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IN THE  
SUPREME COURT OF THE UNITED STATES

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DESHAUN BULLOCK, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

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On Petition for Writ of Certiorari  
to the U.S. Court of Appeals, Eighth Circuit

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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Carlyle Parish LLC  
Kathryn B. Parish\*  
3407 Jefferson, #128  
Saint Louis, MO 63118  
\*Counsel of Record  
ATTORNEY FOR PETITIONER

United States Court of Appeals  
For the Eighth Circuit

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No. 21-1987

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United States of America

*Plaintiff - Appellee*

v.

DeShaun Anthony Bullock, Jr.

*Defendant - Appellant*

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Appeal from United States District Court  
for the Northern District of Iowa - Eastern

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Submitted: April 14, 2022

Filed: May 31, 2022

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Before COLLOTON, MELLOY, and GRUENDER, Circuit Judges.

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GRUENDER, Circuit Judge.

DeShaun Bullock pleaded guilty to possession of a firearm by an unlawful drug user. *See* 18 U.S.C. § 922(g)(3). Bullock appeals the district court's<sup>1</sup> application of a sentencing enhancement for “possessi[ng] any firearm . . . in

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<sup>1</sup>The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa.

connection with another felony offense,” U.S.S.G. § 2K2.1(b)(6)(B), and its decision to depart upward based on conduct of which Bullock was acquitted, *see* U.S.S.G § 4A1.3. We affirm.

## I.

On March 15, 2019, police officers observed activity involving Bullock that they believed was consistent with an illegal drug transaction in a parking lot. The officers observed a car pull up next to Bullock’s car and an unidentified individual exit the back seat of the first car, walk to the driver’s side window of Bullock’s car, and then quickly return to the first car. The officers watched Bullock leave the parking lot and then pulled him over for committing a traffic infraction. Bullock was the only person in the car. He handed the officers his driver’s license and permit to carry weapons. One of the officers asked whether Bullock had a gun, and Bullock reached over to the passenger-side floorboard, picked up his gun, and placed it on the dashboard. The officers searched Bullock’s car and found two baggies of marijuana weighing a combined 4.3 grams, one in the center console and one in the pocket of a coat laying on the back seat.

Bullock pleaded guilty to possession of a firearm by an unlawful drug user. *See* § 922(g)(3). The presentence investigation report recommended applying a sentencing enhancement under U.S.S.G. § 2K2.1(b)(6)(B) for “use[] or possess[ion of] any firearm or ammunition in connection with another felony offense.” The “[l]other felony offense” here is possession of a controlled substance, marijuana, third violation, under Iowa law. *See* Iowa Code § 124.401(5). Bullock objected to the application of the § 2K2.1(b)(6)(B) enhancement. Additionally, the Government moved for an upward departure under U.S.S.G § 4A1.3 or, alternatively, an upward variance, based on the underrepresentation in Bullock’s criminal-history category of the seriousness of his criminal history, relying on a 2017 charge for reckless use of a firearm resulting in serious injury of which Bullock was acquitted in state court. Bullock objected to the upward departure.

At sentencing, the district court applied the § 2K2.1(b)(6)(B) enhancement and departed upward under § 4A1.3 from the sentencing guidelines range of 46 to 57 months' imprisonment. The district court sentenced Bullock to 63 months' imprisonment. Bullock appeals, challenging the § 2K2.1(b)(6)(B) enhancement, the upward departure, and the substantive reasonableness of his sentence.

## II.

We begin with Bullock's challenge to the application of the § 2K2.1(b)(6)(B) enhancement. We review for clear error. *United States v. Mitchell*, 963 F.3d 729, 731 (8th Cir. 2020).

The § 2K2.1(b)(6)(B) enhancement applies "[i]f the defendant . . . used or possessed any firearm or ammunition in connection with another felony offense." Under application note 14(A), the enhancement applies "if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense," such as drug possession. *See United States v. Smith*, 535 F.3d 883, 885 (8th Cir. 2008).

