

OWENSS. PRT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:02-CR-495 CDP
)	
CASSANDRA OWENS,)	
)	
Defendant.)	

SENTENCING HEARING

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

NOVEMBER 14, 2003

APPEARANCES:

For Government: John Bodenhausen
OFFICE OF U. S. ATTORNEY
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St. Louis, MO 63102

For Defendant: John D. Stobbs, II
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2 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND
3 WITH THE DEFENDANT PRESENT.)

4 THE COURT: We are here in the case of United States
5 of America versus Cassandra Owens. This is Case No.
6 4:02-CR-495. There are a number of matters pending with
7 regard to the presentence report in this case, and it's a
8 little confusing, but I think, as I understand where we stand
9 -- well, actually, I'm not sure.

10 Mr. Stobbs, tell me where we stand on your various
11 objections.

12 MR. STOBBS: The real objections, I think, come down
13 to what are contained on my motions for downward departure
14 which are part of my sentencing memorandum.

15 THE COURT: That's really a motion for downward
16 departure, right?

17 MR. STOBBS: Yeah. It just explains in detail the
18 reasons I think that the downward departure is well taken.
19 The other paragraphs, to be honest, are kind of objections
20 that Ms. Owens wanted me to make on her behalf. The probation
21 officer responded, and I think that, you know, to be candid
22 and save time, I think that but for my motion for downward
23 departure, I think that if you just -- you can deny it or
24 however you want to do it so that we can kind of move along.

25 THE COURT: Okay.

2

1 MR. STOBBS: They don't affect her sentencing, so it
2 doesn't matter.

3 THE COURT: And some of them were matters related to
4 some of the original ones, which I guess you did withdraw some

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5 of the original ones, but were all related to some personal
6 information that was corrected. And then the things that
7 remain relate to the overall scheme involving other
8 defendants, correct.

9 MR. STOBBS: Which doesn't really, you know, make a
10 lot of difference, you know. She thought it was important
11 that I object that her daughter doesn't attend local school.
12 Well, local to her means something different than someone
13 else, so it doesn't really matter.

14 THE COURT: Right. And I do understand that. I did
15 read the objections, and so I have all of the information in
16 front of me, which, if that's what you wanted was to make sure
17 I knew the exact, you know, the precise --

18 MR. STOBBS: More than anything.

19 THE COURT: The precise information, I do know that.

20 MR. STOBBS: We would withdraw for interest of, again
21 candor, I think that the motion for downward departure
22 regarding 5H1.7, the role in the offense, I kind of think that
23 I would have a hard time proving it. So it's, I think, in the
24 interest of time and candor I will just withdraw that one.

25 THE COURT: All right. Why don't you go ahead and

3

1 tell me your arguments on the downward departure and make any
2 other statements you wish to on your client's behalf, and I
3 will hear from the Government as well. And then I will get
4 Ms. Owens up and hear from her after I've heard from you.

5 MR. STOBBS: Do you want, Judge -- I don't know how
6 you want. I had intended, you know -- if you want to have her

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7 talk, that would speed things up a heck of a lot if that's
8 okay with you.

9 THE COURT: No. That's fine.

10 MR. STOBBS: I would actually prefer that.

11 THE COURT: Ms. Owens, why don't you step up here
12 with your lawyer.

13 MR. STOBBS: If I can make my little pitch first, and
14 I would --

15 THE COURT: Yeah. Ms. Owens, first before we go any
16 further, let me just ask you this. From what Mr. Stobbs is
17 telling me, I think I know the answer to this, but I need to
18 hear it from you. Did you go over the presentence report and
19 discuss it with him?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: Did he raise all the things you asked him
22 to raise in his objections?

23 THE DEFENDANT: Yes, he did.

24 THE COURT: Okay. That's fine then. And I am going
25 to adopt the presentence report as my findings of fact in the

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1 case and simply deny as moot the objections that don't affect
2 the sentencing guidelines and accept the objections as
3 supplements to the information contained in there with regard
4 to the family information and other things like that.

5 MR. STOBBS: Judge, I want to start off, this is one
6 of those cases, I think, that without meaning to, as a defense
7 lawyer you get closer than you want to get to it because of
8 just the -- what's at issue. You know, she's going to --
9 she's going to either go to jail or not go to jail.

