

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3 United States of America,) Criminal Action
4) No. 21-cr-272
5 Plaintiff,)
6 vs.) SENTENCING HEARING
7) Washington, DC
8 Jordan Kenneth Stotts,) November 9, 2021
9) Time: 10:00 a.m.
10 Defendant.)

11 TRANSCRIPT OF SENTENCING HEARING
12 HELD BEFORE
13 THE HONORABLE JUDGE TIMOTHY J. KELLY
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S

16 For Plaintiff: Christopher Amore
17 DOJ-USAO, District of New Jersey
18 970 Broad Street
19 Suite 700
20 Newark, NJ 07102
21 (973) 645-2757
22 Email: Christopher.amore@usdoj.gov

23 For Defendant: Michelle M. Peterson
24 Federal Public Defender
25 625 Indiana Avenue, NW
Suite 550
Washington, DC 20004
(202) 208-7500
Email: Shelli_peterson@fd.org

Probation Officer: Carmen Newton

26 Court Reporter: Janice E. Dickman, RMR, CRR, CRC
27 Official Court Reporter
28 United States Courthouse, Room 6523
29 333 Constitution Avenue, NW
30 Washington, DC 20001
31 202-354-3267

1 THE COURTROOM DEPUTY: This is criminal matter
2 21-272, United States of America versus Jordan Kenneth Stotts.
3 Present for the government is Christopher Amore. Present for
4 the defendant is Michelle Peterson. Present from the
5 United States probation office is Carmen Newton. Also present
6 is defendant Mr. Stotts.

7 THE COURT: All right. Good morning. We are here
8 for the sentencing of Mr. Stotts, who has pled guilty to Count
9 4 of the information, charging him with parading,
10 demonstrating, or picketing in a Capitol building, in violation
11 of Title 40 U.S.C. § 5104(e) (2) (G). I have received --
12 received and reviewed the presentence report, sentencing
13 recommendation from the probation office, and the sentencing
14 memoranda from the government and the defendant, including a
15 video clip that the government submitted to me.

16 Are there any other documents or materials for me to
17 review, Mr. Amore? And you can address me from there.
18 Hopefully the microphone can capture you. And you may remove
19 your mask when speaking.

20 MR. AMORE: Thank you, Your Honor. Good morning.
21 There are no other submissions from the government.

22 THE COURT: Ms. Peterson, same question to you.

23 MS. PETERSON: No, Your Honor. No other documents
24 from us, either.

25 THE COURT: And, like -- well, Ms. Peterson, you

1 don't have a microphone.

2 MS. PETERSON: I don't have a microphone, so I will
3 hop up and down.

4 THE COURT: I would extend to you the same courtesy,
5 if technologically it was possible.

6 Mr. Stotts, this sentencing hearing will proceed in
7 four steps, and all the while I want you to keep in mind the
8 seriousness of why we're here. You committed and pled guilty
9 to a federal crime and today's proceeding is about the
10 consequences you'll face as a result of your decision to commit
11 that crime.

12 The first step of today's hearing is for me to
13 determine whether you have received the presentence report and
14 whether there are any outstanding objections to that report
15 and, if so, to resolve those objections.

16 The second step is usually for me to determine what
17 sentencing guidelines and sentencing range applies to your case
18 based on your criminal history and based on a defendant's
19 criminal history. But because you pled to a misdemeanor, the
20 sentencing guidelines don't apply here. But even so, what I'll
21 just do as part of the second step is clarify the sentencing
22 framework as far as the statutes that we are operating under.

23 The third step is for me to hear from the government
24 and from your counsel and from you, if you wish to be heard
25 about your sentence.

1 And the last step requires me to fashion a just and
2 fair sentence, in light of the Congress -- the factors Congress
3 has set forth in 18 United States Code § 3553(a). And as part
4 of this last step I will actually impose the sentence, along
5 with other required consequences of the offense.

6 So the final presentence report and sentencing
7 recommendation were filed in this matter on October 29th of
8 2021. Does the government have any objection to any of the
9 factual determinations set forth in that report, Mr. Amore?

10 MR. AMORE: Judge, no objection to any of the factual
11 determinations. I did notice one minor correction that will
12 probably need to be made that pertains to restitution, in
13 paragraph 85. Would you like me to address that now?

14 THE COURT: No, let's -- maybe when you talk about
15 restitution we'll talk about that, especially if it's something
16 that -- well, all right, why don't -- I see Ms. -- I see
17 Ms. Peterson with a look on her face that suggests maybe we
18 should -- if it's going to be disputed, maybe it's easier to
19 mention it now. I'm not saying she's necessarily disputing it.
20 But what is that, Mr. Amore?

21 MR. AMORE: Yes, Your Honor. I don't think it's
22 going to be disputed. It's just in paragraph 85 it says
23 pursuant to 18 U.S. 3663(A), big A, which is the mandatory
24 Victims Restitution Act, that's not applicable in this case. I
25 think that's even addressed elsewhere in this PSR. So really,

1 it's just pursuant to 18 U.S.C. 3663(a)(3), where restitution
2 has been agreed to by the parties in the plea agreement.
3 That's all.

4 THE COURT: Let me ask Ms. Peterson if she contests
5 that correction.

6 MS. PETERSON: That has solved my quizzical look. I
7 have no objection to that.

8 THE COURT: Very well. Ms. Peterson, any -- does the
9 defendant have any objection to any of the factual statements
10 set forth in the PSR?

11 MS. PETERSON: No, Your Honor, except with respect to
12 the financial condition and ability to pay, that I believe was
13 added after the initial presentence report had been prepared
14 because the government had -- I'm sorry, the probation office
15 had not yet received Mr. Stotts's paperwork. So I just want to
16 clarify for the Court.

17 THE COURT: Which -- point me to the --

18 MS. PETERSON: This is on page 14, that when
19 Mr. Stotts submitted his expenses and his income -- really,
20 it's the income that's at issue -- he reported it as if it was
21 a yearly salary and yearly income. As the report notes in
22 other places, he has seasonal employment. And this is the --
23 his income during approximately four months, the salary of the
24 year, when he is working in the landscaping business. And the
25 five -- or, the greenhouses and the five to six months of

1 business income in the off-season -- which in Minnesota is a
2 lot longer than the off-season in Washington, D.C. -- he does
3 odd jobs and snow removal, things like that, so his income is
4 significantly less. And I think that's only matters in terms
5 of if the Court is considering imposing a fine, I don't think
6 this properly reflects his actual monthly cash flow.

