09:55AM

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| UNITED STATES OF AMERICA, PLAINTIFF, VS. CASSIE WILL-DARNALL, DEFENDANT. | CR-24-00292 PCP<br>SAN JOSE, CALIFORNIA<br>SEPTEMBER 24, 2025<br>PAGES 1 - 44 |

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE P. CASEY PITTS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHNNY JAMES
150 S. ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

FOR THE DEFENDANT: OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: VARELL FULLER
55 S. MARKET STREET, SUITE 820
SAN JOSE, CALIFORNIA 95113

U.S. PROBATION: DENISE MANCIA

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

SAN JOSE, CALIFORNIA SEPTEMBER 24, 2025

P R O C E E D I N G S

10:12AM (COURT CONVENED AT 10:12 A.M.)

10:12AM THE CLERK: CALLING CASE NUMBER 24-CR-292, UNITED STATES VERSUS CASSIE WILL-DARNALL. ON TODAY FOR SENTENCING.

10:12AM WILL THE PARTIES PLEASE APPROACH AND STATE YOUR APPEARANCES FOR THE RECORD BEGINNING WITH THE GOVERNMENT.

10:12AM MR. JAMES: IF IT MAY PLEASE THE COURT, JOHNNY JAMES FOR THE UNITED STATES.

10:12AM THE COURT: GOOD MORNING.

10:12AM MR. FULLER: AND VARELL FULLER FOR MS. CASSIE WILL-DARNALL. SHE'S PRESENT BEFORE THE COURT, AND SHE IS OUT OF CUSTODY.

10:12AM THE COURT: GOOD MORNING, MS. DARNALL.

10:12AM PROBATION OFFICER: GOOD MORNING, YOUR HONOR. DENISE MANCIA FOR U.S. PROBATION.

10:12AM THE COURT: GOOD MORNING.

10:12AM MR. JAMES: I WOULD ADDITIONALLY NOTE THAT THE VICTIMS IN THIS MATTER HAVE BEEN NOTIFIED, AND THEY ARE NOT PRESENT.

10:12AM THE COURT: OKAY. THANK YOU. SO WE ARE CONTINUING WHERE WE LEFT OFF A FEW WEEKS AGO. HOPEFULLY THE PARTIES HAD AN OPPORTUNITY TO SEE THE WRITTEN ORDER THAT I ISSUED WITH RESPECT TO SENTENCING GUIDELINES AND MY CALCULATION OF THE

SENTENCING GUIDELINES AS NOTED THEREIN.

I ULTIMATELY DETERMINED THAT THE ADJUSTED OFFENSE LEVEL IN THIS CASE IS 20, WHICH REFLECTS A BASE OFFENSE LEVEL OF 7.

THE SPECIFIC OFFENSE CHARACTERISTICS OF A LOSS OF MORE THAN $3.5 MILLION, WHICH IS AN 18 POINT INCREASE, AND THAT IS USING THE INTENDED LOSS AS THE MEASURE UNDER THE 2024 GUIDELINES.

AND THEN THERE'S A 3 POINT DECREASE FOR THE ACCEPTANCE OF RESPONSIBILITY AS WELL AS A 2 POINT DECREASE AS A 0 POINT OFFENDER AS CASSIE WILL-DARNALL IS.

AND I DECLINED TO APPLY THE SOPHISTICATED MEANS ENHANCEMENT THAT THE GOVERNMENT REQUESTED.

THE END RESULT THERE IS, ALONG WITH A CRIMINAL HISTORY SCORE OF 0 AND A CRIMINAL HISTORY CATEGORY OF 1, THAT RESULTS IN A RECOMMENDED GUIDELINE SENTENCE OF 33 TO 41 MONTHS TO BE SATISFIED BY A TERM OF IMPRISONMENT GIVEN THAT IT'S IN ZONE D AS WELL AS THE OTHER PROVISIONS SET FORTH IN THE ORDER.

LET ME START BY ASKING -- I KNOW OBVIOUSLY BOTH PARTIES HAVE DISAGREEMENTS AS TO THE ELEMENTS, BUT I HAVE RESOLVED FOR OUR PURPOSES THOSE ISSUES.

WITH RESPECT TO THE RECOMMENDED SENTENCE UNDER THE GUIDELINES BASED ON THE CALCULATIONS THAT I'VE DONE AND SET FORTH IN THE ORDER, ARE THERE ANY MISTAKES THAT I'VE MADE OR ANY ISSUES THAT WERE IDENTIFIED? I'LL ASK THE GOVERNMENT FIRST.

10:14AM MR. JAMES: I BELIEVE THE COURT HAS ADDRESSED THE DISPUTED ISSUES THAT WERE PRESENTED TO IT, YOUR HONOR.

10:14AM THE COURT: AND THE AMOUNT -- THE SUGGESTED TERM AND THE SUGGESTED TERM OF SUPERVISED RELEASE IS ALL CORRECT TO THE BEST OF YOUR KNOWLEDGE?

10:14AM MR. JAMES: THAT IS CORRECT TO THE BEST OF MY KNOWLEDGE, YOUR HONOR.

10:14AM THE COURT: OKAY. ANY CONCERNS FROM THE DEFENSE, UNDERSTANDING THAT YOU'VE OBJECTED TO THE APPLICATION OF THE 2024 GUIDELINES?

10:14AM MR. FULLER: WITH THAT UNDERSTANDING, YES -- NO, YOUR HONOR.

10:14AM THE COURT: OKAY. OKAY. THEN THE MAIN THING WE NEED TO DO TODAY THEN IS TO DETERMINE WHAT THE APPROPRIATE SENTENCE SHOULD BE IN THIS CASE UNDER 18 U.S. CODE 3553(A) AND THE FACTORS THAT ARE SET FORTH THERE.

10:15AM LET ME START BY -- YOU KNOW, AND TO DO THAT I'LL HEAR FROM THE GOVERNMENT AND MS. WILL-DARNALL'S COUNSEL, AND I WILL HEAR FROM ANYONE WHO WISHES TO SPEAK ON MS. WILL-DARNALL'S BEHALF, AND FROM MS. WILL-DARNALL HERSELF, AND PROBATION AS WELL IF THEY HAVE ANYTHING THEY WOULD LIKE TO OFFER THIS MORNING.

10:15AM SO I WANT TO -- WE DON'T NEED TO DO WHAT WE DID LAST TIME. WE'VE ALREADY DONE THE EARLIER PART OF THE PROCEEDING, SO I WON'T GET INTO THAT.

10:15AM SO I WILL HEAR FROM THE GOVERNMENT FIRST, AND I WILL

10:15AM NOTE THAT I -- I NOTED THIS BEFORE, BUT I CERTAINLY HAVE HAD A
10:15AM CHANCE TO READ THE MATERIALS PROVIDED BY MS. WILL-DARNALL AND
10:15AM THE SUPPORTERS OF MS. WILL-DARNALL IN CONNECTION WITH THIS
10:15AM MATTER.
10:15AM BUT LET ME START WITH THE GOVERNMENT. AND BEFORE SORT OF
10:15AM HEARING GENERALLY ON YOUR POSITION AS TO THE APPROPRIATE
10:15AM SENTENCE IN THIS CASE, LET ME ASK, I BELIEVE THAT IN THE
10:16AM GOVERNMENT'S SENTENCING MEMORANDUM THE SENTENCE THAT WAS
10:16AM RECOMMENDED WAS AT THE LOW END OF THE GUIDELINES AS THE
10:16AM GOVERNMENT HAD CALCULATED THOSE GUIDELINES.
10:16AM IS THERE ANY CHANGE IN THE GOVERNMENT'S RECOMMENDED
10:16AM SENTENCE GIVEN THE POSITION I'VE TAKEN AS TO THE APPROPRIATE
10:16AM GUIDELINES CALCULATION HERE?
10:16AM MR. JAMES: GIVEN THAT THE GOVERNMENT'S
10:16AM RECOMMENDATION REMAINS WITHIN THE GUIDELINES AS MODIFIED BY THE
10:16AM COURT'S RULING, THE GOVERNMENT'S RECOMMENDATION REMAINS THE
10:16AM SAME OF 41 MONTHS, YOUR HONOR.
10:16AM ALTHOUGH I CERTAINLY RECOGNIZE THAT THE GUIDELINES HAVE
10:16AM NOW BEEN ADJUSTED DOWN AS A CONSEQUENCE OF THE COURT'S RULING,
10:16AM THE GOVERNMENT WAS SENSITIVE IN MAKING ITS ORIGINAL
10:16AM RECOMMENDATION TO THE FACT THAT REASONABLE MINDS COULD TREAT
10:16AM SOME OF THE FACTS IN THIS CASE DIFFERENTLY UNDER THE
10:16AM GUIDELINES, AND EVEN THOUGH THE COURT HAS DECLINED TO APPLY
10:16AM SOME OF THE ENHANCEMENTS THAT COULD BE CONSIDERED UNDER THE
10:17AM GUIDELINES, THE FACTS THAT LED US TO HAVE THAT LITIGATION CAN

10:17AM STILL PROVIDE TO AGGRAVATE THE OFFENSE WHEN THE COURT APPLIES THE FACTORS.

THE FACT OF THE MATTER IS THAT MS. WILL-DARNALL STILL FORGED A NUMBER OF DOCUMENTS, TAX DOCUMENTS, EMPLOYMENT RECORDS AND SO FORTH, IN THE COURSE OF PERPETUATING THIS FRAUD AND STILL STOLE VERY CLOSE TO A MILLION DOLLARS FROM FINANCIAL INSTITUTIONS AS DEFINED BY THE GUIDELINES, AND CERTAINLY MORE THAN $2.8 MILLION TOTAL FROM LENDERS.

THAT THEFT IS VERY SIGNIFICANT AS SET FORTH IN THE GOVERNMENT'S SENTENCING MEMORANDUM. THE LOANS THAT WERE DISBURSED TO MS. WILL-DARNALL REPRESENTS SOME OF THE LARGEST ONES THAT WERE ISSUED UNDER THE PPP PROGRAM, AND THE THEFT OF SUCH A STAGGERING AMOUNT OF MONEY MERITS A SIGNIFICANT PUNISHMENT.

MS. WILL-DARNALL IS NOT A DEFENDANT SITUATED IN SUCH A WAY WHERE WE MAY LOOK AT HER BACKGROUND AND HER HISTORY AND THINK THAT SHE NEVER REALLY HAD AN OPPORTUNITY, THAT THE CIRCUMSTANCES OF HER UPBRINGING INEXTRICABLY LED TO THIS CRIMINAL ACTIVITY.

SHE IS A DEFENDANT WHO WAS SUCCESSFUL IN THE COMMUNITY, WAS A SUCCESSFUL ENTREPRENEUR, AND TURNED AWAY FROM THAT IN ORDER TO DEFRAUD LENDERS AND ULTIMATELY THE GOVERNMENT OF MILLIONS UPON MILLIONS OF DOLLARS.

SO WITH THAT IN MIND, REALLY BECAUSE OF THE SHEER SIZE OF THE THEFT, THE GOVERNMENT REMAINS COMMITTED TO ITS

RECOMMENDATION OF 41 MONTHS.

THERE'S REALLY ONLY SO MUCH POETRY THAT CAN BE APPLIED TO STEALING. STEALING IS BAD. AND IN THAT CONTEXT IT IS INCUMBENT UPON THE COURT TO ISSUE A FIRM SENTENCE IN ORDER TO ENSURE THAT OTHERS SIMILARLY SITUATED ARE DETERRED FROM DOING SO IN THE FUTURE.

THE COURT: OKAY. ANYTHING ELSE YOU WOULD LIKE TO OFFER BEFORE I HEAR FROM MS. WILL-DARNALL AND HER COUNSEL?

MR. JAMES: BEAR WITH ME ONE MOMENT, YOUR HONOR.

