

APPENDIX

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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 17-1649

United States of America

Plaintiff - Appellee

v.

Andre G. Dewberry

Defendant - Appellant

Appeal from United States District Court
for the Western District of Missouri - Western Division

Submitted: January 16, 2019
Filed: August 27, 2019

Before GRUENDER, KELLY, and GRASZ, Circuit
Judges.

GRASZ, Circuit Judge.

Andre Dewberry pled guilty to being a felon in possession of a firearm. As required by the binding plea agreement, the district court¹ sentenced Dewberry to 60 months of imprisonment. Dewberry appeals, arguing he was denied his Sixth Amendment right to self-representation. We hold he waived the challenge by pleading guilty and accordingly affirm the judgment.

I. Background

In January 2015, the Kansas City, Missouri Police Department stopped a vehicle driven by Dewberry, who was a convicted felon. Police observed Dewberry exit the vehicle and toss a black handgun underneath. Police recovered a pistol from under the car.

A grand jury indicted Dewberry on one charge of felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court appointed a public defender to represent Dewberry. Eventually, Dewberry requested permission to proceed pro se. The magistrate judge granted Dewberry's request and appointed the same public defender as standby counsel. Dewberry later moved to have the district court appoint substitute counsel. The district court denied the motion, giving Dewberry three options: (1) continue to represent himself; (2) hire a new attorney; or (3) request that the public defender resume representation.

During a pretrial conference held days before the scheduled trial, after some back and forth with Dewberry

¹ The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

regarding an evidentiary issue as it related to Dewberry's defense strategy, the district court terminated Dewberry's pro se representation and reappointed the public defender as counsel. Dewberry voiced his objection to the reappointment.

Before trial, Dewberry pled guilty to the charge in a plea agreement. The plea agreement included a binding term of 60 months of imprisonment under Fed. R. Crim. P. 11(c)(1)(C). The plea agreement also contained an appeal waiver, providing that Dewberry waived his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement. The appeal waiver included the following provision:

The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An "illegal sentence" includes a sentence imposed in excess of the statutory maximum, but does *not* include less serious errors, such as misapplication of the [United States] Sentencing [Commission] Guidelines, an abuse of discretion, or an imposition of an unreasonable sentence.

The public defender represented Dewberry at the change of plea hearing. The district court accepted the plea after engaging in a Rule 11 plea colloquy to determine Dewberry's plea was knowing, voluntary, and made after being advised of his trial and constitutional rights. The district court asked Dewberry three times if he had been

threatened or coerced in any manner to cause him to enter into this plea, to which he answered no each time. The district court also read the appeal waiver and asked Dewberry if he understood it, to which Dewberry responded yes.

In the presentence investigation report, Dewberry's United States Sentencing Commission Guidelines Manual ("Guidelines") range was calculated as 46 to 57 months of imprisonment. At the sentencing hearing, the district court formally accepted the plea agreement and sentenced Dewberry to the agreed-upon term of 60 months of imprisonment.

In March 2017, Dewberry filed a pro se document, which we treated as a Notice of Appeal. The public defender then filed an *Anders* brief, see *Anders v. California*, 386 U.S. 738 (1967), expressing her view the plea agreement prohibited an appeal of the issues on which Dewberry wished to proceed. However, the public defender also asserted the district court violated Dewberry's Sixth Amendment right to proceed pro se.

We appointed Dewberry new counsel under the Criminal Justice Act and ordered the parties to brief the following issues: (1) whether Dewberry's plea of guilty waived his ability to challenge the denial of his Sixth Amendment right to self-representation; and (2) whether Dewberry's conduct warranted the district court's denial of self-representation. In its briefing, the government conceded Dewberry's conduct did not justify the district court's denial of Dewberry's right to proceed pro se, but argued the reappointment of counsel was warranted because Dewberry did not unequivocally assert his right

to self-representation when asked by the district court during the pretrial evidentiary hearing. The government also argued Dewberry waived his right to appeal by pleading guilty.

II. Analysis

Before considering whether the district court violated Dewberry's Sixth Amendment right to self-representation, *see Faretta v. California*, 422 U.S. 806 (1975), we will address whether he waived his right to appeal the district court's alleged denial of this right by pleading guilty. We conclude Dewberry waived his right to appeal this claim.

"A valid guilty plea . . . waives a defendant's 'independent claims relating to the deprivation of constitutional rights that occurred prior to' pleading guilty." *United States v. Pierre*, 870 F.3d 845, 848 (8th Cir. 2017) (quoting *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)); *see also United States v. Limely*, 510 F.3d 825, 827 (8th Cir. 2007) (stating a "valid guilty plea is an admission of guilt that waives all non-jurisdictional defects and defenses"). "[C]ase-related constitutional defects" are made "irrelevant to the constitutional validity of the conviction" by a guilty plea "[b]ecause the defendant has admitted the charges against him." *Class v. United States*, 138 S. Ct. 798, 804–05 (2018) (quoting *Haring v. Prosise*, 462 U.S. 306, 321 (1983)).

However, a guilty plea does not waive all claims. A waiver does not occur, for example, when the defendant's plea was not made intelligently, voluntarily, and with the advice of counsel. *See Tollett*, 411 U.S. at 265. Nor does a

guilty plea waive a defendant's right to facially challenge the Government's ability to constitutionally charge him in the first place. *See Class*, 138 S. Ct. at 805–06 (holding a guilty plea did not waive an argument that the government did not have the power to criminalize the charged and admitted conduct); *United States v. Broce*, 488 U.S. 563, 575 (1989) (quoting *Menna v. NY*, 423 U.S. 61, 62 n.2 (1975)) (“[A] plea of guilty to a charge does not waive a claim that — *judged on its face* — the charge is one which the State may not constitutionally prosecute.”).

The first task before us then is to decide whether the Sixth Amendment right to represent oneself is the type of right that is waived by a voluntary and intelligent guilty plea or whether it fits into an exception. Although we have never answered this question directly, other circuits have.

The majority of the circuits to reach the issue have held a defendant waives the right to bring a claim for a potential violation of the right to proceed pro se by pleading guilty. *See United States v. Moussaoui*, 591 F.3d 263, 280 (4th Cir. 2010) (holding a defendant's guilty plea foreclosed his *Faretta* challenge); *Werth v. Bell*, 692 F.3d 486, 497 (6th Cir. 2012) (same); *Gomez v. Berge*, 434 F.3d 940, 942–43 (7th Cir. 2006) (same); *United States v. Montgomery*, 529 F.2d 1404, 1406–07 (10th Cir. 1976) (holding the same and observing a contrary conclusion would “open the door to manipulations and gamesmanship”).

The only circuit to hold otherwise is the Ninth Circuit. *See United States v. Hernandez*, 203 F.3d 614, 627 (9th Cir. 2000) (overruled on other grounds by *Indiana v.*

Edwards, 554 U.S. 164 (2008)). In *Hernandez*, the Ninth Circuit held that because the district court wrongly denied the defendant's request to represent himself, it rendered his guilty plea involuntary. 203 F.3d at 627. The court reasoned the "district court's refusal to allow [the defendant] to exercise the right of self-representation forced him to choose between pleading guilty and submitting to a trial *the very structure* of which would be unconstitutional." *Id.* at 626. This choice placed "unreasonable constraints" on his decision to plead guilty. *Id.* The court stated: "When a defendant is offered a choice between pleading guilty and receiving a trial that will be conducted in a manner that violates his fundamental Sixth Amendment rights, his decision to plead guilty is not voluntary." *Id.* at 627. The court reasoned that the decision was not voluntary because "he ha[d] not been offered the lawful alternative—free choice—the Constitution requires." *Id.*

Dewberry urges us to follow an approach nearly identical to the one used in *Hernandez* and hold his guilty plea was involuntary based on the earlier denial of his right to represent himself. But we see no basis to conclude a district court's improper denial of a defendant's Sixth Amendment right to self-representation categorically transforms the defendant's later decision to plead guilty into a per se involuntary decision. As the Fourth Circuit explained, *Hernandez's* rationale is based on the false premise that the defendant who is denied his right to represent himself is forced to either plead guilty or submit to an unconstitutional trial. *Moussaoui*, 591 F.3d at 280. The premise is faulty because "if the defendant proceeded to trial and was convicted, he could seek an appellate remedy for the constitutional violations he alleged." *Id.* In

addition, we have noted that “if a defendant wishes to preserve his right to appeal, he should enter a conditional plea of guilty, ‘reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion.’” *Limely*, 510 F.3d at 827 (quoting Fed. R. Crim. P. 11(a)(2)).

More importantly, the approach used in *Hernandez* is inconsistent with Supreme Court precedent. See *Luce v. United States*, 469 U.S. 38, 42 (1984) (holding that in order to preserve a claim of improper impeachment the defendant is required to testify at trial); *Tollett*, 411 U.S. at 267 (“[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process.”). That precedent informs us that “case-related constitutional defects” are made “irrelevant to the constitutional validity of the conviction” by a later guilty plea “[b]ecause the defendant has admitted the charges against him.” *Class*, 138 S. Ct at 804–05 (quoting *Haring*, 462 U.S. at 321). *Hernandez’s* approach turns the rule on its head by making a defendant’s admission of guilt irrelevant because of an earlier purported case-related constitutional defect. Therefore, we join the majority of circuits and hold a potential violation of the right to proceed pro se does not, in and of itself, render a plea involuntary.

Based on the above analysis, we conclude Dewberry waived his right to bring his Sixth Amendment claim unless he can show us on the specific facts of his case that he did not enter the plea knowingly and voluntarily. Based on the current record, we have no basis to reach such a conclusion.

At the change of plea hearing, the district court complied with Fed. R. Crim P. 11(b) in its colloquy with Dewberry, which is strong evidence the plea was knowing and voluntary. The district court personally addressed Dewberry in open court and made sure he knew and understood his rights and that he was waiving his trial rights if his plea was accepted. The district court also went over the plea terms with Dewberry and repeatedly questioned him to ensure the plea was voluntary and did not result from force, threats, or coercion. This detailed record of questioning about Dewberry's understanding supports the district court's finding he knowingly and voluntarily entered the plea.

We therefore hold Dewberry waived his right to challenge the district court's decision to deny him his Sixth Amendment right to represent himself. Although the district court may have violated Dewberry's right to self-representation, Dewberry is barred from bringing his appeal on this record. Therefore, we decline to address the merits of this Sixth Amendment argument.

III. Conclusion

For the reasons set forth herein, we affirm.

KELLY, Circuit Judge, concurring in the judgment.

In my view, the record makes clear that the district court violated Dewberry's right to self-representation when it reappointed counsel to represent him. The presence of that structural error may have rendered Dewberry's guilty plea involuntary. But because the current record is not fully developed on the second issue,

I would not decide it on direct appeal. I therefore concur in affirming the judgment.

This court reviews de novo a district court's refusal to allow a defendant to represent himself. See United States v. LeBeau, 867 F.3d 960, 973 (8th Cir. 2017). "A request to proceed pro se is constitutionally protected only if it is timely, not for purposes of delay, unequivocal, voluntary, intelligent and the defendant is competent." Jones v. Norman, 633 F.3d 661, 667 (8th Cir. 2011) (cleaned up); see also Faretta, 422 U.S. at 835–36. Here, the magistrate judge found that Dewberry's request to represent himself checked all of the Faretta boxes, and so he granted Dewberry's request. No one challenges that ruling. When the district court later terminated Dewberry's representation, it explained that it did so "to get this plea worked out" and to "help [him] get ready for trial." But these are not valid reasons to bar a defendant from representing himself. See United States v. Smith, 830 F.3d 803, 810 (8th Cir. 2016) ("Defendants have a right to present unorthodox defenses and argue their theories to the bitter end. . . . [F]ailure to respond to a proposed plea agreement [does not] warrant denial of the right of self-representation at trial." (cleaned up)). Thus, the district court impermissibly denied Dewberry his right to represent himself at trial.

That brings me to the only issue addressed by the court: whether Dewberry waived his right to self-representation by pleading guilty. The denial of the right to self-representation is a structural error. See United States v. Gonzalez-Lopez, 548 U.S. 140, 148–49 (2006); see also McCoy v. Louisiana, 138 S. Ct. 1500, 1508 (2018). But it seems that structural errors "can still be waived."

Jackson v. Bartow, 930 F.3d 930, 934 (7th Cir. 2019) (“[T]he consequence of a ‘structural’ error is that it is not subject to harmless-error review; but such errors can still be waived.” (citation omitted)); see also Moussaoui, 591 F.3d at 280 n.12. So I agree with the court that the outcome of Dewberry’s appeal hinges on whether his guilty plea was knowing and voluntary. This is the sort of issue that is often better deferred to post-conviction proceedings under 28 U.S.C. § 2255, as it usually involves facts outside the original record. See United States v. Agboola, 417 F.3d 860, 864 (8th Cir. 2005); United States v. Murphy, 899 F.2d 714, 716 (8th Cir. 1990). I see no reason to depart from the usual rule here, as an invalid plea “is not readily apparent in the current record.” Agboola, 417 F.3d at 864. But Dewberry is not barred from challenging the validity of his guilty plea—or raising a claim of ineffective assistance of counsel—in a post-conviction proceeding.

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APPENDIX B
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 17-1649

United States of America

Appellee

v.

