

# APPENDIX - A

UNITED STATES DISTRICT COURT Judgement (6<sup>th</sup> circuit)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

-----X  
UNITED STATES OF AMERICA, : Case No. 5:21-cr-00370  
: Cleveland, Ohio  
Plaintiff, :  
:  
v. : Wednesday, May 11, 2022  
: 11:03 a.m.  
TODDELL ALEXANDER, :  
:  
Defendant. :  
-----X

TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE PATRICIA A. GAUGHAN  
UNITED STATES CHIEF DISTRICT JUDGE

Court Reporter: Donnalee Cotone, RMR, CRR, CRC  
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United States District Court  
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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

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1 MORNING SESSION, WEDNESDAY, MAY 11, 2022

2 (Proceedings commenced at 11:03 a.m.)

3 - - -

4 THE COURT: Mr. Alexander, you may approach  
11:04:30 5 the podium with counsel.

6 We are here in the matter of the *United States of*  
7 *America v. Toddell Alexander*, Case Number 21-cr-370.

8 Present in court is Mr. Alexander.

9 Is that correct, sir?

11:04:52 10 THE DEFENDANT: Yes.

11 THE COURT: Represented by his attorney,  
12 Mr. Michael O'Shea.

13 MR. O'SHEA: Good morning.

14 THE COURT: Good morning.

11:04:58 15 On behalf of the Government, Mr. Aaron Howell.

16 MR. HOWELL: Good morning, Your Honor.

17 THE COURT: Good morning.

18 On behalf of probation, Ms. Anna Newman.

19 PRETRIAL SERVICES OFFICER: Good morning.

11:05:08 20 THE COURT: Good morning.

21 We're here, sir, today for purposes of sentencing. On  
22 January 19th, you entered a plea of guilty to the  
23 single-count indictment. At that time, I referred your  
24 matter to the probation department for a presentence  
11:05:22 25 investigation report.

1 I have that report before me and I have thoroughly  
2 reviewed it.

3 Have you had an opportunity to go over this report  
4 with your attorney?

11:05:33 5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: According to your report, sir,  
7 your base offense level is 24. There are no specific  
8 offense characteristics, no victim-related adjustments, no  
9 adjustment for role in the offense, no adjustment for  
11:05:53 10 obstruction of justice.

11 Because you are deemed to be an Armed Career Criminal,  
12 your offense level becomes a 33. Three levels are deducted  
13 for acceptance of responsibility for a total offense level  
14 of 30.

11:06:08 15 You have ten criminal history points which corresponds  
16 to a criminal history category of V.

17 Now, let me first turn to the Government.

18 It's my understanding that you do not have any  
19 objections to the manner in which the guidelines have been  
11:06:29 20 applied; is that correct?

21 MR. HOWELL: That is correct, Your Honor.

22 THE COURT: All right. Now, I'm going to turn  
23 to the objections by Mr. Alexander.

24 The first objection, although it states paragraph 31.  
11:06:44 25 I believe that's because of an earlier edition of the

1 presentence report, so it's really paragraph 34.

2 The defendant objects to four points being added for  
3 his convictions for aggravated robbery and felonious  
4 assault. Basically, defendant claims that these crimes  
11:07:11 5 occurred more than 15 years before the conduct giving rise  
6 to this offense.

7 Mr. O'Shea, are you maintaining that objection in  
8 light of the probation officer's response?

9 MR. O'SHEA: Can I elaborate and say --

11:07:26 10 THE COURT: Sure.

11 MR. O'SHEA: -- let me explain why, Judge.  
12 Item No. 1, my client, as the Court may or may not be aware,  
13 filed his own *pro se* objections.

14 THE COURT: No, I understand. But -- but,  
11:07:39 15 Mr. Alexander, you're represented by counsel.

16 I'm going to consider your objections, but I'm -- but  
17 when it comes to argument, it's really you, Mr. O'Shea --

18 MR. O'SHEA: Very well, Judge.

19 THE COURT: -- that you're the one that needs  
11:07:55 20 to respond to the Court's questions because, again --

21 MR. O'SHEA: Understood.

22 THE COURT: -- he's represented by counsel.  
23 So technically, I shouldn't even be considering the *pro se*  
24 objections, but I'm going to. I am going to address them.

11:08:10 25 MR. O'SHEA: And Judge, when I filed the

1 objections for the record or gave them to the probation  
2 officer, I incorporated by reference my client's -- just  
3 so --

4 THE COURT: You did.

11:08:17 5 MR. O'SHEA: I did.

6 THE COURT: No, you -- you did. But  
7 regardless, I'm going to consider them.

8 MR. O'SHEA: Thank you, Judge. Thank you.

9 THE COURT: But I'm going to call on you to  
11:08:26 10 tell me, are you maintaining it, number one, and if so, do  
11 you wish to argue further than the arguments that are in  
12 your sentencing memorandum and presented in the presentence  
13 investigation report under the heading "Objections."

14 MR. O'SHEA: And thank you for that -- I  
11:08:45 15 wasn't aware -- you hadn't mentioned yet the sentencing  
16 memorandum, Judge, so I -- I -- I, of course, set forth some  
17 arguments in that document.

18 Thank you, Judge.

19 THE COURT: Yes. I -- I want you to be  
11:08:56 20 assured and your client to be assured, I have it, and I have  
21 thoroughly reviewed it.

22 MR. O'SHEA: Thank you, Judge.

23 The -- I think it's paragraph 34 now. It talks about  
24 four points, three plus one, under the ACCA. My  
11:09:11 25 understanding of the law is that there is no lookback period

1 as it relates to ACCA. It only applies to career offender.  
2 But we do argue that the one point that he got, because it  
3 was based upon -- and, you know, a contained definition of  
4 physical harm, the same argument that we made --

11:09:30 5 THE COURT: I -- I -- I'm going to stop you.

6 The first objection is the fact that -- correct me if  
7 I'm wrong -- that the crimes occurred more than 15 years  
8 before the conduct in this case, and that's why he believes  
9 he should not be given the four points.

11:09:57 10 Am I missing something?

11 MR. O'SHEA: And I -- my fault if I'm  
12 confusing the Court, Judge.

13 Three points get for the -- for the -- for the crime,  
14 but you get an additional -- additional point. So we're --  
11:10:10 15 we believe -- I mean, my understanding of the ACCA is that  
16 it has no lookback. So three -- I think academically we  
17 lose on that argument, but we do not lose on the additional  
18 point that -- that was assessed for those because of the  
19 definition of violent felony.

