

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. JACKIE DUNCAN, Defendant - Appellant.

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

2019 U.S. App. LEXIS 7211

No. 18-6009

March 12, 2019, Filed

Notice:

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Editorial Information: Prior History

{2019 U.S. App. LEXIS 1}(D.C. No. 5:14-CR-00305-M-1). (W.D. Okla.).United States v. Duncan, 2015 U.S. Dist. LEXIS 10993 (W.D. Okla., Jan. 30, 2015)

Counsel For UNITED STATES OF AMERICA, Plaintiff - Appellee: Edward Joseph Kumiega, Esq., Office of the United States Attorney, Western District of Oklahoma, Oklahoma City, OK.

For JACKIE DUNCAN, Defendant - Appellant: Wendy Curtis Palen, Palen Law Offices, LLP, Glendo, WY.

Judges: Before HOLMES, BACHARACH, and PHILLIPS, Circuit Judges.

CASE SUMMARY District court did not abuse its discretion in admitting the evidence that defendant shot a person as intrinsic to the felon-in-possession count under 18 U.S.C.S. § 922(g)(1) because defendant's contemporaneous possession of the firearm and the shooting were part of a single criminal episode that connected the gun recovered by police to defendant.

OVERVIEW: HOLDINGS: [1]-District court did not abuse its discretion in admitting the evidence that defendant shot a person as intrinsic to the felon-in-possession count because defendant's contemporaneous possession of the firearm and the shooting were part of a single criminal episode that connected the gun recovered by police to defendant where the shooting offered context for the handgun shell casings that were found by law enforcement and later matched to the handgun discovered in defendant's car.

OUTCOME: Judgment affirmed.

LexisNexis Headnotes

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion > Evidence

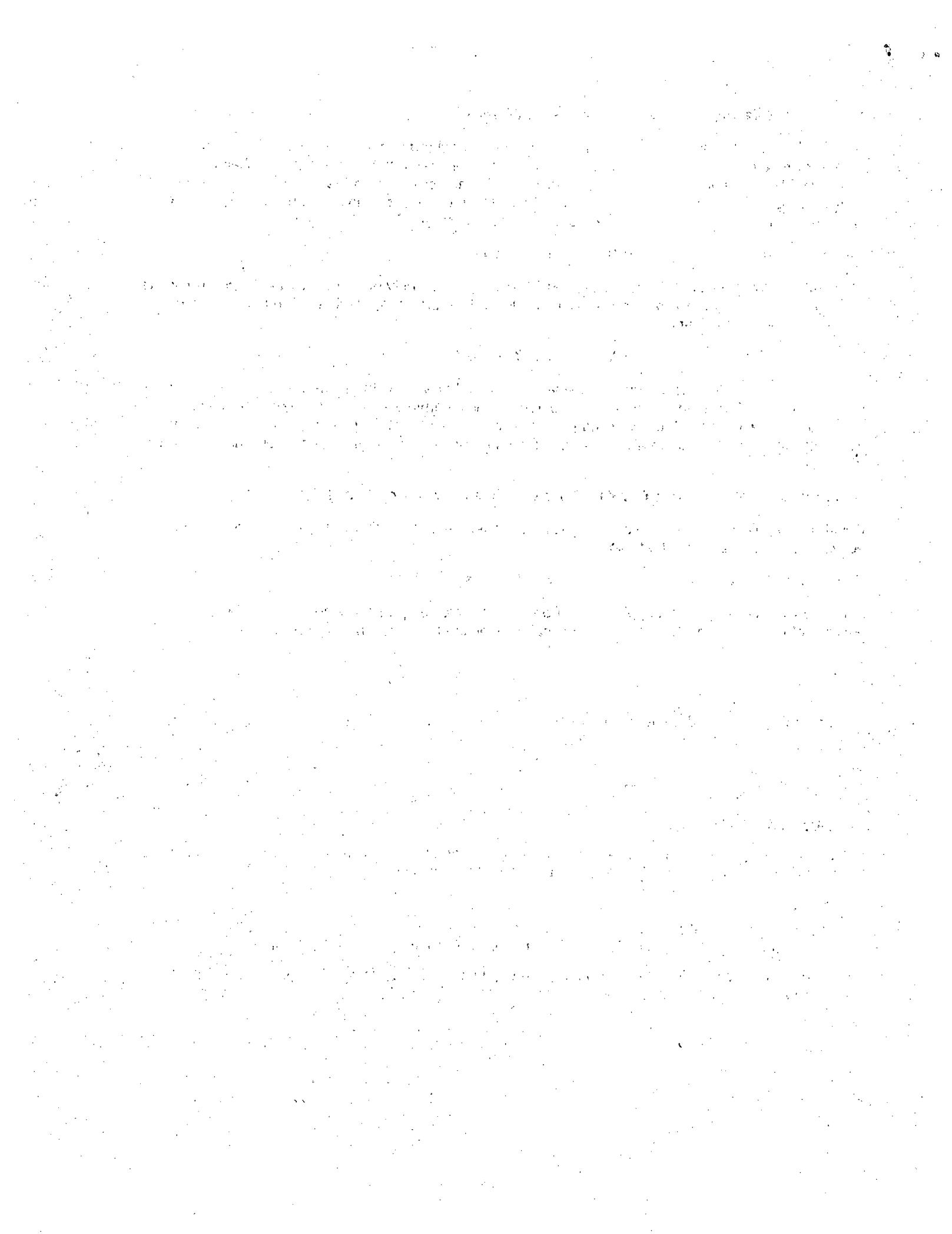
An appellate court reviews a district court's decision to admit evidence for an abuse of discretion, and an appellate court reverses such a decision only if it is manifestly erroneous.

