

APPENDIX C

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)
)
vs.) No. 1:16-CR-00857-MCA
)
ALLEN GOOSSEN)

TRANSCRIPT OF PROCEEDINGS

SENTENCING

October 31, 2016

BEFORE: HONORABLE JUDGE ROBERT A. JUNELL
UNITED STATES DISTRICT JUDGE

Proceedings reported by stenotype.

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1 APPEARANCES:

2 FOR THE GOVERNMENT: ALEXANDER MAMORU MAX UBALLEZ
 3 alexander.uballez@usdoj.gov
 4 Office of the US Attorney
 5 201 Third Street NW, Suite 900
 6 P.O. Box 607
 7 Albuquerque, New Mexico 87103
 8 505-345-7274

9 FOR DEFENDANT: BRIAN A. PORI

10 brian_pori@fd.org
 11 Office of the Federal Public
 12 Defender
 13 111 Lomas Boulevard, Northwest,
 14 #501
 15 Albuquerque, New Mexico 87102
 16 505-346-2489

1 accept your plea that was made in this case.

2 Do the attorneys -- and remind me. Did we
 3 argue about whether or not the heroin that was
 4 alleged to have been injected into Bryan Sutton back
 5 on November 30, 2013, did I -- do you-all want to
 6 argue whether or not -- or did you make arguments at
 7 that time? I don't recall whether you made
 8 arguments -- whether or not that caused the death of
 9 Mr. Sutton or did not cause the death.

10 MR. PORI: We did not make arguments. I
 11 think that the evidence is clear that it was a
 12 contributing factor to his death.

13 THE COURT: Okay.

14 MR. PORI: And it's hard to isolate whether
 15 or not it was the sole cause of death or a
 16 contributory factor. I leave that to the discretion
 17 of the Court, from the testimony of the doctor from
 18 the office of the medical investigator.

19 THE COURT: And what's the government's
 20 position on that?

21 MR. UBALLEZ: And obviously, we're going to
 22 ask the Court to find, pursuant to the testimony by
 23 the doctor, that it was the but-for causation, given
 24 the testimony that we had and that she heard and the
 25 information before her in the autopsy.

1 THE COURT: Good morning. Thank you very
 2 much. Please be seated.

3 Would the clerk call the first case,
 4 please.

5 THE DEPUTY CLERK: The United States versus
 6 Allen Goossen.

7 MR. UBALLEZ: Good morning, Your Honor,
 8 Alex Uballez for the United States.

9 MR. PORI: Brian Pori for Mr. Goossen, who
 10 is present.

11 THE COURT: Okay. And, Mr. Goossen, would
 12 you come up to the podium for just a second, please,
 13 sir?

14 Is it Goossen. Or Goossen?

15 THE DEFENDANT: Goossen.

16 THE COURT: Mr. Goossen, state your name
 17 for me, please.

18 THE DEFENDANT: Allen Goossen.

19 THE COURT: Mr. Goossen, are you the
 20 defendant in this case?

21 THE DEFENDANT: Yes.

22 THE COURT: And we had a hearing back last
 23 month, as I recall, and went through a lot of the
 24 things in your case that are issues in this case.

25 And if I didn't say it at the time, I

1 THE COURT: Okay. Let's make those
 2 arguments at this time.

3 Does the government want to proceed? The
 4 government would have the burden of proof. So why
 5 don't you-all sit down and we'll hear from the
 6 government.

7 MR. UBALLEZ: Your Honor, does Your Honor
 8 want me to address the legal arguments as to standard
 9 of proof or just address the facts?

10 THE COURT: Just do the standard of proof
 11 as well.

12 MR. UBALLEZ: Okay. The standard of proof.
 13 It's the United States' position that, this
 14 being the sentencing hearing, the standard of proof
 15 is preponderance of the evidence.

16 We believe that's the correct standard of
 17 proof in this case. We believe that's what's
 18 supported by the Tenth Circuit precedent, as noted in
 19 our briefings.

20 However, defense has pointed out and made a
 21 point as to specific cases in which the sentencing is
 22 quite different from what they are originally looking
 23 at. And they're -- in those cases, several other
 24 circuits have said it may be possible that the
 25 United States must prove things by clear and

1 convincing evidence.

2 We are not conceding that point for this
3 circuit. However, we are asking, given the -- what
4 we have heard in testimony, both from Ms. Orpy
5 [phonetic] and from Dr. Proe, from the office of the
6 medical investigator, that this Court make both
7 findings in this case.

8 We do believe by clear and convincing
9 evidence Ms. Orpy's testimony showed that even --
10 that the only thing that she had a question about in
11 terms of time line was specific hours of the day.
12 She said in terms of time periods, she had a very
13 good memory of it. She remembered it within seconds,
14 less than a minute, between when Mr. Sutton was sick
15 and when Mr. Sutton was unconscious.

16 The only intervening factor was Mr. Goossen
17 injecting Mr. Sutton with heroin.

18 Now we know, of course, also, that
19 Ms. Orpy's testimony from the day before, where she's
20 testified that they drank about the same amount.
21 That there are similar effects on Mr. Sutton, in
22 terms of the throwing up, the blood in his throw-up,
23 the shakes, and so on.

24 However, we do know, on day one, Mr. Sutton
25 does not die. And on day two he dies.

1 And so the United States' position, as to
2 these facts from Mr. Orpy, are that they -- they
3 establish there was one difference between these two
4 nights, and there's one thing that caused the death.

5 In terms of time line -- and then in order
6 to supplement that, Dr. Proe, from the office of the
7 medical investigator, testified.

8 She was able to listen, as an expert, to
9 the testimony and the facts as they came out from
10 Ms. Orpy of what happened that night and the time
11 line.

12 Based on that, and the results of the
13 autopsy and the tox screen, she was able to determine
14 that there was heroin, and that the heroin was --
15 that there was an opiate in the system. Heroin was
16 in the system.

17 That there was no evidence of Xanax or
18 Percocet in his system.

19 That given the time line that Ms. Orpy
20 gave, and the description of Mr. Sutton's reaction to
21 the injection, it was her medical opinion that the
22 injection of heroin was the but-for cause of the
23 death of Mr. Sutton.

24 And that's what we would ask this Court to
25 find.

1 THE COURT: Okay. Thank you, sir.

2 Counsel?

3 MR. PORI: And, Your Honor, I will quote
4 from the testimony of Dr. Proe, P-R-O-E, who was the
5 doctor that you heard, and I'll rely on the
6 transcript.

7 We were talking with Dr. Proe, at page 71
8 of the transcript:

9 "Question: So we've heard testimony about
10 a shot of heroin. We can't look at the metabolite
11 and say, 'Yes, that's consistent with one shot of
12 heroin.' I certainly can't.

13 "We don't know how much heroin Bryan Sutton
14 used in the hours before he died based on the
15 toxicology results, correct?

16 "Answer: That is correct."

17 So the question of how much heroin
18 Mr. Sutton used and what effect this one shot had in
19 contributing to his death is something that we simply
20 don't know.

21 We also explored with the doctor the level
22 of intoxication.

23 And we began, at page 73:

24 "Question: So we could say that in the
25 hours before he died, Mr. Sutton could have been as

1 high as a .3 blood alcohol concentration?

