

No.

In The Supreme Court Of The United States

Clifton Jackson,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

Petitioner's Appendix

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Appendix A

United States v. Jackson, No. 19-10277, 19-10278,
Dkt. 65 (9th Cir. July 20, 2021) (unpublished),
Order denying petition for rehearing

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 20 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CLIFTON JAMES JACKSON,
Defendant-Appellant.

No. 19-10277
D.C. No.
3:11-cr-00142-HDM-CBC-1
District of Nevada, Reno

ORDER

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CLIFTON JAMES JACKSON,
Defendant-Appellant.

No. 19-10278
D.C. No.
3:18-cr-00105-HDM-WGC-1
District of Nevada,
Reno

Before: LUCERO,* W. FLETCHER, and IKUTA, Circuit Judges.

Appellant filed a petition for panel and en banc rehearing on February 19, 2021 (Dkt. Entry No. 61). The panel has voted to deny the petition for panel

* The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

rehearing. Judges Fletcher and Ikuta have voted to deny the petition for rehearing en banc, and Judge Lucero has so recommended.

The full court has been advised of Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

Appellant's petition for panel and en banc rehearing is **DENIED**.

Appendix B

United States v. Jackson, 838 F. App'x 262,
(9th Cir. Dec. 22, 2020) (unpublished),
Memorandum affirming convictions and sentence

838 Fed.Appx. 262

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.

Clifton James JACKSON, Defendant-Appellant.
United States of America, Plaintiff-Appellee,
v.

Clifton James Jackson, Defendant-Appellant.

No. 19-10277, No. 19-10278

|
Argued and Submitted December
8, 2020 San Francisco, California

|
FILED December 22, 2020

Synopsis

Background: Defendant was convicted in the United States District Court for the District of Nevada, [Howard D. McKibben](#), Senior District Judge, of being a felon in possession of a firearm and sentenced to 18-months' imprisonment. Defendant appealed.

Holdings: The Court of Appeals held that:

[1] court did not commit plain error in convicting defendant of being felon in possession of a firearm despite indictment's omission of the element that defendant knew he was a felon who was barred from possessing a firearm;

[2] defendant was not deprived of his statutory or constitutional rights to a speedy trial;

[3] district court acted within its discretion when it allowed witnesses to testify about hearing shots fired;

[4] district court acted within its discretion by refraining from giving an  [Allen](#) charge or declaring a mistrial; and

[5] sufficient evidence supported jury's verdict that defendant knowingly possessed a firearm in order to support conviction.

Affirmed in part, vacated in part, and remanded.

Procedural Posture(s): Appellate Review.

West Headnotes (6)

[1] **Criminal Law**  Sufficiency of evidence

District court did not commit plain error in convicting defendant of being felon in possession of a firearm, despite indictment's omission of the element that defendant knew he was a felon who was barred from possessing a firearm, where defendant's uncontested presentence report showed that at the time he possessed the firearm he had already sustained four other felony convictions, one of which was a prior felon in possession charge.  [18 U.S.C.A. § 922\(g\)\(1\)](#).

8 Cases that cite this headnote

[2] **Criminal Law**  Duty of prosecution to proceed to trial

Criminal Law  Length of Delay

Defendant was not deprived of his statutory or constitutional rights to a speedy trial when his trial was delayed four-months; defendant failed to show that the continuance was due to government's lack of diligent preparation and record showed that government was working extensively to avoid a discovery delay but encountered unavoidable bureaucratic hurdles outside of its control, and defendant's trial delay of four-months was too short a delay. [U.S. Const. Amend. 6](#); [18 U.S.C.A. § 3161\(c\)\(1\)](#).

[3] **Criminal Law**  Evidence calculated to create prejudice against or sympathy for accused

Criminal Law  Cross-examination and impeachment

Weapons Possession after conviction of crime; prior convictions

District court acted within its discretion when it allowed witnesses to testify about hearing shots fired in prosecution for being a felon in possession of a firearm; evidence was relevant to prove defendant possessed a gun, evidence was not unfairly prejudicial as its probative value was not substantially outweighed by the danger of unfair prejudice, the evidence was not prohibited bad-act evidence, the evidence was related to the crime charged and part of the chain of events that led to defendant's arrest and conviction, and admission of the evidence did not violate defendant's Sixth Amendment confrontation rights as defendant demonstrated through cross-examination that the shots-fired evidence was inconsistent with other evidence and was able to impeach the relevant witnesses.

[U.S. Const. Amend. 6](#); [18 U.S.C.A. § 922\(g\)\(1\)](#).

[4] Criminal Law "Allen," "dynamite," or "hammer," etc., charge**Criminal Law** Failure of jury to reach verdict

District court acted within its discretion by refraining from giving an [Allen](#) charge or declaring a mistrial while the jury appeared deadlocked in prosecution for being a felon in possession of a firearm; there was no per se requirement that a judge give an [Allen](#) instruction to a deadlocked jury, and there was no showing that the instructions the judge gave to the deadlocked jury were unduly coercive.

[5] Weapons Possession

Sufficient evidence supported jury's verdict that defendant knowingly possessed a firearm, as would support defendant's conviction for being a felon in possession of a firearm; an eyewitness saw defendant carrying a gun, heard shots fired, and then called 911. [18 U.S.C.A. § 922\(g\)\(1\)](#).

[6] Sentencing and Punishment New offense

Sufficient evidence supported revocation of defendant's supervised release following conviction for being a felon in possession of a firearm; defendant committed a new and second federal offense when he knowingly possessed the firearm. [18 U.S.C.A. § 922\(g\)\(1\)](#).

Attorneys and Law Firms

*[263](#) William Ramsey Reed, Assistant U.S. Attorney, [Elizabeth Olson White](#), Esquire, Assistant U.S. Attorney, USRE - Office of the US Attorney, Reno, NV, for Plaintiff-Appellee

Wendi L. Overmyer, Assistant Federal Public Defender, Lauren Torre, Assistant Federal Public Defender, Federal Public Defender's Office, Las Vegas, NV, for Defendant-Appellant

Appeal from the United States District Court for the District of Nevada, [Howard D. McKibben](#), District Judge, Presiding, D.C. No. 3:11-cr-00142-HDM-CBC-1, D.C. No. 3:18-cr-00105-HDM-WGC-1

Before: LUCERO,* [W. FLETCHER](#), and [IKUTA](#), Circuit Judges.

MEMORANDUM **

Defendant Clifton Jackson appeals his conviction and sentence for unlawful possession *[264](#) of a firearm, [18 U.S.C. § 922\(g\)\(1\)](#). We have jurisdiction under [28 U.S.C. § 1291](#) and affirm.

