

APPENDIX

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United States Court of Appeals
For the Eighth Circuit

No. 19-3159

United States of America

Plaintiff - Appellee

v.

Demetrius Elishakim Jefferson

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: June 19, 2020

Filed: September 17, 2020

Before LOKEN and GRASZ, Circuit Judges, and CLARK,* District Judge.

LOKEN, Circuit Judge.

A jury convicted Demetrius Jefferson of conspiracy to distribute marijuana (“Count 1”); possession with intent to distribute marijuana (“Count 2”); possessing a firearm in furtherance of a drug trafficking crime (“Count 5”); and being a felon in

*The Honorable Stephen R. Clark, United States District Judge for the Eastern District of Missouri, sitting by designation.

possession of a firearm (“Count 6”). See 18 U.S.C. §§ 922(g)(1), 924(c)(1)(A); 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), 846. On appeal, Jefferson argues there was insufficient evidence to convict him of Counts 2, 5, and 6; the district court¹ erred in denying his motion for a new trial of all four counts; and the court committed three errors in determining his advisory guidelines sentencing range. We affirm.

I. Sufficiency of the Evidence.

We briefly review the trial evidence in the light most favorable to the jury verdict, accepting all inferences in favor of the government. United States v. Hernandez, 569 F.3d 893, 896 (8th Cir. 2009) (standard of review), cert. denied, 559 U.S. 915 (2010). Des Moines police executed a warrant to search a residence where they had probable cause to suspect marijuana distribution, and where a gold GMC Yukon registered to Jefferson had been seen. Jefferson, his girlfriend, Wendy Stark, and their infant child were in the home. In the bedroom, officers found a loaded .22-caliber handgun on a night stand; eighty grams of loose and bagged marijuana in two mason jars and in a blue tote; plastic sandwich bags; and digital scales. Each baggie contained 3.5 grams of marijuana, a quantity commonly used for individual sales. Officers also found articles of male clothing, letters addressed to Jefferson, and a pay stub for Jefferson. In another room called the “smoke room,” they found 270 grams of marijuana, plastic sandwich bags, .22-caliber ammunition, .40-caliber ammunition, a digital scale, and an empty box for the .22-caliber handgun. The government introduced photographs of the rooms and their contents as the officers found them.

Called as a witness by the government, Wendy Stark testified that Jefferson obtained four to six pounds of marijuana from a cousin each month. Jefferson taught her to package the marijuana in plastic sandwich bags for resale, providing the weight

¹The Honorable Robert W. Pratt, United States District Judge for the Southern District of Iowa.

for each package and setting the price. Stark delivered marijuana to Jefferson's customers in a designated parking lot and at the home, occasionally selling to her co-workers. Jefferson used a bank account in Stark's name to deposit proceeds and to withdraw funds for monthly purchases. The government introduced text messages that corroborated this testimony, directing Stark to prepare or deliver packages, check on the drug supply, charge a certain price, or withdraw money.

Stark testified that Jefferson kept most of the drug supply in the smoke room. He instructed Stark to install a lock on the door to which only she and Jefferson had a key. She purchased the .22-caliber handgun at Jefferson's behest for protection at home. For personal protection, Jefferson carried a .40-caliber firearm while conducting drug transactions. On the morning after Jefferson was robbed of the .40-caliber firearm, he texted, "I got robbed!! I need you to get 45 shells and 9 and .380." Stark complied that morning. Jefferson subsequently took the .22-caliber handgun found on the night stand with him when distributing. Stark testified that Jefferson carried the .22-caliber firearm while conducting drug transactions the night before the warrant search; he laid it on the night stand and fell asleep when he returned home. Stark regularly acquired ammunition for Jefferson including the .22- and .40-caliber bullets found in the smoke room. Although she never saw a .45-caliber, a 9-millimeter, or a .380-caliber firearm at the home, Jefferson displayed various guns in their bedroom. Text messages confirmed that Stark purchased bullets for Jefferson for guns not found in their home.

