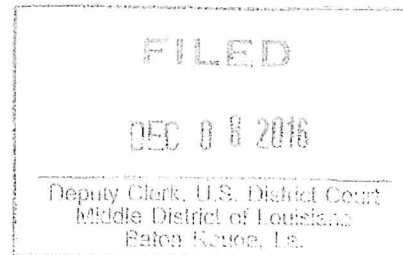


UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA



**SUPERSEDING INDICTMENT FOR POSSESSION OF A FIREARM  
BY A CONVICTED FELON; POSSESSION OF COCAINE BASE AND  
METHAMPHETAMINE; AND FORFEITURE ALLEGATION**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 16-117-JWD-EWD
	:	
<i>versus</i>	:	18 U.S.C. § 922(g)(1)
	:	18 U.S.C. § 924(d)
	:	21 U.S.C. § 844(a)
	:	21 U.S.C. § 853
TIMOTHY COURTNEY	:	28 U.S.C. § 2461(c)

**THE GRAND JURY CHARGES:**

**COUNT ONE**

**Possession of a Firearm by a Convicted Felon**

1. On or about August 9, 2016, in the Middle District of Louisiana, **TIMOTHY COURTNEY**, defendant herein, having been convicted of a crime punishable by imprisonment for a term exceeding one year, a felony, knowingly did possess a firearm, that is, a Taurus, model PT111, 9 millimeter pistol, bearing serial number TIU48312, which firearm previously had been shipped and transported in interstate and foreign commerce.

The above is a violation of Title 18, United States Code, Section 922(g)(1).

**COUNT TWO**

**Possession of Cocaine Base and Methamphetamine**

2. On or about August 9, 2016, in the Middle District of Louisiana, **TIMOTHY COURTNEY**, defendant herein, knowingly and intentionally did possess cocaine base, also known as crack, a Schedule II controlled substance, and methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance.



The above is a violation of Title 21, United States Code, Section 844(a).

**FORFEITURE ALLEGATION**

3. The allegations contained in this Superseding Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture.

4. Upon conviction of the offense alleged in Count One, **TIMOTHY COURTNEY**, defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d), and Title 28, United States Code, Section 2461(c), any firearm and ammunition involved or used in the commission of the offense, including, but not limited to, a Taurus, model PT111, 9 millimeter pistol, bearing serial number TIU48312.

5. Upon conviction of the offense alleged in Count Two, **TIMOTHY COURTNEY**, defendant herein, shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853, any and all property constituting, or derived from proceeds obtained, directly or indirectly, as a result of the said violation, including but not limited to any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the violation.

6. If any of the property or proceeds obtained directly or indirectly as a result of the offense alleged in Count Two, due to any act of omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to a forfeiture money judgment and shall be allowed to forfeit substitute property pursuant to Title 21, United States Code, Section 853(p), in satisfaction of the forfeiture money judgment.

UNITED STATES OF AMERICA, BY

  
J. WALTER GREEN

UNITED STATES ATTORNEY  
MIDDLE DISTRICT OF LOUISIANA

  
RYAN REZAEI  
ASSISTANT UNITED STATES ATTORNEY

A TRUE BILL

**REDACTED  
PER PRIVACY ACT**

GRAND JURY FOREPERSON

December 8, 2016  
DATE

Place of Offense:

Matter to be sealed: ☒ No Yes

City Baton Rouge

Related Case Information:

County/Parish East Baton Rouge Parish

Superseding Indictment ☒ Docket Number 16-117-JWD-EWD  
 Same Defendant ☒ New Defendant \_\_\_\_\_  
 Magistrate Case Number \_\_\_\_\_  
 Search Warrant Case No. \_\_\_\_\_  
 R 20/ R 40 from District of \_\_\_\_\_  
 Any Other Related Cases: \_\_\_\_\_

**Defendant Information:**

Defendant Name Timothy Courtney

Alias

Address

Birthdate \_\_\_\_\_ SS # \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_ Nationality \_\_\_\_\_

**U.S. Attorney Information:**

AUSA Ryan Rezaei

Bar # CA 285133

Interpreter: ☒ No ☐ Yes List language and/or dialect: \_\_\_\_\_

**Location Status:**

Arrest Date \_\_\_\_\_  
 \_\_\_\_\_ Already in Federal Custody as of \_\_\_\_\_  
 \_\_\_\_\_ Already in State Custody \_\_\_\_\_  
 \_\_\_\_\_ On Pretrial Release \_\_\_\_\_

**U.S.C. Citations:**

Total # of Counts: 2

<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count(s)</u>	<u>Petty/ Misdemeanor/ Felony</u>
<u>18 U.S.C. § 922(g)(1)</u>	<u>Possession of a Firearm by a Convicted Felon</u>	<u>1</u>	<u>F</u>
<u>21 U.S.C. § 844(a)</u>	<u>Possession of Cocaine Base and Methamphetamine</u>	<u>2</u>	<u>F</u>

Date: 12-8-16

Signature of AUSA: 

District Court Case Number (To be filled in by deputy clerk): \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA )  
 )  
 vs. ) **REVISED**  
 ) **PRESENTENCE INVESTIGATION REPORT**  
 )  
 ) **Docket No.: 16-117-JWD-EWD**  
 Timothy Courtney )

**Prepared for:** The Honorable John W. deGravelles  
U.S. District Judge

**Prepared by:** Danielle A. Stevens  
U.S. Probation Officer  
Baton Rouge, LA  
225-389-3652  
danielle\_stevens@lamd.uscourts.gov

**Assistant U.S. Attorney**  
Ryan Arash Rezaei  
Michael Jerome Jefferson  
Rene Irvin Salomon  
777 Florida Street, Suite 208  
Baton Rouge, LA 70801  
225-389-0443  
ryan.rezaei@usdoj.gov  
michael.jefferson2@usdoj.gov  
rene.salomon@usdoj.gov

**Defense Counsel**  
Andre Belanger (Appointed)  
8075 Jefferson Highway  
Baton Rouge, LA 70809  
225-383-9703  
andre@manassehandgill.com  
  
Richard M. Upton (Appointed)  
707 Florida Street, Suite 303  
Baton Rouge, LA 70801  
225-382-2118  
mark\_upton@fd.org

**Sentence Date:** To Be Determined.

**Offense:** **Count 1:**  
Possession of a Firearm by a Convicted Felon  
18 U.S.C. § 922(g)(1)  
0 years to 10 years imprisonment/\$250,000 fine, or both  
Class C Felony

**Count 2:**  
Possession of Cocaine Base and Methamphetamine  
21 U.S.C. § 844(a)  
0 years to 1 year imprisonment/\$100,000 fine, or both  
Class A Misdemeanor

**Date Report Prepared:** April 17, 2018

**Date Report Revised:** May 8, 2018



**Release Status:** Arrested by Baton Rouge Police Department on August 9, 2016. In federal custody on a Writ of Habeas Corpus Ad Prosequendum since October 31, 2016.

**Detainers:** None

**Codefendants:** None

**Related Cases:** None

**Identifying Data:**

**Date of Birth:** January 6, 1975  
**Age:** 43  
**Race:** Black or African American  
**Hispanic Origin:** Non-Hispanic origin  
**Sex:** Male

**SSN#:** 434-25-1850  
**FBI#:** 481899RA7  
**USM#:** 08522-095  
**State ID#:** LA1514842  
**ICE#:** Not applicable  
**PACTS#:** 2938793



**Education:** No HS Diploma or GED  
**Dependents:** Five  
**Citizenship:** U.S. Citizen  
**Country of Birth:** U.S.  
**Place of Birth:** Baton Rouge, LA

**Legal Address:** No fixed address

**Residence Address:** No fixed address

**Alias(es):** Also Known As: Jackson Jr., Shelby  
 Also Known As: Courtney, Lil John  
 Also Known As: Courtney, Jerome  
 Also Known As: Cortney, Timothy Jerome

**Alternate IDs:** State DOC(Dept. of Corrections) Number: 00315897  
 Alias DOB: 01/06/1973  
 Alias SSN/EIN: 434-25-2850  
 Alias SSN/EIN: 545-65-3990  
 Alias SSN/EIN: 434-25-1860

***Restrictions on Use and Redislosure of Presentence Investigation Report.*** Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redislosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redislosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redislosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

## **PART A. THE OFFENSE**

### **Charge(s) and Conviction(s)**

1. On October 13, 2016, the Grand Jury for the Middle District of Louisiana returned a one count Indictment charging Timothy Courtney, the defendant, with possession of a firearm by a convicted felon.
2. On December 8, 2016, the Grand Jury for the Middle District of Louisiana returned a two count Superseding Indictment charging the defendant, with possession of a firearm by a convicted felon and possession of cocaine base and methamphetamine. Count one charges on or about August 9, 2016, in the Middle District of Louisiana, the defendant, having been convicted of a felony, knowingly did possess a firearm, that is, a Taurus, model PT111, 9mm pistol, bearing serial number TIU48312, which firearm previously had been shipped and transported in interstate and foreign commerce. This is a violation of 18 U.S.C. § 922(g)(1).
3. Count two charges on or about August 9, 2016, in the Middle District of Louisiana, the defendant knowingly and intentionally did possess cocaine base, a Schedule II controlled substance, and methamphetamine, its salts, isomers, and salts of its isomers, a Schedule II controlled substance. This is a violation of 21 U.S.C. § 844(a).
4. The Superseding Indictment contains a forfeiture allegation which states, upon conviction of the offense alleged in count one, the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 924(d) and 21 U.S.C. 2461(c), any firearm and ammunition involved or used in the commission of the offense, including, but not limited to, a Taurus, model PT111, 9mm pistol, bearing serial number TIU48312. Upon conviction of count two, the defendant shall forfeit to the United States, pursuant to 21 U.S.C. § 853, any and all property constituting, or derived from proceeds obtained, directly or indirectly, as a result of the said violation, including but not limited to any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the violation.
5. On January 3, 2017, the defendant filed a motion for separate trials on the two counts of the Superseding Indictment. A hearing was held on April 12, 2017, to address the motion. On May 15, 2017, the Court granted the defendant's motion.
6. On September 11, 2017, the defendant appeared with his attorney for a Jury Trial before U.S. District Judge John W. deGravelles. Witnesses were sworn and testified. On the same date, the Jury returned a guilty verdict as to count one, possession of a firearm by a convicted felon.
7. On February 28, 2018, the defendant appeared with his attorney for a Jury Trial before U.S. District Judge John W. deGravelles. Witnesses were sworn and testified. On March 1, 2018, the Jury returned a guilty verdict as to count one, possession of cocaine base and methamphetamine. The Court referred this matter to the U.S. Probation Officer for a presentence report. The defendant was remanded to the custody of the U.S. Marshal.

**The Offense Conduct**

8. On August 9, 2016, officers with the Baton Rouge Police Department (BRPD) executed a search warrant of the residence at 3936 Odell Street, in Baton Rouge, Louisiana. The search was following a controlled purchase of narcotics from this location. During the search of the residence, officers located Timothy Courtney, the defendant, in a room inside the residence. Officers also located a small child and Tonya Hilliard, in the kitchen area. The defendant was detained during the search.
9. In the residence, BRPD officers located three dosage units of suspected ecstasy, seven dosage units of alprazolam, two dosage units of suspected hydrocodone in a pill bottle with no label, and a digital scale on the entertainment center in the living room. Further search revealed a Taurus 9mm semi-automatic pistol loaded with nine rounds in the magazine, located next to a wallet containing Courtney's identification and \$549 in the room where he was located. BRPD also located two bags of cocaine base on the entertainment center in the room where the defendant was located. Located on Courtney's person was several large bundles of money totaling \$801. No contraband was located during a search of Hilliard's person.
10. The defendant was arrested and transported to the First District Office to be processed. While in route, Courtney admitted the contraband in the house belonged to him. The defendant also stated "everybody that sells dope knows that sooner or later they gonna get caught. This is not my first time getting caught and I know I will be going away for a while."
11. The drugs were analyzed by the Louisiana State Police Crime Lab. The lab determined the recorded net weight of the drugs were approximately: 0.266 grams of cocaine base and 0.524 grams of methamphetamine. The lab confirmed the Alprazolam tablets were 5mg tablets. The lab also determined the suspected hydrocodone was hydrocodone bitartrate 10mg and acetaminophen 325 mg. No chemical tests were performed on the Alprazolam and hydrocodone.
12. Before the defendant possessed the firearm on August 9, 2016, he had been convicted in a court for multiple felonies. On October 29, 1996, the defendant pled guilty to illegal possession of stolen things, simple burglary of an inhabited dwelling (five counts), and attempted simple burglary of an inhabited dwelling in the 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana, under docket numbers 06-96-0341, 06-96-0340, 06-96-0158, 08-96-0134, and 08-96-0546. On December 7, 2004, the defendant pled guilty to possession of a Schedule II controlled dangerous substance (two counts) in the 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana, under docket numbers 08-06-0187 and 01-07-0039. On February 11, 2008, Courtney pled guilty to possession of a firearm by a convicted felon in the 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana, under docket number 10-05-0539.

**Victim Impact**

13. Count One: This is a Title 18 offense and there is no identifiable victim.
14. Count Two: This is a Title 21 offense and there is no identifiable victim.

**Adjustment for Obstruction of Justice**

15. The probation officer has no information indicating the defendant impeded or obstructed justice.

**Adjustment for Acceptance of Responsibility**

16. Pursuant to USSG § 3E1.1, comment.(n.2), this adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration of such reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct. As of completion of the presentence investigation, the defendant has not clearly demonstrated acceptance of responsibility.

**Offense Level Computation**

*\*Pursuant to the U.S. Supreme Court decision in United States v. Booker, 125 S.Ct. 735 (2005), the Sentencing Guidelines are advisory and non-binding on the Court.*

17. The November 1, 2016, edition of the Guidelines Manual has been used in this case. The Guidelines Manual in effect on the date that the offense of conviction was committed has been compared with the edition in effect at the time of sentencing. The probation officer has determined that there are no ex post facto issues, pursuant to USSG § 1B1.11.

**Count 1: Possession of a Firearm by a Convicted Felon**

18. **Base Offense Level:** The guideline for a violation of 18 U.S.C. § 922(g)(1) is found in USSG § 2K2.1 of the Guidelines Manual. On October 29, 1996, the defendant pled guilty to illegal possession of stolen things, simple burglary of an inhabited dwelling (five counts), and attempted simple burglary of an inhabited dwelling in the 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana, under docket numbers 06-96-0341, 06-96-0340, 06-96-0158, 08-96-0134, and 08-96-0546. On December 7, 2004, the defendant pled guilty to possession of a Schedule II controlled dangerous substance (two counts) in the 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana, under docket numbers 08-06-0187 and 01-07-0039. On February 11, 2008,

Courtney pled guilty to possession of a firearm by a convicted felon in the 19th Judicial District Court, Baton Rouge, Louisiana, under docket number 10-05-0539. On February 11, 2008, the defendant pled guilty to possession of a firearm by a convicted felon in the 19th Judicial District Court, Baton Rouge, Louisiana, under docket number 10-05-0539. The defendant was a prohibited person at the time he committed the instant offense. Pursuant to USSG § 2K2.1(a)(6)(A), the base offense level is 14.

14

19. **Specific Offense Characteristics:** None. 0
20. **Victim Related Adjustment:** None. 0
21. **Adjustment for Role in the Offense:** None. 0
22. **Adjustment for Obstruction of Justice:** None. 0
23. **Adjusted Offense Level (Subtotal):** 14

**Count 2: Possession of Cocaine Base and Methamphetamine**

24. **Base Offense Level:** The guideline for a violation of 21 U.S.C. § 844(a) is found in USSG § 2D2.1 of the Guidelines Manual. An offense involving possession of cocaine base and methamphetamine, Schedule II controlled substances, has a base offense level of eight, pursuant to USSG § 2D2.1(a)(1). 8
25. **Specific Offense Characteristics:** None. 0
26. **Victim Related Adjustment:** None. 0
27. **Adjustment for Role in the Offense:** None. 0
28. **Adjustment for Obstruction of Justice:** None. 0
29. **Adjusted Offense Level (Subtotal):** 8
30. **Multiple Count Adjustment:**

<u>Group/Count</u>	<u>Adjusted Offense Level</u>	<u>Units</u>
Count 1	14	1.0
Count 2	8	0.5

**Total Number of Units:** 1.5

31. **Greater of the Adjusted Offense Levels Above:** 14
32. **Increase in Offense Level:** +1
33. **Combined Adjusted Offense Level:** 15

34. **Chapter Four Enhancement:** The defendant is subject to the armed career criminal enhanced sentence under the provisions of 18 U.S.C. § 924(e) because the instant offense of conviction is a violation of 18 U.S.C. § 922(g) and the defendant has at least three prior convictions for a “violent felony:” (1) simple burglary of an inhabited dwelling, docket number 06-96-0340, 19th Judicial District Court in Baton Rouge, Louisiana; (2) simple burglary of an inhabited dwelling, docket number 06-96-0158, 19th Judicial District Court in Baton Rouge, Louisiana; and (3) simple burglary of an inhabited dwelling (three counts), docket number 08-96-0134, 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana. Pursuant to USSG § 4B1.4 (b)(3)(B), the offense level is 33. 33
35. **Acceptance of Responsibility:** None. 0
36. **Total Offense Level:** 33
- Offense Behavior Not Part of Relevant Conduct:**
37. None.

## PART B. THE DEFENDANT’S CRIMINAL HISTORY

### Juvenile Adjudication(s)

38. None.

### Adult Criminal Conviction(s)

	<u>Date of Arrest</u>	<u>Conviction/Court</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline</u>	<u>Pts</u>
39.	04/12/1996 (Age 23)	Illegal Possession of Stolen Items, Felony Theft/19th Judicial District Court, Baton Rouge, LA; Docket No.: 06-96-0341	10/29/1996: Pled guilty  06/26/1997: (Ct. 1) 4 years imprisonment, to run concurrent with Ct. 2, (Ct.2) 1 year imprisonment, to run concurrent with Ct.1 and Docket Nos.: 08-96-0134 and 08-96-0546, credit for time served  02/12/2001: Paroled  11/24/2004: Released unsatisfied	4A1.2(e)(3)	0

The defendant was represented by counsel, Henry King. According to the offense report, on March 12, 1996, officers were notified of a burglary. Upon arrival, officers contacted the complainant, who advised that his residence had been broken into. Several items were found missing including \$2,200 in assorted cash, a City National Bank book, a 14K gold diamond ring, diamond sapphire earrings, diamond and gold earrings, a 14K gold snake ring, a 14K gold ring with birthstones, a 14K gold lighter, a 14K gold cross with six diamonds, a 14K gold pendant with six diamonds, a Fender Squire Guitar and Amp, a VCR, a compact stereo system, \$50.00 in assorted change, a Super Nintendo game, assorted men's polo shirts, and one string of pearls. Upon investigating, officers observed the den window to have been broken into by a large brick. Officers also located a pager by the fence at the rear of the residence. Officers were informed that the pager was activated through Pager Unlimited to an individual identified as the defendant. Through investigation, it was discovered the defendant sold three items matching the stolen items to a nearby pawn shop for \$90.00.

On April 12, 1996, officers observed the defendant in his vehicle. Upon contact, officers observed a marijuana cigarette in plain view in the defendant's vehicle. Then defendant was placed under arrest for illegal possession of stolen things and felony theft.

Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

40.	04/12/1996 (Age 23)	Simple Burglary of an Inhabited Dwelling/ 19th Judicial District Court, Baton Rouge, LA; Docket No.: 06- 96-0340	10/29/1996: Pled guilty  06/26/1997: 8 years imprisonment, to run concurrent with Docket No.: 08-96-0134, 08-96- 0541, and 06-09-0341, credit for time served  02/12/2001: Paroled  11/24/2004: Released Unsatisfied	4A1.2(e)(3)	0
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The defendant was represented by counsel, Henry King. According to the offense report, on March 12, 1996, officers were notified of a burglary. Upon arrival, officers contacted the complainant, who advised that his residence had been broken into. Several items were found missing including \$2,200 in assorted cash, a City National Bank book, a 14K Gold Diamond ring, Diamond Sapphire earrings, Diamond and Gold earrings, a 14K Gold snake ring, a 14K Gold ring with birthstones, a 14K Gold lighter, a 14K gold cross with 6 Diamonds, a 14K gold pendant with 6 diamonds, a Fender Squire Guitar and Amp, a VCR, a compact stereo system, \$50.00 in assorted change, a Super Nintendo Game, Assorted men's Polos and one String of Pearls. Upon investigating, officers observed the den window to have been broken into by a large brick. Officers also located a pager by the fence at the rear of said residence. Officers were informed that said pager was activated

through Pager Unlimited to an individual, identified as the defendant. Through investigation, it was found that the defendant had sold three items, matching the items stolen in said incident, to a nearby pawn shop for \$90.00.