"To facilitate the crime of drug possession, the defendant must possess the gun with the purpose or effect of facilitating the drug possession, and the connection cannot be just spatial or coincidental." *United States v. Swanson*, 610 F.3d 1005, 1008 (8th Cir. 2010). "This standard may be met when a defendant concurrently possesses drugs and a firearm while in public, like in a car," *id.*, because "when a drug user chooses to carry his illegal drugs out into public with a firearm, there are many ways in which the weapon can facilitate the drug offense and dangerously embolden the offender." *Smith*, 535 F.3d at 886. "The inference that a firearm is for protection of drugs is allowable when the amount of drugs is more than residue." *Swanson*, 610 F.3d at 1008. Accordingly, we have affirmed the application of § 2K2.1(b)(6)(B) when a defendant's "gun and [drugs] were both within his immediate reach" while the defendant was in his car. *Swanson*, 610 F.3d at 1006, 1008.

Bullock argues that the district court clearly erred in finding that the gun facilitated the marijuana possession given the small amount of marijuana he possessed, the widespread availability of marijuana, and the fact that the gun would not have been visible to a drug seller because it was on the passenger-side floorboard.

We conclude that the district court did not clearly err in finding that Bullock's gun facilitated his drug possession. Bullock possessed the gun in public—on a public road in his car—and both the gun and at least some of the drugs were easily accessible; the gun was on the passenger-side floorboard and a baggie of marijuana was found in the center console. *See Swanson*, 610 F.3d at 1008. True, the gun might not have been visible to a drug seller, but Bullock would have been able to access the gun if he needed it. And Bullock was “seen involved in activity . . . that appeared to be consistent with an illegal drug transaction.” *See id.* Although Bullock argues that marijuana possession is not dangerous because marijuana is widely available, given the evidence that Bullock was involved in an illegal drug transaction and the gun's close proximity to the marijuana, “it was permissive for the district court to determine [that the drugs and the gun] were purposefully together and not close in proximity as a matter of coincidence.” *See id.*; *United States v. Almeida-Perez*, 549 F.3d 1162, 1173 (8th Cir. 2008) (“[W]here there are two permissible views of the evidence, the fact-finder's choice between them cannot be clearly erroneous.”).

### III.

Next, Bullock argues that the district court erred in departing upward under § 4A1.3 based on conduct of which he was acquitted. First, Bullock argues that it violated his constitutional rights for the district court to rely on prior conduct of which he was acquitted and that was proved only by a preponderance of the evidence. Second, Bullock argues that even if the preponderance of the evidence standard applies, the prior conduct was not established by a preponderance of the evidence. Third, Bullock argues that the district court did not comply with § 4A1.3(c)'s requirement to explain in writing why his “applicable criminal history

category substantially under-represents the seriousness of [his] criminal history or the likelihood that [he] will commit other crimes.” Fourth, Bullock argues that the district court clearly erred in finding that the prior conduct and present offense conduct are similar.

“We review the [district] court’s decision to depart upward for an abuse of discretion.” *United States v. Outlaw*, 720 F.3d 990, 992 (8th Cir. 2013). “The district court’s factual findings at sentencing are reviewed for clear error, and the district court’s application of the sentencing guidelines to the facts is reviewed *de novo*.” *United States v. Finck*, 407 F.3d 908, 913 (8th Cir. 2005). The district court may depart upward “[i]f reliable information indicates that the defendant’s criminal history category substantially under-represents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes.” § 4A1.3(a)(1). In determining whether to depart, the district court may consider “[p]rior similar adult criminal conduct not resulting in a criminal conviction.” § 4A1.3(a)(2)(E). If the district court departs under § 4A1.3(a)(1), it must provide in writing “the specific reasons why the applicable criminal history category substantially under-represents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes.” § 4A1.3(c)(1).

