No. _____

In the Supreme Court of the United States

SHAUN SHORT,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

On Petition for a Writ of Certiorari to
The United States Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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Appendix Contents

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. SHAUN SHORT, Defendant.	**No. 4:19-cr-00080-RGE-HCA** **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**

I. INTRODUCTION

Multiple 911 calls reported shots fired at a Des Moines apartment complex. One of the responding police officers encountered Defendant Shaun Short, who fit the description of a reported potential suspect. The officer briefly questioned Short, performed a pat down to check him for weapons, and placed him in handcuffs. Short was not advised of his *Miranda* rights during this encounter. As the investigation continued, the smell of marijuana emanating from Short's car prompted a warrantless search of the car, yielding a small bag of marijuana. Officers then obtained a search warrant for Short's apartment, where they found firearms and evidence of drug distribution.

Short moves to suppress the statements he made and the evidence obtained from the warrantless search of his car. Short also asserts the search warrant for his apartment should be declared invalid and the evidence obtained through its execution suppressed. For the reasons set forth below, the Court denies Short's motion.

II. BACKGROUND

Before the Court is Short's Motion to Suppress. ECF No. 36. The matter came before the Court for hearing on August 15, 2019. Def.'s Mot. Suppress Hr'g Mins., ECF No. 46.

Assistant Federal Public Defender Joseph D. Herrold appeared on behalf of Short. *Id.* Special Assistant United States Attorney Mallory E. Weiser appeared on behalf of the Government. *Id.* The Court heard the testimony of Des Moines Police Officer Cordel Miller and Des Moines Narcotics Investigator Andrew Becker. *Id.; see also* Witness List, ECF No. 46-2. The Court received exhibits from both parties, including body camera recordings of police officers' encounters with Short, recordings of 911 calls, a photo of Short's car prior to the search, and the search warrant application for Short's apartment. Ex. List, ECF No. 46-1; Gov't Exs. 1–6, ECF Nos. 50-1, 50-2; Def.'s Exs. A to G, ECF Nos. 40, 49.

The Court finds the following facts by a preponderance of the evidence for the purpose of considering Short's motion. *See United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974); *accord United States v. Long*, 797 F.3d 558, 570 (8th Cir. 2015).

Des Moines police officers responded to a report of gunshots fired at a Des Moines apartment complex on April 16, 2019. The various 911 callers reported that three potential suspects were involved. Callers also reported two black cars were involved, including a car of the same make and model as Short's car: a black Dodge Charger. One 911 caller reported observing someone running from the apartment complex and firing a gun. The caller described this individual as a black male with dreadlocks wearing a white shirt and dark blue plants. Another caller identified a black male dressed in black clothing running down the hill at the back of the apartment complex.

Officer Miller arrived at the apartment complex and encountered Short walking in the parking lot. Short was near a parked car, later determined to be his. Officer Miller recognized Short as matching the description reported by one of the 911 callers as a black male with dreadlocks wearing a white shirt and blue pants.

Officer Miller approached Short. He asked him a series of questions regarding the shots

fired, whether Short had any weapons on his person, Short's identity, and who was involved in the shooting. *See* Def.'s Ex. A at 2:16–3:50, ECF No. 49. Officer Miller performed a six-second pat down of Short. Officer Miller then placed Short in handcuffs. This initial interaction between Officer Miller and Short lasted approximately one minute and thirty-five seconds. Short was not informed of his *Miranda* rights until sometime later at the police station.

After placing Short in handcuffs, Officer Miller surveyed the exterior of Short's black Dodge Charger. Officer Miller detected a strong odor of marijuana emanating from the rear driver's side window, which was open an inch or two. Officer Miller called Narcotics Investigator Andrew Becker to the scene. Becker also smelled marijuana coming from the car. Becker and another narcotics investigator then searched the car. They found a small bag containing approximately two grams of marijuana and an identification card for Short indicating he lived at the apartment complex.

Elsewhere at the apartment complex, Emmanuel Toe and Samuel Atoyebi were identified as the other individuals reportedly involved in the shooting. Both admitted to their involvement in the shooting. They were detained. Atoyebi told officers his black Nissan was hit by gunfire. Atoyebi also stated he drove Toe to the apartment complex to purchase marijuana from Short.

Detective Becker applied for and obtained a search warrant for Short's apartment. Officers then searched Short's apartment. In Short's bedroom, officers found approximately 70 grams of marijuana; baggies with marijuana residue; $12,000 in cash; and working digital scales, one of which field tested positive for cocaine. Officers also located two firearms in Short's mother's room.

On May 14, 2019, a grand jury indicted Short on three counts: 1) possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1), (b)(1)(D); 2) felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and 3) possession of a firearm in

furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). Redacted Indictment, ECF No. 2.[1]

Additional factual findings are set forth below as needed.

III. LEGAL STANDARDS

Short moves to suppress statements he made prior to receiving *Miranda* warnings and evidence from the search of his car and apartment. ECF No. 36. Short argues he was in custody while speaking with Officer Miller at the apartment complex and his statements were obtained in violation of his Fifth Amendment rights. *Id.*; Def.'s Br. Supp. Mot. Suppress 4–11, ECF No. 36-1. Short argues the search of his car and apartment violated his rights under the Fourth Amendment. ECF No. 36; ECF No. 36-1 at 12–17.

A. Fifth Amendment

The Fifth Amendment to the United States Constitution provides: "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. "[T]he prosecution may not use statements . . . stemming from custodial interrogation of the defendant unless it" has warned the defendant "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). A suspect is in custody when "there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)).