1. [Rehaif v. United States](#), — U.S. —, 139 S. Ct. 2191, 204 L.Ed.2d 594 (2019), did not require the district court to vacate Defendant's unlawful firearm possession conviction. First, the indictment's omission of the element that defendant "knew he belonged to the relevant category of persons barred from possessing a firearm" in violation of [18 U.S.C. § 922\(g\)\(1\)](#), did not deprive the district court of jurisdiction. See [United States v. Cotton](#), 535 U.S. 625, 630, 122 S.Ct. 1781,

152 L.Ed.2d 860 (2002) (“[D]efects in an indictment do not deprive a court of its power to adjudicate a case.”).

[1] Second, Defendant's  *Rehaif* challenge to the indictment and jury instructions fails plain error review.¹ As this court noted in *United States v. King*, “ *Johnson* resolves this case.” 979 F.3d 1218, 1220 (9th Cir. 2020). Pursuant to  *United States v. Johnson*, 979 F.3d 632 (9th Cir. 2020), the panel may review the entire record on appeal. The inquiry is “if the defendants' convictions were reversed and the prosecution or trial had to start over, [would] the outcome potentially be any different [?]”  *Johnson*, 979 F.3d at 638. Defendant cannot show that a non-defective indictment/instruction would have produced a different result. The record on appeal contains evidence that the government could have introduced to prove that Defendant knew of his status as a convicted felon. As in  *Johnson* and *King*, Defendant's uncontested presentence report shows that at the time he possessed the firearm, he had already sustained four other felony convictions, one of which was a prior felon in possession charge. Defendant thus cannot plausibly argue that a jury would find he was unaware of his status.

[2] 2. Defendant was not deprived of his statutory or constitutional rights to a speedy trial. The Speedy Trial Act requires that a criminal trial commence within seventy days of a defendant's initial appearance or indictment. 18 U.S.C. § 3161(c)(1). Certain types of delays are excludable from the calculation. *Id.* § 3161(h). A judge may issue a speedy trial continuance, but no such continuance may be granted for “lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.” *Id.* § 3161(h)(7)(C). Defendant failed to show that the continuance was due to the government's lack of diligent preparation. To the contrary, the record shows that the government was “working extensively” to avoid a discovery delay, but *265 encountered unavoidable bureaucratic hurdles outside of its control.

Defendant also has a “fundamental” right to a speedy trial under the Sixth Amendment.  *Klopfer v. State of N.C.*, 386 U.S. 213, 223, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967). The Supreme Court has established a four-part test to evaluate claims under the Sixth Amendment.  *Barker v. Wingo*, 407 U.S. 514, 533, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). Here, the first  *Barker* factor, the length of the delay, is

dispositive. Defendant's trial was delayed four-months. This is too short a delay to trigger a Sixth Amendment violation.

See  *United States v. Turner*, 926 F.2d 883, 889 (9th Cir. 1991).

[3] 3. The district court acted within its discretion when it allowed witnesses to testify about hearing shots fired. The evidence was relevant because it tended to prove that Defendant possessed a gun in violation of  18 U.S.C. § 922(g)(1). Likewise, the evidence was not unfairly prejudicial as its probative value was not substantially outweighed by the danger of unfair prejudice. Cf.  *United States v. Espinoza-Baza*, 647 F.3d 1182, 1190 (9th Cir. 2011) (finding evidence unfairly prejudicial because the record did not contain necessary additional facts). Further, the evidence was not prohibited bad-act evidence. The evidence was related to the crime charged and part of the chain of events that led to Defendant's arrest and conviction. See  *United States v. Daly*, 974 F.2d 1215, 1216 (9th Cir. 1992). Finally, admission of the evidence did not violate Defendant's Sixth Amendment confrontation rights. Defendant demonstrated through cross examination that the shots-fired evidence was inconsistent with other evidence in the case, and he was able to impeach the relevant witnesses.

[4] 4. The district court acted within its discretion by refraining from giving an *Allen* charge or declaring a mistrial. While the jury appeared deadlocked, there is no *per se* requirement that a judge give an *Allen* instruction to a deadlocked jury. More important, there is no showing that the instructions the judge gave to the deadlocked jury were unduly coercive. See  *United States v. Hernandez-Guardado*, 228 F.3d 1017, 1029 (9th Cir. 2000).

[5] [6] 5. Sufficient evidence supports the felon-in-possession charge and the revocation of supervised release. First, the evidence at trial supported the jury's verdict that Defendant knowingly possessed the firearm—an eyewitness saw Defendant carrying a gun, heard shots fired, and then called 911. Second, the district court properly found that Defendant violated supervision by committing a new (and second) federal offense.

6. Because the district court did not err (or any errors were harmless), there was no cumulative error. See   *United States v. Fernandez*, 388 F.3d 1199, 1256–57 (9th Cir. 2004).

7. The district court correctly increased Defendant's offense level under the Sentencing Guidelines. Defendant argues that  *Rehaif* applies to the mens rea required for  U.S.S.G. § 2K2.1(b)(4)'s stolen firearm enhancement. We recently reaffirmed the validity of  U.S.S.G. § 2K2.1(b)(4) and held that it does not contain a scienter requirement. *See United States v. Prien-Pinto*, 917 F.3d 1155, 1156–61 (9th Cir. 2019).

 *Rehaif* does not affect *Prien-Pinto*'s holding.

8. The district court acted within its discretion when it imposed a supervised release risk notification condition. This court has already affirmed the use of the challenged condition.

See  *United States v. Evans*, 883 F.3d 1154, 1164 (9th Cir. 2018) (finding the condition constitutional); *United States v. Oseguera*, 793 F. App'x 579, 581 (9th Cir. 2020).

*266 9. We remand for resentencing on the supervised release revocation. The Probation Officer mistakenly based the revocation range on a Criminal History Category IV

and recommended a 12–18 month range. This mistake went unnoticed, and the district court adopted the guideline range and imposed an 18-month high-end consecutive sentence. The correctly calculated range should have been 8–14 months. Both parties agree that this court should remand for resentencing on the supervised release revocation. *See*  *Rosales-Mireles v. United States*, — U.S. —, 138 S. Ct. 1897, 1903, 201 L.Ed.2d 376 (2018).

We therefore affirm Defendant's conviction, vacate the supervised release violation sentence, and order a limited remand to allow the district court to resentence Defendant for the supervised release violation.

AFFIRMED in part, **VACATED** in part, and **REMANDED**.

