APPENDIX

Appendix A: Opinion of the United States Court of Appeals for the Tenth Circuit, *United States v. Born*, No. 24-7011 (July 11, 2025)

Appendix B: District court's sentencing order

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FILED
United States Court of Appeals
Tenth Circuit

July 11, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KALUP ALLEN BORN,

Defendant - Appellant.

No. 24-7011
(D.C. No. 6:21-CR-00174-JFH-1)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **BALDOCK**, and **CARSON**, Circuit Judges.

Under the Sentencing Guidelines, a criminal defendant may receive a two-point offense level reduction when he accepts responsibility for his offense. This reduction rewards those who take full responsibility, so a defendant must clearly demonstrate he does so solemnly.

The Sentencing Guidelines also provide the district court discretion to depart from an applicable Guideline range for aggravating or mitigating circumstances for which the Guidelines do not adequately account. In these unusual cases, the sentencing court may depart from the prescribed sentencing range.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Here, Defendant Kalup Allen Born seeks vacatur of his 121-month sentence, arguing that the district court erred in denying him an acceptance of responsibility offense-level reduction and abused its discretion in applying a one-level upward departure. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm on both issues.

I.

In December 2020, the Pontotoc Country Justice Center in Ada, Oklahoma incarcerated Defendant in its segregated disciplinary pod. Other inmates knew B.J., another prisoner in the pod, as mouthy and disrespectful. Inmates in this pod get one recreation hour outside of their cell three times a week. Only one inmate at a time may leave his cell to use his recreation time.

On December 14, 2020, B.J. spent one of his recreation hours meandering in and out of the shower and attempting to flood the pod. B.J. also "bark[ed] something at the [prison] camera," "flipped somebody off," and walked around the pod naked. Towards the end of his hour, an officer ordered B.J. back to his cell several times, and B.J. refused to comply. When the officer believed that B.J. finally returned to his cell, the officer allowed Defendant to start his recreation hour. Unfortunately, B.J. was still in the shower. When Defendant saw B.J. and asked what he was doing, B.J. yelled at him: "Fuck you, this is—I run this pod, I am God in this place, you can't do shit. You are a bitch anyways. I can do whatever . . . ." B.J. repeated that "he was God" and continued "saying . . . [Defendant's] punk ass [couldn]'t do anything anyways."

Defendant became very angry, felt like B.J.'s words were "a slap in the face," and believed that he needed to respond. According to Defendant, if "everybody in the jail sees that [interaction] and you don't do nothing," it would "be bad for you." So when B.J. left the shower and walked towards the pod's common area, Defendant walked up behind B.J. and sucker punched him. B.J. fell to the ground, and Defendant stomped on the back of B.J.'s head until he lost consciousness. Video footage shows Defendant stomped on B.J.'s head twenty-seven times, and that at various points Defendant walked away only to return and resume attacking him. As B.J. laid face-down and unconscious on the floor, Defendant returned to his cell. Five days later, B.J. died of the blunt-force head trauma.

A grand jury in the Eastern District of Oklahoma indicted Defendant for first degree murder in violation of 18 U.S.C. §§ 1111(a), 1151, and 1153. At trial, Defendant testified that he felt like he needed to respond to B.J.'s comments, that he "wasn't thinking," that he "lost control" and that he "wish[ed] it never would have happened." During closing arguments, defense counsel implored the jury to consider the jailhouse dynamics that drove Defendant to react instinctually, and to find Defendant "guilty of voluntary manslaughter" rather than first-degree murder, as his attack happened "in the heat of passion." The jury agreed, convicting Defendant of the lesser-included offense of voluntary manslaughter in violation of 18 U.S.C. §§ 1112, 1151, and 1153.

The district court held a consolidated sentencing hearing and sentenced Defendant for voluntary manslaughter and for his offenses in two other cases. The

Final Presentence Report, adopted by the court during sentencing, calculated a total offense level of 29. When combined with a criminal history category of III, Defendant's Guideline sentence for his manslaughter conviction ranged from 108 to 135 months. The parties discussed two issues related to his voluntary manslaughter sentence: first, whether the court should reduce Defendant's offense level under U.S.S.G. § 3E1.1 for accepting responsibility, and second, whether the court should grant the government's motion for an upward departure based on extreme conduct under § 5K2.8.

After reviewing the parties' arguments, the district court denied Defendant an acceptance of responsibility reduction. The district court also found that Defendant's conduct was "unusually cruel, heinous, brutal, and degrading to the victim," and departed upward one offense-level. Based on Defendant's updated total offense level and his criminal history category, his guideline sentence ranged from 121 to 151 months. The district court ultimately sentenced him to 121 months for manslaughter and a total of 608 months' imprisonment for all three cases.

On appeal, Defendant argues that the district court erred when it did not grant him a reduction for acceptance of responsibility and when it applied a one-level upward departure for extreme conduct. We address each issue in turn.

II.

Defendant first contends that the district court erred by denying him a two-point acceptance of responsibility reduction under U.S.S.G. § 3E1.1 because he "admitted he caused the victim's significant injuries and death" and challenged only

the malice and premeditation elements of his first-degree murder charge. [ROA Vol. 2 at 60.]

We review the district court's acceptance of responsibility determination for clear error. United States v. Smith, 100 F.4th 1244, 1250 (10th Cir. 2024) (citing United States v. Amos, 984 F.2d 1067, 1071 (10th Cir. 1993)). The sentencing court "is uniquely positioned to evaluate each defendant's acceptance of responsibility," so we give its determination great deference. Id. (citing U.S.S.G. § 3E1.1, comment., n.5). For this reason, unless that determination "is without foundation," we will not disturb a district court's acceptance of responsibility ruling. Id. (quoting United States v. Lindsay, 184 F.3d 1138, 1143 (10th Cir. 1999)).

Under § 3E1.1(a), a criminal defendant must "clearly demonstrate[] acceptance of responsibility for his offense" to be eligible for an offense-level reduction. If he can prove his "recognition and affirmative acceptance of personal responsibility for his criminal conduct," the sentencing court should "decrease the offense level by 2 levels." United States v. McAlpine, 32 F.3d 484, 489 (10th Cir.), cert. denied, 513 U.S. 1031 (1994) (quoting U.S.S.G § 3E1.1(a)). Although going to trial "does not automatically preclude a defendant from consideration for such a reduction," the acceptance of responsibility guideline was generally "not intended to apply to a defendant that puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse." § 3E1.1 cmt. n.2; see also Smith, 100 F.4th at 1251.

