

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 (Asheville Division)

4 -----x
5 UNITED STATES OF AMERICA, :
6 Plaintiff, :
7 :
8 vs :Criminal Action:1:16-CR-05
9 :
10 JUSTIN NOJAN SULLIVAN, :
11 Defendant. :
12 -----x

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Tuesday, November 29, 2016
Asheville, North Carolina

The above-entitled action came on for a Rule 11/Entry of Guilty Plea Proceeding before the HONORABLE MARTIN K. REIDINGER, United States District Judge, in Courtroom 1, commencing at 9:17 a.m.

APPEARANCES:

On behalf of the Plaintiff:

MICHAEL E. SAVAGE, Esquire
U. S. Attorney's Office
227 W. Trade Street
1700 Carillon
Charlotte, North Carolina 28202

GREGORY R. GONZALEZ, Esquire
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D. C. 20530

On behalf of the Defendant:

FREDILYN SISON, Esquire
Federal Defenders of WNC
1 Page Avenue, Suite 210
Asheville, North Carolina 28801

Tracy Rae Dunlap, RMR, CRR 828.771.7217
Official Court Reporter

I N D E X

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Justin Nojan Sullivan.....4

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Reporter's Certificate26

1 (Witness duly sworn at 9:19 a.m.)

2 **EXAMINATION**

3 BY THE COURT:

4 Q. Mr. Sullivan, do you understand that you are now
5 under oath and that you are required to give truthful
6 answers to the questions that I am about to ask you?

7 A. Yes.

8 Q. Do you understand that if you give false
9 information under oath that you may be prosecuted for
10 perjury or false statements?

11 A. Yes.

12 Q. Are you able to hear and understand my questions?

13 A. Yes.

14 Q. There has been presented to me a document that is
15 entitled "Sealed Addendum to Entry and Acceptance of
16 Guilty Plea" which provides information to the Court
17 concerning your name, age, education, use of drugs or
18 alcohol, and medical information. Did you provide the
19 information for the completion of that document and did
20 you sign that document?

21 A. Yes.

22 Q. Is all of the information provided in that
23 document true and accurate?

24 A. Yes.

25 Q. Is your mind clear, and do you understand that you

1 are here today to enter a guilty plea that may not later
2 be withdrawn except in some limited circumstances that I
3 will explain to you?

4 A. Yes.

5 Q. Do you understand that you are here today to enter
6 a guilty plea pursuant to Rule 11(c)(1)(C) of the Federal
7 Rules of Criminal Procedure? I am advised that -- I am
8 advised, from the plea agreement, that the attorneys for
9 the government and you and your attorney have agreed that
10 a specific sentence is the appropriate disposition of
11 your case. And if the Court accepts the plea agreement
12 and then accepts the sentence, the agreed sentence will
13 be included by the Court in the judgment. If the Court
14 rejects the plea agreement or if the Court rejects the
15 specific sentence recommendation, then you will be given
16 the opportunity to withdraw your plea of guilty. Do you
17 understand all of these things?

18 A. Yes.

19 Q. Have you reviewed the superseding Bill of
20 Indictment with your attorney, and have you and your
21 attorney reviewed the plea agreement?

22 A. Yes.

23 Q. From my examination of the plea agreement I am
24 advised that you are pleading "guilty" to Count Nine as
25 contained in the superseding Bill of Indictment which

1 charges you with Attempted Acts of Terrorism Transcending
2 National Boundaries. Are you in fact pleading guilty to
3 this count as contained in the superseding Bill of
4 Indictment?

5 A. Yes.

6 Q. I will now advise you as to some of the
7 particulars regarding that charge. You are charged in
8 Count Nine of the superseding Bill of Indictment with
9 violating Title 18, United States Code, Sections
10 2332b(a)(1) and (2) which read, in pertinent part, as
11 follows:

12 1. Offenses. Whoever, involving conduct
13 transcending national boundaries and in a
14 circumstance described in subsection (b).
15 (A) kills, kidnaps, maims, commits an assault
16 resulting in serious bodily injury, or assaults
17 with a dangerous weapon any person within the
18 United States or (B) creates a substantial risk of
19 serious bodily injury to any other person by
20 destroying or damaging any structure, conveyance,
21 or other real or personal property within the
22 United States, or by attempting or conspiring to
23 destroy or damage any structure or conveyance or
24 other real or personal property within the United
25 States, in violation of the laws of any state or

1 of the United States shall be punished as
2 prescribed in subsection (C).