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10 And I want to make clear before I say anything else
11 that this, the deal that Mr. Reap and Mr. Bodenhause has
12 given Ms. Owens, it was not a good deal; it was a great deal.

13 And just I appreciate that because, you know, at the
14 late date that they allowed her to plead guilty and to get the
15 full three points for acceptance, they didn't have to do that.
16 And so I think that that's a place that I wanted to start.

17 And I realize that in terms of motions for downward
18 departure, for me I take it -- I kind of took it personally, I
19 guess, that the Government doesn't see things quite as clearly
20 as I do, but they are just doing their job, and I understand
21 that too.

22 I filed motions for downward departure based on what
23 I consider aberrant behavior of family circumstances and then
24 the catchall, the 5K2.0. I also failed to mention that we are
25 going to withdraw the 5K2.5 for the reverse loss, because I

5

1 think that that would be kind of hard to argue that.

2 But the goal that I have here, Judge, is for you to
3 depart downward to Zone B where Ms. Owens does not have to go
4 to jail, where you can give her some sort of a split sentence.
5 We would ask for the high end of a Level 10, I think it is,
6 which would be six months of home confinement, six months of
7 probation.

8 I'm going to talk first about the aberrant behavior
9 argument. Then I'm going to talk about family circumstances.
10 Then I'm going to talk about, I guess, the catchall, the
11 5K2.0.

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12 Well, with regard to aberrant behavior, I need to
13 show that there's a single act or transaction, single
14 transaction; she doesn't have more than one criminal history
15 point; she has no felony convictions. When you take into
16 consideration whether or not it's aberrant behavior, you're
17 allowed -- you, the sentencing judge, are allowed to take into
18 consideration why she committed the crime.

19 Now, I want to be very clear. As thankful as I am to
20 the Government for giving us this great deal, we are not here
21 talking about the fraud, the Michael Washington fraud and all
22 this stuff. We are here talking about the crime which she was
23 convicted of. The crime Ms. Owens was convicted of was false
24 use of a Social Security card. So that's where the argument
25 for aberrant behavior comes in.

6

1 Now, the Government -- and I think the probation --
2 they both respond talking about the Government's response goes
3 to her character, and the probation office's response that
4 goes to the fact that on two other occasions she attempted to
5 use a false Social Security card.

6 First of all, regarding the Government's argument, if
7 you look at the notes, the application notes to 5K2.0, it says
8 that if the defendant has no felony convictions -- now, the
9 fact that, you know, in the 1980s she had a, I guess for lack
10 of a better term, a bad run of luck.

11 As I read the application note to 5K2.20, she doesn't
12 have any felony convictions. None whatsoever. These, I
13 guess, three convictions, little convictions for misdemeanors
14 as well as some other things, those aren't felony convictions.

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15 She has not a felony record.

16 Now, twenty years ago, the misdemeanors that she
17 committed, those aren't egregious, and they're not something
18 that I think have any impact on whether or not you can depart
19 downward for aberrant behavior.

20 The probation office's response, quite honestly,
21 causes me a little bit more concern, because you're talking
22 here about two other instances where she attempted to use it,
23 a false Social Security card.

24 I would tell the Court that the 5K2.20 does not talk
25 about attempt. It talks about the actual crime that was done.

7

1 A fallback position would be that 5K2.20 talks about -- the
2 application note talks about whether or not the crimes would
3 be of limited duration.

4 My position would be that it was all the same kind of
5 thing, in the same kind of time frame regarding the sales of
6 these houses. I want to reiterate the fact that there was
7 only one time that she actually used false Social Security
8 numbers to buy and sell houses. And the main thing -- the
9 main thrust of my argument, in all seriousness, goes to the
10 fact: Why did she do this?

11 Now, she's loaded to talk about why she did this,
12 because this is the first time that she's ever been able to
13 basically be in front of a court and explain it. You are the
14 judge in the case that where the two judgments were entered.
15 And I had -- I got those two files, and I read through it, and
16 she was just like a speed bump for, you know, the union. And

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17 in her mind and in her heart, she doesn't owe that money.

