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APPENDIX A: Defendant, RAJON JAMISON's Sentencing
Memorandum. (R.82, PgID 536-551)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19-cr-20798
Hon. LAURIE J. MICHELSON

vs.

RAJON JAMISON,

Defendant.

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**DEFENDANT, RAJON JAMISON's
SENTENCING MEMORANDUM**

NOW COMES the Defendant, RAJON JAMISON, by and through his attorney, SANFORD A. SCHULMAN and states in support of his Sentencing Memorandum as follows

PROCEDURAL BACKGROUND

On October 29, 2019, Rajon Jamison was arrested and later charged with Possession of Firearms and Ammunition by a Prohibited Person in violation of 18 USC Sec. 922(g)(1) and 18 USC Sec. 924(e)(1). At the time of his arrest, Rajon had been on supervised release for a little over a year.

On March 17, 2022, Rajon pled guilty as charged to the Superseding Indictment without a Rule 11 Plea Agreement.

1. The Nature and Circumstances of the Offense and the History and Characteristics of the Offender

(a) Nature and Circumstances of Offense

The case focuses on a search of the home Rajon shared with his family on October 29, 2019. It is important to note that Rajon was not charged with any criminal charges except for the offenses charged herein. The previous month there was apparently some information provided to Rajon's probation officer. However, Rajon was never charged with any type of assault or any other offense.

When law enforcement arrived at the those, Rajon was cooperative and there is no indication he obstructed the investigation. The firearms that were recovered were not used in any other criminal activity. There were no drugs or any other illegal activity suspected in the home. The firearms were registered in Rajon's mother's name. Rajon's mother was a Flint City Police Officer.

Rajon's phone was seized as part of the investigation and the Government has maintained that there are photographs of these and additional firearms in the phone. In reality, the photos depict prop firearms that Rajon used in his job as a male dancer/entertainer.

The presentence report does not add any offense level points because the firearms were stolen because they were not stolen. Or for firearms that were used in any other offense, because the firearms were otherwise legal and registered and secured under a couch cushion. The firearms were in the house for no other reason but protection. Rajon was concerned about the safety of his family and has since acknowledged that the presence of the firearms was a poor decision.

The defense has filed a number of objections to the presentence report including the following

1. PARAGRAPH 18: Objection to the 26-point base level. The defendant maintains that the correct base level should be 24. On March 17, 2022, the defendant pled guilty to the First Superseding Indictment without a Rule 11 Plea Agreement. The factual basis involved a statement by the defendant that on or about October 19, 2019, in the Eastern District of Michigan (Flint), he was residing in a home with other individuals and he knowingly possessed a Ruger, Model P90 .45 caliber handgun as well as a 9mm caliber semiautomatic handgun and a .40 caliber semiautomatic rifle as well as ammunition.

§ 2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition (a) (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;

Specific Offense Characteristics

2. Paragraph 23: Chapter Four enhancement: and Paragraph 34 qualification as an armed career criminal.

The Supreme Court directs lower courts to use the categorical approach to determine whether prior convictions "ha[ve] as an element the use, attempted use or threatened use of physical force against the person of another." *Descamps v. United States*, 570 U.S. 254, 260-61, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013) (citing *Taylor v. United States*, 495 U.S. 575, 600, 110 S. Ct. 2143, 109 L. Ed. 2d 607 (1990)).

Although the categorical approach originated under the Armed Career Criminal Act, it also applies to the Sentencing Guidelines. See *United States v. Ford*, 560 F.3d 420, 421-22 (6th Cir. 2009). Under the categorical approach, courts do not look at the particular facts of a prior conviction. Instead, they examine only the statutory elements of previous offenses. *Descamps*, 570 U.S. at 261; *Taylor*, 495 U.S. at 600.

Under the categorical approach, courts determine whether every defendant convicted of the particular offense must have used, attempted to use, or threatened to use physical force against the person of another to have been convicted of that offense. Burris, 912 F.3d at 392.

Courts do not examine whether the defendant actually used, attempted to use, or threatened to use physical force against the person of another in the particular case giving rise to the prior conviction. *Id.* The Supreme Court decided *Borden v. United States*, 141 S. Ct. 1817, 210 L. Ed. 2d 63 (2021), under the Armed Career Criminal Act. There, writing for a four-Justice plurality, Justice Kagan identified four states of mind that give rise to criminal liability, in descending order of culpability: purpose, knowledge, recklessness, and negligence. *Id.* at 1823. The plurality held that the definition of a violent felony requires purpose or knowledge, not recklessness or negligence. *Id.* at 1825.

For this conclusion, the plurality located the mens rea requirement in the language of the force clause in the Armed Career Criminal Act, which requires force "against the person of another." *Id.* at 1833. This language "introduces that action's conscious object." *Id.*

Therefore, it excludes reckless conduct and actions not directed at another. *Id.*

In so concluding, the plurality abrogated the Sixth Circuit's decision in *United States v. Verwiebe*, 874 F. 3d 258 (6th Cir. 2017), which held that reckless offenses qualified as violent felonies. See *Borden*, 114 S. Ct. at 1823. Relying on *Verwiebe*, the Sixth Circuit upheld *Borden*'s sentence as a career offender, *id.*, and the Supreme Court reversed, *id.* at 1834. "Offenses with a mens rea of recklessness do not qualify as violent felonies under ACCA." *Id.*

The defendant maintains that his prior convictions including his conviction for conspiracy to commit armed robbery do not qualify him as an armed career offender.

3. Paragraph 24: Acceptance of Responsibility

The presentence report recommends no reduction for acceptance of responsibility. The defendant did not, upon the advice of counsel, address the facts of the case during his presentence interview. He has no requirement to do so. However, he did make out a detailed factual basis at the time of his plea which the court, the prosecutor and defense counsel were satisfied all the elements of the offense charged.

§ 3E1.1. Acceptance of Responsibility

(a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level.

In determining whether a defendant qualifies under subsection (a), appropriate considerations include, but are not limited to, the following:

(A) truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Note that a defendant is not required to volunteer, or affirmatively admit, relevant conduct

beyond the offense of conviction in order to obtain a reduction under subsection

(a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. A defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility, but the fact that a defendant's challenge is unsuccessful does not necessarily establish that it was either a false denial or frivolous;

Although district court may not punish defendant for failing to participate in fact-gathering at presentence interview or for not pleading guilty, defendant must carry burden of demonstrating acceptance of responsibility. *United States v. Nielsen*, 371 F.3d 574, 2004 U.S. App. LEXIS 11322 (9th Cir. 2004).

The defendant in the case at bar has fully and factually accepted responsibility. Rajon explained to the court at the time of the plea that he had never had a full and fair opportunity to see the exhibits, the evidence and review the jury instructions prior to trial. At

the time of the plea, Rajon made a complete factual basis without any issue.

4. Paragraph 30.

The defendant objects to the paragraph that suggests “[i]n June, 2019, he erroneously texted his supervising probation officer and attempted to sell him marijuana.” No text messages exist. The paragraph fails to noted that he was never violated while on Supervised release, completed all other terms and conditions including no tether violations, maintained employment, no tickets or violation while in the Bureau of Prisons, completed programs including anger management, etc.

Rajon was not charged with any new offense while on supervised release, never tested positive for any illegal substances and reported as directed.

5. Paragraph 44:

The defendant takes issue with the suggestion that his wife, Jasmin Major, will not agree to allow him to be placed in her residence after any custodial sentence is imposed. She indicated to Rajon that she would have no issue serving as a third-party custodian at any time.

6. Paragraph 77:

The defendant asserts that he never physically assaulted his girlfriend. He was never convicted or even charged and this is based on a police report to probation which is completely based on hearsay.

(b) Characteristics of the Offender

Rajon's life has been filled with challenges starting as a juvenile. At the age of 13, Rajon pled guilty to second degree murder and served his formidable years in custody. He has been in and out of prison for most of his life. Ironically, he was actually doing very well at the time of his arrest in October, 2019. He had been on supervised release without violation and his relationships with his mother and daughter were improving.

It should also be noted that Rajon received no major infractions while in the Bureau of Prisons, completed a number of programs while in prison and as released without losing any good time credits. After his release from prison in 2018, Rajon was successful while at the half-way house, never violated his tether, maintained employment and has been an integral part of his daughter's life.

Many have already given up on Rajon. But Rajon is 41 years old and still believes he can contribute. At one point in his life when everyone had abandoned him, he demonstrated that he could succeed given the opportunity. Indeed, he earned his GED, attended Community College where he earned a 4.0 g.p.a. for the short time he was there.

Rajon has expressed his desire to return to the community and to demonstrate to his family and the community that he can apply the same desire and aptitude for success. He is not ready to be discarded.

Moreover, Rajon never otherwise violated his supervised release. He reported as directed, never tested positive and when he was required to appear he did.

2. The Need for the Sentence Imposed To Promote Certain Statutory Objectives:

(A) to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; (D) to provide the defendant

with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

The starting point of this analysis should always be the sentence prescribed by the United States Sentencing Commission Guidelines ("U.S.S.G." or "the Guidelines"). *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586, 596, 169 L. Ed. 2d 445 (2007) ("[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range") (citing *Rita v. United States*, 551 U.S. 338, 127 S. Ct. 2456, 2480, 168 L. Ed. 2d 203 (2007)).

However, the court may not limit its analysis to the Guidelines; indeed, it "may not presume that the Guidelines range is reasonable." *Gall*, 128 S. Ct. at 596. Rather, before rendering its decision, the court must consider all the factors enumerated in 18 U.S.C. § 3553(a) to determine if they warrant adjusting the sentence. *United States v. Booker*, 543 U.S. 220, 245-46, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005). In doing so, the court must consider any argument made by the defendant to reduce his or her sentence: When a defendant raises a particular argument in seeking a lower sentence, the record must reflect both that the district judge considered the defendant's argument and that the judge explained the basis for rejecting it. After

considering such arguments, the district judge cannot simply rely upon the advisory Guidelines range, but rather "must make an individualized assessment based on the facts presented." Finally, the district judge "must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." *United States v. Lalonde*, 509 F.3d 750, 770 (6th Cir. 2007) (quoting *Gall*, 128 S. Ct. at 597) (other quotations omitted).

A sentence rendered by a district court must be both procedurally and substantively reasonable. *Gall*, 128 S. Ct. at 597. The court commits procedural error if it ignores or incorrectly calculates the Guidelines range, treats the Guidelines as mandatory, disregards the relevant § 3553(a) factors, relies on clearly erroneous facts, or fails to adequately explain its reasons for choosing a particular sentence or deviating from the Guidelines range. *Id.*; see also *United States v. Dexta*, 470 F.3d 612, 614-15 (6th Cir. 2006) ("[A] sentence is procedurally reasonable if the . . . court addressed the relevant factors in reaching its conclusion. . . . [P]rocedural reasonableness . . . does not depend on a district court's engaging in a rote listing or some other ritualistic incantation of the relevant § 3553(a) factors") (internal citations omitted). By contrast, "[a]

sentence is substantively unreasonable if the district court 'selects the sentence arbitrarily, bases the sentence on impermissible factors, fails to consider pertinent § 3553(a) factors or gives an unreasonable amount of weight to any pertinent factor.'" United States v. Husein, 478 F.3d 318, 332 (6th Cir. 2007) (quoting United States v. Caver, 470 F.3d 220, 248 (6th Cir. 2006)).

If this court makes a finding over the defendant's objection that Rajon qualifies as an armed career offender, this court will have no discretion but to sentence Rajon to a minimum term of 15 years. That is a significant custodial sentence. The guidelines as calculated which provide no benefit for the plea and acceptance of responsibility add an additional 55 months. The nearly 5-year addition to the already draconian 15 years is excessive. If this court deems it appropriate to sentence Rajon as an armed career offender, 15 years is more than sufficient.

Since his arrest and during the pendency of this case, RAJON JAMISON has maintained avoided criminal contact while in the county jail. He has been in custody in the county jail for almost 3 years. He has had little or no access to any federal programs.

The issue of course is what is a sufficient sentence. If Rajon did not have the criminal history, he may have actually been eligible for a non-custodial sentence. Rajon has paid a heavy price for his years of prison. Ironically, he is facing one of his harshest sentences for an offense that did not involve any assault or drugs.

CONCLUSION AND SENTENCING RECOMMENDATION

The defendant, RAJON JAMISON, maintains that he should not be sentenced as an armed career offender and that he should receive the appropriate point reduction for acceptance of responsibility. A sentence of 60 months would otherwise be sufficient but not greater than necessary. If this court finds that Rajon is an armed career offender, a sentence of 15 years is more than sufficient to satisfy all the 3553(a) factors.

Respectfully submitted,

s/Sanford A. Schulman
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Date: September 9, 2022

APPENDIX B: Sentencing Hearing September 16, 2022,
R. 90, PgID 599-666

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAURIE J. MICHELSON
Case No. 10-20079 & 19-20798

RAJON JAMISON,

Defendant.

SENTENCING/SUPERVISED RELEASE VIOLATION HEARINGS

Friday, September 16, 2022

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ALSO PRESENT: Julie Grewes, Probation Officer

- - -

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1 Flint, Michigan

2 September 16, 2022

3 3:12 p.m.

4 - - -

5 (Call to Order of the Court.)

6 **CASE MANAGER:** The United States District Court for
7 the Eastern District of Michigan is now in session, the
8 Honorable Laurie J. Michelson presiding.

9 You may be seated.

10 The Court calls case number 10-20079 and 19-20798,
11 the United States of America versus Rajon Jamison.

12 Counsel, please state your appearances for the
13 record.

14 **MS. NEE:** Good afternoon, your Honor. Ann Nee
15 appearing on behalf of the Government.

16 **THE COURT:** Good afternoon.

17 **MR. SCHULMAN:** Good afternoon, your Honor. Sanford
18 Schulman appearing op behalf of Rajon Jamison, who is seated to
19 my left.

20 **THE COURT:** All right. Thank you. Good afternoon,
21 Mr. Schulman. Good afternoon, Mr. Jamison.

22 **THE DEFENDANT:** Good afternoon.