7 And I would note, in paragraph 66 -- I don't know if
8 this was in the original and I just missed it -- but it says he
9 has retained counsel. He clearly does not have retained
10 counsel; he has me.

11 THE COURT: We'll make the correction here, just
12 saying that the defendant is represented by counsel. We'll
13 have -- and we'll have the other correction that Mr. Amore
14 mentioned, regarding restitution, corrected as well.

15 And then, really, it's not so much -- I guess,
16 Ms. Peterson, what you're saying is with regard to paragraph
17 65, more specifically, and the monthly income portion of that,
18 that that reflects his monthly income for a portion of the
19 year, maybe half the year or -- but not his monthly income
20 every single month.

21 MS. PETERSON: Right. And the months that are not,
22 his income is very little.

23 THE COURT: Okay. All right. Is there any -- let me
24 ask, Mr. Amore, do you dispute -- do you dispute that? I am
25 not -- I mean, I have not been -- the government hasn't asked

1 for a fine. And other than the restitution, I was not really
2 thinking of going down that road, so I'm not sure it matters.
3 But just as far as for purposes of the facts laid out in the
4 PSR, Mr. Amore, do you have any dispute with, sort of, that, I
5 guess, clarification offered by Ms. Peterson?

6 MR. AMORE: I don't, Your Honor. Based on the way
7 the defendant has described his work for the probation officer,
8 I think that sounds reasonable.

9 THE COURT: All right. So, given, now, that neither
10 side has any objections, let me first ask Mr. Stotts,
11 Mr. Stotts, would you -- are you fully satisfied with
12 Ms. Peterson's representation of you? You may take off your
13 mask.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. And have you had enough time
16 to talk with her about the probation office's presentence
17 report and the papers that she filed and the government filed
18 in connection with your sentencing?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. I will then accept the facts
21 as stated in the presentence report. And as with the few
22 corrections we've noted here, the presentence report will be my
23 findings of fact for purposes of this sentencing.

24 So as far as step 2 goes, I'm just going to go ahead
25 and lay out the statutory framework that applies in this case

1 and make sure the parties are all in agreement.

2 First, as a preliminary matter, Congress has imposed
3 a statutory maximum sentence for the offense to which
4 Mr. Stotts has pled guilty. The statutory maximum is six
5 months imprisonment for this Class B misdemeanor. As far as
6 supervised release goes, under 18 U.S.C. §§ 19 and 3583(b)(3),
7 supervised release is not applicable. As far as probation
8 goes, under 18 United States Code § 3561(c)(2), the defendant
9 is eligible for up to five years of probation because the
10 offense is a misdemeanor. And as far as fines go, the maximum
11 fine for the offense is \$5,000. There is also a mandatory
12 special assessment of \$10 under 18 United States Code 3013(a).

13 So, let me ask both counsel whether I have accurately
14 stated the statutory framework under which we are operating
15 here. Mr. Amore?

16 MR. AMORE: Yes, Your Honor.

17 THE COURT: Ms. Peterson?

18 MS. PETERSON: Yes, Your Honor.

19 THE COURT: All right. I must now consider the
20 relevant factors that Congress set out in 18 United States Code
21 § 3553(a) and ensure that I impose a sentence that is, quote,
22 sufficient, but not greater than necessary to comply with the
23 purposes of sentencing, close quote.

24 Those purposes include the need for the sentence
25 imposed to reflect the seriousness of the offense, to promote

1 respect for the law, and to provide just punishment for the
2 offense. The sentence should also afford adequate deterrence
3 to criminal conduct, protect the public from future crimes of
4 the defendant, and promote rehabilitation. And I must also
5 consider the nature and circumstances of the offense, history
6 and characteristics of the defendant, the need for the sentence
7 imposed to comply with the purposes I just mentioned, the kinds
8 of sentences available, the need to avoid unwarranted sentence
9 disparities among defendants with similar records who have been
10 found guilty of similar conduct, and I have to consider the
11 need to provide restitution to the victims of the offense.

12 So, Mr. Amore, I will hear from you -- either where
13 you are, or if you would like to come to the podium, whatever
14 your preference is -- on the 3553(a) factors and the
15 government's sentencing recommendation.

16 MR. AMORE: Thank you, Your Honor. I'll step up to
17 the podium.

18 Your Honor, when looking at the 3553(a) factors, the
19 defendant in this case -- I think the Court should first look
20 at what the defendant did in his individual capacity, before
21 it's placed in the context of the January 6 Capitol riot. And
22 the government sentencing memo set out -- set forth several
23 factors the Court should consider when sentencing January 6
24 defendants, but in Mr. Stotts' case, really, there's four
25 things the Court should consider: First, how he gained entry

1 into the Capitol building; second, what he did once inside the
2 Capitol building; third, how long he remained in the Capitol
3 building, and; fourth, what he did afterwards.

4 So, first, how he gained entry into the Capitol
5 building. You can see, on page 3 of the government's memo, you
6 see the defendant scaling the wall of the west terrace of the
7 Capitol building. This isn't simply jumping over a bicycle
8 rack or hopping a fence; this is scaling what appears -- to me
9 it appears to be an approximately 20-foot wall, that certainly
10 not everyone is physically capable of doing.

11 And what he did afterwards, he entered the Capitol
12 building through the Senate wing door, which at the time he got
13 there that door was open. However, just to the left of that
14 door there's a window, and that window had been broken open.
15 And at the time the defendant was entering through that Senate
16 wing door, you could clearly see, in video from the Capitol's
17 closed circuit TV, that there are individuals also entering the
18 Capitol building through that broken window. Just to highlight
19 the point that scaling a 20-foot wall, entering a door that had
20 already been breached, while other people are entering through
21 the window, certainly shows that the defendant should have
22 known he should not have been doing what he was doing. He knew
23 he should not have been doing what he was doing to gain access
24 to the Capitol building.

25 So, second, what he did once inside, he was in the

1 building. There is a -- he -- he spent -- he first went to the
2 rotunda doors. This is not the entrance, the way he came in.
3 There was another entranceway where other large group of
4 rioters had breached. And there are photos of this entryway in
5 the government sentencing memo, as well. And what you see here
6 in the video, you see the defendant cheering on the rioters who
7 are pushing past law enforcement that are trying to keep people
8 out at the rotunda doors.