We have affirmed the grant of a reduction similar to the one Defendant seeks in United States v. Gauvin, 173 F.3d 798 (10th Cir. 1999). In Gauvin, the defendant "admitted to all the conduct with which he was charged"—assault with a dangerous weapon and assault of a federal officer—and simply disputed whether "his drunkenness [at the time of the offense] rendered him incapable of forming the requisite mens rea." Id. at 806. Although the jury ultimately disagreed with the defendant, finding that he had the requisite mental state, the district court held that the defendant's conduct demonstrated acceptance of responsibility and that he understood the seriousness of his crime, and that he accepted responsibility for his role in the offense. Id. The Gauvin panel stated that although it "might not have reached the same decision" as the district court, "in light of the deference afforded the sentencing judge," the district court did not err in granting a downward departure for acceptance of responsibility. Id.

We have likewise affirmed in United States v. Collins the denial of a reduction similar to the one Defendant seeks. 511 F.3d 1276 (10th Cir. 2008). In Collins, the district court denied an acceptance of responsibility reduction to a defendant who went to trial and argued for conviction on a lesser-included drug offense. Id. at 1281. The Collins defendant, after being stopped by officers, denied his knowledge of the drugs he possessed, attempted to flee from the officers, and accused the officers of planting the drugs on him. Id. at 1280. The defendant, charged with possession of cocaine and marijuana with intent to distribute, offered to plead guilty to the lesser offense of simple possession after counsel "likely advised him that . . . the case

against him was overwhelming." Id. The government rejected his offer, and the case proceeded to trial. Id. at 1278. A jury convicted defendant of simple possession, and at sentencing, he argued for an acceptance of responsibility reduction because he offered to plead guilty to the offense for which he was ultimately convicted. Id. at 1279. Considering these facts, the district court concluded the defendant did not deserve a reduction. Id. We observed that the district court could have reasonably concluded that the defendant's admissions at trial establishing the lesser-included offense "were strategic, rather than evidence of true acceptance of responsibility." Id. at 1280–81. We also emphasized how our clear error review could result in seemingly inconsistent results in cases where a district court granted the acceptance of responsibility reduction, like Gauvin, compared to cases, like Collins, where the district court chose to deny the reduction based on similar facts. Id. at 1280.

Here, like in Collins, the district court denied Defendant a § 3E1.1 acceptance of responsibility reduction. Although acknowledging that Defendant exhibited some expressions of remorse at trial, and that "[g]oing to trial does not automatically preclude a defendant from [the benefits of] acceptance of responsibility," the district court relied on § 3E1.1's Application Notes 1 and 2 in finding Defendant failed to clearly demonstrate that he accepted responsibility. Specifically, the district court found that Defendant continued to engage in violent conduct. It noted that under Application Note 1, courts can consider "voluntary termination or withdrawal from criminal conduct or association" and "post-offense rehabilitative efforts" in analyzing whether to apply § 3E.1.1. It found that:

> [t]here is no evidence of either of those in this situation. Quite the opposite. Defendant incurred further charges for violent conduct after this case—conduct that involved jail contraband as well as violence—and he has not brought to the Court's attention any sort of attempt at rehabilitation. Rather, in Case Number 23-CR-150—offense conduct on April 24, 2023—the Defendant pled guilty to assault with a dangerous weapon with intent to do bodily harm and to possessing contraband in prison after using a metal shank to stab another inmate at least seven times in the head and neck.

The district court also considered Application Note 2 which states, "[t]his adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse." It found that here, "Defendant was found guilty of voluntary manslaughter[,] a lesser included offense of the first-degree murder charged in the indictment. He challenged both the factual element of intent and the factual element of malice aforethought."

On appeal, Defendant now argues that because he admitted to the offense of which he was convicted, we should look to Gauvin. He contends he is "far more deserving of the deduction than the defendant in Gauvin" because that defendant did not admit all the elements of his convicted offense, whereas "his counsel specifically implored the jury to convict [Defendant] of voluntary manslaughter." In his eyes, "[n]ot granting [him] a deduction . . . penaliz[es] a person who goes to trial and has the jury agree that a lesser offense is warranted."

In essence, Defendant urges us to depart from our established manner of reviewing these cases and to apply § 3E1.1 more mechanically—such that if a defendant accepts the elements required for the offense of conviction, the district

court commits clear error in denying him an acceptance of responsibility reduction. But our established body of caselaw requires that we give district courts "great deference" in making this factual determination. Smith, 100 F.4th at 1250. Accordingly, we cannot conclude that Defendant admitting all voluntary manslaughter elements necessarily entitled him to the acceptance of responsibility reduction. See id.

The district court determines whether a defendant "clearly demonstrates acceptance of responsibility for his offense," basing its conclusion on several factors including whether the defendant has voluntarily terminated his criminal conduct and whether he has made post-offense rehabilitative efforts. § 3E1.1, Application Note cmt n.1. The district court expressly found that neither factor supported an acceptance of responsibility reduction because he continued to engage in criminal activity. Because the district court's inquiry is fact-intensive, we reverse only for clear error and "the judgment of the district court on this issue is nearly always sustained." United States v. March, 999 F.2d 456, 463 (10th Cir. 1993) (quoting United States v. Whitehead, 912 F.2d 448, 451 (10th Cir. 1990)). Given the district court's factual findings, it did not clearly err in denying Defendant an acceptance of responsibility reduction.

We also reject the Defendant's argument that the district court denied the acceptance-of-responsibility reduction based on a legal error. Defendant argues that the court mistakenly considered the Defendant's challenge to the conviction with which he was charged (first-degree murder) rather than the offense of conviction

(voluntary manslaughter). For this argument, Defendant points to the Guideline commentary, which refers to acceptance of responsibility for the "offense of conviction," not for the charged offense. See § 3E1.1 comment. n.1. But it is not clear that the court relied on Defendant's challenge to the first-degree murder charge to deny the acceptance-of-responsibility reduction. Before mentioning the Defendant's challenge to the first-degree murder charge, the district court explained that it was relying on the absence of evidence that Defendant had voluntarily withdrawn from the crime or engaged in rehabilitative efforts after committing the offense. Even if we assume for the sake of argument that the district court cannot deny an acceptance of responsibility adjustment when the defendant challenges a charge that results in an acquittal, the record is ambiguous on whether the court relied on Defendant's challenge to the first-degree murder charge, rather than the other factors mentioned, to deny the acceptance of responsibility reduction. When the record is ambiguous about the grounds for a ruling, we cannot presume a legal error. See United States v. Nacchio, 555 F.3d 1234, 1242 (10th Cir. 2009). ("When a district court's language is ambiguous . . . it is improper for the court of appeals to presume that the lower court reached an incorrect legal conclusion.") (quoting Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 386 (2008)).

