

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER, JUDGE

UNITED STATES OF AMERICA,)

Plaintiff,)

VS.)

MARLON SULLIVAN,)

Defendant.)

No. CR 14-0196 CRB-2

San Francisco, California
Wednesday, February 24, 2016

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

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**BY: William Frentzen
Susan E. Badger
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Assistant United States Attorneys**

For Defendant:

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BY: Randolph Elliott Daar, Esquire

Also Present:

Jessica Goldsberry, U.S. Probation

Reported By: Katherine Powell Sullivan, CSR No. 5812, RMR, CRR
Official Reporter

1 Wednesday - February 24, 2016

10:00 a.m.

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

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4 **THE CLERK:** Calling case CR 14-0196, the United States
5 of America versus Marlon Sullivan.

6 Appearances, Counsel.

7 **MR. HASIB:** Good afternoon, Your Honor. Waqar Hasib,
8 Susan Badger, and Will Frentzen for the United States.

9 **THE COURT:** Good afternoon.

10 **MR. DAAR:** Good afternoon, Your Honor. Randolph Darr
11 appearing for Marlon Sullivan.

12 **MS. GOLDSBERRY:** Good afternoon, Your Honor. Jessica
13 Goldsberry for the Probation Office.

14 **THE COURT:** So this is the time for sentencing. I've
15 reviewed the reports.

16 You've reviewed the presentence report?

17 **MR. DAAR:** Yes, Your Honor.

18 **THE COURT:** And that finds that the adjusted offense
19 level is 32, the criminal history category is I. The
20 Sentencing Guideline range would be between 121 months to 151
21 months. There's a plea agreement in this case which sets the
22 range between 60 to 96 months.

23 There's one objection -- well, there's more than one. One
24 objection was to the inclusion in the criminal history category
25 one point by virtue of the fact that there was an earlier

1 criminal offense, but it had either been set aside or
2 discharged, or whatever it is under state law, and, therefore,
3 it shouldn't be included.

4 And the Court believes that the objection is moot because,
5 number one, it's not going to change the criminal history
6 category. And the Court wishes to say that it will not be
7 considered by the Court in imposing a sentence in this case.
8 So that's as to that objection.

9 Objection two lists the language that was used in the
10 presentence report.

11 And objection three also relates to the characterization.
12 Yes, Mr. --

13 **MR. DAAR:** We've actually -- if it would help the
14 Court.

15 **THE COURT:** Yes, anything.

16 **MR. DAAR:** -- reach an understanding with respect to
17 some of these issues.

18 **THE COURT:** Go ahead.

19 **MR. DAAR:** If we can jump on in.

20 The government has agreed and Probation has agreed to
21 strike the two sections that I had objections to in paragraph
22 48.

23 **MR. HASIB:** I think we're talking about different
24 sections, Mr. Daar.

25 **THE CLERK:** Counsel, speak into the microphone.

1 **MR. HASIB:** The two objections that are noted in the
2 PSR, the government believes that Probation got it right and
3 the language is fine. The third objection is one that was not
4 in the PSR, Mr. Daar just brought to my attention with respect
5 to some language in paragraph 48. I would agree that --

6 **THE COURT:** What do you want 48 to say?

7 **MR. HASIB:** Mr. Daar.

8 **MR. DAAR:** I'm sorry, Your Honor?

9 **THE COURT:** 48. What do you want paragraph 48 to say?

10 **MR. HASIB:** As I understand it, Mr. Daar would like to
11 strike the language regarding that the defendants had
12 identified an individual with the local street gang to carry
13 out the murder. But that was specifically Keith Jackson, but
14 not Marlon Sullivan, who made that representation.

15 **MR. DAAR:** That's an important correction.

16 **THE COURT:** All right. So that will be altered or
17 changed.

18 **MR. HASIB:** And, secondly, there is a reference to a
19 text message that was sent on August 5th, 2015. Mr. Daar wants
20 that text message excised. And we have no objection to that.

21 **THE COURT:** Okay. That will go out as well. Go
22 ahead.

23 **MR. DAAR:** The only other issue, which may or may not
24 go into the guideline determination --

25 **THE COURT:** You're not objecting to the guideline

1 determination. You're objecting to including in the
2 presentence report, for purposes of consideration by the Court,
3 the circumstances of the offense.

4 **MR. DAAR:** I was getting ahead of myself.

5 With respect to the 10-kilogram quantity of cocaine was
6 something that had been insisted on, suggested on by the agents
7 multiple times as a prerequisite to the deal occurring, I think
8 that is an important fact. And it's an undisputed fact. I've
9 said it. No one says it's not true. But I've asked Probation
10 to include it. I put it in my objections.

11 **THE COURT:** What you want the report to say is the
12 amount of -- the quantity of narcotics was first suggested by
13 the agent?

14 **MR. DAAR:** Insisted upon by the agent as a
15 prerequisite for the deal going forward. "A deal will not
16 happen unless you get 10 keys."

17 **THE COURT:** Is that what the evidence is?

18 **MR. HASIB:** That it was insisted upon is indeed true.
19 It was insisted upon by Mr. Sullivan. In fact, there were
20 larger quantities that were discussed.