Andre G. Dewberry

Appellant

Appeal from U.S. District Court for the Western District
of Missouri - Kansas City
(4:15-cr-00053-DW-1)

ORDER

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

October 02, 2019

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

/s/ Michael E. Gans

APPENDIX C

[1] IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

_____)
UNITED STATES OF AMERICA)
	) CASE NO. 15-CR-
	) 00053-DW-1
VS.	) KANSAS CITY,
	) MISSOURI
)
ANDRE G. DEWBERRY)
_____)

HEARING
BEFORE THE HONORABLE DEAN WHIPPLE
September 12, 2016

APPEARANCES:

For the Plaintiff:	MR. STEFAN HUGHES U.S. Attorney's Office 400 E. 9th Street, Suite 5510 Kansas City, MO 64106
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For the Defendant:	ANDRE G. DEWBERRY, Pro se
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For the Defendant:	MS. CARIE ALLEN, Standby Counsel Assistant Federal Public
--------------------	---

14a

Defender
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Proceedings recorded by mechanical stenography;
transcript produced by computer.

[2] *(Defendant present.)*

THE COURT: Good afternoon. Please be seated.
Court will call Case No. 15-00053, United States of
America versus Andrew Dewberry. Is the government
ready to proceed?

MR. HUGHES: Yes, Your Honor.

THE COURT: Defense ready to proceed?

THE DEFENDANT: Yeah.

THE COURT: Mr. Dewberry, that order we just
gave you was your motion to not admit your prior

convictions at trial, and that's been denied.

We're here on the government's motion in limine to limit the defendant's discussion of his affirmative defense.

Government have anything further — I've read your briefs, but certainly you can orally state your position. Anything else I need to know?

MR. HUGHES: No, Judge. I'll stand by my written motion.

THE COURT: All right. Mr. Dewberry, your response, please?

THE DEFENDANT: I hadn't had time to put together a brief for all of that, which I explained many times over with the magistrate, and actually gave him quite a bit of material in regards to why, so which —

THE COURT: Mr. Dewberry, any material you want me to hear, present it now.

[3] THE DEFENDANT: Okay. Then I'll just hand it to you.

THE COURT: No, you tell me what it is before you had it to me. I'm not going to read it.

THE DEFENDANT: Oh.

THE COURT: If you haven't filed it, I'm not going

to read it. I'll let you explain it to me now.

THE DEFENDANT: Okay.

THE COURT: Do you want to sit there, or do you want to come up to the podium? Looks like you got a fair amount of material.

THE DEFENDANT: Yeah, I did grab some stuff. The justification defense that I looked into, that wasn't the angle in which I chose to go. It's what they came up with, because I'm not a lawyer. Been kind of forced into this situation.

So the four elements I was actually working on to show relevancy on the four elements. You know, I was working on those. Being that I don't — my resources is what they are is the reason why the time — you know, I was asking about the time situation. But I do have some material, my argument on those four elements —

THE COURT: Okay. What is it?

THE DEFENDANT: — based on myself.

THE COURT: Alright.

THE DEFENDANT: It is somewhere here that I can handle. I can read off, but my hands are — is it okay if I stand up?

[4] THE COURT: Yes, sir.

THE DEFENDANT: It works a little better.

THE COURT: Marshal, what's your position on freeing one of his hands, whatever his dominant hand is?

MARSHAL: If that's what you want, Judge then it's alright.

THE COURT: Are you right or left handed, Mr. Dewberry?

THE DEFENDANT: Right.

THE COURT: Marshals, why don't you uncuff his right hand, give him a little more mobility in dealing with his papers, please.

THE DEFENDANT: Do you want me to read the whole thing, sir?

THE COURT: No, I want you to summarize it.

THE DEFENDANT: You want me to summarize it. Okay. The four elements that they suggest that you need for a justification defense is necessity, only availability choice is two, and reasonable belief of the defendant, three, and reasonable alternative, which I actually — I address in *Stover* and several other cases that are pointed out here in the — you know, here in my summary along with the things that were happening to me as an individual.

The reason why I wasn't choosing the justification defense personally is because —

THE COURT: Wait a minute. You say you weren't selecting —

[5] THE DEFENDANT: I wasn't, no.

THE COURT: Who is?

THE DEFENDANT: Well, the —

THE COURT: Who selected it? You're the one who has to raise the defense. And I understand that Ms. Allen —

THE DEFENDANT: That is correct, and I was pre —

THE COURT: Ms. Allen is standby defense attorney; is that right?

THE DEFENDANT: I understand, and she has no insight for me at all on this.

THE COURT: Okay.

THE DEFENDANT: She was asking me questions, and I thought that was pretty odd from day one. So we — pretty much where we're at on that. I didn't really understand that.

So the elements I was trying to raise was just basic elements of where, when, why, how and what. You know

what I mean?

THE COURT: Okay. All right. Now, let me ask you, Mr. Dewberry. What was the — what was the threat, imminent threat when the police stopped you and you got out of that car?

THE DEFENDANT: There actually — at the time, there wasn't one. The officer —

THE COURT: Okay. Then your first defense fails period. You can't prove the first count, the first element of the four. It's not the threat from the past. It's not the threat from the [6] future. It was your mindset when you got out of that car with that pistol.

Now, let's cut through this.

THE DEFENDANT: Okay.

THE COURT: Do you understand that? Now, what was the threat that you were about to be killed or beat up right then when you stepped out of that car with a gun in your hand?

THE DEFENDANT: That's pretty much why I made sure the officer didn't —

THE COURT: That's not a threat when an officer stops you. What else you got?

THE DEFENDANT: No, I never said there was

a threat. See, that's why I wasn't using — that wasn't my angle of using this —

THE COURT: Okay. Then I can grant the government's motion to suppress any evidence about justification because you're not relying on it. Is that what you're telling me?

THE DEFENDANT: In essence, yes and no. See, because prior — see, we're looking for rele — also relevancy should play a part also.

THE COURT: No, it shouldn't.

THE DEFENDANT: It shouldn't.

THE COURT: It was your status and your mindset at the time you were stopped with a gun in your hand. Nothing else.

Am I stating that right, counselor?

[7] MR. HUGHES: Absolutely, Your Honor.

THE COURT: Okay. That's the way I read the same case law that the government's looked at.

THE DEFENDANT: So is there —

THE COURT: *U.S. versus Blankenship* and *U.S. versus Tom Lee Poe*.

THE DEFENDANT: So basically nothing prior — nothing prior to the incident?

THE COURT: That's correct.

THE DEFENDANT: It's only that particular time that happened?

THE COURT: At the time you were found in possession, yes, sir.

THE DEFENDANT: Well, I — my understanding was a little different because like — like I read things like a female that gets raped, and then later she does something to defend herself, but she gets justified. And I get kind of throwed off because if she — if she knew she was going to get raped, she probably would have took precautions, stuff like that. It kind of throws me off, because I'm not — like I said, I'm not a lawyer.

THE COURT: Well, that's why I'm trying to get you back on track. That's why I asked you, what was the immediate threat of retaliation at the time you were stopped and stepped out of that car with a pistol in your hand?

THE DEFENDANT: The only —

[8] THE COURT: There has to be justification at that point to have the pistol in your hand. Now, what was the threat?

THE DEFENDANT: The officer was not the threat.

THE COURT: Okay. Then there's no threat. Then element No. 1 cannot be satisfied. You got to prove all four elements. You can't prove one, so we're done.

THE DEFENDANT: But before I got in the car, it couldn't have been a threat.

THE COURT: Exactly. Mr. Dewberry, why don't we do this. Those written documents you've got, I'll look at them, but I'm going to — we're going to get ready for trial. I'm going to deny your motion because you can't prove the first element. And we're going to trial on this next Monday, and you will be prohibited from telling the jury in any way during voir dire or during trial that you felt you were justified, because you were not.

THE DEFENDANT: Then I probably should have got killed before I got in the car. Then we wouldn't be here.

THE COURT: Why would you even say that? The officers wouldn't have shot you.

THE DEFENDANT: Because that's why we're here. You don't understand. You see, there's nothing happened before I got in the car. So if I died before I got

in the car —

THE COURT: Wait a minute, wait a minute.

THE DEFENDANT: — we wouldn't be here.

[9] THE COURT: When you got in which car?

THE DEFENDANT: The vehicle that got pulled over.

THE COURT: Okay. So you got in that car.

THE DEFENDANT: Before I got in the car.

THE COURT: Okay. You were in fear of something?

THE DEFENDANT: Now you're starting to pick up on it.

THE COURT: Okay.

THE DEFENDANT: But like you said, there's nothing happened, there's no relevancy before.

THE COURT: That's right.

THE DEFENDANT: So since there's no relevancy before and I died before, then I wouldn't be here.

THE COURT: So nothing happened.

THE DEFENDANT: So it's not relevant.

THE COURT: You need to argue what was the justification at the time the police saw you with the pistol

period. That's all we're going to try.

THE DEFENDANT: I messed up. I'm still alive.

THE COURT: Okay. Fine. Motion in limine is sustained. You cannot raise — I'm ruling you can't raise that as a defense, all right, sir? There's no need to waste anymore time on this because you'll have some other theory.

THE DEFENDANT: It's not — it's not a theory.

THE COURT: That's the prevailing law.

THE DEFENDANT: But it's actually not a theory.

[10] THE COURT: It is. You must prove there was an imminent threat facing you when you stood with a gun in your hand. Not before. The fact that your girlfriend might have been murdered later, that is not relevant, is what I am trying to explain to you, Mr. Dewberry.

THE DEFENDANT: Then, I mean, we need to — I asked him. He could have just went with capital punishment. We would have got this over with a long time ago.

THE COURT: We don't do capital punishment for possession of a weapon.

THE DEFENDANT: Well, I mean, why? You

know what I mean? Come on.

THE COURT: No, you come on. You come on.

THE DEFENDANT: You can't — if you can't — if there's nothing you can do to stop somebody from hurting you, then you just go on and die. This is all I'm asking. There's — I don't have a choice. There's no other choice here.

THE COURT: Listen to me. Listen to me. You had to be in fear of death at the time —

THE DEFENDANT: Everybody keeps saying that.

THE COURT: — you stepped out of that car with the pistol. Before and after is not relevant.

THE DEFENDANT: Then I'm still here. I messed up because I'm here.

THE COURT: No, you didn't mess up.

[11] THE DEFENDANT: I should have died. We keep coming up with the same thing. Had I died, maybe somebody else would be here, not me.

THE COURT: We're going to trial on whether you had prior felony convictions. And I've just given you a ruling that those are going to come in in evidence before the trial. And then the government is going to put on

evidence whether or not you were in possession of that pistol they allege you stepped out of the car with, and you will not be permitted to testify or call witnesses saying you had some threats that existed before that night or after that night, all right, sir?

THE DEFENDANT: So nobody knows nothing. So basically —

THE COURT: Doesn't make any difference what they know. We're not trying what people know or should have known. It's what happened and whether you have prior convictions in possession of a weapon period. 8th Circuit has ruled on this over and over. Over and over.

THE DEFENDANT: And I got proof that the 8th Circuit also ruled on some stuff that overruled it too.

THE COURT: Let me have it.

THE DEFENDANT: You are correct. That's what I said.

THE COURT: All right. What is it? Have you got a case I missed? Let me look at it.

THE DEFENDANT: The 8th Circuit does not acknowledge [12] none — not the justification defense. They don't argue — they don't allow a justification defense at all because of the four elements.

THE COURT: That's just what we've been discussing. That's right. And you can't prove those four elements.

THE DEFENDANT: No, to — to prove all four elements, no. But to actually — let the argument be like I've got case law here that shows like *Panter* and other people that the judge in the 8th Circuit — well, I guess St. Louis wouldn't be here.

THE COURT: That's 8th Circuit. That's —

THE DEFENDANT: You know, let them argue, say, well, you argue your side. He argue his.

THE COURT: That's the *Poe* case, wasn't it? I'm not going to let you argue it.

THE DEFENDANT: Well, if there's — if there's no argument —

THE COURT: It's not a valid defense, so you cannot argue it. The Court was wrong. I think you're talking about *Poe*, or I'm not sure.

THE DEFENDANT: The other judges — like you said, the other judges is wrong.

THE COURT: You can — we're going to trial, Mr. Dewberry. If you're found to have prior convictions and you were in possession of a weapon that day, whatever it

was, January 20th, 2015, we'll have the jury make that determination. [13] I'm not going to let you argue or present evidence on justification.

And if the jury finds you guilty, you can appeal my rulings and the fact I wouldn't let you argue it to the 8th Circuit, but you can't at trial. We're going through this trial.

THE DEFENDANT: We'll go through the trial, but I was actually — I wasn't arguing — again, that was the magistrate's idea that I look into justification.

THE COURT: Okay. Well, you've looked, and I'm telling you it doesn't fit, okay?

THE DEFENDANT: I seen that when I first came in here.

THE COURT: Well, I don't know when you saw that, but I followed the law. And I require the attorneys to follow the law, and I require the people who represent themselves to follow the law. That's the bottom line, Mr. Dewberry. You can't make up the law, and you can't pick and choose a case that you think ought to apply when I'm telling you it doesn't.

THE DEFENDANT: Actually, I wasn't, sir. I was not.

THE COURT: Okay. Anything else? Anything else?

MR. HUGHES: No, Your Honor.

THE COURT: All right. We're going to — Mr. Dewberry, if you want me to read that paperwork, I will, but we're going to prepare for trial.

Now, are you still going to represent yourself, or do you want Ms. Allen to help you?

[14] THE DEFENDANT: She's — again, why do you keep asking me that? She's not — what part are y'all not hearing? She says she ain't going to do it, and y'all can't make her do it.

THE COURT: Now, wait a minute. I thought you fired her. Ms. Allen, did —

THE DEFENDANT: She's actually said that several times in open court. I can't get the transcripts, but I can prove it. Again, it probably isn't relevant because it's not relevant. Is that what you're telling me? It's not relevant when she says she doesn't want to be on the case? That ain't relevant neither?