2 "Answer: Yes, it would appear so.

3 "Question: That level of alcohol alone
4 could be lethal, correct?

5 "Answer: Yes, it could be, in the right
6 certain circumstances.

7 "Question: And certainly, when you're
8 dealing with someone who is a habitual user of
9 alcohol, to withdraw from alcohol, to stop using, can
10 cause its own health consequences?

11 "Answer: Yes, it can."

12 And then finally, we asked about this
13 but-for finding. And the question at page 74 was:

14 "Question: But I'm asking you, based on
15 your expert opinion, if no heroin had been injected,
16 Mr. Sutton still could have died from the toxic level
17 of alcohol to his system, correct?

18 "Answer: That's a little hard to know.

19 It's a little hard. It would be hard for me to come
20 to that conclusion just based on what I know about
21 toxicology results.

22 "Question: But anyone withdrawing from
23 alcohol can have an arrhythmia?

24 "Answer: Potentially. Although, again, I
25 would think that occurring at a higher level than a

1 .2, but I suppose it's possible."

2 So it's clear that there were a combination
3 of effects which led to the death of Bryan Sutton.

4 There was this ongoing use of narcotics.

5 There was, as the Court will recall, this
6 trip to a trailer in the hills in the middle of the
7 day to secure some unknown narcotic from a dealer.

8 And then there was this potentially lethal
9 level of alcohol.

10 So while there's no doubt that this was a
11 tipping point, the question of whether or not this
12 alone was the cause of death I think is not clear,
13 and the government has not met its burden of showing
14 that it was a but-for cause of death.

15 THE COURT: Go ahead.

16 Do you want to respond?

17 MR. UBALLEZ: Just very briefly, Judge.

18 There is no requirement that we know
19 exactly how much heroin caused the death. We do
20 know, however, that that was the one outside
21 influence introduced into his system, and the
22 difference between that day and the day before.

23 As to the arguments regarding level of
24 intoxication, one of the things we do know is that
25 the doctor testified that while the levels found in

1 base offense level of 38 be applied if the defendant
2 is convicted under -- and it gives the statutes --
3 and the offense of conviction establishes that death
4 or serious bodily injury resulted from the use of a
5 substance.

6 Is that -- did I state that correctly?

7 MR. UBALLEZ: Yes, Judge.

8 THE COURT: The other issue, then, is if
9 the Court doesn't rule that way, that the government
10 is requesting a variance.

11 Is that correct?

12 MR. UBALLEZ: That's correct. A departure
13 and a variance, or a combination of the two. Yes,
14 Judge.

15 THE COURT: Okay. And -- but if the Court
16 does not rule affirmatively under 2D1.1(a)(ii), that
17 does not necessarily keep the Court from granting a
18 variance or a departure.

19 Is that correct?

20 MR. UBALLEZ: That's absolutely correct,
21 Judge. And under my reading of it, the only way that
22 this Court could grant the departure under a 5K
23 section would be if it's not already incorporated and
24 taken into account by the guidelines in another way.

25 And so they are sort of mutually exclusive,

1 his blood were high, they wouldn't be high for
2 someone who regularly uses alcohol, and the testimony
3 reflects, as someone who is a regular user, has
4 regularly used alcohol.

5 She followed up those statements by saying
6 that although a person can die of an arrhythmia if
7 they are withdrawing from alcohol, it would be
8 abnormal for them to die of an arrhythmia.

9 (Discussion off the record.)

10 MR. UBALLEZ: An arrhythmia from withdrawal
11 would be a surprising symptom of someone who is
12 drinking alcohol and clearly not withdrawing from it.

13 While they're -- I think the doctor --
14 there is testimony to support that there is a
15 combination of effects.

16 The test here is whether it is the but-for
17 cause. But-for this, would he have died at that
18 moment, but-for this injection?

19 And that was the question I asked Dr. Proe.

20 And she said, "But for the heroin injection
21 at that moment, he would not have died at that
22 moment."

23 THE COURT: Well, just so that I'm clear,
24 the government is requesting -- there's two different
25 things. One is that under 2D1.1(a)(ii), that the

1 but they would -- by a finding that, the guidelines
2 should not take into account this death under 2D,
3 then it allows to you access 5K.

4 THE COURT: Okay. Any comment, Counsel, or
5 any comment on that at all?

6 MR. PORI: Your Honor, I think the evidence
7 is clear that a departure is not appropriate under
8 this circumstance; that the weight of the authority
9 in this circuit that a departure under 2D1 or death
10 resulting is not related to the offense of
11 conviction. It's not relevant conduct.

12 I think the only grounds for the Court to
13 enhance a sentence in this case would be a variance
14 under the factors set forth in 3.53.

15 THE COURT: Okay. All right.

16 The Court finds by clear and convincing
17 evidence that the defendant's conduct did cause the
18 death of Bryan Sutton. Okay?

19 He was the young man that was -- I say
20 young man -- the gentleman that was killed in the --
21 on or about November 30, 2013.

22 The Court finds that the injection led
23 directly to Sutton's death. This occurred
24 approximately 13 months prior to the offense for
25 which the defendant was charged in Count 1 of the

1 indictment in this case.

2 Heroin is the same narcotic as the instant
3 offense, and the defendant continued to distribute
4 heroin in New Mexico, as evidenced by his guilt in
5 Count 1 and 2 of the indictment, even after Sutton's
6 death.

7 The Court is not going to depart, but the
8 Court will consider a variance. Okay?

9 And so the Court would -- may consider a
10 variance, and I would ask you-all to argue on that.

11 Any other presentence issues that the Court
12 needs to take up? And I'm going not -- I'm going to
13 give everybody a chance to allocute, obviously, and
14 then make any other arguments.

15 Are there any other arguments that the
16 government has in the case? Any other arguments,
17 other than what a proper sentence would be? I'm
18 talking about the normal ones. Anything that's pre
19 going through -- setting the guidelines and doing
20 that kind of stuff.

21 MR. UBALLEZ: We would ask for a finding by
22 this Court that it was a reasonably foreseeable
23 effect of the injection of the heroin into
24 Mr. Sutton.

25 THE COURT: Okay. Any response from the

1 defendant?

2 MR. PORI: I think that's inherent in
3 anyone who uses heroin. Anyone who would use heroin
4 should be knowledgeable of its potentially deadly
5 effects.

6 THE COURT: The Court finds that it was --
7 finds the government's position on that.

8 MR. UBALLEZ: Nothing further as to the law
9 and other sections, Judge.

10 MR. PORI: May I approach?

11 THE COURT: Yes, sir.

12 MR. PORI: Your Honor, I'm tendering to the
13 Court a declaration of Mr. Goossen's counsel in the
14 state court proceedings.

15 I've given a copy to the prosecution. It's
16 a declaration from Arlon Stoker. I would ask that it
17 be made part of the record, simply to explain the
18 limitations which Mr. Goossen faces in defending
19 these charges in a sentencing proceeding, given the
20 pendency of a state proceeding involving the same
21 subject matter.

22 And I would ask that it be made a part of
23 the record.

24 THE COURT: Is this the Court's copy?

25 MR. PORI: That's your copy. I have

1 another copy for the clerk.

