

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

July 18, 2022

Lyle W. Cayce  
Clerk

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No. 21-30450

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

EUGENE THURMAN,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 3:19-CR-398-1

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Before JONES, STEWART, and DUNCAN, *Circuit Judges.*

PER CURIAM:\*

Eugene Thurman argues that the district court erred by 1) denying his motion to suppress based on the protective-sweep exception to the Fourth Amendment and the independent-source exception to the exclusionary rule, and 2) miscalculating his base offense level. We AFFIRM the judgment.

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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## **I. BACKGROUND**

The Monroe, Louisiana Police Department (“MPD”) received a call on May 11, 2019 that someone with a “an AR rifle, or AR styled rifle, [or] long gun” was firing rounds outside the Parkview Apartments. That complex is located in an extremely high-crime area. Officers could not find the shooter or the weapon, but they found 17 spent .223 caliber rifle rounds in the parking lot and heard 15 shots while there.

Two days later, MPD received an anonymous tip that “Eugene Thurman [was] a felon . . . in possession of an assault rifle.” The tipster further conveyed that Thurman was a 44-year-old black male who “live[d] [in unit 74] at Parkview Apartments with his girlfriend and her two children [and that he was] known to carry the weapon in a red bag with him.” The tip did not provide enough evidence to obtain a search warrant, but officers determined that Thurman’s was “a known felon[]” with a lengthy criminal history.

With that knowledge, Lieutenant Triche Passman, Corporal James Schmitz, Detective Doug Lambert, and Detective Snowberger, along with at least two other officers, went to the Parkview Apartments later on May 13th to conduct a “knock and talk.” Upon arriving, they found three children playing outside unit 74, and one said that Thurman was inside with “somebody” before going to retrieve him. Thurman emerged about 20 seconds later and stood right outside of the unit with the door still ajar. Lambert detected an odor of marijuana wafting from the apartment. The encounter was recorded on police bodycams. For seven to eight minutes, police spoke to Thurman outside the apartment. During that time, a child entered the unit and then exited along with a woman. Thurman nervously denied possessing a gun. Although he denied that it was “his” apartment, Thurman admitted he “frequented” it. Thurman gave police the lessee’s

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name, and they attempted, without success, to contact her for permission to search the apartment. Thurman refused to approve a warrantless search.

Alarmed by Thurman's nervousness, evasive answers, and the possibility that others remained in the apartment, Passman announced that he was going to "clear the unit"<sup>1</sup> and Lambert told him to "[m]ake sure there [was] nobody else in there." Passman and Snowberger then entered the unit with their guns drawn and the former yelled "Monroe Police, anybody else in here?" Lambert and Schmitz remained outside. Within 30 seconds Passman observed "an AK-47 assault rifle propped up against a wall in the far corner of the back bedroom, a baggie of marijuana on the night table, and digital scales."<sup>2</sup> He then emerged from the hallway and instructed the officers outside to handcuff Thurman.

Passman and Snowberger returned to the doorway, but they had not yet determined that no one else was inside, so Lambert followed them to conduct a secondary sweep. Passman re-drew his sidearm and, within approximately 30 seconds, the officers searched the bathroom and both bedrooms. All three officers then exited the unit. The initial and secondary protective sweeps lasted only approximately one minute combined.

Lambert submitted a search warrant application that "requested to enter 1101 Richwood Road 2 Apt. 74 to collect any and all illegal drugs and weapons found inside the residence." The application stated, in relevant

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<sup>1</sup> Passman was also prompted to conduct the sweep based on Thurman's alleged possession of a gun, especially in light of the prior shootings at the complex. He was unaware of the marijuana odor at that time.

<sup>2</sup> Though that was "not the gun [they] were looking for[.]" Passman determined at that point that there was sufficient ground to seek a search warrant because the gun they were seeking could have been somewhere else. Thurman later uses that to link the sweeps with the warrant. Yet, as explained below, Passman was not involved with obtaining the later-issued search warrant.

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part, that “a protective sweep of the apartment was performed[]” “[d]ue to the chance of someone else being in the apartment and them being armed with a rifle[.]” But it only dedicated one sentence to describing what officers saw inside. The application further explained that officers had been unable to contact the lessee. And it critically maintained that “an odor of marijuana was detected coming from the apartment.” A state court judge signed the warrant that same afternoon. The search commenced shortly afterward and lasted only 20 minutes. Officers recovered: a sandwich bag containing suspected marijuana, a digital scale, Thurman’s ID card, an AK-47 Century International Model M70 AB2,<sup>3</sup> an AK-47 magazine containing 11 7.62 X 39 rounds, an empty Glock 40 magazine, and a brown leather case containing several 30-06 rounds.

A grand jury indicted Thurman in December 2019 as a felon possessing a firearm in violation of 18 U.S.C. § 922(g)(1). Thurman pled not guilty and later moved to suppress all of the seized items. The magistrate judge held a hearing that featured 32 exhibits along with testimony from Passman, Schmitz, and Lambert. The magistrate judge recommended denying the motion. In doing so, she determined that the protective sweeps were invalid but that officers would have obtained a warrant anyway based on the independent-source exception to the exclusionary rule. Both parties filed objections. The district court adopted most of the magistrate judge’s findings but denied suppression because the protective sweeps were constitutionally valid. Thurman entered a conditional guilty plea while reserving the right to appeal the denial of his motion to suppress.

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<sup>3</sup> The AK-47 was manufactured in Minnesota and therefore traveled in interstate commerce to reach Louisiana. A weapons trace later verified that the firearm had been stolen during a December 2018 residential burglary in Baton Rouge.

