

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	1:16-cr-162
)	
vs.)	
)	
YUSUF ABDIRIZAK WEHELIE,)	
)	
Defendant.)	

SENTENCING HEARING

July 14, 2017

BEFORE: THE HONORABLE GERALD BRUCE LEE
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY
 BY: JOHN T. GIBBS, ESQ.

FOR MR. WEHELIE: DIMURO GINSBERG PC
 NINA J. GINSBERG, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. WILSON, RMR, CRR
 U. S. District Court
 401 Courthouse Square
 Alexandria, VA 22314
 (703)501-1580

1 (Thereupon, the following was heard in open court
2 at 9:03 a.m.)

3 THE CLERK: United States of versus Yusuf
4 Abdirizak Wehelie, case number 16-CR-162.

5 MR. GIBBS: Good morning, Your Honor. John
6 Gibbs on behalf of the United States. And with me at
7 counsel table is Special Agent Rick Gaylord of the FBI.

8 THE COURT: Good morning.

9 MS. GINSBERG: Good morning, Your Honor.
10 Nina Ginsberg on behalf of Mr. Wehelie who is present in
11 the courtroom.

12 THE COURT: Good morning, Ms. Ginsberg.

13 Good morning, Mr. Wehelie.

14 Ms. Ginsberg --

15 MS. GINSBERG: Yes, sir.

16 THE COURT: -- I take it you and Mr. Wehelie
17 have had an opportunity to review the presentence report?

18 MS. GINSBERG: Yes, we have.

19 THE COURT: And you had an objection to I
20 believe it was paragraph 46. And I issued a notice of
21 intent to consider an upward departure. And I'm prepared
22 to hear from you and the government about that.

23 MS. GINSBERG: Your Honor, before I do that,
24 we also did object to the criminal history category as
25 overrepresenting the seriousness of Mr. Wehelie's

1 criminal record and --

2 THE COURT: You can address that as well.

3 MS. GINSBERG: Maybe I'll address that one
4 first because I think that's the easier of the two.

5 THE COURT: All right.

6 MS. GINSBERG: Your Honor, the presentence
7 report calculated an offense level of 19 and a criminal
8 history category of three which was based on five
9 criminal history points. Those points were based on two
10 convictions -- well, one Section 251 disposition on a
11 marijuana offense when Mr. Wehelie was 18 years old, a
12 second marijuana offense where he was found guilty in
13 absentia which, according to the presentence report,
14 resulted from a traffic stop where -- a vehicle in which
15 he was a passenger --

16 THE COURT: Hold on just one second. Hold on
17 just one second. Okay, I'm with you.

18 MS. GINSBERG: The second -- the actual first
19 conviction for possession of marijuana was the result of
20 a traffic stop of a vehicle that he was a passenger in.
21 I think the car had a --

22 THE COURT: This is the one he was found
23 guilty in absentia?

24 MS. GINSBERG: That's correct. But it was
25 based on a small amount of marijuana that was found

1 outside one of the passenger side doors, and he was one
2 of a number of occupants in the vehicle.

3 So, there was never -- everyone denied
4 ownership of the marijuana. So, there was never a
5 determination of who actually possessed the marijuana,
6 but he did not show up in court.

7 THE COURT: I understand you're telling me
8 these things, but the record says he was guilty in
9 absentia which means he never showed up, right?

10 MS. GINSBERG: That's right.

11 THE COURT: I can't really -- I don't know
12 really what happened other than what you're telling me
13 now.

14 MS. GINSBERG: I'm just repeating what was in
15 the presentence report.

16 THE COURT: Okay.

17 MS. GINSBERG: So, there was a -- the
18 probation officer obviously made some inquiry into the
19 court records.

20 THE COURT: But it sounds like you're saying,
21 well, maybe he wasn't to be held responsible for the
22 offense. Is that what you're saying?

23 MS. GINSBERG: I'm saying in terms of
24 assessing the seriousness of his past record, that it is
25 not clear from the facts as -- as outlined by the

1 probation officer that he was actually the person in
2 possession of the marijuana.

3 He did fail to appear in court and was found
4 guilty. That is correct.

5 THE COURT: All right.

6 MS. GINSBERG: He was also convicted of a
7 statutory burglary for which he received a 3-year
8 suspended sentence. He ultimately served 90 days for a
9 probation violation because -- which occurred after he
10 returned from his trip overseas. It occurred because he
11 was tested positive for marijuana on several occasions.

12 And that offense involved breaking into a
13 house with a friend. I think a laptop computer and some
14 alcohol was stolen.

15 And the last offense when he was 23 was a
16 misdemeanor embezzlement case where he received a
17 sentence of 180 days --

18 THE COURT: That's when he was working at the
19 sports store?

20 MS. GINSBERG: That's correct, Your Honor.
21 And all of that sentence was suspended.

22 All that's to say that while there was a
23 pattern of minor criminal activity, it was treated by the
24 Fairfax courts as relatively minor. He did not serve any
25 more than this 90 days that was imposed as a result of

1 the probation violation.

2 And it -- in keeping with Your Honor's
3 opinion in *United States versus Nelson*, the history of
4 minor marijuana offenses and nonviolent crimes, we would
5 submit, overrepresent -- a criminal history category 3
6 overrepresents the seriousness of the conduct -- of the
7 type of criminal record one would expect to see of a
8 person who is assigned a criminal history category 3.

9 THE COURT: So, you think he should be put to
10 criminal history category 2?

11 MS. GINSBERG: I do, Your Honor.

12 THE COURT: All right.

13 MS. GINSBERG: I think that's a more
14 appropriate criminal history, a better reflection of his
15 record of nonviolent -- minor nonviolent offenses and the
16 fact that he's had minimal incarceration, minimal
17 probation supervision.

18 And what I think most importantly is that he
19 had no prior treatment for substance abuse or PTSD which
20 were clearly part of his personal history.

21 And that that could --

22 THE COURT: I had the impression that PTSD
23 came after these offenses in 2014; is that right?

24 MS. GINSBERG: It came after the --

25 THE COURT: I'm talking about the date from

1 the standpoint of chronologically, that aspect of it
2 comes after 2014; is that right?

3 MS. GINSBERG: It comes after the probation
4 violation -- it came before -- it came after the two
5 marijuana convictions and the burglary conviction. It
6 came before the probation violation and the embezzlement.

7 THE COURT: So, what year was it?

8 MS. GINSBERG: I'm sorry.

9 THE COURT: What year was the incident that
10 led to PTSD. What year was that?

11 MS. GINSBERG: That was 2015, I believe.

12 THE COURT: So, that confirms what I just
13 said, if it happened in 2015, that wasn't what -- that
14 was not involved in the offenses you just described to
15 me. That was post that.