11:10:31 20 MR. HOWELL: I think, just in general, my  
21 understanding from speaking to Attorney O'Shea before that,  
22 I don't think they're continuing to contest that it is  
23 outside of the 15-year time period.

24 He's just going to the fact that there is the three  
11:10:45 25 levels for that. I think he's conceding that, but arguing



1 that the fourth point, that there being two offenses of  
2 violence, so there's a fourth point added to that. I think  
3 that's what he's arguing now. So he's conceding that  
4 probation is correct about the 15 years, so there should be  
11:11:03 5 three points.

6 The fourth point is saying there are two crimes of  
7 violence, one of which was not sentenced; they're on the  
8 same date. So they added a fourth level to it. That's what  
9 I believe he's arguing in regards to that objection.

11:11:16 10 THE COURT: That's not what I read in the --

11 Sir, okay. Go ahead. You're represented by counsel.

12 THE DEFENDANT: It's four points for --

13 THE COURT: Where is it split up between the  
14 three points and the one point?

11:11:32 15 Where is it here that I -- and I'm missing it?

16 MR. HOWELL: The response from the probation  
17 officer, Your Honor, at the bottom of the response to  
18 Objection Number 1, it talks about the fourth point being  
19 added. It's in italics there.

11:11:50 20 THE COURT: Okay. I'm speaking of -- that  
21 there's a concession regarding the three points.

22 MR. O'SHEA: Yeah. And it has to do with  
23 this, too, Judge. Even though it was a 2005 case, the  
24 defendant wasn't actually sentenced, I think, until sometime  
11:12:09 25 in 2009, which pushed his incarceration level, even if the

1 15-year lookback period applied, into the realm of the 15  
2 years.

3 THE COURT: All right. All right.

4 MR. O'SHEA: I can't, in good faith, argue  
11:12:20 5 that issue.

6 THE COURT: All right. So you are conceding  
7 it. Mr. Howell is correct.

8 MR. O'SHEA: Only academically because I know  
9 my client doesn't want me to. I apologize for that  
11:12:33 10 distinction, Your Honor.

11 THE DEFENDANT: I was sentenced in '05.

12 MR. O'SHEA: It counts for when your sentence  
13 ends, not when it starts. That's what the law says.

14 THE DEFENDANT: I'm not convinced.

11:12:44 15 THE COURT: Do you wish to speak privately?

16 MR. O'SHEA: I have spoken with my client  
17 extensively on this, Your Honor. So he and I agree to  
18 disagree on whether that three points applies or not.

19 THE COURT: Mr. Howell.

11:12:58 20 MR. HOWELL: Yes, Your Honor.

21 THE COURT: What's the Government's position  
22 regarding the additional point?

23 MR. HOWELL: In regards to the additional  
24 point, Your Honor, we believe that probation correctly  
11:13:08 25 scored that as specifically in regards to the aggravated

1 robbery, okay. Under the guidelines, we believe that it  
2 meets the generic definition of a crime of violence under  
3 4B1.2, as it's enumerated there as robbery.

4 So we do believe that they've correctly calculated the  
11:13:32 5 criminal history category points because both the aggravated  
6 robbery and the felonious assault are crimes of violence  
7 under the guidelines.

8 THE COURT: I'll tell you what.

9 I am going to address each and every one of the prior  
11:13:50 10 convictions at issue, because all of your objections appear  
11 to be regarding whether those are crimes of violence or  
12 violent felonies. Okay. So I'm simply going to address --  
13 begin there and then work backwards; unless, Ms. Newman, you  
14 want to say anything at this point?

11:14:16 15 PRETRIAL SERVICES OFFICER: No, Your Honor.

16 I stand by the information that I included in the  
17 report.

18 THE COURT: Okay.

19 MR. O'SHEA: Judge --

11:14:22 20 THE COURT: Sure.

21 MR. O'SHEA: One last thing.

22 I had -- although I had filed the sentencing  
23 memorandum, and I believe the Government has seen it, I did  
24 not forward a copy of it to the probation department. Maybe  
11:14:33 25 my fault. But I gave the probation officer this morning a

1 copy of mine so that they have it.

2 THE COURT: Okay. No problem.

3 All right. So I have to determine if four of  
4 Mr. Alexander's convictions are crimes of violence for  
11:14:54 5 purposes of guideline determinations, and I have to  
6 determine whether they are violent felonies for purposes of  
7 determining whether he qualifies for the Armed Career  
8 Criminal enhancement.

9 I'm going to begin with aggravated robbery. The  
11:15:19 10 Government concedes -- and I know Mr. Howell will correct me  
11 if I'm wrong -- that aggravated robbery is not a violent  
12 felony for purposes of the Armed Career Criminal Act.  
13 Therefore, I am not going to consider aggravated robbery in  
14 determining whether he qualifies under the Act. I'm going  
11:15:40 15 to make the statement, it does not qualify.

16 However, aggravated robbery is a crime of violence for  
17 guideline purposes, because it is an enumerated offense.

18 So, again, aggravated robbery, not a violent felony  
19 for purposes of ACCA. It is a crime of violence under the  
11:16:15 20 guidelines.

21 Felonious assault. I find that the conviction for  
22 felonious assault qualifies as both a violent felony under  
23 the Act and a crime of violence under the guidelines.

24 I know the defendant argues that the felonious assault  
11:16:44 25 statute relies on Ohio's definition of physical harm, which

1 includes nonphysical harm such as illness, et cetera,  
2 regardless of its gravity or duration.

3 And -- and Mr. O'Shea, you have extensively argued it  
4 in your sentencing memorandum. Because a conviction under  
11:17:05 5 the statute could stem from essentially minor or nonphysical  
6 injuries, it is argued, any such conviction cannot qualify  
7 as being violent under either the ACCA or for guideline  
8 computations. This is what the defendant is arguing.

9 However, this Court rejects that argument.

11:17:30 10 In *United States v. Burris* -- it's B-U-R-R-I-S --  
11 912 F.3rd 386 -- it's a 2019 Sixth Circuit case -- the  
12 Sixth Circuit rejected this very argument that the defendant  
13 now raises.

