

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. LAWRENCE J. O'NEILL

UNITED STATES OF AMERICA,	)	
	)	1:12-cr-199 LJO
Plaintiff,	)	
	)	SENTENCE
vs.	)	
	)	
EDWARD MITCHELL,	)	
	)	
Defendant.	)	
_____	)	

Fresno, California

Monday, September 23, 2013

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY: PEGGY J. CRAWFORD, RDR, CRR, Official Reporter

APPEARANCES OF COUNSEL:

For the Government:

**KIMBERLY SANCHEZ**  
Assistant U.S. Attorney  
2500 Tulare Street, Rm. 4401  
Fresno, California 93721

For the Defendant:

FEDERAL DEFENDER'S OFFICE  
2300 Tulare Street  
Suite 330  
Fresno, CA 93721  
BY: **MARC DAYS**,  
Assistant Federal Defender

1 Monday, September 23, 2013 Fresno, California

2 9:04 a.m.

3 THE COURT: Number 6 on calendar, Edward Mitchell.

4 Your appearances on the Mitchell matter?

5 MR. DAYS: Good morning, your Honor. Marc Days with

6 Edward Mitchell, who is present in court. He is in custody.

7 MS. SANCHEZ: Kim Sanchez representing the United

8 States.

9 THE COURT: Are we proceeding today with judgment and  
10 sentencing?

11 MR. DAYS: We are prepared to proceed, your Honor.

12 MS. SANCHEZ: Yes, your Honor.

13 THE COURT: Okay. What's your name?

14 THE DEFENDANT: Edward Mitchell.

15 THE COURT: Mr. Mitchell, have you had a chance to  
16 review the amended Presentence Report with your attorney?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions that remain?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. The Court has received and  
21 reviewed the 28-page amended Presentence Report of  
22 September 20; also the 11(c) agreement; the government's  
23 sentencing memorandum; the amended memo and supplemental memo  
24 of the government; the defendant's sentencing memorandum, and  
25 numerous letters, including one from the defendant and seven

1 others.

2 The Court notes the offense level to be 17. History  
3 Category is IV. Guideline range is 37 to 46, but Probation is  
4 recommending an upward departure of 96.

5 The Court notes on Count 2, the maximum is 120 and on  
6 Count 3, it is 240, maximum amounts.

7 The Court has considered the numerous 3553(a)  
8 factors.

9 Do you wish to be heard further, Mr. Days?

10 MR. DAYS: Yes, your Honor.

11 THE COURT: And I will just tell you, so you are not  
12 guessing. I'm looking at page 5, at line 23 of the  
13 government's amended sentencing memorandum, and I must tell  
14 you that that's exactly how I'm viewing it. And I'm wondering  
15 why I'm not increasing it, going to a statutory maximum in  
16 this case.

17 We have a situation where we have a history of  
18 violating probation. We have a prior gun offense, and he was  
19 on probation at the time of this offense.

20 I'm just seeing somebody who doesn't -- who isn't  
21 getting it, who doesn't want to follow laws and regulations  
22 and rules.

23 And the ones that you are choosing not to follow are  
24 dangerous. This isn't jay-walking here.

25 MR. DAYS: Your Honor, the Court's point is well

1 taken. I want to -- and I think the Court's focused exactly  
2 on what, ultimately, I think the issue is in this case, which  
3 is the type of person Mr. Mitchell is, in deciding what type  
4 of sentence under 3553(a) is sufficient, but not greater than  
5 necessary, to comply with the purposes of that statute.

6 THE COURT: And one other thing I didn't mention was  
7 something that's even more frustrating, Mr. Mitchell, is you  
8 have got potential. You are not stupid. I mean I am looking  
9 and seeing what you are able to accomplish when you set your  
10 mind to it. It is so discouraging to see somebody who has the  
11 potential, who has the ability, and just simply throws it  
12 away. This is not explainable to me. At least I can't  
13 explain it from what I'm reading.

14 MR. DAYS: Your Honor, normally -- I have represented  
15 a number of defendants, and I have to say that Edward Mitchell  
16 is one of the most soft-spoken, easy-to-speak-with individuals  
17 that I have come across, really, in my time as a defense  
18 attorney.

19 I want to go right to the issue that the Court hit on  
20 in starting this out on page 5, line 23, which is getting at  
21 the type of person that he is.

22 If the Court looks at the criminal history portion of  
23 the probation report, in my view, it really gives us an idea  
24 of why we are here and also the type of person that  
25 Mr. Mitchell is. He is 33 years old.

