APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 21-1050

United States of America

Plaintiff - Appellee

v.

Damon L. Buford

Defendant – Appellant

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: October 17, 2022
Filed: December 13, 2022
[Published]

Before LOKEN, GRUENDER, and GRASZ, Circuit Judges.

PER CURIAM.

Damon Buford pleaded guilty to possession of a firearm by a felon. *See* 18 U.S.C. § 922(g)(1). The district court[1] determined that Buford qualified for the enhanced statutory minimum sentence under the Armed Career Criminal Act ("ACCA"). *See* 18 U.S.C. § 924(e)(1). Buford appeals the district court's application of the ACCA enhancement. We affirm.

Buford's presentence investigation report ("PSR") indicated that he was convicted of four separate "serious drug offense[s]." *See* § 924(e). One offense was the sale of a controlled substance on February 21, 2016, a Class B felony. The other three offenses were also Class B felony sales that occurred on April 27, 2018, April 28, 2018, and May 6, 2018. Buford's 2018 convictions were each for sales of less than a gram of cocaine to the same undercover officer. Buford was arrested after the third 2018 sale and charged in state court with three separate counts of sale of a controlled substance. The PSR stated that all four of Buford's convictions constitute predicate offenses under the ACCA. Buford objected to the applicability of the ACCA statutory minimum, but the district court overruled his objection. The district court sentenced him to the ACCA statutory minimum of 180 months' imprisonment followed by 5 years of supervised release. Buford appeals his sentence.

We first address Buford's argument that the district court erred by finding that his 2018 offenses occurred on the same occasion. We

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[1] The Honorable Howard F. Sachs, United States District Judge for the Western District of Missouri.

review *de novo* whether a prior conviction constitutes an ACCA predicate offense. *United States v. Humphrey*, 759 F.3d 909, 911 (8th Cir. 2014).

Under the ACCA, a felon who possesses a firearm is subject to a minimum sentence of fifteen years if he has three prior convictions for violent felonies or serious drug offenses "committed on occasions different from one another." 18 U.S.C. § 924(e)(1). "In many cases, a single factor—especially of time or place—can decisively differentiate occasions." *Wooden v. United States*, 595 U.S. ---, 142 S. Ct. 1063, 1071 (2022). "[C]onvictions for separate drug transactions on separate days are multiple ACCA predicate offenses, even if the transactions were sales to the same victim or informant." *United States v. McDaniel*, 925 F.3d 381, 387 (8th Cir. 2019), *cert. denied*, 140 S. Ct. 1272 (2020).

Buford argues that the record does not establish that his convictions were based on three sales occurring on three distinct occasions, as opposed to one sale with three distinct delivery dates. We disagree. The PSR notes that Buford "admitted to selling drugs to an undercover officer on three separate occasions." Although Buford objected to his sentence enhancement, Buford never objected to this separate-occasions statement in the PSR, so the district court properly accepted it as true. See *United States v. Oaks*, 606 F.3d 530, 541-42 (8th Cir. 2010). Buford also emphasizes that his 2018 offenses entailed selling substantially similar amounts of cocaine to the same undercover officer during a ten-day period, with two of the sales on consecutive days. But "convictions for separate drug transactions on separate days qualify as multiple ACCA predicate offenses, even if the transactions

were sales to the same victim or informant." *McDaniel*, 925 F.3d at 387.

We also disagree with Buford that the rule of lenity requires us to construe the ACCA's occasions clause in his favor. The rule of lenity states that ambiguities in criminal statutes should be resolved in favor of the defendant. *United States v. Davis*, 588 U.S. ---, 139 S. Ct. 2319, 2333 (2019). However, we consider the rule of lenity only when, after employing all other tools of construction, "a grievous ambiguity or uncertainty in the statute" remains. *Donnell v. United States*, 765 F.3d 817, 820 (8th Cir. 2014). As discussed above, Buford committed at least three (if not four) qualifying offenses occurring on separate occasions, so there is no ambiguity in the statute as applied to Buford.[2]

