

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-11402

United States Court of Appeals
Fifth Circuit

FILED

June 11, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff – Appellee

v.

HOWARD LEON COMBS,

Defendant – Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC 4:16-CR-54-1

Before DAVIS, HIGGINSON, and WILLETT, Circuit Judges.

PER CURIAM:*

This appeal requires us to determine de novo whether Texas aggravated assault, TEX. PENAL CODE § 22.02(a), is a “violent felony” under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(i). Because we answer yes, we affirm.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

I.

Howard Combs challenges the district court's imposition of a sentencing enhancement under the ACCA. That law mandates a 15-year minimum sentence on defendants who violate the felon-in-possession statute, 18 U.S.C. § 922(g), and who have three prior convictions for “a violent felony or a serious drug offense, or both.”¹ 18 U.S.C. § 924(e)(1). The ACCA defines “violent felony” to include “any crime punishable by imprisonment for a term exceeding one year” that “has as an element the use, attempted use, or threatened use of physical force against the person of another.” *Id.* § 924(e)(2)(B). The Supreme Court has stated that “physical force” in this provision means “*violent force*—that is, force capable of causing physical pain or injury to another person.” *Johnson v. United States*, 559 U.S. 133, 140 (2010).

A.

Combs argues that his prior Texas aggravated assault conviction is not a violent felony because (1) “bodily injury” and “serious bodily injury” can be caused using indirect methods that do not necessarily involve the use of violent physical force; (2) the commission of aggravated assault requires only a mens rea of recklessness, without the purposeful intent to use force; (3) Texas Penal Code § 22.02(a) is not a divisible statute; and (4) causing bodily injury by using or exhibiting a deadly weapon does not necessarily entail the threatened use of physical force under Texas law. Combs also challenges the constitutionality of 18 U.S.C. § 922(g)(1) under the Commerce Clause.

¹ It is undisputed that Combs pleaded guilty to possession of a firearm by a felon and has two prior convictions for serious drug offenses. We therefore only address whether Combs' conviction for aggravated assault, under Texas law, qualifies as a conviction for violent felony under the ACCA.

B.

We have, in prior decisions, addressed and rejected each of Combs' arguments on appeal. Most recently, in *United States v. Albin Torres*, we determined that the Texas assault statute is divisible—that is, each subsection of this assault statute contains “independent groups of elements for committing multiple crimes.” No. 16-20191, --- F.3d ---, 2019 WL 1986968, at *5 (5th Cir. May 6, 2019). We then applied the modified categorical approach and concluded that commission of Texas aggravated assault that is premised on Section 22.01(a)(2)—threatening another with imminent bodily injury by using or exhibiting a deadly weapon—is a crime of violence under 18 U.S.C. § 16(a).² *Id.* at *5. *Torres* is on point and puts this appeal to rest. Here, Combs was convicted of aggravated assault with a deadly weapon for causing bodily injury to the victim. If *threatening* another with imminent bodily injury by using a deadly weapon is a violent felony (*Torres*), then, under the same aggravated assault statute, so too is *causing* such injury. Though Combs argues that *Torres* did not involve the ACCA statute, we recognize that, in this case, there is no material difference between the use-of-force provisions in Section 16(a) and Section 924(e)(2)(B)(i). See *United States v. Nunez-Medrano*, 751 F. App'x 494, 500–01 (5th Cir. 2018).³

Furthermore, in *United States v. Gracia-Cantu*, we rejected the defendant's arguments—using the same examples Combs now highlights on appeal—that knowingly transmitting HIV or using convulsion-inducing strobe

² “The use of force clause in § 16(a) is almost identically worded to the use of force provisions in the ACCA.” *United States v. Ramos*, 744 F. App'x 215, 217 (5th Cir. 2018). The definition for crime of violence in both § 16(a) and § 924(e)(2)(B)(i) includes offenses that have “as an element the use, attempted use, or threatened use of physical force against the person . . . of another.”