16 MS. GINSBERG: Your Honor, his probation
17 supervision was after he came back from overseas.

18 THE COURT: So my question is, what year did
19 he come back from overseas?

20 MS. GINSBERG: Oh, Your Honor, I apologize,
21 2010.

22 THE COURT: Oh, okay.

23 MS. GINSBERG: He came back in 2010.

24 THE COURT: All right. So that does conform
25 with your argument. Thank you.

1 MS. GINSBERG: So, we would -- we would
2 submit that the criminal history category 3 consistent
3 with how this Court has previously applied the enhance --
4 the criminal history analysis and certainly other judges
5 in this district that the criminal history category 3
6 overrepresents that -- the seriousness of that record.

7 THE COURT: All right, let me hear from the
8 government on that.

9 MR. GIBBS: Your Honor, I think as a starting
10 point we would obviously disagree that the criminal
11 history category is overrepresented. I think, you know,
12 we have to begin with the fact that when the probation
13 officer, Mr. Sewell, prepared the report, he scored this
14 correctly. I mean, there's no dispute that the
15 calculations that he made are accurate.

16 And in terms of the offenses themselves, we
17 have two marijuana convictions at age 18. As the Court
18 noted rightly, the second one he was charged in absentia
19 because he didn't show up which I don't think is to his
20 benefit.

21 We then had a residential burglary. And
22 again, I think it's important. This is the felony
23 offense that prevented him from possessing firearms.
24 This was a serious offense. It was -- he and at least
25 one other individual broke into someone's home, did \$800

1 damages in breaking in, stole a computer valued at
2 \$2,000, stole liquor valid at about \$50. And so, I think
3 it would be a mistake to sort of pass this off as a
4 youthful indiscretion.

5 THE COURT: The legal question is whether the
6 criminal history category overstates the seriousness of
7 the prior criminal record and the risk of recidivism.
8 Can you address that question for me?

9 MR. GIBBS: Right, and I think I would -- you
10 know, would try to stress, I think the seriousness of
11 that offense certainly warrants what the presentence
12 report indicates, which is that he got two criminal
13 history points for that one.

14 Each of the marijuana convictions got one
15 point. And there was one point for the embezzlement
16 which Ms. Ginsberg spoke about a moment ago. So it gives
17 the criminal history score of five and it's difficult to
18 see where, you know, any of those points were
19 inappropriately applied as to this defendant.

20 So, we would simply disagree. We think the
21 probation officer scored it correctly. We think the
22 offenses justify that scoring, and therefore there's no
23 basis for finding that the criminal history category is
24 overrepresented in this case.

25 THE COURT: All right.

1 MR. GIBBS: Thank you, Judge.

2 MS. GINSBERG: Judge, if I could just make
3 one other point on that.

4 THE COURT: Sure.

5 MS. GINSBERG: Mr. Wehelie reminds me that
6 the marijuana possession, the second one when he did not
7 appear, he was overseas at the time. So, he -- he was
8 taken overseas by his family. They determined it was
9 better for --

10 THE COURT: For him to miss court?

11 MS. GINSBERG: He missed court, Your Honor.

12 THE COURT: Okay.

13 MS. GINSBERG: I think it does make some
14 difference that he was -- he was out of the country at
15 the time.

16 THE COURT: All right, thank you.

17 Let the record reflect this matter is before
18 the Court for sentencing. The probation officer has
19 properly prepared the report.

20 The defense has filed a motion asking the
21 Court to consider whether or not defendant's criminal
22 history category is overstated where he's listed in
23 criminal history category 3. And the legal question is
24 whether or not the criminal history overrepresents the
25 seriousness of his prior criminal record or the risk of

1 reci di vi sm.

2 I note that the defendant has two
3 convictions. One was a deferred prosecution when he was
4 18 years old in March of 2009. And, the second guilty in
5 absentia in August of the same year, 2009, age 18, and
6 both of these were misdemeanor offenses for which he did
7 not receive incarceration.

8 And then there is an embezzlement offense at
9 age 23 involving his theft from the store he was working
10 at the time, Dick's Sporting Goods where he received a
11 sentence -- an active sentence of 6 months and an order
12 to serve that.

13 And the other conviction is one of statutory
14 burglary for which he received two criminal history
15 category points and was given 3 years incarceration, all
16 suspended on 2 years.

17 As I reviewed this criminal history category
18 along with the *United States versus Nelson*, I think that
19 the legal question is whether or not looking at these
20 convictions whether or not they overstate his criminal
21 history category.

22 And I would think that the misdemeanor
23 offenses, possession of marijuana, when added in with the
24 offense involving embezzlement, also a misdemeanor, I
25 think overstate the criminal history category here in a

1 way that represents the seriousness of his prior criminal
2 record.

3 Typically offenders in criminal history
4 category 3 might have some offense involving weapons or
5 they might have some offense involving drug distribution,
6 and this defendant does not have that.

7 And the Sentencing Guidelines state that
8 overrepresentation of criminal history category is an
9 area where the Court has discretion and must look at that
10 carefully because criminal history category can often be
11 overstated.

12 So in this case I'll grant the motion for
13 lateral departure from criminal history category 3 to
14 criminal history category 2. The offense level remains
15 the same, which is 19. And I believe then the criminal
16 history -- the applicable guideline range would then be
17 33 to 41 months.

18 I want to address Ms. Ginsberg's objection to
19 the report and I said paragraph 46, but that may not be
20 the right --

21 MS. GINSBERG: Your Honor, it's paragraph 47.

22 THE COURT: Paragraph 47 and then also my
23 notice of intent to consider upward departure.

24 Ms. Ginsberg, context matters to me in this
25 issue. Context matters.

1 MS. GINSBERG: Thank you, Your Honor. I
2 think first I'd like to address the context of the actual
3 offense conduct which was the distribution -- the
4 agreement to transmit -- transport these firearms.

5 And I think Mr. Wehelie's initial involvement
6 with this offense was the result of his interactions with
7 an individual who -- with whom he had -- for whom he had
8 been illegally transporting cigarettes.

9 I think the Court has -- I'm certain has read
10 all of the filings. Mr. Wehelie was in, I would guess
11 the best way to describe it is dire emotional
12 circumstances as a result of what was really a tragic and
13 violent assault on his person that has had --

14 THE COURT: In 2010?

15 MS. GINSBERG: In 2010.

16 THE COURT: But this offense occurred in
17 2016; is that right?

18 MS. GINSBERG: That's right.

19 THE COURT: Okay.

20 MS. GINSBERG: And Your Honor, I think that
21 if Your Honor credits Dr. Stejskal's report, there is
22 every reason to believe that the trauma of that offense
23 carried forward and, in fact, he is still suffering from
24 the trauma of that assault.

25 I think that that is -- that conclusion was

1 borne out by the -- Ms. Lazaro who was the case manager
2 or person in charge of the program at the jail that he
3 participated in, which was an intensive treatment program
4 that was mainly directed at treating his substance abuse
5 problems but certainly did address the mental health --
6 very complex mental health issues as -- not only in
7 themselves but as they related to his substance abuse as
8 best they could in that setting.

9 But, it is absolutely clear to -- at least to
10 me, that from the time he returned from Egypt, he was
11 seen by everyone who knew him as an entirely different
12 person.

