

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA)
5)
6 vs.) Case No.: 3:96-cr-00120
7)
8 LARRY TURNLEY,)
9)
10 Defendant.)

11 TRANSCRIPT OF PROCEEDINGS
12 March 23, 2009 - 10:05 A.M.

13 BEFORE THE HONORABLE SENIOR JUDGE THOMAS A. WISEMAN, JR.
14 DISTRICT JUDGE

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1 (The following proceedings were held at 9:29 a.m.)

2 THE COURT: Matter set for hearing this morning is the
3 United States of America versus Larry Turnley. It's here for
4 resentencing.

5 Is the government ready?

6 MS. COOK: Yes, your Honor.

7 THE COURT: Defendant present and ready?

8 MR. GANT: Defendant is present and ready, your Honor.

9 THE COURT: All right. Now, Mr. Gant, what about the
10 government's objection to your calling some BOP witnesses?

11 MR. GANT: Yes, Judge. I have resolved that issue in
12 terms of I have now decided that that will not be necessary.

13 THE COURT: All right.

14 MR. GANT: That the record contains the documents upon
15 which I sought to offer testimony.

16 THE COURT: Are you satisfied with that, Ms. Cook?

17 MS. COOK: I am satisfied, your Honor.

18 THE COURT: All right. Thank you.

19 All right, then. I will hear you both. I have read your --
20 your memorandum, Ms. Cook, but I will hear you further.

21 MS. COOK: May it please the Court, good morning, your
22 Honor.

23 THE COURT: Good morning.

24 MS. COOK: Other than the statements that I made in the
25 position statement, the only additional information I had to add

1 was an incident report from the Federal Bureau of Prisons. I'd
2 like to offer that by way of proffer, if defense counsel does
3 not object.

4 THE COURT: That's the drug use while -- while he was
5 incarcerated?

6 MS. COOK: That is correct, your Honor.

7 THE COURT: All right. Let it be received.

8 MS. COOK: No further evidence, your Honor.

9 THE COURT: All right.

10 All right, Mr. Gant?

11 MR. GANT: Excuse me. Good morning, Judge.

12 THE COURT: Good morning.

13 MR. GANT: Judge, just by way of inquiry with regard to
14 procedure, I have witnesses that I intend to call, some of whom
15 will be very brief; a couple may be a little longer.

16 In the record of this proceeding are certain letters,
17 certificates that were part of the initial petition filed by
18 Mr. Turnley. I am going to rely upon those. There are a group
19 of which I seek to offer testimony on. And then I intend to
20 call Mr. Turnley.

21 THE COURT: All right.

22 MR. GANT: All right.

23 THE COURT: You may proceed.

24 MR. GANT: Thank you, Judge.

25 Ms. Lorrita Turnley.

1 THE CLERK: Would you raise your right hand?

2 LORRITA LUCILLE TURNLEY, DEFENDANT'S WITNESS, SWORN

3 THE CLERK: Thank you. You may have a seat right up
4 there.

5 If you would state your full name and spell your first name
6 and your last name, please.

7 THE WITNESS: Okay. Lorrita Lucille Turnley,
8 L-O-R-R-I-T-A T-U-R-N-L-E-Y.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. GANT:

12 Q. Ms. Turnley, do you know an individual by the name of Larry
13 Turnley?

14 A. Yes.

15 Q. Tell his Honor, if you would, please, who Larry Turnley is.

16 A. He's my son.

17 Q. Who is the father of Larry Turnley?

18 A. Larry Turnley, Sr.

19 Q. Ms. Turnley, would you be good enough to tell his Honor, if
20 you would, please, where you and Larry Turnley, Sr., were living
21 at the time Larry was born?

22 A. On 23rd Avenue North.

23 Q. And at that address, who, other than you and Larry, Sr.,
24 lived at that address?

25 A. Larry and my daughter, Lorrika.

1 Q. And your daughter, Lorrika, how much older is Lorrika than
2 Larry? Larry, Jr.; I'm sorry.

3 A. About a year and a half.

4 Q. All right. During that period of time when you, Larry, Sr.,
5 Lorrika, and Larry, Jr., lived at the 23rd Street address, were
6 you working?

7 A. No. Huh-uh.

8 Q. Was Larry, Sr., working?

9 A. Yes.

10 Q. Where was he working?

11 A. I think it was Newhall.

12 Q. All right. Packing company?

13 A. Packing company; I believe that's what it was.

14 Q. Tell his Honor, if you would, please, how long you, Larry,
15 Sr., Lorrika, and Larry, Jr., lived at that address.

16 A. Lived there -- Larry, Jr., lived there about a year and a
17 half.

18 Q. Okay.

19 A. A year.

20 Q. All right. At some point in time, did you and Larry, Sr.,
21 separate?

22 A. Yes.

23 Q. Tell his Honor, if you would, please, roughly when that was.

24 A. In '73. 1973.

25 Q. And how old was Larry, Jr., at the time?

1 A. About a year, a little bit less than a year. Yeah.

2 Q. And when you separated from Larry, Sr., did you move
3 somewhere else?

4 A. Yes. I moved back home with my parents, with my mother.

5 Q. All right. And what was that address?

6 Take your time. Slow up, take your time.

7 A. It was on Paris Avenue, 1003 Paris Avenue.

8 Q. And that would have been on south -- in south Nashville?

9 A. Yes.

10 Q. All right. And when you moved to the address of your mother
11 and your stepfather, I believe you said, it was you, Lorrika,
12 and Larry?

13 A. Yes.

14 Q. Were there other people living in that house?

15 A. Yes. My mother, my stepfather, and I had five other sisters
16 and brothers.

17 Q. During the period of time that you lived with your mother
18 and your stepfather and your siblings along with your two
19 children, were you working at that time?

20 A. I was going to school.

21 Q. Tell his Honor where you were in school.

22 A. I went to -- first I went to nursing school.

23 Q. All right.

24 A. For a technician.

25 Q. What was the name of that nursing school, do you remember?

1 A. It went through a CETA program.

2 Q. CETA?

3 A. CETA, CETA program.

4 Q. All right. And how long were you a part of that particular
5 program?

6 A. Six months.

7 Q. During that period of time when you were there with your
8 mother and your stepfather, your siblings, and your two
9 children, was there any contact between Larry and his father?

10 A. At first, but then my husband was locked up. He was -- he
11 was incarcerated.

12 Q. All right. How long did you stay at that south Nashville
13 address with your mother and your stepfather, your siblings, and
14 your two children?

15 A. About a year.

16 Q. You then moved?

17 A. Yes.

18 Q. Tell his Honor, if you would, please, where you moved to.

19 A. I went to -- I moved to Tennessee Village. It was in West
20 Nashville.

21 Q. Okay. And at that Tennessee Village address, who resided
22 there? Who lived there?

23 A. Larry, Jr., Lorrika, and myself.

24 Q. Were you employed at that time?

25 A. No.

1 Q. Tell his Honor, if you would, please, how it was that you
2 were able to maintain the household financially.

3 A. Oh, I was gambling and everything like that.

4 Q. All right. When you say "everything" --

5 A. Gambling. Gambling, and then I started working in clubs.

6 Q. All right. During that period of time when you started the
7 gambling and working in clubs, who looked after Larry and
8 Lorrika?

9 A. A lot of times, my mother. My mother did, and sometimes
10 they were by theirself.

11 Q. All right. How long did you live at that -- the Village
12 address? I'm sorry; I forget the name.

13 A. A year.

14 Q. Where did you move to after that?

15 A. J. P. Napier projects.

16 Q. When you moved to the J. P. Napier projects, your household
17 consisted of how many people?

18 A. Three.

19 Q. That would have been --

20 A. Including myself.

21 Q. -- yourself and your two children?

22 A. Yes. Uh-huh.

23 Q. About what year, as best as you can recall, did you move
24 into the Napier projects?

25 A. 1975.

1 Q. Now, when you moved there, insofar as your
2 relationship -- strike it.

3 Was Mr. Larry Turnley, Sr., still incarcerated?

4 A. Yes, uh-huh.

5 Q. When you moved to the Napier projects, did life change?

6 A. Yes.

7 Q. Take your time, now. Tell his Honor, if you would, please,
8 how life changed once -- once you moved to the projects.

9 A. I began to drink alcohol, and I became suicidal.

10 Q. All right. During that period of time, were you also
11 receiving mental health treatment?

12 A. Yes.

13 Q. Tell his Honor, if you don't mind, the nature of the mental
14 health treatment you were receiving.

15 A. I was going for acute depressive disorder from Dede Wallace.

16 Q. You have said to his Honor that you started drinking during
17 that period of time?

18 A. Yes, uh-huh.

19 Q. Did that drinking become excessive?

20 A. Yes.

21 Q. What was the impact of your excessive drinking on your
22 household, your children?

23 A. Like I said, most of the time, not home. As I say, I was
24 working in the clubs, but I would leave home at 7 in the
25 morning, I might not get home until 3 or 4:00 the next morning,

1 and then -- then start all over again.

2 Q. Okay. While you were experiencing this -- the excessive
3 drinking and these emotional and behavioral kinds of problems,
4 did you begin to see an impact of that on Larry?

5 A. Yes.

6 Q. Tell his Honor, if you would, please, what you soon were
7 able to observe in terms of the impact of your drinking, absence
8 on -- on Larry.

9 A. I guess rebellion. Mostly rebellion and just -- rebellion.
10 Rebellion.

11 Q. All right. And how was that demonstrated? What did he do
12 that demonstrated this rebellious binge that he experienced?

13 A. Oh, he would get upset. He -- he would even cry because of
14 my drinking and me not being home. I guess he felt neglected
15 too.

16 Q. Now, this feeling -- excuse me, please. This feeling of
17 neglect, was that feeling of neglect amplified? Was it made
18 greater in some fashion?

19 A. Yes.

20 Q. All right. Let me ask you about his sister, Lorrika.

21 A. Yes.

22 Q. At some point in time, she moved?

23 A. Yes, she did.

24 Q. Tell his Honor, if you would, please, how old Lorrika was
25 when she was separated from Larry.

1 A. About 15.

2 Q. How old was Larry?

3 A. About 13.

4 Q. Tell his Honor what happened to Lorrika.

5 A. She went to live with my sister out in California.

6 Q. And at the time of the separation between Lorrika and Larry,
7 did you notice a change again in Larry?

8 A. Yes. I guess he was going out, getting more attention from
9 the older guys in the neighborhood that was doing drugs and
10 selling drugs and everything.

11 Q. Now, did Larry ever talk to you about the impact on himself
12 regarding the separation of him and Lorrika?

13 A. Yes. He was -- he was upset, because he wondered why my
14 sister didn't take him.

15 Q. Did Larry ever express to you verbally a feeling that he was
16 being neglected and that she was being treated better?

17 A. Yes, yes, he did.

18 Q. At some point in time, Mrs. Turnley, your drinking and being
19 away from home, you believe -- that's a bad way to put the
20 question.

21 Tell his Honor, if you would, please, if at some point in
22 time your absence from the home, Larry's feeling of neglect,
23 your excessive drinking, started to have a further impact on the
24 conduct of Larry. Do you understand my question?

25 A. Yes.

1 Q. At some point in time, Larry started getting into trouble?

2 A. Trouble, yes, yes, yes.

3 Q. All right. Tell his Honor, if you would, please, in
4 relation to the time that you were drinking heavily --

5 A. Yes.

6 Q. -- gambling --

7 A. Yes.

8 Q. -- working the clubs --

9 A. Right.

10 Q. By the way, tell his Honor why it was that you decided to
11 work at the clubs.

12 A. Because the alcohol was there.

13 Q. All right. Did you work at other places that sold alcohol?

14 A. I worked at a liquor store. I was a manager of a liquor
15 store.

16 Q. All right. Before you started the excessive drinking and
17 the gambling and being away from home, had Larry been a good
18 student?

19 A. Yes, uh-huh.

20 Q. Did he make good grades?

21 A. Very good grades.

22 Q. At some point in time in Larry's academic career, did he
23 receive a certain honor?

24 A. Yes. He got Who's Who Among American High School Students
25 across the United States.

1 Q. Did Larry graduate from high school?

2 A. Yes, he did.

3 Q. What high school was that?

4 A. McGavock.

5 Q. Your drinking, being away from home at some point in time
6 after Larry got out of high school started to have an adverse
7 effect on Larry?

8 A. Yes.

9 Q. All right. Larry started getting in trouble?

10 A. Yes.

11 Q. Tell his Honor, if you would, please, why it is -- pardon
12 me, what you believe led to Larry's getting into trouble after
13 he got out of high school.

14 A. I believe the reason --

15 Q. Tell his Honor, don't tell me.

16 A. Oh. What he done was, I believe he thought he had to take
17 care of his mom. He wanted me out of the drinking and
18 everything. I even went to drug rehab. But he thought he had
19 to take care of me instead of me taking care of him.

20 Q. All right. And did he in fact do that?

21 A. Yes, he did.

22 Q. At some point in time, Mrs. Turnley, you started to turn
23 your life around?

24 A. Yes, I did.

25 Q. Tell his Honor how that happened.

1 A. You know, the funny thing about it, I went to work at the
2 place called LifeWay. It's right after Larry got locked up.
3 That was in '97. And I don't know if the Lord touched me or
4 what, but my whole life -- I quit drinking in one day and never
5 touched a drop since 1997. And then I'm in church and
6 everything. So that's a good thing.

7 Q. Mrs. Turnley?

8 A. Yes.

9 Q. Are you employed?

10 A. Yes, I am.

11 Q. Tell his Honor where you are employed.

12 A. I work with Meharry Medical College.

13 Q. Ms. Turnley, during the period of time that Larry has been
14 incarcerated, have you been in communication with him?

15 A. Oh, yes, yes.

16 Q. How frequently would you see him?

17 A. When he was in Memphis, I probably saw him about three or
18 four times. Maybe more than that, not that much, because he was
19 so far away from me.