18 Now, I guess before I started doing criminal defense
19 work, I went up a lot of times in smaller cases against
20 pro se's, and, you know, often times it's not a fair fight.
21 Well, when you come to federal court, it's even more of not a
22 fair fight.

23 And Judge Cahill had the case before you had it. And
24 there was some motions, I guess, that the union had filed for
25 summary judgment, or whatever you call it, against Ms. Owens,

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1 and Judge Cahill -- his orders were, you know, much -- they
2 were patient over a number of years, and finally it came time
3 where the hammer came down.

4 But for purposes of 5K2.0, what happened is, she went
5 in. She had these properties that she buys and sells. She
6 owns them, and like the two houses that were part of this
7 crime, the Minerva and Clover, Clover is over by the old
8 Riverview Gardens High School, right across from the old GM
9 plant, and it's an area that is coming up.

10 I drove by it when I was preparing for trial, and I
11 was kind of stunned at how some of the houses are really nice.
12 Some of them are run down, but it's an area that's coming up.
13 What Cassandra does, she buys some of these houses, fixes them
14 up, and then waits to sell them for a profit.

15 In this particular case, what she did with the Emma
16 property, Judge, is she knew she was going to get dinged for
17 the \$100,000 judgment that was entered against her, and so she
18 just lied about her Social Security number and told the people
19 that it was a different Cassandra Owens, and for Emma the

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20 union got nothing.

21 Now, I think it's important to add that with regard
22 to the Clover property, that was subsequently sold, and the
23 union got ten thousand bucks out of that. I think that -- and
24 these two instances where there's the attempts, I think that
25 they -- the Government's probably in a better position to tell

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1 this than I am, but as I understand it, they were kind of on
2 tour with those two attempted sales at Phoenix Title and the
3 Netco Title.

4 But you're allowed, for purposes of aberrant
5 behavior, to read the application note. It says that you're
6 allowed to take into consideration why she committed the
7 crime. And this isn't something where it was greed or
8 something like that. This is something where she didn't think
9 she owed these people \$100,000.

10 In the letter that she wrote you, it's interesting,
11 because she said, you know, as only, I guess, someone that
12 doesn't have a whole lot of education in the legal system, if
13 I owe them \$100,000, what does that mean how much I made?

14 And if you think about it, you know, just if she owes
15 them \$100,000, how much is it that she would have earned? And
16 she appeared -- she didn't even appear. It was all by paper,
17 and the lawyers just steam rolled her. They're doing their
18 job, I understand that, but then when you come to the crime
19 what we're here for hearing today for purposes of the aberrant
20 behavior, you can look at that. She has no felony
21 convictions, this is a one-time deal, and she did it for a

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22 reason.

23 And, you know, of course, I'm on the other side, but
24 I think it's justifiable reason in her heart and mind. So
25 that's the argument that I make for aberrant behavior.

10

1 The one for family circumstances, Mr. Reap filed a
2 response saying that hardships on families are part of
3 punishment in criminal offenses. This is the first time I
4 have ever filed a motion in like five hundred people I've
5 represented for family circumstances.

6 And Mr. Reap is 100 percent right about that, Judge,
7 that most people come in here and they whine and they say,
8 Well, I don't want to go away for my mom; I don't want to go
9 away from my house --

10 THE REPORTER: Could you slow down, please?

11 MR. STOBBS: I'm sorry. The question, though, Judge,
12 is, what degree does the punishment to the family fit within
13 the heartland of cases? And my position is that it's just --
14 in this case it's absolutely outside of the heartland.

15 The reason is -- and I think I tried to set it out as
16 well as I could in my sentencing memorandum -- that this -- if
17 you put Cassandra in jail, this -- she is going to rebound
18 from it because, you know, every time -- she's always
19 rebounded from stuff.

20 The impact that this is going to have on her little
21 girls is just -- it's just unfair. It would be horrible.
22 Cassandra is going to talk to you, and she's going to tell you
23 that her little girls, Kim and Katie, if she is incarcerated,
24 they will go with her brother to stay. Her brother lives in

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25 Maplewood.