None of Bullock’s arguments shows that the district court abused its discretion. First, the district court’s reliance on acquitted conduct to depart upward did not violate Bullock’s Fifth and Sixth Amendment rights. “[W]e have repeatedly held that due process never requires applying more than a preponderance of the evidence standard for finding sentencing facts.” *United States v. Martin*, 777 F.3d 984, 997-98 (8th Cir. 2015) (internal quotation marks omitted); *see also United States v. Ruelas-Carbajal*, 933 F.3d 928, 930 (8th Cir. 2019) (“[A]n acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.” (internal quotation marks omitted)); *United States v. Haynie*, 8 F.4th 801, 807 (8th Cir. 2021); *United States v. Shavers*, 955 F.3d 685, 699 (8th Cir. 2020).

Second, the Government established by a preponderance of the evidence that Bullock recklessly used a firearm, resulting in serious injury. The Government presented evidence that Bullock was with the victim when the victim was shot, Bullock did not call 911 until after he had dropped the victim off at the hospital, Bullock lied when he said an unknown black male had shot the victim, Bullock admitted that the “gun went off” accidentally, and the victim testified that Bullock accidentally shot him. Additionally, the Government presented two text messages that Bullock sent after his acquittal. In them, he wrote that “[m]y best friend tried to rob me so I shot him in the face” and “my best friend tried to rob my [sic] so I shot [him] in the head.” From that evidence, the prior conduct was established by a preponderance of the evidence.

Third, the district court adequately explained “why the applicable criminal history category substantially under-represents the seriousness of [Bullock’s] criminal history or the likelihood that [he] will commit other crimes.” See § 4A1.3(c)(1). “[A] failure to provide written reasons does not automatically require reversal.” *Outlaw*, 720 F.3d at 993. In *Outlaw*, “any prejudice from this failure [wa]s nullified when the district court stated with great specificity in open court the reasons for its decision to depart upward.” *Id.* (internal quotation marks omitted). Though the district court did not comply with § 4A1.3(c)(1)’s requirement to elaborate in writing why it departed upward, this was harmless error because it thoroughly explained in the sentencing hearing why it departed upward and noted that both the prior conduct and the present incident involved firearms. See *id.*; Fed. R. Crim. P. 52(a).

Fourth, the district court did not clearly err in finding that the acquitted conduct and present offense conduct are similar because both the prior conduct and the present incident involved firearms. See *United States v. Robertson*, 568 F.3d 1203, 1207, 1212-13 (10th Cir. 2009) (concluding under § 4A1.3 that the defendant’s charges for criminal discharge of a firearm involved conduct that was sufficiently similar to the instant offense of possession of a firearm by a felon).

Therefore, the district court did not abuse its discretion in departing upward under § 4A1.3.

#### IV.

Finally, Bullock argues that his sentence is substantively unreasonable because he cooperated with the police, he is not dangerous, his criminal history consists of only three misdemeanor marijuana-possession convictions, he had custody of his young daughter who had health issues, he had a stable job, and he is at risk of COVID complications due to asthma and hypertension.

We review “the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.” *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). The sentence must be “sufficient, but not greater than necessary” to satisfy the purposes in 18 U.S.C. § 3553(a)(2). § 3553(a). The district court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant,” § 3553(a)(1), “the need for the sentence imposed . . . to reflect the seriousness of the offense,” § 3553(a)(2)(A), “the need for the sentence imposed . . . to afford adequate deterrence to criminal conduct,” § 3553(a)(2)(B), the guidelines sentencing range, § 3553(a)(4), and “any pertinent policy statement,” § 3553(a)(5). “A district court abuses its discretion when it (1) fails to consider a relevant factor that should have received significant weight; (2) gives significant weight to an improper or irrelevant factor; or (3) considers only the appropriate factors but in weighing those factors commits a clear error of judgment.” *Feemster*, 572 F.3d at 461 (internal quotation marks omitted). A district court has “wide latitude” in weighing the § 3553(a) sentencing factors. *United States v. Nguyen*, 829 F.3d 907, 925-26 (8th Cir. 2016). Indeed, “it will be the unusual case when we reverse a district court sentence—whether within, above, or below the applicable Guidelines range—as substantively unreasonable.” *Feemster*, 572 F.3d at 464.



