

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

United States of America,) Criminal Action
) No. 1:19-cr-00103-KBJ
Plaintiff,)
)
vs.) **Sentencing** (via Zoom)
)
Lucas W. Cane,) Washington, D.C.
) **May 19, 2021**
Defendant.) Time: 2:30 p.m.

Transcript of Sentencing (via Zoom)
Held Before
The Honorable Ketanji Brown Jackson (via Zoom)
United States District Judge

A P P E A R A N C E S

For the Government: **Nicholas G. Miranda**
(via Zoom) UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF COLUMBIA
555 Fourth Street, Northwest
Washington, D.C. 20001

For the Defendant: **Danielle C. Jahn**
(via Zoom) FEDERAL PUBLIC DEFENDER FOR THE
DISTRICT OF COLUMBIA
625 Indiana Avenue, Northwest
Washington, D.C. 20004

Also Present (via Zoom):
Kelli Willett, Probation Officers

Stenographic Official Court Reporter:
(via Zoom) Nancy J. Meyer
Registered Diplomate Reporter
Certified Realtime Reporter
333 Constitution Avenue, Northwest
Washington, D.C. 20001
202-354-3118

P R O C E E D I N G S

1
2 (REPORTER'S NOTE: This hearing was held during the
3 COVID-19 pandemic restrictions and is subject to the
4 limitations of technology associated with the use of
5 technology, including but not limited to telephone and video
6 signal interference, static, signal interruptions, and other
7 restrictions and limitations associated with remote court
8 reporting via telephone, speakerphone, and/or
9 videoconferencing.)

10
11 THE COURTROOM DEPUTY: Your Honor, this is Criminal
12 Case 19-103, United States of America v. Lucas W. Cane.

13 Probation officer is Kelli Willett. Starting with
14 government counsel, would you please state your appearance for
15 the record.

16 MR. MIRANDA: Good morning, Your Honor. Nicholas
17 Miranda for the United States.

18 THE COURT: Good afternoon, Mr. Miranda.

19 MS. JAHN: Good afternoon, Your Honor. Dani Jahn on
20 behalf of Mr. Lucas Cane.

21 And for the record, in light of the CARES Act and the
22 pandemic, the defense is prepared to proceed in this fashion.
23 And I would just note that according to what I'm seeing, that
24 we are all connected via public line at this time.

25 THE COURT: Yes, Ms. Jahn, that is correct.

We are here for the sentencing of Lucas Cane who pled
guilty on August 2nd of 2019 to one count of child pornography
in violation of 18 U.S.C. § 2252(a)(2).

Mr. Cane, let me just ask you whether you are able to

1 mute your line. Is that possible? Do you know how to do that?

2 THE DEFENDANT: Did that do it?

3 THE COURT: No.

4 Yes, now you did. Now you did. You're okay. Can you
5 still hear? You can nod if you heard --

6 THE DEFENDANT: (Nods head.)

7 THE COURT: You can hear us. Okay.

8 So as Ms. Jahn mentioned, the court is still in a
9 partial state of closure because we're only in Phase 2 of our
10 plan for reopening the courthouse, and the Chief Judge has
11 issued a standing order that authorizes the Court to use
12 videoconference technology for certain proceedings, including
13 sentencings, with the consent of the defendant and when further
14 delay would cause serious harm to the interests of justice.

15 Ms. Jahn has confirmed that Mr. Cane consents to proceed
16 in this fashion, and I do find that it is in the interest of
17 justice to proceed with today's sentencing hearing via remote
18 technology. I also find any further delay would result in harm
19 to the interests of the defendant and the public.

20 Let me just remind everyone to begin, that recording or
21 rebroadcasting of today's proceeding is prohibited. And I ask
22 that people please mute your devices when you're not speaking.

23 The Court has received and reviewed the presentence
24 report and sentence recommendation from the probation
25 department, the psychosexual examination that the Bureau of

1 Prisons conducted, and various documents that counsel have
2 submitted in advance of the hearing: sentencing memoranda for
3 both the government and the defendant, including exhibits; a
4 supplemental memoranda from the government filed on May 4th,
5 2021; and another supplement that the government filed on
6 May 18th.

7 It appears that the parties have engaged in the process
8 of reviewing and revising the presentence report and that the
9 final report is complete.

10 Mr. Cane, I'm going to explain to you now what is going
11 to happen. There are four steps to this sentencing process.
12 The first step of today's hearing is for the Court to determine
13 whether you and your counsel have reviewed the presentence
14 report and to determine -- or the Court to determine whether
15 there are any outstanding objections to any of the factual
16 determinations or calculations in the PSR and, if so, to
17 resolve those objections.

18 The second step is for the Court to determine what
19 sentencing range applies to your case under the sentencing
20 guidelines, and I do this by referencing the *Guidelines Manual*,
21 figuring out what guideline applies and what specific offense
22 characteristics are applicable in the guideline calculation,
23 look at your criminal history, and consider any mitigating or
24 aggravating factors in the *Guidelines Manual*. Part of this
25 step, I also consider departures, which are bases in the

1 *Guidelines Manual* for reducing a sentence below the otherwise
2 applicable guidelines range.

3 The third step is to hear from the government, from any
4 witnesses that either party would like to have speak, from your
5 counsel, and from you, if you wish to be heard, about the
6 sentence that the Court will impose in this case. And then the
7 last step requires the Court to fashion a just and fair
8 sentence in light of the factors that are set forth in a
9 statute of Congress, 18 U.S.C. § 3553(a). As part of this last
10 step, the Court will actually impose the sentence, along with
11 any other required consequences of your offense.

12 I do talk to defendants and explain what the process is
13 going to be at sentencing, in part, because I realize that it
14 is hard for nonlawyers sometimes to follow all of the
15 mechanical processes that we have to go through, but I think
16 the most important thing from your perspective is to keep in
17 mind why we are here at this moment and the gravity of this
18 situation.

19 You have committed and have now pled guilty to conduct
20 that constitutes a federal crime. So that makes this
21 proceeding a very serious matter because it is fundamentally
22 about the consequences that you will have to face as a result
23 of your decision to engage in criminal conduct in violation of
24 federal law.

25 All right. So let's begin with the first step, which is

1 the examination of the presentence report. The final
2 presentence report and sentencing recommendation in this case
3 were filed on March 26th of 2021.

4 Let me start by asking Mr. Miranda whether the
5 government has any objection to any of the factual
6 determinations in the presentence report.

7 MR. MIRANDA: Not to the factual determinations, no,
8 Your Honor.

9 THE COURT: All right. Before I ask the same of
10 Ms. Jahn, let me start -- Mr. Cane, you might have to unmute
11 for this because I do need to ask you a question. See if you
12 can do so. We cannot hear you. So let's see. I wonder if
13 there's someone there who can help to advise you. There
14 should -- there should be a mute -- you're talking, but we
15 can't hear you. No.

16 Let me ask Ms. Franklin, are you able to unmute him as
17 the -- yes.

18 THE COURTROOM DEPUTY: No, I can't.

19 THE DEFENDANT: Do you know how to unmute this?

20 THE COURT: So you just got it.

21 THE DEFENDANT: It's on.

22 THE COURT: Yes, Mr. Cane, you just got it. I'm not
23 sure what happened there, but --

24 THE DEFENDANT: Now it's unmuted.

25 THE COURT: Okay. Yes.

1 All right. So let me ask you, are you fully satisfied
2 with your attorney in this case?

3 THE DEFENDANT: I am, very much so.

4 THE COURT: And do you feel that you've had enough
5 time to talk with her about the presentence report and the
6 papers filed by the government?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Ms. Jahn, have you and your client
9 read and discussed the presentence report?

10 MS. JAHN: Yes, Your Honor.

11 THE COURT: And I do understand that you may have at
12 least one objection to an issue of fact in that report, but let
13 me just give you the opportunity to state that for the record.