20 Q. But in terms of communication, did you --

21 A. But on the phone.

22 Q. All right.

23 A. Oh, yes, uh-huh.

24 Q. In your communications with Larry from the time he first was
25 sentenced up to and including today, have you noticed a change

1 in him?

2 A. Oh, yes. Yes, yes, yes.

3 Q. Tell his Honor, if you would, please, the changes that you
4 have noticed in him over that period of time.

5 A. For mainly maturity.

6 Q. When you say "maturity," what do you mean?

7 A. He knows now that he takes responsibility of doing the right
8 thing. He wants to help people. Like in prison, he always
9 talked to the prisoners, tried to lead them in the right
10 direction. And I have heard from a lot of them since they have
11 gotten out, you know, and they tell me about what all Larry has
12 done for them. He went to classes, he taught certain classes in
13 the prison system. And so he has changed remarkably.

14 MR. GANT: Your Honor, I have no further questions.

15 THE COURT: All right. Ms. Cook?

16 MR. GANT: Thank you, ma'am.

17 THE WITNESS: Yes.

18 CROSS-EXAMINATION

19 BY MS. COOK:

20 Q. Good morning, Ms. Turnley.

21 A. Good morning.

22 Q. Ms. Turnley, was your son living with you between 1995 and
23 also 1996, the time of his arrest?

24 A. Yes.

25 Q. And at that time, are you aware that the police officers

1 retrieved about \$6,000 in cash from your home as well as several
2 loaded weapons as well as drugs? Is that correct?

3 A. No.

4 Q. No, that's not correct?

5 A. They didn't get \$6,000 from my home, no.

6 Q. Okay. Did they receive any loaded weapons from your home?

7 A. Yes.

8 Q. Did they receive drugs from your home?

9 A. I believe they got residue.

10 Q. Uh-huh. Was your son dealing drugs while he was living at
11 home with you?

12 A. Yes.

13 Q. Okay. Were you aware of that?

14 A. Yes.

15 Q. Okay. You testified that after your son's sentencing, you
16 had noticed a change in him. Is that correct?

17 A. Yes.

18 Q. And I'm assuming you noticed this change while he was
19 incarcerated; is that correct?

20 A. Yes.

21 Q. So incarceration has had a positive effect on your son; is
22 that correct?

23 A. Yes.

24 Q. Had your son been incarcerated before this?

25 A. Yes.

1 Q. Approximately when was your son incarcerated?

2 A. The first time?

3 Q. Yes, ma'am.

4 A. I guess '91, '92.

5 Q. And approximately how long had he been incarcerated at that
6 time?

7 A. About seven months.

8 Q. Had you noted -- noticed any change in his behavior during
9 that period of incarceration?

10 A. No. He -- no. No.

11 Q. No?

12 A. Not that I know of. He was just --

13 Q. So you -- you didn't notice any change in your son's
14 behavior during a short period of incarceration, but during long
15 periods of incarceration, you have noticed a change in your son?

16 A. Oh, yes.

17 Q. Your son began his prison sentence in 1996; is that correct?

18 A. Yes.

19 Q. And how often did you visit him or have you had visits with
20 him while he has been incarcerated, approximately?

21 A. Yes, I have, uh-huh.

22 Q. I'm sorry. My question is, approximately how often did you
23 have visits with your son?

24 A. Well, when he was here, I saw him all the time. Then he
25 went to Oklahoma, so I couldn't get there. So when he went to

1 Memphis, I have been there about five times, four or five times.

2 Q. And your son has been in Memphis since what time?

3 A. I don't know how long he has been.

4 Q Is -- would it be safe to say approximately at least -- at
5 least until 2005? Is that correct?

6 A. Yes. Oh, yeah. Yeah, he was there in 2005, I do believe.

7 Q. So between 2005 and 2009, you have seen your son five times;
8 is that correct?

9 A. Probably so, uh-huh.

10 Q. And when you state that you have seen this noticeable change
11 in your son, what exactly is this change that you have seen?

12 A. Oh, I have even received letters that he wrote, poems he
13 wrote. He is in the Bible, which -- it's a lot of things where
14 he was -- and reading a lot, and then he was just learning more
15 and more about life.

16 Q. Okay. And so these changes that you have seen are largely
17 from letters that you have received; is that correct?

18 A. And through -- through talking, yes.

19 Q. Through talking?

20 A. Through talking to him, yes.

21 Q. And approximately how often do you speak to your son?

22 A. Oh, we were talking then about two or three times every week
23 at first until he got down here to Bowling Green.

24 Q. Okay. All right. I want to go back through some of your
25 testimony, Ms. Turnley. You stated that you believed that your

1 absence from home, your excessive drinking, feelings of neglect,
2 and gambling led to some of Larry Turnley's behavior. Is that
3 correct?

4 A. Yes.

5 Q. Okay. Are you aware that in -- in 1991, your son shot at a
6 police helicopter?

7 A. I heard that.

8 Q. Okay. Do you believe that your being absent from home, your
9 excessive drinking, feelings of neglect, and gambling led your
10 son to point a pistol at a police helicopter and shoot at it?

11 A. I don't believe he did it.

12 Q. You don't believe he did that behavior?

13 A. No.

14 Q. If I were to say to you that in fact he had done that
15 behavior and that he has conceded that he has done that
16 behavior, then my question becomes, do you believe that your
17 excessive drinking, the gambling, the neglect led to that
18 behavior?

19 A. Yes.

20 Q. And how so?

21 A. Peer pressure, not being with me. And like I said, he went
22 out in the streets to find comfort, I guess comfort being around
23 the older people and just being around the wrong crowd.

24 Q. So peer pressure, being around the wrong --

25 A. Wrong crowd.

1 Q. -- wrong crowd, it's your testimony today that that led your
2 son to take a pistol and shoot it at a police helicopter; is
3 that correct?

4 A. As I said, I don't believe he did it.

5 Q. Okay. But if you were -- if I were to tell you that he had
6 done it, if we operate from that assumption, that he had done
7 it, is it your testimony that the peer pressure and the other
8 things that you mentioned led him to do that?

9 A. It could.

10 Q. It could?

11 A. I guess. I don't know. Like I said, I don't believe he
12 done it.

13 MS. COOK: Okay. No further questions, your Honor.

14 THE COURT: Thank you, ma'am. You may come down.

15 THE WITNESS: Okay.

16 THE COURT: Call your next witness.

17 MR. GANT: Thank you, Judge. Ms. Tracy Gibson.

18 THE CLERK: Please raise your right hand.

19 TRACY RENEE GIBSON, DEFENSE WITNESS, SWORN

20 THE CLERK: Have a seat.

21 If you would state your full name and spell your first name
22 and last name, please.

23 THE WITNESS: Tracy Renee Gibson. T-R-A-C-Y

24 G-I-B-S-O-N.

25 THE CLERK: Thank you.

1 DIRECT EXAMINATION

2 BY MR. GANT:

3 Q. Good morning, Ms. Gibson.

4 A. Good morning.

5 Q. Ms. Gibson, do you know Larry Turnley?

6 A. Yes.

7 Q. Tell his Honor, if you would, please, how is it that you
8 know Larry Turnley.

9 A. Larry Turnley is my fiance.

10 Q. How long have you known Larry Turnley?

11 A. I've been knowing Larry for about 15, 16 years.

12 Q. Do you and Larry have a child together?

13 A. Yes.

14 Q. And what is that child's name?

15 A. Deateandra Donnell Turnley.

16 Q. Is Deateandra in court today?

17 A. Yes.

18 Q. How old is Deateandra?

19 A. Deateandra is 13.

20 Q. Tell his Honor, if you would, please, when you first met
21 Larry Turnley and how you met him.

22 A. I met Larry Turnley through my brother.

23 Q. How long ago was that?

24 A. That's been 14, 15 years ago.

25 Q. All right. Deateandra, your son, you and Larry's son, was

1 born shortly before -- pardon me, shortly after Larry was
2 incarcerated?

3 A. Yes.

4 Q. Tell his Honor, if you would, please, what, if any,
5 relationship exists between Deateandra Turnley and Larry
6 Turnley.

7 A. What -- what the relationship they have?

8 Q. Yes.

9 A. Deateandra has a very good relationship with his father.

10 Q. When you say "very good," that's a conclusion?

11 A. Yes.

12 Q. Tell his Honor on what that conclusion is based, what
13 information. Is that based upon your observations of the
14 interaction between the two? Is it based upon conversations
15 that you have had with either Larry or Deateandra?

16 A. Conversations.

17 Q. All right. Tell his Honor -- his Honor, if you would,
18 please, the gist of the conversations that have led you to
19 believe or led you to the conclusion that they have this
20 wonderful relationship.

21 A. Deateandra talks about his father all the time. He just
22 talks about that he want his dad to be home with him so he can
23 do things with him.

24 Q. You have discussed, have you not, incidences where
25 Deateandra has talked about, for example, baseball games and

1 things of that nature that he has experienced with his father?

2 A. Skateboarding.

3 Q. All right. Has Deateandra in fact experienced those things
4 with his father?

5 A. Deateandra talks about places that him and his father,
6 basketball, go-cart riding, and -- but this is things they never
7 did, but this is -- this is what he talks about all the time.

8 Q. You have another son?

9 A. Yes.

10 Q. What is that son's name?

11 A. Phillip Daniel Cotton, III.

12 Q. Is he in court today?

13 A. Yes.

14 Q. Is there a relationship between your son Phillip and Larry
15 Turnley?

16 A. Yes.

17 Q. Tell his Honor, if you would, please, describing him, if you
18 would, the nature of the relationship between Larry and Phillip.

19 A. Phillip and Larry has a -- a very good relationship. He
20 talks to him and --

21 Q. "He" meaning Larry talks --

22 A. Larry talks to Phillip. And they just talk about, you know,
23 telling him to stay in school, to stay in school, do the right
24 thing.

25 Q. Is Phillip in school?

1 A. Yes.

2 Q. What school?

3 A. He goes to Antioch High.

4 Q. What year is he in?

5 A. He is in 12th grade.

6 Q. About to graduate?

7 A. About to graduate.

8 Q. Has Phillip talked with Larry or has Larry talked with
9 Phillip about Phillip's future plans?

10 A. Yes.

11 Q. What is it that Phillip intends to do?

12 A. Phillip is going to school to be a doctor.

13 Q. Does he have offers of scholarships? Where is he going to
14 school?

15 A. He -- he got -- Phillip has got accepted in Western
16 Kentucky.

17 Q. Has Phillip talked to you about the influence, the impact
18 that Larry has had on his development, "his" being Phillip's
19 development?

20 A. Yes.

21 Q. Tell his Honor, if you would, please, what he said to you
22 about that.

23 A. Phillip -- Phillip looked at Larry as his -- his father. He
24 has been there since Phillip was little. And he just talks
25 about he wanted to come home and -- and be there for him. And

1 he's -- he's getting ready to graduate, and he just want him to
2 be there for him.

3 Q. Ms. Gibson, are you employed?

4 A. Yes.

5 Q. Tell his Honor, if you would, please, where you are
6 employed.

7 A. Dentistry Plus.

8 Q. And how long have you been so employed?

9 A. I have been there five years. I have been in dentistry for
10 eight.

11 Q. And you and your two sons live in Davidson County,
12 Nashville, Tennessee?

13 A. Yes.

14 Q. All right. In the same household?

15 A. Yes.

16 MR. GANT: Thank you. I have no further questions of
17 this witness.

18 THE COURT: Ms. Cook?

19 CROSS-EXAMINATION

20 BY MS. COOK:

21 Q. Good morning, Ms. Gibson.

22 A. Good morning.

23 Q. Ms. Gibson, you testified that you -- you have a son with
24 the defendant; is that correct?

25 A. Yes.

1 Q. And when was your son born?

2 A. October the 7th.

3 Q. Of what year?

4 A. Of '9- -- '95.

5 Q. Were you aware that the defendant was dealing drugs?

6 A. Yes.

7 Q. Okay. Were you aware that the defendant was dealing drugs
8 at the time that you were pregnant and also at the time when you
9 had your son?

10 A. Yes.

11 Q. Okay. The defendant went into custody at approximately what
12 year?

13 A. Around '92.

14 Q. '92. And I'm sorry; the term of imprisonment that he is
15 serving right now, did that begin in approximately 1996?

16 A. Yes.

17 Q. Okay. So is it fair to say that your son -- your -- that
18 the defendant had approximately a year of interaction with your
19 son before he was incarcerated? Is that correct?

20 A. Yes.

21 Q. And how often has the defendant seen your son after his
22 incarceration?

23 A. All the time.

24 Q. What is "all the time"?

25 A. You're saying how -- how many times he went to see him?

1 Q. Yes.

2 A. About four or five times.

3 Q. Your son has seen his father about four or five times; is
4 that correct?

5 A. Yes.

6 Q. And it's your testimony that the defendant has had a
7 positive impact on your son; is that correct?

8 A. Yes.

9 Q. And how is it that your -- that the defendant is positively
10 impacting your son? How is it that he is doing this, again?

11 A. By going to see him and talking to him on the phone.

12 Q. Okay. And you also stated that the defendant has had a
13 positive impact on your other son. Is that correct?

14 A. Yes.

15 Q. And how old is he?

16 A. He's 18.

17 Q. And approximately when was he born?

18 A. He was born in '91.

19 Q. Did the defendant interact with your other son prior to his
20 incarceration in 1996?

21 A. Yes.

22 Q. Was the defendant dealing drugs from 1991 to 1996 --

23 A. Yes.

24 Q. -- to your knowledge?

25 A. To my knowledge.

1 Q. Did he share that information with your other son?

2 A. Yes.

3 Q. Your other son knew that he was a drug dealer?

4 A. Yes.

5 MS. COOK: Okay. No further questions, your Honor.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. GANT:

9 Q. Ms. Gibson, it was no secret back in the day that Larry
10 Turnley was dealing drugs, was it?

11 A. No.

12 Q. Ms. Gibson, the Larry Turnley that you knew back in '91, '9-
13 -- up to '95, is that the same Larry Turnley that you know
14 today?