Bullock's sentence is substantively reasonable. At sentencing, the district court said that it considered all the § 3553 factors. The district court also discussed the offense conduct; Bullock's history and characteristics, including his health conditions and role as a father; his criminal history, including the prior conduct of which he was acquitted; the need for deterrence; and other relevant facts. *See* § 3553(a). Though Bullock disagrees with the district court's weighing of the factors, that does not make his sentence substantively unreasonable. *See Nguyen*, 829 F.3d at 925-26.

V.

For the foregoing reasons, we affirm Bullock's sentence.

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## UNITED STATES DISTRICT COURT

Northern District of Iowa

UNITED STATES OF AMERICA

v.

DESHAUN ANTHONY BULLOCK, JR.

) **JUDGMENT IN A CRIMINAL CASE**

)

) Case Number: **0862 6:20CR02018-001**

)

) USM Number: **18419-029**

)

☒ ORIGINAL JUDGMENT☐ AMENDED JUDGMENT

Date of Most Recent Judgment:

Elizabeth Araguas

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) **3 of the Indictment filed on May 19, 2020**☐ 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:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(3) and 924(a)(2)	Possession of a Firearm by a Drug User	07/11/2019	3

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) **1 and 2 of the Indictment** \_\_\_\_\_ 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.

**C.J. Williams**  
**United States District Court Judge**

Name and Title of Judge

**April 16, 2021**

Date of Imposition of Judgment



Signature of Judge

**April 19, 2021**

Date

DEFENDANT: **DESHAUN ANTHONY BULLOCK, JR.**  
CASE NUMBER: **0862 6:20CR02018-001**

### PROBATION

☐ The defendant is hereby sentenced to probation for a term of:

### IMPRISONMENT

☒ The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:  
**63 months on Count 3 of the Indictment.**

☒ The court makes the following recommendations to the Federal Bureau of Prisons:  
**It is recommended that the defendant be designated to a Bureau of Prisons facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.**

**It is recommended that the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.**

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

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

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Federal Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the United States 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 \_\_\_\_\_

DEFENDANT: **DESHAUN ANTHONY BULLOCK, JR.**  
CASE NUMBER: **0862 6:20CR02018-001**

### **SUPERVISED RELEASE**

- ☒ Upon release from imprisonment, the defendant will be on supervised release for a term of:  
**3 years on Count 3 of the Indictment.**

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### **MANDATORY CONDITIONS OF SUPERVISION**

- 1) The defendant must not commit another federal, state, or local crime.
- 2) The defendant must not unlawfully possess a controlled substance.
- 3) The defendant must refrain from any unlawful use of a controlled substance.  
The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.  
☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*
- 4) ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- 5) ☐ The defendant 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 the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. *(Check, if applicable.)*
- 6) ☐ The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

The defendant 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: **DESHAUN ANTHONY BULLOCK, JR.**  
CASE NUMBER: **0862 6:20CR02018-001**

## STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

- 1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.
- 3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant must answer truthfully the questions asked by the defendant's probation officer.
- 5) The defendant must live at a place approved by the probation officer. If the defendant plans to change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.
- 7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
- 10) The defendant 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) The defendant 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) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **DESHAUN ANTHONY BULLOCK, JR.**  
CASE NUMBER: **0862 6:20CR02018-001**