3 2. Treatment of threats, attempts, and
4 Conspiracies. Whoever threatens to commit an
5 offense under paragraph one, or attempts or
6 conspires to do so, shall be punished under
7 subsection (c).

8 (B.) Jurisdictional bases (1) Circumstances. The
9 circumstances referred to in subsection (a)
10 include (A) the mail or any facility of interstate
11 or foreign commerce if used in furtherance of the
12 offense, or (b) the offense obstructs, delays or
13 affects interstate or foreign commerce or would
14 have so obstructed, delayed or affected interstate
15 or foreign commerce if the offense had been
16 consummated.

17 The essential elements the government would be
18 required to prove beyond a reasonable doubt are as
19 follows.

20 1. The defendant knowingly and intentionally
21 attempted to kill, maim or assault one or more
22 persons within the United States in violation of
23 state or federal law; 2. The defendant's conduct
24 transcended national boundaries; and 3. The
25 defendant used a facility of interstate or foreign

1 commerce in furtherance of the offense or the
2 offense, if consummated, would have obstructed
3 delayed or affected interstate or foreign
4 commerce.

5 The maximum penalties for this offense as
6 described by United States Code, Section 2232b(c) are a
7 term of imprisonment for life, a fine of \$250,000, a term
8 of supervised release for any term of years or life, and
9 a \$100 special assessment.

10 Mr. Sullivan, do you fully understand the charge
11 against you, including the maximum penalties?

12 A. Yes.

13 Q. Do you understand each element of the offense
14 charged?

15 A. Yes.

16 Q. Do you understand that upon a plea of "not
17 guilty," the government would be required to prove each
18 element of the offense charged beyond a reasonable doubt?

19 A. Yes.

20 Q. Do you understand that the government would be
21 required to prove that the unlawful acts were committed
22 knowingly, willfully, intentionally, and unlawfully?

23 A. Yes.

24 Q. Have you been advised by your attorney that if you
25 are not a citizen of the United States your guilty plea

1 may result in your deportation or removal from this
2 country, your exclusion from admission to this country,
3 or the denial of your naturalization under federal law?

4 A. Yes.

5 Q. If the Court imposes an active term of
6 imprisonment of more than one year, the Court is required
7 to order a term of supervised release. And a term of
8 supervised release may be ordered in other circumstances
9 as well. This means that after a defendant is released
10 from prison there are certain terms and conditions they
11 will be required to follow. The length of supervised
12 release usually ranges from one to five years but may be
13 more or less than that for certain offenses. Do you
14 understand the term "supervised release" as the Court has
15 explained it to you?

16 A. Yes.

17 Q. Do you understand that if you violate the terms
18 and conditions of supervised release you could be
19 returned to prison for an additional period of time?

20 A. Yes.

21 Q. Do you understand that parole has been abolished
22 in the federal system and if you are sentenced to a term
23 of imprisonment you will not be released on parole?

24 A. Yes.

25 Q. Have you and your attorney discussed how the

1 Sentencing Guidelines may apply in your case?

2 A. Yes.

3 Q. Do you understand how these guidelines may apply
4 to you?

5 A. Yes.

6 Q. Do you understand that even though your plea is
7 being presented under Rule 11(c)(1)(C) of the Federal
8 Rules of Criminal Procedure, the Court must consult the
9 United States Sentencing Guidelines and take them into
10 account in determining whether or not to accept your plea
11 and enter a specific sentence in accordance with that set
12 forth in the written plea agreement?

13 A. Yes.

14 Q. Do you understand that the sentence the Court will
15 impose will be within the statutory limits for the
16 offense to which you are pleading guilty?

17 A. Yes.

18 Q. Do you understand that it is within the Court's
19 sound discretion as to whether or not to accept the plea
20 agreement and enter a judgment for the agreed upon
21 specific sentence?

22 A. Yes.

23 Q. Do you understand that the Court will follow the
24 procedural components of the guidelines system which
25 means that the probation office will prepare a

1 presentence report which contains guidelines
2 calculations, and both you and the government will have
3 the opportunity to object to any alleged deficiencies in
4 that report?