15 A. No.

16 Q. He's different?

17 A. Yes.

18 Q. Would you share with his Honor how it is that you have
19 determined that he is now different?

20 A. Larry's -- he's really -- he's -- he's changed a whole lot.
21 He's -- he has -- we have taught each other. He has taught me
22 to communicate more. He's -- he's changed. To me, he's
23 changed.

24 Q. All right. And you said he has changed. In what particular
25 fashion have you noticed a change?

1 A. His life. I mean, he -- he has changed his life around
2 completely.

3 Q. What has he done now that is different from the Larry you
4 knew back in '91, '92, '93, '94?

5 A. He helped others incarcerated. The prisoners that's
6 already -- that's incarcerated, he helped them. He teaches
7 classes.

8 Q. All right. His conduct toward you and his child and your --
9 his stepchild, soon to be stepchild, is that different?

10 A. Yes.

11 Q. The negative influence that existed back in the early '90s,
12 the drugs and that kind of thing that maybe your children were
13 exposed to, do you think that they would be exposed to that same
14 kind of lifestyle that Larry would hold now?

15 A. No.

16 MR. GANT: All right. Judge, thank you so much.
17 I have nothing further of this young lady.

18 THE COURT: Thank you, ma'am. You may come down.

19 MS. COOK: Your Honor, I had -- I had some questions as
20 a result of --

21 THE COURT: You may. You may. He introduced some new
22 material.

23 MS. COOK: Thank you, your Honor.

24 RE-CROSS-EXAMINATION

25 BY MS. COOK:

1 Q. Ms. Gibson, you stated that you have seen a change in Larry
2 Turnley; is that correct?

3 A. Yes.

4 Q. And you noticed this change after his incarceration; is that
5 correct?

6 A. He's always been a good person.

7 Q. Okay. But you testified that you had noticed a change since
8 he has been in jail -- excuse me, and since he has been in
9 prison; is that correct?

10 A. Right.

11 Q. And what exactly is this change, again, that you saw? You
12 stated that he communicates better, you said that he helps
13 others.

14 A. Yes.

15 Q. Are there any other changes that you have witnessed?

16 A. He guides -- he guides his -- his son in -- his stepson
17 through life.

18 Q. Okay. Have you had an opportunity to see the defendant when
19 he is not incarcerated?

20 A. Yes.

21 Q. Since the time of his imprisonment, since 1996, the time
22 that he has been incarcerated, have you had an opportunity to
23 interact with the defendant or see the defendant when he is not
24 in prison?

25 A. Yes.

1 Q. And what were those occasions?

2 A. We would go out.

3 Q. Oh. I'm sorry. This -- let me be clear about my question.

4 A. Yeah.

5 Q. My question is, the defendant started his period of
6 incarceration in 1996.

7 A. Okay.

8 Q. You stated that you have seen a lot of changes in the
9 defendant since his incarceration in 1996. My question is,
10 after 1996, have you had an opportunity to see the defendant
11 when he is not in prison, when he is not incarcerated?

12 A. No.

13 Q. Okay. You testified that it's your belief that the
14 defendant would no longer deal drugs; is that correct?

15 A. Right.

16 Q. And what makes you believe that?

17 A. Because -- I believe it because he has changed.

18 Q. Okay. Have you ever had an opportunity to testify on the
19 defendant's behalf before?

20 A. No.

21 Q. You never testified before when he was incarcerated in 1991,
22 for example.

23 A. No.

24 Q. Did you have an opportunity to see his behavior during his
25 period of incarceration in 1991?

1 A. Yes.

2 Q. Did you notice any changes as a result of the time he spent
3 in jail at that time?

4 A. Yes.

5 Q. You did? What were those changes?

6 A. I mean, he -- he changed. That's --

7 Q. Can you explain any of those changes and what exactly you
8 observed?

9 A. I can't explain it, but --

10 Q. Okay.

11 A. -- I know he changed.

12 MS. COOK: No further questions, your Honor.

13 THE COURT: You may come down. Thank you,
14 ma'am.

15 Call your next.

16 MR. GANT: Phillip.

17 THE CLERK: If you would raise your right hand.

18 PHILLIP DANIEL COTTON, III, SWORN

19 THE CLERK: Thank you, sir. You may have a seat.

20 If you would state your full name and spell your first name
21 and last name, please.

22 THE WITNESS: Phillip Daniel Cotton, III.

23 P-H-I-L-L-I-P C-O-T-T-O-N.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

1 BY MR. GANT:

2 Q. Young man, how are you today?

3 A. I'm good.

4 Q. Congratulations on your future graduation.

5 A. Thank you.

6 Q. Do you know Larry Turnley?

7 A. Yes.

8 Q. Tell his Honor, if you would, please, how it is that you
9 know Larry Turnley.

10 A. Larry Turnley is my stepfather.

11 Q. Do you know any father other than Larry Turnley?

12 A. Yes. My biological father.

13 Q. Is your contact with Larry more frequent than your contact
14 with your biological father?

15 A. Yes.

16 Q. Would you tell his Honor if Larry Turnley has had any
17 influence or impact upon your life?

18 A. He has a big influence on my life, because I mean, as I'm
19 getting older, he teaches me the way life goes right now, how to
20 -- how to kind of respond to things, how to take things a
21 certain way.

22 Q. And has he done that -- strike it.

23 How has he been able to convey that kind of information to
24 you, young man?

25 A. We talk on the phone. We're just talking. I ask him

1 certain things, and he will tell me about it and how to take it,
2 you know.

3 Q. Do you feel that you have benefited from the influence that
4 Larry has had on your life?

5 A. Yeah.

6 Q. Tell us, if you -- if you can, how it is -- how you feel
7 about having been -- how -- how have you benefited as a result
8 of that?

9 A. I mean, just mentally, like how to think more, you know,
10 school-wise. Tells me graduate, be something. You know, just
11 don't be out in the world, crazy.

12 Q. Okay. And when you say "out in the world, crazy," what do
13 you mean?

14 A. Just, you know, like basically the things he did.

15 Q. Not to do the things that he did?

16 A. Not to do the things he did, yeah.

17 MR. GANT: Thank you. I have nothing further of this
18 young man. Thank you, sir.

19 THE COURT: Ms. Cook?

20 MS. COOK: Nothing from the government, your Honor.
21 But the government also congratulates Mr. Cotton on his recent
22 college acceptance and wish you all the best in the future.

23 THE COURT: Thank you, Mr. Cotton.

24 MR. GANT: I have one additional witness, your Honor.
25 Deateandra.

1 THE CLERK: Would you raise your right hand?

2 DEATEANDRA TURNLEY, DEFENSE WITNESS, SWORN

3 THE CLERK: Thank you, sir.

4 If you would state your full name and spell your first name
5 and your last name.

6 THE WITNESS: Deateandra Turnley. D-E-A-T-E-A-N-D-R-A,
7 T-U-R-N-L-E-Y.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. GANT:

11 Q. Young man, try and throw your voice over my shoulders --
12 okay? -- so we can hear you, all right?

13 You are the son of Larry Turnley, Jr.?

14 A. Yes.

15 Q. All right. I can't hear you.

16 A. Yes.

17 Q. All right. Tell the judge, if you would, please, if you and
18 your father have had contact, communication, over the years that
19 your father has been in prison.

20 A. Yes.

21 Q. And tell his Honor, if you would, please, how that
22 communication was. How did you talk with, write, whatever? How
23 did you do it?

24 A. Well, it was good talking to him.

25 Q. All right. And when you say -- was that over the phone?

1 A. Uh-huh.

2 Q. All right. Is that a yes?

3 A. Yes.

4 Q. All right. Keep your voice up, now. All right. This is
5 important. Tell his Honor, if you would, please, the kinds of
6 things that your father, Larry Turnley, Jr., would talk to you
7 about.

8 A. He would talk -- talk to --

9 Q. Tell the judge, don't tell me.

10 A. Well, he would talk to me about how to keep my grades up and
11 stay in school and be -- and stay doing active things, and --
12 and don't give up at what you do.

13 Q. Did he talk to you about things not to do?

14 A. Just don't do bad things. Don't get into fights and don't
15 listen to what everybody says about you.

16 Q. All right. Has your father, in this relationship that you
17 have had through communication, had an influence on you? Do you
18 know what I mean by the word "influence"? Has he helped you?
19 Has he said things to you that have made you a better person?

20 A. Yes.

21 Q. All right. Tell us some of the things that he said to you
22 that you believe makes you a better person.

23 A. Just like --

24 Q. Keep your voice up, now.

25 A. Just like "Be yourself and don't follow people. Be a

1 leader. And just do good things that you want to do."

2 Q. All right. And have you done that, young man?

3 A. Uh-huh, yes.

4 MR. GANT: All right. Judge, I have nothing further of
5 this young man.

6 THE COURT: All right. Ms. Cook.

7 MS. COOK: Very briefly, your Honor.

8 CROSS-EXAMINATION

9 BY MS. COOK:

10 Q. Good morning, Mr. Turnley.

11 A. Good morning.

12 Q. Mr. Turnley, what I want to ask you is approximately how
13 many times you have interacted or spoken with your father. So
14 my first question is, how often do you talk to your father on
15 the phone?

16 A. All the time.

17 Q. What do you mean by "all the time"? For example, let's just
18 take a month. How many times within a month do you talk to
19 your -- your father?

20 A. Every week.

21 Q. You talk to him every week? And is it your testimony that
22 you have spoken to him every week, let's say, in the past ten
23 years?

24 A. Yes.

25 Q. And approximately how long are these conversations?

1 A. I don't know.

2 MS. COOK: Okay. All right. Those are the only
3 questions that I had. Thank you.

4 THE COURT: All right. Thank you, sir. You may come
5 down.

6 Call your next.

7 MR. GANT: Yes. McMahon.

8 THE CLERK: Ma'am, if you would raise your right hand.

9 ANGELA McMAHON, DEFENSE WITNESS, SWORN

10 THE CLERK: Thank you. You may have a seat.

11 If you would state your full name and spell your first name
12 and your last name.

13 THE WITNESS: Angela McMahon, A-N-G-E-L-A
14 M-C-M-A-H-O-N.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. GANT:

18 Q. Ms. McMahon, where do you live?

19 A. 1222 Kenmore Place, Nashville, Tennessee.

20 Q. Nashville, Tennessee. Ms. McMahon, do you know Larry
21 Turnley?

22 A. Yes, I do.

23 Q. Tell his Honor, if you would, please, how it is that you
24 know Larry Turnley.

25 A. I have been knowing him since 1990, '89.

1 Q. All right. Is he the father of your son, Larry Turnley,
2 III?

3 A. Yes, he is.

4 Q. Your son, Larry Turnley, III, has he, during the period of
5 time that Larry, Jr., has been incarcerated, maintained a
6 relationship with him?

7 A. Yes, he has.

8 Q. Tell his Honor, if you would, please, how it is that Larry
9 Turnley, III, has maintained a relationship with his father,
10 Larry Turnley, Jr.

11 A. He has maintained a relationship with his father through me
12 and his stepmother, Tracy Gibson. His grandfather, on traveling
13 the distance. The first place that I knew that he went was
14 Beaumont, Texas. When my son turned 6, he said he wanted to go
15 visit his dad for his birthday. We took -- I took Tracy and the
16 -- and the two boys and my son, and we took a week and went down
17 there and stayed a whole week and visited him every day.

18 Q. All right. How often would you say that Larry Turnley, III,
19 has visited, physically visited, with Larry Turnley, Jr., during
20 his period of incarceration?

21 A. I would say at least some months it could be twice,
22 depending on the schedules of the other people that were
23 driving.

24 Q. Uh-huh.

25 A. Some months it could be once out of that month.

1 Q. All right. So on the -- would it be fair to say that on the
2 average, once a month, at least once a month?

3 A. Yes. Some of those months were holidays. His birthday, you
4 know, they would get together and see who was going then, and
5 that will be that once a month.

6 Q. All right. Now, your son, Larry Turnley, III, how old is
7 he?

8 A. He is 16.

9 Q. You wrote a letter, did you not, to his Honor -- pardon me,
10 wrote a letter to his Honor some time ago expressing some
11 concern about your son?

12 A. Yes.

13 Q. Share with us -- share with us, if you would, please, share
14 with his Honor what your concern was about Larry Turnley, III,
15 in regard to his relationship with his father.

16 A. His relationship with his father when he was born has always
17 been tight. His daddy has been with him all the time the first
18 five years of his life. When it was taken away, it's been --

19 Q. When -- when you say --

20 A. -- difficult.

21 Q. When you say it was taken away, what's the "it"?

22 A. The relationship.

23 Q. All right. And how --

24 A. When his father got incarcerated.

25 Q. All right. All right.

1 A. It's been difficult to deal with my son. The beginning was
2 kindergarten.

3 Q. All right. And this difficulty, tell his Honor, if you
4 would, please, the nature of the difficulty.

5 A. It's only in school. It's -- he has -- he can't be still.
6 He is constantly in this and that, is basically "I want to be
7 seen" type of thing, because he felt like that he wasn't getting
8 what he had at first, and now he has got to find it another way.

9 Q. All right. Now, Larry Turnley, III, has found himself in
10 some difficulty?

11 A. Yes.

12 Q. All right. Is it -- strike it. It's a bad -- poor way to
13 start out.

14 During the period of time that Larry Turnley, Jr., the
15 father, has been incarcerated, has he been able to exert some
16 influence or control over Larry, III?

17 A. He influences him a lot. It's only based on Larry
18 taking -- taking the information and following it or just
19 straying off.