11

1 The two girls go to school in Rockwood. I forgot how
2 the acronym is, but I refer to it as the desegregation
3 program. To be eligible for the deseg program, there are
4 three things that have to be necessary: You have to have good
5 grades, you have to be well-behaved, and you have to live in
6 north St. Louis.

7 These two little girls, they get good grades. They
8 are well-behaved. They live in north St. Louis right now. If
9 Cassandra goes to prison, the two girls will go to live with
10 her brother in Maplewood.

11 So I asked Cassandra, Well -- there's questions that
12 I think -- and again, I think her position will be, Well, why
13 can't they stay with someone else? Why can't they do this?
14 Why can't they do that?

15 I think there's only a certain number of people that
16 these two girls can stay with. If she goes to jail, she's
17 going to lose her house, so we're not here whining about that.
18 She is going to lose the house that she lives in, but she'll
19 somehow rebound from that.

20 Her little girls, they go to school in Maplewood.
21 They can't get back into the deseg program. She's going to
22 tell you that Kim -- it took three years for her to get into
23 the deseg program. She is a freshman. So maybe it will take
24 another three or four years for her to get in. By that time,
25 it's done.

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1 And Cassandra's someone -- she's got a GED. She's
2 went a little bit further than a GED, but she's trying to give
3 these little girls a better life than what she had. And this
4 isn't some liberal defense lawyer saying feel sorry for her
5 little girls. This is something that will have a real impact
6 on them.

7 And Katie is someone that she was -- I think she's in
8 first grade, and she was able to get in quicker, and she might
9 get back into deseg quicker, but it was something that the
10 little girls, they would have -- Kim would go to Beaumont.

11 The reason that she does not want Kim to go to
12 Beaumont is because academically it's not as good as
13 Marquette. It's a dangerous school. There's gangs. And she
14 would have to worry about her.

15 And, you know, I understand that the position the
16 Government's taking. And to be honest, Judge, you know, I'm
17 in the heartland of cases because if, God forbid, my mom or
18 dad had gone to jail, or something like that, and I couldn't
19 have, you know, continued in a private boarding school, I
20 might have ended up just in like -- you know, in a Marquette
21 kind of school.

22 This isn't the situation. This is someone who is
23 basically poor and uneducated and is trying to give her
24 daughters some sort of a future. And I just -- I have to tell
25 you that I think that this is a case that for those kind of

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1 family circumstances makes it unique, and it makes it outside
2 of the heartland, and I think that for that purpose you can
3 enter an order of downward departure.

4 And the final thing is that the 5K2.0, the catchall,
5 I don't know -- I don't know how -- to be honest, I don't know
6 how to argue that, because I think that the family
7 circumstances is a case that really rips this out of the
8 heartland of cases.

9 The heartland of cases are, I think, kind of like
10 what the Government said in its response: that you have a
11 defendant who is just a run-of-the-mill case that says, Well,
12 I don't want to go to jail or -- you've seen it, Judge. They
13 think of some hardship.

14 This isn't something that Cassandra's inventing. I
15 think that when you talk to her, you know, she enunciates it
16 much better than I can ever hope to because it's something
17 that it's personal and it's real to her.

18 But I think for those three reasons, one of those
19 three reasons certainly -- aberrant behavior, family
20 circumstances, or the catchall -- you can go down from a year
21 and a day sentence, which is hopefully what you'd give if she
22 were incarcerated, down to a twelve month sentence of six
23 months of home confinement and six months of probation. And
24 if Cassandra could say something?

25 THE COURT: Yes. Ms. Owens, why don't you say

14

1 anything you wish to at this time. This is your chance, okay?

2 THE DEFENDANT: Yes, ma'am. It's really a whole lot

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3 that I really would like to say. But more so than anything, I
4 -- when you speak of behavior, okay, I don't really know what
5 you guys consider it as to be, but I can consider myself not
6 to be the type of person that I've been characterized to be.

7 I'm a hard-working individual. My morals and my
8 value has been established since birth. In this situation
9 here that I am in, yes, I did use a false Social Security
10 number, and I'm sorry that I did use the false Social Security
11 number.

12 The reason, you know -- it's always a reason for a
13 person doing what they do, okay? And my reason at that time
14 was, there was a situation where I had a cleaning service, and
15 the union stepped in and they shut me down. And when they
16 shut me down, years later they sent me letters saying that I
17 owed them \$100,000, okay?