In sum, the district court found that Defendant had not clearly accepted responsibility because he continued to engage in criminal conduct and failed to make post-offense rehabilitative efforts. Given these findings, its determination about whether Defendant accepted responsibility was not "without foundation" and,

therefore, not clearly erroneous. Smith, 100 F.4th at 1250 (quoting Lindsay, 184 F.3d at 1143). The record, moreover, is ambiguous on whether the district court denied the reduction because of these factual findings or because Defendant challenged his first-degree murder charge. We thus affirm the district court's § 3E1.1 ruling.

III.

Defendant next raises two challenges to the district court's one-level upward departure for extreme conduct pursuant to U.S.S.G. § 5K2.8. First, he argues that his Guideline range adequately reflected his offense, and in deciding to depart the district court unreasonably relied on considerations already accounted for by the Guidelines. According to Defendant, "the conviction was a heat-of-passion voluntary manslaughter," so his conviction and its associated Guidelines already account for "losing control" and engaging in violent behavior. He maintains that § 5K2.8 applies only to "unusually" brutal offenses, and his was not unusual enough to merit a departure. And second, he contends that the district court incorrectly found that Defendant's conduct humiliated B.J.

When a district court departs upward, we review a sentencing decision's reasonableness for an abuse of discretion. United States v. Huckins, 529 F.3d 1312, 1317 (10th Cir. 2008) (quoting Gall v. United States, 552 U.S. 38, 41 (2007)); United States v. Robertson, 568 F.3d 1203, 1211 (10th Cir. 2009) (quoting United States v. Alapizco-Valenzuela, 546 F.3d 1208, 1215–16 (10th Cir. 2008)). "A district court abuses its discretion when it renders a judgment that is arbitrary, capricious,

whimsical, or manifestly unreasonable." Huckins, 529 F.3d at 1317 (quoting United States v. Muñoz–Nava, 524 F.3d 1137, 1146 (10th Cir. 2008)). We review a district court's factual findings for clear error. United States v. Todd, 515 F.3d 1128, 1135 (10th Cir. 2008) (citing United States v. Kristl, 437 F.3d 1050, 1055 (10th Cir. 2006); United States v. Ortiz, 993 F.2d 204, 207 (10th Cir. 1993)).

Under § 5K2.8, a district court can increase a defendant's sentence above the Guideline range to reflect the nature of the defendant's conduct if the defendant's conduct was "unusually heinous, cruel, brutal, or degrading to the victim." Such extreme conduct includes the "torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation." § 5K2.8. When reviewing a district court's upward departure, like those imposed pursuant to § 5K2.8, we consider four factors: "(1) whether the district court relied on permissible departure factors, (2) whether those factors removed a defendant from the applicable Guidelines heartland, (3) whether the record supports the district court's factual bases for a departure, and (4) whether the degree of departure is reasonable." Robertson, 568 F.3d at 1211 (citing United States v. Munoz–Tello, 531 F.3d 1174, 1186 (10th Cir. 2008)). We give substantial deference to a district court's determination that the case before it is atypical and therefore justifies a departure. United States v. Proffit, 304 F.3d 1001, 1011 (10th Cir. 2002) (quoting United States v. Collins, 122 F.3d 1297, 1303 (10th Cir. 1997)). Defendant's § 5K2.8 challenges concern the second and third factors, so we do not address factors one and four.

Defendant first argues that "losing control" does not distinguish his case from other voluntary manslaughter cases because the voluntary manslaughter Guideline already accounts for an offense committed "in the heat of passion where somebody dies." He argues that "[h]is losing control is what made the offense voluntary manslaughter," so the district court erred in considering his loss of control when it decided to depart.

But Defendant's loss of control is not the only fact that made his offense, in the district court's view, unusual. At sentencing, the district court found that Defendant's actions significantly differed from the norm because "[t]he video surveillance of the homicide played during trial shows . . . Defendant prolonged the victim's pain by stomping on him over 27 times, punching the victim six times, and continuing the assault after the victim stopped protecting himself, including continuing to stomp on the victim's head after he appeared lifeless." The district court concluded that this kind of "prolonged assault demonstrates a gratuitous infliction of injury on a helpless, motionless victim." The district court also found that Defendant "taunt[ed] [B.J.] and mock[ed] him throughout the assault," and later decided to "act[] out the assault to other inmates."

These findings illustrate that the district court did not abuse its discretion in imposing a one-level upward departure. We have upheld a district court's decision to depart pursuant to § 5K2.8 where the district court made specific factual findings demonstrating that the defendant's conduct "was unusually brutal within the universe of voluntary manslaughters." United States v. Checora, 175 F.3d 782, 793 (10th Cir.

1999) (affirming the district court's departure determination but remanding for further findings as to the extent of the departure because the court gave no principled reason for departing upwards six levels). Here, the district court listed specific factual considerations that made Defendant's offense atypical: the number of times Defendant stomped on B.J., the fact that Defendant punched B.J. several times while stomping on him, the fact that B.J. appeared helpless and lifeless during the attack, Defendant's taunting and mocking attitude during the attack, and the fact that Defendant later acted out the attack to other inmates.[1] And although all voluntary manslaughter cases necessarily involve a defendant "losing control" in the heat of passion, the district court did not abuse its discretion in finding that Defendant's particular conduct went beyond the heat of passion normally exhibited in a commonplace voluntary manslaughter case. Indeed, the district court specifically stated so.

Defendant then contends that the district court erroneously found that his attack humiliated B.J. Defendant argues this characterization "ignores all of B.J.'s actions caught on surveillance video that immediately preceded the offense." [Opening Br. at 29.] B.J. "spent his entire hour of recreation time using the shower to flood the floor" while "meander[ing] around, naked, yelling at the officer in the

[1] Defendant does not dispute these facts; he disputes only whether these facts make his voluntary manslaughter atypical. And as explained below, Defendant disputes whether the attack humiliated B.J. considering B.J.'s conduct towards Defendant before the attack. But Defendant does not dispute the district court's finding that his conduct during the attack involved mocking and taunting.

tower," "refus[ing] to go back to his cell," "flip[ing] off the officer," "hid[ing] underneath the stairs," and "curs[ing] at [Defendant]."