9 So, you know, if the defendant is going to suggest
10 that he didn't know he shouldn't have been in there, he didn't
11 know he couldn't go in, I mean, he could visibly see others
12 pushing law enforcement out of the way so that the rioters
13 could all gain access to the Capitol.

14 He then spends most of his time in the rotunda of the
15 Capitol building. There is a large mob in the rotunda, as
16 well. For a lot of the time he was walking through the
17 rotunda, using his cell phone to take photos and videos. But
18 at approximately 3:04 p.m. a large contingent of law
19 enforcement officers enter the rotunda; they're wearing riot
20 gear, they're wearing helmets, holding shields, some of them
21 are carrying batons. They enter for the purposes of clearing
22 the rotunda, to put down the riot that was occurring right in
23 the center of the Capitol building.

24 And one would think at this point the defendant would
25 turn around and leave the Capitol building, faced with a mob of

1 law enforcement officers. But he doesn't. He proceeds to the
2 very front of the pack to confront these law enforcement
3 officers. It's a confrontation that goes on for approximately
4 eight minutes from 3:04 in the afternoon to 3:12. And the
5 defendant stands his ground.

6 He stays at the front of the pack. The officers are
7 trying to clear the rotunda, they're pushing against rioters.
8 Some of the rioters are pushing back physically. The defendant
9 in this case stands his ground. You could see in the video I
10 submitted to the Court, which is Exhibit 1, which is a
11 90-second video that occurs between 3:07 and 3:08, not only is
12 he standing his ground, but he's shouting. He starts singing
13 the national anthem. He starts yelling at the officers and
14 refuses to leave.

15 That 90 seconds, I provided that to the Court because
16 that clearly shows the defendant, it gives the -- hopefully, it
17 gives Your Honor an idea of what I mean by the defendant stood
18 his ground. But that's only 90 seconds. This went on for
19 eight minutes. There was -- in the larger CCTV video, that
20 captures the entire rotunda, although -- you know, you don't
21 see the defendant as clearly as you do in the body-worn camera
22 video. You clearly see he remains at the front of that pack
23 for eight minutes, being pushed by law enforcement, refusing to
24 leave the rotunda.

25 Eventually he does leave, along with the rest of the

1 rioters that are in the Capitol, at approximately 3:12.

2 The third factor was having scaled the building. He
3 entered through that Senate door at approximately 2:22. And
4 he's eventually forced out of the rotunda at 3:12. That's 50
5 minutes. Almost an hour that the defendant stayed in the
6 building.

7 So what did the defendant do afterwards? He went to
8 his social media, to his Facebook account. And I provided Your
9 Honor with a sample of some of his postings. To me, the most
10 striking one was this, he writes, "The story of the siege. It
11 all started by scaling the wall as we broke into the U.S.
12 Capitol to strike fear into the sold-out Congress." If there
13 was a question, any question as to why the defendant decided to
14 enter the Capitol building that day, I think that Facebook post
15 answers it: To strike fear into Congress.

16 Another post, "We were peaceful, but the police were
17 not. Police were aggressive and on the wrong side. They got
18 us out, but it's far from over. 1776."

19 Then, finally, he wrote, "I got kicked out, but I'll
20 be back."

21 One other action he took afterwards -- which I don't
22 believe it's in my sentencing memo -- but he admitted, when he
23 sat down for his interview with the FBI, he admitted that the
24 photos and videos he had taken on his phone on January 6, he
25 had since deleted them off his phone.

1 In the defendant's submission, he suggests that
2 climbing the wall seemed like a challenge and that it was a
3 lapse in judgment. I think his Facebook posts seem to counter
4 that. He refers to it as a "siege," which a siege, from my
5 understanding, is a law enforcement or military operation to
6 surround a building, to choke a building from its supplies, to
7 shut down whatever is going on inside of that building. And
8 also, like I said before, to instill fear into Congress.

9 The defendant also suggests in his memo that the
10 government concedes that Mr. Stotts committed no violent acts
11 or encouraged others to do so. I don't think that's entirely
12 accurate. The government sentencing memo does say that
13 Mr. Stotts did not directly physically strike any officers, but
14 remaining at the front of a crowd that is pushing up against
15 law enforcement, screaming in the officers' faces for eight
16 minutes, I think that any law enforcement officer who observed
17 that boldness, that brazenness, that aggressiveness would think
18 that there is -- if not violence, certainly a potential for
19 violence from someone behaving that way.

20 Moreover, he also cheered on the violence of others,
21 those that were storming through the rotunda doors, pushing
22 their way past law enforcement. He was pumping his fist as
23 that was going on.

24 So, I don't think that this was just a lapse in
25 judgment, but a conscious decision to confront and interfere

1 with the law enforcement officers that were trying to shut down
2 a riot that was going on in the U.S. Capitol building on
3 January 6.

4 And as I transition now to -- from the seriousness of
5 the offense into the defendant's criminal history, Your Honor
6 will see that this is not the first time that this defendant
7 has had an issue with confronting law enforcement.

8 Although it's almost ten years ago, in 2012 he was
9 sentenced to 90 days in jail, 88 of which were suspended, after
10 he pled guilty to disorderly conduct and obstruction. This is
11 in the PSR, paragraph 31. And according to the write-up in the
12 PSR, local police officers were issuing citations for underage
13 drinking when the defendant disrupted their duties. The
14 officers warned Mr. Stotts several times to back away. He
15 ignored their commands and became belligerent. Your Honor,
16 this seems very similar to Mr. Stotts's conduct inside the
17 Capitol.

18 Also, as noted in the PSR, in 2009 -- which, again,
19 is more than ten years ago -- but it reiterates the fact that
20 this is not the defendant's first encounter with law
21 enforcement. He was charged with assault of a peace officer,
22 which eventually was dismissed. This is at paragraph 29 of the
23 PSR, Your Honor, which states he was uncooperative with the
24 police, he refused to sit in the squad car, and then he tried
25 to run.

1 As noted in the defense's sentencing memo, he does
2 have other convictions that mostly seem to pertain to
3 alcohol-related offenses.