23 **THE COURT:** On the morning of his trial, Mr. Jamison
24 plead guilty without a plea agreement to the charge in the
25 superseding indictment, possession of firearms and ammunition

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1 by a prohibited person. Ms. Grewe has prepared a very thorough
2 presentence report, and we're here today for the sentencing in
3 case 19-20798. This offense and others are also the basis of a
4 supervised release violation petition that is scheduled for
5 hearing today as well. That is case 10-2079.

6 Some of the objections that Mr. Jamison has raised to
7 the presentence report correspond to allegations in the
8 supervised release violation report, namely, whether he tried
9 to sell marijuana to his probation officer and whether he
10 assaulted his prior girlfriend.

11 In either proceeding, the Government would have to
12 prove those incidents by a preponderance of the evidence, and
13 so I don't know if you all had intended to call witnesses at
14 the supervised release violation hearing, because it appears
15 Mr. Jamison is contesting the allegations, or plan to have an
16 evidentiary hearing on the objections in the sentencing in
17 terms of which proceeding which we should take up first.

18 So, Ms. Nee, does the Government have any position
19 here?

20 **MS. NEE:** Based on the Defendant's guilty plea in the
21 new case, the 2019 case, the Government believes that that does
22 establish his violation of supervised release for the violation
23 number one of the amended petition, which deals with the
24 firearms possession, with that being a sufficient offense for
25 purposes of the penalty to supervised release.

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1 For efficiency purposes, the Government would move to
2 dismiss without prejudice the remaining violations, violation 2
3 and 3. While these would be dismissed, there has been evidence
4 which or allegations which have been put forward in the amended
5 petition that was sworn to and signed to by Mr. Henson, as well
6 as other evidence which was admitted in the suppression hearing
7 context, and, based on those allegations, as well as statements
8 that have been previously made in the evidence in this case,
9 the Government still believes that references to those
10 allegation's should still remain in the PSR in this case --

11 **THE COURT:** Well, we'll deal with those because I'll
12 have to deal with them in terms of the objections, but that was
13 one of the things I wondered if maybe the Government was
14 prepared to dismiss those other two violations for purposes of
15 the supervised release violation hearing.

16 **MS. NEE:** That is correct, and the Government will
17 proceed in that manner.

18 **THE COURT:** All right. And, Mr. Schulman, any
19 objection to that?

20 **MR. SCHULMAN:** No objection.

21 **THE COURT:** All right. Then let's take up the
22 sentencing first, and the first thing that I should do is
23 verify with Mr. Schulman that you and Mr. Jamison have had an
24 opportunity to review and discuss the presentence report and,
25 most importantly, the revised report, and, Mr. Schulman, did

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1 you have that opportunity?

2 **MR. SCHULMAN:** Yes, your Honor. I provided
3 Mr. Jamison a copy of the presentence report, and I've
4 conferred with him on a couple occasions as relates to the
5 content, and he's received a copy of the report and, as well,
6 my memorandum, including the objections, as well as the
7 Government's memorandum.

8 **THE COURT:** All right. Very good. And Mr. Jamison,
9 did you have an opportunity to ask Mr. Schulman any and all
10 questions that you may have had about the presentence report?

11 **THE DEFENDANT:** Uh-huh, yeah.

12 **THE COURT:** And was he able to answer those questions
13 for you?

14 **THE DEFENDANT:** Yeah, yes.

15 **THE COURT:** Before we continue this afternoon with
16 your sentencing this afternoon, do you feel you need or want
17 any additional time to discuss the presentence report with
18 Mr. Schulman?

19 **THE DEFENDANT:** No.

20 **THE COURT:** A number of objections have been raised
21 that I will address. Other than the objections that have been
22 raised, do you agree that the factual content of the
23 presentence report is truthful and accurate?

24 **THE DEFENDANT:** Other than the objection, yes.

25 **THE COURT:** All right. And, Ms. Nee, did the

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1 Government also have an opportunity to review the presentence
2 report?

3 **MS. NEE:** Yes, your Honor.

4 **THE COURT:** Okay. And as I've indicated, the Defense
5 has filed a number of objections. I think what I'd like to do
6 is deal with the objection to the armed career criminal
7 enhancement first because it impacts some of the other
8 objections.

9 So, Mr. Schulman, I know you addressed the objections
10 both in the addendum to the presentence report as well as
11 somewhat in your sentencing memo. Is there anything else that
12 you would like to argue with respect to the armed career
13 criminal enhancement?

14 **MR. SCHULMAN:** Yes, your Honor. Mr. Jamison asked me
15 to clarify a point as relates to the objection. It's my
16 understanding that the predicate for the enhancement is based
17 upon, at least in part, the conviction in 1994 for the juvenile
18 case that he had -- I'm sorry, the homicide that he had plead
19 to as a juvenile. So it's his position that that juvenile
20 adjudication is not -- should not be used as a predicate,
21 meaning that it should not be used as a springboard to
22 basically commence or to implement the armed career offender
23 statute, which would then make it a mandatory 15 years.

24 So that's in addition to the specific objections that
25 I've raised, and, now, I know there's a lot of talk about, you

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1 know, use a categorical approach. In fact, there's so much
2 appeal -- appellate work on this in terms of what is an armed
3 career offender. It really is somewhat confusing. I have
4 several cases that are up at the Sixth Circuit, one en banc
5 right now. It's just one -- you know, which case, especially
6 as it relates to the 924(c), that's not necessarily this case.
7 but the point is here we have a situation where that the use of
8 that case, which is 27 years ago as a predicate now makes the
9 Court -- you know, if the Court adopts that argument as --

10 **THE COURT:** Well, the act specifically includes
11 juvenile offenses, right? So I don't --

12 **MR. SCHULMAN:** I know that's one of the issues is
13 it's tough to explain that, you know, if someone's a juvenile,
14 you haven't fully developed. I mean we have a lot of arguments
15 about what is juvenile adjudications. I mean there are people
16 convicted of first degree murder and come back in the state
17 system, and the Supreme Court says people who are juveniles
18 don't have the same development. They're not the same, and
19 they haven't matured, and, yet, yeah, that triggers it, and
20 I've read the case law.

21 **THE COURT:** So there's something akin to a *Miller*
22 argument --

23 **MR. SCHULMAN:** Yes.

24 **THE COURT:** -- that's currently in the appellate
25 court under the ACCA?

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1 **MR. SCHULMAN:** Yes. That's the kind of idea that --
2 even the craziness that -- the Supreme Court has actually
3 increased the age, I think the Michigan Supreme Court, under 18
4 to 18. I mean we keep recognizing that -- and I think it's
5 really, really exacerbated in this situation where, for
6 sentencing purposes, we're talking about 27 years ago.

7 Now, I think if he was, you know, 21 and you're
8 saying, listen, he was only 17 when this happened, it's not
9 really a strong argument, but you can't even make that argument
10 I suppose. You know, I don't even know if this is a proper
11 argument to make, but it just seems, when you step away from
12 it, that those kind of arguments are valid, and those are valid
13 arguments that the Court should look at those and say, listen,
14 when he was -- and, in this case, how old was he when committed
15 that offense. He wasn't 17. He wasn't 16. He wasn't 15. He
16 was 13.

17 I think that's when he committed it, is that right,
18 you were 13 years old?

19 You know, just -- that's the predicate and that's the
20 problem. It doesn't rest well, and now it kicks him into a
21 whole different area.

22 And what I was going to add, and I'll just say this,
23 because it's part of my argument anyway, that when you have
24 sentencing, you have a sentence where you have a lot of
25 discretion. You talk about guidelines and points. You talk

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1 about mitigation and leadership, and you talk about departures.
2 and then you have the kind of sentences where you have a drug
3 case where it's just a mandatory ten, you know, or, you know,
4 those kind of cases.

5 This is the most difficult because you don't care
6 really about the nature and circumstances of the case. You
7 don't really care about his characteristics. We don't really
8 care. The armed career offender says, your past is what
9 dictates the sentence. It's the past. It's your criminal
10 history. It's not 3553(a) factors. You can talk about those
11 all day long, but if you find him an armed career offender,
12 that doesn't matter.

13 The guns were potentially legal. They were
14 purchased. They were secured. If you find factors in his
15 behalf for his harsh growing up, it won't matter. It's all
16 based on his past. The complete sentence is because of his
17 history. That's the most challenging part of a case like this
18 and the most disturbing.

19 So when you see what juvenile offenses do, and I
20 can't tell him it does, but it's just this one, really,
21 essentially, is why the Court should maybe have more
22 discretion.

23 **THE COURT:** Okay. Thank you. Ms. Nee, anything
24 further the Government wants to argue? I know you addressed
25 this as well extensively in your sentencing memo.

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1 **MS. NEE:** It appears to me that Defense counsel is
2 agreeing to the state of the law right now, which is that the
3 juvenile offense does count as a predicate under the ACCA, and
4 the arguments which are being raised are more, perhaps,
5 arguments that he's going to be using in terms of where that
6 sentence should fall ultimately, but not that the Armed Career
7 Criminal Act wouldn't apply to juvenile offenses or juvenile
8 adjudications.

9 In this particular case, as the Armed Career Criminal
10 Act makes clear, juvenile adjudications do count as predicates.
11 There is some acknowledgment that for a juvenile adjudication
12 to count, it should be a particularly serious juvenile
13 adjudication, and that's why, with respect to juvenile
14 adjudications versus with respect to adults, the Armed Career
15 Criminal Act does require that the violent crime involve --
16 that it would be involving the use or carrying of a firearm and
17 that is what happened in this case.

18 Now, Defense counsel mentions the apparent unfairness
19 of using something that happened 27 years ago when Defendant
20 was a juvenile, but, unfortunately, in this case, the Defendant
21 just continued to commit violent crimes after that adjudication
22 as a juvenile case. So I don't think this particular case is
23 one in which that there needs -- or that there should be a
24 particular additional concern about using the juvenile
25 adjudication as a predicate, which is required under the law.

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1 And, of course, the judge -- the judges in Armed
2 Career Criminal Act cases, including the Court in this case,
3 can look to other factors of the Defendant's extensive criminal
4 history since that time in weighing the sentencing factors, on
5 top of the application of the Armed Career Criminal Act. And
6 that's all, your Honor. Thank you.

7 **MR. SCHULMAN:** Judge, just one more point based on
8 what she just mentioned.

9 What's interesting also about this is that putting
10 that armed career offender to the side for a second, it's
11 interesting that he got zero points for that juvenile case. He
12 didn't get any points for criminal history. I just found that
13 always kind of interesting that it weighs so heavily on the
14 armed career offender, but if you take it away, he gets zero
15 points for the guidelines. I just --

16 **THE COURT:** And I do. I see in the case law that
17 issue gets raised relatively frequently that offenses that are
18 too old to count for criminal history points do count under the
19 Armed Career Criminal Act because there is no time limitations
20 on those offenses.

21 All right. Well, let me take the objections I think
22 one by one. The primary argument that Mr. Jamison raised is
23 that under the Supreme Court ruling in *Borden versus United*
24 *States*, 141 Supreme Court 1817, 2021, offenses that can be
25 committed with a mens rea of recklessness do not qualify as

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1 violent felonies under the elements clause of the Armed Career
2 Criminal Act.

3 That argument does not apply to the controlled
4 substance offense, and the Government's sentencing memo
5 explains why Mr. Jamison's drug offense fits the definition of
6 a serious drug offense under the ACCA. ECF number 83 at Page
7 ID 563.

8 Additionally, recklessness does not involve the
9 intent to cause harm. Michigan law criminalizing assault with
10 intent to do great bodily harm less than murder as follows,
11 assault another person with intent to do great bodily harm less
12 than the crime of murder, assaults another person by
13 strangulation or suffocation. MCL 750.84.

14 As explained by the Government, the Sixth Circuit has
15 previously examined Michigan's assault with intent to commit
16 great bodily harm statute and found that it is a specific
17 intent crime that requires, "One, an attempt or threat with
18 force or violence to do corporal harm to another, an assault;
19 and, two, an intent to do great bodily harm less than murder."

20 *Raybon versus United States* 867 F. 3rd 625 at 631 to
21 633 Sixth Circuit 2017.

22 Because the statute requires a specific intent to
23 commit great bodily harm as well as an attempt or threat with
24 force or violence against another. The Sixth Circuit found
25 that the statute met the requirement for the use, attempted

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1 use, or threatened use of physical force against a person of
2 another under the elements clause of Guideline 4B1.2(a) (2),
3 which is identical to that in the ACCA.

4 That's ECF number 83 at Page ID 570 citing *Raybon*.

5 The Court agrees with the Government that this
6 offense cannot be committed with a mental state of ordinary
7 recklessness, and before I even looked at these first two
8 offenses I should have set forth the underlying case law, which
9 I neglected to do.

10 Pursuant to the Armed Career Criminal Act, 18 United
11 States Code Section 924(e), "A person who violates 18 United
12 States Code Section 922(g) shall be imprisoned for a minimum of
13 15 years if that person has three or more previous convictions
14 for a violent felony or serious drug offense."

15 Under the elements clause, a violent felony is
16 defined, in relevant part, as, "Any crime punishable by
17 imprisonment for a term exceeding one year, or any act of
18 juvenile delinquency involving the use or carrying of a
19 firearm, knife, or destructive device that would be punishable
20 by imprisonment for such term if committed by an adult that has
21 an element, the use, attempted use, or threatened use of
22 physical force against the person of another."

23 That's 18 United States Code Section 924(e) (2) (B).

24 See, for example, *United States V Burris*, 912 F. 3rd
25 386 at 392 Sixth Circuit 2019.

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1 To determine whether a state conviction falls within
2 the elements clause, federal courts must apply the categorical
3 approach. An offense does not qualify as a crime of violence
4 unless the least serious conduct it covers falls within the
5 elements clause. That's also *Borden versus United States* 141
6 Supreme Court 1817 at 1833, Justice Kagan, plurality
7 concurrence.

8 As stated in Paragraph 12 of the presentence report,
9 probation relied on Mr. Jamison's following convictions in
10 concluding that he is subject to the sentencing enhancement
11 under the Armed Career Criminal Act: Second degree murder and
12 felony firearm on March 5, 1994; assault with intent to commit
13 great bodily harm less than murder; and felony firearm in the
14 Seventh Circuit Court in Flint, Michigan on June 25, 2011; and
15 possession with intent to distribute controlled substances in
16 the United States District Court for the Eastern District of
17 Michigan on April 9, 2012.

