

APPENDIX - A

You have received a *jp*ay letter, the fastest way to get mail

From : Tinesha Walker, CustomerID: 22857404
To : KESEAN WILSON, ID: 812224
Date : 2/17/2023 10:15:57 AM EST, Letter ID: 1701939377
Location : LCF
Housing : E1049TOPE1

7:07



By Danielle Salisbury |
DSalisbury@mlive.com



David Birdsall

JACKSON, MI – Jackson County District Judge R. Darryl Mazur arraigned an alleged bank robber Friday afternoon.

David Floyd Birdsall of Summit Township is charged with armed robbery, punishable by up to life in prison, and using a firearm in the commission of a felony, which would add two years to any longer prison sentence he might receive.

Police and prosecutors allege Birdsall, 23, used a handgun to rob Jackson City County Credit Union, 2320 Francis St., about 9:30 a.m. Thursday.

 [mlive.com](https://www.mlive.com)

***jp*ay Tell your friends and family to visit www.jp.com to write letters and send money!**

You have received a *jp*ay letter, the fastest way to get mail

From : Tinesha Walker, CustomerID: 22857404
To : KESEAN WILSON, ID: 812224
Date : 2/17/2023 10:16:09 AM EST, Letter ID: 1701939509
Location : LCF
Housing : E1049TOPE1

7:07 



Mazur ordered him held in the Jackson County Jail on a \$500,000 bond.

The state charges, however, might be dropped.

Chief Assistant Prosecutor Mark Blumer told Mazur there is a "high probability" Birdsall will be federally prosecuted.

Blumer said the prosecutor's office will yield its case if the U.S. attorneys decide to pursue it.

It is a federal crime to rob any national or state member bank of the Federal Reserve.

Possible penalties are harsher in federal court, crimes are easier to prove and the U.S. government has more resources, Blumer said.

Blumer said police found Birdsall in possession of the firearm believed to be used in the robbery. He also had "tagged" money from the bank, and confessed the crime to officers, Blumer told Mazur.

About 9 p.m. Thursday, less than 12 hours after the robbery, Jackson police officers

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APPENDIX - B

CTN: 38-12002847-01 CCL CH

2012002847 CH

STATE OF MICHIGAN
12th JUDICIAL DISTRICT
4th JUDICIAL CIRCUIT

COMPLAINT
FELONY

CASE NO.: 2012002847
DISTRICT:
CIRCUIT:

District Court ORI: MI- M1380025J

312 S. JACKSON ST. JACKSON, MI 49201 517-788-4260

Circuit Court ORI: MI- M1380015J

312 S. Jackson St Jackson, MI 49201 517-788-4268

THE PEOPLE OF THE
STATE OF MICHIGAN
V KESEAN CALVIN WILSON
1024 PIGEON STREET
JACKSON, MI 49203

Victim or complainant

Complaining Witness

Co-defendant(s)

BREANNA CRAWFORD

Date: On or about

10/10/2012

City/Twp./Village

COUNTY OF JACKSON

County in Michigan

JACKSON

Defendant TCN

Defendant CTN

38-12002847-01

Defendant SID

3592429X

Defendant DOB

03/09/1992

Police agency report no.

38JCSD 1382772412

Charge

See below

DLN

Vehicle Type

Defendant DLN

NA

STATE OF MICHIGAN, COUNTY OF JACKSON

The complaining witness says that on the date and at the location described above, the defendant contrary to law:

COUNT 1: ROBBERY - ARMED

did in the course of committing a larceny of money, use force or violence against a person present, Heather Schoendorf, and in the course of that conduct possessed handgun, a dangerous weapon; contrary to MCL 750.529. [750.529]

FELONY: Life or any term of years, unless aggravated assault or serious injury involved, then not less than 2 Years; DNA to be taken upon arrest.

COUNT 2: WEAPONS - FELONY FIREARM

did carry or have in his/her possession a firearm, to-wit: a handgun, at the time he/she committed or attempted to commit a felony, to-wit: armed robbery; contrary to MCL 750.227b. [750.227B-A]

FELONY: 2 Years consecutively with and preceding any term of imprisonment imposed for the felony or attempted felony conviction; Mandatory forfeiture of weapon or device [See MCL 750.239]

COUNT 3: ASSAULT WITH A DANGEROUS WEAPON(FELONIOUS ASSAULT)

did make an assault upon Charles Dennett with a dangerous weapon, to-wit: a handgun, but without intending to commit the crime of murder or to inflict great bodily harm less than the crime of murder; contrary to MCL 750.82. [750.82].

FELONY: 4 Years and/or \$2,000.00; DNA to be taken upon arrest.