### **SPECIAL CONDITIONS OF SUPERVISION**

*The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:*

1. **The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**
2. **The defendant must participate in a substance abuse evaluation. The defendant must complete any recommended treatment program, which may include a cognitive behavioral group, and follow the rules and regulations of the treatment program. The defendant must participate in a program of testing for substance abuse. The defendant must not attempt to obstruct or tamper with the testing methods.**
3. **The defendant must not use or possess alcohol. The defendant is prohibited from entering any establishment that holds itself out to the public to be a bar or tavern without the prior permission of the United States Probation Office.**
4. **If not employed at a lawful type of employment as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.**

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
United States Probation Officer/Designated Witness

\_\_\_\_\_  
Date

Judgment 6 of 7

DEFENDANT: **DESHAUN ANTHONY BULLOCK, JR.**  
CASE NUMBER: **0862 6:20CR02018-001**

**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>AVAA Assessment<sup>1</sup></u>	<u>JVTA Assessment<sup>2</sup></u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	<b>\$ 100</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>

☐ 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<sup>3</sup></u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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**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:

<sup>1</sup>Amy, Vicky, and Any Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

<sup>2</sup>Justice for Victims of Trafficking Act of 2015, 18 U.S.C. § 3014.

<sup>3</sup>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: **DESHAUN ANTHONY BULLOCK, JR.**  
CASE NUMBER: **0862 6:20CR02018-001**

### SCHEDULE OF PAYMENTS

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

- A ☒ \$ 100 due immediately;
- ☐ 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 will 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 must pay the cost of prosecution.
- ☐ The defendant must pay the following court cost(s):
- ☐ The defendant must 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) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.



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

No: 21-1987

United States of America

Appellee

v.

DeShaun Anthony Bullock, Jr.

Appellant

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Appeal from U.S. District Court for the Northern District of Iowa - Eastern  
(6:20-cr-02018-CJW-1)

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**ORDER**

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

July 13, 2022

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

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/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
VS. ) 20-CR-2018  
 )  
DESHAUN BULLOCK, JR., )  
 )  
Defendant. )

APPEARANCES:

ATTORNEY DANIEL AARON CHATHAM, U.S. Attorney's Office,  
111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401,  
appeared on behalf of the United States.

ATTORNEY ELIZABETH ARAGUÁS, Nidey, Erdahl, Meier &  
Araguás, 425 Second Street S.E., Suite 1000, Cedar  
Rapids, Iowa 52401, appeared on behalf of the Defendant.

SENTENCING HEARING,

HELD BEFORE THE HON. C.J WILLIAMS,

on the 16th day of April, 2021, at 111 Seventh Avenue  
S.E., Cedar Rapids, Iowa, commencing at 8:59 a.m., and  
reported by Patrice A. Murray, Certified Shorthand  
Reporter, using machine shorthand.

Transcript Ordered: 5/13/21  
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for a complete copy of the transcript.**

1 All right. In arriving at a sentence that is  
2 sufficient but not greater than necessary to achieve the  
3 goals of sentencing, I have considered all the factors at  
4 Title 18 United States Code Section 3553(a). Even if I  
5 do not mention each of them in my comments here, I have  
6 carefully considered them.

7 Turning first to the offense conduct, the offense  
8 conduct actually spans a couple years of time, and it  
9 comes with the context of shortly before this, the  
10 defendant shot another person. It's awfully hard for me,  
11 Mr. Bullock, to hear you say you're not a dangerous  
12 person. You shot a man in the face. You shot a man in  
13 the face. And either it was accidental or it was  
14 intentional, but you shot a man in the face. You could  
15 have killed him. So that is completely inconsistent with  
16 the idea that you are not a dangerous man.