18 And so, as I previously indicated, the controlled
19 substance offense is a qualifying offense. I explain that the
20 assault with intent to commit great bodily harm less than
21 murder and felony firearm also is a qualifying offense, and so
22 that leaves the second degree murder conviction. As we were
23 discussing, juvenile offenses like Mr. Jamison's second degree
24 murder and felony firearm convictions from the same proceeding
25 are included in the ACCA calculation, especially when they are

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1 procedurally sound.

2 See, for example, 18 United States Code Section
3 924(e)(2)(B) and *United States V Crowell* 493 F. 3rd 744 Sixth
4 Circuit 2007.

5 I've been given no reason to believe that this
6 conviction was not procedurally sound, and I understand
7 Mr. Schulman's argument. As Ms. Nee indicated, though, that is
8 the present state of the law, and so the issue is whether
9 second degree murder under Michigan law can be committed
10 recklessly. The plurality in *Borden* concluded the phrase
11 "Violent felony under the Armed Career Criminal Act does not
12 include offenses criminalizing ordinary reckless conduct.
13 That's *Borden* at 1825 Note 4.

14 The Sixth Circuit has stated, "Squelching any
15 inclination to presume that a second degree murder conviction
16 necessarily involves the use, attempted use, or threatened use
17 of physical force against the person of another, the Supreme
18 Court recently held that an offense requiring a mens rea of
19 simple recklessness does not qualify as a violent felony under
20 the elements clause of the ACCA, a clause that is essentially
21 identical to 924(c)(3)(A)."

22 "Consequently, the question presents itself whether
23 second degree murder, prohibited by 18 United States Code
24 Section 1111, can be committed with mere recklessness such that
25 it does not necessarily involve the application of force and

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1 And that's *Keys v Booker* 798 F. 3rd 442 at 450 to 451
2 Sixth Circuit 2015, citing Michigan case law.

3 Many cases analyzing second degree murder under the
4 federal statute or a state statute with a similar malice
5 requirement found it to be a crime of violence even after
6 *Borden* because they require more than ordinary recklessness.

7 See, for example, *United States V Begay* 33 F.4th.
8 1081 Ninth Circuit 2022 en banc.

9 *Tomlin versus United States* 2021 U.S. Dist Lexis,
10 168607 Western District of North Carolina 2021, holding that
11 post *Borden*, North Carolina's second degree murder had a
12 minimum mental state of extreme recklessness, which was greater
13 than ordinary recklessness and qualified as a crime of
14 violence.

15 *United States V Montgomery* 2022 U.S. Dist Lexis 89876
16 Eastern District of Virginia 2022, finding that second degree
17 murder in Virginia does not embrace volitional acts that are
18 merely reckless.

19 The Government cites additional cases in its
20 sentencing memo finding that second degree depraved heart
21 murder, like Michigan's law of second degree murder, remains a
22 crime of violence after *Borden*.

23 ECF number 83 at Page ID 564 to 567.

24 Thus, the Court concludes that Michigan malice murder
25 requires a mens rea that exceeds ordinary recklessness and

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1 satisfies the fourth -- the force clause. Thus, Mr. Jamison
2 does have three qualifying predicate offenses for the ACCA and
3 that objection will be overruled.

4 So I'm going to go back now to Objection 1, which was
5 an objection to the base offense level of 26, presumably, I
6 believe, on the ground that Mr. Jamison did not possess a gun
7 capable of accepting a large capacity magazine, but let me ask
8 Mr. Schulman what is the basis of this objection?

9 **MR. SCHULMAN:** Hold on one second.

10 **THE COURT:** Or maybe it was that Mr. Jamison did not
11 have two predicate offenses.

12 **MR. SCHULMAN:** That was my argument, yes, that the
13 26-point base level was incorrect and should have been 24, but
14 I don't know how he got zero points for the homicide, so yeah.

15 **THE COURT:** But even assuming, he'd still have two.

16 **MR. SCHULMAN:** Right.

17 **THE COURT:** He's got the controlled substance and the
18 assault with intent to commit great bodily harm.

19 **MR. SCHULMAN:** He believes that one of the firearms,
20 the Tec, he maintains was not his and he didn't plead to,
21 somehow added points. I don't know if that's accurate. I
22 really focused on the armed career offender giving him four
23 enhancements, Chapter 4 enhancements in Paragraph 34 qualifies
24 as an armed career offender was our objection. So I think the
25 Court has ruled on it.

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1 **THE COURT:** Okay. Ms. Nee.

2 **MS. NEE:** The Government relies on the arguments and
3 the photographs that were included in the Government's
4 sentencing memorandum. The difference between the 26-point and
5 the 24-point base offense levels is the presence of a firearm
6 or the possession of a firearm that's capable of accepting a
7 large capacity magazine, and based on the facts of the case,
8 the facts set forth in the PSR, as well as what is evident on
9 its face from the photographs, one of those firearms, which was
10 the Intratec, clearly had a large capacity magazine inserted
11 into the firearm in the manner in which it was possessed by the
12 Defendant, and, therefore, the 26 level is correct.

13 **THE COURT:** And I believe I reviewed something, maybe
14 it's even the transcript of the plea, that Mr. Jamison did
15 acknowledge, as part of the factual basis of the plea,
16 possessing the firearms that are referenced in the charging
17 document, which I believe does reference that firearm.

18 Ms. Nee, is that your recollection?

19 **MR. SCHULMAN:** Since there wasn't a Rule 11 Plea
20 Agreement, the question is what was used as a factual basis.
21 Often the information in the indictment is used and the Court
22 typically goes through that with the defendants.

23 **THE COURT:** And what is your recollection of how the
24 factual basis was established? That was mine.

25 **MR. SCHULMAN:** Right.

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1 **MS. NEE:** I'm looking at my notes as well, and as far
2 as my recollection as well was that he pleaded to the first
3 count of the first superseding indictment, which does list
4 three firearms, as well as all the ammunition, and that he did
5 acknowledge that he knew that weapons, in the plural, were
6 hidden in the house and that he had possessed -- he knew that
7 the firearms and ammunition were in the house and that he had
8 possessed them. I mean that was my recollection.

9 Without the benefit of the transcript, that might be
10 difficult to ascertain in more detail, but I would also say
11 that based on the photographs that were shown, as well the
12 evidence that was in the case, those three firearms were all
13 together under the couch in close proximity to each other, and
14 as also shown in one of the pictures that was on Defendant's
15 phone and was included as, I believe, Figure 4 in the
16 Government's sentencing memorandum, the Defendant had, also
17 from a photograph showing both the rifle that he definitely had
18 also specifically acknowledged in his plea agreement as
19 possessing, as well as the Intratec extended magazine firearm
20 were together in that photograph on his phone, and that that
21 photograph was taken by a make and model of cell phone that was
22 the same as the Defendant's cell phone that it was found on.

23 So I think in this case, even without the specific
24 transcript acknowledgment, which was our collective
25 recollection that he had admitted to, that there is sufficient

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1 evidence in the -- in this case that there was a firearm that
2 was possessed by him that had an extended magazine.

3 **THE COURT:** And I suppose the other question I
4 probably should have asked you both, and it's the reason I
5 started with the objection to the Armed Career Criminal Act, is
6 I believe that sets the base offense level?

7 **PROBATION OFFICER:** Yes, your Honor.

8 **THE COURT:** So I don't know that this really even
9 matters, the 24 or the 26.

10 **MS. NEE:** I would agree with that.

11 **MR. SCHULMAN:** Yes.

12 **THE COURT:** But just to cover all of our bases here,
13 the basis of the objection was 2K2.(a)(1) [sic], which applies a
14 base offense level of 26 where the offense involved a
15 semiautomatic firearm that is capable of accepting a large
16 capacity magazine, and the Defendant committed any part of the
17 instant offense subsequent to sustaining at least two felony
18 convictions of either a crime of violence or a controlled
19 substance offense, and, as I previously ruled, Mr. Jamison has
20 a prior controlled substance offense, and he has at least one
21 other felony conviction of a crime of violence.

22 Probation also explained the basis of the scoring
23 that Count 1 of the superseding indictment, that Mr. Jamison
24 plead guilty to, references possession of an Intratec Uzi-style
25 handgun, an Intratec Model AB-10 nine millimeter caliber

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1 semiautomatic handgun -- ECF number 65 -- which was loaded with
2 17 rounds of ammunition, and Application Note 2 to 2K2.1
3 describes a high-capacity magazine as one capable of accepting
4 15 rounds or more.

5 I accept and adopt the probation response.

6 The Government's sentencing memo also attaches
7 photographs from the search warrant execution and of the
8 recovered firearms that show that this offense involved a
9 large-capacity magazine, and it will not ultimately matter,
10 because the Armed Career Criminal Act status will determine
11 Mr. Jamison's base offense level. So I will overrule that
12 objection.

13 Objection number 3 is to the lack of any acceptance
14 of responsibility credit or the two points of the acceptance of
15 responsibility credit for Mr. Jamison's plea because he did not
16 plead until the morning of trial, after all the preparation
17 work had been done.

18 And, Mr. Schulman, any further argument with respect
19 to this objection?

20 **MR. SCHULMAN:** Yes, your Honor.

21 I think it's somewhat noteworthy that, today, the
22 Government, in the discussion regarding what would be the
23 colloquy, you know, what was in his guilty plea, he told the
24 Court how he admitted this and how he accepted this and how he
25 fully made a great record. So when they want the Court to

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1 consider that acceptance of responsibility when it's, you know,
2 it applies in that regard, but when it actually gets points for
3 acceptance of responsibility, he gets zero, and I understand
4 that it's -- you know, the law is if you make the Government
5 prepare for trial, you shouldn't get acceptance of
6 responsibility points, but, you know, it is their job to get
7 ready for trial just like we got ready for trial. I understand
8 the law, but it's -- that's what they do, and, you know what,
9 I'm just saying it wasn't a super-complicated case with a lot
10 of lay witnesses and experts flying all over the place, and
11 those three points are really significant. I don't know what
12 the guidelines are, but it really --

13 **THE COURT:** Two. It can't be three because the
14 Government has to move for the third.

15 **MR. SCHULMAN:** Okay, right. Well, they could have
16 also, two points --

17 **THE COURT:** But I can't overrule that.

18 **MR. SCHULMAN:** Yep, that's right, but it has the
19 potential for three points, whether it's just two and one or
20 whether, you know, whether it comes from the Government, they
21 agree or not, but the point is, that really has a significant
22 change in his guideline range.

23 And the only thing I noted, and I kind of maybe I
24 glossed over a little bit, is there was another lawyer who was
25 sort of handling this file, and I don't know if they had the

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1 same kind of interaction with Mr. Jamison, maybe the same
2 experience. I see that in cases as well. I've come in to many
3 cases later, and when I was a younger lawyer, I'd see older
4 lawyers, more experienced lawyers come in and they -- it's a
5 game changer in some regard. I don't know if that makes any
6 difference, but he did, on the day of trial, did plead, and it
7 wasn't like we were here until 4:30 in the afternoon. I mean
8 when he came here, I spoke to him. He had a full opportunity
9 to really look at the exhibits. You know, then he plead.

10 I'd just also note that I've also had cases where the
11 Jencks material comes forward, too. It is a game changer, too,
12 sometimes, when you see that. That's not this case, but
13 sometimes when someone sees that it's, "Whoa, if I had known
14 that six months ago, I would have plead." You don't get a
15 chance to see all the Jencks material. I don't know if there
16 was Jencks material in this regard, but the idea is you really
17 get to see all the exhibits, and then he plead is really what
18 happened, and my role was in the tail end of it, but I get it,
19 you have, at most, two points and the Government has the third
20 point, and that significant change in the guidelines, I think,
21 is something I think at least the Court should consider.

22 **THE COURT:** Okay. Well, I do know the Government did
23 not move for the third point, but I -- Ms. Nee, I don't know if
24 I know your -- the Government's position on the other two
25 points. I know probation's position.

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1 What is the Government's position?

2 **MS. NEE:** The Government concurs in the probation
3 department's decision not to provide the two-point reduction to
4 the base offense level for acceptance of responsibility. There
5 is, as was stated in the response by the probation department,
6 the issue of the timeliness, the fact that the Defendant waited
7 until, literally, the morning of trial when the jury pool had
8 already been assembled and the Court was preparing to start
9 voir dire. This was very late in the game to be entering his
10 plea, and, in terms of timeliness, a factor in the two-point
11 reduction, this was not a timely guilty plea.

12 I would also point out, though, the additional
13 conduct or allegations that have kind of been made after that
14 plea that I think are illustrative of a continued failure to
15 fully accept responsibility. The Defendant did make an
16 acceptable factual basis at the plea agreement, which
17 established a sufficient factual basis for the offense to which
18 he was pleading guilty.

19 Since that time, there have been a number of
20 allegations that appear to be made in the Defendant's
21 sentencing memorandum that appear to be efforts to either
22 mitigate or step back in some way from those -- from fully
23 accepting responsibility. Allegations, for instance, that
24 there were -- that he may have been only one person out of
25 other people living in the house, and the facts in this case

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1 that were developed in the suppression motions, as well as were
2 in the evidence of this case, indicated that he was residing at
3 that house, that there was no other significant beds or
4 furniture that would indicate that multiple people were living
5 there at the same time.

6 That, in fact, stating that photos of the firearm in
7 his phone were prop firearms in terms of, you know, trying to
8 step back from some of the responsibility of the fact that he
9 possessed those dangerous weapons, and, as shown by the
10 picture, which was in the Government's sentencing memorandum,
11 those definitely do appear to be the same firearms and there
12 are additional -- there were additional pictures in his phone,
13 which would have been introduced at trial.

14 And I do have copies here, if the Court would like to
15 see them, but that there were also at least two other
16 photographs that were of similar -- similarly displaying the
17 Intratec firearm or the rifle. And the Intratec firearm, in
18 fact, the photograph is so clear, that with the actual digital
19 file, we're able to zoom in and see the serial number on the
20 Intratec in the photograph is, in fact, the serial number of
21 the gun that was recovered at his house.

