

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GARIAN KING,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

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APPENDIX A

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

No. 19-10001
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 21, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

GARIAN KING,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-189-1

Before JOLLY, JONES, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Garian King appeals his guilty plea conviction and 120-month sentence for possession of a firearm by a felon pursuant to 18 U.S.C. §§ 922(g)(1) and 924(a)(2). King challenges his sentence on the ground that the district court's imposition of a four-level enhancement of his offense level under U.S.S.G. § 2K2.1(b)(6)(B)—which applies where the defendant “used or possessed any firearm . . . in connection with another felony offense”—was erroneous.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

King first argues that the finding in the presentence report (PSR), which the district court adopted, that King committed the Texas offense of aggravated assault with a deadly weapon, *see* Texas Penal Code §§ 22.01(a)(2) and 22.02(a)(2), was unreliable because it was based on conflicting witness accounts. Our review of this issue is for clear error, and we will not reverse unless the district court's account of the evidence is implausible in light of the record as a whole. *United States v. Harris*, 740 F.3d 956, 966-67 (5th Cir. 2014). In this case, the evidence concerning the aggravated assault consisted of (i) two witness statements that confirmed that King brandished a firearm and threatened the victims; (ii) two witness statements that confirmed that King displayed a firearm and, while not dispositive, supported a reasonable inference that King threatened the victims, *see United States v. De Jesus-Ojeda*, 515 F.3d 434, 442 (5th Cir. 2008); and (iii) King's statement denying that he threatened the victims, *see, e.g., United States v. Gutierrez-Mendez*, 752 F.3d 418, 429 (5th Cir. 2014). Given the "significant discretion" accorded to the district court "in evaluating reliability," *United States v. Young*, 981 F.2d 180, 185 (5th Cir. 1992), King has failed to show that the district court's reliance on the PSR, or the court's finding that King committed the Texas offense of aggravated assault with a deadly weapon, was clear error, *see Harris*, 740 F.3d at 966-67.

King next argues that the district court erred by failing to make factual findings regarding the veracity of a written statement of a witness, which King claims was evidence that he did not commit aggravated assault. Because King failed to object on this ground in the district court, our review is for plain error. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). Federal Rule of Criminal Procedure 32 directs a district court to rule on "any disputed portion of the presentence report or other controverted matter." FED.

R. CRIM. P. 32(i)(3)(B); *see* U.S.S.G. § 6A1.3(b), p.s. A defendant generally is provided adequate notice of the district court's resolution of disputed facts when the court adopts the findings of the PSR. *United States v. Mora*, 994 F.2d 1129, 1141 (5th Cir. 1993). Here, the district court properly considered the witness's written statement, made findings in accordance with Rule 32(i) and § 6A1.3, explicitly overruled King's objection, and adopted the factual findings contained in the PSR. Therefore, King's argument that the district court erred under Rule 32 is without merit. *See Mora*, 994 F.2d at 1141.

Lastly, King challenges his conviction on the ground that the factual basis for his conviction was lacking proof that he knew, at the time of his offense, that he was a convicted felon. *See Rehaif v. United States*, 139 S. Ct. 2191, 2194 (2019). We review his argument for plain error. *See Puckett v. United States*, 556 U.S. 129, 134 (2009). Although the factual resume and plea colloquy standing alone do not establish that King knew, when he committed his present offense, that he had been convicted of an offense punishable by more than one year of imprisonment, the record as a whole establishes that he had such knowledge. *See United States v. Ortiz*, 927 F.3d 868, 872-73 (5th Cir. 2019). Because King's PSR established, without any challenge by King, that he had been convicted of offenses punishable by more than one year of imprisonment, and his counsel admitted at sentencing that King understood that "he wasn't supposed to have a firearm," the question whether King knew of his status as a convicted felon is at least subject to reasonable dispute. *See Puckett*, 556 U.S. at 134-35. Accordingly, King has failed to show plain error. *See Puckett*, 556 U.S. at 134-35.

AFFIRMED.

APPENDIX B

DEC 14 2018

CLERK, U.S. DISTRICT COURT

By _____
Deputy

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:18-CR-189-A(01)

GARIAN KING

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney John Bradford. The defendant, GARIAN KING, was represented by Federal Public Defender through Assistant Federal Public Defender Brook Antonio.