COUNT 4: BANK ROBBERY

did with the intent to commit the crime of larceny, put in fear Heather Schoendorf for the purpose of stealing money from a Credit Union; contrary to MCL 750.531. [750.531-A]

FELONY: Life or any term of years

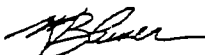
Upon conviction of a felony or an attempted felony court shall order law enforcement to collect DNA identification profiling samples.

The complaining witness asks that the defendant be apprehended and dealt with according to law.

(Peace Officers Only) I declare that the statements above are true to the best of my information, knowledge and belief.

Warrant authorized on

by:



Date

10/10/2012
2:09:44 PM

MARK E. BLUMER P24029
CHIEF ASSISTANT PROSECUTOR

Complaining Witness Signature

Subscribed and sworn to before me on

Date

Judge/Magistrate/Clerk

Bar no.

APPENDIX - C

5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

D-1 DAVID FLOYD BIRDSALL,

Defendant.

Case:2:12-cr-20468
Judge: Lawson, David M.
MJ: Grand, David R.
Filed: 07-17-2012 At 04:03 PM
INDI USA V DAVID FLOYD BIRDSALL (LG
)

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

18 U.S.C. § 2113(a) - *Bank Robbery*

D-1 DAVID FLOYD BIRDSALL

On or about July 5, 2012, in the Eastern District of Michigan, Defendant DAVID FLOYD BIRDSALL, by force, violence and intimidation did take from the person or presence of another money, namely \$8,139.00, belonging to and in the care, custody, control, management, and possession of the Jackson City County Credit Union, a bank whose deposits were then insured by the National Credit Union Administration, in violation of Title 18, United States Code, Section 2113(a).

COUNT TWO

18 U.S.C. §924(c) - *Possession of Firearm in Furtherance of a Crime of Violence*

D-1 DAVID FLOYD BIRDSALL

On or about July 5, 2012, in the Eastern District of Michigan, Defendant DAVID FLOYD BIRDSALL, knowingly used, carried, and brandished the following firearm: one (1) Sterling, .25 caliber handgun, with an obliterated serial number, during and in relation to a crime of violence, namely robbery of the Jackson City County Credit Union, for which he may be prosecuted in a court of the United States, for the crime of Bank Robbery, in violation of Title 18, United States Code, Section 2113(a), all of which constitutes a violation of Title 18, United States Code, Section 924 (c)(1)(A).

COUNT THREE

18 U.S.C. § 922(g)(1) - *Felon in Possession of a Firearm*

D-1 DAVID FLOYD BIRDSALL

On or about July 5, 2012, in the Eastern District of Michigan, Defendant DAVID FLOYD BIRDSALL, having been previously convicted of at least one crime punishable by imprisonment for a term exceeding one year (felony offense), did knowingly possess the following firearm: one (1) Sterling, .25 caliber handgun, with an obliterated serial number, which was manufactured outside the State of Michigan, and thus traveled in interstate or foreign commerce, in violation of Title 18, United States Code, Section 922(g)(1).

COUNT FOUR

18 U.S.C. § 922(k) - *Possession of a Firearm with an Obliterated Serial Number*

D-1 DAVID FLOYD BIRDSALL

On or about July 5, 2012, in the Eastern District of Michigan, Defendant DAVID FLOYD BIRDSALL, knowingly possessed a firearm, namely one (1) Sterling, .25 caliber handgun, that had been shipped and transported in interstate commerce, from which the manufacturer's serial number had been removed, altered and obliterated, in violation of Title 18, United States Code, Sections 922(k) and 924(a)(1)(B).

FORFEITURE ALLEGATION

18 U.S.C. § 924(d) - *Firearms and ammunition forfeiture*

D-1 DAVID FLOYD BIRDSALL

1. The allegations contained in Counts 1 - 4 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c).

2. Upon conviction of any of the offenses in violation of Title 18, United States Code, Section 2113(a), as set forth in Count 1 of this Indictment or Title 18, United States Code, Section 924(c) as set forth in Count 2 of this Indictment, or Title 18, United States Code, Section 922(g)(1), as set forth in Count 3 of this Indictment, or Title 18, United States Code, Section 922(k), as set forth in Count 4 of this Indictment, the Defendant DAVID FLOYD BIRDSALL, shall forfeit to the United States pursuant to Title 18, United States Code, Section 924(d) and

Title 28, United States Code, Section 2461(c), any firearms and ammunition involved in or used in the knowing commission of the offenses.

THIS IS A TRUE BILL.