On April 12, 1996, officers observed the defendant in his vehicle. Upon contact, officers observed a marijuana cigarette in plain view in the defendant's vehicle. Then defendant was placed under arrest for Illegal Possession of Stolen Things and Felony Theft.

Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

41.	04/22/1996 (Age 23)	Simple Burglary of an Inhabited Dwelling/ 19th Judicial District Court, Baton Rouge, LA; Docket No.: 06- 96-0158	10/29/1996: Pled guilty  06/26/1997: 8 years imprisonment, to run concurrent with Docket No.: 08-96-0134, 08-96- 0546, 06-96-0341, and 06-96-0340. Given credit for time served  02/12/2001: Paroled  11/24/2004: Released Unsatisfied	4A1.2(e)(3)	0
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The defendant was represented by counsel, Henry King. According to the offense report, on April 11, 1996, officers were notified of a burglary. Upon arrival, officers spoke with the victims, who advised that they had arrived home to find that their residence was burglarized. The victims advised that several items were missing, including a Macintosh Performer, a Cannon copier, a Minolta 35 mm, a 12 gauge pump shotgun, a white gold wedding band, a graduation ring, a blue stone "S," a Macy's credit card, a Campo card, a Dillard's card, a Sears card, and a Montgomery Ward card. Officers located the source of entry, a window, which was removed. Officers were able to collect prints from the window pane.

On April 16, 1996, officers were advised that the latent prints matched the defendant. On April 22, 1996, officers contacted the defendant at the parish prison and placed him under arrest for aggravated burglary of an inhabited dwelling.

Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

42.	05/18/1996 (Age 23)	Simple Burglary of an Inhabited Dwelling (3 Counts)/19th Judicial District Court, Baton Rouge, LA; Docket No.: 08-96-0134	10/29/1996: Pled guilty  06/26/1997: 8 years imprisonment for each count, to run concurrent, credit for time served  02/12/2001: Paroled  11/24/2004: Released unsatisfied	4A1.2(e)(3)	0
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The defendant was represented by counsel, Henry King. According to the offense report, on May 6, 1996, officers were notified of a burglary. Upon arrival, the complainant advised that an individual had broken into his residence and stolen several items, including two guns.

On April 14, 1996, officers were notified of two additional burglaries. Upon arrival, one of the victims advised that an individual had broken into his residence and stolen several items. The complainant also advised that the individual had broken into his neighbor's residence as well. The neighbor advised he saw the individual, and several of his neighbor's stolen items were recovered at this residence, in a red bag. Officers obtained latent finger prints from a window pane, as well as a very small amount of blood. Items stolen included expired credit cards, old silver coins, 10 troy ounces of a .999 silver bar, men's watches, miscellaneous papers, a small set of tools, a Sony VCR, a fax machine, a keyboard, a name pendant, a 14k gold diamond watch, an initial ring, a heart shaped diamond pendant, and a name pendant.

On May 17, 1996, officers were contacted in reference to a stolen watch. The watch, a Seiko, gold nugget with diamonds, valued at \$2,200.00 had been pawned at the Penny Pincher Pawn Shop for \$900.00 and was believed to have been stolen in the burglary that took place on May 6, 1996. Officers contacted the victim of the burglary, who positively identified the watch. Officers learned the watch was pawned by the defendant. On May 18, 1996, officers made contact the defendant while he was attempting to start his vehicle. The defendant was placed under arrest for three counts of burglary. Officers observed a black leather revolver in the defendant's vehicle. The revolver had been reported stolen from the first burglary. When interviewed, the defendant admitted to executing the three burglaries.

Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

43.	07/08/1996 (Age 23)	Attempted Simple Burglary of an Inhabited Dwelling/ 19th Judicial District Court, Baton Rouge, LA; Docket No.: 08- 96-0546	10/29/1996: Pled guilty, 4A1.2(e)(3) deferred sentencing  06/26/1997: 4 years imprisonment, to run concurrent to Docket No.: 08-96-0134, Credit for time served  02/12/2001: Paroled  11/24/2004: Released Unsatisfied	0
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The defendant was represented by counsel, David Ferguson. According to the offense report, on May 15, 1996, officers received notice of a break in. Upon arrival, the complainant advised he was asleep when he heard a knock on the door. The complainant did not answer the door. The complainant then heard the breaking of glass and proceeded to the front door where he observed a hand attempting to unlock the deadbolt. The complainant scared the individual off. Upon running away, the complainant recognized the individual was his neighbor's nephew.

On June 27, 1996, officers attempted to locate the nephew; however, were unsuccessful. On June 28, 1996, the nephew met with officers to be interviewed. The nephew advised that on the date of the incident, he met an individual, named Tim, later identified as the defendant, who asked him if he knew of any place they could obtain money. The nephew advised that he knew the complainant had stereo speakers in his residence. The nephew and the defendant decided to break into the residence. The defendant acted as the driver, while the nephew attempted to break into the residence.

When questioned, the nephew advised, two months prior, he had helped the defendant burglarize two residences. The nephew also stated the defendant was currently serving time in the East Baton Rouge Parish Prison on unknown charges. Through investigation, officers learned the other two burglarizes were the ones mentioned under Docket No. 08-96-0134.

On July 8, 1996, the defendant was placed under arrest. Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

44.	01/27/2000 (Age 27)	Introduction of Contraband into Penal Institution/8th Judicial District Court, Winn, LA; Docket No.: 37820	09/08/2000: Pled guilty, 4A1.2(e)(3) 6 months imprisonment, to run consecutive with sentence presently serving	0
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02/12/2001: Paroled

11/24/2004: Released  
Unsatisfied

The defendant was represented by counsel, Jeffrey Robinson. According to the Bill of Information, on or about January 22, 2000, the defendant did have in his possession, while incarcerated in the Winn Correctional Center, a controlled dangerous substance, to wit: marijuana.

Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known. Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

45.	07/16/2001 (Age 28)	Possession of Marijuana/19th Judicial District Court, Baton Rouge, LA; Docket No.: 08-01-0372	05/30/2002: Pled guilty, 4A1.2(e)(3) 60 days imprisonment, credit for time served, to run concurrent	0
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The defendant was represented by counsel, Barry Milligan. According to the offense report, on July 16, 2001, officers received information from a confidential informant that an individual was selling marijuana and cocaine from The Rooming House located at 3345 North Street, room #4, Baton Rouge, Louisiana. Officers proceeded to the area and upon arrival, two individuals exited the room. One of the individuals, identified as the defendant, dropped a marijuana cigar to the floor. Officers knocked on the room and were greeted by an additional individual. Officers observed a clear baggie of marijuana on top of a bed behind the individual. Officers also located several items, including two clear baggies of marijuana, one clear baggie of cocaine rocks, one clear baggie containing cocaine, a Ruger 9mm semi-automatic pistol, four stolen credit cards, one stolen Driver's License, and \$200. The defendant was placed under arrest for possession of marijuana.

Attempts to verify details of the defendant's performance in jail were unsuccessful.

46.	12/19/2001 (Age 28)	Attempted Possession of Marijuana/City Court, Baton Rouge, LA; Docket No.: 01- CR-1529570S	02/28/2002: Bench warrant issued  01/28/2004: Bench warrant recalled, found in contempt, fined, pay or stay 5 days  02/11/2004: Pled guilty, 30 days jail, credit for time served, to run concurrent	4A1.2(e)(3)	0
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Attorney representation could not be determined; however, the Louisiana Constitution of 1974, Article 1, Section 13, states all individuals are to be advised of their right to counsel. According to the offense report, on December 19, 2001, officers were conducting surveillance when observing a hand to hand exchange. Officers observed one of the individuals departing from the scene in a vehicle. Officers conducted a traffic stop on the vehicle. Upon contact, the passenger of the vehicle, identified as the defendant, surrendered one baggie containing marijuana. The defendant advised he bought the marijuana for \$100. The defendant also stated his brother, the driver of the vehicle, was only driving him. The defendant was placed under arrest for possession of marijuana.

The defendant was originally billed with possession of marijuana; however, on February 11, 2004, the defendant pled guilty to the amended charge. Attempts to verify details of the defendant's performance in jail were unsuccessful.

47.	08/02/2003 (Age 30)	Illegal Possession of Stolen Things/19th Judicial District Court, Baton Rouge, LA; Docket No.: 12-04- 0114	12/07/2004: Pled guilty, 10 months imprisonment, credit for time served	4A1.2(e)(3)	0
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The defendant was represented by counsel, Sidney Hall. According to the offense report, on March 6, 2003, officers received notice of a burglary. Upon arrival, the complainant advised her office had been broken into, her back window had been smashed out, and her camera was stolen. On March 13, 2003, officers discovered the camera had been pawned at the Cash America Pawn Shop for \$70.00 by an individual.

On June 10, 2003, officers contacted the individual who had pawned the camera. When questioned, the individual advised he did pawn the camera; however he was not involved in the burglary. He advised that his neighbor, identified as the defendant, asked him to pawn the camera because he needed to pay a bill.

On August 2, 2003, officers conducted a traffic stop on the defendant's vehicle and placed him under arrest on an active warrant for the burglary. Attempts to verify details of the defendant's performance in prison were unsuccessful.

48.	04/19/2005 (Age 32)	Inspection Sticker Required, No Driver's License Issued, Security Requirement/ City Court, Baton Rouge, LA; Docket No.: BR01639527	07/25/2005: Bench warrant issued  09/21/2005: Bench warrant recalled, Pled guilty, 2 days jail, to run concurrent, credit for time served	4A1.2(e)(3)	0
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Attorney representation could not be determined; however, the Louisiana Constitution of 1974, Article 1, Section 13, states all individuals are to be advised of their right to counsel. According to the Baton Rouge City Court documentation, on April 19, 2005, the defendant was placed under arrest for the charges.

Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known. Attempts to verify details of the defendant's performance in jail were unsuccessful.

49.	09/19/2005 (Age 32)	Possession of a Firearm by a Convicted Felon/ 19th Judicial District Court, Baton Rouge, LA; Docket No.: 10- 05-0539	02/11/2008: Pled guilty, 10 years imprisonment, credit for time served, to run concurrent  12/06/2011: Paroled  08/11/2016: Revoked  11/23/2016: Paroled  03/26/2017: Full-term release	4A1.1(a)	3
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The defendant was represented by counsel, Rodney Messina. According to the offense report, on August 31, 2005, officers received notice of a burglary. Upon arrival, the victim advised that his business had been broken into and 29 guns and numerous pieces of jewelry had been stolen. Fingerprints were taken from the scene.

On September 2, 2005, officers received an anonymous tip that the individuals who committed the burglary were located at a residence. Officers proceeded to the residence and were greeted by a female, later identified as the defendant's wife. A search of the residence revealed several items, including a handgun, a browning rifle, a smith and Wesson handgun, three magazines, a black display tray with six gold rings in it, all of which had been reported stolen in the above incident. Officers also located a black duffle

bag containing five sale's tags from a pawn shop, a bag of six pills, and a small bag of white powder. When questioned, the defendant's wife advised that her husband and another individual had brought the gun to her residence.

On September 16, 2005, officers were informed that the latent prints matched three individuals, one identified as the defendant. On September 19, 2005, officers located the defendant and placed him under arrest for looting, criminal damage to property, felony theft, aggravated burglary, illegal possession of stolen things, illegal possession of stolen firearms, and illegal possession of a firearm by a convicted felon.

Bench warrants for the defendant were issued and recalled on multiple dates. The defendant was found in contempt and fined on December 14, 2005. It is noted the defendant committed the instant offense while on supervision for this offense. Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

50.	11/10/2005 (Age 32)	No Driver's License in Possession, Security Requirement, Failure to Yield on Left Turn (2 Counts), No Registration in Vehicle/ City Court, Baton Rouge, LA; Docket No.: BR01660356	01/04/2006: Bench warrant issued  12/20/2006: Bench warrant recalled, found in contempt, fined, pay or stay 5 days, to run concurrent; Pled guilty, 2 days jail, to run concurrent, credit for time served	4A1.2(c)(1)	0
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Attorney representation could not be determined; however, the Louisiana Constitution of 1974, Article 1, Section 13, states all individuals are to be advised of their right to counsel. According to the Baton Rouge City Court documentation, on November 10, 2005, the defendant was placed under arrest for the above offenses.

Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known. Attempts to verify details of the defendant's performance in prison were unsuccessful.

51.	06/22/2006 (Age 33)	Possession of Schedule II/19th Judicial District Court, Baton Rouge, LA; Docket No.: 08-06-0187	02/11/2008: Pled guilty, 5 years imprisonment, to run concurrent, credit for time served  12/06/2011: Paroled  08/11/2016: Revoked	4A1.1(a)	3
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The defendant was represented by counsel, Rodney Messina. According to the offense report, on June 22, 2006, officers arrived at a residence to conduct a no-knock search warrant. Upon arrival, officers contacted the defendant, his wife, and an additional individual in the front yard. A search of the residence revealed several items, including two crack cocaine rocks, two clear bags containing marijuana, and three digital scales. When questioned, the defendant advised that the items belonged to him. The defendant was placed under arrest for possession with intent to distribute crack cocaine and possession with intent to distribute marijuana.

Bench warrants for the defendant were issued and recalled on multiple dates. It is noted the defendant committed the instant offense while on supervision for this offense. Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

52.	12/17/2006 (Age 33)	Possession of Schedule II/19th Judicial District Court, Baton Rouge, LA; Docket No.: 01-07-0039	02/11/2008: Pled guilty, 4A1.1(a) 5 years imprisonment, to run concurrent, credit for time served  12/06/2011: Paroled  08/11/2016: Revoked	3
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The defendant was represented by counsel, Rodney Messina. According to the offense report, on December 17, 2006, officers on patrol observed a vehicle that did not have a license plate. Officers proceeded to conduct a traffic stop; however, the driver, identified as the defendant, continued to drive at a slow speed until reaching a driveway. The defendant then exited the vehicle and contacted the officers. Officers observed the defendant to be very nervous and witnessed him drop crack cocaine onto the ground. When questioned, the defendant advised he bought the cocaine from an individual on the street. The defendant was placed under arrest for possession of cocaine.

It is noted the defendant committed the instant offense while on supervision for this offense. Attempts to verify details of the defendant's performance in prison and on supervision were unsuccessful.

53.	03/28/2007 (Age 34)	Vehicle License Required, No Driver's License, Safety Belt Violation/City Court, Baton Rouge, LA; Docket No.: BR01781052	07/03/2007: Pled guilty, 4A1.2(c)(1) fined, pay or stay 2 days, to run concurrent, credit for time served	0
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Attorney representation could not be determined; however, the Louisiana Constitution of 1974, Article 1, Section 13, states all individuals are to be advised of their right to counsel. According to the Baton Rouge City Court documentation, on March 28, 2007, the defendant was placed under arrest for the listed charges.

Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known. Attempts to verify details of the defendant's performance in prison were unsuccessful.

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|-----|------------------------|--|---|-------------|---|
| 54. | 11/14/2012<br>(Age 39) | Vehicle License<br>Required, Improper<br>Equipment/City Court,<br>Baton Rouge, LA;<br>Docket No.:<br>BR022043910 | 03/05/2013: Bench<br>warrant issued<br><br>01/31/2014: Bench<br>warrant recalled, found<br>in contempt, fined, pay<br>or stay 5 days jail, to<br>run concurrent, credit<br>for time served<br><br>02/06/2016: Pled guilty,<br>10 days jail, to run<br>concurrent, credit for<br>time served | 4A1.2(c)(2) | 0 |
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Attorney representation could not be determined; however, the Louisiana Constitution of 1974, Article 1, Section 13, states all individuals are to be advised of their right to counsel. According to the Baton Rouge City Court documentation, on November 14, 2012, the defendant was placed under arrest for the listed charges.

Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known. Bench warrants for the defendant were issued on multiple dates. Attempts to verify details of the defendant's performance in prison were unsuccessful.

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|-----|------------------------|---|---|----------|---|
| 55. | 02/17/2016<br>(Age 43) | Possession of<br>Marijuana/City Court,<br>Baton Rouge, LA;<br>Docket No.: 16-CR-<br>016359S | 08/11/2016: Pled guilty,<br>fined, pay or stay 10<br>days, to run concurrent,<br>credit for time served | 4A1.1(c) | 1 |
|-----|------------------------|---|---|----------|---|

According to the offense report, on February 17, 2016, officers on patrol observed a driver of a vehicle, not wearing his seatbelt. Upon contact, officers observed the passenger attempting to conceal an item between his seat and the passenger side door. Officers observed a strong odor of marijuana and observed a greenish vegetable matter scattered on the defendant's shirt and lap. Officers located a small bag, containing marijuana, by the passenger door, as well as two packages of cigarette rolling papers. The defendant was placed under arrest for possession of marijuana. A bench warrant was issued on April 20, 2016; however, it was recalled on August 11, 2016.

**Criminal History Computation**

56. The criminal convictions above result in a subtotal criminal history score of 10.
57. The defendant committed the instant offense while under a criminal justice sentence for possession of a Schedule II controlled substance (two counts), and possession of a firearm by a convicted felon, all in the 19<sup>th</sup> Judicial District Court, Baton Rouge, Louisiana, under docket numbers 08-06-0817, 01-07-0039, and 10-05-0539. Pursuant to USSG § 4A1.1(d), two points are added.
58. The total criminal history score is 12. According to the sentencing table in USSG Chapter 5, Part A, a criminal history score of 12 establishes a criminal history category of V.
59. The defendant is an armed career criminal. As a result, the criminal history category shall be the greatest of the criminal history category applicable under Chapter Four, Part A; or Category IV. In this case, the defendant's criminal history category of V under Chapter Four, Part A is the greatest.

**Other Criminal Conduct**

	<b><u>Date of Arrest</u></b>	<b><u>Charge</u></b>	<b><u>Agency</u></b>	<b><u>Disposition</u></b>
60.	04/04/1991 (Age 18)	Possession with Intent to Distribute Cocaine, Possession of Marijuana; Docket No.: 04-91-0752	19th Judicial District Court, Baton Rouge, LA	No disposition located

According to the offense report, on April 4, 1991, officers received information regarding a killing at a nearby location, as well as heavy drug activity. Officers proceeded to the location and found several individuals, one identified as the defendant, standing on the corner. The individuals began to flee as officers approached; however, all of the individuals were detained. A search of the area where they were standing revealed an H&R handgun, two marijuana cigarettes, and a small bag of cocaine. The defendant was placed under arrest for possession with intent to distribute cocaine and possession of marijuana.

61.	07/09/1991 (Age 18)	Possession of Cocaine; Docket No.: 10-91- 2094	19th Judicial District Court, Baton Rouge, LA	No disposition located
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According to the Bill of Information, on or about July 9, 1991, the defendant committed the offense of possession of cocaine. Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known. According to the 19th Judicial District Clerk of Court's Office, a disposition could not be located for this case.

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|-----|------------------------|---|--|------------------------|
| 62. | 04/26/1992<br>(Age 19) | Simple Possession of<br>Marijuana, Bench<br>Warrant | Baton Rouge Police<br>Department, Baton<br>Rouge, LA | No disposition located |
|-----|------------------------|---|--|------------------------|

According to the offense report, on April 26, 1992, officers proceeded to contact the defendant as a result of an active warrant for his arrest for contempt of court. Upon contact, officers located one marijuana cigarette on the defendant's person. The defendant was placed under arrest for the warrant, as well as possession of marijuana.

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|-----|------------------------|--|--|-----------------------|
| 63. | 08/14/1992<br>(Age 19) | Simple Escape; Docket<br>No.: 92-F1109 | 4 <sup>th</sup> Judicial District<br>Court, Monroe, LA | 01/04/1994: Dismissed |
|-----|------------------------|--|--|-----------------------|

According to the Bill of Information, on or about August 14, 1992, the defendant willfully and unlawfully escaped from the custody of the Louisiana Department of Corrections. Offense reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known.

The defendant pled guilty to this offense on September 9, 1992, and was sentenced to three years imprisonment at hard labor. The defendant filed a post-conviction appeal, which was granted. The previous plea was withdrawn and the sentence was vacated on June 23, 1993. On January 4, 1994, the Assistant District Attorney filed a motion to dismiss the conviction in accordance with Article 691 of the Louisiana Code of Criminal Procedure.