14 MS. JAHN: Yes, Your Honor. The objection for a
15 factual reason centers around paragraph 13. The objection can
16 be found at page 25 of the final PSR. The basis for that
17 objection, from the defense's perspective, is that those
18 details were not contained in the statement of offense to which
19 Mr. Cane agreed.

20 THE COURT: All right. And at page 25, it says the
21 defense objects to the inclusion of paragraph 13. I noted that
22 there are at least some subparts of paragraph 13 that were
23 included. So do you have a more specific objection with
24 respect to what parts of paragraph 13 you think you omitted?

25 MS. JAHN: Your Honor, it then bleeds over into the

1 legal issue that is further objected, found at page 26, that
2 revolves around an enhancement for the materials and how it
3 could or could not qualify for an enhancement.

4 So I agree there are some materials. I'm not objecting
5 that this information is -- is valid information, and portions
6 of it Mr. Cane did agree, but there is some information that
7 was not contained in the statement of offense that, now then,
8 the defense believes warranted the PSR writer's assessment of
9 the enhancement.

10 THE COURT: All right. Well, we do have the PSR
11 writer on the line. Ms. Willett is with us, and I would love
12 to get Mr. Cane to -- to mute again, but I'm a little nervous
13 about it because I don't know if he can come back. Let's see.
14 Great. That's helpful. Thank you.

15 So, Ms. Willett, the Court has looked at paragraph 13.
16 I see various lines in the initial paragraph that referred to
17 information that is not in the statement of offense, and also
18 subparagraph 1 appears to be things that are not in the
19 statement of offense.

20 Did you want to put forward the probation office's
21 argument as to why those should be retained?

22 THE PROBATION OFFICER: Yes, Your Honor. We stand by
23 our position that those -- those -- that information is
24 material to the case because it justifies that 4-level
25 enhancement for the sadistic and masochistic conduct. It

1 includes descriptions of the pornography that -- that is
2 attributed to Mr. Cane. And, specifically, Mr. Cane personally
3 posted 23 Dropbox and Mega links to the kid group, and it
4 contained over 6500 files depicting children who were
5 elementary school age, middle school, and high school ages, all
6 engaged in sexual acts or posing sexually.

7 And those videos and images depicted children engaged in
8 masturbation and vaginal and anal penetration with objects;
9 like hairbrushes, pins, pencils, curling irons, other objects,
10 and minors also engaged in anal and vaginal sex. One of the
11 descriptions, which is listed in Video 1, discloses an adult
12 male who appears to have control of a recording device,
13 penetrating his erect penis -- the anus of a prepubescent girl.

14 Our position is that pursuant to the guideline
15 1B1.3(a)(1)(iii) [sic], relevant conduct does include all acts
16 and omissions aided, committed, counseled, commanded, induced,
17 procured, or willfully caused by the defendant that occurred
18 during the commission of the offense.

19 And we believe also that 18 U.S.C. 3661 allows the Court
20 to consider without any limitation information concerning the
21 background and the character and the conduct of the defendant
22 unless prohibited by law. And, therefore, Your Honor, we
23 believe that that is justly applied there and --

24 THE COURT: All right. So as far as -- thank you,
25 Ms. Willett.

1 But as far as I understand it, the government is not
2 seeking the increase that this information pertains to. Both
3 you and Ms. Jahn mentioned that this factual information, which
4 is not in the statement of offense -- although it may well be
5 supported by the videos that were obtained, the parties'
6 negotiated a statement of offense that did not include this
7 information. And the government has laid out its position that
8 the enhancement is not something that the government is
9 seeking. And it's my understanding that the government has the
10 burden of establishing any enhancements.

11 So let me just double-check with Mr. Miranda that the
12 government is not seeking the enhancement for sadistic or
13 masochistic conduct under 2G2.4 [sic] (b) (4).

14 MR. MIRANDA: That's correct, Your Honor.

15 THE COURT: So because of that, I am going to sustain
16 the defendant's objection to paragraph 13, insofar as it
17 contains information not included in the statement of offense.
18 I do agree with the probation office in the general sense that
19 I'm not bound by the stipulations of facts that the parties
20 have provided, but I'm hesitant to rely on any facts that the
21 parties specifically chose not to include. It's not clear to
22 the Court whether Mr. Cane pled guilty to the instant offense,
23 if that information was included.

24 And so I'm going to order probation to modify the PSR so
25 the statements in paragraph 13 that were not contained in the

1 statement of offense are excluded, and I'm happy to go over
2 with probation what my understanding is of those particular
3 statements, and the defense counsel can as well. It's not the
4 entire paragraph, but it is subdivision 1, as far as I can
5 tell, and three or four lines in the first introductory
6 paragraph. So we'll sort that out.

7 And with the exception of the modifications that I just
8 discussed, I will accept the factual recitation in the
9 presentence report regarding the circumstances of the offense,
10 and, therefore, the modified facts as stated in the presentence
11 report will be the Court's findings of fact for the purpose of
12 this sentencing.

13 Now, I got to that point without asking if there were
14 any other objections, but I didn't see any in the materials
15 that we -- that were submitted.

16 MS. JAHN: That's right, Your Honor. No other
17 objections for the factual basis.

18 THE COURT: Okay. All right. So let's go to the
19 calculation. The calculation in the presentence report was
20 done using the 2018 *Guidelines Manual*, and it was as follows:
21 Beginning with the guideline offense level, the applicable
22 guideline in this case is Section 2G2.2, and at (a)(2), that
23 guideline has a base offense level of 22 under the
24 circumstances presented here.

25 According to the presentence report -- and we'll talk

1 about that calculation in a minute in light of the observations
2 I just made, but according to the presentence report, there are
3 five specific offense characteristics that apply: a 2-level
4 increase under 2G2.2(b) (2) because the material involved a
5 prepubescent minor under the age of 12 years; a 2-level
6 increase under 2G2.2(b) (3) (F) because the defendant knowingly
7 engaged in the distribution of child pornography; a 2-level
8 increase under 2G2.2(b) (6) because the offense involved the use
9 of a computer or an interactive computer service for the
10 possession, transmission, receipt, or distribution of the
11 material or accessing with intent to view the material; a
12 5-level increase under Section 2G2.2(b) (7) (D) because the
13 offense involves 600 or more images of child pornography; and
14 the PSR also indicates that there's a 4-level increase under
15 2G2.2(b) (4) because the offense involved material portraying
16 sadistic or masochistic conduct.

17 Before I go into the discussion or the Court's view of
18 that last increase, let me just complete the offense level
19 calculation in the PSR. The government has represented that
20 Mr. Cane has demonstrated acceptance of responsibility in a
21 manner that entitles him to a 2-level reduction under 3E1.1(a);
22 and that Mr. Cane timely notified the government of his
23 intention to plead guilty in a manner that entitles him to an
24 additional 1-level reduction under 3E1.1(b). As a result, the
25 PSR sets the total offense level under the guidelines at 34.

1 Now, we have been discussing the enhancement for
2 sadistic or masochistic. The Court has excluded those facts.
3 And as a result, I will also find that the 4-level enhancement
4 will not be applied. Let me just state for the record why.
5 The probation office has indicated that the enhancement is
6 warranted because the D.C. Circuit is the only circuit --
7 because while the D.C. Circuit is the only circuit not to have
8 addressed this issue, the 11 other federal circuit courts that
9 have, each held that certain kinds of images qualify for this
10 enhancement. And as the probation officer previously noted, it
11 appears as though from the probation office's standpoint, some
12 of the material at issue here includes those kinds of images.

13 However, the government states in its sentencing
14 memoranda that the statement of offense as agreed to by the
15 defendant does not support this enhancement and the enhancement
16 was not included in the plea agreement based on the facts and
17 circumstances of this case.