CIRHOT

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Evidence > Relevance > Prior Acts, Crimes & Wrongs

Fed. R. Evid. 404(b)(1) governs the admission of certain uncharged criminal or otherwise wrongful conduct: Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. Fed. R. Evid. 404(b)(1). Such evidence is limited to proving things like motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Fed. R. Evid. 404(b)(1).

Evidence > Relevance > Prior Acts, Crimes & Wrongs

The limitations of Fed. R. Evid. 404(b)(1) and (2) are implicated only by evidence of acts extrinsic to the charged crime. Thus, if the contested evidence is intrinsic to the charged crime, then Fed. R. Evid. 404(b) is not even applicable.

Evidence > Relevance > Prior Acts, Crimes & Wrongs

Other act evidence is intrinsic when the evidence of the other act and the evidence of the crime charged are inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged. In other words, intrinsic evidence is that which is directly connected to the factual circumstances of the crime and provides contextual or background information to the jury.

Criminal Law & Procedure > Criminal Offenses > Weapons > Possession

Constructive possession of a firearm in a jointly occupied vehicle requires some connection or nexus between the defendant and the firearm.

Evidence > Relevance > Prior Acts, Crimes & Wrongs

Fed. R. Evid. 404(b) does not apply when offenses committed as part of a single criminal episode become other acts simply because the defendant is indicted for less than all of his actions.

Opinion

Opinion by: Jerome A. Holmes

Opinion

ORDER AND JUDGMENT*

Jackie Duncan appeals his conviction for, among other offenses, being a felon in possession of a firearm. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Background

Duncan was a member of the 107 Hoover Crips gang. During February and March 2014, he and other gang members committed several robberies and shootings in Lawton, Oklahoma.

Duncan was eventually arrested and tried on eight counts: conspiracy to interfere with commerce by robbery, 18 U.S.C. § 1951(a); felon in possession of a firearm, 18 U.S.C. § 922(g)(1); possessing a

controlled substance with intent to distribute, 21 U.S.C. § 841(a)(1); possessing/brandishing a firearm in furtherance of drug trafficking, 18 U.S.C. § 924(c)(1)(A); interfering with commerce by robbery, 18 U.S.C. § 1951(a) (two counts); and possessing/brandishing a firearm in furtherance of a violent crime, 18 U.S.C. § 924(c)(1)(A) (two counts).