A police officer may briefly detain a person when there is reasonable suspicion the person

[1] On June 20, 2019, a grand jury returned a superseding indictment charging Short with the same offenses. ECF No. 26. The Government explained the superseding indictment clarified Count 2. Notice Superseding Indictment, ECF No. 28.

is engaging in criminal activity. *United States v. Pelayo-Ruelas*, 345 F.3d 589, 591–92 (8th Cir. 2003) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). "Reasonable suspicion exists when an 'officer is aware of "particularized, objective facts which, taken together with rational inferences from those facts, reasonably warrant suspicion that a crime is being committed."'" *United States v. Givens*, 763 F.3d 987, 989 (8th Cir. 2014) (quoting *United States v. Hollins*, 685 F.3d 703, 706 (8th Cir. 2012)). Persons subject to brief investigative detentions, known as *Terry* stops, are not in custody for *Miranda* purposes. *Pelayo-Ruelas*, 345 F.3d at 591–92 (citing *Berkemer v. McCarty*, 468 U.S. 420, 439–40 (1984)); *United States v. McGauley*, 786 F.2d 888, 890 (8th Cir. 1986) ("No *Miranda* warning is necessary for persons detained for a *Terry* stop.").

B. Fourth Amendment

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. "[S]ubject only to a few specifically established and well delineated exceptions," searches and seizures "without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment." *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).

Among those exceptions is the automobile exception, which permits a warrantless search of an automobile when there is probable cause to believe it contains evidence of criminal activity. *Carroll v. United States*, 267 U.S. 132, 158–59 (1925); *accord United States v. Davis*, 569 F.3d 813, 817–18 (8th Cir. 2009). "Probable cause exists when, given the totality of the circumstances, a reasonable person could believe there is a fair probability that contraband or

evidence of a crime would be found in a particular place." *United States v. Murillo-Salgado*, 854 F.3d 407, 418 (8th Cir. 2017) (quoting *United States v. Wells*, 347 F.3d 280, 287 (8th Cir. 2003)).

C. Challenging a Search Warrant Under *Franks*

A defendant challenging an affidavit supporting a search warrant must make two showings to obtain an evidentiary hearing. *Franks v. Delaware*, 438 U.S. 154, 171–72 (1978); *United States v. Shockley*, 816 F.3d 1058, 1061 (8th Cir. 2016). First, the defendant is required make a "'substantial preliminary showing' that the affiant intentionally or recklessly included a false statement" or omitted a truthful statement in the warrant affidavit. *Shockley*, 816 F.3d at 1061 (quoting *United States v. Jacobs*, 986 F.2d 1231, 1233–34 (8th Cir. 1993)); *United States v. McIntyre*, 646 F.3d 1107, 1113 (8th Cir. 2011). Second, the defendant must show "the false statement [or omitted information] was 'necessary to the finding of probable cause.'" *Shockley*, 816 F.3d at 1061 (quoting *Jacobs*, 986 F.2d at 1233–34).

An attack on an affidavit supporting a search warrant cannot be merely conclusory. *Franks*, 438 U.S. at 171. The defendant must allege deliberate falsehood or reckless disregard for the truth and support such allegations with an offer of proof. *Id.* The test to determine if an affiant deliberately or recklessly made false statements, or omitted truthful statements, "is whether, after viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." *McIntyre*, 646 F.3d at 1114 (quoting *United States v. Butler*, 594 F.3d 955, 961 (8th Cir. 2010)).

In addition to this substantial showing, a defendant must also establish the affidavit would be insufficient to support probable cause for the search if false statements were excluded and omitted statements were included. *Franks*, 438 U.S. at 171–72. The defendant is only entitled to a *Franks* hearing if the affidavit's remaining content is insufficient to establish probable cause. *Id.*

IV. DISCUSSION

Short asserts his statements to law enforcement during the investigation of reported gunshots fired should be suppressed because he was in custody and questioned without first being read his *Miranda* rights. ECF No. 36-1 at 4–11. He contends the statements' admission at trial would violate the Fifth Amendment. *Id.* Short asserts the evidence found in his car should be suppressed because his car was searched without a warrant in violation of the Fourth Amendment. *Id.* at 12–13. Finally, Short asserts the evidence obtained from his apartment should be suppressed because the affidavit supporting the search warrant contains misleading information and omissions rendering the search warrant invalid and the subsequent search unlawful in violation of the Fourth Amendment. *Id.* at 14–17.

First, the Court finds Short was subject to a valid *Terry* stop. Thus, *Miranda* warnings were not required during Officer Miller's initial questioning. Second, the Court finds probable cause existed for the search of Short's car, making the search lawful under the automobile exception to the Fourth Amendment's warrant requirement. Finally, the Court finds Short did not make the necessary showings for a *Franks* hearing regarding the validity of the search warrant for his apartment. The Court denies Short's motion to suppress.

A. Fifth Amendment: *Terry* Stop and Custodial Interrogation

Short moves to suppress the statements he made to officers at the scene prior to receiving *Miranda* warnings. ECF Nos. 36 at 2; 36-1 at 4–11. Short argues his encounter with Officer Miller went beyond what is permitted for a "temporary investigative detention, or '*Terry* stop,'" and constituted custodial interrogation requiring *Miranda* warnings. ECF No. 36-1 at 4–7 (quoting *Waters v. Madson*, 921 F.3d 725, 736 (8th Cir. 2019)). The Government agrees Short was in custody after Officer Miller placed Short in handcuffs. Gov't's Resist. Def.'s Mot. Suppress 6–7, ECF No. 44. The Government therefore does not resist Defendant's motion as to statements Short

made after he was handcuffed. *Id.* at 7.