Although we do not rubber stamp the district court's departure determination, we recognize that district courts have an "institutional advantage" because they see "so many more Guideline sentences than appellate courts do." United States v. Begaye, 635 F.3d 456, 465 (10th Cir. 2011) (quoting Gall, 552 U.S. at 52). Thus, we give the district court's discretionary decision that Defendant's humiliation of B.J. during the attack justified a departure substantial deference and detect no error. See id. at 463–65. Even if, as Defendant argues, B.J.'s unseemly behavior right before to the attack "negate[d] a belief that [Defendant's] conduct caused B.J. any additional humiliation," § 5K2.8 focuses on whether Defendant's offense was "unusually heinous, cruel, brutal, or degrading to the victim." See generally United States v. Hanson, 264 F.3d 988, 998 (10th Cir. 2001) (affirming the district court's decision to impose an upward departure on Defendant's sentence pursuant to § 5K2.8 regardless of the victim's characteristics). Examples of that conduct include, among other things, "prolonging of pain or humiliation." § 5K2.8. The district court found that "Defendant tortured and degraded the victim," apart from the physical beatings, by "taunting him and mocking him throughout the assault." Given these findings, even if B.J. acted embarrassingly before the attack, the district court's § 5K2.8 departure was not arbitrary, capricious, whimsical, or manifestly unreasonable. Huckins, 529 F.3d at 1317 (quoting Muñoz–Nava, 524 F.3d at 1146).

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

Appendix B: District court's sentencing order

process. Now, hopefully, my brother can rest in peace.

Thank you.

THE COURT: Thank you for your statement, Ms. Johnson.

In Case Number 21-CR-174, the Defendant argues he should receive a two-level level reduction of his offense level for acceptance of responsibility under U.S. Sentencing Guideline Section 3E1.1. He claims, citing U.S. versus Gauvin, 173 F.3d 798, Tenth Circuit, 1999, that his trial testimony demonstrates his acceptance of responsibility.

Mr. Rael, do you wish to make any further argument on this point?

MR. RAEL: No, Your Honor.

THE COURT: The Court disagrees with the Defendant's perspective. Going to trial or conviction by trial does not automatically preclude a defendant from receiving acceptance of responsibility points. However, the defendant must clearly demonstrate his acceptance responsibility. Application Note 1 of U.S. Sentencing Guideline Section 3E1.1 provides non-exhaustive factors for the Court to consider in determining whether such a clear demonstration exists. The first is truthfully admitting the offense conduct. True, the Defendant's trial testimony included an admission of attacking the victim and some expression of remorse. He also stipulated to the medical examiner's findings and the cause of death. However, this is not sufficient for a clear demonstration

of responsibility, nor is it so significant to outweigh other factors that weigh against finding such a clear demonstration.

In particular, Application Note 1 also describes "voluntary termination or withdrawal from criminal conduct or association" and "post-offense rehabilitative efforts." There is no evidence of either of those in this situation. Quite the opposite. Defendant incurred further charges for violent conduct after this case – conduct that involved jail contraband as well as violence – and he has not brought to the Court's attention any sort of attempt at rehabilitation. Rather, in Case Number 23-CR-150 – offense conduct on April 24, 2023 – the Defendant pled guilty to assault with a dangerous weapon with intent to do bodily harm and to possessing contraband in prison after using a metal shank to stab another inmate at least seven times in the head and neck.

Further, Application Note 2 states that this adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. In this case, Defendant was found guilty of voluntary manslaughter a lesser included offense of the first-degree murder charged in the indictment. He challenged both the factual element of intent and the factual element of malice aforethought.

Defendant in this Court's view is not entitled to a reduction for acceptance responsibility and this objection is overruled.

The Court adopts the presentence report, and it will form the

factual basis for the Court's sentence today. The Court must make an accurate determination of the applicable sentencing range under the United States Sentencing Guidelines.

In Case Number 21-CR-174, based upon the offense to which Defendant was adjudicated guilty by a duly empaneled jury along with the specific offense characteristics, Defendant's total offense level is 29. His criminal history category is III.

Under the applicable guideline provisions, the sentencing range for imprisonment in Case Number 21-CR-174 is 108 to 135 months. The sentencing range for supervised release is 1 to 3 years, and Defendant is not eligible for probation. The Court may also impose a fine between $30,000 and up to $250,000. Restitution is mandatory but has not been ascertainable by the Court as no restitution request has been made.

Case Number 23-CR-150

In this case Defendant previously entered a plea of guilty to Counts 2 and 4 of the indictment before the United States Magistrate Judge.

The Defendant both orally consented and signed a written consent to proceed before the magistrate judge. This Court finds the plea was voluntary and supported by the factual record. Therefore, the Court affirms the finding of guilt and accepts Defendant's guilty plea before the magistrate judge.

Mr. McEwen, was the victim in his matter or his representative notified of this hearing and given the opportunity to attend?

MR. McEWEN: Your Honor, the Government is in compliance with the CVRA rights in this particular case. No victims wish to speak today.

THE COURT: All right. Thank you, Counsel.

It is my understanding there are no pending objections to the Presentence Report in this case.

Is that correct from the Goverment's perspective?

MR. McEWEN: Yes, Your Honor.

THE COURT: Mr. Rael, is this correct from the Defendant's perspective?

MR. RAEL: Yes, Your Honor.

THE COURT: There being no objections, the Court adopts the Presentence Report and it will form the factual basis for the Court's sentence today.

The Court must make an accurate determination of the applicable sentencing range under the United States Sentencing Guidelines.

In this case the Government filed a motion for one-level reduction for acceptance of responsibility at Docket Number 43. That motion is granted and the Defendant's acceptance of responsibility has been taken into account in the calculation of the advisory guideline range.

In this case, Case Number 22-CR-150, based upon the offenses to which the Defendant pled guilty, the specific offense characteristics, and an adjustment for acceptance of responsibility,

the Defendant's total offense level is 20, his criminal history category is II.

Under the applicable guideline provisions, the sentencing range for imprisonment in Case Number 22-CR-150 is 37 to 47 months. The sentencing range for supervised release is one to three years, and Defendant is not eligible for probation.

The Court may also impose a fine between $15,000 and $150,000. Restitution is mandatory, but has not been ascertainable by this Court as no restitution request has been made.

The Court finds the plea agreement in this case adequately reflects the seriousness of the offense and will not undermine the statutory purposes of sentencing. Therefore, the Court accepts the plea agreement in Case Number 22-CR-150.

Now, back to Case Number 21-CR-122, in this case the parties agreed upon sentence as set out in the plea agreement is outside the applicable sentencing guideline range. Under U.S. Sentencing Guideline Section 5K2.0, Comment Note 5 in Section 6B1.2(c), where a plea agreement includes a specific sentence pursuant to Federal Rule of Criminal Procedure Rule 11(c)1(C), the Court may accept the agreement if the Court is satisfied that the agreed sentence is outside the applicable guideline range for justifiable reasons, and those reasons are set forth with specificity.

I am familiar with the sentencing memoranda filed by both parties in this case, the Government's motion or the Government's memoranda at Docket #105 and the Defendant's memorandum at

Docket Number 106.

Would either side like to be heard with regard to the plea agreement?

MR. McEWEN: Yes, Your Honor.