Buford argues alternatively that remand is required for new fact-finding on the different-occasions issue. He notes that in *United States v. Williams*, we remanded to the district court in light of *Wooden* "for a new factual determination on the issue of whether Williams had three prior convictions committed on different occasions." *See* No. 19-2235, 2022 WL 1510779, at *1 (8th Cir. May 13, 2022) (unpublished) (per curiam). *Williams*, however, did not offer any general guidance as to what district court fact-finding, if any, is needed in light of *Wooden*. *Id*. No further fact-finding is needed in this case, so a remand is not necessary. *See United States v. Robinson*, 43 F.4th 892, 895-96 (8th Cir. 2022) (discussing

[2]Moreover, even if the April 27 and April 28 sales occurred on one occasion, Buford would still have three qualifying predicate offenses occurring on separate occasions.

Wooden and concluding that the defendant's prior burglary offenses occurred on separate occasions without remanding for further fact-finding).

Next, we address Buford's argument that the Sixth Amendment requires facts related to sentencing under the ACCA to be found by a jury. Buford did not raise this argument at sentencing, so we review for plain error. *See United States v. Pirani*, 406 F.3d 543, 549 (8th Cir. 2005). An error is plain only if, at the time of appellate review, the erroneous nature of the trial court's decision is obvious. *Henderson v. United States*, 568 U.S. 266, 273 (2013). We have held that facts about prior convictions that are relevant to ACCA sentencing do not need to be submitted to a jury. *Robinson*, 43 F.4th at 896; *United States v. Harris*, 794 F.3d 885, 887 (8th Cir. 2015). Additionally, *Wooden* is not intervening precedent because the Court declined to weigh in on the Sixth Amendment question. *See* 142 S. Ct. at 1068 n.3. Therefore, any error committed by the district court in failing to submit facts related to Buford's ACCA sentencing is not obvious at the time of our review. The district court thus did not plainly err by not having a jury find facts related to Buford's ACCA sentencing.

In sum, we conclude that Buford's 2018 offenses occurred on different occasions and that the district court's ACCA-related fact-finding was not plain error. For the foregoing reasons, we affirm.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-1050

United States of America

Appellee

v.

Damon L. Buford

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City (4:19-cr-00264-HFS-1)

ORDER

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

February 08, 2023

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

/s/ Michael E. Gans

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DAMON L. BUFORD, [DOB: 12/07/1997] Defendant.	Case No. _____ ***Felon in Possession of a Firearm*** 18 U.S.C. §§ 922(g)(1) and 924(e)(1) NLT: 15 Years' Imprisonment NMT: $250,000 Fine NMT: 5 Years' Supervised Release Class A Felony $100 Mandatory Special Assessment Per Count of Felony Conviction

INDICTMENT

THE GRAND JURY CHARGES THAT:

On or about July 6, 2019, in the Western District of Missouri, the defendant, DAMON L. BUFORD, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm, to wit, a Smith and Wesson, Model SD9, 9mm caliber pistol, bearing Serial Number FBK3439, and said firearm had been transported in interstate commerce, all in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

A TRUE BILL.

8/7/19
Date

/s/ Tressie Borders
FOREPERSON OF THE GRAND JURY

/s/ Sean T. Foley
Sean T. Foley
Special Assistant United States Attorney
Violent Crime & Drug Trafficking Unit
Western District of Missouri

APPENDIX D

15. **Adjustment for Role in the Offense:** None. **0**

16. **Adjustment for Obstruction of Justice:** None. **0**

17. **Adjusted Offense Level (Subtotal):** **20**

18. **Chapter Four Enhancement:** The defendant has been determined to be an armed career criminal, pursuant to §4B1.4, as the instant offense involves an offense of conviction which is in violation of 18 U.S.C. § 922(g), and the defendant has at least three prior convictions for a "violent felony" or "serious drug offense," or both, committed on occasions different from one another. More specifically, the defendant has a felony count of conviction for sale of a controlled substance in connection with Jackson County, Missouri, Circuit Court, Case No. CR96-71029; and three felony counts of conviction for sale of a controlled substance (all committed on different occasions) in connection with Jackson County, Missouri, Circuit Court, Case No. CR98-04022. Pursuant to §4B1.4(b)(3)(B), a base offense level of 33 is warranted. **33**