21 So I think if this is the objection, we certainly have
22 issues with that. We can agree that there were 10 kilograms
23 that were discussed. Who brought it up first, plainly
24 Mr. Sullivan and Mr. Jackson came to the undercover agent --

25 **THE COURT:** Number one, it's not going to affect the

1 sentencing.

2 **MR. HASIB:** It's not.

3 **THE COURT:** And, number two, why don't I simply delete
4 the language which says that one side or the other insisted
5 upon it?

6 **MR. HASIB:** That will resolve --

7 **THE COURT:** Okay.

8 **MR. DAAR:** Understood.

9 **THE COURT:** Okay. So I think we're ready to proceed.

10 Do you have another -- go right ahead. Talk to your
11 lawyer, Mr. Sullivan.

12 (The defendant conferred with counsel off the record.)

13 **MR. DAAR:** The only other issue would relate to the
14 conditions of non-association with the gangs.

15 **THE COURT:** I'll deal with that.

16 **MR. DAAR:** Same issues --

17 **THE COURT:** I'll deal with that.

18 **MR. DAAR:** He's going to do the same.

19 **THE COURT:** Okay. So I'll hear from the government
20 first.

21 **MR. HASIB:** I think we will be relatively brief and
22 rely largely on the arguments set forth in our papers.

23 The one issue that I was going to raise with the Court is
24 this issue of potential sentencing entrapment by the government
25 agent supposedly run amuck. I think the Court has already

1 addressed that in previous sentencings this morning.

2 I will note that there were multiple, multiple
3 conversations on the telephone with Mr. Sullivan, in particular
4 where Mr. Sullivan was asking for this drug deal to happen. It
5 has to take place. And, indeed, there are calls where it
6 almost sounds like he's desperate for it to happen. So the
7 notion that there is evidence of some sort of sentencing
8 entrapment here, the government denies and disputes. But that,
9 I think -- we talked a lot about those arguments today.

10 I think more important are the 3553(a) factors, that the
11 government actually agrees with the defendant that he's got a
12 lot going for him. This is a person who had a job, a career in
13 a difficult industry, a competitive industry, and he was
14 succeeding. He's got a college degree. He's got a graduate
15 degree, as I understand. This is a guy who I think was very
16 close to figuring out and doing it right but for some
17 colossally bad mistakes that he made with respect to meeting
18 David Jordan and working with David Jordan.

19 We received his letter to the Court that was filed
20 yesterday, and the letter from -- it's his fiancée, Ms.
21 Bronson, I believe. And, frankly, the government was moved by
22 both of those letters and has hope that Mr. Sullivan can indeed
23 work it out and find -- find the right way in life.

24 The government is going to persist with its recommendation
25 of 84 months that it set forth in its sentencing

1 recommendation. Mindful of the sentences that have just been
2 issued this morning, the government believes the sentences we
3 recommended for Senator Yee and for Keith Jackson were the
4 right sentences; although, the Court obviously found different
5 sentences. So that's why I'm continuing to persist that 84
6 months is the right sentence for Mr. Sullivan.

7 However, I think what the Court has probably recognized in
8 the plea agreements and the sentencing recommendations that we
9 put forward is that we had a certain hierarchy of defendants in
10 terms of culpability. And that level of culpability was with
11 Keith Jackson towards the top, Senator Yee somewhere in the
12 middle, and Mr. Sullivan and Mr. Jackson towards the bottom.
13 And I think the Court recognizes that hierarchy. That's
14 certainly what we tried to do with our plea agreements.

15 So bearing that in mind, Your Honor, unless the Court has
16 specific questions about who called who --

17 **THE COURT:** I have a question in that regard. So I
18 sentenced Senator Yee to 60 months.

19 **MR. HASIB:** Uh-huh.

20 **THE COURT:** And I did so, I think, for all the reasons
21 I stated. Public official. 67 years of age. Had accomplished
22 a number of things. But, again, incredibly venal. And I gave
23 my reasons. I don't need to do that.

24 So I guess I need to have a better understanding of your
25 last sentence, because under 3553(a)(6), I'm to avoid

1 unwarranted disparities among defendants in the case. I strive
2 and -- and I get tremendous cooperation from the government in
3 advising the Court as to where all these people fit vis-a-vis
4 one another.

5 And maybe you ought to consult with, Mr. Frentzen. I'm
6 just trying to make sure I understand what the government's
7 position is, because I think you have to -- I think you have
8 to -- while you disagree with the sentence I gave Senator Yee,
9 I think you have to plug that in.

10 I sentence according to a certain order, and do it on a
11 certain day in order to make sure that the lawyers for
12 defendants, to the extent they want to make an argument, can
13 make an argument. I don't know whether -- sentencing is not a
14 science. It's not even an art. I don't know what it is. But
15 it ought to be something that's fair and transparent.

16 So I attempt to do it in this particular way in order to
17 assure that both sides, the government and the defense, has an
18 appreciation as to a shifting field that obviously the Court
19 brings about in the sentencing process.