14 In *Burris*, the Court reviewed the Ohio's felonious  
11:17:57 15 assault statute and reviewed the definition of physical  
16 harm. The Court first determined very importantly that the  
17 statute is divisible. It then determined that convictions  
18 under Revised Code 2903.11(A)(1) do not qualify because they  
19 incorporate harm that would not qualify as violent.

11:18:23 20 But the Court then separately analyzed 2903.11(A)(2).  
21 The Court noted that convictions under this provision  
22 require the additional element of use of a deadly weapon or  
23 dangerous ordnance by causing or attempting to cause  
24 physical harm.' Because of this additional element, the  
11:18:48 25 Court concluded that a conviction under 2903.11(A)(2)

1 qualifies as a violent felony for purposes of the Armed  
2 Career Criminal Act, as well as a crime of violence for  
3 guideline purposes.

4 Because this defendant's prior conviction for  
11:19:11 5 felonious assault is based upon 2903.11(A)(2), it qualifies  
6 for both purposes here.

7 I'm now going to move to the domestic violence  
8 convictions. The defendant has two prior convictions for  
9 domestic violence under Ohio Revised Code 2919.25(A).

11:19:37 10 Defendant, again, argues that Ohio's definition of  
11 physical harm is too broad and that these two convictions  
12 cannot be considered for purposes of the Armed Career  
13 Criminal Act. The argument is rejected.

14 In *United States v. Gatson* -- it's G-A-T-S-O-N --  
11:20:01 15 776 F.3rd 405 -- it's a 2015 Sixth Circuit case -- the Court  
16 determined that crimes of violence under 2919.25(A) are  
17 categorically violent felonies for purposes of the Armed  
18 Career Criminal Act. And less than one month ago, the  
19 Sixth Circuit addressed this very issue once again in  
11:20:32 20 *United States v. Mickel*, M-I-C-K-E-L, 2022 WL 1100459,  
21 Sixth Circuit case, decided on April 13th of this year.

22 That defendant made the same argument Mr. Alexander is  
23 making to me. In that case, defendant argued that based on  
24 *Burris* and other authority, *Gatson* should be reconsidered.

11:21:14 25 The Sixth Circuit Court, however, noted that it was

1 bound to apply *Gatson* because in the absence of an  
2 inconsistent decision from the Supreme Court of the  
3 United States that requires modification of a panel  
4 decision, only the Court sitting *en banc* can overrule a  
11:21:38 5 prior published panel decision.

6 Accordingly, based upon *Gatson* and *Mickel*, I find that  
7 the two prior convictions for domestic violence qualify as  
8 violent felonies under the Armed Career Criminal Act and  
9 they are also considered crimes of violence for guideline  
11:21:58 10 purposes. And I do cite *United States v. Solomon*,  
11 763 Fed.Appx 442, Sixth Circuit case, decided on  
12 February 13th, 2019.

13 So now I go back to the calculations. I'll start with  
14 paragraph 19. All four prior convictions count.

11:22:33 15 I move to paragraph 25, aggravated robbery does not  
16 count, but aggravated assault and both violent -- domestic  
17 violence convictions count. So the offense level of -- or  
18 the enhancement to 33 remains.

19 And then turning to paragraph 34, the four points are,  
11:23:07 20 in fact, correctly scored.

21 Okay. So now, Mr. O'Shea, having heard all of that,  
22 let me now go back to any other objections.

23 MR. O'SHEA: We're -- I believe, Judge -- and  
24 if I can cite the case, I'll call it -- I think we referred  
11:23:34 25 to it in our sentencing memorandum as the *Derrick Johnson*

1 case. It's out of the Sixth Circuit. We stand by that  
2 objection. I think you've already addressed it. I just  
3 want to ratify that, my client wants me to ratify it, so I'm  
4 doing that in the courtroom for you.

11:23:50 5 Let me double-check, Judge, but I think you've covered  
6 it all.

7 And Judge, I think by virtue of what you've just said  
8 to us as it relates to what we'll call Section 4 on page 10  
9 of our sentencing memorandum, and the rule of lenity.

11:24:09 10 You've addressed that. We believe that there might be some  
11 obvious interpretation issues, let's say.

12 I mean, I struggled myself, and I think everybody in  
13 this room did, with how to apply some of these definitions  
14 that are implicit in the ACCA and in the sentencing  
11:24:28 15 guidelines. And so, I believe in good faith, to a certain  
16 degree, Judge, that there is some confusion and ambiguity  
17 here and because of that, the tie goes to the defendant.  
18 I've already argued that in the sentencing memorandum.

19 In addition to that, Judge, we brought up an Eighth  
11:24:43 20 Amendment issue relative to the impact of a 15-year  
21 mandatory minimum sentence under the ACCA.

22 As the Court may remember from the motion to suppress  
23 that we had here, which, I think, took us the better part of  
24 two hours. We had Akron police pulling over my client and  
11:25:02 25 the mother of his child as well as the child, essentially on



1 their way to a functional grocery store run, in what I would  
2 characterize, and I believe the Akron police would agree  
3 with me, is a relatively high crime activity neighborhood.  
4 My client possessed, it appears, a weapon on the floorboard  
11:25:18 5 of the car.

6 As the Court may recall, too, he was extraordinarily  
7 polite to the police, extraordinarily cooperative to the  
8 police, when they pulled him over; as were the police, to  
9 their credit as well.

11:25:36 10 And it appears to me that -- that to send a guy to  
11 prison for 15 years under the application of the ACCA, in  
12 the context of this defendant, with these facts as it  
13 applies to this defendant -- not saying the ACCA in all  
14 cases is a violation of the Eighth Amendment. But in the  
11:26:00 15 context of this particular case as it applies to this  
16 defendant, it appears to me that it is an extraordinarily  
17 harsh remedy for the conduct that took place on the day in  
18 question.

19 And it appears -- and I know there's case law out  
11:26:16 20 there that says, you know, if you even possess a shotgun  
21 shell accidentally in your mom's attic, they can apply the  
22 ACCA. That seems extraordinarily unfair under the context.  
23 I think the ACCA was clearly designed to go after and  
24 penalize people who had a firearm in the commission of a  
11:26:39 25 functionally bad situation. I don't want to say necessarily

1 an offense, Judge, because that triggers something else, but  
2 certainly the mere possession of this firearm to protect  
3 one's family as they travel to the store in a high drug  
4 activity area, to apply the ACCA to that seems to me  
11:26:58 5 potentially the cruelest application of the ACCA in the  
6 context of this defendant, Your Honor.