All Citations

838 Fed.Appx. 262

Footnotes

* The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1 Defendant argues the defective indictment constitutes structural error as it presents constitutional issues. We disagree. *See*  *Neder v. United States*, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (noting that most “constitutional errors are harmless” and that errors are structural, and thus subject to automatic reversal, in a “very limited class of cases” (citation omitted)). Because the errors of which Defendant complains are errors “in the trial process itself” and not “defect[s] affecting the framework within which the trial proceeds,” this is not one of the “rare situations” that mandates a presumption of prejudice.  *Id.* at 9, 13, 119 S.Ct. 1827 (citation omitted).

We also reject Defendant's argument, raised for the first time during oral argument, that Defendant preserved his  *Rehaif* insufficiency challenge (and thus that we should review that issue *de novo*) by bringing a general Rule 29 motion below, even though that motion was not based on  *Rehaif* or the knowledge-of-status issue he now raises. *King*, 979 F.3d at 1219 (“[P]lain-error review applies when the defendant fails to challenge the district court's omission of the knowledge-of-status element now required under  *Rehaif*.” (quotation marks and citation omitted)).

Appendix C

United States v. Jackson, No. 3:18-cr-00105-HDM-WGC,
Dkt. 95 (D. Nev. July 31, 2019) (unpublished),
Final Judgment of Conviction

UNITED STATES DISTRICT COURT
District of Nevada

UNITED STATES OF AMERICA

v.

CLIFTON JAMES JACKSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:18-cr-00105-HDM-WGC

USM Number: 46430-048

Kate Berry, AFPD and Chris Frey, AFPD
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on Count One of Indictment filed 12/13/2018 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18, U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	12/1/2018	One

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

The defendant was found not guilty on Count Two of Indictment filed 12/13/2018.

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

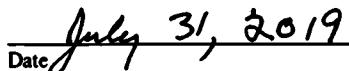
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant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

July 31, 2019

Date of Imposition of Judgment


Signature of Judge
HOWARD D. MCKIBBEN, Senior U.S. District Judge

Name and Title of Judge


Date

DEFENDANT: CLIFTON JAMES JACKSON
CASE NUMBER: 3:18-cr-00105-HDM-WGC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **Seventy-eight (78) months**.

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

Recommendation for placement of defendant at FCI Safford or FCI Tucson.

Further recommendation for placement of defendant in RDAP, if he qualifies.

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

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: CLIFTON JAMES JACKSON
CASE NUMBER: 3:18-cr-00105-HDM-WGC

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **Three (3) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.
 - 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. C 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, or 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: CLIFTON JAMES JACKSON
CASE NUMBER: 3:18-cr-00105-HDM-WGC

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 nunchukus 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 User 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: CLIFTON JAMES JACKSON
CASE NUMBER: 3:18-cr-00105-HDM-WGC

SPECIAL CONDITIONS OF SUPERVISION

1. **Substance Abuse Treatment** - You must participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You may be required to contribute to the costs of the program based on your ability to pay.
2. **No Alcohol** - You must not use or possess alcohol.
3. **Community Service** - You must complete 100 hours of community service within 18 months. The probation officer will supervise the participation in the program by approving the program (agency, location, frequency of participation, etc.). You must provide written verification of completed hours to the probation officer.
4. **Search and Seizure** - You shall submit to the search of your person, property, residence, or automobile under your control by the probation officer or any other authorized person under the immediate and personal supervision of the probation officer, upon reasonable suspicion, without a search warrant to ensure compliance with all conditions of release.

DEFENDANT: CLIFTON JAMES JACKSON
CASE NUMBER: 3:18-cr-00105-HDM-WGC**CRIMINAL MONETARY PENALTIES**

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

TOTALS	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
	\$100.00	N/A	None	N/A
	Due and payable immediately.			

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>
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Clerk, U.S. District Court
Attention: Finance
Case No.: 3:18-cr-00105-HDM-WGC
333 Las Vegas Blvd., South
Las Vegas, Nevada 89101

TOTALS	\$ _____	\$ _____
---------------	----------	----------

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:

* 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: CLIFTON JAMES JACKSON
CASE NUMBER: 3:18-cr-00105-HDM-WGC

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 \$100.00 due immediately, balance due

not later than _____, or
 in accordance with 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:

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

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

Joint and Several

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:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

Appendix D

United States v. Jackson, No. 3:18-cr-00105-HDM-WGC,
Dkt. 81 (D. Nev. April 12, 2019) (unpublished),
Jury Verdict

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
APR 12 2019	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Plaintiff,

v.

Clifton James Jackson,

Defendant.

3:18-CR-00105-HDM-WGC

VERDICT FORM

We, the jury, empaneled in the above-captioned case upon our oath do hereby state that we find the following unanimous verdict:

Count One

Our verdict as to Count One – Felon in Possession of a Firearm, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2), is as follows:

Defendant Clifton James Jackson, Guilty
(Not Guilty / Guilty)

Count Two

Our verdict as to Count Two – Felon in Possession of Ammunition, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2), is as follows:

Defendant Clifton James Jackson, Not Guilty
(Not Guilty / Guilty)

DATED: This 12th day of April, 2019.

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FOREPERSON OF THE JURY

Appendix E

United States v. Jackson, No. 3:18-cr-00105-HDM-WGC,
Dkt. 103 (D. Nev. Feb. 5, 2019) (unpublished),
Transcript of Calendar Call

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE ROBERT C. JONES, SENIOR DISTRICT JUDGE
---o0o---

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	No. 3:18-cr-105-HDM-WGC
	:	
-vs-	:	February 5, 2016
	:	
CLIFTON JAMES JACKSON,	:	Reno, Nevada
	:	
Defendant.	:	
	:	

TRANSCRIPT OF CALENDAR CALL

APPEARANCES:

FOR THE PLAINTIFF: MEGAN RACHOW
Assistant United States Attorney
Reno, Nevada

FOR THE DEFENDANT: CHRISTOPHER FREY and KATE BERRY
Assistant Federal Public Defenders
Reno, Nevada

Reported by: Margaret E. Griener, CCR #3, FCRR
Official Reporter
400 South Virginia Street
Reno, Nevada 89501

1 RENO, NEVADA, TUESDAY, FEBRUARY 2, 2019, 1:30 P.M.

2 ---oo---

3

4 THE COURT: Please be seated. Welcome. Good
5 afternoon.

6 This was in the case of the United States versus
7 Clifton James Jackson.

8 Appearances, please.

9 MS. RACHOW: Megan Rachow on behalf of the
10 government.

11 MS. BERRY: Kate Berry and Chris Frey on behalf
12 of Mr. Jackson.

13 THE COURT: And Mr. Jackson is here. Thank you,
14 sir.

15 This is set this afternoon for calendar call.
16 We have presently a jury trial scheduled for February 11th,
17 next week, with a must-be-tried date of February 23rd under
18 the Speedy Trial Act.