The defendant pleaded guilty on August 10, 2018 to the one count Information filed on August 8, 2018. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2) Unlawful Firearm Possession By A Felon	04/05/2018	1

As pronounced and imposed on December 14, 2018, the defendant is sentenced as provided in this judgment.

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

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

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months. This sentence shall run consecutively to any sentence that may be imposed in Case No. 1540140, in the Criminal District Court No. 3 of Tarrant County, Texas.

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

SUPERVISED RELEASE

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

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

Standard Conditions of Supervision

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

5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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

FINE

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

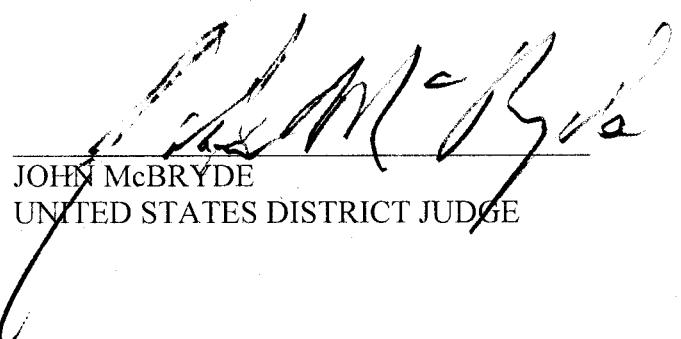
FORFEITURE

Pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), it is hereby ordered that defendant's interest in the following property is condemned and forfeited to the United States: a Remington, Model 870 Express, 12-gauge shotgun, including any ammunition, magazines, and/or accessories recovered with the firearm.

STATEMENT OF REASONS

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

Signed this the 14th day of December, 2018.


JOHN McBRYDE
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2018 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal

APPENDIX C

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

4 UNITED STATES OF AMERICA,) CASE NO. 4:18-CR-189-A
5 Government,)
6 VERSUS) FORT WORTH, TEXAS
7 GARIAN KING (01),) DECEMBER 14, 2018
8 Defendant.) 10:03 A.M.

VOLUME 1 OF 1
TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE JOHN McBRYDE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

14 FOR THE GOVERNMENT: MR. JOHN BRADFORD
15 UNITED STATES DEPARTMENT OF JUSTICE
16 NORTHERN DISTRICT OF TEXAS
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33 Proceedings reported by mechanical stenography, transcript
34 produced by computer.

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19-10001.108

1

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DEFENDANT'S EXHIBIT INDEX

14

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>
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16

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PROCEEDINGS

December 14, 2018 - 10:03 a.m.

COURT SECURITY OFFICER: All rise.

4 Hear ye, hear ye, hear ye, the United States
5 District Court for the Northern District of Texas at Fort
6 Worth is now in session, the Honorable John McBryde presiding.

7 Let us pray. God bless the United States and this
8 Honorable Court. Amen.

9 Please be seated.

11 ALL PRESENT: Morning, Your Honor.

15 And Mr. Bradford's here for the government, and
16 Mr. -- who is here -- Mr. Antonio is here for the defendant.

17 MR. ANTONIO: Yes, Your Honor.

20 What is your name?

1 indictment as to that offense and then pleaded guilty to it
2 after the Court accepted that waiver, and the offense to which
3 you pleaded guilty is unlawful firearm possession by a felon,
4 and we're here today for sentencing based on the conviction
5 resulting from that plea of guilty.

6 Mr. Antonio, did you and your client receive in a
7 timely manner the Presentence Report and the addendum to it?

8 MR. ANTONIO: Yes, Your Honor.

9 THE COURT: And did the two of you read those items
10 and then discuss them with each other?

11 MR. ANTONIO: Well, Your Honor, at the time we had
12 Mr. Cody Cofer, who worked with our office but is no longer
13 with our office, but, yes, they reviewed it. They reviewed
14 that, yes.

15 THE COURT: Oh, okay. That's right. Mr. Cofer was
16 the attorney until just a few days ago, wasn't he?

17 MR. ANTONIO: That's correct, Your Honor.

18 THE COURT: Okay. Let me be sure the defendant
19 confirms that because you don't have personal knowledge of it.

20 Mr. King, there's a Presentence Report that was
21 issued and then an addendum to it.

22 Did you and Mr. Cofer discuss those -- did you read
23 those items?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And did you and Mr. Cofer discuss them?