1           When this happened, he did have two prior felony  
2 convictions. They are noted on lines 40 and lines 43. They  
3 happened in 2010, when he was 29 and 30 years old.

4           Prior to that, he had really no real criminal  
5 history. And when I say no real criminal history, what I'm  
6 referring to is prior to that, he had two driving on suspended  
7 license convictions and a possession of marijuana, a  
8 misdemeanor, it looks like a 11357(b), which is punishable by,  
9 my understanding, a hundred dollar fine. That was the extent  
10 of his criminal history up to age 29.

11           It is a criminal history. The first felony is  
12 possession of a controlled substance and the second one is  
13 possession of a firearm.

14           The reason I'm pointing this out is that up to the  
15 age of 29, Edward Mitchell really had no real criminal  
16 history. So the question becomes, well, how did he, going to  
17 the Court's initial point, how did he get here?

18           And the probation report tells us how he got here.  
19 He developed a drug habit, a serious drug habit, after having  
20 what I would describe as a productive first 25 years of life.

21           He came from a modest background. He was taken away  
22 from his parents for reasons that he is not even fully aware  
23 of at this point, and raised by his grandmother here in  
24 Fresno, from Mississippi.

25           He went on to Fresno City College. Went on to

1 develop into, as the letter that we have attached from the  
2 head coach of the program, to develop into a good player. He  
3 describes Mr. Mitchell, who he interacted with on a daily  
4 basis, and I quote the description, "Hard working, very  
5 dependable. He worked extremely hard to make himself into a  
6 quality player. He is fun to be around. Positive  
7 personality. Has a good heart and has a strong work ethic  
8 when motivated."

9 That's a description given by a person, a respected  
10 person who dealt with him on a daily basis prior to him  
11 succumbing to what can only be described as a demonic force of  
12 drug addiction. That is what has brought us here today.

13 THE COURT: Except we have a lot of people who have  
14 drug addictions, and we don't have, relatively speaking, that  
15 many people who come here with a gun background, both in  
16 history and in the present offense.

17 And we have a situation here where your attorney  
18 tells me how you got here, and my response to that is: You  
19 almost didn't get here. I mean if there were ever a case that  
20 shows the dangers of having a gun around, this is it. We have  
21 got one dead, two shot, and you were one of the ones that was  
22 shot. You are lucky you are here.

23 I mean you may be soft-spoken and productive when you  
24 are not on drugs, but you are simply compounding many times,  
25 not just once over, many times, when you take a drug addiction

1 and you inject guns into it. I mean truly, you are lucky that  
2 you weren't charged with other things, but that seems like a  
3 big deal, but not in this case. The big deal in this case is  
4 that you are alive.

5 MR. DAYS: Your Honor, there was the 2010 firearm  
6 case. It was -- the firearm was found, I believe, between a  
7 seat in a vehicle.

8 And I don't think it is uncommon, and from my  
9 viewpoint, this case ultimately is about the felon in  
10 possession and the drugs.

11 I understand there is a lot more going on here. I  
12 think the reason why -- well, he clearly wasn't charged in  
13 state court. And I just want --

14 THE COURT: I'm not going down the road of thinking  
15 that he needs to be somehow accountable for a person dead.  
16 That's not my issue. My issue is talking about the danger of  
17 having guns. And this isn't just a drug addiction issue,  
18 because many, many people, it is not a normal, natural, next  
19 step to having gunplay involved with drug addiction.

20 MR. DAYS: Well, from my viewpoint of what occurred,  
21 I don't see -- I have seen a number of cases come through  
22 where there are individuals that possess firearms and drugs.  
23 I see them -- and fortunately, in those cases, those firearms  
24 don't get used.

25 Defendants end up getting sentenced. In my



1 experience, they end up getting sentenced pretty much  
2 consistent with the guideline range. Sometimes even a gun may  
3 not even be accounted for.

4 When the Court describes it as gunplay, I viewed it a  
5 little bit differently. When Mr. Walker came into that house,  
6 he came in that house to kill. And he was an invited guest to  
7 that house, the residence. He had been there before on  
8 numerous prior occasions to hang out, to watch sporting  
9 events.

10 No one, no one thought Mr. Walker was a threat. And  
11 that really is why I believe the interplay of the drug  
12 addiction, the lack of judgment, really, is what we are  
13 talking about here.

14 When you use drugs, you put yourself in associations  
15 that aren't healthy, that aren't good, that really is, as far  
16 as my viewpoint is concerned, can be even described as people  
17 that may engage in lost demonic behavior because their mind is  
18 gone.