19 I need to ask you several questions,
20 Mr. Jackson. The main purpose of these questions is to make
21 sure you understand your rights, constitutional rights.

22 You've been charged, of course, in an indictment
23 with felon in possession of a gun and ammunition, and you have
24 certain rights, of course, in defending against that charge.

25 The first most important right that I want to

1 discuss with you is the right to speedy trial. Both under the
2 constitution and the Speedy Trial Act, you have the right to
3 insist upon a speedy, open trial in front of an unbiased jury.

4 That's a right, of course, that you can waive in
5 order to allow your attorney to file various motions and such,
6 but you don't have to waive it.

7 The second right that I want to discuss with you
8 is the right to effective assistance of counsel. Under the
9 constitution we must provide you with effective, learned
10 counsel who can advise you, and I believe you have that
11 presently appointed to represent you. These attorneys know
12 the court system, they know the judges, they know the
13 procedure, and they know the U.S. Attorney and what positions
14 the U.S. Attorney makes.

15 And so my advice to you, of course, is you don't
16 have to follow their advice, but you certainly need to listen
17 to it and consult with them and listen to what they advise you
18 to do.

19 The reason for advising you of these two rights
20 at calendar call is to tell you that you have the right to
21 insist upon how your case is presented. You can't require
22 your attorney to present frivolous or illegal motions, but you
23 have the right to direct how your case is presented and when.

24 It's in that regard that you have the right to
25 insist upon a speedy trial. For example, under our

1 must-be-tried date, under the Speedy Trial Act, we must
2 initiate this trial no later than February 23rd unless you
3 waive that right.

4 Now, your attorneys have implied in their
5 various status reports in such file that you may have grounds
6 to file various motions. Just, for example, one possible
7 motion is a motion to suppress the evidence that the
8 government intends to present against you in their trial.

9 They've informed us of what they intend to
10 present, *Brady* motions, which your attorney would explain to
11 you as well. But in order to do that, of course, your
12 attorneys need time to prepare those motions, need time to
13 investigate the evidence supporting such motions, and advise
14 you on the probable responses by the government and your
15 likelihood of getting those motions clear.

16 In order to do that, however, in order to give
17 them that time, you would have to waive or agree to a brief
18 continuance of the Speedy Trial Act, otherwise they won't have
19 time to properly present it.

20 Now, you have the right to effective assistance
21 of counsel. But all your attorneys can do is advise you of
22 what your rights are and probable outcomes of such motions and
23 then help you make the decision as to whether you want to
24 waive that right in order to allow them time to present those
25 motions and get a response from the Court, or whether you want

1 to insist, as you have the right to do, on the speedy trial to
2 go forward, for example, next week we've scheduled the trial.

3 So my purpose in asking and giving that advice
4 and asking those questions is to make sure you understand
5 those particular rights that I have just discussed.

6 Do you understand your rights to speedy trial,
7 sir, and the fact that you can waive it, and/or the right to
8 effective assistance of counsel?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Okay. All right. Now, I'm assuming
11 unless you or your counsel tell me you want a waiver, that we
12 are proceeding next week with trial which is set for 8:30
13 a.m. -- now, let's see, is it scheduled for Monday?

14 It's President's Day, but we're proceeding.

15 THE CLERK: No, your Honor, that's -- the 18th
16 is the holiday.

17 THE COURT: Oh, terrific. Okay.

18 So next week Monday is the date scheduled for
19 this trial at 8:30, and what we do is we select 12 jurors plus
20 probably a couple of alternates to serve in case any of those
21 jurors fail, and then we go ahead with selecting the jury.

22 And the way we normally proceed with that,
23 addressing some of the motions that have been filed by your
24 counsel, is that I ask initial questions of the jury pool.
25 We'll have 50 or so of them here, asking them to raise their

1 hand if they have a response to those questions and then we
2 ask follow-up questions.

3 And the purpose is twofold, first, to see if
4 there are any jurors on the face of those questions that are
5 biased, that would act with partiality in your case.

6 So I make strong efforts to ferret out those
7 folks, and I give them strong cautions with respect to unfair
8 bias, racial bias, bias against Second Amendment, over the
9 Second Amendment with permitting a statute such as prohibiting
10 a person from carrying a gun, bias against prior -- the
11 government alleges here that you have a prior felony
12 conviction, whether they have potential biases against prior
13 felons, and I try to make it clear to them that you have, as
14 the government has, a constitutional right to a fair, unbiased
15 jury.

16 So that's your right, and that's the way we
17 would proceed.

18 Then, in addition, I ask the counsel if they
19 have additional questions, and as long as they're not
20 educational questions, trying to educate the jury as to your
21 side of the case, I permit counsel to call the jurors up one
22 by one behind the screen privately and to answer further
23 questions. That's the way we proceed.

24 I don't allow them to ask educational questions
25 which educate them, that's reserved for the opening statements

1 by each side, but I do want them to be able to ask questions
2 that would help you, number one, to determine whether a juror
3 should be excluded for bias, that's for cause, and, number
4 two, just to get general background, permissible background.

5 I don't think I normally would let them ask, for
6 example, are you a card-carrying member of the NRA. I don't
7 think I would normally allow them do that, but I would
8 certainly allow them to ask further questions, do you have
9 strong feelings about the Second Amendment prohibiting -- the
10 statute that Congress has passed that you're charged with,
11 that is, a prohibited person, or do you have strong racial
12 bias or any bias in your background conflicts against
13 African-Americans.

14 I let them ask those further questions so that
15 they can see, number two, if they have a basis for exercising
16 a peremptory challenge.

17 A peremptory challenge is a challenge to a juror
18 without giving an excuse, unless, of course, we can all see
19 that the excuse is on a racial background or some other
20 illegal means for excluding a juror.

21 That peremptory challenge -- you have six
22 challenges. The government has three peremptory challenges.

23 You have as many cause challenges as you need to
24 challenge the jurors to exclude them because of bias, but you
25 have six peremptory challenges, "I want these six people to be

1 excluded, please," for no reason at all unless, of course, we
2 can all see that it's for some illegal grounds, for example,
3 religion or race or ethnicity. That's the way we proceed.

4 And then after we finish all of those questions,
5 we end up with a panel here of 32, 34 people, sufficient,
6 including your peremptory challenges, to bring our jury down
7 to 12 plus two alternates. That's the way we proceed.