³ While our unpublished opinions are not controlling precedent, they may be persuasive authority. See *Ballard v. Burton*, 444 F.3d 391, 401 & n.7 (5th Cir. 2006) (citation omitted).

lights lacked the use of physical force. 920 F.3d 252, 253–54 (5th Cir. 2019) (per curiam). Both *Torres* and *Gracia-Cantu* applied our recent en banc decision in *United States v. Reyes-Contreras*, which found no valid distinction between direct and indirect force under the ACCA and recognized that the use-of-force requirement may include knowing or reckless conduct. 910 F.3d 169, 182–83 (5th Cir. 2018) (en banc). Important here, *Reyes-Contreras* also overruled several cases that Combs relies on. Though Combs contends that retroactive application of our *Reyes-Contreras* decision violates his due process rights, we have rejected this argument. *United States v. Burris*, 920 F.3d 942, 952–53 (5th Cir. 2019); *United States v. Gomez Gomez*, 917 F.3d 332, 334 (5th Cir. 2019).

Finally, regarding Combs’ constitutional challenge to 18 U.S.C. § 922(g)(1) under the Commerce Clause, we have rejected that argument as well.⁴ *United States v. Alcantar*, 733 F.3d 143, 146 (5th Cir. 2013). Considered altogether, we hold that the issues Combs raises on appeal are all foreclosed. We therefore conclude that Texas aggravated assault is a violent felony under the ACCA.

II.

Based on the above reasons, we affirm Combs’ sentence.

AFFIRMED.

⁴ Combs concedes that this constitutionality issue is foreclosed under our precedent.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-11402

United States Court of Appeals
Fifth Circuit

D.C. Docket No. 4:16-CR-54-1

FILED
June 11, 2019

UNITED STATES OF AMERICA,

Lyle W. Cayce
Clerk

Plaintiff - Appellee

v.

HOWARD LEON COMBS,

Defendant - Appellant

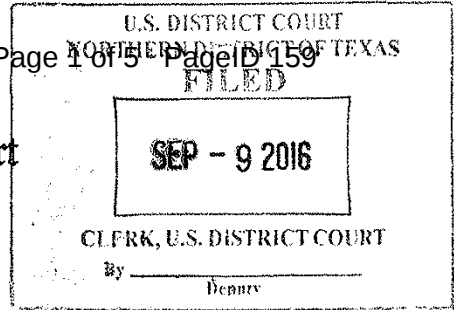
Appeal from the United States District Court for the
Northern District of Texas

Before DAVIS, HIGGINSON, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the sentence imposed by the District Court is affirmed.



United States District Court
Northern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA §
v. §
HOWARD LEON COMBS §

Case Number: 4:16-CR-054-A(01)

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Frank Gatto. The defendant, HOWARD LEON COMBS, was represented by Federal Public Defender through Assistant Federal Public Defender Peter Fleury.

The defendant pleaded guilty on May 27, 2016 to the one count indictment filed on March 16, 2016. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(e) Felon in Possession of Firearm	February 3, 2016	1

As pronounced and imposed on September 9, 2016, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 180 months to run concurrent with any future sentence in Case No. 1443697D and consecutively to any future sentence in Case Nos. 1441995, 1443695, and 1443696, in Tarrant County, Texas.

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

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years and that while on supervised release, the defendant shall comply with the following conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not possess illegal controlled substances.
3. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
4. The defendant shall refrain from any unlawful use of a controlled substance, submitting to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer pursuant to the mandatory drug testing provision of the 1994 crime bill.
5. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered at the rate of at least \$25 per month.
6. The defendant shall participate in mental health treatment services as directed by the probation officer until successfully discharged, which services may include prescribed medications by a licensed physician, with the defendant contributing to the costs of services rendered at a rate of at least \$25 per month.
7. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.
3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.

6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his or her dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

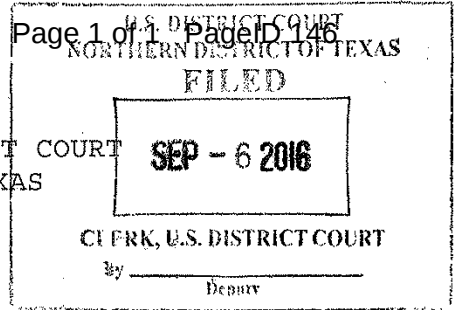
STATEMENT OF REASONS

The "Statement of Reasons" and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 9th day of September, 2016.