19 THE COURT: But that argument would be stronger if  
20 Mr. Walker walked in with the only gun that was around and  
21 they had an argument and, somehow, Mr. Mitchell got the gun  
22 and used it.

23 MR. DAYS: I think that the facts in the case are  
24 even more favorable to Mr. Mitchell than the scenario the  
25 Court just described.

1           Here, there was no argument. Here, what happened  
2 was -- and gunplay as the Court just described. Here what  
3 happened, was this man walked into the house. He shot before  
4 he walked into the house and killed Mr. Mitchell's guest and  
5 friend that was over celebrating his birthday at pointblank  
6 range, killed the man. Then shot Mr. Mitchell's girlfriend.

7           Mr. Mitchell heard the noise and came out. He didn't  
8 come out with a gun. He didn't come out to play with guns.  
9 He came out to see what happened. There was no gun with him  
10 when he came into the living room, and then was shot twice in  
11 the arm. According to witnesses, the blood was pouring out of  
12 his arm like a hose with water.

13           No gun. He didn't have a gun then. What caused him  
14 to go back and get the gun was what just happened, what I just  
15 described, life and death.

16           I'm convinced, based on what I read, that Mr. Walker  
17 would have walked out of that place and killed everybody there  
18 and left no witnesses. He came into that house with the  
19 intent to commit murder, cold blooded murder. That's what  
20 caused the use of a gun.

21           So I think those facts actually are even more  
22 favorable towards Mr. Mitchell than if there was an argument  
23 and then gunplay ensued. Because there was gunshots that rang  
24 out; he came out into the living room without a firearm.

25           So there is no intent on his part to use a firearm.

1 None, zero. Firearm is not even in his mindset when Walker  
2 comes over to the house.

3 THE COURT: Well, it must be somewhere in his mindset  
4 if he has a gun and he knows he is not supposed to have one.

5 MR. DAYS: Well, and that is the typical dilemma that  
6 I think the Court faces when it sentences people to felon in  
7 possession of a firearm. We have pled guilty to that offense.  
8 They have dismissed the 924(c). We negotiated a resolution,  
9 and the Court is aware of what it is.

10 But my point is simply that when the Court sees  
11 people come on a regular basis, having pled guilty to felon in  
12 possession of a firearm, those individuals oftentimes possess  
13 that firearm for various reasons, including self-defense.  
14 They have made a choice. Mr. Mitchell made that choice, just  
15 like all the other 922(g) defendants the Court sees.

16 He wasn't acting wild with this firearm. And I think  
17 the fact that he came out into the living room and suffered  
18 two shots after other people had been shot is solid, solid  
19 evidence that this man had no intent whatsoever to use that  
20 firearm. He is guilty of possessing it, I agree, just like  
21 every other 922(g) defendant.

22 I think at the end of the day, the recommendation of  
23 probation for 96 months, as I have looked through the  
24 probation report, has to deal with more of Mr. Mitchell's  
25 conduct after, after the shooting occurred. It is almost an

1 obstruction argument that they make in support of the  
2 deviation up to 96 months.

3           The Court, as I understand it, has determined the  
4 guideline range to be 37 to 46 months. If, instead of the  
5 5K2.21 [sic] departure that the Probation Office is  
6 recommending up to 96 months, which is really based on  
7 obstruction facts only, and I have to say that, as difficult  
8 as this case is, I ultimately came to the conclusion this  
9 weekend in preparing for this sentencing that Probation, for  
10 the most part, has it on the money.

11           I don't agree with the -- with the movement up to 96  
12 months, but Probation is not holding Mr. Mitchell responsible  
13 for saving his life and the life of others that were there  
14 that day. They are not seeking additional time for him  
15 defending life and saving life.

16           They are asking for the additional time based on what  
17 can only be, in my opinion, obstructive conduct. That, under  
18 the guidelines, is a two-level increase. That would have  
19 brought Mr. Mitchell to 46 months, 46 to 57 months, based on  
20 the Court's guideline calculation.

21           Now, we are not here today in any way to shirk  
22 responsibility. That's why we agreed to 80 months. The Court  
23 read Mr. Mitchell's letter. Not only was his good friend  
24 dead, not only was his girlfriend shot and hurt and those kids  
25 traumatized, but Mr. Walker, a person that Mr. Mitchell

1 befriended, is dead also, and we understand that there is  
2 accountability for that.

3 When the guideline range is at 37 months, and we ask  
4 for 80 --

5 (The Court spoke off the record to an unrelated  
6 party.)