20 Q. All right. Now, when you say Larry following, are you
21 talking about Larry, III, Little Larry?

22 A. Yes, Larry, III, following his father's advice.

23 Q. All right. Does his father give him advice?

24 A. Yes.

25 Q. All right. And tell his Honor, if you would, please, the

1 nature of the advice. How is it that Larry Turnley, Sr., knows
2 what to talk to Larry, III, about?

3 A. Well, I would -- if there is an incident or anything, I
4 would somehow get a message to Tracy to give to Larry, or, like,
5 in one incident, I did make a trip. I'm not the visiting type,
6 but I would make a special trip and bring him, and we would have
7 a discussion at that moment in time over whatever it is that
8 we're going over.

9 Q. When you --

10 A. Or it will be messages. And when he calls Larry, you know,
11 he would ask him questions and get his feedback and let him know
12 which role to take on -- on that information.

13 Q. Would there be times when you would advise Larry, Sr., about
14 a particular issue that he ought to talk to his son about?

15 A. Yes.

16 Q. All right. Did that happen often?

17 A. It is not often that he does stuff.

18 Q. "He" meaning?

19 A. But -- my son, Larry Turnley, III. But when it is necessary
20 and it needs to be two parents involved in it, then I would
21 discuss it with him, write him a letter, whatever, and he
22 would -- when he called, that would be the main issue.

23 Q. All right. Has that procedure that you used had any impact
24 on your son, Larry?

25 A. Yes.

1 Q. All right. Does your son, Larry, listen to what it is that
2 Larry Turnley, Sr., has to say?

3 A. Yes.

4 Q. Your son now is in juvenile detention; is that true?

5 A. Yes.

6 Q. Do you believe that if Larry, Sr., were in his life now or
7 sometime in the near future, it would have a positive impact on
8 Larry, III?

9 A. Physically, yes.

10 Q. And when -- you qualify it when you say "physically." Tell
11 us, if you would, please, what you believe the impact would be
12 on your son if his father were physically in his life.

13 A. The impact would be that the little minor things that he do
14 he would think clearly about before he -- he does before he
15 thinks about things. And that's one of the things that his
16 father talks to him about. And with him being actually here in
17 his face, saying, "Come on, man, you know, think about" -- you
18 know, "think about this, think about that," he would, "Okay, now
19 I see what you're saying," basically.

20 MR. GANT: Thank you.

21 I have nothing further of this witness.

22 THE COURT: Ms. Cook, cross-examination.

23 CROSS-EXAMINATION

24 BY MS. COOK:

25 Q. Good morning, Ms. McMahon.

1 A. Good morning.

2 Q. You stated that your relationship between the -- your son
3 and the defendant was very close and very tight; is that
4 correct?

5 A. Very.

6 Q. You stated that the defendant loved your son a great deal;
7 is that correct?

8 A. Very.

9 Q. But the defendant's love for your son didn't keep the
10 defendant from dealing drugs from 1993 through 1996, did it?

11 A. No.

12 Q. Okay. You were aware that the defendant was dealing drugs
13 between the time your son was born up until the time that he was
14 incarcerated; is that correct?

15 A. Right.

16 Q. And during that time, was the defendant employed, to your
17 knowledge?

18 A. Yes.

19 Q. He was employed?

20 A. Uh-huh.

21 Q. What was his employment?

22 A. I can't -- I don't know the name of it, but I knew that he
23 used to drive a transportation car, and he used to help with the
24 HUD home building.

25 Q. Anything else?

1 Was -- the defendant's main source of income, however, was
2 drug dealing; is that correct?

3 A. Yes.

4 Q. Okay. Did the -- did the defendant provide you with any
5 financial support for your son?

6 A. Me in my hand, no.

7 Q. Okay. So from 1993 to 1996, the defendant didn't give you a
8 quarter; is that correct?

9 A. No. He took care of his child hisself.

10 Q. He did?

11 A. Yes.

12 Q. Okay. So he didn't give you any money; is that correct?

13 A. Right.

14 Q. But he provided for his son?

15 A. Yes.

16 Q. And I'm assuming you mean by "his son" Larry Turnley, III;
17 is that correct?

18 A. III, uh-huh.

19 Q. And when you say he didn't give you any money, he gave the
20 money -- how did he get the money to Larry Turnley, III?

21 A. He always was with his child.

22 Q. Was he --

23 A. When he'd go shopping, he was always buying him stuff,
24 bringing it over, anything he needed. Even if he didn't think
25 he needed it at that point in time, he had it.

1 Q. Okay. But your son did not live with Mr. Turnley, with
2 Larry Turnley, Sr.; is that correct?

3 A. No, but he was always at his house.

4 Q. Okay. Have you had an opportunity to see the defendant or
5 observe his behavior when he is not incarcerated after 1996?

6 A. He has been incarcerated since 1996, so how would I --

7 Q. Let me make sure I'm clear about my question --

8 A. Yeah.

9 Q. -- so that you won't have to answer it with a question.
10 Have you seen or observed the defendant's behavior when he is
11 not incarcerated after 1996?

12 A. I haven't observed. Just letters.

13 Q. Okay.

14 A. And when he calls his son, if he wants to know that what he
15 said to him is true, then he will ask to speak to me if he is at
16 home, and we'll have a quick conversation then.

17 Q. Okay. And approximately how many times has your son visited
18 with Mr. Turnley since his time of incarceration, again?

19 A. Like I said, some months took twice a month and some months
20 once a month if it's a holiday.

21 Q. How many times total, Ms. McMahan?

22 A. Total what, in a year or --

23 Q. Visits.

24 A. -- since '96?

25 Q. Excuse me, Ms. McMahan. How many times total since the

1 point of incarceration in 1996, approximately, how many times
2 total?

3 A. 70 times.

4 Q. 70 times? Since 1996, is it your testimony that the
5 defendant has visited with your son 70 times? Is that correct?

6 A. Uh-huh.

7 Q. And on these 70 visits, who is -- who -- who is -- who is
8 arranging for this? Who is providing the transportation?

9 A. Like I said, I have arranged two for those visits. The rest
10 is his stepmother, Tracy Gibson, and his grandfather, Larry
11 Turner, Sr.

12 Q. You were here during the grandmother's testimony, were you?

13 A. Uh-huh.

14 Q. And you were also here during Tracy's testimony; is that
15 correct?

16 A. Yes.

17 Q. Okay. Were you here when Tracy testified that her son had
18 visited the defendant about four or five times?

19 A. Yes.

20 Q. Okay. But it's your testimony that your son has visited
21 with his father 70 times?

22 A. Uh-huh.

23 MS. COOK: Okay. No further questions, your Honor.

24 THE COURT: Any redirect?

25 MR. GANT: No, your Honor. Thank you very much.

1 THE COURT: Thank you, ma'am. You may come down.

2 MR. GANT: Your Honor, if I may approach.

3 THE COURT: Yes, sir.

4 MS. COOK: I'm sorry; I didn't know if you were coming
5 to the bench.

6 MR. GANT: Judge, would you consider accommodating me
7 for about two minutes? I have one more witness, Larry Turnley,
8 to put on, and then --

9 THE COURT: You want -- you want a recess?

10 MR. GANT: If we could, Judge.

11 THE COURT: All right. Let's take -- take a comfort
12 recess.

13 MR. GANT: Thank you.

14 THE COURT: 15 minutes.

15 (Recess.)

16 THE COURT: You may continue, Mr. Gant.

17 MR. GANT: Thank you, Judge. Larry Turnley.

18 LARRY DONNELL TURNLEY, JR., DEFENSE WITNESS, SWORN

19 THE CLERK: Thank you, sir. You may have a seat.
20 If you would state your full name, please.

21 THE WITNESS: Larry Donnell Turnley, Jr.

22 MR. GANT: Judge Wiseman, may I ask to hand this up to
23 you?

24 THE COURT: Yes, sir.

25 MR. GANT: Judge, the record contains a number of

1 letters and certificates, a group of which I want to refer
2 during this presentation, and they are broken up into four --
3 pardon me, five groups: D-1, drug certificate; D-2 would be
4 anger management; D-3, parenting certificates; D-4, juvenile;
5 D-5, education; D-6, business. I kind of kept them there
6 together, Judge. We don't intend to go through each and every
7 one of them, but those are the categories I intend to address.
8 May I proceed?

9 THE COURT: Just a moment.

10 MR. GANT: Sure.

11 THE COURT: Ms. Cook, do you have any objection to any
12 of these?

13 MS. COOK: None, your Honor.

14 THE COURT: All right. They'll be received, then. The
15 Court will consider them.

16 MR. GANT: Thank you, Judge.

17 (Defendant's Exhibits 1 through 6 were received into evidence.)

18 DIRECT EXAMINATION

19 BY MR. GANT:

20 Q. Mr. Turnley, in 1996, were you sentenced to prison?

21 A. Yes.

22 Q. All right. You're going to have to keep your voice up, now.

23 A. Uh-huh.

24 Q. Talk to his Honor, not me.

25 A. All right.

1 Q During the period of your incarceration from 1996 up to and
2 including 2008, have you participated in various training
3 programs, vocational programs?

4 A. Yes, I have.

5 Q. I want to call your attention to what you have before you
6 there as Exhibit D-1. You see that?

7 A. Yes.

8 Q. That is a certificate of completion awarded to you in 2002
9 for the completion of a 40-hour drug program.

10 A. Uh-huh.

11 Q. You see that there?

12 A. Yes.

13 Q. All right. Can't say uh-huh.

14 A. Yes.

15 Q. All right. Tell his Honor, if you would, please, what that
16 program consisted of and what you did in the program.

17 A. Well, this program consisted of the effects of drug use and
18 drug abuse and who is all affected by drug abuse and drug use.

19 Q. And did the program at all entail treatment for drug abuse?

20 A. Yes. It was a program basically about -- about -- you know,
21 it showed tapes about a former -- like Hollywood Henderson used
22 to play with the Dallas Cowboys, and he had a drug addiction.
23 And showed him giving speeches in prison. And you know how
24 drugs ruined -- how drugs ruined his life. And, you know, he
25 just showed -- showed tapes and videos of, you know, people who

1 abused drugs and came out -- know what I'm saying? -- from
2 rehabilitating themselves to making an impact on expressing
3 themselves to others on how they changed their life after being
4 -- abusing drugs or using drugs.

5 Q. All right. Tell his Honor whether or not you feel you
6 benefited from that program.

7 A. Yes.

8 Q. Before you participated in that program, were you a user of
9 drugs?

10 A. Well, on the streets, yes.

11 Q. It's a simple question.

12 A. Yes, on the streets, yes.

13 Q. Okay. Reference has been made this morning --

14 A. Uh-huh.

15 Q. -- to an incident in 2006 --

16 A. Yes.

17 Q. -- where you tested positive for marijuana.

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes.

21 Q. All right. You've got to say yes.

22 A. Okay. Sorry about that.

23 Q. The record doesn't like uh-huh.

24 A. Sorry about that.

25 Q. The incident that occurred in 2006 --

1 A. Uh-huh. Yes.

2 Q. The incident that occurred in 2006, how long had you been
3 incarcerated at the time that incident occurred?

4 A. Nine years.

5 Q. Up to and including that nine-year period of time when the
6 incident occurred, had there been any other write-ups on you
7 since you had been incarcerated?

8 A. No.

9 Q. After that incident in 2006, in terms of consequences, tell
10 his Honor what happened.

11 A. I -- I done time in the hole. I did 28 days in the hole. I
12 lost my -- I lost my room, I lost my job, and also I had to deal
13 with the disappointment of my family as well as my peers who
14 looked up to me on the compound, because they knew that I should
15 have known better to -- to -- to, you know, smoke marijuana.

16 Q. Now --

17 THE COURT: Did you lose any good time credits?

18 THE WITNESS: No, sir, because I had a life sentence,
19 so therefore, they didn't take any good time, because I didn't
20 have any time to give.

21 BY MR. GANT:

22 Q. After --

23 May I proceed? I'm sorry, your Honor.

24 THE COURT: Yes, sir. Go ahead.

25 BY MR. GANT:

1 Q. After that incident occurred and those consequences ensued,
2 were you required to do drug screens after that?

3 A. Yes, sir. I was on two years' drug screen. I lost my
4 visits for a year.

5 . screensdrug the about you asking I'm Q.

6 A. Yes. Yes, sir.

7 Q. Two years of drug screens?

8 A. Yes.

9 Q. How often during each year?

10 A. Once a month, every month.

11 Q. For 24 months, you had to do drug screens?

12 A. Yes, sir.

13 Q. During that 24-month period of time when you did drug
14 screens, was there ever another positive drug screen?

15 A. No.

16 Q. Between 2002 and March 23rd, 2008, have there been any other
17 positive drug screens?

18 A. No, just that one.

19 Q. I would like to call your attention, if I may, to what is
20 identified in your packet as D-2.

21 A. Uh-huh.

22 Q. You -- what is it?

23 A. Yes.

24 Q. D-2 is a certificate awarded to you for having completed an
25 anger management program?

1 A. Yes.

2 Q. Tell his Honor, if you would, please, what was the purpose
3 of that particular program?

4 A. I took this class to -- to learn about how to control anger
5 as well as how to channel it in a positive -- positive
6 direction.

7 Q. Did you feel that you were in need of that kind of a
8 program?

9 A. Yes.

10 Q. All right. Tell us why.

11 A. Because, you know, the environment that I was in as far as
12 prison, you wake up -- you know, some days you wake up and
13 you're angry, and you -- you know, you -- you want to know how
14 to find an outlet for it or how to deal with the anger. And I
15 enrolled in this class to -- to help me out with it.

16 Q. All right. And your participation in this class, other than
17 giving you a certificate, do you feel that it helped you?

18 A. Yes.

19 Q. Tell us how.

20 A. I helped -- it helped me because it -- you know, I learned
21 how to, like I -- like I say, control anger as well as how to
22 challenge it in a positive direction and not feed it with
23 negativity and also how to recognize the warning signs that you
24 have when you're about to become angry.