2 THE COURT: And this is the first time you
3 have raised this issue. Is that correct?

4 MR. PORI: Your Honor, actually, no. In
5 the objections to the presentence report, as well as
6 in our supplemental authorities, we emphasized that
7 it would be fundamentally unfair to enhance
8 Mr. Goossen's sentence on the basis of the facts
9 surrounding the death of Mr. Sutton. Because in our
10 objections, we argue principles of comity, of
11 federalism, and now more importantly, we are arguing
12 principles of Fifth and Sixth Amendment
13 jurisprudence.

14 These facts that would form the basis of
15 this -- of this variance are facts that are pending
16 for consideration in front of the state courts of
17 New Mexico.

18 And to try to subsume these in these facts
19 without an indictment, without an acknowledgment or
20 an admission by the defendant, without proof beyond a
21 reasonable doubt, would contravene the Fifth
22 Amendment and the Sixth Amendment.

23 We lean on the reasoning of Justice Scalia
24 that all facts essential to imposition of a level of
25 punishment that the defendant receives, whether a

1 statute calls them the elements of the offense or
2 sentencing factors or Mary Jane, must be found by the
3 jury beyond a reasonable doubt.

4 And the idea of having an enhanced
5 sentence, a sentence that could increase ten times
6 beyond the sentence recommended by the guidelines in
7 a proceeding where the defendant does not have a full
8 and fair opportunity to rebut the challenges with his
9 own testimony, we would submit violates the Fifth and
10 Sixth Amendment.

11 That's why we would endorse the approach
12 taken by the probation department in this case that,
13 should the Court wish to impose sentence, to
14 recognize that death, the Court can ensure in this
15 case that whatever sentence is imposed in this case
16 is imposed to be served consecutively to the sentence
17 in the pending state court case.

18 That would respect comity, that would
19 respect federalism, that would respect the Fifth and
20 Sixth Amendment.

21 THE COURT: Your objection is overruled.

22 All right. If I could get defense counsel
23 and the defendant to come to up to the podium.

24 Just so that I'm -- I don't miss anything,
25 is there any other objections that were to the

1 presentence report other than have already been
2 raised?

3 MR. PORI: Yes, Your Honor.

4 We did raise an objection in our sentencing
5 memorandum objecting to the two-level increase for
6 the possession of a firearm in connection with the
7 drug trafficking offense, because we believe, again,
8 that evidence is not reliable enough to justify an
9 enhancement.

10 It's evidence offered by an unnamed,
11 uncross-examined, undisclosed confidential informant
12 who indicated that at one time Mr. Goossen traded
13 drugs for a firearm.

14 And that's the basis of the enhancement, so
15 we believe that's unreliable.

16 THE COURT: Okay.

17 Does the government have a position on
18 that?

19 MR. UBALLEZ: We do not disagree with that,
20 Judge. We didn't present any evidence as to that
21 firearm or any testimony from the witnesses regarding
22 the reliability of that confidential informant.

23 THE COURT: Okay. So the government does
24 not disagree with the defendant's objection to
25 paragraph 18, the two-level points that were given

1 that?

2 MR. UBALLEZ: Yes, Judge.

3 THE COURT: Okay.

4 MR. PORI: With a criminal history category
5 of I, yields a recommended guideline sentence of 10
6 to 16 months.

7 THE COURT: I show that he has a criminal
8 history category of II.

9 MR. PORI: Oh, my apologies.

10 So the guideline sentence of 12 to 18
11 months. You're right, Your Honor. There's a
12 criminal history category of II.

13 THE COURT: Would you say that one more
14 time?

15 MR. PORI: You're right, Your Honor.

16 THE COURT: Okay. So a 12 and a II would
17 be a guideline range of 12 to 18 months,
18 supervised -- and that's on each count, Count 1 and
19 Count 2.

20 You've got -- the probation remains at --
21 the supervised release remains at three years to
22 life -- or actually, three years, excuse me.

23 Three years would be the guideline range,
24 correct?

25 THE PROBATION OFFICER: Your Honor, three

1 under US Sentencing Guideline 2D1.1(b)(i).

2 Is that correct?

3 MR. UBALLEZ: That's correct, Judge.

4 THE COURT: All right. So the Court grants
5 the defendant's objection. Paragraph 18 will now be
6 a zero.

7 Any other objections, then?

8 MR. PORI: No, Your Honor.

9 THE COURT: That would make paragraph 22,
10 the adjusted offense level, a 14.

11 That would make paragraph 24, the
12 acceptance of responsibility, a two.

13 Paragraph 25, the acceptance -- other
14 acceptance of responsibility, would be a zero now,
15 because the adjusted offense level is less than 16.

16 Do you agree with that, Counsel?

17 MR. PORI: Yes, Your Honor.

18 THE COURT: Do you agree with that for the
19 government?

20 MR. UBALLEZ: Yes, Judge.

21 THE COURT: Okay. So that would make the
22 total offense level a 12 rather than a 13.

23 Do you agree with that, Counsel?

24 MR. PORI: Yes, Your Honor.

25 THE COURT: Does the government agree with

1 years to life.

2 THE COURT: Okay. That's the statutory
3 provision, but the guideline range would be three.

4 THE PROBATION OFFICER: Would be three,
5 yeah.

6 THE COURT: The defendant is in -- still
7 remains in Zone C, so is ineligible for probation on
8 either count.

9 The fine range is now 5,000 -- oops, that
10 wouldn't be right.

11 You show 3,000 to 2 million, but I thought
12 the -- is there something that enhances that?

13 I've got the 2015 book with me, and I show
14 that an offense level of 12, the minimum range for a
15 fine is \$5,500 and the maximum is 55,000.

16 THE PROBATION OFFICER: Correct,
17 Your Honor.

18 THE COURT: Okay.

19 THE PROBATION OFFICER: The maximum
20 statutorily, though, would be the 1 million.

21 THE COURT: The million? Okay.

22 Community restitution of \$500?

23 THE PROBATION OFFICER: Yes, Your Honor.
24 We recommend that.

25 THE COURT: Okay. And then special

1 assessment to the crime victim's fund of \$100 on each
2 count.

3 THE PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: All right. Let me go through
5 the guidelines with you.

6 I have reviewed the presentence
7 investigation report prepared by US Probation
8 Officer Sandra Day. I find the report accurate and
9 correct, with the exception of the following matters
10 which I have ruled on on the record.

11 Paragraph 18 is no longer a plus two. It
12 is now a zero.

13 Paragraph 22, the adjusted offense level,
14 is now a 14, rather than a 16.

15 Paragraph 25, the second acceptance of
16 responsibility under 3E1.1(b) is now a zero rather
17 than a minus one, because the adjusted offense level
18 is less than 16.

19 And the total offense level is now a 12.

20 The criminal history category remains a II.

21 I adopt the report as amended in the
22 application of the US Sentencing Guidelines as
23 amended on the record.

24 The total offense level is a 12.

25 The criminal history category II.

1 The guideline range for custody is 12 to 18
2 months on each count.

3 Supervised release is three years on each
4 count.

5 The defendant is ineligible for probation.

6 The fine range is \$5,500 to \$55,000.

7 Community restitution is \$500.

8 And the special assessment to the crime
9 victim's fund is \$100 on Count 1 and 2 -- excuse
10 me -- \$100 on Count 1 and \$100 on Count 2, for a
11 total of \$200.