"*Miranda* warnings are required when a suspect is interrogated while in custody." *United States v. Aldridge*, 664 F.3d 705, 711 (8th Cir. 2011). To determine if a person is in custody "[t]he ultimate inquiry is whether (1) the person has been formally arrested, or (2) the person's freedom of movement has been restrained to a degree associated with a formal arrest." *United States v. Martinez*, 462 F.3d 903, 908–09 (8th Cir. 2006) (citing *United States v. LeBrun*, 363 F.3d 715, 720 (8th Cir. 2004). Brief investigatory detentions, or *Terry* stops, are not of the same nature and do not impose the same potentially coercive circumstances as custodial interrogations. *Pelayo-Ruelas*, 345 F.3d at 592 (citing *Berkemer*, 468 U.S. at 439–40). Persons are not in custody when an officer asks "a moderate number of questions to determine [the detainee's] identity and . . . tr[ies] to obtain information confirming or dispelling the officer's suspicions." *Id.* During a *Terry* stop or other brief investigatory detention, the "broad contention that a person is in custody for *Miranda* purposes whenever a reasonable person would not feel free to leave" is inapplicable. *Id.* Although a "[detainee] is not free to leave a *Terry* stop until the completion of a reasonably brief investigation," he is not in custody and *Miranda* warnings are not required. *Id.*

There are circumstances where suspects may be placed in handcuffs without transforming a *Terry* stop into custodial detention. *See Martinez*, 462 F.3d at 907 (concluding that handcuffing "did not convert the *Terry* stop into an arrest"); *United States v. Fisher*, 364 F.3d 970, 973 (8th Cir. 2004) (recognizing officers may constrain a suspect with handcuffs during an investigative detention when there is serious danger). However, the Government resists Short's motion to suppress only as to statements he made before Officer Miller handcuffed him. Therefore, the Court need only consider the circumstances of Short's detention before he was handcuffed.

Short was not in custody before he was handcuffed. Here, Officer Miller performed a valid *Terry* stop. Officer Miller had reasonable suspicion to stop Short when he arrived at the apartment

complex. Short matched the description of one of the potential suspects reported in 911 calls. Officer Miller asked Short to "come here" and "sit down." Officer Miller performed a brief pat down of Short and ask questions necessary for officer safety and to confirm or dispel his suspicion that Short was involved in the reported shooting. The pre-handcuff encounter lasted approximately one minute and thirty-five seconds, including the approximately six-second pat down. While Officer Miller's initial directives to Short might make a reasonable person feel not free to leave, that fact does not convert this brief investigatory detention into an arrest. *See Pelayo-Ruelas*, 345 F.3d at 592.

Additionally, Officer Miller's questioning did not convert the *Terry* stop into custodial interrogation. Interrogation occurs when an officer "should reasonably be aware that the information sought . . . is directly relevant to the substantive offense." *United States v. Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996) (quoting *United States v. McLaughlin*, 777 F.2d 388, 391–92 (8th Cir. 1985). Interrogation alone does not trigger *Miranda* when a person is not in custody. *See United States v. Cowan*, 674 F.3d 947, 958 (8th Cir. 2012). During a *Terry* stop, "an officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person . . . and take additional steps to investigate further." *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 178 (2004). Such additional steps include asking limited questions to determine a detainee's identity or obtain information to confirm or dispel an officer's suspicions. *See Pelayo-Ruelas*, 345 F.3d at 592; *Berkemer*, 468 U.S. at 439–40.

Short acknowledges Officer Miller's initial questions were permissible under *Terry*. ECF No. 36-1 at 9 (citing Def.'s Ex. A. at 3:28, ECF No. 49). Short claims the questions became impermissible when Officer Miller asked: "So you don't know who was involved? Who's doing this?" *See id.* at 7–9. Officer Miller asked these questions before handcuffing Short. This portion of the encounter lasts approximately twenty-two seconds. *See* ECF No. 49 at 3:28–3:50.

Officer Miller's questions regarding the circumstances of the reported shooting are "directly relevant to the substantive offense" because they seek information about who committed the offense. However, officers are permitted to ask limited questions to confirm or dispel their suspicions during *Terry* stops. *See Berkemer*, 468 U.S. at 439–40. Here, Officer Miller's two questions are limited both in time and in scope. *Cf. Cowan*, 674 F.3d at 958 (recognizing a question about an item suspected to link the suspect to the crime is permissible in a noncustodial situation, but requires *Miranda* warnings in a custodial situation). These two limited questions did not go beyond what is permissible during a *Terry* stop. Accordingly, *Miranda* warnings were not required. Introduction of Short's statements during the valid *Terry* stop would not violate his Fifth Amendment rights.

B. Fourth Amendment

1. Automobile exception

Short argues the search of his car was invalid under the search incident to arrest exception to the warrant requirement of the Fourth Amendment. ECF No. 36-1 at 12–13. Short further contends a warrantless search under the automobile exception was not justified because the officers lacked specific public safety or evidence preservation concerns. *Id.* At the hearing Short acknowledged he is arguing for a greater limitation on the application of the automobile exception than controlling caselaw requires. The Government asserts the warrantless search of Short's car was supported by probable cause and therefore was valid under the automobile exception. ECF No. 44 at 7–9.

When law enforcement has probable cause to believe an automobile contains contraband or evidence of criminal activity it may conduct a warrantless search of the automobile. *United States v. Brown*, 634 F.3d 435, 438 (8th Cir. 2011) (citing *United States v. Davis*, 569 F.3d 813, 817 (8th Cir. 2009)). The automobile exception to the warrant requirement is

founded on concerns over the very nature of automobiles. *See Carroll v. United States*, 267 U.S. 132, 153 (1925). An automobile's capacity to move from an area and out of a jurisdiction justifies a warrantless search of a vehicle if law enforcement has probable cause to believe evidence of a crime is contained therein. *Id.* "No exigency beyond that created by the ready mobility of an automobile is required for a warrantless search of a car to fall within the exception." *United States v. Blaylock*, 535 F.3d 922, 926 (8th Cir. 2008).