22 Otherwise, his claims that he was otherwise doing
23 well on supervised release. Well, the Government has moved to
24 dismiss without prejudice the other two violations in the
25 supervised release violation petition. Nevertheless, those

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1 were serious allegations, one of which was directly with the
2 probation officer and that he swore to in his petition that,
3 you know, he had attempted to sell and admitted to attempting
4 to sell marijuana to his probation officer and had been doing
5 so in the community.

6 And also his allegations that the guns were in his
7 sentencing memo that the guns were registered to his mother.
8 Those statements are not -- and that she was Flint City police
9 officer. There's no record of those firearms having been
10 registered to his mother at that time. The rifle did not
11 require registration as a rifle, but the other two firearms
12 were not registered to any female during the course of the
13 registration history in the state of Michigan.

14 And then, even up until today, I think he was just
15 recently, you know, we had this question of what he actually
16 admitted to at the plea hearing, because it appears that he's
17 now trying to say that he did not possess the Intratec which
18 was found with the other two firearms, and, taken together, I
19 think that all of this conduct supports the probation
20 department's decision not to apply the two-point reduction for
21 the acceptance of responsibility in this case.

22 **MR. SCHULMAN:** Just a response.

23 I think what's note -- what's important to remember
24 is the discussion I had with Mr. Jamison is that you plea on
25 the day of trial you're not going to get three points, likely,

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1 for acceptance of responsibility. So go to trial, you have
2 nothing to lose. You're going to get the same guidelines if
3 you make them spend a week at trial, it's going to be the same
4 guidelines. You're not going to get worse points because you
5 went to trial. If you've already don't get the three points
6 for acceptance of responsibility. So go to trial. The worst
7 that's going to happen is the same guidelines come up.

8 So, actually, his acceptance of responsibility saved
9 a week of trial, because the guidelines came out the same. So
10 the argument is that he doesn't accept responsibility and he
11 made them prepare for trial, I understand that, but he gets no
12 credit for not making them go to trial, because it would have
13 been the same guidelines.

14 **THE COURT:** Well, that's not -- Ms. Nee's argument is
15 what you don't get to do is say, at the time of the plea, I'm
16 accepting responsibility because I want the points, and then,
17 at the time of sentencing, say, well, I'm not really accepting
18 responsibility, that's I think the argument.

19 **MR. SCHULMAN:** Yeah, that's the second part of the
20 argument. I was going to address that. The first part I was
21 going to say is that you get the same guidelines whether you go
22 to trial or not.

23 The second point is that some of the things she
24 mentioned, the firearms that were recovered, as far as I
25 understand, they weren't stolen. The serials weren't deleted.

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1 I mean there's a lot of accept -- so he's making those points
2 in our memoranda. That doesn't mean you're not accepting
3 responsibility. He made a factual basis at the time of his
4 plea, but when he's talking about some photos in his phone,
5 saying those were props, that's what he's -- that's what we're
6 trying to articulate to the Court, because, of course, the
7 Government has a vision, a view of what the totality of the
8 circumstances are. You didn't hear the trial. So maybe you
9 would have seen the photos and heard the testimony. I've seen
10 cases where you have a trial and the sentence was very
11 different from had you just had a presentence report.

12 But the point is, the firearms were not part of any
13 other larger scale case with drugs and more guns and he was
14 taken -- you know, they were stolen. Those were the points
15 they were making in the memorandum I think that would try to
16 give the Court some reference as to the --

17 **THE COURT:** Is the memorandum trying to suggest that
18 Mr. Jamison did not possess the firearms that are mentioned in
19 the first superseding indictment?

20 **MR. SCHULMAN:** No, never, never. We're talking about
21 photographs. We talk about the -- because the guns could be
22 registered, and they could be legal, and those are important
23 factors. And, in fact, sometimes in presentence report you get
24 points for if it's stolen, and there's no points. You get
25 points if they were used in, you know, another offense and

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1 another relevant conduct. I'm just saying that's the whole
2 argument is the totality of the circumstances, the other
3 relevant -- I mean the nature and circumstances of the case,
4 but he never has denied it. He made a factual basis, and I
5 think even talking to the presentence officer -- presentence
6 investigation. He never stated, "I didn't do it. I want to
7 withdraw my plea." I was just trying to explain things like the
8 photographs in his phone where he had said those were props and
9 the Government --

10 **THE COURT:** What does that mean? What do you mean by
11 that?

12 **THE DEFENDANT:** I'll talk. When I tell 'em there's
13 props on my phone, I said that -- I told him that when she was
14 seeing pictures of me with the vest on and all. I was a male
15 stripper. I was dancing. Those was the props. I didn't say
16 the guns was the props in the video. Now, the guns that
17 originally is tooken, that was at my mother's house. She has
18 the registration to them guns that was in there. I've never
19 told them about them guns that was in there because I didn't
20 want to get no family members in trouble. I told you all in
21 the beginning, when I took the plea, I told 'em I take this
22 plea, I'm saying I know there's weapons in the house, I don't
23 know where all of 'em at. So I didn't know that that stuff was
24 put in certain spots with all that in one category. I knew it
25 was the rifle that was in the house. I knew the rifle was up

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1 under the couch, but it wasn't under the couch. It was
2 supposed to have been in the folding bed. That's the last
3 place that I knew it was at. Now, I wasn't the only one in
4 that house, but I accept responsibility because I don't
5 supposed to be around 'em. That's what I'm accepting
6 responsibility for, not me supposed to be around them guns.

7 So I accept that, but the fact that, you know -- and
8 then, about the trial, I waited until the day of trial. No, I
9 didn't just wait until the day of trial, I was told by his
10 attorney that was working with him that there wouldn't be that
11 day of trial. We wouldn't have no trial that day, that it
12 supposed to be again postponed, and then when I get here,
13 because I been trying to blow the phone up to this attorney's
14 office to figure out what's going on with my court date, what's
15 going on. I get here, and then everybody here and everybody is
16 ready for trial. I didn't hear from Stefanie until all the way
17 in. I met him on the day of trial when he came here, yeah,
18 like we about getting ready to go to trial. This is what
19 everybody got on you.

20 **THE COURT:** Okay. All right. Thank you.

21 This happens sometimes when both sides are right, the
22 late plea, the lateness of the plea is a basis to not get the
23 third point and why the Government did not move for the third
24 point, and there's nothing I can do about that. I'm also quite
25 sure that I made very clear, at the final pretrial and final

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1 plea cutoff, that at that time, there would be a trial, and I
2 set the trial date. So there should not have been any surprise
3 that we were going to trial.

4 **THE DEFENDANT:** She told me it was being postponed,
5 your Honor.

6 **THE COURT:** And the timeliness issue is only one
7 factor to be considered in determining the two-point reduction
8 and that's Guideline 3E1.1, Application Note 1H, but another
9 factor to be considered is truthfully admitting the conduct of
10 the offense, which my recollection of the plea is that
11 Mr. Jamison did do that, that he did admit to possessing all of
12 the firearms that are referenced in the first superseding
13 indictment.

14 There had been some statements made that are
15 concerning, but also based on my feeling that Mr. Jamison
16 qualifies as an Armed Career Criminal, I'm not sure how much
17 impact the two-point reduction is going to have, but I will
18 give the two-point reduction, and I will sustain that objection
19 in Mr. Jamison's favor.

20 So that takes us to Objection 4, which is the
21 objection to Mr. Jamison calling his probation officer and
22 attempting to sell him marijuana, which is Paragraph 30 of the
23 presentence report.

24 And, Mr. Schulman, anything further you want to
25 argue -- I'm sorry, it's not Paragraph 30.

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1 **MR. SCHULMAN:** It is Paragraph 30, your Honor.

2 **THE COURT:** Yeah, I think there may be -- I don't
3 know if there are four paragraphs summarizing the supervised
4 release violation, but, yeah, it is part of Paragraph 30, the
5 last paragraph.

6 An amended supervised release violation petition was
7 filed on January 2020, which alleges three violations based on
8 the instant offense, an alleged assault on Defendant's
9 girlfriend on September 21, 2019, and Defendant's attempted
10 sale of marijuana to his probation officer on June 26th, 2019.
11 A supervised release violation hearing is pending, however, it
12 has not been scheduled.

13 **MR. SCHULMAN:** Your Honor --

14 **THE COURT:** So that is a truthful statement.
15 Paragraph 30 is just saying an amended supervised release
16 petition was filed, which makes these allegations -- that is a
17 truthful statement, right?

18 **MR. SCHULMAN:** It is, and in light of the
19 Government's -- this was obviously written prior to the
20 Government's motion today as it relates to the balance of the
21 allegations in the supervised release violation. So it's not
22 as important, I think at this time. I'm -- I do stand -- my
23 misunderstanding that, that the --

24 **THE COURT:** I don't think the presentence report is
25 making suggestions or commentary about the 3553 with respect to

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1 this incident or the incident -- the alleged assault on his
2 prior girlfriend, and that's Objection 6.

3 **MR. SCHULMAN:** Right.

4 **THE COURT:** Which is also an objection to this
5 paragraph. This paragraph, as written, is truthfully accurate.
6 Those incidents were and are part of an amended supervised
7 release violation petition. So as to that, I'm going to
8 overrule the objection. I don't see a reason to remove that
9 from the presentence report because it's a truthful statement.

10 When we get to the supervised release violation, the
11 Government is agreeing to dismiss, without prejudice, those
12 violations, but they are violations. So I think it's an
13 accurate recitation in the presentence report and I'll overrule
14 those objections.

15 **MR. SCHULMAN:** Your Honor, might the presentence
16 report, for whatever it's worth, just include those were the
17 allegations in the supervised release but were later dismissed
18 by the Government and that would be --

19 **THE COURT:** All right. I think that's fine.

20 Ms. Grewe, any problem doing that?

21 **PROBATION OFFICER:** No, your Honor.

22 **THE COURT:** That they're indicating they're being
23 dismissed, Ms. Nee?

24 **MS. NEE:** I mean we don't normally adjust the PSR. I
25 understand there are supervised release violations in this

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1 case. I would just ask that it be made clear that it was
2 dismissed, the circumstances of its dismissal. That's all.
3 Thank you.

4 **THE COURT:** Therefore, I can see amending this last
5 paragraph, Paragraph 30 maybe to indicate at the time of
6 sentencing or during the sentence, the hearing had been
7 scheduled for that same day and the Government -- that the
8 Government dismissed two of the violations without prejudice.

9 Could we do something like that?

10 **MS. NEE:** Yes, I would agree to that.

11 **MR. SCHULMAN:** I would as well.

12 **THE COURT:** All right. And so Ms. Grewe will make
13 that change for us.

14 **PROBATION OFFICER:** Yes, your Honor.

15 **THE COURT:** All right. Thank you. So that just
16 leaves Objection 5, which objects to the reference in Paragraph
17 44 that Mr. Jamison's wife, Jasmin Major, would not agree to
18 him staying at her residence upon his release from prison.

19 And, Mr. Schulman, anything further you want to state
20 with respect to that objection?

21 **MR. SCHULMAN:** Yes, your Honor, Ms. Major is present
22 and I just -- I wasn't at the interview, of course, with the
23 presentence investigator and her -- if there was one, but he
24 informed me that he was under the belief that his wife would
25 have no objection to her allowing him being a custodial third

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1 party, whatever they might need for him for his return and his
2 reunification with his family he.

3 **THE COURT:** Ms. Nee, do you wish to address this?

4 **MS. NEE:** The Government has information in that
5 regard.

6 **THE COURT:** All right. Paragraph 44 of the
7 presentence report identifies Mr. Jamison's marriage to
8 Ms. Major in 2019, and the last sentence indicates that the
9 probation department spoke to Ms. Major and she advised she has
10 stepped away from the relationship with Mr. Jamison, and while
11 they will be coparenting Heavenly, he will not be released to
12 her home, and so, Mr. Schulman, is it your position that you
13 understand that, after speaking with probation, Ms. Major has
14 changed her position?

15 **MR. SCHULMAN:** I'm not sure she changed or if she
16 maybe never intended that. I wasn't there. All I can relate
17 is that his position is that and that she may be able to tell
18 you as well that she would be more than happy, I guess.

19 **THE COURT:** All right. Now, Ms. Major is with us.

20 **MS. MAJOR:** I stated to her that me and Rajon stepped
21 away from our relationship but we would reside in the same home
22 to coparent Heavenly.

23 **THE COURT:** All right. Miss Grewe.

24 **PROBATION OFFICER:** Your Honor, I spoke to Ms. Major,
25 and as soon as I identified myself as a probation officer and

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1 the presentence writer, she indicated absolutely not, that he
2 would not -- was it me who you spoke to on the phone?

3 **MS. MAJOR:** I'm not sure who I spoke to on the phone.

4 **PROBATION OFFICER:** So I'm not sure if I am the
5 probation officer who she spoke to, but she immediately
6 indicated that she would not be living with him. Then she
7 further explained their relationship and indicated that she has
8 stepped away from the relationship and she did not feel
9 comfortable with him living with her. If she has since changed
10 her mind, this all will be indicated in the presentence file.

11 When Mr. Jamison is released from custody, an investigation
12 will be completed to determine whether or not he is allowed to
13 release to her. Based on this information, I would assume our
14 supervision unit would not allow him to live with her with this
15 back and forth on whether or not.

16 So I stand by my statements. If she is indicating
17 now she's not sure I'm whom she spoke to, those statements just
18 to the probation department are all true.

19 **THE COURT:** All right. Given that Mr. Jamison is
20 going to have a mandatory minimum here of 15 years, so we're a
21 long way from his release, do we need to include release
22 information in the presentence report? I'm wondering could we
23 keep the last sentence almost the way you have it, "The
24 probation department spoke to Ms. Major and she advised that
25 she has stepped away from the relationship with Mr. Jamison but

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1 they will coparent Heavenly," period, and we don't indicate
2 anything --

3 **PROBATION OFFICER:** Okay, your Honor.

4 **THE COURT:** -- about where he'll go on release.

5 All right. So let's do that, and, also, it's not
6 going to have an impact on the sentencing. So I don't see a
7 need to do a significant edit but I guess I'll sustain in part
8 and overrule in part that objection.