20 So do you have any further comments? You don't have to
21 speak, but you can if you want to.

22 **MR. HASIB:** I appreciate Your Honor's comments. I do
23 take into consideration the sentences that were issued this
24 morning. And it seems to me that the most reasonable
25 comparison, with respect to Mr. Sullivan, is to compare him to

1 Mr. Jackson, to Keith Jackson. Comparing him to Senator Yee
2 may be comparing apples to oranges.

3 **THE COURT:** That's what I think. To tell you the
4 truth, that's the way I looked at it. Senator Yee stood alone.
5 And while he was part of this problem, he stood alone. His
6 sentencing -- the disparities in his sentencing or where he
7 stands in his sentencing reflected his unique position.

8 Mr. Sullivan, either of the Jacksons didn't betray some
9 public trust. And so they -- they stand alone. But I think
10 it's instructive where Keith Jackson was, because I think that
11 I do want to avoid unwarranted disparities in that regard.

12 **MR. HASIB:** And that's right. And I think that's the
13 right comparison to make, Your Honor.

14 **THE COURT:** Okay.

15 So now we're on to Mr. Daar. Do you have something you
16 want to say?

17 **MR. DAAR:** Yes, Your Honor. I've been listening to
18 you very carefully this morning. And I've been listening,
19 watching you as you listen to the defendants' statements. And
20 I've been listening to the questions you were asking the
21 defendants after they're done speaking.

22 In each instance, I've not had an opportunity to answer
23 any of your questions. And I hope when my client is speaking
24 and you have a question you ask it, because I would like a
25 dialogue to occur.

1 But, clearly, in the Court's mind, especially with Keith
2 and with Senator Yee, you're wondering how did this person
3 come -- how did this come to happen to this person? What is it
4 that took this person on this path and turned it onto this
5 path? And that's an important question because without the how
6 you never figure out the why.

7 In other words, each of these defendants -- he has to know
8 how this happened. It's not enough to say, "I did something
9 wrong. I promise I'll never do it again." He has to go down
10 deep and answer the same question you've been asking, which is,
11 after everything you have done in your life, after all these
12 good things have happened, how is it that you have this
13 colossal failure and we're standing here in federal court
14 looking at multiple years in federal prison?

15 As I tried to make clear in our moving papers, the
16 government, their tactics, this three-year investigation, a
17 promise they'll make millions, those created mere opportunities
18 for this man to fail. And they created opportunities for him
19 to fail colossally in this situation. That is not entrapment.
20 I've never said it's entrapment. But it is a situation in
21 which but for the government he wouldn't even have had a chance
22 to fail in the manner he did.

23 We know what was going on pretty much before this all
24 started. We know because, A, we were -- the defendants spoke
25 about what they were doing, to some degree, on tape. We know

1 because phones were tapped. And we know because residences
2 were searched. They looked through computers. They looked
3 through every piece of paper in the home.

4 So we do have a snapshot of a man who made it, to some
5 degree, out of the neighborhood. And I want to stop there for
6 a minute because this sort of went to the heart of your
7 question, Your Honor. And I think, in a sense, Noelle, when
8 she wrote to the Court -- and she wrote a very insightful
9 letter. And I think the fact she is in love with this guy
10 bodes well for future, if she's still there when he gets out.
11 But I want to read to you from the second paragraph, the last
12 line, because I think it begins to give, maybe, some
13 understanding of how these things happen.

14 She talks about all his accomplishments, how bright he is,
15 and so forth, a good father and good family man. She says,
16 "Though his friends and family saw a robust and successful man,
17 the darkest shadows of insecurities and burdens followed him
18 closely. He was able to mask it with others by his charm, by
19 his boastful personality, and by his credentials."

20 What she was speaking to is something that I don't fully
21 understand, Your Honor. It's something I've encountered
22 numerous times. In the Western Addition in San Francisco,
23 despite how good our public education system is, the world in
24 the Western Addition is a little different than the world that
25 other people in San Francisco grew up in.

1 And we know that. We know people like Keith Jackson
2 overcame those conditions and made themselves successful. This
3 man overcame those conditions. Had a great mom, a great dad, a
4 great family. They kept him out of trouble. He did his
5 homework. He did right. And he was on his way out of that
6 neighborhood.

7 But you never leave the neighborhood, Your Honor. And I
8 don't know if that's something that you or I will ever fully
9 understand. But there's an insecurity, a very, very deep
10 insecurity that I'm not as good as everybody else. I'm not
11 really going to make it out there in that big white world. I'm
12 really just a kid from the hood.

13 And on the other side of that is the Central Player
14 Division, the gang right there in the neighborhood, the other
15 side of being black today in San Francisco.

16 This man, Keith Jackson, Brandon, they stood in a world
17 between the white world and the black world. They're trying to
18 make it. But as she talked about so eloquently, there's this
19 bottom line insecurity that follows them, that gnaws on them,
20 that never escapes.

21 And how do you overcome that? One way is you get a title:
22 Sports agent. You put on a nice suit. You get a nice car.
23 You start feeling like you're somebody. But it still eats at
24 you.

25 What's another way to show you're successful in this

1 world? Well, this world happens to value money. And money,
2 unfortunately, is one way to make yourself feel less secure
3 about your ability to function in this world.