Probable cause exists when the totality of the circumstances indicates there is a "fair probability" of criminal activity. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). The odor of marijuana coupled with the testimony of someone qualified to identify the odor can be sufficient to establish probable cause for a search. *See Johnson v. United States*, 333 U.S. 10,13 (1948) (recognizing the presence of odor coupled with testimony of a qualified witness identifying it may constitute probable cause); *United States v. Smith*, 789 F.3d 923, 928–29 (8th Cir. 2015) (holding smell of marijuana and police officer's testimony identifying it established probable cause). The smell of marijuana alone can also indicate a "fair probability" that evidence of criminal activity is contained in the same location. *See United States v. Walker*, 840 F.3d 477, 483–84 (8th Cir. 2016) (determining smell of unburnt marijuana was an independent and sufficient basis for probable cause to search automobile); *United States v. Caves*, 890 F.2d 87, 91 (8th Cir. 1989) (determining smell of burnt marijuana established probable cause to believe automobile contained unused marijuana).

There was probable cause to search Short's car. Officers responded to the scene after 911 calls reported a potential suspect and car matching Short and his black Dodge Charger. Officer Miller, a trained and experienced officer, identified the odor emanating from Short's slightly open window as marijuana. Investigator Becker, a narcotics investigator trained in identifying illegal substances, was called to the scene to confirm the detected odor. Investigator Becker confirmed

the odor as marijuana. Two officers with training and experience identified the odor emanating from Short's car as marijuana. Under the totality of the circumstances, there was probable cause to believe Short's car contained unburnt marijuana. Therefore, the warrantless search of Short's car did not violate the Fourth Amendment. Because the Court finds the automobile exception applies, it need not consider Short's search-incident-to-arrest argument.

2. Sufficiency of Search Warrant Affidavit under *Franks*

Short argues the affidavit for the search warrant obtained for his apartment was misleading and omitted information material to a finding of probable cause, rendering the search warrant invalid. ECF No. 36; ECF No. 36-1 at 14–17. The Government asserts Short fails to meet the requirements set forth in *Franks* and is not entitled to an evidentiary hearing on the matter. ECF No. 44 at 9–12; *see* 438 U.S. at 171–72. The Court finds Short's assertions fail to meet the requirements under *Franks*.

The first showing under *Franks* requires the defendant to assert more than mere conclusions that the law enforcement officer deliberately or recklessly included a false statement or omitted a truthful statement in the warrant affidavit. *Franks*, 438 U.S. at 171. Accordingly, a defendant cannot rely entirely on his own accusations that "after viewing all the evidence, the affiant must have entertained serious doubts as to the truth of his statements or had obvious reasons to doubt the accuracy of the information he reported." *McIntyre*, 646 F.3d at 1114 (internal quotations and citations omitted); *see United States v. Carpenter*, 422 F.3d 738, 745 (8th Cir. 2005) (determining defendant could not meet the requirement under *Franks* by relying solely on his own accusations that the affiant acted deliberately or recklessly). Second, the defendant must show that if the offensive content in the warrant affidavit is ignored, its remaining content "would be insufficient to establish probable cause." *United States v. Coleman*, 349 F.3d 1077, 1083 (8th Cir. 2003).

In his affidavit, Investigator Becker includes statements from Toe and Atoyebi indicating

Short sold drugs. Def. Ex. D at 6–7, ECF No. 40. Investigator Becker also relies on the evidence retrieved from the search of Short's car, his experience as a narcotics investigator, and the criminal history of Short and his mother. *Id.* Short asserts Investigator Becker omitted various details, including that Toe and Atoyebi were the other suspects reported in the 911 calls and that their accounts varied as to why they came to the apartment complex. ECF No. 36-1 at 14–17. Short supports this assertion by claiming Investigator Becker knew or should have known of these details from the body camera recordings of the officers who interviewed Toe and Atoyebi. *See* ECF No. 36-1 at 15–16. Short's assertions fail to show Investigator Becker deliberately or recklessly omitted this information. Therefore, Short's assertions are insufficient to meet the substantial first showing required under *Franks*. *See Carpenter*, 422 F.3d at 745.

Even if Short made a sufficient showing that Becker omitted certain statements deliberately or recklessly, he would fail to satisfy the second required showing under *Franks*. The recovery of marijuana in Short's car, the circumstances of the shots-fired incident, and Short's criminal history provide a separate and sufficient basis for probable cause. *Cf. Carpenter*, 422 F.3d at 745 (holding defendant also failed to meet the second *Franks* requirement because several untainted sources of information in the affidavit were sufficient for probable cause). Even if the affidavit included the omitted information, the references to the reports and response to 911 shots-fired calls, the recovery of marijuana from Short's car, and Short's criminal history remain. This content is sufficient, considering the totality of the circumstances, to support a finding of probable cause to search Short's apartment. No *Franks* hearing is warranted.

V. CONCLUSION

Short was subject to a valid *Terry* stop. Officer Miller's encounter with Short before he was handcuffed did not require *Miranda* warnings. Investigator Becker had probable cause to search Short's car. Short's claim that the affidavit for the search warrant for his apartment

contained misleading and omitted information does not meet the standard set forth in *Franks*. For the foregoing reasons, admission at trial of the statements Short made before he was handcuffed, and the evidence found in Short's car and apartment does not violate the Fourth or Fifth Amendments.