5 A. Yes.

6 Q. Do you understand that due to your plea being
7 pursuant to Rule 11(c)(1)(C) of the Federal Rules of
8 Criminal Procedure that if the Court accepts the plea
9 then such acceptance is conditional upon the court
10 imposing a sentence that is consistent with the agreed
11 disposition set forth in the written plea agreement?

12 A. Yes.

13 Q. Do you understand that if the Court does not
14 accept and impose the specific sentence as agreed between
15 yourself and the government in the plea agreement you
16 will be given an opportunity to withdraw your plea of
17 guilty?

18 A. Yes.

19 Q. Do you understand that the Court has the
20 discretion, in appropriate circumstances, to order you to
21 make restitution to any victim of the offense? The Court
22 may also, in appropriate circumstances, require you to
23 pay the costs of your confinement in prison or costs of
24 supervision or special investigative costs, or all of
25 these costs? The Court may also require you to forfeit

1 property involved in the offenses. Do you understand
2 these requirements as I have explained them to you?

3 A. Yes.

4 Q. Do you understand you have a right to plead "not
5 guilty," to have a speedy trial before a judge and jury,
6 to summon witnesses to testify in your behalf, and to
7 confront the witnesses against you?

8 A. Yes.

9 Q. Do you understand that if you exercise your right
10 to trial you would be entitled to the assistance of an
11 attorney, that you would not be required to testify, that
12 you would be presumed innocent, and the burden would be
13 on the government to prove your guilt beyond a reasonable
14 doubt? Do you understand all of these rights?

15 A. Yes.

16 Q. Do you understand that by entering a plea of
17 "guilty," you forfeit and waive, or give up, your right
18 to plead "not guilty," to a trial by jury and at that
19 trial to the -- the right to assistance of counsel, the
20 right to confront and cross-examine witnesses against
21 you, and the right against compelled self-incrimination
22 or any other rights associated with a jury trial?

23 Do you understand that by entering this plea of
24 "guilty" that you are waiving, or giving up, all of those
25 rights? There will be no trial. And your plea of

1 "guilty" -- if your plea of "guilty" is accepted, there
2 will be one more hearing where the Court will determine
3 whether to impose the agreed upon sentence. Do you
4 understand all of these things?

5 A. Yes.

6 Q. Are you in fact guilty of the count of superseding
7 Bill of Indictment to which you have come to court today
8 to plead guilty? That is, did you commit the acts
9 described in Count Nine of the superseding Bill of
10 Indictment?

11 A. Yes.

12 Q. There has been filed with the Court a 24-page
13 document entitled "Factual Basis." Have you had an
14 opportunity to review that document with your attorney?

15 A. Yes.

16 Q. Do you understand the contents of that document?

17 A. Yes.

18 Q. On the last page of that document your attorney
19 has signed a statement that reads: "The defendant does
20 not dispute this factual basis with the exception of
21 those facts which are stated in italics." Is that a true
22 statement? That is, do you not dispute the statements in
23 that document with the exception of those portions
24 written in italics?

25 A. Yes.

1 Q. Is your plea of guilty voluntary?

2 A. Yes.

3 Q. Other than the promises contained in your written
4 plea agreement, has anyone made any promise to you or
5 threatened you in any way to cause you to enter this plea
6 of guilty against your wishes?

7 A. No.

8 Q. Do you enter this plea of guilty of your own free
9 will, fully understanding what you are doing?

10 A. Yes.

11 Q. Do you understand that entering a plea of guilty
12 to a felony charge may deprive you, at least for a time,
13 of certain civil rights such as the right to vote, hold a
14 public office, serve on a jury, or possess a firearm?

15 A. Yes.

16 Q. Is your willingness to plead guilty the result of
17 prior discussions between your attorney and the attorney
18 for the government?

19 A. Yes.

20 Q. Have you and the government entered into a plea
21 agreement regarding this case?

22 A. Yes.

23 THE COURT: Mr. Savage, if I could call on you to
24 present the terms of the plea agreement.

25 MR. SAVAGE: Yes, Your Honor. And I will -- for

1 the sake of brevity, I'll highlight the most important --
2 some of the more important terms. Of course all the
3 terms are important, and this document is number 50 on
4 the Court's docket.

