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NO. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 2018

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Donavan Cross - Petitioner,

vs.

United States of America - Respondent.

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Eighth Circuit

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**APPENDIX TO PETITION FOR WRIT OF CERTIORARI**

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Brad Hansen  
Assistant Federal Defender  
701 Pierce Street, Suite 400  
Sioux City, Iowa 51101  
TELEPHONE: (712) 252-4158  
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ATTORNEY FOR PETITIONER

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**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 17-1982

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United States of America

Plaintiff - Appellee

v.

Donavan Cross

Defendant - Appellant

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Appeal from U.S. District Court for the Northern District of Iowa - Sioux City  
(5:16-cr-04067-MWB-1)

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**JUDGMENT**

Before WOLLMAN, LOKEN and MURPHY, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

April 30, 2018

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

Appendix Page 1 of 24

Adopted April 15, 2015  
Effective August 1, 2015

**Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.**

**V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari**

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States*, 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file *pro se* a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California*, 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing *pro se* a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petition for writ of certiorari.

United States Court of Appeals  
For the Eighth Circuit

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No. 17-1982

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United States of America

*Plaintiff - Appellee*

v.

Donavan Cross

*Defendant - Appellant*

---

Appeal from United States District Court  
for the Northern District of Iowa - Sioux City

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Submitted: December 14, 2017

Filed: April 30, 2018

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Before WOLLMAN, LOKEN, and MURPHY, Circuit Judges.

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LOKEN, Circuit Judge.

A jury convicted Donavan Cross of being a prohibited person in possession of a firearm and ammunition in violation of 18 U.S.C. §§ 922(g)(1), (3), 924(a)(2). The district court<sup>1</sup> sentenced Cross to 120 months in prison. Cross appeals his conviction and sentence, raising several issues. We affirm.

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<sup>1</sup>The Honorable Mark W. Bennett, United States District Judge for the Northern District of Iowa.

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## **I. The Suppression Issue**

On June 4, 2016, Andrea Cross called 911 to report a “physical” disturbance between her grandson, Donavan Cross, and his girlfriend at Andrea’s home in Sioux City, Iowa. Andrea told the dispatcher she had left the home and responding officers should “use the front door” to enter. Officers Paul Yaneff and William Enockson soon arrived. As they approached the front door, they heard a woman scream inside. Moments later, Cross’s girlfriend, Sophia Finauga, exited the house, distraught and exhibiting a bruised eye. Yaneff called her but Finauga ran back into the house.

Cross, known to be violent and to carry weapons, was wanted on a warrant. Officer Yaneff requested backup. Other officers arrived and surrounded the house. Using a loudspeaker, Yaneff repeatedly ordered Cross to exit the home with his hands empty. Finauga came out first. Yaneff directed her to safety after confirming Cross was still inside. Cross finally emerged, naked except for a hand towel, and was arrested on the outstanding warrant. Cross said he wanted to get clothes from the home and led Yaneff and two other officers inside to his clothes lying in a hallway. On the left side of the hallway was a bedroom; Yaneff testified Cross tried to close the bedroom door with his foot while they were picking up his clothes. As they were leaving, the officers asked Cross if they should lock or shut the front door. Cross replied, “[I]eave it alone just in case [Finauga] goes back inside.”

After questioning Cross about Finauga’s eye injury and whether she lived with him, Officer Yaneff spoke with Finauga. She said her eye injury resulted when Cross assaulted her four days earlier. Meanwhile, Sergeant Jacob Hoogendyk called the number Andrea Cross had provided. She said that Finauga “had recently moved back into the residence with Donavan,” the two had many verbal fights, and “[Finauga] can go get her stuff, and then I want her gone.” The Officers helped Finauga arrange for her mother to pick her up. Yaneff asked Finauga if she wanted to collect her

belongings from Andrea Cross's home to take to Finauga's mother's home. Finauga said yes and agreed that two officers should accompany her inside the home.

Inside the home, Finauga walked into the bedroom, collected a makeup bag, and began filling two duffel bags with her belongings. When she picked up a t-shirt lying atop a hamper, a nine-millimeter Ruger gun fell on the floor, ejecting the gun's loaded magazine. Finauga claimed she knew nothing about the gun. Officer Yaneff, standing in the doorway, told Finauga to back away from the gun, collect her belongings, and leave the room. Yaneff proceeded to apply for a search warrant.