IT IS ORDERED that Defendant Shaun Short's Motion to Suppress Evidence, ECF No. 36, is **DENIED**.

IT IS SO ORDERED.

Dated this 18th day of September, 2019.

REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
SHAUN SHORT

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:19-CR-00080-001

USM Number: 19138-030

Alfredo G. Parrish and Jessica Donels
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) Three of the Superseding Indictment filed on June 20, 2019.

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

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

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 924(c)(1)(A)(i)	Possession of Firearm in Furtherance of Drug Trafficking Crime	04/16/2019	Three

☐ See additional count(s) on page 2

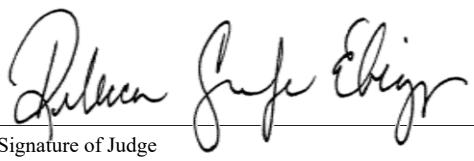
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☑ Count(s) One and Two ☐ 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.

March 10, 2020
Date of Imposition of Judgment



Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge
Name of Judge Title of Judge

March 10, 2020
Date

DEFENDANT: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001

IMPRISONMENT

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

72 months as to Count Three of the Superseding Indictment filed on June 20, 2019.

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

That the defendant be afforded the opportunity to participate in the Residential Drug Abuse Treatment Program (RDAP), that he be placed at FCI Oxford or other facility in close proximity to the State of Iowa, and that he be provided vocational training in the construction trades.

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

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ 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: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001

SUPERVISED RELEASE

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

Three years as to Count Three of the Superseding Indictment filed on June 20, 2019.

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: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001

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 _____

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

If not obtained while in Bureau of Prisons' custody, you must participate in GED classes as approved by the U.S. Probation Office.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or 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 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: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001

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.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$0.00	$ 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
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:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** 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: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001

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 $ 100.00 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 crimnal 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

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	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 Ruger, Model P95, 9mm pistol (SN: 317-86958); and $12,817 in United States currency, as outlined in the Preliminary Order of Forfeiture filed on January 27, 2020.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A. ☑ **The court adopts the presentence investigation report without change.**
B. ☐ **The court adopts the presentence investigation report with the following changes:** *(Use Section VIII if necessary)*
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report)

1. ☐ **Chapter Two of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to base offense level, or specific offense characteristics)*

2. ☐ **Chapter Three of the United States Sentencing Commission Guidelines Manual** determinations by court: (*briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility*)

3. ☐ **Chapter Four of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations*)

4. ☐ **Additional Comments or Findings:** *(include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)*

C. ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**
Applicable Sentencing Guideline: *(if more than one guideline applies, list the guideline producing the highest offense level)* _____

II. COURT FINDINGS ON MANDATORY MINIMUM SENTENCE *(Check all that apply)*

A. ☑ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:

☐ findings of fact in this case: *(Specify)* _____

☐ substantial assistance *(18 U.S.C. § 3553(e))*
☐ the statutory safety valve *(18 U.S.C. § 3553(f))*

C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: *(BEFORE DEPARTURES OR VARIANCES)*

Total Offense Level: N/A
Criminal History Category: N/A
Guideline Range: *(after application of §5G1.1 and §5G1.2)* N/A
Supervised Release Range: 2 to 5 years
Fine Range: $ N/A to $ N/A

☑ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.

B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary).*

C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. *(Also complete Section V)*

D. ☑ The court imposed a sentence otherwise outside the sentencing guideline system (*i.e.*, a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. **The sentence imposed departs:** *(Check only one)*
- ☐ above the guideline range
- ☐ below the guideline range

B. **Motion for departure before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
   - ☐ binding plea agreement for departure accepted by the court
   - ☐ plea agreement for departure, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense departure motion
2. **Motion Not Addressed in a Plea Agreement**
   - ☐ government motion for departure
   - ☐ defense motion for departure to which the government did not object
   - ☐ defense motion for departure to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for departure

C. **Reasons for departure:** (*Check all that apply*)

☐	4A1.3	Criminal History Inadequacy	☐	5K2.1	Death	☐	5K2.12	Coercion and Duress
☐	5H1.1	Age	☐	5K2.2	Physical Injury	☐	5K2.13	Diminished Capacity
☐	5H1.2	Education and Vocational Skills	☐	5K2.3	Extreme Psychological Injury	☐	5K2.14	Public Welfare
☐	5H1.3	Mental and Emotional Condition	☐	5K2.4	Abduction or Unlawful Restraint	☐	5K2.16	Voluntary Disclosure of Offense
☐	5H1.4	Physical Condition	☐	5K2.5	Property Damage or Loss	☐	5K2.17	High-Capacity Semiautomatic Weapon
☐	5H1.5	Employment Record	☐	5K2.6	Weapon	☐	5K2.18	Violent Street Gang
☐	5H1.6	Family Ties and Responsibilities	☐	5K2.7	Disruption of Government Function	☐	5K2.20	Aberrant Behavior
☐	5H1.11	Military Service	☐	5K2.8	Extreme Conduct	☐	5K2.21	Dismissed and Uncharged Conduct
☐	5H1.11	Charitable Service/Good Works	☐	5K2.9	Criminal Purpose	☐	5K2.22	Sex Offender Characteristics
☐	5K1.1	Substantial Assistance	☐	5K2.10	Victim's Conduct	☐	5K2.23	Discharged Terms of Imprisonment
☐	5K2.0	Aggravating/Mitigating Circumstances	☐	5K2.11	Lesser Harm	☐	5K2.24	Unauthorized Insignia
						☐	5K3.1	Early Disposition Program (EDP)

☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. **State the basis for the departure.** *(Use Section VIII if necessary)*