25 Q. All right. The skills that you learned as a result of your

1 participation in this anger management program --

2 A. Yes.

3 Q. -- were you able to or did you share those skills with other
4 inmates?

5 A. Yes.

6 Q. All right. And tell us how you were able to do that.

7 A. Well, you know, if you see, like, the younger guys that come
8 in, and you may see them complaining about an officer doing this
9 or an officer, like, go in their room and tear their room up or
10 something, and, you know, they get angry because of that, and
11 then, you know, I pull them up and tell them, you know, "You
12 know, had you had your bed made up, you know, they probably
13 wouldn't have went in there and tore your room up." And just,
14 you know, "You can't let, you know, that -- their behavior make
15 you respond in that type of way, because if you do, then they
16 know how to punch your buttons, and then they'll continue to do
17 that, because they know that it's going to make you upset."

18 Q. There is a second D-2 in your packet there.

19 A. Yes.

20 Q. Pardon me, D-2A, given to you in November of 2000.

21 A. Yes.

22 Q. Entitled Cage -- pardon me, Cage, C-A-G-E, your rage anger
23 management group?

24 A. Uh-huh. Yes.

25 Q. Tell us about that, if you would, please.

1 A. Yes. In this class, it showed us tapes mainly in a prison
2 setting and showing, like, scenarios where somebody might jump
3 you in line or somebody may, you know, bump up against you, and
4 then it just shows you have to respond -- first it shows in a
5 negative way, and then it shows in a positive way.

6 Q. Uh-huh.

7 A. And then, you know, you just determine, you know, the best
8 way to -- to deal with situations like that when they do arise.

9 Q. Again, as a result of your participation --

10 A. Yes.

11 Q. -- in this program --

12 A. Yes.

13 Q. -- did you benefit from it?

14 A. Yes.

15 Q. And tell his Honor -- don't tell me; I know. Tell his Honor
16 how it is that you benefited from it.

17 A. I benefited from it just by being able to -- to -- to
18 receive this information and -- and apply it to my life and
19 apply it to, you know, whenever a situation like that will
20 arise, I know to walk away. I know -- if I know somebody is a
21 troublemaker or whatever, I know to avoid them. And, you know,
22 that's how it has helped me.

23 Q. There is a document in your packet designated D-2B. Do you
24 see that there?

25 A. Yes.

1 Q. Again, not so much an anger management program but a Stress
2 for Success stress management program?

3 A. Yes.

4 Q. Do you remember participating in that program?

5 A. Yes, I remember. I remember -- know what I'm saying? --
6 bits and pieces of it.

7 Q. All right. Tell us, if you would, please, tell his Honor --

8 A. Yes.

9 Q. -- what you recall being the objective of the program.

10 A. The objective is to -- that you can -- for you to focus on
11 what you can control, and things that you can't control, you
12 can't worry about it.

13 Q. Given what you learned in that program --

14 A. Yes.

15 Q. -- were you able to apply it to your situation, doing a life
16 sentence in the penitentiary?

17 A. Yes.

18 Q. Tell us how you were able to do that.

19 A. Well, for instance, you know, like filing briefs with the
20 Court, if, you know, I receive a denial on my brief, I know it's
21 beyond my control, so I can't worry about it. All I got to do
22 -- all I can do is continue to -- to fight or continue to -- to
23 file a motion as well as with my children. You know -- you
24 know, I have had my daughter since I have been down telling me
25 she didn't want me to be her father. However, I -- I took it

1 as, you know, it's nothing I can do about it. So therefore, I
2 am not going to let it worry me or upset me. I just deal with
3 it whenever -- know what I am saying? -- the opportunity present
4 itself.

5 Q. Would you move to group D? There is a certificate marked
6 D-3. Do you see it there -- see it there?

7 A. Yes.

8 Q. Your participation in a parenting seminar.

9 A. Yes.

10 Q. All right. First of all, tell his Honor, if you would,
11 please -- there are three certificates concerning parenting
12 skills. Do you see those three there?

13 A. Yes.

14 Q. That would be D-3A -- pardon me, D-3, D-3A, and D-3B. Do
15 you see those?

16 A. Yes.

17 Q. All right. The seminars concerning parenting skills, those
18 were not mandatory programs, were they?

19 A. No. No, sir.

20 Q. All right. You decided or you chose to take those?

21 A. Yes.

22 Q. All right.

23 A. Every class. Every class I took, yes.

24 Q. You're talking just about the parenting?

25 A. Yes.

1 Q. Tell his Honor, if you would, please, what prompted your
2 desire to participate in these parenting programs.

3 A. Well, mainly it prompted me to take these parenting classes
4 because I wanted to -- I wanted to get tips on how to establish
5 a relationship as well as communicate with my children from
6 prison.

7 Q. All right. And these parenting programs --

8 A. Yes.

9 Q. -- did they address those kinds of problems, and, if so,
10 how?

11 A. Yes. They addressed those type of problems, because I was
12 able to be -- be around people who had all -- who had been
13 incarcerated for years before me, and, you know, I -- I drew off
14 their experiences with their children, and also, from the tapes
15 and things that the classes had offered, what we watched, you
16 know, I -- I learned from those tapes as well of -- of how to be
17 a parent.

18 Q. All right. What did you hope to gain as a result of what
19 you learned in those programs?

20 A. Well, what I hoped to gain was how to -- how to become a
21 parent. Because, you know, coming up, I -- you know, my
22 parents, you know, I had parents, I have, you know, they -- my
23 father was incarcerated, my mother was addicted to alcohol, so,
24 therefore, you know, I really just didn't have a solid
25 foundation as far as adults in my life that I can see that, you

1 know, this is how parents are.

2 But I went to -- I had friends whose house I used to go over
3 in and stay, and I seen that they -- you know, that they had a
4 strong network, family network, as opposed to mine. So just
5 drawing off what I saw in their household, it let me know how a
6 family is supposed to be. And going to these classes, it just
7 really reinforced in me how to -- to become a good father to my
8 children.

9 Q. You have heard testimony today from two women who are
10 mothers of children of yours --

11 A. Yes.

12 Q. -- did you not? Your relationship with your son,
13 Deateandra --

14 A. Yes.

15 Q. -- do you feel that your relationship with that son has
16 benefited any as a result of what you have learned in these
17 parenting skills programs?

18 A. Yes.

19 Tell us how. Q.

20 A. It has benefited him as well as myself, because I learned
21 how to communicate. I learned how you got to respect your --
22 your child's opinion. You got to respect their mind. If
23 they -- you can't force your way into their life once you have
24 been absent or out of their life or for a long period of time.
25 You got to, you know, go to -- you got to give them the choice

1 of what -- what type of role they want you to play in their
2 life.

3 Q. All right.

4 A. And you just can't force your way and say, you know, this is
5 how it's going to be. And I learned in the class how you got to
6 sit back and, you know, respect their mind or respect their
7 voice.

8 Q. All right. And if I were to ask you the same question
9 regarding your stepson, soon to be stepson Phillip Cotton --

10 A. Yes.

11 Q. -- and if I were to ask you the same with regard to your son
12 Larry, III, would your answer be the same?

13 A. Yes.

14 Q. In your packet, there is identified a group of Exhibits D as
15 in David 4 and 4-A. Do you see those?

16 A. Yes.

17 Q. Those are certificates of completion for counseling in
18 juvenile awareness group. Do you see those?

19 A. Yes.

20 Q. Tell his Honor, if you would, please, what that was all
21 about, this -- this counseling in juvenile awareness group.

22 A. Yes. It was -- it was a program in Edgefield, South
23 Carolina, when I was down there in which they was bringing
24 at-risk teens in who had run in -- you know, run afoul with the
25 law, and they wanted -- it was like a Scared Straight; they

1 wanted us to, you know, share our experiences with them. And we
2 had to go through a training session in order to get to that
3 stage of getting one-on-one sessions with the at-risk teens.

4 Q. All right. The following certificate is called Wake Up
5 Juvenile Awareness Program. Is that the same program or a
6 different one?

7 A. It's the same program.

8 Q. All right. Tell his Honor how it was that you became
9 interested in a juvenile awareness or juvenile wake up awareness
10 program.

11 A. Yes. I wanted the opportunity to share my experiences with
12 the at-risk teens and hopefully --

13 Q. Why?

14 A. Hopefully deter them from following in the footsteps of
15 making the bad choices that I made. You know, I wanted to deter
16 them. And hopefully, my situation would -- would make them
17 think and be like -- you know, make them gain appreciation for
18 their -- for their freedom.

19 Q. Okay. This interest that you had then in making juveniles
20 aware of some of the bad choices that you made with a view
21 toward deterring them from doing such a thing, is that an
22 interest that you still continue to have?

23 A. Yes.

24 Q. While you have been incarcerated, Mr. Turnley, you have
25 attempted, have you not, to further your education?

1 A. Yes.

2 Q. There are two certificates in your packet there, one Algebra
3 I and Algebra II. Do you see those?

4 A. Yes.

5 Q. Tell his Honor, if you would, please, first of all, where
6 you were when you participated in those two programs, Algebra I
7 and Algebra II.

8 A. I was in FCI Memphis.

9 Q. All right. And what caused you to decide to participate in
10 those two programs?

11 A. Well, I took those two classes because I wanted to brush up
12 on my math skills, because they was offering a college course,
13 and they was giving a pretest, and I wanted to, you know,
14 sharpen up on my math skills before I took the pretest.

15 Q. All right. Did you take the pretest?

16 A. Yes.

17 Q Were you successful on the pretest?

18 A. Well, they had three openings, and it was people already
19 that was taking the pretest had college credits, so that allowed
20 them to take those seats.

21 Q. All right. Likewise, there are -- draw your attention to
22 Exhibit D as in David 5-B as in boy. Do you see that there?

23 A. Yes.

24 Q. Again, a certificate indicating your participation in a --
25 in another educational program, spelling program. Would -- was

1 your participation in that program likewise initiated by your
2 desire to take the pretest?

3 A. Well, I took that class because I wanted to broaden my
4 vocabulary.

5 Q. All right. The next certificate, D -- I think that's 5-C,
6 Spanish.

7 A. Yes.

8 Q. Tell his Honor, if you would, please, where you were when
9 you took that course.

10 A. FCI Memphis.

11 Q. And what prompted you to be interested in taking the Spanish
12 course?

13 A. I wanted to learn Spanish.

14 Q. Any particular reason why?

15 A. Yes. Because I have -- you know, I teach a fitness class
16 and also a self-empowerment class, and --

17 Q. And where do you teach those classes?

18 A. In FCI Memphis.

19 Q. How long have you been teaching those classes?

20 A. I have been teaching the fitness class for, like -- like,
21 ten years, and the self-empowerment class I have been teaching
22 off and on for, like, nine, nine years.

23 Q. All right. How is it that the Spanish played into your
24 teaching of those two programs?

25 A. Because there's Spanish-speaking guys on the compound, and I

1 wanted -- you know, just for one, I hear them talking, and then
2 I wanted to communicate with them and, you know, ask them, you
3 know, if they wanted to come to my class or whatever, things of
4 that nature.

5 Q. All right. There are designated, under D No. 6-A, -B, -C,
6 and -D, a number of business-oriented certificates. Do you see
7 those there?

8 A. Yes.

9 Q. I would like to draw your attention to the first one. And
10 we won't go through all of them individually. But the first one
11 for completion -- successful completion of the Smart Money
12 course, what prompted your interest in these business classes?

13 A. Because I wanted -- I wanted to know about it and I wanted
14 -- you know, I wanted to share the information that I received
15 from these classes with my family and people on the outside.
16 That's mainly most of the information that I receive or that I
17 take in, I get it to pass it on for -- for -- for people who are
18 on the outside so they can benefit or use it just in case they
19 are not familiar with -- like, for instance, the Smart Money,
20 which dealt with establishing credit and also finding out what
21 your credit score, and, you know, it dealt with adjustable
22 rates, fixed rates, how to take the equity, use the equity in
23 your house, and also how to apply for loans. You know, it just
24 deals with various things. And I just wanted to get the
25 information and pass it on to -- to my people on the outside

1 just in case they didn't know about this information.

2 MR. GANT: All right. Can I ask your Honor to have
3 this handed up to Mr. Turnley and the original to your Honor? I
4 have it. It's hard to read. This is the original. Probably
5 should hold on to this.

6 Would you hand that to Mr. Turnley?

7 May I have him hand that to Mr. Turnley, please?

8 THE COURT: Yes, sir.

9 BY MR. GANT:

10 Q. Mr. Turnley, I just handed up to you a -- it's very, very
11 difficult to read because it's light, but do you recognize that
12 as a photocopy of a letter?

13 A. Yes.

14 Q. Tell his Honor where that letter came from.

15 A. It was some guys, you know, in the county jail that I am at
16 right now.

17 Q. Warren County?

18 A. Yes.

19 Q. All right. Some guys in jail did what?

20 A. Yes. They, you know, had -- had a chance to sit back and
21 just observe me and saw how, you know, I had them, you know,
22 working out and then giving them positive -- just giving them --
23 giving them positive things -- you know what I'm saying? -- to
24 put on their mind concerning their time, concerning just -- just
25 dealing with the situation. And then they saw -- they knew

1 about the sentence that I had and see how -- saw how I continued
2 -- know what I'm saying? -- to remain positive under this
3 situation.

4 Q. Is this a letter that you asked them or solicited
5 -- solicited them to write on your behalf?

6 A. No. They said -- they said, "We're going to write a letter
7 for you to" -- "When you go to court, we're going to write a
8 letter for you."

9 MR. GANT: With your Honor's permission, I would ask
10 that he be allowed to read that into the record. I'll give your
11 Honor the original, because it's a copy. It's very difficult to
12 read.