13 The letters from his family who saw him
14 firsthand and probably had the most interactions with
15 him, I think, are consistent in describing him as
16 emotionally depleted. His mother talked about finding
17 him curled up on the floor crying, exhibiting -- just
18 outbursts of anger, emotional detachment. He withdrew
19 from college. He was unable to hold a job. And his
20 emotional range -- his ranges of emotions was just all
21 over the place.

22 And clearly, according to Dr. Stejskal
23 consistent with someone who was suffering from severe
24 traumatic post distress disorder.

25 So it is in that -- he was unemployed, unable

1 to find or keep a job, partially because of his criminal
2 record and partially because of his own emotional
3 instability.

4 But he was basically medicating himself with
5 an array of drugs that he was doing whatever he could to
6 get his hands on. And so he was selling or transporting
7 untaxed cigarettes and getting a few hundred dollars from
8 that here and there. And it was the person he was doing
9 that for that said you can make some more money if you
10 will agree to transport firearms.

11 And, the individual involved in this was
12 Muslim. And at that time, in Mr. Wehelie's life, a
13 religious and righteous Muslim individual was someone who
14 had a great deal of emotional appeal to him.

15 So, he agreed -- and I don't say any of this
16 as a way of minimizing the seriousness of the conduct.
17 It certainly -- these types of firearms --

18 THE COURT: So he moved from cigarettes to
19 transporting high-powered weapons with magazines from
20 Baltimore to Virginia. And what was he told the reason
21 these weapons were being moved?

22 MS. GINSBERG: He wasn't told. He wasn't
23 told.

24 But, Your Honor, the government conceded as
25 early as the detention hearing in this case that the --

1 the gun offense, the transportation of firearms had
2 absolutely nothing to do with terrorism. It had -- it
3 was -- there was never any suggestion at the time that he
4 did this that there was -- that these guns would be used
5 for anything that would remotely be connected to a
6 terrorism offense.

7 THE COURT: That may well be. But my
8 experience has been that people don't go hunting with
9 AK-47s and military-style weapons.

10 MS. GINSBERG: Judge, there is nothing good
11 about transporting those type of weapons. There is no
12 question about that.

13 And, one can only imagine what they might
14 have been used for. But I agree with Your Honor, there
15 could not be a good purpose for that.

16 What I think is extremely important is what
17 Your Honor mentioned at the outset is context. I think
18 Mr. Wehelie's ability, his mental ability to draw
19 reasonable conclusions and moral conclusions about the
20 propriety of engaging in this kind of conduct was -- was
21 impaired to a degree that permitted him to move from
22 transporting cigarettes to transporting these very
23 dangerous guns.

24 And, I think one of the indications of that,
25 an indication that he really was not --

1 THE COURT: Let me be clear, I think that
2 Virginia is known as a state where citizens have as many
3 weapons as they want. The problem that the defendant has
4 is, as a convicted felon, he may not have weapons.

5 And so, the -- we're not talking about a
6 young man who is stopped by the police carrying a single
7 pistol. We're talking about a person being paid to
8 transport high-powered weapons from one state to another
9 and then you have to, from the standpoint of context,
10 address the statements in paragraph 47.

11 MS. GINSBERG: Okay. I'm going to do that.

12 First, the statements in paragraph 47
13 occurred after he had -- the offense was complete. There
14 were no other -- there's no suggestion that he was -- had
15 transported or was even asked to transport these weapons
16 again or that he might have agreed to do that had he been
17 asked.

18 But, the statements occurred after the --
19 I've been calling him the UCE, had been suggested --
20 encouraging his -- encouraging his devotion to religion.
21 This was something that I think in his state of -- his
22 emotional state --

23 THE COURT: Let me say out loud. I have -- I
24 have not been persuaded that the religion that I know of
25 as Islam promotes killing innocent people or is a

1 religion that is filled with violence. I'm not familiar
2 with that.

3 So, I have difficulty just saying that
4 because of Islam he was led to talk about ISIL. I have
5 trouble with that. I don't know that to be the Islam I'm
6 familiar with.

7 MS. GINSBERG: Well, I think it's not the
8 Islam that most of us is familiar with. But this
9 occurred -- first of all, these statements, they were
10 not -- they were not as the government said, made over an
11 extended period of time. These statements occurred on
12 one day in a long meeting with the UCE in a hotel room.

13 Now, that's not to say that he hadn't thought
14 about these -- these issues. He came to the meeting with
15 some videos that he had seen on Instagram. His
16 involvement with all of this Isis propaganda is based --
17 came from following -- people he was following on
18 Instagram. This was a confused --

19 THE COURT: People that the defendant was
20 following on Instagram?

21 MS. GINSBERG: Several people that he was
22 following. But, Your Honor --

23 THE COURT: He has a right to do that.

24 MS. GINSBERG: He has a right to do that.

25 THE COURT: But, I have difficulty with the

1 statements that were made and the context.

2 And correct me if I'm wrong and help me with
3 the context. As I understand it, this was a meeting post
4 offense where the defendant still had an outstanding
5 request from this individual who had given -- who he had
6 transported high-powered weapons for, to obtain weapons
7 for himself and his cousin that was a part of what was
8 still outstanding, and that they watched a movie or a
9 video about ISIL. And then after that, there was a
10 discussion about him going overseas to join ISIL, and if
11 he couldn't go overseas to join ISIL -- I have the words
12 here. I can read them out loud as you can. They are --
13 they don't sound to me like the statements of somebody
14 that was high on drugs. And they don't sound like the
15 statements to me that were the product of some
16 spontaneous -- it was the product of some kind of thought
17 process that was not -- "I would say I would like to go
18 like to recruitment centers". That's the defendant
19 speaking.

20 "Why recruitment centers", the undercover
21 says.

22 The defendant, "There's a bunch of soldiers
23 there".

24 "Why there instead of some other place?", the
25 UCE says.

1 The defendant, "Cause I think there will be
2 less security and more damage I can do. If I want to do
3 that, I want to do a lot of damage. I don't want to get
4 one guy. I want to get like 20 of them or something like
5 that, you know. Nothing is impossible".

6 "It's very difficult."

7 "Other than that, any shopping center, you
8 know, just catch those niggers just sitting there, you
9 know, in Springfield. You see them chilling there and
10 say hey, what's up. Come there one day, come in one day,
11 act like I'm cool. Sign up, like, you know, show my
12 face, you know, sign up. They're like okay. Next time
13 they see me open arms. Next time, I just don't know,
14 like nothing is gone. It's the whole spot gone".

15 UCE, "Empty a clip?"

16 Defendant, "Just empty the clip. Everyone at
17 me."

18 "Which recruitment center? Army, Navy,
19 Airforce, Navy, where?", UC.

20 "Anyone. Especially I love to catch Marines.
21 I hate those guys."

22 UC, "Why Marines?"

23 Defendant, "Cause I think they're so tough.
24 They think they're so bad. You know, they think they're
25 number one. That's the number one so-called bad ass,

1 right, like the toughest American from all those guys are
2 the Marines."