12 The Court will be glad to hear from you and
13 your client on anything you would like for me to
14 hear.

15 MR. PORI: Thank you.

16 Your Honor, the one thing that I wanted to
17 emphasize, the tragedy of this case, is that when we
18 were hearing from the young woman in our sentencing
19 hearing, she concluded her testimony with me by
20 explaining, "None of us were greedy if we had
21 something."

22 That's at page 44 of the transcript.

23 And she explains that:

24 "If we had any kind of substance when we
25 were teenagers we shared it amongst our group."

1 I asked her at the end of her testimony:

2 "Did you try to talk Bryan Sutton out of
3 doing that shot of heroin?"

4 And she said:

5 "You couldn't talk Bryan out of doing that.
6 No one could talk him out of doing that."

7 That's at page 46.

8 The point of it, Your Honor, is this is a
9 tragedy. This is an accidental death which resulted
10 from two friends who were heroin addicts and a
11 misguided attempt to help.

12 This is the way these friends were friends.
13 And it's very likely that if Allen Goossen was in
14 Bryan Sutton's position, I would be standing next to
15 Bryan Sutton instead of Allen Goossen. It is by the
16 grace of God that Allen Goossen is alive, and I think
17 that he needs to appreciate the tragedy that has
18 befallen Mr. Sutton.

19 But more important, I think the Court needs
20 to understand that all of this arises out of the
21 disease of addiction.

22 As we explained in our sentencing
23 memorandum, the disease of addiction is a disease of
24 the mind as surely as cardiac insufficiency is a
25 disease of the heart.

1 And these characteristics of this
2 relentless disease are apparent over and over and
3 over in this case.

4 We relied at length on the Supreme Court
5 decision in Robinson, where we said that a state
6 might determine that the general health requires that
7 the victim of these and other afflictions like mental
8 illness or leprosy or sexually transmitted diseases
9 be dealt with with compulsory treatment rather than
10 incarceration.

11 And, Your Honor, that's what we're
12 requesting in this case. The Court has determined
13 that the offense level is 12 and the criminal history
14 category II.

15 Under Zone C, the Court has the authority
16 to impose a split sentence, and that's what we'd ask
17 the Court to do, to give Mr. Goossen credit for the
18 time he's served in federal custody, including time
19 awaiting charging in state court -- and I've
20 discussed that with Ms. Day -- as well as the
21 opportunity to enter and complete long-term
22 residential drug abuse treatment.

23 We ask that, Your Honor, because that would
24 be the fitting tribute for Mr. Sutton: one less
25 addict on the streets of Farmington, New Mexico.

1 And, by the grace of God, one less addict who
2 overcame his addiction so that he could be a resource
3 to other addicts, to fight this deadly disease which
4 is a scourge in this district, unlike more -- most
5 other districts, whether it's Farmington, whether
6 it's Espanola, whether it's the streets of
7 Albuquerque.

8 Drug addiction is a disease which has
9 claimed too many lives in this district.

10 And we would ask the Court to punish that
11 disease with treatment, not with incarceration.

12 That would be our request.

13 THE COURT: And, Mr. Goossen, anything you
14 would like to say?

15 THE DEFENDANT: Yes, Your Honor.

16 I would like to say that Bryan was one of
17 my really good friends since I was really young.
18 I've known him since I was 16. And there isn't a day
19 that goes by that I don't think of him. He was like
20 a brother to me. I grew up an only child, and me and
21 him did everything together when we were in grade
22 school, up to high school, until I moved away.

23 And then we reunited again when I moved
24 back from Wisconsin and we were friends again, just
25 like no time had passed.

1 He has always been there for me, and I have
2 always been there for him.

3 And I would like to say to his family that
4 I'm truly sorry for what happened. I'm very truly
5 sorry for what happened, and there's not a day that
6 goes by that I do not think of him.

7 And ever since that happened I did try to
8 get help and tried and tried on my own, and I could
9 not do it.

10 And I see this as a blessing from God that
11 I got caught with the stuff that I did. Because of
12 that I've only had one relapse in the past 21 months,
13 and that one relapse got me back in custody right
14 away. It took me away from my family and my
15 children.

16 And that's one thing I don't want to go
17 back to is addiction, especially for my wife and my
18 kids and myself. My wife and kids deserve a father
19 that's happy and supporting and sober.

20 And that's -- I humbly ask that you
21 consider rehab for me, sir.

22 And that is all I have to say. Thank you.

23 THE COURT: The government, anything
24 you-all would like to add?

25 MR. UBALLEZ: Absolutely, Judge.

1 I do have both arguments, and if the Court
2 will allow several members of Bryan Sutton's family
3 in the courtroom today, they would like to address
4 the Court.

5 THE COURT: Thank you. You-all have a
6 seat.

7 MR. UBALLEZ: And I'll keep my arguments
8 brief. I know we've -- both sides have briefed this
9 heavily. And our arguments are -- the United States'
10 argument is laid out in full within all of our
11 briefing.

12 I would like to point out, as to Mr. Orpy's
13 testimony:

14 "Did you try to talk him out of scoring
15 drugs from his friend?

16 "Chris and I did, yes."

17 That was the testimony on page 46.

18 That's testimony we had from the day
19 before, when they did talk him out -- they tried to
20 talk him out of it. There's only one difference, as
21 I said before, between the day that he lived and the
22 night that he died. And that difference is
23 Mr. Goossen. It's not a matter of Mr. Goossen's
24 addiction. We're not asking for punishment because
25 he's an addict.

1 We're asking for punishment for the
2 continuing actions he does to put the rest of the
3 community, including his friends, at risk, as
4 outlined in our motion.

5 I think this case is a poster child for
6 that. It shows one person who knew -- and we knew
7 from his confession to the police officers that he
8 knew. He was the one there, he was the one that
9 injected him.

10 And the cops talked to him and they're
11 like, you know, you -- "You did this, right?"

12 "Yeah. I injected him."

13 And then he died, and he watched him die.

14 And then 13 months later he's selling to an
15 undercover and he's selling to a CI.

16 And then when he finally gets arrested the
17 following year he's carrying distribution quantities
18 of heroin, and he admits that he sells to a few
19 friends. That is the conduct.

20 The United States will call Aneliz
21 Hernandez to address the Court.

22 THE COURT: Let me see the probation
23 officer for just a second.

24 (Discussion off the record.)

25 THE COURT: We are back on the record.

1 Conditions of supervised release in the
2 District of New Mexico change tomorrow. And so it
3 doesn't make a lot of sense -- and the officers have
4 really been working hard on getting those that
5 they've already done in shape with the ones that will
6 be in effect tomorrow, and so we're having a little
7 conversation, just because I've gotten them on some
8 of the other cases.

9 I didn't get them on this case, so we're
10 doing that so that the language would be in line with
11 what we're going to be doing -- what you-all will be
12 doing here starting tomorrow.

13 And it doesn't -- and I guess the big issue
14 is we can't -- the Court can't delegate authority to
15 probation officers to do certain things anymore, so
16 the language has to be that the Court is ordering
17 things, not the probation officers.