Your Honor, with regards to the 11(c)1(C), as far as the factors that we would like the Court to consider for that range of 360 to 540 months, it involves the specific availability of witnesses in this case. As you heard, the age of some of the witnesses is a factor in this case. At least two of them would be in their eighties. The impact of the testimony of witnesses, several of them, and their well-being could be an issue; and there was possible evidentiary issues. Although those issues were not litigated, there was potential issues with regards to Ms. Brenda Carter's statement, as well as actions taken by the medical staff in treating Ms. Carter. We suspected that those issues would have been brought up and there would have been extensive litigation by -- with regards to that. So for the purposes of the judicial economy, as well as the interest of justice, we believe that this range is fair in this particular case.

Thank you.

THE COURT: Thank you, Mr. McEwen.

Mr. Rael, do you wish to be heard regarding the issue of whether the Court will accept the plea agreement?

MR. RAEL: No, thank you, Your Honor.

THE COURT: Now, with respect to Case Number 21-CR-174, the Government has filed an omnibus motion for a

four level upward departure and/or variance at Docket Number 98. The Defendant filed his response in opposition at Docket Number 99. Additionally, both parties filed sentencing memoranda; the Government at Document Number 101 and the Defendant at Docket Number 102.

Would either party like to be heard with regard to the Goverment's Motion for Departure and/or Variance?

MR. McEWEN: Yes, Your Honor, most of what I would have said and argued I think was conveyed by Mr. Carter. I don't have anything in addition to what he said. And I ditto everything that he said. And I would ask for the Court to consider those statements, as well as what we have submitted to the Court in our filings.

THE COURT: All right. Mr. Rael, do you have any comments or additional argument you wish to make, in addition to the objection that you filed in your Sentencing Memorandum in Case Number 21-CR-174?

MR. RAEL: No, Your Honor.

THE COURT: With regard to Case Number 23-CR-150, the Government has filed a motion for a nine-level variance based upon the original PSR at Docket Number 45. I am also familiar with the Sentencing Memoranda filed by both parties; the Government at Docket Number 44 and the Defendant at Docket Number 39.

Would counsel wish to be heard regarding this motion, or

with regard to sentencing in that case?

MR. McEWEN: Your Honor, I would like to make -- and I don't know if it's a motion for interlineation or a correction.

The information that we provided to the Court in our motion with regards to the range, we wrote this before the amended PSR.

THE COURT: I understand.

MR. McEWEN: Okay.

THE COURT: And we've corrected that, and I'll address that, understanding that that has changed given the amended PSR. So actually, you're asking for -- in one of the cases instead of a four-level departure or variance, you're asking for a three level?

MR. McEWEN: Yes. And in this particular case, instead of the nine would be ten.

So other than that, I don't have anything, Your Honor. But I would – with regards to case 23-150, I don't know if I heard – when you were stating the range, the advisory guideline range, I thought I heard you say 46 -- excuse me -- 36 or 37 to 47 months. And I think it's 37 to 46 months. So I –

THE COURT: It should be 37 to 46. So if I said anything other than that, then I'll correct that on the record right now.

MR. McEWEN: All right.

THE COURT: It is 37 to 46 months. So if I misspoke, I am going to correct the record right now.

MR. McEWEN: All right. And that's all I have, Your Honor.

THE COURT: All right. Thank you, Counsel.

Mr. Rael, do you wish to be heard regarding any of those issues, your sentencing memorandum, or the Goverment's motion?

MR. RAEL: Judge, I think I am a little confused with the Court's. . .and I just want to clarify.

I do have some general sentencing remarks. I am going to largely rest on our written submissions. Is now an appropriate time to do that, or --

THE COURT: So, good question because this is a little unusual because we are doing three sentencings here all at once.

Right now I am asking whether you have any argument you wish to make concerning the Government's motion for a departure and/or variance in Case Number 23-CR-150, or -- and then I am going to invite you to make any additional comments you wish to make regarding sentencing overall.

Of course, if you wish to make any comments concerning Case Number 21-CR-174, the Government's Motion for Departure and/or Variance, you may also make that now as well.

MR. RAEL: Thank you, Your Honor. I understand. We will rest on our written submissions with respect to those issues.

THE COURT: All right. So, I understand the parties' briefs and the sentencing memoranda, and we have addressed

the specific motions and I will rule on that in just a moment, but this is the opportunity for counsel to provide any additional statements, omnibus or otherwise, that they wish to make in regard to sentencing on either of the cases, either 21-CR-122, 21-CR-174, or 23-CR-150?

MR. McEWEN: Your Honor, with regards to case number 21-CR-122, we have submitted six exhibits. They are photos. I have provided them to your courtroom deputy, Mr. Davis.

Exhibit 1 is the mark on Ms. Brenda Carter's neck that was referenced by her son, Jay Carter.

Exhibit 2 is the position of the vehicle in Fossil Creek. And that's the position it was when Ms. Carter was pushed out of the vehicle into the creek by the Defendant.

I believe photo 3 is the photo of the Skeltons' garage on fire the night – or excuse me – the early morning hours of the offense.

And then Exhibits 4 through 5 are pictures of the aftermath of the fire at their residence, the Skeltons' residence.

We would like to admit those into evidence at this time.

THE COURT: Any objection, Mr. Rael?

MR. RAEL: No objection.

THE COURT: Those exhibits will be admitted for the purpose of this proceeding.

MR. McEWEN: With regards to aggravation and mitigation, Your Honor, again I believe Mr. Carter accurately

summed it up, as well as the Johnson family on what we are dealing with here. We are dealing with a very, very, very dangerous individual; someone who has shown this aggression and dangerousness ever since a very young age. He is someone who has refused to learn any lessons.

It doesn't matter what environment he is put in, he continues to be aggressive and to be dangerous.

What I think is striking and ironic is the letter that he wrote to Ms. Carter after he kidnapped her and robbed her and committed that heinous act. The letter had some very interesting comments in it, and statements in it, such as, "I was scared, I was drunk. I wasn't trying to hurt you." But the facts show differently. The facts show somebody that was absolutely intending to hurt her that day.

Again, in that letter he said scared, didn't know what to do when she woke up. I am not a bad person. I am in college. I am really trying. I had a terrible night. I really want to go down -- I really don't want to go down this road.

Your Honor, everyone of those statements are countered by the Defendant's actions. He has used excuse after excuse after excuse. He used these same excuses when he got up on the stand and testified in the Billy Johnson trial, in Case Number CR-21-174.

He refuses to take actual responsibility for his actions, and that will never change. We are way beyond rehabilitation with the

Defendant at this point.