2 THE COURT: Okay. Now, there were some objections
3 to the Presentence Report, and I issued an order on
4 November 26 stating that I tentatively have concluded that all
5 of the objections made by the defendant are without merit.

8 MR. ANTONIO: No additional evidence, Your Honor.

11 MR. ANTONIO: Yes, Your Honor.

19 Let me look again at those paragraphs.

20 MR. ANTONIO: And, Your Honor, to sum it up, there
21 were two individuals, the one that's alleged to have been
22 assaulted, that says that Mr. King pointed a firearm at him.
23 However, Mr. King and Raven, who was his girlfriend, say that
24 he never pointed the firearm at them. He showed them the
25 firearm --

1 THE COURT: Are you going to have some evidence to
2 back up what you're telling me?

3 MR. ANTONIO: No, Your Honor, not outside of the
4 argument that we have.

5 THE COURT: That's in the Presentence Report, what
6 you're telling me. Okay. That's what I was getting ready to
7 do, to review that. The objection goes to paragraphs 5
8 through 16 and 27.

9 Let's see. There were two people who said that the
10 defendant threatened them with gunpoint and then fled from the
11 apartment.

12 Then when he was stopped by the officers shortly
13 after that and his vehicle was searched, the officers located
14 a 12-gauge shotgun behind the driver's seat, a sawed-off
15 barrel shotgun, that had the serial number obliterated. It
16 had a round of ammunition in the chamber and two rounds
17 attached on the side, and then a box of shotgun shells were in
18 the vehicle's trunk.

19 And then he pointed the gun at those two people and
20 said that he would shoot them if they didn't back off.

21 Apparently the defendant thought, when he initially
22 went to that apartment, that one of the witnesses, one of the
23 people in the apartment, was trying to start something with
24 him, and he went back to his vehicle and retrieved a gun, and
25 that's when he came back and threatened those people with that

1 gun.

2 Apparently he denied some of the things that the
3 witnesses had said they observed. The defendant said he had
4 the gun and it -- hidden in his jacket, but he denies that he
5 displayed it. Apparently the girlfriend, Smith, confirmed
6 that he went to the car and came back with a gun.

7 Okay. There -- I'm satisfied from what's in the
8 Presentence Report that it supports what the probation officer
9 did.

10 *MR. ANTONIO:* And, Your Honor -- I'm sorry, in
11 regards to --

12 *THE COURT:* Did you have some other argument that
13 you wish to make?

14 *MR. ANTONIO:* Well, in regards to the statement that
15 the girlfriend said that he went back to the car, I think that
16 statement was incorrect. We have her handwritten statement
17 here that confirms --

18 *THE COURT:* Well, let me see that.

19 Do you want to mark it as an exhibit and offer it as
20 evidence?

21 *MR. ANTONIO:* Yes, Your Honor.

22 *THE COURT:* Why don't we try to do things in a
23 proper sequence instead of piecemeal. I asked earlier if you
24 had any evidence you wanted to offer and you indicated you
25 didn't.

1 *MR. ANTONIO:* That's correct. I'll mark it as
2 Defense Exhibit 1.

3 May I approach?

4 *THE COURT:* Okay. It's received.

5 *MR. ANTONIO:* While Your Honor is reading that, for
6 the record, that's Ms. Raven Smith's handwritten statement to
7 the police officers.

8 *THE COURT:* Well, apparently there was a point in
9 time when he didn't have a gun, and I can't tell from this
10 statement whether she's referring to that point in time or the
11 point in time after he went to get the gun.

12 I'm not satisfied that this statement changes
13 anything as far as the recitations in the Presentence Report's
14 concerned, so I'll overrule that objection.

15 *MR. ANTONIO:* And, Your Honor, just to clarify that
16 statement, it seems --

17 *THE COURT:* I've overruled the objection. I've read
18 the statement.

19 Is there any further objection or is that the only
20 one? Looks like -- no, there's an objection number 2.

21 *MR. ANTONIO:* Right.

22 *THE COURT:* That's an objection having to do with
23 paragraph 95 on page 21 of the Presentence Report.

24 It's the defendant's position that the Court doesn't
25 have discretion as to whether to cause the sentences to run

1 concurrently or consecutively?

2 MR. ANTONIO: It's our argument that the sentence
3 should run concurrently because they --

4 THE COURT: I'm saying, are you contending the Court
5 doesn't have discretion to decide whether they run
6 concurrently or consecutively?