S/Grand Jury Foreperson

GRAND JURY FOREPERSON

Date: 7/17/2012

BARBARA L. McQUADE
United States Attorney

s/Kevin Mulcahy

KEVIN MULCAHY
Assistant United States Attorney
Chief, General Crimes Unit

s/Adriana N. Dydel

ADRIANA N. DYDELL
Special Assistant United States Attorney
211 West Fort Street, Ste 2001
Detroit, MI 48226
(313) 226-9125
email: adriana.dydel@usdoj.gov

United States District Court
Eastern District of Michigan

Criminal Case Co

Case: 2:12-cr-20468
Judge: Lawson, David M.
MJ: Grand, David R.
Filed: 07-17-2012 At 04:03 PM
INDI USA V DAVID FLOYD BIRDSALL (LG)

NOTE: It is the responsibility of the Assistant U.S. Attorney signing this form to co

Reassignment/Recusal Information

This matter was opened in the USAO prior to August 15, 2008

Companion Case Information	Companion Case Number:
This may be a companion case based upon LCrR 57.10 (b)(4) ¹ :	Judge Assigned:
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	AUSA's Initials: AND

Case Title: USA v. D-1 DAVID FLOYD BIRDSALL

County where offense occurred : JACKSON

Check One: ☒ Felony ☐ Misdemeanor ☐ Petty

☐ Indictment/ ☐ Information --- no prior complaint.

☒ Indictment/ ☐ Information --- based upon prior complaint [Case number: 12-30417]

☐ Indictment/ ☐ Information --- based upon LCrR 57.10 (d) [Complete Superseding section below].

Superseding Case Information

Superseding to Case No: _____ Judge: _____

☐ Original case was terminated; no additional charges or defendants.

☐ Corrects errors; no additional charges or defendants.

☐ Involves, for plea purposes, different charges or adds counts.

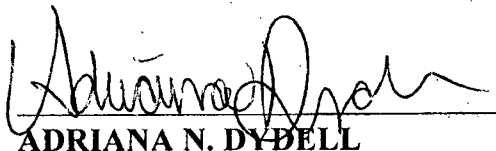
☐ Embraces same subject matter but adds the additional defendants or charges below:

<u>Defendant name</u>	<u>Charges</u>	<u>Prior Complaint (if applicable)</u>
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Please take notice that the below listed Assistant United States Attorneys are the attorneys of record for the above captioned case.

July 17, 2012

Date


ADRIANA N. DYDELL

Assistant United States Attorney

211 W. Fort Street, Suite 2001

Detroit, Michigan 48226

Phone: 313-226-9125

E-Mail: adriana.dydell@usdoj.gov

¹ Companion cases are matters in which it appears that (1) substantially similar evidence will be offered at trial, (2) the same or related parties are present, and the cases arise out of the same transaction or occurrence. Cases may be companion cases even though one of them may have already been terminated.

4

UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan

United States of America

v.

DAVID FLOYD BIRDSALL

Case:2:12-mj-30417

Judge: Unassigned,

Filed: 07-06-2012 At 01:40 PM

CMP USA v DAVID FLOYD BIRDSALL (FMM

)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of JULY 5, 2012 in the county of JACKSON in the
EASTERN District of MICHIGAN, the defendant(s) violated:

Code Section

Offense Description

Title 18, United States Code 2113(a)

Bank Robbery

Title 18, United States Code 924(c)

Possession of a Firearm in Furtherance of a Crime of Violence.

This criminal complaint is based on these facts:

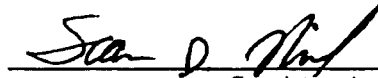
(see Attached Affidavit)

☒ Continued on the attached sheet.

Sworn to before me and signed in my presence.

Date: July 6, 2012

City and state: Detroit, Michigan



Complainant's signature

Sean D. Nicol, Special Agent

Printed name and title



Judge's signature

David R. Grant, U.S. Magistrate Judge

Printed name and title

UNITED STATES DISTRICT COURT

for the
Eastern District of MichiganFILED
case # 12-0709-4255
FID # 8930420

AUG 06 2012

United States of America

v.