18 The defense simply emphasizes in its written objections
19 to the PSR that the parties did not agree to the application of
20 this specific enhancement when negotiating the plea agreement,
21 and the government did not believe the enhancement applied.

22 The Court has evaluated this. I agree with the position
23 taken by the government and defense counsel. The parties did
24 not include any video depictions that satisfy this enhancement
25 in the statement of offense. Therefore, the modified facts at

1 sentencing do not include such videos. The Court is also
2 loathe to apply any sentencing enhancement that the government
3 has not pursued because it is the government's burden to
4 establish the predicate facts for enhancing a sentence under
5 the guidelines, and the government has expressly eschewed that
6 responsibility here. Thus, even if the facts supported this
7 enhancement, it is meaningful that the government has not
8 sought to have it applied under the circumstances presented in
9 this case.

10 Third, and finally, the rule of lenity also raises in
11 favor of not applying this enhancement to the guideline
12 calculation. Therefore, notwithstanding the circuit's -- other
13 circuits' legal determination that such enhancement might be
14 applicable to the kinds of video depictions that the probation
15 office has described, the Court will not increase the offense
16 level in the instant offense by 4 levels for the use and
17 materials portraying sadistic or masochistic conduct.

18 Now, when I get to the discussion of variances, I will
19 talk further about my policy disagreements with the guidelines
20 concerning the offense level enhancements for use of the
21 computer and the number of images, but prior to the
22 consideration of departures or variances, the Court finds that
23 Mr. Cane's total offense level is 30.

24 Given what I have said and the positions that I have
25 taken, is there any objection to the calculation of the offense

1 level at this point?

2 Mr. Miranda?

3 MR. MIRANDA: No, Your Honor.

4 THE COURT: Ms. Jahn?

5 MS. JAHN: No, Your Honor, there's no objection. I
6 just would request in light of your earlier instruction to
7 modify the PSR, if you would also allow for modification of the
8 PSR for the reasons you just discussed.

9 THE COURT: Let me ask Ms. Willett what the probation
10 office's standpoint is given that I've modified the facts. In
11 other words, I -- there are times when I have disagreed with
12 the calculation that the probation office has made but have not
13 ordered a modification of the PSR to reflect the Court's
14 calculation of the guidelines.

15 What I understand Ms. Jahn to be asking is that since I
16 have removed from the PSR the factual basis for that
17 enhancement, what is the probation office's position about
18 modifying the calculation as well?

19 THE PROBATION OFFICER: Yes, Your Honor. We would
20 have no objection to modifying that as well.

21 THE COURT: All right. So we will have that done, in
22 addition to removing those facts.

23 Turning to the applicable criminal history category, the
24 presentence investigation has found that Mr. Cane has no prior
25 convictions that receive criminal history points in the

1 *Guidelines Manual*. Therefore, he has zero criminal history
2 points, which puts him in Criminal History Category I.

3 Are there any objections to the criminal history
4 calculation?

5 Mr. Miranda?

6 MR. MIRANDA: No, Your Honor.

7 THE COURT: Ms. Jahn?

8 MS. JAHN: No, Your Honor.

9 THE COURT: All right. So given a criminal history
10 calculation category of I and an offense level of 30,
11 Mr. Cane's applicable sentencing range under the guidelines is
12 97 to 121 months of imprisonment.

13 Are there any objections to this guideline range
14 calculation? And, again, this is before departures or
15 variances.

16 Mr. Miranda?

17 MR. MIRANDA: No, Your Honor.

18 THE COURT: Ms. Jahn?

19 MS. JAHN: No, Your Honor.

20 THE COURT: Okay. So that is the applicable
21 guideline range. And the next step is for the Court to
22 consider departures.

23 Now, at this point I would like to do what I would
24 ordinarily do if we were in person, which is seal the courtroom
25 so that I could have, essentially, a bench conference with the

1 parties. So I think what I'm going to do is ask Ms. Franklin,
2 given our technological status, if we can put the public line
3 in the waiting room -- it looks like it's already gone.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
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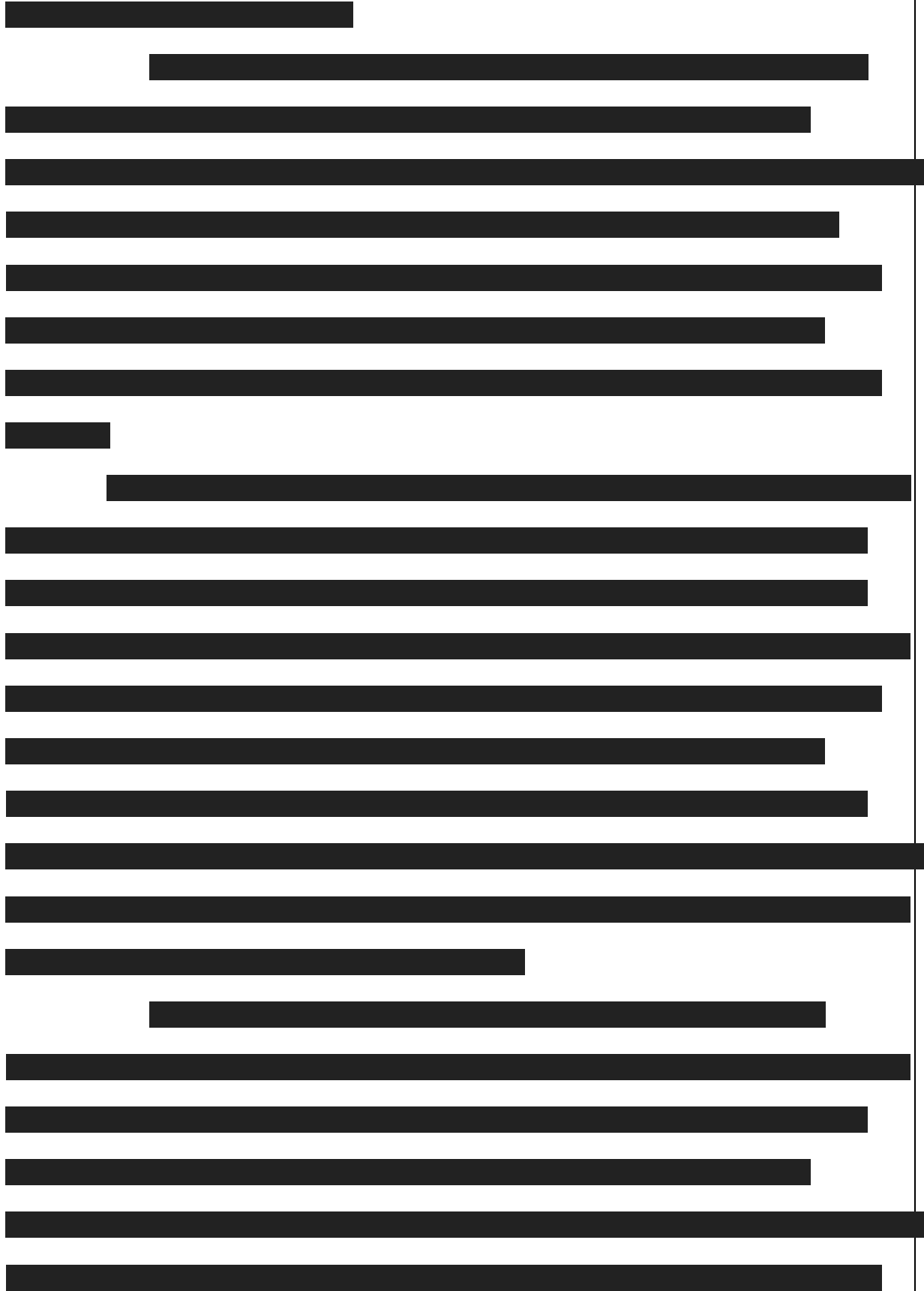


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[REDACTED]

Ms. Franklin, can we now come back to the public? Yes, the public is back.