5 The parties agreed by and through the United
6 States attorney for the Western District of North
7 Carolina and Mr. Justin Nojan Sullivan, in person and
8 through his counsel, Fredilyn Sison that they have
9 reached agreement under Federal Rule of Criminal
10 Procedure 11(c)(1)(C). In this agreement, the defendant
11 agrees to enter a voluntary plea of guilty to Count Nine
12 as set forth in the superseding Bill of Indictment and,
13 as he has done here today, admits to in fact being guilty
14 of Intentional Acts of Terrorism Transcending National
15 Boundaries, in violation of United States Code, Section
16 2332b(a)(1) and (a)(2) as charged in Count Nine.

17 The defendant understands and agrees that every
18 provision set forth in this agreement is a material term.
19 And his failure to comply with any provision of the
20 agreement or attempt to withdraw the plea agreement would
21 relieve the United States of its obligations under the
22 plea agreement, but the defendant would not be relieved
23 of the defendant's obligation or allowed to withdraw his
24 guilty plea.

25 Because the plea is offered pursuant to Rule

1 11(c)(1)(C), if the Court accepts the plea agreement, the
2 Court may not impose a lesser or greater sentence than
3 that agreed by the parties, per the agreement. The
4 defendant is aware that the statutory maximum sentence
5 for the violation of this statute is a term of life
6 imprisonment and a fine not exceeding \$250,000. In
7 addition, the defendant, as the Court stated, understands
8 if there's a violation of supervised release may subject
9 the defendant to additional periods of incarceration.

10 The plea agreement is made pursuant to 11(c)(1)(C)
11 and binds the Court only to the terms as set forth in
12 paragraph seven. Under paragraph seven, which is bolded,
13 Your Honor, the defendant and the United States agree to
14 make a binding recommendation to this court that the
15 defendant be sentenced to a term of life imprisonment.
16 Pursuant to the United States Sentencing Guidelines
17 policy, the parties stipulate that the agreed sentence in
18 paragraph seven is within the applicable guideline range.
19 And in this regard, the parties agree they will jointly
20 recommend the Court make the following findings and
21 conclusions as to the federal sentencing guidelines.
22 That the applicable guideline for Count Nine is
23 Sentencing Guideline 2A2.1. The object of the
24 defendant's attempt would have constituted First-Degree
25 Murder resulting in a base level offense of 33. The

1 terrorism enhancement under guideline Section 3A1.4
2 applies because Count Nine is a felony that involved and
3 was intended to promote a federal crime of terrorism as
4 that is defined in Title 18, United States Code, Section
5 2332b(g)(5).

6 The United States agrees the defendant's entry of
7 a plea is timely for the purposes of guidelines section
8 3B1.1(e). Based on this, the total offense level the
9 defendant, including acceptance of responsibility, would
10 be offense level 42. Under the terrorism enhancement it
11 would be criminal category VI, which is a sentence of 361
12 months to life in prison. The parties agree they will
13 not seek a departure or variance from the applicable
14 guideline, but the United States will inform the Court
15 and probation of all facts pertinent to the sentencing
16 process.

17 Your Honor, there are many standard terms in this
18 district with regards to paragraph nine and financial
19 disclosures, monetary penalty and forfeitures. With
20 regards to restitution. The defendant, regardless to
21 loss amount, agrees to pay restitution to all victims
22 directly or indirectly harmed by the relevant conduct,
23 including conduct pertaining to any dismissed counts or
24 uncharged counts. To make full disclosure of all current
25 and projected assets to the United States Probation

1 Office. With regard to each and every asset listed in
2 the superseding Bill of Indictment or seized in a later
3 investigation, the defendant stipulates and agrees to the
4 forfeiture of those items and, if necessary, as to
5 substitute property.

6 The defendant waives all rights of notice of
7 forfeiture under set Rule 33.2. If the United States
8 discovers the defendant has not disclosed all assets, the
9 United States may seize forfeiture of any subsequent
10 discovered assets. The defendant agrees to participate
11 in the inmate financial responsibility program and fill
12 out all financial obligations due and owing under this
13 agreement.