18 I responded wanting to know how I owed them this
19 money, but nobody could really actually sit down and tell me
20 exactly how I owe this money no more than they want their
21 money. So I came here -- I believe it was downstairs -- and
22 at any rate, the lady told me that I could fill out a form and
23 submit the form, and I did just that. So I still ended up
24 having to pay this \$100,000, okay?

25 So I buy and sell houses. I've been buying and

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1 selling houses now for maybe -- this is my sixth year. This
2 is the year that I was hoping that things would kind of -- I
3 could see myself prospering. I will say it that way, okay?

4 And the property that I had, the first property that
5 I had, the Emma property, was the first time I ever used a

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6 false Social Security number, and the reason being, as I
7 stated there is always a reason, is because I didn't feel like
8 I owed the union this kind of money.

9 You know, hard working, I put my monies together, and
10 then they want me to just take my money and give them
11 something that I don't actually feel -- or that I know that I
12 do not owe them, okay? So yes, I did, I did use a false
13 Social Security. And if I stood here and said I didn't, I
14 would be lying, okay?

15 As far as my daughters, I'm a -- they're
16 well-behaved, okay? They are well-behaved. They are
17 well-disciplined young ladies, okay? And we're a family,
18 okay? We're a family. We've always been a family.

19 And my oldest daughter, Kim, she is an A and B
20 student right now. She attends Marquette. I wasn't going to
21 stop until I got her into a school that was going to challenge
22 her. She attended two different academies but not the
23 academies that would challenge her. They were new schools,
24 and they weren't a challenge. She had been on a waiting list
25 since sixth grade to get into -- it's called VICC, voluntary

16

1 interdistrict --

2 THE COURT: Coordinating council.

3 THE DEFENDANT: Exactly. And we waited three years.
4 I mean, I went back and forth, back and forth, and I was
5 determined to get her in this school. And she's in there now.
6 She's a freshman. She is a cheerleader on the cheerleader
7 squad. She attends other programs that they have to develop

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8 her socially and academically, and, you know, she's a good
9 student.

10 And I would really hate for this to be taken away
11 from her because of something that I did, you know. It's
12 something that I did. Yes, I did. It's something that I did,
13 but I don't feel like she should be punished.

14 And as far as a punishment, Your Honor, to be
15 perfectly honest with you, I'm just going to tell you, I feel
16 like I've been punished long enough. I've been dealing with
17 this for over a year now, for over -- it was a year in
18 September. Last September, this September, this October or
19 November, for a year and two months.

20 And emotionally, emotionally, you know, it's really
21 taken a toll over me emotionally, you know, but I just don't
22 want my daughters to end up in a school like Beaumont or
23 Northwest or Vashon, because I've fought too hard. We've
24 fought too hard.

25 When I say "we," she would always say, Mama, did you

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1 go up there yet? Mama, did you call these people? Mama, what
2 did they say? Mama, I'm tired of this school. And that's
3 where I am with her. That's where I am. We fought this fight
4 together.

5 And as far as my daughter going to live with my
6 brother, if she -- I tell you this, first of all, okay? He's
7 a heart patient, okay? He's a heart patient. And if she is
8 taken out of that school into another school and, God forbid,
9 I did go away, and when I come back, I would not be allowed to
10 -- she would not be allowed to be put back into the same

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11 school. She would be thrown right back on the waiting list,
12 and I don't really know how long the waiting list is going to
13 be. And if it's anything like it was this time, it's over.
14 It's over. It's just as simple as over.

15 Judge, I beg the Court, if I can go into a halfway
16 house, anywhere, I beg the Court to please, you know, just
17 don't send me away, you know. Please don't send me away.

18 THE COURT: Anything further?

19 THE DEFENDANT: No, ma'am. That's it. Thank you.

20 THE COURT: Mr. Bodenhausen?

21 MR. BODENHAUSEN: Yes, Your Honor. A couple of
22 things. I really don't know enough to say anything whether or
23 not her daughter would or would not be able to continue in her
24 school. You know, I don't have the facts on what the school
25 -- so I'm not going to address that actual fact.