7 THE COURT: Go ahead.

8 MR. DAYS: The point I'm trying to get across, your  
9 Honor, is when the guideline range, the low end is at 37  
10 months, the conduct that Probation relies on is what can be  
11 called "obstruction." That, to me, is what it is, which is a  
12 two-level increase.

13 We are at 46 months then on the low end, and  
14 Mr. Mitchell, we signed an agreement saying that we wouldn't  
15 ask for less than 80 months. Now, in exchange for that, the  
16 government agreed to knock out the 924(c).

17 Frankly, I think that's a just outcome in this case,  
18 given what happened, the way that the plea worked out.

19 The question is what is the appropriate increase.  
20 Probation doesn't feel, and I agree with this 100 percent,  
21 they don't agree with the government's argument that  
22 Mr. Mitchell, who was shot, a victim, shattered bone, metal  
23 rod in his arm, should be made an example, should be punished,  
24 the victim, a victim of a murderer, should be made the example  
25 to all other defendants when there is no gunplay here.

1           He is not coming out with a gun into that living  
2 room, even when there were shots fired. I don't believe he is  
3 the right defendant to make that example with.

4           Probation is making its recommendation based on his  
5 conduct. I don't know if there is --

6           THE COURT: Part of what Probation is saying is the  
7 amount of drugs, too, isn't it?

8           MR. DAYS: In what respect, your Honor?

9           THE COURT: This was not an insignificant amount of  
10 drugs that were involved.

11           MR. DAYS: Well, it definitely wasn't a usable  
12 amount, and we pled guilty to the possession with intent to  
13 distribute. We acknowledged that. We accepted responsibility  
14 for that.

15           This isn't the amount of drugs that I have typically  
16 seen or really, frankly, I can't recall ever seeing this  
17 amount of drugs. And I'm not saying it to minimize it at all.

18           And given what's happened, it is a clear  
19 demonstration to everybody in here that it doesn't take kilos  
20 for things to go crazy. It doesn't require that.

21           I'm there. I'm not trying to minimize the amount of  
22 drugs. But frankly, I can't remember in this Court ever  
23 seeing such a small amount of drugs. I mean I think we are  
24 here for the other things that went on.

25           The question is, what's a just sentence? What

1 sentence is sufficient, but not greater than necessary?

2 Mr. Mitchell has family here in the court that are  
3 here to support him, that will be here to support him when he  
4 gets out, while he is in custody. But I wanted to point out a  
5 couple of people to the Court that I think could provide some  
6 additional insight concerning Mr. Mitchell.

7 One is Rhonda Martin, who is the maternal grandmother  
8 to Mr. Mitchell's children. I think that that's important  
9 because she can attest to the type of person that Mr. Mitchell  
10 is, that she has observed, and also type of father and how he  
11 has treated her daughter as well. I think all those things  
12 are important for the Court to get an idea of what is a  
13 sufficient sentence here.

14 I believe this is a man that, when he gets past this  
15 drug issue, which clearly developed and caused him to lose  
16 judgment to the point where he had a murderer come into his  
17 house; that's a clear sign of lack of judgment right there,  
18 that you can't differentiate evil and you let it in your  
19 house. That's what happens when you use drugs and you abuse  
20 them on a daily basis like he was.

21 Also, Ayana Layfield, who was there that day, who was  
22 shot. I mean obviously, this is traumatic, this is emotional.  
23 She is here to support him. They are not dating right now,  
24 but she is supporting him.

25 It is my understanding she feels she is alive today

1 because of Mr. Mitchell having the intestinal fortitude after  
2 being shot, with a shattered arm, to prevent Mr. Walker from  
3 killing everybody in that residence.

4 I don't know if there is anything else the Court  
5 wants me to address. I believe Mr. Mitchell also would like  
6 to address the Court.

7 THE COURT: Okay.

8 MR. DAYS: I'm hoping that Mr. Mitchell could address  
9 the Court after Ms. Martin and Layfield, if the Court wants to  
10 listen from them.

11 THE COURT: We have limited time, but we will listen.  
12 Let's do it now.

13 MR. DAYS: Thank you, your Honor. Ms. Martin?

14 MS. MARTIN: Good morning, your Honor.

15 THE COURT: Who are you? Take a deep breath. Who  
16 are you?

17 MS. MARTIN: Rhonda Martin, and I am the grandmother  
18 of Mr. Mitchell's two sons.

19 THE COURT: Okay.

20 MS. MARTIN: I'm here for him, as well as my daughter  
21 and my two grandsons, who are really having a tough time. I'm  
22 going to try not to get emotional while I tell you this, but  
23 me and my husband were taking care of the two boys, with my  
24 daughter. They live with us now.