4 But, I think it's important to show that this
5 defendant in particular, unlike many of the other January 6
6 defendants, clearly has an issue with law enforcement. He's
7 not afraid to confront law enforcement, not afraid to stand his
8 ground when law enforcement is trying to do their duties, not
9 afraid to yell in the face of law enforcement, and doesn't seem
10 to be deterred when law enforcement pushes him, gives him
11 directions. He simply added to the numbers that were in the
12 rotunda that was making it difficult for law enforcement to do
13 their job that day.

14 And so, Your Honor, that's -- those are the
15 individual acts of the defendant. Certainly, this has to be
16 looked at in the larger context of January 6th, which was an
17 attack on the Capitol, that achieved its objective to disrupt
18 the Congressional certification of the 2020 Electoral College
19 vote. It threatened the peaceful transfer of power following
20 the 2020 election. And, indeed, the defendant in this case
21 seemed to want to have some part of that, as indicated in his
22 messages that he was there to instill fear in Congress.

23 Again, this took place within the context of a large,
24 violent riot that relied on numbers to overwhelm law
25 enforcement officers. And as I said before, he contributed to

1 those numbers by refusing to leave the rotunda when those
2 officers showed up in riot gear and gave directions for the
3 rioters to leave the rotunda. The defendant refused to leave
4 for eight minutes.

5 And so while certainly deterrence is necessary in
6 this case -- we don't ever want to see what happened at the
7 Capitol happen ever again -- but we also don't want to see
8 people behaving this way towards law enforcement in any
9 context, whether it's the Capitol building, on the streets of
10 Washington, D.C., outside the White House, outside any of the
11 federal -- outside or inside any of the federal buildings in
12 the District of Columbia.

13 And so those are the reasons, Your Honor, why the
14 government is seeking 45 days of incarceration in this case.
15 The amount of time the defendant spent in the Capitol building,
16 his actions inside the Capitol building, his refusal to comply
17 with law enforcement, and his interference with law
18 enforcement's objectives in putting down the riot, and,
19 finally, his posts on social media after he -- after he was
20 kicked out of the Capitol building.

21 Subject to any questions Your Honor has, that's all I
22 have.

23 THE COURT: Very quickly, Mr. Amore. Obviously,
24 you've pointed out some of the more problematic parts of facts
25 for the defendant, both in terms of the offense and his history

1 and characteristics. But, obviously, have to consider the flip
2 side of all of those things, right?

3 MR. AMORE: Of course.

4 THE COURT: I have to consider that he didn't --
5 there is no evidence of -- I won't go through all of them;
6 Ms. Peterson, I'm sure, will ably do that. But, the fact that
7 he didn't have a weapon, the fact that he didn't appear to have
8 any real planning or was not a part of any other group, or all
9 those other things, I have to weigh those things, too, right?

10 MR. AMORE: Of course, Your Honor. And everything
11 you've said is accurate.

12 THE COURT: And then the other thing I want to
13 mention, just as -- because you talked about some of these past
14 offenses. I think the two -- in what you said, Mr. Amore, I
15 think you suggested that the offenses you highlighted here did
16 not involve alcohol -- or maybe by saying that other offenses
17 did involve alcohol, you suggested that the offenses you had
18 highlighted did not. Does that make any sense? But as I read
19 them, I think both the offenses you highlighted appear to also
20 stem from -- I mean, maybe the charges weren't about alcohol,
21 but if you read the narratives, they both appear to involve the
22 consumption of alcohol. Is that fair?

23 MR. AMORE: That's fair. That is correct as well,
24 Your Honor, yep.

25 THE COURT: So in that sense, I don't think there's

1 any evidence that Mr. Stotts was under the influence of alcohol
2 on January 6. So in some sense, that does distinguish some of
3 these offenses from his conduct that day.

4 MR. AMORE: I think that's right, Your Honor --

5 THE COURT: You can kind of argue that both
6 directions. But I think, as a matter of fact, that's true.

7 MR. AMORE: I think that's right, Your Honor. But
8 I'll just say, I don't -- with respect to the 2012 conviction
9 for disorderly conduct and obstruction, I don't -- I don't mean
10 to suggest that if alcohol was involved, it somehow excuses
11 that conduct or behaving that way towards law enforcement.

12 THE COURT: And I'm not suggesting that either.
13 Okay. Thank you very much.

14 MR. AMORE: Thank you, Judge.

15 THE COURT: Ms. Peterson, I will hear from you.

16 MS. PETERSON: Thank you, Your Honor. Let me start
17 with a couple of other things the government did not mention,
18 because I think some of what they did mention is fair.

19 Mr. Stotts acknowledges that he behaved terribly on January
20 6th. One thing the government did not point to, however, is
21 what Mr. Stotts did ten days later, and that is he voluntarily
22 turned himself in to law enforcement. They didn't come out to
23 arrest him; he called them and went to the station. They
24 offered to come to him, he said no, he would come to them.

25 He went to them, he wore the same clothing that he

1 wore on the day of January 6th. He gave them a full
2 confession. And I have -- I've listened to the entire thing.
3 He never raises his voice, he is never disrespectful in any
4 way, shape, or form throughout that interview. He makes no
5 excuses for his actions, takes -- accepts full responsibility
6 for it. And, in fact, the agents thank him for that in the
7 course of the interview and tells him -- makes a point of
8 telling him they don't consider him a threat and they have no
9 evidence that he committed any violent acts. And they then let
10 him leave and he goes back home. They ask him for how to reach
11 him, if they need to reach him in the future, he provides that
12 information, he remains available to them. And it's two months
13 that go by before there is any arrests at all.

14 The tenor of that interview -- and perhaps we should
15 have played it, but I don't think the government would disagree
16 with this -- was completely polite, respectful, he was full of
17 contrition and remorse and the agents were, likewise, very
18 respectful towards him and made him feel comfortable telling
19 them exactly what occurred that day, and that is what he did.

20 So I think you have to weigh that in when you're
21 comparing his actions. And other than in that immediate
22 aftermath of January 6th, whether we acknowledges he posted
23 things that he shouldn't have posted and he made comments that
24 certainly made it seem as if he was proud of what he had done
25 on that day, upon reflection, after he left, his complete

1 attitude changed. And this is not a situation where he deleted
2 his Facebook accounts and deleted posts in order to prevent law
3 enforcement from seeing them. First of all, everyone knows
4 that that's not an effective way of destroying evidence.