Before trial, Duncan filed a motion in limine, seeking{2019 U.S. App. LEXIS 2} to exclude evidence that Anthony Johnson had "identified [him] as the individual who shot him . . . on February 27, 2014." R., Vol. I at 135. Duncan argued that "[t]his evidence is not admissible pursuant to Rule 404(b), Fed.R.Evid., is not inextricably intertwined with the facts of the case, and its probative value is substantially outweighed by the danger of unfair prejudice." *Id.* (internal quotation marks omitted). He explained that "[i]f the jury receives evidence that [he] not only possessed and discharged the firearm alleged in [the felon-in-possession count] of the superseding indictment . . . , but that he also shot someone with it[,] then there is a substantial risk the jury will assume [he] acted in conformity and committed the other acts charged in the remaining counts." *Id.* at 137. The government opposed the motion, asserting that the "shooting completes the story of the crime charged." *Id.* at 148. The district judge denied the motion.

At trial, the prosecutor elicited that Johnson had been shot by Duncan. Specifically, Johnson, who described himself as an "[o]ld gang member" of the 24 Karat Crips, *id.*, Vol. III at 328, 333, testified that he got shot in the back on February 27, 2014, after going to a house on McKinley Street to buy crack cocaine. He{2019 U.S. App. LEXIS 3} explained that he went inside and saw "7-Shot," a member of the 107 Hoover Crips-a gang that Johnson had robbed in the past. *Id.* at 339, 340. Feeling "a bad vibe," *id.* at 341, Johnson went outside to the front yard. There, he saw Duncan, who was also a 107 Hoover gang member, coming toward him from the back yard. According to Johnson, Duncan shot him and then and called for 7-Shot, who came outside, shooting at Johnson as well. Johnson retreated to the back of the house while Duncan and 7-Shot jumped in a vehicle and drove off.

Johnson further testified that he called 911 and reported he had been shot in the back. Police officers responded, located Johnson, and summoned an ambulance. Officer Lindsey Adamson testified that when she encountered Johnson, he "had blood on his jacket and a bullet hole in his back." *Id.* at 290. The officers searched the area and found six .40 caliber and seven 9mm shell casings.

The prosecution next provided evidence of Duncan's involvement in crimes two days later-evidence that showed Duncan's possession of the same gun he had used to shoot Johnson. Specifically, during the early morning hours of March 1, 2014, Duncan and several of his associates robbed drug dealers and others at two separate{2019 U.S. App. LEXIS 4} residences.

One of the drug dealers, Travis Carpenter, testified that Duncan pointed a 9mm pistol at him in the kitchen while Duncan and an associate robbed him. Carpenter indicated that Duncan or the other man fired one or two shots in the process, and that both men "jumped on [him] . . . [and] beat [him] down." *Id.* at 455. Police later discovered two bullet holes in the kitchen, and they recovered a 9mm shell casing.

The other drug dealer, Donald Willis, testified that Duncan, 7-Shot, and others broke into his bedroom and demanded Willis's gun and money. According to Willis, Duncan threatened to shoot Willis if he moved, and after the assailants found his gun and money, Duncan threatened to kill him if he reported the incident.

Duncan, by then the subject of two arrest warrants, was apprehended on April 9, 2014, by Lawton police officers who had been dispatched to a residence on a report of a burglary in progress. Duncan had driven to the residence with 7-Shot and another member of the 107 Hoover Crips, who testified

that Duncan was carrying a pistol in a holster. When police arrived, Duncan fled on foot and discarded the holster. Police captured Duncan, found the holster, and discovered a fully-loaded{2019 U.S. App. LEXIS 5} 9mm pistol under the driver's seat that fit into the holster. A firearms examiner testified that the eight 9mm shell casings found at the two residences were fired in the pistol recovered from Duncan's car.