17 But coming off of an acquittal for that conduct --  
18 and I'm not going to conclude that you intentionally shot  
19 him. I am going to conclude that those text messages  
20 were puffery and bragging. But at the very least you  
21 discharged a firearm and shot your friend in the face.  
22 And then, after that happens, after you've had this  
23 contact with law enforcement officers, you've been  
24 charged, you know that you've been interviewed about your  
25 use of controlled substances, all having to do with the

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1 firearm, what you do is you then go to a gun shop, you  
2 lie on the form, and you buy another gun. So you're  
3 acquitted in April of 2018, you're bragging about it a  
4 month later on text messages, and then three months after  
5 you are acquitted -- less than three months after you are  
6 acquitted, you are out buying another gun and lying about  
7 it. And then when law enforcement officers find you in  
8 March in the car and they seize another firearm from you  
9 and interview you about your drug use again, which should  
10 have been -- if you weren't already fully aware that you  
11 can't possess firearms when you are using controlled  
12 substances, you respond to that after they take that gun  
13 by going out and buying another gun and lying on another  
14 form.

15 And so this is behavior that shows a complete  
16 disrespect for the law. You're not deterred by contact  
17 with law enforcement officers, repeated contact with law  
18 enforcement officers.

19 Just a minor matter aside, but you indicated that  
20 you didn't even know the marijuana was in the car. The  
21 unobjected-to portions of the presentence investigation  
22 report indicates at paragraph 6 that you told the  
23 officers there would be a bag of weed in the car. So you  
24 did know that there was marijuana in the car on March 15,  
25 2019.

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1           So I find the offense conduct to be aggravating in  
2 the sense that it is the same type of conduct, that is,  
3 possession of a firearm by an unlawful drug user, despite  
4 repeated contact with law enforcement officers over that.  
5 It is -- as Ms. Araguás notes though, on the possession  
6 for which you are charged of these firearms, you were not  
7 using them in the sense of displaying them, you didn't  
8 discharge these two firearms, and so there is an absence  
9 of some aggravating facts there.

10           Turning to the history and characteristics of the  
11 defendant here, the defendant is 29 years old, single,  
12 and he has one dependent child. The letters of support  
13 paint a different picture of the defendant. He had a  
14 good upbringing. By his own report, he had a normal and  
15 great upbringing. And he was sheltered, according to his  
16 own words, and attended a private school; had lots of  
17 toys. He, according to the letters of support, was a  
18 good athlete, and there were hopes that he was going to  
19 go to college and play at a college as well.

20           The defendant did graduate from high school, and he  
21 did go to Iowa Central Community College for one year at  
22 that point. The defendant's history of drug use goes  
23 back to the age of 13 when he began using marijuana, and  
24 essentially he has used marijuana ever since the age of  
25 13. He has had some treatment, and he has been diagnosed

1 with cannabis dependence as well, which I guess,  
2 Mr. Bullock, you need to understand, you're going to have  
3 a problem in the future with that addiction problem.  
4 You've got to get on top of it, or you're just going to  
5 find yourself back in contact with law enforcement.

6 The defendant does have some physical issues with  
7 regard to hypertension, asthma, and chronic kidney  
8 disease as well that I've noted in the presentence  
9 report. There's no history of mental illness, other than  
10 there is some indication that the defendant was diagnosed  
11 with ADHD as a child and had an individualized education  
12 program.

13 I did note, as well as was emphasized by the  
14 defendant, that he has a good -- and by his counsel --  
15 that he has a good work history, that he has worked hard  
16 and has apparently been very successful. And that's  
17 reflected at paragraphs 59 through 61 of the presentence  
18 report.

19 The defendant's criminal history is limited. The  
20 defendant has three prior possession of marijuana  
21 offenses. Two of those occurred while he was on  
22 probation from a prior one, so that also shows a degree  
23 of recidivism and failure to be deterred by contact with  
24 law enforcement or even criminal sentences. His first  
25 conviction was a deferred judgment; and had he refrained

1 from the use of controlled substances and the other  
2 violations he engaged in while on probation, that  
3 conviction would have gone away, but he blew it and  
4 ultimately had his deferred judgment revoked. And so  
5 prior attempts by courts to be lenient with the defendant  
6 have not resulted in him being deterred from additional  
7 criminal conduct.