Meanwhile, Andrea Cross returned to the rear of her home. Hoogendyk explained they found a gun, were obtaining a search warrant, and asked who used which rooms. Andrea Cross said the bedroom was Donavan's, a room across the hall was his music studio, and he used the bathroom between those rooms. During the ensuing warrant search, officers found a methamphetamine pipe containing burnt residue, clear plastic baggies, mens clothing, and mail and documents addressed to Donavan Cross in the bedroom where the gun and magazine were found. In the studio room, they found live ammunition for the gun, drug paraphernalia, and a plastic bag containing a substance that field-tested positive for methamphetamine. In the bathroom, they found more drug paraphernalia, a holster that fit the gun, and Donavan Cross's cellphone and debit card.

Before trial, Cross moved to suppress the evidence seized from his home, arguing Finauga lacked apparent authority to consent to the officers' entering without a warrant while she collected her belongings. After an evidentiary hearing, the magistrate judge<sup>2</sup> recommended denying the motion, concluding Finauga had actual and apparent authority to consent to the entry. Adopting all but one of the magistrate

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<sup>2</sup>The Honorable C.J. Williams, United States Magistrate Judge for the Northern District of Iowa.

judge's findings, the district court denied the motion to suppress, concluding the entry into Andrea Cross's house before the warrant issued was constitutionally permissible because it was within the scope of Andrea Cross's initial consent to enter her home to resolve a domestic disturbance, and because the officers reasonably believed that Finauga had apparent authority to consent to the officers' entry. In reviewing the denial of a motion to suppress, we review the court's fact findings for clear error and its legal conclusions *de novo*. United States v. Amratiel, 622 F.3d 914, 915 (8th Cir. 2010), cert. denied, 562 U.S. 1247 (2011).

The general prohibition against warrantless entry into a home does not apply "to situations in which voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises." Illinois v. Rodriguez, 497 U.S. 177, 181 (1990); see United States v. Matlock, 415 U.S. 164, 171 (1974). "Consent is valid when an officer reasonably relies on a third party's demonstration of apparent authority over the premises." United States v. Lindsey, 702 F.3d 1092, 1096 (8th Cir.) (quotation omitted), cert. denied, 570 U.S. 912 (2013). A third party has apparent authority when "the facts available to the officer at the moment . . . warrant a man of reasonable caution in the belief that the consenting party had authority over the premises." Amratiel, 622 F.3d at 916 (quotation omitted). Whether the police reasonably rely "on indicia of common authority . . . is a question of law that we review *de novo*." United States v. Almeida-Perez, 549 F.3d 1162, 1170 (8th Cir. 2008).

On appeal, Cross argues the police had no reason to believe they had valid consent to enter because they did not adequately investigate Finauga's apparent authority, and because Andrea Cross's initial consent to enter the home lapsed once the domestic disturbance had been resolved. But Cross ignores a litany of facts permitting reasonable officers to believe they had consent to accompany Finauga into the home to collect her personal belongings: After the officers arrived, Finauga exited and reentered the house freely. Cross, under arrest and leaving with his

clothing, told the officers to leave the front door open in case Finauga went back inside. Finauga told an officer she had been with Donavan Cross for “a while” and confirmed she had personal belongings in the home. Finauga had to call her mother to come get her, suggesting she was not a temporary visitor. And Andrea Cross told Sergeant Hoogendyk that Finauga “had recently moved back into the residence with Donavan,” that the two got in numerous verbal fights, and that “[Finauga] can go get her stuff, and then I want her gone.”

In these circumstances, we agree with the district court that the officers had a reasonable belief (i) that Finauga had apparent authority to consent to their entry into the house with her, and (ii) that entry to accompany Finauga while she collected her belongings to move elsewhere was directly related to the entry that Andrea Cross authorized in her initial call for assistance. Compare Almeida-Perez, 549 F.3d at 1170-71 (third party had apparent authority to consent; he was sitting on the porch when officers arrived, invited the officers inside, and proceeded without knocking or seeking permission); United States v. Hilliard, 490 F.3d 635, 639-40 (8th Cir. 2007). We affirm the denial of Cross’s motion to suppress.

## **II. An Evidentiary Issue**

At trial, the district court admitted over Cross’s objection the jail recording of a telephone conversation Cross had with Finauga after his arrest in which he urged Finauga to consider that Cross would face much harsher consequences if convicted than Finauga, given his criminal background. Cross asked, “so do you got me or what?” Finauga responded, “yeah, I’m gonna go.” Cross said he did not do anything wrong; Finauga responded, “I know you didn’t.” Later, Cross asked, “it was yours?” to which Finauga responded, “yes,” in what Cross acknowledges was an “exasperated tone.” Cross argued, as he does on appeal, that the call had little probative value because Cross did not admit the firearm or ammunition were his and, in fact, maintained his innocence. In denying his motion for a new trial, the district court

explained the call was probative of Cross's possession because it revealed "Cross's attempt to cajole Finauga into assuming responsibility for the pistol."