We submit to you, Your Honor, that the main priority at this point -- and we've asked the Court -- and the reason we've asked the Court to sentence the Defendant to 540 months on CR-21-122, 180 months on CR-21-174, and 120 months on CR-23-150 for an aggregate of 840 months, and for all of those sentences to run consecutive -- 840 months -- for all of them to run consecutively. The reason we've asked for this is we have got to protect society from this Defendant. He is a danger, he is going to do this again, and he is going to continue to do it. His actions speak louder than any of his excuses, than any of the words he could ever put in front of this Court.

And, Your Honor, that's why we are asking the Court to sentence the Defendant to an aggregate of 840 months on all three cases.

THE COURT: All right. Thank you, Mr. McEwen.

Mr. Rael, would you like to be heard regarding sentencing concerning any of the three cases, or all of them?

MR. RAEL: Yes, thank you, Your Honor.

Your Honor, I'll be brief. I know you have our written filings. We've tried to be comprehensive in those submissions and make all of our arguments.

Ultimately, Judge, I recognize the difficulty here for this Court. There is a lot of trauma in this room, a lot of horrible, horrific, unspeakable things. I see that, I recognize that, but

there is trauma on the other side too. And the genesis of this is not an evil person. It is somebody who was traumatized from a young age by the adults that were around him. The full history there, Your Honor, you have it. You have Dr. Salsbury's report. You have my written submissions.

Mr. Born can never expect the victim's family to understand that. I recognize that. But I can ask the Court to give those things weight.

We have tried to be very measured in what we are asking the Court to do. We are not asking for concurrent sentences. In the cases -- well, in the case where we could have asked for a downward variance, we didn't. We are asking for guideline sentences.

Mr. Born, in Ms. Carter's case, stipulated to a range that is, on the low end, roughly 1.5 times the low end of the applicable range. And on the high end, it is double that recognizing the seriousness of his conduct.

Judge, ultimately I think this case is one about -- or I am sorry -- these cases and this situation and this sentencing, it is all about false dichotomies, Judge. Your Honor has to make choices here and I am asking you to overlook these false dichotomies. Two things can be true at once. Mr. Born can still be struggling in a custodial setting, still learning, still struggling, but remorseful at the same time.

Case ending in 122 could be incredibly tragic, but Mr. Born,

at the time a college student, we can fairly say that he had no intent for the night to end that way, for it to progress in that way when it began.

He started at his dorm room on his way to a fraternity party. That was not how the night was supposed to end.

Mr. Johnson, his death could be tragic, Judge, but legally provoked.

Judge, we have tried to be incredibly measured here with our recommendation. The sentencing guidelines carry weight. They are important.

18 U.S.C. 3553(a) entertains no scenario where rehabilitation is no longer a factor for this court, contrary to what the Government just asserted.

We are asking you to impose guideline sentences, Judge, and in one instance a sentence that is significantly above the guideline with an eye toward the future. We are commending a sentence of over 40 years. He will be an old man if he is ever released. And there is certainly a number of obstacles standing in his way if he can't conform his behavior.

Judge, based on everything we have described in our written filings, based on my comments today, I ask the Court to follow our requested sentence.

Thank you.

THE COURT: Thank you, Mr. Rael.

All right. Does the Defendant wish to make any statements

regarding sentencing in any of the cases or in all of the cases? And if so, he may approach the podium with his counsel and he may make any statement that he wishes.

You can come up here, Mr. Born.

THE DEFENDANT: Yes, sir.

THE COURT: All right. Mr. Born, it looks like you've written something out, and that's just fine. It happens all of the time, but let me advise you that sometimes when folks write something out in advance and then they read it in court, they tend to read it quickly and it is difficult for me to hear and understand it.

So, let me caution you, take your time, read it slowly, and read it clearly so I can hear it because what you have to say is important.

THE DEFENDANT: Yes, sir.

THE COURT: Proceed whenever you are ready and take as much time as you need.

THE DEFENDANT: Your Honor, thank you for giving me the chance to speak. I would like to start off by expressing my extreme remorse and sorrow to anybody I've hurt here today, or caused pain with my past actions. I take full responsibility for those actions. If I could take it all back, I would in a heartbeat. I'm sorry, I'm sorry for all of it.

I understand I have to go away, so I am going to do my best to take the time to better myself. I could be a good functioning

part of society one day because I don't want to spend the rest of my life in prison.

So, I would ask, with all due respect, that you not sentence me to the maximum guidelines and to send me to a prison where I could participate in all the programs available to me. Please give me a chance to prove I can reform myself and be a functioning part of society one day.

So, Your Honor, thank you.

THE COURT: All right. Thank you for your statement, Mr. Born. You may have a seat. (Complied)

All right. I am going to take a short recess and I'll be back in a moment.

(2:25 p.m.)

(RECESS)

(2:41 p.m.)

COURT IN SESSION

THE COURT: Please be seated.

In Case Number 21-CR-122, based upon the information provided by the parties, the Court finds that the sentence and final disposition agreed to pursuant to Rule 11(c)(1)(C) is outside the applicable guideline range for justifiable reasons and does not undermine the statutory purposes of sentencing, and adequately reflects the seriousness of the offense. Therefore, the Court accepts the plea agreement and will depart upward pursuant to U.S. Sentencing Guideline Section 5K2.0(d)(4), and comment

note 5 and Section 6B1.2(c).

In Case Number 21-CR-174, the Goverment's motion at Docket Number 98 requests a three-level upward departure and/or upward variance, arguing the calculated guideline range is inadequate under both the Guidelines and the Section 3553(a) factors. The Government requests the court depart and/or vary upward to impose a statutory maximum sentence of 180 months and a maximum term of supervised release.

As to the departure motion, the Government argues Defendant's conduct was the definition of "unusually cruel, heinous, brutal, and degrading to the victim," citing U.S. Sentencing Guideline Section 5K2.8. Examples given in this guideline include torture of a victim, gratuitous infliction of injury, or prolonging of pain and humiliation.

The video surveillance of the homicide played during trial shows that Defendant tortured and degraded the victim. The Defendant prolonged the victim's pain by stomping on him over 27 times, punching the victim six times, and continuing the assault after the victim stopped protecting himself, including continuing to stomp on the victim's head after he appeared lifeless.

Defendant's prolonged assault demonstrates a gratuitous infliction of injury on a helpless, motionless victim. Defendant also humiliated the victim by taunting him and mocking him throughout the assault, and he continued this behavior even after returning to his cell. Video surveillance also showed the

Defendant acting out the assault to other inmates.

The sentencing guideline range does not appropriately represent Defendant's conduct in this case, as Defendant's actions significantly differed from the norm and his behavior justifies removal of him from the applicable guideline heartland. The Government's motion pursuant to U.S. Sentencing Guideline Section 5K2.8 contained within Docket Number 98 is granted in part. The Court departs upward one level to a revised offense level of 30, with a resulting guideline range of 121 to 151 months.