18 All right. Tell me your name, please.

19 MS. HERNANDEZ: Aneliz Hernandez.

20 THE COURT: All right. And, Ms. Hernandez,
21 what would you like to tell me?

22 MS. HERNANDEZ: Bryan Sutton was my
23 stepbrother. I'd like to express that using Bryan in
24 the past tense still and will forever be difficult
25 for me and my family.

1 I've known Bryan since we were four years
2 old. We grew up together. We played sports: soccer,
3 baseball. Our families had barbecues together. We
4 spent Fourth of Julys, Christmases, you name it. We
5 all did it together.

6 Our parents got married in January of 2013.
7 But as far as we were concerned, we were family
8 before then.

9 Unfortunately our family was torn apart on
10 November 30, 2013, only ten months after our family
11 was officially joined as one.

12 I think a lot about the last moment I had
13 with Bryan, our last conversation, our last laugh,
14 our last hug. We talked about everything, our future
15 plans, our life, work, how much we've grown up and
16 what everything had in store for us.

17 Bryan was an incredible person who could
18 make you laugh and smile no matter the situation.

19 He touched the lives of every person he met
20 and he never hesitated to lend an ear when we needed
21 to talk.

22 He was -- it was important for him to be a
23 good friend, a good son, and a good father.

24 He was only 26, and that's not enough years
25 on this earth.

1 Pictures, stories, videos, and messages is
2 all we have left. That's all we have left of Bryan.
3 That's all we have left to show Gauge, his youngest,
4 who he was, because he was passed away before Gauge
5 was born. Gauge will almost be three soon, and he's
6 being raised by the most extraordinary, selfless, and
7 amazing people I know in this world -- my mom,
8 Dolores, and my stepdad, Bryan's father, Bill Sutton.

9 With no hesitation they made the decision
10 to adopt Gauge and guide him through life, putting
11 their new marriage and life adventures to the side
12 for new adventures.

13 The idea of my mom, who raised myself, my
14 sister, and my two brothers having to start over to
15 raise a child, it weighed heavy on my heart. But she
16 took it with no question or no hesitation.

17 I think about my stepdad all the time,
18 constantly praying, worrying, and thinking about how
19 he is, all the while struggling to heal himself, his
20 only child taken away from him.

21 Nobody can take away the hurt, no matter
22 how hard we try. It's an everyday struggle for us.

23 Nobody should have to go through this, and
24 I hope and pray nobody has to.

25 Your Honor, I stand in front of you and

1 would like to express to you and Mr. Allen how his
2 actions and decisions changed my family's life; how
3 his actions have already changed the life of two
4 kids. They're just starting life and they have to go
5 through life without their father.

6 Because of his actions, our families will
7 always suffer. They will never -- that will never go
8 away. Our hurt and our hearts that are broken will
9 never heal.

10 I've repeated the word "family" numerous
11 times because family is everything. That's all we
12 have is our family. We, as a family, have no choice
13 but to teach our baby boy right now, that we have,
14 right from wrong. We have to teach him the value of
15 life, how important life is, to think before making
16 decisions that can take away life, a lesson I hope
17 that we teach these kids and that I wish that
18 Mr. Allen would have been taught.

19 Thank you.

20 THE COURT: Thank you very much.

21 Anyone else you would like to call?

22 MR. UBALLEZ: Bill Sutton.

23 THE COURT: Would you state your name for
24 me, please?

25 MR. SUTTON: William Lee Sutton.

1 THE COURT: All right, Mr. Sutton.

2 You may proceed.

3 MR. SUTTON: I did write an impact letter.
4 I'll probably just phrase through it.

5 My name is William Lee Sutton. My son's
6 name was Bryan Lee Sutton. He was born June 11,
7 1987. He's my only biological child, and he was the
8 only child of his deceased mom.

9 I was 20 years old when he was born. My
10 wife was 18. We were all young back then. I have
11 lots of memories of growing up. I mean, he was -- he
12 was the spotlight of our lives.

13 He was the first grandchild, the first
14 great grandchild to my grandparents for the first 16
15 years of his life.

16 He was a big part of our family.

17 Bryan grew up playing many different sports
18 and was determined to excel at all.

19 Bryan worked very hard. And again, was
20 determined to excel at every task asked of him.

21 He was a CDL driver.

22 He was an operator -- qualified equipment
23 operator, certified poly welder, and certified steel
24 welder.

25 Bryan was also a father to two wonderful

1 seems like everything we did, you know, the hunting
2 or going to work and seeing things he operated, ideas
3 we had that we were going to do together and build
4 together.

5 And now my parents are moving towards the
6 retirement phase of the business, and the business is
7 coming to me. And Bryan was my go-to person. He was
8 somebody that I could rely on, somebody that I could
9 trust. And that is now gone.

10 I do plan to continue what I'm doing, but I
11 miss him. He was a major part of my future plans.

12 Bryan left behind two wonderful children.
13 Liam was the oldest and just five at the time of his
14 passing. He's still trying to learn the meaning of
15 death.

16 His most favorable memories are going
17 fishing, playing trucks, and riding in his dad's
18 truck.

19 He will never really get to know the
20 chance -- get the chance to know how much his dad
21 loved him and how special he really was.

22 Gauge will never have live memories of his
23 dad, Daddy Bryan. He was born two and a half months
24 after Bryan's death. The only thing he will ever
25 know is what I tell him and the memories shared by

1 children, Liam Lee Sutton, and Gauge Bryan Sutton.
2 Bryan passed away on November 30, 2013.

3 My life was blessed when he was born. He
4 was a healthy little boy and all you could ask for.

5 We did everything together. We'd go
6 hiking. We played sports. We'd go camping. We'd go
7 fishing. We'd go hunting. We'd go to the lake with
8 the boat. We'd go bike riding. He learned to ride a
9 bike at three.

10 I enjoyed coaching him in sports. I
11 coached him for nine years in baseball. We pretty
12 much did everything together. We had many hopes and
13 plans that we'd continue to do that the rest of our
14 lives.

15 I currently work in a family business, my
16 family's business for the past 19 years. My
17 grandparents started it in 1954. And before they
18 passed -- before they passed, we had always talked
19 about how the business would be passed down to Bryan.
20 It was a business he seemed to enjoy working at, and
21 he worked there off and on for the past six years.
22 That was my plan, and I believe that was Bryan's plan
23 as well.

24 Every day I go to work I just -- I see him
25 everywhere, you know. I mean, every -- you know, it

1 others of his biological dad.

2 Bryan was my son. I named him, I raised
3 him, I loved him. He was not supposed to pass before
4 me.

5 We are not supposed to pass before our
6 children [sic]. I will never get to see him grow
7 older, as I do. I will never get to see him enjoying
8 playing catch with his two boys, as I did with him.

9 Like I said before, I won't be able to
10 expand our business in the way that he and I had
11 planned.

12 I will think of him and I will miss him
13 every day until the day I die.

14 That's all I have. I just wanted to give
15 you a little bit about Bryan.

16 Thank you.

17 THE COURT: Okay. Thank you.

18 MR. UBALLEZ: One final family member,
19 Your Honor, Ms. Dolores Sutton.

20 I'm apologizing, Judge. I wasn't able to
21 print out her statement. It's on a tablet, if you
22 don't mind that she reads from a tablet.