The jury found Duncan guilty on six of the eight counts: conspiracy; being a felon in possession of a firearm; interfering with commerce by robbery (two counts); and possessing/brandishing a firearm in furtherance of a violent crime (two counts). The court sentenced Duncan to 386 months' imprisonment: 384 months for the two counts of possessing/brandishing a firearm; consecutive to 1 month for the conspiracy and interference-with-commerce counts; consecutive to 1 month for the felon-in-possession count.

Discussion

Duncan contends the district court erred in admitting evidence that he shot Johnson. Duncan stresses that he was not charged for the shooting, and he asserts that "the government could [have] introduce[d] evidence of [his] possession of the weapon and [participation in] gang activity without reference to the firing of the gun and the shooting and injury of Mr. Johnson." Aplt. Br. at 10-11. According to Duncan, evidence of the shooting was offered only to establish his criminal{2019 U.S. App. LEXIS 6} disposition. "[W]e review a district court's decision to admit evidence for an abuse of discretion, and we reverse [such] a decision only if it is manifestly erroneous." *United States v. Irving*, 665 F.3d 1184, 1210 (10th Cir. 2011) (internal quotation marks omitted).

Federal Rule of Evidence 404(b) governs the admission of certain uncharged criminal or otherwise wrongful conduct: "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). Such evidence is limited to proving things like "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *Id.* 404(b)(2).

But the limitations of Rule 404(b)(1) and (2) are implicated only by "evidence of acts *extrinsic* to the charged crime." *Irving*, 665 F.3d at 1212 (emphasis added; internal quotation marks omitted). Thus, "[i]f the contested evidence is *intrinsic* to the charged crime, then Rule 404(b) is not even applicable." *Id.*

"[O]ther act evidence is *intrinsic* . . . when the evidence of the other act and the evidence of the crime charged are inextricably intertwined or both acts are part of a single criminal episode or the other acts were necessary preliminaries to the crime charged." *Id.* (internal quotation marks{2019 U.S. App. LEXIS 7} omitted). In other words, "intrinsic evidence is that which is directly connected to the factual circumstances of the crime and provides contextual or background information to the jury." *Id.* (internal quotation marks omitted).

We conclude that the district court would not have abused its discretion in admitting the evidence of Johnson's shooting as intrinsic to the felon-in-possession count. The shooting offered context for the 9mm shell casings that were found by law enforcement and later matched to the 9mm handgun discovered in Duncan's car. See *United States v. Mills*, 29 F.3d 545, 549 (10th Cir. 1994) (noting that constructive possession of a firearm in a jointly occupied vehicle requires "some connection or nexus between the defendant and the firearm"). In short, Duncan's contemporaneous possession of the firearm and shooting of Johnson were part of a single criminal episode that connected the gun recovered by police to Duncan. Thus, the district court had the discretion to conclude that Rule 404(b) was not applicable. See *United States v. Buckner*, 868 F.3d 684, 688 (8th Cir. 2017) (holding

that prior shooting was admissible intrinsic evidence connecting defendant to gun found in a vehicle in which he was a passenger); *United States v. Anderson*, 741 F.3d 938, 949 (9th Cir. 2013) (stating that "Rule 404(b) does not apply when offenses committed as part of a single criminal{2019 U.S. App. LEXIS 8} episode become other acts simply because the defendant is indicted for less than all of his actions" (internal quotation marks omitted)).

Even though we conclude that the district court would have been acting within its discretion in ruling that the evidence of Johnson's shooting was not subject to Rule 404(b), we must still assess whether the district court would have abused its discretion in determining that the probative value of that evidence was not substantially outweighed by the danger of unfair prejudice. See *Irving*, 665 F.3d at 1213 (citing Fed. R. Evid. 403). Duncan argues that the evidence of Johnson being shot was unfairly prejudicial because it implied he had a "bad character and . . . rais[ed] the odds that he" committed the two § 924(c)(1)(A) crimes-brandishing or discharging a firearm during the Carpenter and Willis robberies. Aplt. Br. at 15 (internal quotation marks omitted). The district court could reasonably reject such an argument. The evidence of Duncan's involvement in, and violent/threatening conduct during, the robberies was overwhelming. Both Carpenter and Willis testified unequivocally that Duncan pointed a gun at them and robbed them. Further, Carpenter testified that Duncan also beat him, and Willis testified that Duncan{2019 U.S. App. LEXIS 9} threatened to kill him. Given the strength of the government's evidence, the district court would not have abused its discretion in concluding that the evidence of Duncan's shooting of Johnson would not likely have affected the jury's decisionmaking regarding the § 924(c)(1)(A) charges.