5 THE COURT: Not everyone knows.

6 MS. PETERSON: Most people know that's not an
7 effective way of destroying evidence. But more importantly, he
8 did it, as he indicated and as he told law enforcement, because
9 he had a conversation with his father, realized how stupid he
10 had been and didn't want to participate in that anymore.

11 Mr. Stotts is not someone who has ever gone to a
12 protest before or a political rally; was not his intention
13 even. He was, as I've noted in my sentencing memo, he was in
14 his off-season, he was in Arizona, he decided to go visit his
15 father. He travels around in his vehicle, sleeps in his
16 vehicle in the off season. And he was driving to Florida,
17 heard about then-President Trump inviting people to come to the
18 Capitol and suggesting that everyone should come to show their
19 support, and he decided to come.

20 Came on his own. He didn't have any plans in
21 advance. He stayed outside of the city and came in to do some
22 sightseeing two days before the rally, the 4th. On the 5th he
23 came in for the rally that evening, then he went back out where
24 he was staying, and then came back in for the speeches on
25 January 6th.

1 He had no intention of going to the Capitol and
2 there's nothing that suggests that he did. And he also had no
3 intention of engaging in any criminal actions prior to coming.
4 He didn't come with weapons, he didn't come with even defensive
5 gear. He had -- he had no camouflage clothing, he had no gas
6 masks, he had no bear spray, no pepper spray, no weapons of any
7 sort. That doesn't excuse what he did, which is he got caught
8 up in what was going on and he played a role in that, and he
9 acknowledges that.

10 I didn't mean to, in describing his scaling of the
11 wall -- as you saw it, as a challenge -- to suggest that
12 somehow appropriate. He knows it wasn't. That's how he would
13 describe to the Court how stupid it was. And yet, when he saw
14 people doing it, I'm an able-bodied young man, I can do that,
15 too. It wasn't as if he couldn't just walk up the steps and
16 walk in the door; that's what a lot of other people were doing.
17 So it wasn't a maneuver to designed to do something more
18 nefarious, if you will. It was a way to get where he was
19 going, along with everyone else.

20 And he's -- I know the government said that the
21 defendant somehow never -- that what he did showed that he
22 didn't know that he couldn't go in. We have never suggested
23 that. Mr. Stotts did not suggest to the police when he -- or
24 to the FBI when he interviewed with them, nor did we suggest
25 that he didn't know that he wasn't supposed to go in. He fully

1 knew that. He has acknowledged that in pleading guilty. You
2 can't plead guilty to the offense you pled guilty to. And his
3 statement of offense acknowledges that he knew that he was not
4 supposed to be in the Capitol that day.

5 So that's -- that's never been an issue. It's really
6 trying to get into his -- we've been trying to explain to the
7 Court why he did what he did and what he was thinking at the
8 time, which was, quite frankly, that he wasn't thinking. He
9 got caught up in the moment. And I think, as the Court has
10 already noted with respect to the criminal history, it is, as
11 I've said in my sentencing memo, ten years old and it does all
12 stem from when he was using alcohol.

13 As my sentencing memo outlines, he left his home at a
14 very young age. He's lived a very solitary life. He does have
15 family, but he is really on his own. And he went through a
16 period of time when he was drinking and making bad decisions as
17 a result. And now, in fact, the only group he's a member of is
18 a religious group that he goes to and does bible study with.
19 He's not part of any organized effort to express his political
20 views one way or the other. Not that there's anything wrong
21 with that, but I think it does explain a little bit more the
22 different posture he was in than many people who came on
23 January 6th. And, again, he came with no intention of going
24 into the Capitol, that was -- he didn't -- he had no -- if
25 someone else was planning that, it was not him, and he did not

1 know what he did following along and regrets that.

2 There is no doubt, and Mr. Stotts has seen the video,
3 that where he is being -- I would agree with the government's
4 characterization of it -- I would say obnoxious, but
5 belligerent works as well. He was singing loudly in the face
6 of the officers. And, again, that is -- he recognizes how
7 wrong his behavior was; it was disruptive, it could have
8 instilled fear in people, and it's nothing -- he makes no
9 excuses for it.

10 But I think you have to view that in the overall --
11 that is a short period of time while he's in the Capitol. And
12 the government has noted that he was in there for 50 minutes.
13 You can trace his steps in that CCTV footage and you do not see
14 him commit any violence, you do not see him commit any
15 destruction of property. Wanders through. Does he get caught
16 up in the moment, start singing the national anthem loudly and
17 obnoxiously? Yes, and he has acknowledged that.

18 I think the difficult question for this Court is, in
19 looking at this, it is a Class B misdemeanor. Certainly, in
20 the history of this courthouse, it is rare for someone who is
21 convicted, prior to January 6, of a Class B misdemeanor, to be
22 incarcerated. I think that sentencing disparity is a hard
23 issue to face here because there's already sentencing disparity
24 on these cases. There have been, as I indicated in my
25 sentencing memo, and I'm sure the Court is well aware of,

1 sentences ranging from two months probation with a fine all the
2 way up to the six months probation and up to three years of --
3 I'm sorry, six months confinement or up to three years of
4 probation, sometimes with home confinement, sometimes without
5 home confinement. And while the government tries to thread the
6 needle and explain why one case deserves home confinement and
7 another doesn't, why one deserves 30 days of incarceration,
8 another, perhaps, 45 days of incarceration, it's very difficult
9 to look at these cases and, really, come up with a matrix with
10 every case, where it ought to be.

11 So, Mr. Stotts is asking the Court to sentence him to
12 a period of probation with, if the Court believes necessary,
13 home confinement. I'm not sure how much home confinement.
14 Judge McFadden pointed out, in a case where the government was
15 asking for home confinement, these are not cases that home
16 confinement is necessary so that he doesn't commit another
17 crime. It's winter in Minnesota, Mr. Stotts will spend most of
18 it indoors anyway, as anyone, like myself, who grew up in
19 Minnesota knows.

20 There's not a lot of punishment to home confinement,
21 and I get that, but there's also not a lot to be gained with
22 respect to deterring Mr. Stotts. There's no reason to believe
23 he will commit this act again, given his lack of planning, his
24 lack of intent of when he came to the Capitol, doing anything
25 like that. While, frankly, there's nothing wrong with going to

1 political protests at all, he doesn't do that. There was a
2 one-time event for Mr. Stotts. So we would ask the Court to
3 sentence him to a period of probation.