JOHN McBRYDE
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	NO. 4:16-CR-054-A
	§	
HOWARD LEON COMBS	§	

O R D E R

After having reviewed the presentence report pertaining to defendant, HOWARD LEON COMBS, defendant's objections thereto, and the other sentencing items, the court tentatively has concluded that all objections made by defendant to the presentence report are without merit. The parties should take such tentative conclusion into account in making decisions as to what presentations to make at the sentencing hearing.

THE COURT SO ORDERS.

SIGNED September 6, 2016.

A large, handwritten signature in black ink, appearing to read "John McBryde", written over a horizontal line.

JOHN McBRYDE
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA . CRIMINAL ACTION NO.
. 4:16-CR-054-A-1
V. .
. Fort Worth, Texas
HOWARD LEON COMBS . September 9, 2016
.

TRANSCRIPT OF PROCEEDINGS
(Sentencing Hearing)
BEFORE THE HONORABLE JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: MR. FRANK GATTO
United States Attorney's Office
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102-6897
(817) 252-5200

For the Defendant: MR. PETER FLEURY
Federal Public Defender
819 Taylor Street, Room 9A10
Fort Worth, Texas 76102
(817) 978-2753

Court Reporter: MS. ANA P. WARREN
U.S. District Court Reporter
501 W. 10th Street, Room 502
Fort Worth, Texas 76102-3637
(817) 850-6681

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

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P R O C E E D I N G S

(Commencing, 10:00 a.m.)

THE COURT: Okay. I'm now calling for sentencing Number 4:16-CR-054-A. It's United States of America versus Howard Leon Combs.

MR. GATTO: Frank Gatto for the government, Your Honor.

MR. FLEURY: Peter Fleury for Mr. Combs.

THE COURT: Mr. Gatto's here for the government, and Mr. Fleury's here for the defendant.

Mr. Combs, state your full name for the record.

DEFENDANT COMBS: Howard Leon Combs.

THE COURT: You appeared before me on May 27, 2016 when you pleaded guilty to the offense charged by the one count indictment in this case, and it was the offense of felon in possession of a firearm. Of course, we're here today for sentencing based on the conviction resulting from that plea.

Mr. Fleury, did you and your client receive in a timely manner the presentence report and the -- I believe there's --

MR. FLEURY: There was an addendum, Your Honor.

THE COURT: And the addendum. Did you all receive those in a timely manner?

MR. FLEURY: We did, Your Honor.

THE COURT: And did both of you read those items and then discuss them with each other?

1 MR. FLEURY: We did, Your Honor.

2 THE COURT: Okay. There were some objections to the
3 presentence report and, also, objections to the addendum. Do
4 you still want to pursue any of those objections? You've seen
5 the government's response, the probation officer's response,
6 and my tentative conclusions.

7 MR. FLEURY: Yes, and I had an objection to the
8 addendum.

9 THE COURT: Is that the only one you're pursuing now,
10 the objections to the addendum?

11 MR. FLEURY: We are pursuing those, Your Honor,
12 yes.

13 THE COURT: Okay.

14 MR. FLEURY: I also had an additional objection I had
15 not made. It doesn't affect the guidelines, but I can present
16 that now or --

17 THE COURT: You have one that does not affect the
18 guidelines?

19 MR. FLEURY: Yes, Your Honor.

20 THE COURT: What is that?

21 MR. FLEURY: It is important to my client, because it
22 could cause him danger in prison if it's not corrected, and
23 that is, on Page 5 of the addendum, in the paragraph just
24 above where it says "other criminal conduct," it states that
25 he has been identified as a member of the Aryan Brotherhood

1 gang while incarcerated in TDCJIE and on parole.

2 Mr. Combs has been adamant he is not a member of the Aryan
3 Brotherhood gang. He's a member of the Aryan Circle. They're
4 a different gang, which could be dangerous to him if he's
5 characterized or if he's placed with members of the wrong
6 gang. They may be upset with him --

7 THE COURT: Okay. Does he want to offer any evidence
8 in support of that?

9 MR. FLEURY: Yes, Your Honor. I had just spoken with
10 his probation officer, and she showed me the document that was
11 the basis of this, and it was just an error.