4 So what happened here, Your Honor? What happened here is
5 you had a man who was outwardly very successful. But he wasn't
6 quite making it. He had a couple of jobs on commissions with
7 different agencies. Then, you know, he's -- he's a risk taker
8 for better or worse. So he goes out on his own. He tries to
9 make it, and he's not making it. He's not making it.

10 So what does he do? He starts selling marijuana. And
11 there's no question he was involved in marijuana, selling
12 marijuana to enable his -- to keep going and go forward.

13 Now, the government, in their effort to catch bad guys,
14 lays this elaborate trap with Dave Jordan, and it goes on for
15 three or four years. We know this. And we know that he gets
16 pulled into this. And we know that over and over again he
17 makes terrible mistakes in an effort to get the millions of
18 dollars that Dave Jordan says he would get.

19 That's not entrapment. He was -- I agree with the
20 government. I've listened to the tapes. He was playing a
21 role. He was playing the role. I'm a big drug dealer; I can
22 do anything.

23 Yeah, he was playing that role. But underneath that he
24 was anxious. That's why he pled guilty, Your Honor. That's
25 why I'm not in a jury trial here, because he's guilty. He was

1 anxious to do it and it's not entrapment. Never said it was.

2 But the government created an opportunity. He had a flaw
3 in him. Whatever that insecurity, you know, whatever psych
4 term it is, there was a crack inside this guy. And it was just
5 sitting there. And when these opportunities came, it just
6 opened up, and he ran with it. So, in a sense, the government
7 showed him something that was wrong with him, almost like an
8 x-ray, he didn't even know perhaps.

9 But in the end, Your Honor -- and I've spent hours and
10 hours with this man, talking to him. His mother -- is Fatima
11 here?

12 Would you stand up, Fatima.

13 This is his mother, Fatima Sullivan.

14 Thank you, Fatima.

15 When this case first began, people were upset. They were
16 angry. The government did this; they did that. People
17 yelling. Everything like that.

18 Early on, Your Honor, she said five words to me. Those
19 words, to me, define what's going on in this case, define what
20 he's facing, and define the whole reality of the situation
21 better than anyone has said it to date. And she said something
22 only a mother could say. And those words, when he finally
23 really understood those words, went right into that crack. And
24 those words were, "Lucky it was the government."

25 That's what his mother said, Your Honor. Not "my poor

1 son." Not "those bastards trapped him." She said, "Lucky it
2 was the government." Because she knew that there was something
3 in him that wasn't working right, and this situation caused it
4 to flourish, gave it a petri dish to grow in an unimaginable
5 way. But it caused that to happen.

6 And I think, in part, the government's recommendation --
7 and they said it -- you know, Your Honor, I have to respect
8 their brief. I never quoted from the government's brief
9 before. In the conclusion of the government's brief, they say,
10 "This gives the government some comfort" -- and I hope this
11 doesn't discourage you from being forthright in the future.

12 It says, "It gives the government some comfort that
13 Sullivan's willingness and eagerness to engage in criminal
14 activity with Dave Jordan was an aberration and simply a deeply
15 misguided attempt to achieve the financial success in his life.
16 He sought to fill that insecurity, to fill that hole." And
17 that is the truth.

18 And the other thing that happened, because -- because he
19 could see this truth early on, is he directed -- and I
20 helped -- I didn't help. We together, he and I led to the
21 pleas in this case.

22 And, once again, the government in its brief, it doesn't
23 say that we helped. It doesn't say we aided, we comforted. It
24 said, "At the same time Sullivan's initiative and the work by
25 him and his counsel that led the other three defendants to also

1 plead guilty."

2 The Court began to get a sense of, gee, what must it be
3 like for an intelligent human being to be locked in a 4-by-8
4 concrete room and the key to the door, the thing that's keeping
5 him in are their own words, which they must listen to over and
6 over and over again.

7 I made him listen to tapes and transcripts. We read and
8 read and read. And for an intelligent person to be confronted
9 to that degree with their own failing, he wasn't out here. He
10 wasn't worried about going to jail. He spent 23 months in the
11 worst conditions that exist, which is -- county jails are the
12 worst conditions that exist. And federal prison time is
13 nothing compared to what the 23 months -- he's not going to the
14 penitentiary. And the 23 months he did in that county jail is
15 going to be ten times worse than anything he faces in federal
16 prison. And that's -- I know that from my experience.

17 And I've talked to hundreds of people that have done time.
18 I've visited prisons from all over the country. And other than
19 the penitentiary, the county jail is a much more chaotic,
20 punitive environment. And he's been there for 23 months. And
21 I want the Court to consider that.

22 So what does this all mean? It means, I believe, that
23 this Marlon Sullivan has gone through a sincere process to
24 which he understood why it's the flaws of himself that caused
25 him to be here. It's acceptance of responsibility. Not just

1 saying the words. Why have we got 2, 3 points off for
2 acceptance of responsibility? I mean, there we are. It's a
3 special thing. All you've got to do is say it. I'm sorry, I
4 make a deal. And you get the 2. You do it in the nick of
5 time, you get to 3.

6 But what he did is something way more -- way beyond that,
7 much more sincere, self-reflective figuring out what it is that
8 went wrong. And why is that important? It's important because
9 it speaks to recidivism. The Probation office recognizes, as
10 does the government, that he's at a very, very low risk to
11 reoffend.