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|-----|------------------------|-----------------------------|--|------------------------|
| 64. | 04/18/1996<br>(Age 23) | Bench Warrant (5<br>Counts) | Baton Rouge Police<br>Department, Baton<br>Rouge, LA | No disposition located |
|-----|------------------------|-----------------------------|--|------------------------|

According to the offense report, on April 18, 1996, the defendant was placed under arrest for five warrants for contempt of court.

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|-----|------------------------|---------------|--|------------------------|
| 65. | 05/22/1996<br>(Age 23) | Bench Warrant | Baton Rouge Police<br>Department, Baton<br>Rouge, LA | No disposition located |
|-----|------------------------|---------------|--|------------------------|

According to the offense report, on May 22, 1996, the defendant was placed under arrest for a bench warrant for contempt of court.

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|-----|------------------------|---------------------------------|--|------------------------|
| 66. | 09/26/1996<br>(Age 23) | Contempt of Court (6<br>Counts) | Baton Rouge Police<br>Department, Baton<br>Rouge, LA | No disposition located |
|-----|------------------------|---------------------------------|--|------------------------|

According to the offense report, on September 26, 1996, the defendant was placed under arrest for warrants for contempt of court.

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|-----|------------------------|--|--|-----------------------|
| 67. | 02/19/2002<br>(Age 29) | Filling False Public<br>Records, Simple<br>Assault | Baton Rouge Police<br>Department, Baton<br>Rouge, LA | 03/12/2002: No billed |
|-----|------------------------|--|--|-----------------------|

According to the offense report, on February 19, 2002, officers were notified of shots fired in a nearby area. Upon arrival, officers contacted two females, who advised they were not aware of the situation; however, they did have friends inside of the residence. Officers proceeded to the front door of the residence and observed a strong odor of marijuana. Officers observed an individual, later identified as the defendant, sitting on the sofa, holding a marijuana cigar. Upon entering the residence, officers observed another individual throw an item to the side. When questioned, the defendant advised that the cigar was his. A search of the defendant's person revealed a baggie containing marijuana. A search of the room revealed an additional baggie containing marijuana, a large box of sandwich bags, a digital scale with several small pieces of crack cocaine laying on top of the scale. Officers also located a plastic bag containing crack cocaine near the location where the individual threw the object. The defendant was placed under arrest under the name of Shelby Jackson, Jr.; however, it was later revealed that the defendant lied about his identity. Officers were notified that the defendant was wanted through Probation and Parole. The defendant was placed under arrest for possession, distribution, manufacturing of Schedule II, violation of Probation and Parole, and misrepresentation during booking.

68.     03/04/2002     Aggravated Burglary;     19th Judicial District     08/02/2002: Dismissed  
           (Age 29)     Docket No.: 04-02-     Court, Baton Rouge,  
                           0353                             LA

According to the offense report, on July 3, 2001, officers received notice of a disturbance. Upon arrival, the complainant advised that her boyfriend, identified as the defendant, had arrived to visit her in her room at her boarding house located at 3345 North Street, Baton Rouge, Louisiana. The defendant requested \$10 from the victim; however the victim refused to give him money. The defendant then became angry. Upon exiting the room, the victim locked the defendant out; however, the defendant broke down the door. The defendant then began to hit the victim with a closed fist. The defendant then put a large hunting knife to the victim's throat and threatened to kill her. The defendant refused to leave, threw a pair of the victim's underwear onto the bed, and stabbed a knife through them. Another individual confronted the defendant and the defendant fled the scene. The victim gave officers a false identification of the defendant, due to fear of retaliation. On October 31, 2001, officers made contact with the victim and were given the defendant's true identity.

On February 2, 2002, a warrant was issued for the defendant's arrest. On March 4, 2002, the defendant was placed under arrest for the warrant under the charge of aggravated burglary.

69.     02/10/2003     Contempt of Court;     City Court, Baton     02/11/2003: Bench  
           (Age 30)     Docket No.: 01-CR-     Rouge, LA             warrant recalled  
                           129570S

According to the offense report, on February 10, 2003, the defendant was placed under arrest for contempt of court.

70. 08/02/2003 Simple Burglary; 19th Judicial District 09/29/2004: Dismissed  
(Age 30) Docket No.: 09-03- Court, Baton Rouge,  
0553 LA

This offense is related to the conduct listed under the conviction in docket number 12-04-0114. Refer to that conviction for details.

71. 08/02/2003 Illegal Possession of Baton Rouge Police 10/27/2004: Dismissed  
(Age 30) Stolen Things; Docket Department, Baton  
No.: 10-04-0492 Rouge, LA

This offense is related to the conduct listed under the conviction in docket number 12-04-0114. Refer to that conviction for details.

72. 01/21/2004 Possession with Intent Baton Rouge Police No disposition located  
(Age 31) to Distribute Marijuana Department, Baton  
Rouge, LA

According to the offense report, on January 21, 2004, officers received notice from concerned citizens regarding narcotic activity in a nearby area. Upon arrival, officers observed a few individuals, one identified as the defendant, standing around a drum that contained fire. Officers observed the defendant obtain a small baggie from a brown paper bag. The brown bag was then passed through several hands. Officers proceeded to contact the individuals. Upon observing the officers, one of the individuals placed the bag in a grassy area nearby. Officers obtained the bag and observed 19 individually wrapped baggies containing marijuana. A search of the defendant's person revealed a small plastic baggie containing marijuana. The defendant was placed under arrest for distribution/manufacturing Schedule I.

The defendant was placed under arrest under the name Shelby Jackson, Jr. It is noted this is one of the defendant's aliases.

73. 05/10/2005 Unauthorized Use of a 19th Judicial District 02/11/2008: Dismissed  
(Age 32) Motor Vehicle; Docket Court, Baton Rouge,  
No.: 06-05-0251 LA

According to the offense report, on May 9, 2005, officers received notice of a stolen vehicle. The complainant advised that her mother's vehicle had been stolen on May 6, 2005. On May 10, 2005, officers observed an individual driving the vehicle. Officers conducted a traffic stop and contacted the driver, identified as the defendant. When questioned, the defendant advised the vehicle was not his and belonged to someone named "Black." The defendant was placed under arrest for unauthorized use of a motor vehicle.

On January 31, 2006, the defendant failed to appear in court and a bench warrant was issued. The warrant was recalled and issued on multiple dates; however, it was last recalled on April 19, 2007.

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|-----|------------------------|---------------|--|------------------------|
| 74. | 04/24/2007<br>(Age 34) | Bench Warrant | East Baton Rouge<br>Parish Sheriff, Baton<br>Rouge, LA | No disposition located |
|-----|------------------------|---------------|--|------------------------|

According to the offense report, on April 24, 2007, a routine warrant check was conducted on the defendant and an active warrant was located for charge of possession of cocaine.

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|-----|------------------------|--|---|-----------------------|
| 75. | 01/27/2014<br>(Age 41) | Simple Burglary;<br>Docket No.: 04-14-<br>0134 | 19th Judicial District<br>Court, Baton Rouge,<br>LA | 06/19/2017: Dismissed |
|-----|------------------------|--|---|-----------------------|

According to the offense report, on January 27, 2014, officers were notified of a suspicious vehicle driving around a neighborhood and parking in various driveways. Officers were also advised that an individual observed three males going into a backyard. Officers proceeded to the area and observed the vehicle. Officers conducted a traffic stop. Officers contacted the driver, identified as the defendant, as well as two passengers. When questioned, the defendant advised they were not stealing from houses, instead they were picking up items along the road. When questioned, the passengers advised they had broken into a shed and stole several appliances, including a dryer, washer, ladder, deep freezer, and stock pot. The defendant and passengers were placed under arrest for simple burglary.

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|-----|------------------------|---|---|-----------------------|
| 76. | 08/09/2016<br>(Age 43) | Possession with Intent<br>to Distribute Schedule<br>I, Possession with<br>Intent to Distribute<br>Schedule II (2 Counts),<br>Possession with Intent<br>to Distribute Schedule<br>IV, Possession of a<br>Firearm / Carrying<br>Concealed Weapon by<br>Convicted Felon,<br>Illegal Carrying of a<br>Weapon with<br>Controlled Dangerous<br>Substance; Docket No.:<br>09-16-0813 | 19th Judicial District<br>Court, Baton Rouge,<br>LA | 06/19/2017: Dismissed |
|-----|------------------------|---|---|-----------------------|

This arrest is related to the instant offense. For details, see the offense conduct section of this report.

#### **Pending Charges**

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|-----|-------|
| 77. | None. |
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**Other Arrests**

	<b><u>Date of Arrest</u></b>	<b><u>Charge</u></b>	<b><u>Agency</u></b>	<b><u>Disposition</u></b>
78.	07/09/1996 (Age 23)	Bench Warrant	East Baton Rouge Parish Sheriff, Baton Rouge, LA	No disposition located
Reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known.				
79.	04/11/1997 (Age 24)	Bench Warrant (5 Counts)	East Baton Rouge Parish Sheriff, Baton Rouge, LA	No disposition located
Reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known.				
80.	02/20/2002 (Age 29)	Bench Warrant	East Baton Rouge Parish Sheriff, Baton Rouge, LA	No disposition located
Reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known.				
81.	02/12/2004 (Age 31)	Bench Warrant	Baton Rouge Police Department, Baton Rouge, LA	No disposition located
Reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known.				
82.	02/18/2009 (Age 36)	Taking Contraband into a Penal Institution	Dixon Correctional Facility	No disposition located
Reports pertaining to this arrest could not be obtained; therefore, details of this offense are not known.				

## PART C. OFFENDER CHARACTERISTICS

### Personal and Family Data

83. During the presentence investigation process, our office contacted Tonya Hillard, the defendant's girlfriend, for verification of social information. As such, the personal and family information provided by the defendant is verified. However, it should be noted that Hilliard was unable to provide information regarding the defendant's childhood. The defendant was unable to provide the probation officer with contact information for a family member to verify the information. Courtney advised he does not have a permanent address. The defendant indicated he received mail at the Volunteers of America, Baton Rouge, Louisiana, prior to the arrest for the instant offense. The defendant stated he would like to reside with Hilliard at 3936 Odell Street, Baton Rouge, Louisiana, when released from incarceration. On April 5, 2018, the probation officer completed a home assessment of the residence. The home is a two bedroom, one bathroom apartment located in a lower socioeconomic neighborhood. Hilliard advised she resides there with her and Courtney's daughter and an adult female friend. There is a large and aggressive pit bull dog inside the residence. No contraband was observed in plain view.
84. Courtney advised he was born on January 6, 1975, in Baton Rouge, Louisiana, to Shelby Jackson and Arlene Denise Pack. The defendant advised that Pack's maiden name is Courtney. The defendant's family is as follows:
- Father: Shelby Jackson died in 2002.
- Mother: Arlene Pack resides in the Baton Rouge, Louisiana, area. Courtney indicated he has not seen his mother in more than 30 years; however, he reported she is currently residing in a nursing home. The defendant did not know her age.
- Half-brother: Shelby Jackson, Jr., age 38, resides in Fresno, California, and is disabled.
- Half-sister: Dabita Pack, age 38 resides in Baton Rouge, Louisiana, and is disabled.
- Half-brother: Elijah Burton, age 25, resides in Baton Rouge, Louisiana. The defendant advised he does not know the name of Burton's employer.
- Half-brother: Joseph Jackson is 22 years old and resides in South Dakota. Courtney stated he is uncertain if Jackson is currently employed.
85. The defendant reported was raised by his aunts, specifically Barbara Courtney, until she passed away in 2000. Courtney stated his grandmother also helped raise him; however, she died when the defendant was six years of age. The defendant indicated his parents were young teenagers when he was born. As a result, various family members assisted with raising him. The defendant advised he entered foster care when he was eight years old. Courtney stated he was placed in various foster homes throughout Louisiana. The defendant reported he was released from foster care to return to his family when he was 13 years old. A collateral request was sent to the Department of Children and Family Services

(DSCFS); however, as of this writing, no response has been received by the probation office. Courtney advised there were no significant issues during his childhood, yet he reported he witnessed his father use cocaine in the 1990s. The defendant indicated he did not have the best childhood, but he chose his own direction in life. Courtney stated, as an adult, he resided in California for one year, as well as Florida.

86. Courtney advised he married Cherlyn Courtney, age 38, in March 2004. The defendant stated the couple have been separated for many years, but are not divorced. The couple share two children:

Daughter: Timara Courtney, age 15 and resides with her mother, Cherlyn Courtney, in Baton Rouge, Louisiana.

Son: Timothy Courtney, Jr., age 12, resides with his mother, Cherlyn Courtney, in Baton Rouge, Louisiana.

87. The defendant reported he is currently in a relationship with Tonya Hilliard, age 35. The defendant indicated that Hilliard was diagnosed with Schizophrenia and is taking medication as directed. The couple share one child.

Daughter: Tinesha Hilliard, age 5, resides with her mother in Baton Rouge, Louisiana.

88. Courtney reported two other children from prior relationships.

Daughter: Betty Cockran, age 28, resides in Arkansas. Cockran's mother is Ruby Cockran, who passed away last year

Daughter: The defendant advised he has a 12 year old daughter that he has never met because her mother gave birth to her while the defendant was incarcerated years ago. The defendant was unable to provide the name of the child or the mother's name.

#### **Physical Condition**

89. Courtney is 5'11" and weighs approximately 225 pounds. He has black hair and brown eyes. The defendant advised he has a chronic illness that requires monitoring. Courtney stated he is prescribed Truvada and another unknown medication for treatment. The defendant also reported he has shingles. Courtney advised he is prescribed Neurontin for treatment of shingles. A collateral response from the East Baton Rouge Parish Prison (EBRPP) (Correct Health, Baton Rouge, Louisiana) confirms the defendant's information. Records reflect, as of September 2016, the defendant's current medication includes Neurontin 600mg, Prezobix 800/150, and Truvada 200mg/300mg. The defendant stated he has three tattoos, "Timara" on his left arm; "Timothy Jr." on his right arm; and a picture of a clown face on his right forearm. Courtney did not report any allergies, scars, or other distinguishing marks.

**Mental and Emotional Health**

90. The defendant reported seeing a mental health care professional when he was in his 30s, while at EBRPP. Courtney advised he was prescribed Zoloft by the prison doctor as a result of trouble sleeping, stress, incarceration, and being diagnosed with the chronic illness. The defendant indicated he took the medication for a few years; however, he discontinued the medication because he did not like the way it made him feel. A collateral response from EBRPP does not confirm this information. As a result, this information remains unverified. Courtney stated he was antisocial as a child and was sent to Margaret Dumas Center while in DCFS custody. The defendant stated he was prescribed medication to make him hyper; however, he was unable to recall the name of the medication. A collateral request was sent to the Margaret Dumas Center; however, this information remains unverified. Courtney indicated he is not interested in mental health treatment. The defendant did not report any past or present gambling addiction, nor any relationships involving domestic violence.

**Substance Abuse**

91. Courtney reported a history of marijuana use, which began when he was eight years old. The defendant stated his aunt smoked marijuana, which allowed him access to it at that age. Courtney described his use as one marijuana cigar on occasion. Courtney reported his last use of marijuana was years ago. The defendant advised he has never received treatment for substance abuse; however, he has participated in AA/NA meeting during periods of incarceration only because he wanted knowledge of the meaning of substance abuse. As to alcohol, the defendant stated he last used 15 years ago and discontinued use because he did not like to drink. Courtney denied any other use of illegal substances. The defendant advised he is not interested in substance abuse treatment. Courtney was unable to provide a urine sample at the completion of the presentence interview due to incarceration.

**Educational, Vocational and Special Skills**

92. The defendant reported he completed the 8<sup>th</sup> grade in the East Baton Rouge Parish School System. Courtney advised he enrolled at Capital High School; however, he never attended. A collateral request was sent to the East Baton Rouge Parish School Board; however, as of this writing, no response has been received by the probation office. The defendant reported obtaining his General Educational Diploma (GED) from the Louisiana Training Institute (LTI), which is now named Southside Alternative High School. A collateral request was sent to Southside Alternative High School; however, as of this writing, no response has been received by the probation office. Courtney stated he would like to earn a college degree.

**Employment Record**

93. Courtney is unemployed and has been incarcerated in federal custody on a Writ of Habeas Corpus Ad Prosequendum since October 31, 2016. The defendant reported he has been attempting to obtain disability income since he was diagnosed with the serious chronic illness in 2005. Courtney indicated he has been denied multiple times.

94. The defendant advised his last employment was in 2007. Courtney stated he was self-employed in the lawn service business. The defendant did not provide enough information to verify this employment. Courtney indicated he was supported by family and food stamps during periods of unemployment. The defendant advised he received food stamps in both California and Louisiana. Courtney stated the Volunteers of America, Baton Rouge, Louisiana, completed the necessary documents for him to obtain food stamps. A collateral response from Louisiana DCFS reflects the defendant received benefits from July 2014 until October 2017. The response reflects various benefit amounts ranging from \$132.00 to \$192.00 per month. The defendant did not provide enough information for the probation office to verify this information with the California government agency.

**Financial Condition: Ability to Pay**

95. A review of the defendant's credit report and the personal financial statement with affidavit supports the profile summarized below:
96. Courtney's credit report reveals he has eight accounts in collections (seven medical, one cable) totaling \$3,159.00. The defendant has one trade line account (utility company) with a balance of \$121.00, which is past due. Courtney did not report any assets. A check of Accurant confirms the defendant's information.

**Analysis:**

97. The defendant is currently incarcerated and has no monthly income. Courtney has been in federal custody on a Writ of Habeas Corpus Ad Prosequendum since October 31, 2016. The defendant does not have any assets which can be liquidated to pay a fine. In addition, the defendant is being represented by appointed counsel. Based on his current financial status, it is unlikely he will be capable of paying a fine within the guideline range.

**PART D. SENTENCING OPTIONS**

*\*Pursuant to the U.S. Supreme Court decision in United States v. Booker, 125 S.Ct.735 (2005), the Sentencing Guidelines are advisory and non-binding on the Court.*

**Custody**

98. **Statutory Provisions:** Count 1: The maximum term of imprisonment is 10 years. 18 U.S.C. § 924(a)(2). Count 2: The maximum term of imprisonment is one year. 21 U.S.C. § 844(a). Should the court determine the defendant meets the criteria for the sentencing enhancement pursuant to 18 U.S.C. 924(e), the minimum term of imprisonment is 15 years and the maximum is life.
99. **Guideline Provisions:** Based upon a total offense level of 33 and a criminal history category of V, the guideline imprisonment range is 210 to 262 months. Pursuant to USSG § 5G1.1(a), since the statutory maximum term of imprisonment in this case is 120 months, the guideline range becomes 120 months. Should the Court determine the defendant meets

the criteria for a sentencing enhancement pursuant to 18 U.S.C. § 924(e), the current guidelines range of 210 to 262 months will be the guidelines range in this case.

### **Supervised Release**

100. **Statutory Provisions:** Count 1: The Court may impose a term of supervised release of not more than three years. 18 U.S.C. § 3583(b)(2). Count 2: The Court may impose a term of supervised release of not more than one year. 18 U.S.C. § 3583(b)(3). Multiple terms of supervised release shall run concurrently. 18 U.S.C. § 3624(e). Should the Court determine the defendant meets the criteria for a sentencing enhancement under 18 U.S.C. § 924(e), then pursuant to 18 U.S.C. § 3583(1), the Court may impose a term of supervised release of not more than five years.
101. **Guideline Provisions:** Count 1: Since the offense is a Class C Felony, the guideline range for a term of supervised release is one year to three years. USSG § 5D1.2(a)(2). Count 2: Since the offense is a Class A Misdemeanor, the guideline range for a term of supervised release is one year. USSG § 5D1.2(a)(3). If a sentence of imprisonment of one year or less is imposed, a term of supervised release is not required but is optional, pursuant to USSG § 5D1.1(b). Supervised release is recommended if the court imposes a term of imprisonment of more than one year or when required by statute, pursuant to USSG § 5D1.1(a). Should the Court determine the defendant meets the criteria for a sentencing enhancement under 18 U.S.C. § 924(e), then the offense will be a Class A felony and the guideline range will be a term of supervised release of two to five years, pursuant to USSG § 5D1.2(1)

### **Probation**

102. **Statutory Provisions:** Count 1: The defendant is eligible for not less than one nor more than five years probation because the offense is a Class C Felony. 18 U.S.C. § 3561(c)(1). One of the following must be imposed as a condition of probation unless extraordinary circumstances exist: a fine, restitution, or community service. Count 2: The defendant is eligible for not more than five years probation. 18 U.S.C. § 3561(c)(2). Multiple terms of probation shall run concurrently. 18 U.S.C. § 3564(b). Should the Court determine the defendant meets the criteria for a sentencing enhancement under 18 USC 924(e), probation will be prohibited by statute.
103. **Guideline Provisions:** Counts 1 and 2: Since the applicable guideline range is in Zone D of the Sentencing Table, the defendant is ineligible for probation. USSG § 5B1.1, comment.(n.2).