7 MR. ANTONIO: No, I'm not contending that the Court
8 doesn't have any discretion. What I'm saying is --

9 THE COURT: You think I ought to exercise my
10 discretion by making them concurrent?

11 MR. ANTONIO: Yes.

12 THE COURT: Let's see. Has the state sentence been
13 imposed?

14 MR. ANTONIO: Not yet, Your Honor.

15 THE COURT: Go ahead. Did you have any more you
16 wanted to say on the subject we're now discussing?

17 MR. ANTONIO: No, Your Honor.

18 THE COURT: And you indicated you had something you
19 wanted to say that explained this exhibit, Defendant's Exhibit
20 1 statement. Go ahead and say what you want to say on that
21 subject.

22 MR. ANTONIO: Yes, Your Honor.

23 In regards to the statement, I know Your Honor said
24 that it wasn't clear whether he went back to the car and got
25 the gun or not, but in reading that statement, it seems she

1 confirms that Mr. King, as he stated, had the firearm on him
2 at the time. And then one of the individuals was following
3 them, the one that was the ex-boyfriend was following them,
4 and then Mr. King turned after a while, after he followed them
5 for a while, turned and said, back off.

6 So there was no going back to the car and getting
7 the gun. From her statement, she said he turned with the gun
8 and said, back off, after he had followed him from the
9 apartment.

10 *THE COURT:* Okay. Well, I'm not satisfied the
11 statement has any effect on the ruling I've made or changes
12 the descriptions of activity in the Presentence Report, so I
13 remain -- persist in that ruling.

14 This defendant has quite a history of criminal
15 conduct.

16 Starting at age 16, he was guilty of theft of
17 property and -- as a runaway, and maybe those wouldn't be too
18 significant if things stopped at that point in time.

19 But then at age 17, he pleaded guilty to possession
20 of drug paraphernalia and got a 1-month deferred probation and
21 a small fine.

22 And then at age 18, a year later, he pleaded guilty
23 to possession of marijuana and got a light, 15-day
24 imprisonment sentence and his driver's license was suspended
25 for 12 months.

1 Again at age 18, he had another conviction
2 of -- based on a plea of guilty of possession of marijuana and
3 got a 17-day imprisonment sentence.

4 Then at age 20, he was convicted of burglary of a
5 habitation and he pleaded guilty to that. Again, he was put
6 on deferred adjudication probation, but apparently he violated
7 that and it was revoked and he was sentenced to 3 years
8 imprisonment. Then he was released on parole, and then had a
9 hearing based on an alleged violation, and they continued his
10 parole, and then he had another hearing based on his alleged
11 violation of his parole. He finally discharged his parole.

12 Then at age 20, he was convicted of theft of
13 property again. That was a plea of guilty. He got another
14 light sentence, 12 days imprisonment.

15 Again at age 20, he was convicted on a plea of
16 guilty of possession of cocaine and got a 3-year sentence of
17 imprisonment. And then he was released on parole, had a
18 revocation hearing, and apparently did not revoke his
19 parole -- had two different revocation hearings.

20 Then at age 22 he was convicted of theft of property
21 again. He pleaded guilty to that and got another light
22 sentence, 16 days of imprisonment.

23 Age 24, he was convicted of -- again of possession
24 of cocaine. He pleaded guilty and got a 6-month sentence at
25 that time.

1 Then at age 26, he was convicted of theft again and
2 got a 90-day imprisonment sentence. Of course, that almost
3 brings us up to date to the offense that we're here on today.

4 I'm going to exercise my discretion to make --

5 *(Bench Conference with Courtroom Deputy)*

6 THE COURT: My tentative conclusion is that I'll
7 exercise my discretion to cause the sentence in this case to
8 run consecutive to the sentence imposed in the state court
9 case, but I'll hear from you further on that subject,
10 Mr. Antonio.

11 But before we go any further, I overrule that
12 objection, your objection number 2.

13 And there being no further objections to the
14 Presentence Report, the Court adopts as the fact findings of
15 the Court the facts set forth in the Presentence Report as
16 modified or supplemented by the addendum, and the Court adopts
17 as the conclusions of the Court the conclusions expressed in
18 the Presentence Report.