3 MS. GINSBERG: Judge --

4 THE COURT: That doesn't sound like something
5 that happened just that day. That had been something
6 that had been ruminating around in his mind for a long
7 time.

8 MS. GINSBERG: Judge, first of all, the
9 question of whether he was high or not, he was high every
10 day. He was high every day.

11 THE COURT: You and I have handled hundreds,
12 thousands of cases involving people who get high. Never
13 once have I had someone get high and say, you know what
14 I'm going to do? I'd go overseas and get guns. I'd go
15 to Springfield or some place and kill Marines. I've
16 never heard that before, ever.

17 As a human being, I'm a 65 years old. I've
18 been doing this 40 years, and you've been doing this
19 equal amount of time. We've never had a case like that,
20 never.

21 MS. GINSBERG: Judge, I understand what
22 you're saying, but I have also heard young children, 10,
23 11, 12 years old, after watching some of the video games
24 that are as violent as anything you can imagine say
25 comments, that although not in the context of Isis are

1 not any different than that.

2 And I think Your Honor can't disagree with me
3 that you have heard children, after they play these
4 violent games after they do -- they are encouraged by
5 their friends. They talk about what they're going to do
6 about blowing people up, how they can't wait to get their
7 hands on this and get to there and they came up with the
8 most elaborate of schemes. These are 10, 11, 15 years
9 old.

10 THE COURT: We're talking about a person who
11 attended college for more than a year and who was 23,
12 24 years old and who had come back from Yemen and Egypt
13 four years earlier and who was following Instagram ISIL.

14 I understand what you're saying, and I
15 received Mr. Wehelie's letter. I'm just having real
16 difficulty erasing those words I just read out of my
17 mind.

18 And I have to be clear that obviously the
19 Sentencing Guidelines are advisory here and I gave you
20 notice that I'm considering an upward departure, not just
21 because of the statements, but because of the context.
22 The context matters to me.

23 Transporting high-powered weapons, then
24 having a conversation with the person supplying
25 high-powered weapons and going beyond that and saying,

1 not just get me a weapon. Let me tell you what I'm going
2 to do with the weapon.

3 MS. GINSBERG: Judge, let me just say this.
4 The request to get a gun, Mr. Wehelie's request to get a
5 gun occurred months before -- I think at or before the
6 time that he transported the weapons.

7 He never followed up on that. These were
8 clearly, clearly people who had access to firearms.
9 Mr. Wehelie made one request -- made one request saying
10 that he would like -- asking can he help him get a
11 firearm.

12 THE COURT: Can you point me in this record
13 to any statement he's made where he withdrew what I just
14 said?

15 MS. GINSBERG: Well, Your Honor, yes. I can
16 tell you in his text to the undercover, the UCE, he says
17 on April the 3rd, which is about 2 or 3 weeks later, he
18 says, "I'm starting to have doubts. Isis, bro, they been
19 doing a lot of bad and killing innocent people. So, I'm
20 confused now, bro, like if they really on the truth. I
21 don't know, bro. I'm just confused. It's all problems.
22 But it's the problems over there. I don't know which
23 team to be on. Maybe I'm wrong. I need to start praying
24 and getting close to Allah. I just love the fact that
25 they were trying to make a Muslim state. I thought I was

1 sure, but I just took a step back and looked at those --
2 at the facts."

3 And then he breaks off contact with the
4 undercover.

5 THE COURT: I read that, too, but I didn't
6 say where he withdrew the threat. Did you?

7 MS. GINSBERG: Judge, he didn't -- he
8 didn't -- he didn't --

9 THE COURT: Even in the statement he wrote to
10 me, he doesn't say I withdraw those words.

11 MS. GINSBERG: Well, Your Honor, I think he
12 did in so many -- I mean, if Your Honor is looking for
13 that -- those specific --

14 THE COURT: I would expect someone facing
15 sentencing would say, absolutely, that those statements
16 are false. I withdraw them and I disavow them. I expect
17 that.

18 MS. GINSBERG: I think he did.

19 THE COURT: Okay.

20 MS. GINSBERG: I think he did. He certainly
21 has in every conversation I've ever had with him.

22 THE COURT: I don't doubt that. I don't
23 doubt that he's told his lawyer that.

24 MS. GINSBERG: Well, Your Honor, I -- if Your
25 Honor -- if Your Honor -- and I -- if Your Honor puts any

1 faith in my judgment about people, I will tell you that I
2 think that the statements he have made -- has made have
3 been genuine, heartfelt and are a true representation of
4 his --

5 THE COURT: I don't doubt your integrity, and
6 your integrity is not in issue. This is your client, not
7 your cousin.

8 MS. GINSBERG: Your Honor, Mr. Wehelie was
9 under surveillance as -- these were obviously alarming
10 comments. I cannot imagine that the United States did
11 not employ every means of surveillance available to it,
12 including the use of FISA intercepts.

13 They knew when he was going to get on a plane
14 to Minnesota. They knew he'd traveled to Ohio. They
15 showed up at his house. They knew the cars that were
16 coming to his house. They knew who he was coming and
17 going with. They knew the places he was going. And they
18 found no indication whatsoever of any conduct that would
19 be supportive of any of those comments.

20 And, the government arrested him and tried --
21 and says, well, we couldn't have ignored the fact that he
22 might have left the country. No one is disputing the
23 fact that it was a prudent thing to arrest him.

24 But they found no indication that he planned
25 to leave the country. They knew exactly what he was

1 doing. They knew who he was talking to. And they know
2 that nothing of any substance came up as a result of
3 their surveillance of him. And had there been, we would
4 be facing very, very different -- we would be in a very,
5 very different position today.

6 And I think regardless of the words he used,
7 his conduct, what -- this Court -- what should be
8 important to this Court is what he did, not what he said.

9 THE COURT: I appreciate what you just said.
10 Thank you.

11 MS. GINSBERG: Thank you, Your Honor. And,
12 Your Honor, I -- in -- how you explain how a person who
13 is otherwise so obviously as considered by his family and
14 the people that know him, who is so obviously a loving,
15 caring, nonviolent individual could arrive at a point
16 where he was uttering such chilling words, there has to
17 be an explanation for that. He did not have a history of
18 being involved or even being interested in the slightest
19 degree in organizations like Isis. He didn't do anything
20 ever. He didn't -- when the undercover agent suggested
21 that they send blankets overseas, he didn't say, oh,
22 yeah, I'll get you some blankets. He didn't do anything
23 to back up any of these words.

24 Now, I can't argue with you. It sounds like
25 an elaborate thought process. I don't know how he came

1 to say those things. But, what I do know is that his
2 behavior, his conduct which was under close examination
3 by the government as well it should have been, didn't
4 turn up anything that was consistent with the threats
5 that he expressed.

6 And so, why he came to -- how that happened?
7 Why he -- I'm sure -- he is anxious to address the Court.
8 I'm sure you're going to ask him. How did this happen?
9 How did you say these things? Where did it come from?
10 They obviously sound well thought out.