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The Presentence Investigation Report (“PSR”) assessed a base offense level of 26 pursuant to United States Sentencing Guidelines (“USSG”) § 2K2.1(a)(1) because Thurman had two prior felony convictions for controlled substance offenses. With a total offense level of 26 and a criminal history category of V,<sup>4</sup> Thurman faced 100 to 125 months of imprisonment under the guidelines, but the statutory maximum was 10 years. Thurman objected, arguing that his drug conspiracy conviction was not a controlled substance offense. The court overruled the objection at sentencing and adopted the PSR. The court then sentenced Thurman to 120 months of imprisonment and three years of supervised release. Thurman timely appealed.

## II. DISCUSSION

“When reviewing a denial of a motion to suppress evidence, [this court] review[s] the district court’s factual findings for clear error and its legal conclusions, including the ultimate constitutionality of the actions of law enforcement, *de novo*.” *United States v. Meals*, 21 F.4th 903, 906 (5th Cir. 2021) (citation omitted) (alterations in original). Findings of sufficient danger justifying a protective sweep are, for example, reviewed for clear error. *United States v. Watson*, 273 F.3d 599, 603 (5th Cir. 2001) (citation omitted). Moreover, “facts underlying the suppression determination are reviewed in the light most favorable to the prevailing party, which in this case is the Government.” *Meals*, 21 F.4th at 906 (citation omitted). And the court may generally “affirm the district court’s ruling on a motion to suppress based on any rationale supported by the record.” *United States v. Wise*, 877 F.3d 209, 215 (5th Cir. 2017) (internal quotation marks and citation

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<sup>4</sup> Thurman’s base offense level was increased by two points pursuant to USSG § 2K2.1(b)(4) because the firearm was stolen. But he received a three-point reduction under USSG § 3E1.1(a) and (b) for accepting responsibility.

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omitted). “Our review is particularly deferential where denial of the suppression motion is based on live oral testimony because the judge had the opportunity to observe the demeanor of the witnesses.” *United States v. Michalik*, 5 F.4th 583, 588 (5th Cir. 2021) (citation omitted).

We address in order Thurman’s challenge to the protective sweeps, the applicability of the independent-source exception, and whether the district court properly calculated Thurman’s base offense level.

**A.**

**I.**

The district court ruled that “[t]he protective sweep conducted in Parkview Apartment No. 74 [was] constitutionally valid[]” based on the anonymous tip regarding the gun and the officers’ articulated concerns about someone remaining inside.<sup>5</sup> Thurman contends that “no exigent circumstances compel[ed] the entry into [his] residence for a protective sweep[]” and reasons that the court should have suppressed the evidence seized as a result of the search. He specifically emphasizes that nothing suggested anyone else was inside, as evidenced by Passman’s decision to turn his back to the unit’s interior. And, Thurman insists, officers would not have waited three minutes to conduct the sweep if they truly perceived danger.

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<sup>5</sup> The magistrate judge evaluated considerations this court has held pertinent to the protective-sweep exception. The district court, in contrast, assessed considerations related to the exigent-circumstances exception. But the two exceptions are analytically distinct. Compare *Maryland v. Buie*, 494 U.S. 325, 334 110 S. Ct. 1093, 1098 (1990), with *Kirk v. Louisiana*, 536 U.S. 635, 638, 122 S. Ct. 2458, 2459 (2002) (*per curiam*). We may nonetheless “affirm . . . based on any rationale supported by the record” and will therefore evaluate the sweeps based on considerations identified by the magistrate judge. *Wise*, 877 F.3d at 215 (5th Cir. 2017) (internal quotation marks and citation omitted).

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This court assesses the validity of protective sweeps by evaluating whether:

- *First*, the officers had a legitimate law enforcement purpose for entering the dwelling;
- *Second*, the sweep was supported by a reasonable, articulable suspicion that the area to be swept harbored an individual posing a danger to those on the scene;
- *Third*, the sweep was no more than a cursory inspection of those spaces where a person may have been found; and
- *Fourth*, the sweep lasted no longer than was necessary to dispel the reasonable suspicion of danger and no longer than the police were justified in remaining on the premises.

*United States v. Mendez*, 431 F.3d 420, 428 (5th Cir. 2005) (citing *United States v. Gould*, 364 F.3d 578, 587 (5th Cir. 2004) (en banc), *cert. denied* 543 U.S. 955, 125 S. Ct. 437 (2004), *abrogated in part on other grounds by Kentucky v. King*, 563 U.S. 452, 461-70, 131 S. Ct. 1849, 1857-62 (2011)). In doing so, “we consider the totality of the circumstances surrounding the officers’ actions.” *United States v. Silva*, 865 F.3d 238, 241 (5th Cir. 2017) (*per curiam*) (citation omitted). “If reasonable minds could differ on the whether the sweep was warranted, we do not second-guess the judgment of experienced law enforcement officers concerning the risks in a particular situation.” *Id.* at 242 (citation omitted).

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With respect to the first consideration, officers suspected that Thurman had an “assault rifle[,]” which could have fired the numerous .223 rounds in the nearby parking lot two days earlier. They had also examined Thurman’s background, which includes four drug-related convictions, one conviction for fleeing arrest, and at least four other charges for allegedly beating women on various occasions. And, as explained below, the officers reasonably suspected that another person may have been hiding in the unit. Viewing that evidence in the light most favorable to the government, officers had a legitimate law enforcement purpose for entering the unit.