7 THE COURT: Mr. Howell.

8 MR. HOWELL: Your Honor, just in regards to  
9 the Court's ruling on the objections, the only thing that I  
11:27:16 10 intended to add the Court already covered. I was --

11 THE COURT: I'm sorry, no. I'm still with  
12 Mr. O'Shea on his objections. Do you want to respond to his  
13 arguments?

14 MR. HOWELL: Your Honor, as far as the Eighth  
11:27:34 15 Amendment, I mean, I understand why he's making the  
16 argument. It's the same discussion that we had at the  
17 suppression hearing.

18 One of the things I will point out, that there were  
19 other options discussed at that time that could have  
11:27:45 20 happened between then and now that could have kind of taken  
21 that issue off of the table. That was not taken advantage  
22 of, so I would just say in regards to the Eighth Amendment,  
23 I don't think there's any violation here. I think the Court  
24 has correctly ruled on the ACCA as well, and I'm ready to be  
11:28:01 25 heard at the appropriate time in regards to the appropriate

1 sentence, Your Honor.

2 THE COURT: Well, regarding the Eighth  
3 Amendment argument, I know that the defendant pointed to the  
4 *United States v. Young*. I'm aware of that. In that case,  
11:28:21 5 the defendant was convicted under the Armed Career Criminal  
6 Act for having in a drawer in his home seven shotgun shells  
7 belonging to his widowed neighbor. Even under those  
8 circumstances, the Sixth Circuit found no Eighth Amendment  
9 violation.

11:28:42 10 So when I look at that case and I look at the facts in  
11 this case, the Eighth Amendment argument simply fails.

12 Before I move on to sentencing, I am going to go back  
13 to paragraph 34.

14 And, Mr. O'Shea, I appreciate the fact -- and  
11:29:10 15 Mr. Howell said it as well -- that you were really  
16 withdrawing your 15-year argument. How about if we just put  
17 it that way. And I really -- because I didn't see that it  
18 was withdrawn prior to today, and I can see that your client  
19 needs a ruling on it. I'm going to make a ruling.

11:29:35 20 MR. O'SHEA: Thank you, Judge.

21 THE COURT: Even though you technically  
22 withdrew it. I'm going to make a ruling.

23 I know that Mr. Alexander objects to the points, and  
24 he noted that according to the sentencing guidelines, any  
11:29:54 25 time a case commences 15 years prior to the instant offense,

1 zero points are assessed. I completely agree with the  
2 response by the probation officer. Prior offenses will be  
3 considered if the period of incarceration extended into the  
4 15-year period leading up to the date of the instant  
11:30:25 5 offense. Because defendant was released from prison in  
6 2009, and this offense occurred in 2021, the prior offenses  
7 are within the 15-year period.

8 MR. O'SHEA: Judge, just for clarification,  
9 the sentencing in Case No. 20050920513, which is both the  
11:30:45 10 aggravated robbery, felonious assault case that we've given  
11 a lot of attention to this morning, the defendant was  
12 actually sentenced in November of 2009 for that case and  
13 given a five-year sentence. That's my understanding from  
14 the docket in that case.

11:31:01 15 THE COURT: That's within the 15 years.

16 MR. O'SHEA: Fifteen years going forward.

17 Let's assume, Judge, that the agg rob case, he got  
18 five years in 2009, that brings him up to 2014. We'd have  
19 to go -- you know, that's the reason that we backed off the  
11:31:17 20 15, because that easily meets that definition.

21 But I just want to -- I think you indicated that he  
22 was released from prison in 2009, and I think that -- that  
23 the sentencing I have took place in November 25th, 2009.

24 THE DEFENDANT: Can I speak on that, please?

11:31:31 25 MR. O'SHEA: And I know that sentence had

1 something to do with him coming back for a resentencing,  
2 Judge, and I think that's what he means, but --

3 THE COURT: Ms. Newman.

4 PROBATION OFFICER: Your Honor, I have the  
11:31:43 5 docket. He was sentenced on May 3rd, 2005, to a five-year  
6 prison term, and then in November -- on November 25th, 2009,  
7 he was resentenced to correct the original judgment, and he  
8 was still placed on five years prison with a mandatory  
9 post-release control.

11:32:03 10 So when he was released from prison, it was within the  
11 15-year time period.

12 MR. O'SHEA: Enough said on that, Judge.

13 THE COURT: Objection is not well taken.

14 MR. O'SHEA: Thank you, Judge.

11:32:20 15 THE COURT: Okay. Now, on the issue of  
16 sentencing.

17 Mr. O'Shea, should I turn to you first, or your  
18 client?

19 MR. O'SHEA: Why don't you turn to my client  
11:32:28 20 first, Judge.

21 THE COURT: All right.

22 Sir, do you have anything to say?

23 THE DEFENDANT: Yes, Your Honor, if it may  
24 please the Court.

11:32:36 25 First of all, my name is Toddell Alexander. Yes, I

1 did get pulled over with a weapon in my car, but I feel like  
2 I shouldn't get 15 years, though, for just a weapon. Plus  
3 one of my predicates, I feel like is just from the law, the  
4 *Derrick Johnson* case, physical harm in Ohio is -- is broad,  
11:33:03 5 is already broader than the physical force is in the federal  
6 sense. According to *Derrick Johnson*, the *Johnson v.*  
7 *United States* case, 784. -- it's a Missouri case, but a  
8 Sixth Circuit -- it reads the same as Ohio. The Government  
9 in that case admitted that it reads the same as Ohio's  
11:33:25 10 case -- case law.

11 That case was remanded and vacated for the facts of  
12 physical harm can be committed through illness, as I quoted  
13 in my objections. I wrote a three-page objection on that --  
14 on that situation. Physical harm could be committed through  
11:33:44 15 illness. I also gave proper case law to back myself up that  
16 physical harm could be committed without even touching. I  
17 don't know if you got those objections or that  
18 three-page -- --

19 THE COURT: Yes, I did. Yes, I did.

11:33:58 20 THE DEFENDANT: -- I properly wrote that out,  
21 took my time. Like my lawyer said, me and him was not  
22 seeing eye to eye on that situation, but it's something I  
23 took my time and looked it up because I wasn't trying to get  
24 15 years. I mean, I do have a family also, like, you know.  
11:34:14 25 So it could be committed without illness, though. So I feel

1       like I should argue that, though.