Jefferson argues the evidence was insufficient to convict him of Count 2 -- marijuana distribution. The government's case was based on Stark's testimony, he argues, and it "should be given no weight" because she was a drug user with prior drug convictions who admitted to testifying to receive a lenient sentence in future proceedings and to improve her chance of gaining custody of her children. We reject this argument for multiple reasons. First, the drugs, drug paraphernalia, gun, and ammunition found in a home where Jefferson slept, kept clothes, received mail, and

registered his car corroborated Stark's testimony and provided independent evidence Jefferson possessed and distributed marijuana. See United States v. Thompson, 881 F.3d 629, 632-33 (8th Cir. 2018). Second, even without this corroborating evidence, "[w]e have repeatedly upheld jury verdicts based solely on the testimony of co-conspirators and cooperating witnesses." United States v. Anwar, 880 F.3d 958, 967 (8th Cir. 2018) (quotation omitted). Third, it is axiomatic that "witness credibility is virtually unreviewable on appeal because it is preeminently the job of the finder of fact." United States v. Van, 543 F.3d 963, 965 (8th Cir. 2008) (quotation omitted). The jury rejected Jefferson's argument it should find Stark not credible for the reasons he now urges us to adopt on appeal. We will not second-guess the jury's credibility finding.

Jefferson argues the evidence was insufficient to convict him of Counts 5 and 6, the firearm counts, because Stark's testimony that he possessed the .22-caliber handgun found on the night stand was not credible, there is no fingerprint or other tangible evidence that he possessed the firearm or ammunition, and Stark's testimony is not sufficient to support the jury's finding that he possessed the .22-caliber ammunition. We disagree. Stark -- whose credibility we must accept -- testified that Jefferson started carrying the .22-caliber handgun during drug transactions after his .40-caliber firearm was stolen, carried that firearm the night before the warrant search, and placed it on the night stand where it was found. Ammunition for the two firearms was found in the smoke room. A reasonable jury could find that Jefferson possessed the .22-caliber firearm and the ammunition in furtherance of a drug trafficking crime. See United States v. Waln, 916 F.3d 1113, 1116 (8th Cir. 2019). Whether Stark initially purchased these items is irrelevant. Stark's testimony established, at a minimum, that Jefferson had actual and constructive joint possession of the .22-caliber firearm and the ammunition. See United States v. Williams, 512 F.3d 1040, 1044 (8th Cir.), cert. denied, 553 U.S. 1099 (2008). "[F]orensic evidence is not necessary for a firearms conviction." United States v. Porter, 687 F.3d 918, 921 (8th Cir. 2012) (quotation omitted).

II. The Motion for New Trial.

The second issue presented in Jefferson's brief on appeal is that the district court "erred in denying Mr. Jefferson's motion for new trial." In the argument section of the brief, however, he advanced numerous claims of alleged evidentiary and procedural trial errors as reasons we should order a new trial. Many of these issues are raised for the first time on appeal; none were included in the statement of issues presented for review, as Rule 28(a)(5) of the Federal Rules of Appellate Procedure requires. "We decline to consider an issue that has not been properly presented to either court." United States v. Mejia-Perez, 635 F.3d 351, 354 (8th Cir. 2011). Accordingly, we will consider only the three reasons for new trial that Jefferson presented both in his motion for new trial to the district court and his opening brief to this court. The others were waived. We review the denial of a motion for a new trial "for a clear abuse of discretion, a rigorous standard." Anwar, 880 F.3d at 969 (quotation omitted).

First, Jefferson contends a new trial is required because the government in closing argument used a trial exhibit in violation of Rule 404(b) of the Federal Rules of Evidence. In his motion for new trial, Jefferson argued that the government improperly used Jefferson's text message to Stark that referred to "getting smacked with a gun" as evidence he possessed the gun and ammunition at issue. On appeal, he makes an entirely different Rule 404(b) argument -- the government improperly used this text message to convict him based on his propensity to possess firearms when it argued, "The defendant and his crimes were real. His drug dealing was real. His gun carrying was real. He was not playing a game, and you should convict him." Assuming this contention was preserved for appeal, it is without merit. The government stayed within the permissible parameters of Rule 404(b) by using the text message to demonstrate Jefferson considered the drug trade dangerous and therefore had a motive to possess the firearm and ammunition. See Fed. R. Evid. 404(b)(2); United States v. Green-Bowman, 816 F.3d 958, 965 (8th Cir. 2016). Moreover, Jury

Instruction 18 “sufficiently cured any potential prejudice” by instructing jurors not to convict Jefferson “simply because you believe he may have committed similar acts in the past.” United States v. Morris, 817 F.3d 1116, 1122 (8th Cir. 2016).