All right. We are now moving on to the Court's statement of the law and the factors that generally apply.

Section 3553 requires the Court to consider a variety of factors, including the sentencing range that the guidelines prescribe, and I have calculated the sentencing range at this point.

1 So let me just state for the record the applicable
2 statutory and guideline penalties for the offense of
3 conviction. The charge of distribution of child pornography in
4 violation of 18 U.S.C. § 2252(a)(2) carries a statutory maximum
5 penalty of 20 years of imprisonment. It also carries a
6 statutory mandatory minimum sentence of 5 years of
7 imprisonment. Mr. Cane is ineligible for probation under the
8 applicable statutory provisions.

9 I did want to note that at paragraphs 127 and 128 of the
10 PSR, there's a typo that I've discussed with Ms. Willett. It
11 says that the defendant is ineligible for probation because he
12 committed a Class A felony. But it's my understanding that the
13 instant offense classifies it as a Class C felony. So we'll
14 make that correction as well in the PSR.

15 If the term of imprisonment is imposed, the statutes
16 provide that Mr. Cane faces a supervised release range
17 following imprisonment of 5 years to life, and under the
18 guidelines, that range is also 5 years to life. The statute of
19 conviction sets a maximum fine of \$250,000 and a guideline fine
20 range is between 30,000 and 300,000 dollars. The defendant is
21 also obligated to pay a \$100 special assessment. The statutory
22 and guideline restitution provisions also require defendants to
23 pay restitution for the instant offense.

24 The government has filed a supplement, and there are
25 three identified victims in this case who seek restitution, and

1 Mr. Cane has apparently agreed to pay each victim \$1,000. Let
2 me just double-check with the parties that that's the case.

3 MR. MIRANDA: Yes, Your Honor, that -- that is the
4 case. And I would just point out for the record, Your Honor,
5 that this -- the operative facts and the conduct in this case,
6 it does precede the latest Amy, Vicky act. And as a result,
7 while he is required to pay restitution, the mandatory minimum,
8 so to speak, of restitution of \$3,000 per victim does not
9 apply. I did connect both the -- the lawyers of the victims
10 and the defense attorney who negotiated that agreement of
11 \$1,000 per each of the three victims, and I also provided to
12 the Court the appropriate addresses to which the restitution
13 should be paid.

14 THE COURT: Thank you, Mr. Miranda. That's a helpful
15 clarification.

16 Ms. Jahn, is it that you're concurring with
17 Mr. Miranda's representations and the fact that your client has
18 agreed to pay each of these victims a thousand dollars?

19 MS. JAHN: Yes, Your Honor, for a total of \$3,000, we
20 agree.

21 THE COURT: Okay. So given that, have I stated
22 accurately the statutory and guideline framework under which we
23 are operating in regard to this case?

24 MR. MIRANDA: Yes, Your Honor.

25 MS. JAHN: Yes, Your Honor.

1 THE COURT: All right. Before I discuss the other
2 sentencing factors that will bear on the Court's final
3 determination, let me give the parties the opportunity to
4 address the sentencing guideline calculation and/or the Court's
5 considerations under 3553. Let me start with Mr. Miranda.
6 Does the government wish to speak about any of these factors at
7 this time?

8 MR. MIRANDA: Yes, Your Honor. Just briefly.

9 I understand that Your Honor has received and reviewed
10 the sentencing memorandum, as well as the other materials that
11 were filed under seal in this case -- I understand -- and,
12 therefore, will not simply repeat what was in them.

13 The only thing that I wish to highlight from the
14 sentencing memorandum is that there are clearly competing
15 concerns in this case. I understand Your Honor's policy
16 disagreements with regard to the sentencing guidelines and --
17 and that Your Honor will discuss them. I would just point out
18 that in this case, Your Honor, it is not -- the quantity of
19 child pornography that is distributed in this case far exceeds
20 that which is -- that which makes up the 600-plus images; and
21 that even if that application were generally to be discounted
22 in this case, there were so many above that that do not just
23 come from one, but came from many separate Mega links in this
24 case that the government believes it does present substantially
25 more in quantity of distribution than the average case.

1 The other thing is in duration. This is not simply one
2 incident or -- or one day of distribution. Rather, as is
3 stated in the statement of offense and by the defendant's own
4 acknowledgement, he had been engaged in this type of behavior
5 for greater than six months.

6 THE COURT: So what's the government's position? I
7 mean, you're obviously aware of my policy disagreement. I just
8 think it's very, very hard to deal with number of images as a
9 significant aggravator, but you think this is, nevertheless, an
10 aggravated case because he used more than one account or -- is
11 that what I understood you to say?

12 MR. MIRANDA: No, Your Honor. And -- and I
13 understand there are different bases for policy disagreements
14 with regard to the number of images. And since Your Honor has
15 stated them on the record in this particular case, I will not
16 attempt, certainly, to speak for you -- or I will just speak
17 generally and say that it is certainly the case that in the --
18 that in many cases -- most cases -- an aggravator or a specific
19 offense characteristic for a number of images does apply. And
20 that that is much more so given the -- that virtually every
21 case also involves the use of computers and the ease in which
22 images and multiple images and multiple videos at once are
23 submitted is certainly the case.

24 And so I'm fully -- I entirely understand not applying
25 that in all cases -- with the policy disagreement with applying

1 them in all cases; however, the government does believe that
2 there, nonetheless, can still be distinction in cases where it
3 does still or should still apply and in -- and that this
4 presents such a case, in particular, because -- not just
5 because of the just pure number of videos, which is very high
6 and higher than the average case, but also because they did not
7 just come from one Mega link.

8 There's certainly cases where in -- there are thousands
9 of images or videos -- images and/or videos that are better
10 sent that are distributed, but they all came via one Mega link
11 that was sent in one moment at one time. And, therefore,
12 sometimes courts will not distinguish that from -- from the
13 sending of one or two images or videos.

14 However, in this case, there were multiple different
15 links. In particular, there were a total of 23 different
16 Dropbox and Mega links that were sent to the -- to the group.
17 So it is not just one instance.

18 THE COURT: So he sent 23 times?

19 MR. MIRANDA: That -- yes, that's what I'm saying.

20 THE COURT: All right.

21 MR. MIRANDA: He posted 23 Dropbox and Mega links,
22 that's correct. And -- and, Your Honor, that, combined with
23 his own -- with his own admission, frankly, that he said -- and
24 I'm quoting from the statement of offense; that he admitting to
25 using the images --

1 THE COURT REPORTER: Hold on. Hold on, Mr. Miranda.
2 You've got to slow down.

3 MR. MIRANDA: Oh, I'm sorry.

4 THE COURT REPORTER: "That he admitted to using the
5 images" --

6 MR. MIRANDA: I'm sorry. I'll repeat that. I'm
7 sorry.

8 During the interview, Cane admitted to using the KIK
9 user ID, as well as possessing and sending child pornography
10 and images through a Dropbox link -- through Dropbox links and
11 using KIK for approximately seven months prior to his arrest.

12 So that further indicates that he was involved in this
13 type of behavior for an extended period of time rather than in
14 any single day or a single instance of sending, viewing, or
15 otherwise involved in child pornography. And other than that
16 and the reasons that were discussed under seal, the government
17 stands on its sentencing memorandum.

18 THE COURT: Thank you, Mr. Miranda.

19 Ms. Jahn.

20 MS. JAHN: Yes, Your Honor.

21 I will not belabor the very lengthy submission that
22 Mr. Cane submitted on his behalf. I'll, frankly, start with
23 the analysis that is separate from what the attorneys have
24 provided to you; that the presentence report writer submitted
25 that a recommended sentence in this case alone would be a term

1 of 84 months. That is separate and apart from any arguments or
2 any submissions made by the attorneys that the Court previously
3 addressed.