19. **Acceptance of Responsibility:** Pursuant to §3E1.1(a), the offense level is reduced 2 levels. **-2**

20. **Acceptance of Responsibility:** Because the offense level is 16 or greater and upon motion of the government stating the defendant has assisted authorities in the investigation or prosecution by timely notifying authorities of the intent to plead guilty, an additional 1-level reduction is incorporated in the guideline calculations, pursuant to §3E1.1(b). **-1**

21. **Total Offense Level:** **30**

PART B. THE DEFENDANT'S CRIMINAL HISTORY

22. In accordance with federal and state law and the policy of the Judicial Conference of the United States, it is presumed the defendant was represented by counsel or knowingly waived counsel, unless otherwise indicated. Additionally, court records confirmed the information noted below, unless otherwise indicated.

Juvenile Adjudication(s)

23. None.

Adult Criminal Convictions

	Date of Arrest	Conviction/Court	Date Sentence Imposed/Disposition	Guideline	Pts
24.	01/16/96 (Age 18)	Obstructing Officer (M);	04/12/96: Guilty; SIS, 1 year probation.	4A1.2(c)(1)	0

		Municipal Court, Kansas City, MO Case No.: 1G031072			

According to Kansas City, Missouri, Municipal Court documentation, on January 16, 1996, the defendant refused to follow police directives following a disbanded fight. The defendant reportedly aggravated the situation by yelling and closing in on officers.

25.	01/31/96 (Age 18)	Possession of a Controlled Substance (F); Jackson County Circuit Court, Kansas City, MO Case No.: CR96-70186	08/30/96: Deferred prosecution sentence. 12/04/97: 3 years custody, concurrent with CR96-71029, SES, 3 years probation. 03/25/99: Probation revoked, 3 years custody, pursuant to 120-day callback provision, concurrent with CR96-71029 and CR98-04022. 06/28/99: SES, 3 years probation. 07/25/99: Released to probation. 05/17/01: Probation suspended. 05/28/03: Discharged from probation.	4A1.2(e)(3)	0

According to the Statement of Probable Cause and a Kansas City, Missouri, Police Department incident report, on January 31, 1996, police observed the defendant engage in what appeared to be a drug transaction. Through questioning, police discovered the defendant concealing .23 gram of cocaine base in his mouth. Following a brief struggle, the defendant relinquished the drugs and was placed under arrest. On February 1, 1996, the defendant admitted to possession of the confiscated drugs and further related he had been smoking "crack cocaine" for approximately one week.

Prior to being sentenced in relation to this case, the defendant was unsuccessfully discharged from a drug diversion program in October 1996 due to non-compliance. The defendant was subsequently sentenced on December 4, 1997, at which time he was ordered to successfully complete the TREND treatment program, located in Kansas City, Missouri. The defendant began such treatment on January 12, 1998; however, his attendance was deemed to be unsuitable and he received an unsuccessful discharge on November 20, 1998. During such time, the defendant admitted to Missouri Probation and Parole (MP&P) that he had smoked marijuana and taken prescription medication (Valium) which was not prescribed to him. On March 25, 1999, the defendant's probation was revoked in relation to his involvement with Jackson County, Missouri, Circuit Court, Case No. CR98-04022. Following his release from custody, the defendant was again placed on probation. On

October 10, 1999, the defendant was arrested and found to be in possession of a controlled substance (cocaine base) in relation to Jackson County, Missouri, Circuit Court, Case No. CR00-00925. In March 2000, the defendant failed to report to his probation/parole officer on three separate instances. On May 24, 2000, the defendant was unsuccessfully discharged from the Free and Clean treatment program, located in Kansas City, Missouri, due to absenteeism. On December 12, 2000, the defendant admitted to MP&P to using marijuana. In March 2001, the defendant failed to report to his probation/parole officer on one instance. On March 23, 2001, the defendant was again unsuccessfully discharged from the Free and Clean treatment program for failing to attend. On May 17, 2001, the defendant's probation was suspended and a Capias issued. On February 6, 2003, the defendant admitted to MP&P that he had smoked PCP. He was subsequently discharged from probation on May 28, 2003.

