

1 (Begin proceedings via videoconference at 9:57 a.m.)

2 DEPUTY CLERK: 3:20-CR-54, United States of America
3 versus Hayes.

4 MR. TIEKE: Good morning, Your Honor. Chris Tieke on
5 behalf of the United States.

6 THE COURT: We're going to need to turn Mr. Tieke's
7 volume up there.

8 Ms. Beyl, you want to go ahead and enter your appearance as
9 well.

10 MS. BEYL: Thank you, Judge. Chastity Beyl for
11 Mr. Hayes. He is present and in custody, and he has consented
12 to appear at this sentencing via video.

13 THE COURT: We are conducting this sentencing hearing
14 via videoconference pursuant to provisions of the CARES Act and
15 with the consent of both parties. I am in the courtroom, along
16 with the court reporter and courtroom deputy.

17 The parties, the probation officer, and I understand,
18 Mr. Tieke, one observer who's a victim also is appearing via
19 videoconference.

20 Mr. Hayes, can you see and hear me well?

21 THE DEFENDANT: Yeah, yes, Your Honor.

22 THE COURT: So let's begin then. Ms. Beyl, have you
23 and Mr. Hayes received and reviewed the presentence
24 investigation report?

25 MS. BEYL: Yes, sir. I would note as a housekeeping

1 matter, I think that there was another PSR that had been filed a
2 couple of days ago. My understanding is that had a few typos in
3 it, but it was nothing of substance. So the prior PSR to that,
4 which again is the same thing in substance, that has been
5 reviewed with Mr. Hayes.

6 THE COURT: Yes, and the probation officer reported to
7 me that the revised PSR merely corrected, as you pointed out,
8 some typos. It changed no calculations and changed no findings.
9 No factual report was changed in the revised version.

10 Mr. Hayes, have you had enough time to go over the PSR with
11 Ms. Beyl?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And, Mr. Tieke, I presume by the presence
14 of the victim here -- and I'll have you identify her, to the
15 extent she wishes to be identified, and give her an opportunity
16 to speak at a later point in the hearing -- but I presume by her
17 presence that you have discharged the Government's obligation
18 with respect to victim notification of this hearing.

19 MR. TIEKE: Yes, Your Honor, that's correct, and
20 Miss Salandanan is the victim that's with us today. The other
21 victim was notified but chose not to address the court, and the
22 insurance company in this case was also notified, Your Honor.

23 THE COURT: And there is no representative from the
24 insurance company though; is that correct?

25 MR. TIEKE: No, sir.

1 THE COURT: So let's begin with a look at the
2 guideline calculations contained in the PSR. They begin at the
3 bottom of page five and then continue at the top of page six in
4 paragraph 16.

5 The base offense level here for a violation of Title 18 of
6 the U.S. Code, Section 2119, is found in Guideline 2B3.1, and
7 that offense -- base offense level is a 20.

8 The base offense level is enhanced by five levels because of
9 the brandishing or possessing of a firearm. Paragraph 18
10 enhances the base offense level another two levels because the
11 victim was physically restrained to facilitate the offense.

12 And then paragraph 19, there is another two-level increase
13 because the offense involved carjacking under Guideline
14 2B3.1(b) (5).

15 Paragraph 22, which I believe, Ms. Beyl, is the subject of
16 an objection. Is that correct?

17 MR. TIEKE: Yes, Your Honor.

18 THE COURT: It adds two levels under Guideline 3C1.2
19 because the -- of the conclusion that the defendant recklessly
20 created a substantial risk of death or serious bodily injury to
21 another person in the course of fleeing from law enforcement.

22 That results in an adjusted offense level of 31. After all
23 three levels of acceptance of responsibility are credited, we
24 get a total offense level of 28.

25 And, Mr. Tieke, just for the record, I presume the

1 Government has no objection to that third level of acceptance of
2 responsibility being added.

3 MR. TIEKE: No objection, Your Honor.

4 THE COURT: So have I stated the calculations
5 correctly as they are found in the PSR?

6 MR. TIEKE: You have, Your Honor, from the United
7 States' perspective.

8 MS. BEYL: Yes, Your Honor.

9 THE COURT: And so am I correct, Mr. Tieke, that the
10 Government has no objections to the contents of the PSR?

11 MR. TIEKE: No objections, Your Honor.

12 THE COURT: And, Ms. Beyl, you have one objection; is
13 that correct?

14 MS. BEYL: Yes, sir.

15 THE COURT: And that is to the adjustment for
16 obstruction of justice in paragraph 22 that we just mentioned.

17 I have reviewed all of the materials submitted by the
18 parties, and I have considered the objection as it is written.
19 Why don't we take a minute now to hear any additional argument
20 that either side may have with respect to this objection.

21 Ms. Beyl, I'll start with you.

22 MS. BEYL: Thank you, Your Honor. I would reiterate
23 the arguments that are contained in my sentencing memo. I know,
24 as this court always does, you have reviewed that and understand
25 what those arguments are.

1 One thing that I would emphasize, of course, we are focused
2 on the fifth element under *U.S. v. Dial*, 524 F.3d 783. That's a
3 Sixth Circuit case from 2008 that discusses the 3C1.2
4 enhancement.

5 The issue, of course, is -- from the defense perspective is
6 what was Mr. Hayes' state of mind at the time of the flight. As
7 is clear from the *Dial* opinion, when the court is considering
8 whether the conduct of flight occurred during the commission of
9 the offense of conviction, or as it relates here in the course
10 of attempting to avoid detection or responsibility for that
11 offense, in order to make that determination, the court is to
12 look at the defendant's state of mind in order to determine if
13 there was a sufficient nexus between the flight and the offense
14 of conviction.

15 In these circumstances we do have certain evidence that
16 supports Mr. Hayes' state of mind. First and foremost was his
17 statement at the hospital. He did advise the officers that he
18 was under the influence, and he does not recall a lot of the
19 events.

20 But also at the time he was on probation and because he was
21 on probation, he was not supposed to have a gun. There was an
22 individual in the car who did possess a gun, and Mr. Hayes was
23 concerned that that could be considered a probation violation.
24 That would lend to his state of mind as to why he fled from the
25 police.

1 Also, candidly, he has pled guilty here to carjacking. So
2 he did have knowledge that the vehicle was stolen. At that
3 point in time, however -- and I will address this a little bit
4 later in the sentencing hearing -- Mr. Hayes' state of mind was
5 that he's simply in a stolen vehicle, not that a carjacking was
6 involved, because he was not the individual who brandished the
7 gun or forced either of the ladies out of the vehicle.