11 But, I don't know what goes on in the mind of
12 someone who has been through the years -- at this point,
13 this was five years of emotional dissolution and how he
14 comes to that point. And if he -- and it sounds like he
15 did. He briefly flirted with some of the ideas that Isis
16 was putting out to the world. But, he didn't do anything
17 about it. And he didn't follow up with the people who
18 could have gotten him firearms. He didn't follow up with
19 these individuals who could have put him in contact with
20 anybody that could put him on a boat to go overseas. He
21 hid from them.

22 He stopped answering their calls, their
23 texts. He hid from them. And the government kept their
24 eye on him. I have to assume, and I'm sure the Court
25 would expect, that they kept a very, very close eye on

1 him. And they found nothing. They found absolute --
2 they found that he did absolutely nothing.

3 And if they -- they had access to his phone
4 after he was arrested. I -- I would expect they had
5 access to his phone beforehand or at least who the people
6 he was calling. They would have seen from his text
7 messages he was going to Minnesota to stay with his aunt.
8 He was making arrangements to get together with young
9 women. That's not the kind of conduct someone who is
10 planning an escape from the United States and go overseas
11 and commit some kind of violent act.

12 This was a desperate young man who was
13 falling apart, whose family relationships had totally
14 disintegrated, who was ashamed because he could barely
15 look his family in the eyes. And you can see from the
16 letters they wrote, what kind of amazing people they are.

17 THE COURT: Thank you, Ms. Ginsberg.

18 MS. GINSBERG: Thank you, Your Honor.

19 THE COURT: Let me hear from the government.

20 MR. GIBBS: Thank you, Judge.

21 Judge, to your point about the context, I
22 think Your Honor obviously has read through the pleadings
23 very carefully and is familiar with the undercover call.
24 And I think the government shares the concern about those
25 statements. And I think in terms of that context, it's

1 important to point out as the Court noted, the defendant
2 did make statements to the undercover about getting his
3 own gun and this was earlier. This was in January and
4 February of 2016.

5 February 18th of that same year was the date
6 of the offense. So, that's the date that the defendant
7 was agreeable to, for \$300, transporting these four
8 high-powered weapons from Maryland to Virginia.

9 So, the offense occurred and the defendant
10 willingly joined it, participated in it, transported the
11 guns, turned them over to another individual in Virginia
12 but then stayed in touch with the undercover. And there
13 were communications with them. A number of them were
14 recorded. One of them was attached to our pleading where
15 he makes this -- these comments on March 30th.

16 Now, as Ms. Ginsberg already pointed out, the
17 defendant, you know, had this interest in Isis. He
18 looked at them on Instagram. Apparently there was
19 something very appealing about this group, about their
20 ideology, what they portrayed in the media and the
21 violence that they espoused.

22 And I think one of the things that is
23 especially troubling about the March 30th communication
24 with the undercover is, as you read through the
25 communication, the undercover is not sort of pushing

1 Mr. Wehelie in any particular direction. He's asking
2 questions.

3 And the UC asked about what would you do if
4 you weren't -- in the context of joining Isis, what would
5 you do if you were not allowed to travel and you couldn't
6 go overseas to join Isis? And that's the point at which
7 Mr. Wehelie comes up with this very detailed, thorough,
8 chilling plan about what he would do. And the Court read
9 some of that into the record.

10 And it's -- it's a bit hard to believe that
11 this is an individual who was high and had smoked
12 marijuana, and yet he's sitting there having these
13 conversations and sort of laying out in great detail what
14 it is he would do if he were prevented from traveling.

15 So, I think we agree with the Court that
16 these are incredibly troubling statements and certainly
17 give the government pause. And I don't think it's fair
18 as Ms. Ginsberg suggested to say that, oh, well, the
19 government has lots of resources. They clearly were
20 concerned about this guy because of these statements and
21 other things, and so, they would have had all the
22 surveillance and it's okay. Everybody was safe. We
23 don't have to worry about that.

24 THE COURT: The defense says that the
25 government agreed that there should be no enhancement for

1 factors involving terrorism; is that right?

2 MR. GIBBS: It is correct, Judge, and that is
3 right. I mean, we would argue that the terrorism
4 enhancement doesn't apply in this case, because again it
5 has to apply in terms of the offense of conviction. And
6 we don't argue that the defendant should get bumped up to
7 a criminal history category 6 and up to level 32 based on
8 that. I mean --

9 THE COURT: Well, I kind of had the
10 impression that that was a judgment that you all reached.
11 But that did not mean that I could not consider the
12 conduct that occurred during the investigation post
13 offense. And this appeared to me to be post offense
14 conduct that was still during the investigation. And the
15 question I have -- the legal question I have, is it
16 relevant conduct?

17 MR. GIBBS: Judge, we believe it is, and I
18 think we believe that this is part of the, you know, in
19 terms of the context of the offense, this occurred about
20 six weeks after the crime itself was committed, but it
21 occurred in the context of continued discussions with
22 this same undercover employee. They had still stayed in
23 touch. They were still getting together. They were
24 still -- nothing had happened.

25 And again, I think there was a discussion

1 earlier about whether the defendant had withdrawn from
2 any sort of criminal conduct or expressed his desire to
3 withdraw. That didn't happen.

4 So, from the time that the guns were
5 transported up to the time of the March 30th statements,
6 the defendant continued to stay in touch with the UCE,
7 continued to talk to him, continued to talk to him about
8 these troubling comments. And so, we would argue that
9 these are facts that the Court should have the ability to
10 consider in fashioning an appropriate sentence in this
11 case.

12 THE COURT: So, the context issue is one that
13 I want you to address as well.

14 The person he was talking to had the capacity
15 to provide weapons. He knew that because the person
16 actually hired him to move weapons.

17 MR. GIBBS: Correct.

18 THE COURT: So, the context of discussion is
19 post offense, but it has to do with weapons, that is to
20 say how weapons would be used if he could not leave the
21 country and what he would do with them.

22 MR. GIBBS: That's right, Judge. And,
23 interestingly, in the discussions he had with the
24 undercover, I don't believe -- and Special Agent Gaylord
25 is here. I'm sure he can correct me if I get this wrong,

1 but I don't believe there was any discussion of the
2 defendant saying, yeah, this is a great plan. I really
3 thought it through, but my one problem is I can't get
4 weapons. I mean, I don't think he expressed sort of,
5 that that would be a big hindrance in terms of this.

6 And he never expressed it in terms of, you
7 know, I'll do this with a knife or I'll do this with a
8 sword. He talked about getting a gun and spraying the
9 entire clip. So --

10 THE COURT: What effect, if any, should I
11 give the statements Ms. Ginsberg read in the text
12 messages about having doubt?

13 MR. GIBBS: Well, I think later there were
14 some doubts expressed. And as the -- as the
15 investigation continued, I think from what we could tell,
16 Mr. Wehelie did withdraw. Seemingly he had had
17 discussions with other individuals and it appeared that
18 he began to have suspicions towards the undercover, that
19 he might be a government agent which as it turned out was
20 accurate.