Regarding the second consideration, a child told Schmitz, as officers approached the unit, that “somebody[]” besides Thurman was inside,<sup>6</sup> and a woman and child remained in the apartment after Thurman initially exited. It was therefore reasonable to suspect that someone else could be inside, and that person could have foreseeably gotten hold of the suspected firearm. Even if these suspicions were tentative, this court has “upheld the validity of [a] protective sweep on the officers’ belief even though the factual basis for the belief was disputable.” *United States v. Wilson*, 306 F.3d 231, 238 (5th Cir. 2002) (citation omitted). Again, viewing these facts in the light most favorable to the government, the initial and secondary sweeps were

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<sup>6</sup> The officers here did not hear noises or see movements suggesting that someone was inside. Cf. *United States v. Ibarra-Zelaya*, 465 F.3d 596, 605 (5th Cir. 2006); *United States v. Maldonado*, 472 F.3d 388, 393-94 (5th Cir. 2006). But from the child’s comment, they had no way of knowing whether the child spoke of anyone else besides the woman. And this court has upheld protective sweeps based on reports that a person and a firearm were present in a residence. See *United States v. Riley*, 968 F.2d 422, 424 (5th Cir. 1992) (determining that a warrantless entry was not unreasonable where an accomplice told officers that “there was a large sum of money, a handgun, and another individual at the residence he had just left”).



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supported by a reasonable, articulable suspicion that unit 74 harbored an individual potentially posing a danger to officers on the scene.<sup>7</sup>

Disagreeing, Thurman emphasizes that Passman “blocked any entry into the apartment as he stood at the apartment’s entryway with his back to the apartment’s interior . . . [.]” and that he did so “for a large part of the time that [officers] stood talking with [him].” To be sure, an officer’s “behavior [can] objectively reveal[] a purpose to conduct a search,” which logically means that such behavior can also support or undermine the reasonableness of a protective sweep. *Florida v. Jardines*, 569 U.S. 1, 10, 133 S. Ct. 1409, 1417 (2013). But Thurman ignores Passman’s conduct *during* the sweeps. For example, Passman drew his gun and announced his presence as he entered the unit to conduct the first sweep. If Passman was truly unconcerned for his safety, such measures would have been unnecessary. Further, Passman moved quickly and left the apartment quickly. During the secondary sweep, Passman again drew his sidearm and had two other officers providing backup. These actions were limited to measures appropriate to the protection of officer safety rather than an investigation for incriminating evidence. They dispel any inference that an unreasonable search was occurring.<sup>8</sup>

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<sup>7</sup> Thurman attempts to analogize the facts here to those present in *United States v. Menchaca-Castruita*, 587 F.3d 283 (5th Cir. 2009) and *United States v. Carter*, 360 F.3d 1235 (10th Cir. 2004), where the respective courts held protective sweeps to have been invalid. But both of those decisions involved protective sweeps based principally on the presence of suspected drugs; neither involved suspicion of firearms based on anything other than officers’ general association of guns with drug dealing. *Menchaca-Castruita*, 587 F.3d at 287; *Carter*, 360 F.3d at 1238. Officers here reasonably suspected the presence of a firearm even apart from Thurman’s history in the drug trade.

<sup>8</sup> Even assuming *arguendo* that Passman was not concerned for *his* safety, such lack of concern cannot be imputed to other officers. Snowberger, for example, also entered the unit with his gun drawn, illustrating his own concerns.

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Respecting the third consideration, “the area in front of the bed where the gun was seen appeared to be wide enough space for someone to have crouched down to avoid detection.” And “it took the officers only a little over 30 seconds to find the weapon after the search began.” Moreover, Passman “observed the baggie of marijuana in plain view on the nightstand[]” at approximately the same time as he saw the gun. This court has upheld the validity of protective sweeps under mattresses as police searched for persons potentially hiding in hollowed-out spaces. *See Silva*, 865 F.3d at 243; *United States v. Garcia-Lopez*, 809 F.3d 834, 839 (5th Cir. 2016). The much more limited sweeps here amounted to no more than cursory inspections of spaces where a person may have been found.

The fourth consideration, relating to the time consumed by the sweeps, plainly cuts against suppression. Video evidence proves these sweeps lasted no longer than one minute, i.e., no longer than necessary to dispel the reasonable suspicion of danger posed by another person and no longer than the police were justified in remaining on the premises.

Based on the totality of the circumstances viewed in the light most favorable to the government, the initial and secondary protective sweeps were constitutionally reasonable.

## II.

Even if the sweeps were invalid, the district court (and the magistrate judge) determined that, once Lambert perceived the odor of marijuana, “all of the evidence sought to be suppressed would have been discovered pursuant to an independent source[] sufficient to withstand exclusion of the evidence . . . .” Thurman, however, contends that the marijuana odor could have blown in from another apartment. He also argues that “[t]he unlawful sweep of [his] apartment unquestionably motivated the officers’ decision to procure a warrant[,]” and given that connection, “the [g]overnment failed to

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show that the marijuana formed an independent basis for entering the apartment, unconnected to the unlawful search.”

The independent source exception to the exclusionary rule “allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source.” *Utah v. Strieff*, 579 U.S. 232, 238, 136 S. Ct. 2056, 2061 (2016) (citation omitted). To determine whether lawful searches and seizures are genuinely independent of earlier tainted ones, we must assess whether “the expurgated warrant affidavit provided probable cause for the issuance of the warrant by the magistrate judge[]” and “whether the illegal search *affected* or *motivated* the officers’ decision to procure the search warrant.” *United States v. Restrepo*, 966 F.2d 964, 966 (5th Cir. 1992), *cert. denied*, 506 U.S. 1049, 113 S. Ct. 968 (1993) (citing *Murray v. United States*, 487 U.S. 533, 108 S. Ct. 2529 (1987) (emphasis in original)). We review determinations respecting the first consideration *de novo* and those regarding the second for clear error. *United States v. Hassan*, 83 F.3d 693, 697 (5th Cir. 1996).