18

1 But what I would like to talk about a little bit is
2 the, first of all, in the 5K2.20, the aberrant behavior, this
3 isn't just a single occurrence. By the admission in the plea
4 agreement, she provided a false Social Security on several
5 occasions spaced months apart.

6 The Emma transaction occurred in May of 2001; the
7 transactions that were ultimately alleged in the indictment,
8 that was superseded later. Also, she provided a false Social
9 Security in that transaction, too, the first one at Phoenix
10 Title on December 7. So to say it's a single occurrence, it's
11 not a single occurrence. It's multiple occurrences of the
12 same type of conduct.

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13 Further, as far as the actual other conduct, the
14 fraud in connection with the sales of Clover and Minerva,
15 again, there's a transaction -- this is from the plea
16 agreement. There's a transaction on December 7 in which the
17 transaction did not close. And the plea agreement -- as the
18 plea agreement states, she was advised that it was not closed
19 due to fraud.

20 Now, she goes about seven days later and tries to do
21 it again. The same transaction, the same people. So I don't
22 know if we can say that as far as aberrant behavior we have a
23 situation with just a single occurrence, but we actually have
24 multiple occurrences of different fraudulent conduct. So I
25 would like to at least, you know, make that point. I don't

19

1 think that that departure is met on the facts as in the --
2 stated in the plea agreement.

3 As far as the family ties go, I will just refer the
4 Court to -- the policy statement says that they are not
5 ordinarily relevant. The case law, as I'm sure Your Honor is
6 aware, repeatedly states that's a discouraged basis for
7 departure.

8 And the need to care for minor children, the case law
9 again in this circuit says that it's not any different than
10 other families in which the care giver is facing imprisonment.
11 And I just would refer Your Honor to a case that kind of lists
12 several fact patterns, United States v. King at 280 F.3d 886.

13 It refers to -- in that case the district court had
14 been reversed on granting a downward departure on family ties,
15 but it lists several cases and samples where the Eighth

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16 Circuit thought that it was not supported.

17 One was in which the defendant was the sole care
18 giver to three children with a disabled wife. Another one was
19 a single parent of five children, one of whom who had a
20 neurological disorder. The third case they list is a single
21 parent with two children and a care giver to a diabetic
22 mother.

23 I'm not trying to diminish her circumstances by
24 saying that. I'm just trying to show you that these are the
25 type of cases that our courts have said are not sufficient

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1 under this family ties departure basis.

2 And, I think, Your Honor, other than that, I just
3 would like to mention, as Mr. Stobbs has said, this was a
4 great deal. Apparently, it wasn't great enough.

5 And so I don't know what else to tell you. I think
6 you have all the facts and our positions, but I don't think
7 either of those bases that have been offered are actually
8 supported by the law or supported when the facts of this case
9 are applied to the law as I understand it.

10 And Mr. Reap was checking about the issue of whether
11 she had a prior felony. She had a stealing over one-fifty,
12 but I've been informed it was amended to a misdemeanor at the
13 time of her sentencing, so that is not --

14 THE COURT: The conviction was amended down, which is
15 a common thing. Yeah, that's a common thing on that type of
16 stealing over -- at least back at that time period.

17 MR. BODENHAUSEN: Other than that, Your Honor, I

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18 really have nothing further. I will stand on our writing.

19 MR. STOBBS: It's interesting, first of all, the
20 Government's response to the 5K2.20 made great hay out of the
21 fact that she had these little misdemeanors twenty years ago.
22 Now, their argument before you later is talking about it's
23 more than one transaction.

24 My reading of 5K2.20 says that it's only one
25 occurrence, and that's the occurrence that she's here for.

21

1 That's the only crime she's committed. Now, I consider --

2 THE COURT: Wait a minute. You're saying it's
3 aberrant behavior, and what you're saying is, you want to
4 argue that the crimes she was convicted of was aberrant
5 behavior, and you're telling me I can't consider what she --
6 what's in the plea agreement about things she did other times.

7 MR. STOBBS: No. She had two other attempts. I
8 mean, there's two other attempts. What I'm telling you is
9 that my backup position would be that it's kind of a
10 one-transaction deal. Every time she made a closing, you
11 know, she would use a fake Social Security number. That's
12 really all the argument I can make in terms of that. I
13 understand that.