8 He also had a bench warrant outstanding from state court at
9 that time, a bench warrant that he had incurred the day before.
10 So there were reasons for his flight. He gave statements to the
11 police as to his reasons for the flight, and that's the first
12 thing that the court is to look at are the facts and
13 circumstances in support of his state of mind or if there's any
14 statements that he's given as to his state of mind.

15 Also relevant to this determination is the temporal and
16 geographic proximity to the offense of conviction. I know that
17 when I brought this to probation's attention, they disagreed
18 with their analysis, and I think it was primarily focused on
19 that particular issue. And I would submit to the court, as far
20 as proximity and geographical -- or as far as temporal and
21 geographic proximity, that the offenses from which he was
22 fleeing are closer in time than the carjacking, and that being
23 in a stolen car, being currently on probation, and having an
24 individual in the car with a gun. Also, there was the bench
25 warrant from the day before. So there were other reasons for

1 the flight that were closer in time than the carjacking.

2 So for those reasons, as well as the reasons that I have
3 stated in the sentencing memo, we would respectfully submit that
4 there has not been enough proof presented in order to support
5 the enhancement that indeed there is more facts supporting that
6 the flight was from something other than the conviction, the
7 offense of conviction, and for that reason that the two-level
8 enhancement should not apply.

9 THE COURT: Mr. Tieke.

10 MR. TIEKE: Your Honor, I'll respond to those kind of
11 in order. I'll first reiterate what I stated in the sentencing
12 memo as well. I'll also point out that at this stage the United
13 States would only be required to show by a preponderance of the
14 evidence the issue of the flight here, and so I'll first discuss
15 the state of mind.

16 It's interesting that Mr. Hayes does not recall some of
17 these events but was of such a state of mind that he could
18 differentiate between whether he was fleeing from his probation
19 violation the day before or the fact that he was the driver of a
20 vehicle that was stolen in the day before bleeding over into the
21 evening -- excuse me -- the early morning hours of the day
22 before. And so I think that if you look at the facts, he was
23 driving the vehicle at the time of the -- it fled the police
24 officers. He had participated in the carjacking the day before.

25 And Ms. Beyl brings up the dispute over possession of the

1 firearm. There was a police report where one of the other
2 associates that committed the carjacking admitted to the gun,
3 but there was also statements by both the victims in this case
4 that identified Mr. Hayes as the person that brandished the
5 firearm to commit the carjacking the day before.

6 So I believe that if you're looking to parse out his state
7 of mind, he was clearly in a car fleeing from police that he had
8 stolen the day before using a gun.

9 And I think in terms of the argument about the temporal
10 location, I cited to the Fifth Circuit case of *Rodriguez* in my
11 sentencing memo, and there the court applied this same
12 enhancement where a carjacking had occurred three to four days
13 earlier. And so here we are, we're even closer in time to the
14 flight from police than the court was and the facts were in the
15 *Rodriguez* case.

16 So we would maintain that at least by a preponderance of the
17 evidence, from the statements in evidence that are in the PSR,
18 that the probation office appropriately applied the 3C1.2
19 enhancement in this case.

20 THE COURT: Anything further on this point?

21 MS. BEYL: Judge, one thing that I would point out
22 that I said, again, I would get into during the actual arguments
23 for sentencing and the factors, as it relates to the prosecuting
24 witnesses identifying Mr. Hayes as the individual with the gun,
25 I would note for the record that at -- in the discovery at

1 USA250, one of the prosecuting witnesses -- I think is present
2 here today, Miss Salandanan -- was shown two photos of
3 Mr. Hayes. And this occurred on June the 17th of 2020. It was
4 presented by Special Agent Peter Summers.

5 And initially when she was shown a booking photo -- I'm
6 sorry -- the driver's license photo of Mr. Hayes, she said that
7 she thought he had been in the middle seat, but she wasn't sure.
8 And then there was another photo shown of Mr. Hayes. It was a
9 booking photo of Mr. Hayes. And she said at that point in time
10 that she didn't recognize that individual and didn't think he
11 was in the car or one of the three.

12 So I think there are some disputes as far as who had the gun
13 and who was involved in this. So I would just point out that
14 fact to the court.

15 THE COURT: Mr. Tieke, is there an open question as to
16 the possession of the firearm?

17 MR. TIEKE: Your Honor, I also would like to point out
18 too that -- a number of things that I failed to mention. This
19 was in the midst of, you know, the coronavirus. And so at this
20 point during -- identification is somewhat of an issue because
21 folks were wearing masks all throughout this process.

22 But there are additional pieces of evidence that tie
23 Mr. Hayes to the firearm. For example, when Mr. Hayes' social
24 media was reviewed as part of the investigation, he was
25 actually -- now, it was not at the same time, I'll grant you

1 that. But during the investigation, it was revealed that
2 Mr. Hayes had a firearm that fits the description of the one
3 used in this case. And the reason we know that is because on
4 the sleeve of the firearm, there's a very distinctive punisher
5 head symbol. And that was observed in the video that was found
6 on Mr. Hayes' social media and it was also observed on the
7 firearm that was discovered in this case so -- and ATF has
8 reviewed that and has determined that these guns were -- not
9 with exact certainty but are -- that that symbol is very
10 distinctive.

11 And so there's additional evidence on different occasions
12 Mr. Hayes had this vehicle, but, yes, there were issues with
13 identification. But at one point both of the victims have
14 identified him as the one with the firearm.

15 And I would also state that there is an aiding and abetting
16 charge. So I believe that the application of the firearm
17 enhancement, the brandishing, would apply regardless of who had
18 the firearm in the car anyway. So I think that's important to
19 note. So any of the defendants that enhancement would have
20 applied, and I don't think the defense objected to that
21 brandishing of a firearm enhancement.

22 MS. BEYL: No, Judge.

23 MR. TIEKE: And so the firearm is somewhat, I think --
24 there is competing testimony and proof regarding that, but I
25 think it's a distinction without a difference under the theory

1 of aiding and abetting that could occur in this case as well.

2 MS. BEYL: And, Judge, I would agree with the United
3 States on that point. We didn't dispute it. I mean, and
4 Mr. Hayes is not by any means trying to say that he's not
5 accepting responsibility for what happened at the carjacking.