Regarding the first consideration, the search warrant contained sufficient information to justify a search without reference to anything seen during the protective sweeps. In fact, Lambert’s search warrant affidavit included only a single sentence referring to anything observed during the protective sweep and only mentioned contraband observed in plain view. Similar affidavits have provided probable cause where officers had independent evidence of suspected drug activity. *See United States v. Hearn*, 563 F.3d 95, 102 (5th Cir. 2009). The affidavit here also stated that “[w]hile speaking with [Thurman,] an odor of marijuana was detected coming from the apartment.” Lambert later testified that he could “smell it from the moment [officers] walked up to the front door[.]” The district court “accept[ed] the veracity of Lambert’s testimony made under oath at the hearing, which he also made under oath before the state court judge.” This

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finding is therefore heavily weighted in the government's favor. *See Michalik*, 5 F.4th at 588 (citation omitted). Further, "[d]istinctive odors, detected by those qualified to know them, may alone establish probable cause." *United States v. McKeever*, 906 F.2d 129, 132 (5th Cir. 1990) (collecting cases). Thus, excluding the single sentence related to the protective sweeps, the search warrant's reference to the smell of marijuana emitting from the unit supported probable cause. *See Hassan*, 83 F.3d at 697.

The more subjective second consideration about the officers' motivation concerns "the precise nature of the information acquired during the illegal search" and "the relative probative import of this information compared to all other information known to the officers." *Restrepo*, 966 F.2d at 972. Neither the district court nor the magistrate judge made express findings regarding whether the officers were motivated to obtain the search warrant based on evidence observed during the protective sweeps. The district court did, however, adopt the magistrate judge's finding that the government satisfied the second consideration.<sup>9</sup>

Passman's post-sweep remarks and testimony in isolation could suggest that the sweeps motivated him to procure a search warrant. For example, Passman testified that he did not have sufficient grounds to apply for a search warrant until "[a]fter the sweep was done and the items—the marijuana, and the rifle were seen." But he took no action to obtain a warrant. On the contrary, he remained on scene and finally authorized Schmitz to procure a warrant.

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<sup>9</sup> "Even where the district court has not made any factual findings, we have independently review[ed] the record to determine whether the district court's decision is supported by any reasonable review of the evidence." *United States v. Mendez*, 885 F.3d 899, 910 (5th Cir. 2018) (internal quotation marks and citations omitted) (alteration in original).

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Schmitz was on the phone during the protective sweeps trying to contact the apartment lessee. He neither participated in the sweeps nor saw any contraband.<sup>10</sup> But Schmitz smelled marijuana at the premises and took Lambert along to procure the warrant. Lambert later testified that Schmitz largely told him what information to draft in the warrant application.

In sum, the record fairly shows that Schmitz catalyzed the search warrant application without ever entering the unit, and Passman's involvement in submitting a warrant application was nil. Finally, the application itself focuses on the smell of marijuana, with a mere mention of items inside the apartment. We cannot form a definite and firm conviction that the district court clearly erred by determining that the government satisfied the second consideration. *See United States v. Cabrera*, 288 F.3d 163, 168 (5th Cir. 2002) (internal quotation marks and citations omitted). The independent source doctrine thus independently would bar application of the exclusionary rule.

#### B.

The PSR assigned Thurman a base offense level of 26 pursuant to USSG § 2K2.1(a)(1) because he committed the offense at issue after sustaining two felony convictions for controlled substance offenses, one of which was a conspiracy offense. Thurman's complaint about the guidelines calculation is that his prior drug conspiracy conviction should not be included because it is not a controlled substance offense within § 2K2.1. If that is correct, his base offense level was much higher than it should have been. Our precedent forecloses this contention. The reasoning behind our precedent is developed in *United States v. Kendrick*, 980 F.3d 432, 444 (5th Cir. 2020),

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<sup>10</sup> Passman told Schmitz about the contraband, but it is unclear what role that played in his decision making.

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*cert. denied*, 141 S. Ct. 2866 (2021) (quoting *United States v. Lightbourn*, 115 F.3d 291, 293 (5th Cir. 1997)).<sup>11</sup>

For the reasons stated above, we AFFIRM the conviction and sentence.

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<sup>11</sup> The district court stated it would have imposed an “identical” sentence even if the guidelines range was “incorrect[.]” Thus, any error would be harmless. *See United States v. Delgado-Martinez*, 564 F.3d 750, 752-53 (5<sup>th</sup> Cir. 2009)(citations omitted).

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

UNITED STATES OF AMERICA, : DOCKET NO. 3:19CR00398  
PLAINTIFF, :  
VERSUS : July 21, 2021  
EUGENE THURMAN, :  
DEFENDANT. : Monroe, Louisiana

REPORTER'S OFFICIAL TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE TERRY A. DOUGHTY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Next Mr. Thurman?

3 COURT CLERK: It is.

4 THE COURT: All right. Ready to proceed,  
5 Mr. Thurman? You're Mr. Thurman?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. I thought so. All right. This is  
8 *United States of America versus Eugene Thurman, Criminal Action*  
9 *Number 3:19-398-01.*

10 Mr. Shannon, I ask you first, is the government ready to  
11 proceed?

12 MR. SHANNON: Yes, we are, Your Honor.

13 THE COURT: And any reason why sentence should not be  
14 imposed at this time?

15 MR. SHANNON: No, Your Honor.

16 THE COURT: And has the government received and  
17 reviewed a copy of the presentence report?

18 MR. SHANNON: Yes, I have.

19 THE COURT: Ms. Martin, is Mr. Thurman ready to  
20 proceed?

21 MS. MARTIN: Yes, Your Honor.

22 THE COURT: And is there any reason why sentence  
23 should not be imposed at this time?

24 MS. MARTIN: No, Your Honor.

25 THE COURT: And have you and your client,



1 Mr. Thurman, received and reviewed a copy of the presentence  
2 report?

3 MS. MARTIN: We have, Your Honor.

4 THE COURT: Okay. And I understand there are some  
5 objections to the presentence report. There were originally  
6 two. Are there still two or -- let me know what you wish to do  
7 in those matters.