THE COURT: THAT'S OKAY.

MR. JAMES: YOUR HONOR, I BELIEVE THAT THE RATHER LENGTHY SENTENCING MEMORANDUM ARTICULATES THE GOVERNMENT'S POSITION ADEQUATELY, AND THERE'S NOTHING FURTHER AT THIS TIME.

THE COURT: AND I WILL NOTE JUST FOR THE RECORD THAT IN ADDITION TO THE MATERIAL THAT I IDENTIFIED LAST TIME AS HAVING REVIEWED IT, I OBVIOUSLY ALSO REVIEWED THE PARTIES' SUPPLEMENTAL BRIEFING THAT WAS PROVIDED AFTER OUR SEPTEMBER 5TH HEARING AND LOOKED AT THAT BRIEFING IN CONNECTION WITH PREPARING THE ORDER AND IN THINKING ABOUT TODAY'S PROCEEDINGS.

OKAY. LET ME HEAR FROM MS. WILL-DARNALL AND HER COUNSEL AND WHATEVER -- AND IF THERE IS ANYONE ELSE WHO WISHES TO SPEAK ON HER BEHALF IN WHATEVER MANNER THAT YOU THINK IS MOST APPROPRIATE.

MR. FULLER.

MR. FULLER: THANK YOU, YOUR HONOR. I WOULD LIKE TO

10:19AM SUBMIT SOME ARGUMENTS WITH RESPECT TO WHAT WE BELIEVE IS THE
10:19AM APPROPRIATE SENTENCE.
10:20AM THERE ARE TWO INDIVIDUALS WHO ARE PRESENT IN THE COURT, MY
10:20AM CLIENT'S MOTHER, AS WELL AS A FRIEND, WHO WOULD LIKE TO SPEAK
10:20AM AND ADDRESS THE COURT.
10:20AM THE -- I'D LIKE TO BEGIN BY NOTING, AS THE COURT NOTED,
10:20AM THE GUIDELINE RANGE HAS BEEN SUBSEQUENTLY AMENDED BECAUSE OF
10:20AM THE COURT'S RULING ABOUT THE SPECIFIC MEANS ENHANCEMENT. THAT
10:20AM BRINGS THE GUIDELINE RANGE DOWN TO 33 TO 41 MONTHS.
10:20AM PROBATION HERE HAS RECOMMENDED A VARIANCE. APPLYING THAT
10:20AM VARIANCE AS RECOMMENDED BY PROBATION TO THE AMENDED GUIDELINE
10:20AM RANGE, WE COME UP WITH A RECOMMENDED SENTENCE OF 16 MONTHS.
10:20AM HERE, YOUR HONOR, THE DEFENSE SENTENCING REQUEST IS TO
10:20AM HOME CONFINEMENT, AND WE PROPOSE IN THE ALTERNATIVE A SENTENCE
10:20AM OF 12 MONTHS AND 1 DAY. WE THINK THAT THERE ARE COMPELLING
10:20AM MITIGATING FACTORS HERE THAT WOULD WARRANT SUCH A SENTENCE. IN
10:20AM PARTICULAR, THIS OFFENSE DOES INVOLVE THE -- MY CLIENT'S THEFT
10:20AM OF THESE PPP LOANS PROCEEDS AND HER RECEIPT OF THAT MONEY.
10:20AM NOW, WHEN WE LOOK AT THE NATURE AND CIRCUMSTANCES OF THE
10:20AM OFFENSE, I THINK IT'S IMPORTANT TO NOTE THAT THE ACTUAL CONTEXT
10:21AM IN WHICH THIS OCCURRED.
10:21AM MY CLIENT WAS NOT -- SHE'S NOT A SERIAL FRAUDSTER. SHE
10:21AM HAS NOT LIVED A LIFE OF CRIME. SHE HAS LIVED A LIFE AS A
10:21AM FAIRLY LAW ABIDING INDIVIDUAL, AND THAT'S WHY SHE IS A ZERO
10:21AM POINT OFFENDER. SHE DID AT ONE TIME HAVE A SUCCESSFUL BUSINESS

RENTING OUT EXECUTIVE RENTAL PROPERTIES IN THE BAY AREA, IN SANTA CLARA IN PARTICULAR.

SHE HAD LOST HER MAIN CLIENT SHORTLY BEFORE COVID. THAT MAIN CLIENT WAS BOUGHT OUT BY A VENTURE CAPITAL FIRM CAUSING HER TO LOSE HER BUSINESS AND THAT MAIN SOURCE OF INCOME.

SHE WAS SCRAMBLING TO SAVE THAT BUSINESS, BUT UNBEKNOWNST TO HER THE SHUTDOWN WAS COMING, AND HER EFFORTS TO DOUBLE DOWN AND SAVE THAT BUSINESS WERE IN VAIN. SHE INCURRED ADDITIONAL FINANCIAL DEBTS.

I THINK IT IS IMPORTANT THAT THE COURT CONSIDER THE CIRCUMSTANCES IN WHICH SHE COMMITTED THE OFFENSE AND THE ENVIRONMENT IN WHICH SHE COMMITTED THE OFFENSE. THE COVID-19 PANDEMIC WAS GOING ON AT THAT TIME. IT WAS JUST NOT A NORMAL TIME. INDIVIDUALS WERE BEING BOMBARDED WITH ADVERTISEMENTS. IT BECAME ALMOST A COTTAGE INDUSTRY OF ADVERTISERS SOLICITING PEOPLE, TELLING THEM, DID YOU HAVE A BUSINESS? WAS YOUR BUSINESS AFFECTED BY COVID? YOU HAVE MONEY COMING TO YOU, YOU HAVE MONEY COMING TO YOU.

THAT DOES NOT EXCUSE OR JUSTIFY HER CONDUCT, BUT IT EXPLAINS THE FULL CONTEXT OF IT. MOST OF US WERE LIVING IN OUR HOMES. IT WAS JUST NOT THE NORMAL SOCIETY THAT WE WOULD NORMALLY LIVE IN AT THAT TIME. AND SOME OF THOSE SOCIETAL NORMS, THAT WOULD BE THE SORT OF BARRIERS TO PEOPLE MAKING SUCH POOR DECISIONS WEREN'T IN PLACE.

AND ON TOP OF THAT, MY CLIENT WAS DRINKING TO EXCESS AT

10:22AM THE TIME. WE DON'T CONTEND THAT HER DRINKING ROSE TO THE LEVEL
10:22AM OF NOT KNOWING WHAT SHE WAS DOING. SHE KNEW FULL WELL WHAT SHE
10:22AM WAS DOING.
10:22AM I THINK IT'S ALSO IMPORTANT TO NOTE HOW WE GOT HERE.
10:22AM MS. DARNALL CAME BY WAY OF A TARGET LETTER. SHE WAIVED
10:22AM INDICTMENT. SHE AVOIDED THE GOVERNMENT THE LABOR OF GOING TO A
10:23AM GRAND JURY AND OBTAINING AN INDICTMENT, AND SHE HAS RESOLVED
10:23AM HER CASE RATHER QUICKLY.
10:23AM NOW, I THINK IT'S VERY IMPORTANT FOR THE COURT TO CONSIDER
10:23AM THE FORFEITURE IN RELATION TO THE CRIMINAL, THE CRIMINAL
10:23AM FORFEITURE IN RELATION TO WHAT IS A REASONABLE AND APPROPRIATE
10:23AM SENTENCE HERE.
10:23AM HERE, THE GOVERNMENT'S REQUEST IS FOR A SENTENCE OF
10:23AM 41 MONTHS ON -- IN ADDITION TO THAT RESTITUTION. RESTITUTION
10:23AM IS MANDATORY. THE GOVERNMENT'S RESTITUTION AMOUNT THEY'RE
10:23AM SEEKING IS ABOUT 3 MILLION, INCLUDING INTEREST.
10:23AM THE DEFENSE REQUEST WILL AT SOME POINT, AND WE WILL
10:23AM DISCUSS THAT AT A LATER POINT, WILL PROBABLY BE A LITTLE
10:23AM WITHOUT THE INTEREST.
10:23AM HOWEVER, IT IS CRITICAL TO THE COURT'S CONSIDERATION OF
10:23AM WHAT IS A REASONABLE AND APPROPRIATE SENTENCE TO PUNISH HER AND
10:23AM DETER HER FROM THIS FUTURE CONDUCT THAT THE GOVERNMENT IS
10:23AM SEEKING A MONETARY JUDGMENT.
10:23AM THAT MONETARY JUDGMENT ON TOP OF THE RESTITUTION BY MY
10:23AM CALCULATION RESULTS IN ABOUT 4.2 MILLION. THAT IS THE MONETARY

SANCTION AND PENALTY THAT SHE WILL HAVE TO DEAL WITH EITHER BY WAY OF RESTITUTION OR A MONEY JUDGMENT. THAT WILL BE IN PLACE FOR THE NEXT 20 YEARS OF HER LIFE.

MS. WILL-DARNALL HAS PAID A VERY HIGH PRICE FOR HER CONDUCT, AND SHE WILL IN THE FUTURE. THAT AMOUNT -- HERE, THE MAXIMUM FINE PERMITTED UNDER THE STATUTE IS $250,000. THE ONE POINT -- THE 2.8 MILLION MONETARY PENALTY REPRESENTS A 1,000 PERCENT INCREASE OVER THE HIGHEST FINE THAT THE COURT MAY IMPOSE HERE.

I THINK THAT IS AN IMPORTANT FACTOR FOR THE COURT TO CONSIDER WITH RESPECT TO WHETHER -- WHAT ACTUAL SENTENCE IS NECESSARY TO DETER HER, PUNISH HER, AND PROVOKE RESPECT FOR THE LAW. I SUBMIT THAT A SENTENCE OF HOME CONFINEMENT WITH SUCH SIGNIFICANT MONETARY PENALTIES THAT WILL COST HER DEARLY IS A SUFFICIENT PUNISHMENT.

NOW, ORDINARILY THIS WOULD BE AN ACADEMIC PURSUIT TO ENTER THESE MONEY JUDGMENTS, BUT WE KNOW THAT IS NOT THE CASE HERE BECAUSE -- LET'S SPEAK THAT TRUTH. THE TRUTH IS ANTICIPATED THAT AT SOME POINT MS. WILL-DARNALL MAY COME TO ACQUIRE INHERIT PROCEEDS FROM HER MOTHER. AND THOSE PROCEEDS, I ASSUME THE GOVERNMENT WILL AGGRESSIVELY SEEK AND GO AFTER THOSE TO SATISFY THIS MONEY JUDGMENT AS WELL AS THE RESTITUTION.

SO THAT FINANCIAL OBLIGATION IS NOT A THEORETICAL OBLIGATION. I SUBMIT IT'S A REAL PENALTY THAT SHE WILL HAVE TO INCUR AS A RESULT OF THIS OFFENSE, AND I THINK THE COURT SHOULD

FACTOR THAT IN IN DETERMINING WHETHER OR NOT A SENTENCE OF, AS THE GOVERNMENT REQUESTED 41 MONTHS, IS NECESSARY OR WHETHER A CUSTODIAL TERM IS NECESSARY GIVEN THE SIGNIFICANT HIT SHE IS GOING TO INCUR FROM THIS FINANCIAL PENALTY, THE FINANCIAL PENALTY ON TOP OF THE RESTITUTION. SHE WILL BE REQUIRED TO PAY BACK 50 PERCENT MORE, ONE AND A HALF TIMES MORE THAN SHE RECEIVED FROM THE GOVERNMENT.

ADDITIONALLY, YOUR HONOR, AS WE NOTED IN OUR PAPERS, THERE ARE SEVERAL OTHER CONSIDERATIONS THE COURT MAY WANT TO CONSIDER. HER FAMILIAL RESPONSIBILITIES ARE CONSIDERABLE. BY ALL ACCOUNTS, SHE'S AN EXTRAORDINARY MOTHER. SHE'S AN EXTRAORDINARY AND LOVING MOTHER.