6 It's just at the time of the flight, what I'm trying to
7 point out to the court is his knowledge of what had happened,
8 his involvement in it and what potentially happened --

9 THE REPORTER: Ms. Beyl, you cut out a little bit
10 there. Could you repeat that.

11 MS. BEYL: Yes, I pointed out this information during
12 this analysis just to show the court what Mr. Hayes' state of
13 mind was as to what he could potentially be charged with and
14 what his involvement was with the carjacking, and I'm discussing
15 this in the time frame of when he was apprehended by the police
16 when the flight occurred.

17 THE COURT: I think it's also important at this point
18 to put this objection into context. If the two-level
19 enhancement that is the subject of the objection is applied, as
20 I indicated, we would have a total offense level of 28 and a
21 criminal history category of III, resulting in a guideline
22 custody range of 97 to 121 months.

23 Now, the plea agreement is a (C) plea. And if I accept the
24 parties' (C) plea, it permits arguments in a range from 78 to 97
25 months. And so there is the possibility that the court could

1 accept the parties' (C) plea and sentence the defendant to a
2 term that is contemplated by either the resulting offense level
3 range at 28 or the parties' agreed upon range in the plea
4 agreement. Correct?

5 MR. TIEKE: That's correct, Your Honor.

6 MS. BEYL: Yes, sir.

7 THE COURT: Ms. Beyl?

8 MS. BEYL: Yes, Your Honor. I think if the court is
9 inclined to overrule the objection to the two-level enhancement,
10 it would be the defendant's position to move for a variance
11 below the 97 to 121 months. And, again, that would be in
12 compliance with the (C) plea, yeah, again, if the court decided
13 to accept the (C) plea.

14 THE COURT: The flip side of that is equally true
15 though. I could sustain the objection, remove the two-level
16 enhancement and still sentence the defendant at the upper end of
17 the guideline which corresponds with the upper end of the
18 parties' agreed upon range in the (C) plea agreement. Correct?
19 In other words --

20 MS. BEYL: Yes, sir.

21 THE COURT: -- there is an outcome here that can be
22 found, consistent with the parties' plea agreement, irrespective
23 of the outcome of the objection.

24 MS. BEYL: Yes, sir.

25 THE COURT: And you agree with that also, Mr. Tieke?

1 MR. TIEKE: Yes, that's correct, Your Honor. I merely
2 argued the point that about the enhancement because I do think
3 that it applies in the case.

4 THE COURT: No, I understand. I think we need to
5 flesh this out. I'm just pointing out that there is -- there
6 are outcomes here that might not be impacted by the resolution
7 of the objection, but we do need to fully consider the
8 objection.

9 Here's where I come out: I have reviewed the case law,
10 Ms. Beyl, including the case you cited. The Sixth Circuit has
11 adopted the five-point test from the Fifth Circuit's case,
12 *Southerland*, I believe. And for this enhancement to apply under
13 that test, the government has to show that the defendant
14 recklessly -- and in this case I think we see recklessness by
15 the fact that the car was wrecked during this pursuit, flipped.
16 Paragraph 10 says, "flipped into the median of I-64."

17 Number two says, "creates a substantial risk of death or
18 serious bodily injury." I think anyone who has driven on an
19 interstate late at night knows that to be in close proximity to
20 an accident of this nature faces a danger and such a dangerous
21 event would certainly threaten the safety of any cars traveling
22 close-by.

23 The next factor is "to another person" -- well, the other
24 person would be whomever is on the interstate -- "in the course
25 of fleeing from a law enforcement officer." Paragraph 10 of the

1 PSR shows that this was a pursuit.

2 And then we get to the fifth factor, which is the factor
3 that really is addressed by your objection, that the conduct
4 occurred during the commission of the offense of conviction, in
5 preparation for that offense, or in the course of attempting to
6 avoid detection or responsibility for that offense. Now, that
7 last phrase is the operative phrase here.

8 This pursuit, resulting in the serious wreck on an
9 interstate, occurred around 1:00 a.m. on the 4th. That's about
10 24, 25 hours after the victims of the carjacking were forced out
11 of their car at gunpoint, per the facts as reported in paragraph
12 nine.

13 I just don't find the claim to lack memory of the carjacking
14 offense to which he pleaded guilty, I just don't find that
15 credible. I think that this guideline is properly applied here.
16 I think that comment three to the guideline says that the factor
17 of, quote, "during flight," end quote, is to be construed
18 broadly.

19 Clearly here the defendant had not abandoned the stolen car
20 in the first 24 hours after stealing it, as is sometimes the
21 case. Instead, he was still using it and doing so recklessly by
22 flipping the car during the pursuit. So I'm going to overrule
23 the objection and find that the adjustment of two levels in
24 paragraph 22 is correctly applied.

25 Now, any other objections that we need to take up?

1 MR. TIEKE: Not from the United States, Your Honor.

2 MS. BEYL: Not from the defendant.

3 THE COURT: I will then adopt the PSR. It will be
4 filed in the record under seal. In the event of an appeal, the
5 parties, court, and counsel will have access to it.

6 Do we have any motions to take up, Mr. Tieke?

7 MR. TIEKE: Not from the United States, Your Honor.

8 THE COURT: Ms. Beyl?

9 MS. BEYL: Judge, as I had indicated earlier, in the
10 event that the court chose to overrule the defendant's objection
11 to the two-level enhancement, therefore setting Mr. Hayes'
12 sentencing range beginning at 97 months up to 121 months, we
13 would make a motion for a variance and request that the court
14 impose a 78-month sentence, which is encompassed within the (C)
15 plea.

16 I know that this court usually likes for us to go ahead and
17 address the 3553(a) factors during the course of any such
18 motions, and I'll be happy to do so if you want me to proceed
19 with that.

20 THE COURT: That'd be fine. Go ahead.

21 MS. BEYL: Thank you, Judge.

22 Going back a little bit to the arguments that I was making
23 before, again, I know that Miss Salandanan is present here on
24 this conference, and I don't want any comments that I make to be
25 interpreted any way with disrespect to her or anything as far as

1 her integrity or credibility is concerned.

2 When I was discussing earlier about the information
3 concerning the identification, I wanted to point out to the
4 court that there was a point in time during the course of this
5 investigation -- and this occurred on June the 17th of 2020 --
6 where there were issues with even identifying Mr. Hayes. And
7 there was also information that one of the individuals in the
8 vehicle with him whenever he was apprehended admitting to having
9 the gun that was involved in the robbery.