THE COURT: I haven't heard her say that.

THE DEFENDANT: You didn't have to say that. It's on court records.

THE COURT: My information was you fired her.
You wouldn't —

THE DEFENDANT: It's on court records that
she don't want to be on the case. I actually have
documents on it too.

THE COURT: Let's ask Ms. Allen.

THE DEFENDANT: She doesn't want to be on
the case.

THE COURT: Ms. Allen, do you want to represent
him, or what's the problem?

MS. ALLEN: Your Honor, I filed a motion to
withdraw probably eight, nine months ago, but that was
after consulting with Mr. Dewberry and that he wanted
me to withdraw from the case and he wanted to have new
counsel appointed. I did do that [15] at his request.

THE COURT: All right.

MS. ALLEN: Because there was a breakdown in
communication. I absolutely will represent Mr. Dewberry
if the Court wants me to represent Mr. Dewberry and if
Mr. Dewberry wants me to represent him and doesn't
want to represent himself. That is not an issue.

THE COURT: What do you say, Mr. Dewberry?

THE DEFENDANT: We can't play that — how

can you play that game?

THE COURT: I'm not playing a game. She said she'll represent you. Now, what's wrong? What —

THE DEFENDANT: So she can — so you're telling me that nothing prior is not relevant.

THE COURT: That's right.

THE DEFENDANT: Then it is to me.

THE COURT: Well, then, you raise that on appeal.

THE DEFENDANT: It is —

THE COURT: Ms. Allen is —

THE DEFENDANT: She can't — how can she represent me?

THE COURT: You have to cooperate. You have to work with her.

THE DEFENDANT: No, she can't represent me because what happened prior is relevant.

THE COURT: No, no.

[16] THE DEFENDANT: And you can't say — there's no way you can say — if she quit, there's no way you can say she's fired — she's hired again after she quit.

THE COURT: Well, I'm going to. We'll solve that. I'll reappoint her, if you think she's not appointed, and

direct her to be prepared to go to trial next Monday morning.

THE DEFENDANT: Then I'll represent myself like I have been doing, because she quit.

THE COURT: Listen to me. She just said she would represent you at trial. I just reappointed her.

THE DEFENDANT: I mean, you reappointed her.

THE COURT: Yes, sir.

THE DEFENDANT: To who, me?

THE COURT: Yes, sir. To represent you at trial next Monday morning.

THE DEFENDANT: So she's going to — she's going to represent me?

THE COURT: Yes, sir.

THE DEFENDANT: On what defense?

THE COURT: I can't tell her what defense. Justification she can't use. I've just ruled you can't do that. I've just ruled that's not a defense. You're not going to give evidence on it to the jury. We're not going to instruct on it, on justification. That's out.

THE DEFENDANT: So she can quit, and you can make her do [17] it?

THE COURT: I won't play that game with you. I've already told you I've reappointed her. She said she would represent you. Now you're just trying to —

THE DEFENDANT: No, because —

THE COURT: — keep from going to trial.

THE DEFENDANT: — I already had done this, and she can't — she can't just say — do you know what I mean?

THE COURT: Why can't she?

THE DEFENDANT: She can't do that.

THE COURT: Why can't she? Why can't she?

THE DEFENDANT: So basically you're saying everybody can do what they want to do; but if somebody threatened my life, I can't say nothing.

THE COURT: I never said that.

THE DEFENDANT: Then I keep saying, hey, why don't we just go on and kill me now? We don't even have to have the damn trial. We can just go out back with a bullet and get this over with.

THE COURT: Now, Mr. Dewberry —

THE DEFENDANT: Do you know what I'm saying? Because —

THE COURT: Yeah, I hear what you're saying

and —

THE DEFENDANT: — you do what you want to do —

THE COURT: You're being ridiculous. You're being ridiculous. Stop it.

[18] THE DEFENDANT: That's got to be — you got to be kidding me. So you're telling me —

THE COURT: No, you got to be kidding me.

THE DEFENDANT: If somebody threatened to kill me and I call the police, and I got records that I kept calling the police, you say that don't matter you kept calling the police. What you should do is — basically you wish I was dead.

THE COURT: No, sir.

THE DEFENDANT: I'm not dead, so basically I'm here to prove why I did what I did. You saying, well, you could have never done nothing because you got to be perfect, and I said okay.

THE COURT: I didn't say any of that.

THE DEFENDANT: And now my lawyer quit and does what she wants to do. And you said, well, she's your lawyer again. Well, she doesn't want to do it.

THE COURT: Your mindset —

THE DEFENDANT: You got to be kidding me.

THE COURT: Your threat has to be in existence at the time you got out of the car, not before and not afterwards. It's when you were stopped that night on January the 20th. And you've argued there is none. You've admitted there is none. That's all we're going to try.

THE DEFENDANT: There's never going to be a threat at exactly 30 seconds. Do you understand what I'm saying? That [19] makes no — that makes no sense.

THE COURT: No, that's not — no, you don't understand what I'm saying. No, you're not trying to listen to what I'm saying. The threat has to be in existence at the time you were found in possession of a weapon period.

THE DEFENDANT: Then the only other thing is to die. I mean, you're making it very clear —

THE COURT: No, I didn't say —

THE DEFENDANT: — because once —

THE COURT: No, the only thing you can do is go to trial and let a jury decide whether or not you were in possession of a weapon on January the 20th, 2015 and have prior felony convictions. That's the only issues.

That's what we're going to try.

THE DEFENDANT: I mean, if you want — I just don't know what to say. If you want to have a trial saying that he had a weapon in his hands, then that's what they going to do.

THE COURT: No, I'm not going to tell them what to do. I'm going to let them decide.

THE DEFENDANT: You just told her what to do.

THE COURT: Yeah. Well, I — no, she said she'd represent you. I reappointed her to represent you. Come on, Mr. Dewberry.

THE DEFENDANT: Because she's scared of you.

THE COURT: You know what you're doing.

[20] THE DEFENDANT: You just told her to represent me —

THE COURT: Yes.

THE DEFENDANT: — because of fear. She's afraid of you, or she wouldn't have done it.

THE COURT: No, she isn't.

THE DEFENDANT: Come on, man. You got to be kidding me because —

THE COURT: No, you got to be kidding me.

THE DEFENDANT: Her career is on the line if she don't do it. You know it.

THE COURT: No, it isn't.

THE DEFENDANT: And you know it. Her whole — her life and her career is on the line if she don't follow your rules.

THE COURT: No, that's not —

THE DEFENDANT: Yes, it is. She probably won't ever work again, and she would have to leave town.

THE COURT: She appears in front of me all the time.

THE DEFENDANT: And you know it.

THE COURT: Yes, I know she appears, and she's a good attorney, and she'll do a good job —

THE DEFENDANT: But she already quit.

THE COURT: — if you listen. Now, you're not listening to me.

THE DEFENDANT: Okay. Well, let me ask you this. Let me ask you this, right? She told me — she told me, right, that [21] when we were —

THE COURT: No, it's not right.

THE DEFENDANT: — first putting this case

together, she said, “Well, why don’t you say somebody else threw the gun under the car?” I said, That’s a lie. I ain’t going to do that.”

THE COURT: Oh, well, I don’t care. I don’t believe that.

THE DEFENDANT: See there? That’s why I said — that’s why I said I didn’t want her from the beginning. That’s why I said I didn’t want her from the beginning.

THE COURT: Do you have any statement — now, this is ridiculous. You just want to argue. I’m through arguing with you. We’re going to trial Monday morning. Do you have civilian clothes to wear? What do you have to wear?

THE DEFENDANT: What do you mean? I got on clothes.

THE COURT: You don’t want to have —

THE DEFENDANT: What are you talking about?

THE COURT: Do you want to have a pair of dress slacks?

THE DEFENDANT: You’ve already decided me, bro. What are you talking about? You said there’s no

problem. I have no problem. I got proof that I been in the hospital and everything. I got proof. You said there wasn't no problem when I got in the car. There was only a problem —

THE COURT: The problem was when you got out.

THE DEFENDANT: — when the officer pulled me over. And [22] I complied with the officer, and you said I shouldn't have been — I shouldn't have been a threat because I complied with the officer.

So basically I should have made sure the officers shot me like they do with the rest of them brothers out there. They should have shot me in the face like he done the last guy.

THE COURT: Getting ready for trial. You have any friends or relatives that can get you —

THE DEFENDANT: Then I'm pretty sure you got a gun up there. We can get this over right out back.

THE COURT: We don't have a gun up here. My goodness.

THE DEFENDANT: You know you got a gun up there.

THE COURT: I've never had a gun in this courtroom.

THE DEFENDANT: We can get this over with. Like we don't even have to have a trial. I'm cool with it. I'm okay with it because it's already — you already made it clear what's going to happen.

THE COURT: The only other option I can think of, do you want to plead guilty?

THE DEFENDANT: Plead guilty to what?

THE COURT: Being a previously convicted felon —

THE DEFENDANT: Not even.

THE COURT: — in possession of a weapon period.

THE DEFENDANT: Only if you're going to give capital punishment.

[23] THE COURT: I don't give capital punishment.

THE DEFENDANT: Then you're messing up there. I think you should. Because this is relevant. When people were trying to kill me, you're laughing about it. You think, actually think this is funny. When I was laying in the hospital beat to death, you think that type of stuff is funny, and that's not — really not funny. And my wife got killed too, and you think all this is funny. None of this is funny.

THE COURT: No.

THE DEFENDANT: So if I was dissing that type of stuff on you, you would probably want to bring me up on charges.

THE COURT: Now, now, now, you're not even talking common sense.

THE DEFENDANT: So which type of stuff would be beyond —

THE COURT: No, no, no.

THE DEFENDANT: The other side of it. If somebody hit you in the face and busted your eye open, you probably would have wanted to defend your damn self.

THE COURT: Mr. Dewberry, I've already ruled. It has to be an imminent threat at the time you were observed in possession of the weapon by police officers when they stopped you on January 20th of this year. That's it. That's all we're going to try.

Now, do you want to contact some friends? Or I don't know [24] whether the public defenders has some clothes, free clothes or something.

MS. ALLEN: We've offered to get him some clothes. I had Iris talk to him about that. I don't know

that he wants us to.

THE COURT: Okay. If he doesn't —

MS. ALLEN: We have offered to do that.

THE COURT: All right.

MS. ALLEN: Your Honor, I do just want to clarify one thing.

THE COURT: Okay.

MS. ALLEN: I don't know if Mr. Dewberry would still be choosing to go pro se if I were representing him. I just wanted to clarify for the Court. Is the Court denying any desire he has to go pro se and appointing me next week?

THE COURT: Yes.

MS. ALLEN: If that's the case, that's fine. I just wanted to make sure I understood.

THE COURT: I'm denying his request to go pro se, and I'm reappointing you —

MS. ALLEN: Okay.

THE COURT: — to represent the defendant. And if you have any voir dire or other proposed instructions, please get them filed, because now we've got —

THE DEFENDANT: I can't even defend myself now.

THE COURT: Well, you haven't done any good at it yet, [25] Mr. Dewberry. Why would you want to do it later?

THE DEFENDANT: You know what? You know what, man? You know what? Sometimes — I used to think Timothy McVeigh was wrong, but I see he was probably angry, and it's because this makes no sense.

THE COURT: Why doesn't it make sense?

THE DEFENDANT: Because between two —

THE COURT: Mr. —

THE DEFENDANT: When I was trying to speak up for myself, didn't nobody want to listen. Then when I do speak up, you tell me to shut the — shut up. So I don't understand.

THE COURT: Yes, you do, but you —

THE DEFENDANT: No, I have no idea.

THE COURT: You have three priors. Don't act to me like you've never been to court.

THE DEFENDANT: Oh, I got three priors, and I knew — and I kept them people up off from me, but I wish I hadn't. I wish I hadn't. And I hope — I hope —

THE COURT: That's hindsight.

THE DEFENDANT: I hope before I even get

here next week that I get stabbed to death because I almost been —

THE COURT: I'm sorry you think that way. I don't.

THE DEFENDANT: So — and then the joke would be on you.

THE COURT: We're going to trial next Monday, and there's no joke on here.

[26] THE DEFENDANT: So I hope I'm dead before I get here.

THE COURT: All right. We'll be here at 8:30 for pretrial. Marshals, if you would tell whoever is accommodating Mr. Dewberry.

COURTROOM DEPUTY: It's set at 1:00.

THE COURT: Oh, that's right, 1:00, because we got three other trials. We'll start at 1:00. I'm sorry. 1:00 Monday morning, Mr. Dewberry.

If you want street clothes, you need to let the — doesn't the public defender have some clothes?

THE DEFENDANT: I'm going to wear a robe.

THE COURT: No. You wear what you got.

THE DEFENDANT: Since all this is funny, I got a joke too.

THE COURT: No, you're trying to make a joke of it.

THE DEFENDANT: I want to wear a robe.

THE COURT: No. Motion is denied. This case is continued or set for trial Monday morning.

THE DEFENDANT: And he's laughing, you son of a —

THE COURT: Now, now, now. Marshals, please give Mr. Dewberry — well, give him time to talk to his attorney. When he's finished talking to his attorney, he's ready to go. Thanks for coming in. Be in recess. See you at 1:00 Monday.

* * *

(Court adjourned.)