2               And that's -- that's actually too broad from the  
3       federal sense, because the federal law says you can find a  
4       way to commit a crime without force, any type of force. You  
11:34:32 5       bring it up, and it could not be categorically fit. So I  
6       argued that case, and I actually had you consider my  
7       argument towards the sentence.

8               THE COURT:   Mr. O'Shea.

9               MR. O'SHEA:   I just incorporate by reference  
11:34:49 10       what I've already presented to you, Judge, on this issue. I  
11       think my client is arguing the same thing that we argued in  
12       the sentencing memorandum as it relates to that. And I  
13       think he also touched on that -- an Eighth Amendment  
14       argument as well.

11:35:04 15              Judge, may he also talk a little bit about himself and  
16       his family?

17              THE COURT:   Of course, of course, of course.

18              THE DEFENDANT:  Well, I'm 34. I'm engaged  
19       right now. I got eight kids. I just had a baby since I've  
11:35:19 20       been here. When I caught this case, they sent me to the  
21       halfway house, so that's how I ended up having a baby, of  
22       course.

23              But I keep a job. I was a kitchen manager at a  
24       restaurant. As you can tell, I went to school. I got my  
11:35:34 25       GED. Got a graphic design degree. I went to college. I

1 didn't finish college, though. I decided to work instead of  
2 finish college because I had kids. I have a lot of kids.  
3 My family is here today, the few that came.

4 I mean, I'm a family man, of course. Yes, I do get in  
11:35:56 5 trouble, but I didn't break the law maliciously, though, and  
6 I feel like 15 years would be a little heavy on me, though.  
7 So, I don't know.

8 THE COURT: Mr. O'Shea.

9 MR. O'SHEA: Judge, you know, as I said  
11:36:19 10 before, you know, with regard to whatever sentence you feel  
11 compelled by statute or by guideline to impose here, I think  
12 I said it during my Eighth Amendment argument.

13 It's just -- on that day my client is on his way to  
14 get functionally food for his family, and that's got to be  
11:36:44 15 differentiated between somebody who is out on the street  
16 with just a gun in their belt, walking around trying to be a  
17 gang banger, pardon the expression, Judge, or somebody who  
18 is inside of a bar consuming alcohol, and they've got a gun  
19 on them and they're causing a ruckus. And I think what  
11:37:05 20 happened on the day that he was pulled over speaks a lot  
21 of what he -- of where he was in his life at that point, and  
22 what he wanted to do, take care of his family, be employed,  
23 produce for his family.

24 You saw the -- on the video, and in the testimony of  
11:37:21 25 the officers how polite he was, how cooperative he was.



1 That's the kind of guy -- and I always say the thing about  
2 body cam video is that it shows everything, and sometimes  
3 the bad thing about body cam is that it shows everything.  
4 And in this case, the body cam showed that my client was a  
11:37:40 5 pleasant, cooperative person, didn't give the police any  
6 trouble. And I think there just has to be some coat put on  
7 that hook when it comes to that type of stuff, particularly  
8 when police officers go through what they go through and  
9 what they see on the street. There could have been a much  
11:37:56 10 different scenario than they saw that day.

11 And so I ask the Court to take that into  
12 consideration. And take into consideration the other  
13 biographical background factors that we have in the  
14 presentence investigation in connection with whatever  
11:38:11 15 sentence you have to issue here today, Judge.

16 THE COURT: Mr. Howell.

17 MR. HOWELL: Thank you, Your Honor.

18 Just looking at the history and characteristics of  
19 Mr. Alexander, as the PSR indicates, there is a history with  
11:38:23 20 him of violent convictions, and other convictions involving  
21 a firearm. And one of the things I think, ultimately, this  
22 comes down to are choices that this defendant makes. And  
23 unfortunately, I understand what he indicates he was out  
24 there doing that day, but he also chose to have a firearm  
11:38:42 25 with him, and he knows that he cannot do that.

1           Looking through his prior convictions, the domestic  
2           violence, the felonious assault, the aggravated robbery,  
3           when you look on paper, and then you listen to  
4           Mr. Alexander, who I've had the experience of -- I had  
11:38:59 5           experience with him in state court, had experience with him  
6           through the suppression hearing in this case here today. He  
7           presents as different individuals. He acknowledges, yes, he  
8           commits crime, he's a family man. I know the Court will  
9           take all that into consideration. But the bottom line is he  
11:39:17 10          cannot continuously possess a firearm based upon the things  
11          that he's done in the past. And he's, unfortunately, chosen  
12          to do that.

13                I also indicated to him on that day during the  
14                suppression hearing, and just acknowledging again today,  
11:39:32 15          there are other ways that this could have shaken out that,  
16          you know, the Court's hands may not have been tied in  
17          regards to the ACCA issue and the mandatory 15-year  
18          sentence. That was not taken advantage of, and, you know,  
19          that's another choice that Mr. Alexander made. And I  
11:39:48 20          respect that, but I hope he understands that's just another  
21          choice that he made.

22                Your Honor, based upon his history and  
23                characteristics, based upon the Court's findings in regards  
24                to the armed career criminal, we respectfully ask for the  
11:40:03 25          mandatory minimum sentence for Mr. Alexander of 15 years.

1 THE COURT: Ms. Newman.

2 PRETRIAL SERVICES OFFICER: Your Honor, I  
3 don't have anything else to say.

4 But one thing I did notice that no one mentioned, when  
11:40:13 5 he was pulled over that day, he also had a protection order  
6 on file, which prohibited him from having a firearm.

7 So to say that, you know, he shouldn't get Armed  
8 Career Criminal based on that, I mean, he was a "prohibited  
9 person," so he knew he shouldn't have had a firearm. But  
11:40:32 10 there was a protection order in place which prohibited him  
11 also from having a firearm, and he chose to have that.

12 THE COURT: This Court does, in fact, find  
13 that the total offense level is a 30, Criminal History  
14 Category V, and because of the mandatory minimum, the  
11:40:52 15 guideline range becomes 180 to 188 months.

16 It is the judgment of this Court, sir, that you be  
17 committed to the custody of the Bureau of Prisons to be  
18 imprisoned for a term of 180 months.

19 Upon release from imprisonment, you will be placed on  
11:41:07 20 supervised release for a term of five years.

21 I am not ordering a fine, but there is a \$100 special  
22 assessment due and payable today.

23 While on supervision, you must comply with all of the  
24 mandatory and standard conditions adopted by this Court.  
11:41:22 25 They are set forth in Part D of your report.