21 THE COURT: So, you think that the statements
22 in context about having doubts were after he had an
23 impression the person he was talking to was an undercover
24 agent?

25 MR. GIBBS: That's correct. And at the time

1 of the statements on March 30th, Mr. Wehelie appeared not
2 to have any doubts. He appeared very trusting of the
3 undercover and appeared to feel as though he could talk
4 about his affinity for Isis openly and freely with that
5 individual.

6 THE COURT: All right. Well, talking about
7 Isis is not the same thing as having a plan to do
8 something for Isis, is it?

9 MR. GIBBS: No, not at all, Judge.

10 THE COURT: Okay.

11 MR. GIBBS: Thank you, Judge.

12 MS. GINSBERG: Your Honor, if I might, first
13 of all, it's not necessary to withdraw from a -- assuming
14 there was a plan which I don't concede for the first
15 instance, but someone can withdraw from criminal conduct
16 or anticipated criminal conduct without announcing to the
17 people that they had been talking to that I am
18 withdrawing. They just stop.

19 And, that's a -- that's something courts
20 consider all the time. You don't have to actually use
21 the -- you have to remove yourself, but you don't have to
22 say, hey, so and so, I'm withdrawing from this.

23 And, I think his conduct is evidence that
24 that's exactly what he did. And I will tell the Court
25 part of the reasons that this case has been -- the

1 sentencing has been continued so many times is because I
2 have requested discovery, some of which has been
3 produced, some of which hasn't for reasons perhaps of
4 national security.

5 But I have requested any -- the government
6 produced anything that suggests that this was -- that
7 there was anything relevant to this discussion that we're
8 having right now. And I can tell you that I received
9 absolutely no evidence, nothing from the government that
10 indicated that there was a basis for Mr. Gibbs's
11 statement that he may have suspected that this was an
12 undercover agent.

13 And if that's existed, that's something that
14 should have been disclosed, and I don't believe it. I
15 don't -- I don't believe that Mr. Wehelie had the
16 slightest inclination that this -- that the person he was
17 talking to was an undercover agent. And I think if the
18 Court is even going to consider that, the government has
19 an obligation to make the basis of that known to the
20 Court and to me.

21 THE COURT: All right.

22 MS. GINSBERG: But, aside from that, when
23 Mr. Wehelie agreed to transport these firearms, he didn't
24 know what kind of firearms they were talking about. He
25 got to this hotel. He got -- he got to the hotel room

1 late. I mean, that's how excited he was about
2 transporting firearms. He was supposed to be there early
3 in the morning. He didn't arrive there until sometime in
4 the afternoon. They'd been trying to reach him. He
5 didn't hear the phone because he was passed out from
6 having been up and using drugs the night before. That's
7 the state of mind he was in when he went to pick up these
8 firearms.

9 He also -- the government also has no -- can
10 say he didn't -- he didn't say well, I would do this but
11 I can't do it because I don't have guns. They know that
12 he didn't ever make a second request for the undercover
13 agent or anybody associated with him to get him guns.
14 And they offered to sell him other types of weapons. He
15 didn't -- he didn't follow up on any of that. And they
16 have no reason based on their surveillance to think that
17 he had any way of ever finding firearms.

18 So, I think that the -- as horrific as these
19 statements were, what really matters is what he did and
20 actually what he didn't do. And that when Your Honor
21 asked for context, that is the most -- you can't get into
22 someone's head. You or I will never really know what
23 inspired those comments, as troubling as they were.

24 But what we do know is what he did not do.
25 He did not attempt to obtain a firearm or any kind of

1 weapon from these individuals or anybody else. He took
2 no actions that were consistent with the statements he
3 made. He was a -- what I would call a very damaged
4 individual who was in excruciating emotional pain, and he
5 made what are obviously more than regrettable comments,
6 but this Court can't point to any objective evidence that
7 he ever intended to carry them out.

8 And that's really what -- the crux of this.
9 They're troubling words, but we don't put people in jail
10 for their words.

11 THE COURT: Thank you, Ms. Ginsberg.

12 MS. GINSBERG: Thank you, Your Honor.

13 THE COURT: The record should reflect that
14 I've considered the -- whether to sustain defense
15 objections to removal of the comments in offense behavior
16 not part of the relevant conduct in paragraph 47 that
17 I've described on the record. I'm going to overrule the
18 objection. I will leave the statements in.

19 I have decided from the standpoint of
20 procedural sentencing issues that the guidelines will
21 remain as I announced earlier granting the defendant's
22 motion for downward departure from 33 to 41 months. And
23 I will consider those comments as it relates to 3553(a)
24 what judgment I make about sentencing.

25 So to be clear, the guidelines are

1 procedurally correct as I've just announced. I'll leave
2 the information in and I am going to consider them as it
3 relates to what I do in the 3553(a) for sentencing.

4 Does the government have anything you want to
5 say about sentencing, 3553(a)?

6 MR. GIBBS: Judge, just very briefly, I think
7 most of this was covered in our moving papers. You know,
8 the offense itself of moving the guns, we believe that
9 the guidelines as currently calculated accurately reflect
10 that offense, the 33 to 41 months. But, again, that
11 offense was committed in the context of these additional
12 discussions with the undercover employee from March 30th.
13 And those statements were obviously incredibly troubling
14 to the government, to the FBI.

15 It was really those -- because, again, those
16 statements were made in the context of a question about
17 what would you do if you were prevented from traveling
18 over there. He made the comments about attacking a
19 Marine Corps recruiting station and spraying the clip.

20 And so, it was in July of 2016 when the
21 defendant first tried to travel. He was going to
22 Minnesota. The FBI just couldn't be certain that that
23 wasn't an attempt to get close to the Canadian border and
24 travel across. So he was arrested immediately upon that,
25 because in his own comments, there was a trigger. It was

1 "if, then". If I can't travel, then I will go commit
2 this crime.

3 And, as troubling as they were, and given the
4 closest in time and the fact that it was still with the
5 same undercover, we would argue that those are facts that
6 should be taken into consideration by Your Honor in
7 fashioning an appropriate sentence under the 3553(a)
8 factors. So --

9 THE COURT: If someone threatens to kill the
10 President of the United States, and they're here and the
11 President of the United States is in Paris, is that a
12 criminal offense?

13 MR. GIBBS: I believe it is, yes, Your Honor.

14 THE COURT: Is there any First Amendment
15 right to threaten to kill the President of the United
16 States and not have any present ability to carry it out?

17 MR. GIBBS: Your Honor, it's been a long time
18 since I've done any of those cases --

19 THE COURT: Let me put it this way. Could
20 someone sitting in Alexandria threaten to kill the
21 President of the United States knowing he's in Paris, and
22 not have any weapons? If it is determined to be a true
23 threat, could that person be prosecuted in federal court?