### **Fines**

104. **Statutory Provisions:** Count 1: The maximum fine is \$250,000. 18 U.S.C. § 3571(b). Count 2: The maximum fine is \$100,000. 18 U.S.C. § 3571(b). A special assessment of \$100 per count is mandatory. 18 U.S.C. § 3013.
105. **Guideline Provisions:** The fine range for this offense is from \$17,500 to \$175,000. USSG § 5E1.2(c)(3).

Costs of prosecution shall be imposed on the defendant as required by statute. USSG § 5E1.5. In determining whether to impose a fine and the amount of such fine, the Court shall consider, among other factors, the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed. USSG § 5E1.2(d)(7) and 18 U.S.C. § 3572(a)(6). These costs may include drug and alcohol treatment, electronic monitoring, and/or contract confinement costs. The most recent advisory from the Administrative Office of the United States Courts, dated July 13, 2017, provides the following monthly cost data:

	<u>Bureau of Prisons Facilities</u>	<u>Community Correction Centers</u>	<u>Supervision by Probation Officer</u>
Daily	\$95.00	\$80.00	\$12.00
Monthly	\$2,898.00	\$2,440.00	\$366.00
Annually	\$34,770.00	\$29,280.00	\$4,392.00

#### **Restitution**

106. **Statutory Provisions:** Counts 1 and 2: Restitution is not applicable in this case. 18 U.S.C. § 3663.
107. **Guideline Provisions:** Counts 1 and 2: Restitution is not applicable in this case.

#### **Denial of Federal Benefits**

108. **Statutory Provisions:** At the discretion of the Court, the defendant, having been convicted of a fourth drug possession offense, shall be ineligible for any and all federal benefits for up to five years after such conviction. 21 U.S.C. § 862(b)(1)(B).
109. **Guideline Provisions:** The Court, pursuant to 21 U.S.C. § 862, may deny the eligibility for certain federal benefits of any individual convicted of distribution or possession of a controlled substance. USSG §5F1.6.

#### **PART E. FACTORS THAT MAY WARRANT DEPARTURE**

110. Presentation of information in this section does not necessarily constitute a recommendation by the probation officer for a departure.
111. Pursuant to USSG § 4A1.3(a)(1), an upward departure may be warranted if reliable information indicates the defendant's criminal history category substantially underrepresents the seriousness of the defendant's criminal history or likelihood that the defendant will commit other crimes.

**PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE  
ADVISORY GUIDELINE SYSTEM**

112. Presentation of information in this section does not necessarily constitute a recommendation by the probation officer for a variance in sentencing.
113. The probation officer has identified factors under 18 U.S.C. § 3553(a) that may warrant a variance and imposition of a non-guideline sentence, specifically, the nature of the offense and the history and characteristics of the defendant. The defendant reported a history of substance abuse and has reportedly never received treatment outside of periods of incarceration. Courtney has a history of mental health issues with limited treatment. Additionally, the defendant committed the instant offense while on supervision for conduct similar to the instant offense.

Respectfully Submitted,

Clarence P. Rambo  
Chief U.S. Probation Officer

Reviewed: Robert K. Sibille, Jr.  
Supervisory U.S. Probation Officer

By:

 FOR \_\_\_\_\_  
Danielle A. Stevens  
U.S. Probation Officer  
May 15, 2018

**ADDENDUM TO THE REVISED PRESENTENCE REPORT**

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA  
UNITED STATES V. TIMOTHY COURTNEY, DKT. 16-117-JWD-EWD**

**OBJECTIONS**

**By the Government**

The government has no objection to the revised presentence report.

**By the Defendant**

**Objection No. 1:** The defendant objects to paragraphs 98 and 99 of the revised presentence report, specifically to an inaccurate application of the armed career criminal guideline.

**FACTS IN SUPPORT OF OBJECTION:**

The defense objects to an increase in the statutory minimum and maximum penalties pursuant to the armed career criminal provision referenced in 18 U.S.C. § 924(e) on constitutional grounds. The defense contends that enhancing the statutory penalty provisions pursuant to a judicial finding of fact at a sentencing hearing and not before the jury at his trial violates the defendant's 6<sup>th</sup> Amendment right to trial. In *Alleyne v. United States*, the Supreme Court held that "any fact" increasing the mandatory minimum sentence for a crime is an "an element" of the crime and not a sentencing factor. Admittedly, footnote 1 of that opinion, as noted by this Circuit *in dicta*, recognizes a narrow exception to the rule when the "fact" in question is a prior conviction. Nonetheless, that same footnote advises that such a challenge was not made in *Alleyne* which is precisely what we seek to do with this objection.

**SENTENCING GUIDELINES OR OTHER LEGAL REFERENCES  
IN SUPPORT OF OBJECTION:**

*Apprendi v. New Jersey*, 120 S.Ct. 2348 (2000); *Alleyne v. United States*, 133 S.Ct. 2151 (2013); *United States v. Wallace*, 759 F.3d 486, 497 (5<sup>th</sup> Cir. 2014); *United States v. Lewis*, 587 Fed. Appx. 223 (5<sup>th</sup> Cir. 2014)

**Response:** The probation officer disagrees with the defendant's objection. In *U.S. v. Morris*, 293 F.3d 1010 (7<sup>th</sup> Cir. 2002), the defendant argued that the armed career criminal enhancement of his sentence violated his constitutional rights as set forth in *Apprendi v. New Jersey*, because a jury was never presented with the issue of whether the convictions were committed on occasions different from one another. Morris argued that under *Apprendi*, the determination of whether his prior convictions were committed on



occasions different from one another should have been presented to the grand jury, tried before the jury, and found beyond a reasonable doubt before he was sentenced under the armed career criminal enhancement. The district court held that the enhancement was appropriately applied in this case.

In *U.S. v. Skidmore*, 254 F.3d 635 (7<sup>th</sup> Cir. 2001), Skidmore argued that his enhanced sentencing, pursuant to the armed career criminal act, violated his constitutional rights in light of the Supreme Court's decision in *Apprendi v. New Jersey*. Skidmore asserted that under *Apprendi*, whether he had been convicted of three separate violent felonies is a fact that should have been presented to the grand jury, tried before the jury, and found beyond a reasonable doubt before he was sentenced under the armed career criminal enhancement pursuant to 18 U.S.C. § 924(e). The district court affirmed the sentence.

**Objection No. 2:** The defendant objects to paragraph 34 of the revised presentence report, specifically to the inaccurate application of the Chapter Four Enhancement.

**FACTS IN SUPPORT OF OBJECTION:**

The defense objects to the Chapter Four Enhancement raising his offense level to Level 33 on grounds that he is an armed career criminal. Should the Court sustain the Defendant's first objection, this enhancement, as applied, would no longer be valid requiring a recalculation of his offense level.

**SENTENCING GUIDELINES OR OTHER LEGAL REFERENCES IN SUPPORT OF OBJECTION:**

See objection one.

**Response:** The probation officer disagrees with the defendant's objection. As indicated in paragraph 34 of the presentence report, the defendant is subject to the armed career criminal enhanced sentence under the provisions of 18 U.S.C. § 924(e) because the instant offense of conviction is a violation of 18 U.S.C. § 922(g) and the defendant has at least three prior convictions for a "violent felony:" (1) simple burglary of an inhabited dwelling, docket number 06-96-0340, 19th Judicial District Court in Baton Rouge, Louisiana; (2) simple burglary of an inhabited dwelling, docket number 06-96-0158, 19th Judicial District Court in Baton Rouge, Louisiana; and (3) simple burglary of an inhabited dwelling (three counts), docket number 08-96-0134, 19th Judicial District Court, Baton Rouge, Louisiana. Pursuant to USSG § 4B1.4 (b)(3)(B), the offense level is 33.

The crime of Louisiana simple burglary of an inhabited dwelling is a "violent felony" under 18 U.S.C. § 924(e). See *United States v. Mumphrey*,

No. CR 12-00072-BAJ-EWD, 2017 WL 5015511, at \*2 (M.D. La. Nov. 2, 2017) (concluding that the Louisiana crime of simple burglary of an inhabited dwelling is a violent felony under the enumerated offenses clause set forth in 18 U.S.C. § 924(e)(2)(B)(ii)); *Vititoe v. United States*, No. 3:08-CR-94-TAV-HBG-1, 2017 WL 354241, at \*2 (E.D. Tenn. Jan. 24, 2017) (same); *United States v. White*, No. CR 07-0011, 2016 WL 7097365, at \*2 (E.D. La. Dec. 6, 2016) (same); *United States v. Melancon*, No. 13-CR-132, 2016 WL 5661769, at \*1 (M.D. La. Sept. 29, 2016) (same conclusion after comparing the elements of Louisiana's simple burglary of an inhabited dwelling with the elements of generic burglary as set forth in *Taylor v. United States*, 495 U.S. 575, 598 (1990)); *United States v. Williams*, No. CR 13-146-SDD-SCR-2, 2016 WL 792431, at \*5 (M.D. La. Feb. 29, 2016) (same).

The defendant has at least three convictions for a violent felony, committed on occasions different from one another. Such person shall be imprisoned not less than 15 years. As a result, the Chapter Four Enhancement was correctly applied in this case.

**Objection No. 3:** The defendant objects to paragraph 55 of the presentence report, specifically to the incorrect criminal history point calculation.

**FACTS IN SUPPORT OF OBJECTION:**

The defense objects to assigning one criminal history point for the municipal offense of possession of marijuana. The defense challenges this conviction alleging that it was obtained in violation of Courtney's 6<sup>th</sup> Amendment right to counsel. The presentence report makes no indication that Courtney was provided counsel or advised he could receive appointed counsel and can only gleam from the "pay or stay" verbiage that he was incarcerated when adjudicated guilty. More specifically, the PSR suggests that he had an outstanding bench warrant when adjudicated which would have been satisfied by his placement in custody for this arrest on August 9, 2016. (See PSR page 2: Release Status) It is well established that an offender can collaterally attack a prior conviction when a conviction is used to enhance a penalty provided the attack is limited to a violation of counsel claim.

**SENTENCING GUIDELINES OR OTHER LEGAL REFERENCES IN SUPPORT OF OBJECTION:**

*United States v. Hollis*, 506 F.3d 415 (5<sup>th</sup> Cir. 2007); *United States v. Longstreet*, 603 F.3d 273, 276-77 (5<sup>th</sup> Cir. 2010); *Iowa v. Tovar*, 124 S.Ct. 1379 (2004)

**Response:** The probation officer disagrees with the defendant's objection. The following should be added to paragraph 55 of the presentence report: Attorney representation could not be determined; however, the Louisiana

Constitution of 1974, Article 1, Section 13, states all individuals are to be advised of their right to counsel.

Pursuant to “Monograph 107: The Presentence Investigation Report” in the *Guide to Judiciary Policy*, verification of Sixth Amendment compliance may be established in several ways, which are listed in the order of the best evidence: verification by examination of the court record; verification by examination of the court record by an officer in another district; citation of a state law or state court rule that requires that all defendants have the right to counsel during the prosecution of the case; or the defendant's admission of attorney representation for the case.” In this case, the best evidence available is citation of the Louisiana Constitution of 1974, Article 1, Section 13, which states all individuals are to be advised of their right to counsel; therefore, it can only be concluded that the defendant was advised of his right to legal representation in this matter.

Furthermore, “Monograph 107” states the defendant has the burden of establishing that a facially valid conviction is unconstitutional. From the documentation available, this is a facially valid conviction. Additional documentation proving the defendant was afforded counsel or waived his right to counsel is not necessary to assign criminal history points to this conviction, nor is its absence evidence that he was not represented by counsel or that he did not waive his right to counsel. As a result, the defendant should receive one criminal history point for the conviction in paragraph 55 of the presentence report.

In addition, the defendant indicates the presentence report does not reflect the outstanding bench warrant in paragraph 55 was satisfied. It should be noted that paragraph 55 of the presentence report clearly states the bench warrant was recalled on August 11, 2016.

**Additions/Corrections to the Presentence Report**

**Correction No. 1:** Paragraph 104 of the presentence report should read as follows:

**Statutory Provisions:** Count 1: The maximum fine is \$250,000. 18 U.S.C. § 3571(b). Count 2: The maximum fine is \$100,000. 18 U.S.C. § 3571(b).  
Count 1: A special assessment of \$100 is mandatory. 18 U.S.C. § 3013.  
Count 2: A special assessment of \$25 is mandatory. 18 U.S.C. § 3013.

Respectfully Submitted,

Clarence P. Rambo  
Chief U.S. Probation Officer

Reviewed: Robert K. Sibille, Jr.  
Supervisory U.S. Probation Officer

By:



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Danielle A. Stevens  
U.S. Probation Office  
June 18, 2018

**UNITED STATES DISTRICT COURT**  
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

v.

TIMOTHY COURTNEY

§ **JUDGMENT IN A CRIMINAL CASE**

§

§

§ Case Number: **3:16-CR-00117-JWD-EWD(1)**§ USM Number: **08522-095**§ **Richard M. Upton**

§ Defendant's Attorney

**THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	<b>One and two of the Superseding Indictment</b>

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1) / Possession of a Firearm by a Convicted Felon	08/09/2016	1
21:844(a) / Possession of Cocaine Base and Mehtamphetamine	08/09/2016	2

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

- ☐ The defendant has been found not guilty on count(s)
- ☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

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

**January 10, 2019**

Date of Imposition of Judgment



Signature of Judge

**John W. deGravelles**  
**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

**1/14/2019**

Date



DEFENDANT: TIMOTHY COURTNEY  
CASE NUMBER: 3:16-CR-00117-JWD-EWD(1)

## IMPRISONMENT

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

**210 months** on count one and 12 months on count two, to run concurrently for a total of 210 months.

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

It is recommended to the Bureau of Prisons that the defendant be housed in a facility capable of providing him with educational and vocational training, mental health and substance abuse treatment.

☒ 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: TIMOTHY COURTNEY  
CASE NUMBER: 3:16-CR-00117-JWD-EWD(1)

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

**5 years** on count one and one year on count two, to run concurrently, for a total of five years.

### 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 sentence of 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 (34 U.S.C. § 20901, et seq.) as 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)*

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

DEFENDANT: TIMOTHY COURTNEY  
CASE NUMBER: 3:16-CR-00117-JWD-EWD(1)

## 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, or if placed on probation, within 72 hours of the time you were sentenced, 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 supervision that the probation officer 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 the position or 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. I understand additional information regarding these conditions is available at the [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: TIMOTHY COURTNEY  
CASE NUMBER: 3:16-CR-00117-JWD-EWD(1)

### **SPECIAL CONDITIONS OF SUPERVISION**

You must participate in a substance abuse assessment and/or treatment program. While participating in the program, you must follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of the substance abuse assessment and/or treatment program, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must assist in the cost of the testing, as approved by the probation officer. You must not attempt to obstruct or tamper with the testing methods.

You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of mental health treatment program, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

You must take all mental health medications that are prescribed by your treating physician. You must pay the costs of the medication, to the extent you are financially able to pay. The U.S. Probation Office must determine your ability to pay and any schedule for payment, subject to the Court's review upon request.

If the judgment imposes a financial penalty, you must pay the financial penalty in accordance with the Schedule of Payments sheet of the judgment. You must also notify the court, through the probation officer, of any changes in economic circumstances that might affect the ability to pay this financial penalty.

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: TIMOTHY COURTNEY  
CASE NUMBER: 3:16-CR-00117-JWD-EWD(1)

### 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>
<b>TOTALS</b>	\$125.00		Waived	N/A

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ 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:
- |   |                               |  |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution                         |
| <input type="checkbox"/> the interest requirement for the           | <input type="checkbox"/> fine | <input type="checkbox"/> 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: TIMOTHY COURTNEY  
CASE NUMBER: 3:16-CR-00117-JWD-EWD(1)

### 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 payments of \$ \_\_\_\_\_ due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C** ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☒ Special instructions regarding the payment of criminal monetary penalties:  
**It is ordered that the defendant shall pay to the United States a special assessment of \$125.00 for Counts one and two of the Superseding Indictment, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.**

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

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

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

Pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), the defendant shall forfeit to the United States, any firearm and ammunition involved or used in the commission of the offenses, including, but not limited to a Taurus, model PT111, 9mm pistol, bearing serial number TIU48312.

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) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF LOUISIANA  
3

4 UNITED STATES OF AMERICA : CRIMINAL ACTION  
5 VERSUS : NO. 16-117  
6 TIMOTHY COURTNEY : HON. JOHN W. DEGRAVELLES  
7 : JANUARY 10, 2019

8 =====  
9 *SENTENCING*  
10 =====

11 A P P E A R A N C E S

12 FOR THE UNITED STATES OF AMERICA:

13 MR. RYAN A. REZAEI  
14 MR. MICHAEL J. JEFFERSON  
15 U.S. ATTORNEY'S OFFICE, MIDDLE DISTRICT OF LOUISIANA  
777 FLORIDA STREET, SUITE 208  
BATON ROUGE, LOUISIANA 70801

16 FOR TIMOTHY COURTNEY:

17 MR. ANDRE BELANGER  
18 MANASSEH, GILL & KNIPE, P.L.C.  
8075 JEFFERSON HIGHWAY  
19 BATON ROUGE, LOUISIANA 70809  
20  
21

22 REPORTED BY: GINA DELATTE-RICHARD,CCR  
23

24 UNITED STATES COURTHOUSE  
777 FLORIDA STREET  
25 BATON ROUGE, LOUISIANA 70801  
(225) 389-3564



1                   **USA V. TIMOTHY COURTNEY #16-CR-117 01/10/19**

2                   **THE COURT:** YOU MAY BE SEATED.

3                   GOOD MORNING, EVERYONE. WE ARE HERE FIRST IN THE  
4                   **UNITED STATES VERSUS TIMOTHY COURTNEY**, WHICH IS 16-CR-117.  
5                   WILL COUNSEL ENTER AN APPEARANCE FOR THE RECORD.

6                   **MR. JEFFERSON:** GOOD MORNING, YOUR HONOR. MIKE  
7                   JEFFERSON ON BEHALF OF THE UNITED STATES.

8                   **MR. BELANGER:** GOOD MORNING, YOUR HONOR. ANDRE'  
9                   BELANGER HERE ON BEHALF OF MR. COURTNEY WHO IS PRESENT THIS  
10                  MORNING.

11                  **THE COURT:** ALL RIGHT. WE'RE GOING TO START OUR  
12                  PROCEEDING THE WAY WE START EVERY SENTENCING, WHICH IS WITH  
13                  WHAT'S CALLED A SEALED PORTION. SO FOR THOSE OF YOU WHO ARE  
14                  NOT REPRESENTING THE PARTIES OR THE PARTIES, I'M GOING TO ASK  
15                  YOU TO STEP OUT IN THE HALL FOR JUST A MINUTE SO THAT WE CAN  
16                  DISCUSS WHETHER MR. COURTNEY IS OR IS NOT COOPERATING. WE DO  
17                  THIS IN EVERY CASE. THE FACT THAT WE HAVE THIS SEALED PORTION  
18                  DOESN'T MEAN THAT HE IS OR IS NOT COOPERATING. SO WITH THAT,  
19                  MR. JONES IS SEALING THE COURTROOM AND WE WILL NOW NOTE FOR  
20                  THE RECORD THAT THE COURTROOM IS SEALED.

21                  **REPORTER'S NOTE:** *(AT WHICH TIME THE COURTROOM WAS*  
22                  *SEALED AND THIS PORTION OF THE TRANSCRIPT HAS BEEN FILED UNDER*  
23                  *SEAL.)*

24                  **REPORTER'S NOTE:** *(THE COURTROOM WAS UNSEALED AND*  
25                  *THE PROCEEDINGS RESUMED.)*

1           **THE COURT:** OUR RECORD WILL REFLECT THAT THE  
2 COURTROOM IS NOW UNSEALED AND WE'LL PROCEED WITH SENTENCING.

3           IF YOU WOULD, MR. COURTNEY, COME ON UP AND STAND  
4 NEXT TO YOUR COUNSEL AT THE PODIUM. I'M GOING TO ASK YOU JUST  
5 A FEW QUESTIONS.