12 All right. So now we have some very serious crimes that
13 he has pled guilty to. The guns. Guns are dangerous. They're
14 dangerous from the minute they come out of that factory where
15 they manufacture them. They're dangerous the minute they go
16 into a law-abiding person's home and are subject to theft or
17 being picked up by some kid and shooting his brother. They're
18 dangerous when they get in the hands of criminals. They're
19 dangerous right down the road. They're dangerous in the hands
20 of hunters.

21 Luckily, as his mother said, the guns in this case are
22 never going to hurt anybody. In fact, they were taken off the
23 street. Not that he intended that. But the effect of it is
24 they're off the street.

25 He now has thought about what could have been different

1 about those guns. He's reflected on what if something had
2 happened, and what if he had to live with that the rest of his
3 life.

4 But that didn't happen in this case. And there was no
5 cocaine in this case. And there was no murder in this case.
6 There was some talk. There was some powder. And a whole bunch
7 of guns came off the street.

8 He's committed some serious crimes, and now we're before
9 the Court trying to figure out about how long to give him, in
10 the simplest sense of the word.

11 He's probably at a low risk for reoffending. So then we
12 have to look at disparity with the other defendants, and we
13 have to look at, sort of, deterrence. Those were the two
14 factors I'm thinking, trying to guess what the factors are that
15 you're going to be trying to work with in figuring this out.

16 When I'm dealing with clients who are trying to figure
17 out, Gee, should I take eight years? Should I risk 15? I say
18 to them, Don't think about it now. Think about it seven years
19 from now. You're in that room. You're looking at the door.
20 The door is either going to open or it's not going to open.
21 And that's the place you have to be in order to make that
22 decision.

23 And, in essence, 3553 kind of puts you near that door also
24 because you look at that door and you say, when does that door
25 need -- how long does that door need to stay closed to deter

1 others? How long does that door need to stay closed to teach
2 him a lesson about how serious his conduct was? And how long
3 does that door need to be closed so I can feel that I've been
4 fair with respect to the other defendants in that case?

5 And I've always wondered and I know you must wonder, Your
6 Honor, after 48 months or so in a cell and that door is still
7 closed, what happens on the 49th month?

8 We throw these numbers around. We're comforted by the
9 guidelines. But that's an important -- that is really the
10 heart of the question. Unanswerable question, as we all know.
11 But that is the heart of the question. And to me, at least in
12 terms of deterrence, I think at some point -- and that I
13 misstated in my memo. I asked for 48 months. That was a
14 mistake. I worked it off Probation. 60 months is all I can
15 ask you for in the agreement.

16 But I'm just saying to you, we get to that point, it's
17 more than done its job. There's not people on the street
18 walking around saying, oh, I heard Judge Breyer gave 48 months
19 and not 60 or 62 or 68. People don't think that way.

20 Unfortunately, I get to meet people that have failed. And
21 those differences aren't significant in terms of deterrent
22 value. A few years. There's no empirical evidence, either, of
23 that. But that's the system we have.

24 He has done everything he can do from the moment he has
25 failed. He has struggled like I've seen -- I've seen very few

1 clients who reach a really different place than when I met him.

2 He -- he's been worried about Brandon all through this
3 case. He's like his little brother. He was worried about him.
4 He said, you know, gee, can I help him somehow? I said no, I
5 got to take care of you. You can't help him.

6 But when the time came, he did. Brandon wanted less time
7 from the government. And typically you have similarly situated
8 defendants, as soon as one does that the other does that and
9 nothing happens.

10 But he said, You know what? I'm older. I could have
11 stopped him. I didn't. So let's -- you know, let's see if --
12 can I help at all by saying that?

13 So he has accepted responsibility. He accepted
14 responsibility for his younger brother at detriment to himself.
15 Not benefit. At a detriment to himself he stepped forward and
16 accepted, sort of, this older-brother relationship that he had.

17 Keith Jackson was not his father. Not even a father
18 figure. But what Keith Jackson was to him was a mentor. He
19 was the guy that made it out of the hood, onto the school
20 board. When this guy was trying to set up an Internet company
21 in India, Keith Jackson sent venture capitalists to meet with
22 him. He was this guy's mentor. This guy believed in him.
23 And, unfortunately -- Keith Jackson didn't force anyone to do
24 anything, but the fact that his mentor was willing to do this,
25 it made -- it made the moral crack that occurred all the worse.

1 So while I don't think he has the same mitigating impact
2 as it did for Brandon, it should have some mitigating impact
3 for the Court.

4 I'm going to rest at this point, Your Honor.

5 **THE COURT:** I need to ask a question. Maybe two.

6 I don't disagree with anything that you said. But I'm
7 trying to figure out two offenses that are very troubling. One
8 was the \$275,000 drug deal. I mean, that's just not a
9 street -- a sale at UN plaza. That's a -- that's --

10 **MR. DAAR:** Off the charts.

11 **THE COURT:** That's awful.

12 **MR. DAAR:** Yes.