1 In addition, you're going to be drug tested within 15  
2 days of release from imprisonment, and you must submit to at  
3 least two periodic drug tests thereafter.

4 I am going to order substance abuse treatment as  
11:41:40 5 deemed appropriate by your officer.

6 You may not use or possess alcohol.

7 You must submit to a warrantless search based only  
8 upon reasonable suspicion of contraband or evidence of a  
9 violation of a condition of release.

11:41:56 10 You must meet any legal obligation to support your  
11 dependents. You must cooperate in the collection of DNA.

12 Let me inform you, sir, that you do have the right to  
13 appeal your conviction and sentence. If you cannot afford  
14 to appeal, the cost will be borne by the Government.

11:42:13 15 I do, in fact, find the sentence to be sufficient, but  
16 not greater than necessary, to satisfy the purposes of  
17 sentencing.

18 On one hand I do note that as an adult, Mr. Alexander  
19 has had five felony convictions, aggravated robbery,  
11:42:31 20 felonious assault, domestic violence, having a weapon while  
21 under disability; four misdemeanor convictions, endangering  
22 children, interference with custody. And I, too, noted the  
23 protection order that was in place until, I believe it's in  
24 place until June 6th, which prohibits the defendant from  
11:42:53 25 having contact with three of his children and their mother.

1           On the other hand, I do, in fact, acknowledge that the  
2           mandatory minimum of 180 months is a significant sentence.  
3           I stand by all of my legal analysis regarding the Armed  
4           Career Criminal enhancement. Therefore, the Court has no  
11:43:26 5           option to give anything lower than 180 months.

6           But I do, in fact, find the 180 months is significant  
7           enough, and certainly takes into account the prior  
8           convictions, and the prior history of possession of weapons  
9           and violence.

11:43:45 10           Mr. O'Shea, first of all, sir, any objections?

11                   MR. O'SHEA: Other than what I've already set  
12           forth, Your Honor, nothing further.

13                   THE COURT: And is there anything further?

14                   MR. O'SHEA: Procedurally, no, right now,  
11:44:01 15           Your Honor.

16                   THE COURT: Mr. Howell, first of all, sir, any  
17           objections?

18                   MR. HOWELL: No objections, Your Honor.

19                   THE COURT: Secondly, anything further?

11:44:08 20                   MR. HOWELL: No, Your Honor. Thank you.

21                   THE COURT: Ms. Newman, did I miss anything?

22                   PRETRIAL SERVICES OFFICER: No, Your Honor.

23                   THE COURT: I'm sorry, sir, were you raising  
24           your hand?

11:44:18 25                   THE DEFENDANT: I was just about to say, I'm

1 just thankful for hearing my argument. I do want to put a  
2 notice of appeal up there as for right now.

3 THE COURT: That's fine.

4 THE DEFENDANT: And I still want to argue that  
11:44:30 5 *Johnson v. United States* is -- it's -- it's -- it's  
6 Sixth Circuit, so I'm going to still argue that.

7 Thank you for your --

8 THE COURT: Certainly, certainly.  
9 Mr. Alexander.

11:44:46 10 You understand your argument just does not have legal  
11 support given your specific convictions.

12 But, Mr. O'Shea, I will turn to you and you can  
13 certainly confer with Mr. Alexander. Of course, he can  
14 appeal this.

11:45:03 15 Do you want the appeal?

16 THE DEFENDANT: Yes.

17 MR. O'SHEA: Sure.

18 Well, I think what she's asking --

19 THE COURT: No, no, no.

11:45:12 20 Mr. Alexander, do you want Mr. O'Shea to take the  
21 appeal?

22 THE DEFENDANT: It's up to him. We don't see  
23 eye to eye on this, though. So I might have to get another  
24 lawyer. We actually don't see eye to eye at all.

11:45:22 25 THE COURT: So you would -- can you afford an

1 attorney?

2 THE DEFENDANT: They said -- I was told once I  
3 file the appeal, they would appoint one to me.

4 THE COURT: Well, I'll go ahead and indicate  
11:45:32 5 that you want to appeal, and I can appoint an attorney.

6 THE DEFENDANT: Thank you.

7 THE COURT: So my question to you, is, do you  
8 want Mr. O'Shea or do you want me to appoint somebody  
9 different?

11:45:43 10 THE DEFENDANT: You can appoint somebody  
11 different. We don't see eye to eye, you know.

12 THE COURT: All right. That's fine. Mr.  
13 Alexander, that is fine.

14 THE DEFENDANT: Yes, ma'am.

11:45:50 15 THE COURT: I understand. I understand.

16 Mr. O'Shea, you understand I'm not going to put you --

17 MR. O'SHEA: I do. No problem, Judge.

18 Two things procedurally. One, I --I think to finish  
19 out the appointment here, I'll file the notice of appeal and  
11:46:00 20 get that on there.

21 THE COURT: All right.

22 MR. O'SHEA: Get that docketed for my client.  
23 Protect him in that way.

24 And secondly, Judge, as you may recall, in the plea  
11:46:08 25 agreement, he also preserved his right to appeal the issues

1 related to the motion to suppress.

2 THE COURT: Oh, of course. Oh, of course.

3 (Discussion between defendant and attorney out of the  
4 hearing of the reporter.)

11:46:17 5 MR. O'SHEA: I'm sorry? Sure.

6 Judge, one of the things my client is asking me now  
7 about is placement. The placement issue.

8 THE COURT: Where would you like me to  
9 recommend?

11:46:26 10 THE DEFENDANT: I would recommend, so my  
11 family can come to see me, I go to Elkton, if possible.

12 Second opinion would be McKean.

13 THE COURT: I didn't hear that.

14 THE DEFENDANT: Elkton, if I could, so my  
11:46:36 15 family could see me.

16 THE COURT: Right.

17 THE DEFENDANT: Secondly, would be McKean, if  
18 possible.

19 THE COURT: Mr. Howell, do you have any  
11:46:47 20 position regarding recommendation of placement?

21 MR. HOWELL: No, Your Honor.

22 THE COURT: And, Ms. Newman, do you wish to  
23 weigh in?

24 PRETRIAL SERVICES OFFICER: No, Your Honor.

11:46:53 25 THE COURT: I'm happy to recommend either



1 Elkton or McKean.

2 THE DEFENDANT: Thank you.

3 THE COURT: Any other requests?

4 THE DEFENDANT: No, ma'am.

11:47:03 5 THE COURT: All right.