On appeal, Cross argues the district court abused its discretion in admitting the call because "its probative value is substantially outweighed by a danger of . . . unfair prejudice." Fed. R. Evid. 403. He contends that any minimal probative value was outweighed by the unfair prejudice of revealing he was calling from jail. See Estelle v. Williams, 425 U.S. 501, 504 (1976). As the district court noted, neither the government's witnesses nor the recording alluded to Cross being incarcerated. Whatever the jury might have inferred from the recording was a far cry from the prejudice that resulted from having to wear prison garb in Williams, which was "likely to be a continuing influence throughout the trial." Id. at 505; see United States v. Johnson, 624 F.3d 815, 821-22 (7th Cir. 2010). That Cross used profanity and sounded "frantic" in the call was not *unfair* prejudice. There was no abuse of the district court's substantial evidentiary discretion. See United States v. Harris-Thompson, 751 F.3d 590, 600 (8th Cir.) (standard of review), cert. denied, 135 S. Ct. 415 (2014).

### III. Sufficiency of the Evidence

Cross appeals the district court's denial of his post-trial motion for judgment of acquittal or a new trial under Rule 29 and Rule 33 of the Federal Rules of Criminal Procedure. We apply the same standard of review to the district court's denial of a Rule 29 motion for judgment of acquittal as we do to a sufficiency of the evidence challenge. United States v. Cook, 603 F.3d 434, 437 (8th Cir. 2010). "We view the evidence in the light most favorable to the government, resolving evidentiary conflicts in favor of the government, and accepting all reasonable inferences drawn from the evidence that support the jury's verdict." Id.

Cross argues the evidence was insufficient to convict him of being a prohibited person in possession of a firearm or ammunition because the government introduced insufficient evidence that he knowingly possessed the firearm and ammunition found in two rooms in Andrea Cross's house. Constructive possession may support a conviction under 18 U.S.C. § 922(g) and "is established if the person has dominion over the premises where the firearm is located, or control, ownership, or dominion over the firearm itself." United States v. Maxwell, 363 F.3d 815, 818 (8th Cir. 2004), cert. denied, 543 U.S. 1154 (2005). The government may prove constructive possession through circumstantial evidence but "must show a sufficient nexus between the defendant and the firearm." United States v. McDonald, 826 F.3d 1066, 1072 (8th Cir. 2016).

At trial, the government introduced evidence that officers found mens clothing and documents addressed to Donavan Cross in the bedroom where the gun and magazine were found, and that Cross tried to shut the door to that room when officers accompanied him to gather his clothes. Officer Yaneff testified he told Cross that officers found a gun in the bedroom and that Cross, a convicted felon, could not possess a firearm. Cross asserted the gun was his grandmother's and it was not found on his person. When Yaneff explained constructive possession, Cross denied the bedroom was his and claimed only the studio room was his. Andrea Cross testified the bedroom was his and she "wasn't supposed to go in there." Andrea also testified that Cross used the music studio where officers found ammunition that fit the gun. In the bathroom between those rooms, they found Cross's debit card beside a holster that fit the gun. The jail call between Cross and Finauga, in which he tried to convince her to claim ownership of the gun, supported Cross's possession. And both prosecution and defense experts testified that a "mixture" of at least three persons' DNA was found on the gun and magazine, and that Cross was a likely source of the DNA, though possibly by transfer through an intermediary.

Cross argues there was little direct evidence connecting him to the gun -- it did not bear his fingerprints, the DNA evidence was inconclusive, he never admitted possessing the gun and ammunition, and the government presented no eyewitness testimony linking him to the gun. However, circumstantial evidence of possession alone may support a verdict. As the district court explained, “the jury could easily have found that the [bed]room was Cross’s bedroom.” Andrea Cross corroborated Donavan’s statement that he used the music studio, where officers found live ammunition. The DNA evidence, even if not conclusive, supported other evidence of possession. As the district court noted, the government did not have to prove that Cross had *exclusive* possession of the firearm. Drawing all inferences in favor of the guilty verdict, we conclude there was sufficient evidence of actual or constructive possession to support Cross’s conviction.