13 **THE COURT:** That's awful. That's a big, big figure.
14 You can't look at 275,000 and say, you know, I'm just a street
15 dealer or, well, this isn't really -- this isn't really all
16 that serious. It's big time. It's big time. It's a big
17 league. Now, it's not millions, but it's 275,000.

18 **MR. DAAR:** Right.

19 **THE COURT:** The second thing -- and, look, you don't
20 have to -- whatever you want to say, you can say.

21 The murder for hire, now, do I think Mr. Sullivan would
22 have committed the murder? Actually, no.

23 **MR. DAAR:** Okay. That's --

24 **THE COURT:** I think when the day came he wouldn't have
25 done it. I don't know what role he would have played in it,

1 but I don't think he would have done it. But I can't
2 understand how he can participate in it, go along with it. For
3 him -- I just don't know that the explanation is, well, he
4 wasn't really serious but then goes to the place to I.D. the
5 decedent, the proposed decedent.

6 And at some point, because he is smart, at some point he
7 realizes or should realize, "I can't do these steps. It's
8 wrong. It's just wrong to do these steps." Yet he did them.

9 And, you know, you can characterize it as a chasm in his
10 upbringing -- or not in his upbringing, but where he was at
11 that given time. I think that's probably right.

12 But, you know, people aren't, in my view, born evil. They
13 are born a particular whatever their -- whatever their genetic
14 abilities are. And then they receive the benefit or the
15 detriment of their upbringing. Sometimes it's beneficial.
16 Sometimes it's not. And it's not their fault. They're given
17 what they get.

18 But when they cross the line into making decisions --
19 which, of course, the courts believe it's around 18, but it's
20 different for different people -- when they cross that line,
21 they're held responsible for their decisions.

22 And notwithstanding the motivation, whatever pushed them
23 in one direction or another, it's their decision. And I'm
24 having an extremely difficult time looking at the decisions
25 that he made and somehow think that they weren't major criminal

1 decisions.

2 They weren't, sort of, am I going to launder some money?
3 Am I going to make a small deal? Am I going to do this and
4 that? They are major criminal decisions.

5 His age belies it. His record belies it. He shouldn't be
6 making those types of decisions, but he did. And that's really
7 the danger of embarking on, basically, a criminal enterprise,
8 is that it gets you so far over your head that it's
9 extraordinarily dangerous. It's dangerous not just to the
10 person who's doing it, it's dangerous to the community.

11 And your mother is right. Thank goodness it was the
12 government. Because what the government said wasn't so unusual
13 in the world of criminal activity. We do have people who are
14 murdered for hire. We do have people doing drug deals of
15 \$275,000 or more. We have that out there.

16 And so it was fortuitous that it was the government on
17 the -- dealing with that transaction, because it could have
18 been someone else. And I don't know whether you want to
19 comment on that, but --

20 **MR. DAAR:** I do.

21 **THE COURT:** -- it's bothering the Court.

22 **MR. DAAR:** I do. And I'd like Mr. --

23 **THE COURT:** Obviously, I'm going to hear from
24 Mr. Sullivan.

25 **MR. DAAR:** I will let him answer, sort of, the second

1 question.

2 **THE COURT:** Any way you want to deal with it.

3 **MR. DAAR:** Okay. I'd like to address briefly with you
4 the first question.

5 I have done a lot of drug cases, Your Honor, as you have
6 participated in many trials. It's a large quantity. It's
7 10 kilos. Even if the government suggested it, he showed up
8 with the money. End of story. He did it. I'm not backing off
9 from that. But two things I want you to consider when
10 comparing it to your typical drug defendant that you see in
11 federal court.

12 One, the inception of the conversation about drugs begins
13 in August of 2012. And it takes until March of 2014, a year
14 and some change, for the single act to get consummated.

15 That just -- all that tells you, Your Honor, is it took
16 him nine months to come up with the money to do the deal.
17 That's what it tells you. It took him nine months to come up
18 with the money to do the deal. We know that.

19 The second thing -- and then I've got a third. The second
20 thing is, like any organization, you don't step in as
21 president. In order for a criminal dealing cocaine to work his
22 way up to the kilo level, you know, a 10-kilo deal 3,000 miles
23 away would take years of criminal activity. It would take
24 years of escalating buys. It would take years of developing
25 relationships, and probably get caught before he even got

1 there, possibly.

2 He did wrong. It's a big case. But the reason it took
3 him nine months to get there -- and you don't go from zero to a
4 hundred in the real world -- he couldn't have gotten there --
5 if he was a kilo dealer, Your Honor, the deal would have
6 happened. The government offered a great price. He would have
7 said great, let's do it.

8 **THE COURT:** Well, but I think he was.

9 **MR. DAAR:** He wanted to. He wanted to.

10 **THE COURT:** I don't think he was a repeated habitual
11 drug dealer. I don't think that. But he engaged in a
12 multi-kilo, \$275,000 transaction. Maybe you know-- that's what
13 he's engaged in.

14 **MR. DAAR:** He's ready --

15 **THE COURT:** I don't know -- maybe there's not much
16 more to say. The facts speak for themselves. I think I should
17 hear from Mr. Sullivan.

18 **MR. DAAR:** Okay.

19 **THE DEFENDANT:** Thank you, Your Honor, for allowing me
20 to speak today.