[27] (End of requested transcript)

-oOo-

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

Date: June 7, 2017

/s/_____
Signature of Court Reporter
Barbara Barnard

APPENDIX D

[1] IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

_____)
UNITED STATES OF AMERICA)
	) CASE NO. 15-CR-
	) 00053-DW-1
VS.	) KANSAS CITY,
	) MISSOURI
)
ANDRE G. DEWBERRY)
_____)

CHANGE OF PLEA
BEFORE THE HONORABLE DEAN WHIPPLE
SEPTEMBER 19, 2016

APPEARANCES:

For the Plaintiff:	MR. STEFAN HUGHES U.S. Attorney's Office 400 E. 9th Street, Suite 5510 Kansas City, MO 64106
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For the Defendant:	MS. CARIE ALLEN, Assistant Federal Public Defender 818 Grand, Suite 300 Kansas City, MO 64106
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Transcribed by:	BARBARA BARNARD, RPR, CRR
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47a

Official Court Reporter
400 East 9th Street, Room
8420
Kansas City, Missouri 64106
(816) 512-5622

Proceedings recorded by mechanical stenography;
transcript produced by computer.

[2] *(Defendant present.)*

THE COURT: Good afternoon. Please be seated.
Good afternoon, Mr. Dewberry. How are you?

THE DEFENDANT: I'm not sure sometimes.

THE COURT: Okay. Well, I understand you've
negotiated a plea, so let me call this case and we'll talk
about it.

Court will call Case No. 15-00053, United States of
America versus Andre Dewberry. Mr. — you're Andre
Dewberry; is that correct?

THE DEFENDANT: Yeah.

THE COURT: Why don't you come up to the
podium because I'm going to — in taking that plea, I'm
going to need to talk to you a lot, so let's start with you
coming up to the podium. Then I'll — then from there, I'll

have you go over to the witness stand.

Again, you're Andre Dewberry; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: And I've been advised — well, here. I have the original signed copy. You've negotiated a binding plea agreement with the government and wishing to withdraw your plea of not guilty previously entered on this charge that we were going to have a trial on, subject to the terms of the plea agreement; is that correct?

THE DEFENDANT: Yeah, that's correct.

THE COURT: Here's how we do it. I will permit you to [3] withdraw your plea of guilty. Now I'm going to have the government read the charge to you and advise you of the range of punishment. Then we'll — I'll ask you how you plead, and then we'll talk about the binding plea agreement.

MR. HUGHES: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. HUGHES: The indictment reads that on or about January 20th, 2015, in the Western District of Missouri, Andre D. Dewberry, defendant herein, having been convicted of crimes punishable by imprisonment for

a term exceeding one year, did knowingly possess in and affecting commerce a firearm, to wit: A Grendel, G-R-E-N-D-E-L, Model P10, .380 caliber handgun bearing serial number 22754, which had been transported in interstate commerce contrary to provisions of Title 18, United States Code, Sections 922(g) (1) and 924(a) (2).

The range of punishment for a conviction of this crime carries a — no more than ten years imprisonment, no more than a \$250,000 fine, no more than three years of supervised release, and a \$100 mandatory special assessment.

THE COURT: Thank you.

Mr. Dewberry, do you understand what you're charged with in this case?

THE DEFENDANT: Yes.

THE COURT: Do you understand the range of punishment for that charge the government just read to us?

[4] THE DEFENDANT: Yeah.

THE COURT: Part of that punishment, Mr. Dewberry, is that not more than three years supervised release. That's considered part of the punishment because after you serve any time in jail or prison, when

you're released, you're released and placed on supervised release. It's the same thing that the state calls probation or parole.

There are rules you must abide by. If you violate the rules, that can be the basis, after a hearing to determine if you did violate the rules, to revoke your supervised release and order you to spend more time in jail or prison. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: So knowing the offense with which you're charged and the range of punishment for that offense, what is your plea to this charge, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Before I can accept your plea, Mr. Dewberry, I need to ask you some additional questions under oath, make a record that you know and understand what you're pleading guilty to.

Now, further, we're going to talk about this is a binding plea agreement. And I'll tell you now, I'm not going to accept your plea of guilty until — well, I guess I accept the plea of guilty subject to the terms of the binding plea agreement. But [5] before I accept the

binding plea agreement, I'm going to order a presentence investigation to determine if it's a reasonable binding plea agreement. If it is, then we'll go on with sentencing. If it isn't, I'll set aside your plea of guilty and we'll reset this case for trial or another hearing. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay. So I need you to raise your right hand to answer questions concerning this plea of guilty and the plea agreement. We're going to talk about that too. She'll swear you in, Mr. Dewberry.

(Defendant sworn.)

THE COURT: Mr. Dewberry, this takes some time. Are you comfortable — you act like you're having trouble walking. Can you make it up on this chair up on the witness stand? Can you come around here, or do you want to just sit at counsel table? Do you want to sit down in that chair behind you?

THE DEFENDANT: It's whatever.

THE COURT: Why don't you come up here. I can talk to you better if we're closer, Mr. Dewberry,.

MS. ALLEN: They're bringing the agreement and stuff up for you.

THE COURT: Mr. Dewberry, I'm going to ask

you some background questions, and then we'll go over the charge in a little more detail. Then I'm going to advise you of the plea of [6] guilty and the constitutional rights you waive by pleading guilty. Let's start with tell me your name again.

THE DEFENDANT: Andre Dewberry.

THE COURT: How old are you, Mr. Dewberry?

THE DEFENDANT: 51.

THE COURT: What's the condition of your physical health today? You're walking with a cane. How is your physical health?

THE DEFENDANT: I'm not sure sometimes.

THE COURT: Well, are you under a doctor's care right now?

THE DEFENDANT: No, not — not like — not that kind of doctor's care. I take medication.

THE COURT: Okay. Do you have any idea what the medication is for?

THE DEFENDANT: Well, I take muscle relaxers and —

THE COURT: Okay.

THE DEFENDANT: — pain medication for my hip from one of the things that happened out of this

situation.

THE COURT: Okay. Now, you tell me you're 51. How much formal education do you have? How far did you go in school?

THE DEFENDANT: 12th grade.

THE COURT: What type of work do you do, or what type of job skills do you have?

THE DEFENDANT: Well, I normally work on physical jobs. [7] I use my hands —

THE COURT: Okay.

THE DEFENDANT: — and stuff, so I — I had a little company I was trying to get off the ground when I — and I — that I wanted to get off the ground —

THE COURT: Okay.

THE DEFENDANT: — when I got arrested.

THE COURT: All right. Now, what's the condition of your mental health? As far as you know, are you in good mental health?

THE DEFENDANT: I don't know.

THE COURT: Well, you know, we had that exam, and the doctor found that you were in mental health and could understand the charge against you. Do you understand — do you — are you concerned about that now?

THE DEFENDANT: Not really.

THE COURT: Because if you do, we'll just have another exam to bring it up-to-date, okay?

THE DEFENDANT: No, I don't think they're going to find me crazy. Just kind of heartbroken.

THE COURT: Okay. Well, that's understandable. That's understandable.

Now, let's talk about this charge. This charge alleged that you were found in possession of this weapon on January the 20th of 2015. Do you agree with that date?

[8] THE DEFENDANT: Yeah.

THE COURT: Do you remember that's the day the police stopped you?

THE DEFENDANT: Yes.

THE COURT: You stepped out of the car with the gun in your hand. Do you remember that?

THE DEFENDANT: Yeah.

THE COURT: Then you pitched it underneath the car. Do you understand that? Do you remember that?

THE DEFENDANT: Yeah.

THE COURT: Okay, all right. Now, at the time — now, on that date at the time you were in possession of that weapon, what was the condition of your physical

health, good or bad?

THE DEFENDANT: Good.

THE COURT: What was the condition of your mental health, good or bad?

THE DEFENDANT: Good.

THE COURT: Were you under the influence of drugs or alcohol at the time you were found in possession of that weapon?

THE DEFENDANT: Not at that time, no.

THE COURT: Okay. All right. Now, the charge goes on to tell us that this offense took place in the Western District of Missouri. I'm going to have the government's attorney give us a summary of the evidence they would present or the factual basis for filing this charge against you, all right, sir?

[9] MR. HUGHES: Good afternoon, Your Honor. I would briefly summarize the evidence. On January 20, 2015 —

THE COURT: Wait a minute. Why don't you just come on up to the podium. The reporter has got to take this down.

MR. HUGHES: Sorry, Your Honor.

THE COURT: That's all right.

MR. HUGHES: On January 20th, 2015, at approximately 10:36 p.m., Kansas City police officers were patrolling in the area of Kansas City at 43rd and Agnes, which is in Kansas City, Jackson County, in the Western District of Missouri. At that time, they observed a vehicle being driven by Mr. Dewberry, which was a green 1998 BMW, and they ran the plates. The plates turned out to have six active municipal warrants, and five of those warrants were for Mr. Dewberry.

The officers stopped the vehicle. At that time the driver and sole occupant of the vehicle, Mr. Dewberry, opened the door, stepped out of the vehicle with a black handgun in his hand and threw it underneath the vehicle. Officers arrested Mr. Dewberry, and computer checks revealed he had two prior felony convictions for robbery and that he had been sentenced to terms of imprisonment on those two robberies for more than one year.

The black handgun was recovered, and it was more specifically identified as a Grendel, G-R-E-N-D-E-L, Model P, as in Paul, 10, .380 caliber handgun bearing serial number 22754, [10] and it was a semiautomatic handgun.

The Special Agent Matthew Brown, who is trained

as an interstate nexus expert for the Bureau of Alcohol Tobacco Firearms and Explosives, reported that the .380 Grendel was not manufactured or produced within the state of Missouri, and therefore, previously traveled in interstate or foreign commerce. That would be the government's evidence, Your Honor.

THE COURT: Thank you. Ms. Allen, do you want to point out any other background or factual background in this case?

MS. ALLEN: No. I think there's one correction, two things that Mr. Hughes forgot. I don't think it's significant for the plea. I just want to make sure it's accurate. I think he stated it was a semiautomatic, and I do believe it was a pistol.

THE COURT: You mean a revolver?

MR. HUGHES: It was not a revolver.

MS. ALLEN: I don't know the specifics.

THE COURT: I'll bet you Mr. — what was it, Mr. Dewberry?

THE DEFENDANT: Well, that's one of the questions I was going to ask. I didn't — I didn't know when an appropriate time was. The gun — well, I mean, we called it — it was — at one point it may — it was a gun.

THE COURT: Okay.

THE DEFENDANT: And that's where the charge actually [11] comes from. When I came in possession of it, I knew that it didn't work, and so I thought that it only fired — because the psychologist got the research for me. You take and put one bullet in at a time, which makes it a semiautomatic, because it's not able to shoot like an average gun.

THE COURT: Okay. Yeah.

THE DEFENDANT: So — which I didn't know that neither because I didn't have any ammunition for the gun.

THE COURT: Oh, you had no ammunition?

THE DEFENDANT: No.

THE COURT: There was no ammunition in the gun when you —

THE DEFENDANT: And it didn't work. I know it didn't work.

THE COURT: Well, how do you know it didn't work if you never tried it?

THE DEFENDANT: Because what you call the firing pin —

THE COURT: Yes.

THE DEFENDANT: — was — all the parts were gone. Parts of the gun were actually missing.

THE COURT: Okay. All right. All right. But you understand it's still considered a handgun.

THE DEFENDANT: By it looking like a gun, yes, sir.

THE COURT: Yes. Do you understand that?

THE DEFENDANT: Because it looked like one.

[12] THE COURT: All right. All right. And it's so — you possessed — you knowingly possessed it. You knew you had it in your possession.

Mr. Hughes, just out of curiosity, does your police report recount the fact that it doesn't work?

MR. HUGHES: Yes, Your Honor, it does. It was analyzed by a Robert J. Smith, who's a criminalist with KCPD, and he noted that the firearm was, in fact, missing its firing pin. However, ATF agents who were going to testify would tell the Court that the fact that the gun was missing its firing pin does not take it outside of the purview of the statutory definition of a firearm, which is contained in 18 U.S.C. 921(a) (3). It is still a firearm. The statute is written in the disjunctive. It's a firearm because of the —

THE DEFENDANT: It looked like it.

MR. HUGES: — the first prong and the second prong.

THE COURT: Okay. It's still considered a firearm. Do you understand that?

THE DEFENDANT: They're saying because it looked like a gun.

THE COURT: That's right.

THE DEFENDANT: Yeah.

THE COURT: Okay. All right. Do you have any disagreement with — that it's a Grendel Model P10, .380 caliber handgun?

[13] THE DEFENDANT: I really didn't know.

THE COURT: How long had you had it in your possession?

THE DEFENDANT: Well, that was the interesting thing. It was — it was a gun that was probably — that I knew somebody had found it 15 years ago because I knew who had had it 15 years ago. And so it was found. It was found, and it's basically in some trash, so that's how I came —

THE COURT: How long had you had it in your possession?

THE DEFENDANT: How long had I had it?

THE COURT: Yeah.

THE DEFENDANT: About couple months.

THE COURT: Okay. All right. Okay. And, of course, it says it had been transported in interstate commerce. What that means is that it was manufactured in some state outside the state of Missouri; and at some point before you got it into your possession, somebody had to haul it into Missouri.

THE DEFENDANT: Yes.

THE COURT: It could have been as simple as over in Kansas.

THE DEFENDANT: Yes.

THE COURT: Do you understand that?

THE DEFENDANT: That was one of the questions I wanted to ask, because my understanding is that the interstate commerce — now, I'm not arguing the item —

THE COURT: Okay.

[14] THE DEFENDANT: — you know.

THE COURT: Yeah.

THE DEFENDANT: The interstate commerce issue is what I was referring to. How can interstate

commerce — I didn't quite understand because the gun was in the state of Missouri ten years prior to me coming in possession of it.

THE COURT: Yeah. That —

THE DEFENDANT: And it —

THE COURT: But it wasn't made in Missouri.

THE DEFENDANT: I understand it wasn't made.