8 And then while I talk to the jury and tell them
9 about their obligations to act in an unbiased fashion, the
10 clerk works with your attorneys to go one by one those
11 peremptory challenges until we have a final panel of 12 plus
12 two. That's the way the process works in my court.

13 Of course, your attorneys submit a list of
14 proposed voir dire, that is, questions to the jury initially,
15 and I ask -- I have the right to ask some of those, to exclude
16 others, but if I exclude any of those questions, your
17 attorneys have the right at a recess or whatever to say,
18 "Judge, I really think you need to ask that particular
19 question, or allow me to ask it."

20 That way I let them make argument to the Court,
21 "Here's some questions that you didn't ask, Judge, but you
22 really need to in order for us to exercise our peremptory
23 challenges." So that's the process.

24 Now, final question. Have you had full right,
25 counsel, full opportunity to discuss with your client whether

1 he wants to waive speedy trial and proceed at a later date, or
2 proceed this coming Monday?

3 MS. BERRY: We have, your Honor.

4 THE COURT: Okay. And are you proceeding?

5 MS. BERRY: May I be heard?

6 THE COURT: Sure, and then we'll proceed, of
7 course, to your other motions.

8 MS. BERRY: Thank you, your Honor.

9 THE COURT: Thank you.

10 MS. BERRY: Mr. Jackson has been clear that he
11 wants to assert his speedy trial rights, and that he will not
12 waive them in favor of a continuance, but defense counsel will
13 be ineffective if we proceed on Monday, and I would like to
14 explain to the Court why that is the case.

15 We were not provided with crucial discovery in a
16 timely manner, and there is still a lot of outstanding
17 discovery that we are not in possession of, and so even if we
18 spent all of our time exclusively on this case until trial, we
19 wouldn't even be able to get through all of the discovery in
20 this case.

21 THE COURT: Without listing it, give me a
22 characterization of what types of evidence you have not had
23 disclosed to you.

24 MS. BERRY: So just at the end of late last week
25 we received 30 hours of dashboard and body cameras, so we

1 obviously haven't had an opportunity to go through all of
2 that.

3 We believe there is still outstanding body and
4 dashboard camera video, including video of one of the K-9
5 handlers in this case, Deputy Harris.

6 THE COURT: Are you talking about video -- dash
7 video of the incident for the handler?

8 MS. BERRY: Of the handler's dashboard or body
9 camera showing the K-9 alerting in this case.

10 We don't have video of Mr. Jackson being
11 transported to the jail. We don't have video of the -- or
12 images of the gun being found. We do not have the --

13 THE COURT: Why do you suspect there would be
14 video of his transport to the jail?

15 MS. BERRY: It's just typical of things that we
16 receive in discovery because there is video in the car --

17 THE COURT: I wasn't aware of that. I would
18 certainly suspect that there's video of the stop or arrest or
19 the encounter with police, especially through the dash cam,
20 but I don't understand why there would be any video of his
21 transport.

22 You mean an outside video.

23 MS. BERRY: So -- I'm sorry, your Honor.

24 THE COURT: You don't think the video continues
25 to run while he's being transported to the jail?

1 MS. BERRY: We do often receive video of
2 transports in discovery. Typically -- and the government can
3 certainly clarify this, there is a video that's outward
4 facing, but there's also audio or sometimes a video that's
5 inward facing, meaning showing the person --

6 THE COURT: In the backseat.

7 MS. BERRY: -- in the backseat.

8 THE COURT: I see.

9 MS. BERRY: It's our understanding from the
10 police reports that we have received that there were at least
11 14 officers that were involved in this case. We only have
12 dashboard camera videos from nine, and body camera -- I'm
13 sorry, dashboard videos from eight and body camera videos from
14 nine.

15 We also learned today from an external
16 investigation that the Storey County Police Department was the
17 first to arrive. We have received no --

18 THE COURT: Where did the arrest take place?

19 MS. BERRY: It took place in Reno.

20 THE COURT: Why was Storey County --

21 MS. BERRY: It was near the Mustang stop. I
22 don't know, your Honor.

23 THE COURT: I see. Okay.

24 MS. BERRY: We also -- we've requested but we
25 haven't received the dispatch logs so we don't know the timing

1 of events, and kind of putting together a timetable based on
2 the 30 hours of video that we have would be weeks' worth of
3 work at least.

4 We don't have photos of the gun or information
5 about where it was found.

6 We believe there are two 911 emergency calls
7 that were made which is why police responded and pulled the
8 car over that purportedly had Mr. Jackson in it. We do not
9 have those calls.

10 We don't have tow records or inventory records.

11 We don't have the records from the K-9s that
12 allegedly alerted on the car, although we have -- some of
13 these items we have separately subpoenaed in addition to
14 requesting them in discovery, but we haven't received the
15 responses of those subpoenas yet.

16 THE COURT: Okay.

17 MS. BERRY: And so, you know, based on what we
18 have, we're missing an enormous amount of information, but we
19 don't even physically have the time to go through all of the
20 information that we do have and competently prepare for trial,
21 decide what items we would want to exclude through motions in
22 limine.

23 As we indicated to your Honor in our status
24 update, we believe there is a motion to suppress in this case,
25 but until I know the timing and the events, I cannot prepare

1 one.

2 THE COURT: Well, I need to ask the government
3 in a moment about what, if any, of these materials are
4 appropriate to turn over and what, if any, they have not
5 turned over.

6 But before I do that, I need to ask you, you've
7 advised Mr. Jackson of the need to obtain this discovery and
8 of the potential need to file motions?

9 MS. BERRY: I have, your Honor.

10 THE COURT: And he's told you he doesn't want to
11 give you that time.

12 MS. BERRY: Mr. Jackson doesn't believe that he
13 should be in the position of waiving a constitutional right
14 because of delay that was not caused by defense counsel or by
15 himself.

16 The fact that we are ineffective is because we
17 don't have the materials that we need, and we didn't receive
18 them in a timely way.

19 THE COURT: Well, if you're advising me that you
20 cannot act as effective -- in an effective way providing him
21 assistance, but he refuses to give you that time for whatever
22 reason, then you put the Court in the position where, if I
23 agree with you, that it would be ineffective assistance. In
24 essence, that's counsel's own advice to me.

25 You have an ethical obligation, if he insists on

1 going forward in that fashion, to withdraw if he's ignoring
2 your advice, or to advise the Court, as you're apparently
3 attempting to do, that it would be ineffective assistance of
4 counsel in which case I have to provide the motion on your
5 behalf, on his behalf, that in order to give him effective
6 assistance, I either have to appoint new counsel who will
7 honor his direction, or who will also insist that they have
8 preparation time.