14 And I'm not going to try to -- it's a very difficult
15 loophole to walk through, but I think that that's something
16 that -- the reading of the language, that's what it says.

17 With regard to the family circumstances, this case is
18 different than any of those other cases because here -- and
19 I've read all those cases. I've read all the cases. But all
20 those cases go back to the kind of people that -- where I've

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21 represented and they want me to make this kind of an argument
22 for downward departure because their mom's sick or something
23 like that.

24 What makes this case unique -- and there is a First
25 Circuit case that says that the downward departure -- the

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1 judge didn't give it, and it was upheld. It wasn't given to
2 the defendant. It was given to the family members.

3 This is something that the downward departure for
4 family circumstances, Judge, it is totally different than any
5 of those other cases because the family circumstances here is
6 the impact, that just horrible impact that it's going to have
7 on these little girls.

8 You know, I can speak very forcefully, but I'm not
9 going to say anything more because I think that what Cassandra
10 said, the way she said it, was much more reasoned and much
11 better than anything I could ever hope to say. I think that
12 that is something that you can hook onto with regard to the
13 departing downward for family circumstances.

14 THE COURT: Hold on a second. All right. Here is
15 what I'm going to do. I am going to depart from the
16 sentencing guidelines on the basis of family circumstances
17 outside the heartland of the situations contemplated by the
18 sentencing guidelines, and I am going to sentence the
19 defendant to a period of three years' probation with six
20 months' home confinement.

21 This is a departure from the sentencing guidelines
22 done over the objection of the Government. I find that the

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23 defendant -- I reject the defendant's argument for aberrant
24 behavior.

25 I agree with the Government's position that where we

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1 have repeated use, a false use of a Social Security number or
2 attempted using the Social Security number, just not
3 completing anything, that this is not aberrant behavior. And
4 I believe also that the prior criminal conduct of the
5 defendant shows she's committed other property crimes in the
6 sense of -- there are stealings, there are shopliftings, you
7 know, those property crimes from some time ago indicate that
8 this is not aberrant behavior as that departure is
9 contemplated by the guidelines.

10 Now -- and I don't find that there's any other
11 factors for the catchall departure, but I do find the family
12 circumstances warrant a departure in this case. This is
13 highly unusual. I don't usually depart on this basis.

14 I find that normally the answer to everyone's
15 complaints about this is that, you know, you should have
16 thought about your children when you committed the crime. And
17 I will say that to Ms. Owens: You should have thought about
18 your children when you committed that crime.

19 However, in this situation, because of the particular
20 issue involving the defendant's children, their residence in
21 the city of St. Louis, their participation in the voluntary
22 desegregation program, which as I understand the program, what
23 defendant and defense counsel have stated is correct. There
24 are lengthy waiting lengths. It is difficult to get in,
25 especially at the high school level.

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1 We have a child here who is a freshman in high
2 school, an A student, a cheerleader in the program, and if I
3 send her mother to jail, that child's life will be changed.
4 And that child's life will be changed in a way that, you know,
5 she will not be able to participate in the program if she
6 lives in Maplewood, not unless somebody lies about it, which
7 this defendant can't lie about because she's going to be on
8 probation, and she can't lie to anybody about anything or
9 she'll go to jail.

10 So if she's honest, her child will suffer, and I
11 don't believe that this child, under these particular
12 circumstances, should have to pay the price for her mother's
13 crime.

14 Now, that is not to say that her mother shouldn't
15 have to pay the price, because I believe Ms. Owens should be
16 punished for this. You have not suffered enough punishment
17 yet, Ms. Owens. You have not been to jail. You've not been
18 on probation or done the other things that I'm going to
19 require.

20 I am going to require six months' home confinement.
21 I am going to require 40 hours of community service. I also
22 think you need to understand that those judgments that were
23 entered against you were entered lawfully. The Rules of Civil
24 Procedure were followed. You were given notice of the
25 lawsuits. You had an opportunity to defend them.

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1 And as I recall them and from my review of the files,
2 you have a reason why you don't think you're liable, but under
3 the law, you are liable, and those are final judgments. So I
4 frankly don't understand how you can be in the business you're
5 in and not -- and avoid those judgments, because I'm afraid
6 this is going to recur as a problem.