THE COURT: So someone had to bring it into Missouri ten years ago.

THE DEFENDANT: Ten years ago.

THE COURT: That makes it interstate commerce. There's no time limit on when it can be brought in.

THE DEFENDANT: Well, that's one of the things that I — because I don't really get a lot of library time in my — and that's one of the things I was inquiring about, because there's a — there is a limitation, a five-year limitation on who had it last.

THE COURT: No, there isn't. Where did you get that idea?

THE DEFENDANT: In the state of Missouri, right here.

THE COURT: Did you ever hear of that, Mr. Hughes?

MR. HUGHES: No, and we're in federal court. And what [15] the federal law is, it doesn't matter who brought the gun into the state of Missouri. The critical component is that the gun was manufactured outside the state of Missouri.

In this particular case, this firearm was manufactured in Florida. Therefore, it had to have crossed the line — a state line for it to be possessed by the defendant on the day in question.

THE COURT: And there's no time limit on when it could have been brought in.

MR. HUGHES: Absolutely none.

THE COURT: Okay. Do you understand that, Mr. Dewberry?

THE DEFENDANT: Yeah, I — I guess, because it — what I was reading, it read different, so I was just inquiring.

THE COURT: Okay.

THE DEFENDANT: The opposite of what — I'm not arguing that it's not a gun and all that. I was just inquiring about —

THE COURT: Interstate transportation.

THE DEFENDANT: — who had it — yes, who had it last is not known for a fact; that I'm not the one that brought it, and I know it was here ten years ago. And I could tell you who got it, and so basically we both would be getting charged with the same crime.

THE COURT: Yes, that's right. You could have, yes.

THE DEFENDANT: By law, that means both of us would be guilty.

[16] THE COURT: Yeah, if you want to testify against him. We're not talking about that today. But the point is at some point — it was manufactured in Florida, and someone had to —

THE DEFENDANT: Yes. Yes, I'm — like I said, I'm not arguing.

THE COURT: Okay, all right.

THE DEFENDANT: I was just saying I know it was here, and I didn't bring it, quite some time ago.

THE COURT: I understand.

THE DEFENDANT: That is all.

THE COURT: So that's what you're pleading guilty to. Is there anything else about the charge you

don't understand?

THE DEFENDANT: Well, I was kind of — I mean, I understand it's a plea agreement, so the other question I guess really wouldn't matter because I had asked for quite some months could I see the discovery, and I was not allowed to, so — but it doesn't — you know, I mean, we're — I kind of —

THE COURT: What are you — why are you concerned about the discovery now? You're not going to trial, so it's not going to be introduced anyway.

THE DEFENDANT: That was the other question. That's what I'm saying. At this point, it probably wouldn't matter to see — you know what I'm saying?

THE COURT: Yeah. I knew it wouldn't matter because — now, look. Let's get down to the basis.

[17] THE DEFENDANT: Yeah.

THE COURT: You stepped out of that car with a gun in your hand.

THE DEFENDANT: Yeah.

THE COURT: Now, that's all the prosecutor would have had to show the jury. Then he would have had to show them that he transported it, that it was made in

Florida and somebody hauled it in here even without knowing who hauled it. Do you understand that?

THE DEFENDANT: Okay. I mean, I — you're right as far as that aspect, you know. Without, you know — there's just — you know, it's a couple other things really.

THE COURT: Well, now, Mr. Dewberry, I don't mean to imply you couldn't have brought up those other things in front of a jury, but you would have — you wouldn't have had to. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Okay.

THE DEFENDANT: Okay.

THE COURT: Now, have you been threatened or coerced in any manner to cause you or force you to plead guilty to this charge other than we were going to trial?

THE DEFENDANT: No.

THE COURT: All right. Now, Mr. Dewberry, you have two prior charges. Did those result from you pleading guilty or as [18] a result of a jury trial?

THE DEFENDANT: Me pleading guilty.

THE COURT: Okay. So you've pled guilty before. That's the only reason I'm asking, all right? Did you plead

guilty on both of them?

THE DEFENDANT: Yes.

THE COURT: Okay. As you know, Mr. Dewberry, when you plead guilty, you waive various constitutional rights. I'm required to go over and explain each one of them to you. Then I will ask you if you understand the charge I've just explained to you. When you tell me you have — you do understand it, I'll ask you to waive or give up that constitutional right. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Mr. Dewberry, the bulk of these rights hinge on your right to a jury trial. And we have a jury in the courthouse, a jury panel to pick a jury and go to trial this afternoon. You knew that, didn't you?

THE DEFENDANT: Yeah.

THE COURT: By pleading guilty, you're waiving your right to a jury trial on this charge. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Do you waive your right to a jury trial on this trial — on this charge at this time?

THE DEFENDANT: Yes.

[19] THE COURT: Further, at that trial you would have a right to confront the people who accuse you of committing this crime. That's under your right to face and confront your accusers, and your attorney would be given an opportunity to cross-examine them. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: By pleading guilty, you're giving up your right to confront — you're waiving your right to confront and face your accusers because you're admitting your guilt; and thus, your attorney cannot cross-examine them. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: So do you waive your right to confront and face your accusers and to cross-examine them on this charge?

THE DEFENDANT: Yes.

THE COURT: After the government had put all its witnesses on and evidence, then you would have been given an opportunity to present evidence you wanted a jury to hear. Do you understand that?

THE DEFENDANT: Could you repeat that one more time?

THE COURT: After — after the government puts its case on by putting its witnesses on, then you have the opportunity to put your case on. You can do that by calling witnesses you want to testify in your defense. Do you understand that?

THE DEFENDANT: Yes.

[20] THE COURT: But by pleading guilty, you're giving up that right. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: So do you give up your right to subpoena witnesses and to compel their attendance at a trial on this charge?

THE DEFENDANT: Yeah.

THE COURT: After you — if we had — we're working our way through the trial, Mr. Dewberry. After you had called these witnesses, then you'd have to decide if you wanted to take the stand and testify under oath in front of that jury. At no time would you have been forced to or required to unless you decided that's what you wanted to do. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: That's your right not to incriminate, which means to tell on yourself, that you were

in possession of that weapon. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: That's called your right against self incrimination.

Now, you waive that right because we went over the charge, and you admitted you were in possession of that weapon, and you admitted that you had these two prior robbery convictions. Do you understand that?

THE DEFENDANT: Yes.

[21] THE COURT: So do you — so do you now waive your right against self incrimination on this charge?

THE DEFENDANT: Yes.

THE COURT: If we had had the trial, and the jury, after hearing the evidence and after deliberating, had announced they had found you guilty, you would have a right to appeal that jury's guilty verdict to the federal appellate courts that review what goes on at a jury trial. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. And a lawyer would represent you on that appeal challenging the jury finding you guilty. By pleading guilty, we're not going to have a jury trial. So a jury is never going to find you guilty, so

there's no way to appeal your guilty verdict that's never going to happen. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: So do you waive your right to appeal a jury's finding of guilty on this charge?

THE DEFENDANT: Yeah.

THE COURT: All right, sir. Now, at the time you were stopped out there, you threw the gun under the car. You threw some other evidence over the car. The police officers searched the area and recovered the gun, and I think it was a syringe. Do you remember that?

THE DEFENDANT: Yeah.

[22] THE COURT: By pleading guilty, you're giving up your right to further challenge whether that search was properly conducted to find the weapon mainly and the drugs. Or I mean needle or syringe.

THE DEFENDANT: Yes.

THE COURT: Do you give up that right at this time?

THE DEFENDANT: Yes.

THE COURT: Mr. Hughes, did Mr. Dewberry make any statements that you would have been looking to introduce into evidence?

MR. HUGHES: Yes, Your Honor. He made some statements post arrest but pre-Miranda.

THE COURT: Okay. Mr. Dewberry, by pleading guilty, you're giving up your right to further challenge whether those statements you made out after you were arrested could be introduced into evidence. Do you understand that?

THE DEFENDANT: What? I didn't understand that.

THE COURT: Okay. Mr. Hughes said when the officers arrested you out there, you made some statements. I don't even know what they were.

THE DEFENDANT: Okay.

THE COURT: But Mr. Hughes is indicating to us they might have wanted to have those officers tell the jury what you said. By pleading guilty, you're giving up your right to further challenge whether Mr. Hughes would have been allowed to [23] do that. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And do you give up that right at this time?

THE DEFENDANT: Yes.

THE COURT: Now, is there any prior plea offers? We need to get that on the record.

MR. HUGHES: No, Judge. This was the only plea offer that was formally negotiated with Mr. Dewberry. However, in the interest of being fully candid with the Court, at the time that the defendant was representing himself, I believe August 23rd I drafted a letter and sent it to Mr. Dewberry at CCA informing him that if he was not interested in pleading pursuant to the plea agreement that he's pleading to today, that he did have the alternative of pleading up to the Court with no written agreement. But we never discussed that, but I did want to let the Court know that that was an alternative that was mentioned to Mr. Dewberry.

THE COURT: Thank you. Do you remember that, Mr. Dewberry?

THE DEFENDANT: Yes.

THE COURT: Okay. But anyway, there's no prior plea agreements, so now we need to talk about this binding plea agreement you've negotiated with the government. Now, I'm going to start with having Mr. Hughes come up to the podium again and advise us on the record of what you and the government agreed [24] to.

Then I need to ask you some questions, all right, sir?

THE DEFENDANT: Yes.

THE COURT: All right. Mr. Hughes.

MR. HUGHES: Judge, if the Court is inclined to accept this plea, the essence of it is is that the Court, if you agree, would bind itself to sentencing Mr. Dewberry to a term of 60 months imprisonment. That is reflected in paragraph 10 of the plea agreement. And I believe it's also contained in paragraph 6A of the plea agreement.

THE COURT: All right.

MR. HUGHES: And 6F of the plea agreement and 6G of the plea agreement. Did the Court want me to go beyond?

THE COURT: No. Well, Ms. Carie, you want to point out any other provisions? Since this is a binding plea agreement, and, of course, there's some language about the guideline applications, but we still have to do that to have probation office apply the guidelines. So why don't you tell — and although the binding plea agreement is going to override whatever the guidelines say if I accept it.

MR. HUGHES: Correct.

THE COURT: All right. Ms. — do you want to

point out any other parts of the plea agreement, Ms. Allen?

MS. ALLEN: I'll just point it out just to clarify this, and I've gone over this with Mr. Dewberry. So the plea agreement is — as it stands right now, we're going to have a [25] presentence investigation. And after we get the presentence investigation, your report back, the judge will decide whether or not he's going to accept the binding plea agreement. You understand that, right?

THE DEFENDANT: Yes.

MS. ALLEN: And if he accepts the binding plea agreement, he will give you 60 months. That's required. And you understand that, right?

THE DEFENDANT: Yes.

MS. ALLEN: And if he tells us that he is not going to accept the binding plea agreement, you are allowed — and it says here in writing you are allowed to withdraw your plea, and we would be back to the same position we were before you entered into the plea agreement. You understand that, right?

THE DEFENDANT: Yes.

MS. ALLEN: Okay. That's all I wanted to go over.

THE COURT: Thank you.

All right. Mr. Dewberry, so let me ask you some of the same questions. If I accept your plea of guilty, and it appears I will, I'm going to — I'm going to order a presentence investigation. That will be conducted by a federal probation officer. The purpose of that is to give me more background information on you so I will be able to determine whether I can accept this binding plea agreement.

So we order the presentence investigation. The federal [26] probation officer will do the investigation and write the written report. You and our attorney get a written copy of it as well as the government's attorney. You want to go over that because information in there can affect whether or not I accept the binding plea agreement.

That presentence report will give me your educational history. It will give me your work history. It will give me your criminal history. But also in there, it's going to give me more background information on you on this case.

So you go over it — we want to make sure it's accurate — with your attorney. If there's anything in there that you or she or both of you think is inaccurate — inadequate, what happens then is Ms. Allen will notify or

contact the probation officer who wrote the report and point out what you and she disagree with. If the probation officer agrees that they got something wrong, they'll change it.

But on the other hand, if they think what they put in there is correct, then we have a dispute that's got to be resolved before we can have a final sentencing hearing. I will be notified. And with that notification, we'll set up a date for a hearing to resolve those — the dispute about what ought to be in that presentence.

At that hearing, you can call witnesses to support your position. You can testify yourself about it. If the government takes a different position, they can call witnesses. Now, if [27] you call witnesses, the government can cross-examine your witnesses. And if the government calls witnesses, your attorney can cross-examine the government witnesses. And if you testify, the government can cross-examine you.

What I'm explaining, Mr. Dewberry, is what we call a full evidentiary hearing. So when all the evidence is in, then I've got to rule on those disputed — the disputed issues. We're trying to determine what the true facts are.

Now, when I say rule, if I rule contrary to your

argument, your position of what the facts are, that will not be the basis to allow you or permit you to withdraw this plea of guilty. Do you understand that?

THE DEFENDANT: If you rule — say that last part again.

THE COURT: Sure. We're going to have that hearing just to make sure we're all looking at the same facts when we apply the Federal Sentencing Guidelines. So if there's disputed facts, then I'll hear evidence about supporting what those facts ought to be from you, from the government. Then I'll rule.

Now, if I don't accept your version of the facts, that will not be the basis to permit you to withdraw this plea of guilty. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: All right. And, of course, this is a binding plea agreement. Again, once we establish the factual basis, and we'll still apply the guidelines to give everybody [28] including me, what the guidelines tell us is a reasonable sentence. I need all that before I can determine whether I will accept the binding 60-month sentence. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: That's how we're going to do it. But the thing that's important to you, if I can't accept it, I'll tell you and probably tell you why I can't accept it and permit you to withdraw your plea of guilty. So you will still stand with a plea of not guilty in place, and we'll just set it for trial like we have for today, and we'll have a jury trial. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Okay. Then, of course, paragraph 6A says the Court must impose a sentence of 60 months and a term of supervised release not to exceed three years. That's what we're all talking about. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And if I can't do that, we'll set aside the plea.