10 Now, as the United States pointed out and I do want to make
11 clear to this court, we did not object to the enhancements for
12 the possession of the firearm or for the actions involved with
13 one of Mr. Hayes' unindicted co-defendants pulling one of the
14 girls out of the car, because he did plead to aiding or abetting
15 the carjacking. And so I don't want this court to misinterpret
16 any of these arguments as him trying to shirk his
17 responsibility, as him not taking acceptance for what happened.
18 He has fully accepted this. He will accept any reasonable
19 sentence that this court chooses to impose because of these
20 factors of the offense, but I did want to point those two issues
21 out.

22 I think what the court -- we would like for the court to
23 seriously consider, especially in determining the sentence and
24 in support of this motion for a variance, is looking at
25 Mr. Hayes' history. He has, in my opinion, one of the saddest

1 histories that I have seen with an individual. He didn't have a
2 very good start in life, and he is only 21 years old. He is one
3 of my younger clients, and like I said, he didn't have a good
4 shake of it starting out.

5 As you can see from the sentencing memo, Mr. Hayes was born
6 to a teenage drug-addicted mother. She used alcohol and other
7 substances. He was actually born addicted to alcohol and drugs
8 and suffered from drug withdrawals as an infant, actually
9 resulted in seizures. He, however, remained in the custody of
10 his biological mother and was eventually taken out of her
11 custody because of this, as well as other indications of sexual
12 abuse by her.

13 So he and his brother, his full biological brother were
14 removed from his mother's home whenever Mr. Hayes was two years
15 old, and he was placed in the custody of Tiffany Diaz. And she
16 in fact is still in his life, and he still communicates with
17 her. And I think he essentially looks upon Ms. Diaz as his true
18 parent, even though she is an adoptive parent.

19 I will note that around 2016, Mr. Hayes' biological mother
20 did come back into his life. I think this caused much more harm
21 than good. She was, essentially, seeking financial support and
22 help from him. And whenever he did not provide that to her, she
23 essentially abandoned him again. And she made many false
24 promises to him, and I think this added to what you see in the
25 PSR with his mental history and substance abuse. I think that

1 it significantly contributed to that.

2 Mr. Hayes, around the age of 16, was kicked out of his
3 house. He began living on the streets at that point in time.
4 He got involved with the wrong crowd. He was using drugs and he
5 was stealing in order to, basically, support himself in order to
6 live.

7 At one point in time, he was at a point where he was
8 basically living in a car that was offered to him by a cousin
9 who was a friend. Unfortunately, this friend was killed a short
10 while later. I believe that was in 2016.

11 In 2017, he lost his adoptive father. And then I think what
12 has been most trying and most influential on him is that his
13 full biological brother, the one that was taken away from his
14 mother along with him, he was murdered in 2018. And his adopted
15 brother, so Ms. Diaz's son, died of an overdose shortly before
16 this offense in 2020.

17 Mr. Hayes continually does have, I think, a criminal history
18 that might cause concern with this court because of the nature
19 of his prior offenses, primarily being the prior facilitation of
20 murder and robbery charges that he pled guilty to pursuant to
21 *Alford* back in 2018.

22 Now, as I noted for the court, in state court, based on my
23 experience down there, to be facing such significant crimes as
24 he was facing and the fact that these were initially death
25 penalty cases, to have that amended down to Class D felonies

1 where you're probation eligible and it carries only one to five
2 years is very significant. Based upon my history of being in
3 Jefferson Circuit Court, you don't get that very often. That
4 does not happen very often unless there are significant factual
5 issues and problems with the case.

6 And my understanding from speaking with Mr. Hayes -- and,
7 again, review of those records, that indeed is what happened and
8 he did take an *Alford* plea. In fact, he was placed on probation
9 and not just probation but diversion. And what that means is
10 that when he completed probation, that case would have been
11 dismissed.

12 So, again, I know that the court may have concern with that
13 prior record, but those are facts that I want you to be aware of
14 because there are obvious issues with whether Mr. Hayes was
15 truly involved in that case or not. But as with most people, it
16 is very scary to be facing such significant time and having your
17 life -- and having your life in the hands of a jury. And so
18 because of that, Mr. Hayes chose to take the safe route. He
19 entered an *Alford* plea and was given diversion in that case.

20 As I alluded to earlier, you know --

21 THE COURT: And let me just stop you there so I make
22 sure I have a clear understanding of the sequence and the record
23 is clear. That was in January of 2020; is that correct?

24 MS. BEYL: That he pled guilty?

25 THE COURT: Yes.

1 MS. BEYL: I believe so. I believe that's when he
2 entered that plea.

3 THE COURT: In paragraph 32 of the PSR, it indicates
4 that he pleaded guilty in Jefferson Circuit Court on January 28,
5 2020. Is that correct?

6 MS. BEYL: Yes, sir.

7 THE COURT: And then this offense occurred then less
8 than six months later in June of 2020.

9 MS. BEYL: Yes. And the offense though -- the offense
10 date for that was in November of 2018.

11 THE COURT: Right, but he --

12 MS. BEYL: Okay.

13 THE COURT: -- but the guilty plea hearing was in
14 January of 2020.

15 MS. BEYL: Right.

16 THE COURT: Less than six months before this offense.

17 MS. BEYL: Yes, sir.

18 THE COURT: Go ahead.

19 MS. BEYL: Thank you.

20 As I was alluding to earlier with his prior history, it's
21 not a surprise that he has significant substance abuse and
22 mental health issues. He was diagnosed in 2015 with mental
23 health issues. He was receiving treatment for that, but that
24 stopped in 2017.

25 Again, this coincides with -- his criminal history coincides

1 with ceasing the mental health treatment. It also coincides
2 with the death of his brother, as well his adoptive father.
3 While these are not excuses and we're not in any way advising
4 the court that they are indeed excuses, it's something for the
5 court to put in perspective as far as what was going on with his
6 life and how he ended up here today for these charges and for
7 this sentencing.

8 Our position is that a 78-month sentence would be
9 significant but not greater than necessary. Seventy-eight
10 months is a significant amount of time for an individual to
11 serve in custody, especially someone as young as he is.

12 Prior to this he has not spent a significant amount of time
13 in custody. I think he was in custody about 16 months while he
14 was awaiting for that other case to be resolved. So this would
15 be a significant increase in his jail time that he has not
16 experienced before.