#### **IV. Sentencing Issues**

At sentencing, the district court determined that Cross’s total offense level is 22, agreeing with the Presentence Investigation Report (PSR) that his prior felony conviction for possession with intent to deliver marijuana was a controlled substance offense. See U.S.S.G. §§ 2K2.1(a)(4)(A), 4B1.2(b).<sup>3</sup> Cross is in Criminal History Category V, resulting in an advisory guidelines sentencing range of 77 to 96 months imprisonment. After carefully weighing mitigating sentencing factors urged by Cross, the district court imposed a statutory maximum 120-month sentence, explaining:

I think Mr. Cross has proven himself to be a habitual domestic abuser on five occasions including assaulting his own mother. . . . Of course, he

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<sup>3</sup>On appeal, Cross argues this was prejudicial error that increased his offense level from 14 to 20. Our recent decision in United States v. Maldonado, 864 F.3d 893 (8th Cir. 2017), cert. denied, 138 S. Ct. 702 (2018), which involved the same statute, Iowa Code Ann. § 124.401(1)(d), forecloses this contention.

was totally disrespectful and a complete jerk to his grandmother in the phone conversation. But assaulting your own mother and inflicting bodily injuries? I don't care what a mother could do. That's reprehensible. And then to do it to the various mothers of his children. . . . I think Mr. Cross is exactly in the crosshairs of who Congress intended to keep off the streets if they possess a firearm. . . . You are violent. And the primary goal of my sentence in this case is to protect the public from further violence by you.

On appeal, Cross launches a volley of challenges at this sentence.

1. First, Cross argues the district court abused its discretion in admitting two jail call recordings and a grand jury transcript at sentencing. “As a general proposition, a sentencing judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come.” Nichols v. United States, 511 U.S. 738, 747 (1994); see United States v. Atkins, 250 F.3d 1203, 1212 (8th Cir. 2001). “In resolving any dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.” U.S.S.G. § 6A1.3(a).

In the first jail call, prior to the hearing on his motion to suppress, Cross angrily instructed his grandmother to testify that she did not consent to let anyone enter her home. Cross peppered his comments with profanity and verbal abuse, prompting the district court to remark, “I cannot believe somebody could be so disrespectful to their grandmother . . . . It means to me he’s a disgusting individual.” The second was a call to Finauga after trial in which Cross, using offensive language, attributed his conviction to her failure to testify. Finauga replied that Cross was simply avoiding responsibility for his actions and implied that Cross had been waving around the firearm found in the bedroom in Andrea Cross’s house.

Cross argues these calls were not relevant to any contested issue at sentencing and were unfairly prejudicial, prompting the district court to call him a “disgusting individual” and an “idiot.” However, the recorded calls related directly to the offense of conviction. Cross’s comments to his grandmother and to Finauga were relevant to 18 U.S.C. § 3553(a) sentencing factors, evidencing his lack of respect for the law, refusal to take responsibility for his actions, and “disgusting” conduct. Finauga’s vague reference to Cross waving the gun around was also relevant to the district court’s finding that he has “a history of displaying weapons.”

The grand jury transcript was testimony by Reyna Anderson, the mother of one of Cross’s children, recounting an incident in August 2015 when Cross dragged her by her hair out of her bed, hit her violently with a shirt and phone charger, and broke her cellphone. Anderson also testified that Saydie Grier, the mother of one of Cross’s other children, told Anderson that Cross “would hit [Grier], [and] pull her around.” Cross argues that Anderson’s grand jury testimony was unreliable because charges that he assaulted Anderson were dismissed and he was never charged with assaulting Grier. As neither Anderson nor Grier testified at trial or sentencing, Cross complains he was denied an opportunity to cross-examine them, yet the district court relied on these allegations in finding that he is a “habitual” domestic abuser.

We have repeatedly upheld the consideration of grand jury testimony at sentencing; it “has indicia of reliability because it was given under oath and subject to the penalties of perjury.” United States v. Morin, 437 F.3d 777, 781 (8th Cir. 2006); see United States v. Wallace, 408 F.3d 1046, 1048 (8th Cir.), cert. denied, 546 U.S. 1069 (2005). That Cross was never convicted of assaulting Anderson or charged with assaulting Grier does not render Anderson’s grand jury testimony unreliable. Cross did not object to the PSR’s description of his assault against Anderson, and Anderson’s testimony recounting assaults against Anderson and Grier was consistent with his behavior toward other women including his mother and Finauga. Although Cross argues he lacked an opportunity to cross-examine Anderson or Grier, “the

Confrontation Clause does not apply at sentencing hearings.” United States v. Sheridan, 859 F.3d 579, 584 (8th Cir. 2017) (quotation omitted). The district court did not abuse its discretion in considering the jail calls and Anderson’s grand jury testimony in finding that Cross is a habitual domestic abuser with a history of displaying weapons.