13 THE COURT: Do you have any objection to this,
14 Ms. Cook?

15 MS. COOK: No, I do not, your Honor.

16 THE COURT: Just let it be received as an exhibit. I
17 will read it.

18 MR. GANT: Judge, may I ask that that be marked as
19 Defendant's Exhibit No. 7?

20 THE COURT: Yes. Yes. It will be so marked.

21 (The document was marked Defendant's Exhibit No. 7.)

22 MR. GANT: All right. With that, Judge, Mr. Turnley
23 has a statement that he would like to read to your Honor that he
24 prepared.

25 THE COURT: All right.

1 MR. GANT: And we will rest.

2 THE WITNESS: Can I read it?

3 THE COURT: Yes, sir.

4 THE WITNESS: Good morning. I would like to thank you,
5 Honorable Judge Wiseman, for the opportunity to stand before you
6 a second time. Also, I would like to thank all the wonderful
7 people who include family, friends who came out to support me on
8 this matter.

9 Before I start, I would like to say a quote by the late
10 great Dr. Martin Luther King, who says, "The ultimate measure of
11 a man is not where he stands in moments of comfort and
12 convenience but for where he stands at times of challenge and
13 controversy."

14 Your Honor, in my letter to you that was attached to my
15 motion, I stated my biggest regret from my last time standing
16 before you 11 years ago was not speaking up and allowing you to
17 see that I wasn't a monster in which the sentence you imposed on
18 me reflected. Now, 11 years later, I do not think anything I
19 would have said, that they would measure up to the actions I
20 have displayed during my incarceration, which consists of
21 40-plus activities that I have earned in classes as a student,
22 teacher, numerous classes I have taught and still teach and one
23 incident report over the course of 11 years in prison. I won't
24 go into my many accomplishments while incarcerated, because you
25 have my file, which spans over a decade, before you. However,

1 what I will say is, when I was given a sentence of life -- to
2 life in prison, I chose to --

3 THE COURT: Mr. Turnley --

4 THE WITNESS: Yes, sir.

5 THE COURT: -- excuse me just a minute. Slow down a
6 little bit so that the court reporter can take it. You are
7 reading a little bit fast.

8 THE WITNESS: I'm sorry about that.

9 THE COURT: That's all right.

10 THE WITNESS: However, what I will say is, when I was
11 given a sentence to life in prison, I chose to make it benefit
12 me in a positive way, which is reflected in my file before you,
13 instead of playing the victim and being controlled by
14 bitterness. My letter to you that was attached to my motion
15 expressed what I have gained from this experience, which is more
16 than I lost because of it.

17 I am not going to stand before you and try to tickle your
18 ears with a long, drawn-out letter. But what I will do is tell
19 the Court, my family, and community that I'm sorry for being a
20 part of the problem and selling drugs during my ignorant,
21 immature state of mind. I admit my behavior was wrong, and I
22 accept responsibility for my actions.

23 Your Honor, you sentenced me to life in prison. And seeing
24 how hurt my family was all because of my actions made me do a
25 reality check and get my life together.

1 Q. Morning, Mr. Turnley.

2 A. Morning. How you doing, Ms. Cook?

3 Q. Been better, been worse.

4 Mr. Turnley, are you familiar with the Sixth Circuit Court
5 of Appeals' opinion in your case?

6 A. Yes.

7 Q. You weren't a street-level drug dealer, were you,
8 Mr. Turnley?

9 A. Yes.

10 Q. You were not?

11 A. Yes.

12 Q. You were a street-level drug dealer?

13 A. Yes.

14 Q. Okay. You dealt 30 to 40 kilograms of cocaine at a time; is
15 that correct?

16 A. No.

17 Q. No, you did not?

18 A. No, ma'am.

19 Q. What were the approximate quantities that you were dealing
20 between 1994 to 1995?

21 MR. GANT: Judge, may I interpose an objection?

22 THE COURT: What's --

23 MR. GANT: The objection being, we're not here to
24 relitigate the case. I understand that certain foundation is
25 necessary, but it sounds like we're going beyond foundation.

1 THE COURT: Well, overruled for the present.

2 Don't go too far in this, Ms. Cook. We don't need to retry
3 it.

4 MS. COOK: All right. Your Honor, briefly, I just
5 wanted to state to the Court that the federal rules of evidence
6 do not apply in this sentencing hearing. The defendant -- what
7 is before the defendant at this point in time are his history --
8 history and characteristics under the Rule 3553(a) factors,
9 which is very, very broad, to --

10 THE COURT: I'm allowing you to explore that. Yes, go
11 ahead.

12 MS. COOK: Thank you, your Honor.

13 BY MS. COOK:

14 Q. Between 1994 and 1995, the period of the conspiracy for
15 which you were convicted, Mr. Turnley, approximately what were
16 the quantities of drugs that you were dealing?

17 A. Well --

18 MR. GANT: Judge, now I'm going to ask that -- I
19 counsel my client at this point to not answer that question.

20 MS. COOK: Your Honor, defense counsel made a decision
21 to put his -- his client on the stand. The 3553(a) factors are
22 here before the Court. Part of those histories and
23 characteristics are exactly what kind of quantities Mr. Turnley
24 was dealing.

25 MR. GANT: The problem with that, Judge, is, as she

1 well knows, there is an issue about whether or not the lack of
 2 the amount of drugs mentioned in the indictment might warrant
 3 relief in this case. To get him to answer that question now, I
 4 suggest, your Honor, is nothing more than an attempt to fill in
 5 a hole that they have. I would most respectfully be allowed to
 6 counsel my client not to answer that question.

7 THE COURT: Following Apprendi, unless the jury finds
 8 or the defendant admits to the quantities of drugs, there is a
 9 maximum limit. I'm going to sustain your objection.

10 BY MS. COOK:

11 Q. Mr. Turnley, back in your original sentencing -- I believe
 12 it was in 1997 -- you did not file any objections to your
 13 presentence report; is that correct?

14 A. My attorney did.

15 Q. Okay. And you did not speak to the Court, did you?

16 A. Yes.

17 Q. Excuse me. During your original sentencing, did you address
 18 the Court?

19 A. Did I speak? No, no, I didn't speak to the Court. No, I
 20 didn't.

21 you did but , Courtto the talk to opportunity an had You Q.
 22 --not

23 A. Yes.

24 ?correctis that -- Q.

25 A. Yes.

1 Q. Okay. So you had an opportunity to object to anything you
2 wanted to in the presentence report or anything about the
3 sentencing proceeding, and you opted not to; is that correct?

4 A. Well, it was more so I didn't understand. And my -- my
5 attorney had brought me my presentence report a day before my
6 sentencing. And what I did, when I had a chance to review it,
7 which was -- which it took, like, an hour, I saw about the
8 career offender, and I brought that to his attention as well as
9 a couple other things, in which he came to court the following
10 day and proposed the issues that I had objections to.

11 Q. Okay. Mr. Turnley, just so that we're clear, you had an
12 opportunity to talk to the Court during your original
13 sentencing, and you elected not to; is that correct?

14 A. Yes, correct.

15 Q. But now you have an opportunity to talk to the Court; is
16 that correct?

17 A. Yes.

18 Q. I want to go through your criminal history, Mr. Turnley.
19 Back in 1991, you were convicted of an aggravated assault; is
20 that correct?

21 A. Yes.

22 Q. And you were convicted of this aggravated assault because
23 you were sitting on a porch somewhere and took a .32-caliber
24 pistol and pointed it at a police helicopter; is that correct?

25 A. Correct.

1 Q. And you shot at that helicopter; is that correct?

2 A. I shot in the air, yes.

3 Q. And as a result of your shooting at this helicopter, the
4 helicopter had to do an emergency landing; is that correct?

5 A. Yes.

6 Q. When you were shooting into the air at this police
7 helicopter, you had no idea if you would shoot someone; is that
8 correct?

9 A. I had no idea that I would even hit the helicopter.

10 Q. But there was a possibility that you might kill someone;
11 isn't that correct?

12 A. Yes.

13 Q. Okay. You heard testimony from your mother today that she
14 had engaged in excessive alcoholism; is that correct?

15 A. Yes.

16 Q. Gambling?

17 A. Yes.

18 Q. Neglect?

19 A. Yes.

20 Q. And did all of those things cause you to take that pistol
21 and shoot it at the helicopter?

22 A. Well, I'd say peer pressure made me shoot at the helicopter,
23 and it was more so than dealing with her alcohol; it was more so
24 of dealing with I was on my way to the Navy, and by me going to
25 the Navy, it was a part of me that felt that I still had to find

1 some kind of way to fit in with neighborhood, fit in with the
2 hood. So the only way that I felt that I can be accepted was to
3 -- to -- to do something, because they was looking at me as
4 being "He going to leave. He going to get out of the hood," and
5 things of that nature. So, you know, it was just pressure from
6 that standpoint.

7 Q. So just to be clear, it's your testimony today that peer
8 pressure and the possibility of going to the Navy --

9 A. Yes. It wasn't --

10 Q. -- prompted you to potentially kill a police officer; is
11 that correct?

12 A. No, no, no, it wasn't the possibility of going to the Navy;
13 it was just peer pressure to the point where I felt that I had
14 to try to -- try to fit in with the guys and let them know that
15 -- that I wasn't -- I hadn't changed. Or when I say "changed,"
16 to the point of, you know, when -- when -- when people are in
17 the Projects and things of that nature, when they see that
18 somebody is about to leave, it's like a crab in the -- in the
19 barrel syndrome; when somebody is feeling -- feeling to get out,
20 get out, another crowd pull them back down. And it was more so
21 of that kind of pressure right there of I'm getting ready to
22 leave and being pulled back down.

23 Q. Okay. But it's your testimony today that you accept full
24 responsibility for shooting at that police helicopter; is that
25 correct?

1 A. Yes, yes.

2 Q. It's your testimony today that you made a conscious decision
3 to -- to take that pistol and shoot it at the helicopter; is
4 that correct?

5 A. I wouldn't say a conscious decision.

6 Q. Okay. Were the police agitating you at the time that you
7 made --

8 A. No.

9 Q. -- that you shot at the police officers?

10 A. And --

11 Q. Let me finish my question, sir.

12 A. Sorry. Sorry.

13 Q. Were the police agitating you at the time you made that
14 decision --

15 A. No.

16 Q. -- to shoot at them? Had you had -- had you seen the police
17 officers? Had you physically seen them, visually seen them?

18 A. First of all, I didn't know they was police officers.

19 Q. Did you know it was a police helicopter?

20 A. I didn't know -- no, I didn't know it was a police
21 helicopter. As a matter of fact, I think that was the first
22 time that that was being brought out.

23 Q. So you made a -- you -- you made a conscious decision to
24 shoot at the helicopter, and you didn't know who was in there;
25 is that correct?

1 A. Like I say --

2 Q. Yes or no, sir?

3 A. I wouldn't say a conscious decision. I wouldn't say a
4 conscious decision. However, yes, I shot -- I shot in the air
5 not thinking that I was going to hit a helicopter or hit it.
6 But, of course, I shot in the air in -- in that direction, but I
7 didn't think I was going to hit it with a -- with a pistol.

8 Q. Okay. So you -- you made a decision to shoot a pistol in
9 the air --

10 A. Yes, yes.

11 Q. -- towards a helicopter?

12 A. Yes.

13 Q. And you -- you did not know or you did know that potentially
14 someone would die?

15 A. I didn't know that I was going to hit it.

16 Q. Okay. I want to move on to 1994. You were on probation
17 after that conviction; is that correct?

18 A. Yes.

19 Q. Okay. And while you were on probation for making a decision
20 to shoot at a helicopter not knowing who was in there, back in
21 1994, you were convicted again of reckless aggravated assault;
22 is that correct?

23 A. Yes.

24 Q. Okay. And during this -- during this time, you had a .375
25 Magnum; is that correct?

1 A. No.

2 Q. No, it's not?

3 A. No.

4 Q. What kind of gun did you have at that time?

5 A. No gun at all.

6 Q. You didn't have a gun at all?

7 A. No.

8 Q. Okay. You had an opportunity to see your presentence
9 report; is that correct?

10 A. Yes.

11 Q. And you testified that you did not -- you did not disagree
12 or raise any objections to what's in your presentence report; is
13 that correct?

14 A. Yes, that's -- that's correct.

15 THE COURT: It's not what he said. It's not what he
16 said. When he studied it for an hour, he told his lawyer about
17 it and -- about his objections.

18 BY MS. COOK:

19 Q. Okay. Your -- so your testimony is, your lawyer didn't
20 raise any objections; is that correct?

21 A. Exactly. Exactly.

22 Q. I see. Did you challenge your presentence report or
23 information that was in your presentence report at any other
24 time after your sentencing?

25 A. I didn't -- I didn't have a chance to challenge the

1 presentence report after I was sentenced.

2 Q. Did you raise any challenges involving your presentence
3 report during your appeal?

4 A. I think the only thing that my appellate attorney filed on
5 was me -- well, my acquitted conduct. I think that's the main
6 thing that he filed on, my acquitted conduct being used for --
7 and that conduct really is what got me to being in the category
8 receiving a life sentence.

9 Q. And again, I want to turn your attention to 1994, your
10 conviction of the reckless aggravated assault. Is it your
11 testimony today that you were not armed with a .375 Magnum?

12 A. No.

13 Q. You were not? So if I produced the transcript of your plea
14 colloquy from that conviction, it would still be your testimony
15 that you were not armed with that .375 Magnum?

16 A. It would -- it was a gun found in that area. It wasn't on
17 me; it was a gun found on the ground. The gun didn't have any
18 prints on it.