25 And my husband just passed. He was there for my two



1 grandsons and now he is not going to be there for them. And I  
2 feel they need a man in their life, and with their father  
3 gone, it is really difficult.

4 Mr. Mitchell has been really respectful towards me.  
5 He has been a good father. He has been good to my daughter.  
6 They are not together, but he has still been there. She has  
7 been there for him.

8 And all this happened, I think, because of the drugs.  
9 I know young people get caught up. He is a very talented and  
10 smart person. With all the drugs, somehow, they just lose  
11 their way.

12 I have been a correctional officer for 24 years, so I  
13 can tell when someone is a good person. I think I'm a pretty  
14 good judge of character. He is a good person. There is a  
15 good person there.

16 I just want him to -- I think once he hit his rock  
17 bottom, maybe he can understand now, maybe he knows what he  
18 has lost. He has lost his family. He doesn't see his boys.  
19 He is far from them now. Maybe this will wake him up.

20 THE COURT: Let me ask you a question.

21 MS. MARTIN: Yes.

22 THE COURT: I understand that you see him in a much  
23 different light from, for instance, the charges brought  
24 against him that he has pled guilty to. But one of my major  
25 focuses here is guns, and when guns are involved, everything

1 changes. Everything changes.

2 And you, with your background as a correctional  
3 officer, you know that to be true.

4 And the nicest, calmest person with a gun becomes a  
5 very dangerous person. Why did he have a gun when he knew he  
6 shouldn't? He knew it was illegal. And in fact, not only did  
7 he know it was illegal, he had had it, the very same  
8 situation, three years before.

9 Most people who have drug addictions don't have guns.  
10 Now, there are guns around drugs, we know that. But he had  
11 it. It wasn't just that this other person brought in the gun  
12 that was involved in the drug issues. He had his own. He  
13 becomes a dangerous person.

14 In this particular case, I agree with Mr. Days, he  
15 probably did save his own life, may have saved his then  
16 girlfriend's life, but that doesn't discount the fact that he  
17 had a gun and it was illegal to have, because the law says  
18 what it says about felons with guns.

19 MS. MARTIN: Yes.

20 THE COURT: How is it that I'm supposed to view that?

21 MS. MARTIN: I think because of the lifestyle that  
22 the drugs is part of having the weapons. It is, we all know  
23 that. I mean when there is busts, there is guns involved.  
24 Their lack of judgment is part of it, it is -- we see it every  
25 day.

1           THE COURT: But that's exactly -- isn't this exactly  
2 why the law comes down so heavily on people with guns, is  
3 because there is such a lack of judgment when you couple the  
4 guns and the drugs together?

5           You have got an even more dangerous person because of  
6 the drugs, because of the lack of judgment. So now, instead  
7 of just having a person who has a gun who shouldn't have it,  
8 we have got a person who shouldn't have it who has no  
9 judgment. Doesn't that make them more dangerous?

10          This is exactly what the law is looking at. This is  
11 certainly what I'm looking at.

12          MS. MARTIN: I think we also have to look at the  
13 person. You know, what type of person is Mr. Mitchell.

14          THE COURT: He was almost a dead one.

15          MS. MARTIN: That's true. Through the grace of God,  
16 he is here.

17          THE COURT: Exactly.

18          MS. MARTIN: And so there is a reason why he is here.

19          THE COURT: It is not that I'm not listening to you  
20 on a personal level because I am, and I understand that there  
21 are children involved. There are consequences that are just  
22 catastrophic in a family.

23          Children don't understand. What they do understand  
24 is that someone who is a -- an important person in their life,  
25 they are missing, they are missing in action. They understand

1     that part, but they don't understand the bigger picture. I  
2     got that part.

3             And I appreciate your coming to tell me about it in  
4     your family. It counts.

5             MS. MARTIN: Thank you.

6             THE COURT: But the reason I'm chatting with you back  
7     and forth is because I need you to understand that it is not  
8     an easy decision.

9             MS. MARTIN: I understand.

10            THE COURT: Thank you.

11            MS. MARTIN: You are welcome.

12            MR. DAYS: Thank you, Judge. Your Honor, as I'm sure  
13     the Court can imagine, this is very emotional. And  
14     Ms. Layfield is here, she is present, supporting Mr. Mitchell,  
15     but it is just a little bit tough for her to speak.

16            THE COURT: That's fine. I understand.

17            Mr. Mitchell, do you want to tell me something?

18            THE DEFENDANT: Yes, your Honor. I would like to,  
19     first of all, apologize to the government, to the community,  
20     to my family, to my kids.