4 THE COURT: Ms. Peterson, just clarify a couple
5 things for me. It was -- I think it was ten days later that
6 he --

7 MS. PETERSON: Yes.

8 THE COURT: -- called the FBI or the police?

9 MS. PETERSON: Yes, that is correct, Your Honor. He
10 called them and then they made an arrangement for him to come
11 in. I believe he called on January 16th, according to the FBI
12 reports, which is ten days later. Then he came in, I believe,
13 the next day, or two days later. He came when they told him to
14 come.

15 THE COURT: In the Facebook posts, I think the
16 government says something like in the hours afterward.

17 MS. PETERSON: That is correct.

18 THE COURT: We're talking about within 24 hours of
19 the -- of January 6?

20 MS. PETERSON: That is correct, to the immediate
21 aftermath of what happened that day.

22 THE COURT: And is Mr. Stotts going to address me
23 today?

24 MS. PETERSON: Yes, Your Honor.

25 THE COURT: All right. All right. Mr. Stotts, if

1 you have -- you have the right to make a statement or present
2 any information to me you would like to mitigate your sentence.
3 And so, if you would like to address me, please approach the
4 podium. And you may remove your mask, sir.

5 THE DEFENDANT: Thank you, Your Honor. Plain and
6 simple, I broke the law. You know, I need to be held
7 accountable. I know that's the way of the world, that's what
8 keeps the world safe. And I'm ashamed of what I've done. So
9 experience has been a reality check for me. Made me realize
10 how necessary it was to figure things out and be a better
11 person, moving on. I just want to put this all behind me and
12 just move on with my life.

13 THE COURT: All right. Thank you. Thank you very
14 much. You may be seated.

15 MR. AMORE: Judge, may I just say one thing very
16 quickly in response to what Ms. Peterson said about the
17 defendant contacting the FBI? That is true, but I want to make
18 sure it's clear he was first approached by the FBI and given
19 their contact information. And he did, on his own, reach out
20 to the FBI to say, Okay, I will come and speak with you. But I
21 don't believe it's that he just, ten days later, picked up the
22 phone and called the FBI and said, Hey, I want to come talk to
23 you.

24 THE COURT: He was approached by the FBI and said --
25 how was he -- I mean, can you give me a little more context?

1 MR. AMORE: He -- I believe he was called by the FBI
2 and then he called them back to say can we -- can I speak to
3 you? But I would like to speak with you somewhere private, not
4 at my residence. Can I come to a local police station and
5 speak with you? I believe that's how it went.

6 THE COURT: Ms. Peterson, do you -- can you -- I
7 mean, given how you presented it, in terms of he picked up the
8 phone, that's not, obviously, quite how you had presented it.

9 MS. PETERSON: If the government has -- if that's
10 what the government says happened, I can't dispute that. I
11 don't know. If there -- I believe I saw in the record that
12 there was a -- he had reason to believe, obviously, that they
13 wanted to talk to him. I thought that I saw that they had
14 called his brother, or something along those lines, and then he
15 called them. But in any event, yeah, I'm not --

16 THE COURT: Maybe the brother had received a call or
17 somebody and he became aware of it?

18 MS. PETERSON: Without having it in front of me, I
19 wouldn't swear to anything, exactly how it transpired. But,
20 yes, he didn't do it without any sort of suggestion that they
21 wanted to talk to him. But he did call them and arrange to go
22 in and see them.

23 THE COURT: All right. All right. Mr. Amore,
24 anything to add on that? It sounds like he became aware,
25 perhaps, of some -- I'm not sure that it matters very much

1 because the reality is, he did follow up. And --

2 MR. AMORE: Correct.

3 THE COURT: -- the bigger picture is, we are here
4 today because he wanted to take responsibility early, and he
5 did so by pleading guilty. There are -- there have only been a
6 handful of sentencings so far -- I don't know, maybe 20, maybe
7 that's more than a handful -- still, in the greater scheme,
8 that's early acceptance of responsibility, however you want to
9 slice it. So, I'm not sure that matters.

10 All right. Well, I have assessed the particular
11 facts of this case in light of the relevant 3553(a) factors and
12 I'm going to provide my thoughts for the record and for you,
13 Mr. Stotts, on how each of these factors weigh in this case.

14 Let me begin with my considerations with regard to
15 the nature of the offense. This is the hardest thing that, I
16 think, in these cases, that me and many of my colleagues have
17 to wrestle with, because what happened that day, on January
18 6th, was in some ways as serious as an offense can be, given
19 that it threatened the peaceful transfer of power from one
20 president to another.

21 The damage that was done that day was both tangible
22 and intangible. You had a role, but you had a limited role.
23 So let me just say a few things about the overall events of
24 January 6th, insofar as I have to consider the nature and
25 circumstances of the offense.

1 Mr. Stotts, our Constitution and our laws give you
2 rights that people in other countries would do just about
3 anything for, and that our predecessors, our ancestors here in
4 America have died for. You have the right to vote for whoever
5 you want to for president. You have the First Amendment right
6 to speak out in favor of your candidate, put up signs to
7 convince your friends and neighbors to vote for him or her.
8 And if you don't like how an election is being conducted, you
9 can speak out about that, too. You can call or write or meet
10 with elected officials in your state or in the federal
11 government. You can try to get election laws changed, if you
12 don't like them. You can always engage in peaceful protest.
13 And if you think you've been wronged and you have a case, you
14 can file a lawsuit in state court or here in federal court.

15 But, freedom means that with those rights come
16 responsibilities. So what you cannot do is become part of a
17 mob that uses violence and the threat of violence disrupts
18 Congress's ability to fulfil its role to process the
19 certification of the Electoral vote for college -- Electoral
20 vote for president. What you cannot do is engage in a mob to,
21 in your words, strike fear into our elected officials in that
22 moment.