21 I was living my life as a caricature, distorted
22 representation to produce a ridiculous effect.

23 The prosecution said something at my bail hearing. They
24 stated that my accomplishments were commendable. But given
25 that fact makes the situation worse because I didn't have to be

1 here. And I couldn't agree with them more.

2 My environment growing up, not a single parent or lack of
3 resources. I had everything one would need to have a chance at
4 success and to pursue happiness. My father provided resources;
5 great example of what it was to be a man. My mother love,
6 nurturing that only a woman could provide.

7 I failed. Took me, what, about a year, year and a half to
8 really understand the magnitude of my choices and actions, how
9 many other people besides myself they affected.

10 Also, unintended consequences with these guns. I never
11 thought about the potential possibilities that could happen if,
12 you know -- with the gun sales. I didn't think of what could
13 potentially happen. I'm just trying to help this guy that we
14 knew.

15 They said that money is the root of all evil. And I think
16 this situation definitely exemplifies it.

17 I had the greatest father imaginable, and I've turned out
18 to be worse for my children.

19 But Marlon Sullivan is no violent man. My entire life,
20 adolescence, teenager, I've never hurt anybody. Sad to say, I
21 was willing to tell UC 4599 anything he wanted to hear so I can
22 get access to the drugs. In addition to the drugs, I wanted to
23 make money to further my business. Can't take that away.

24 That's true. I've been very candid, truthful about my
25 participation in this case. And it was never going happen.

1 Never.

2 To answer your question, I knew and it's very bad to say,
3 but I knew the government, they couldn't make me do the murder
4 for hire without doing the drug deal first, just because of how
5 everything transpired. I knew that would happen first, and I
6 would get out of murder for hire. Doesn't make it better, but
7 it was never going to happen.

8 What actions -- I mean words said and action taken, I
9 understand my guilt. And losing my freedom for the past two
10 years has definitely had a profound effect on me. And I can
11 readily say that I will never commit another crime for the rest
12 of my life.

13 There's something else I want to address. In 2007, I had
14 a contentious relationship with the mother of my first two
15 children, which led to -- it led to a domestic violence
16 conviction and a requirement to take 52 weeks of anger
17 management classes. With these classes, I learned how to deal
18 with stress and how to handle volatile situations. In 2012,
19 another incident occurred. And I was able to apply what I
20 learned and not repeat those same choices.

21 And the point I'm making here is that the system works.
22 It works in the past. And it's worked now because I'll never
23 repeat these choices.

24 I would like to take this time to thank my family,
25 friends, former clients. These people, they -- they supported

1 me my entire life. I had so many people trust me, give me
2 resources, push me. I was, quote-unquote, one who would make
3 it. These guys, they pushed me. And I definitely appreciate
4 it.

5 This woman, she has -- she's been my best friend,
6 companion. And hopefully when I get out of here, she'll still
7 consider spending the rest of her life with me. And that's
8 Noelle Bronson. Our son was five weeks old when I was
9 arrested. And she -- she's remained steadfast. She hasn't
10 withered in her support or love this entire time.

11 My mother, we lost my father a month prior to me being
12 arrested. And I'm sure this situation took her over the top.
13 I was the rock, the stability of our family. I failed her.
14 Hopefully I will pay her back one day.

15 To my auntie, Denise Jackson, like he said, Brandon, we
16 both have -- I mean, we both made choices. We're both adults.
17 At the same time, I was older. I had more experience. When
18 this situation began to exacerbate, I had a chance to put him
19 out of it, and I didn't. And I definitely apologize to her.

20 To my attorney, Randy Daar, definitely appreciate him. He
21 managed this process greatly. The words are within me, inside
22 me. You've given me hope to get past this thing. And you told
23 me I would. Thank you.

24 **MR. DAAR:** You're welcome.

25 **THE DEFENDANT:** Lastly, arguably most important, Your

1 Honor, is I want to thank the United States government,
2 Mr. William Frentzen. When I think about this case and --
3 ultimately ended with me. It ended with me. And if it wasn't
4 you guys in that hotel room, there's a good chance right now I
5 would be dead. So for that, thank you.

6 I'd like to leave the Court with an axiom that has
7 resonated in me throughout my time in custody. The who man
8 recognizes his crime and accepts his punishment is a member of
9 good standing with his country. But the man who runs and
10 hides, the man who's unrepentant and he knows what he's done is
11 a symptom of a much greater disease.

12 Your Honor, it is my complete endeavor to reintegrate with
13 my family, my community, and become a member of good standing
14 with my country.

15 Thank you.

16 **THE COURT:** Well, your case is tragic, as is Brandon
17 Jackson's. It's absolutely tragic. There's no reason why you
18 would be here. You know, it's a -- it's extraordinarily sad
19 and difficult.

20 I think that if one were simply to look at the situation,
21 would you ever do this again? I don't think you will. I think
22 Mr. Daar is correct. The likelihood of recidivism is slight.
23 And if that was the sole criteria, I would have no problem in
24 giving you a lecture and sending you out.