24 MR. GIBBS: I believe they could, Judge.

25 THE COURT: All right. Thank you.

1 MR. GIBBS: Thank you, Judge.

2 MS. GINSBERG: Judge, I have to say that I
3 am -- to say disturbed is to --

4 THE COURT: You have a tough job here. I
5 understand that. But make your statement.

6 MS. GINSBERG: Your Honor, first of all, I
7 think it is entirely disingenuous and inappropriate for
8 the government to make the statement it just did in terms
9 of what it believes is an appropriate sentence.

10 And, I say that because when the government
11 filed its initial sentencing pleading, it took into
12 account every single thing that we've been talking about
13 here and made reference to these comments, made reference
14 to the seriousness of these comments.

15 Your Honor knows that these sentencing
16 recommendations are not the idle recommendation of a
17 single prosecutor but are vetted and well thought out,
18 especially in this context.

19 And the pleading, the initial pleading that
20 the government filed in this case said that it believed
21 that a sentence within the guidelines was an appropriate
22 sentence.

23 And, to then come to this court after Your
24 Honor files a notice of intent for a possible upward
25 departure and essentially change its considered view of

1 what an appropriate sentence is because the Court
2 indicated that it might impose a harsher sentence, to me
3 is a -- an incredibly disturbing thing to have happen.

4 And it shakes my confidence. And I think it
5 will shake the confidence of other defense counsel in its
6 ability to rely on representations that the government
7 makes. And I think it should disturb the Court that it
8 can represent what it believes is its considered judgment
9 and then when it thinks it has an end, to stick it in a
10 little harder, to come back and disavow what was
11 obviously a considered judgment at the outset. And I
12 find that extremely offensive, and I'm very disturbed by
13 it.

14 Notwithstanding that, I'm not going to -- I
15 don't think it's necessary to repeat the information
16 that's in Dr. Stejskal's report. Your Honor has his CV.
17 He is clearly an extremely qualified professional and
18 extremely qualified to make the assessments that he did.

19 This is an individual who was suffering from
20 the symptoms of severe PTSD which Dr. Stejskal and
21 Ms. Lazaro both believe he is continuing to suffer today.

22 And he is sitting here. He wrote you a very
23 articulate letter. You will hear him speak. He does not
24 look like someone who is in extreme distress. But, Your
25 Honor, this is an individual who suffered a horri fic,

1 violent assault on his person that affected his very
2 core. And he drowned himself in drugs and probably
3 became like any other alcoholic who looks normal when
4 he's high as a kite because he was in extreme pain.

5 Dr. Stejskal says he is still experiencing --
6 and I think that the jail -- the jail had -- is in
7 agreement with this. He did extraordinary -- he made
8 extraordinary efforts to get whatever treatment was
9 available to him while he was at the jail. Everybody --
10 there's no question he benefitted in an extraordinary way
11 from this.

12 Confronting -- confronting these issues in a
13 jail and having to process and cope and maintain in a
14 jail is something that is probable more difficult in a
15 psychological sense that most people ever have to deal
16 with.

17 This -- this is the sign of someone with
18 character, with integrity, someone I think that the Court
19 can rely on when he said this is not what I ever intended
20 to do. And this is what I will never do -- never say or
21 ever do in my lifetime again.

22 And I think every indication that the Court
23 has is that this is an individual who was at a breaking
24 point five years later, is still today.

25 Dr. Stejskal says it is important where he

1 goes to prison, that the -- that the people who are going
2 to be taking care of him are aware that he could, I
3 forget the term he used, but that he could fall into a
4 severe emotional state if -- if he's not in a proper
5 setting.

6 So, the fact that he has been able to do well
7 in the jail, that he's completed programs that he's --
8 what appears to be a thoughtful and articulate individual
9 does not mean that he was not gravely affected by what
10 happened to him.

11 And frankly, to me, that is the best
12 explanation for those words from someone who was never --
13 never would have been expected to behave that way before
14 and who's given every indication since that he will
15 never, ever be involved in anything like that again.

16 THE COURT: All right. Mr. Wehelie, if you'd
17 come to the podium with your lawyer, please.

18 Good morning.

19 MR. WEHELIE: Good morning, sir. How you
20 doing?

21 THE COURT: I'm fine.

22 Mr. Wehelie, is there any statement you want
23 to make on your behalf? You've been listening to all
24 these discussions we've had. What do you have to say?

25 MR. WEHELIE: I would like to start out by

1 saying I take full responsibility for the actions and
2 crimes I committed. And I also truly wholeheartedly
3 regret the statements I said and definitely disavow them
4 and discredit it.

5 And I don't -- I don't ever believe that
6 someone who is really a follower of Islam, who calls
7 himself a Muslim will ever commit violence in their
8 religion or anything like that. That does not
9 representative Islam. It does not represent my parents
10 who are the true example of Islam and the American dream.

11 They've come to this country with nothing and
12 they have everything now. And they're the most peaceful
13 and the most humblest people that I know, and they always
14 support me and have my back.

15 And, when I do have an opportunity to go back
16 to society, I do plan on finishing my school. And I want
17 to help people who have been in my situation, who have
18 been through what I've been through, who have been
19 through, like, what happened to me in Egypt.

20 I want to help because only someone who's
21 been in those shoes can really understand what a person
22 really goes through. And, I really feel like this 1 year
23 and 1 week of incarceration has really changed my life
24 and I finally looked at myself in the mirror, and I
25 really see a different person. I'm not the person -- I

1 didn't like myself before. I hated myself for no reason.

2 I finally accepted -- I finally have
3 acceptance. That's what I learned in the drug program.
4 That's the first thing I learned is acceptance. I accept
5 that what happened to me is not going to define me. And
6 after this, after this speed bump, I'm going to be
7 successful. I'm going to be a person that people can
8 look back and say, wow, he's been through this and look
9 what he's -- look how -- he became a better person. Look
10 he's successful, and he has a family. And I have a lot
11 of plans, and I'm going to do that when I do get an
12 opportunity, Your Honor.

13 And, thank you for letting me speak today.

14 THE COURT: All right. Mr. Wehelie, you're
15 before the Court for possession of firearms by a
16 convicted felon. And offenses involving weapons and a
17 person convicted of a felony in and of itself are serious
18 offenses. But, your case is distinctive in several
19 respects.

20 First, you were just involved with untaxed
21 cigarettes and somehow became involved with this
22 individual who offered you the opportunity to transport
23 weapons for money.

24 And your lawyer has given me context that
25 says that you were using drugs and financially in dire

1 straits and not in school anymore. You completed a year
2 of school and you stopped going to school.

3 And that offense involved transportation of
4 weapons that were powerful, high capacity magazines
5 weapons that are not weapons for hunting or target
6 shooting but very serious weapons that could only have a
7 nefarious criminal purpose if brought to the streets of
8 Virginia, which is what you did to bring them to
9 Virginia.

10 The offense in my mind also, from the
11 standpoint of context involves the events that preceded
12 it from the standpoint of your, as you described, what
13 occurred in Egypt, coming back to the United States and
14 then five years later or nearly five years later, this
15 involvement with this individual takes place.