17 He's going to be in custody for almost the entirety of his
18 20s. This is a significant period in anyone's life, and he is
19 going to be in custody missing out on that. But more
20 importantly, I think 78 months is sufficient. It's roughly, you
21 know, six months to keep him or -- I'm sorry -- six years to
22 keep him out of that street life, away from, you know,
23 individuals that are the wrong individuals to be hanging with.
24 And, also, it gives him the opportunity to get into drug
25 treatment programs, to get treatment for his mental health, to

1 work on some type of, you know, training or apprenticeships in
2 order for him to have some skills for whenever he gets out.

3 I think that that amount of time would be sufficient for him
4 to accomplish those goals. And, in fact, as I referenced in my
5 sentencing memo, I have been in communications with Mr. Hayes.
6 He reached out to me. He's the one that's wanting to find
7 something that -- some skill that he can learn while he is in
8 prison and actually requested, give me the names of facilities
9 so that I can look them over to determine what would provide the
10 best training for what he wants to go into, which is an
11 automotive program. He wants to go into automotive repair and I
12 think work on computers in automobiles. And so I've provided
13 that information to him. And at the end of the sentencing
14 whenever we were going to request the court for a facility to
15 recommend, that is going to be part of it.

16 Again, once he is released from this case, if the court gave
17 him a 78-month sentence he'd be roughly be 27 years old. Then
18 he would have the three years of supervised release. That would
19 put him under some form of supervision either in prison or
20 supervised by a probation officer until he is 30.

21 Now, I know that the United States did point out in its memo
22 about how Mr. Hayes has not done well. I guess it's an
23 understatement whenever he has been under supervision with
24 probation. I know that's going to be a concern with this court
25 based upon, you know, your statements and your questions

1 concerning when he pled guilty to that prior case.

2 But I think that there is significant difference between a,
3 you know, 20 or 21-year-old and a, you know, 27, 28-year-old.
4 There's a lot of growing up during that time period. And
5 whenever you are in prison and you are in prison for that long,
6 that is certainly a hard and important lesson for him to learn.

7 So I would ask the court to take that into consideration
8 when determining the need for the sentence imposed and the kind
9 of sentences available.

10 For these reasons, I would ask the court to consider the
11 78-month sentence, that these reasons do certainly demonstrate
12 that 78 months, followed by three years of supervised release,
13 would be a sufficient but not greater than necessary sentence
14 for Mr. Hayes.

15 THE COURT: Mr. Tieke.

16 MR. TIEKE: Yes, Your Honor. Thank you.

17 The United States would agree that some of the mitigating
18 factors that Ms. Beyl pointed out would support a variance at
19 least down to the level that the parties suggested in the plea
20 agreement, and we will leave the sentence up to the court's
21 discretion within the range suggested by the parties.

22 And so looking to those 3553(a) factors, first (a)(1), the
23 nature and circumstances of the offense, I don't think the
24 seriousness of this offense can be understated. Taking
25 advantage of, you know, the protests that were occurring at the

1 time in Louisville, Mr. Hayes, assisted by others, brandished a
2 firearm, physically restrained two female victims, stole a
3 vehicle and left those female victims in unfamiliar place. They
4 then drove around Lexington before engaging in a police chase,
5 which ended in an accident. And so I don't think the -- you
6 know, the seriousness of the offense can be understated.

7 And when you look at the history and characteristics of this
8 defendant, Mr. Hayes, as Ms. Beyl pointed, out is now 21 years
9 old. His significant criminal history since the age of 18,
10 including charges for resisting arrest, carrying a concealed
11 deadly weapon, and complicity to robbery and murder, as was
12 pointed out. He has pending charges for illegally possessing a
13 firearm and possession of illegal drugs.

14 But at the same time, his history does show a particularly
15 troubling past wherein he was born with alcohol and drugs in his
16 system introduced to him by his biological mother. They only
17 continued through his early years, ultimately, as Ms. Beyl
18 pointed out, forcing child protective services to place him with
19 another family.

20 The PSR also documents a history of mental illness and drug
21 abuse. And so while, you know, his personal history certainly
22 doesn't excuse his reckless criminal activity, I think it's
23 nonetheless an important consideration for the court, both in
24 terms of the suggested variance in the sentence imposed.

25 When we look to (a)(2), the factor of the need for the

1 sentence imposed, a sentence within the range suggested by the
2 parties will be the longest that Mr. Hayes has served.

3 His criminal history and conduct while released on court
4 supervision, as Ms. Beyl mentioned, certainly makes clear that
5 past conditional sentences and the like in state court have
6 failed to deter Mr. Hayes from committing criminal activity.
7 And so serving a significant federal sentence somewhere within
8 the range suggested by the parties will hopefully have a
9 deterrent effect that those past interactions with the court
10 system at the state level may not have had.

11 When you look to (a)(3), the kinds of sentences available, a
12 sentence between 78 and 97 months appropriately balances the
13 need, I think, to punish Mr. Hayes and serve as a deterrent for
14 others committing similar crimes.

15 When you look to (a)(6), the avoidance of disparities, the
16 United States acknowledges that the suggested range and based on
17 the parties' on calculation falls somewhat below the low end
18 of -- of what was agreed upon in the PSR -- what was adopted in
19 the PSR I should say.

20 And so I think some of the factors that Ms. Beyl discussed
21 and the United States discussed would support at least putting
22 us within the 78 to 97-month range that was suggested.

23 And so the United States' recommendation for a sentence
24 within 78 to 97 months, I think, takes account both of the
25 aggravating factors that I mentioned, as well as the mitigating

1 circumstances in this case and avoids disparities among, you
2 know, similarly situated defendants who have committed both
3 similar crimes and have a similar background and circumstances
4 as Mr. Hayes.

5 So for those reasons, it's the position of the United States
6 that the court should, if it's so inclined to adopt the plea
7 agreement between the parties, and respectfully request that at
8 its discretion the court sentence Mr. Hayes somewhere in the
9 range of 78 to 97 months, followed by three years of supervised
10 release, and would request that restitution be ordered
11 consistent with the agreed order of restitution that was filed
12 by the parties -- by the United States some two days ago, I
13 believe. And with that, if the court is so inclined could hear
14 from the victim at the appropriate time as well.

15 THE COURT: Before we get to that, let me ask you
16 couple of questions. First, let me make sure -- tell me what
17 that restitution number is. I want to make sure I've got that
18 number here.