19 The Court concludes that the total offense level as
20 calculated under the guidelines would be 110 to 137 months,
21 but because of the statutory maximum imprisonment that can be
22 imposed for the offense of conviction, it becomes 120 months;
23 that the supervised release range is 1 to 3 years; that the
24 Criminal History Category is VI; and the fine range is \$20,000
25 to \$200,000; and that a special assessment of \$100 is

1 mandatory.

2 *(Bench Conference with Courtroom Deputy)*

3 *THE COURT:* The offense level is 6. If I said
4 something different than that, I'm changing it.

5 *(Bench Conference with Courtroom Deputy)*

6 *THE COURT:* I mean the Criminal History Category is
7 VI. The offense level is 25. I may have misspoken a minute
8 ago.

9 The total offense level is 25; the Criminal History
10 Category is VI; the imprisonment range is -- well, it's 110 to
11 120 months, that becomes the maximum; supervised release range
12 is 1 to 3 years; and the fine range is \$20,000 to \$200,000;
13 and a special assessment of \$100 is mandatory.

14 So if I misspoke earlier, I apologize.

15 Go ahead and make whatever statement you want to
16 make on behalf of your client, Mr. Antonio, and you can
17 include anything in it you want to say about the possibility
18 of running them consecutively or concurrently.

19 *MR. ANTONIO:* Thank you, Your Honor.

20 Before you is Mr. Garian King. He is a 28-year-old
21 kid who, on that day, was scared. He went to his girlfriend's
22 house. Her ex-boyfriend was there. He went to talk to her,
23 brought her outside. They walked down the steps, across the
24 parking lot.

25 Now, as soon as Mr. Garian King got his girlfriend

1 and they started walking, the other individual started
2 following them. He followed them down the stairs, across the
3 parking lot to his car. At some point before they got to the
4 car, that individual was threatening Mr. King. He was making
5 comments to Mr. King. He was scaring Mr. King.

6 And so, Mr. King didn't point the gun at him and
7 threaten him. He turned to him and said, hey, back off, leave
8 me alone, because he was scared for his life. He didn't know
9 what this individual was going to do.

10 Now, Mr. King understands that he wasn't supposed to
11 have a firearm. That's not the issue. That's why he pled
12 guilty. But as far as running the sentence consecutive to the
13 state court charge, which I may add arises out of the same
14 facts, it's the same case, and if he's punished twice, it's as
15 if he -- actually, if it runs concurrent -- or consecutive,
16 it's as if he's being punished twice, and I don't think that's
17 fair to him given the situation and it's not right.

18 So, we ask for a downward variance of 84 months, not
19 only because of the situation, but because Mr. King has a
20 daughter, has a 7-year-old daughter who is in his life that he
21 helps take care of, that he is going to miss some crucial time
22 in her life.

23 84 months is, I believe, a 7-year sentence. That's
24 still going to be significant time that he's going to serve,
25 and enough time to serve the Court's purposes under 3553

1 statute, the factors the Court is supposed to consider, but
2 it's also a significant time where he's going to be able to
3 get back in his daughter's life. That means he's back in her
4 life at age 14, those formative teenage years.

5 So given all the facts and circumstances, Your
6 Honor, we're asking for that downward variance and to run the
7 case concurrent to the state court case.

8 *THE COURT:* Mr. King, you have the right to make any
9 statement or presentation you would like to make on the
10 subject of mitigation, that is, the things you think the Court
11 should take into account in determining what sentence to
12 impose, or on the subject of sentencing more generally, and
13 I'll invite you at this time to do that.

14 *THE DEFENDANT:* I just ask that you be merciful with
15 my time of my punishment so I can get back home.

16 *THE COURT:* Anything else?

17 *THE DEFENDANT:* No, sir.

18 *THE COURT:* Okay. Well, when I consider all of the
19 factors the Court should consider in determining what sentence
20 to impose as outlined in 18 United States Code Section
21 3553(a), I am persuaded that a sentence of 120 months
22 imprisonment in this case, to run consecutively to whatever
23 sentence is imposed in the state court, combined with an
24 obligation to serve a term of supervised release of 3 years
25 that's to start once he's completed his sentence of

1 imprisonment, combined with an obligation to pay a special
2 assessment of \$100, and that would be payable at the time of
3 sentencing, is a sentence that is required in order to
4 adequately and appropriately address all of those factors.