16 You're following ISIL on Instagram and about
17 four weeks after the offense, there's this meeting with
18 the undercover, and the investigation continues at this
19 point. And, you were watching ISIL video. And you heard
20 me read what I read about what you said and what you
21 would do.

22 And I've been trying to think about that from
23 the context of sentencing you for the offense you
24 committed and taking into account all the conduct,
25 because a judge is not restricted in what they consider

1 at sentencing. I have to consider the whole individual.

2 And, the person that your family described is
3 not the person who made those statements on that day.

4 The person who made those statements on that
5 day is someone who poses a threat to public safety at a
6 military recruiting center. And the description of how
7 it would go -- take place is not just chilling, it was
8 something that would not be a spontaneous thought that
9 someone who was using drugs would have.

10 I've sentenced maybe thousands of people who
11 have been affected by drugs. Not one has ever said I
12 want to kill Marines in the name of ISIL. Not one has
13 said I want to commit mass murder or I'm even thinking
14 about it with the detail that you said.

15 And I would expect you to come here today and
16 say, well, Judge, I don't believe those things any more.
17 I disavow it. I expect you to do that. And I would
18 expect you to do that because you realize that you're in
19 federal court and federal courts have cases like this.

20 Now, I understand and I've taken into account
21 the fact that you were under surveillance for nearly a
22 year. And the government had the opportunity to observe
23 what you did. And there was nothing that rose to the
24 level that would bring you to criminal court. And this
25 weapons offense was one of opportunity. And it was

1 presented to you and you readily took it.

2 But when the discussion talked about -- after
3 ISIL -- watching the ISIL video what you would do, I've
4 tried to say to myself, well, can you walk those words
5 back and how do they fit in the context. And the way
6 they fit in the context to me is the person you were
7 speaking with was not some random individual. It was an
8 individual who you knew had the capacity to provide you
9 with high magazine, very serious weapons, because he had
10 already done it before a month earlier.

11 And while there's no evidence that you
12 visited a military recruiting station, I have grave
13 concerns about a young man even talking about such a
14 thing. I have concerns that since you're willing to move
15 weapons in exchange for money, that had you had your own
16 weapons or were provided with your own weapons that you
17 might actually carry out such an act.

18 And I recognize the offense before the Court
19 is one of possession of weapons, and I've said that
20 several times. And in weighing the offense and the
21 applicable guideline range, the guidelines cover in
22 their -- the Sentencing Commission has said the
23 guidelines cover the mainstream offense. I don't
24 necessarily agree with that, because I don't think
25 there's any empirical evidence that shows that the

1 guidelines themselves have any relationship to what
2 punishment is appropriate in every single case. One size
3 does not fit all.

4 As I evaluate your case, I'm convinced that
5 the guidelines are inadequate to take into account the
6 post offense conduct that demonstrates a mindset that is
7 one that we can only measure a person by their words and
8 their actions.

9 And, Ms. Ginsberg is right. There are no
10 actions that I can point to where you obtained a weapon
11 or visited a military recruitment center. But I can
12 certainly measure you by your words, and I will.

13 And I've considered the submissions in both
14 sides' briefs, and the arguments, the sincere arguments
15 made by counsel and your counsel, in particular.

16 I take you at your word. Given you've travel
17 to Yemen, your statements made to the undercover officer,
18 I will not turn a blind eye to what a person says to
19 someone who has the capacity to provide weapons within
20 30 days of the offense.

21 My judgment is the Court may properly take
22 into account these statements made about what he would do
23 with weapons and his description of plan to commit an act
24 in the name of ISIL.

25 I have no First Amendment problem here as I

1 conclude the threats to commit violence against the
2 United States, the United States military recruiting
3 offices 4 weeks after handling high-powered weapons does
4 not protect First Amendment speech.

5 I acknowledge that the threat here is a
6 verbal one to undercover individual contemporaneous in
7 the sense that it's 4 weeks later to someone who had the
8 possibility of providing weapons. And it always is
9 impossible to predict a person's actions.

10 But the context here of 4 weeks earlier
11 having transported high-powered weapons, watching ISIL
12 video, discussing travel overseas to join ISIL and then
13 spontaneously describing a detailed plot to carry out
14 mass murder at a military recruiting station is not
15 something within the normal Sentencing Guidelines. They
16 could not take into account such an aggravating factor
17 and under 3553(a), they could not take into account such
18 a high aggravating factor.

19 And I do not find your statements to be
20 puffery. They were not a joke or idle chatter. And the
21 events, if carried out, would have certainly been
22 devastating.

23 I recognize that I could very easily sentence
24 you to a guideline sentence. However, I've determined
25 that a guideline sentence would be insufficient, under

1 3553(a), to take into account the nature of the offense
2 and the context of the offense.

3 My judgment is I'm going to sentence you to
4 120 months in the custody of the Bureau of Prisons. I'm
5 going to place you on a 3-year term of supervised
6 release. I recommend that you participate in the
7 500-hour residential drug treatment program.

8 I will make a special condition that you
9 participate in mental health treatment at the direction
10 of the probation officer and waive confidentiality as to
11 the mental health provider so the mental health provider
12 can speak to the probation officer.

13 I require you to participate in substance
14 abuse testing and treatment at the direction of the
15 probation officer. I will recommend to the probation
16 office they -- I will recommend to the Bureau of Prisons
17 that you be allowed to participate in the 500-hour drug
18 treatment program.

19 Ms. Ginsberg, I was thinking FCI Butner,
20 North Carolina. Do you have any other placement in mind?

21 MS. GINSBERG: Your Honor, we were going to
22 recommend that or Fort Dix.

23 THE COURT: FCI Fort Dix.

24 MS. GINSBERG: Either Butner for Fort Dix.

25 THE COURT: Okay. I'll put in the

1 recommendation to the Bureau of Prisons FCI Fort Dix or
2 FCI Butner, North Carolina.

3 MS. GINSBERG: Judge, if --

4 THE COURT: I will not impose any fine, cost
5 of incarceration or cost of supervision because I make
6 the judgment you do not have the ability to pay those
7 things. And the \$100 special assessment has to be paid
8 right away.

9 Yes.

10 MS. GINSBERG: I just want to point out that
11 I think it's a good idea for him to -- and I think he
12 would want to participate in the RDAP program. But just
13 point out to the Court he will not get -- he will not be
14 eligible for sentence reduction as a result of that.

15 THE COURT: I understand. I would hope he
16 would want the program to get sober.

17 MS. GINSBERG: Yes, sir.

18 THE COURT: Thank you. You all are excused.

19 (Proceeding concluded at 10:11 a.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United State District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the sentencing hearing in the case of United States of America vs. Yusuf A. Wehelie.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said sentencing hearing, and that the foregoing pages, numbered 1 to 52, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 10th day of August, 2017.

/s/
Renecia Wilson, RMR, CRR
Official Court Reporter