23 THE COURT: That's fine.

24 Would you tell me your name, please?

25 MS. SUTTON: Good morning, Your Honor. My

1 name is Dolores Oliveda Sutton.

2 THE COURT: Okay. Go ahead. You may
3 proceed.

4 MS. SUTTON: I'm Mr. Sutton's wife and
5 Bryan's stepmom.

6 I have a letter from my -- from Jennana
7 Johnson, which is my sister-in-law, that was unable
8 to be here. She lives far away. She lives in
9 Malaysia, but I'd like to read what she said to us.

10 (Reading) Bryan Sutton was my only nephew.
11 We were eight years apart, and in some ways more like
12 siblings. I remember the day he was born, when he
13 took his first steps. I remember him playing
14 baseball in the backyard on hot summer days. Some
15 days he'd come over to our house before school and
16 we'd eat breakfast together and watch cartoons.

17 As we grew older, I moved away, and we
18 always kept in touch.

19 He visited me when I was in college in
20 Oregon. He spent a few weeks in Malaysia where I
21 currently reside.

22 When he was about 12, I always looked
23 forward to seeing him on my trips home. We have a
24 small family, so we're all close.

25 He had a dry sense of humor that still

1 and told me. I will never forget the moment for the
2 rest of my life. I wanted to see him, to touch him,
3 but the body had already been sent to Albuquerque.

4 We spent an agonizing week waiting to see
5 him, his body, not knowing what we would find. Would
6 he be battered and bruised? Would it really be him?

7 Knowing that he had been dropped off at the
8 ER dead was especially hard to accept. How could his
9 friends do this to this man that we loved and
10 cherished so much.

11 Feeling his body was one of the hardest
12 things I have ever done. He was covered in an ugly
13 brown blanket. He looked peaceful.

14 Just writing this breaks my heart. The boy
15 that I loved so fearlessly was gone. His body was
16 hard and cold.

17 His dad cried over him and rubbed his arms
18 and feet. It was the saddest day of my life.

19 Bryan left behind a four-year-old son,
20 Liam, at that time. Liam won't remember his dad. He
21 will never know the dreams his dad had for him, how
22 much he loved him, and how proud he was of him.

23 We will never see Bryan into the man he
24 wanted to be.

25 These last three years have been so hard

1 makes me laugh. He brought so much joy to my
2 grandparents, which is his grandparents, and my
3 parents.

4 Bryan was the baby of the family for 14
5 years until I had my oldest son. He meant the world
6 to us.

7 His mother battled cancer from about 2010
8 until she passed in January of 2013. We exchanged
9 e-mails during this time, mostly bragging about
10 Bryan's son Liam, and she would always ask me to keep
11 in touch with Bryan and look out for him. She knew
12 how close we were, and she thought maybe he would
13 listen to me.

14 Bryan had a difficult time accepting her
15 passing. I know that he was trying to keep it all
16 together. He was working and supporting his son.

17 I was in Farmington the night he had died.
18 My family and I had flown in from Malaysia earlier
19 that week. We had Thanksgiving with him on Thursday
20 night. My kids had so much fun telling jokes and
21 wrestling with him.

22 My oldest son was 11 at the time. He made
23 plans to go skateboarding with him the following
24 Saturday. Unfortunately, Bryan passed before then.

25 My parents woke me up at about 2:00 a.m.

1 for all of us. I miss him every day. He's the first
2 thing I think of when I wake up. Some days I still
3 cry thinking of him.

4 My kids talk about him, recalling memories
5 here and there. I can accept he's gone, but the pain
6 never goes away. Jennana Johnson. (End reading.)

7 My apologies to the Court for not keeping
8 it together.

9 THE COURT: Take your time.

10 MS. SUTTON: To completely articulate the
11 impact that Bryan's death has had on my life is truly
12 overwhelming, and I really believe it to be
13 impossible.

14 I have written a statement in my head over
15 and over again a thousand times, not just for this
16 statement, but since the day he died.

17 The emotional and physical impact that
18 Bryan's death has had on myself, my husband, and our
19 family has changed our lives forever.

20 Today and the rest of my life I'm grieving
21 with my husband for the loss of his only son, my
22 stepson, that I considered my son as well.

23 Bryan will never be able to live out his
24 own potential. Bryan's death has left us vulnerable,
25 and forever saddened that he will never be able to

1 realize his hopes and his dreams.

2 January 2013 we joined our family as one.
3 We all went to Hawaii. It was a very close family
4 get-together. Family is everything to me.

5 But even before then, Bryan was family.
6 Bryan grew up with my kids. I've known Bryan since
7 he was four years old. We've had the -- so many
8 things together.

9 Bryan was a remarkable man. He never hurt
10 anyone. He was always there for everyone. He was
11 there for my kids, he was there for his friends, he
12 was there for strangers. If someone needed a hand
13 Bryan was there, no questions asked. That was Bryan.

14 Our family gatherings will never be the
15 same for the rest of our lives. These once joyful
16 occasions have been taken away. They've been ripped
17 from us.

18 Yes, we're able to smile and laugh since
19 the death of our son, and hope he is smiling with us.

20 But we are forced to look at the empty
21 chair in our home, a constant reminder of the lack of
22 his presence there. We only have a memory.

23 Because of the defendant's selfish,
24 careless, irresponsible actions, I mourn the loss of
25 my husband, as I knew him. He is a confident and

1 that they put us. I had walked away. I begged for
2 him. To be told that your child is gone and not
3 being able to see him, it seemed like a dream.

4 We were unable to see Bryan until
5 Wednesday. This happened on Saturday.

6 In the meantime we went to where Bryan
7 lived, two blocks from our house -- two blocks. I
8 watched my husband start packing his belongings from
9 that home.

10 I helped him pack his belongings, with
11 tears in his eyes. We all packed, quiet. We looked
12 at each other and there was nothing -- nothing we
13 could do. There's nothing I could do for him.

14 I helped him pack his belongings, but I
15 felt like I was violating Bryan's privacy. It was
16 Bryan's stuff.

17 We drive past his house on a daily basis.
18 It's on my husband's path to work, the grocery store,
19 the mall, schools. I catch him glancing at the home
20 with such sadness in his eyes.

21 Funeral arrangements had to be made for
22 Bryan's service that week. Discussions and decisions
23 on what Bryan would be wearing for the service was
24 very devastating to us.

25 I was forced to realize that this fact was

1 strong man in the world that surrounds. My heart
2 will ache for my husband for the rest of my life. I
3 feel his pain that is indescribable, and helplessness
4 because he hurts so much.

5 There's nothing that I can say or do.
6 There's nothing anyone can say or do.

7 I watch my husband try to find the strength
8 within himself to continue his normal routine, but
9 there is no more normal routine.

10 Bryan's death imposed doing things that I
11 would never wish upon anyone to have to do.

12 November 30, 2013, is a day we will never
13 forget. That knock at the door, as I got up at
14 1:05 a.m. There's two uniformed police officers
15 letting me know, letting my husband know, that Bryan
16 was gone.

17 We were both in shock. We stood there with
18 nothing to say. That is something nobody ever should
19 experience.

20 Bryan's death, it should never have
21 happened.

22 We went home, after not being able to see
23 Bryan. I begged the nurse. I begged the doctor,
24 "Please let us see Bryan."