9 So, in other words, this isn't -- this would not
10 be on the government's motion, this would be under a ruling by
11 the Court under the statute that, in order to provide
12 effective assistance, Mr. Jackson must have additional time
13 regardless of his waiver or not waiver, in other words, for
14 the ends of justice.

15 And I would be ruling on the Court's own motion
16 that we must continue in order to give him that effective
17 assistance. Is that what you're telling me?

18 MS. BERRY: Your Honor is correct that, you
19 know, the speedy trial right is a constitutional right that he
20 has the right not to waive, but the Court, in the interests of
21 justice, can continue a trial even when a defendant has not
22 waived his speedy trial rights.

23 And we have also done extensive Ninth Circuit
24 research on this question to make sure we were fulfilling our
25 ethical obligations and our duty to our client, and there is

1 an enormous amount of case law indicating both that the Court
2 can continue a trial over even when -- even if Mr. Jackson
3 were not to consent, which he will not, and we remain on the
4 case because it is still our duty as his attorneys to advise
5 the Court that we would be ineffective.

6 And, indeed, there's quite a bit of case law
7 that suggests, on our own motion for a continuance without
8 Mr. Jackson's consent, the Court can move the trial in the
9 interests of justice.

10 THE COURT: Let's ask now for the government's
11 response on the items that allegedly have not been turned
12 over, their obligation to turn over, and, of course, in
13 essence, the Court's own motion upon the advice they don't
14 think they can give effective assistance as to whether I
15 should continue the matter or not.

16 MS. RACHOW: Thank you, your Honor.

17 As your Honor is well aware, this defendant made
18 his initial appearance and was arraigned on this indictment on
19 December 21st, 2018.

20 The government has been working extensively with
21 the Washoe County Sheriff's office to acquire the body
22 cameras. There have been ongoing requests from the
23 government, there have been some concerns and there have been
24 some problems with getting requests issued.

25 The case agent is present in court today. He is

1 the one who has been attempting to facilitate as much as
2 humanly possible --

3 THE COURT: He's FBI, federal agent.

4 MS. RACHOW: Yes, your Honor.

5 THE COURT: Not the state.

6 MS. RACHOW: Yes, your Honor, he's with the ATF,
7 that is correct.

8 THE COURT: Okay.

9 MS. RACHOW: So in response to the dispatch logs
10 and the 911 calls, we have requested those repeatedly, and as
11 soon as we get them, we will turn them over.

12 THE COURT: Can you give me -- without revealing
13 details, can you give me generally a characterization of why
14 there are concerns.

15 MS. RACHOW: Your Honor, ever since the body
16 cams went into effect, each agency has different permissions
17 as to who can get access.

18 We have a working relationship with the Reno
19 Police Department and Sparks Police Department where we have
20 an evidence dot com account, and they give us permission to
21 push their videos to us.

22 We do not have that in place with the county --

23 THE COURT: They're the ones who turned over --
24 their city attorney or the district attorney are the ones who
25 agreed to turn over the case to the FBI.

1 MS. RACHOW: The ATF, yes, your Honor.

2 THE COURT: ATF.

3 MS. RACHOW: In this case we actually moved
4 almost immediately on this case after the arrest because, as
5 your Honor's aware, Mr. Jackson was on supervised release for
6 a conviction out of this court for felon in possession.

7 THE COURT: I vaguely remember -- I do remember
8 you, Mr. Jackson, vaguely, but I honestly don't remember the
9 circumstances of the prior case.

10 MS. RACHOW: So because we do not have those
11 relationships in place with county, my local ATF agent has
12 been diligently working to try to get permissions with county
13 to push the disks.

14 And in this particular case we still don't have
15 an evidence dot com account, so what had to happen is
16 everything had to be burned.

17 And then there were issues with a corruption on
18 the file. It's just been an ongoing mess. And as defense has
19 indicated, this is an extensive amount of body cam footage
20 because there were so many officers on scene.

21 THE COURT: Were there Storey County officers
22 involved?

23 MS. RACHOW: I have no idea about that, your
24 Honor. When I watched the body cam, it looked to me like it
25 was a state trooper that was present, but I did not see

1 anybody that was from Storey County.

2 THE COURT: Okay.

3 MS. RACHOW: So if that is true, that is news to
4 me.

5 THE COURT: Of course, if it's Storey County, it
6 would be a state highway patrolman or a state officer.

7 MS. RACHOW: It looked like it was the state.

8 THE COURT: Only if it were Virginia City, the
9 city attorney, for example, would have been -- I don't know if
10 they have city police or not, do they?

11 MS. RACHOW: I believe they just have a
12 sheriff's department up there.

13 THE COURT: Okay.

14 MS. RACHOW: I have never actually worked with
15 Storey County in acquiring a case.

16 THE COURT: So how long do you think until you
17 get those concerns resolved and turn over any and all
18 information that they're entitled to?

19 MS. RACHOW: Your Honor, from looking at the
20 case agent, we think perhaps a week.

21 Again, we have been working diligently on this,
22 and I don't know that there is any internal camera from the
23 transport. I haven't seen that. Mr. Jackson invoked so
24 nobody was questioning him or anything like that.

25 THE COURT: Your questions to Washoe or to the

1 state certainly includes requests for any and all body cameras
2 whether internal or external or dash cam or otherwise.

3 MS. RACHOW: Yes, your Honor, and we are
4 following up with the K-9 handler because it is odd that we do
5 not have a body cam from him.

6 I was able to get his --

7 THE COURT: They typically have a body camera.

8 MS. RACHOW: I don't know, your Honor, because
9 it depends on the agency who is required to wear a body cam.
10 Usually it's just the patrol officers and officers in actual
11 uniform.

12 I don't know that in this case the K-9 handler
13 does, but we are following up on that. He did not do a
14 report, but he did do a log of his dog's alert so I have
15 received the log of the report which is basically a very small
16 chart, and he is working on sending me the K-9 records for
17 both his K-9 and the other K-9.

18 THE COURT: Okay. So thank you for that
19 response initially.

20 Counsel has informed me that at least a week
21 probably a little longer, to get those matters clarified.

22 So can you tell me, including your time to
23 prepare appropriate motions, including motions to the
24 magistrate judge, for example, for exclusion of evidence,
25 getting responses and getting the judge's ruling, how much

1 time you think we need in order to allow counsel to prepare
2 effective assistance?