AT THE TIME OF HER LIFE WHEN SHE COMMITTED THIS, SHE WAS GOING THROUGH A PRETTY ROUGH PATCH. SHE WAS DEALING WITH A LOT OF STRESSORS. THOSE FAMILY OBLIGATIONS AND HER ELDERLY MOTHER AND HER MOTHER'S HEALTH CONDITIONS, AS WE HAVE RAISED WITH THE COURT, WE THINK WOULD SUGGEST THAT A SENTENCE OF HOME CONFINEMENT WITH THOSE SIGNIFICANT MONETARY PENALTIES IS A SIGNIFICANT PUNISHMENT.

BUT WITH THAT, YOUR HONOR, I WOULD PERMIT THE INDIVIDUALS WHO WANT TO SPEAK TO THE COURT TO ADDRESS THE COURT AT THIS TIME.

THE COURT: YES. THAT'S APPROPRIATE.

LET ME ASK PROBATION ONE QUESTION, AND THIS WAS THE ISSUE THAT YOU RAISED, AND I WOULD LIKE TO HEAR FROM PROBATION

WHETHER THERE'S A CHANGE IN PROBATION'S RECOMMENDATION IN TERMS OF THE DEGREE OF VARIANCE GIVEN THE CHANGE IN CALCULATIONS THAT WE'VE MADE AS TO THE GUIDELINES?

PROBATION OFFICER: YOUR HONOR, OUR RECOMMENDATION WOULD REMAIN THE SAME. WE CAREFULLY CONSIDERED ALL FACTORS WHEN MAKING -- WHEN COMING UP WITH A RECOMMENDATION.

I WOULD LEAVE IT AT 24 MONTHS.

THE COURT: OKAY. THANK YOU.

PROBATION OFFICER: YEAH.

THE COURT: OKAY. THANK YOU. CERTAINLY I'M HAPPY TO HEAR FROM ANYONE WHO WISHES TO SPEAK ON BEHALF OF MS. WILL-DARNALL.

MRS. WILL: MY NAME IS SANDRA WILL.

NOW?

THE COURT: YES. PLEASE GO AHEAD, MRS. WILL.

MRS. WILL: GOOD MORNING, YOUR HONOR. MY NAME IS SANDRA WILL. CASSIE IS MY DAUGHTER. I NEVER IMAGINED THAT AT 86 YEARS OLD I WOULD BE STANDING HERE TODAY BEGGING FOR COMPASSION FOR MY DAUGHTER, BUT I AM.

I AM FACING THE LOSS OF MY HOME AND MOST PAINFULLY THE POSSIBLE LOSS OF MY ONLY CHILD, CASSIE, TO PRISON.

CASSIE IS NOT ONLY MY CAREGIVER, AT THIS POINT IN MY LIFE SHE IS MY ONLY CAREGIVER AND SURVIVING FAMILY MEMBER. SHE IS MY LIFELINE.

MY HEALTH IS FRAGILE. I LIVE WITH AGING COGNITIVE

DECLINE, HEARING LOSS, AND WORSENING MACULAR DEGENERATION AMONG OTHER COMMON AGE RELATED ISSUES. EACH DAY IT BECOMES HARDER TO FUNCTION ON MY OWN. I DEPEND ON CASSIE NOT JUST FOR EVERY DAY TASKS, INCLUDING READING THE DOCUMENTS AND BILLS, USING TECHNOLOGY AND THE PHONE, ORGANIZING AND ATTENDING DOCTOR MEETINGS AND MEDICINES AND KEEPING ME SAFE, BUT ALSO FOR EMOTIONAL SUPPORT.

I DON'T KNOW HOW I WOULD IMAGINE MY DAILY LIFE, AND YET THE PROSECUTION HAS TREATED ME AS IF I WERE A CRIMINAL. THEY HAVE ACCUSED ME OF CONSPIRING WITH MY DAUGHTER, EVEN OF MASTER MINDING A REAL ESTATE SCHEME AT MY AGE. THESE ACCUSATIONS ARE FALSE, AND THEY HAVE DEVASTATED ME.

I'VE SPENT OVER $65,000 TRYING TO DEFEND MYSELF AND TO HOLD ON TO THE HOME MY HUSBAND AND I BOUGHT ON A TEACHER'S SALARY 40 YEARS AGO.

IN MAY OF THIS YEAR I RECEIVED A DOCUMENT DELIVERED BY THE MAILMAN THAT I HAD TO VACATE MY HOME IN 60 DAYS. FORECLOSURE WITHOUT WARNING AND WITHOUT ANY CAUSE. I DIDN'T COMMIT A CRIME.

ANYWAY, CASSIE IS NOT MY -- IS NOT ONLY MY CAREGIVER, BUT A DEVOTED MOTHER TO HER 11-YEAR-OLD SON. SHE HAS SELDOM MISSED A SCHOOL EVENT OR A LITTLE LEAGUE BASEBALL GAME OR A CHANCE TO BE THERE FOR HIM. THAT IS WHO SHE TRULY IS, NOT THE PERSON THE PROSECUTION HAS TRIED TO PORTRAY.

CASSIE IS KIND, EMPATHETIC, AND COMPASSIONATE. SHE HAS A

GIFT FOR CALMNESS AND FOR EASING MY FEARS WITH HUMOR AND WARMTH. SHE IS DEEPLY LOVED BY HER MANY FRIENDS AND EXTENDED EAST COAST RELATIVES.

SHE HAS ADMITTED HER MISTAKE, AND SHE CARRIES THE WEIGHT OF IT EVERY DAY.

BUT TAKING HER FROM ME AND FROM HER SON WOULD NOT JUST PUNISH HER, IT WOULD DESTROY US.

YOUR HONOR, I GAVE 50 YEARS OF MY LIFE WORKING IN PUBLIC EDUCATION. I RETIRED AT 80 YEARS OLD. MY HUSBAND AND I RAISED OUR FAMILY WITH INTEGRITY AND HAVE GIVEN BACK TO MY COMMUNITY. NEVER DID I IMAGINE THAT MY FINAL YEARS -- EXCUSE ME -- WOULD BE SPENT IN FEAR, FEAR OF SPENDING MY FINAL DAYS, MONTHS, OR YEARS ALONE AND FACING THE LOSS OF THE ONLY CHILD I HAVE.

I AM PLEADING WITH YOU, PLEASE DON'T TAKE CASSIE AWAY FROM ME AND FROM NICK. SOME DAY MY COMMENTS WILL BE A FADING MEMORY TO MOST OF YOU, BUT NICK WILL RELIVE THIS DAY OFTEN, AND I HOPE HE DOES WITH GRATITUDE AND RESPECT.

FRANKLY, I'M AFRAID. I'M TRULY AFRAID. I DON'T HAVE ANYONE ELSE IN THIS WORLD. I HAVE NO LIVING FAMILY LEFT EXCEPT NICK AND CASSIE. I KNOW MY HEALTH WILL CONTINUE TO DECLINE, AND I'M DEEPLY AFRAID OF WHAT THAT MEANS. THE THOUGHT OF BEING ISOLATED WITH NO SUPPORT IS OVERWHELMING. I NEED MY DAUGHTER. SHE IS MY PRIMARY SOURCE OF STRENGTH, COMFORT, AND CARE. WITHOUT HER I WOULD BE LEFT PRETTY MUCH ALONE IN A FACILITY WITH A PAID CAREGIVER.

10:33AM PLEASE, YOUR HONOR, I'M ASKING NOT JUST FOR HUMAN COMPASSION, BUT FOR SURVIVAL. I CANNOT DO THIS ALONE AND NICK SHOULD NOT HAVE TO DO THIS ALONE.

IF THERE IS ANY WAY FOR CASSIE TO MAKE AMENDS WHILE STILL BEING HERE TO CARE FOR US, I BEG YOU TO GRANT IT. THANK YOU.

THE COURT: THANK YOU, MRS. WILL.

MR. FULLER: AND THE OTHER INDIVIDUAL?

MS. MOOMJIAN: HI, YOUR HONOR. MY NAME IS ESTHER MOOMJIAN. I'M A LONG-TIME FRIEND OF CASSIE AND SANDRA.

I JUST WANT TO START OFF BY SAYING, YES, A CRIME WAS COMMITTED, A MISTAKE WAS MADE. BUT WE'RE ALSO ALL HUMAN BEINGS. AND I THINK OFTENTIMES IN SOCIETY WE OVERLOOK THE HUMANITY IN EACH OTHER, AND THAT'S WHERE I WOULD LIKE TO BEGIN HUMAN TO HUMAN, HEART TO HEART.

THIS SEEMS REALLY HARSH. I AM CONCERNED ABOUT THE IMPACT OF SANDRA. I ACTUALLY LIVE WITH SANDRA, BUT I AM NOT HER CARETAKER. I AM NEVER HOME. I HAVE A COMPLETELY SEPARATE LIFE, AND I HAVE WITNESSED THE DECLINE AND THE SUFFERING THAT SHE HAS GONE THROUGH, AND IT'S BEEN HEART BREAKING. IT'S BEEN CHALLENGING.

SHE, HONESTLY, WILL NOT SURVIVE IF THIS IS A LONG-TERM IMPACT.

IT IS TRUE, CASSIE HAS BEEN HER PRIMARY CARETAKER. SHE'S BEEN VERY PATIENT, MORE PATIENT THAN I COULD BE.

I THINK REMOVING CASSIE FROM HER MOTHER AND HER SON WILL

10:35AM HAVE LASTING IMPACT. EVEN THOUGH HER SON IS 11 YEARS OLD, SHE
10:35AM IS HIS ROCK. SHE IS HIS EMOTIONAL SUPPORT. SHE IS HIS SAFE
10:36AM PLACE. SHE'S A GOOD MOTHER. SHE'S NEVER MISSED ANY EVENTS.
10:36AM SHE GOES TO -- TAKES HIM TO SCHOOL, SHE FEEDS HIM, SHE CARES
10:36AM FOR HIM. THE THINGS THAT THESE DOCUMENTS WERE SAYING ABOUT
10:36AM HER, COMPLETE LIES, FABRICATION, EXAGGERATION, UNNECESSARY.
10:36AM IT'S UNNECESSARY. UNNECESSARY.

10:36AM AND SHOW ME A PERSON THAT HASN'T MADE A MISTAKE IN THEIR
10:36AM LIVES. WE PUNISH OURSELVES. CASSIE HAS BEEN PUNISHING HERSELF
10:36AM EVERY SINGLE DAY. I'VE WITNESSED IT. I'VE LIVED BY HER. I'VE
10:36AM SEEN IT.

10:36AM SHE HAS A GOOD ATTITUDE. SHE'S IN ACCEPTANCE. SHE HAS
10:36AM OWNED HER CRIME, BUT SHE'S BEEN LIVING IN ETERNAL PRISON
10:36AM BECAUSE SHE KNOWS THAT THIS POOR DECISION IS IMPACTING THOSE
10:36AM CLOSEST TO HER.

10:36AM SHE'S MY BEST FRIEND. I'VE KNOWN HER FOR OVER 25 YEARS.
10:36AM SHE'S NOT NEGLECTFUL. SHE'S NOT ABUSING DRUGS OR ALCOHOL.
10:37AM IT'S ALL ABSURD.

10:37AM SHE TOOK OUT A LOAN. SHE DIDN'T KILL ANYBODY. SHE DIDN'T
10:37AM PHYSICALLY HURT ANYBODY. SHE MADE A MISTAKE DURING A VERY
10:37AM TUMULTUOUS TIME WHEN THE WORLD WAS NOT RIGHT, PEOPLE WERE NOT
10:37AM RIGHT. NOBODY WAS THINKING RIGHT. WE WERE BEING BRAIN WASHED
10:37AM AND CONDITIONED EVERY SINGLE STEP OF THE WAY.

10:37AM SO I ASK YOU, YOUR HONOR, THAT YOU MAY FIND COMPASSION AND
10:37AM FIND THE LEAST IMPACTFUL SENTENCING FOR THE BEST AND THE

HIGHEST GOOD OF EVERY HUMAN INVOLVED IN THIS PROCESS, FOR HER MOTHER, FOR HER SON, FOR ME, FOR CASSIE, AND THE COMMUNITY.

THANK YOU VERY MUCH.

THE COURT: THANK YOU.

(PAUSE IN PROCEEDINGS.)

THE DEFENDANT: YOUR HONOR, MY NAME IS CASSIE WILL-DARNALL. I'M 53 YEARS OLD. I'M FROM THE BAY AREA. I WAS BORN IN SAN JOSE AND RAISED IN LOS GATOS.

I WENT TO LEE HIGH SCHOOL AND I WENT TO SAN DIEGO STATE FOR MY UNDERGRAD AND SAN CLARA UNIVERSITY FOR GRADUATE SCHOOL.

I'VE BEEN IN BUSINESS AS LONG AS I CAN REMEMBER. WHEN I WAS 12 YEARS OLD I HAD A CAR WASH.

WHEN I WAS 28 YEARS OLD I OPENED MY FIRST BUSINESS, SYLVAN LEARNING CENTER. BY THE TIME I SOLD THE CENTERS THERE WERE THREE. I HAVE A TEACHING DEGREE, AND I'VE TAUGHT SCHOOLS RECENTLY UP UNTIL WHEN THIS CASE STARTED.

BUT I STAND BEFORE YOU TODAY WITH REMORSE, DEEP REMORSE AND A MUCH CLEARER PERSPECTIVE ON THE CHOICES THAT BROUGHT ME HERE.

LOOKING BACK, I CAN SEE THAT I WASN'T MAKING RATIONAL DECISIONS. I WAS REACTING TO OVERWHELMING CHAOS IN MY LIFE, AND I FAILED TO CONSIDER THE CONSEQUENCES OF MY ACTIONS.

PEOPLE IN THEIR FIFTIES WITH CHILDREN AND A BUSINESS THAT THEY'VE WORKED VERY HARD, YEARS TO BUILD, SUDDENLY DON'T DECIDE TO BECOME CRIMINALS. THAT'S NEVER WHO I WAS.

10:39AM WHAT HAPPENED WAS A RESULT OF BEING PUSHED BEYOND MY BREAKING POINT. AT THE TIME I WAS IN A HIGH CONFLICT DIVORCE. I WAS ACTUALLY LATER DIAGNOSED WITH PTSD AS A DIRECT RESULT. I DIDN'T EVEN REALIZE THE TOLL IT WAS TAKING ON ME, BUT IT LEFT ME DRAINED AND VULNERABLE.

IN 2019 MY BUSINESS PARTNER ABANDONED ME. DESPITE SIGNING A CONTRACT TO SHARE HALF OF OUR DEBT, SHE LEFT ME WITH MORE THAN A MILLION DOLLARS IN LOANS SECURED AGAINST MY HOME AND PLUS ANOTHER HALF MILLION IN LEGAL FEES FROM A BROKEN LEASE.

ON TOP OF THAT, I ALREADY HAD INVESTED HEAVILY IN INVENTORY FOR MY COMPANY. WE HAD A CONTRACT WITH APPLE. THAT CONTRACT WAS SET TO BEGIN MARCH 2020. IT WAS WORTH OVER $5 MILLION. IT WAS GOING TO TAKE MY BUSINESS TO THE NEXT LEVEL.

AND THEN COVID HIT AND PRACTICALLY OVERNIGHT THAT CONTRACT DISSOLVED, MY BUSINESS COLLAPSED, AND THE COMPANY I POURED EVERYTHING INTO WAS GONE. I WAS LEFT WITH LAWSUITS, CRUSHING DEBT, AND NO INCOME.

IN THAT DESPERATION I MADE A TERRIBLE MISTAKE. I APPLIED FOR A LOAN I WASN'T QUALIFIED FOR. AT THE TIME I CONVINCED MYSELF IT WAS TEMPORARY, THAT IF ANYONE FOUND OUT, I COULD RESOLVE IT. I NEVER THOUGHT OF IT AS A CRIME. LOOKING BACK, I SEE HOW RECKLESS AND IGNORANT THAT WAS.

NO ONE WOULD KNOWINGLY RISK THEIR FAMILY AND THEIR FREEDOM AND THEIR FUTURE OVER A SHORT TERM LOAN. THE FACT THAT I DID

THAT SHOWS HOW FAR MY JUDGMENT HAD BROKEN DOWN UNDER THE STRESS. BUT THE GREATEST HARM IS NOT TO ME, IT'S TO MY FAMILY.

YOU HEARD FROM HER. AND I DO SUPPORT HER.

MY 11-YEAR-OLD SON ALSO DEPENDS ON ME. HE DOES HAVE OCD, AND HIS STABILITY IS CRITICAL TO HIS MENTAL HEALTH. I AM ONE OF THE PRIMARY SOURCES OF STRUCTURE AND SUPPORT, AND I FEAR FOR WHAT WOULD HAPPEN IF I WAS NOT AROUND FOR HIM.

I'M NOT ASKING TO BE EXCUSED. I ACCEPT RESPONSIBILITY. I HAVE ALREADY LOST MY CAREER, MY FINANCIAL SECURITY, THE HOME I INHERITED FROM MY FATHER, AND I'LL SPEND THE REST OF MY LIFE MAKING RESTITUTION.

I ASK FOR COMPASSION AND THE CHANCE TO SERVE MY SENTENCE AT HOME WHERE I COULD CONTINUE TO TAKE CARE OF MY MOTHER AND SON. INCARCERATION WOULD NOT ONLY PUNISH ME, IT WOULD PUNISH TWO VULNERABLE PEOPLE.

IT'S HARD TO IMAGINE NEVER SEEING MY MOTHER AGAIN. I HAVE NO PRIOR RECORD. I POSE NO DANGER TO THE COMMUNITY. WHAT I DO HAVE IS A DETERMINATION TO REBUILD MY LIFE WITH HONESTY AND INTEGRITY AND USE MY EXPERIENCE TO HELP OTHERS. I MADE A MISTAKE, AND I WILL REGRET THAT FOREVER.

I JUST ASK YOU FOR YOUR COMPASSION TODAY. THANK YOU.

THE COURT: THANK YOU.

MR. FULLER: YOUR HONOR, THE DEFENSE -- I WANT TO HAVE SOME REMARKS ABOUT THE DEFENSE SENTENCING REQUEST.

THE DEFENSE SENTENCING REQUEST, AS WE HAVE FILED IN OUR

PAPERS, IS GENERAL CONFINEMENT ONLY, ALTERNATIVELY A SENTENCE OF 12 MONTHS AND 1 DAY. WE WOULD STAND BY THAT REQUEST.

I THINK THE STATEMENTS OF MY CLIENT AS WELL AS HER MOTHER AND FRIEND RAISE ONE OF THE OTHER CONSIDERATIONS FOR THE COURT IN IMPOSING SENTENCE, WHICH IS THE SORT OF COLLATERAL CONSEQUENCES THAT SHE HAS ALREADY INCURRED BECAUSE OF HER CONDUCT.

IT IS NO DOUBT AN INCREDIBLY PAINFUL THING THAT NOT ONLY DID HER POOR DECISION MAKING IS GOING TO AFFECT HER OWN FINANCIAL FUTURE BUT THAT IT HAS UNNECESSARILY INVOLVED HER MOTHER.

MY CLIENT'S MOTHER HAD NO PART IN APPLYING FOR THOSE LOANS. HOWEVER, SHE NOW HAS HAD TO PAY A FINANCIAL COST BECAUSE OF MY CLIENT'S CONDUCT, AND THAT SITS HEAVILY WITH HER AS THE COURT CAN SEE.

AND WITH THAT, I WOULD RESERVE ANY REMARKS UNTIL AFTER THE GOVERNMENT COUNSEL.

THE COURT: OKAY. LET ME ASK A QUESTION OF BOTH COUNSEL AND PROBATION.

WHAT IS THE SCOPE OF MY AUTHORITY HERE TO REQUIRE THAT A PARTIAL -- THAT PART OF THE TERM OF IMPRISONMENT BE SERVED IN THE BUREAU OF PRISONS AND THAT PART BE SERVED IN HOME CONFINEMENT?

MR. FULLER: YOUR HONOR, 3553, THE COURT HAS FULL DISCRETION. IF THE COURT WANTED TO SENTENCE HER TO PROBATION,

10:43AM THE COURT MAY DO SO. THE SENTENCING GUIDELINES ARE MERELY
10:44AM ADVISORY. WE KNOW THAT FROM GULL, WE KNOW THAT FROM BOOKER,
10:44AM BECAUSE OF THE SENTENCES THAT WERE IMPOSED IN THERE, WHICH WERE
10:44AM EXTRAORDINARY VARIANCES FROM THE GUIDELINE RANGE.
10:44AM THE COURT: WELL, I GUESS THE QUESTION I'M -- WHAT
10:44AM IS THE SCOPE -- YOU KNOW, DO I HAVE THE POWER TO SAY A CERTAIN
10:44AM AMOUNT OF THIS TIME WILL BE SERVED IN THE BUREAU OF PRISONS AND
10:44AM A CERTAIN AMOUNT OF THE TIME WILL BE SERVED ON HOME
10:44AM CONFINEMENT?
10:44AM MR. FULLER: YES, YOUR HONOR, YOU CAN DO THAT. YOU
10:44AM MAY ORDER A SPLIT TERM UNDER YOUR AUTHORITY UNDER 3553 TO
10:44AM IMPOSE A CUSTODIAL COMPONENT AND IMPOSE A COMPONENT THAT IS
10:44AM HOME CONFINEMENT.
10:44AM THE COURT MAY DO THAT. FOR EXAMPLE, IF THE COURT WERE TO
10:44AM SENTENCE HER TO A TERM OF IMPRISONMENT AND THEN THEREAFTER
10:44AM REQUIRE AS A CONDITION OF SUPERVISED RELEASE THAT SHE SERVE A
10:44AM PERIOD OF HOME CONFINEMENT, THAT WOULD BE AN APPROPRIATE
10:44AM SENTENCE.
10:44AM THE COURT: WHAT DOES THE GOVERNMENT -- DO YOU HAVE
10:45AM AN UNDERSTANDING OF THAT?
10:45AM MR. JAMES: MY UNDERSTANDING UNDER THE GUIDELINES IS
10:45AM THAT BECAUSE THE OFFENSE LEVEL FALLS WITHIN ZONE D OF THE
10:45AM SENTENCING TABLE, THAT THE MINIMUM RANGE RECOMMENDED BY THE
10:45AM GUIDELINES IS TO BE SERVED IN ACTUAL CUSTODIAL IMPRISONMENT.
10:45AM I DO NOT DISAGREE WITH THE DEFENSE COUNSEL, HOWEVER, WHEN

10:45AM HE REPRESENTS THAT THE TERM OF SUPERVISED RELEASE WHICH MAY FOLLOW MAY HAVE AS A CONDITION HOME CONFINEMENT.

MR. FULLER: I THINK THE KEY TO THE COURT'S -- A KEY TO THE GOVERNMENT'S RECITATION THERE IS RECOMMENDED.

THE COURT: RIGHT. BUT I GUESS THE -- BUT THE SCOPE, FOR WHATEVER -- TO THE EXTENT THAT I IMPOSE A TERM OF IMPRISONMENT, THAT WOULD BE SERVED IN THE BUREAU OF PRISONS AND THEN IF I WANTED TO IMPOSE HOME CONFINEMENT THAT WOULD HAVE TO BE -- LET ME ASK PROBATION.

PROBATION OFFICER: THAT IS CORRECT, YOUR HONOR. THE WAY DEFENSE COUNSEL EXPLAINED IT, IT WOULD HAVE TO BE A TERM OF IMPRISONMENT, YOU KNOW, WHATEVER TERM THAT IS.

AND THEN AS PART OF SUPERVISED RELEASE, HOME CONFINEMENT.

THE COURT: OKAY.

MR. FULLER: ADDITIONALLY, YOUR HONOR, THERE IS THE OPTION OF INTERMITTENT CONFINEMENT. IF THE COURT WERE TO SENTENCE HER TO -- AND INTERMITTENT CONFINEMENT, I MEAN A HALFWAY HOUSE. IF THE COURT WERE TO SENTENCE HER TO A PERIOD OF TIME IN THE SAN FRANCISCO HALFWAY HOUSE AS A CUSTODIAL COMPONENT, THE COURT MAY DO THAT AS WELL AND MAY DO THAT AS A CONDITION OF SUPERVISED RELEASE AND MAY FASHION WHATEVER SENTENCE, WHATEVER PORTION OF THE COURT'S ORDER WOULD BE AS TO CUSTODY AT THE HALFWAY HOUSE AND IN HOME CONFINEMENT.

THE COURT: OKAY. THANK YOU.

IS THERE ANYTHING ELSE THE GOVERNMENT WANTED TO OFFER?

10:46AM MR. JAMES: AS TO THE INTERMITTENT CONFINEMENT REMARK, MY UNDERSTANDING FROM AN UNRELATED CASE BEFORE JUDGE DAVILA IS THAT THERE ARE NOT RESOURCES IN THIS DISTRICT TO DO INTERMITTENT CONFINEMENT AS THAT WORD TYPICALLY REPRESENTS, FOR EXAMPLE, LIKE WEEKEND TIME OR SOMETHING LIKE THAT, WHICH I DON'T THINK IS NECESSARILY WHAT DEFENSE COUNSEL IS ASKING FOR, BUT I WANTED TO MAKE THE COURT AWARE OF THAT.

IN RESPONSE TO SOME OF THE REMARKS THAT HAVE BEEN MADE ON BEHALF OF THE DEFENDANT, IT IS COMPELLING REMARKS FROM MS. WILL-DARNALL'S FAMILY. THEY ARE DEEPLY, DEEPLY MOVING.

BUT I MUST CONFESS THAT THEY MOVE THE GOVERNMENT TO, IF ANYTHING, GREATER ANGER, BECAUSE MS. WILL-DARNALL KNEW THAT SHE HAD A NEEDY MOTHER WHO WAS RELYING ON HER WHEN SHE COMMITTED THIS CRIME. MS. WILL-DARNALL KNEW THAT SHE HAD A SON WHO WAS RELYING ON HER WHEN SHE COMMITTED THIS CRIME, AND SHE KNEW THAT THE CONSEQUENCE OF STEALING MILLIONS OF DOLLARS HAD TO BE THAT SHE WOULD BE TAKEN AWAY FROM THEM AND THAT SHE WOULD SERVE TIME IN PRISON, AND YET SHE STOLE THE MONEY ANYWAY.

MS. WILL-DARNALL KNEW THAT WHEN SHE GAVE MONEY TO HER MOTHER THAT WAS THE PRODUCT OF FRAUD, THAT SHE WAS GOING TO FURTHER HARM HER MOTHER AS A RESULT OF HER CRIMINAL ACTIVITY. SHE HAD TO HAVE KNOWN THAT.

THE DEFENDANT: NO, I DIDN'T.

MR. JAMES: I APPRECIATE MS. WILL-DARNALL'S STATEMENT THAT SHE FAILED TO FULLY CONSIDER THE CONSEQUENCES OF

HER ACTIONS. THAT MUCH IS EVIDENT.

BUT HER FAILURE TO CONSIDER THOSE CONSEQUENCES DOES NOT GRANT HER RELIEF FROM THOSE CONSEQUENCES.

WITH THAT IN MIND AND FOR ALL OF THE REASONS PREVIOUSLY PRESENTED TO THE COURT, BOTH IN WRITING AND ORALLY, THE GOVERNMENT WOULD REQUEST THE SENTENCE AS RECOMMENDED IN ITS SENTENCING MEMO.

THE COURT: OKAY. THANK YOU.

ANYTHING ELSE?

MR. FULLER: BRIEFLY. TO GOVERNMENT COUNSEL'S POINT, I THINK IT IS -- MY CLIENT HAS ACKNOWLEDGED HER POOR DECISION MAKING DURING THIS TIME.

I WOULD CLOSE WITH -- TO BRING US TO THE BROADER CONTEXT OF THE PPP LOAN FRAUD HERE. WE KNOW THAT THERE WAS A LOT OF PPP LOAN FRAUD COMMITTED IN RELATION TO THIS PROGRAM, SO MUCH THAT CONGRESS AMENDED THE STATUTE OF LIMITATIONS BECAUSE THEY FELT THAT THEY WOULD NOT BE ABLE TO DEAL WITH ALL OF THE FRAUD ASSOCIATED WITH THE PPP LOAN PROGRAM IN THE SUFFICIENT AMOUNT OF TIME UNDER THE STATUTE OF LIMITATIONS.

I SAY THAT BECAUSE I THINK IT'S IMPORTANT FOR THE COURT TO PUT INTO CONTEXT SHE WAS NOT -- SHE DID MAKE THOSE FALSE STATEMENTS ON THAT LOAN, BUT SHE WAS CLEARLY WITHIN THE GROUP OF INDIVIDUALS THAT THIS PROGRAM WAS INTENDED TO ASSIST, THOSE WHOSE BUSINESSES WERE AFFECTED BY COVID.

NOW, WE LOOK AT REPORTS ABOUT SOME INDIVIDUALS WHO

10:50AM COMMITTED PPP LOAN FRAUD AND MADE UP COMPANIES OUT OF WHOLE CLOTH THAT NEVER EXISTED AND THEY HAD ABSOLUTELY NO RIGHT TO THOSE FUNDS. THEY JUST SIMPLY LIED ABOUT EVERYTHING. THEY MADE UP SHELL CORPORATIONS AS THE GOVERNMENT NOTED IN ITS BRIEFING. BUT THAT'S NOT THE CASE HERE.

WITH THAT, YOUR HONOR, THE DEFENSE FINAL REQUEST WOULD BE AS TO HOME CONFINEMENT OR THE SENTENCE THAT THE COURT MAY IMPOSE OF A SPLIT TERM.

THE COURT: OKAY. ANYTHING ELSE FROM PROBATION?

PROBATION OFFICER: NO, YOUR HONOR.

THE COURT: OKAY. AND UNLESS THE PARTIES HAVE ANYTHING ELSE THEY WOULD LIKE TO OFFER, I THINK WE'RE READY TO DECIDE WHAT THE APPROPRIATE SENTENCE IS HERE.

MR. JAMES: THE ONLY OTHER NOTE, AND THIS IS A CLERICAL MATTER, YOUR HONOR, IS THE GOVERNMENT WOULD ASK SPECIFICALLY AS NOTED IN THE SENTENCING MEMORANDUM AND THE SUPPLEMENTAL MEMORANDUM THAT THE COURT ANNOUNCE THE CRIMINAL FORFEITURE AS PART OF ITS SENTENCE.

THE COURT: OKAY. THAT'S SUBJECT TO AN UNDERSTANDING THAT THE TERMS OF THAT FORFEITURE MAY BE -- ARE STILL SUBJECT TO THE SUBSEQUENT HEARING; IS THAT RIGHT?

MR. JAMES: THE ANCILLARY PROCEEDINGS WILL BE ONGOING AT A LATER DATE, BUT THE CRIMINAL FORFEITURE MUST BE PRONOUNCED AS PART OF THE SENTENCE UNDER THE RULE.

MR. FULLER: AND, YOUR HONOR, IT WAS THE DEFENSE

10:51AM REQUEST, AND AFTER CONFERRING WITH THE GOVERNMENT COUNSEL, THAT
10:51AM THE COURT DEFER ENTRY OF THE FORFEITURE PROCEEDINGS. IF THE
10:51AM COURT WANTS, I CAN GET INTO THE DETAILS OF THAT REQUEST AT THIS
10:51AM TIME OR DEFER UNTIL AFTER THE COURT PRONOUNCES.
10:51AM THE COURT: I MEAN, I GUESS JUST SO I UNDERSTAND THE
10:51AM GOVERNMENT'S REQUEST -- AND DOES THE GOVERNMENT NEED ME TO
10:51AM ANNOUNCE FORFEITURE, INCLUDE FORFEITURE AND INCLUDE FORFEITURE
10:51AM OF THE SPECIFIC PROPERTIES AND PROPERTY IDENTIFIED IN THE
10:51AM PRESENTENCE REPORT? IS THAT --
10:52AM MR. JAMES: THE PROPERTY IDENTIFIED IN THE
10:52AM PRELIMINARY ORDER OF FORFEITURE WITH THE EXCEPTION OF THE
10:52AM LOS GATOS/ALMADEN PROPERTY WHICH THE GOVERNMENT IS NO LONGER
10:52AM SEEKING CRIMINAL FORFEITURE FOR.
10:52AM THE COURT: OKAY.
10:52AM MR. FULLER: YOUR HONOR, THE DEFENSE REQUEST -- MY
10:52AM UNDERSTANDING IS ALSO THAT -- ONE SECOND.
10:52AM (DISCUSSION AMONGST COUNSEL OFF THE RECORD.)
10:52AM MR. FULLER: IT'S MY UNDERSTANDING THAT THE
10:52AM GOVERNMENT'S REQUEST WILL ALSO BE AS TO THE MONEY JUDGMENT.
10:52AM THE DEFENSE REQUEST IS THAT THE COURT, THE COURT WOULD
10:52AM PROVIDE OR WOULD INDICATE TO THE PARTIES WHAT THE COURT'S
10:52AM SENTENCE IS AT THIS TIME AND THEN DEFER ENTRY OF JUDGMENT UNTIL
10:52AM A CONSOLIDATED RESTITUTION AND FORFEITURE PROCEEDING MAY BE
10:52AM HELD.
10:52AM HERE'S WHY, YOUR HONOR. THE PRELIMINARY ORDER OF

FORFEITURE INVOLVES A SEIZURE OF APPROXIMATELY 700 AND CHANGE FROM THE VANGUARD ACCOUNT. IF THE COURT WERE TO ENTER THE FINAL ORDER OF FORFEITURE TODAY, THOSE FUNDS MAY NOT BE CONSIDERED FOR PURPOSES OF RESTITUTION. THEY WOULD NOT GO TO THE SMALL BUSINESS ADMINISTRATION. THEY WOULD GO TO THE GOVERNMENT'S -- TO THE DOJ ASSET FORFEITURE.

IT IS THE DEFENSE REQUEST, AS WE HAVE RAISED WITH THE GOVERNMENT, THAT THOSE FUNDS BE USED TO COMPENSATE THE VICTIM, THE SMALL BUSINESS ADMINISTRATION, AND NOT BE USED FOR PURPOSES OF FORFEITURE PROCEEDINGS.

THE FORFEITURE PROCEEDINGS IS THE PENALTY THAT IS ASSOCIATED WITH MY CLIENT. RESTITUTION GOES TO A CONCERN AS TO THE SMALL BUSINESS ADMINISTRATION, WHICH IS THE VICTIM HERE.

NOW, THE COURT HAS A COUPLE OF OPTIONS. THE COURT MAY DEFER THAT, BUT THE GOVERNMENT IS QUITE RIGHT ABOUT THE COURT NEEDING TO ENTER THAT FINAL JUDGMENT OF FORFEITURE OF WHEN THE COURT PRONOUNCES AND IMPOSES SENTENCE. THAT IS WHY WE ARE ASKING THE COURT TO INFER DISPOSITION OF SENTENCE AND PRONOUNCEMENT OF THE FINAL SENTENCE UNTIL THAT TIME.

ANOTHER OPTION IS THE COURT MAY ENTER A PRELIMINARY ORDER OF FORFEITURE AND IDENTIFY THE PARTICULAR ASSETS, BUT THEN HOLD OFF ON IDENTIFYING THE AMOUNTS WITH RESPECT TO THOSE ASSETS. AND I CITE TO THE COURT RULE -- ONE SECOND.

(PAUSE IN PROCEEDINGS.)

MR. FULLER: CRIMINAL RULE OF PROCEDURE

32.2(B)(2)(C) WHICH PROVIDES THE COURT -- IF THE COURT CANNOT IDENTIFY ALL OF THE SPECIFIC PROPERTY SUBJECT TO FORFEITURE OR CALCULATE THE TOTAL AMOUNT OF THE MONEY JUDGMENT, THE COURT MAY ENTER A FORFEITURE ORDER THAT LISTS ANY IDENTIFIED PROPERTY, DESCRIBES OTHER PROPERTY IN GENERAL, AND WHEN SPECIFIC PROPERTY IS IDENTIFIED OR THE MONEY JUDGMENT HAS BEEN CALCULATED.

UNDER THAT PROCEDURE, YOUR HONOR, THE COURT WOULD IDENTIFY THE PROPERTY AND THEN DEFER AS TO THE AMOUNTS TO THE LATER DATE.

THE COURT: WOULD THE GOVERNMENT OBJECT TO DOING THAT UNDER THE CIRCUMSTANCES?

MR. JAMES: CAN I BEG A MOMENT OF THE COURT'S INDULGENCE?

THE COURT: YES.

(DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

MR. JAMES: YOUR HONOR, AFTER CONFERRING WITH MY FORFEITURE COLLEAGUES, THE PRELIMINARY ORDER OF FORFEITURE WAS PROPOSED TO THE COURT MONTHS AGO AND SIGNED OFF BY THE COURT, AND IT SPECIFICALLY IDENTIFIES THE PROPERTY AND THE AMOUNT OF THE MONEY JUDGMENT THAT IS SUBJECT TO FORFEITURE AND WHICH NEEDS TO BE IMPOSED AS PART OF THE SENTENCE.

THERE WERE NO OBJECTIONS PRIOR TO THE ENTRY OF THAT PRELIMINARY ORDER OF FORFEITURE THAT I AM IMMEDIATELY AWARE OF.

THIS REALLY IS AN 11TH HOUR OBJECTION TO BOTH THE SCOPE OF FORFEITURE AND THE APPLICATION OF THE FUNDS THAT HAVE BEEN

SEIZED SUBJECT TO IT. THERE'S NO BASIS FOR THAT.

I RESPECT MY COLLEAGUE'S CITATION TO RULE 32.2(B)(2)(C), BUT THAT IS NOT PARTICULARLY APPLICABLE HERE WHERE WE HAVE ALREADY SUCCESSFULLY IDENTIFIED THE PROPERTY AND THE AMOUNTS TO THE COURT AND THE PRELIMINARY ORDER OF FORFEITURE HAS ALREADY BEEN ENTERED.

THE APPROPRIATE THING TO DO AT THIS TIME IS FOR THE COURT TO PRONOUNCE THAT FORFEITURE AS IT APPLIES TO CASSIE WILL-DARNALL.

TO THE EXTENT THAT THERE REMAINS ANCILLARY CLAIMS CONTESTING ASPECTS OF THE FORFEITURE, THAT WILL STILL BE LITIGATED AT A LATER DATE.

AND TO THE EXTENT THAT THE DEFENSE MAY SEEK TO CONTEST THE APPROPRIATE AMOUNT OF RESTITUTION, THAT CAN ALSO BE LITIGATED AT A LATER DATE. INDEED THE DEFENSE AND THE GOVERNMENT HAVE ALREADY DISCUSSED THAT IT IS NOT OUR INTENTION TO ASK THE COURT TO FINALIZE RESTITUTION TODAY, BUT RATHER TO SET A SEPARATE RESTITUTION HEARING SOME TIME AFTER THE PRONOUNCEMENT OF JUDGMENT TODAY.

MR. FULLER: AND, YOUR HONOR, TO THE COURT'S POINT, THE RULE DOES PERMIT THE COURT TO DEFER THAT FINAL DETERMINATION. I DID NOT HEAR ANYTHING IN THE GOVERNMENT'S OPPOSITION TO THAT THAT INDICATED THAT THE COURT CANNOT DO THAT.

THE CONCERN HERE, YOUR HONOR, IS ALSO THAT RESTITUTION IS

10:57AM MANDATORY. AS THE COURT IS AWARE, AND THE GOVERNMENT HAS
10:57AM INDICATED THE PARTIES CAN DEFER THE ISSUE OF RESTITUTION. IF
10:57AM WE DEFER THE ISSUE OF RESTITUTION AT THAT HEARING, IT IS THE
10:57AM DEFENSE POSITION TO APPLY THOSE FUNDS THAT WERE SEIZED IN THAT
10:57AM ACCOUNT TO RESTITUTION. WE WOULD LIKE TO HAVE THAT DISCUSSION
10:57AM WITH THE GOVERNMENT. IT'S OBVIOUSLY THE GOVERNMENT'S
10:57AM DISCRETION WHETHER OR NOT TO DO THAT.
10:57AM I AM AWARE THERE'S A PROCESS BY WHICH THOSE FUNDS MAY BE
10:57AM USED FOR THAT PURPOSE, BUT IF THE COURT WERE TO PROCEED WITH
10:57AM THE FINAL ORDER OF FORFEITURE TODAY, THOSE FUNDS MAY NOT BE
10:58AM CONSIDERED FOR PURPOSES OF THE RESTITUTION. THE RESTITUTION
10:58AM HEARING IS STILL YET TO BE HELD.
10:58AM MR. JAMES: DEFENDANT DOES HAVE NOT ANY
10:58AM PARTICULARIZED RIGHT TO PAY BACK THE MONEY SHE STOLE WITH THE
10:58AM MONEY THAT SHE STOLE. UNDER THE LAW IT MAY BE RIGHTFULLY
10:58AM SEIZED SUBJECT TO CRIMINAL FORFEITURE, AND THE GOVERNMENT HAS
10:58AM DONE SO AND WILL CONTINUE TO DO SO.
10:58AM THE GOVERNMENT DOES NOT INTEND TO PERMIT MS. WILL-DARNALL
10:58AM TO APPLY ANY PART OF THOSE FUNDS THAT ARE SUBJECT TO CRIMINAL
10:58AM FORFEITURE TO HER RESTITUTION OBLIGATIONS.
10:58AM CERTAINLY THIS IS A HEAVY PENALTY THAT IS FALLING UPON
10:58AM MS. WILL-DARNALL. CERTAINLY THE COURT SHOULD CONSIDER THE
10:58AM SCOPE OF THAT PENALTY OF THE CRIMINAL FORFEITURE IN ITS
10:58AM APPLICATION OF THE 3553(A) FACTORS. IT MUST BECAUSE IT SERVES
10:58AM THE PURPOSE OF PUNISHMENT.

10:58AM BUT THAT DOES NOT MEAN THAT THE COURT MAY REFUSE AT THE
10:58AM 11TH HOUR A PORTION OF THE CRIMINAL FORFEITURE SIMPLY SO THAT
10:59AM THOSE SAME FUNDS MAY BE AVAILABLE IN A RESTITUTION HEARING.
10:59AM THOSE OBLIGATIONS ARE MS. WILL-DARNALL'S AND THEY'RE
10:59AM MS. WILL-DARNALL'S IN FULL.
10:59AM MR. FULLER: YOUR HONOR, MY UNDERSTANDING OF THE
10:59AM DEPARTMENT OF JUSTICE ASSET FORFEITURE PROGRAM IS THAT THEY
10:59AM HAVE TWO, REMISSION AND RESTORATION. AND THIS IS THEIR GUIDE
10:59AM TO THAT PROCESS WHICH PROVIDES THAT RESTORATION ISSUES WITH THE
10:59AM ATTORNEY GENERAL AT THE REQUEST OF THE U.S. ATTORNEY AUTHORIZES
10:59AM THE USE OF FORFEITED FUNDS TO PAY RESTITUTION TO THE VICTIMS IN
10:59AM A CRIMINAL OFFENSE.
10:59AM SO IT IS A PROGRAM THAT EXISTS WITHIN THE DEPARTMENT OF
10:59AM JUSTICE, AND IT IS AT THEIR DISCRETION TO APPLY THOSE FUNDS
10:59AM EITHER TO RESTITUTION BECAUSE THE RESTITUTION HERE, YOUR HONOR,
10:59AM IS NOT ABOUT MS. DARNALL. IT IS NOT PUNISHMENT. IT IS ABOUT
10:59AM THE VICTIM AND RESTORING THE VICTIM TO BE MADE WHOLE. THE
10:59AM MONETARY PENALTY, THAT'S THE PUNISHMENT.
10:59AM NOW, THE GOVERNMENT IS SEEKING TO USE THE FUNDS IN ORDER
10:59AM TO DECREASE THE MONETARY PENALTY AS TO MY CLIENT RATHER THAN
11:00AM USING THOSE TOWARDS RESTITUTION. THAT IS TO SAY, IF THE COURT
11:00AM IS INTENDING TO PROCEED THAT WAY, THAT IS WHAT I BELIEVE THE
11:00AM EFFECT OF ENTERING THE FINAL ORDER OF FORFEITURE WOULD BE
11:00AM TODAY.
11:00AM THE COURT: OKAY. IT DOES SEEM LIKE THEY'RE -- I

MEAN, IT'S ODD TO SAY THAT THE RESTITUTIONARY OBLIGATION WOULDN'T BE -- CONSIDER WHETHER THE ENTITY FROM WHICH THE MONEY WAS TAKEN HAS RECEIVED THAT MONEY BACK, WHAT SEEMS TO BE THE PRINCIPAL. BUT THAT WOULD BE -- WHEN YOU THINK ABOUT RESTITUTION, YOU THINK ABOUT THE RESTORATION OF THE FUNDS THAT WERE TAKEN FROM SOMEONE AND HAVING THEM RETURNED.

NOW, IT KIND OF GOES THROUGH FORFEITURE, WHICH IS A PENALTY, AS OPPOSED TO A QUESTION OF RESTITUTION. SO I THINK I WOULD BE INCLINED TO DEFER IMPOSITION OF A FINAL ORDER OF RESTITUTION UNDER 352.2 -- UNDER THE PROVISION THAT WAS IDENTIFIED BY COUNSEL.

MR. JAMES: I APOLOGIZE, YOUR HONOR. I MUST ASK FOR CLARIFICATION. ARE YOU DEFERRING RESTITUTION OR ARE YOU DEFERRING FORFEITURE?

THE COURT: I'M DEFERRING ENTRY OF A FINAL ORDER OF FORFEITURE UNTIL THE APPROPRIATE AMOUNT OF FUNDS THAT SHOULD BE INCLUDED IN THE AMOUNT OF FORFEITURE CAN BE IDENTIFIED.

MR. JAMES: I HAVE SPOKEN WITH MY COLLEAGUE. DEFENSE COUNSEL IDENTIFIES PROGRAMS UNDER THE DEPARTMENT OF JUSTICE WHERE THE U.S. ATTORNEY'S OFFICE IN CONJUNCTION WITH THE DEPARTMENT MAIN MAY ENTER INTO AGREEMENTS WHERE MONEY THAT WOULD OTHERWISE BE SUBJECT TO FORFEITURE MAY GO TO RESTITUTION.

WE'RE NOT EXERCISING THAT DISCRETION IN THIS CASE. AND SO ABSENT THAT, THERE'S -- I'M NOT AWARE OF ANY BASIS IN LAW UNDER WHICH THE FUNDS THAT ARE BEING THE SUBJECT OF FORFEITURE,

CRIMINAL FORFEITURE, THEY BE DIVERTED TO APPLY TO RESTITUTION.

INDEED, IF ANYTHING, THE LAW IS QUITE CLEAR THAT THESE CONCEPTS OF FORFEITURE AND RESTITUTION SERVE DIFFERENT PURPOSES AND ONE MAY NOT BE OFFSET BY THE OTHER, WHICH IS IN EFFECT WHAT THE DEFENDANT IS ATTEMPTING TO ACCOMPLISH.

THE COURT MAY CONSIDER THE SCOPE OF THE CRIMINAL FORFEITURE IN DETERMINING WHAT THE APPROPRIATE CUSTODIAL SENTENCE IS. I DON'T WANT TO CALL THAT AN OFFSET, BUT IT'S ONE OF THE THINGS THAT THE COURT MUST CONSIDER IN THE APPLICATION OF THE FACTORS, BUT IT WOULD BE INAPPROPRIATE TO REDUCE THE CRIMINAL FORFEITURE IN ORDER TO HAVE THOSE SAME FUNDS BE AVAILABLE IN RESTITUTION.

MR. FULLER: YOUR HONOR, HERE, THERE IS NO --

THE COURT: LET ME ASK THIS. IS THERE ANY HARM TO THE GOVERNMENT IN ALLOWING THIS TO BE RESOLVED IF I AM, YOU KNOW -- IF WE'RE ADDRESSING THIS FOR THE FIRST TIME IN COURT ORALLY WITHOUT ANY BRIEFING ON THIS ISSUE. I UNDERSTAND BECAUSE OF THE WAY IT WAS RAISED, BUT -- AND OBVIOUSLY -- I'M SURE THE GOVERNMENT WOULD LIKE TO GET A FINAL ORDER TODAY SO IT HAS CERTAINTY ON THIS ISSUE. THERE OBVIOUSLY IS SOME DISCRETION UNDER THE RULES TO POSTPONE ENTRY OF THE FINAL ORDER OF FORFEITURE IF THERE IS A NEED TO RESOLVE AN ISSUE WITH RESPECT TO THE AMOUNT OF THE FUNDS TO BE FORFEITED OR THE MONETARY JUDGMENT. THAT'S HOW AT LEAST LOOKING AT THE RULE THAT I HAVE THAT DISCRETION.

SO WHAT IS THE HARM TO THE GOVERNMENT OF ALLOWING THESE ARGUMENTS TO BE PROPERLY BRIEFED TO ME, TO BE PROPERLY RAISED? IS THERE ANYTHING -- IS THERE ANY HARM TO RESOLVING THIS AT THAT POINT RATHER THAN DOING IT RIGHT NOW ON THE FLY?

MR. JAMES: THERE ARE A COUPLE OF THINGS: ONE GENERAL PRINCIPLE AND ONE SPECIFIC ISSUE IN THIS CASE.

THE GENERAL PRINCIPLE IS THAT IF THE COURT IS NOT GOING TO ENTER A CRIMINAL FORFEITURE AGAINST THE DEFENDANT AT THIS TIME BUT THEN ALSO PROCEEDS TO IMPOSE THE OTHER ASPECTS OF THE SENTENCE, IT RAISES THE QUESTION OF HOW THE COURT WAS ABLE TO WEIGH UNDER THE FACTORS THE WEIGHT OF THAT CRIMINAL FORFEITURE AS A PENALTY WHEN IT WAS ALSO CONSIDERING THE TERM OF CUSTODY, THE TERMS OF SUPERVISED RELEASE AND ALL ELSE. I THINK THOSE THINGS HAVE TO BE IMPOSED AT THE SAME TIME.

SO WHATEVER THE COURT DOES, IT NEEDS TO OCCUR ALL AT ONE POINT IN TIME, AT LEAST THAT'S MY UNDERSTANDING.

SPECIFIC TO THIS CASE --

THE COURT: I MEAN, BUT HERE IT SAYS -- THE RULES SAY I CAN POSTPONE IT. IT SPECIFICALLY SAYS I CAN POSTPONE ENTRY OF -- OR I'M LOOKING AT, IF BEFORE SENTENCING THE COURT CANNOT IDENTIFY ALL OF THE SPECIFIC PROPERTY SUBJECT TO FORFEITURE, CALCULATE THE TOTAL AMOUNT, IT MAY ENTER A FORFEITURE ORDER THAT LISTS ANY IDENTIFIED PROPERTY THAT DESCRIBES OTHER PROPERTY IN GENERAL TERMS AND STATES THAT THE ORDER WILL BE AMENDED UNDER RULE 32(E)(1).

SO CLEARLY THE RULES CONTEMPLATE THE POSSIBILITY OF ENTERING SENTENCING WITHOUT REACHING FINAL RESOLUTION ON THE AMOUNT OF FORFEITURE.

MR. JAMES: PERHAPS WHEN THE ITEMS TO BE FORFEITED HAVE NOT BEEN IDENTIFIED, BUT WE HAVE IDENTIFIED THOSE ITEMS IN THIS CASE AND THERE HAS NOT BEEN ANY OBJECTION TO THAT UNTIL 10, 15 MINUTES AGO, AND REALLY THAT'S A LATENT AND UNTIMELY OBJECTION TO THE PRELIMINARY ORDER OF FORFEITURE THAT HAS BEEN ENTERED.

I DON'T BELIEVE THAT RULE PROVIDES A MECHANISM IN THIS CASE.

NOW, THAT SAID, IF THE COURT WISHES TO CONTINUE SENTENCING IN TOTAL, THAT'S WITHIN THE COURT'S DISCRETION.

THE COURT: THAT I DO NOT WISH TO POSTPONE TO THREE WEEKS.

MR. JAMES: RIGHT. THE OTHER SPECIFIC ISSUE IN THIS CASE IS THAT THERE IS A CONTINUITY OF GOVERNMENT COUNSEL ISSUE IN THIS CASE. I HAVE SERVED AS THE GOVERNMENT'S REPRESENTATIVE IN THIS MATTER SINCE EARLIER THIS YEAR. I WILL BE DEPARTING THE U.S.'S OFFICE ON OCTOBER 10TH, AND I'M ALREADY BOOKED UP WITH NUMEROUS SENTENCINGS BETWEEN NOW AND THEN. THE PREVIOUS COUNSEL ON THIS CASE WILL NOT BECOME AVAILABLE TO RESUME HER REPRESENTATION OF THE GOVERNMENT UNTIL LATE NOVEMBER OR DECEMBER.

AND SO TO THE EXTENT THAT THIS GETS CONTINUED TO A FUTURE

DATE, THE GOVERNMENT'S REQUEST IS GOING TO HAVE TO BE THAT IT BE CONTINUED QUITE SUBSTANTIALLY, WHETHER IN PART OR IN WHOLE.

THE COURT: WELL, WE HAVE A HEARING COMING UP ON THE QUESTION OF THE THIRD PARTY CHALLENGE TO FORFEITURE; CORRECT?

MR. JAMES: YES. I BELIEVE IT IS SET FOR OCTOBER 14TH.

THE CLERK: 15TH, COUNSEL.

MR. JAMES: 15TH. I APOLOGIZE. I WAS OFF BY A DAY.

SO CERTAINLY THE COUNSEL WHO REPRESENTS THE GOVERNMENT AS TO THE FORFEITURE PROCEEDINGS IN THE ANCILLARY FORFEITURE LITIGATION WILL BE THERE AND PRESENT, BUT GENERALLY SPEAKING, WE SEPARATE OUT WHO REPRESENTS THE GOVERNMENT FOR FORFEITURE PURPOSES AND WHO REPRESENTS THE GOVERNMENT FOR THE GENERAL PROSECUTION OF THE CRIME.

THE COURT: BUT MAYBE THE CIRCUMSTANCES HERE WILL JUSTIFY -- IT CERTAINLY SEEMS LIKE WE ARE GOING TO BE BACK TOGETHER IN RELATIONSHIP TO THIS CASE ON OCTOBER 15TH, AND IT SEEMS LIKE THIS WOULD BE AN ISSUE THAT IS PERHAPS ADDRESSED BETTER THEN. I UNDERSTAND THERE MIGHT BE SOME TRANSITION CHALLENGES IN THE OFFICE, BUT IT DOES SEEM TO ME THAT'S SOMETHING THAT CAN BE OVERCOME. IT'S A PRETTY DISCRETE ISSUE THAT WE'RE TALKING ABOUT AS I UNDERSTAND IT.

SO, AGAIN, IN THE ABSENCE OF -- THIS IS SOMETHING I DON'T WANT TO CONTINUE THE SENTENCING FURTHER SINCE WE ALREADY CONTINUED IT BY THREE WEEKS, BUT I DO THINK THAT IT IS

APPROPRIATE TO ENTER THE ORDER OF FORFEITURE CONSISTENT WITH RULE 32.2(B)(2)(C), A GENERAL ORDER OF FORFEITURE, AND THAT'S WHAT I WILL INTEND TO DO AS PART OF THE SENTENCE HERE.

SO OBVIOUSLY I HAVE HAD A CHANCE TO CONSIDER ALL OF THE MATERIAL THAT HAS BEEN PROVIDED, THE SENTENCE RECOMMENDED BY THE GUIDELINES, I'VE HEARD FROM MS. WILL-DARNALL, AND HER MOTHER, AND HER FRIEND, AND COUNSEL FOR MS. WILL-DARNALL, AND THE GOVERNMENT.

I THINK THAT -- YOU KNOW, AND I'VE CONSIDERED THE STATUTORY FACTORS SET FORTH UNDER 18 U.S. CODE SECTION 3553(A).

AND I THINK IN SOME WAYS THERE'S A NUMBER THAT ARE IMPORTANT HERE. THE NATURE AND THE CIRCUMSTANCES OF THE OFFENSE ARE SIGNIFICANT HERE. YOU KNOW, THIS IS NOT A SMALL AMOUNT OF FRAUDULENT APPLICATIONS, RIGHT? THERE WAS 2.8 MILLION, ROUGHLY, IN LOAN FUNDS THAT WERE RECEIVED AS A RESULT OF MS. WILL-DARNALL'S FALSE APPLICATIONS AND MORE THAN $9 MILLION IN FALSE APPLICATIONS THAT WERE SUBMITTED, AND THAT'S A LARGE AMOUNT OF MONEY THAT WAS FRAUDULENTLY PROCURED AND SOUGHT TO BE PROCURED FROM THE GOVERNMENT. AND THAT IS A KIND OF FRAUDULENT CONDUCT THAT REQUIRES A SIGNIFICANT PENALTY.

AND I THINK THAT IN ADDITION, IT'S IMPORTANT TO NOTE THAT, YOU KNOW, I UNDERSTAND THERE ARE GOING TO BE FINANCIAL PENALTIES AND THERE ARE OTHER PENALTIES THAT ARE ACCOMPANIED BY THIS, BUT IN CRIMES LIKE THIS, DETERRENCE NOT ONLY WITH RESPECT TO MS. WILL-DARNALL WHO I UNDERSTAND IS A ZERO POINT OFFENDER

11:09AM UNDER THE CIRCUMSTANCES OF WHICH THIS OCCURRED, BUT THERE ARE
11:09AM IMPORTANT PUBLIC DETERRENT CONSEQUENCES AT ISSUE HERE AND THERE
11:09AM ARE SOME EQUITY ISSUES THAT ARISE TO THE EXTENT THAT THE
11:09AM ABILITY TO IMPOSE FINANCIAL CIRCUMSTANCES FOR A CRIME MIGHT BE
11:09AM A BASIS FOR AVOIDING TERMS OF IMPRISONMENT THAT OTHERS WHO
11:09AM MIGHT BE UNABLE TO AVOID BY VIRTUE OF THEIR CIRCUMSTANCES AND
11:09AM WHAT IS AT ISSUE.