Second, Jefferson argues a new trial is warranted because forensic evidence testimony by the government’s expert witnesses -- Ryan Petruccelli and Benjamin Campbell -- was irrelevant, prejudicial, and not helpful to the jury. See Fed. R. Evid. 402, 403, and 702. Petruccelli testified he did not find Jefferson’s DNA on the .22-caliber firearm. Campbell testified he did not find fingerprints on it. Both explained that, in their experience, it is rare to find forensic evidence on firearms or ammunition, testimony consistent with that of experts in other firearm possession cases. See Porter, 687 F.3d at 921. Jefferson does not discredit their qualifications nor identify unfair prejudice. Jefferson’s emphasis during trial on the lack of forensic evidence made the testimony relevant and helpful to the jury. The district court did not abuse its discretion in admitting it.

Third, Jefferson argues it was unduly prejudicial to admit into evidence over his objection a photograph of him sitting handcuffed on a sofa during the warrant search. See Fed. R. Evid. 402, 403. The photograph was relevant to proving that Jefferson was at the home when officers executed the search warrant, a fact to which Jefferson refused to stipulate. In identifying the photograph, a Des Moines police officer testified it is “standard practice to secure individuals during a search warrant.” The district court immediately gave the jury a cautionary instruction to minimize prejudice: “The mere fact that for officer safety the defendant was handcuffed isn’t evidence of anything, other than it’s a plan for officer safety.” Admission of the photograph was not an abuse of discretion and does not warrant a new trial.

III. Sentencing Issues.

At sentencing, the district court determined that Jefferson had three predicate offenses that make him a “career offender.” See USSG § 4B1.1(a). In reaching Jefferson’s total offense level of 24, the district court imposed a two-level increase for maintaining a premises for the purpose of manufacturing or distributing a controlled substance, and a two-level increase for being an organizer or leader of a criminal activity. See USSG §§ 2D1.1(b)(12), 3B1.1(c). These enhancements resulted in an advisory guidelines sentencing range of 360 months to life imprisonment. Varying downward, the district court sentenced Jefferson to 210 months. On appeal, Jefferson challenges these enhancements. We review the career offender designation *de novo*. See United States v. Maldonado, 864 F.3d 893, 897 (8th Cir. 2017), cert. denied, 138 S. Ct. 702 (2018). We review the court’s findings supporting the premises and leader enhancements for clear error. See United States v. Miller, 698 F.3d 699, 705 (8th Cir. 2012) (premises), cert. denied, 568 U.S. 1182 (2013); United States v. Behera, 223 F.3d 797, 804 (8th Cir. 2000) (leader), cert. denied, 531 U.S. 1181 (2001).

A. Career Offender: Jefferson is a career offender if he “has at least two prior felony convictions of either a crime of violence or a controlled substance offense.” USSG § 4B1.1(a). The district court determined that his 2001 Wisconsin conviction for robbery with use of force was a predicate crime of violence conviction, and his 2001 Wisconsin conviction for possessing with intent to distribute cocaine and 2008 federal conviction for attempting to possess with the intent to distribute marijuana were predicate controlled substance convictions. Jefferson challenges all three determinations. Since two predicate felony convictions are sufficient for career offender status, we will consider only the two controlled substance offenses.

To determine whether a prior state conviction is a controlled substance offense, we apply the categorical approach, asking whether the least culpable conduct

sufficient for conviction under the state law is “encompassed by the generic federal offense.” Maldonado, 864 F.3d at 897 (quotation omitted). Jefferson was convicted of violating Wis. Stat. § 961.41(1m)(cm)(1) (2000). Section 961.41(1m) makes it “unlawful for any person to possess, with intent to manufacture, distribute, or deliver, a controlled substance or a controlled substance analog.” Jefferson argues this statute is categorically overbroad because it includes “deliver” in its offense conduct, whereas USSG § 4B1.2(b) defines “controlled substance offense” as an offense “that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.” The Wisconsin statute defines “deliver” as “the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.” Wis. Stat. § 961.01(6).

In United States v. Harper, the Seventh Circuit concluded that the Wisconsin definition of “deliver” is consistent with the generic federal definition because “[t]ransfer is just another word for distribute or dispense.” 756 F. App’x 656, 658 (7th Cir. 2019) (quotation omitted). This commonsense reading is consistent with our precedents. In Maldonado, we rejected the contention that Iowa and Nebraska drug distribution offenses were categorically overbroad because they included “deliver” in their offense conduct. See 864 F.3d at 899-90. The Iowa and Nebraska statutes at issue had the same definition of “deliver” as the Wisconsin Statute. Compare Iowa Code § 124.101(7) and Neb. Rev. Stat. § 28-401(12), with Wis. Stat. § 961.01(6). In United States v. Thomas, we reached the same conclusion regarding a Missouri controlled substance offense, concluding that, “[u]nder Missouri law, ‘deliver’ and ‘distribute’ are synonymous.” 886 F.3d 1274, 1275 (8th Cir. 2018). As we concluded in Maldonado, 864 F.3d at 899, Jefferson relies on a distinguishable Fifth Circuit case because the Texas statute there at issue, unlike the Wisconsin statute,

could be violated “by proving only an offer to sell.” United States v. Hinkle, 832 F.3d 569, 571, 576-77 (5th Cir. 2016).

Jefferson’s prior federal controlled substance conviction was for attempting to possess with the intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A). The offenses described in 21 U.S.C. § 841 are specifically designated “career offender predicate offense[s]” in 28 U.S.C. § 994(h). United States v. Baker, 16 F.3d 854, 857 (8th Cir. 1994). Jefferson argues that inchoate § 841 offenses, like his conviction for “attempting” to possess with intent to distribute, are not controlled substance offenses. However, the Sentencing Commission’s commentary to § 4B1.2 expressly provides that “controlled substance offense” includes “the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.” USSG § 4B1.2 cmt. n.1. In United States v. Mendoza-Figueroa, we held that Application Note 1 “is within the Commission’s full statutory authority” and therefore “we must enforce Note 1 in accordance with its terms.” 65 F.3d 691, 693 (8th Cir. 1995) (en banc), cert. denied, 516 U.S. 1125 (1996). Jefferson urges us to instead follow contrary decisions in United States v. Winstead, 890 F.3d 1082, 1091-92 (D.C. Cir. 2018), and United States v. Havis, 927 F.3d 382, 386 (6th Cir. 2019) (en banc). But our panel is bound by the en banc decision in Mendoza-Figueroa.

B. The Premises Enhancement: The Guidelines increase a defendant’s offense level by two if the defendant “maintained a premises for the purpose of manufacturing or distributing a controlled substance.” USSG § 2D1.1(b)(12). The evidence at trial established that Jefferson managed his drug trade from the residence he shared with Wendy Stark. During the warrant search, police found bulk quantities of marijuana, individually packaged user quantities of marijuana, scales, packaging consistent with drug trafficking, a loaded firearm, and ammunition. Stark testified that Jefferson directed customers to pick up drugs from the home. Jefferson argues the absence of his name on the lease and the fact he was not controlling access to the home at the time of his arrest demand a contrary finding. We disagree. He was found

sleeping at the home on the morning of the warrant search. His clothes and mail were found in the bedroom. Stark testified he came and went as he pleased. His car was parked in the front and was registered to the residence. This substantial evidence that Jefferson maintained the premises for the purpose of distributing controlled substances clearly outweighs the fact that his name was not on the lease. See Miller, 698 F.3d at 706-07. There was no clear error imposing this enhancement.

C. The Leader Enhancement: A two-level increase applies if the defendant “was an organizer, leader, manager, or supervisor” of one or more other participants in a criminal activity, unless a greater increase applies. USSG § 3B1.1(c) & cmt. n.2. The terms “organizer” and “leader” are broadly interpreted. Behera, 223 F.3d at 804. “The key factors in determining management or supervisory authority are control over other participants and organization of the criminal activity.” United States v. Pena, 67 F.3d 153, 156-57 (8th Cir. 1995). Jefferson argues the district court clearly erred because Stark’s history of using controlled substances and controlled substance convictions was evidence that she was the mastermind of the drug operation. However, Stark described criminal activity in which Jefferson controlled her participation -- instructing her how to package drugs in individual sale quantities, directing her to conduct deliveries, ordering her to install a lock on the smoke room door, having her purchase a firearm and ammunition to protect the drug enterprise, and managing funds derived from and used in the enterprise. This is the conduct of a manager or leader. See, e.g., United States v. Espinoza, 885 F.3d 516, 525-26 (8th Cir.), cert. denied, 138 S. Ct. 2694 (2018), applying the four-level organizer or leader enhancement in § 3B1.1(a).

For these reasons, the judgment of the district court is affirmed.

SOUTHERN DISTRICT OF IOWA

V.

USM Number: 09921-089

Defendant's Attorney

which was accepted by the court.