4 What's important to note, as you know, Your Honor, is
5 that the probation office tracks all of the cases involving
6 these types of offenses and these applicable guidelines. And
7 so, frankly, I think while obviously you have found, and the
8 defense agrees, that the total offense level is 30, his range
9 then begins at a 97- to 121-month analysis, I think we should
10 also talk about how the probation office sees as -- an
11 appropriate sentence and recommendation given the sentencing
12 disparity arguments and the very arguments that the defense
13 submits and this Court has highlighted at other hearings with
14 regard to the guidelines.

15 So at the low end we're at 97 months. And here we are
16 requesting a variance of 37 months, to put it in context as to
17 what kind of variation we are requesting or departure we are
18 requesting.

19 And so I'm not going to belabor all the arguments about
20 the guidelines themselves. They are in the sentencing
21 memorandum, as well as all of the disparity arguments and what
22 not only this Court has imposed in very similar cases but what
23 other courts have done in the District Court for the District
24 of Columbia.

25 Separately, I would just talk about the characteristics

1 and background of Mr. Cane. As you know, he submitted a very
2 lengthy letter to you, Your Honor, to describe some of what he
3 has gone through since his arrest and the very significant
4 progress he has made. As you know, he has been at various
5 jails during a very scary time. He participated in a
6 psychosexual evaluation. All of those details are memorialized
7 and detailed in a report and then also contained in part in the
8 presentence report. Ultimately, I think the doctor's opinions
9 reflect a moderate to low risk of reoffending, and I would note
10 that for the record.

11 Separately, what I think has been a driver for Mr. Cane
12 and some of his unsuccessful conduct, whether it be criminal or
13 not, is the fact that he has suffered from mental health issues
14 for a very significant period of time. He's also endured a
15 very significant medical event that almost caused him his
16 life -- that's spelled out in the sentencing memorandum -- but,
17 notably, has been his drug use.

18 And what we can say on a very positive track is that
19 Mr. Cane has now been free of any illegal narcotics for several
20 years since his arrest. He has participated in treatment when
21 afforded to him. You also have letters from the Unity Health
22 Care program from the D.C. jail, who then also talk about how
23 his participation has been a positive one. He is on Suboxone
24 to also alleviate some of the addiction side effects that he
25 has. These are all very positive things during a very

1 difficult time for all of us, but particularly for those who
2 have been confined during this pandemic.

3 And one thing I would just note is that Mr. Cane
4 referenced to me that he had not been outside -- outside to see
5 the sun or the rain or any weather from February of 2020 until
6 just a few weeks ago, for reasons that, obviously, have been
7 written extensively about, to try to curb some of the
8 challenges at the D.C. jail. But that type of condition of
9 confinement is severe and needs to be considered in the context
10 of what is an appropriate sentence here.

11 And in sum, Your Honor, we believe a sentence of
12 60 months followed by a 10-year term of supervised release is
13 an appropriate outcome here.

14 THE COURT: Thank you, Ms. Jahn.

15 Let me ask Mr. Cane whether he has anything that he
16 would like to say to the Court concerning the sentence to be
17 imposed in this case.

18 THE DEFENDANT: Can you hear me?

19 THE COURT: We can.

20 THE DEFENDANT: For brevity sake, I wrote some things
21 down. Hearing these things and being reminded of the person
22 that I was becoming, it's sickening, really. I'm beyond sorry.
23 I've -- I don't know what I needed, but -- the fact that I got
24 caught, it's -- the people that were affected, as soon as -- as
25 soon as I sobered up, as soon as the reality of this crushed

1 down on me, that was -- well, I mean, it -- for -- for a bit
2 there I wanted to kill myself, and I felt like that was really
3 the only option, the only -- the only choice.

4 But with time, I realize that was kind of an easy way
5 out. That's not -- that -- I don't deserve that opportunity to
6 shirk my responsibility. That's the part of my penance. But,
7 you know, no amount of contrition or self-flagellation,
8 regardless of how deeply I regret my actions or how
9 different -- how changed I am today, how I think with a
10 different mind. I see with different eyes. I've been sober
11 for 33 months, and -- and that's not been easy, not at all, not
12 from the beginning, not until now. Still it's not.

13 And it's -- these last 33 months have been harder than I
14 ever imagined. And the time going forward, the rest of my life
15 is not going to be easy either. As a matter of fact, it's
16 going to be terrible. Really, I'm going to be a pariah, and --
17 but, again, that is part of the penance. I want to earn
18 forgiveness, and I want to find a measure of redemption,
19 however I can do that.

20 Reconciliation, of course, with -- with family is
21 important, but the lion's share of the work for all of those
22 things is going to have to come after I'm released, after I
23 serve my time. And -- and I ask that -- for that opportunity
24 to be -- to be afforded to me to -- to begin that work sooner
25 than later when I'm still a relatively young man.

1 I -- I appreciate Your Honor, Mr. Miranda, Ms. Willett.
2 I'm -- I know I deserve punishment. I'm wrong. I was wrong.
3 I was wrong. I deserve everything I've gotten thus far. I
4 thank you.

5 THE COURT: Thank you, Mr. Cane.

6 Let me have you mute your microphone once again so that
7 we can continue to hear.

8 I am ready to pronounce sentence in this case. After
9 calculating the sentencing guidelines, considering departures,
10 hearing the statements made by counsel in our off-the-record --
11 or "on the record but under seal" proceeding, and the
12 statements made here this afternoon by both counsel and the
13 defendant, the Court must now consider the relevant factors
14 laid out by Congress in section 18 U.S.C. -- sorry, Title 18,
15 U.S.C. § 3553(a) in order to ensure that it imposes a condition
16 that is sufficient but not greater than necessary to comply
17 with the purposes of sentencing.

18 These purposes include the need for the sentence imposed
19 to reflect the seriousness of the offense, to promote respect
20 for the law, to provide just punishment for the offense. The
21 sentence should also deter criminal conduct, protect the public
22 from future crimes by a defendant and promote rehabilitation.

23 In addition to the guidelines and policy statements, the
24 Court must consider the nature and circumstances of the
25 offense, the history and characteristics of the defendant, the

1 types of sentences available, the need to avoid unwarranted
2 sentencing disparities among defendants with similar records
3 who have been found guilty of similar conduct, and the need to
4 provide restitution to any victims of an offense.

5 This Court has considered all of these factors when
6 deciding what the appropriate sentence is in this case, and it
7 is not my practice, Mr. Cane, to lay them all out in detail in
8 the sentencing hearing, but I do ordinarily make some comments.
9 And I think they're important, especially in a case such as
10 this one.

11 I would like to provide remarks, for the record,
12 concerning the nature and circumstances of the offense, your
13 history and characteristics, and the need to avoid unwarranted
14 sentencing disparities. With respect to the nature of your
15 offense, it is my hope that -- now after having spent the time
16 that you've spent in jail for this offense under the conditions
17 that Ms. Jahn indicates, I hope that you now understand that
18 what you did was wrong, as you have indicated, and that
19 distribution of child pornography is an extremely serious
20 federal crime.

21 I've heard what you said here today this afternoon; I
22 read the letter that you wrote to the Court, and you do
23 describe your conduct as, quote, vile, unnatural, and
24 disgusting, end quote. But I just want to be sure, Mr. Cane,
25 that you understand why this crime was so heinous.

1 What defendants who commit this kind of crime need to
2 recognize and appreciate is that possession and distribution of
3 child pornography is much more than just viewing and
4 circulating and distributing disgusting or vile pictures,
5 something taboo. This is a crime that involves people who have
6 taken pictures and videos of real children while those children
7 are being sexually abused and then putting those pictures on
8 the internet for other people to see and, in your case and in
9 similar cases, actively trading in those images.