25 But that's not it. The fact is that you caused a lot of

1 harm or could have caused a lot of harm had you not been
2 dealing with the government in this situation. The narcotics
3 transaction, weapons, the murder for hire. You know, I do
4 accept your statement. But, you see, part of the problem in
5 all of this are what you call the unintended consequences to
6 embark upon a course of criminal conduct. You're responsible
7 for any foreseeable result. And the harm that's caused is a
8 foreseeable result. And so I feel that it's important that a
9 punishment of the -- be contained in the sentence.

10 I think your conduct since arrest has been exemplary, has
11 been helpful. You've been straightforward. And all of that is
12 for the good. All of that is of the good.

13 So looking at all the factors, pursuant to the Sentencing
14 Reform Act of 1984, it is the judgment of the Court that Marlon
15 Sullivan is hereby committed to the custody of the
16 Bureau of Prisons to be imprisoned for a term of 66 months.

17 The Court recommends that the defendant participate in the
18 Bureau of Prisons Residential Drug Abuse Treatment Program.

19 Upon release from imprisonment the defendant shall be
20 placed on supervised release for a term of three years. Within
21 72 hours of release from the custody of the Bureau of Prisons,
22 the defendant shall report in person to the Probation office in
23 the District to which the defendant is released. While on
24 supervised release, the defendant shall not commit another
25 federal, state, or local crime, shall comply with the standard

1 conditions that have been adopted by this court, shall refrain
2 from any unlawful use of a controlled substance, and submit to
3 a drug test within 15 days of release on supervised release,
4 and two periodic drug tests thereafter, and shall comply with
5 the following conditions:

6 Defendant shall participate in a program of testing and
7 treatment for drug abuse as directed by the probation officer
8 until such time as the defendant is released from treatment by
9 the program.

10 Defendant shall abstain from the use of all alcoholic
11 beverages.

12 The defendant shall pay any special assessment that is
13 imposed by this judgment and remains unpaid at the commencement
14 of the term of supervised release.

15 The defendant shall submit to any search of his person,
16 residence, office, vehicle, or any property under his control.
17 Such a search shall be conducted by a U.S. probation officer or
18 any federal, state, or local law enforcement officer, at any
19 time, with or without suspicion. Failure to submit to a search
20 may be grounds for revocation. Defendant shall warn any
21 residents that the premises may be subject to searches.

22 The defendant shall make an application to register as a
23 drug offender pursuant to state law.

24 With respect to contact of any codefendant in this case,
25 is there anything that needs to be addressed?

1 **MR. DAAR:** They've been in a cell together this whole
2 time.

3 **THE COURT:** Defendant shall not have any contact with
4 any codefendant in this case once on supervised release.
5 That's really what it is, once on supervised release.

6 Defendant shall cooperate in the collection of DNA as
7 directed by the Probation officer.

8 Defendant shall not own or possess any firearms
9 ammunition, destructive device or other dangerous weapons.

10 Further ordered defendant shall pay the United States a
11 special assessment of \$100, which will be due immediately.
12 When incarcerated, payment of criminal monetary penalties are
13 due during imprisonment at not less than \$25 a quarter.
14 Payment shall be made to The Clerk, U.S. District Court, 450
15 Golden Gate Avenue, Box 36060, San Francisco, California 94102.
16 No fine is ordered.

17 The defendant shall forfeit any interest he has in the
18 items that are listed in the plea agreement commencing on --
19 they are, I think, 61 items. And they will be appended to the
20 police report.

21 So I wish you luck.

22 **THE DEFENDANT:** Thank you.

23 **THE COURT:** Sentencing is a difficult process. I
24 think the government was balanced, measured, forthright. I
25 think you did an excellent job, Mr. Daar.

1 But it's sad. It's sad. I hope you will be -- I don't
2 know, 34, 33, 34 years old when you emerge. Your life is ahead
3 of you. Let me tell you, it's ahead of you. May not look that
4 way, but it really is. And it's really up to you at that
5 point.

6 You can overcome this. You can overcome this.

7 **THE DEFENDANT:** Thank you.

8 **THE COURT:** I know you can.

9 **THE DEFENDANT:** Thank you.

10 **THE COURT:** And, you know, as long as you just
11 remember what your mom said, you know, and look to a good set
12 of values, you can go forward. Because you should. You
13 should.

14 And Mr. Daar is right. I don't know what it's like
15 growing up in the Western Addition. I'm very fortunate. I had
16 a very different perspective in my life experiences, I'm sure,
17 than what you had and Mr. Jackson had. You know, that's the
18 truth. I understand that. And I also understand that that may
19 explain a lot. But it doesn't cure the harm. And the harm is
20 the harm. And it's important to address that.

21 **THE DEFENDANT:** Thank you, Your Honor.

22 **THE COURT:** So I wish you luck.

23 **THE DEFENDANT:** Thank you.

24 **MR. DAAR:** Can we get a recommendation to Lompoc, Your
25 Honor?

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THE COURT: Yes, certainly. I'll make that recommendation.

THE DEFENDANT: CDP?

MR. DAAR: It's not in there.

You struck the non-association to CDP; right?

THE COURT: Yeah, I struck that.

MR. DAAR: Thank you, Your Honor.

THE COURT: Okay.

(At 12:57 p.m. the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Friday, April 22, 2016

Katherine Sullivan

Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter