

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JESSIE HARRIS

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX

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Appendix A	Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit
Appendix B	Judgment and Sentence of the United States District Court for the Northern District of Texas

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

No. 20-10183
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 9, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESSE HARRIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-304-7

Before HAYNES, WILLETT, and HO, *Circuit Judges*.

J U D G M E N T

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

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Clerk

No. 20-10183
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESSE HARRIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-304-7

Before HAYNES, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:*

Jesse Harris pleaded guilty to conspiracy to possess with the intent to distribute methamphetamine. Some members of the conspiracy brought methamphetamine from Mexico and distributed it to Harris and others for resale and use. In one transaction, Harris traded multiple firearms for an

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-10183

unknown quantity of methamphetamine. Based on this transaction, the district court applied a two-level increase to Harris's offense level for possession of a firearm in connection with a drug offense. *See* U.S.S.G. § 2D1.1(b)(1). The court also added two levels because the methamphetamine was imported from Mexico. *See* § 2D1.1(b)(5).

Harris contends that the first two-level increase was erroneous because he did not possess a firearm in connection with his drug offense. The district court's decision to apply this increase is a factual determination that is reversible only if it is clearly erroneous. *United States v. Marquez*, 685 F.3d 501, 508 (5th Cir. 2012). "The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." § 2D1.1(b)(1), cmt. 11(A) (2018). "It is not necessary for possession of the weapon to play an integral role in the offense or to be sufficiently connected with the crime to warrant prosecution as an independent firearm offense." *United States v. Villarreal*, 920 F.2d 1218, 1221 (5th Cir. 1991). But here the firearms were an integral part of the transaction itself. As Harris concedes, the firearms were "used as collateral in a barter transaction for narcotics." The two-level increase was not clearly erroneous. *See United States v. Glenn*, 15 F.3d 179, 1994 WL 24871, 6 (5th Cir. 1994) (applying the increase where the defendant "acquired the handgun in exchange for crack"); *see also* 5TH CIR. R. 47.5.3 (stating that unpublished decisions issued before January 1, 1996, are binding precedent).

Next, Harris contends that the two-level increase for imported methamphetamine was erroneous because there was no proof that he knew the drugs came from Mexico. As he concedes this argument is foreclosed by circuit precedent, and he raises the issue only to preserve it for further review. *See United States v. Serfass*, 684 F.3d 548, 552–53 (5th Cir. 2012).

The judgment is AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v. Case Number: 4:19-CR-00304-O(07)
U.S. Marshal's No.: 59272-177
JESSE HARRIS Shawn Smith, Assistant U.S. Attorney
Aaron Clay Graham, Attorney for the Defendant

On October 21, 2019 the defendant, JESSE HARRIS, entered a plea of guilty as to Count One of the Information filed on October 17, 2019. Accordingly, the defendant is adjudged guilty of such Count, which involves the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute a Controlled Substance	7/31/2019	One

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission pursuant to Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 as to Count One of the Information filed on October 17, 2019.

The defendant shall notify the United States Attorney for this district within thirty 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.

Sentence imposed February 3, 2020.



REED O'CONNOR
U.S. DISTRICT JUDGE

Signed February 3, 2020.

Judgment in a Criminal Case
Defendant: JESSE HARRIS
Case Number: 4:19-CR-00304-O(7)

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IMPRISONMENT

The defendant, JESSE HARRIS, is hereby committed to the custody of the Federal Bureau of Prisons (BOP) to be imprisoned for a term of **ONE HUNDRED THIRTY-FIVE (135) months** as to Count One of the Information filed on October 17, 2019.

The Court recommends to the BOP that the defendant be allowed to participate in the Residential Drug Treatment Program, if eligible. The Court makes a non-binding recommendation to the Bop that Defendant, if appropriately classified, be allowed to serve his term of imprisonment as near as geographically possible to an FCI facility locally within the Northern District of Texas.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THREE (3) years** as to Count One of the Information filed on October 17, 2019.

While on supervised release, in compliance with the standard conditions of supervision adopted by the United States Sentencing Commission, the defendant shall:

- (1) not leave the judicial district without the permission of the Court or probation officer;
- (2) report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five (5) days of each month;
- (3) answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) support the defendant's dependents and meet other family responsibilities;
- (5) work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) notify the probation officer within seventy-two (72) hours of any change in residence or employment;
- (7) refrain from excessive use of alcohol and 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;
- (8) not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) not associate with any persons engaged in criminal activity and not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) permit a probation officer to visit the defendant at any time at home or elsewhere and permit confiscation of any contraband observed in plain view by the probation officer;
- (11) notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
- (12) 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; and,

Judgment in a Criminal Case
Defendant: JESSE HARRIS
Case Number: 4:19-CR-00304-O(7)

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- (13) notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement, as directed by the probation officer.

In addition the defendant shall:

not commit another federal, state, or local crime;

not possess illegal controlled substances;

not possess a firearm, destructive device, or other dangerous weapon;

cooperate in the collection of DNA as directed by the U.S. probation officer;

report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release;

refrain from any unlawful use of a controlled substance. The defendant 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;

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 (copayment) at a rate of at least \$25 per month;

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 (copayment) at the rate of at least \$25 per month; and,

provide to the probation officer complete access to all business and personal financial information.

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

Judgment in a Criminal Case
Defendant: JESSE HARRIS
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RETURN

I have executed this judgment as follows:

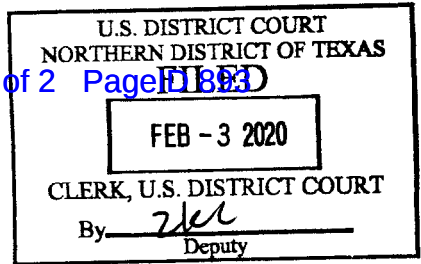
Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

United States Marshal

BY
Deputy Marshal

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION



UNITED STATES OF AMERICA	
VS	
JESSE HARRIS	4:19CR00304-O(007)

ORDER SETTING ADDITIONAL TERMS OF SUPERVISED RELEASE

It is hereby ORDERED that the above-named defendant, while on supervised release, comply with the standard conditions recommended by the U.S. Sentencing Commission and comply with the following additional conditions:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not illegally possess controlled substances.
3. The defendant shall cooperate in the collection of DNA as directed by the probation officer.
4. The defendant shall not possess a firearm, ammunition, destructive device, or any dangerous weapon.
5. The defendant shall report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons within 72 hours of release.
6. The defendant must refrain from any unlawful use of a controlled substance. The defendant 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.
7. 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 (copayment) at a rate of at least \$25 per month. (Macro 24AFW)
8. 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 (copayment) at the rate of at least \$25 per month. (Macro 23AFW)

9. The defendant shall provide to the probation officer complete access to all business and personal financial information. (Macro 18A)

Jesse Harris, Defendant

Signed 