Duncan also maintains that the evidence of Johnson being shot was unfairly prejudicial because it "was highly emotional," given that Johnson also testified he was in pain at trial, illiterate, homeless, and needed money for food. Aplt. Br. at 16. But these points merely set a background for Johnson's testimony, offering relevant information concerning Johnson's personal circumstances and explaining how he had agreed to testify for the prosecution. Therefore, the district court could have reasonably concluded that such background testimony would not have rendered the testimony about Duncan's shooting of Johnson unfairly prejudicial.

Conclusion

We affirm the district court's judgment.

Entered for the Court

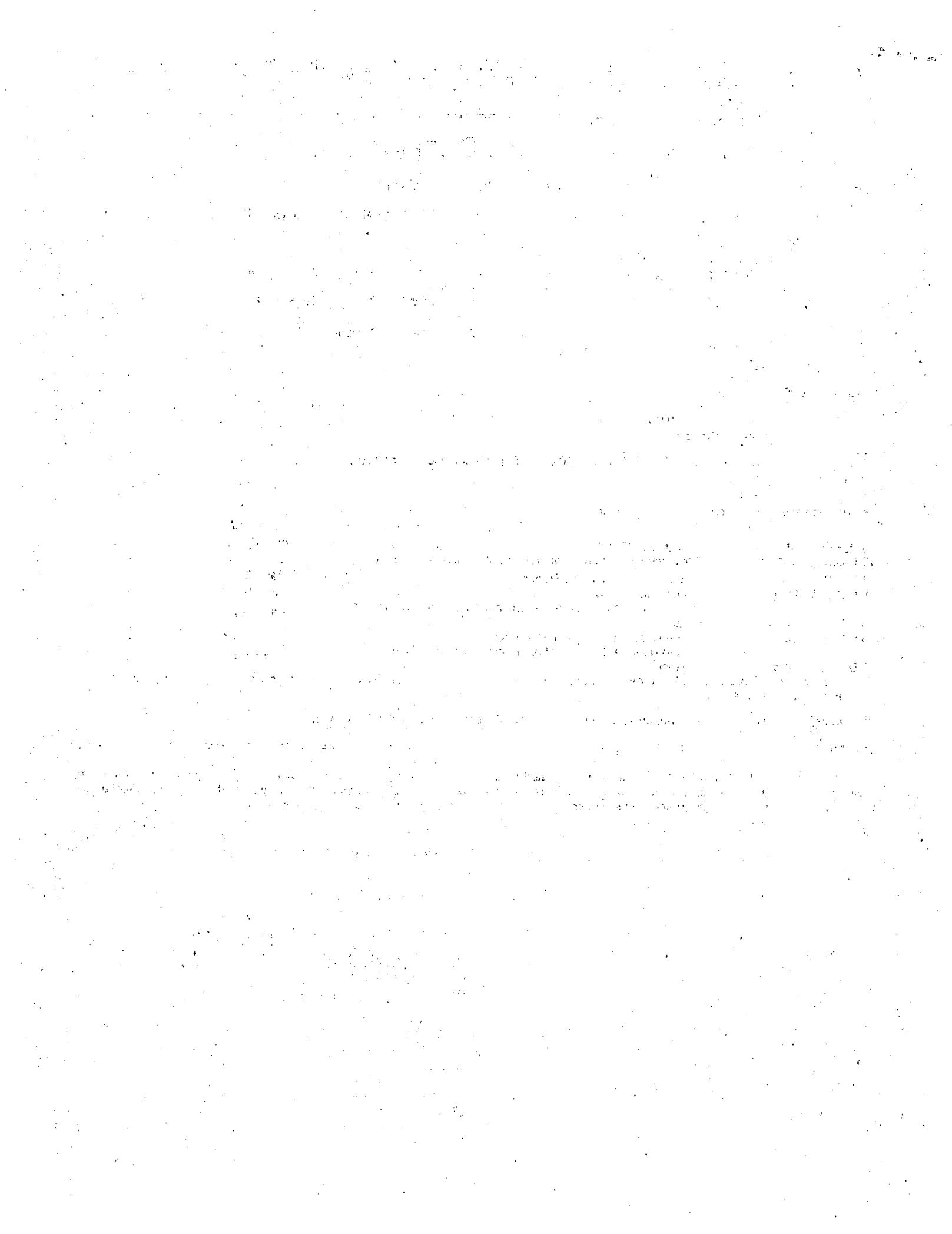
Jerome A. Holmes

Circuit Judge

Footnotes

*

After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.



UNITED STATES DISTRICT COURT

Western District of Oklahoma

UNITED STATES OF AMERICA) JUDGMENT IN A CRIMINAL CASE
v.)
JACKIE DUNCAN) Case Number: 1087 5:14CR00305
) USM Number: 29137-064
) William H. Campbell
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____
 pleaded nolo contendere to count(s) _____ which was accepted by the court.
 was found guilty on count(s) 1, 2, 5, 6, 9, and 10 of the Superseding Indictment filed January 6, 2015.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1951(a)	Conspiracy to commit interference with commerce by robbery	03/01/2014	1
18 U.S.C. § 922(g)	Felon in possession of a firearm	04/09/2014	2
18 U.S.C. § 1951(a)	Interference with commerce by robbery	03/01/2014	5
18 U.S.C. § 924(c)	Possession/brandishing of firearm in furtherance of a crime of violence	03/01/2014	6