25 At that time my husband was in the room

1 not a dream, for it was real. Bryan, in fact, was
2 gone. He will never walk in through our front door.
3 We will never hear the stomping of his feet, for
4 Bryan always wore a brown pair of boots, his work
5 boots. When he came in it was always, "Hey, Dad."

6 That is what I hear in our home today any
7 time someone is at the door. Any time we're in that
8 home Bryan will never walk through that door.

9 I will never forgive the defendant for what
10 he has done to our family for taking Bryan's life.

11 I wish he could completely feel the extent
12 to which he has changed our lives.

13 Bryan left in this world two beautiful
14 children to be cared for. Both will never have the
15 opportunity to know their father. This was taken
16 from them by the defendant.

17 We have adopted his young son, Gauge, after
18 Bryan's passing, a constant reminder of Bryan. He is
19 such an angel that brings us joy and sadness all in
20 one.

21 Bryan never got to meet this child because
22 his life was taken from us before he was born. Gauge
23 will never have that opportunity to meet his dad.

24 The selfless action taken by the defendant
25 has a huge impact on both my husband and I in many

ways, emotionally and financially.

At our age, instead of planning for our future, our retirement, we are forced to plan for Bryan's son's education, not only for Gauge, but for Liam as well, for their education, for their future. We have to step up and be both grandparents and parents.

At this time Gauge knows nothing of his dad. He calls us mom and dad. As I say, he is a true angel for us. It is the hardest thing my husband goes through every day, as Bryan's son calls him dad. I see it in his eyes that this is Bryan's son. Bryan should be here. Gauge should have Bryan.

Your Honor, I'm aware that conviction of drug trafficking that he is being sentenced for carries, I think, a sentence between zero to 20 years.

I ask you to sentence him to the maximum. His careless, selfish actions handed our son a death sentence and his family a life sentence. He knew the consequences of his actions.

20 years certainly seems lenient, considering the punishment that this irresponsible person dealt Bryan and his family. This sentence will not bring Bryan back, but it's my hope that it

But we will continue with the memories of Bryan. We know he's gone, but he's not gone from our memory.

I believe Bryan is here with us today. He's here for his dad. And I know his dad and I, as well as his family, just want to tell him, we love you Bryan, and we're here for you.

Thank you, Your Honor.

THE COURT: Anyone else, Counsel?

MR. UBALLEZ: No, Your Honor.

Just very, very briefly, before I pass it over -- back to Mr. Pori.

I've spoken with the family, and they understand that this is the sentencing for the charges of trafficking. They understand what to expect of this, and they're not asking this Court, nor is the United States, to sentence Mr. Goossen for the 2013 actions.

As laid out in our brief, what Mr. Goossen has done is continue a pattern of behavior, the pattern of behavior that leads him before this Court today.

I do want to address a couple final things that we heard in evidence.

We heard from Ms. Orpy that Ms. Orpy, on

will keep the defendant from committing this heinous crime again.

He didn't stop at Bryan, he continued. He continued in his path even after that night when he took Bryan's life. He had no remorse of what happened and continued.

We have hope that Bryan's death was not in vain. This is our son's last chance to make a difference in this world.

A strict sentence for Mr. Allen Goossen has the potential to affect the actions and thoughts of others which could later save lives.

This can make a difference.

Your Honor, I just wanted you to know how this has impacted our life. Mr. Goossen is still here in this world. And his children, his family, have that opportunity, regardless of where he's at, where we do not.

We cannot see Bryan. It's only in that cemetery, his grave. That's all we have, even though he's not there.

As I say, there's not enough paper. We could write book after book on how this has impacted us. There's no words. There's nothing that we can say or do.

the 29th, tried to talk Bryan out of it, because that's what a friend does.

Chris Hanks tried to talk Bryan out of it, because that's what a friend does.

Again on the 30th, tried to talk him out of it, because that's what a friend does.

But Tanya Orpy held Bryan's hand as he died, because that's what a friend does, and tried to call 911, because that is what a friend does, and then went with Bryan to the hospital, because that's what a friend does.

Mr. Goossen was not a friend.

Thank you.

THE COURT: Counsel, if you and the defendant would come up to the podium.

I am departing from the recommended sentence. Pursuant to 18 United States Code, Section 3553(a), the factors to be considered in imposing a sentence, the Court has reviewed and considered the applicable guidelines in this case, as well as the testimony and argument by counsel.

The applicable guidelines, which is 15 to 21 months, the Court does not believe that is an adequate sentence; therefore, the Court will grant an upward variance, specifically as to 18 United States

1 Code, Section 3353(a)(ii)(B), to afford adequate
2 deterrence to criminal conduct, and (C), to protect
3 the public from further crimes of the defendant.

4 As noted in paragraph 27 of the presentence
5 report and the testimony that was heard at this last
6 hearing, and a ruling made by the Court, Mr. Goossen
7 injected heroin into Bryan Sutton on or about
8 November 30, 2013, here in New Mexico.

9 The injection led directly to Mr. Sutton's
10 death.

11 This occurred approximately 13 months prior
12 to Count 1 of the instant offense.

13 Heroin is the same narcotic as the instant
14 offense, and Mr. Goossen continued to distribute
15 heroin in New Mexico, as evidenced by his guilt in
16 Counts 1 and 2 of the indictment, even after
17 Mr. Sutton's death.

18 Therefore, an upward variance is warranted.

19 To afford adequate deterrence to criminal
20 conduct and protect the public from further crimes of
21 the defendant, the Court grants an upward variance of
22 15 levels. That would make -- to both Counts 1 and
23 2 -- to run concurrent with one another.

24 The total offense level will now be a 27,
25 and a criminal history category of II.

1 The guideline range for custody is now 78
2 to 97 months.

3 Supervised release remains at three years.

4 The fine range is now 25,000 to 250,000.

5 The community restitution is \$500.

6 And the special assessment to the crime
7 victim's fund is \$100 on each count.

8 Mr. Goossen, pursuant to the Sentencing
9 Reform Act of 1984, which I have considered in an
10 advisory capacity, and the sentencing factors set
11 forth in 18 United States Code, Section 3353(a),
12 which I have considered in arriving at a reasonable
13 sentence, the following sentence is imposed.

14 Allen Goossen is placed in the custody of
15 the US Bureau of Prisons to serve a term of
16 imprisonment of 90 months on Count 1 and 90 months on
17 Count 2, such counts to run concurrent with one
18 another.

19 Where does your client like for me to
20 recommend he spend his time?

21 MR. PORI: Federal Correctional Institution
22 in Florence, Colorado, please.

23 THE COURT: I'll recommend Florence,
24 Colorado, with the Bureau of Prisons.

25 I recommend that you get education, job

1 training, that you participate in the RDAP program
2 while you are there, and get mental health
3 counseling.

4 Upon release from the Bureau of Prisons,
5 you're placed on supervised release, three years on
6 Count 1 and three years on Count 2, such counts to
7 run concurrently.

8 Let me go back to the sentencing count.

9 As far as the sentencing count, such
10 sentence shall be consecutive to any sentence you
11 receive from the 11th Judicial District Court in
12 Farmington related to an incident where you supplied
13 the heroin to an individual that resulted -- to
14 Mr. -- to the individual that was involved in that
15 incident.