9 All right. So with that, Mr. Schulman, does the
10 Defense have any other disagreements with, corrections, or
11 additions to the presentence report?

12 **MR. SCHULMAN:** Paragraph 77. I don't know if the
13 Court did or did not --

14 **THE COURT:** Mr. Schulman, can you put the microphone
15 a little closer to you. Yes, that would be very helpful.

16 **MR. SCHULMAN:** Yes, I think it Paragraph 77, he had
17 a -- took an issue with the characterization of him physically
18 assaulting his girlfriend. I noted that he had never been
19 convicted or charged, and it's based on a police report which,
20 of course, would be hearsay, but the idea of other relevant
21 conduct is a very murky one, and so I don't know if it's
22 necessarily incorrect, but it's based on a police report.

23 It really -- these kind of paragraphs should really
24 say, I mean -- you know, it's acting -- the sentence suggests
25 that it's somewhat conclusive that it's been verified, you

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1 know, he has been suspected of physically assaulting his
2 girlfriend. I guess the idea of suspected, that's a little --

3 **THE DEFENDANT:** Girlfriend. I don't --

4 **THE COURT:** Right. That's how I read it. This was
5 just indicating he had been suspected, but it's clear there's
6 no reference to any charges or anything. So I -- I don't see
7 any need to make any revisions that there. I'll overrule that
8 objection.

9 **MR. SCHULMAN:** And that is the sum and total of the
10 objections, your Honor.

11 **THE COURT:** All right. And, Ms. Nee, does the
12 Government have any disagreements with, corrections or
13 additions to the presentence report?

14 **MS. NEE:** No, your Honor.

15 **THE COURT:** All right. I also have received the
16 presentence report. I have carefully reviewed and studied it.
17 I have also reviewed and carefully studied the sentencing memos
18 from both parties. I've presided over the suppression hearing
19 where I learned information about the offense and Mr. Jamison's
20 living situation. I've not received any other materials
21 regarding the sentencing and accept, as otherwise stated and
22 now ruled upon, I am accepting the presentence report as my
23 findings of fact. I will calculate the advisory guidelines
24 range based on my rulings on the objections to the presentence
25 report.

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1 As I addressed in those rulings, as a felon with at
2 least two prior felony convictions of a crime of violence or
3 controlled substance offense and possessing a firearm capable
4 of accepting a large capacity magazine, Mr. Jamison's base
5 offense level under 2K2.1(a)(1)(4)(A) is 26.

6 There is a two-level enhancement for his possessing
7 of three guns, for an adjusted level of 28.

8 But as an Armed Career offender, the base offense
9 level is 33.

10 I will give him a two-level reduction for acceptance
11 of responsibility for a total offense level of 31.

12 His criminal history and the fact that he was on
13 supervised release at the time of the instant offense put him
14 in criminal history category VI, so does his ACCA status.

15 A base offense level of 31 and criminal history
16 category VI results in an advisory guideline imprisonment range
17 of 188 to 235 months, and because the Armed Career Criminal
18 applies, there is a mandatory minimum of 180 months.

19 So, counsel, any objections to that calculation that
20 have not previously been stated? Ms. Nee?

21 **MS. NEE:** No, your Honor.

22 **THE COURT:** And Mr. Schulman?

23 **MR. SCHULMAN:** No additional, your Honor.

24 **THE COURT:** All right. So Ms. Nee, do you wish to
25 make any remarks on behalf of the Government?

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1 **MS. NEE:** Your Honor, I would just say that the
2 Government submitted its sentencing memorandum in this case
3 setting forth the reasons in support of its recommendation of a
4 235-month sentence. This was a serious offense, as indicated
5 in the Government's sentencing memorandum, involving three
6 firearms, an extended magazine, additional ammunition, as well
7 as paraphernalia such as the ballistic vest without the plates
8 involved, a belt with a pistol holder, a ski mask that matched
9 the brass knuckles, and of course there were indicia of his own
10 occupancy in that house where all those things were found.

11 He committed this offense while he was on supervised
12 release for other firearm and drug offenses which had been
13 committed on two separate occasions, and after a significant
14 sentence that he had served in that case, this is also his
15 fifth firearm related conviction -- actually, the sixth time
16 that he's been found with firearms but his fifth conviction, as
17 two of those prior firearm offenses were charged together in
18 federal court.

19 And these were serious violent offenses. These are
20 not simply cases where the Defendant possessed firearms, but,
21 in one case, he was found guilty of second degree murder for an
22 offense that involved shooting another teenager in the head.
23 He was found guilty of assault great bodily harm in which he
24 shot six times into another person's vehicle following a bar
25 fight, and the woman in that vehicle was shot, actually, in at

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1 least two parts of her body. He was convicted of conspiracy
2 for armed robbery, in which there was an attempted armed
3 robbery which happened and Defendant was found in the get-away
4 car with a magazine on him matching firearm under him and a gas
5 canister on his person.

6 He also had the federal drug conviction.

7 This is -- now, Defense earlier mentioned -- tried to
8 raise an argument that it was unfair, if you will, to consider
9 as an Armed Career Criminal predicate that the Defendant
10 committed or was found guilty of the second degree homicide
11 when he was a teenager in the '90s. The Armed Career Criminal
12 Act does not simply punish juveniles with, as in the cases that
13 are mentioned with life sentences or otherwise based on a
14 single offense. It is designed to have enhanced penalties for
15 those people who repeatedly have crimes of violence and serious
16 drug offenses, and that is what happened here.

17 Since the time that the Defendant committed and was
18 convicted of the second degree homicide, he has just continued
19 to recidivate and continued to engage in violent behavior as
20 well as his drug trafficking behavior.

21 This is essentially after his homicide conviction,
22 his other offenses happened while he was on supervision, on
23 release, on court terms, almost continuously since that point.

24 He committed the conspiracy for armed robbery when he
25 was under state supervision for the homicide. He committed

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1 four additional criminal offenses when he was on parole from
2 that offense, and then, having been released on supervised
3 release following his most recent convictions in federal court.
4 he committed the current offense and was alleged to have
5 committed two other serious offenses.

6 In light of this repeated pattern of criminal
7 activity, including multiple crimes of violence and a drug
8 trafficking offense, as well as the possession in this
9 particular case of particularly serious firearms, Government
10 believes that an appropriate sentence is the 235 months as
11 recommended in the sentencing memorandum and that that would be
12 sufficient but not greater than necessary to achieve the aims
13 of sentencing in this particular case. Thank you.

14 **THE COURT:** Thank you, Ms. Nee.

15 And, Mr. Schulman, at this time, would you like to
16 make any remarks on Mr. Jamison's behalf?

17 **MR. SCHULMAN:** Yes, your Honor. The guidelines as
18 calculated by the Court today, the low end is -- I don't mean
19 to say only, but only eight months higher than the mandatory
20 minimum, based on the armed career offender status, and let me
21 start by saying I'm not sure that eight months -- if the Court
22 would consider the low end of the guidelines or even the 180
23 months is going to make much of a significant difference.
24 Someone serves eight years in jail, ten years in jail, fifteen
25 at what point does it really start to become irrelevant, you

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1 know, twenty years, in six months will he learn his lesson so
2 to speak. I don't know what the additional time serves above
3 what I consider as some kind of Draconian 15 years, another
4 eight months.

5 The Government is obviously asking for 235, the high
6 end of the guidelines, but all these guidelines and what we're
7 talking about is, really, her -- her allocution is really
8 premised on his past. I mentioned that at the beginning, you
9 know, if I -- there's people who have a minor felony and they
10 pick up this -- or charged with this type of case and they
11 would be eligible for probation for the same offense could
12 garnish somebody a probationary offense, and, in his situation,
13 we're begging for 15 years.

14 It's really -- we talk about disparity, it really is
15 kind of chilling how offense really matters very little, it's
16 their status. That's their whole argument. They really made
17 very little argument about that he took the guns on the street,
18 that he pointed those guns at people, that they were illegal,
19 that they'd come from the scene of homicide, none of that. The
20 nature and circumstances of the case is almost irrelevant to
21 her statements today. It was completely about what -- about
22 happened when he was 25, 20 and even at 13 years of age, and
23 because of his past --

24 **THE COURT:** Well, maybe she didn't reargue her entire
25 sentencing memo.

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1 **MR. SCHULMAN:** You're right. Fair enough.

2 But the point she brought up today -- and I know we
3 incorporate arguments with our memorandums, but it really does
4 focus on his criminal history. That's where we spent most of
5 our time talking about, and I do think that, you know -- so
6 putting that aside, all the legal arguments, I want to make
7 some remarks about Rajon Jamison just his characteristics.

8 He's got family members who are here and I want to
9 first apologize. There was some miscommunication about
10 letters. They apparently had indicated to him that they sent
11 letters, and I was going to forward those and he himself had
12 written a letter. I checked my e-mail a couple times and I
13 never got them, but more important than the letters, is their
14 presence here. Whether the Court received them or not, they're
15 here, and that's important, because after all that he has,
16 quote, done and his history, they know him better than us, far
17 better. They know his character. They know his capabilities.

18 You see little glimmers of real opportunity in his
19 life. He got a 4.0 at a community college. I know it's just a
20 few classes, but it just shows his potential. I mean I don't
21 know him like that, but there are times that you see him as a
22 good father and as a -- you know, his mother's still in his
23 life. These people still care about him. I think it tells a
24 lot about what they see as his potential as well.

25 I can't explain and excuse and justify what has

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1 happened, but he did not have an easy past for sure. He has
2 had challenges from the beginning, and I don't know necessarily
3 if those are excuses, but, you know, a lot of people have come
4 into the world with opportunities and those opportunities make
5 their paths, even if it's rocky, somewhat more manageable. He
6 didn't seem to have that, and, you know, that case at 13, I'm
7 sure there's a whole story behind that, and that just puts you
8 way behind the game at that age.

9 Nevertheless, I do think that there is -- you know,
10 before the Court throws -- doesn't find that he isn't
11 salvageable, giving him a sentence of 235 months or whatever
12 the Government asks for, I think that, you know, he's been
13 institutionalized much of his life, but sometimes during that
14 time when he wasn't, he did offer something positive, and I'd
15 like to just finish on that -- those thoughts, the child that's
16 in his life, you know, a child, and his fiancee and his family
17 and his friends, I think those are a positive thing. He's
18 contributed. He's intelligent. I know he wrote me letters.
19 He looked up case law. So I do think that he's got a lot to
20 contribute. He still is a relatively young man. I mean it's
21 all relative, but I think he's young, and I hope when he
22 completes this, that will be the end of it, and I think he has
23 gotten to that point where this is it. I mean although he
24 wasn't selling drugs or on the street and, really, you know,
25 assaulting people those type of things, those firearms, he's

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1 paying a significant price for that -- for that conduct.

2 And I just want to say it's not -- I don't want to
3 say it wasn't a super bad offense, but I know he's realized
4 that even those missteps, now with his status, can have such a
5 significant impact, not just on him and his freedom, but on the
6 rest of his family who will continue to stand behind him
7 because I think they truly know his character and his nature.

8 **THE COURT:** Do you know, Mr. Schulman, who is with
9 him? I see Ms. Major. I assume that's Heavenly with her.

10 **MS. JAMISON:** I'm his mother Marianne Jamison.

11 **THE COURT:** Hello, Ms. Jamison.

12 **MS. JAMISON:** This is his cousin, Omar Wooten.
13 That's his brother A.J. Jamison.

14 **THE COURT:** That's A.J.?

15 **MS. JAMISON:** Yes.

16 **THE COURT:** All right. Thank you.

17 **MS. JAMISON:** And their cute little girl.

18 **THE COURT:** Thank you. Thank you all for being here.

19 Mr. Jamison, I advised you when I took your plea, I
20 told you at that time that you would have an opportunity if you
21 wished to address the Court before I sentenced you. So at this
22 time, is there anything that you would like to say?

23 **THE DEFENDANT:** Yes, your Honor.

24 **THE COURT:** All right. Please.

25 **THE DEFENDANT:** I mean as my attorney stated, since

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1 the child, that I been in and out of this system and trying to
2 stay out, you know, always being in trouble. It's always been,
3 you know, either I get in my own way or get caught up with the
4 influence around other people, but this time around right here,
5 I wasn't -- I wasn't -- I was doing good, like they, what they
6 never brought up is all the positives that I do do or all the
7 community service I help out with or that I didn't have no
8 dirty drops. I didn't have no police contact.

9 I been home for almost two years. I got home at '18,
10 the beginning of '18 of when I got out from the feds. She say,
11 oh, Jamison been doing this. I wasn't doing -- I wasn't -- I
12 wasn't with no police contact when my daughter was born. I
13 been -- I been spending every moment. They didn't say I been
14 working. You see the letters from my job saying how quick they
15 wanted -- they gave me a raise. I been working, notwithstanding
16 the fact every day, she can verify to you, every
17 day I went to work, came back to work. I wasn't out taking no
18 guns shooting at anybody. Like I say, my main priority since
19 my daughter being born was her.

20 You know, they institutionalize, yeah, it's things
21 that happen when you're -- when you're in jail and you stay
22 being in there that means that you do to survive like in there
23 that you are in there you can't bring to the world. I'm
24 learning it. I mean like stuff that I had to do to survive in
25 there, you can't do it when you in the street, you know what I

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1 mean.

2 And then, of course, I'm worried with my momma saying
3 that, you know, people threatening her or saying stuff to her,
4 you know, I mean about killing me and stuff like that. So
5 it -- if she felt, you know, made her feel better to leave
6 something at the house, stuff like that, I didn't mind because
7 I wasn't out carrying I felt like, okay, it can be there. But
8 that's still wrong thinking. I know I can't be around it, but
9 20 years, I'm about to be 42 years old, you know what I mean.
10 I'm not trying to spend the rest of my life where we live to
11 60, something like that, I'm not trying to spend the rest of my
12 life in prison and away from my daughter. I'm not trying to
13 see her at 18, you know, just now getting home from jail and
14 trying to be a father to her, you know what I mean.