18 U.S.C. § 1951(a)	Interference with commerce by robbery	03/01/2014	9
18 U.S.C. § 924(c)	Possession/brandishing of firearm in furtherance of a crime of violence	03/01/2014	10

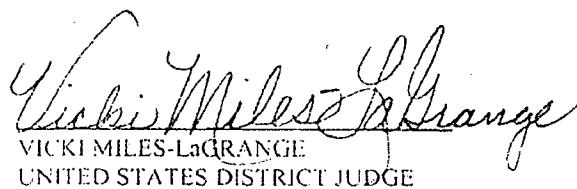
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) 3 and 4 of the Superseding Indictment

Count(s) 7 and 8 of the Superseding Indictment is are dismissed on the motion of the United States.

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

January 5, 2018
Date of Imposition of Judgment



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE

1/9/2018
Date Signed

1 Marshal.

2 We'll be in recess.

3 MORNING SESSION, MARCH 11, 2015

4 (Proceedings had without the presence of the jury.)

5 THE COURT: I wanted to give you my rulings on the
6 outstanding matters. The jury is on their way up now.

7 On the motion, the surplusage motion, I know you asked me
8 to reconsider it. I did look at it again, but I'm going to
9 stay with my prior ruling on that.

10 On the other motion concerning -- I looked back at a case
11 or two, whether he discharged the gun or whether he was being
12 shot at, I'm just going to allow him to say what he says, I
13 guess that he was shot at.

14 MR. KUMIEGA: He was walking around with a bullet in
15 his back from Mr. Duncan.

16 MR. EARLEY: Allegedly.

17 MR. KUMIEGA: Allegedly.

18 THE COURT: I am going to let that in. It is
19 probably the fairest thing to do. Who knows how it will come
20 out.

21 There was another part of that motion.

22 MR. KUMIEGA: I'm not going to bring up any stolen
23 firearms, I conceded that.

24 THE COURT: Okay.

25 (Jury enters the courtroom.)