21            I know I did some things, I made some mistakes that I  
22     shouldn't have made. I should have made better decisions in  
23     my life. I should have taken advantage of my education when I  
24     had a chance.

25            THE COURT: That's not over, you know. That

1 opportunity is not over. As long as you are alive and  
2 breathing, it is not over.

3 THE DEFENDANT: I will make better decisions once I  
4 am released and I'm going to be a better person and do better.

5 THE COURT: I want to hear about the gun. I want you  
6 to tell me something that's going to be convincing that tells  
7 me that this gun activity is done.

8 THE DEFENDANT: It is done. I'm changing my life.  
9 I'm staying away from guns. I'm staying away from those  
10 things I was involved in, drugs. I just not going to do it.

11 I have to for the sake of my kids. I want to be  
12 there for them. I apologize for everything I did.

13 THE COURT: Okay. Does Probation wish to be heard?  
14 Do you wish to address some of the comments?

15 PROBATION OFFICER: No, your Honor.

16 THE COURT: Okay.

17 MS. SANCHEZ: Your Honor, the culmination of  
18 circumstances in this case was a disaster waiting to happen,  
19 and it happened.

20 This case isn't about punishing the defendant because  
21 he protected his family or himself. This case is about a  
22 person who made the choice, who made multiple choices that  
23 started a whole ball rolling that ended up with two people  
24 dead and two people shot and two traumatized children.

25 This case is about the defendant, who was selling

1 cocaine from his apartment which was in a multi-unit apartment  
2 dwelling, where there were other people present on the day of  
3 this incident.

4 This case is about the defendant, who was on  
5 probation for a gun offense and a drug offense while he had  
6 two stolen firearms in his apartment.

7 This case is about the defendant inviting Donald  
8 Walker to his apartment to sell him cocaine. This case is  
9 about the defendant making the choice to have over eight  
10 ounces of cocaine at his apartment that he could sell on this  
11 day.

12 This case is about the defendant inviting danger into  
13 his apartment, where he had his girlfriend, her four-month-old  
14 baby, her four-year-old child, two of his friends, and all of  
15 the other people who were present in that multi-unit apartment  
16 dwelling on this day.

17 And after the gunshots rang off and there was blood  
18 all over the place, the defendant made the choice to take his  
19 two stolen guns and over eight ounces of cocaine to a  
20 neighbor's apartment to get rid of those items before the  
21 police came, wasting valuable time when he didn't know if the  
22 four-month-old baby was shot. He could have been rendering  
23 aid to his girlfriend, to his friend, who, he didn't know at  
24 that time, I'm sure, whether he was dead or alive.

25 Finding the four-year-old, who the police found

1     hiding in the closet, completely traumatized, having no idea  
2     whether the four-year-old was shot or injured.

3             Those were all choices this defendant made. So it is  
4     not about whether this defendant is a good person or bad  
5     person. He could be the best person in the world, but he made  
6     those choices.

7             He was undergoing drug treatment at the time and  
8     still taking cocaine while he was undergoing drug treatment,  
9     wasting valuable court resources, as this Court knows are  
10    unavailable to many people who have similar drug problems. He  
11    was a week away from graduating a drug rehab program.

12            This case is not at all about punishing someone  
13    because they protected the lives of other people. This case  
14    is precisely about what all of these laws are designed to  
15    deter, to avoid.

16            This is a disaster. And it was the defendant's  
17    choices that allowed it to happen. That's why the government  
18    is making the recommendation it did in its sentencing  
19    memorandum, and we ask that the Court impose the sentence  
20    requested.

21            THE COURT: Mr. Mitchell, why is she wrong?

22            THE DEFENDANT: I can't say that she is. I mean --

23            THE COURT: What did she tell me just now that was  
24    wrong?

25            THE DEFENDANT: I can't say -- I can't see what she

1 told you that was wrong. I made poor decisions, but --

2 MR. DAYS: Your Honor, she is not wrong. And  
3 everything she said, she is absolutely correct. I mean we see  
4 drug-dealing in apartments. We see defendants with firearms.  
5 We see defendants selling drugs, delivering drugs with  
6 children every day here. We see that.

7 But the requested sentence, there has to be a reason  
8 that they are requesting the sentence they are requesting.

9 THE COURT: Well, how about the simple reason that we  
10 are obligated in the system to take people out of play who are  
11 either unwilling or unable to control their actions, whether  
12 it be by addiction or by a decision?