8 MS. MARTIN: Sure. Your Honor, originally I had  
9 filed two objections. At this time, I would withdraw the  
10 second objection. That second objection was that one of the  
11 convictions in the PSR was too old to count. Based off of the  
12 recently provided time computation worksheet from the  
13 Department of Corrections, we have since learned that that  
14 conviction does fall within the 15-year lookback period and is  
15 countable, so we would withdraw that second objection.

16 THE COURT: Okay. Let that be withdrawn, and that  
17 will -- objection will be -- I guess, will be moot. I won't  
18 have to rule on it since it's been withdrawn.

19 So you also have the first objection. You've provided a  
20 detailed letter setting forth, but feel free to argue that  
21 objection if you'd like.

22 MS. MARTIN: Thank you, Your Honor, and I'm not going  
23 to go into too much detail, but I would just reiterate for the  
24 record what that second objection is.

25 I had filed an objection that Mr. Thurman's 2002

1 conviction for conspiracy to distribute crack cocaine does not  
2 qualify as a controlled substance offense under the guidelines  
3 and that the commentary's expansion of the controlled substance  
4 definition to include it is a circumvention of the  
5 congressionally-approved definitions of controlled substance  
6 offenses. And for that reason, I'm maintaining that objection  
7 that that 2002 conviction would not count as a controlled  
8 substance offense; and, therefore, that Mr. Thurman's base  
9 offense level, if he had only one rather than two controlled  
10 substance offenses, that his base offense level would be  
11 reduced from 26 down to 20.

12 THE COURT: Okay. All right. Mr. Shannon, would you  
13 like to say anything on that?

14 MR. SHANNON: Judge, just to dovetail on what we  
15 discussed yesterday. As the Court recognized, there is a  
16 circuit split. But in the Fifth Circuit the binding precedence  
17 is that Mr. Thurman's conviction at issue would count, and so  
18 the government would request at this time that it be counted  
19 towards his criminal offense level.

20 THE COURT: Okay. And I've reviewed this. And I  
21 want to say it's a really good objection. I mean, it's a  
22 well-argued, well-thought-out objection and good responses. I  
23 had to really look hard on this one, and there is a circuit  
24 split. The United -- what that means is, there's 12 -- I can't  
25 remember how many, but 12 circuits in the United States and

1 there's a split. There's at least three --

2 MS. MARTIN: Correct.

3 THE COURT: -- that say what Ms. Martin says on that.  
4 Bottom line is, I'm going to file a written ruling on this  
5 because I did a written ruling on it to cite the specifics of  
6 it. But bottom line is that the -- whether a conviction -- a  
7 2002 conviction for conspiracy to distribute crack cocaine  
8 meets the definition of a controlled dangerous substance under  
9 the guidelines. And the guideline base offense level of 26 and  
10 whether it meets the controlled substance offense definition  
11 under United States Sentencing Guideline 4B1.2(b), bottom line  
12 is that the application notes say it applies to a conspiracy,  
13 but it doesn't say anything about it, a conspiracy, in -- or  
14 other in co-defenses in the definition. And the question is:  
15 Can the application notes expand that?

16 And, like I said, it's a really good objection. Like I  
17 say, it's a split. And I've cited the cases I found  
18 that -- that ruled -- it ruled in -- the way Mr. Thurman, but I  
19 also cited cases that went the other way, that ruled in favor  
20 of -- against Mr. Thurman that you count that offense because  
21 you look at the -- you look at the application notes also.

22 So I put that in there. I did find a -- a Fifth Circuit  
23 case, which is *United States versus Crosby*, 838 F 891, or APPX  
24 891, *Fifth Circuit 2021*, which went the way against Mr. Crosby.  
25 In other words, you look at the application notes and you count

1 it as a controlled substance offense. So -- and I've set that  
2 out and explained it and I'll file it in the record after the  
3 -- after the sentencing.

4 But I find that the objection, which is Objection Number  
5 1, is denied for that reason. But, like I say, it was a  
6 really, really close call, really good objection had it not  
7 been for the Fifth Circuit recently ruling on it, then, you  
8 know, I wouldn't have known what I would have done on that.  
9 But, anyway, it was a good objection. So I'm now going to  
10 proceed to the sentencing, unless there's anything else.

11 MS. MARTIN: Your Honor, I'd like to say a few things  
12 on --

13 THE COURT: Yeah.

14 MS. MARTIN: -- Mr. Thurman's behalf, and I believe  
15 he also would like to --

16 THE COURT: Yeah, that's good. I was going to ask  
17 you that. Ms. Martin, would you like to say anything on  
18 Mr. Thurman's behalf?

19 MS. MARTIN: Yes, thank you. So I would just point  
20 out, Your Honor, I submitted a letter from Mr. Thurman's  
21 daughter to the Court. And I believe that he has family in the  
22 courtroom today. He has family here who want to see him  
23 succeed and help him succeed in the future.

24 I would also point out that the PSR mentions that he was  
25 employed as the lead maintenance man at Motel 6. So I'd also

1 point out to Your Honor that he has job skills and carpentry  
2 and HVAC, and he was training other individuals to do  
3 maintenance work as well. That Motel 6 had hired him back, and  
4 we believe that they would hire him again. He does have job  
5 skills for the future.

6 And I would also highlight -- I'm not sure -- I cannot  
7 recall if I read this in the PSR or if this came from my  
8 conversations with Mr. Thurman, as well as his daughter's  
9 letter, but I would also point out to Your Honor that  
10 Mr. Thurman had began attending college courses with his  
11 daughter. And, you know, he's told me, in conversations, that  
12 he was -- he had to catch the bus every single day for a year  
13 to get from his home to college and work. And he did that.