3 I'm not asking you to make a motion, I'm just
4 asking for your honest assessment.

5 MS. BERRY: Thank you, your Honor. May I have a
6 moment to discuss with my cocounsel?

7 THE COURT: Sure.

8 (Discussion held off the record.)

9 MS. BERRY: Thank you, your Honor.

10 We are trying to come up with the quickest time
11 frame that we could ethically do it in, in response to
12 Mr. Jackson's desires.

13 We think that we could get all motions fully
14 briefed within six to seven weeks. That allows a week or two
15 for production.

16 THE COURT: Right.

17 MS. BERRY: A week or two for us to do motions,
18 two weeks for the government to respond, and maybe a week for
19 our reply, and so for --

20 THE COURT: And if you -- by the way, just as a
21 background, if you choose -- normally up here as opposed to
22 down south the judges themselves handle suppression motions.
23 But if you want, and if Judge Cobb is willing, I'm certainly
24 willing to let the magistrate judge handle, as they do down
25 south, suppression motions.

1 MS. BERRY: Thank you, your Honor.

2 THE COURT: And what else were you saying? So
3 at least six weeks or so.

4 MS. BERRY: I think six to seven weeks we could
5 have all issues fully briefed.

6 THE COURT: Right.

7 MS. BERRY: And then it would be up to the Court
8 how much time the Court would need to consider those motions
9 after they're fully briefed.

10 THE COURT: I don't need much time. You know, I
11 read the briefs quickly, and my law clerks research them, and
12 then if we hold a hearing, my calendar is fairly open this
13 spring so I can do that.

14 Okay. So I think we're looking at a minimum of
15 two months to three months if we go down this route,
16 Mr. Jackson, and, again, I'm not asking you to waive your
17 constitutional right, sir, you'll reserve that issue for
18 appeal if I deny -- if I grant a continuance.

19 But in light of what your counsel is telling me,
20 I don't think I can go forward on your case without violating
21 your rights to effective assistance of counsel unless you
22 insist on discharging this counsel and having somebody else
23 come on who would abide by your instruction.

24 So I'm probably put in the position where I'm
25 going to have to continue this trial for the ends of justice

1 to protect your rights.

2 So let's give you some alternative dates first
3 and ask if counsel have objection. I understand Mr. Jackson
4 is objecting, he wants the trial next Monday. Probably out
5 about three months.

6 THE CLERK: Two months, a little over two months
7 would be April 8th for a jury trial, thereafter it would be
8 May 6th.

9 THE COURT: Yeah. I'm sure we don't want to get
10 into June because then we just push everything way back.

11 Right now I don't have anything on that week of
12 June 6th, or the end of --

13 THE CLERK: You mean May 6th?

14 THE COURT: May 6th, nor the end of April,
15 April 29, I don't have anything that week so I would have a
16 couple of weeks open.

17 THE CLERK: Correct.

18 THE COURT: So consistent with providing an
19 effective assistance right, and not asking for any waiver of
20 speedy trial right, would April 29th or May 6th be available
21 to counsel?

22 MS. BERRY: Defense counsel can do either of
23 those dates. We can also do the April 8th date that the Court
24 mentioned.

25 THE COURT: I can do it earlier, but, of course,

1 we may have to continue it if there's still problems in
2 turning that stuff over.

3 Okay. Counsel?

4 MS. RACHOW: Your Honor, the April 8th date
5 would work great for the government.

6 THE COURT: Let's set it for April 8. That's
7 just before everybody has to pay their taxes so I do
8 apologize.

9 So let's set it for April 8th, and we need a
10 further calendar call, Madam Clerk, so we can make sure the
11 parties are in position.

12 Let's see. We have a trial on the 1st, right?

13 THE CLERK: Correct.

14 THE COURT: Okay. So April 8th. When would you
15 set -- and that's at 8:30 in the morning. When would you set
16 a calendar call?

17 THE CLERK: Your Honor, we could do the calendar
18 call on -- I'm still getting used to our new Outlook. The
19 26th of March, that would be two weeks before the trial.

20 THE COURT: That's a Reno calendar.

21 THE CLERK: Correct.

22 THE COURT: Okay. Let's set calendar -- what
23 time, please?

24 THE CLERK: Calendar call would be at 1:30 p.m.

25 THE COURT: 1:30, the 26th, with trial to

1 proceed on April 8 at 8:30 a.m.

2 Now, this, of course, is -- you can request
3 additional dates for hearing motions, motions on hearing --
4 I'm sorry, hearings on motions or, of course, filing deadlines
5 for various other matters. So you can request additional
6 dates, either of myself or of the magistrate judge.

7 Be sure to tell me if you want this matter
8 referred -- suppression motions referred to the magistrate
9 judge. Be sure to tell me that, and I'll do it. Of course, I
10 have to do it with the consent of Judge Cobb or his referral
11 to Judge Carry.

12 MS. BERRY: Thank you so much, your Honor. We
13 will request that Judge Cobb or Judge Carry hear the motion to
14 suppress.

15 THE COURT: Okay. If Judge Cobb won't consent
16 to it, I'll ask if he'll refer it to Judge Carry.

17 MS. BERRY: Thank you, your Honor.

18 THE COURT: It's a little out of the ordinary
19 procedure, but I don't have any problem with that. I have
20 served before in Las Vegas and was delighted with the
21 magistrate judges handling those issues. We don't do it up
22 here, so I followed the normal procedure.

23 MS. RACHOW: Thank you, your Honor.

24 And just with that, though, once the magistrate
25 judge -- if they do consent, of course, and they issue their

1 ruling, then, of course, both sides have the chance to appeal
2 it to the district court judge.

3 THE COURT: Yes.

4 MS. RACHOW: Which could push the time line
5 back.

6 THE COURT: File an objection. They would make
7 a ruling. In this kind of case in a motion to suppress, they
8 can make a ruling, but you have the right to file objections,
9 either side, and the district judge has to hear it, too, not
10 the evidence portion, but at least the argument.

11 MS. BERRY: And I can represent that I will move
12 as quickly as ethically possible with the motion to be
13 sensitive to all of the interests involved.

14 THE COURT: Okay. And, again, I just raise --
15 honestly I don't remember the facts and circumstances, unless
16 Mr. Jackson was the one who was convicted previously because
17 of -- he alleges that he was defending himself and he shot
18 with a pistol?