And again, paragraph 6F, the Court isn't bound by the sentencing guidelines. And if I do not agree to impose a 60-month sentence, then I will allow you to withdraw your plea of guilty. That's mentioned in paragraph F. That's what we just talked about.

All right. Let's see if there's anything else we need to [29] talk about in here. It talks about preparing the

presentence report. And then it agrees with the guideline calculations in paragraph 10. But again, paragraph 10 says the United States agrees not to seek a sentence beyond 60 months, and the defendant agrees not to seek a sentence below 60 months. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: All right. Now, paragraph 10G is referring back to what you and I talked about, any factual disputes. If there's any disputes about what facts ought to be considered in determining your sentence, we have that hearing we talked about. Paragraph 10 says, "The defendant consents to judicial fact finding by a preponderance of the evidence for all issues pertaining to the determination of defendant's sentence." Do you understand that?

THE DEFENDANT: I think so.

THE COURT: Okay. Well, here. Here's why that's in here. The Federal Rules of Criminal procedure say any facts that can affect the defendant's sentence must be decided by a jury. Now, we agree we're not going to have a jury here to do that, to agree on determining disputed facts. So then our rules of criminal procedure say that in that event, then the sentencing judge, if there's

any dispute as to what the facts are, then the judge who's going to pronounce a sentence can hear the facts, hear the witnesses. That's what we talked about. You can call [30] witnesses. The government can call witnesses. You can testify yourself. Says the sentencing judge can hear the evidence and then rule what the facts are. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Then the determination of the facts then determine how they would be applied to the Federal Sentencing Guidelines. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: So that's what this is talking about, that you agree — "The defendant consents to judicial fact finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence." Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Do you now agree to that?

THE DEFENDANT: Yes.

THE COURT: All right, sir. Paragraph 15 spells out that by pleading guilty, you're limiting any appeal you can file. Paragraph 15B says, "The defendant expressly

waives his right to appeal his sentence directly or collaterally on any ground except ineffective assistance of counsel, prosecutorial misconduct or an illegal sentence.” And an illegal sentence in this case would be a sentence other than five years. Do you understand that?

THE DEFENDANT: Yes.

[31] THE COURT: If I sentence you any way other than five years, you can — any different than the 60 months or five years, you can appeal that sentence. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Do you agree to that?

THE DEFENDANT: Yes.

THE COURT: To that provision? All right. We’ve gone over it three or four times, and everybody is in agreement with it, Mr. Dewberry.

Now, that’s — again, that’s the plea agreement. Have you been threatened or coerced in any manner to cause you or force you to enter into this binding plea agreement?

THE DEFENDANT: No.

THE COURT: Now, I’m going to have you acknowledge that you signed it. This is the original. This

is the one that goes in the Court file. It's a 12-page document. On the 11th page is Mr. Hughes' signature binding the government to the terms and your signature binding you to the terms of this agreement. And then, of course, on the next page is your attorney's signature acknowledging that she's gone over this with you and explained it to you. Do you see that?

THE DEFENDANT: Yes sir.

THE COURT: Is that your signature?

THE DEFENDANT: Yes.

THE COURT: All right. Before you signed it, did you go [32] over it with your attorney?

THE DEFENDANT: Yeah.

THE COURT: Did you have her explain any part of it to you that you didn't understand?

THE DEFENDANT: Well, I was kind of worried about the \$250,000.

THE COURT: Oh, the fine?

THE DEFENDANT: It's kind of a lot of money that I don't have.

THE COURT: Well, nobody is going to make you pay a fine that you don't have money for. They may assess it, but we're not talking about the fine. That's not part of

the punishment. I mean, that's part of the punishment, but this is a binding plea agreement. It's 60 months period, nothing about money. Do you understand that, Mr. Dewberry?

THE DEFENDANT: Yeah.

THE COURT: All right. Again, have you been threatened or coerced in any manner to cause you or to force you to enter into this plea agreement?

THE DEFENDANT: No.

THE COURT: All right. You're represented by Ms. Carie Allen. First you represented yourself, and then we appointed Carie Allen to assist you because I was concerned about going over that plea agreement and getting ready for trial and help you get ready for trial. Are you satisfied with her assisting [33] you in this case?

THE DEFENDANT: Yeah.

THE COURT: Has she done everything you've asked her to do in acting as your attorney in this case?

THE DEFENDANT: We've had some disagreements on some things.

THE COURT: All right. Did you get them worked out?

THE DEFENDANT: I hope so.

THE COURT: Okay. All right. All right. Has she failed to do for you anything you've asked her to do?

THE DEFENDANT: Not at this point.

THE COURT: Okay. All right. Ms. Allen, do you have any questions you wish to ask your client?

MS. ALLEN: No, I won't ask him any questions.

THE COURT: Thank you. Now, Mr. Dewberry, we're done. Is there anything gone on you don't understand?

THE DEFENDANT: No, I understand.

THE COURT: Okay. If you'll step down, come back to the podium, I'm going to accept your plea of guilty, take the binding plea agreement under advisement, and then I'll tell you then we'll discuss what happens then.

Mr. Dewberry, after questioning you under oath, the Court finds your plea of guilty was entered into by you understandingly, knowingly and voluntarily, and the Court further finds that you — you're entering into the plea [34] agreement with the advice of counsel; was entered into by you understandingly, knowingly and voluntarily. And I'm going to accept your plea of guilty and enter a judgment of guilty against you at this time so we can order that presentence investigation.

When the presentence investigation — I'll order a presentence investigation by the U.S. Probation and Parole office. When it's back, you get a copy of it as well as the government and your attorney. That kicks in the time. You have 14 days to go over it to see if there's anything wrong.

If there is, your attorney and the probation officer will try to work it out. If they can't get it worked out, that's when they let me know, and we have that hearing. And at that point, I will advise you whether or not I can accept — accept this binding plea agreement that requires me to impose a 60-month sentence on you. And if I can, I'll do it. And if I can't, I will permit you to withdraw your plea of guilty and set aside the plea of guilty and the plea agreement, and we'll set the matter for trial. Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: But I can't — and I won't commit, no judge would, to being bound by the plea agreement until we get all the information in the case, the presentence and the other information and all the information pertaining to this case. Do [35] you understand that?

THE DEFENDANT: Yeah.

THE COURT: This is — well, this is standard, the standard way we do it, Mr. Dewberry, anytime we have a binding plea agreement. So we're done as soon as I check with the lawyers.

Anything further from the government?

MR. HUGHES: No, Your Honor.

THE COURT: Anything further by the defense?

MS. ALLEN: No, Your Honor.

THE COURT: Have I — anybody — probation, have I missed anything I need to ask to allow you to get me a presentence?

PROBATION OFFICER: No, Your Honor.

THE COURT: Okay. Mr. Dewberry, has anything gone on that you don't understand?

THE DEFENDANT: No.

THE COURT: All right. I'm remanding you to the custody of the marshals to continue in custody until we have that sentencing hearing, all right, sir?

Where are they keeping you? Where are you?

MS. ALLEN: CCA.

THE COURT: CCA?

THE DEFENDANT: Yeah.

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THE COURT: All right. Thank you. You may
step aside.

[36] Be in recess.

(Court adjourned.)

* * *

(End of requested transcript)

-oOo-

I certify that the foregoing is a correct transcript from the
record of proceedings in the above matter.

Date: April 11, 2017

/s/_____
Signature of Court Reporter
Barbara Barnard

APPENDIX E

**[1] IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

_____)	
UNITED STATES OF AMERICA)	
	)	CASE NO. 15-CR-
	)	00053-DW-1
VS.	)	KANSAS CITY,
	)	MISSOURI
)	
ANDRE G. DEWBERRY)	
_____)	

**SENTENCING
BEFORE THE HONORABLE DEAN WHIPPLE
MARCH 1, 2017**

APPEARANCES:

For the Plaintiff:	MR. STEFAN HUGHES U.S. Attorney's Office 400 E. 9th Street, Suite 5510 Kansas City, MO 64106
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For the Defendant:	MS. CARIE ALLEN, Assistant Federal Public Defender 818 Grand, Suite 300 Kansas City, MO 64106
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Transcribed by:	BARBARA BARNARD,
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90a

RPR, CRR
Official Court Reporter
400 East 9th Street, Room
8420
Kansas City, Missouri 64106
(816) 512-5622

Proceedings recorded by mechanical stenography;
transcript produced by computer.

[2] *(Defendant present.)*

THE COURT: Mr. Dewberry, why don't you just have a seat. The marshals advised me you're walking with a cane, so will you be more comfortable seated there?

Not going to talk to me. Okay.

Court will call Case No. 15-00053, United States of America versus Andre G. Dewberry. Are you Andre G. Dewberry?

THE DEFENDANT: Yeah.

THE COURT: And you're represented by Ms. Carie Allen; is that correct?

THE DEFENDANT: Not under my wishes.

THE COURT: Well, you started to go pro se in this matter. And to get this plea worked out, it was helpful to have an attorney. That's why we appointed her to

represent you. All right, sir? And I'm going to leave her appointed. Now, Mr. Dewberry, you shouldn't be doing this by yourself.

THE DEFENDANT: I — I keep saying from the beginning two years ago and I keep saying, the little voice, I didn't have a choice.

THE COURT: You didn't have a choice for what?

THE DEFENDANT: But to do it by myself.

THE COURT: All right. I understand you, but I — I think Judge Larson even talked to you about that, didn't he?

THE DEFENDANT: Yeah, and —

THE COURT: Yeah.

[3] THE DEFENDANT: And, I mean, I — I wrote — I sent quite a bit of paperwork —

THE COURT: Yes, sir, you did. Yeah.

THE DEFENDANT: — in trying to explain every time, and nobody's — they don't — it's — they send me to psychologists. And he even said, "The boy is not lying," and everybody keep saying this, and nobody just is — nobody is listening. They're just doing what they want to do anyway. But I got to go to jail if I do it.

THE COURT: Mr. Dewberry, you broke the law.

THE DEFENDANT: I know it.

THE COURT: All right.

THE DEFENDANT: I understand it.

THE COURT: And there's punishment attributed to it, all right, sir?

THE DEFENDANT: I thought we was going to play fair. It's not —

THE COURT: Well, let's talk about it. You pled guilty on September 19 of last year to being — to the charge of being a previously convicted felon in possession of a firearm pursuant to a binding plea agreement. I took the binding plea agreement — I accepted your plea of guilty with the understanding that if I couldn't accept that binding plea agreement, you could set aside your plea and go to trial. Do you remember that day?

[4] THE DEFENDANT: Yeah. You stated you wanted to see a PSI.

THE COURT: Yes, sir.

THE DEFENDANT: And I — I mentioned a year-and-a-half ago with Mr. Larson that the sentencing — they were oversentencing me, and nobody said — they told me I didn't understand the law. And so I wrote — I got some books. They said they were the law books, and

I wrote it down. And I said this is the law, and they said, well — and come to find out I was right according to the PSI people. But nobody really didn't listen to me in the beginning.

THE COURT: Well, so you're now saying the PSI is right?

THE DEFENDANT: I said that a year-and-a-half ago.

THE COURT: Okay.

THE DEFENDANT: I said a year-and-a-half ago, this is the sentencing guideline system that the federal government has set up, and everyone told me I didn't know what I was talking about.

THE COURT: Oh, now, Larson didn't tell you that we didn't use the sentencing guidelines. Didn't they tell you they were advisory? They're not mandatory.

THE DEFENDANT: I understand.

THE COURT: Okay.

THE DEFENDANT: And Ms. Carie Allen, this attorney that you have here, she said that that is not — that the book don't [5] know what it's talking about. I said okay. So I asked Mr. Larson. He said, well, you got to talk to Mr. Whipple about it. So now we're here talking to

Mr. Whipple about it.

THE COURT: Okay. Yes, sir.

THE DEFENDANT: And, I mean, I mentioned — I did mention this. And, I mean, I — and, you know, everything I've said has been the truth from the beginning, and I don't understand — I thought this was — I thought this was what we were supposed to be doing, and I was foolish to even think that that's what we were standing on.

THE COURT: But you remember we went over the binding plea agreement.

THE DEFENDANT: I understand that. And I guess —

THE COURT: And the binding plea agreement says if I accept it, the sentencing of 60 months.

THE DEFENDANT: Yeah, I know. And —

THE COURT: Okay.

THE DEFENDANT: And I just — I really didn't have a choice because I was told that if you don't accept it, it's — you know, trial ain't going to turn out good because — here, what the — they — what Mr. — this gentleman, the prosecutor put in his — his thing saying that I fabricated a story that I proved to be true; and after I

proved the story to be true.

THE COURT: Wait. What story are you thinking was fabricated?

[6] THE DEFENDANT: The story that he says that I fabricated about being attacked and all this other stuff.

THE COURT: By being where?

THE DEFENDANT: I sent a brief to the Court. Actually several copies for you and him.

THE COURT: Yes, I read those.

THE DEFENDANT: Right. He said that was all fabrication because those records, the police records and the ball, bat, none of that stuff exists, and I proved that it did. It took me a while, but I actually have —

THE COURT: All right. So how does that change the fact that you have these prior convictions?

THE DEFENDANT: It doesn't change the prior convictions.

THE COURT: Okay.

THE DEFENDANT: No, it doesn't.

THE COURT: All right. So what's in the presentence you disagree with? Let's get that resolved.