Since granting the motion for departure, the Court finds that it is not appropriate to vary an additional level. So accordingly, the Government's motion for a variance is denied.

In Case Number 23-CR-150, the Government requests a ten level upward variance based upon the original PSR to reach the statutory maximum of 120 months as to Count 2 and 60 months as to Count 4. The Court will not grant this variance as it does not believe the nature and circumstances of the offense justify it. In particular, the jail fight that forms the basis of this indictment involved multiple individuals behaving violently and it appears that the Defendant did not initiate this particular fight. While this in no way justifies the Defendant's possession or use of contraband or his violent behavior, it also does not justify an upward variance.

The Court recognizes that the United States Sentencing Guidelines are advisory and not mandatory, but nonetheless it

has considered the guidelines along with all factors set forth in Title 18 U.S.C. Section 3553(a) to reach what the Court believes will be an appropriate and a reasonable sentence in this case.

In determining a sentence in each of Mr. Born's three cases, the Court has considered the nature and circumstances of the offenses, Mr. Born's personal characteristics, his escalating and violent criminal history, the advisory sentencing guideline calculations and sentencing disparities among defendants.

In Case Number 21-CR-122 that began when Defendant broke into Ms. Carter's home. He forced her into her vehicle and drove the car onto a state highway, where he wrecked the vehicle by driving it off of a bridge. He ordered Ms. Carter to get out of the car, and when she fell from the car into a rocky section of the creek below the bridge, she sustained numerous injuries, including a broken hip. She was left in extreme cold as Defendant made his way to the highway and left the scene. Ms. Carter unfortunately died five months later after the injuries sustained in these events.

After Defendant reached the highway, abandoning Ms. Carter, he broke into three other residences. At the first two, he stole various personal property. And at the third, he started a fire to keep himself warm. When the fire grew out of control, the Defendant left the residence. The fire eventually completely engulfed the home and caused a total loss to the homeowners.

Thankfully, those victims were able to escape the fire.

Case Number 12-CR-174 occurred while Defendant was in pretrial detention for his first case. He kicked and stomped fellow inmate Billy Jo Johnson to death by stomping him about his head 27 times. During the assault, Defendant walked away, and then when he returned, he resumed the attack. The Defendant was charged with first degree murder and convicted at jury trial of the lesser included offense of voluntary manslaughter.

In Case Number 23-CR-150, that occurred while Defendant was incarcerated pending sentencing in his two homicide cases. He repeatedly stabbed a fellow inmate with a homemade shank. The victim sustained numerous injuries, including lacerations or stab wounds to the left side of his nose, his right cheek, above and inside his right ear, and the right side of his throat, back and neck, and his lower middle back, and a right occipital scalp hematoma. He suffered also an acute displaced fracture of the anterior bony annual septum, and he suffered pain throughout the trauma.

Particularly relevant given Defendant's two completed homicides, the Court notes that the indictment in Case Number 23-CR-150 charges Defendant with assault with intent to commit murder. However, the plea agreement states that the Government will move for dismissal of that charge, and another for assault resulting in serious bodily injury, upon sentencing for the two

counts to which Defendant pled; assault with a dangerous weapon with intent to do bodily harm and possession a contraband in the prison.

Defendant is 25 years old and has a reported unstable, abusive upbringing. Defendant's sealed sentencing memorandum indicates that he had some brain injury approximately four months prior to the charged conduct in Case Number 21-CR-122. However, his Presentence Report also reported that he is otherwise physically healthy without limitations. He has a history of abusing methamphetamine and marijuana from a young age. He has indicated interest in mental health treatment.

These cases are never easy, and it is always my wish to convey my heartfelt condolences to the family who has suffered in this case immensely and will obviously continue to suffer. No question. And I can't even imagine the pain that you are going through. And this is an important day for you because the hope is that it will bring closure and some kind of sense of relief and maybe some peace, but I am also mindful that really I am not the one that can do that. If I could, I would, with every ounce of my being, try to give you peace and strength and the courage to go forward. I wish that for you. I hope that for you. And I have been doing this for about four years and these are never easy. This is not the part of this position that I enjoy being in. In some sense it is easy because what has happened is

inexplicable. It can't be justified. And I've had families on occasion tell me that they would like for me to impose a sentence as if the victim in the case, or that particular case, was my son. It was a young two-year-old who lost his life at the hands of the defendant. And I agree, I should do that. So, in this case I should impose a sentence as if Ms. Carter was my mother or Mr. Johnson was my brother.

And what is hard to explain is at the same time, I am also understanding that I need to impose a sentence as if Mr. Born is my son, and that is not something that can be fathomed because it makes no sense. And what I am telling you is I want you to understand no matter what the sentence is, the sentence and the number of months, the number of years can never be and does not equate to the value of Ms. Carter's life or Mr. Johnson's life. That is not how the system works. So, you need to understand that. The calculation is not a measurement of that.

At the same time there needs to be severe punishment in this case, without question, and it is apparent to the Court that Mr. Born is clearly a danger and clearly need not be among the public for a very long time.

Based upon these factors, the sentences will be as follows:

Within the departure guideline range pursuant to the parties' 11(c)(1)(C) plea agreement, the range in Case Number 21-CR-122 will be pursuant to the parties' plea agreement.

In Case Number 21-CR-174, it will be outside the advisory guideline range pursuant to the departure granted by the Court pursuant to U.S. Sentencing Guideline Section 5K2.8.

And Case Number 23-CR-150 will be within the advisory guideline range.

The Court finds that the sentences to be imposed here will be reasonable and sufficient, but not greater than necessary to meet the requirements and objectives set forth in Title 18 U.S.C. Section 3553(a). I believe that the sentences to be imposed will reflect the seriousness of offenses, serve as an adequate deterrent to this Defendant, promote respect for the law, provide just punishment for the offenses, and provide protection for the public from further crimes by this Defendant, and provide correctional treatment for the Defendant in the most effective manner.

Concurrent terms of supervised release with appropriate special conditions based upon these factors are appropriate to the extent that they would provide monitoring for the Defendant for any future law violations and receive appropriate substance abuse and/or mental health treatment should he ever be released.

Restitution in Case Number 21-CR-122 is mandatory and it will be ordered.

Mr. Born, would you approach the podium with your counsel, sir? (Complied)

Mr. Born, you appear for sentencing today. In accordance with applicable law, it is the order and judgment of this Court that you, Kalup Allen Born, are hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term totaling 608 months, which shall be comprised as follows:

In Case Number 21-CR-122 imprisonment for a term of 450 months as to Counts 1, 2 and 4, and 240 months as to Count 3. These sentences shall run concurrently, each with the other. However, they shall run consecutively with the terms of imprisonment imposed in Case Number 21-CR-174 and Case Number 23-CR-150.