13 MR. DAYS: Well --

14 THE COURT: Don't we have some type of an obligation  
15 to do that?

16 MR. DAYS: Absolutely, absolutely. Remember, your  
17 Honor, the government dismissed the 924(c).

18 THE COURT: And maybe she did that because of the  
19 reasons that you are arguing now.

20 MR. DAYS: Well, I'm sure that may have been a  
21 reason. I mean I pointed out for a reason, and I want to keep  
22 this focused on -- I mean this is all about Mr. Mitchell and  
23 what an appropriate sentence is.

24 THE COURT: I agree, but -- well, wait a minute. I'm  
25 not sure I agree with that. It is not all about him. It is



1 also about the community, and it is about the law and the  
2 desire of the law to have people follow it. So it is not just  
3 about him.

4 MR. DAYS: But what I'm getting at, your Honor -- and  
5 that's why I distinguished Probation, the reason they are  
6 recommending their upward versus the reason the government is  
7 making its request.

8 Probation is recommending the upward because of the  
9 conduct after the shooting. That's how I read the probation  
10 report.

11 The government is recommending its upward because we  
12 see drugs every day, we see drugs being transported with  
13 children in baby seats regularly. We see guns when people get  
14 arrested regularly with drugs.

15 The reason, and the difference between the two, is  
16 the government ultimately believes Mr. Mitchell should be  
17 punished because of the conduct of Mr. Walker. It is the  
18 conduct of Mr. Walker that is their springboard.

19 So they want -- I mean I can't see it -- I don't see  
20 it any other way. They want to hold the victim responsible,  
21 and he is a defendant, but he is also a victim, they want to  
22 hold him responsible for Walker's conduct.

23 THE COURT: No. What I'm hearing her say is that it  
24 was Mr. Mitchell who started the process and continued the  
25 process to allow what ultimately happened to happen because he

1 was the one who was maintaining a drug house. He was the one  
2 who had the stolen guns. He was the one who put everyone,  
3 including himself, into a position of danger because of the  
4 decisions he made to continue with illegal activities.

5 MR. DAYS: Well, all my point is, is that every  
6 statement the Court just made applies to every single  
7 defendant that's charged with a drug offense in this court in  
8 a firearm offense.

9 THE COURT: And I suppose what's happened here is  
10 that we see the perfect storm hit and the consequences of it.  
11 And I think that's the argument.

12 MR. DAYS: Well, the only problem from my viewpoint  
13 with that is I mean I'm assuming it's deterrence, is what the  
14 Court is referencing --

15 THE COURT: Well, no, I'm not just referencing --

16 MR. DAYS: -- as a 3553(a) factors.

17 THE COURT: I'm referencing deterrence, but I'm also  
18 referencing protecting the public.

19 MR. DAYS: That's why I went into Mr. Mitchell's  
20 criminal history. And we have somebody that clearly developed  
21 a drug program. He went into DEJ as his first conviction.

22 The gun charge that occurred that he was convicted of  
23 before he actually even had that felony conviction for DEJ.  
24 He hadn't been kicked out of the program yet according to the  
25 report.

1           So that's -- I'm just getting towards the point, in  
2 terms of protecting the public, we have a person that picked  
3 up his first felony, controlled substance, DEJ, at 29 years  
4 old.

5           THE COURT: And he started running at a pretty fast  
6 pace.

7           MR. DAYS: He did, and now he is here. And 80  
8 months, which is 43 months above the guideline, doubling the  
9 guideline, is not a small sentence. That is a significant  
10 amount of time.

11           He will also be on supervised release, being  
12 monitored. He will get his drug treatment. And I think there  
13 is a lot of potential for Mr. Mitchell. He has got two boys  
14 to raise. He has got all the incentive in the world, and we  
15 are asking the Court not to give up on him and -- a sentence  
16 consistent with what the government is recommending, which  
17 was, at first, 30 and now it is 20 without any explanation for  
18 what the rationale is, is the one sentence is essentially  
19 giving up on this man, and there will be significant  
20 collateral consequences, including his kids.

21           THE COURT: There already are.

22           MR. DAYS: I understand, and I think there is a way  
23 to minimize that, but ultimately, I think 80 months is  
24 sufficient and not greater than necessary, your Honor.

25           THE COURT: Okay. Anything else?

1 MS. SANCHEZ: Your Honor, a life sentence would be  
2 giving up on this defendant, and the government did not  
3 believe that was warranted.