8 As for the 2017 incident, I understand the defendant  
9 was acquitted of that conduct in state court. The state  
10 court did not have the benefit of the text messages that  
11 are reflected in Government's Exhibits 3 and 4. And  
12 while I do find them to be puffery, what they do show is  
13 the defendant most clearly shot the defendant -- or the  
14 victim. I'm not sure what the defense was at the trial,  
15 but here, I'm assessing evidence by a preponderance of  
16 the evidence. At a criminal trial, the jury has to find  
17 the evidence beyond a reasonable doubt.

18 Here, I find based on the evidence presented by the  
19 government that the defendant at the very least  
20 recklessly discharged this firearm. He either  
21 intentionally shot his friend or he recklessly did so.  
22 There's nothing in front of me and nothing in any of the  
23 records provided by the court [sic] and none of the  
24 statements the defendant made to law enforcement  
25 officers, either reflected in the reports or in his

1 interview at Exhibit 2, where he ever claimed any  
2 self-defense or any other explanation. So the only  
3 conclusion I can reach from this is the defendant shot  
4 his friend, and in the best light for the defendant, he  
5 did so recklessly without justification. And so in that  
6 sense, I do find the defendant's criminal history  
7 category is understated and underrepresents the  
8 seriousness of his criminal history and the likelihood of  
9 him reoffending.

10 The one part that gives me some -- a couple things  
11 give me some pause on the extent of any upward variance  
12 or upward departure, is the defendant perhaps has  
13 appeared to make some change in his life since these  
14 incidents occurred back in 2018 and 2019, in part because  
15 of his responsibility as a father. And I also do  
16 recognize that the firearm in this case, while it was a  
17 high-capacity magazine, the defendant wasn't perhaps  
18 using it in a way that created a greater danger. And so  
19 perhaps to some degree the 4-level enhancement -- or, I'm  
20 sorry, the 6-level enhancement, taking it from a base  
21 offense level 14 to a base offense level 20, to some  
22 degree might overstate how serious the defendant's  
23 possession of a high-capacity magazine, in this  
24 particular case on these facts, were.

25 So taking into account all the facts and all the



1 factors at Title 18 United States Code Section 3553(a), I  
2 am granting the government's motion for an upward  
3 departure or in the alternative an upward variance. When  
4 the Court is upward departing for understatement of  
5 criminal history, the Court of Appeals wants the Court to  
6 typically use the structure of the guidelines in doing  
7 so. The defendant is at a criminal history category III  
8 at this point, with a total offense level of 21, the  
9 guideline range of 46 to 57 months. If I were to go  
10 upward by one criminal history category to a criminal  
11 history category IV, the new advisory guideline range of  
12 imprisonment would be 57 to 61 months.

13 PROBATION OFFICER: Your Honor?

14 THE COURT: Yes.

15 PROBATION OFFICER: 57 to 71 months.

16 THE COURT: What did I say? 61. I'm sorry, 57  
17 to 71 months. And alternatively, I would vary upward to  
18 that range as well. And I do that based not only on the  
19 2017 criminal conduct of which the defendant was  
20 acquitted but also the fact that he committed the same  
21 offense in paragraphs 29, 30, and 31, which shows a lack  
22 of deterrence and that he committed the offenses at 30  
23 and 31 while he was on probation for the offense at  
24 paragraph 29, which also shows a high degree of  
25 recidivism.

1           So with that ruling, it is the judgment of this  
2 Court, Mr. Bullock, that you are hereby committed to the  
3 custody of the Bureau of Prisons to be imprisoned for a  
4 term of 63 months. That is roughly in the middle of that  
5 new advisory guideline range. I find that sentence to be  
6 sufficient but not greater than necessary to achieve the  
7 goals of sentencing here.

8           It is recommended that you be designated to a Bureau  
9 of Prisons facility in close proximity to your family  
10 commensurate with your security and custody  
11 classification needs. It is also recommended that you  
12 participate in the Bureau of Prisons 500-hour  
13 Comprehensive Residential Drug Abuse Treatment Program or  
14 an alternate substance abuse treatment program.