6 THE DEFENDANT: Thank you.

7 THE COURT: Good luck to you, sir, and good  
8 luck to your family.

9 - - -

10 (Proceedings adjourned at 11:47 a.m.)

11

12 C E R T I F I C A T E

13

14 I certify that the foregoing is a correct transcript  
15 from the record of proceedings in the above-entitled matter.

16 /s/ Donnalee Cotone 8th of June, 2022

DONNALEE COTONE, RMR, CRR, CRC

DATE

17 Realtime Systems Administrator

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# APPENDIX - B

UNITED STATES COURT OF APPEALS OPINION. (6<sup>th</sup> CIRCUIT)

NOT RECOMMENDED FOR PUBLICATION

File Name: 23a0145n.06

No. 22-3448

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

Mar 29, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TODDELL ALEXANDER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF  
OHIO

OPINION

Before: CLAY, McKEAGUE, and STRANCH, Circuit Judges.

**JANE B. STRANCH, Circuit Judge.** Toddell Alexander appeals his 180-month sentence for possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2), as well as the denial of his motion to suppress statements that he claims were elicited without proper *Miranda* warnings. Because the district court properly classified Alexander as an armed career offender based on his multiple convictions for domestic violence under Ohio law, and because the district court properly found that Alexander was not in custody when he made the challenged statements, we **AFFIRM**.

**I. BACKGROUND**

**A. The Traffic Stop**

On February 2, 2021, Alexander was driving his car to a grocery store in Akron, Ohio, with his youngest child and the baby's mother. Akron Police Officers Mark Sember and Anthony Trimble were in the area in their patrol vehicle, saw Alexander's car, and ran its registration, which showed that Alexander was the registered owner and that his driver's license had been suspended.

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A state database also showed Trimble that Akron police had stopped Alexander in the same car a few weeks earlier and found ammunition. Because they suspected that Alexander was driving with a suspended license, Sember and Trimble activated their cruiser's lights and stopped him. When the officers approached the car, Alexander was in the driver's seat, a woman was in the passenger seat, and a child sat in the back. Trimble explained that they had stopped Alexander to investigate whether he was driving with a suspended license. He asked Alexander to step out of the car and go to the police cruiser so that Trimble could investigate his license and any outstanding warrants. As Alexander was about to get out of his car, Trimble asked whether he had anything illegal on his person.

Before seating Alexander in the back of the cruiser, Trimble patted him down and asked him to confirm that he did not have anything illegal on his person. While Trimble checked for Alexander's license and warrant status, Alexander sat in the cruiser's back seat. He was not handcuffed, and he was permitted to keep his phone. Trimble later testified that, at that point, he was not arresting Alexander for driving with a suspended license.

Sember remained by Alexander's car. Per Trimble's testimony, he was concerned for Sember's safety because he thought Alexander might have a firearm in the car. His apprehension was based on the prior traffic stop where police had found ammunition in that same car and an incident Trimble had investigated about two years before involving Alexander and a "shots fired" call. So, Trimble asked Alexander about the prior traffic stop and if there was currently a gun in the car. Alexander replied that he was not sure; he sometimes had a firearm in the car and could not remember whether he had removed it, but, he told Trimble, if it was in the car, it would be under one of the front seats. Trimble did not provide a *Miranda* warning during this questioning.

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Trimble subsequently found a pistol under the driver's seat of Alexander's car. He then read Alexander his *Miranda* rights because he planned to ask some questions about the firearm, and eventually informed Alexander that he was under arrest for possessing the firearm. Alexander was charged with unlawful possession of a firearm, knowing that he had been previously convicted of a felony criminal offense, in violation of 18 U.S.C. § 922(g)(1) and § 924(a)(2).

**B. Suppression Hearing**

During Alexander's ensuing prosecution, his attorney moved to suppress the statements Alexander made while seated in the cruiser during the traffic stop, before Trimble recovered the gun, on the basis that he had been in custody when he was questioned and should have been informed of his *Miranda* rights.<sup>1</sup> At the suppression hearing, Trimble acknowledged on cross-examination that, if someone is stopped while driving with a suspended license, that person is generally not free to leave during the investigation to determine whether that offense is arrestable. Trimble also agreed that, when Alexander was seated in the back of the cruiser, he could not open the car door from the inside and was not free to leave.

Applying the framework of *United States v. Salvo*, 133 F.3d 943, 950 (6th Cir. 1998), the district court found that, although Alexander was seated in a police car and unable to leave the vehicle, the questioning was brief and conducted to ensure officer safety, Trimble's tone was friendly and conversational (he did not exert undue coercive pressure), and the conversation lasted only two minutes or so. And, after the firearm was recovered, Trimble read Alexander his *Miranda* rights and arrested him with no improper questioning before doing so. The district court concluded

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<sup>1</sup> Alexander also unsuccessfully argued that the traffic stop was not supported by reasonable suspicion, but he does not raise this argument on appeal.

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that Alexander was not in custody for purposes of *Miranda* when he was initially questioned, and therefore denied Alexander's suppression motion.

**C. Plea and Sentencing Hearing**

Alexander entered into a plea agreement on January 19, 2022, which contemplated that his prior felony convictions might qualify him for an enhanced penalty under 18 U.S.C. § 924(e) (the Armed Career Criminal Act, or ACCA) and the application of the Sentencing Guidelines' associated armed career criminal enhancement, USSG § 4B1.4. Alexander retained the right to appeal the district court's determination of his criminal history category and Guidelines range, as well as the denial of his suppression motion.

The Presentence Investigation Report (PSR) generated for Alexander identified four prior felony convictions for crimes of violence as defined by the Guidelines: aggravated robbery and felonious assault convictions from 2005, and two felony domestic violence convictions under Ohio Rev. Code § 2919.25(A) from 2011 and 2013. Applying the armed career criminal sentencing enhancement, Alexander's offense level was calculated as 33 and his criminal history category as V. Alexander objected to the PSR's conclusions, arguing, as relevant here, that the Ohio domestic violence statute was too broadly worded for his convictions to qualify as a crime of violence for ACCA purposes.