14 The defendant stipulates there is a factual basis
15 as required by Rule 11(b)(3) for this plea of guilty. He
16 further stipulates that he has read and understands the
17 factual basis following this plea agreement and the
18 factual basis used by the court and probation office
19 without objection by the defendant to determine the
20 applicable advisory guideline or appropriate sentence.
21 Under Title 18, United States Code, Section 3553(a),
22 unless the factual basis itself notes the defendant's
23 right to object, a particular fact has been explicitly
24 reserved.

25 Your Honor, there are a number of important

1 waivers and the Court has covered certain of those
2 already in its colloquy. I will note that the defendant,
3 by pleading guilty, expressly waives his right in this
4 plea agreement to contest the conviction on appeal except
5 for claims of ineffective assistance of counsel or
6 prosecutorial misconduct.

7 Your Honor, this plea agreement is effective and
8 binding once it is signed by the defendant and the United
9 States. It was signed by all the parties on about the
10 10th of November, 2016, and there is no agreements,
11 representations or understandings between the parties in
12 this case other than those explicitly set forth in this
13 plea agreement, nor will there be unless it is contained
14 in writing and provided to the Court in a filed pleading.

15 THE COURT: Thank you, Mr. Savage.

16 **FURTHER EXAMINATION**

17 BY THE COURT:

18 Q. Mr. Sullivan, do you understand and agree with
19 the terms of the plea agreement as they have just been
20 explained to you?

21 A. Yes.

22 Q. Is this your signature on the plea agreement?

23 A. Yes.

24 Q. Have you discussed your right to appeal with your
25 attorney and do you understand that the plea agreement in

1 this case provides that you may not appeal your
2 conviction or sentence or contest the same in a post-
3 conviction proceeding unless it is on the grounds of
4 prosecutorial misconduct or ineffective assistance of
5 counsel?

6 A. Yes.

7 Q. Do you knowingly and willingly accept the
8 limitation on your right to appeal and to file post-
9 conviction proceedings?

10 A. Yes.

11 THE COURT: Ms. Sison, have you reviewed each of
12 the terms of the plea agreement with the defendant and
13 are you satisfied that he understands those terms?

14 MS. SISON: Yes, sir.

15 **FURTHER EXAMINATION** BY THE COURT:

16 Q. Mr. Sullivan, have you had ample time to discuss
17 with your attorney any possible defenses that you may
18 have to this charge, and have you told your attorney
19 everything you want her to know about this case?

20 A. Yes.

21 Q. Are you entirely satisfied with the services of
22 your attorney?

23 A. Yes.

24 Q. Are you telling the Court that you know and
25 understand fully what you are doing and that you heard

1 and understood all the parts of this proceeding, and that
2 you want the Court to accept your plea of guilty?

3 A. Yes.

4 Q. Do you have any questions, statements or comments
5 to make about anything brought up or discussed in the
6 course of this proceeding?

7 A. Yes. I'd say -- you know, the prosecutor was
8 saying that I stole the money, but that's not my money.
9 I never knew Clark. And it was definitely not my money.
10 And they made up a bunch of lies about me in the
11 superseding indictment. They're saying things I never
12 said. And the factual basis, unless I went over it, all
13 the lies in there would still be there. And I'll say of
14 course I'm a Muslim and, you know, my faith really helps
15 me and -- because, you know, worldly life is an illusion.
16 The real life starts after death. And I just want to say
17 that I'll always love my brothers and sisters. That's
18 all. Thank you.

19 THE COURT: Mr. Savage.

20 MR. SAVAGE: Your Honor, this brings up some
21 ambiguity, I think, in the plea colloquy in regards to
22 the factual resume. First, to clarify for the defendant.
23 I think this issue of the money came up with regards to
24 \$689 that was seized from the defendant at the time of
25 the search in this case. It is not the government's

1 position, nor is it alleged in the superseding
2 indictment, that he stole the money. We don't know
3 whether he stole the money or not. I don't know how he
4 got the money but we're not alleging he stole it. We are
5 alleging he was going to use that money to buy an AK-47
6 -- AR-15, rather, at the gun show, and use that to murder
7 people which is what is admitted in this factual resume.
8 So if there are lies in the factual resume that are not
9 -- or things he doesn't agree with that are not in
10 italics, then we need to know what those are right now.