15           It is inherent in my ruling, of course, that I have  
16 denied the defendant's motion for a downward variance. I  
17 find that the impact that this has had on his family and  
18 the impact it has on his employment is a natural  
19 consequence of his crime and his criminal conduct, and I  
20 don't find it to be sufficiently mitigating to vary  
21 downward from the offense level. I have taken into  
22 account the mitigating factors here by not adopting the  
23 government's recommendation of a 70-month sentence, and  
24 instead sentencing the defendant at 63 months.

25           And so it's also clear for the Court of Appeals, if

1 I am in error in my upward departure, I would impose the  
2 same sentence under the 3553(a) factors independent of  
3 the guidelines.

4       Upon release from imprisonment, you will be placed  
5 on supervised release for 3 years. While on supervised  
6 release, you must comply with the following mandatory  
7 conditions: You must not commit another federal, state,  
8 or local crime; you must not unlawfully use or possess a  
9 controlled substance; and you must cooperate in the  
10 collection of a DNA sample as directed by your probation  
11 officer.

12       In addition, you must comply with the standard  
13 conditions of supervision set out in my judgment order,  
14 and with all the special conditions set forth in  
15 paragraphs 74 through 77 of the presentence report. It  
16 is ordered that you must pay to the United States a  
17 special assessment of \$100, which will be due  
18 immediately. I find you do not have the ability to pay a  
19 fine so no fine will be imposed.

20       You are hereby remanded to the custody of the United  
21 States Marshal.

22       Mr. Chatham, there remains outstanding Counts 1 and  
23 2 of this indictment.

24       MR. CHATHAM: The United States moves to  
25 dismiss those counts, Your Honor.

1           THE COURT: I will grant that motion. So  
2 Counts 1 and 2 are dismissed.

3           Before I advise Mr. Bullock of his right to appeal,  
4 Mr. Chatham, is there anything else on behalf of the  
5 United States?

6           MR. CHATHAM: No, Your Honor.

7           THE COURT: Officer Kuhn?

8           PROBATION OFFICER: No, Your Honor.

9           THE COURT: Ms. Araguás?

10          MS. ARAGUÁS: No, Your Honor.

11          THE COURT: All right. Mr. Bullock, let me  
12 talk to you, sir, about your right to appeal. If you  
13 disagree with the sentence I've just imposed, you have  
14 the right to appeal that sentence to a higher court.  
15 That court is called the Eighth Circuit Court of Appeals.  
16 To appeal to that court, you would have to file a written  
17 notice of appeal with the Clerk of Court for the Northern  
18 District of Iowa here in Cedar Rapids within the next  
19 14 days. If you fail to file a written notice of appeal  
20 in the next 14 days, you give up forever your right to  
21 appeal the sentence I've just imposed. If you would like  
22 to appeal but you cannot afford the services of an  
23 attorney to do so, I would appoint an attorney to  
24 represent you on appeal at no expense to you.

25          Do you understand your right to appeal, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you have any questions about  
3 anything we've done here today, sir?

4 THE DEFENDANT: No.

5 THE COURT: All right. Ms. Araguás, anything  
6 further?

7 MS. ARAGUÁS: No, Your Honor.

8 THE COURT: Mr. Chatham?

9 MR. CHATHAM: No, Your Honor.

10 THE COURT: Thank you. We'll be in recess.

11 (Proceedings concluded at 10:29 a.m.)  
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## C E R T I F I C A T E

I, Patrice A. Murray, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that at the time and place heretofore indicated, a hearing was held before the Honorable C.J. Williams; that I reported in shorthand and transcribed to the best of my ability the proceedings of said hearing; and that the foregoing transcript is a true record of all proceedings had on the taking of said hearing at the above time and place.

I further certify that I am not related to or employed by any of the parties to this action, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand this 25th day of May, 2021.

/s/ Patrice A. Murray

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