12 THE COURT: Well, let me see what document you're
13 talking about.

14 MR. FLEURY: So I don't necessarily need to introduce
15 them into evidence since it's --

16 THE COURT: Well, I want to see what you're talking
17 about --

18 MR. FLEURY: Yes, Your Honor.

19 THE COURT: -- if you're offering that -- if that is
20 evidence?

21 MR. FLEURY: Yes, Your Honor.

22 THE COURT: I had not shown the prosecutor this
23 either, Your Honor.

24 THE COURT: The probation officer says on the page
25 you're talking about of the addendum that he contends that

1 he's a member of the Aryan Circle and not the Aryan
2 Brotherhood. Isn't that consistent with what you're saying?

3 MR. FLEURY: That's consistent with what I'm saying,
4 but I'm also saying the TDCJIE does not identify him as the
5 Aryan Brotherhood gang. It does identify him as Aryan Circle.

6 THE COURT: Let me see the document.

7 (Brief pause in proceedings)

8 THE COURT: Well, I've been handed several pages of
9 documents. One of them has up at the top "restricted and
10 confidential," and it says, confirm security threat group STG,
11 whatever that is, membership. And that's indicated, yes, it
12 is a confirmed a security threat group membership, but then
13 down below that it has additional gang membership information,
14 and it says the offender is confirmed -- a confirmed member of
15 the Aryan Circle. The offender joined the group around the
16 age of 20. He denies holding any rank or being responsible
17 for any gang-related activities.

18 Is that what you're referring to?

19 MR. FLEURY: Yes, Your Honor. So I would ask that
20 the addendum be amended so that it's clear to the Bureau of
21 Prisons which gang he's a member of.

22 THE COURT: Do you have any problem with that?

23 MR. GATTO: No, Your Honor.

24 THE COURT: Okay. Well, we'll amend Page 5 of -- the
25 probation officer will amend Page 5 of the presentence report

1 to make that correction.

2 MR. FLEURY: I think you meant to say addendum.

3 THE COURT: I mean the addendum.

4 MR. FLEURY: Thank you, Your Honor, very much.

5 THE COURT: Here are these back.

6 Okay. So is the only objection left your Objection Number
7 1?

8 MR. FLEURY: Not entirely, Your Honor. Objections 2
9 and 3 are -- will be -- would be rendered moot if the Court
10 overrules Objection 1, but it would be very important if the
11 Court sustains our objection.

12 THE COURT: Okay. So we need to deal with Objection
13 Number 1 first.

14 Okay. I'm overruling Objection Number 1. So that carries
15 with it Objection Numbers 2 and 3?

16 MR. FLEURY: It renders them moot, but for appellate
17 purposes, we want to persist in our Objections 2 and 3,
18 because if we were to win on appeal, we want to make it clear
19 that we persist in our objections to 2 and 3.

20 THE COURT: Okay. I've concluded that there is no
21 way the defendant can commit an aggravated assault under Texas
22 law that would not cause the convictions of that offense not
23 to be a felony as defined in Section -- what is it,
24 924(e)(2)(B)(i). In other words, however he committed that
25 offense, it would have as an element the use and attempted use

1 or threatened use of physical force against a person.

2 So the case that you're primarily relying on, the recent
3 United States versus Tinkle case, is really not applicable
4 there because there was a way there could be a conviction in
5 that case of a controlled substance offense that would not
6 come within the statutory definition of a controlled substance
7 offense. There is no way that the defendant could be
8 convicted of an aggravated felony under Texas law without
9 whatever he did that led to the conviction and without the
10 offense of conviction containing an element of -- having an
11 element, the use -- attempted use or threatened use of
12 physical force against a person.

13 So that's the reason I'm overruling it. There may be
14 other reasons, but that's to me the most obvious reason.

15 MR. FLEURY: We would object to that ruling based on
16 the arguments we presented in our objections to the
17 presentence report and in our objections to the addendum, Your
18 Honor.

19 THE COURT: Okay. There being no further objections
20 to the presentence report, the Court adopts -- let me find
21 what I'm looking for.