6           OKAY. THE PROBATION SERVICE, MR. COURTNEY, PREPARED  
7 A REVISED PRE-SENTENCE INVESTIGATION REPORT TO ASSIST ME IN  
8 SENTENCING YOU, WHICH IS DOCUMENT 134. IT WAS DISCLOSED TO  
9 THE PARTIES ON MAY 15TH, 2018. IT ALSO PREPARED AN ADDENDUM  
10 TO THAT REPORT, 136, AND A SUPPLEMENTAL ADDENDUM, WHICH IS  
11 142, AND THOSE WERE DISCLOSED TO THE PARTIES ON JUNE 18TH,  
12 2018 AND OCTOBER 2ND, 2018 RESPECTIVELY. DID YOU GET COPIES  
13 OF THOSE, THAT'S THE PRE-SENTENCE REPORT AND THEIR ADDENDA?

14           **THE DEFENDANT:** IN AUGUST.

15           **THE COURT:** I'M SORRY?

16           **THE DEFENDANT:** I GOT A COPY IN AUGUST.

17           **THE COURT:** YOU GOT COPIES OF ALL OF THEM IS WHAT  
18 YOU SAID?

19           **THE DEFENDANT:** IN AUGUST I GOT A COPY.

20           **THE COURT:** OKAY. SO DID YOU READ THOSE?

21           **THE DEFENDANT:** YES, THE COPY I GOT IN AUGUST. ONE  
22 COPY.

23           **THE COURT:** OKAY. I JUST NEED TO MAKE SURE WHAT YOU  
24 GOT.

25           DO YOU KNOW WHAT HE'S TALKING ABOUT, MR. BELANGER?

1           **MR. BELANGER:** I THINK MAYBE AT ONE POINT -- WE HAD  
2 THE ORIGINAL PSR WHICH DID NOT HAVE THE ENHANCEMENTS, AND THEN  
3 THERE WAS AN ADDENDUM OR A REVISED, I KNOW WE HAD GOTTEN THAT.  
4 AND THEN WE HAD FILED DIFFERENT OBJECTIONS THAT WERE RESPONDED  
5 TO AND HE SHOULD HAVE HAD ALL OF THAT AND REVIEWED THEM.  
6 BECAUSE WE'VE GONE OVER HIS REPORT FAIR ENOUGH, WHICH IS WHY  
7 WE FILED PROCES' OBJECTIONS ON HIS BEHALF AS WELL.

8           **THE COURT:** RIGHT. AND I DO UNDERSTAND THERE ARE  
9 OBJECTIONS. WE'RE GOING TO GET TO THOSE. MY MAIN REASON FOR  
10 ASKING THIS IS I NEED TO MAKE SURE THAT YOU'VE HAD A CHANCE TO  
11 LOOK AT THE PRE-SENTENCE REPORT, DISCUSS THOSE WITH  
12 MR. BELANGER, SO THAT YOU'RE PREPARED TO GO FORWARD THIS  
13 MORNING.

14           **THE DEFENDANT:** YES.

15           **THE COURT:** HAVE YOU DONE THAT?

16           **THE DEFENDANT:** YES. I SAW THEM IN AUGUST WHEN HE  
17 BROUGHT THEM TO ME AND WE TALKED ABOUT THEM AND I SAW MY  
18 LAWYER ONE MORE TIME AFTER THAT UNTIL YESTERDAY AND NOW I'M  
19 HERE TODAY.

20           **THE COURT:** OKAY. AND, AGAIN, JUST TO BE SPECIFIC,  
21 MR. BELANGER, YOU DID REVIEW THESE DOCUMENTS WITH YOUR CLIENT?

22           **THE DEFENDANT:** YES, SIR. I REVIEWED THE  
23 PRE-SENTENCE REPORTS. I REVIEWED -- WE PREPARED THE  
24 OBJECTIONS TOGETHER. WE REVIEWED THE OBJECTIONS AND EVEN AS  
25 OF YESTERDAY I BROUGHT TO HIM THE MEMORANDUM THAT I FILED FOR

1 THE COURT.

2 THE COURT: ALL RIGHT. AND DID YOU ANSWER ANY  
3 QUESTIONS THAT HE HAD?

4 MR. BELANGER: I HAVE. AND WE HAVE ALSO SPOKEN A  
5 TIME OR TWO ON THE PHONE COLLECT, YOUR HONOR.

6 THE COURT: OKAY. MR. COURTNEY ARE YOU SATISFIED  
7 WITH THE REPRESENTATION BY MR. BELANGER?

8 THE DEFENDANT: YES, I AM. BUT MY OBJECTION WAS  
9 FILED ALREADY WHEN I GOT THE REPORT BEFORE I EVEN WENT OVER  
10 IT. THE REPORT, THE OBJECTION WAS ALREADY FILED.

11 THE COURT: SO I'M NOT SURE WHAT YOU'RE TRYING TO  
12 TELL ME. ARE YOU UNHAPPY WITH MR. BELANGER?

13 THE DEFENDANT: NO. I GUESS I'M STRAIGHT WITH IT.  
14 I CAN'T CHANGE NOTHING WHAT HAPPENED.

15 THE COURT: OKAY. I UNDERSTAND. SO WE'RE GOING TO  
16 TALK ABOUT THE OBJECTIONS THAT YOUR ATTORNEY HAS FILED ON YOUR  
17 BEHALF IN A MOMENT. BUT OTHER THAN THOSE OBJECTIONS ARE THERE  
18 ANY OTHER OBJECTIONS OR CORRECTIONS, ALTERATIONS OR ADDITIONS  
19 BY THE DEFENDANT -- SUGGESTED BY THE DEFENDANT?

20 MR. BELANGER: YOUR HONOR, I BELIEVE, AND I THINK  
21 PART OF THE CONFUSION HERE IS THAT THERE'S ACTUALLY TWO --  
22 THERE'S A COUPLE SETS OF OBJECTIONS. THERE WAS OBJECTIONS  
23 THAT AS THE ATTORNEY THAT I FILED IN REVIEWING THE PSR AND  
24 THEN AFTER REVIEWING THAT WITH MR. COURTNEY HE HAD SOME OTHER  
25 OBJECTIONS THAT HE WANTED FILED AND I THOUGHT THAT IT WAS

1 BETTER TO HAVE THEM FILED PROCES', AND SO WHILE I MAY HAVE  
2 FILED THEM, I PUT ON THERE THAT THESE ARE THE DEFENDANT'S  
3 PROCES' OBJECTIONS. SO I BELIEVE I FILED THREE OBJECTIONS AND  
4 THEN LATER ON MR. COURTNEY FILED THREE PROCES' OBJECTIONS.

5 THE COURT: OKAY. AND WHEN I SAID OBJECTIONS I  
6 MEANT TO INCLUDE BOTH PROCES' AND YOUR OBJECTIONS FILED ON HIS  
7 BEHALF. SO OTHER THAN THOSE OBJECTIONS, BOTH YOUR'S FILED  
8 PROCES' THROUGH MR. BELANGER AND MR. BELANGER'S OBJECTIONS  
9 FILED ON YOUR BEHALF, DO YOU HAVE, FROM THE DEFENDANT, ANY  
10 OTHER CORRECTIONS, ALTERATIONS, ADDITIONS OR OBJECTIONS?

11 MR. BELANGER: I DO NOT, YOUR HONOR.

12 THE COURT: WE'RE GOING TO GO THROUGH THESE,  
13 MR. COURTNEY, ONE BY ONE SO YOU'LL HAVE A CHANCE AND YOUR  
14 LAWYER WILL HAVE A CHANCE TO ARGUE THESE. ARE THERE ANY --  
15 OTHER THAN THE OBJECTIONS WE'RE GOING TO CONSIDER IN A MOMENT,  
16 ARE THERE ANY CORRECTIONS, ALTERATIONS OR ADDITIONS THAT THE  
17 GOVERNMENT WISHES TO MAKE?

18 MR. JEFFERSON: NONE, YOUR HONOR.

19 THE COURT: ALL RIGHT. SO WE'RE GOING TO START WITH  
20 THE OBJECTIONS DISCUSSED IN THE ADDENDA AND I'M GOING TO, AT  
21 THE OUTSET, NOTE THAT I'LL ADDRESS FIRST THE ARGUMENTS MADE IN  
22 THE ORIGINAL ADDENDUM AND THEN I WILL MOVE TO THE SUPPLEMENTAL  
23 ADDENDUM AND CONCLUDE WITH THE ARGUMENTS RAISED IN THE  
24 DEFENDANT'S SENTENCING MEMORANDUM.

25 OBJECTION ONE, ARMED CAREER CRIMINAL AND APPRENDI.

1 THE DEFENDANT FIRST OBJECTS TO PARAGRAPHS 98 AND 99 OF THE  
2 REVISED PRE-SENTENCE REPORT ON THE GROUNDS THAT HE IS NOT  
3 SUBJECT TO THE ARMED CAREER CRIMINAL GUIDELINE BECAUSE UNDER  
4 *ALLEYNE* AND *APPRENDI* IT VIOLATES HIS SIXTH AMENDMENT RIGHT TO  
5 TRIAL BY JURY. IN ADDITION TO THE SUBMISSION, ANYTHING ELSE  
6 YOU'D LIKE TO SAY ABOUT THAT, MR. BELANGER?

7 MR. BELANGER: YOUR HONOR, I THINK I DETAILED THAT  
8 IN MY SENTENCING MEMORANDUM, WHY I THINK THAT THAT PARTICULAR  
9 FOOTNOTE IN *ALLEYNE* BASICALLY SAYS THAT THIS PRECISE ISSUE WAS  
10 NOT ADDRESSED IN *ALLEYNE*, AND I DO THINK THAT THE GOVERNMENT  
11 TO GET THIS ENHANCEMENT, BECAUSE WE ARE ADDING FIVE YEARS TO A  
12 MINIMUM AND HAVING AN UNLIMITED EXPOSURE TO A MAXIMUM, THAT  
13 THAT PROVISION HAS TO BE PROVEN BEYOND A REASONABLE DOUBT TO A  
14 JURY. BY NOT CHARGING THAT THERE WAS NO DEFENSES THAT COULD  
15 HAVE BEEN RAISED BEFORE THE JURY AND NOW WE STAND HERE TODAY  
16 WITH A LOWER EVIDENTIARY BURDEN BUT SUBJECTING HIM TO  
17 SIGNIFICANTLY MORE JAIL TIME.

18 THE COURT: ALL RIGHT. MR. JEFFERSON, DO YOU HAVE  
19 ANYTHING YOU WANT TO ADD?

20 MR. JEFFERSON: NO, SIR, NOT BEYOND THE RESPONSE  
21 THAT WAS PROVIDED TO THE DEFENDANT'S OBJECTION, YOUR HONOR. I  
22 BELIEVE THE INFORMATION REFERENCED REGARDING *APPRENDI* AND  
23 *SKIDMORE* AND THE OTHER JURISPRUDENCE CITED THERE ADEQUATELY  
24 ADDRESSES THE DEFENDANT'S CONCERN AND I THINK SUPPORT THE  
25 POSITION THAT, YOU KNOW, THESE THINGS SHOULD BE CONSIDERED.

1           THE COURT: OKAY. ALL RIGHT. THANK YOU.

2           WELL, THE COURT HAS, OF COURSE, REVIEWED THE  
3 BRIEFING ON THIS ISSUE AND IT OVERRULES THE OBJECTION. AS  
4 EXPLAINED IN THE ADDENDUM IN *UNITED STATES VERSUS MORRIS*, 293  
5 F.3D 1010 (7TH CIRCUIT 2002), THE DEFENDANT ARGUED THAT THE  
6 ARMED CAREER CRIMINAL ENHANCEMENT OF HIS SENTENCE VIOLATED HIS  
7 CONSTITUTIONAL RIGHTS AS SET FORTH IN *APPRENDI VERSUS NEW*  
8 *JERSEY* BECAUSE A JURY WAS NEVER PRESENTED WITH THE ISSUE OF  
9 WHETHER THE CONVICTIONS WERE COMMITTED ON OCCASIONS DIFFERENT  
10 FROM ONE ANOTHER.

11           MORRIS ARGUED THAT UNDER *APPRENDI* THE DETERMINATION  
12 OF WHETHER HIS PRIOR CONVICTIONS WERE COMMITTED ON OCCASIONS  
13 DIFFERENT FROM ONE ANOTHER SHOULD HAVE BEEN PRESENTED TO THE  
14 GRAND JURY, TRIED BEFORE THE JURY AND FOUND BEYOND A  
15 REASONABLE DOUBT BEFORE HE WAS SENTENCED UNDER THE ARMED  
16 CAREER CRIMINAL ENHANCEMENT.

17           THE APPELLATE COURT HELD THAT THE ENHANCEMENT WAS  
18 APPROPRIATELY APPLIED IN THAT CASE. IN *UNITED STATES VERSUS*  
19 *SKIDMORE*, 254 F.3D 635 (7TH CIRCUIT 2001), SKIDMORE ARGUED  
20 THAT HIS ENHANCED SENTENCING PURSUANT TO THE ARMED CAREER  
21 CRIMINAL ACT VIOLATED HIS CONSTITUTIONAL RIGHTS IN LIGHT OF  
22 THE SUPREME COURT DECISION IN *APPRENDI VERSUS NEW JERSEY*.  
23 SKIDMORE ASSERTED THAT UNDER *APPRENDI*, WHETHER HE HAD BEEN  
24 CONVICTED OF THE THREE SEPARATE VIOLENT FELONIES IS A FACT  
25 THAT SHOULD HAVE BEEN PRESENTED TO THE GRAND JURY, TRIED

1 BEFORE THE JURY AND FOUND BEYOND A REASONABLE DOUBT BEFORE HE  
2 WAS SENTENCED UNDER THE ARMED CAREER CRIMINAL ENHANCEMENT  
3 PURSUANT TO 18 UNITED STATES CODE, SECTION 924(E). AND IN  
4 THAT CASE THE APPELLATE COURT AFFIRMED THE SENTENCE AND FOR  
5 THESE REASONS THE DEFENDANT'S FIRST OBJECTION IS OVERRULED.

6 THAT BRINGS US TO NUMBER TWO, WHICH IS DEFENDANT  
7 OBJECTS TO PARAGRAPH 34 OF THE REVISED PSR SPECIFICALLY TO THE  
8 ARMED CAREER CRIMINAL ENHANCEMENT. MR. BELANGER?

9 MR. BELANGER: YOUR HONOR, SINCE I THINK YOU'VE  
10 RULED ON THE STATUTORY EQUIVALENT OF THIS I DON'T HAVE  
11 ANYTHING OTHER TO ADD. AGAIN, IT'S THE ISSUE AS TO WHAT NEEDS  
12 TO BE PRESENTED AND PROVEN AND IT'S OUR CONTENTION, EVEN UNDER  
13 THE GUIDELINES SCHEME, THAT THIS IS SOMETHING THAT SHOULD HAVE  
14 BEEN BROUGHT BEFORE A JURY BECAUSE IT DOES IMPACT THE  
15 SENTENCING RANGES MR. COURTNEY WILL FACE.

16 THE COURT: ALL RIGHT.

17 MR. JEFFERSON, ANYTHING TO ADD TO YOUR BRIEFS?

18 MR. JEFFERSON: NO, SIR, YOUR HONOR.

19 THE COURT: DEFENDANT'S OBJECTION IS OVERRULED.

20 AS INDICATED IN PARAGRAPH 34 OF THE PRE-SENTENCE  
21 REPORT, THE DEFENDANT IS SUBJECT TO THE ARMED CAREER CRIMINAL  
22 ENHANCED SENTENCE UNDER THE PROVISIONS OF 18 U.S.C., SECTION  
23 924(E) BECAUSE THE INSTANT OFFENSE OF CONVICTION IS A  
24 VIOLATION OF 18 UNITED STATES CODE, SECTION 922(G) AND THE  
25 DEFENDANT HAS AT LEAST ON THREE -- HAS AT LEAST THREE PRIOR

1 CONVICTIONS FOR A VIOLENT FELONY. ONE, SIMPLE BURGLARY OF AN  
2 INHABITED DWELLING, DOCKET NUMBER 06-96-0340, 19TH JUDICIAL  
3 DISTRICT COURT IN BATON ROUGE.

4 TWO, SIMPLE BURGLARY OF AN INHABITED DWELLING,  
5 DOCKET NUMBER 06-96-0158, 19TH JUDICIAL DISTRICT COURT IN  
6 BATON ROUGE. AND THREE, SIMPLE BURGLARY OF AN INHABITED  
7 DWELLING, THREE COUNTS, DOCKET NUMBER 08-96-0134, 19TH  
8 JUDICIAL DISTRICT COURT, BATON ROUGE, LOUISIANA. PURSUANT TO  
9 U.S. SENTENCING GUIDELINE SECTION 4B1.4(B)(3)(B), THE OFFENSE  
10 LEVEL IS 33.

11 THE CRIME OF LOUISIANA SIMPLE BURGLARY OF AN  
12 INHABITED DWELLING IS A, QUOTE, "VIOLENT FELONY," CLOSED QUOTE  
13 UNDER 18 U.S.C. SECTION 924(E). *SEE UNITED STATES VERSUS*  
14 *MUMPHREY*, NUMBER CR 12-00072-BAJ-EWD, 2017 WEST LAW, 5015511  
15 AT PAGE 2, (MIDDLE DISTRICT LOUISIANA, NOVEMBER 2ND, 2017).  
16 CONCLUDING THAT THE LOUISIANA CRIME OF SIMPLE BURGLARY OF AN  
17 INHABITED DWELLING IS A VIOLENT FELONY UNDER THE ENUMERATED  
18 OFFENSES CLAUSE SET FORTH IN 18 U.S.C. SECTION  
19 924(E)(2)(B)(II). ALSO *VITITOE*, V-I-T-I-T-O-E, *VERSUS UNITED*  
20 *STATES* NO. 3:08-CR-94, 2017 WEST LAW 35421 AT PAGE 2, (EASTERN  
21 DISTRICT TENNESSEE, JANUARY 24, 2017), STANDING FOR THE SAME  
22 PROPOSITION.

23 *UNITED STATES VERSUS WHITE*, NUMBER CR-07-0011 2016  
24 WEST LAW 7097365 AT PAGE 2 (EASTERN DISTRICT LOUISIANA,  
25 DECEMBER 6, 2016), THE SAME. *UNITED STATES VERSUS MELANCON*,

1 NO. 13-CR-132, 2016 WEST LAW 5661769 AT PAGE 1 (MIDDLE  
2 DISTRICT LOUISIANA, SEPTEMBER 29, 2016). SAME CONCLUSION  
3 AFTER COMPARING THE ELEMENTS OF LOUISIANA SIMPLE BURGLARY OF  
4 AN INHABITED DWELLING WITH THE ELEMENTS OF GENERIC BURGLARY AS  
5 SET FORTH IN *TAYLOR VERSUS UNITED STATES*, 495 U.S. 575 AT PAGE  
6 598, (1990). ALSO, *UNITED STATES VERSUS WILLIAMS*, NO.  
7 CR-13-146, WHICH IS 2016 WEST LAW 792431 AT PAGE 5, (MIDDLE  
8 DISTRICT LOUISIANA, FEBRUARY 29, 2016), STANDING FOR THE SAME  
9 PROPOSITION.

10 THE DEFENDANT HAS AT LEAST THREE CONVICTIONS FOR A  
11 VIOLENT FELONY COMMITTED ON OCCASIONS DIFFERENT FROM ONE  
12 ANOTHER AND UNDER THIS PROVISION THE PERSON SHALL BE  
13 IMPRISONED NOT LESS THAN 15 YEARS. AS A RESULT THE CHAPTER  
14 FOUR ENHANCEMENT WAS CORRECTLY APPLIED IN THIS CASE AND THE  
15 DEFENDANT'S OBJECTION IS OVERRULED.

16 ALL RIGHT. THE THIRD OBJECTION IS TO PARAGRAPH 55  
17 OF THE REVISED PSR SPECIFICALLY TO THE CALCULATION OF  
18 DEFENDANT'S CRIMINAL HISTORY POINTS AND ASSIGNING ONE CRIMINAL  
19 HISTORY POINT FOR THE MUNICIPAL OFFENSE OF POSSESSION OF  
20 MARIJUANA.