19 MR. TIEKE: Sure, Your Honor. The restitution amount
20 is \$20,117.81. And it goes to two separate victims, to
21 Miss Salandanan and her father, who are the insured in the case.
22 It's comprised of \$500 deductible be that they paid. And then
23 the remainder of the restitution would go to Liberty Mutual
24 Insurance, who paid the remainder of that balance as the paid
25 amount on the claim.

1 THE COURT: And the parties' plea agreement, when it
2 sets out this range, this 78 to 97-month range, indicates that
3 the parties are free to argue for an appropriate sentence within
4 that range. I'm going to put you on the spot, Mr. Tieke, and
5 ask you to be a bit more specific as to the Government's
6 argument here as to an appropriate sentence within that range.

7 MR. TIEKE: Sure, Your Honor. We would -- as the
8 court knows, sentencing is at its discretion. I believe a
9 sentence somewhere within that range, in the middle of that
10 range would be something that would be appropriate in this case
11 and would balance the mitigating and aggravating factors that we
12 discussed. But as always, considering all of the information
13 presented in front of it, we would defer to your discretion to
14 sentence within that range.

15 THE COURT: All right. Go ahead and introduce the
16 victim, please.

17 MR. TIEKE: Yes, Your Honor. With us today is
18 Miss Salandanan. And I apologize for mispronouncing the last
19 name, I'm sure. She was one of the occupants of the vehicle and
20 the victim of the carjacking, and she was like to address the
21 court, Your Honor.

22 THE COURT: Yes. Thank you.

23 THE WITNESS: Okay. Hi, I'm Erika Salandanan. I've
24 written up a victim impact statement. I guess I'll just go
25 ahead and read it.

1 So as I sit here, finally presented the opportunity to
2 address and speak in front of the boy who stole and totaled my
3 car, after having watched him hold both my best friend and I at
4 gunpoint, I'm filled with many words and thoughts that I really
5 need to say to him, words and thoughts that it took me a while
6 to finally get onto paper.

7 I would first off begin by actually thanking him, thanking
8 him for showing me sometime second chances do not work on
9 certain individuals, showing me that evil is evil and sometimes
10 people do not change, showing me that our criminal justice
11 system can be broken, that people like him should not get
12 another try or another chance because he took his chance and he
13 hurt people and changed their lives forever. He took his chance
14 and very, very soon after he used it to carjack me and my best
15 friend after making him drive us around.

16 I would also want to tell him that he's a coward, a coward
17 for turning to a life that could have been more, turning to a
18 life that is resulting in jail time where he now belongs,
19 turning to something he could have avoided if he had made better
20 decisions, a life that could have led to college, or sports, or
21 a trade of his choice.

22 At the last court he had discussed obtaining his GED.
23 However, now he's in a court sentencing facing prison time that
24 he deserves looking at the woman he held at gunpoint as she
25 tells him he's a coward.

1 With that being said, he does not deserve the pleasure of
2 thinking he damaged me. He did not. He did not break me, or
3 hurt me, or damage me in any way. He's too much of a sorry
4 excuse of a man to do that, but he did what he did.

5 Him and his friends drug me and my best friend out of my car
6 at gunpoint. He ripped my keys -- or they ripped my keys out of
7 my hand after his friends yanked we with my arms behind my back
8 out of my car, all while having a gun pointed at us. He called
9 us names, and I watched my best friend suffer many seizures from
10 stress and anxiety because of him.

11 He threatened me with horrible cuss words and said time and
12 time again, "I will shoot you right here." And then he left us
13 in a place alone and stranded where the police eventually ended
14 up telling me they called it murder capital of Louisville.

15 I remember everything from that night. I can and have
16 replayed it in my head so many times. I remember knowing and
17 accepting the fear instilled in me at that moment. I remember
18 the gut-wrenching and heartbreaking acceptance to myself that I
19 thought I was going to be killed that night.

20 Driving him and his friends around for hours for what felt
21 like forever, I am so easily to relive that terror, the panic,
22 and the stomach clenching, unshakeable fear. To this day I can
23 physically feel it.

24 He has made it so I can no longer sleep with all of my
25 lights off. He has given me diagnosed PTSD and has made me fear

1 going into my own city. He has changed my outlook on going
2 places alone.

3 He has made me second-guess many things when I'm making
4 simple decisions. He has made me fear anybody when simply
5 walking down the street. I now find myself turning my head
6 every second I get and getting flashbacks consistently when
7 hearing clicking sounds similar to the gun that was held to my
8 head that night.

9 As I am now back enrolled at a university, the trauma he
10 imprinted in my brain has made itself extremely prevalent. As I
11 walk alone to and from class, I find myself clinging to my
12 pepper spray and mentally askew because of the things he did to
13 me, things he probably doesn't even think about or give the time
14 of day to consider or feel even remotely bad affect my everyday
15 actions.

16 I replay that night in my head time and time again, thinking
17 about everything I could and would have done differently. It
18 keeps me up at night. I think of all the what-ifs and if onlys
19 and hoping that he gets what he deserves so. Now I sit on a
20 video call and will listen as he hopefully gets sentenced to the
21 maximum amount of time possible in prison.

22 I do hope he comes out as a better human. However, it is
23 hard for me to even see him as that after what he did to my best
24 friend and I that night in June of last year.

25 As I start to wrap this up, I understand this is it. This

1 is all the closure I'm able to get from one of the most
2 traumatic nights of my life, a video call, where I do not even
3 get to look at him in person after what he did to me.

4 Instead, I have talked into a camera for five minutes and,
5 again, this is all the closure I getting. I'm left with so many
6 questions I more than likely will never get to know the answer
7 to, the number one questions being was this all worth it? If
8 this is what he wanted for his life? If he could start over,
9 would he choose the same path? And if yes, is that only because
10 he got caught?

11 Part of me pities him for being weak and lacking the
12 strength and ability to be better than a small man carjacking a
13 woman at gunpoint, but the majority of me knows he is just a
14 coward who is now going to be shackled and locked away and
15 that's that.

16 THE COURT: Thank you, ma'am.

17 I wish you well. I am sorry you feel that you would have
18 preferred to be here in person. I'm sure you understand that
19 during the pandemic we are holding as many hearings as possible
20 by videoconference in order to mitigate risk of transmission of
21 the virus.