DEFENDANT: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. **The sentence imposed is:** *(Check only one)*
- ☑ above the guideline range
- ☐ below the guideline range

B. **Motion for a variance before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
   - ☐ binding plea agreement for a variance accepted by the court
   - ☐ plea agreement for a variance, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense motion for a variance
2. **Motion Not Addressed in a Plea Agreement**
   - ☑ government motion for a variance
   - ☐ defense motion for a variance to which the government did not object
   - ☐ defense motion for a variance to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for a variance

C. **18 U.S.C. § 3553(a) and other reason(s) for a variance** *(Check all that apply)*

☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1):
- ☐ Mens Rea
- ☐ Extreme Conduct
- ☐ Dismissed/Uncharged Conduct
- ☐ Role in the Offense
- ☐ Victim Impact
- ☐ General Aggravating or Mitigating Factors: *(Specify)*

☑ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1):
- ☐ Aberrant Behavior
- ☐ Lack of Youthful Guidance
- ☐ Age
- ☐ Mental and Emotional Condition
- ☐ Charitable Service/Good Works
- ☐ Military Service
- ☐ Community Ties
- ☐ Non-Violent Offender
- ☐ Diminished Capacity
- ☐ Physical Condition
- ☐ Drug or Alcohol Dependence
- ☐ Pre-sentence Rehabilitation
- ☐ Employment Record
- ☐ Remorse/Lack of Remorse
- ☐ Family Ties and Responsibilities
- ☐ Other: *(Specify)*
- ☑ Issues with Criminal History: *(Specify)* Seriousness of prior criminal conduct not accounted for by guideline sentence.

☑ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense *(18 U.S.C. § 3553(a)(2)(A))*
☐ To afford adequate deterrence to criminal conduct *(18 U.S.C. § 3553(a)(2)(B))*
☑ To protect the public from further crimes of the defendant *(18 U.S.C. § 3553(a)(2)(C))*
☐ To provide the defendant with needed educational or vocational training *(18 U.S.C. § 3553(a)(2)(D))*
☐ To provide the defendant with medical care *(18 U.S.C. § 3553(a)(2)(D))*
☐ To provide the defendant with other correctional treatment in the most effective manner *(18 U.S.C. § 3553(a)(2)(D))*
☐ To avoid unwarranted sentencing disparities among defendants *(18 U.S.C. § 3553(a)(6))* *(Specify in section D)*
☐ To provide restitution to any victims of the offense *(18 U.S.C. § 3553(a)(7))*
☐ Acceptance of Responsibility
☐ Conduct Pre-trial/On Bond
☐ Cooperation Without Government Motion for Departure
☐ Early Plea Agreement
☐ Global Plea Agreement
☐ Time Served *(not counted in sentence)*
☐ Waiver of Indictment
☐ Waiver of Appeal
☐ Policy Disagreement with the Guidelines (*Kimbrough v. U.S., 552 U.S. 85 (2007)*: *(Specify)*

☐ Other: *(Specify)*

D. **State the basis for a variance.** *(Use Section VIII if necessary)*

The sentence was imposed after considering all the factors set forth in 18 U.S.C. § 3553(a), as dictated into the record at the time of sentencing.

DEFENDANT: SHAUN SHORT
CASE NUMBER: 4:19-CR-00080-001
DISTRICT: SOUTHERN DISTRICT OF IOWA

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. ☑ **Restitution not applicable.**

B. **Total amount of restitution:** $0.00

C. **Restitution not ordered:** *(Check only one)*

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)'(s) losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons: *(Explain)*

D. ☐ **Partial restitution is ordered for these reasons:** *(18 U.S.C. § 3553(c))*

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

Defendant's Soc. Sec. No.: 338-88-3788

Defendant's Date of Birth: 03/12/1993

Defendant's Residence Address: 7209 Southeast Fifth Street, Apartment 70, Des Moines, Iowa 50315

Defendant's Mailing Address: U.S. Marshals Service custody

Date of Imposition of Judgment: March 10, 2020

Signature of Judge

Rebecca Goodgame Ebinger, U.S. District Judge
Name and Title of Judge

Date: March 10, 2020

United States Court of Appeals
For the Eighth Circuit

No. 20-1533

United States of America

Plaintiff - Appellee

v.

Shaun Short

Defendant - Appellant

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

Submitted: January 12, 2021
Filed: June 29, 2021

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

LOKEN, Circuit Judge.

Shaun Short conditionally pleaded guilty to possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(i). He appeals the district court's[1] denial of his motion to suppress evidence found in a warrantless

[1]The Honorable Rebecca Goodgame-Ebinger, United States District Judge for the Southern District of Iowa.

search of his vehicle and a subsequent warrant search of his apartment. See Fed. R. Crim. P. 11(a)(2). Regarding the vehicle search, the issue is whether the automobile exception to the Fourth Amendment's warrant requirement applies to a vehicle with a flat tire. On that issue, we review the district court's findings of fact for clear error and its legal conclusions *de novo.* United States v. Williams, 777 F.3d 1013, 1015 (8th Cir. 2015). Regarding the apartment search, the issue is whether Short made the threshold showing needed to require a hearing under Franks v. Delaware, 438 U.S. 154 (1978), to determine the sufficiency of the warrant affidavit's showing of probable cause. We review the denial of a Franks hearing for abuse of discretion. United States v. Kattaria, 553 F.3d 1171, 1177 (8th Cir.) (en banc), cert. denied, 558 U.S. 1061 (2009). Short also argues the district court imposed a substantively unreasonable 72-month prison sentence, an issue we review for abuse of discretion. United States v. Borromeo, 657 F.3d 754, 756 (8th Cir. 2011). We affirm.