Lynn Lee, RPR, FCRR
United States Court Reporter
U.S. Courthouse, 200 N.W. 4th St.
Oklahoma City, OK 73102

DEFENDANT: Jackie Duncan
CASE NUMBER: 1087 5:14CR00305

Judgment — Page 2 of 7

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of 386 months. This consists of 1 month on each of Counts 1, 5, and 9, to run concurrently with each other; 1 month on Count 2, to run consecutively to Counts 1, 5, and 9; 84 months on Count 6, to run consecutively to Counts 1, 2, 5, and 9; and 300 months on Count 10, to run consecutively to Counts 1, 2, 5, 6, and 9.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant, if eligible, participate in the Inmate Financial Responsibility Program at a rate determined by Bureau of Prisons staff in accordance with the requirements of the program;

That the defendant, if eligible, participate in the Residential Drug Abuse Program (RDAP) while incarcerated;

That the defendant, if eligible, be designated to FCI El Reno, and if not eligible for that facility, then to the appropriate facility in either Florence, Colorado, or Yazoo City, Mississippi.

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

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

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

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

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

RETURN

I have executed this judgment as follows:

Defendant delivered
on _____ to _____

at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jackie Duncan
CASE NUMBER: 1087 5:14CR00305

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of 5 years. This consists of 3 years on each of Counts 1, 2, 5, and 9, and 5 years as to each of Counts 6 and 10, all terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a restitution. (check if applicable)
5. You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7. You must participate in an approved program for domestic violence. (check if applicable)

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

DEFENDANT: Jackie Duncan
CASE NUMBER: 1087 5:14CR00305

Judgment— 4 of 7

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: Jackie Duncan
CASE NUMBER: 1087 5:14CR00305

SPECIAL CONDITIONS OF SUPERVISION

The defendant must submit to a search of his person, property, electronic devices or any automobile under his control to be conducted in a reasonable manner and at a reasonable time, for the purpose of detecting firearms, controlled substances, drug paraphernalia, and/or evidence of drug use or drug trafficking activities at the direction of the probation officer upon reasonable suspicion. Further, the defendant must inform any residents that the premises may be subject to a search.

The defendant shall participate in a program of substance abuse aftercare at the direction of the probation officer to include urine, breath, or sweat patch testing; and outpatient treatment. The defendant shall totally abstain from the use of alcohol and other intoxicants both during and after completion of any treatment program. The defendant shall not frequent bars, clubs, or other establishments where alcohol is the main business. The court may order that the defendant contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.

The defendant shall participate in a program of mental health aftercare at the direction of the probation officer. The court may order that the defendant contribute to the cost of services rendered (copayment) in an amount to be determined by the probation officer based on the defendant's ability to pay.

DEFENDANT: Jackie Duncan
CASE NUMBER: 1087 5:14CR00305

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 600.00	\$ 0.00	\$ 0.00	\$ 700.00

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

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Sasha Gray		\$700.00	

TOTALS \$ 700.00

Restitution amount ordered pursuant to plea agreement \$ _____.

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

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

the interest requirement is waived for the fine restitution.

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

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

DEFENDANT: Jackie Duncan
CASE NUMBER: 1087 5:14CR00305

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 1,300.00 (\$600 in assessments and \$700.00 restitution) due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

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

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

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

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

F Special instructions regarding the payment of criminal monetary penalties:

If restitution is not paid immediately, the defendant shall make payments of 10% of the defendant's quarterly earnings during the term of imprisonment.

After release from confinement, if restitution is not paid immediately, the defendant shall make payments of the greater of \$ 50.00 per month or 10% of defendant's gross monthly income, as directed by the probation officer. Payments are to commence not later than 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be paid through the United States Court Clerk for the Western District of Oklahoma, 200 N.W. 4th Street, Oklahoma City, Oklahoma 73102.

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

Joint and Several

Defendant and Co-Defendant Names Case Number (including dft number) Joint and Several Amount

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:
All right, title, and interest in the assets listed in the Preliminary Order of Forfeiture dated April 17, 2015 (doc. no. 125).

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