26.	02/22/96 (Age 18)	Sale of a Controlled Substance (F); Jackson County Circuit Court, Kansas City, MO Case No.: CR96-71029	12/04/97: Guilty; 5 years custody, concurrent with CR96-70186, SES, 3 years probation. 03/25/99: Probation revoked, 5 years custody, pursuant to 120-day callback provision, concurrent with CR96-70186 and CR98-04022. 06/28/99: SES, 3 years probation. 07/25/99: Released to probation. 05/17/01: Probation suspended. 05/28/03: Discharged from probation.	4A1.2(e)(3)	0

According to Count 2 of the Information, "the defendant, Damon L. Buford, in violation of Section 195.211, RSMo, committed the Class B felony of sale of a controlled substance, punishable upon conviction under section 558.011.1(2), RSMo, in that on or about February 21, 1996, in the County of Jackson, State of Missouri, the defendant either acting alone or purposefully in concert with another sold cocaine base, a controlled substance to [an investigator], knowing or consciously disregarding a substantial and unjustifiable risk that it was a controlled substance."

An additional count of sale of a controlled substance was dismissed.

According to the Statement of Probable Cause, on February 21, 1996, the defendant sold 1.30 grams of cocaine base to an undercover officer for $100. On February 22, 1996, the defendant was arrested in connection with a search of 2506 Kensington, Kansas City, Missouri. On February 23, 1996, the defendant admitted to police that he had previously sold cocaine base from the residence in question.

The defendant's probation adjustment is reflected under Case No. CR96-70186.

27.	12/31/96 (Age 19)	Simple Assault (M); Municipal Court, Kansas City, MO Case No.: 1G053299	04/08/97: Guilty; 10 days custody.	4A1.2(e)(3)	0

The circumstances of this offense are unknown.

28.	03/08/97 (Age 19)	Trespassing (M); Municipal Court, Kansas City, MO Case No.: 1G075224	08/28/97: Guilty; Fined.	4A1.2(c)(1)	0

The circumstances of this offense are unknown.

29.	05/06/98 (Age 20)	Ct. 1) Sale of a Controlled Substance (F), Ct. 2) Sale of a Controlled Substance (F), Ct. 3) Sale of a Controlled Substance (F); Jackson County Circuit Court, Kansas City, MO Case No.: CR98-04022	03/25/99: Guilty; Cts. 1-3) 10 years custody, each count, pursuant to 120-day callback provision, concurrent and concurrent with CR96-71029 and CR96-70186. 06/28/99: SES, 3 years probation. 07/25/99: Released to probation. 05/17/01: Probation suspended. 05/28/03: Discharged from probation.	4A1.2(e)(3)	0

According to Count 1 of the Indictment, "the defendant, Damon L. Buford, in violation of Section 195.211, RSMo, committed the Class B felony of sale of a controlled substance, punishable upon conviction under Section 558.011.1(2), RSMo, in that on or about April 27, 1998, in the County of Jackson, state of Missouri, the defendant sold cocaine base, a controlled substance, to [a detective] knowing or consciously disregarding a substantial and unjustifiable risk that it was a controlled substance."

According to Count 2 of the Indictment, "the defendant, Damon L. Buford, in violation of Section 195.211, RSMo, committed the Class B felony of sale of a controlled substance, punishable upon conviction under Section 558.011.1(2), RSMo, in that on or about April 28, 1998, in the County of Jackson, state of Missouri, the defendant sold cocaine base, a controlled substance, to [a detective] knowing or consciously disregarding a substantial and unjustifiable risk that it was a controlled substance."