21 MR. BELANGER?

22 MR. BELANGER: YOUR HONOR, WHAT WE HAVE HERE WHEN WE  
23 LOOK AT THE UNDERLYING PART OF THE CONVICTION IS HE HAD AN  
24 OUTSTANDING BENCH WARRANT AND THEN HE GETS ARRESTED FOR, I  
25 BELIEVE, WHICH WOULD BE THIS CRIME, AND HE RESOLVES HIS LITTLE

1 MISDEMEANOR. THERE'S NO EVIDENCE THAT HE HAD AN ATTORNEY AND  
2 IT IS CUSTOMARY IN STATE AND MUNICIPAL PRACTICES THAT WHEN  
3 SOMEBODY HAS CREDIT FOR TIME SERVED THEY JUST SIMPLY ENTER A  
4 GUILTY PLEA AND MOVE ON THEIR DAY WITHOUT REALLY HAVING THE  
5 ADVICE OF AN ATTORNEY AS TO WHY YOU SHOULD OR SHOULD NOT FIGHT  
6 THIS CASE. I KNOW WE'RE ONLY TALKING ABOUT ONE CRIMINAL  
7 HISTORY POINT, BUT I DO BELIEVE THAT UNDER THE CIRCUMSTANCES  
8 HERE THIS IS PURELY JUST MOVING A CASE THROUGH THE SYSTEM WITH  
9 NO EVIDENCE OF REPRESENTATION PROVIDED FOR HIM AND I'D ASK  
10 THAT THE COURT SUSTAIN OUR OBJECTION.

11 THE COURT: THANK YOU. MR. JEFFERSON?

12 MR. JEFFERSON: WE HAVE NOTHING TO ADD TO THAT. WE  
13 CONCUR WITH THE FINDINGS OF THE PRE-TRIAL SERVICES -- I MEAN  
14 WITH THE PROBATION OFFICE.

15 THE COURT: THANK YOU, MR. JEFFERSON.

16 THE DEFENDANT'S OBJECTION IS OVERRULED. AS  
17 EXPLAINED IN THE ADDENDUM TO THE PSR, THE FOLLOWING SHOULD BE  
18 ADDED TO PARAGRAPH 55 OF THE PRESENTENCE REPORT: ATTORNEY  
19 REPRESENTATION COULD NOT BE DETERMINED, HOWEVER, THE LOUISIANA  
20 CONSTITUTION OF 1974, ARTICLE 1, SECTION 13, STATES ALL  
21 INDIVIDUALS ARE TO BE ADVISED OF THEIR RIGHT TO COUNSEL.  
22 PURSUANT TO MONOGRAPH 107, THE PRE-SENTENCE INVESTIGATION  
23 REPORT AND THE GUIDE TO JUDICIARY POLICY, VERIFICATION OF THE  
24 SIXTH AMENDMENT COMPLIANCE MAY BE ESTABLISHED IN SEVERAL WAYS  
25 WHICH ARE LISTED IN THE ORDER OF THE BEST EVIDENCE.

1 VERIFICATION BY EXAMINATION OF THE COURT RECORD; VERIFICATION  
2 BY EXAMINATION OF THE COURT RECORD BY AN OFFICER IN ANOTHER  
3 DISTRICT; CITATION OF A STATE LAW OR STATE COURT RULE THAT  
4 REQUIRES THAT ALL DEFENDANTS HAVE THE RIGHT TO COUNSEL DURING  
5 THE PROSECUTION OF THE CASE; OR THE DEFENDANT'S ADMISSION OF  
6 ATTORNEY REPRESENTATION FOR THE CASE.

7 IN THIS CASE, THE BEST EVIDENCE AVAILABLE IS  
8 CITATION OF THE LOUISIANA CONSTITUTION OF 1974, ARTICLE 1,  
9 SECTION 13, WHICH STATES ALL INDIVIDUALS ARE TO BE ADVISED OF  
10 THEIR RIGHT TO COUNSEL; THEREFORE, IT CAN ONLY BE CONCLUDED  
11 THAT THE DEFENDANT WAS ADVISED OF HIS RIGHT TO LEGAL  
12 REPRESENTATION IN THIS MATTER.

13 FURTHERMORE, MONOGRAPH 107 STATES THE DEFENDANT HAS  
14 THE BURDEN OF ESTABLISHING THAT A FACIALLY VALID CONVICTION IS  
15 UNCONSTITUTIONAL. FROM THE DOCUMENTATION AVAILABLE, THIS IS A  
16 FACIALLY VALID CONVICTION. ADDITIONAL DOCUMENTATION  
17 PROVIDING -- I'M SORRY, PROVING THE DEFENDANT WAS AFFORDED  
18 COUNSEL OR WAIVED HIS RIGHT TO COUNSEL IS NOT NECESSARY TO  
19 ASSIGN CRIMINAL HISTORY POINTS TO THIS CONVICTION NOR IS ITS  
20 ABSENCE EVIDENCE THAT HE WAS NOT REPRESENTED BY COUNSEL OR  
21 THAT HE DID NOT WAIVE HIS RIGHT TO COUNSEL. AS A RESULT THE  
22 DEFENDANT SHOULD RECEIVE ONE CRIMINAL HISTORY POINT FOR THE  
23 CONVICTION IN PARAGRAPH 55 OF THE PRE-SENTENCE REPORT.

24 IN ADDITION, THE DEFENDANT INDICATES THE PRESENTENCE  
25 REPORT DOES NOT REFLECT THE OUTSTANDING BENCH WARRANT IN

1 PARAGRAPH 55 WAS SATISFIED. IT SHOULD BE NOTED THAT PARAGRAPH  
2 55 IN THE PRESENTENCE REPORT CLEARLY STATES THE BENCH WARRANT  
3 WAS RECALLED ON AUGUST 11, 2016. AND FOR THESE REASONS THE  
4 DEFENDANT'S OBJECTION IS OVERRULED.

5 NOW WE MOVE TO THE SUPPLEMENTAL ADDENDUM, OBJECTION  
6 1, FACTS OF CONVICTION. THE DEFENDANT NEXT OBJECTS TO  
7 PARAGRAPH 12 OF THE REVISED PSR. HE DENIES THAT HE WAS  
8 CONVICTED OF THE CRIMES CONTAINED IN PARAGRAPHS 51 AND 52 OF  
9 THE PSR. DOES THE DEFENDANT WISH TO BE HEARD?

10 MR. BELANGER: I DON'T THINK IT'S NOT THAT HE WAS  
11 CONVICTED. I THINK IT REALLY COMES DOWN TO THE DATE, YOUR  
12 HONOR. I BELIEVE THIS HAS A DECEMBER 7, 2004 DATE, WHEREAS I  
13 BELIEVE THE DEFENDANT BELIEVES THE CONVICTIONS WERE IN  
14 FEBRUARY OF 2008.

15 THE COURT: ALL RIGHT. MR. JEFFERSON?

16 MR. JEFFERSON: YOUR HONOR, I REALLY DON'T -- I MEAN  
17 EVEN IF WE ASSUME THAT THAT IS CORRECT, THEY'RE STILL  
18 CONVICTIONS NO LESS. SO WHICHEVER DATE, WHETHER IT'S THE  
19 DECEMBER 7TH, 2004 OR THE FEBRUARY 11, 2008, WE BELIEVE THAT  
20 THE CONVICTIONS ARE NO LESS VALID CONVICTIONS FOR CRIMES  
21 COMMITTED ON DATES DIFFERENT FROM ONE ANOTHER AND, THUS, THEY  
22 SHOULD BE COUNTED.

23 THE COURT: ALL RIGHT. THANK YOU, MR. JEFFERSON.

24 THE OBJECTION IS GOING TO BE OVERRULED. AS  
25 EXPLAINED IN THE SUPPLEMENTAL ADDENDUM TO THE PSR, THE COURT

1 OBTAINED THE COURT RECORDS REGARDING THESE CONVICTIONS FROM  
2 THE 19TH JDC IN BATON ROUGE, AND ACCORDING TO THE BILL OF  
3 INFORMATION IN DOCKET NUMBER 08-06-0817 OF THAT COURT THE  
4 DEFENDANT WAS CHARGED WITH POSSESSION OF A SCHEDULE II  
5 CONTROLLED DANGEROUS SUBSTANCE, COCAINE.

6 COURT RECORDS STATE THAT ON FEBRUARY 11, 2008, THE  
7 DEFENDANT APPEARED IN COURT WITH HIS ATTORNEY, MR. RODNEY  
8 MESSINA, AND ENTERED A PLEA OF GUILTY TO THE BILL OF  
9 INFORMATION. THE COURT SENTENCED THE DEFENDANT TO FIVE YEARS  
10 IMPRISONMENT TO RUN CURRENTLY. ACCORDING TO COURT RECORDS  
11 FROM THE 19TH JDC IN DOCKET NO. 01-07-0039 ON FEBRUARY 11TH,  
12 2008, THE DEFENDANT APPEARED IN COURT WITH HIS ATTORNEY,  
13 RODNEY MESSINA, AND ENTERED A PLEA OF GUILTY TO POSSESSION OF  
14 COCAINE. THE DEFENDANT WAS SENTENCED TO FIVE YEARS  
15 IMPRISONMENT TO RUN CONCURRENTLY.

16 THE COURT MAY RELY ON INFORMATION CONTAINED IN THE  
17 PRE-SENTENCE REPORT AS LONG AS IT IS WELL SUPPORTED AND  
18 APPEARS RELIABLE. IN *U.S. VERSUS HECKEL*, 570 F.3D 791, (7TH  
19 CIRCUIT 2009) THE DEFENDANT'S TENTATIVE RECOLLECTION THAT HE  
20 SPENT ONLY SIX MONTHS IN A COMMUNITY-BASED MODIFICATION  
21 PROGRAM ON HIS 15-YEAR OLD THEFT SENTENCE WAS NOT ENOUGH TO  
22 CAST DOUBT ON THE ACCURACY OR RELIABILITY OF THE PSR STATEMENT  
23 THAT HE WAS SENTENCED TO 19 MONTHS AND SIMILAR REASONING  
24 APPLIES HERE.

25 FURTHER, IN *U.S. VERSUS RODRIGUEZ*, 897 F.2D 1324 AT

1 PAGES 1327 THROUGH 28 (5TH CIRCUIT 1990), THE FIFTH CIRCUIT  
2 HELD THAT A DISTRICT COURT IS ENTITLED TO RELY ENTIRELY UPON  
3 THE FACTS CONTAINED IN THE PSR EVEN IF A DEFENDANT OBJECTS TO  
4 THOSE FACTS IF THE DEFENDANT DOES NOT PRESENT ANY REBUTTAL  
5 EVIDENCE. THE DEFENDANT MUST SHOW THE EVIDENCE ON WHICH THE  
6 DISTRICT COURT RELIED UPON IN SENTENCING. IT WAS MATERIALLY  
7 UNTRUE. THAT'S *RODRIGUEZ* AS PAGE 1328.

8 IN ADDITION, MONOGRAPH 107 STATES THAT THE DEFENDANT  
9 HAS THE BURDEN OF ESTABLISHING A FACIALLY VALID CONVICTION IS  
10 UNCONSTITUTIONAL. FROM THE DOCUMENTATION AVAILABLE, THIS IS A  
11 FACIALLY VALID CONVICTION; THEREFORE, AS THE DEFENDANT HAS  
12 PROVIDED NO INFORMATION ESTABLISHING THE CONVICTION IS  
13 INVALID, THE PRE-SENTENCE REPORT CORRECTLY APPLIED THE  
14 CONVICTIONS REFLECTED IN PARAGRAPHS 51 AND 52 OF THE  
15 PRE-SENTENCE REPORT.

16 FURTHER, IF INFORMATION IS PRESENTED TO A SENTENCING  
17 JUDGE WITH WHICH THE DEFENDANT TAKES ISSUE, THE DEFENDANT  
18 BEARS THE BURDEN OF DEMONSTRATING THAT THE INFORMATION CANNOT  
19 BE RELIED UPON BECAUSE IT IS MATERIALLY UNTRUE, INACCURATE OR  
20 UNRELIABLE. *U.S. VERSUS ANGULO*, 927 F.2D 202 AT 205, (5TH  
21 CIRCUIT 1991). ADDITIONALLY, THE BURDEN IS NOT MET BY  
22 SUBMITTING WRITTEN OBJECTIONS TO THE PRE-SENTENCE REPORT AS  
23 OBJECTIONS ARE NOT EVIDENCE, THEY ARE MERELY UNSWORN  
24 ASSERTIONS, *U.S. VERSUS --* AND I'LL SPELL THIS ONE OUT,  
25 *L-G-H-O-D-A-R-O*, 967 F.2D 1028 AT 1030 (5TH CIRCUIT 1992)

1 CITING *U.S. VERSUS SANDERS*, 942 F.2D 894 AT PAGES 897 AND 98.  
2 AND THE DEFENDANT HERE HAS NOT MET HIS BURDEN AND THEREFORE  
3 THE OBJECTION IS OVERRULED.

4 MR. BELANGER: YOUR HONOR, MAY I SAY SOMETHING?

5 THE COURT: YES, YOU MAY.

6 MR. BELANGER: I APOLOGIZE TO THE COURT FOR A POORLY  
7 CRAFTED PROCES' OBJECTION HERE. MR. COURTNEY WAS NOT  
8 CONTESTING THOSE CONVICTIONS. IT WAS SIMPLY THE DATE. AND I  
9 THINK IN MY READING OF THE COURT'S RULING THERE, I THINK THE  
10 COURT PROPERLY REFERENCED HIM BEING REPRESENTED BY MR. MESSINA  
11 AND PLEADING ON FEBRUARY 11, 2008. SO WE WOULD AGREE WITH  
12 THAT ASSESSMENT, YOUR HONOR. I MEAN IT WAS SIMPLY JUST  
13 CORRECTING THE DATE OF CONVICTION, NOT THAT THESE CONVICTIONS  
14 EXISTED.

15 THE COURT: ALL RIGHT. WELL DOES THAT CHANGE  
16 ANYTHING IN YOUR --

17 MR. BELANGER: IT DOES NOT CHANGE THE GUIDELINE  
18 CALCULATIONS, YOUR HONOR.

19 THE COURT: OKAY. ALL RIGHT. THANK YOU.

20 OKAY. WE GO ON TO SUPPLEMENTAL ADDENDUM OBJECTION  
21 NUMBER 2, WHICH IS GENERIC BURGLARY. THE DEFENDANT NEXT  
22 OBJECTS TO PARAGRAPHS 98 AND 99 OF THE PSR ON THE GROUNDS THAT  
23 HIS BURGLARY CONVICTIONS ARE NOT AGGRAVATED, BUT SHOULD BE  
24 CONSIDERED GENERIC AND NOT APPLICABLE TO HIM.

25 MR. BELANGER?

1           **MR. BELANGER:** YOUR HONOR, I'M GOING TO LET  
2 MR. COURTNEY SPEAK ON THIS. MR. COURTNEY PROVIDED THE *JOHNSON*  
3 AND *HAROLD* DECISIONS IN SUPPORT OF HIS OBJECTIONS THAT HE  
4 BELIEVES THAT HIS CRIME IS NOT AN AGGRAVATED CRIME.

5           **THE COURT:** ALL RIGHT. YES, SIR. ANYTHING TO ADD  
6 TO YOUR WRITTEN OBJECTION?

7           **THE DEFENDANT:** YES. THAT SIMPLE BURGLARY IN THE  
8 STATE OF LOUISIANA, IT WASN'T AGGRAVATED. AND AT THE TIME I  
9 WANT TO JUST SAY THAT'S MY FIRST CONVICTION IN MY LIFE WAS  
10 THEN FOR THE BURGLARIES. I NEVER GOT CONVICTED OF ANOTHER  
11 BURGLARY IN THE NEXT 20 YEARS. IF I WOULD HAVE KNEW  
12 EVERYTHING WAS ONE CONVICTION, IT WOULDN'T -- AND I NEVER GOT  
13 CONVICTED OF ANOTHER BURGLARY SINCE THE '90S, SINCE I GOT OUT;  
14 PERIOD. I NEVER DID NO VIOLENCE TO NOBODY IN MY LIFE. I  
15 NEVER HURT NOBODY; PERIOD. NEVER. NOTHING TO EVEN TRY TO,  
16 YOU KNOW, BECOME A VIOLENT PERSON FOR TO GET TIME LIKE THEY'RE  
17 TRYING TO GIVE ME FOR THE REST OF MY LIFE.

18           **THE COURT:** ALL RIGHT. THANK YOU, MR. COURTNEY.  
19 MR. JEFFERSON, YOU WANT TO RESPOND?

20           **MR. JEFFERSON:** I'M NOT EXACTLY SURE HOW, YOUR  
21 HONOR. I'M NOT SURE IF THE DEFENDANT IS MAINTAINING THAT  
22 THESE BURGLARY CONVICTIONS DID NOT HAPPEN. IF THEY DID  
23 HAPPEN, WHETHER OR NOT HE COMMITTED ANY VIOLENCE IN CONNECTION  
24 WITH THEM, DOES NOT CHANGE THE NATURE OR THE APPLICATION OF  
25 THE SENTENCING GUIDELINES. THESE BURGLARIES ARE TREATED A

1 CERTAIN WAY BY THE VERY NATURE OF THE CRIME. AND SO I'M NOT  
2 SURE JUST HOW TO RESPOND TO THAT. EITHER THEY HAPPENED OR  
3 THEY DIDN'T HAPPEN. AND I'M NOT SURE IF I'M HEARING HIM SAY  
4 THEY DID NOT HAPPEN, THE BURGLARIES.

5 THE DEFENDANT: I DIDN'T SAY THAT.

6 THE COURT: YEAH. I DIDN'T HEAR MR. COURTNEY TO SAY  
7 THEY DIDN'T HAPPEN. WHAT I UNDERSTOOD MR. COURTNEY TO SAY WAS  
8 THAT THEY WERE VIOLENT. THAT'S WHAT I TOOK AS THE ARGUMENT.

9 THE DEFENDANT: I DIDN'T SAY THEY DIDN'T HAPPEN. I  
10 DID DO A BURGLARY BACK THEN AND WHEN I WENT TO JAIL THEY CAME  
11 REBOOK ME. I DIDN'T DO A BURGLARY, GET OUT, DID ANOTHER  
12 BURGLARY, GET OUT. IT DIDN'T HAPPEN LIKE THAT. ONCE I GOT  
13 CONVICTED OF THE BURGLARY, THE ONE I PLEADED, THEY CAME AND  
14 REBOOKED ME. HE ASKED ME IF YOU WANT TO PLEAD TO ALL OF THIS,  
15 IT'S YOUR FIRST CONVICTION, YOU KNOW. I'M LIKE, ALL RIGHT,  
16 I'LL PLEAD TO IT. IF I KNEW BY ME PLEADING TO THAT NOW BACK  
17 THEN THAT 20 SOMETHING YEARS LATER IT'LL PUT ME AWAY FOR THE  
18 REST OF MY LIFE, I WOULD HAVE KNEW NOT TO DO IT.

19 MR. BELANGER: YOUR HONOR, I'M GOING TO ADDRESS SOME  
20 OF MR. COURTNEY'S THOUGHTS IN A MOMENT WHEN I MAKE MY CRUEL  
21 AND UNUSUAL PUNISHMENT ARGUMENT, BUT I THINK WHAT  
22 MR. COURTNEY'S OBJECTION IS, HE'S FOUND CASES THAT TALK ABOUT  
23 WHEN YOU DID WITH A RESIDUAL CLAUSE THAT THERE'S A WAY TO  
24 AVOID THIS ENHANCEMENT. AND WHAT HE'S TRYING TO SAY IS THAT,  
25 AS I APPRECIATE IT, IS THAT HE DID NOT COMMIT A VIOLENT ACT, A

1 CRIME OF VIOLENCE, AND SO IT SHOULD NOT BE CONSIDERED AN  
2 AGGRAVATED SHOWING. AND IF IT'S NOT, THEN THE ENHANCEMENTS  
3 THAT WE'RE TALKING ABOUT IS BOTH STATUTORILY AND UNDER THE  
4 GUIDELINES WOULD BE INAPPLICABLE AND HE'D BE FACING A ZERO TO  
5 TEN YEAR SENTENCE.

6 THE COURT: ALL RIGHT. AND THAT'S WHAT I UNDERSTOOD  
7 HIS ARGUMENT TO BE. AND, MR. COURTNEY, I'LL JUST TELL YOU  
8 THAT YOUR ARGUMENT JUST RUNS -- IT'S ALREADY BEEN DECIDED  
9 AGAINST YOU. THERE ARE SEVERAL CASES THAT WE ALREADY TALKED  
10 ABOUT HERE IN THE MIDDLE DISTRICT WITH *MUMPHREY*, *VITITOE*,  
11 *WHITE*, *MELANCON*, *WILLIAMS* ALL CONSIDERED THIS ISSUE AND THEY  
12 ALL CONSIDERED THIS TO BE A VIOLENT FELONY FOR PURPOSES OF  
13 BOTH THE GUIDELINES AND THE STATUTE. AND SO I HEAR YOUR  
14 ARGUMENT. I UNDERSTAND IT. BUT THE CASE LAW ON THIS JUST  
15 SIMPLY DOES NOT -- DOES NOT AGREE WITH YOU ON THAT.