22 The Court adopts as the findings of the Court -- the fact
23 findings of the Court the facts set forth in the presentence
24 report as modified or supplemented by the addendum and any
25 facts I found from the bench, and the Court adopts as the

1 conclusions of the Court the conclusions expressed in the
2 presentence report as modified or supplemented by the addendum
3 or any conclusions I've expressed from the bench.

4 The Court concludes that the Total Offense Level is 30.
5 That the Criminal History Category is IV. That the
6 imprisonment range is 180 months. That the supervised release
7 range is two to five years. That the fine range is \$30,000 to
8 \$300,000, and a special assessment of \$100.

9 You can make whatever statement you would like to make on
10 behalf of your client at this time.

11 MR. FLEURY: Your Honor, did you receive character
12 letters that we presented, letters written on behalf of the
13 defendant?

14 THE COURT: Yes. I received a letter from you. Your
15 letter is dated August 29, 2016 and attached to it were three
16 letters -- four letters, and I received and read them.

17 MR. FLEURY: Your Honor, I would point out that
18 friends and family, his girlfriend and niece, some of the
19 people that wrote the letters, are here to show their
20 support.

21 THE COURT: Very good. Thank you for being here.

22 Okay. You can make whatever statement you would like to
23 make on behalf of your client.

24 MR. FLEURY: Your Honor, the sentence range in this
25 case is now a mandatory minimum of 15. That's already above

1 what the guideline range is as set forth in the presentence
2 report and the addendum. So it already effectively is an
3 upward departure from the guidelines. Fifteen years is an
4 awful long time for the offense that Mr. Combs is standing
5 before the Court. We would ask that the Court not sentence
6 above the statutory minimum in this case.

7 THE COURT: Not do what?

8 MR. FLEURY: Not sentence above what is the statutory
9 minimum in this case, 15 years.

10 THE COURT: Okay. Did you have anything else,
11 Mr. Fleury?

12 MR. FLEURY: No.

13 THE COURT: Mr. Combs, you have the right to make any
14 statement or presentation you would like to make on the
15 subject of mitigation, that is, the things you think the Court
16 should take into account in determining what sentence to
17 impose or on the subject of sentencing more generally, and at
18 this time, I'll invite you to do that.

19 DEFENDANT COMBS: Your Honor, I had already
20 previously wrote a letter on my own behalf to be with those
21 letters, and instead of repeating, I would just decline to say
22 anything else.

23 THE COURT: Well, I've read those letters. Did you
24 have anything you wanted to say?

25 DEFENDANT COMBS: No, sir.

1 MR. FLEURY: Judge, was his letter included in the
2 packet? I'm not sure I --

3 THE COURT: Pardon?

4 MR. FLEURY: May I have a moment?

5 (Brief pause in proceedings)

6 Mr. FLEURY: I may have forgotten to give to the
7 Court the letter that Mr. Combs wrote.

8 THE COURT: Well, I didn't think I had a letter he
9 wrote. I have one from Barbara Combs and one from Rachel
10 Joann Kilroy (phonetic) and one from Brandy Crow and one from
11 Vickie Combs.

12 MR. FLEURY: Here it is. I do have it. I forgot to
13 give it to my secretary to type it.

14 THE COURT: Well, hand it up. Is it something I can
15 read?

16 MR. FLEURY: I do have it. It is typed, and I just
17 failed to give it to my secretary to include, and I also have
18 his answers to some questions we give to our clients on a
19 routine basis.

20 THE COURT: Well, hand it up and I'll see if I can
21 read it.

22 MR. FLEURY: Thank you. It's typed.

23 THE COURT: You have a typed version?

24 MR. FLEURY: Yes, Your Honor.

25 I apologize, Your Honor.

1 (Brief pause in proceedings)

2 THE COURT: You have a drum set?

3 DEFENDANT COMBS: Yes, sir.

4 THE COURT: I feel sorry for the people in your
5 household.

6 You had a snare drum and a base?

7 DEFENDANT COMBS: Yes, sir, tongues, cymbals.

8 THE COURT: Do you have all the things that clam
9 together?

10 DEFENDANT COMBS: Yes, sir.

11 THE COURT: They make a lot of noise.

12 When I was a youngster, Gene Krupa was the drum hero.

13 DEFENDANT COMBS: Yes.

14 THE COURT: Have you ever heard him --

15 DEFENDANT COMBS: Yes, sir.

16 THE COURT: -- the records that he played?

17 DEFENDANT COMBS: Yes, sir. He and Buddy Rich were
18 at the same time.

19 (Brief pause in proceedings)