According to Count 3 of the Indictment, "the defendant, Damon L. Buford, in violation of Section 195.211, RSMo, committed the Class B felony of sale of a controlled substance, punishable upon conviction under Section 558.011.1(2), RSMo, in that on or about May 6, 1998, in the County of Jackson, state of Missouri, the defendant sold cocaine base, a controlled substance, to [a detective] knowing or consciously disregarding a substantial and unjustifiable risk that it was a controlled substance."

According to a Statement of Probable Cause, on April 27, 1998; April 28, 1998; and May 6, 1998, the defendant sold purported cocaine base in the amounts of .8 gram, .7 gram, and .9 gram to an undercover officer. He was placed under arrest on May 6, 1998. On May 7, the defendant admitted to selling drugs to an undercover officer on three separate occasions.

The defendant's probation adjustment is reflected under Case No. CR96-70186.

30.	08/25/98 (Age 20)	Driver Fails to Produce License (M); Municipal Court, Kansas City, MO Case No.: 8867568	12/29/00: Guilty; 90 days jail, SES, 2 years probation.	4A1.2(e)(3)	0
31.	10/19/98 (Age 20)	No Operator's License (M); Municipal Court, Kansas City, MO Case No.: 08890530	09/13/99: Guilty; 10 days jail, SES, 1 year probation.	4A1.2(c)(1)	0
32.	11/05/98 (Age 20)	Trespassing (M); Municipal Court, Kansas City, MO Case No.: 1G157399	01/13/99: Guilty; 90 days jail, SES, 1 year probation.	4A1.2(c)(1)	0

The circumstances of this offense are unknown.

33.	12/19/98 (Age 21)	No Operator's License (M); Municipal Court, Kansas City, MO Case No.: 08928907	02/28/00: Guilty; 6 months jail, SES, 2 years probation.	4A1.2(e)(3)	0
34.	10/10/99 (Age 21)	Possession of a Controlled Substance (F); Jackson County Circuit Court, Kansas City, MO Case No.: CR00-00925	05/23/03: Guilty; 5 years custody with recommendation for placement in the Long-Term Treatment Program, pursuant to RSMo. 217.362. 06/14/04: SES, 3 years probation.	4A1.2(e)(3)	0

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	Case No. 4:19-cr-00264-HFS-1
Plaintiff,	)	
vs.	)	
DAMON L. BUFORD,	)	
Defendant.	)	January 6, 2021 Kansas City, Missouri

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TRANSCRIPT OF SENTENCING
BEFORE HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For United States: Sean T. Foley
U.S. Attorney's Office
400 East Ninth Street
Suite 5510
Kansas City, Missouri 64106

For Defendant: Ronna Holloman-Hughes
Federal Public Defender's Office
1000 Walnut
Suite 600
Kansas City, Missouri 64106

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[2] (Proceedings commenced at 10:39 a.m.)

THE COURT: All right. Apparently we are ready to proceed. We have scheduled a sentencing in this case, in the case of United States of America against Damon L. Buford. Mr. Foley represents the United States. Ms. Holloman-Hughes represents the defendant.

Before we get into the sentencing procedure, I need to make certain findings. Congress adopted legislation early last year because of the pandemic which allows remote proceedings for sentencing, among other activities, but in order to proceed remotely, the Court has to determine whether a remote proceeding is necessary to avoid serious harm to the interest of justice. And there also needs to be a finding that this particular case qualifies for a remote proceeding.

The basic reason, of course, for proceeding in this manner is the pandemic, and because I'm in supposedly a vulnerable situation because of age, I have not been going to the courthouse and, in particular, not having courtroom proceedings. Courtroom proceedings would be particularly dubious because defendants who are imprisoned presumably have not been tested for the virus, and also, it's my understanding that there's no segregation between persons in the jail, which would isolate vulnerable people or people who would test positive. So to have them in the courtroom with me, even though there's considerable distance, is not advisable.

[3] The options would be to delay sentencing until we could have a courtroom proceeding or to transfer the case for sentencing to another judge. Neither of those would be appropriate. The last would place a burden on the other judges which I consider to be unnecessary. The defendant's situation is also a factor, in that defendants generally want to get sentencing out of the way and be moved on to prison, a Bureau of Prisons situation, and it would be my understanding that while there's no complete safety anywhere that the Bureau of Prisons probably has safer facilities than the county jails would provide. So I am prepared to make the finding that proceeding remotely today would be necessary to avoid serious harm to the interest of justice and that this case qualifies for the procedure.