22 And I also trust that any questions that you have about the
23 process could be answered by Mr. Tieke or his colleagues in the
24 U.S. Attorney's Office. But thank you for your -- thank you for
25 your remarks.

1 Anything further, Mr. Tieke?

2 MR. TIEKE: Nothing further from the United States,
3 Your Honor. Thank you.

4 THE COURT: And, Ms. Beyl, anything further by way of
5 discussion or argument with respect to the factors at 18 U.S.C.
6 3553(a)?

7 MS. BEYL: Your Honor, nothing from me as far as
8 argument is concerned with regard to those factors.

9 I did speak to Mr. Hayes, and he would like to make a
10 statement to the court when appropriate.

11 THE COURT: Now would be a good time for that,
12 Mr. Hayes. Go ahead.

13 THE DEFENDANT: Yes, I'm Damion Hayes. And, first,
14 I'd like to answer Erika's question. First, no, it wasn't worth
15 it. Second of all, if I had a chance, yeah, I would change and
16 not because I got caught because, honestly, I see jail as saving
17 me more than anything. I feel I had had a bad luck of draw.
18 And when I was locked up from my last case I just was released
19 for, my best friend got killed. And my momma told me that she
20 feel like jail saved me.

21 When I was just on the streets, my house got shot up for no
22 apparent reason. And I was laying in my bed and I just heard
23 the click clack of the gun and managed to get out of the bed
24 before the bullets hit my bed.

25 So I feel like jail saves people sometimes. And I feel like

1 hopefully this can help me to better myself and I can get a
2 trade, I can get the mental help that I need, because my head's
3 been messed up for a long time. And I feel like prison's got
4 all this therapy and psychiatrists and maybe I can get my life
5 back on track.

6 I feel like Louisville is not really a place for me to live
7 in. And I hope that when I do finally make it out of prison,
8 that probation will allow me to move to a better city where I
9 can start me a family and achieve an apartment, because I feel
10 like in Louisville that's not something I can do, at least I
11 can't do it safely. So I feel like in Louisville I don't really
12 have a chance to be the best man that I am.

13 And, once again, I'd just like to apologize to Erika for
14 what happened to her and her best friend, because I done seen a
15 lot of things like that myself and I know how it feels.

16 THE COURT: Thank you, Mr. Hayes.

17 Anything further, Ms. Beyl?

18 MS. BEYL: No, Your Honor.

19 THE COURT: Anything further, Mr. Tieke?

20 MR. TIEKE: Nothing further, Your Honor. Thank you.

21 THE COURT: I will at this point say that I have, of
22 course, studied the PSR. I have considered carefully the
23 arguments of counsel, both written and as made during this
24 hearing. I have also, of course, carefully considered the
25 factors set out at 18 U.S.C. 3553(a), and following that

1 consideration, I will accept the parties' (C) plea agreement and
2 I will sentence the defendant consistent with the limitations of
3 the (C) plea. I find the Government's arguments here
4 persuasive.

5 Now, irrespective of the guidelines argument previously
6 discussed, I do conclude that a sentence at the lower end of the
7 parties' agreed upon range is not appropriate. But also
8 consistent with the arguments of -- presented by each side, and
9 in particular Mr. Tieke's arguments, I find that a modest
10 variance down of six months in recognition of the very troubling
11 personal history as documented in the PSR in paragraphs 42, 47,
12 and 49 is appropriate.

13 Anything further before I state the sentence, Ms. Beyl?

14 MS. BEYL: Your Honor, the only thing that I would
15 just point out to the court, we had moved for the sentence to be
16 run concurrent with his state time. I know it I didn't address
17 that during the 3553(a) factors, but there is a plea and a
18 sentencing set for tomorrow in state court. It's an agreement
19 to run everything concurrent, and the United States does not
20 object.

21 THE COURT: Has that sentence been meted out yet?

22 MS. BEYL: No, sir. Tomorrow they are set. We have
23 been coordinating with the U.S. Marshals, and I believe that he
24 should be conducting a plea and a sentencing at the same time.
25 He is going to be both sentenced on the new case and revoked on

1 the prior case on the same day and he's agreeing to revocation.

2 THE COURT: Mr. Tieke, what's the Government's
3 position here?

4 MR. TIEKE: Your Honor, we would have no objection to
5 running the sentences concurrent. The understanding is that
6 that plea and sentencing is going to take place tomorrow after
7 this court has finished sentencing Mr. Hayes today, but no
8 objection to running the sentences concurrent.

9 THE COURT: What's the case number there, Ms. Beyl?

10 MS. BEYL: The state court case number? There are
11 two. It is -- and they're both out of Jefferson Circuit Court.
12 It's 18-CR-3427-002 and 20-CR-1773.

13 THE COURT: So, Ms. Brunn, let me make sure I'm
14 referring to the correct case. Is this -- Catherine, is the
15 case that's set out in paragraph 32 of the PSR?

16 PROBATION OFFICER: Yes, Your Honor, that would be the
17 sentence referring to where he's going to be revoked.

18 THE COURT: Well, I'm somewhat hesitant there because
19 that sentence has not been handed down yet. I have agreed in
20 some cases to a concurrent sentence in anticipation of a state
21 sentence that has yet to be handed down, but I think the better
22 practice is not to do that.

23 If they run their sentence concurrent, it works out the --
24 in the fashion requested here, but I'll -- since the Government
25 has no objection, I'll go ahead and include that in the

1 judgment.

2 Anything else, Mr. Tieke?

3 MS. BEYL: No, Your Honor.

4 MR. TIEKE: No, Judge.

5 THE COURT: I will then now state the sentence. I
6 have considered, as I indicated, the advisory sentencing
7 guidelines, which we have discussed here, the factors at
8 18 U.S.C. 3553, and I will impose the following sentence:

9 It is the judgment of the court that the defendant, Damion
10 Lamont Hayes, is committed to the custody of the Federal Bureau
11 of Prisons for a term of 91 months as to Count 1 in the
12 indictment.

13 Upon release from imprisonment, Mr. Hayes shall be placed on
14 supervised release for a term of three years as to Count 1. He
15 shall abide by the standard conditions of supervision adopted by
16 this court, as well as a number of special conditions, and a
17 copy of that list has been provided to the defendant and
18 counsel.

19 The special conditions include substance abuse treatment,
20 drug testing, mental health treatment, and a condition which
21 prohibits Mr. Hayes from having any contact with the victims.
22 And all of these factors will be addressed and explained to
23 Mr. Hayes by the U.S. Probation Office.