14 And so, Your Honor, I would say, like with all of these  
15 things, with his job skills and his willingness to attend  
16 school and his family's support, we would ask for a sentence of  
17 71 months concurrent with the state court sentence. Your  
18 Honor, the way I came to that 71 months is reducing my base  
19 offense level from that 26 to 20 based off only one prior  
20 controlled substance offense, and I do understand that Your  
21 Honor has denied that objection, but I'm just informing you of  
22 how I got to that number.

23 THE COURT: Okay.

24 MS. MARTIN: If he had only that one controlled  
25 substance offense, as we are arguing, and then the additional

1 specific offenses -- enhancements are applied, such as two for  
2 the firearm being stolen, minus the three points for him  
3 accepting responsibility, then he would have a final offense  
4 level of 19, which is a guideline range of 57 to 71 months. So  
5 that's why I ask for that sentence of 71 months concurrent with  
6 the state court docket.

7 I think that would capture what is happening with the  
8 circuit split with the controlled substance offenses, and I  
9 think it would also consider, you know, Mr. Thurman's family  
10 support, education, his efforts to remain employed.

11 And then finally I would say even that sentence of 71  
12 months would put his release date into his early 50s. And, of  
13 course, we are all aware that with age recidivism usually  
14 decreases. So that's my request for 71 months concurrent with  
15 the state sentence.

16 If Your Honor were not inclined to go that low, I would  
17 then state that Mr. Thurman should at least be given a -- a  
18 benefit or acknowledgment of his guilty plea because he was  
19 able -- he did not take this case to trial, which he could  
20 have, especially given the high guideline range that he's  
21 currently facing. And so by not taking this case to trial, by  
22 pleading guilty, he has saved Your Honor the time of sitting  
23 through a trial, the government the time and resources it would  
24 take, the defense, all the Court staff and U.S. Marshals. And  
25 I would ask that he would at least be rewarded for that and

1 that --

2 THE COURT: Now, he got points off, didn't he? He  
3 got three points off, I assume?

4 MS. MARTIN: He did, Your Honor. And the currently  
5 calculated guideline range is the 100 to 120 months. But for  
6 defendants in his situation who are facing that higher range,  
7 if they received the maximum sentence, whether they go to trial  
8 or plead guilty, there's little incentive in the future for  
9 clients facing comparable ranges to plead guilty. They say,  
10 "Well, might as well go to trial if I'm going to get the  
11 maximum sentence regardless."

12 And so I would ask that if Your Honor were inclined to  
13 sentence Mr. Thurman inside that range, then we would ask for a  
14 sentence of 100 months which does reward him for saving us all  
15 the time and resources of a trial.

16 THE COURT: Okay. All right. And, Mr. Thurman, you  
17 are welcome to say something if you'd like. You don't have to,  
18 but I'd like to hear from you if you want to say anything.  
19 Okay. You can read it, that's fine.

20 THE DEFENDANT: Dear Judge. I would like to  
21 apologize to my children for putting them through this  
22 situation. I would like to ask the Court for leniency. I read  
23 the Court papers that I only finished one semester at Delta  
24 Community College. I rode that year with my daughter with the  
25 hopes of showing her nothing was impossible. Although I didn't

1 finish it, it was one of my greatest accomplishments just to  
2 see she graduate from Wesley University with a degree in social  
3 work. I have two more daughters attending university this  
4 year.

5 I stood in front of this Court 20 years ago, a young man  
6 -- a young man with an eighth grade education, never had a job,  
7 no real focus in this life. 20 years later I got my GED, went  
8 to Delta Community College School of Business, worked at Motel  
9 6 for seven years and other jobs needed to support my family.

10 THE COURT: Anything else?

11 THE DEFENDANT: No.

12 THE COURT: Okay. Thank you. And I did receive and  
13 read a letter from your daughter, Ms. Euneisha Brown, I think  
14 that's how you pronounce that --

15 THE DEFENDANT: Yes.

16 THE COURT: -- who wrote a good letter on your  
17 behalf.

18 Mr. Shannon, anything the government would like to say in  
19 this matter?

20 MR. SHANNON: Judge, the government appreciates  
21 Mr. Thurman's contrition in this case. The guidelines that  
22 were calculated by the probation department were correctly  
23 calculated. The government would seek a sentence within those  
24 ranges and has no problem with a sentence at the bottom end of  
25 the range of 100 months.



1 Thank you, Judge.

2 THE COURT: All right. I'm respectively considered  
3 United States Sentencing Commission guidelines in this case. I  
4 find the guideline applications are as follows: The applicable  
5 offense level is 25. The Criminal History Category is V. The  
6 guideline range is 100 to 120 months -- actually, it's 100 to  
7 125 months, but it's 120 because that's the maximum sentence  
8 for this charge. Probation is not recommended. Supervised  
9 release is three years -- up to three years. Restitution is  
10 not applicable. I'm not going to impose a fine, and special  
11 assessment of \$100. And the reasons for these guideline  
12 determinations are set forth in the presentence report.

13 Having reviewed and considered the guidelines, the factors  
14 listed in 18 U.S.C., Section 3553 -- I mean, 3553(a) and the  
15 appropriate policy concerns, I've decided to -- what sentence  
16 to impose. In this case, I find the guideline range reasonably  
17 addresses the real conduct of defendant that underlies his  
18 crime, achieves the goals of Section 3553(a) and provides an  
19 appropriate sentence.

20 I do want to point out that the -- there were two -- I  
21 show that Mr. Thurman had six felony convictions. And he also  
22 has numerous domestic abuse battery charges and other arrests  
23 he was arrested for. He has a -- he was a category V on the  
24 criminal history points. But, honestly, he should have been a  
25 VI because -- well, I mean, it was correctly calculated, but

1 there were two felonies that didn't count any points just  
2 because they were so old.