There's another factor that needs to be dealt with, and that is that a defendant has a right to be sentenced in a courtroom if he chooses to have that done, so Mr. Buford's consent to proceeding today in this manner needs to be established. My supposition is that before scheduling the case that there had been prior approval by defendant's counsel, as well as the defendant; however, we ought to have a brief record showing consent by the defendant to proceed in this manner without having a courtroom sentencing. And I would call upon defense counsel if she would ask a few questions on that subject.

[4] MS. HOLLOMAN-HUGHES: Good morning, Mr. Buford. The Court is wondering if we've spoken about the possibility of having your sentencing via video today. We have, correct?

THE DEFENDANT: Yes.

MS. HOLLOMAN-HUGHES: And I told you that I would have to file a motion to say that you consented. I have filed that motion, and you, in fact, consent to having this hearing via video, correct? Is that a yes? You have to speak up.

THE DEFENDANT: Yes.

MS. HOLLOMAN-HUGHES: Okay. And you understand that we're having this hearing via video because of the Covid-19 virus and the dangerousness of all of us getting together in a courtroom, but if you wanted to, we could wait until the virus was over, I guess, and you could wait to have your hearing in a courtroom. You understand that?

THE DEFENDANT: Yes.

MS. HOLLOMAN-HUGHES: But knowing that, you still want to proceed via video?

THE DEFENDANT: Yeah.

MS. HOLLOMAN-HUGHES: Okay. I have nothing further, your Honor.

THE COURT: All right. I think that's probably an adequate record, so I would find that there is consent to proceeding at this time and in this manner.

Dealing with the standard proceedings, we first need [5] to have a ruling concerning the pre-sentence report and the punishment calculations in that report. Mr. Buford, have you had an opportunity to review the pre-sentence report?

THE DEFENDANT: Yes, your Honor.

THE COURT: Your attorney has made only one complaint to the report, which is written up in a December 15th addendum and recites that Mr. Buford does not believe that his convictions for sales of controlled substance should be predicates, that is, predicates for sentencing. The amounts of drugs that he sold were less than a gram in each case, and it's asserted by counsel that it would be the intent of the legislature to enhance punishments for drug dealers distributing large amounts of narcotics.

The previous cases in Missouri did establish a reason for the allegation of the indictment that we're dealing with, a 15-year minimum sentence, and that is dealt with by what is reported that Ms. Holloman-Hughes has objected to. Mr. Buford, do you understand the objection she's made?

THE DEFENDANT: Yes.

THE COURT: And was the objection one that you wanted her to make?

THE DEFENDANT: Yes. I also noted that it said that I would have to have at least three priors, am I correct, in order to be an armed career criminal? And those --

THE COURT: Yes.

[6] THE DEFENDANT: And those three priors would come from three convictions, right?

MS. HOLLOMAN-HUGHES: Your Honor, let me interrupt because we've had this conversation, so I want to make sure that the Court understands the question and that Mr. Buford understands --

THE COURT: All right. Perhaps counsel can state what the problem is.

MS. HOLLOMAN-HUGHES: Mr. Buford has three convictions for sales of controlled substance that happened on different occasions from one another. Unfortunately, those sales were ran together, and so his question is, because they were all in one case, Case Number 9804022, he believes that they should be considered one conviction and, therefore, he is not eligible for the ACCA.

THE DEFENDANT: I was arrested one time and interviewed one time. I was never arrested after each sale. I was picked up on those sales one time and one time only.

MS. HOLLOMAN-HUGHES: And so I've explained to him that under the 924(e), the sales are on different occasions. It does not mean that he has to have different arrests in order for the sales to be on different occasions; they just have to be two different sales. So he could have a sale on one corner, walk down to another corner, have another sale, and that's two different sales.