23 What happened that day was not only damage property
24 and hurt people, real people, it was a blow against customs and
25 practices that help support the rule of law and the

1 Constitution. It broke our tradition of the peaceful transfer
2 of power. And so, it was more than extremely serious. In my
3 view, it was a national disgrace. And you played a role in
4 that. But as I said, you had a limited role. You weren't part
5 of any group, there's no evidence that you planned anything,
6 you did not engage in violence against people or property, you
7 didn't bring a weapon. And however you became aware that the
8 police wanted to talk to you, you made yourself available very
9 quickly thereafter and submitted to an interview, took
10 responsibility, and here we are today, with you being, you
11 know, let's say one of the first 20 or 25 people or so to be
12 sentenced.

13 Now, there are -- that limited role is a positive for
14 you. But, the government fairly points out some of the things
15 with regard to your involvement that are not so positive. You
16 didn't leave when you were ordered to leave the Capitol. You
17 scaled a wall to get in the building. You stayed almost an
18 hour. And the social media posts, you posted some things on
19 social media that made it seem that you were proud of what
20 happened and, honestly, that you might do it again.

21 So, there's a lot to be said for what went on that
22 day and how bad it was and how serious it was. And while much
23 of your role was limited, there are some things there that are
24 cause for concern and that weigh against you.

25 As far as your characteristics as an offender go,

1 we've talked about your past, your convictions. Most of them
2 are old and most of them can be linked one way or the other to
3 alcohol, it seems to me. That's not an excuse, no one is
4 offering that as an excuse, but it puts them in context.

5 But another part of your characteristics as an
6 offender, it seems to me, is your willingness to take
7 responsibility early here. When you addressed me here today, I
8 believe you that you feel remorse for what happened. You made
9 no bones about it, you made no excuses. And that's consistent
10 with what your attorney has said your approach here has been
11 all along. And to me, that means a lot, and that says a lot
12 about where you're headed from here and whether you're likely
13 to engage in any of this conduct in the future. I weigh that a
14 lot, as I said.

15 Other than the history -- the nature of the -- the
16 nature of the offense and your characteristics as an offender,
17 I have to weigh -- let me tie this off about your
18 characteristics as an offender. Again, like the nature of the
19 offense, I think there are some strong things you have in your
20 favor here in context, but a few other things that are cause
21 for concern. It's not quite the same than if you showed up
22 here in court with no record at all, is the reality.

23 The next factor that I have to consider is that the
24 sentence has to reflect the seriousness of the offense, to
25 promote respect for the law, to provide just punishment, to

1 afford adequate deterrence to criminal conduct, to protect the
2 public, and to promote rehabilitation. I do think, when I look
3 at -- and this is another piece, another part of this
4 sentencing that I think my colleagues and I are going to be,
5 you know, carefully considering in each of these cases as we go
6 forward, and it's difficult. I don't think, at the end of the
7 day, if I were to just give you probation and no other --
8 nothing else, just straight probation for some very short
9 period of time, let's say, I'm not sure that does capture how
10 bad, even given your limited role, how bad, how serious the
11 offense was and whether that really does provide adequate
12 deterrence. It's -- again, it's difficult.

13 We've talked about the types of sentences available.
14 I can -- about how much probation you're eligible for. And,
15 obviously, you're eligible for up to six months incarceration.
16 Government has asked for 45 days of incarceration, your
17 attorney has asked for -- you have asked for probation. We
18 talked about those things.

19 I have to consider unwanted sentence disparities.
20 Usually that's something the sentencing guidelines kind of help
21 inform the judge about. Here, there are no sentencing
22 guidelines and the event here is so unusual that I'm not sure
23 what the -- how the guidelines would have helped anyway. But
24 in any event, I certainly have studied closely, to say the
25 least, the sentencings that have been handed out by my

1 colleagues. And as your attorney has pointed out, you know,
2 maybe, perhaps not surprisingly, judges have taken different
3 approaches to folks that are roughly in your shoes.

4 And then, last, I have to consider the need to
5 provide restitution. And, of course, as part of the sentence I
6 am going to order the \$5,000 worth of restitution that the
7 Court has --

8 MS. PETERSON: \$500.

9 THE COURT: \$500, pardon me. \$500 worth of
10 restitution that the parties have agreed is appropriate in this
11 case.

12 I think it's a close call. I think, you know,
13 Mr. Stotts, as I've said, I think you have a lot of positives
14 here. I think the only things that make it somewhat close are
15 your scaling of that wall, the dramatic nature of that, and the
16 fact that you have a criminal record in which -- well, that you
17 have a criminal record that has wound you up in jail for short
18 periods of time on occasion; very short, though. But I think,
19 to me, your remorse, your genuine remorse and the fact that
20 we're here very early -- it doesn't seem, maybe, very early,
21 given that this happened in January, but relative to other
22 defendants, relative to the difficulties I think, probably, the
23 Department of Justice has had in trying to figure out how to
24 make plea offers that reflect all these factors.

25 I am going to sentence you to 24 months of probation.

1 I'm going to have -- I'm going to subject you to home detention
2 for 60 days. So you won't be able to leave your home, except
3 for -- we'll go through it -- except for a very limited amount
4 of -- very limited reasons, for 60 days. As Ms. Peterson says,
5 perhaps that's not as much of a punishment as it would be in
6 Miami. But I think it's appropriate.

7 I would order the \$500 of restitution that the
8 parties have agreed on. And, Mr. Stotts, I'm going to ask
9 you -- order you to complete 60 hours of community service as a
10 part of your -- as a condition of your probation.

11 So, Mr. Stotts, why don't you come up here and stand
12 up here with Ms. Peterson up at the podium.

13 So, I will now impose the sentence which I conclude,
14 after considering all the 3553(a) factors, is sufficient, but
15 not greater than necessary, to comply with the purposes of
16 sentencing.

17 Pursuant to the Sentencing Reform Act of 1984, and in
18 consideration of the provisions of 18 United States Code 3553,
19 it is the judgment of the Court that you, Jordan Stotts, are
20 hereby sentenced to a term of 24 months of probation on Count
21 4. In addition, you are ordered to pay a special assessment of
22 \$10 in accordance with 18 United States Code 3013. While on
23 supervision you shall abide by the following mandatory
24 conditions, as well as the standard conditions of supervision
25 which are imposed to establish the basic expectations for your

1 conduct while on supervision.