THE DEFENDANT: What do I disagree with?

THE COURT: That's in the presentence. Yeah,

we're trying to arrive at the sentencing here.

THE DEFENDANT: In the — I mean, in the presentencing, I said that the PSI is — the crime with the prior convictions would constitute less time than what you guys are offering me, and no one told me — they told me that I didn't know what I was talking about. So if you want me to take a chance, we'll go to [7] trial, because there's no way you would get under 60 months.

And — and I said according to the rules and guidelines with the prior convictions that I have, because I took those into account, this is what my crime constitutes as my punishment.

Now, if you feel that because I'm not liked by the courts that I should do extra time, I guess so be it.

THE COURT: It doesn't have anything to do with — I don't have any like or dislike for you. I've got a job to do, and the guidelines are advisory. You negotiated a binding plea agreement. I questioned you under oath concerning that, and you agreed to be bound by it. Now you're wanting to back out, right?

THE DEFENDANT: I argued this in the beginning.

THE COURT: Okay. But we're way past the

beginning.

THE DEFENDANT: I understand it. And the interesting thing is that whatever happens in the beginning, it doesn't matter.

THE COURT: That's correct, because there's give and take on both sides. This matter was set to go to trial, and we were getting ready to go to trial, and you negotiated this binding plea agreement. And you signed it, and you acknowledged under oath that you signed it and you agreed to be bound with it.

Now, why — are you wanting to back out of that binding plea agreement? I think everybody knew it was going to be a little [8] bit higher than the guidelines. But you remember I told you the guidelines are advisory. I don't have to follow them.

THE DEFENDANT: The guidelines — it actually came back a lot lower.

THE COURT: No, it didn't. It came back three months lower than high. Hang on a minute. Where's my copy?

The guideline range is 46 to 57 months.

THE DEFENDANT: Yeah, I mentioned this to my psychologist a year-and-a-half ago.

THE COURT: All right, sir. Okay.

THE DEFENDANT: And I mentioned it to the courts a year-and-a-half ago.

THE COURT: All right.

THE DEFENDANT: But I don't know the law.

THE COURT: That's why you have an attorney.

THE DEFENDANT: Well, I mentioned it to the person you gave me for an attorney, and they — she told me I — shut up, I don't know what I'm talking about.

THE COURT: Terri, go on my desk and see if you can find my calculation sheet. I didn't get it.

That's water under the bridge.

THE DEFENDANT: Yeah, I guess —

THE COURT: We've got a binding plea agreement. Now, tell me why you don't think you're now bound by it.

THE DEFENDANT: I signed it. There's — I don't have [9] a — according to the stipulations, there's — once you sign it, there's no way out of it.

THE COURT: That's the way I see it too. Yes, sir, unless you can tell me that something happened that I should let you out of it, and I'm not hearing it. Just because it's your agreed sentence, and I think — I know

we knew that at the time you entered into it, that it could come out higher than the guidelines, but —

THE DEFENDANT: I already knew.

THE COURT: But it's half the statutory limit, 120 months.

THE DEFENDANT: I knew it wasn't coming back higher. I argued that from the beginning. It doesn't —

THE COURT: Well, Mr. Dewberry, do you want to back out of the binding plea agreement and go to trial? Now, that's the bottom line. You've been in the legal system for years.

THE DEFENDANT: If I could go — if I could go to trial from what — because I don't know a lot about the law, I would probably prefer, because at this point I was going to ask the Court if there's no way out of this plea, then if there's any way — because basically I've lost so much. And if I've already asked for the — for — I've asked the courts over and over again, which nobody keeps hearing me, for — what you call it when they put you in the little chair with the thing on your head? What they call that? Put the needle in your arm and they [10] put you in the ground.

No, the other thing they call it. I mean, whatever it — because, see, nobody understands how much I lost in this whole situation, because nobody says, well, I mean, what would make a person who's actually go and do a particular thing and let me even hear why he done it.

Now, I actually proved without a shadow of a doubt to the courts what would make me do such a thing. That's all I ask. And the Court says, well, we don't care.

So I would prefer at any given chance that if I have to keep living like this, then I would like to — I got some addresses. I want to be moved as far away as possible and hopefully — I mean, you know what I mean? My family, everything I've lost. There's nothing. I have nothing left to give.

THE COURT: Mr. Dewberry, you were a convicted felon —

THE DEFENDANT: I got you.

THE COURT: — with a gun.

THE DEFENDANT: I got you, sir.

THE COURT: Bottom line.

THE DEFENDANT: I got you.

THE COURT: This is not a social welfare agency.

THE DEFENDANT: I understand.

THE COURT: You understand that?

THE DEFENDANT: I said —

THE COURT: You entered into a binding plea agreement. [11] You haven't shown me any good reason why I ought to let you out of it other than you — nobody would listen to you. I listened to you on the day you pled guilty, and I found you entered into your plea understandingly, knowingly and voluntarily. I accepted that plea agreement. I took the binding plea agreement under advisement until I got the presentence, all right, sir?

Now, the presentence is back, and the — we're now here to resolve whether I'm going to accept that binding plea agreement. Before we do that, let's put on the record your concerns here about the guidelines.

Now, in the presentence, it shows a total offense level of 21 points. Shows you have a criminal history category of III. The sentencing range under the guidelines is 46 to 57 months. Any period of incarceration to be followed by one to three years supervised release. The fine range is \$7,500 to \$75,000. Excuse me. And there must be a \$100 special assessment.

Is there any objections to the calculations of the

guidelines by the government?

MR. HUGHES: None at all, Your Honor.

THE COURT: Is there any by the defense?

MS. ALLEN: Not to the guidelines, no, Your Honor.

THE COURT: Thank you.

Mr. Dewberry, do you have any further challenge to the calculations of the guidelines which validate what you've been talking about?

[12] THE DEFENDANT: All I can say is, I mean, I don't have 75,000. There's numbers that I don't have. I'm not going to have tomorrow. In five years from now, I'm not going to have \$250,000. I know that.

THE COURT: I know. We know that.

THE DEFENDANT: Well, you put it down there saying that I owe it. And I don't understand that I owe the \$250,000, and I know I ain't got it.

THE COURT: Wait a minute, wait a minute. Calm down. These are advisory guidelines. They're calculations. That's all they are.

Do you have any further objections to the calculations of the guidelines? I know you don't like them. That's one matter. But there they are, hard written

paper. Any further objections other than you don't like them?

THE DEFENDANT: I said that a long time ago.

THE COURT: What did he say?

MS. ALLEN: He agrees that the numbers are right. He said that a long time ago.

THE COURT: Okay. All right. Then the Court finds those are the advisory guidelines.

Now, let's address the binding plea agreement. The government have anything further to say on the binding plea agreement that I need to know?

MR. HUGHES: No, Your Honor. I would hope that the [13] Court would enforce the binding plea. It's — it's fair and just under these particular circumstances, so I would humbly ask the Court to accept the plea as configured back on September 19th, 2016.

THE COURT: On the eve of trial as I recall.

MR. HUGHES: I'm sorry?

THE COURT: On the eve of trial, wasn't it?

MR. HUGHES: On the day of trial, yes.

THE COURT: On the day of trial. Okay.

Anything — further information on the binding plea agreement, Ms. Allen?

MS. ALLEN: Just briefly, Your Honor. I think the Court may recall that one of the things that Mr. Dewberry really wanted to do is he wanted to put forth sort of a necessity defense in this case, and that's where we ran into a lot of issues.

THE COURT: Yes.

MS. ALLEN: And what I told him when this was going on is he really wanted his story told. He wanted the Court to understand why he had the gun. This was a situation where he never denied having the gun. He wanted to be able to tell why he had it. And I think we all kind of went round and round about why that wasn't a trial issue. That was a sentencing issue.

And so I did file a sentencing memo in this case. And I [14] know we often don't do that in binding plea agreements, but I did that because I told Mr. Dewberry that I would tell the Court why he had the gun because that's very important to him.

THE COURT: Okay.

MS. ALLEN: And I handed that out. I handed him a copy, and I know the Court has read it. But Mr. Dewberry was a victim of violent crime before this. He was beaten with a baseball bat. His car that belonged to

him and his fiancée Gwen Williams was set on fire. And then I attached the newspaper articles that actually show that after he went into custody, Ms. Williams was actually the victim of an arson, murder.

And, you know, I think that that's also contributed to a lot of the issues; kind of like a lot of the depression and I think a lot of the publicity that he's had since he's been in here. He was out there. He felt like he needed to protect himself, and he felt like he needed to protect her when he was out there. And he knew he couldn't have a gun, but he had one because he felt like he needed to protect them. And then he goes into custody and he couldn't protect her. And I know that's got to be tough. And I do want the Court to take that into account.

THE COURT: I will take that into account, and I understand that. Anything else?

MS. ALLEN: Your Honor, I think we have the rest of it in the sentencing memorandum, and we would just ask the Court to follow the binding plea for 60 months.

[15] THE COURT: All right. I've read the sentencing memorandum. In fact, I read it twice.

Mr. Dewberry, the curious thing I've found in the

sentencing memorandum was the gun didn't work. Did you know that at the time you had it in your possession?

THE DEFENDANT: Yeah.

THE COURT: Well, why — what would you think would have happened if you'd have pointed that at anybody, at someone else who had a gun?

THE DEFENDANT: You know what?

THE COURT: No, I don't know what. That's just mind boggling.

THE DEFENDANT: Because I keep saying — because I'm not trying to be hard to get along with, sir. I'm really not. And I tried to explain this from the beginning, and it seems that everybody gets mad because they tell me I'm either foolish, stupid, retarded or — you know, they got a lot of other words instead of actually not listening to what I'm saying. And in actuality, my intent is not to hurt anyone, see? And knowing that.

So nine times out of ten, if you — if a person thinks that if — if you think I got a gun, if you come to harm me and I go, "Hey, stop," and you think I've got a gun, you're going to stop. That's going to give me an opportunity to get the hell away from you.

[16] THE COURT: I understand that that's your

reasoning.

THE DEFENDANT: And now I had enough sense to figure that out.

THE COURT: Oh, I agree with that, but the point of it is what if the other guy has got a gun?

THE DEFENDANT: Then so be it.

THE COURT: You're behind the eight ball.

THE DEFENDANT: I don't have the intent to hurt anybody, so there's really — nobody shouldn't have the intent to harm me.

THE COURT: Now, wait a minute. How does guy that you approach pointing that gun, if he's got a gun, how does he know your gun is not loaded? Don't you see the risk of what you're doing?

THE DEFENDANT: See, here's the thinking. A lot of people, right, if they think that they got the ability to get harmed just as much as they're going to harm you, they pretty much pause.

THE COURT: Agreed.

THE DEFENDANT: Because you — I might get hurt too. So if you come and you're going to hit me in the face and I say, "Huh-uh, I got a stick too." Now, you don't know whether it's a plastic stick or a whiffle ball stick. All

you know is I got the same thing you got. So in your mind, you're going to think, "Hey, I might get hurt just as well as I'm going to give the [17] hurting." So you're going to pause for a second, which is going to give me the opportunity to look for an escape route, see? Because now I'm not cornered. I can escape.

THE COURT: All right.

THE DEFENDANT: And that was the reason for it. But nobody wanted to — they didn't care that you were trying to escape. And so Mrs. Williams would have escaped; but, no, she did not.

THE COURT: All right. Now, you understand that that's not a defense as your attorney has tried to explain to you.

THE DEFENDANT: Well, I mean, after you call the police several times when this is happening, if someone comes to you to harm you, you really don't have time to wait on the police because they're not there to escort you like they do some of the big stars.

THE COURT: Okay.

THE DEFENDANT: So you got to think of something that you're going to be able to do right then and there, I mean, if you're going to use your head,

because you've already been hurt several times. So since you've been hurt several times and you're looking in the mirror at your scars and your wounds, you begin to think to yourself, what about the next time this happens to me? How am I going to get away?

THE COURT: I understand your position.

THE DEFENDANT: Yeah, really. Really?

[18] THE COURT: Yes, sir. But my job is to apply the law.

THE DEFENDANT: Yeah.

THE COURT: And I'm going to do it.

THE DEFENDANT: Yeah.

THE COURT: All right, sir?

THE DEFENDANT: Yeah.

THE COURT: All right. I understand — I'm going to accept the binding plea agreement. I'm going to find it was entered into by you understandingly, knowingly and voluntarily. And you committed yourself to it, and I'm accepting it, and I'll commit myself to it.

I'm going to impose your punishment at 60 months as you agreed to. Upon serving of that sentence, I'm going to order that you be placed — now I've lost my calculations here again. I'm going to place you on

supervised for three years under the supervision of the U.S. Probation and Parole office. I'm going to find that you do not have the ability to pay a fine or your costs of incarceration. Those items will be waived. I will enter a judgment against you in the amount of \$100, a special assessment judgment, which is a final judgment due and payable today.

Upon advising you of the punishment I'm going to assess against you pursuant to the binding plea agreement, do you have any additional reasons why I shouldn't pronounce the sentence as you agreed to? Mr. Dewberry, any other reasons you want me [19] to hear?

THE DEFENDANT: No. I just think it should be appealed on the fact that everything I've been saying from the beginning is not taken serious.

THE COURT: Well, you certainly can appeal it, but any reason why I shouldn't pronounce a sentence that you would then be able to appeal?

Wait a minute. He's waived his right to appeal except on specific grounds, an illegal sentence or prosecutorial misconduct. You've limited your appeal in that plea agreement. Do you remember that, Mr. Dewberry?

THE DEFENDANT: (No response.)

THE COURT: Any other reasons why I shouldn't pronounce this sentence on you?