16 And so that you will -- this sentence will
17 run consecutive to that, to that sentence from the
18 state court, Counts 1 and 2.

19 Supervised release, again, is three years
20 on Count 1, three years on Count 2. The general
21 terms of supervised release are those set with the US
22 Court for the District of New Mexico.

23 The special terms of supervised release are
24 as follows:

25 You must participate in and successfully

1 complete an outpatient substance abuse treatment
2 program approved by your probation officer, which may
3 include testing.

4 You're prohibited from obstructing or
5 attempting to obstruct or tamper in any fashion with
6 the collection, efficiency, and accuracy of any
7 substance.

8 Excuse me. Let me go back again. I was
9 reading from the wrong one.

10 You must participate in and successfully
11 complete an outpatient substance abuse program and
12 follow the rules and regulations of that program.

13 Your probation officer will supervise your
14 participation in the program by providing provider
15 location, modality, duration, and intensity.

16 You may be required to pay all or a portion
17 of the cost of the program, based upon your ability
18 to pay.

19 You must submit to a search of your
20 property, house, residence, vehicles, papers,
21 computers, as defined in 18 United States Code,
22 Section 1030(e)(i), other electronic communications
23 or data storage devices or media or office under your
24 control.

25 Your probation officer may conduct a search

1 under this condition only when reasonably --
2 reasonable suspicion exists, in a reasonable manner
3 and at a reasonable time for the purpose of detecting
4 illegal contraband or activities.

5 You must inform any resident or occupants
6 that the premises may be subject to a search.

7 You must not use or possess alcohol.

8 You must not knowingly purchase, possess,
9 distribute, administer, or otherwise use any
10 psychoactive substance, including synthetic
11 marijuana, bath salts, et cetera, that impair a
12 person's personal or mental functioning, whether or
13 not intended for human consumption.

14 You must not own, possess, or have access
15 to a firearm, ammunition, destructive device, or
16 dangerous weapon, or anything that was designed or
17 was modified for the specific purpose of causing
18 bodily injury or death to another person, such as
19 nunchucks or TASERS.

20 You must participate in a mental health
21 treatment program and follow the rules and
22 regulations of that program.

23 Your probation officer, in consulting with
24 the treatment provider, will supervise your
25 participation in the program.

1 You may be required to pay all or a portion
2 of that program.

3 I find that you do not have the ability to
4 pay a fine.

5 You are required to pay community property
6 restitution in the amount of \$500 as compensation for
7 the considerable amount of public harm caused by your
8 distribution of drugs in New Mexico.

9 Restitution will be paid in monthly
10 installments of \$50, or 10 percent of the defendant's
11 monthly income, whichever is greater.

12 A total of \$325 of restitution will be
13 disbursed to the New Mexico Crime Victim Reparation
14 Commission crime victim's fund, and a total of \$175.
15 The restitution will be disbursed to the behavioral
16 health science division of the New Mexico Human
17 Service Department.

18 Again, based on your lack of financial
19 resources, the Court will not impose a fine.

20 You are required to pay the mandatory
21 special assessment to the crime victim's fund of \$100
22 on Count 1 and \$100 on Count 2, for a total of \$200.

23 Mr. Goossen, you have the right to appeal
24 your sentence and conviction, assuming your rights to
25 appeal were not given up or waived as part of your

1 plea agreement in this case.

2 If you cannot afford an attorney to
3 represent you on appeal, an attorney will be
4 appointed for you.

5 With few exceptions, any notice of appeal
6 must be filed within 14 days from today in writing.
7 And if you cannot afford it, a transcript of the
8 record in this case will be prepared for appeal at
9 the government's expense.

10 Does the government have anything else it
11 would like to say?

12 MR. UBALLEZ: No, Your Honor.

13 THE COURT: Anything from the defense
14 counsel?

15 MR. PORI: Yes, Your Honor.

16 We would object to the sentences, both as
17 procedurally and substantively unreasonable.

18 The Court, in its description of the
19 sentence, indicated that the guideline was 15 to 21
20 months. Of course that -- the Court may have
21 misspoken that. We've determined it is 12 to 18
22 months.

23 THE COURT: I'm sorry. You're correct.
24 And thank you for correcting me.

25 The sentence -- the original sentence, when

1 we changed the guideline -- when I granted that it
2 was 12 to 11, was a total offense level of 12 and a
3 criminal history category of II. The guideline range
4 for custody would have been 12 to 18 months, and I am
5 varying from that sentence.

6 MR. PORI: Yes. And the 15-level increase
7 does reflect the beginning of an offense level of 12.

8 But, Your Honor, we think that that's why
9 the sentence is substantively unreasonable.

10 Had Mr. Goossen been charged with
11 involuntary manslaughter under the guidelines which,
12 given Dr. Proe's testimony, is the only offense that
13 could have supported her conclusion that this was an
14 accidental death from a drug overdose, he would have
15 faced an offense level of 12; at most, an offense
16 level of 18, under 2A1.4 of the guidelines.

17 An offense level of 18, with an acceptance
18 of responsibility, would have been an offense level
19 of 15. That would have yielded a guideline sentence
20 of 21 to 27 months.

21 So even were the Court to impose a 12-month
22 sentence along with a 21-month sentence, he would
23 face a total sentence of 33 months.

24 This is three times the sentence
25 recommended by the United States sentencing

1 guidelines.

2 And clearly, this kind of sentence creates
3 unwarranted sentencing disparities, because there are
4 numerous defendants who are charged with the
5 distribution of heroin. All of the defendants who
6 distribute heroin are aware that heroin is a lethal
7 drug that can kill people.

8 We have examples of it every day, aside
9 from the terribly painful example Mr. Sutton's
10 untimely demise.

11 And yet, this is the one defendant who is
12 singled out for a dramatic increase in the
13 sentencing, up to 90 months for a charge. Again, a
14 procedurally unreasonable portion of the sentence for
15 a charge that was not brought to the grand jury,
16 admitted by Mr. Goossen, or proven beyond a
17 reasonable doubt.

18 For all of those reasons we object.

19 THE COURT: Your objections are overruled.

20 Anything else from the government?

21 MR. UBALLEZ: Just to note that in that
22 circumstance, he would have clearly been charged for
23 this trafficking resulting in death, clearly been
24 eligible for the 38-level found in 2D1.1(a)(ii).

25 Nothing further, Your Honor.

1 MR. PORI: But they didn't charge him for
2 that. And yet he receives a 15-level increase.

3 That is the procedurally unreasonable
4 portion of this sentence.

5 THE COURT: You'll have an opportunity to
6 visit with the Tenth Circuit on that.

7 MR. PORI: I'm sure we will, Your Honor.

8 Thank you.

9 THE COURT: Mr. Goossen is remanded back to
10 the custody of the United States marshal.

11 (Proceedings concluded at 10:28 a.m.)
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1 CERTIFICATE

2
3 I, Paul Baca, RPR, CCR in and for the State
4 of New Mexico, do hereby certify that the above and
5 foregoing contains a true and correct record,
6 produced to the best of my ability via machine
7 shorthand and computer-aided transcription, of the
8 proceedings had in this matter.
9

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11
12 PAUL BACA, RPR, CCR
13 Certified Court Reporter #112
14 License Expires: 12-31-16
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