4 A little background, since it was mentioned quite a  
5 few times, as to the withdrawal of the 924(c) as part of the  
6 plea agreement had to do with two factors: The defendant  
7 wanting to avoid the risk of a life sentence, and the  
8 government agreeing to that, and the uncertainty of case law  
9 at the time under *United States versus Alleyne*, which was  
10 decided after the plea agreement was reached in this case, as  
11 to whether the government had to allege a discharge of the  
12 firearm in order for a ten-year mandatory minimum to take  
13 effect. And in giving consideration to the defendant on those  
14 two points, the government agreed to withdraw the 924(c).

15 THE COURT: Okay. Anything from Probation?

16 PROBATION OFFICER: No, your Honor.

17 THE COURT: All right. I certainly understand both  
18 the sides and the arguments on both sides of this for lesser,  
19 for a lot more. I believe that Probation has got it right.  
20 It has got to be significant. It is going to be significant.

21 It could be more, and I'm not saying it shouldn't be  
22 more. Government may be right. But you are going to prove us  
23 either right or wrong. And I just hope it is not with -- I  
24 hope it is with good consequences, not with devastating  
25 consequences.

1           Because, you know, we oftentimes, judges sit up here  
2     and we say, "Gee, horrible things could have happened." I  
3     don't need to say that in your case. Horrible things did  
4     happen, and they are going to have collateral consequences for  
5     the people who were there, including those children, forever.  
6     So this isn't a situation where I have to act dramatic and  
7     say, "Gee, these things really could happen."

8           They do happen. It did happen. So I don't need to  
9     go there. You are already there, and so is your family, and  
10    it is horrid.

11          Pursuant to the Sentencing Reform Act of 1984, it is  
12    the judgment of the Court that you are committed to the  
13    custody of the Bureau of Prisons to be imprisoned for a term  
14    of 96 months on each of Counts 2 and 3, to be served  
15    concurrently for a total term of 96 months.

16          You shall pay a special assessment of \$200, payment  
17    to begin immediately, and the Court does find you do not have  
18    the ability to pay a fine and that's waived.

19          Was there a preliminary order of forfeiture? If  
20    there was, I will make it and incorporate it into the  
21    judgment.

22          MS. SANCHEZ: Thank you, your Honor.

23          THE COURT: Upon release from imprisonment, you shall  
24    be placed on supervised release for a term of 36 months on  
25    Count 2 and the same on Count 3, concurrently, for a total of

1 36.

2           Within 72 hours of release from the custody of the  
3 Bureau of Prisons, you shall report in person to Probation in  
4 the district where you are released.

5           While on release, you shall not commit another  
6 federal, state, or local crime, not possess a firearm,  
7 ammunition or a destructive device, as defined under 18 United  
8 States Code 921, or any other dangerous weapon; shall not  
9 illegally possess controlled substances; shall cooperate in  
10 the collection of DNA, as directed by Probation; shall comply  
11 with the standard conditions recommended by the Sentencing  
12 Commission and adopted by the Court; shall refrain from any  
13 unlawful use of a controlled substance; shall submit to one  
14 drug test within 15 days release from imprisonment and at  
15 least two thereafter, not to exceed four per month.

16           The Court is going to order the nine special  
17 conditions, which I can read or incorporate.

18           MR. DAYS: Incorporation is fine.

19           MS. SANCHEZ: Incorporation is fine.

20           THE COURT: Done and ordered.

21           Is there a request geographically?

22           MR. DAYS: Yes, your Honor, Terminal Island.

23           THE COURT: Court will make that recommendation;  
24 however, that is a secondary recommendation. The first one is  
25 the 500-hour Bureau of Prisons substance abuse treatment

1 program. You desperately need that. You know it and I know  
2 it. There is no debating it, and that's where my number one  
3 priority is. So if that takes you to a different place  
4 geographically, so be it. That's going to save you. The  
5 location isn't going to save you, it is that program that's  
6 going to save you, I hope.

7 THE DEFENDANT: Yes.

8 THE COURT: We have Count 1 to deal with.

9 MS. SANCHEZ: Government moves to dismiss Count 1 of  
10 the indictment.

11 THE COURT: Granted. Appellate rights have been  
12 waived.

13 Anything else?

14 MR. DAYS: No, thank you, your Honor.

15 THE COURT: All right. It's up to you now. It is in  
16 your court. You are the judge now.

17 THE DEFENDANT: Thank you, your Honor.

18 THE COURT: Let's do something. All right.

19 (The proceedings were concluded at 9:52 a.m.)

20 I, PEGGY J. CRAWFORD, Official Reporter, do hereby  
21 certify the foregoing transcript as true and correct.

22

23 Dated: 29th of January, 2014

/s/ Peggy J. Crawford  
PEGGY J. CRAWFORD, RDR-CRR

24

25