2. Cross further argues the district court clearly erred in finding him “to be a habitual domestic abuser on five occasions,” and for multiple instances of brandishing firearms. Regarding instances of domestic abuse, Cross acknowledges he was convicted of assaulting his mother. In denying Cross’s motion to suppress, the district court found that he assaulted Finauga on May 31, 2016, when she suffered the eye injury, and again on June 4, when the disturbance caused Andrea Cross to call 911 and Cross broke Finauga’s cellphone. Anderson’s grand jury testimony supported the district court’s finding of at least two additional assaults. Regarding the brandishing of firearms, the district court relied on police reports and other record evidence in overruling Cross’s objections to two incidents described in the PSR. In one, Cross was charged with aggravated assault after pointing a gun at a security officer. In the other, he pleaded guilty to violating Nebraska’s terroristic threats statute after firing gunshots into the ceiling at a garage party. The district court did not clearly err in finding that Cross was a habitual domestic abuser who had brandished firearms on multiple occasions.

3. Cross argues the 120-month, statutory maximum sentence was substantively unreasonable because the court did not give sufficient weight to his youth, his difficult childhood, and the lack of evidence that he used the firearm he unlawfully possessed. After expressly weighing the above factors, the district court concluded that aggravating factors, including Cross’s history of violence and domestic abuse, supported imposing the statutory maximum sentence. “The district court has wide latitude to weigh the § 3553(a) factors and assign some factors greater weight than

others.” United States v. Thibeaux, 784 F.3d 1221, 1227 (8th Cir. 2015). The district court did not abuse its substantial sentencing discretion.

The judgment of the district court is affirmed.

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**United States Court of Appeals**

***For The Eighth Circuit***

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329

**St. Louis, Missouri 63102**

**Michael E. Gans**  
*Clerk of Court*

**VOICE (314) 244-2400**  
**FAX (314) 244-2780**  
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April 30, 2018

Mr. Bradley Ryan Hansen  
FEDERAL PUBLIC DEFENDER'S OFFICE  
Suite 400  
701 Pierce Street  
Sioux City, IA 51101-0000

RE: 17-1982 United States v. Donavan Cross

Dear Counsel:

The court has issued an opinion in this case. Judgment has been entered in accordance with the opinion. The opinion will be released to the public at 10:00 a.m. today. Please hold the opinion in confidence until that time.

Please review [Federal Rules of Appellate Procedure](#) and the [Eighth Circuit Rules](#) on post-submission procedure to ensure that any contemplated filing is timely and in compliance with the rules. Note particularly that petitions for rehearing and petitions for rehearing *en banc* must be received in the clerk's office within 14 days of the date of the entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. No grace period for mailing is allowed, and the date of the postmark is irrelevant for pro-se-filed petitions. Any petition for rehearing or petition for rehearing *en banc* which is not received within the 14 day period for filing permitted by FRAP 40 may be denied as untimely.

Michael E. Gans  
Clerk of Court

AMT

Enclosure(s)

cc: Mr. Ajay J. Alexander  
Mr. Donavan Cross  
Mr. John H. Lammers  
Mr. Rob Phelps

District Court/Agency Case Number(s): 5:16-cr-04067-MWB-1

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**United States Court of Appeals**

***For The Eighth Circuit***

Thomas F. Eagleton U.S. Courthouse  
111 South 10th Street, Room 24.329

**St. Louis, Missouri 63102**

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April 30, 2018

West Publishing  
Opinions Clerk  
610 Opperman Drive  
Building D D4-40  
Eagan, MN 55123-0000

RE: 17-1982 United States v. Donavan Cross

Dear Sirs:

A published opinion was filed today in the above case.

Counsel who presented argument on behalf of the appellant and appeared on the brief was Bradley Ryan Hansen, AFPD, of Sioux City, IA.

Counsel who presented argument on behalf of the appellee and appeared on the brief was Ajay J. Alexander, AUSA, of Sioux City, IA.

The judge who heard the case in the district court was Honorable Mark W. Bennett. The judgment of the district court was entered on April 24, 2017.

If you have any questions concerning this case, please call this office.

Michael E. Gans  
Clerk of Court

AMT

Enclosure(s)

cc: MO Lawyers Weekly

District Court/Agency Case Number(s): 5:16-cr-04067-MWB-1

Appendix Page 16 of 24

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

No: 17-1982

United States of America

Appellee

v.