19 Q. Okay. And were you shot during that incident?

20 A. Yes.

21 Q. Okay. What led to your being shot during that incident?

22 A. I was laying on the ground when -- when I was shot, for one.
23 And the police was being called to a house call, and they
24 thought that I was the person who was involved in the domestic
25 violence dispute. So when they shot me, they was thinking that

1 I was the individual that they had come looking for.

2 Q. Were you in possession of a weapon during that time?

3 A. No.

4 Q. At no point?

5 A. No.

6 Q. Okay. I want to come back to that. Let's move on to some
7 other incidents in your criminal history.

8 Back in 1992, you were arrested -- arrested for aggravated
9 trespass. Is that correct?

10 A. Yes.

11 Q. According to your presentence report, on December 22nd,
12 1992, Aki Jennings, Larry Turnley, Eric McKnight entered and
13 remained on the property and habitation of Tonya Lawson without
14 her consent and that the defendants were reckless about their
15 presence there, causing her to fear for her safety, Tonya
16 Lawson. Is that correct?

17 A. No, that's -- no, that's incorrect.

18 Q. It is incorrect?

19 A. Yes.

20 Q. What -- what is incorrect about that?

21 A. What's incorrect about it is, we was with her boyfriend.
22 She wasn't in the house. She wasn't there, period. And we was
23 with her boyfriend. And her boyfriend is the one who -- who had
24 the weapons, and he was charged with it. He was charged with
25 the weapons.

1 Q. I want to move on, now, to another arrest of yours in 1992.
2 Again, according to your presentence report, it says, "The
3 defendant jumped out of a stolen vehicle in the area of 830
4 Claiborne Street and ran inside the residence located at 828
5 Claiborne Street." Is that correct?

6 A. Yes.

7 Q. Okay. "The defendant refused to open the door, and Metro
8 officers forced entry into the apartment by kicking in the door.
9 The defendant had access or control over four guns, including a
10 Ruger, a Magnum, Smith & Wesson." Is that correct?

11 A. Like I said, that -- that was her boyfriend's stuff, Tonya
12 Lawson. She --

13 Q. Did you have control over those weapons?

14 A. No, ma'am.

15 Q. Okay. Back on to 1992 -- this is again while you were
16 already on probation for aggravated assault -- you were arrested
17 again for aggravated assault. It says on December 24th, 1992,
18 you were walking along Lafayette Street, you were
19 approached -- excuse me. Excuse me; Prosecutor Frank Matthews
20 stated that on December 24th, 1992, he was walking along
21 Lafayette Street when he was approached by you and three other
22 individuals and was knocked to the ground by two of the
23 individuals. Is that correct?

24 A. It's incorrect on -- on the part where he is saying that
25 I -- I hit him. I broke it up.

1 Q. You were -- you were part of the crowd that approached him
2 is that correct?

3 A. No, no, no, no. I wasn't part of the crowd. I was walking
4 up when some individuals was beating him up, and I stopped them
5 from -- from kicking on him.

6 Q. So you saved him; is that correct?

7 A. Yes.

8 Q. Okay. In 1996, you began your period of incarceration; is
9 that correct?

10 A. Yes.

11 Q. You were in prison; is that -- is that right?

12 A. Yes, ma'am.

13 Q. Okay. And in 2006, while you were in prison, you were
14 smoking marijuana in prison. Is that correct?

15 A. Yes.

16 Q. How did you get that marijuana?

17 A. A guy -- a guy had it, and he smoked it with me.

18 Q. What was his name?

19 A. I'm not -- I don't -- I don't know what his name was. I
20 just know we was in the room -- we was all in the room together;
21 know what I'm saying?

22 Q. How did you get the marijuana?

23 A. It was on the -- it was on the compound. It is marijuana.
24 It is drugs on -- on the compound.

25 Q. Okay. How did you get it? Did you buy it?

1 A. Somebody else had it. I just smoked it with him.

2 ?itbuy didn't you . So Okay Q.

3 A. No, ma'am.

4 Q. Who bought it?

5 A. Like I say, the -- the guy that I smoked it with. The guy
6 that I smoked it with -- was a couple guys. I don't recall who
7 all it was.

8 THE COURT: Ms. Cook, how is that relevant to what
9 we're here on?

10 MS. COOK: Your Honor, the --

11 THE COURT: It is not relevant.

12 MS. COOK: Okay.

13 THE COURT: And I sustain an objection which hadn't
14 been made yet, but I assume you object to it, Mr. --

15 MR. GANT: I do, your Honor.

16 THE COURT: It's sustained.

17 MS. COOK: All right.

18 BY MS. COOK:

19 Q. Mr. Turnley, you testified that as part of your
20 rehabilitation, you participated in drug abuse treatment. Is
21 that correct?

22 A. Yes, ma'am.

23 Q. Okay. You have firsthand knowledge about what addictions
24 can do to people, don't you?

25 A. Yes.

1 Q. You have firsthand knowledge about what alcoholism did to
2 your mother; is that correct?

3 A. Yes, ma'am.

4 Q. And given your firsthand knowledge about what addiction does
5 to people generally and your mother specifically, you made a
6 decision to be a drug dealer; is that correct?

7 A. Yes.

8 Q. Okay. Now, you stated that as a result of this class that
9 you were in, you learned about the effects that drugs have on
10 someone's life; is that correct?

11 A. Yes.

12 Q. But you are also aware of the effect that drugs had on your
13 mother's life; is that correct?

14 A. Alcohol?

15 Q. Alcohol, excuse me.

16 A. Yes.

17 Q. And you also are aware of the effects that drugs had on the
18 lives of individuals to whom you sold drugs; is that correct?

19 A. Correct.

20 Q. Now, you testified that before 2006 you had not had a
21 writeup; is that correct?

22 A. Yes.

23 Q. Okay. But you have not testified that before 2006 that you
24 had engaged in drug abuse while you were in prison; is that
25 correct?

1 A. Okay.

2 THE COURT: Wait a minute.

3 THE WITNESS: Can you repeat that question?

4 MS. COOK: Yes.

5 BY MS. COOK:

6 Q. You testified that prior to 2006, you had not had a writeup.

7 A. Yes.

8 Q. Have you testified that you did not engage in drugs prior to
9 2006?

10 A. Are you speaking on that --

11 Q. Let me ask that -- let me ask that a different way.

12 THE COURT: I haven't heard it, if -- he hasn't
13 testified to that, Ms. Cook.

14 BY MS. COOK:

15 Q. Had you engaged in any sort of drug use prior to 2006 while
16 you were in prison?

17 A. No, ma'am.

18 Q. Okay. And it's your testimony that you have not engaged in
19 any sort of drug use since -- since 2006; is that correct?

20 A. Yes, ma'am.

21 Q. Okay. And you testified that a life sentence helped you get
22 your life together; is that correct?

23 A. Yes, ma'am.

24 MS. COOK: Okay. No further questions, your Honor.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

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BY MR. GANT:

Q. Mr. Turnley --

A. Yes.

Q. -- those convictions that Ms. Cook has just asked you about, you did time for those convictions?

A. Yes.

MR. GANT: Nothing further.

THE COURT: Come down, Mr. Turnley.

MR. GANT: With that, your Honor, defense rests.

THE COURT: All right. Ms. Cook, will you have any proof?

MS. COOK: No further proof, your Honor.

THE COURT: All right. Then let's -- let's take our -- our lunch recess, come back at 1:15. We are in recess until then. And I expect to hear arguments from both of you and suggestions as to what should be done.

(Recess.)

THE COURT: All right. Anyone have anything further to offer before we hear arguments?

MS. COOK: Nothing from the government, your Honor.

MR. GANT: Nothing on behalf of Mr. Turnley.

THE COURT: Okay. Then Ms. Cook, I will hear you first.

MS. COOK: Your Honor, the government respectfully

1 wants to make clear in the record that it preserves all of its
2 objections.

3 THE COURT: Oh, certainly. Certainly.

4 MS. COOK: Thank you, your Honor.

5 To the extent that the Court wants to address the 3553(a)
6 factors before the Court, it's the government's position that
7 there shouldn't be a change in defendant's sentencing. To the
8 extent that the Court wants to make a change, it is the
9 government's position that the defendant should receive the
10 bottom end of the guidelines, which is 292 months.

11 But before I get to that part of the argument, essentially
12 what's before the Court is this: It's the government's position
13 that there's no evidence before the Court at the present moment
14 that eclipses what we do in fact know about this particular
15 defendant.

16 The evidence that's been produced today is a great deal of
17 self-serving statements, statements on behalf of family members
18 stating that they have witnessed a change in the defendant,
19 given their limited amount of interaction with the defendant,
20 and certainly no observation of the defendant when he is not
21 under the control and authority of the BOP.

22 What we do know about the defendant -- and I will not go
23 through all of this -- what we do know about the defendant are
24 what is effectively admissions in the presentence report. The
25 two underlying convictions involving reckless aggravated assault

1 and also attempted murder prompted the Court to say during the
2 sentencing, the original sentencing of the defendant, this Court
3 had referred to Mr. Turnley as follows: "One thing that bothers
4 me about this man's prior history, Mr. Johnson, is the fact that
5 he shot at police in a helicopter and could have killed somebody
6 and the fact that he had a weapon and was wearing a bulletproof
7 vest when he was shot by a policeman. This Court finds that
8 this man has a history of violence. Violence toward law
9 enforcement officers, possession of cop-killing bullets, and a
10 bulletproof vest -- in fact, on two different occasions he was
11 prepared to shoot a policeman -- convinces the Court that this
12 man does not need to be in society for any reason for any length
13 of time."

14 I wanted to point out to the Court that the defendant's
15 criminal history and also the drug quantities in the presentence
16 report are effectively admissions. The defendant did not raise
17 as a legal matter challenges to these facts during his original
18 sentencing. The time to appeal these underlying facts has come
19 and gone, and -- and these facts are effectively before the
20 Court now as facts.

21 What is largely speculation and conjecture is Mr. Turnley's
22 ability to change or alter his conduct now. The evidence that's
23 before the Court with respect to what is certain is, again, a
24 presentence report that states that Mr. Turnley was responsible
25 for 273, I believe, grams of cocaine base, 30 to 40 kilos of

1 cocaine during the time of the conspiracy. The presentence
2 report outlines the defendant's prior criminal history.

3 I also wanted to highlight for the Court that while
4 Mr. Turnley was incarcerated in 2006, while he was under the
5 custody of the Bureau of Prisons and he was in prison, he tested
6 positive for drug use. It is not only that the defendant tested
7 positively for drug use -- the drug use itself is criminal
8 activity -- but acquiring those drugs certainly within a prison
9 facility is also criminal activity.

10 The defendant has testified that he has not tested positive.
11 He is -- what is clear is that there is only one writeup for
12 drug abuse in the defendant's file as a result of his
13 incarceration.

14 The defendant claims that he has not engaged in any sort of
15 drug use prior to this time or after that time. The government
16 submits that again, that is a self-serving statement. What is
17 clear before the Court is the drug quantities the defendant was
18 engaged in, his criminal history as outlined in the presentence
19 report, and his further criminal activity while he is in the
20 Bureau of Prisons.

21 What is left to speculation and conjecture is the testimony
22 from the defendant's family with regard to the causes for some
23 of his behavior and his ability to change. There is testimony
24 from Mrs. Turnley that some of her behavior had contributed to
25 the defendant's conduct. Your Honor, there is no direct

1 causation, there is no direct correlation between Ms. Turnley's
2 behavior as she characterizes it as gambling, excessive
3 drinking, and neglect that can directly cause Mr. Turnley to
4 turn a gun to a helicopter with the possibility of killing
5 someone and then later having another scuffle with the police in
6 which the defendant himself was shot.

7 There was testimony from two of the defendants, mothers of
8 two of his children. I wanted to highlight to the Court that
9 there was limited contact between the defendant's son and
10 himself while he was incarcerated. Although Ms. McMahon
11 testified that she -- that her son saw the defendant 70 times, I
12 think there may be some issues with credibility with regard to
13 that statement.

14 But the bottom line is, your Honor, what is certain or what
15 is clear are the admissions in the presentence report. What is
16 speculation and conjecture are the defendant's behaviors once he
17 has been incarcerated as attested to by his -- by himself and
18 his family members. And that testimony does not eclipse what is
19 clearly known to the Court and what the Court has already
20 remarked on.

21 Again, the government's position is that Mr. Turnley should
22 not have a change in his sentence. To the extent that the Court
23 is going to change his sentence, the defendant should receive
24 292 months. The Court can get there under the sentencing
25 guidelines 5C1.2, which would allow stacking to meet the bottom

1 of the guidelines, which is 292. Thank you, your Honor.

2 THE COURT: Stacking to do what? Tell me how you
3 arrive at that.

4 MS. COOK: Your Honor, it's the government's position
5 that Apprendi doesn't apply here, but to the --

6 THE COURT: So are you looking -- looking at 240 and
7 then stacking on top of 240? With a 20-year -- you're applying
8 a 20-year max?

9 MS. COOK: To both counts.

10 THE COURT: Yeah.

11 MS. COOK: Allowing the 20-year max to both counts and
12 then reaching the 292 mark from there.

13 THE COURT: Okay. All right.

14 MS. COOK: Thank you, your Honor.

15 Very briefly, also, your Honor, it is unclear to me whether
16 the defendant -- well, it is unclear to me whether the
17 defendant -- what is clear to me is that the defendant is -- has
18 not testified about his acceptance of responsibility with regard
19 to the drug quantities. It is unclear to me that he has a Fifth
20 Amendment privilege at this point in time, because the statute
21 of limitations has run on the underlying convictions.

22 Regardless of that issue, defendant had an opportunity to
23 speak to the Court. Whether he accepts responsibility for the
24 drug quantities I think remains an open issue.

25 THE COURT: It's not a matter of I didn't rule on the

1 basis of a -- of a Fifth Amendment self-incrimination, Ms. Cook.
2 But as it stands now, he has the -- the benefit of not having
3 said that. And -- and I'm giving him that -- that benefit.