In Case Number 21-CR-174 imprisonment for a term of 120 months. This sentence shall run consecutively with the terms of imprisonment imposed in Case Number 21-CR-122 and Case Number 23-CR-150.

In Case Number 23-CR-150 imprisonment for a term of 37 months as to each of Counts 2 and 4. These sentences shall run concurrently, each with the other, within Case Number 23-CR-150. However, they shall run consecutively with the terms of imprisonment imposed in Case Number 21-CR-122 and Case Number 21-CR-174.

The Court recommends that the Bureau of Prisons evaluate and determine whether you are a suitable candidate for the most comprehensive substance abuse and mental health treatment program available to you during your term of

incarceration, such as the Residential Drug Abuse Program or other similar programs. Should you be allowed to participate in such programming, the Court recommends that you be afforded the benefits prescribed and set out in Title 18 USC Section 3621(e) in accordance with the Bureau of Prisons policy.

Should you be released from imprisonment, you shall be placed on a term of supervised release as follows:

In Case Number 21-CR-122 for a term of five years as to each of Counts 1, 2 and 4, and three years as to Count 3. The terms of supervised release shall run concurrently, each with the other, and concurrently with the terms of supervised release imposed in Case Number 21-CR-174 and Case Number 23-CR-150.

In Case Number 21-CR-174 for a term of three years. This term of supervised release shall run concurrent with the terms of supervised release imposed in Case Number 21-CR-122 and Case Number 23-CR-150.

In Case Number 23-CR-150 for a term of three years as to each of Counts 2 and 4. The terms of supervised release shall run concurrently, each with the other, and concurrently with the terms of supervised release imposed in Case Number 21-CR-122 and Case Number 21-CR-174.

Should your term of supervised release be revoked, an additional term of imprisonment of up to five years as to Case Number 21-CR-122 Counts 1, 2 and 4, and up to two years

as to Case Number 21-CR-122 as to Count 3; and Case Number 21-CR-174 and Case Number 23-CR-150 could be imposed at each revocation.

Immediately upon release from custody, but in no event later than 72 hours following any release, you must report in person to the Probation Office in the district where you are authorized to reside.

While on supervised release, you must not commit another federal, state, or local crime.

You must not own, possess, or have access to a firearm, ammunition, destructive device, or any other dangerous weapon.

You must at the direction of the United States Probation Office cooperate with and submit to the collection of a DNA sample for submission to the Combined DNA Index System.

You must not possess a controlled substance and you must refrain from any unlawful use of a controlled substance.

You must submit to one (1) drug test within 15 days of any release from custody. And thereafter, you shall submit to at least two additional periodic drug tests, not to exceed eight tests per month.

You must comply with the standard conditions that have been adopted by this Court, and you must also comply with the following additional special conditions:

You shall participate in a program approved by the

United States Probation Office for the treatment of narcotic addiction, drug dependency, or alcohol dependency, which will include testing to determine if you have reverted to the use of drugs or alcohol and may include outpatient treatment.

You shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. You shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. You must pay the costs of the program or assist in payment of the costs of the program if financially able to do so.

You shall submit to a search conducted by a United States Probation Officer of your person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search shall be grounds for revocation.

You are prohibited from attempting to or having any contact whatsoever with the victims in this case and/or their families, and that is you shall not contact them directly, indirectly, in person, through others, by telephone, mail, electronic means, or any other manner, at any time or place

unless specifically authorized in advance by this Court.

You shall remain 100 yards away from them, their places of residence, their places of employment and/or school at all times.

Based upon your financial profile as outlined in the Presentence Report, the Court finds that you do not have the ability to pay a fine. Therefore, no fine is imposed.

You shall, however, pay a mandatory special monetary assessment of $100 per count for a total of $400 in Case Number 21-CR-122; $100 in Case Number 21-CRF-174; and $200.00 in Case Number 23-CR-150.

These assessments are to be paid immediately to the United States Court Clerk for the Eastern District of Oklahoma.

In Case Number 21-CR-122, you shall pay restitution in the amount of $7,500 to the Oklahoma Crime Victim Compensation Board as listed in Paragraph 102 of the Presentence Report. This restitution shall be paid through the United States Court Clerk for the Eastern District of Oklahoma.

Any monetary penalty is due in full immediately, but is payable on a schedule to be determined pursuit to the policy provisions of the Federal Bureau of Prisons' Inmate Financial Responsibility Program while imprisoned if you voluntarily participate in this program.

Should you be released from imprisonment and a monetary balance remain, payment shall commence no later than 60 days following your release from custody to a term of supervised

release. You shall make monthly equal payments of $100 or 10% of your net income, whichever is greater, over the duration of your term of supervised release and thereafter as prescribed by law as long as some debt remains.

Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon your property discovered before or after the date of this judgment. Interest on the restitution is waived.

Mr. Born, I have a duty to advise you that, subject to any waive of appellate and post-convection rights that may be contained in any plea agreements, you may have a right to appeal each of the sentences that have been imposed today. Any such appeal must be filed within 14 days the date the judgments are entered. If you wish to appeal and cannot afford an appeal, there are forms in the Clerk's office to request to appeal without prepayment of costs. And Mr. Rael will remain your counsel during this 14-day time of appeal.

Mr. Rael, do you have anything further on behalf of Mr. Born today, sir?

MR. RAEL: No. Thank you, Your Honor.

THE COURT: Mr. McEwen, anything further on behalf of the Government?

MR. McEWEN: A couple of things, Your Honor.

Again, I don't know if my ears are going out, but I thought on Case Number 21-CR-174 you said 120 months? You may

have said 121 months, but I heard 120.

THE COURT: 121 months is the Court's sentence in Case --

MR. McEWEN: Okay.

THE COURT: -- in Case Number 21-CR-174.

MR. McEWEN: Thank you, Your Honor. I just wanted to make sure.

THE COURT: 121 months. To the extent I said anything different, that is correct on this record.

THE COURT: Thank you, Your Honor.

And I did file or submit yesterday a Notice of Dismissal on Case Number 21-CR-122, as well as Case Number 23-CR-150.

We would ask the Court to approve both of those.

THE COURT: All right. The Government's Notice of Dismissal, as represented by counsel, is received and those notices of dismissals will be approved and those remaining counts are dismissed.

Anything further, Counsel?

MR. McEWEN: No, Your Honor.

THE COURT: Mr. Rael?

MR. RAEL: No, Your Honor. Thank you.

THE COURT: The Defendant is remanded to the custody of the United States Marshal's Service.

Court is adjourned.

(END OF PROCEEDINGS)