15 I know my life to them don't mean much, you know what
16 I mean. I done learned that, you know, me going through the
17 system whether from the prosecutor or probation officer, my
18 life to them, it's a dot on a map, okay, go on push and kick
19 him under the rocks, but I know I can make it, you know what I
20 mean. I know I can establish, because I was doing it. I know
21 I -- I know I -- I can -- I can -- I can be somebody that's
22 successful in this life. I know I can be a father to my
23 daughter. I know that I can be the best father to her because
24 I been doing it since I been even in jail.

25 I ask the Court to have mercy for me mainly because

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1 I'm trying to get back to her, and I'm trying to live a better
2 life for her, and I been -- I been doing it I just need the
3 opportunity to be -- to -- to really establish myself to be
4 better and not all the time every time, you know, I do -- I do
5 make -- and I ain't minimizing my flaws or the stuff that I do,
6 but to every time they want to give me the max, you know what I
7 mean, for the same guys that do the same stuff as me, they
8 going right back home, and they getting opportunities. Whether
9 it's -- I mean I just sit there and watch for three years that
10 I been sitting in this county jail for the same guys that got
11 the same record as me, they going right back home, whether it's
12 a Tyler General and all these guys, Jimmy Humphrey, these guys,
13 they're going right back home.

14 I'm just asking the Court to have mercy on me and
15 give me a chance to get back home to my family and be something
16 to my family, you know what I mean. I'm trying. I'm giving it
17 my best. I ain't gave up yet. I'm 42 years old. I'm not
18 trying to spend the rest of my life in prison, you know what I
19 mean. Like I said, I just want to be there for my daughter. I
20 want to be there for my family. I want to be -- spend my -- I
21 got little brothers and sisters. I done watched them grow up
22 being locked up, you know what I mean. My little brother grown
23 in the (inaudible). I mean all that. I'm not trying to spend
24 the rest of my life in y'all cuffs or in this system.

25 **THE COURT:** Thank you. I do appreciate hearing from

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1 you. I appreciate hearing from all of you.

2 I think I also explained to you at the plea hearing
3 that I have to impose a sentence that is sufficient but not
4 greater than necessary to comply with our sentencing laws, and
5 in making that determination, I have to consider a number of
6 factors. I start with the advisory guidelines range that I
7 calculate, that's the 188 to 235 months. As you know, there's
8 a mandatory minimum of 180 months. Then I consider the nature
9 and circumstances of this offense and your history and
10 characteristics, the need for the sentence to effect the policy
11 goals of sentencing, including providing just punishment,
12 promoting respect for the law, deterring criminal conduct, and
13 protecting the public, also providing you with needed training,
14 care, or other correctional treatment, and the kinds of
15 sentences available.

16 And I want to start with your history and
17 characteristics, because that is really what is driving the
18 other factors here and lurking throughout much of this case has
19 been the question of whether you qualify was an armed career
20 offender, and it's no surprise, really, Mr. Jamison, how you
21 ended up here. The presentence report explains it pretty well,
22 in a few sentences.

23 Paragraph 41 says that since the age of 13 you have
24 been out of custody for only approximately 42 months.

25 Paragraph 48, you expressed a need to attend

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1 counseling in the future due to your lifelong incarceration
2 beginning at age 13. You explained that you had learned to
3 fear making decisions and missed the part of being a youth that
4 could explore, make mistakes, and learn from them freely, what
5 is commonly known as being institutionalized. That, instead,
6 you made decisions based on your past experiences, which
7 involved gang involvement at an early age, and older siblings
8 that were not positive influences.

9 So you have a pretty good self-understanding of how
10 you came to be here, and that's the path that we see. I'm not
11 entirely sure why it got off course so quickly. Both of your
12 parents were involved in your upbringing. They both worked.
13 You have some siblings that appear to be doing well, a nail
14 technician, a tax preparer, a DJ, a student, but you also have
15 twin brothers who are incarcerated and I believe were the bad
16 influences that you referenced to the probation officer.
17 Somehow gang life got involved, and, so, at age 13, you were
18 drinking and doing drugs, and, after getting into an argument
19 with another kid, shot him in the head. You were made a ward
20 of the state. There were some periods of improvement but your
21 life never really got back on track.

22 At age 19, you served about six-and-a-half years
23 after being part of an attempted robbery of a store. There
24 were prison misconducts. There were parole violations. There
25 was cocaine possession at age 27.

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1 Shortly after that sentence, you were involved in a
2 bar fight that involved some women. You followed one of the
3 women in your car after she left the bar and shot her multiple
4 times. You got another relatively lengthy sentence.

5 Then your first federal conviction for drug dealing
6 and having guns. You were sentenced to 84 months and
7 supervised release. You were charged with violating several
8 conditions of the supervised release. We've talked about
9 those. Two were -- are going to be dismissed.

10 But then the underlying offense, whether from you,
11 from your mother, from others, there was an incredibly
12 dangerous stockpile of stuff at the residence where you were
13 staying, the home of your daughter, your young daughter and her
14 mother.

15 The .45 caliber Ruger P90 semiautomatic handgun
16 loaded with nine live rounds, a High Point .40 caliber
17 converted rifle with a magazine, an Intratec Uzi-style handgun
18 with a high capacity magazine loaded with 17 live rounds. I
19 don't know why, with your criminal history and a young child in
20 the house that your mother or other people would want those
21 guns to be in that home; a tan carrier for a ballistic
22 protection plate, a .22 caliber magazine unloaded, a plastic
23 bag containing 26 live rounds of ammunition with a mixture of
24 .40 caliber and 9 millimeter rounds and one brass knuckle-style
25 weapon, and all of this as a convicted felon who cannot possess

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1 firearms and ammunition while under court supervision and where
2 a young child was living, and, of course, you didn't need this
3 level of firepower for protection, and, whether you did or not,
4 with your criminal history, it doesn't matter. You can't have
5 them.

6 And so then I go back to the factors that I have to
7 consider, the nature and circumstances of the offense are
8 serious and dangerous, as the Government rightly points out.
9 It is particularly dangerous for you to possess firearms
10 because you have used them, including to shoot people. There's
11 been no respect for the law or court supervision most of your
12 life. You have posed a danger to the community and no sentence
13 has deterred your criminal conduct. And that's your past, but
14 I don't only consider your past.

15 You've never lived a normal life. So it's somewhat
16 of a challenge for me to figure out if you can. I agree with
17 Mr. Schulman, Mr. Jamison, you have the intellectual
18 capability. You earned your GED. You did well in school.
19 You've taken some college courses. You've learned some trades.
20 You have an interest in construction and drafting. You are in
21 good health. You have some family support, as evidenced here.
22 Your mother is here. Your cousin is here. Your brother is
23 here. Your wife or fiancee or mother of your child is here.
24 Your daughter is here. You have a daughter that you clearly
25 care for. You've hurt women in the past and put them in harm's

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1 way, but maybe having a daughter can help to change that.

2 You have a lengthy sentence to serve and you
3 recognize as well that you're getting too old to keep living
4 like this. You recognize that you need help to be able to
5 integrate into society and we can help you with that. You've
6 expressed again that you don't want to spend the rest of your
7 life in prison, you want to spend the rest of your life with
8 your family and being a father to your daughter.

9 Those are all the factors that I do consider under
10 Section 3553(a) in determining a sentence that is sufficient
11 but not greater than necessary.

12 And so the Government is not wrong to argue that 235
13 months, the top of the guidelines range I calculated, would
14 serve those purposes, but that's not the issue. The issue is
15 what sentence is sufficient but not greater than necessary to
16 achieve those purposes, and you have a mandatory minimum of 15
17 years. That is a very long time. I don't see a reason to vary
18 from the guidelines range, but I can't say that a sentence at
19 the bottom of your range is not sufficient but not greater than
20 necessary, and I do want you to have an opportunity to spend
21 significant periods of time with your family and show us that
22 you can do better and that you can be better, and so with that
23 I'm going to sentence you as follows:

24 On Count 1 of the superseding indictment, pursuant to
25 the Sentencing Reform Act of 1984, the Court, considering the

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1 sentencing guidelines and factors contained in 18 United States
2 Code Section 3553(a), hereby commits you to the custody of the
3 United States Bureau of Prisons for a term of 188 months to run
4 concurrent to the pending supervised release revocation on
5 docket 10-CR-20079.

6 Upon release from prison, I'm going to put you on
7 supervised release for a term of three years.

8 You will have to pay a special assessment of \$100,
9 which will be due immediately.

10 I will waive the imposition of any fine, costs of
11 incarceration and costs of supervision, due to your lack of
12 financial.

13 I will order mandatory drug testing.

14 And during your period of supervised release, you
15 will have to abide by the standard conditions that have been
16 adopted by this court, and I'm also going to impose the
17 following special conditions that you'll have to comply with:

18 You must participate in a cognitive behavioral
19 treatment program and follow the rules and regulations of the
20 program. Your probation officer will supervise your
21 participation in the program. Those programs may include group
22 sessions led by a counselor or participation in a program
23 administered by the probation office.

24 You must submit to a psychological or psychiatric
25 evaluation as directed by the probation officer.

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1 You must participate in a mental health treatment
2 program and follow the rules and regulations of the program.
3 Your probation officer, in consultation with your treatment
4 provider, will supervise your participation in the program.

5 You must submit your person, residence, office,
6 vehicle, papers, business, or place of employment and any
7 property under your control to a search. That search shall be
8 conducted by a United States probation officer at a reasonable
9 time and in a reasonable manner based upon a reasonable
10 suspicion of contraband or evidence of a violation of a
11 condition of release, and failure to submit to the search may
12 be grounds to revoke your supervised release, and you must warn
13 any residents that the premises may be subject to searches.

14 And, Mr. Schulman, would you like me to include in
15 the judgment any recommendation as to placement?

16 **MR. SCHULMAN:** Yes, your Honor. I would ask that a
17 recommendation for Milan.

18 **THE COURT:** All right. I will recommend that
19 Mr. Jamison be placed at FCI Milan.

20 And let me ask, counsel, then, with the sentence that
21 has just been imposed, are there any objections that have not
22 previously been raised, Ms. Nee?

23 **MS. NEE:** No, your Honor.

24 **THE COURT:** And Mr. Schulman?

25 **MR. SCHULMAN:** No, your Honor. I just would also ask

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1 two other matters, one, if he's eligible for the RDAP program.
2 He didn't mention that to me, but I think there was some
3 substance use mentioned in the report. Given it's a gun
4 offense, he may not even be eligible, but rules change and
5 things happen in the BOP, and I don't know -- whatever the
6 recommendations could be.

7 **THE COURT:** All right. Does he have a controlled
8 substance issue?

9 **MR. SCHULMAN:** There's nothing mentioned in it.

10 **PROBATION OFFICER:** Your Honor, there is somewhat of
11 a -- I think back and forth.

12 **MR. SCHULMAN:** I recall there was. I don't have the
13 paragraphs in front of me.

14 **THE COURT:** All right. I'll recommend it. It will
15 be up to the BOP. They'll determine whether Mr. Jamison
16 qualifies for the program. I think that the nature of the
17 offense will mean that he won't get any reduction in the
18 sentence, but if they deem that he has a need for it, I would
19 think he would still qualify.

20 **MR. SCHULMAN:** We have no other additional requests.
21 He did just ask me if the Court would allow him to have contact
22 with his minor child.

23 **THE COURT:** I leave that to the marshal. I let them
24 make that determination, and I'm hopeful, Mr. Jamison, that
25 you'll able to take advantage of the programs that we are going

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1 to make available to you, both in the BOP, but I'm thinking
2 more also on supervised release. You're not a dot on the map
3 to the Court and you're not a dot on the map to probation.
4 They will be extremely invested in your care and your treatment
5 and your integration back into society, because the goal is to
6 not see you back here, either in federal court or have you back
7 in state court. I hope you'll work with them. You didn't
8 really have a chance when you put on supervised release for
9 your last offense, but I hope we'll have an opportunity this
10 time.

11 I will also advise you that you do have a right to
12 appeal the sentence that I've just imposed. Any appeal would
13 have to be filed within 14 days of the date that I enter the
14 final judgment here or any -- 14 days of any notice of appeal
15 that's filed by the Government, and if you're unable to pay the
16 costs of the appeal, you may apply for leave to appeal without
17 the prepayment of those costs, and you may also seek the
18 assistance of the clerk in preparing a notice of appeal.

19 All right. So with respect to the sentencing with
20 respect to case 19-20798, is there anything further that we
21 need to do on that matter? Ms. Nee anything for the
22 Government?

23 **MS. NEE:** No, your Honor.

24 **THE COURT:** And, Mr. Schulman, anything for
25 Mr. Jamison?

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1 **MR. SCHULMAN:** No, your Honor.

2 **THE COURT:** And, Ms. Grewe, anything from probation?

3 **PROBATION OFFICER:** Your Honor, the only thing I
4 would indicate is on the section where there's a recommendation
5 for FCI Milan. The BOP does prefer if not Milan, closest to
6 Michigan as possible. That way, if he doesn't qualify for
7 Milan, they'll go from there.

8 **THE COURT:** All right. Thank you, let's include that
9 language.

10 All right. So then we need to address the supervised
11 release violation petition which, again, is case number
12 10-20079, and after Mr. Jamison served his 84-month sentence
13 for prior gun and drug offenses, he began his three-year term
14 of supervised release on September 15, 2018. He was charged
15 with violating the conditions of his supervised release,
16 including for the criminal activity he was just sentenced for,
17 and, indeed, this hearing has been delayed for a long time
18 pending the sentencing.

19 The amended violation report was issued on
20 January 2nd of 2020 charging Mr. Jamison with three violations
21 of the mandatory conditions that he not commit another crime,
22 one based on the gun possession he plead guilty and was just
23 sentenced for, one based on an alleged assault of his
24 exgirlfriend, and one based on an incident in which he tried to
25 sell marijuana to his probation officer. That's ECF number 42.

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1 Mr. Jamison had his initial appearance on the
2 supervised release violation charges back in January of 2020
3 before Magistrate Judge Hluchaniuk. He was advised of the
4 violations and advised of his rights during that proceeding,
5 including the right to counsel. He waived a preliminary
6 hearing and, following a hearing, was ordered detained pending
7 that proceeding, which order I affirmed.