I. The Vehicle Search

We recite the background facts relevant to the vehicle search as found by the district court in its Order denying the motion to suppress:

> Des Moines police officers responded to a report of gunshots fired at a Des Moines apartment complex on April 16, 2019. The various 911 callers reported that three potential suspects were involved. Callers also reported two black cars were involved, including a car of the same make and model as Short's car: a black Dodge Charger. One caller reported observing someone running from the apartment complex and firing a gun. The caller described this individual as a black male with dreadlocks wearing a white shirt and dark blue pants. Another caller identified a black male dressed in black clothing running down the hill at the back of the apartment complex.
>
> Officer [Cordel] Miller arrived at the apartment complex and encountered Short walking in the parking lot. Short was near a parked

> car, later determined to be his. Officer Miller recognized Short as matching the description reported by one of the 911 callers as a black male with dreadlocks wearing a white shirt and blue pants.
>
> Officer Miller approached Short. He asked him a series of questions regarding the shots fired, whether Short had any weapons on his person, Short's identity, and who was involved in the shooting. . . .
>
> After placing Short in handcuffs, Officer Miller surveyed the exterior of Short's black Dodge Charger. Officer Miller detected a strong odor of marijuana emanating from the rear driver's side window, which was open an inch or two. Officer Miller called Narcotics Investigator Andrew Becker to the scene. Becker also smelled marijuana coming from the car. Becker and another narcotics investigator then searched the car. They found a small bag containing approximately two grams of marijuana and an identification card for Short indicating he lived in the apartment complex.
>
> Elsewhere at the apartment complex, Emmanuel Toe and Samuel Atoyebi were identified as the other individuals reportedly involved in the shooting. Both admitted to their involvement in the shooting. They were detained. Atoyebi told officers his black Nissan was hit by gunfire. Atoyebi also stated he drove Toe to the apartment complex to purchase marijuana from Short.
>
> Detective Becker applied for and obtained a search warrant for Short's apartment. In Short's bedroom, officers found approximately 70 grams of marijuana; baggies with marijuana residue; $12,000 in cash; and working digital scales, one of which field tested positive for cocaine. Officers also located two firearms in Short's mother's room.

In denying Short's motion to suppress evidence found during the warrantless search of his vehicle, the district court concluded that the smell of marijuana gave the officers probable cause to search the vehicle and that the automobile exception permitted them to search the vehicle without a warrant. "Under the automobile exception to the Fourth Amendment, an officer may search a vehicle without a

warrant if he has probable cause." United States v. Pacheco, 996 F.3d 508, 513 (8th Cir. 2021).

On appeal, Short does not contest the court's conclusion that the smell of marijuana gave the officers probable cause to search his vehicle. Rather, Short argues that the Supreme Court's original reasoning in establishing the automobile exception does not apply in this case because his car was parked in the apartment complex lot with a flat tire. It is true the Supreme Court has repeatedly stated that no *separate* exigency is required for a vehicle search because "if a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." Maryland v. Dyson, 527 U.S. 465, 467 (1999) (alterations in original); see Pennsylvania v. Labron, 518 U.S. 938, 940 (1996) ("the automobile's 'ready mobility' [is] an exigency sufficient to excuse failure to obtain a search warrant once probable cause to conduct the search is clear") (citation omitted). But the Court has never held that only a "readily mobile" automobile may be searched without a warrant. Indeed, in Michigan v. Thomas, 458 U.S. 259, 261 (1982), the Court stated:

> the justification to conduct . . . a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant.

Short cites no case holding that the automobile exception does not apply when the vehicle to be searched is temporarily immobilized, and we have found none. Published opinions by two of our sister circuits, supported by an unpublished opinion of this court, have held to the contrary. In United States v. Mercado, 307 F.3d 1226, 1229 (10th Cir. 2002), the Tenth Circuit upheld the warrantless search of a van that had been towed to a public garage for minor repairs. The Court relied in part on our

unpublished decision in United States v. Maggard, No. 00-1146, 2000 WL 680394 (8th Cir.), cert. denied, 531 U.S. 916 (2000), where we upheld the warrantless search of a truck stuck in a ditch, explaining that the truck had not lost its "inherent mobility" because it could become mobile by simply towing it out of the ditch. Here, there is no evidence that the flat tire rendered Short's vehicle more than temporarily immobile. Nor is there evidence the flat tire rendered the vehicle even temporarily immobile, as numerous witnesses reported it had been driving around the parking lot that afternoon.

In United States v. Fields, 456 F.3d 519 (5th Cir.), cert. denied 549 U.S. 1046 (2006), the Fifth Circuit upheld the warrantless search of a vehicle that crashed into the side of a duplex while being pursued by police with probable cause to believe it contained contraband:

> Fields mischaracterizes the automobile exception. Even where a automobile is not immediately mobile at the time of the search, 'the lesser expectation of privacy resulting from *its use as a readily mobile vehicle* justifies[s] application of the vehicular exception.'

Id. at 524 (emphasis and alterations in original), quoting California v. Carney, 471 U.S. 386, 391 (1985). Here, as the apartment complex parking lot was "available for the use of residents and their guests, the landlord and his agents, and others having legitimate reasons to be on the premises, . . . [Short] did not have an expectation of privacy" in the lot. United States v. McGrane, 746 F.2d 632, 634 (8th Cir. 1984).

The officers indisputably had probable cause to search Short's vehicle, and an easily repairable flat tire did not cause the vehicle to lose its inherent mobility. Accordingly, the automobile exception applied and the district court properly denied the motion to suppress evidence resulting from the vehicle search.