☒ was found guilty on count(s)
after a plea of not guilty.

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1)	Conspiracy to Distribute a Mixture and Substance	11/26/2018	One
841(b)(1)(D), 846, 851	Containing Marijuana		
21 U.S.C. §§ 841(a)(1),	Possession with Intent to Distribute a Mixture and Substance	11/26/2018	Two
841(b)(1)(D), 851	Containing Marijuana		

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

Robert W. Pratt

Date _____

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ADDITIONAL COUNTS OF CONVICTION

Title & Section

Nature of Offense

Offense Ended

Count

18 U.S.C. § 924(c)(1)(A)

Possession of a Firearm in Furtherance of a Drug

11/26/2018

Five

Trafficking Crime

18 U.S.C. §§ 922(g)(1),
924(a)(2)

Felon in Possession of a Firearm

11/26/2018Six

DEFENDANT: Demetrius Elishakim Jefferson
CASE NUMBER: 4:19-cr-00048-001

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 imprisonment, consisting of 120 months as to Count One; 60 months as to Count Two to be served concurrently to Count One; 60 months as to Count Six, 30 months of which to run concurrently with and 30 months of which to run consecutively to Count One; and 60 months as to Count Five of the Second Superseding Indictment filed on May 21, 2019, to run consecutively to all other counts.

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

The defendant be placed at FMC Rochester in Minnesota, if commensurate with his security and classification needs. The defendant to provided a psychological evaluation and treatment, if necessary.

☒ 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 _____ 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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Demetrius Elishakim Jefferson
CASE NUMBER: 4:19-cr-00048-001

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SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

4 years as to each of Counts One, Two, and Five and 3 years as to Count Six of the Second Superseding indictment filed on May 21, 2019, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a 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 which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: Demetrius Elishakim Jefferson
CASE NUMBER: 4:19-cr-00048-001

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: Demetrius Elishakim Jefferson
CASE NUMBER: 4:19-cr-00048-001

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SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You shall not knowingly associate or communicate with any member of the Vice Lords criminal street gang, or any other criminal street gang.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Demetrius Elishakim Jefferson
 CASE NUMBER: 4:19-cr-00048-001

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CRIMINAL MONETARY PENALTIES

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

- ☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	<u>Assessment</u>	<u>JVTA Assessment *</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 400.00	\$ 0.00	\$ 0.00	\$0.00

- ☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS		\$0.00	\$0.00

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

17a

* 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: Demetrius Elishakim Jefferson
CASE NUMBER: 4:19-cr-00048-001

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 400.00 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 _____ (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:
- All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
- While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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

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:
- a loaded Phoenix Arms .22 caliber pistol (SN: 4511495); .22 caliber long rifle, Remington Golden Bullet ammunition; and .40 caliber Smith & Wesson cartridge, CCI Blazer Brass ammunition, as further described in the Preliminary Order of Forfeiture entered on August 5, 2019.

Payments shall be applied in the following order: (1) assessment, (2) ^{18a} restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, and (8) costs, including cost of prosecution and court costs.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 19-3159

United States of America

Appellee

v.

Demetrius Elishakim Jefferson

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Des Moines
(4:19-cr-00048-RP-1)

ORDER

Appellant's motion to withdraw and seal his petition for rehearing and rehearing *en banc* has been considered by the court, and the motion is denied. It is further ordered that appellant's pro se petition for rehearing and rehearing *en banc* is denied.

October 28, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

18 U.S.C. § 3553(a)

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

- (1)** the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2)** the need for the sentence imposed--
 - (A)** to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B)** to afford adequate deterrence to criminal conduct;
 - (C)** to protect the public from further crimes of the defendant; and
 - (D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3)** the kinds of sentences available;
- (4)** the kinds of sentence and the sentencing range established for--
 - (A)** the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines--
 - (i)** issued by the Sentencing Commission pursuant to [section 994\(a\)\(1\) of title 28, United States Code](#), subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and
 - (ii)** that, except as provided in [section 3742\(g\)](#), are in effect on the date the defendant is sentenced; or
 - (B)** in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to [section 994\(a\)\(3\) of title 28, United States Code](#), taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#));
- (5)** any pertinent policy statement--
 - (A)** issued by the Sentencing Commission pursuant to [section 994\(a\)\(2\) of title 28, United States Code](#), subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under [section 994\(p\) of title 28](#)); and
 - (B)** that, except as provided in [section 3742\(g\)](#), is in effect on the date the defendant is sentenced.¹

- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

21 U.S.C. § 802(16)

(16)

(A) Subject to subparagraph (B), the term “marihuana” means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term “marihuana” does not include--

(i) hemp, as defined in [section 1639o of Title 7](#); or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

18 U.S.C. § 994

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System--

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including--

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under [paragraphs \(6\) and \(11\) of section 3563\(b\) of title 18](#);

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in [section 3553\(a\)\(2\) of title 18, United States Code](#), including the appropriate use of--

(A) the sanctions set forth in [sections 3554, 3555, and 3556 of title 18](#);

(B) the conditions of probation and supervised release set forth in [sections 3563\(b\) and 3583\(d\) of title 18](#);

(C) the sentence modification provisions set forth in [sections 3563\(c\), 3564, 3573, and 3582\(c\) of title 18](#);

(D) the fine imposition provisions set forth in [section 3572 of title 18](#);

(E) the authority granted under [rule 11\(e\)\(2\) of the Federal Rules of Criminal Procedure](#) to accept or reject a plea agreement entered into pursuant to [rule 11\(e\)\(1\)](#); and

(F) the temporary release provisions set forth in [section 3622 of title 18](#), and the prerelease custody provisions set forth in [section 3624\(c\) of title 18](#); and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in [section 3565 of title 18](#), and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in [section 3583\(e\) of title 18](#).

(b)

(1) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

(2) If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, have any relevance to the nature, extent, place of service, or other incidents¹ of an appropriate sentence, and shall take them into account only to the extent that they do have relevance--

(1) the grade of the offense;

(2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;

(4) the community view of the gravity of the offense;

(5) the public concern generated by the offense;

(6) the deterrent effect a particular sentence may have on the commission of the offense by others; and

(7) the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents¹ of an appropriate sentence, and shall take them into account only to the extent that they do have relevance--

(1) age;

(2) education;

(3) vocational skills;

- (4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;
- (5) physical condition, including drug dependence;
- (6) previous employment record;
- (7) family ties and responsibilities;
- (8) community ties;
- (9) role in the offense;
- (10) criminal history; and
- (11) degree of dependence upon criminal activity for a livelihood.

The Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

(e) The Commission shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant.

(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in [section 991\(b\)\(1\)](#), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in [section 3553\(a\)\(2\) of title 18, United States Code](#), shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and--

(1) has been convicted of a felony that is--

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act ([21 U.S.C. 841](#)), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act ([21 U.S.C. 952\(a\)](#), [955](#), and [959](#)), and chapter 705 of title 46; and

(2) has previously been convicted of two or more prior felonies, each of which is--

- (A) a crime of violence; or
- (B) an offense described in section 401 of the Controlled Substances Act ([21 U.S.C. 841](#)), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act ([21 U.S.C. 952\(a\)](#), [955](#), and [959](#)), and chapter 705 of title 46.

(i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant--

- (1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;
- (2) committed the offense as part of a pattern of criminal conduct from which the defendant derived a substantial portion of the defendant's income;
- (3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;
- (4) committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted; or
- (5) committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 ([21 U.S.C. 841](#) and [960](#)), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

(k) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

(l) The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect--

- (1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of--
 - (A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and
 - (B) multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in [section 3553\(a\)\(2\) of title 18, United States Code](#).

(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.

(o) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

(q) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. Such report shall be based upon consideration of a variety of alternatives, including--

- (1)** modernization of existing facilities;
- (2)** inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and
- (3)** use of existing Federal facilities, such as those currently within military jurisdiction.

(r) The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(s) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in--

- (1)** the community view of the gravity of the offense;
- (2)** the public concern generated by the offense; and
- (3)** the deterrent effect particular sentences may have on the commission of the offense by others.

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in [section 3582\(c\)\(1\)\(A\) of title 18](#), shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

(u) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.

(v) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(w)

- (1)** The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission, in a format approved and required by the Commission, a written report of the sentence, the offense for which it is

imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include--

- (A) the judgment and commitment order;
- (B) the written statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission);
- (C) any plea agreement;
- (D) the indictment or other charging document;
- (E) the presentence report; and
- (F) any other information as the Commission finds appropriate.

The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.

(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.

(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission itself may assemble or maintain in electronic form as a result of the information submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.

(x) The provisions of [section 553 of title 5](#), relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

(y) The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.