19 MS. RACHOW: No, your Honor, that would not be
20 this case.

21 THE COURT: No, a different case.

22 So, Mr. Jackson -- Mr. Jackson was the one at
23 the Grand Sierra?

24 MS. RACHOW: I believe so, your Honor. The gun
25 was left behind in a little bag at a slot machine, and then it

1 was his library card --

2 THE COURT: That case I do remember. That's the
3 extent of it.

4 Of course, in this case, the government has the
5 obligation to both prove a prior felony, unless you admit it,
6 so they show the record of the conviction, as well as the fact
7 of possession of the gun. They have the obligation -- the
8 current gun. They have the obligation twofold.

9 So I'm just saying I don't think as I sit here
10 there's any reason for me to recuse, but if you do need to
11 file a motion to recuse, file it forthwith, please, so that we
12 can consider that too.

13 Any other matters -- since I'm setting this
14 over, any other matters? The trial is off next week, of
15 course.

16 MS. RACHOW: Nothing on behalf of the
17 government, your Honor, thank you.

18 MS. BERRY: Nothing further, your Honor, thank
19 you.

20 THE COURT: Okay. Thank you. Thank you,
21 Mr. Jackson, I'm sorry we've had to delay it.

22 Court will be in recess.

23 (A recess was taken.)

24 -000-

25

1 I certify that the foregoing is a correct
2 transcript from the record of proceedings
3 in the above-entitled matter.

4 /s/Margaret E. Griener 10/03/2019
5 Margaret E. Griener, CCR #3, FCRR
6 Official Reporter

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Appendix F

United States v. Jackson, No. 3:18-cr-00105-HDM-WGC,
Dkt. 9 (D. Nev. Dec. 13, 2018) (unpublished),
Indictment

1 DAYLE ELIESON
 2 United States Attorney
 3 MEGAN RACHOW
 4 Nevada Bar No. 8231
 5 Assistant United States Attorney
 6 400 South Virginia Street, Suite 900
 7 Reno, Nevada 89501
 8 (775) 784-5438
 9 Megan.Rachow@usdoj.gov

1 ✓ FILED
 2 ENTERED
 3 RECEIVED
 4 SERVED ON
 5 CO-NUMEROUSIES OF RECORD
 6
 7 DEC 13 2018
 8 CLIFTON JAMES JACKSON
 9 DISTRICT COURT
 10 STATE OF NEVADA
 11 BY: DEPUTY
 12
 13

14 *Representing the United States of America*

15 UNITED STATES DISTRICT COURT
 16 DISTRICT OF NEVADA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 CLIFTON JAMES JACKSON,

21 Defendant.

22 INDICTMENT FOR VIOLATIONS OF:

23 Title 18, United States Code, Sections
 24 922(g)(1) and 924(a)(2) – Felon in
 25 Possession of a Firearm (Count One)

26 Title 18, United States Code, Sections
 27 922(g)(1) and 924(a)(2)—Felon in
 28 Possession of Ammunition (Count Two)

29 THE GRAND JURY CHARGES THAT:

30 3:18-cr-00105-RCJ-WGC

31 Count One

32 (Felon in Possession of a Firearm)

33 On or about December 1, 2018, in the State and District of Nevada, CLIFTON
 34 JAMES JACKSON, defendant herein, having been convicted of a crime punishable by
 35 imprisonment for a term exceeding one year in the United States District Court, District of
 36 Nevada, to wit: Felon in Possession of a Firearm, on or about November 7, 2016; did
 37 knowingly possess a MAB, 7.65 mm pistol bearing serial number D4065, said possession
 38 being in and affecting commerce; all in violation of Title 18, United States Code, Sections
 39 922(g)(1) and 924(a)(2).

Count Two

(Felon in Possession of Ammunition)

On or about December 1, 2018, in the State and District of Nevada, CLIFTON JAMES JACKSON, defendant herein, having been convicted of a crime punishable by imprisonment for a term exceeding one year in the United States District Court, District of Nevada, to wit: Felon in Possession of a Firearm, on or about November 7, 2016; did knowingly possess Winchester .32 caliber ammunition, said possession being in and affecting commerce; all in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

A TRUE BILL:

FOREPERSON OF THE GRAND JURY

DAYLE ELIESON
United States Attorney

MEGAN RACHOW
Assistant United States Attorney

Appendix G

United States v. Jackson, No. 3:11-cr-00142-HDM-CBC,
Dkt. 154 (D. Nev. Aug. 2, 2019) (unpublished),
Final Judgment for Revocation

UNITED STATES DISTRICT COURT
District of Nevada

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
) (for Revocation of Probation or Supervised Release)
 v.)
) Case Number: 3:11-cr-00142-HDM-CBC
 CLIFTON JAMES JACKSON)
) USM Number: 46430-048
)
) Kate Berry, ACPD and Chris Frey, ACPD
) Defendant's Attorney

THE DEFENDANT:

admitted guilt to violation of condition(s) _____ of the term of supervision.

X was found in violation of condition set forth in Paragraph 1 of ECF No. [22] Petition filed 12/4/2018.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
Paragraph 1 of [22] Petition	Do Not Commit Another Crime	12/1/2018

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

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

Last Four Digits of Defendant's Soc. Sec. No.: 0277

July 31, 2019
Date of Imposition of Judgment

Defendant's Year of Birth: 1964


Signature of Judge

City and State of Defendant's Residence:

HOWARD D. MCKIBBEN, Senior U.S. District Judge
Name and Title of Judge

In Custody

Aug 2, 2019
Date

DEFENDANT: CLIFTON JAMES JACKSON
CASE NUMBER: 3:11-cr-00142-HDM-CBC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **Eighteen (18) months to be served consecutive to the defendant's sentence in his related USDC, District of Nevada, Case No. 3:18-cr-00105-HDM-WGC.**

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

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

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Appendix - 45a

DEFENDANT: CLIFTON JAMES JACKSON
CASE NUMBER: 3:11-cr-00142-HDM-CBC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Eighteen (18) months to be served concurrent to the defendant's supervised release in his related USDC, District of Nevada, Case No. 3:18-cr-00105-HDM-WGC.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

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, not to exceed 104 tests annually.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, or 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: CLIFTON JAMES JACKSON
CASE NUMBER: 3:11-cr-00142-HDM-CBC

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: CLIFTON JAMES JACKSON
CASE NUMBER: 3:11-cr-00142-HDM-CBC

SPECIAL CONDITIONS OF SUPERVISION

1. Substance Abuse Treatment - You must participate in an outpatient substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You may be required to contribute to the costs of the program based on your ability to pay.
2. No Alcohol - You must not use or possess alcohol.
3. Search and Seizure - You shall submit to the search of your person, property, residence, or automobile under your control by the probation officer or any other authorized person under the immediate and personal supervision of the probation officer, upon reasonable suspicion, without a search warrant to ensure compliance with all conditions of release.