10 Now, I know, Mr. Cane, that in your heart of hearts you
11 had to know that what you were doing was wrong. Your own
12 collection apparently included thousands of images and videos
13 of real children of various ages in sexually compromised
14 positions, and it's important that you understand that the
15 children in those pictures were not actors, they were not
16 knowing and willing participants in the degrading conduct
17 that's depicted. They were being forced to commit unspeakable
18 acts of sexual violence for the pleasure of the person who was
19 filming them and for the gratification of, frankly, sick people
20 everywhere. And that's a real problem.

21 When I get cases like this one, I try to assess the
22 extent to which the defendant really understands that his
23 behavior was problematic, because it's important for the Court
24 to get a sense that a defendant is not going to do this kind of
25 thing again. I need to know that you understand the damage

1 that is being done to young children in the photos that you
2 were so eagerly collecting and trading.

3 And I must say that at least, you know, the record in
4 this case, outside of your statements, is a bit ambiguous in
5 this regard. On the one hand, you mention in your letter and
6 you say here again -- or you suggest here again that child
7 pornography inflicts harm on real children; that your actions
8 were alarming, especially because you've worked as a primary
9 and secondary schoolteacher and have four children of your own.
10 Those are the kinds of things the Court is looking for.

11 On the other hand, the forensic psychosexual evaluation
12 that was conducted in this case at least suggests in certain
13 places that you may not be able to recognize or acknowledge all
14 of the behaviors that precede acting out deviant sexual
15 behavior. Now, the evaluator did conclude that you had, quote,
16 for the most part, end quote, taken responsibility for your
17 actions. But I need you to understand, Mr. Cane, that when it
18 comes to this behavior, "for the most part" is not good enough
19 because real children are being impacted, terrorized, when the
20 impulse to traffic in child pornography goes unchecked.

21 There were victim impact statements that were submitted
22 in this case, and I hope that you had the opportunity to read
23 them. I read them. And very much like the statements from
24 other victims that I've seen in similar cases, the statements
25 that were made were harrowing. One of the victims who

1 submitted a letter in this case states that having been abused
2 on camera makes her fearful of the outside world and that now
3 everything makes her nervous. She goes on to explain that she
4 is constantly afraid of running across someone who has seen her
5 images on the internet and who recognizes her and that that
6 fear makes it literally impossible for her to feel safe on her
7 own.

8 Another victim expresses a similar sentiment,
9 emphasizing that even though she's tried to forget the abuse
10 that she endured, she simply cannot do that precisely because
11 her pictures are still out there.

12 There's also a relatively unusual letter from the mother
13 of a child pornography victim who explains how her entire
14 family has been thrown into a world of unbearable stress and
15 how it's now left to her to guide her daughters, quote, through
16 this horrific never-ending ordeal thanks to the internet,
17 end quote. And I was particularly struck by how she addresses
18 your conduct as a defendant in relation to this case. She
19 remarked, "When this defendant decided to download the child
20 pornography images of my daughters, he had the opportunity to
21 change his mind, but he did not. He could have reported the
22 child pornography images he found on the internet to law
23 enforcement authorities, but he did not. He might have
24 considered that he was stepping over the line of what was
25 legally and morally acceptable in our society, but he did not.

1 Instead, he continued on with his virtual assault of my
2 daughters."

3 She says, quote, I would suggest that any regret that
4 this defendant might have for committing this heinous crime and
5 any adverse effects that it might have on him and his family
6 pale in comparison to the pain and suffering this defendant has
7 imposed on my daughters and on our family as a whole,
8 end quote.

9 Those are really, really striking words from someone who
10 has felt the pain of being victimized by this behavior. And
11 all of the victims, I think, have made crystal clear that the
12 conduct of possessing and distributing child pornography is a
13 significant harm in and of itself even though there's nothing
14 in this record that suggests that you had any role in producing
15 these child pornographic images. To put an even finer point on
16 it, Congress appears to have understood that the mere
17 possession and distribution of these kinds of filthy images is
18 a serious problem because the market for producing pictures of
19 children who are being molested and raped is driven by those
20 who want to see those pictures.

21 If the lookers weren't there, Mr. Cane, if the interest
22 wasn't there, then there would be fewer child victims, which is
23 why I believe that Congress was motivated to make distribution
24 of child pornography a federal offense and why they were
25 motivated to require judges to impose a statutory minimum

1 penalty when that offense is charged.

2 So the question for this Court becomes how to assess the
3 seriousness of your offense for the purpose of the sentence to
4 be imposed as section 3553(a) requires.

5 As you know, the sentencing guidelines prescribe a much
6 greater term of imprisonment than the 60-month minimum term
7 that appears in the applicable statute, and it is relatively
8 common for courts to discount the guideline range for child
9 pornography offenses at sentencing largely because the child
10 pornography guideline is not the product of the commission's
11 empirical assessments and because the guideline calculation
12 includes and emphasizes certain factors that have been widely
13 criticized even by the Sentencing Commission itself.

14 As Mr. Miranda and I were discussing earlier, it is this
15 Court's practice, ordinary practice, to make some adjustments
16 to the guideline calculation as it relates to child pornography
17 crimes for this reason. And as I've indicated in other similar
18 cases, the guideline factors are in many ways outdated and, in
19 general, no longer adequately distinguish between more serious
20 and less serious child pornography distribution offenses.

21 For example, the guidelines include a 2-level increase
22 for the use of a computer, and they also provide for
23 substantial enhancement for the number of images that are
24 stored on a computer's hard drive. Whatever the state of the
25 law and technology when the guidelines were first adopted, as a

1 general matter, neither of those circumstances are necessarily
2 aggravating factors today.

3 It is for that reason that Mr. Miranda in his remarks
4 started talking about particular factors that he sees in this
5 case that may well warrant a more severe guideline calculation
6 on the basis of at least the number of images.

7 But I will say, to start, that a computer is at work
8 with respect to nearly all distribution offenses today, and it
9 is typically very easy to receive and possess and distribute
10 child pornography electronically such that the mere number of
11 images and the fact that you used an electronic medium are not
12 ordinarily in themselves indicative of an especially heinous or
13 egregious offense.

14 Now, that said, the government, in my view, has made a
15 persuasive argument concerning the aggravated nature of the
16 multiple acts of distribution that occurred in this case over a
17 significant period of time. So what I have done right now, in
18 thinking this through, is decided to apply my general policy to
19 a certain extent, but not to the same extent as I have in other
20 cases. I will disagree with the commission, as I always have,
21 with respect to the 2-level guideline enhancement for the use
22 of the computer, and I'm not going to apply it in my variance
23 analysis.

24 I will adjust the number of images slightly to allow you
25 to have a 4-level guideline enhancement for the number of

1 images rather than 5. And so, as a result, I am varying from
2 the guideline range to this extent, which, as a practical
3 matter, when I do the math quickly, I am considering you to be
4 at an offense level of 27 rather than a 30, which carries a --
5 with a criminal history category of I -- a guideline range of
6 70 to 87 months, is sort of where I am before I consider other
7 potential bases for varying.

8 Let me turn to your history and characteristics. The
9 probation office has found that you have no prior criminal
10 history, which is not unusual for cases of this type. It is
11 also worth noting that the expert who conducted the
12 psychosexual evaluation of you determined that you are at low
13 risk for committing a contact sex offense in the future and
14 that you are at a low to moderate risk for further child
15 pornography offending. That's a very important factor that the
16 courts take into account, and I have done so.