11:09AM SO I'VE CONSIDERED THE NATURE AND THE CIRCUMSTANCES OF THE
11:09AM OFFENSE, AND I DO THINK THAT SOME TERM OF IMPRISONMENT IS
11:09AM NECESSARY HERE GIVEN THE STATUTORY FACTORS UNDER 18 U.S. CODE
11:10AM SECTION 3553(A).

11:10AM THAT SAID, I'VE ALSO CONSIDERED THE HISTORY AND
11:10AM CHARACTERISTICS OF MS. WILL-DARNALL, INCLUDING THE FACT THAT
11:10AM THIS APPEARS TO BE ABHORRENT AND A RESULT OF PARTICULAR
11:10AM CIRCUMSTANCES THAT WERE UNIQUE IN SOME WAYS TO THE ONSET OF THE
11:10AM PANDEMIC AND THE CHALLENGES THAT SHE WAS FACING AT THE TIME OF
11:10AM ISSUE, AND HAS NOTED THE FACT THAT MS. WILL-DARNALL WAS A
11:10AM VICTIM OF THE ONSET OF THE PANDEMIC, ALTHOUGH NOT ELIGIBLE FOR
11:10AM THE RELIEF THAT WAS MADE AVAILABLE THROUGH THE PROGRAMS FOR
11:10AM WHICH SHE APPLIED FOR LOANS.

11:10AM SO I DO THINK THAT THOSE CIRCUMSTANCES ARE SIGNIFICANT AND
11:10AM DO MERIT A SUBSTANTIAL DOWNWARD VARIANCE FROM THE SENTENCE THAT
11:10AM IS RECOMMENDED UNDER THE GUIDELINES WHICH IS AT A MINIMUM A
11:10AM SENTENCE OF 33 MONTHS IMPRISONMENT.

11:11AM SO IN LIGHT OF THOSE FACTORS AS WELL AS THE, YOU KNOW,

11:11AM CONSIDERING THE, AGAIN, THE NEED TO AVOID INEQUITABLE SENTENCES
11:11AM OR A SENTENCE THAT IS OUT OF LINE WITH THE SENTENCES THAT HAVE
11:11AM BEEN PROVIDED IN OTHER SIMILAR CASES, AND IT'S OF NOTE THAT
11:11AM THIS IS ONE OF THE CASES WAS NOTED IN THE PRESENTENCE REPORT
11:11AM WHERE IT DOES APPEAR SORT OF THE AVERAGE SENTENCE THAT IS
11:11AM IMPOSED IN THESE CASES IS USUALLY WITHIN THE GUIDELINES FOR
11:11AM SOMEONE WITH THE SAME GUIDELINES CALCULATIONS.

11:11AM I THINK THE CIRCUMSTANCES HERE ARE UNIQUE AND DO MEASURE
11:11AM AND DO JUSTIFY A DOWNWARD VARIANCE FOR THE REASONS I'VE SAID.
11:11AM BUT UNDER ALL OF THESE CIRCUMSTANCES, I DO THINK THAT THE
11:11AM SENTENCE THAT IS SUFFICIENT BUT NO GREATER THAN NECESSARY TO
11:11AM SATISFY THE PURPOSES OF SENTENCING IN 18 U.S. CODE 3553(A)
11:11AM WOULD BE A SENTENCE OF 18 MONTHS OF IMPRISONMENT TO BE FOLLOWED
11:12AM BY A PERIOD OF SUPERVISED RELEASE OF 3 YEARS AND SUBJECT TO THE
11:12AM STANDARD AND SPECIAL CONDITIONS OF SUPERVISED RELEASE THAT ARE
11:12AM SET FORTH IN THE PRESENTENCE REPORT.

11:12AM I WILL ALSO -- AS NOTED, I WILL ORDER FORFEITURE. I'LL
11:12AM ISSUE A GENERAL ORDER OF FORFEITURE AS I BELIEVE TO WHAT IS AT
11:12AM ISSUE IS THE REAL PROPERTY LOCATED AT 111 BELWOOD GATEWAY IN
11:12AM LOS GATOS AS WELL AS IN GENERAL THE FUNDS THAT ARE ON DEPOSIT
11:12AM IN A VANGUARD ACCOUNT IN AN AMOUNT TO BE DETERMINED IN THE
11:12AM FUTURE AS WELL AS A FORFEITURE OF MONEY JUDGMENT IN AN AMOUNT
11:12AM TO BE DETERMINED IN THE FUTURE.

11:13AM ARE THERE OTHER PROPERTIES THAT I NEED TO INCLUDE IN THAT
11:13AM ORDER, GENERAL ORDER?

11:13AM MR. JAMES: NO, YOUR HONOR.

11:13AM THE COURT: OKAY. I WILL ALSO ORDER RESTITUTION IN AN AMOUNT TO BE DETERMINED IN THE FUTURE. THERE WILL BE -- AND I SHOULD NOTE THIS IS OBVIOUSLY A JUDGMENT ON COUNTS ONE AND TWO. IT'S A TERM OF 18 MONTHS IMPRISONMENT TO BE SERVED CONCURRENTLY ON BOTH COUNTS.

I WILL ORDER A SPECIAL ASSESSMENT OF $100 PER COUNT AS WELL.

ARE THERE ANY -- I'LL ASK PROBATION, ARE THERE ANY OTHER ASPECTS OF THE SENTENCE I MISSED?

11:13AM PROBATION OFFICER: THE ONLY THING I WOULD ADD IS THERE WAS A RECENT MEMORANDUM SUBMITTED BY PRETRIAL SERVICES. THERE WAS A POSITIVE DRUG TEST, I BELIEVE. SO WE RECOMMEND SUSPENDING THE DRUG TESTING, THE MANDATORY DRUG TESTING CONDITION. I WOULD ASK THE COURT TO RECONSIDER THAT GIVEN THE POSITIVE DRUG TEST.

11:14AM THE COURT: I THINK I'LL STAND AND GO WITH THE ORIGINAL RECOMMENDATIONS OF THE CONDITIONS OF SUPERVISED RELEASE.

11:14AM PROBATION OFFICER: OKAY. THESE ARE WITH REGARD TO THE MANDATORY?

11:14AM THE COURT: YES, YES.

11:14AM PROBATION OFFICER: OKAY.

11:14AM THE COURT: I ALSO THINK VOLUNTARY SURRENDER IS APPROPRIATE UNDER THE CIRCUMSTANCES OF THIS CASE.

I THINK IT MAKES SENSE -- I'M NOT PARTICULARLY CONCERNED ABOUT FLIGHT IN THESE CIRCUMSTANCES. SO I WOULD -- YOU KNOW, I'M HAPPY TO SET AN ORDER FOR VOLUNTARY SURRENDER AT SOME POINT IN THE NEW YEAR SO WE CAN GET THROUGH THE FALL AND THE HOLIDAYS.

LET ME ASK DEFENSE COUNSEL.

(DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

MR. FULLER: YOUR HONOR, THE FIRST WEEK OF JANUARY WOULD BE FINE.

THE COURT: THAT'S WHAT I WAS THINKING. SO I'LL ORDER MS. WILL-DARNALL TO VOLUNTARY SURRENDER TO THE BUREAU OF PRISONS OR AS OTHERWISE DIRECTED AT 5:00 P.M. ON WEDNESDAY, JANUARY 7TH, 2026.

IS THERE ANYTHING ELSE THAT I FAILED TO ADDRESS?

MR. JAMES: I DON'T THINK THE COURT HAS TO ARTICULATE THIS, BUT IT SOUNDS LIKE THERE'S NO IMPOSITION OF A FINE?

THE COURT: NO. I THINK THE RECOMMENDATION -- AND THE RECOMMENDATION IS THAT THE FINE HAS BEEN WAIVED BASED ON THE LACK OF NEEDS.

MR. JAMES: I BELIEVE THAT COVERS EVERYTHING, YOUR HONOR.

MR. FULLER: YOUR HONOR, I BELIEVE WE NEED TO SET A DATE FOR THE RESTITUTION HEARING.

THE COURT: OKAY.

THE CLERK: OCTOBER 15TH.

THE COURT: ALL RIGHT. OCTOBER 15TH IS THE FORFEITURE HEARING. SO WHAT IS -- IT SOUNDS LIKE THE RESTITUTION HEARING WILL HAVE TO BE PUT OFF UNTIL SOMEONE ELSE CAN COME ON TO THE CASE?

MR. JAMES: I BELIEVE UNDER THE LAW WE HAVE TO GET IT DONE WITHIN 90 DAYS. IF WE WANT TO SET A DATE ABOUT 60 DAYS OUT, I THINK THAT SHOULD BE ADEQUATE TIME FOR EITHER PRIOR COUNSEL TO COME BACK IN AND ATTEND TO IT, AND IF NOT, CERTAINLY ENOUGH TIME FOR THE GOVERNMENT TO PRESENT SOMEBODY TO ATTEND TO RESTITUTION.

THE COURT: NICOLE, ARE WE AVAILABLE ON THE 19TH OF NOVEMBER?

THE CLERK: YES, YOUR HONOR.

THE COURT: WOULD THAT WORK FOR DEFENSE COUNSEL?

MR. FULLER: YOUR HONOR, I THINK -- YES, I CAN DO THAT.

CAN WE DO THE 12TH?

THE COURT: CAN WE DO THE 12TH?

THE CLERK: YES, YOUR HONOR.

THE COURT: IS THAT -- OR DOES DECEMBER 3RD WORK BETTER FOR PEOPLE?

MR. FULLER: THAT WORKS.

MR. JAMES: DECEMBER 3RD.

THE COURT: SO WE'LL SET IT FOR DECEMBER 3RD, 2025,

A HEARING ON THE RESTITUTION.

MS. WILL-DARNALL, YOU DO HAVE THE RIGHT TO APPEAL UNDER CERTAIN CIRCUMSTANCES. SO YOU SHOULD KNOW THAT ANY NOTICE OF APPEAL HAS TO BE FILED WITHIN 14 DAYS OF THE ENTRY OF JUDGMENT OR 14 DAYS OF THE GOVERNMENT'S FILING OF THE NOTICE OF APPEAL.

FOR THE REASONS WE DISCUSSED, IT WILL PROBABLY BE THE CASE THAT THE ENTRY OF JUDGMENT WILL PROBABLY NOT BE IMMEDIATE BECAUSE THERE ARE SOME OTHER DETAILS THAT HAVE TO BE RESOLVED BEFORE WE DO THAT, BUT CERTAINLY WHEN THAT JUDGMENT HAPPENS, YOU HAVE 14 DAYS TO FILE A NOTICE OF APPEAL AND IF YOU -- YOU CAN SEEK THE CLERK'S OFFICE ASSISTANCE IN DOING SO. AND YOU MAY ALSO BE ENTITLED TO A WAIVER OF APPEAL FEES AND ASSISTANCE OF COUNSEL ON APPEAL IF YOU'RE ABLE TO AFFORD THAT.

IS THERE ANYTHING ELSE THAT WE NEED TO ADDRESS THIS MORNING?

MR. FULLER: NOTHING FURTHER FROM THE DEFENSE, YOUR HONOR.

MR. JAMES: NOTHING FURTHER FROM THE GOVERNMENT, YOUR HONOR.

THE COURT: OKAY. THANK YOU. GOOD LUCK, MS. WILL-DARNALL.

THE CLERK: THANK YOU. THIS MATTER IS CONCLUDED.

(COURT CONCLUDED AT 11:18 A.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: SEPTEMBER 30, 2025