8 Mr. Jamison, you do have a right to have counsel
9 during this supervised release violation proceeding. I believe
10 at the time you were in front of Judge Hluchaniuk, you had been
11 represented by the Federal Community Defender's Office.
12 Mr. Schulman is now representing you. He's present with you
13 today.

14 Do you wish to continue with him as your lawyer for
15 the supervised release violation proceeding?

16 **THE DEFENDANT:** Yes, ma'am.

17 **THE COURT:** And, Mr. Schulman, have you and
18 Mr. Jamison had an opportunity to review the amended violation
19 report?

20 **MR. SCHULMAN:** Yes, your Honor.

21 **THE COURT:** Were you able to discuss the charges in
22 that report?

23 **MR. SCHULMAN:** Yes.

24 **THE COURT:** And we've already had a discussion, and
25 the Government has agreed that as a result of Mr. Jamison's

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1 prior guilty plea, which covers violation number 1, that the
2 Government will dismiss without prejudice violations 2 and 3,
3 and so can we all agree that Mr. Jamison has already admitted
4 violation 1, Ms. Nee?

5 **MS. NEE:** Yes, your Honor.

6 **THE COURT:** Do we need to go back through that, do
7 you think?

8 **MS. NEE:** I think it would be sufficient if the
9 Defendant here acknowledges that he is pleading guilty to the
10 first violation as a result of the factual basis that was
11 previously admitted in the case from 2019; I think that would
12 be sufficient.

13 **THE COURT:** All right. Mr. Schulman?

14 **MR. SCHULMAN:** Yes, your Honor. I mean, it speaks
15 for itself. He's plead guilty, which is a violation of his
16 supervised release.

17 **THE COURT:** All right. And so, Mr. Jamison, I know
18 that you've had an opportunity to review the amended violation
19 report and to discuss it with Mr. Schulman, and do you agree
20 that violation number 1, as set forth in the report, is, in sum
21 and substance, what you plead guilty to in the other case that
22 we just sentenced you for?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** And I should ask you, are you presently
25 under the influence of --

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1 **THE DEFENDANT:** No.

2 **THE COURT:** -- any controlled substances, any
3 medications?

4 **THE DEFENDANT:** No.

5 **THE COURT:** Has there been any change in your mental
6 history, your mental health since I took your guilty plea?

7 **THE DEFENDANT:** No.

8 **THE COURT:** And I asked you at the time of your plea
9 if anyone promised you anything to plead guilty there.
10 Similarly, here, has anyone made any promises to you to get you
11 to admit violation number 1?

12 **THE DEFENDANT:** No.

13 **THE COURT:** Anyone threatened you in any way, coerced
14 you, put any duress upon you to get you to admit violation 1?

15 **THE DEFENDANT:** No.

16 **THE COURT:** And do you understand by pleading guilty
17 to violation 1, that that could result in the revoking of your
18 supervised release and putting you -- giving you additional
19 jail time?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** And so understanding that, do you still
22 wish to admit the violation, violation number 1?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** And are you admitting this violation
25 because the facts are true and accurate and that's what you

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1 did?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** And are you admitting this violation
4 knowingly and voluntarily?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** All right. I will accept the plea to
7 violation number 1. I will dismiss without prejudice
8 violations 2 and 3.

9 And, with that, are the parties prepared to proceed
10 to sentencing, Ms. Nee?

11 **MS. NEE:** Yes, your Honor.

12 **THE COURT:** And Mr. Schulman?

13 **MR. SCHULMAN:** Yes, your Honor. We'd incorporate our
14 previous arguments and statements.

15 **THE COURT:** All right. Under 7B1.1 and 7B1.4, given
16 that this violation conduct is classified as grade A, and
17 Mr. Jamison has a criminal history category of VI, his advisory
18 guideline imprisonment range for these violations is 30 to 37
19 months, but the statutory maximum is 24 months, and so that
20 becomes the guidelines range.

21 Mr. Schulman has indicated that they adopt their
22 prior argument. Ms. Nee, anything further from the Government?

23 **MS. NEE:** No, your Honor.

24 **THE COURT:** All right. And I don't have much to add
25 in determining the sentence here, Mr. Jamison. I consider

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1 similar factors to the factors that I just considered in
2 connection with your sentencing. Supervised release violations
3 are, in large measure, about respect for and compliance with
4 the Court's order and its supervisory authority, and we have
5 addressed some of your prior problems on supervision and your
6 criminal history, as well as the nature and circumstances of
7 this dangerous offense while you were on supervision, not
8 permitted to possess firearms, not living at the address given
9 to your supervising officer, and so those things do warrant a
10 sentence that accounts for its seriousness and will promote
11 deterrence.

12 I have to consider the lack of respect for the law
13 and protection of the public, but I've also weighed this
14 against the other factors that I considered with your
15 sentencing, your daughter, your education, the harshness of
16 your detention during the pandemic, the fact that you will be
17 serving a lengthy sentence on the underlying gun charge.

18 And so considering all of those things and
19 considering Chapter 7 of the sentencing guidelines, 18 United
20 States Code Section 3853 and a subset of the cross-referenced
21 factors in 18 United States Code Section 3553(a), I'm going to
22 revoke your supervised release and sentence you to 12 months
23 concurrent to the sentence that I gave you in case number
24 19-20798, and I'm not going to impose any further supervised
25 release in this case because you'll have supervised release in

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1 the other case.

2 So are there any objections to that sentence that
3 have not previously been stated, Ms. Nee?

4 **MS. NEE:** No, your Honor.

5 **THE COURT:** And Mr. Schulman?

6 **MR. SCHULMAN:** No, your Honor.

7 **THE COURT:** And Mr. Jamison, you also have a right to
8 appeal that sentence, and the same information that I gave you
9 about your appeal rights also applies with respect to the
10 supervised release violation sentence.

11 All right. Then do the parties feel there's anything
12 further that we need to do in connection with the supervised
13 release violation report, Ms. Nee?

14 **MS. NEE:** No, your Honor.

15 **THE COURT:** And Mr. Schulman?

16 **MR. SCHULMAN:** No, your Honor.

17 **THE COURT:** All right. So anything further that we
18 need to do, in general, for Mr. Jamison's cases, Ms. Nee?

19 **MS. NEE:** No, your Honor.

20 **THE COURT:** And Mr. Schulman?

21 **MR. SCHULMAN:** Yes, your Honor. I know the hour is
22 late, but could the Court direct your clerk to provide, if they
23 have one, a financial affidavit? It's a CJA 23. Because he
24 has a right -- has an appeal as a right, it might take long to
25 get an affidavit to him to fill out. If they have one just

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1 readily available, we'd appreciate that. Other than that, we
2 have nothing else for today's record.

3 **THE COURT:** We can print one and then maybe provide
4 it to the marshals to give to Mr. Jamison in detention or to
5 Mr. Schulman.

6 **MR. SCHULMAN:** Yes.

7 **THE COURT:** Okay. Very good. We will do that.

8 And, Miss Grewe, anything further from probation?

9 **PROBATION OFFICER:** No. Just to note, your Honor,

10 that I am here on behalf of Warren Henson.

11 **THE COURT:** Yes, I should have done. Thank you, and
12 thank you for standing in.

13 All right. Then with respect to both cases, we may
14 be adjourned, and, Mr. Jamison, good luck to you. Take care of
15 yourself.

16 **THE DEFENDANT:** Thank you.

17 **MR. SCHULMAN:** Thank you.

18 **CASE MANAGER:** All rise. Court is adjourned.

19 (Proceedings concluded 4:58 p.m.)

20 - - -
21 **C E R T I F I C A T I O N**

22 I, Andrea E. Wabeke, official court reporter for the
23 United States District Court, Eastern District of Michigan,
24 Southern Division, appointed pursuant to the provisions of
25 Title 28, United States Code, Section 753, do hereby certify
that the foregoing is a correct transcript of the proceedings
in the above-entitled cause on the date hereinbefore set forth.
/s/Andrea E. Wabeke
Official Court Reporter
RMR, CRR, CSR

November 4, 2022
Date

APPENDIX C: Judgment, R. 84, PgID 581-587

UNITED STATES DISTRICT COURT
Eastern District of Michigan

UNITED STATES OF AMERICA

v.

Rajon Jamison

§ JUDGMENT IN A CRIMINAL CASE

§

§

§

Case Number: 0645 4:19CR20798 (1)

USM Number: 46293-039

§ Sanford A. Shulman

§ Defendant's Attorney

THE DEFENDANT:

| | | |
|-------------------------------------|---------------------------------------------------------------------|---------------------------|
| <input checked="" type="checkbox"/> | pleaded guilty to count(s) | 1, Superseding Indictment |
| <input type="checkbox"/> | pleaded nolo contendere to count(s) which was accepted by the court | |
| <input type="checkbox"/> | 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

18 U.S.C. § 922(g), Possession of Firearms by a Prohibited Person

| <u>Offense Ended</u> | <u>Count</u> |
|----------------------|--------------|
| 10/29/2019 | 1 |

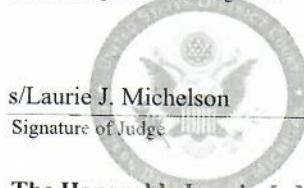
The defendant is sentenced as provided in pages 2 through of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)
 Count 1 of the Indictment is are dismissed on the motion of the United States

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

9/16/2022

Date of Imposition of Judgment



s/Laurie J. Michelson

Signature of Judge

The Honorable Laurie J. Michelson
United States District Judge

Name and Title of Judge

09/19/2022

Date

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798 (1)

IMPRISONMENT

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

188 months concurrent with the sentence imposed (12 months custody) on his supervised release violation under Docket No. 10CR20079-1.

The costs of incarceration are waived.

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

The Court recommends placement at FCI Milan or a facility close to Michigan and the defendant's participation in the Residential Drug Abuse Program (RDAP)

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

90

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798 (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years. The costs of supervision are waived.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798 (1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798 (1)

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). Such programs may include group sessions led by a counselor or participation in a program administered by the probation office.
2. You must submit to a psychological/psychiatric evaluation as directed by the probation officer.
3. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
4. You must submit your person, residence, office, vehicle(s), papers, business or place of employment, and any property under your control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner based upon a reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; you must warn any residents that the premises may be subject to searches.

DEFENDANT: Rajon Jamison
 CASE NUMBER: 0645 4:19CR20798 (1)

CRIMINAL MONETARY PENALTIES

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

| TOTALS | Assessment | JVTA Assessment* | Fine | Restitution |
|---------------|-------------------|-------------------------|-------------|--------------------|
| | \$100.00 | Not applicable | None | None |

- The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* 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. 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 it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:

* 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: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798 (1)

SCHEDEULE OF PAYMENTS

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

- A Lump sum payments of \$100.00 due immediately (Special Assessment)
 - 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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

- Joint and Several

Restitution is joint and several with the following co-defendants and/or related cases, in the amount specified below:

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- Defendant shall receive credit on «dft_his_her» restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- 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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798
DISTRICT: Eastern District of Michigan

**STATEMENT OF REASONS
(Not for Public Disclosure)**

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

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

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

1. **Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court (briefly summarize the changes, including changes to base offense level, or specific offense characteristics):**
2. **Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):**
The Court granted the defendant a two level reduction for Acceptance of Responsibility pursuant to USSG § 3E1.1(a)
3. **Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations):**
4. **Additional Comments or Findings (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it):**

¶30 delete last sentence in section. Add language that defendant is alleged to have assaulted his girlfriend on September 21, 2019 and attempted to sell marijuana to his probation officer on June 26, 2019, these were the allegations in the petition but were later dismissed in the violation hearing following the sentencing.

¶44 remove information about residing together, indicate they will co-parent. "The probation department spoke to Ms. Major, and she has advised she has "stepped away" from the relationship with JAMISON but they will co-parent Heavenly."

C. **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**

Applicable Sentencing Guideline *(if more than one guideline applies, list the guideline producing the highest offense level):* _____

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

A. One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.

B. One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
 findings of fact in this case (Specify): _____
 substantial assistance (18 U.S.C. § 3553(e))
 the statutory safety valve (18 U.S.C. § 3553(f))

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

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

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798
DISTRICT: Eastern District of Michigan

STATEMENT OF REASONS

| | |
|--------------------------------------------------------------------|-----------------------|
| Total Offense Level: | 31 |
| Criminal History Category: | VI |
| Guideline Range (<i>after application of §5G1.1 and §5G1.2</i>): | 188 months-235 months |
| Supervised Release Range: | 2 years-5 years |
| Fine Range: | \$30,000-\$250,000 |

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

DEFENDANT: Rajon Jamison
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DISTRICT: Eastern District of Michigan

STATEMENT OF REASONS

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

- A. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: Sufficient but not greater than necessary
- C. The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. *(Also complete Section V)*
- D. The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

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

A. The sentence imposed departs *(Check only one):*

- above the guideline range
- below the guideline range

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

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

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

| | | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------|-----------------------------------|---------------------------------|------------------------------------|
| <input type="checkbox"/> 4A1.3 | Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 | Death | <input type="checkbox"/> 5K2.12 | Coercion and Duress |
| <input type="checkbox"/> 5H1.1 | Age | <input type="checkbox"/> 5K2.2 | Physical Injury | <input type="checkbox"/> 5K2.13 | Diminished Capacity |
| <input type="checkbox"/> 5H1.2 | Education and Vocational Skills | <input type="checkbox"/> 5K2.3 | Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 | Public Welfare |
| <input type="checkbox"/> 5H1.3 | Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 | Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 | Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 | Physical Condition | <input type="checkbox"/> 5K2.5 | Property Damage or Loss | <input type="checkbox"/> 5K2.17 | High-Capacity Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 | Employment Record | <input type="checkbox"/> 5K2.6 | Weapon | <input type="checkbox"/> 5K2.18 | Violent Street Gang |
| <input type="checkbox"/> 5H1.6 | Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 | Disruption of Government Function | <input type="checkbox"/> 5K2.20 | Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 | Military Service | <input type="checkbox"/> 5K2.8 | Extreme Conduct | <input type="checkbox"/> 5K2.21 | Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 | Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 | Criminal Purpose | <input type="checkbox"/> 5K2.22 | Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 | Substantial Assistance | <input type="checkbox"/> 5K2.10 | Victim's Conduct | <input type="checkbox"/> 5K2.23 | Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 | Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 | Lesser Harm | <input type="checkbox"/> 5K2.24 | Unauthorized Insignia |
| <input type="checkbox"/> Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual (see "List of Departure Provisions" following the Index in the Guidelines Manual). <i>(Please specify):</i> | | | | | |