MS. ALLEN: No, Your Honor.

THE COURT: No, he needs to answer. Any other reasons I need to know about that I shouldn't pronounce this sentence?

THE DEFENDANT: You know, as I mentioned earlier, I don't know everything about the law. And, you know, had I known that I would be sitting here, I — I don't — I only — you know what? This microphone don't even work because every time I ask for the records, I don't — I can't get them, so it don't even matter.

THE COURT: What do you mean? I'm hearing you.

THE DEFENDANT: I meant like the records. You know, the [20] other gentlemen there or at the facility, they ask for their records from the courts and they get them. But for some reason, my case is secret, you know, hush-hush in the courtrooms that I can't get records.

THE COURT: Did you get a copy of the presentence?

THE DEFENDANT: No. I want copies of these transcripts.

THE COURT: No, I didn't ask you that. Did you get a copy of the presentence?

THE DEFENDANT: Yeah. They sent that, yeah.

THE COURT: Okay. Did you read that?

THE DEFENDANT: Yeah, I seen it.

THE COURT: Did you go over it with your attorney?

THE DEFENDANT: I mean, there's — there's really nothing going to change in it. You just mentioned that you was going to go with the 60.

THE COURT: I did. I did. How do you think the transcript — what did you want transcripts of?

THE DEFENDANT: Of my court proceedings.

THE COURT: These proceedings?

THE DEFENDANT: My prior proceedings.

THE COURT: All your priors?

THE DEFENDANT: I needed the transcripts.

THE COURT: Why?

THE DEFENDANT: Why did I need them?

THE COURT: Yes.

[21] THE DEFENDANT: So I can understand the

law.

THE COURT: You didn't need your — look, look. You didn't need your transcript to show that on July 21st, 1994, you were tried by a jury and found guilty of robbery in the first degree. Why do you — do you remember that?

THE DEFENDANT: I said the transcripts coming here. I didn't need the records from them. They gave those to me.

THE COURT: Why do you need the transcripts then?

THE DEFENDANT: You need the tran — what you use the transcripts for is the things that are discussed in the courtroom, sir, is that you take them and compare them and you compare them against the law books that are written that the Supreme Court and the Congress have wrote, and you compare them against that to see that the laws are followed and the procedures are followed in the courtrooms.

THE COURT: Mr. Dewberry, that's why we appointed a lawyer to represent you.

THE DEFENDANT: And I mentioned to you — I sent you paperwork regarding that.

THE COURT: Yes.

THE DEFENDANT: And you dis — you discredited it again.

THE COURT: That's right, Mr. Dewberry. You need a lawyer. You're not an expert.

THE DEFENDANT: I never said I was.

THE COURT: Well, then why do you think that you could [22] better understand the law and proceedings than a lawyer?

THE DEFENDANT: Well, I mean —

THE COURT: Come on now. You're playing games with me, Mr. Dewberry.

THE DEFENDANT: No, I didn't say I —

THE COURT: Yes, you are.

THE DEFENDANT: Okay. See, that's what I mean. You're —

THE COURT: No, I should tell you what I mean. I mean you have a lawyer because you don't know the law. And that's why we appoint lawyers to represent you even though you thought you were smart enough to represent yourself. And I'm sorry, they talk about that where you're incarcerated, I'm sure at other prisons, but it's wrong, Mr. Dewberry. I just — unbelievable.

You have a high school education, right? Hang on

a minute. Graduated from Paseo High School, 1983. And then after getting out of high school, your employment record. You were employed — last employment was with New Horizons. Probation officer is unsure of your dates of employment. You reported no other employment history.

IRS records indicate that in 2013, you were briefly employed with Metropolitan Energy Center and earned \$600. And in 2012, you were employed by New Horizons and earned \$8,773. IRS records also confirm that in 2012, you were employed by [23] Apprentice Personnel, Overland Park, Kansas, and earned \$1,681. IRS records reflects no earnings for 2014 and '15.

Missouri Department of Corrections confirm you were previously employed as a produce manager at a grocery store for approximately five years in the '90s. What grocery store was that, Mr. Dewberry? Do you remember?

THE DEFENDANT: You know, it almost seems like you come off as though you care about my life.

THE COURT: I do.

THE DEFENDANT: I don't — I don't think so.

THE COURT: Well, that's your — that's your

opinion. But the point of it is that you have a limited employment history, and your history is you go out and rob.

THE DEFENDANT: You think so.

THE COURT: Well, I've got a written record here that says that. You had a robbery in January 1994, multiple DWIs on October 24th, 2002. Another robbery first degree. You were tried and found guilty. It appears you rob and you don't want to work. Why shouldn't I observe that from your record?

THE DEFENDANT: Well, see, here's the interesting things, sir, is that if you actually read the material that I was — that I so graciously and I had thought, being a human being, was sending to you, you would have found out that I actually started my own mother company right here.

THE COURT: Well, I guess I didn't. When do you start [24] your own company?

THE DEFENDANT: You didn't read — you're not reading the material.

THE COURT: Yeah, I am.

THE DEFENDANT: No, you're not. No, you're not.

THE COURT: You know, you're — Mr. Dewberry, you're —

THE DEFENDANT: I have the business card, sir.

THE COURT: All right. Let me see it.

MS. ALLEN: Bring it up?

THE COURT: Yeah.

THE DEFENDANT: It's a company that me and the young lady started.

THE COURT: Well, how come Internal Revenue couldn't find any information? Correction Enterprises, Manager, Dewberry.

THE DEFENDANT: Yeah.

THE COURT: All right. There's no record of any employment, any income from this.

THE DEFENDANT: That's absolutely correct —

THE COURT: Okay.

THE DEFENDANT: — because according to the law —

THE COURT: I can print business cards saying I own three banks in Kansas City, Missouri.

THE DEFENDANT: I pretty much knew you

was going to say that. That's why I never even —

[25] THE COURT: Okay. Sure. Why shouldn't I, Mr. Dewberry?

THE DEFENDANT: That's why I never mailed it to you. That's why I never mailed it to you. And the rest of the records got burned in the home. I sent you pictures of that.

THE COURT: Yeah, I did — I read that.

THE DEFENDANT: No, you didn't see that neither.

THE COURT: Okay. Mr. Dewberry, I think you and I have had enough exchange.

THE DEFENDANT: That's what I'm saying.

THE COURT: You have any other reason why I shouldn't sentence you? Shouldn't sentence you? Anything else?

MS. ALLEN: He says he's ready to be sentenced, Your Honor.

THE COURT: All right.

MS. ALLEN: And do you mind if — do you still have the business card up there?

THE COURT: Yeah, here. Take it back.

MS. ALLEN: I told him I would get it back.

THE COURT: Yeah. Retrieve it now.

THE DEFENDANT: Yeah, that's personal, you know?

THE COURT: Absolutely. Any other reason why I shouldn't — and, Mr. Dewberry, I needed to refresh my memory too. In my order that I entered on January the 23rd of this year, I said before the Court are 63 pages of documents filed by the defendant personally, and it's filed as 124. It appeared to [26] be — he appears to be presenting this to the Court as evidence, and then it enumerates them. I'm not going over it again. So I saw and reviewed them, all right?

You have any other reason why I shouldn't pronounce sentence on you?

THE DEFENDANT: You've made it clear anything I say is — doesn't make sense.

THE COURT: Well, tell me anything else that you want to tell me. Any reason why I shouldn't sentence you? I've heard all your explanations of your history and so forth. I've looked at the documents you've sent me, 63 of them. Now, anything else — any other reason why I shouldn't pronounce sentence on you?

THE DEFENDANT: I don't want to argue.

THE COURT: All right. Allocution is granted to the defendant. I've considered everything you've submitted, Mr. Dewberry. The Court accepts the binding plea agreement.

It is the judgment and sentence of this Court that the defendant, Andrew G. Dewberry, shall be committed to an institution or institutions to be designated by the Federal Bureau of Prisons for a period of 60 months pursuant to the binding plea agreement unless sooner discharged according to law. Finds — the Court finds the defendant does not have the ability to pay a fine or his costs of incarceration. Those items will be waived.

[27] Upon serving this sentence, Mr. Dewberry, when you're released from prison, you're going to be put on federal probation. You should conform your conduct to the terms and conditions of supervised release that are in effect when you get out of prison. In addition to those standard conditions, I'm going to impose these special conditions.

No. 1 — these are in the presentence. They start at the bottom of page. 12.

To successfully participate in any substance abuse counseling program, which may include urinalysis, sweat

patch, Breathalyzer testing as approved by the probation office and pay any associated costs as directed by the probation office.

No. 2, you shall submit your person, any property, house, residence, office, vehicle, papers, computer, or other electronic communication or data storage devices to be searched by a U.S. probation officer at a reasonable time and in a reasonable manner based upon reasonable suspicion of contraband or evidence of a violation of condition of release. Failure on your part to submit to a search may be grounds for revocation of this supervised release, and you are directed to warn all other residents that the premises that you occupy may be subject to search pursuant to this condition.

No. 3, you shall not consume or have in your possession alcoholic beverages or beer, including 3.2 percent beer, at any time and shall not be present in any establishment where [28] alcoholic beverages are the primary items for sale.

No. 4, you shall satisfy any warrants or pending charges within the first 90 days of being placed on supervised release.

No. 5, you shall comply with the Western District

of Missouri's offender employment guideline, which may include participation in training, counseling, and/or daily job searching as directed by your probation officer. If not in full compliance with the conditions of supervision requiring full time employment at a lawful occupation, you may be required to perform up to 20 hours of community service per week until employed as approved and directed by your probation office.

No. 6, you shall be at your place of residence every night between the hours of 10:00 p.m. and 6:00 a.m. seven days a week unless your work schedule requires you to work beyond 10:00 p.m. In that event, you shall be at your place of supervision — or your place of residence within 30 minutes after your workday is complete.

The Court imposes this sentence after considering the Sentencing Reform Act of 1984, considering the guidelines as advisory, considering that this is a binding plea agreement which the Court approves, and considering the factors under 18 U.S.C. 3553 as a valid reason to impose this sentence and accept this binding plea agreement. The nature and circumstance — in particular, the nature and circumstances of this offense, the history and characteristics [29] of this defendant. As

previously enumerated, he has two prior robbery first degree criminal convictions, and both of which he cannot — could not conform his conduct to the terms of supervised release and was revoked one, two, three times on the first one. I don't know if I counted them on the second one. Well, he wasn't — you didn't violate on the second — well, you served them concurrently. What's the matter with me?

Anyway, to afford adequate deterrence to criminal conduct by this defendant and to protect the public from further crimes of this defendant and his belief that he can do what he wants without any consequences and doesn't answer to any rules or regulations.

I'm imposing this sentence as a — for punishment, deterrence, and to serve the ends of justice as a reasonable sentence for the reasons I've just stated.

Now, Mr. Dewberry, I'll give you credit for the time I've imposed upon you for the time you've been held in custody awaiting this final disposition.

Lastly I need to advise you you have 14 days from today to appeal this sentence or any ruling I have made at this sentencing here preliminary to imposing having this hearing and in this hearing today.

You're represented by Ms. Carie Allen. Are you satisfied with the representation of you by her?

THE DEFENDANT: (Witness shakes head.)

[30] THE COURT: What has she failed to do besides get you off, and that wasn't going to happen?

THE DEFENDANT: (No response.)

THE COURT: Mr. Dewberry, if you don't give me specific reasons what she's failed to do, I'm going to find she's adequately represented you. You can be as obstinate as you want to. You know the system well. You know what you need to do, and that's what you're doing.

Now, what has she failed to do?

THE DEFENDANT: I think you're just wanting to argue, sir. I don't want to argue.

THE COURT: All right. I'm finding you stated no valid reason that she's failed to do anything. I find she's adequately — more than sufficiently represented you because of your obstinate attitude.

All right. Anything further by the government?

MR. HUGHES: No, Your Honor.

THE COURT: Anything further by the defense?

Mr. Dewberry, do you have any thought where you might want to be incarcerated? I'll even consider that.

You've been —

THE DEFENDANT: You're going to just blow them off anyway.

THE COURT: No, I'm not. I'm going to make a recommendation to the Bureau of Prisons, except it will be in a federal facility. I can't send you to a state prison.

[31] THE DEFENDANT: I mean, everything I say is —

MS. ALLEN: He'll put it in the judgment.

THE DEFENDANT: — always considered some bullshit.

MS. ALLEN: If there's a place, there's a place. If there's not, there's not. But is there a place? Do you want him to Leavenworth, stay close?

THE DEFENDANT: Fuck no.

MS. ALLEN: Okay. No, no recommendation.

THE COURT: Okay. All right. Thank you. I'll remand you to the custody of the marshals for execution of the sentence. Court will be in recess. Good luck to you, Mr. Dewberry.

MS. ALLEN: Your Honor, we have written down some recommendations. I'll just hand them to you.

THE COURT: What, what?

MS. ALLEN: He has written down some recommendations, so I'll just hand them to you.

THE COURT: Oh, okay. Here's that — do you want me to — wait a minute, Mr. Dewberry. Do you want me to do this? You had written down Memphis, Tennessee or Perkins, Illinois; is that correct? Do you have any objection if I recommend to the Bureau of Prisons they consider placing you in the FCI in Memphis or the FCI in Perkins, Illinois?

I'll make those — no, here's a third one. Oxford, FCI Oxford, Oxford, Wisconsin. I'll make those recommendations to the Bureau of Prisons. That's all they are, Mr. Dewberry.

[32] Be in recess.

(Court adjourned.)

* * *

(End of requested transcript)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above matter.

Date: April 11, 2017

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/s/ _____
Signature of Court Reporter
Barbara Barnard