[7] THE COURT: All right. I'll make a ruling on the objections that I've heard, but, Mr. Buford, do you have any objections to the report that you consider to be significant objections other than what we've already referred to?

THE DEFENDANT: No, your Honor.

THE COURT: All right. I would adopt the report subject to a ruling on the objections that have been made. Ms. Holloman-Hughes, is there anything further that you would want to say in support of the objection?

MS. HOLLOMAN-HUGHES: No, your Honor.

THE COURT: All right. I don't think I need to hear from the Government. As outlined by Ms. Holloman-Hughes, the calculations made by the Probation Office are consistent with what Congress provided. I do recognize that for various reasons the defendant might consider that what happened quite a few years ago should not be considered serious enough to require a 15-year minimum sentence; however, that decision was made by Congress and it is a minimum sentence that the Court has no authority to modify. So whatever people

might think about the fairness of the 15-year minimum, it is required by the statute that's relied on. And as I believe I said earlier, the indictment itself referred to a 15-year minimum sentence, so it's no surprise. I have not looked at the prior proceeding before me, but my supposition is that those sentences were counted for 15-year minimum at that time also. Since I [8] mentioned that prior proceeding, the sentence was -- while I'm sure the defendant considered it to be a long sentence, it was less than the 15 years, but that was because of the Government's motion for -- because apparently of cooperation, that caused a reduced sentence at that time.

So the objection made principally by the defendant himself is overruled, and that means we are dealing with a 15-year minimum sentence. The guideline sentence would have been a long sentence also but less than the 15 years. Therefore, the entire pre-sentence report is adopted for the record, and we will now deal with the sentencing decision. I would have authority to go beyond the 15 years; in fact, the statute allows life imprisonment, but 15 years is the minimum. Perhaps for the record I should mention that the Probation Office notes that the guideline without the 15 years would have been 135 to 168 months.

So I would call upon counsel to address me on the sentencing decision, whether it should be 15 years or more, and just before my decision, Mr. Buford, you will have an opportunity to also say something to me if you wish to do so. But first I would call upon Ms. Holloman-Hughes. And I take it you're asking for a minimum sentence -- minimum authorized sentence?

MS. HOLLOMAN-HUGHES: Yes, your Honor, but I would want to clear up something. I understand that his guideline as [9] it stands would be 135 to 168 months, and that is with the ACCA, but, of course, the 180 months is the minimum. Without the ACCA, his base offense level would have started at 14 because he has no prior crimes of violence. And it appears as though the PSI writer added two points in Paragraph 12 for a firearm being stolen and four points, which I don't know if that is something that I would have probably objected to, but the four points also, which would have gave him a criminal – I mean a

base offense level of 20, and the fact that he would have gotten a three-point reduction for acceptance would have made him a 17. And he only has four criminal history points, your Honor, so realistically, had he not been deemed an armed career criminal, he would have been looking at 30 to 37 months, actually, without this --

THE COURT: All right. It's helpful that you added that to the record, and I don't think -- I don't think we need to debate that issue because -- I mean, for present purposes, I'll accept what you've said.

MS. HOLLOMAN-HUGHES: Okay. So --

THE COURT: Go ahead.

MS. HOLLOMAN-HUGHES: So with that said, though, it is extreme for Mr. Buford to accept that, you know, but for this designation of him selling on three different occasions, and it looks like day after day after day what amounts to 1 gram or less or a bit more -- and I want to say, I did drug [10] court for years in Jackson County, and because if you get more than three sales on a person, they can't get in drug court -- and I think that is part of the purpose of having -- going back three times before you arrest a person, but he has these three sales that were minimal, and now he's looking at 15 years of his life in prison. And he's not a young man.

So I'd ask the Court to consider his age, the 3553(a) factors, the fact that this wasn't -- he's not brandishing the gun. He obviously has some serious drug history. He was under the influence of PCP. And that seems to be most of his problem. So I'd ask the Court to consider the 3553(a) factors, the nature and circumstances of this case, his history of not being a violent offender, the fact that he needs help for his substance abuse issue, and sentence him to the low end of 180 months with three years -- I'm sorry -- yeah, three years of supervised release and the RDAP program, your Honor.