7 And I'm not going to tell you you can't be in that
8 business, but I'm going to tell you that, you know, you better
9 be very careful because I am concerned that you may have
10 temptations to commit future crimes. And if you do that,
11 you're going to go to jail, and it won't matter that it may be
12 hard on your children if you violate these conditions.

13 This is the one-time shot. But it is for this very
14 specific reason because of this specific child in this
15 specific program that I am departing. And I probably -- and I
16 don't -- well, I believe it's appropriate under the
17 circumstances of this case, and that's why I'm doing it over
18 the Government's objection.

19 So for those reasons I will now formally state the
20 sentence. It is the judgment of this Court this the defendant
21 is hereby placed on probation for three years. While on
22 probation, the defendant must comply with the standard
23 conditions that have been adopted by this Court and with the
24 following additional conditions: The defendant must
25 participate in the home confinement program for a period of

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1 six months. During this time, you must remain at your place

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2 of residence except for employment and other activities
3 approved in advance by the probation office.

4 You must maintain a telephone at your place of
5 residence without call forwarding, modems, caller ID, call
6 waiting, portable cordless telephones, or answering machines,
7 or any other feature or service that would interfere with the
8 operation of electrical monitoring equipment.

9 At the approval of the probation office, you will
10 wear an electronic monitoring device, which may include global
11 positioning system and/or a random tracking, and follow
12 electronic monitoring procedures specified by the probation
13 office.

14 You also must refrain from any unlawful use of a
15 controlled substance and must submit to a drug test within 15
16 days of beginning supervision and at least two periodic drug
17 tests thereafter. Additionally, as a condition of probation,
18 you must perform 40 hours of community service at the
19 direction of the probation office.

20 I do think that the defendant does not have the
21 ability to pay a fine and, therefore, none is imposed. It is
22 ordered that the defendant shall pay to the United States a
23 special assessment of \$100, and that is due immediately.

24 This sentence is a departure from the sentencing
25 guidelines on the basis that I have stated and is made at the

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1 defendant's motion and over the objection of the Government.

2 Ms. Owens, as part of your plea agreement in this
3 case, you did waive your right to appeal this sentence, and

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4 therefore, I'm not advising you of any appeal rights that I
5 normally would.

6 You should understand, though, that under the terms
7 of that plea agreement, if I departed from the guidelines
8 under -- with over the objection of one side or the other, the
9 other side has the right to appeal. So what that means in
10 this case is, the Government does have a right to appeal this
11 sentence, and so you should be aware of that. So that is my
12 sentence for the reasons stated.

13 Anything further at this time?

14 MR. STOBBS: No, ma'am.

15 THE COURT: The defendant is -- I guess the original
16 indictment, to the extent it hasn't already been, is dismissed
17 since she pleaded to the superseding information.

18 MR. BODENHAUSEN: That's what I was going to ask you,
19 Your Honor. I think that's my understanding too.

20 MR. STOBBS: It is.

21 MR. BODENHAUSEN: If not, we move to dismiss those --

22 THE COURT: Right. If it wasn't done before, it will
23 be done now, and that's a technical matter the clerk can
24 handle.

25 MR. BODENHAUSEN: Mr. Reap has asked that I file a

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1 formal motion to dismiss the original indictment, so I will
2 file that on paper.

3 THE COURT: That's fine, if you think that's
4 appropriate. I can't ever remember how we're supposed to do
5 that when there's a superseding information. So either way.
6 As long as you all clean it up technically, that's fine with

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9 I further certify that the foregoing is a true and
10 accurate transcript of the proceedings held in the
11 above-entitled case and that said transcript is a true and
12 correct transcription of my stenographic notes.

13 I further certify that this transcript contains pages 1
14 through 30 inclusive and that this reporter takes no
15 responsibility for missing or damaged pages of this transcript
16 when same transcript is copied by any party other than this
17 reporter.

18 Dated at St. Louis, Missouri, this 4th day of November,
19 2003.

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/s/Shannon L. McCreary
Shannon L. McCreary, RPR, CSR, CCR
Official Court Reporter

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