

No. 19-

IN THE
Supreme Court of the United States

RODRIGO ROMAN,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX VOLUME

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TABLE OF CONTENTS

APPENDIX A	Judgment in a Criminal Case issued the United States District Court for the Southern District of Texas, McAllen Division.
APPENDIX B	Decision of the United States Court of Appeals for the Fifth Circuit denying relief on direct appeal.

APPENDIX A

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in McAllen

ENTERED

September 18, 2017
David J. Bradley, ClerkUNITED STATES OF AMERICA
v.
RODRIGO ROMAN

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: 7:16CR00876-S2-009
USM NUMBER: 51236-424 See Additional Aliases.Damon Matthew Cheronis and Stephen Francis Hall
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 on February 8, 2017.

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

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846, 841(a)(1), and 841(b)(1)(A)	Conspiracy to possess with intent to distribute 10.18 kilograms of cocaine.	06/16/2016	1

 See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

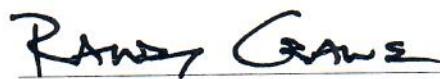
The defendant has been found not guilty on count(s) _____

Count(s) Orig. Indict. and 1st SS Indict., as to this defendant. 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.

September 14, 2017

Date of Imposition of Judgment



Signature of Judge

RANDY CRANE
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

September 18, 2017

Date

DEFENDANT: **RODRIGO ROMAN**
CASE NUMBER: **7:16CR00876-S2-009**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months.

See Additional Imprisonment Terms.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed in an institution as close as possible to his family in Chicago, Illinois, one where he can receive any medical treatment that may be needed, and where he can participate in the Residential Drug Abuse treatment Program (RDAP).

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

The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the 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: **RODRIGO ROMAN**
CASE NUMBER: **7:16CR00876-S2-009**

SUPERVISED RELEASE

Upon release from imprisonment you will be on supervised release for a term of: 5 years.

See Additional Supervised Release Terms.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You 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 you pose a low risk of future substance abuse. (*check if applicable*)
4. You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
5. You 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 which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
6. You must participate in an approved program for domestic violence. (*check if applicable*)

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

STANDARD CONDITIONS OF SUPERVISION

See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your 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 your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment, you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you 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, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You 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. You 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. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **RODRIGO ROMAN**
CASE NUMBER: **7:16CR00876-S2-009**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		

- See Additional Terms for Criminal Monetary Penalties.
- 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 payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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- See Additional Restitution Payees.
- TOTALS** \$0.00 \$0.00
- 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:

- Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* 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.

DEFENDANT: **RODRIGO ROMAN**
CASE NUMBER: 7:16CR00876-S2-009

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 \$100.00 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 _____ installments of _____ over a period of _____, to commence _____ days after the date of this judgment; or

D Payment in equal _____ installments of _____ over a period of _____, to commence _____ days after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ 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:

Payable to: Clerk, U.S. District Court
Attn: Finance
P.O. Box 5059
McAllen, TX 78502

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 shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

**Joint and Several
Amount**

**Corresponding Payee,
if appropriate**

See Additional Defendants and Co-Defendants Held Joint and Several.
 The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:
 See Additional Forfeited Property.

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) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-41033
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 10, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

RODRIGO ROMAN,

Defendant-Appellant

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 7:16-CR-876-9

Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

STEPHEN A. HIGGINSON, Circuit Judge:*

Rodrigo Roman appeals the ten-year statutory minimum sentence imposed after he pleaded guilty to conspiring to possess with the intent to distribute over five kilograms of cocaine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A). He argues that the district court erred in determining that he possessed a firearm or other dangerous weapon in connection with his drug offense. This finding resulted in a two-level

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 17-41033

enhancement in Roman's offense level under U.S.S.G. § 2D1.1(b)(1) and made him ineligible for a sentence reduction under the safety valve provision, U.S.S.G. § 5C1.2(a).

A district court's factual finding that the dangerous weapons enhancement applies is reviewed for clear error. *United States v. Ruiz*, 621 F.3d 390, 396 (5th Cir. 2010). It will be affirmed if "plausible, considering the record as a whole." *Id.* The enhancement applies if a defendant possessed a "dangerous weapon (including a firearm)" in connection with drug offense conduct. § 2D1.1(b)(1); *United States v. Vasquez*, 161 F.3d 909, 912 (5th Cir. 1998). The Government bears the initial burden to demonstrate "a temporal and spatial relation existed between the weapon, the drug trafficking activity, and the defendant." *United States v. Juluke*, 426 F.3d 323, 328 (5th Cir. 2005) (quoting *United States v. Cooper*, 274 F.3d 230, 245 (5th Cir. 2001)). The burden then "shifts to the defendant to show that it was clearly improbable that the weapon was connected with the offense." *Ruiz*, 621 F.3d at 396.

In making its findings, the district court may rely on the facts set out in a presentence report (PSR) "if those facts have an adequate evidentiary basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that the information in the PSR is unreliable." *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (quoting *United States v. Trujillo*, 502 F.3d 353, 357 (5th Cir. 2007)). Here, the PSR stated that a search of Roman's residence resulted in the discovery of over \$48,000 in currency, a money counter, a homemade firearm silencer, ammunition, and three firearms, including a sawed-off shotgun, a semi-automatic pistol, and another pistol. Law enforcement officers also discovered 4.72 kilograms of cocaine in a vehicle located on Roman's property. According to the PSR, Roman's role in the offense was that of a narcotics and currency

No. 17-41033

stash house caretaker and street-level distributor. The PSR thus recommended sentencing enhancements for possession of a dangerous weapon, U.S.S.G. § 2D1.1(b)(1), and for maintaining a premises for the purpose of manufacturing or distributing a controlled substance, U.S.S.G. § 2D1.1(b)(12).

Roman objected to the dangerous weapons enhancement and the PSR's resulting determination that he was not eligible for a sentence reduction under the safety valve provision.¹ He did not contest the other factual findings in the PSR. At sentencing, Roman maintained that there was insufficient evidence the firearms were connected to drug trafficking because no drugs were found in the residence itself, the shotgun was inoperable, and the pistols were unloaded and locked in a safe upstairs. Defense counsel further argued that one firearm was used for legitimate self-defense in a dangerous neighborhood and the other two firearms were given to Roman by a co-defendant to hold on to, but not to keep permanently.

The district court accepted that Roman may have kept a firearm to protect himself against gangs but concluded that the firearms were also used to facilitate drug trafficking, including defending drugs and drug proceeds kept at the residence. This finding is plausible and well-supported by the record. That the weapons were not loaded and that one weapon may have been inoperable is "not dispositive." *United States v. Paulk*, 917 F.2d 879, 882 (5th Cir. 1990). The "mere presence" of a firearm can "heighten the danger inherent in drug trafficking." *Id.*; *United States v. Mitchell*, 31 F.3d 271, 278 (5th Cir. 1994). Nor does the fact the pistols were locked in a safe make a difference here. What matters is that the weapons were accessible to Roman. *United States v. Menesses*, 962 F.2d 420, 429 (5th Cir. 1992). Accordingly, the district

¹ Roman also argued that he was entitled to a three-point reduction in his offense level for acceptance of responsibility. The district court awarded this reduction at sentencing.

No. 17-41033

court did not err in applying the weapons enhancement under U.S.S.G. § 2D1.1(b) and correctly found Roman ineligible for a sentence reduction under the safety valve provision. *Ruiz*, 621 F.3d at 397; *Vasquez*, 161 F.3d at 912.

AFFIRMED.