11 THE COURT: And with that. Mr. Sullivan, I do
12 want to follow up on a statement that you made, and that
13 pertained to the factual basis document that has been
14 filed with the Court. In this factual basis document
15 there are statements that are made in regular print, and
16 then there are statements that are made in italicized
17 print. And the affirmation that is at the end of this
18 document that was signed by your attorney says that you
19 do not dispute the factual basis with the exception of
20 those facts that are stated in the italicized print, and
21 that is part of the basis for whether or not I will
22 accept your plea. So I want to make sure that I am clear
23 as to what you are saying. Are you telling me that you
24 have reviewed this factual basis document and that as to
25 any portion that is not in italicized print that you do

1 in fact not dispute those statements?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Savage, is there anything else
4 for the government with regard to that matter?

5 MR. SAVAGE: No, Your Honor. I think that that
6 clarifies things.

7 THE COURT: Ms. Sison, if you would, please,
8 approach and I will hand you the Plea Inquiry Form for
9 signature by you and your client.

10 (Ms. Sison indicating.)

11 (Defendant indicating.)

12 THE COURT: Mr. Sullivan, I want to ask -- I see
13 on this form where there is a signature line for -- there
14 are two signature lines on the next to last page, one
15 that says "Defendant's Signature" and the other one
16 saying "Counsel's Signature." On the line for
17 "Defendant's Signature" there is what appears to be the
18 cursive letter "J." Is that in fact a complete
19 signature, or did you intend it to be a complete
20 signature?

21 A. Yes, that's my signature.

22 THE COURT: Okay. Based upon the representations
23 and answers given by the defendant and counsel in the
24 foregoing Rule 11 proceeding, the Court finds that the
25 defendant's plea is knowingly and voluntarily made and

1 that the defendant understands the charges, potential
2 penalties, and the consequences of his plea. The Court
3 further finds that the defendant's plea is supported by
4 an independent basis in fact containing each of the
5 elements of the offense charged against the defendant in
6 Count Nine of the superseding Bill of Indictment.

7 Accordingly, the defendant's guilty plea is hereby
8 accepted and the defendant is adjudicated to be guilty of
9 said count. This plea of guilty is accepted pursuant to
10 Rule 11(c)(1)(C) of the Federal Rules of Criminal
11 Procedure, and it is conditioned only upon the acceptance
12 by the Court of the agreed sentence at the sentencing
13 hearing in accordance with the Federal Rules of Criminal
14 Procedure.

15 Is there any matter concerning a consent order for
16 forfeiture? Is that something we're handling this
17 morning?

18 MR. SAVAGE: Your Honor, if we could have
19 additional time to discuss that with the defendant's
20 counsel. As you heard, the defendant has some concerns
21 about one of the provisions in there. Rather than take
22 up the Court's time, I think we can submit that to the
23 Court through the cyber clerk or directly, as you prefer.

24 THE COURT: Okay. Are there any other issues that
25 we can take up this morning regarding this matter?

1 MR. SAVAGE: Your Honor, the terms of the sealing
2 order having been fulfilled, the United States moves to
3 unseal the plea agreement and the factual resume in this
4 case as well as the motions seal.

5 THE COURT: Ms. Sison, any response to that?

6 MS. SISON: No, Your Honor.

7 THE COURT: With that, the factual basis document,
8 or factual resume, as Mr. Savage refers to it, as well
9 as the plea agreement, both of which were previously
10 filed under seal and that there was an order entered by
11 this court sealing those documents until further order,
12 those documents were sealed pending this hearing and this
13 hearing, now having been completed and the guilty plea
14 having been accepted, the Court orders that those two
15 documents -- the factual basis document and the plea
16 agreement document -- are hereby deemed unsealed.

17 Are there any other issues that we need to
18 address?

19 MR. SAVAGE: Not at this time, Your Honor.

20 THE COURT: Anything else for the defense?

21 MS. SISON: Your Honor, we have filed a notice of
22 preference for presentence interview with the Court and
23 that's been given to your clerk.

24 THE COURT: Okay. With that, the next matter in
25 this hearing -- I mean in this case. The probation