3 But, in any event, he's -- that's why I'm going to give  
4 120 months. I believe that -- and, actually, if I could give  
5 more than 120, probably in your case I would because of your  
6 criminal history. And the criminal history says a lot to me.  
7 It tells me whether people really try to do right or not.

8 And it's the judgment of the Court that Mr. Eugene Thurman  
9 is committed to the custody of the Bureau of Prisons for a term  
10 of 120 months on Count 5. This guideline sentence was selected  
11 after considering the factors contained in  
12 18 U.S.C., Section 3553(a) concerning Mr. Thurman's criminal  
13 history, personal characteristics, his involvement in the  
14 instant offense.

15 He shall cooperate in the collection of DNA as directed by  
16 the U.S. Probation Office. He shall pay a \$100 special  
17 assessment to the Crime Victim Fund immediately. Based on Mr.  
18 Thurman's financial condition, I find he does not have the  
19 ability to pay a fine, so I'm not going to order a fine.

20 Upon release from imprisonment, Mr. Thurman shall be placed on  
21 supervised release for a period of three years as to Count 1.  
22 Within 72 hours of his release from custody, Mr. Thurman shall  
23 report to the U.S. Probation Office in the district to which he  
24 is released.

25 While on supervised release, Mr. Thurman shall not commit

1 another federal, state or local crime, shall not possess a  
2 firearm or dangerous weapon and shall comply with the standard  
3 conditions of supervision adopted by this Court.

4 It's recommended that Mr. Thurman be evaluated by the  
5 Bureau of Prisons for placement in a residential substance  
6 abuse treatment program they deem appropriate.

7 Mr. Thurman shall abide by the following special  
8 conditions of supervised release: Because the presentence  
9 report and other reliable sentencing information indicates a  
10 high risk of substance abuse in the future, Mr. Thurman shall  
11 participate in the program for treatment of drug and alcohol  
12 addiction, dependence or abuse, which may include, but is not  
13 limited to: Urine, breath, saliva and skin testing should a  
14 screening and/or assessment indicate treatment is needed. The  
15 Court will determine whether any such treatment will be  
16 inpatient or outpatient after the screening and/or assessment  
17 is conducted.

18 Mr. Thurman shall comply with the rules and regulations of  
19 the treatment agency and allow the probation officer, in  
20 consultation with the agency, to adjust the modality, duration  
21 and intensity of treatment as needed. Mr. Thurman shall  
22 further submit to drug and/or alcohol testing techniques in  
23 addition to those performed by the treatment agency during and  
24 after formal treatment services. Mr. Thurman must also  
25 participate in an approved program for domestic violence.

1 Are there any other charges that need to be dismissed in  
2 this matter, Mr. --

3 MR. SHANNON: No, Your Honor, this is single count.  
4 I know you mentioned a moment ago Count 5, but I believe it's  
5 just Count 1.

6 THE COURT: Okay. That's correct.

7 All right. At this time I must advise you you have the  
8 right to appeal your sentence and/or conviction in this matter.  
9 If you're unable to afford the services of an attorney to  
10 handle your appeal, counsel will be appointed to you. If you  
11 cannot afford it, a transcript of the record in this case will  
12 be prepared for appeal at the government's expense, and  
13 pursuant to the Rules of Appellate Procedure, you normally have  
14 14 days from the date the judgment in this case is filed to  
15 file your Notice of Appeal. And, if you do appeal, the  
16 presentence report, letters on your behalf will be placed into  
17 the record of this proceeding under seal.

18 Anything else before we -- Mr. Shannon?

19 MR. SHANNON: No, Your Honor.

20 THE COURT: Ms. Martin?

21 MS. MARTIN: Yes, Your Honor. On page 11, paragraph  
22 44 of the PSR, there is an arrest that I believe is still  
23 pending that forms the basis of this federal offense. And I  
24 would ask that Your Honor would run the federal sentence  
25 concurrent with that state offense since it does -- it is about

1 the same offense.

2 THE COURT: Okay. Mr. Shannon, anything?

3 MR. SHANNON: No objection.

4 THE COURT: I mean, I think that's appropriate. It  
5 is the instant offense.

6 MS. MARTIN: Correct.

7 THE COURT: Can you tell me -- can you cite the --

8 MS. MARTIN: Docket number?

9 THE COURT: Docket number, correct.

10 MS. MARTIN: It is Case Number 19-CR2697 in the  
11 Fourth Judicial District Court in Monroe.

12 THE COURT: Okay. So it's a Ouachita Parish case?

13 MS. MARTIN: Yes.

14 THE COURT: Okay. All right. I will make that  
15 amendment and run the sentence concurrent with the -- any state  
16 charges relating to the instant offense in Ouachita Parish,  
17 Fourth Judicial Court, Number 19-CR2697.

18 Thank you. Anything else?

19 MS. MARTIN: Nothing more, Your Honor. Thank you.

20 THE COURT: Okay. Thank you.

21 Mr. Thurman is remanded to the custody of the U.S.  
22 Marshal Service to begin his term of imprisonment with the  
23 Federal Bureau of Prisons.

24 MR. SHANNON: Thank you, Judge.

25 THE COURT: Thank you.

1 (Court adjourned at 2:18 m.)  
2  
3  
4  
5  
6  
7

8 \* \* \* \* \*

9 CERTIFICATE

10 I, Debbie Lowery, Certified Court Reporter, do certify  
11 that the foregoing is, to the best of my ability and  
12 understanding, a true and correct transcript from the  
13 proceedings of this matter.  
14  
15  
16

17 \_\_\_\_\_  
/s/Debbie Lowery

18 8/24/2021  
19  
20  
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24  
25

AO 245B (Rev. 09/19 - WDLA) Judgment in a Criminal Case

Sheet 1  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
RECEIVED - MONROE

JUL 21 2021

## UNITED STATES DISTRICT COURT

TONY R. MOORE, CLERK  
BY PC  
DEPUTY

Western District of Louisiana

Monroe Division

UNITED STATES OF AMERICA

## JUDGMENT IN A CRIMINAL CASE

v.