Donavan Cross

Appellant

---

Appeal from U.S. District Court for the Northern District of Iowa - Sioux City  
(5:16-cr-04067-MWB-1)

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**ORDER**

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Murphy did not participate in the consideration or decision of the petition for panel rehearing. Judge Kelly did not participate in the consideration or decision of this matter.

June 12, 2018

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

## UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA

v.

DONAVAN CROSS

## ) JUDGMENT IN A CRIMINAL CASE

)

) Case Number: 0862 5:16CR04067-001

)

) USM Number: 16769-029

)

ORIGINAL JUDGMENT  
 AMENDED JUDGMENT

Bradley Ryan Hansen

Defendant's Attorney

Date of Most Recent Judgment:

Reason for Amendment:

Reduction of Sentence Pursuant to the

## THE DEFENDANT:

pleaded guilty to count(s) \_\_\_\_\_

pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.

was found guilty on count(s) 1 of the Indictment filed on August 24, 2016 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1), 922(g)(3), and 924(a)(2)	Possession of a Firearm and Ammunition by a Prohibited Person	06/04/2016	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_ is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

Mark W. Bennett  
U.S. District Court Judge

Name and Title of Judge

April 24, 2017

Date of Imposition of Judgment

Signature of Judge

Mark W. Bennett

4.24.17

Date

DEFENDANT: **DONAVAN CROSS**  
CASE NUMBER: **0862 5:16CR04067-001**

**PROBATION**

The defendant is hereby sentenced to probation for a term of:

**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **120 months on Count 1 of the Indictment.**

The court makes the following recommendations to the Federal Bureau of Prisons:  
**It is recommended that the defendant be designated to either FCI Oxford, WI, or FCI Greenville, IL, if commensurate with the defendant's security and custody classification needs.**  
**It is recommended that the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.**

The defendant is remanded to the custody of the United States Marshal.

The defendant must surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_.  
 as notified by the United States Marshal.

The defendant must surrender for service of sentence at the institution designated by the Federal Bureau of Prisons:

before 2 p.m. on \_\_\_\_\_.  
 as notified by the United States Marshal.  
 as notified by the United States Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **DONAVAN CROSS**  
CASE NUMBER: **0862 5:16CR04067-001**

## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant will be on supervised release for a term of:  
**3 years on Count 1 of the Indictment.**

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## **MANDATORY CONDITIONS OF SUPERVISION**

- 1) The defendant must not commit another federal, state, or local crime.
- 2) The defendant must not unlawfully possess a controlled substance.
- 3) The defendant must refrain from any unlawful use of a controlled substance.  
The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
 The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*
- 4)  The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- 5)  The defendant must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*
- 6)  The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **DONAVAN CROSS**  
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## STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in the defendant's conduct and condition.

- 1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
- 3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
- 5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
- 7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
- 10) The defendant must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

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## SPECIAL CONDITIONS OF SUPERVISION

*The defendant must comply with the following special conditions as ordered by the Court and implemented by the U.S. Probation Office:*

1. The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. The defendant must participate in a mental health evaluation. The defendant must complete any recommended treatment program, and follow the rules and regulations of the treatment program. The defendant must take all medications prescribed to the defendant by a licensed medical provider.
3. The defendant must participate in a substance abuse evaluation. The defendant must complete any recommended treatment program, which may include a cognitive behavioral group, and follow the rules and regulations of the treatment program. The defendant must participate in a program of testing for substance abuse. The defendant must not attempt to obstruct or tamper with the testing methods.
4. If not employed at a lawful type of employment as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

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Defendant

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Date

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U.S. Probation Officer/Designated Witness

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Date

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### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>TOTALS</u>	<u>Assessment</u> \$ 100	<u>JVTA Assessment<sup>1</sup></u> \$ 0	<u>Fine</u> \$ 0	<u>Restitution</u> \$ 0
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The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss<sup>2</sup></u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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**TOTALS**      \$ \_\_\_\_\_

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

<sup>1</sup>Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

<sup>2</sup>Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A  Lump sum payment of \$ 100 due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance with  C,  D,  E, or  F below; or

B  Payment to begin immediately (may be combined with  C,  D, or  F below); or

C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of  
 (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or

D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of  
 (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a  
 term of supervision; or

E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from  
 imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant must pay the cost of prosecution.  
 The defendant must pay the following court cost(s):  
 The defendant must forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.