2 The mandatory conditions include: One, you must not
3 commit another federal, state, or local crime. Two, you must
4 not unlawfully possess a controlled substance. Three, the
5 mandatory drug testing condition is suspended based on my
6 determination that you pose a low risk of future substance
7 abuse. Four, you must cooperate in the collection of DNA as
8 directed by the probation officer, and; five, you must make
9 restitution in accordance with 18 United States Code § 3663,
10 and 3663(a), or any other statute authorizing a sentence of
11 restitution.

12 You shall also comply with the following special
13 conditions: You are ordered to make restitution to the
14 Architect of the Capitol in the amount of \$500. The Court
15 determined you do not have the ability to pay interest and,
16 therefore, waives any interest or penalties that may accrue on
17 the balance.

18 Restitution obligation: You must pay the balance of
19 any restitution owed at a rate of no less than \$100 per month.

20 Given what you've told me, Ms. Peterson, about his
21 ability to pay, if that needs to be adjusted, the parties can
22 approach me about adjusting it, but --

23 MS. PETERSON: Thank you, Your Honor.

24 THE COURT: -- leave that alone for the moment.

25 Financial payment: You must pay the financial

1 penalty in accordance with the schedule-of-payments sheet of
2 the judgment. You must also notify the Court of any changes in
3 economic circumstances that might affect the ability to pay
4 this financial penalty.

5 Financial information disclosure: You must provide
6 the probation officer access to any requested financial
7 information and authorize the release of any financial
8 information. The probation office may share financial
9 information with the United States Attorney's Office.

10 Restitution payments shall be made to the Clerk of the Court
11 for the United States District Court, District of Columbia, for
12 disbursement to the following victim: The victim's name is the
13 Architect of the Capitol, Office of the Chief Financial
14 Officer, Attention: Kathy Sherrill, S-H-E-R-R-I-L-L, CPA, Room
15 H2-205B, Washington, D.C. 20515, and the amount of loss is
16 \$500.

17 The financial obligations are immediately payable to
18 the Clerk of the Court for the U.S. District Court, 33
19 Constitution Avenue Northwest, Washington, D.C. 20001. Within
20 30 days of any change of address you shall notify the Clerk of
21 the Court of the change until such time as the financial
22 obligation is paid in full.

23 As I mentioned, so for 60 days you will be subject to
24 location monitoring. The defendant will be monitored by the
25 form of location monitoring technology indicated herein for a

1 period of 60 days and he must follow the rules and regulations
2 of the location monitoring program. The cost of the program is
3 waived. Location monitoring technology is at the discretion of
4 the probation officer, including radio frequency, or RF
5 monitoring, GPS monitoring, including hybrid GPS Smart-Link or
6 voice recognition.

7 The form of location monitoring technology will be
8 used to monitor the following restrictions on the defendant:
9 Movement in the community; the defendant is restricted to his
10 residence at all times, except for employment, education,
11 religious services, medical, substance abuse or mental health
12 treatment, attorney visits, court appearances, court-ordered
13 obligations, or other activities as pre-approved by the
14 officer.

15 And as I also mentioned, then you must complete,
16 also, 60 hours of community service. Probation officer will
17 supervise the participation in the program by approving the
18 program, and you must provide written verification of the
19 completed hours to the probation officer.

20 I will also authorize supervision and jurisdiction of
21 this case to be transferred to the United States District Court
22 for the District of Minnesota.

23 The probation office shall release the presentence
24 investigation report to all appropriate agencies, which
25 includes the United States Probation Office in the approved

1 District of residence, in order to execute the sentence of the
2 Court.

3 Treatment agencies shall return the presentence
4 report to the probation office upon the defendant's completion
5 or termination from treatment.

6 Pursuant to 18 United States Code 3742, you have a
7 right to appeal the sentence imposed if the period of
8 imprisonment is longer than the statutory maximum. If you
9 choose to appeal, you must file any appeal within 14 days after
10 I enter judgment. And as defined in 28 United States Code
11 2255, you also have the right to challenge the conviction
12 entered or sentence imposed if new and currently unavailable
13 information becomes available to you, or on a claim that you
14 received ineffective assistance of counsel in entering a plea
15 of guilty to the offense of conviction in connection with
16 sentencing. And if you are unable to afford the cost of an
17 appeal, you may request permission from the Court to file an
18 appeal without cost to you.

19 And, finally, pursuant to the D.C. Circuit's opinion
20 in *United States versus Hunter*, 809 F.3d 677, decided on
21 January 12th, 2016, are there any objections to the sentence
22 imposed that are not already noted on the record, Mr. Amore?

23 MR. AMORE: No, Your Honor.

24 THE COURT: Ms. Peterson?

25 MS. PETERSON: No, Your Honor. Thank you.

1 THE COURT: All right. All right. This concludes my
2 judgment in this case. I expect -- I guess I'll have a motion
3 from the government to dismiss additional counts?

4 MR. AMORE: That's correct, Your Honor. The
5 government would move to dismiss Counts 1, 2, and 3.

6 Do you need a written motion?

7 THE COURT: No. That's fine. I will grant that
8 motion. We will dismiss those counts.

9 Mr. Stotts, as I said, based on your -- the way you
10 addressed me here today and given your record, which is not
11 perfect, but is -- doesn't suggest to me that you're going to
12 be -- you're going to have a hard time moving on or putting
13 this behind you, I wish you good luck in doing that.

14 The community service, I think, is a valuable way to
15 give back to the community when, perhaps, you're making up for
16 something you've done to damage our national community in some
17 way. But based on the way you addressed me here today, I feel
18 confident you're going to be able to do that and, you know,
19 move on with your life in a positive way. So, good luck to you
20 going forward. The case is going to be transferred to
21 Minnesota, so you may not -- if all goes well, you won't be
22 appearing before me again.

23 Mr. Amore, is there anything else you think I need to
24 address here today?

25 MR. AMORE: No, Your Honor. Thank you.

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THE COURT: All right. And Ms. Peterson?

MS. PETERSON: No, Your Honor. Thank you.

THE COURT: Good luck, sir. Parties are dismissed.

* * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, JANICE DICKMAN, do hereby certify that the above and foregoing constitutes a true and accurate transcript of my stenographic notes and is a full, true and complete transcript of the proceedings to the best of my ability.

Dated this 13th day of November, 2021

Janice E. Dickman, CRR, CMR, CCR
Official Court Reporter
Room 6523
333 Constitution Avenue, N.W.
Washington, D.C. 20001