EUGENE THURMAN

Case Number: 3:19-CR-00398-1

USM Number: 11255-035

Ashley Renee Martin  
Defendant's Attorney

## THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1 of the Indictment
- ☐ 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
18:922(g)(1)	Possession Of A Firearm By A Convicted Felon	05/13/2019	1

The defendant is sentenced as provided in pages 2 through 6 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) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

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

July 21, 2021  
Date of Imposition of Judgment

TERRY A. DOUGHTY  
Signature of Judge

TERRY A. DOUGHTY, United States District Judge  
Name of Judge Title of Judge

7/21/2021  
Date

DEFENDANT: EUGENE THURMAN  
CASE NUMBER: 3:19-CR-00398-1

### IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 120 month(s) as to count 1 to run concurrently with any sentence imposed in Docket No. 19CR2697 on the docket of the 4<sup>th</sup> JDC of Ouachita Parish, Louisiana.

☒ The court makes the following recommendations to the Bureau of Prisons:  
that Defendant be evaluated for placement in a residential substance abuse treatment program deemed appropriate.

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

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

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

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL



DEFENDANT: EUGENE THURMAN  
CASE NUMBER: 3:19-CR-00398-1

### SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: three (3) years

### MANDATORY CONDITIONS (MC)

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.
4. ☐ 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)*
5. ☐ 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)*
6. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
7. ☐ 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)*
8. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*
9. ☐ The passport restriction imposed at the time of initial release is hereby suspended, and defendant's passport is ordered released to defendant's attorney. *(check if applicable)*
10. ☐ The passport restriction imposed at the time of initial release is continued, and defendant's passport is ordered transferred to the U. S. Department of State. *(check if applicable)*
11. You must comply with the standard conditions that have been adopted by this court as well as any other conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION (SC)

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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

DEFENDANT: EUGENE THURMAN  
CASE NUMBER: 3:19-CR-00398-1

### **SPECIAL CONDITIONS OF SUPERVISION (SP)**

1. Because the presentence report and/or other reliable sentencing information indicates a high risk of future substance abuse, the defendant shall participate in a program for the treatment of drug and/or alcohol addiction, dependence, or abuse which may include, but not limited to, urine, breath, saliva, and skin testing should a screening and/or assessment indicate treatment is needed. The Court will determine whether any such treatment will be in patient or outpatient after the screening and/or assessment is conducted. The defendant shall comply with the rules and regulations of the treatment agency and allow the probation officer, in consultation with the agency, to adjust the modality, duration, and intensity of treatment as needed. The defendant shall further submit to drug and/or alcohol testing techniques, in addition to those performed by the treatment agency, during and after formal treatment services.
2. The defendant must participate in an approved program for domestic violence

DEFENDANT: EUGENE THURMAN  
 CASE NUMBER: 3:19-CR-00398-1

### CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$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.

- ☐ 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/or penalties and it is ordered that:
- ☐ the interest and/or ☐ penalty requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest and/or ☐ penalty 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: EUGENE THURMAN  
CASE NUMBER: 3:19-CR-00398-1

### 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 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: Payable to U.S. Clerk of Court

The Court orders that any federal income tax refund payable to the defendant from the Internal Revenue Service will be turned over to the Clerk of Court and applied toward any outstanding balance with regard to the outstanding financial obligations ordered by the Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, or, unless ordered otherwise, criminal debt payments may be made online at [www.lawd.uscourts.gov/fees](http://www.lawd.uscourts.gov/fees).

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

- ☐ Joint and Several  
☐ Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The Court gives notice this case involves other defendants who may be held jointly and several liable for payment of all or part of the restitution ordered herein and may order such payment in the future.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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

## USSG § 2K2.1

### **§ 2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition**

(a) Base Offense Level (Apply the Greatest):

(1) 26, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(3) 22, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(4) 20, if —

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. § 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. § 922(d); or (III) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(5) 18, if the offense involved a firearm described in 26 U.S.C. § 5845(a); 2K2.1(a)(6)

(6) 14, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; (B) is convicted under 18 U.S.C. § 922(d); or (C) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

- (7) 2, except as provided below; or
- (8) 6, if the defendant is convicted under 18 U.S.C. § 922(c), (e), (f), (m), (s), (t), or (x)(1), or 18 U.S.C. § 1715.

(b) Specific Offense Characteristics

(1) If the offense involved three or more firearms, increase as follows:  
of Firearms Increase in Level

- (A) 3-7 add 2
- (B) 8-24 add 4
- (C) 25-99 add 6
- (D) 100-199 add 8
- (E) 200 or more add 10.

(2) If the defendant, other than a defendant subject to subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level 6.

(3) If the offense involved—

(A) a destructive device that is a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by 15 levels;

or

(B) a destructive device other than a destructive device referred to in subdivision (A), increase by 2 levels.

(4) If any firearm (A) was stolen, increase by 2 levels; or (B) had an altered or obliterated serial number, increase by 4 levels.

The cumulative offense level determined from the application of subsections (b)(1) through (b)(4) may not exceed level 29, except if subsection (b)(3)(A) applies.

(5) If the defendant engaged in the trafficking of firearms, increase by 4 levels.

(6) If the defendant—

(A) possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(7) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.

(c) Cross Reference

(1) If the defendant used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense, apply—

(A) §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

## USSG § 4B1.2

### §4B1.2. Definitions of Terms Used in Section 4B1.1

(a) The term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

(b) The term "controlled substance offense" means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

(c) The term "two prior felony convictions" means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.*, two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of §4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of nolo contendere.