16 AND CONSIDERING THAT, THE ARMED CAREER CRIMINAL  
17 ENHANCEMENT, IN THE VIEW OF THIS COURT, WAS CORRECTLY APPLIED.  
18 THE DEFENDANT HAD THE BURDEN OF DEMONSTRATING THE INFORMATION  
19 PRESENTED TO THE SENTENCING JUDGE CANNOT BE RELIED UPON  
20 BECAUSE IT IS MATERIALLY UNTRUE OR UNRELIABLE. AGAIN, GOING  
21 BACK TO THE EXTENT THAT THIS ARGUMENT DEALS WITH THE FACTUAL  
22 UNDERPINNINGS OF THE CONVICTIONS, YOU LOOKED TO *ANGULO* AND THE  
23 OTHER CASE, *LGHODARO*, AND SO TO THE EXTENT THAT IT'S A FACTUAL  
24 ARGUMENT AS OPPOSED TO A LEGAL ARGUMENT THAT THE DEFENDANT HAS  
25 NOT MET HIS BURDEN, SO THE SUPPLEMENTAL ADDENDUM OBJECTION

1 NUMBER 2 IS OVERRULED.

2 THAT BRINGS US TO NUMBER 3, WHICH IS PARAGRAPH 34 OF  
3 THE PSR ON THE GROUNDS THAT HE WAS CHARGED WITH SEPARATE  
4 BURGLARIES WHEN HE WAS INVOLVED IN ESSENTIALLY ONE BIG CASE  
5 AND I THINK THAT -- YES, SIR. LET'S TAKE A LITTLE BREAK HERE.

6 REPORTER'S NOTE: *(TEMPORARILY OFF THE RECORD.)*

7 THE COURT: PROBATION CONSULTED WITH ME AND WANTED  
8 ME TO MAKE CLEAR TO YOU, MR. COURTNEY, AND THE RECORD TO BE  
9 CLEAR, THAT WHAT YOU WERE CONVICTED OF WAS SIMPLE BURGLARY OF  
10 AN INHABITED DWELLING, WHICH IS DIFFERENT FROM SIMPLE BURGLARY  
11 AND IS CONSIDERED UNDER THE CASE LAW THAT I JUST MENTIONED TO  
12 YOU TO BE A VIOLENT FELONY.

13 ALL RIGHT. WE ARE NOW ON NUMBER 3. DEFENDANT  
14 OBJECTS TO 34 -- PARAGRAPH 34 ON THE GROUNDS THAT HE WAS  
15 CHARGED WITH SEPARATE BURGLARIES AND WHEN, IN FACT, HE ARGUES  
16 HE WAS INVOLVED IN ONLY ONE BIG CASE. EITHER MR. BELANGER OR  
17 MR. COURTNEY?

18 MR. BELANGER: YOUR HONOR, I WOULD -- AGAIN, THIS IS  
19 SOMETHING I'LL DEAL WITH ELSEWHERE, BUT, IN ESSENCE, HERE WHAT  
20 MR. COURTNEY IS TRYING TO SAY, IS THAT IT'S NOT LIKE HE  
21 COMMITTED A CRIME, WAS ADJUDICATED, GOT OUT, DIDN'T LEARN A  
22 LESSON, COMMIT ANOTHER BURGLARY, ANOTHER BURGLARY, ANOTHER  
23 BURGLARY. HE WAS ARRESTED FOR ONE BURGLARY AND WHILE IN JAIL  
24 IS GOING TO BE REBOOKED ON A HANDFUL OF THEM. THEY ALL GOT  
25 ALLOTTED TO THE SAME DIVISION OF COURT OR ADJUDICATED ON THE

1 EXACT SAME DAY.

2 NOW, THEY COULD HAVE EASILY HAVE BEEN CONSOLIDATED  
3 FORMALLY ON ONE BILL OF INFORMATION OR HE COULD HAVE PLED TO  
4 ONE AND HAD THE REST DISMISSED. WHETHER HE RESOLVED ONE  
5 BURGLARY OR A MILLION BURGLARIES WAS NOT GOING TO AFFECT HOW  
6 THE LOUISIANA DEPARTMENT OF CORRECTIONS TREATED HIS SENTENCE  
7 OR HIM IN JAIL. SO IN MR. COURTNEY'S APPRECIATION THIS IS  
8 REALLY ONE CONVICTION, AND IF IT'S ONE CONVICTION THEN HE DOES  
9 NOT HAVE ENOUGH CONVICTIONS TO SUPPORT THESE ENHANCEMENTS.  
10 AND I'LL LET MR. COURTNEY ADD IF I MISSPOKE IN HIS ARGUMENT.

11 THE COURT: IS THAT CORRECT? IS THAT YOUR ARGUMENT,  
12 MR. COURTNEY?

13 THE DEFENDANT: YES, THAT IS MY ARGUMENT. I WAS  
14 SENTENCED ONE DAY ON THE BURGLARIES AT THE SAME TIME, ONE  
15 CONVICTION. LIKE I SAID, MY FIRST CONVICTION IN MY LIFE.  
16 FIRST TIME BEING IN TROUBLE.

17 THE COURT: ALL RIGHT. MR. JEFFERSON, DO YOU HAVE  
18 ANYTHING TO ADD?

19 MR. JEFFERSON: NO, YOUR HONOR. I THINK THE COURT  
20 HAS ALREADY EXPLAINED.

21 THE COURT: JUST SO THE RECORD IS GOING TO BE CLEAR  
22 ON THIS SPECIFIC ONE, I'M GOING TO OVERRULE THE OBJECTION FOR  
23 THE REASONS I GAVE EARLIER BUT, FURTHER, THE COURT OBTAINED  
24 COURT RECORDS REGARDING THESE CONVICTIONS FROM THE 19TH JDC  
25 AND ACCORDING TO THE COURT DOCUMENTS THE DEFENDANT PLED GUILTY

1 TO FOUR SEPARATE COUNTS OF SIMPLE BURGLARY OF AN INHABITED  
2 DWELLING IN DOCKET 06-96-0340, 06-96-0158 AND 08-96-134, THREE  
3 COUNTS. AND THE COURT ORDERED THAT THESE SENTENCES BE IMPOSED  
4 TO RUN CONCURRENT WITH ONE ANOTHER.

5 PURSUANT TO 18 UNITED STATES CODE, SECTION 924(E)(1)  
6 IN THE CASE OF A PERSON WHO VIOLATES 18 U.S.C. SECTION 922(G)  
7 AND HAS THREE PREVIOUS CONVICTIONS BY ANY COURT REFERRED TO IN  
8 18 U.S.C. SECTION 922(G)(1) FOR A VIOLENT FELONY OR SERIOUS  
9 DRUG OFFENSE, OR BOTH, COMMITTED ON OCCASIONS DIFFERENT FROM  
10 ONE ANOTHER, THE DEFENDANT IS SUBJECT TO AN ENHANCED SENTENCE  
11 UNDER THIS PROVISION.

12 ALL OF THE DEFENDANT'S BURGLARIES INVOLVED DIFFERENT  
13 VICTIMS, DIFFERENT LOCATIONS AND THEY OCCURRED ON DIFFERENT  
14 OCCASIONS DIFFERENT FROM ONE ANOTHER. SPECIFICALLY THE  
15 BURGLARY IN DOCKET NO. 06-96-0340 OCCURRED ON OR ABOUT  
16 MARCH 12, 1996. THE BURGLARY IN DOCKET NO. 06-96-0158  
17 OCCURRED ON OR ABOUT APRIL 11, 1996. EACH OF THE THREE  
18 BURGLARIES IN DOCKET NO. 08-96-0134 OCCURRED ON APRIL 14, 1996  
19 AND MAY 6, 1996. THERE WERE TWO SEPARATE BURGLARIES THERE.  
20 AND SO THE FACT THAT THE DEFENDANT PLED GUILTY TO ALL OF THESE  
21 AT ONE TIME DOESN'T CHANGE THE FACT THAT THESE ARE ALL  
22 SEPARATE INCIDENTS AND SEPARATE CONVICTIONS.

23 *UNITED STATES VERSUS KELLEY*, 981 F.2D 1464, (5TH  
24 CIRCUIT 1993), *UNITED STATES VERSUS PAIGE*, 634 F.3D 871, (6TH  
25 CIRCUIT 2011), *UNITED STATES VERSUS HOCKENBERRY*, 730 F.3D 645,

1 (6TH CIRCUIT 2013) ARE ALL CASES WHICH SUPPORT THE COURT'S  
2 CONCLUSION AND FOR THESE REASONS THE DEFENDANT'S OBJECTION IS  
3 OVERRULED.

4 WE'RE GOING TO NEXT ADDRESS THE OBJECTION TO THE  
5 SENTENCING MEMORANDUM, ARMED CAREER CRIMINAL. HE ARGUES THAT  
6 THE SENTENCING MEMORANDUM, THE ENHANCEMENT SHOULD NOT APPLY  
7 BECAUSE THE MATTER WAS NOT RESOLVED BY THE JURY THAT CONVICTED  
8 HIM. I THINK IT'S ESSENTIALLY THE SAME ARGUMENT THAT'S BEEN  
9 MADE BEFORE, BUT ANY ADDITIONAL ARGUMENT THAT YOU'D LIKE TO  
10 MAKE ON THAT, MR. BELANGER?

11 MR. BELANGER: NO, YOUR HONOR. I JUST FILED SOME  
12 ADDITIONAL BRIEFING ON IT WITH THE MEMORANDUM.

13 THE COURT: OKAY. AND FOR THE REASONS GIVEN BEFORE,  
14 THE COURT IS GOING TO OVERRULE THE OBJECTION. AND, AGAIN, THE  
15 COURT CAN DETERMINE IF THE ENHANCEMENT APPLIES BY A  
16 PREPONDERANCE OF THE EVIDENCE STANDARD. THERE'S SIMPLY NO  
17 NEED FOR THE JURY TO MAKE THAT DETERMINATION.

18 SENTENCING MEMORANDUM OBJECTION 2, CRUEL AND UNUSUAL  
19 PUNISHMENT, WHICH ARGUES THAT APPLYING THE ARMED CAREER  
20 CRIMINAL ENHANCEMENT WOULD CONSTITUTE CRUEL AND UNUSUAL  
21 PUNISHMENT. MR. BELANGER?

22 MR. BELANGER: YES, SIR, YOUR HONOR. AND I THINK I  
23 CAN MENTION SOME OF THE THINGS THAT MR. COURTNEY SAID HERE  
24 TODAY. WHAT YOU HAVE, IN ESSENCE, IS HE IS NOW GOING TO BE  
25 FACING FIVE -- A MINIMUM SENTENCE OF FIVE YEARS THAT IS IN

1 EXCESS OF WHAT WOULD OTHERWISE BE THE MAXIMUM PENALTY HE WOULD  
2 FACE FOR THE STATUTORY CHARGE AND AN UNLIMITED POTENTIAL  
3 SENTENCE ON WHAT HE COULD RECEIVE. AND IT'S REALLY DRIVEN BY  
4 THESE BURGLARY CONVICTIONS FROM 1996. DECADES HAVE PASSED AND  
5 MR. COURTNEY HAS NOT BEEN ARRESTED AND CONVICTED OF A VIOLENT  
6 CRIME SINCE THEN; YET FOR THIS ONE SERIES OF EVENTS IN 1996 IS  
7 WHAT'S GOING TO POTENTIALLY PUT HIM IN JAIL FOR THE REST OF  
8 HIS LIFE.

9 WHAT MR. COURTNEY IS TRYING TO SUGGEST TO THIS COURT  
10 IS THAT HE WAS, IN FACT, RESPONSIBLE FOR A BURGLARY IN 1996,  
11 BUT THAT HE MAY HAVE CHALLENGED SOME OF THE OTHER COUNTS, HAD  
12 HE HAD KNOWN THEN THAT THEY WOULD BE USED TO SEND HIM TO JAIL  
13 POTENTIALLY FOR THE REST OF HIS LIFE. HE DIDN'T NEED TO DO  
14 THAT IN LOUISIANA. LIKE I SAID EARLIER, WHETHER HE PLED TO  
15 ONE OR ONE MILLION WAS NOT GOING TO AFFECT HIS STATUS. HE WAS  
16 STILL GOING TO GO TO THE DEPARTMENT OF CORRECTIONS AS A FIRST  
17 FELONY OFFENDER THAN HAVE THE GOOD TIME AND THE PAROLE  
18 BENEFITS AS A FIRST FELONY OFFENDER NOTWITHSTANDING THAT.

19 WHILE THERE HAVE BEEN CHANGES TO THE HABITUAL  
20 OFFENDER LAW, AT THE TIME IN THE 1990S FELONIES ADJUDICATED ON  
21 THE SAME DAY WOULD HAVE BEEN CONSIDERED ONE CONVICTION FOR  
22 PURPOSES OF A HABITUAL OFFENDER. SO REALISTICALLY FROM A  
23 PRACTICAL STANDPOINT IT DIDN'T MAKE ANY SENSE FOR HIM TO FIGHT  
24 ONE OR TWO OF THESE BURGLARY CONVICTIONS. BUT WHAT HE'S  
25 SAYING NOW IS THAT HAD HE HAD KNOWN THEN WHAT WOULD HAPPEN

1 TODAY HE WOULD HAVE.

2 WHY I THINK THIS IS CRUEL AND UNUSUAL PUNISHMENT,  
3 AND I DON'T WANT TO GET INTO THE FULL DETAILS IN AN OPEN  
4 COURT, BUT THERE IS REFERENCE TO MR. COURTNEY HAVING A CHRONIC  
5 DISEASE. I, WHETHER THE COURT GIVES HIM 15 YEARS, 16 YEARS,  
6 17 YEARS, I'M NOT CERTAIN THAT HE IS GOING TO LIVE TO SERVE  
7 THAT SENTENCE. AND SO, IN ESSENCE, WHATEVER SENTENCE THE  
8 COURT IMPOSES WITHIN THE STATUTORY LIMITS WE TAKE THAT TO BE A  
9 DEATH SENTENCE FOR MR. COURTNEY. THE COURT PRESIDED OVER THE  
10 TRIALS IN THIS CASE. YOU HAVE CONSTRUCTIVE POSSESSION OF A  
11 FIREARM AND CONSTRUCTIVE POSSESSION OF DRUGS THAT WERE SO  
12 SMALL YOU COULD BARELY SEE IT IN THE PALM OF YOUR HANDS.

13 MR. COURTNEY -- AND, AGAIN, THIS IS SOMETHING THAT  
14 IS A LITTLE BIT OF A NUANCE DIFFERENCE IN STATE AND FEDERAL  
15 COURT. YOU TALK ABOUT CRIMES OF VIOLENCE IN STATE COURT AND  
16 WE TALK ABOUT AGGRAVATED CRIMES IN FEDERAL COURT. WHAT  
17 MR. COURTNEY IS TRYING TO STRESS TO THE COURT IS HE IS NOT A  
18 VIOLENT PERSON. HE HAS NOT BEEN CHARGED WITH HARMING ANYBODY.  
19 HE WASN'T CONSIDERED HARMING ANYONE IN 1996 WHEN THESE  
20 BURGLARIES TOOK PLACE. HE'S NOT USED VIOLENCE. NONE OF HIS  
21 CONVICTIONS ARE FOR ANYTHING VIOLENT AGAINST A PERSON AND TO  
22 SUBJECT HIM TO 15 TO LIFE UNDER THESE CIRCUMSTANCES GIVEN HIS  
23 PERSONAL HEALTH HISTORY, I THINK CONSTITUTES CRUEL AND UNUSUAL  
24 PUNISHMENT, YOUR HONOR.

25 THE COURT: ALL RIGHT. THANK YOU, MR. BELANGER.

1 MR. JEFFERSON?

2 MR. JEFFERSON: WE HAVE NOTHING TO ADD, YOUR HONOR.

3 THE COURT: ALL RIGHT. WELL, THE COURT'S GOING TO  
4 OVERRULE THE OBJECTION. THERE'S JUST SIMPLY INSUFFICIENT  
5 LEGAL AUTHORITY TO SUPPORT THE DEFENDANT'S POSITION. I  
6 UNDERSTAND THE EQUITABLE ARGUMENT THAT'S THERE, BUT LEGALLY  
7 THERE'S JUST NOTHING TO SUPPORT THAT THIS IS CRUEL AND UNUSUAL  
8 PUNISHMENT. AND, OBVIOUSLY, I'M GOING TO LOOK AT THE TOTALITY  
9 OF THE CIRCUMSTANCES IN FASHIONING A SENTENCE, BUT I'M GOING  
10 TO OVERRULE THE OBJECTION. AND THAT CONCLUDES THE OBJECTIONS.

11 AND, ACCORDINGLY, THE COURT ADOPTS THE UNDISPUTED  
12 FACTUAL STATEMENTS AND GUIDELINES COMPUTATIONS RECOMMENDED BY  
13 THE PROBATION OFFICE AS REFLECTED IN THE REVISED PRE-SENTENCE  
14 INVESTIGATION REPORT AND ADDENDA AND I FIND THAT THE  
15 APPLICABLE GUIDELINES IN THIS CASE PROVIDE FOR THE FOLLOWING:

16 A TOTAL OFFENSE LEVEL OF 33; CRIMINAL HISTORY  
17 CATEGORY V; TERM OF IMPRISONMENT OF 210 TO 262 MONTHS PURSUANT  
18 TO THE ARMED CAREER CRIMINAL ENHANCEMENT; A PERIOD OF  
19 SUPERVISED RELEASE OF COUNT 1, TWO TO FIVE YEARS; COUNT 2, ONE  
20 YEAR; THE DEFENDANT IS INELIGIBLE FOR PROBATION ON BOTH COUNTS  
21 1 AND 2; A FINE IN THE SUM OF 17,500 TO \$175,000; RESTITUTION  
22 IS NOT APPLICABLE; A SPECIAL ASSESSMENT FEE IN THE AMOUNT OF,  
23 FOR COUNT 1, \$100; COUNT 2, \$25.

24 I HAVE REVIEWED THE PSR. I HAVE REVIEWED THE  
25 ADDENDA. I HAVE REVIEWED THE SENTENCING MEMORANDUM SUBMITTED

1 ON BEHALF OF THE DEFENDANT. I HAVE READ THE CHARACTER LETTERS  
2 SUBMITTED ON BEHALF OF THE DEFENDANT. I'VE REVIEWED  
3 EVERYTHING THAT HAS BEEN PROVIDED TO ME AS A PART OF THIS  
4 RECORD. AND NOW, MR. COURTNEY, IT'S YOUR OPPORTUNITY IF YOU  
5 WANT TO TAKE IT TO ADDRESS ME BEFORE SENTENCING.

6 MR. BELANGER: YOUR HONOR, I'D LIKE TO READ A  
7 SENTENCE -- A LETTER THAT HE PREPARED TO THE COURT THAT I'M  
8 ACTUALLY SEEING -- AND I'D LIKE TO FILE THESE INTO THE RECORD  
9 AFTERWARDS. "TO THE HONORABLE JUDGE JOHN DEGRAVELLES. HI,  
10 HOW ARE YOU DOING? WHEN THIS LETTER REACHES YOUR HANDS I HOPE  
11 AND PRAY IT FINDS YOU IN THE BEST OF HEALTH AND CARE. WELL I  
12 DON'T KNOW HOW THINGS ARE GOING TO GO IN COURT TODAY, BUT I  
13 HOPE AND PRAY THAT THINGS WILL BE ALL RIGHT. I'VE BEEN --  
14 I'VE BEEN LOCKED UP SO MUCH SINCE 2016, FOUND MY MOTHER AFTER  
15 36 YEARS AND LOST HER THREE WEEKS AGO. NEVER EVEN HAD A  
16 CHANCE TO SEE HER, HUG HER. SHE TRIED TO HOLD ON. MY UNCLE,  
17 HER BROTHER, MY OLDEST DAUGHTER, MOTHER, PASSED IN 2016.