5 So the Court's ordering and adjudging that the
6 defendant be committed to the custody of the Bureau of Prisons
7 to serve a term of imprisonment of 120 months.

8 As I've indicated, that will be consecutive to any
9 future sentence received by the defendant in Case Number
10 1540140 in Criminal District Court Number 3 of Tarrant County,
11 Texas.

12 I'm also ordering that the defendant serve a term of
13 supervised release of 3 years that will start once the
14 defendant has completed his sentence of imprisonment.

15 And while he's on supervised release, he'll comply
16 with the standard conditions ordered by the Court that will be
17 set forth in the judgment of conviction and sentence, and the
18 following additional conditions:

19 He shall not commit another federal, state, or local
20 crime.

21 He shall not unlawfully possess a controlled
22 substance.

23 He shall cooperate in the collection of DNA as
24 directed by the probation officer as authorized by the Justice
25 for All Act of 2004.

Debbie Saenz, CSR, RMR, CRR, TCRR
United States District Court
(817) 850-6661

19-10001.123

1 He shall refrain from any unlawful use of a
2 controlled substance and shall submit to one drug test within
3 15 days of release from imprisonment and at least two periodic
4 drug tests thereafter as directed by the probation officer.

5 He shall participate in a program approved by the
6 probation officer for treatment of narcotic or drug or alcohol
7 dependency that will include testing for the detection of
8 substance use, and he shall abstain from the use of alcohol
9 and all other intoxicants during and after completion of that
10 treatment, and he'll contribute to the cost of those services
11 at the rate of at least \$25 a month.

12 He shall participate in mental health treatment
13 services as directed by the probation officer until
14 successfully discharged, and those services may include
15 prescribed medications by a licensed physician, and the
16 defendant shall contribute to the cost of those services at
17 the rate of at least \$25 a month.

18 I'm also ordering that the defendant pay a special
19 assessment of \$100. That's payable immediately to the United
20 States of America through the office of the clerk of court
21 here in Fort Worth.

22 Mr. King, you have the right to appeal from the
23 sentence I've imposed, if you're dissatisfied with it. That
24 appeal would be to the United States Court of Appeals for the
25 Fifth Circuit.

1 You have the right to appeal in forma pauperis, that
2 means without any cost to you, if you were to qualify for it,
3 and presumably you would. You have the right to have the
4 clerk of court file a notice of appeal for you, and the clerk
5 would do that forthwith, if you were to specifically request
6 it.

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

13 Has that been done, Mr. Antonio?

14 MR. ANTONIO: Yes, Your Honor.

15 *(Bench Conference with Courtroom Deputy)*

16 THE COURT: Okay. And I'm reminded that there is a
17 forfeiture count and that has to be dealt with as well.

18 So I'm adding: Pursuant to 18 United States Code
19 Section 924(d) and 28 United States Code Section 2461(c), the
20 Court orders that defendant's interest in the shotgun -- it's
21 a Remington, Model 870 Express, 12-gauge shotgun, including
22 any ammunition, magazines, and/or accessories recovered with
23 that shotgun are forfeited to the United States of America.

24 And that is part of the sentence, so if that changes
25 the defendant's thought on any subject, I'll hear from the

1 defendant or his attorney at this time.

2 MR. ANTONIO: Nothing further, Your Honor, on that
3 regard.

4 But in regards to the sentence, I would like to
5 object to the procedural and substantive reasonableness of the
6 sentence, including but not limited to the consecutive
7 sentence that the Court has imposed.

8 THE COURT: The defendant's remanded to custody, and
9 you're excused, Mr. Antonio, unless you have -- is
10 Mr. Brown -- he's here for the next case.

11 (End of Proceedings)

12 **REPORTER'S CERTIFICATE**

13 I, Debra G. Saenz, CSR, RMR, CRR, certify that the
14 foregoing is a true and correct transcript from the record
15 of proceedings in the foregoing entitled matter.

16 I further certify that the transcript fees format
17 comply with those prescribed by the Court and the Judicial
18 Conference of the United States.

19 Signed this 4th day of March, 2019.

20 /s/ Debra G. Saenz
21 DEBRA G. SAENZ, CSR, RMR, CRR
22 Texas CSR No. 3158
23 Official Court Reporter
24 The Northern District of Texas
25 Fort Worth Division

CSR Expires: 12/31/19

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