At sentencing, the court rejected Alexander's argument. Citing *United States v. Gatson*, 776 F.3d 405 (6th Cir. 2015), *United States v. Solomon*, 763 F. App'x 442 (6th Cir. 2019), and *United States v. Mickel*, No. 21-3561, 2022 WL 1100459 (6th Cir. Apr. 13, 2022), *cert. denied* (2022), the court concluded Sixth Circuit precedent established that Alexander's convictions "under [Ohio Rev. Code §] 2919.25(A) are categorically violent felonies for purposes of the Armed Career Criminal Act" and "crimes of violence for [G]uideline purposes." R. 50, Sentencing

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Hr'g Tr., PageID 369-70. The district court sentenced Alexander to 15 years' imprisonment, the mandatory minimum sentence for a conviction under 18 U.S.C. § 922(g) based on Alexander's four previous convictions for violent felonies. This timely appeal followed.

## II. ANALYSIS

### A. Armed Career Offender Classification

Alexander was twice convicted under Ohio law for “knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member.” Ohio Rev. Code § 2919.25(A). He challenges the district court's conclusion that those prior convictions constituted ACCA violent felonies. We review such determinations de novo. *Greer v. United States*, 938 F.3d 766, 770 (6th Cir. 2019).

In 2015, we held that a conviction under Ohio Rev. Code § 2919.25(A) categorically qualifies as an ACCA violent felony. *Gatson*, 776 F.3d at 411. The ACCA covers any crime that “has as an element the use, attempted use, or threatened use of physical force against the person of another[.]” 18 U.S.C. § 924(e)(2)(B)(i)—i.e., “violent force . . . capable of causing physical pain or injury to another person,” *Johnson v. United States*, 559 U.S. 133, 140 (2010). Citing the ACCA's “elements” clause, we explained in *Gatson* that knowingly causing, or attempting to cause, physical harm to a family or household member requires “to some extent, by definition,” the use of force “capable of causing physical injury or pain to another[.]” 776 F.3d at 410-11 (quoting *Johnson*, 559 U.S. at 140).

Alexander acknowledges, as he must, that *Gatson* is this Circuit's “definitive” case on Ohio domestic violence offenses as ACCA predicates. Nevertheless, he argues that we should “revisit” its holding for two reasons. First, *Gatson* was decided before the ACCA's residual clause was

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conclude that we are bound by *Gatson*, and Alexander's domestic violence convictions qualify as violent felonies. See *Solomon*, 763 F. App'x at 445; *United States v. Melendez-Perez*, No. 20-3925, 2021 WL 3045781, at \*3 (6th Cir. July 20, 2021); *Mickel*, 2022 WL 1100459, at \*2; *United States v. Mitchell*, No. 21-3896, 2022 WL 12230276, at \*3 (6th Cir. Oct. 21, 2022). The district court therefore properly classified Alexander as an armed career offender and properly applied the relevant Guidelines enhancement.

**B. Custody for *Miranda* Purposes**

Alexander next argues that the district court erred in determining that he was not in custody for *Miranda* purposes when he was seated in the back of the police cruiser and asked about the presence of a weapon in his car. When reviewing a district court's decision regarding a motion to suppress, we review factual findings for clear error and legal conclusions de novo. *United States v. Evans*, 581 F.3d 333, 340 (6th Cir. 2009). Whether a person is "in custody" for *Miranda* purposes is a mixed question of law and fact that is also reviewed de novo. *United States v. Levenderis*, 806 F.3d 390, 399 (6th Cir. 2015).

Law enforcement officials must advise a person of their *Miranda* rights before engaging in "custodial interrogation." See *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). "In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of 'the objective circumstances of the interrogation,' a 'reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave.'" *Howes v. Fields*, 565 U.S. 499, 509 (2012) (cleaned up) (first quoting *Stansbury v. California*, 511 U.S. 318, 322-23 (1994) (per curiam), then quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). Courts examine "all of the circumstances surrounding the interrogation," including the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints



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during the interview, and the release of the interviewee at the end of the questioning. *Id.* (quoting *Stansbury*, 511 U.S. at 325); see *United States v. Hinojosa*, 606 F.3d 875, 883 (6th Cir. 2010) (identifying similar factors for courts' consideration and citing *Salvo*, 133 F.3d at 950).

Alexander's primary contention is that the initial traffic stop's objective was complete once his license had been run and confirmed to be suspended. He argues that Trimble's questions about the presence of a firearm came afterward and were unrelated to the traffic stop's purpose, thus converting the stop into an independent investigation. Alexander analogizes his circumstances to those of *United States v. Whitley*, 34 F.4th 522 (6th Cir. 2022), where we held that police questioning exceeded the scope and duration of a traffic stop based on traffic violations after officers saw a scale in the driver's lap and affirmatively decided to investigate the possibility of narcotics sales or possession. *Id.* at 530-31. But unlike the *Whitley* officers, Trimble asked Alexander about the prior traffic stop and his firearm while or just after retrieving information about Alexander's license and registration from the database. The questions "d[id] not measurably extend the duration of the stop": they occurred while it was happening. *Rodriguez v. United States*, 575 U.S. 348, 355 (2015); *United States v. Howard*, 815 F. App'x 69, 76 (6th Cir. 2020). *Cf. Whitley*, 34 F.4th at 527, 530-31 (questions after officers "abandoned their investigation of the traffic violation" exceeded scope of traffic stop).

More broadly, we find no error with the district court's analysis as to whether Alexander was in custody for *Miranda* purposes. As in *United States v. Wright*, 220 F. App'x 417 (6th Cir. 2007), Alexander was placed in the back of a police vehicle without handcuffs, and the questioning lasted only a couple of minutes. *Id.* at 421; see *Salvo*, 133 F.3d at 951; *Howard*, 815 F. App'x at 79. Especially important to our analysis is that Trimble's inquiries "address[ed] the traffic violation that warranted the stop . . . and attend[ed] to related safety concerns." *Rodriguez*, 575

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U.S. at 354; *see also United States v. Everett*, 601 F.3d 484, 495 (6th Cir. 2010) (“[O]fficers conducting a traffic stop may inquire about dangerous weapons.”), *abrogated on other grounds by Rodriguez*, 575 U.S. at 353, 356-67. Under the totality of these circumstances, the district court did not err by finding that no *Miranda* warning was required when Trimble initially questioned Alexander.

### III. CONCLUSION

For the foregoing reasons, we **AFFIRM** Alexander’s sentence and the district court’s order denying his November 14, 2021 motion to suppress.