THE COURT: Any particular location for imprisonment? Is there anything requested? Near Kansas City, or just wherever the Bureau of Prisons requests, decides?

THE DEFENDANT: California, your Honor. My father is -- this is my last living parent. Arizona or California. I know he would probably be going to Arizona with family, but I'm trying to get to Arizona or California. My father has cancer. He's in his 70's.

THE COURT: All right.

[11] THE DEFENDANT: And I'm just -- and he's my only living parent, alive.

THE COURT: Okay. That will be taken into consideration by me. Mr. Foley, do you have anything you wish to say about the sentencing decision?

MR. FOLEY: I would join Ms. Holloman-Hughes' 180-month recommendation. As the Court noted, this is his second conviction under 924(e). It appears that he rolled off his supervised release in May of 2019 and then was caught with this gun. And as was also noted, he was on PCP in July of 2019. But the United States believes that a 180-month calculation is correct, that it's based upon the law that the Court set forth earlier, and that it's sufficient but not greater than necessary to serve what dictates in this instance.

THE COURT: All right. And, Mr. Buford, you have been speaking up when you felt it was appropriate. I would listen to you again if there's something you want to say about the sentence.

THE DEFENDANT: Your Honor, I would just say that, you know, I made -- I've made mistakes I'm not happy of. I kind of feel like I've been viewed as a monster, a big time drug dealer, which I've never been. I hate that I'm in this situation. I've been locked in this jail for 17 months. I done caught Covid in here. My life's been violated. You know? [12] I'm just -- I really don't know what to say at this time. I mean, you know, I've seen people get less time for murder. And I guess I'm looking at the -- my criminal history rather than the severity of my crime. You know? And I stand responsible for what I did, you know, I'm sorry. And apparently this is the way the Government works. I just ask you to find it in your heart to have mercy on me.

THE COURT: All right. Perhaps I should mention that in the previous proceeding before me for a felon in possession of a firearm, in Paragraph 39, there is a recitation that the guideline at that time would have been 188 to 235 months. I take it that that did include the various drug offenses, so in a way, this should not be considered to be a surprisingly long sentence. As I said earlier, I really have no authority over the sentence. I could go above 180 months, above 15 years, but I agree with counsel that 15 years is adequate and should not be increased. So I will use the 15-year minimum sentence and I will make the recommendation of the RDAP program and for service of the sentence in California or Arizona. I've noted that on my papers, but the defendant should understand the Bureau of Prisons makes its own decision. The sentence is imposed because it is the statutory minimum. It is at least adequate for the seriousness of the offense and the record and also for purposes of deterrence.

[13] Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant Damon L. Buford is hereby committed to the custody of the Bureau of Prisons for 180 months on this one-count indictment. Upon release from imprisonment, the defendant shall be placed on supervised release for five years. Since the Court finds the defendant does not have the ability to pay a fine, the fine is waived. It's further ordered the defendant shall pay to the United States a special assessment of $100.

While on supervised release, the defendant shallcomply with the mandatory and standard conditions that have been adopted by the Court. In addition, the defendant shall comply with the special conditions listed in Paragraph 107, Part D of the pre-sentence report. The defendant shall remain in custody for service of the sentence imposed. And to repeat myself, the recommendations as to location and to the RDAP program are on the papers that will be used in this case.

I do need to advise the defendant that if a defendant wishes to appeal from a sentence and if he's retained the right to appeal, he could only do so by filing a notice of appeal within 14 days of this date, and

a person unable to pay the costs of appeal may apply for leave to appeal in forma pauperis.

I believe we have completed what we need to do in this case. As the courtroom deputy indicated earlier, if the [14] defendant and defense counsel would like to confer for any purpose, we can provide for a private conference at this time. Would either of you like to confer?

MS. HOLLOMAN-HUGHES: Yes, sir.

THE COURT: All right. We will -- the courtroom deputy will arrange for a private discussion between the defendant and his attorney, and the rest of us can go off the record.

(Proceedings concluded at 11:09 a.m.)