20 THE COURT: Okay. You didn't want this as an
21 exhibit, did you?

22 MR. FLEURY: No, Your Honor.

23 THE COURT: I'll hand you the letter back.

24 I think you handed me all this stuff.

25 MR. FLEURY: Thank you.

1 THE COURT: Well, with the criminal history this
2 defendant has, a sentence above the top of the 180 range, as
3 it becomes, would be appropriate, but I'm going to limit it to
4 180 months. I think that probably will appropriately address
5 all the factors the Court should consider in sentencing in
6 this case under 18, United States Code, Section 3553(a),
7 combined with a term of supervised release of three years to
8 start when he gets out of prison, plus, an obligation to make
9 a special assessment payment of \$100. So that's the sentence
10 I'm going to impose.

11 The Court orders and adjudges that the defendant be
12 committed to the custody of the Bureau of Prisons to serve a
13 term of imprisonment of 180 months.

14 Okay. Now, that's to be concurrent with any sentence in
15 Case Number 1443697D. Apparently, that's a Tarrant County,
16 Texas case, and it's to be consecutive to any sentences in
17 Case Numbers 1441995, 1443695, and 1443696, and those,
18 apparently, are Tarrant County cases as well.

19 I'm also ordering that the defendant serve a term of
20 supervised release of three years, and that will start when
21 he's completed the sentence of imprisonment, and while he's on
22 supervised release, he shall comply with the standard
23 conditions that will be set forth in the judgment of
24 conviction of sentence and the following additional
25 conditions:

1 He shall not commit another federal state or local crime.
2 He shall not possess illegal controlled substances. He shall
3 cooperate in the collection of DNA as directed by the
4 probation officer and as authorized by the Justice for All Act
5 of 2004.

6 He shall refrain from any unlawful use of a controlled
7 substance, and he shall submit to one drug test within 15 days
8 from release from imprisonment and at least two periodic drug
9 tests thereafter as directed by the probation officer. He
10 shall participate in a program approved by the probation
11 officer for the treatment of narcotic or drug or
12 alcohol dependency that will include testing for the detection
13 of substance use. And he shall abstain from the use of
14 alcohol and all other intoxicants during and after completion
15 of that treatment and shall contribute to the cost of those
16 services at the rate of at least \$25 a month.

17 He shall participate in mental health treatment services
18 as directed by the probation officer until successfully
19 discharged, and those services may include prescribed
20 medications by a licensed physician, and he shall contribute
21 to those services at the rate of at least \$25 a month.

22 I'm ordering him to pay a special assessment of \$100.
23 That's payable immediately to the United States of America
24 through the office of the clerk of the Court here in Fort
25 Worth.

1 Mr. Combs, you have the right to appeal from the sentence
2 I've imposed if you're dissatisfied. That appeal would be to
3 the United States Court of Appeals for the Fifth Circuit. You
4 have the right to appeal in forma pauperis. That means
5 without any cost to you if you qualify for it. You have the
6 right to have the clerk of the Court file a notice of appeal
7 for you, and the clerk will do that forthwith if you were to
8 specifically request that.

9 You and your attorney have been given a form that outlines
10 certain rights and obligations in reference to an appeal. If
11 you haven't already done so, I want the two of you to review
12 that. Once both of you are satisfied you understand it, I
13 want both of you to sign it and return it to the court
14 coordinator.

15 Has that been done?

16 MR. FLEURY: It has, Your Honor.

17 THE COURT: Okay. The defendant is remanded to
18 custody, and the attorneys are excused.

19 (End of proceedings, 10:20 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter, and that the transcript was prepared by me and under my supervision.

s/ Ana P. Warren
Ana P. Warren, CSR #2302
U.S. District Court Reporter

November 14, 2016
Date

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