U.S.S.G. § 4B1.1

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

(b) Except as provided in subsection (c), if the offense level for a career offender from the table in this subsection is greater than the offense level otherwise applicable, the offense level from the table in this subsection shall apply. A career offender's criminal history category in every case under this subsection shall be Category VI.

Offense Statutory Maximum

**Offense
Level***

(1) Life	37
(2) 25 years or more	34
(3) 20 years or more, but less than 25 years	32
(4) 15 years or more, but less than 20 years	29
(5) 10 years or more, but less than 15 years	24
(6) 5 years or more, but less than 10 years	17
(7) More than 1 year, but less than 5 years	12.

(c) If the defendant is convicted of [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#), and the defendant is determined to be a career offender under subsection (a), the applicable guideline range shall be determined as follows:

(1) If the only count of conviction is [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#), the applicable guideline range shall be determined using the table in subsection (c)(3).

(2) In the case of multiple counts of conviction in which at least one of the counts is a conviction other than a conviction for [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#), the guideline range shall be the greater of--

(A) the guideline range that results by adding the mandatory minimum consecutive penalty required by the [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) count(s) to the minimum and the maximum of the otherwise applicable guideline range determined for the count(s) of conviction other than the [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) count(s); and

(B) the guideline range determined using the table in subsection (c)(3).

(3) Career Offender Table for [18 U.S.C. § 924\(c\)](#) or [§ 929\(a\)](#) Offenders

§ 3E1.1 Guideline Range for the 18 U.S.C. § 924(c) or § 929(a) Count(s)
Reduction

No reduction 360-life

2-level reduction	292-365
3-level reduction	262-327.

Fed. R. Crim. P. 16(a)

(a) Government's Disclosure.

(1) Information Subject to Disclosure.

(A) Defendant's Oral Statement. Upon a defendant's request, the government must disclose to the defendant the substance of any relevant oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew was a government agent if the government intends to use the statement at trial.

(B) Defendant's Written or Recorded Statement. Upon a defendant's request, the government must disclose to the defendant, and make available for inspection, copying, or photographing, all of the following:

(i) any relevant written or recorded statement by the defendant if:

- the statement is within the government's possession, custody, or control; and
- the attorney for the government knows--or through due diligence could know--that the statement exists;

(ii) the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew was a government agent; and

(iii) the defendant's recorded testimony before a grand jury relating to the charged offense.

(C) Organizational Defendant. Upon a defendant's request, if the defendant is an organization, the government must disclose to the defendant any statement described in Rule 16(a)(1)(A) and (B) if the government contends that the person making the statement:

(i) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or

(ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee, or agent.

(D) Defendant's Prior Record. Upon a defendant's request, the government must furnish the defendant with a copy of the defendant's prior criminal record that is within the government's possession, custody, or control if the attorney for the government knows--or through due diligence could know--that the record exists.

(E) Documents and Objects. Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible

objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

(F) Reports of Examinations and Tests. Upon a defendant's request, the government must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:

- (i) the item is within the government's possession, custody, or control;
- (ii) the attorney for the government knows--or through due diligence could know--that the item exists; and
- (iii) the item is material to preparing the defense or the government intends to use the item in its case-in-chief at trial.

(G) Expert Witnesses. At the defendant's request, the government must give to the defendant a written summary of any testimony that the government intends to use under [Rules 702, 703, or 705 of the Federal Rules of Evidence](#) during its case-in-chief at trial. If the government requests discovery under subdivision (b)(1)(C)(ii) and the defendant complies, the government must, at the defendant's request, give to the defendant a written summary of testimony that the government intends to use under [Rules 702, 703, or 705 of the Federal Rules of Evidence](#) as evidence at trial on the issue of the defendant's mental condition. The summary provided under this subparagraph must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

(2) Information Not Subject to Disclosure. Except as permitted by Rule 16(a)(1)(A)-(D), (F), and (G), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in [18 U.S.C. § 3500](#).

(3) Grand Jury Transcripts. This rule does not apply to the discovery or inspection of a grand jury's recorded proceedings, except as provided in [Rules 6, 12\(h\)](#), 16(a)(1), and [26.2](#)

Fed. R. Evid. 103

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

(1) if the ruling admits evidence, a party, on the record:

(A) timely objects or moves to strike; and

(B) states the specific ground, unless it was apparent from the context;

or

(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record--either before or at trial--a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.