17 The Court also recognizes the various other mitigating
18 factors that are present in your case, some of which Ms. Jahn
19 has highlighted here, others of which appear in the defense
20 sentencing memoranda. I do know that you struggle with a
21 number of mental health conditions, substance abuse problems.
22 Some of which -- some of these factors may have contributed to
23 your decision to look at child pornography in the first place.
24 I note, in particular, your significant health concern that got
25 you on to taking drugs regularly in order to mitigate it, and

1 that could very well be at the heart of some of this conduct.

2 I also appreciate that you've taken substantial steps in
3 prison to try to rehabilitate yourself. You diligently pursued
4 mental health and substance abuse treatment. You've expressed
5 remorse for your actions and other factors that the parties and
6 the Court have discussed in our under-seal conference.

7 All of these things have been important to the Court in
8 my assessment of how to treat this case. I've also reviewed
9 and considered the letters that have been submitted on your
10 behalf. You have a lot of support, Mr. Cane, and the Court
11 always appreciates getting letters from a defendant's friends
12 and family because people who know a defendant can attest to
13 his true character. These letters describe you as caring and
14 hard-working, smart and dependable. I have no doubt, no reason
15 to doubt, the representations that are being made by the people
16 who have written to me. And you should not only be very proud
17 that you have that kind of a following. You should also be sad
18 to know what your criminal conduct must be doing to the people
19 who know and trust you and care about you.

20 Many of the people who have written to me, obviously,
21 did not know about the deviant behavior that caused you to
22 amass a trove of sickening pictures of sickening child abuse,
23 and I hope you will be honest with them moving forward,
24 because, in addition to needing treatment, you're going to need
25 their help, as you suggested. This is the beginning of a long

1 road, and not only during your period of incarceration will you
2 need the help of people on the outside world but also
3 afterwards when you return to the community.

4 There's going to be a lot of restrictions that the law
5 requires you to follow because you are a convicted sex
6 offender, and you're going to need the support of these people
7 to get through this next phase of your life.

8 The third and final consideration that I will discuss is
9 the need to avoid unwarranted sentencing disparity. That is a
10 factor that is often very important in my considerations with
11 respect to how to sentence a defendant. I have looked at the
12 various statistics that your attorney mentioned in her
13 sentencing memorandum, and I am aware that similarly situated
14 defendants often receive sentences well below the guideline
15 range, both within this district and nationwide.

16 I've also looked at other cases in which I, in
17 particular, have sentenced defendants for the distribution of
18 child pornography. And your case seems to me to be fairly
19 similar to that of two other defendants that I sentenced:
20 Brian Hess, who your attorney specifically named in her
21 sentencing memoranda, and a defendant named Ryan Cooper, who I
22 sentenced just a few weeks ago. Both defendants had a similar
23 offense level and criminal history score as you do, and I
24 sentenced both of those defendants to 60 months of imprisonment
25 and 120 months of supervised release.

1 I have gone back, pulled those case files, looked at the
2 facts and circumstances of the cases carefully. Mr. Cooper had
3 even more mitigating factors than you do, Mr. Cane, but
4 Mr. Hess seemed to have more severe conduct than yours, insofar
5 as there were facts suggesting that he may have even
6 participated in the production of child pornography, in
7 addition to distributing it, although he was not accused of
8 that.

9 All things considered then and -- and given the various
10 facts, including those that were discussed at our sealed
11 conference, the Court cannot find any meaningful distinction
12 between your distribution offense and theirs that would justify
13 my imposing a sentence in this case that is greater than the
14 sentences I imposed on those defendants. Therefore, the need
15 to avoid unwarranted sentencing disparities supports the
16 imposition of a similar sentence in this case, which is what
17 both defense counsel and the government have recommended.

18 Therefore, taking into account the statements of the --
19 of counsel and the defendant, the letters submitted on the
20 defendant's behavior, the defendant's crime and all of the
21 other 3553(a) factors, this Court concludes that a penalty of
22 60 months of imprisonment is sufficient but not greater than
23 necessary to reflect the seriousness of the instant offense, to
24 promote deterrence, to protect the public from future crimes
25 that may be committed by this defendant, and to avoid

1 unwarranted disparities among defendants convicted of similar
2 crimes.

3 Also consistent with the term of supervised release
4 imposed on prior similar defendants, I will impose a period of
5 120 months of supervised release to permit this defendant to
6 rehabilitate himself and integrate himself fully back into
7 society.

8 Therefore, based on the Court's consideration of all of
9 the 3553(a) factors, I will now state the sentence to be
10 imposed.

11 It is the judgment of the Court, that you, Lucas Cane,
12 are hereby committed to the custody of the Bureau of Prisons
13 for a term of 60 months on Count 1, with credit for time
14 already served since your detention on the charges in this
15 case.

16 You are further sentenced to serve a term of 120 months
17 of supervised release on Count 1, and you must pay both a \$100
18 special assessment and restitution in the amount of \$3,000.
19 The Court finds that you do not have the ability to pay a fine
20 and, therefore, waives imposition of a fine in this case.

21 The special assessment and restitution are immediately
22 payable to the Clerk of the Court for the U.S. District Court
23 for the District of Columbia. Within 30 days of any change of
24 address, you shall notify the Clerk of the Court of the change
25 until such time as that financial obligation is paid in full.

1 The Court waives any interest or penalties that may accrue on
2 unpaid balances.

3 Restitution payments shall be made to the Clerk of the
4 Court for the U.S. District Court for the District of Columbia
5 for disbursements to the victims as follows: to Fiona in the
6 amount of \$1,000; to Jenny in the amount of \$1,000; to Jane in
7 the amount of \$1,000. And the address information has been
8 provided by the government.

9 Given your significant substance abuse history, the
10 Court will recommend to the Bureau of Prisons that you be
11 housed at a facility that has a 500-hour Residential Drug Abuse
12 Prevention plan and you be placed in such a program during your
13 term of imprisonment.

14 Within 72 hours of release from custody, you shall
15 report in person to the probation office in the district to
16 which you are released.

17 While on supervision, you shall submit to the collection
18 of DNA; you shall not possess a firearm or other dangerous
19 weapon; you shall not use or possess an illegal controlled
20 substance; and you should not commit another federal, state, or
21 local crime.

22 You shall also abide by the general conditions of
23 supervision adopted by the U.S. Probation Office, as well as
24 the following special conditions, which I will state and
25 describe the reasons for as the D.C. Circuit requires.

1 Restitution obligation. The defendant shall pay the
2 balance of any restitution owed at a rate of no less than \$50 a
3 month and provide verification of the same to the probation
4 office. This obligation is the least restrictive means
5 possible of ensuring that the restitution is provided to the
6 victims of the offense for which you have been convicted.

7 Sex offender registration. You shall comply with the
8 sex offender registration requirements for convicted sex
9 offenders in any state or jurisdiction where you reside, are
10 employed, carry on a vocation, or are a student. Imposing
11 registration as a condition of supervised release is the least
12 restrictive means of protecting the public from further sex
13 crimes.

14 Contact restrictions. You must not have direct contact
15 with any child you know or reasonably should know to be under
16 the age of 18 with the exception of your own children without
17 the permission of the probation office. If you do not --
18 excuse me. If you do have any direct contact with any child
19 you know or reasonably should know to be under the age of 18,
20 with the exception of your own children, without permission of
21 the probation officer, you must report this contact to the
22 probation officer within 24 hours. Direct contact includes
23 written communication, in-person communication, or physical
24 contact. Direct contact does not include incidental contact
25 during ordinary daily activities in public places. This is the

1 least restrictive means necessary of protecting the public from
2 future sex crimes against minors, of deterring future offenses,
3 and encouraging registration.