II. The Franks Hearing Issue

Short argues the district court erred in refusing to hold a Franks hearing based on Short's allegations that Detective Becker omitted key information from his application for a warrant to search the apartment that Short and his mother shared in the complex. To merit a Franks hearing, Short must make a substantial preliminary showing that Becker, the warrant affiant, included in the affidavit "a false statement knowingly and intentionally, or with reckless disregard for the truth . . . [that] is necessary to the finding of probable cause." Kattaria, 553 F.3d at 1176, quoting Franks, 438 U.S. at 155-56. "The requirement of a substantial preliminary showing is not lightly met." United States v. Arnold, 725 F.3d 896, 898 (8th Cir. 2013) (quotation omitted).

Short's argument is based in part on the contention that the search of his car was unlawful and therefore that part of Becker's probable cause showing must be excised in determining whether the affidavit established probable cause. Like the district court, we have rejected that contention. The bulk of the argument focuses on Becker's alleged omission of facts necessary to put the probable cause showing in proper perspective -- the affidavit recited that Atoyebi and Toe admitted being involved in the shooting and that Atoyebi told Detective Dawson that the two went to the apartment complex to buy marijuana from Short, but it omitted facts demonstrating that Atoyebi was not credible -- his conflicting statements to other officers, initially giving a false name and claiming to be a witness rather than a participant in the shooting; Toe's conflicting statement they came to the apartment to fight; and evidence from witnesses that Toe was the shooter and only Atoyebi placed a firearm in Short's hands. Short argues that "showing that he was the victim of this shooting, and that Atoyebi was not credible, should have been sufficient to have a hearing pursuant to Franks."

The district court found that "Short's assertions fail to show Investigator Becker deliberately or recklessly omitted" from his affidavit "various details, including that Toe and Atoeybi were the other suspects reported in the 911 calls and that their accounts varied as to why they came to the apartment complex." And even if Short had made a sufficient showing of deliberate or reckless omissions, the court found that, "if the affidavit included the omitted information, the references to the reports and response to 911 shots-fired calls, the recovery of marijuana from Short's car, and Short's criminal history" are "sufficient, considering the totality of the circumstances, to support a finding of probable cause to search Short's apartment." We agree.

Absent from Short's allegations is a scintilla of evidence that Detective Becker knowingly disregarded the truth in his warrant affidavit in order to mislead the issuing judge. "A mere allegation standing alone, without an offer of proof in the form of a sworn affidavit of a witness or some other reliable corroboration, is insufficient to make the difficult preliminary showing." United States v. Mathison, 157 F.3d 541, 548 (8th Cir. 1998), cert. denied, 525 U.S. 1089 (1999). Short argues the alleged omissions create an inference of reckless disregard of the truth. However, "[i]n a warrant affidavit, the government need only show facts sufficient to support a finding of probable cause." United States v. Ozar, 50 F.3d 1440, 1445 (8th Cir.), cert. denied, 516 U.S. 871 (1995). Therefore, "reckless disregard for the truth may be inferred from the omission of information from an affidavit only when the material omitted would have been clearly critical to the finding of probable cause." United States v. Carnahan, 684 F.3d 732, 735 (8th Cir.) (quotation omitted), cert. denied, 568 U.S. 1016 (2012). Here, no clearly critical facts were omitted. The recovery of marijuana in Short's vehicle, the 911 calls including one caller who reported that a man fitting Short's description ran from the complex firing a weapon, and Short's criminal history established probable cause to search the apartment, even if Atoybei's statements to the police officers were less than completely credible. The district court did not abuse its discretion in denying a Franks hearing.

III. The Sentencing Issue

The district court determined that Short's advisory guidelines sentence range was 60 months imprisonment, the mandatory minimum sentence. See 18 U.S.C. § 924(c)(1)(A)(i). The PSR identified Short's extensive criminal history as a potential ground for upward departure, see USSG § 2K2.4, comment. (n.2(B)), and a number of 18 U.S.C. § 3553(a) sentencing factors that may warrant an upward variance. The government requested an upward variance to 90 months. The district court sentenced Short to 72 months imprisonment. The court explained that the 12 month variance reflected the serious nature of the underlying events, including that it was "a shooting related to drug trafficking" that "occurred in an open and public area," that Short's several prior convictions evidenced a "consistent engagement in drug trafficking," and that combining drugs and guns "create[s] a greater risk."

On appeal, Short argues that his 72 month sentence is substantively unreasonable because the district court did not give adequate weight to mitigating factors --his troubled upbringing and disabilities -- while giving too much weight to the seriousness of the underlying shooting and his criminal history. At sentencing, the district court expressly considered the parties' sentencing positions and arguments and explained the reasons for the sentence it imposed. The court acknowledged Short's "significant documentation of challenges that he's faced and he continues to face in terms of intellectual functioning and other background issues," his "letters of support," and a medical report the court found "thorough" and considered. The court weighed those factors against the offense conduct's "significant danger to the public both in its basic form, possessing a firearm in furtherance of a drug trafficking crime, and in the actual facts of this case."

"We review this issue under the abuse-of-discretion standard, taking into account the totality of the circumstances." Borromeo, 657 F.3d at 756 (citation omitted). After careful review of the totality of the circumstances reflected in the

sentencing record, we conclude this is not "the unusual case when we reverse a district court sentence -- whether within, above, or below the applicable Guidelines range -- as substantively unreasonable." Id. The district court did not abuse its substantial sentencing discretion in weighing the 18 U.S.C. § 3553(a) factors.

The judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1533

United States of America

Appellee

v.

Shaun Short

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:19-cr-00080-RGE-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 04, 2021

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

/s/ Michael E. Gans