4 MS. COOK: Absolutely, your Honor. This is your
5 courtroom, Judge. I don't need to state the obvious.

6 THE COURT: Well, it's -- it's a matter of fairness,
7 perhaps.

8 MS. COOK: Understood, your Honor.

9 THE COURT: All right. Thank you.

10 MS. COOK: Thank you.

11 THE COURT: Now, then, you may -- may proceed,
12 Mr. Gant.

13 MR. GANT: Judge Wiseman, Ms. Cook, Judge, it seems to
14 me that we can distill where we are now, in terms of procedure,
15 we can distill it down to this. The eligibility of Mr. Turnley
16 to be before you today on a 3582(2)(c) -- (c)(2) hearing was
17 triggered by an amendment to the drug guidelines. You have
18 given him that hearing. The government says to you that --

19 THE COURT: In doing so, we have made some law.

20 MR. GANT: We have.

21 THE COURT: You're going to have to defend this,
22 Mr. Gant. So keep going. That's No. 1 you're going to have to
23 defend.

24 MR. GANT: All right.

25 THE COURT: There's more.

1 MR. GANT: There's more, I'm sure.

2 But what -- what has occurred here, Judge, according to the
3 government, is that we have had this hearing, and really nothing
4 has changed. And what you have heard in terms of evidence in
5 support of a reduction in the sentence is speculation. In
6 essence, the government is saying, "Judge, everything is the
7 same except, you know, the law changed to allow a reduction. If
8 you are disposed to giving them a reduction, the reduction
9 shouldn't be more than 292 to 365." That's their position.

10 I think more has changed than that, Judge. Two things have
11 changed that are very important. Again, I could stand here
12 and -- and go through 3553(a) and what's required. You know it
13 much better than I do. Plus, you already went through that when
14 you imposed the initial sentence in this case. We can
15 assume -- excuse me, we can assume from that that you at that
16 time took into consideration all the information that you had,
17 including the presentence reports and whatever evidence that was
18 put on, and you decided at that time that the sentence that you
19 imposed was not more than necessary in order to accomplish the
20 objectives of 3553(a).

21 You said at that time, Judge, that this was an individual
22 that you didn't think would be subject to rehabilitation. Okay.
23 And then in light of that, you imposed what you believed to be
24 the necessary sentence.

25 There have been significant changes since then. One has

1 been a change in Larry Turnley. If you disregard the testimony
2 that you have heard today, the oral testimony that you have
3 heard today, Judge, there is still significant evidence before
4 you in this record that says this is not the same guy that you
5 sentenced almost 13 years ago. If you heard not a single piece
6 of oral testimony, the one thing you know is this: This young
7 man accomplished an almost incomprehensible record in terms of
8 being in prison for life and having accomplished what is
9 reflected in those certificates that are part of this record.
10 Didn't have to do it, had nothing to gain by doing it, but he
11 did it. And the one thing that he has said to you by way of
12 this record and the one thing that has to be of some
13 significance is this: He said, "Judge, thank you for giving me
14 life -- this life sentence, because it gave me life. It made me
15 realize that that life that I was living day to day, not caring
16 about anything, wasn't a way to go." But yes, he has changed.

17 But I think, Judge, a more significant change has been the
18 change in the law. All right? And that change in the law has
19 said this: You have the discretion, now that you have accorded
20 him a 3582 hearing, you have the discretion to either leave the
21 sentence like it is or reduce it. If you exercise that
22 discretion in favor of reducing the sentence, then we get into
23 that area that we addressed a few moments ago about the law.
24 There are some cases, some circuits, that say if you decide to
25 reduce his sentence, you, Judge Wiseman, are cabined into that

1 292 to 365 amended guideline range. There is at least some
2 authority out there that says, "Nope, if you have decided that
3 you are going to reduce his sentence, not only are you to take
4 this amended guideline range, 292 to 365, but you can exercise
5 your discretion to go below that."

6 Now, I'm asking your Honor to go below. But I'm asking your
7 Honor to go below for a different reason. One, I think that
8 what you have heard and learned about this young man warrants
9 it; two, I believe, under Apprendi, in light of the fact that
10 the indictment in this case set out no amount with regard to the
11 drugs involved, that the statutory sentence that he is subject
12 to is 240 months.

13 THE COURT: On each count.

14 MR. GANT: On each count.

15 THE COURT: So they can be run consecutively.

16 MR. GANT: There is no question that's --

17 THE COURT: That's Ms. Cook's position.

18 MR. GANT: Yes. Yes, your Honor. What I'm asking your
19 Honor to do is this. First of all, I think that you have not
20 only the discretion but the authority to impose a sentence below
21 the range. Clearly, you can't give him a sentence higher, but
22 certainly, you can give him one below the range based upon at
23 least my reading of the United States v. Clark and my belief
24 that that is supported by United States v. Hicks.

25 But more important, I think, Judge, given what the Supreme

1 Court has recently said in the Spears case, you can exercise
2 your discretion in favor of imposing a sentence below the bottom
3 of the guideline range if you believe, based upon this record
4 and what you have heard, that a sentence below that range, below
5 the bottom range, is sufficient, can be sufficient, and would be
6 certainly sufficient and not greater than what's necessary in
7 order to accomplish the objectives for 3553(a).

8 Certainly, a 240-month sentence concurrent, a 240-month
9 sentence concurrent would be a sentence that is a sentence that
10 would be -- would be seen as a deterrent to anybody. We're
11 talking 20 years. It would be a deterrent to anybody who is
12 thinking about going out and -- going out there and dealing
13 drugs in any kind -- on any kind of a scale.

14 If we're talking about, Judge, whether a sentence of 20
15 years, whether that is the kind of sentence that would gain
16 respect for the law, certainly it would, Judge. No one is going
17 to say that a 20-year sentence for the conduct in which Larry
18 Turnley engaged in is not the kind of sentence that's
19 not -- that doesn't warrant respect. What I'm suggesting to
20 your Honor is this. And I don't have to be long about this,
21 because you've got all our briefs.

22 THE COURT: Take your time. We've got all afternoon.

23 MR. GANT: All right. I would ask your Honor to
24 consider imposing a sentence of 240 months and that 240 months
25 on each count to run concurrent. Thus, this young man would

1 have served -- I think it's a little more than 13 years in now.
2 We're talking about roughly six to seven more years. Certainly,
3 that sentence, Judge, would be sufficient and not greater than
4 what is necessary in order to achieve the objectives of Section
5 3553(a). And I would ask you to seriously consider that. Thank
6 you, Judge.

7 THE COURT: All right, sir.

8 Ms. Cook, you may respond.

9 MS. COOK: Very briefly, your Honor. I'm on thin water
10 here. I just want to be -- No. 1, I want to be respectful to
11 the Court, but No. 2, I have -- I have a record that I'm going
12 to have to stand accountable for in another proceeding, and I
13 just want to be clear with the Court and also with defense
14 counsel, the government is making no concessions whatsoever with
15 regard to this instant proceeding.

16 The government has raised a number of objections with regard
17 to whether the defendant is a career offender, whether Apprendi
18 applies retroactively, whether Booker applies retroactively,
19 whether the defendant is entitled to any reduction whatsoever,
20 and the government is preserving all of those arguments. The
21 government is making no concessions with regard to those in this
22 particular proceeding.

23 THE COURT: And you should not. They're all
24 interesting questions. Some of them are novel questions. Some
25 of them have no -- no precedent.

1 MS. COOK: I -- well, I will refrain from remarking on
2 that. But I just want to be clear that -- that we are not
3 making any sort of concessions in this particular proceeding.

4 What the government is arguing here is, what is before the
5 Court is the defendant's behavior prior to the time that he was
6 sentenced and the defendant's behavior after the time that he
7 was sentenced. There is documented proof in the presentence
8 report by the way of admissions as to the drug quantities the
9 defendant was dealing. This is not a street-level drug dealer;
10 these are large quantities of drugs. There is documented
11 evidence with regard to the defendant's criminal history. What
12 is before the Court today is testimony from his mother, the
13 mother of two of his children, and a stack of certificates the
14 defendant has received while he has been in prison.

15 It is the government's position that the evidence submitted
16 to the Court today by way of people who obviously love the
17 defendant and a bunch of certificates do not eclipse the weight
18 of the evidence before the Court in the presentence report.
19 What is in the presentence report are two situations -- at least
20 one situation in which the defendant is turning an armed gun at
21 law enforcement officials with the possibility of killing
22 someone. And it's the government's position that the evidence
23 in the presentence report has not been eclipsed by the testimony
24 of family members today and certificates.

25 Defense counsel and the defendant argue that a life sentence

1 has had a meaningful impact on the defendant's life. It's
2 enabled him to turn his life around. The government asks
3 that -- that the Court make that life sentence real. If it has
4 had such an amazing impact on Mr. Turnley's ability to turn
5 himself around, get himself together, and think very differently
6 about his life and his own conduct, that sentence should
7 be -- should be made real and kept real.

8 With regard to whether a 20-year sentence garners respect
9 for the law, again, I don't -- I don't want to rehash the
10 objections that have been raised before in prior proceedings.
11 Again, it is the government's position that the original life
12 sentence took into account the 3553(a) factors and is the
13 appropriate sentence for the defendant. Thank you, your Honor.

14 THE COURT: All right. Anyone wish to be heard
15 further? All right. I'll make some preliminary rulings, then.

16 First of all, the guidelines as computed in the amended
17 supplement, first and second supplements to -- to the
18 presentence report have not been objected to, so the Court will
19 determine that the guideline offense level will be 36 and a
20 criminal history category of V, which provides for a 292- to
21 365-month range, a fine range of 20,000 to \$8 million, and a
22 supervised release of five years on each count.

23 As the Court has previously observed in -- in its memorandum
24 opinion, if current law is what we should be using in -- in the
25 resentencing, then post-Apprendi, there's a 20-year maximum on

1 each count when no amount of drugs is either found by the jury
2 or adopted by -- admitted by the defendant. And as has been
3 noted and the Court has previously held, the guidelines and the
4 policy statements of the Sentencing Commission are advisory, but
5 pursuant to 18 United States Code Section 3553(a), the Court
6 will take (a)(4) -- the Court will take both of those into
7 consideration; that is, the -- the guidelines and the policy
8 statements of the Sentencing Commission. And on a resentencing,
9 under 18 United States Code Section 3582(c)(2), the Court's
10 directed to consider all of the factors set forth in 18 United
11 States Code Section 3553(a).

12 Regarding those, first, the nature and circumstances of the
13 offense. I make no apologies and I don't take back what I said
14 at the previous -- previous sentencing hearing, that this man's
15 seriousness of his offense when coupled with his two prior
16 convictions lead the Court to believe that he was at that time a
17 serious danger to society. I am impressed by the -- by the
18 efforts that he has made while incarcerated under a life
19 sentence with no real incentive to -- to do any of these things.
20 He wasn't going to get out, period. It's certainly to his
21 credit that -- that he went on and -- and tried to prepare
22 himself for release if it ever happened.

23 The efficacy of judicial intervention in this case
24 may -- may have -- have been worthwhile. Very infrequently is
25 it. Most people who are incarcerated don't get a whole lot of

1 rehabilitation. We have gone to a punishment model, the just
2 deserts model, rather than a type of rehabilitation.

3 The Court has considered the need to promote respect for the
4 law, provide for just punishment, to deter further criminality
5 by this defendant, as well as sending a message to others who
6 might be -- be considering similar conduct. The Court has
7 considered the kinds of sentences available. Incarceration
8 certainly is -- is -- is still an appropriate sentence in his
9 case. The Court is somewhat skeptical of -- of how much
10 influence he has been able to provide to his children, but I
11 hope that that continues. I hope that is the case. He has had
12 very little opportunity to be much of an influence, but -- and
13 hopefully they don't follow in his footsteps, as is so often the
14 case, by taking up the -- the drug dealing and criminality.

15 Having considered all of the above, Mr. Turnley, if you
16 will, please, stand where you are.

17 Based upon the verdict of the jury finding you guilty of
18 Counts 10 and 18, and having considered those matters that the
19 Court has outlined, the Court finds you guilty of Count 10 and
20 sentences you to 240 months on Count 10. The Court finds you
21 guilty of Count 18 and sentences you to 24 months on Count 18 to
22 run consecutive to the sentence imposed on Count 10. On each
23 count, you will serve a period of five years of supervised
24 release, to run concurrently with each other.

25 Fine is waived. The Court finds you're unable to pay a

1 fine. Cost of your incarceration is waived. The Court finds
2 you are unable to pay that. The cost of -- of your supervised
3 release is also waived.

4 Now, then, I have not followed the recommendation of either
5 the defendant's counsel or the -- or the government. Therefore,
6 I will note for the record that each of you have objections
7 thereto.

8 Now, then, I need to advise you, Mr. Turnley, of your right
9 to appeal. You have a right to appeal your sentence. If you
10 wish to appeal, you must file a notice of appeal within ten days
11 from today, not counting today. If you wish it to be done, the
12 clerk will file a notice of appeal on your behalf. If you are
13 unable to pay for a lawyer to prosecute the appeal, the Court
14 will appoint a lawyer for you. Do you understand these rights?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, then, the same conditions of
17 supervised release that were previously imposed are reimposed.

18 Ms. Cook, have I omitted anything?

19 MS. COOK: Not that I'm aware of, your Honor.

20 THE COURT: Mr. Gant?

21 MR. GANT: Not that I'm aware of, your Honor.

22 THE COURT: All right. Mr. Marshal, he is in your
23 custody. The Court will be in recess.

24 (Proceedings concluded at 1:50 p.m.)

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REPORTER'S CERTIFICATE

I, Brian V. Ratekin, Notary Public for the State of Tennessee and Court Reporter, do hereby certify:

That I reported on the stenograph machine the proceedings held in open court on March 23, 2009, in the matter of United States of America vs. Larry Turnley; Case No. 3:96-cr-00120; that said proceedings in connection with the trial were reduced to typewritten form by me; and that the foregoing transcript is a true and accurate record of said proceedings.

This the 19th day of April, 2009.

s/ Brian V. Ratekin _____

BRIAN V. RATEKIN
Registered Professional Reporter
Certified Court Reporter