18 MY KIDS ARE GETTING OLDER. I MISS THEM SO MUCH. I  
19 HAVE THREE GRANDKIDS BY MY OLDEST GIRL. I MISS THEM. MY BABY  
20 GIRL KEEPS SAYING, DADDY, YOU'RE TAKING SO LONG. SHE'S SIX  
21 NOW. SHE WAS THREE YEARS OLD THEN. I'VE BEEN MARRIED 14  
22 YEARS NOW. MY WIFE CHERLYN COURTNEY, SHE IS ON DIALYSIS AND  
23 NEEDS ME. MY AUNT JANICE COURTNEY SHE ALSO. I'M NOT A BAD  
24 PERSON. I NEVER HURT NO ONE IN MY LIFE. I GOT IN TROUBLE IN  
25 THE '90S AND IN '07. I'M TRULY SORRY AND WISH I COULD TURN

1 BACK THE HANDS OF TIME, BUT IF WE COULD WE WOULD NEVER LEARN  
2 NOTHING. MY ACTIONS HAVE BROUGHT STRESS AND PAIN TO MY KIDS I  
3 KNOW AND TO THIS COURT AND MY FAMILY I HAVE LEFT I AM SORRY.  
4 I'VE BEEN GOING TO AA AND A CLASS GETTING MYSELF TOGETHER. MY  
5 HEALTH IS NOT GOOD. I'M SICK. I DON'T WANT TO DIE IN JAIL.  
6 MY LITTLE SISTER, I DIDN'T SEE HER UNTIL 12. THE LAST TIME  
7 WAS 1989. SHE DON'T KNOW -- SHE NEVER -- SHE DOESN'T KNOW.  
8 SHE'S NEVER BEEN IN TROUBLE. THAT HURT. SO I DON'T WANT TO  
9 BE ANOTHER STATISTIC. I WISH AND PRAY THE DAY WHEN I CAN SEE  
10 MY KID. I'M NOT A VIOLENT PERSON AT ALL, NEVER WILL BE OR  
11 WAS. I ASK FOR YOU TO HAVE MERCY AND GOD BLESS. P.S. SO MUCH  
12 MORE TO SAY JUST NOT ENOUGH TIME."

13 THEN HE HAS THIS LETTER FROM ROBERT BUMM. IT SAYS,"  
14 "MY NAME IS ROBERT BUMM AND I ATTEND ALCOHOL ANONYMOUS MEETING  
15 AT WEST BATON ROUGE PARISH PRISON EACH WEEK. MR. TIMOTHY  
16 JEROME COURTNEY HAS BEEN ATTENDING THE AA MEETINGS EACH WEEK,  
17 IS DOING WELL. THANK YOU FOR YOUR TIME AND ATTENTION." AND  
18 IT'S SIGNED WITH HIS HOME AND CELL PHONE NUMBER, SO I TAKE  
19 THAT TO MEAN HE'S A LAY SPONSOR OF THE GROUP.

20 AND THEN THIS IS A LETTER WRITTEN FROM TINESHA TO  
21 MR. COURTNEY ADDRESSED TO DADDY. IT SAYS, "LETTER TO MY  
22 DADDY. I LOVE 'LIL DADDY. I WANT TO PLAY WITH AT PLAYGROUND.  
23 SHE WANTS YOU TO DANCE WITH HER. I LOVE YOU WITH ALL MY  
24 HEART. COME HOME SOON." I DON'T KNOW IF THIS WAS WRITTEN BY  
25 THE DAUGHTER HERSELF OR ON THE DAUGHTER'S BEHALF.

1           AND THEN HE HAS A COPY OF A DEATH OBITUARY FOR  
2 MS. RUBY COCHRAN HIGHLIGHTED. AND I CAN ADD TO THIS, YOUR  
3 HONOR, THAT WHILE VISITING WITH MR. COURTNEY IN JAIL HE DID  
4 EXPRESS TO ME HOW HIS MOTHER WAS NOT INVOLVED IN HIS LIFE AND  
5 HOW SHE HAD TURNED UP RECENTLY AND THAT IT WAS HIS HOPE THAT  
6 HE COULD GET OUT OF JAIL TO SEE HER. AND THEN ONE OF THE  
7 TIMES WHEN I VISITED WITH HIM HE ADVISED ME THAT SHE HAD JUST  
8 PASSED AND SO HE NEVER HAD THAT OPPORTUNITY. WITH THE COURT'S  
9 PERMISSION MR. COURTNEY WOULD LIKE TO FILE THESE INTO THE  
10 RECORD.

11           **THE COURT:** ALL RIGHT. WE WILL RECEIVE THEM INTO  
12 THE RECORD. I WILL SAY THAT I HAD RECEIVED HIS LETTER AND HAD  
13 READ IT BEFORE, BUT THESE OTHER LETTERS WERE NOT PART OF THE  
14 RECORD, SO I APPRECIATE HAVING THEM READ TO ME AND I WILL  
15 CONSIDER THEM AND WILL MAKE IT A PART OF THE RECORD.

16           ALL RIGHT. ANYTHING FURTHER FROM THE DEFENDANT?

17           **MR. BELANGER:** FROM COUNSEL, YOUR HONOR, I KNOW THAT  
18 THE GUIDELINES HERE CALL FOR A PRETTY HEFTY SENTENCE.  
19 OBVIOUSLY I WAS HOPING, WHETHER IT BE THROUGH THE STATUTORY  
20 OBJECTIONS OR THE CONSTITUTIONAL OBJECTIONS, THAT THE COURT  
21 FELT EMPOWERED TO GO BELOW THE STATUTORY MANDATORY MINIMUM OF  
22 15 YEARS. ADJUDGED BY THE COURT'S RULING THAT IT FEELS THAT  
23 IT CAN NOT DO SO. SO AT THIS POINT I'M LEFT TO URGE ON BEHALF  
24 OF MY CLIENT THAT THE COURT IMPOSE THE LOWEST SENTENCE IT  
25 FEELS THAT IT POSSIBLY CAN.

1 I BELIEVE THAT WITH MR. COURTNEY'S ILLNESS THAT ANY  
2 SENTENCE THE COURT WILL IMPOSE WILL BE PRETTY SIGNIFICANT. I  
3 ALSO ASK THE COURT TO TAKE RECOGNITIONS OF THE FACTS OF THIS  
4 CASE. AGAIN, WE'RE TALKING ABOUT A HANDGUN AND CONSTRUCTIVE  
5 POSSESSION OF A SMALL AMOUNT OF DRUGS. NO ONE WAS THREATENED  
6 OR HARMED AND THE FACTS THAT ADJUDICATED MR. COURTNEY GUILTY  
7 AND THAT THE CONVICTIONS WHICH ARE DRIVING THIS SENTENCE WERE  
8 DECADES AGO. AND MR. COURTNEY IS RIGHT, SINCE THE '90S HE'S  
9 NEVER BEEN CONVICTED OF A BURGLARY AGAIN OR ANY OTHER  
10 AGGRAVATING CRIME. I THINK THOSE ARE ALL MITIGATING FACTORS  
11 TO JUSTIFY THE LOWEST SENTENCE POSSIBLE, YOUR HONOR.

12 THE COURT: ALL RIGHT. THANK YOU, MR. BELANGER.  
13 MR. JEFFERSON?

14 MR. JEFFERSON: WE HAVE NOTHING TO ADD, YOUR HONOR.

15 THE COURT: ALL RIGHT. I'M GOING TO BEGIN BY GIVING  
16 SOME REASONS FOR THE JUDGMENT I'M IMPOSING TODAY. I HAVE  
17 BEFORE ME A 43-YEAR OLD MALE WHO WAS FOUND GUILTY OF  
18 POSSESSION OF A FIREARM BY A CONVICTED FELON AND POSSESSION OF  
19 COCAINE BASE AND METHAMPHETAMINE.

20 IN THIS CASE THE OFFICERS EXECUTED A SEARCH WARRANT  
21 OF HIS RESIDENCE IN BATON ROUGE FOLLOWING A CONTROLLED  
22 PURCHASE OF NARCOTICS FROM THE RESIDENCE AND DURING THE SEARCH  
23 THE OFFICERS LOCATED THE DEFENDANT INSIDE THE RESIDENCE WITH  
24 POINT 266 GRAMS OF COCAINE BASE, POINT 524 GRAMS OF  
25 METHAMPHETAMINE, SEVERAL DOSAGE UNITS OF ALPRAZOLAM AND

1 HYDROCODONE BITARTRATE. THE DEFENDANT ALSO HAD SEVERAL LARGE  
2 BUNDLES OF MONEY ON HIS PERSON TOTALING \$801. OFFICERS  
3 LOCATED IN THE ROOM WHERE THE DEFENDANT WAS LOCATED A TAURUS  
4 9MM SEMI-AUTOMATIC PISTOL LOCATED WITH NINE ROUNDS OF  
5 AMMUNITION.

6 THE DEFENDANT HAS ADULT CONVICTIONS FOR ILLEGAL  
7 POSSESSION OF STOLEN ITEMS, TWO COUNTS, FELONY THEFT, SIMPLE  
8 BURGLARY OF AN INHABITED DWELLING, FIVE COUNTS, ATTEMPTED  
9 SIMPLE BURGLARY OF AN INHABITED DWELLING, INTRODUCTION OF  
10 CONTRABAND INTO A PENAL INSTITUTION, POSSESSION OF MARIJUANA,  
11 TWO COUNTS, ATTEMPTED POSSESSION OF MARIJUANA, MULTIPLE  
12 TRAFFIC VIOLATIONS, POSSESSION OF A FIREARM BY A CONVICTED  
13 FELON AND TWO COUNTS OF POSSESSION OF A SCHEDULE II CONTROLLED  
14 SUBSTANCE, COCAINE.

15 THE DEFENDANT HAS OTHER CRIMINAL ARRESTS FOR  
16 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE, POSSESSION OF  
17 MARIJUANA, TWO ARRESTS, POSSESSION OF COCAINE, MULTIPLE  
18 ARRESTS FOR BENCH WARRANTS IN CONTEMPT OF COURT, SIMPLE  
19 ESCAPE, FILING FALSE PUBLIC RECORDS, SIMPLE ASSAULT,  
20 AGGRAVATED BURGLARY, SIMPLE BURGLARY, TWO ARRESTS, ILLEGAL  
21 POSSESSION OF STOLEN THINGS, POSSESSION WITH INTENT TO  
22 DISTRIBUTE MARIJUANA, UNAUTHORIZED USE OF A MOVEABLE,  
23 POSSESSION WITH INTENT TO DISTRIBUTE SCHEDULE I AND II, TWO  
24 COUNTS, AND FOUR, POSSESSION OF A FIREARM BY A CONVICTED  
25 FELON, ILLEGAL CARRYING OF A WEAPON WITH A CONTROLLED

1 DANGEROUS SUBSTANCE AND TAKING CONTRABAND INTO A PENAL  
2 INSTITUTION.

3 THE DEFENDANT'S CRIMINAL HISTORY IS EXTENSIVE AND  
4 INCLUDES AT LEAST FIVE CONVICTIONS FOR VIOLENT FELONIES. AS A  
5 RESULT, THE DEFENDANT MEETS THE CRITERIA FOR THE ARMED CAREER  
6 CRIMINAL SENTENCING ENHANCEMENT PURSUANT TO 18 U.S.C. SECTION  
7 924(E) WHICH RESULTS IN A MANDATORY MINIMUM TERM OF  
8 IMPRISONMENT OF 15 YEARS, FOR THE REASONS PROVIDED EARLIER  
9 WHEN I ADDRESSED THE DIFFERENT OBJECTIONS ON THIS SUBJECT.

10 AGAIN, THE DEFENDANT HAS AN EXTENSIVE HISTORY THAT  
11 INCLUDES AT LEAST FIVE CONVICTIONS FOR VIOLENT FELONIES. THE  
12 DEFENDANT'S CRIMINAL HISTORY ALSO REFLECTS A PRIOR CONVICTION  
13 FOR AN OFFENSE INVOLVING POSSESSION OF A FIREARM BY A  
14 CONVICTED FELON, AS WELL AS MULTIPLE CONVICTIONS FOR  
15 POSSESSION OF CONTROLLED DANGEROUS SUBSTANCES, INCLUDING  
16 COCAINE BASE. IN ADDITION, THE DEFENDANT HAS COMMITTED THE  
17 INSTANT OFFENSE WHILE ON SUPERVISION FOR MULTIPLE OFFENSES IN  
18 THE 19TH JUDICIAL DISTRICT COURT IN BATON ROUGE, LOUISIANA.

19 IN CONSIDERING ALL OF THIS INFORMATION, A GUIDELINE  
20 SENTENCE OF 210 MONTHS IS APPROPRIATE. AND I BELIEVE HAVING  
21 CONSIDERED ALL OF THE 3553(A) GUIDELINE POINTS THIS IS GOING  
22 TO MEET THE STATUTORY PURPOSES OF SENTENCING, INCLUDING  
23 PROMOTING RESPECT FOR THE LAW, PROVIDING JUST PUNISHMENT FOR  
24 THE OFFENSE, ACHIEVING GENERAL DETERRENCE AND PROTECTING THE  
25 PUBLIC FROM FURTHER CRIMES BY THIS DEFENDANT.

1 AS A RESULT OF THE DEFENDANT'S CRIMINAL HISTORY, A  
2 PERIOD OF FIVE YEARS OF SUPERVISED RELEASE ON COUNT 1 AND ONE  
3 YEAR ON COUNT 2 TO RUN CONCURRENTLY FOR A TOTAL OF FIVE YEARS  
4 IS GOING TO BE IMPOSED.

5 SO, ACCORDINGLY, IT IS ADJUDGED THAT AFTER HAVING  
6 CONSIDERED THE UNITED STATES SENTENCING GUIDELINES AND THE  
7 SENTENCING FACTORS ENUMERATED IN 3553(A) AND BASED ON THE  
8 TOTALITY OF THE CIRCUMSTANCES, IT IS THE JUDGMENT OF THE COURT  
9 THAT THE DEFENDANT TIMOTHY COURTNEY IS HEREBY COMMITTED TO THE  
10 CUSTODY OF THE BUREAU OF PRISONS TO BE IMPRISONED FOR A TERM  
11 OF 210 MONTHS ON COUNT 1 AND 12 MONTHS ON COUNT 2 TO RUN  
12 CONCURRENTLY FOR A TOTAL OF 210 MONTHS. IT IS RECOMMENDED  
13 THAT THE BUREAU OF PRISONS -- TO THE BUREAU OF PRISONS THAT  
14 THE DEFENDANT BE HOUSED IN A FACILITY CAPABLE OF PROVIDING HIM  
15 WITH EDUCATIONAL AND VOCATIONAL TRAINING AND MENTAL HEALTH AND  
16 SUBSTANCE ABUSE TREATMENT.

17 UPON RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL  
18 BE PLACED ON SUPERVISED RELEASE FOR A TERM OF FIVE YEARS ON  
19 COUNT 1 AND ONE YEAR ON COUNT 2 TO RUN CONCURRENTLY FOR A  
20 TOTAL OF FIVE YEARS. WITHIN 72 HOURS OF RELEASE FROM THE  
21 CUSTODY OF THE BUREAU OF PRISONS, THE DEFENDANT SHALL REPORT  
22 IN-PERSON TO THE PROBATION OFFICE TO THE DISTRICT TO WHICH THE  
23 DEFENDANT IS RELEASED. WHILE ON SUPERVISED RELEASE, THE  
24 DEFENDANT SHALL COMPLY WITH THE 13 STANDARD CONDITIONS AND THE  
25 FOLLOWING MANDATORY OR SPECIAL CONDITIONS: 14, 15, 16, 17,

1 24, 27, 32, 33, 44 AND 60 ADOPTED BY THIS COURT IN DETAIL AND  
2 GENERAL ORDER NUMBER 2017:03.

3 IN SUMMARY, THE DEFENDANT MUST NOT COMMIT ANOTHER  
4 FEDERAL, STATE OR LOCAL CRIME NOT UNLAWFULLY POSSESS A  
5 CONTROLLED SUBSTANCE, REFRAIN FROM UNLAWFUL USE OF A  
6 CONTROLLED SUBSTANCE, COOPERATE IN DNA COLLECTION, PARTICIPATE  
7 IN SUBSTANCE ABUSE TREATMENT, SUBMIT TO SUBSTANCE ABUSE  
8 TESTING AND NOT TAMPER WITH TESTING, PARTICIPATE IN MENTAL  
9 HEALTH TREATMENT, TAKE PRESCRIBED MEDICATION AND SUBMIT TO  
10 SEARCH AND POSSIBLE SEIZURE OF ANY CONTRABAND CONDUCTED BY THE  
11 PROBATION OFFICER.

12 THE DEFENDANT MUST PAY THE COST OF ANY TREATMENT  
13 SERVICES TO THE EXTENT HE IS FINANCIALLY ABLE TO DO THAT. THE  
14 PROBATION OFFICE MUST DETERMINE THE DEFENDANT'S ABILITY TO PAY  
15 AND ANY SCHEDULE FOR PAYMENT SUBJECT TO THE COURT'S REVIEW  
16 UPON REQUEST.

17 THE COURT FINDS THAT THE DEFENDANT DOES NOT HAVE THE  
18 ABILITY TO PAY A FINE AND WAIVES THE FINE. IT IS ORDERED THAT  
19 THE DEFENDANT SHALL PAY TO THE UNITED STATES A SPECIAL  
20 ASSESSMENT FEE OF \$125 WHICH SHALL BE DUE IMMEDIATELY.

21 PURSUANT TO 18 UNITED STATES CODE, SECTION 924(D)(1)  
22 AND 28 U.S.C. SECTION 2461(C), THE DEFENDANT SHALL FORFEIT TO  
23 THE UNITED STATES ANY FIREARM AND AMMUNITION INVOLVED OR USED  
24 IN THE COMMISSION OF THE OFFENSE, INCLUDING BUT NOT LIMITED TO  
25 A TAURUS MODEL PT111 9MM PISTOL BEARING SERIAL NUMBER

1 TIU48312.

2 IN CLOSING, I HAVE CONSIDERED A SENTENCE ABOVE AND  
3 BELOW AND WITHIN THE GUIDELINE RANGE AND I WOULD IMPOSE THIS  
4 SENTENCE IRRESPECTIVE OF THAT RANGE. I BELIEVE THAT THE  
5 SENTENCE I'M IMPOSING TODAY IS THE MOST APPROPRIATE UNDER THE  
6 CIRCUMSTANCES. I'M GOING TO ORDER THAT THE PRE-SENTENCE  
7 INVESTIGATION REPORT BE MADE A PART OF THE RECORD UNDER SEAL.

8 NOW, MR. COURTNEY, YOU HAVE THE RIGHT TO -- YOU HAVE  
9 THE RIGHT TO APPEAL THE SENTENCE THAT I JUST IMPOSED. IF YOU  
10 DO THAT YOU HAVE TO DO THAT WITHIN 14 DAYS. IF YOU DO NOT DO  
11 THAT WITHIN 14 DAYS YOU WILL HAVE WAIVED YOUR RIGHT TO APPEAL.  
12 IF YOU NEED A LAWYER AND YOU CANNOT AFFORD ONE FOR YOUR APPEAL  
13 ONE WILL BE APPOINTED TO REPRESENT YOU AT NO COST TO YOU. IF  
14 YOU CANNOT AFFORD THE TRANSCRIPT, ONE WILL BE PROVIDED TO YOU  
15 AT NO COST TO YOU AND IF YOU CANNOT AFFORD THE FILING FEE THAT  
16 WILL BE WAIVED AT MY ORDER. DO YOU UNDERSTAND YOUR RIGHTS OF  
17 APPEAL?

18 THE DEFENDANT: YES.

19 THE COURT: IS THERE ANYTHING FURTHER?

20 MR. BELANGER: YEAH, YOUR HONOR. YOU KNOW, I  
21 UNDERSTAND THAT THE COURT CONSIDERS MY OVERRULED OBJECTIONS TO  
22 BE PRESERVED ON APPEAL. TO THE EXTENT THAT THE COURT HAS NOT  
23 ADOPTED OUR CRUEL AND UNUSUAL PUNISHMENT ARGUMENT, I WOULD  
24 LIKE TO JUST OBJECT TO THE SENTENCE BEING EXCESSIVE.

25 THE COURT: AND ALL OF THOSE OBJECTIONS, INCLUDING

1 THE ONES YOU JUST REARTICULATED, ARE PRESERVED FOR THE RECORD.

2 MR. BELANGER: THANK YOU, YOUR HONOR.

3 THE COURT: ALL RIGHT. ANYTHING FURTHER FROM THE  
4 UNITED STATES?

5 MR. JEFFERSON: NO, SIR, YOUR HONOR.

6 THE COURT: WITH THAT THE DEFENDANT IS REMANDED TO  
7 THE CUSTODY OF THE UNITED STATES MARSHAL.

8 REPORTER'S NOTE: *(WHEREUPON COURT WAS ADJOURNED.)*

9 C E R T I F I C A T E

10 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
11 FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED  
12 NUMBERED MATTER.

13 S:/GINA DELATTE-RICHARD,CCR

14 GINA DELATTE-RICHARD, CCR

15 OFFICIAL COURT REPORTER  
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