4 Sex offender assessment and treatment. You shall
5 participate in a program of sex offender and treatment as
6 directed by the U.S. probation officer. At the direction of
7 the United States Probation Office, you shall pay for all or a
8 portion of any treatment program. You shall waive your right
9 of confidentiality in treatment and sign any necessary releases
10 for any records imposed as a consequence of this judgment to
11 allow the United States Probation Office to review your course
12 of treatment and progress with the treatment providers. This
13 condition is imposed because it is the least restrictive means
14 of providing you with treatment to rehabilitate yourself so you
15 can move forward from the underlying offense, and it will also
16 deter future conduct involving sex offenses.

17 Computer/internet search monitoring. You shall identify
18 all computer systems, internet-capable devices and similar
19 memory and electronic devices to which you have access and
20 permit the installation of the computer and internet monitoring
21 program on any and all such devices. Given that you initiated
22 and planned the offense of conviction online via computer, and
23 in light of your uncharged relevant conduct, this condition is
24 the least restrictive means of protecting the public from
25 future offenses, deterring you from committing any future

1 offenses, and aiding in your -- in treating your correctional
2 needs.

3 Computer search. You must submit your computers as
4 defined in 18 U.S.C. 1030(e)(1) or other electronic
5 communications or data storage devices or media to a search.
6 You must warn any other people who use these computers or
7 devices capable of accessing the internet that the devices may
8 be subject to searches pursuant to this condition. A probation
9 officer may conduct a search pursuant to this condition only
10 when reasonable suspicion exists that there is a violation of a
11 condition of supervision and that the computer or device
12 contains evidence of this violation.

13 Any search will be conducted as -- at a reasonable time
14 and a reasonable manner. The Court finds that this condition
15 is reasonably related to the nature and circumstances of your
16 offense, the need to deter criminal conduct, protection of the
17 public, and treatment of your correctional needs because the
18 nature of your offense indicates such degree of risk of
19 recidivism and because any repeated criminal conduct of this
20 nature could well be carried out on your computer.

21 Substance abuse treatment. You shall participate in and
22 successfully complete a residential and/or outpatient substance
23 abuse treatment program which may include drug testing and
24 detoxification service as approved and directed by the
25 probation office. Given your history of drug use, imposing

1 substance abuse treatment as a condition of supervised release
2 is the least restrictive meanings of furthering your
3 rehabilitation so you can move beyond drug addiction.

4 Substance abuse testing. You shall submit to substance
5 abuse testing as approved and directed by the probation office.
6 Again, given your history of drug use, this condition is the
7 least restrictive means necessary of ensuring you remain drug
8 free in the name of rehabilitation.

9 Mental health treatment. You shall participate in a
10 mental health treatment program, which may include outpatient
11 counseling or residential placement, as approved and directed
12 by the probation office. Given the connection between your
13 mental health issues as described in the presentence report and
14 the crime for which you have been convicted, this condition is
15 the least restrictive means possible of protecting the public
16 from future offenses, deterring you from committing any future
17 offenses, and ensuring that you remain in good mental health in
18 the name of rehabilitation.

19 Pursuant to your plea agreement and Rule 32.2(a) of the
20 Federal Rules of Criminal Procedure, you, Mr. Cane, are hereby
21 ordered to forfeit an Apple iPhone 5s.

22 And the probation office shall release the presentence
23 investigation report to all appropriate agencies in order to
24 execute the sentence of the Court. Treatment agencies shall
25 return the presentence report to the probation office upon the

1 defendant's completion or treatment -- or terms -- excuse me --
2 from treatment.

3 Mr. Cane, you have the right to appeal the sentence
4 imposed by this Court under the limited circumstances laid out
5 in your plea agreement. If you choose to appeal, you must file
6 an appeal within 14 days after the Court enters judgment. If
7 you are unable to afford the cost of an appeal, you may request
8 permission from the Court to file an appeal without cost to
9 you.

10 Let me turn to counsel to ask if there are any
11 objections to the sentence imposed that are not already noted
12 on the record.

13 Mr. Miranda?

14 MR. MIRANDA: No, Your Honor.

15 THE COURT: Ms. Jahn?

16 MS. JAHN: Your Honor, I believe that you stated in
17 terms of the sex offender assessment and treatment that
18 Mr. Cane should pay for a percentage of the cost of that
19 program and assessment. And I am requesting that the Court
20 reconsider that request in light of his indigency, the \$3,000
21 restitution amount in which he has paid, and know, undoubtedly,
22 the struggles that he will face to find employment immediately
23 upon his release.

24 THE COURT: Let me ask the probation office and the
25 government whether they have any objection to waiving that part

1 of the condition.

2 THE PROBATION OFFICER: Your Honor, the probation
3 office has no objection to waiving that.

4 THE COURT: Mr. Miranda?

5 MR. MIRANDA: Nor does the government, Your Honor.

6 THE COURT: All right. I will not require that
7 Mr. Cane pay for all or a portion of the treatment program as
8 previously indicated with respect to sex offender assessment
9 and treatment.

10 Ms. Jahn, anything else?

11 MS. JAHN: Your Honor, and I believe that was the
12 only assessment associated with the other conditions; is -- is
13 that correct?

14 THE COURT: I did not require an assessment with
15 respect to -- well, I required substance abuse testing, but not
16 an assessment. There's a distinction.

17 MS. JAHN: Yes, Your Honor. I'm sorry. With all the
18 other conditions that you did impose, what I'm getting at is to
19 ensure that there are no costs that will be associated with
20 Mr. Cane in light of now your agreement to waive the cost of
21 any programs or assessment or testing.

22 THE COURT: Yes. Correct. That was the only one.

23 MS. JAHN: Thank you, Your Honor.

24 MR. MIRANDA: Your Honor, I believe that there is a
25 \$100 --

1 THE COURT: There is the standard hundred dollar
2 assessment. Thank you, Mr. Miranda. That will remain. That
3 is in the law. That is a standard thing for -- all defendants
4 have to pay a hundred dollars for every offense of conviction.
5 But I believe Ms. Jahn was talking about the other kinds of
6 conditions with respect to mental health treatment, substance
7 abuse treatment, and sex offender assessment, none of which
8 Mr. Cane will have to pay for now that I've stricken that
9 particular assessment requirement.

10 MS. JAHN: That's right, Your Honor. Thank you.

11 And just two final requests, if I could. If you could
12 make a recommendation for his placement in the Bureau of
13 Prisons at Seagoville. It's S-e-a-g-o-v-i-l-l-e. It's noted
14 also in the presentence report. It's a particular facility
15 that is close to his home in Oklahoma. It also has the various
16 treatment programs that we've been discussing. And, notably,
17 it also has a continuation of the Suboxone treatment program in
18 which he is currently participating in. So separate from
19 placement at Seagoville, the defense's request is he continue
20 in the treatment of Suboxone as designated by the Bureau of
21 Prisons.

22 THE COURT: All right. So those are two different
23 recommendations. I will ask that he be placed at Seagoville
24 and then, separately, that he be continued in the Suboxone
25 treatment program that he has been participating in.

1 Anything else?

2 MS. JAHN: Thank you, Your Honor. No, nothing
3 further.

4 THE COURT: All right. So that concludes the Court's
5 judgment in this case.

6 Mr. Miranda, is there anything else from you?

7 MR. MIRANDA: No, Your Honor.

8 THE COURT: All right. Thank you.

9 That is the end of this sentencing, Mr. Cane. Good
10 luck.

11 (The proceedings concluded at 4:35 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

I, Nancy J. Meyer, Registered Diplomate Reporter,
Certified Realtime Reporter, do hereby certify that the above
and foregoing constitutes a true and accurate transcript of my
stenograph notes and is a full, true, and complete transcript
of the proceedings to the best of my ability.

Dated this 25th day of March, 2022.

/s/ Nancy J. Meyer
Nancy J. Meyer
Official Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
333 Constitution Avenue Northwest
Washington, D.C. 20001