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

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798
DISTRICT: Eastern District of Michigan

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE (If applicable)

A. The sentence imposed is (Check only one):

- above the guideline range
- below the guideline range

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

1. Plea Agreement

- binding plea agreement for a variance accepted by the court
- plea agreement for a variance, which the court finds to be reasonable
- plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- government motion for a variance
- defense motion for a variance to which the government did not object
- defense motion for a variance to which the government objected
- joint motion by both parties

3. Other

- Other than a plea agreement or motion by the parties for a variance

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

The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)

| | | |
|------------------------------------------------------------------------------------|------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Mens Rea | <input type="checkbox"/> Extreme Conduct | <input type="checkbox"/> Dismissed/Uncharged Conduct |
| <input type="checkbox"/> Role in the Offense | <input type="checkbox"/> Victim Impact | |
| <input type="checkbox"/> General Aggravating or Mitigating Factors (Specify) _____ | | |

The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)

| | |
|------------------------------------------------------------------------|---------------------------------------------------------|
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition |
| <input type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other (Specify): _____ |
| <input type="checkbox"/> Issues with Criminal History (Specify): _____ | |

To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))

To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))

To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (Specify in section D)

To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

Acceptance of Responsibility Conduct Pre-trial/On Bond Cooperation Without Government Motion for Departure

Early Plea Agreement Global Plea Agreement

Time Served (not counted in sentence) Waiver of Indictment Waiver of Appeal

Policy Disagreement with the Guidelines (*Kimbrough v. U.S.*, 552 U.S. 85 (2007)). (Specify): _____

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DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798
DISTRICT: Eastern District of Michigan

STATEMENT OF REASONS

Other (Specify): _____

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

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798
DISTRICT: Eastern District of Michigan

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. **Restitution not applicable.**

B. **Total amount of restitution: None«REST»**

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

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

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

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

DEFENDANT: Rajon Jamison
CASE NUMBER: 0645 4:19CR20798
DISTRICT: Eastern District of Michigan

STATEMENT OF REASONS

Defendant's Soc. Sec. No.: 372-88-4852
Defendant's Date of Birth: 11/14/1980
Defendant's Residence Address: 2837 Brandon Street Flint, MI 48503
Defendant's Mailing Address: Same as residence.

09/16/2022

Date of Imposition of Judgment

s/Laurie J. Michelson
Signature of Judge

The Honorable Laurie J Michelson
United States District Judge

Name and Title of Judge

09/19/2022

Date

APPENDIX D: Published Opinion of the Sixth Circuit Court of Appeals United States of America vs. Rajon Jamison (22-1840)
85 F.4th 796 (6th Cir. 2023)

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 23a0236p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RAJON JAMISON,

Defendant-Appellant.

No. 22-1840

Appeal from the United States District Court for the Eastern District of Michigan at Flint.
No. 4:19-cr-20798-1—Laurie J. Michelson, District Judge.

Decided and Filed: October 26, 2023

Before: KETHLEDGE, THAPAR, and MATHIS, Circuit Judges.

COUNSEL

ON BRIEF: Sanford A. Schulman, Detroit, Michigan, for Appellant. Ann Nee, UNITED STATES ATTORNEY'S OFFICE, Flint, Michigan, for Appellee.

OPINION

MATHIS, Circuit Judge. Rajon Jamison challenges the enhanced sentence he received under the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), after pleading guilty to a federal firearm offense. We must decide whether a violation of Michigan’s felony-firearm statute is a “violent felony” under the ACCA when a juvenile is convicted of that offense for possessing a firearm while committing second-degree murder. For the reasons below, we hold that it is. Thus, we affirm.

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United States v. Jamison

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I.

In October 2019, officers in Flint, Michigan, recovered ammunition and three firearms from Jamison's suspected residence. A grand jury returned a one-count indictment against Jamison for being a felon in possession of firearms and ammunition, in violation of 18 U.S.C. § 922(g)(1). The government referenced 18 U.S.C. § 924(e)—the ACCA—in the indictment because it believed that Jamison's criminal history qualified him for an ACCA sentence enhancement.

On the morning that Jamison's case was set for trial, he pleaded guilty to the § 922(g) violation without a plea agreement. At sentencing, the district court found that Jamison had the following prior convictions that were violent felonies under the ACCA: (1) a 1994 conviction as a juvenile in Michigan for second-degree murder and for felony firearm; (2) a 2011 conviction in Michigan for assault with intent to commit great bodily harm less than murder and for felony firearm; and (3) a 2012 conviction in federal court to one count of possession with intent to distribute controlled substances. The district court sentenced Jamison to 188 months' imprisonment.

Jamison timely appealed. Jamison argues that the district court erred in sentencing him under the ACCA because he does not have three prior convictions for violent felonies or serious drug offenses. And, assuming that the ACCA does not apply, Jamison argues that his non-ACCA sentencing range should be reduced by two offense levels. We address the arguments in turn.

II.

The ACCA mandates a severe increase in certain repeat offenders' sentences. It "enhances the sentence of anyone convicted under 18 U.S.C. § 922(g) of being a felon in possession of a firearm if he has three or more prior convictions," state or federal, that are a "violent felony or a serious drug offense, or both, committed on occasions different from one another." *Borden v. United States*, 141 S. Ct. 1817, 1822 (2021); 18 U.S.C. § 924(e)(1). If a defendant has three such prior convictions on his record at the time of his § 922(g) conviction,

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the ACCA turns a “10-year maximum sentence . . . into a 15-year minimum one.”¹ *Borden*, 141 S. Ct. at 1822 (citations omitted).

We use the categorical approach to determine if a prior conviction qualifies as a violent felony or a serious drug offense. *United States v. Fields*, 53 F.4th 1027, 1043 (6th Cir. 2022); *United States v. Burris*, 912 F.3d 386, 392 (6th Cir. 2019) (en banc). Using that approach, “the facts of a given case are irrelevant.” *Borden*, 141 S. Ct. at 1822. We instead look only to the elements of the alleged predicate offense and ask if it “‘by definition, . . . falls within [the] category’ of offenses described by the federal statute.” *Fields*, 53 F.4th at 1043 (quoting *Mellouli v. Lynch*, 575 U.S. 798, 805 (2015)) (alteration in original).

In using the categorical approach, we “must presume that the [previous] conviction rested upon nothing more than the least of the acts criminalized under” the alleged predicate offense. *Id.* at 1043–44 (alteration in original). It is a hypothetical inquiry that asks if “‘someone [could] commit [the] crime of conviction without’ meeting the federal enhancement’s criteria.” *Id.* at 1044 (quoting *Pereida v. Wilkinson*, 141 S. Ct. 754, 762 (2021)) (alterations in original). If he can, then that conviction cannot serve as a predicate offense that warrants an enhancement.

As mentioned above, the district court found that Jamison’s 1994 juvenile conviction, his 2011 conviction for assault with intent to commit great bodily injury and felony firearm, and his 2012 federal drug conviction were all violent felonies under the ACCA. We consider whether the district court erred.

A.

As an initial matter, Jamison has forfeited some of his sentencing challenges on appeal. A defendant forfeits issues raised on appeal that he fails to develop “in any meaningful way.” *United States v. Kerley*, 784 F.3d 327, 340 (6th Cir. 2015); *see also United States v. Bradley*, 917 F.3d 493, 509 (6th Cir. 2019) (defendant “failed sufficiently to develop his lesser-included offense argument and thus forfeited the argument”). In his brief on appeal, Jamison asserts only “that his prior convictions including his conviction for conspiracy to commit armed robbery do

¹In 2022, Congress passed the Bipartisan Safer Communities Act which increased the penalty for a § 922(g) violation to 15 years from 10 years. 18 U.S.C. § 924(a)(8).

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not qualify him as an armed career offender[.]”² D. 23 at p.25. Jamison failed to develop this argument as it relates to his 2012 drug conviction and his 2011 conviction for assault with intent to commit great bodily injury and felony firearm. He has therefore forfeited any challenge to the district court relying on these convictions as ACCA predicate offenses.

B.

That leaves Jamison’s 1994 juvenile conviction for felony firearm and second-degree murder. A juvenile conviction³ qualifies as a violent felony under the ACCA’s elements clause if it: (1) “has as an element the use, attempted use, or threatened use of physical force against the person of another,” (2) is punishable by imprisonment for more than one year; and (3) involves “the use or carrying of a firearm, knife, or destructive device.” 18 U.S.C. § 924(e)(2)(B)(i); *United States v. Eubanks*, 617 F.3d 364, 369 (6th Cir. 2010). We review a district court’s finding that a crime is a violent felony under the ACCA de novo. *United States v. Amos*, 501 F.3d 524, 526 (6th Cir. 2007) (citing *United States v. Hargrove*, 416 F.3d 486, 494 (6th Cir. 2005)).

Below, we consider whether Jamison’s juvenile conviction for felony firearm under Michigan law qualifies as a violent felony under the ACCA, which in turns requires us to consider whether second-degree murder under Michigan law is a violent felony.

1.

A person is guilty of a felony-firearm offense under Michigan law when the person “carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony.” Mich. Comp. Laws Ann. § 750.227b(1). Such a conviction “shall be punished by imprisonment for 2 years.” *Id.* The elements of felony firearm are: (1) possessing a firearm (2) during the commission, or attempted commission, of another felony. *People v. Avant*, 597 N.W.2d 864, 869 (Mich. Ct. App. 1999); *Sandoval Hernandez v. Barr*, 764 F. App’x 469,

²The district court did not find that Jamison’s conviction for conspiracy to commit armed robbery qualified as an ACCA predicate offense. Therefore, we need not consider any alleged error related to that conviction.

³The ACCA uses the term “act of delinquency.” An act of delinquency is nothing more than “[a] crime committed by a juvenile.” *United States v. Mekediak*, 510 F. App’x 348, 351 (6th Cir. 2013), *abrogated on other grounds by Shuti v. Lynch*, 828 F.3d 440 (6th Cir. 2016).

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472 (6th Cir. 2019). But any felony could satisfy the another-felony element—including a felony that does not satisfy the ACCA’s elements clause. This statute therefore is too broad to categorically qualify as a violent felony. And so, we must decide “whether the statute in question is divisible because it sets out multiple separate crimes.” *Burriss*, 912 F.3d at 393.

Michigan’s felony-firearm statute is divisible because there are alternate ways to commit the crime. *See Sandoval Hernandez*, 764 F. App’x at 473–75; *Milton v. United States*, 35 F.3d 566, at *2 (6th Cir. 1994) (unpublished table decision). Specifically, each different felony that a defendant commits or attempts to commit while possessing a firearm constitutes an alternate way of violating the felony-firearm statute. Michigan’s model jury instruction for felony firearm proves the point. It provides:

- (1) The defendant is also charged with the separate crime of possessing a firearm at the time [he/she] committed [or attempted to commit] the crime of _____.
- (2) To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:
- (3) First, that the defendant committed [or attempted to commit] the crime of _____, which has been defined for you. It is not necessary, however, that the defendant be convicted of that crime.
- (4) Second, that at the time the defendant committed [or attempted to commit] that crime [he/she] knowingly carried or possessed a firearm.

Mich. Model Crim. Jury Instruction § 11.34 (Mich. Sup. Ct. Comm. on Model Crim. Jury Instructions 2017). The “blank spaces indicate that the prosecution is required to prove that a defendant committed a specific underlying felony to obtain a felony-firearm conviction.” *Sandoval Hernandez*, 764 F. App’x at 475. Therefore, the felony that underlies a felony-firearm offense is an element of the crime. *See People v. Morton*, 377 N.W.2d 798, 801 (Mich. 1985) (“[T]he Legislature intended, with only a few narrow exceptions,⁴ that every felony committed by a person possessing a firearm result in a felony-firearm conviction.”); *see also People v. Mitchell*, 575 N.W.2d 283, 285 (Mich. 1998); *Sandoval Hernandez*, 764 F. App’x at 474

⁴None of those exceptions applies here.

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(holding that “the commission of a *particular* felony is an element of the offense” of felony firearm).

Because the felony-firearm statute is divisible, we use the modified categorical approach “to determine which alternative element in a divisible statute formed the basis of the defendant’s conviction.” *Descamps v. United States*, 570 U.S. 254, 278 (2013). This approach allows us to look past “the mere fact of conviction” and look to other sources to determine if the defendant’s prior conviction falls within the conduct the ACCA penalizes. *See Taylor v. United States*, 495 U.S. 575, 602 (1990); *Shepard v. United States*, 544 U.S. 13, 19 (2005) (holding that *Taylor*’s reasoning extended to prior convictions stemming from guilty pleas as well as those stemming from jury verdicts). These other sources include charging documents, written plea agreements, transcripts of plea colloquies, and “any explicit factual finding by the trial judge to which the defendant assented.” *Shepard*, 544 U.S. at 16.

The state-court documents related to Jamison’s 1994 felony-firearm conviction reflect that Jamison possessed a firearm while committing second-degree murder. Therefore, Jamison’s juvenile felony-firearm conviction qualifies as an ACCA predicate offense only if second-degree murder is a violent felony under the ACCA.

2.

We use the categorical approach to determine if second-degree murder under Michigan law is a violent felony within the strictures of the ACCA’s elements clause. *Fields*, 53 F.4th at 1043. Under that approach, we consider whether any of the acts criminalized by the state statute, “even the least culpable,” do not match the elements clause. *Borden*, 141 S. Ct. at 1822. But focusing on the least culpable conduct under the state statute does not mean we should let our “legal imagination” run wild. *Moncrieffe v. Holder*, 569 U.S. 184, 191 (2013) (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). Instead, “there must be ‘a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime.’” *Id.*

We look to Michigan law to determine if second-degree murder includes conduct that falls outside of the ACCA’s elements clause. *Burris*, 912 F.3d at 398. In Michigan, a prosecutor