24 It is further ordered that the defendant shall pay
25 restitution in the amount of \$20,117.81. The interest on that

1 will be waived. The defendant is required to pay a special
2 penalty assessment fee of \$100 as to the single count of
3 conviction. These financial sanctions shall be paid in
4 accordance with a schedule of payments page, which will be
5 contained in the judgment.

6 Due to the defendant's financial condition, I'm going to
7 waive imposition of a fine, as well as the cost of
8 investigation, prosecution, incarceration, and supervision.

9 Now, as we have discussed, I have carefully considered the
10 history and characteristics of Mr. Hayes. He is a young man,
11 but he has already accumulated a significant criminal history,
12 including that murder conviction in paragraph 32 of the PSR that
13 we have discussed here.

14 He has also endured a rather traumatic life, which, again,
15 as I stated just a minute ago, is set out and documented in
16 paragraphs 42, 47, and 49 of the PSR, and that is -- that is a
17 record that the Government has to their credit recognized as a
18 proper basis for and adjustment of the sentence.

19 I have also considered the nature and circumstance of the
20 offense here. This was by any measure a serious and dangerous
21 crime that endangered the safety and perhaps even the lives of
22 the young victims. The defendant and his accomplices forced two
23 young women from a car at gunpoint. And as I have noted, this
24 was less than six months after the defendant pleaded guilty to a
25 murder charge in Jefferson Circuit Court. And 24 hours after

1 the carjacking, he was tracked down and pursued by the police,
2 still in the stolen car.

3 As I outlined at the outset, the advisory sentence
4 guidelines here produce a total offense level of 28 against a
5 criminal history of III, which results in a recommended range of
6 97 to 121, a fine range of 25,000 to 250,000, and a one to
7 three-year term of supervised release. Restitution is mandatory
8 in this case.

9 As I have indicated, I've accepted the parties' (C) plea,
10 and this sentence falls within the range agreed to by the
11 parties. The sentence of 91 months followed by three years of
12 supervised release properly reflects the seriousness of this
13 offense. It will promote respect for the law, and it will deter
14 future criminal conduct from Mr. Hayes. I conclude that the
15 sentence will also protect the public from future crimes of the
16 defendant.

17 The sentence is sufficient but not greater than necessary to
18 comply with the purposes set forth in 18 U.S.C. 3553(a)(2). I
19 conclude that this is a just punishment, and I would also note
20 that a sentence any lower than 91 months would not in my
21 judgment be just.

22 Now, are there any objections to the sentence that I have
23 just announced or the special conditions which have not
24 previously been raised, Ms. Beyl?

25 MS. BEYL: No, Your Honor.

1 THE COURT: Mr. Tieke?

2 MR. TIEKE: No objection, Your Honor.

3 THE COURT: Now, Mr. Tieke, I believe in the parties'
4 plea agreement there is an appeal waiver. Is that correct?

5 MR. TIEKE: That's correct, Your Honor. It's
6 paragraph 12 in the plea agreement.

7 THE COURT: So, Mr. Hayes, you may recall from the
8 time of your change of plea hearing that your appeal waiver was
9 discussed. Now, these appeal waivers are generally considered
10 valid, but if you believe yours is invalid for any reason, you
11 may present that theory to the Court of Appeals.

12 You may also appeal on either or both of the exceptions that
13 are contained in that appeal waiver, the first being for a claim
14 of ineffective assistance of counsel and the second being a
15 claim of prosecutorial misconduct.

16 To pursue either of those bases on appeal, you must first
17 file a notice of appeal. You must do that within 14 days of the
18 entry of judgment. And if you need the assistance of the
19 clerk's office in filing that notice, they will upon request
20 assist you with that.

21 And if you cannot afford the fee that is generally due at
22 the time of filing a notice, you may ask that it be waived. And
23 if you cannot afford counsel appeal, you can request that
24 counsel be appointed to represent you free of charge. Do you
25 understand these appeal rights that I've outlined for you?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Ms. Beyl, anything further with respect to
3 your client's appeal rights that we need to cover?

4 MS. BEYL: No, sir.

5 THE COURT: Now, anything by way of request for
6 recommendation to be included in the judgment that we should
7 take up at this point?

8 MS. BEYL: Yes, Your Honor. I have spoken with
9 Mr. Hayes. And as far as his preference, it would be --
10 he listed Manchester, Kentucky, or Lexington. Essentially, he
11 wants something close to home. He just doesn't want to go to
12 Big Sandy, which I don't even know if that is a federal facility
13 or not, but that's -- his preference is closest to home, but
14 there's just one facility he does not want to go to.

15 His second preference is --

16 THE COURT: Well, let's take that up. Let's take that
17 up first.

18 MS. BEYL: Okay.

19 THE COURT: As you know, I do not recommend for or
20 against any specific institution.

21 Mr. Hayes, the law does not give me the authority to
22 direct -- are you listening, Mr. Hayes?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The law does not give me the authority to
25 direct the Bureau of Prisons to place you in any specific prison

1 facility or program within a facility.

2 They do as a matter of policy listen and take into account
3 recommendations made by a sentencing court. So the best I can
4 do is recommend that you be placed in a facility as close as
5 possible to your home here in Louisville, and I'm happy to do
6 that. I will include that recommendation.

7 Now, Ms. Beyl, was there a second request?

8 MS. BEYL: Yes, Judge. There is an automotive program
9 that is offered in it Bennettsville, South Carolina. I don't
10 know if the court can word the order for that preference or if
11 perhaps it could say that he go to a facility close to that
12 area, but I know that that is a program that he is very
13 interested in pursuing.

14 THE COURT: Well, what I would do there is in the
15 second -- on the second priority recommendation, I would
16 indicate that the defendant has communicated an interest in
17 automotive repair programs, and I would ask the Bureau of
18 Prisons to evaluate him for participation in such a program,
19 which they will take into account. Certainly there is no
20 guarantee that he would be placed in such a program straight
21 away, but they will in my experience make note of those
22 interests.

23 Anything further?

24 MS. BEYL: No, Your Honor.

25 THE COURT: Mr. Tieke, anything further from the

1 United States?

2 MR. TIEKE: No, Your Honor. Thank you.

3 THE COURT: Thank you. We'll be concluded.

4 (Proceedings concluded at 11:07 a.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25