DAVID FLOYD BIRDSALL

Case: 2:12-mj-30417

Judge: Unassigned,

Filed: 07-06-2012 At 01:40 PM

CMP USA v DAVID FLOYD BIRDSALL (FMM)

CLERK'S OFFICE-DETROIT-PSG
U.S. DISTRICT COURTI hereby certify that the foregoing is
a true copy of the original on file in this
Office.CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

ARREST WARRANT

To: Any authorized law enforcement officer

BY: 

Deputy

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested) DAVID FLOYD BIRDSALL

who is accused of an offense or violation based on the following document filed with the court:

- ☐ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☒ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

(1) Bank Robbery in violation of Title 18, United States Code 2113(a)

(2) Possession of a Firearm in Furtherance of a Crime of Violence in violation of Title 18, United States Code 924(c)

DAVID R. GRAND

Date: July 6, 2012

Issuing officer's signature

City and state: Detroit, Michigan

DAVID R. GRAND, U.S. MAGISTRATE JUDGE

Printed name and title

Return

This warrant was received on (date) 7/6/2012, and the person was arrested on (date) 7/9/2012
at (city and state) JACKSON, MichiganDate: 7/9/2012

Arresting officer's signature

Sean D. Nicol Special Agent FBI

Printed name and title

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

D-1, DAVID FLOYD BIRDSALL

Defendant.

No. 12-cr-20468

HON. David M. Lawson

OFFENSES:

18 U.S.C. § 2113(a) (Bank Robbery)

18 U.S.C. § 924(c) (Possession of
Firearm in Furtherance of a Crime of
Violence)

MAXIMUM PENALTY: Life

MANDATORY MINIMUM PENALTY: 7
YEARS

MAXIMUM FINE: \$250,000

MAXIMUM SUPERVISED RELEASE: 5 years

FILED
AUG 29 2012
CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, Defendant
DAVID FLOYD BIRDSALL and the government agree as follows:

1. GUILTY PLEAS

A. Counts of Conviction

Defendant will enter a plea of guilty to **Count One** of the Indictment, which
charges Bank Robbery, in violation of 18 U.S.C. § 2113(a); and **Count Two** of the

Indictment, which charges Possession of a Firearm in Furtherance of a Crime of Violence, in violation of 18 U.S.C. § 924(c).

B. Elements of Offense

The elements of Count One are: (1) The Defendant took money from the person or presence of a bank teller, while that money was in the care or custody of Jackson City County Credit Union; (2) Such taking was by force and violence or intimidation; (3) The deposits of Jackson City County Credit Union were then insured by the National Credit Union Administration.

The elements of Count Two are: (1) The Defendant committed the elements of a crime of violence prosecutable in federal court; and (2) The Defendant knowingly possessed and brandished a firearm in furtherance of the crime of violence.

C. Factual Basis for Guilty Pleas

The following facts are a sufficient and accurate basis for Defendant's guilty pleas: On July 5, 2012, Defendant entered the Jackson City County Credit Union in Jackson, MI intending to commit a robbery. Defendant approached a teller, pulled a loaded Sterling .25 caliber handgun with an obliterated serial number from his pocket, brandished it at the teller and handed the teller a black plastic bag. The teller took \$8,139.00 from her teller drawer, including five \$20 bait bills, placed it into the plastic bag and handed it to Defendant who fled on foot. Defendant stipulates

that Jackson City County Credit Union is a bank whose deposits were insured by the National Credit Union Administration on July 5, 2012.

2. SENTENCING GUIDELINES

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, Defendant's guideline range is 46-57 months on Count One, and a consecutive mandatory minimum of 84 months on Count Two, as set forth on the attached worksheets. If the Court finds:

a) that Defendant's criminal history category is higher than reflected on the attached worksheets, or

b) that the offense level should be higher because, after pleading guilty, Defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense(s); or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than 46-57 months on Count One, and/or 84 months on Count Two, the higher guideline range becomes the agreed range. However, if the Court finds that Defendant is a career offender,

an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does *not* authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections a) and b), above.

3. SENTENCE

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Except as provided in the next sentence, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B. However, the Court **must** impose a sentence of imprisonment on Count Two of at least 84 months (7 years).

B. Supervised Release

A term of supervised release follows the term of imprisonment. The Court **must** impose a term of supervised release on Counts One and Two of no less than

3 years. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of **\$200.00** and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

There is no agreement as to fines.

E. Restitution

The Court shall order restitution to every identifiable victim of Defendant's offenses and all other relevant conduct. The victims, and the full amounts of restitution in this case, are as follows:

Jackson City County Credit Union: \$274.00.

4. Forfeiture of Firearms

Defendant agrees, pursuant to 18 U.S.C. § 924(d) to the forfeiture of the following firearm as property involved in violation of 18 U.S.C. §§ 924(c) and 2113(a) : one Sterling .25 caliber handgun, with an obliterated serial number.

With respect to the above identified firearm contained within this agreement, the Defendant agrees to the entry of one or more orders of forfeiture of his interest in such property upon application by the United States at, or any

time before, his sentencing in this case.

In entering into this agreement with respect to forfeiture, Defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives his right to challenge any failure by the Court to advise him of his rights with respect to forfeiture, set forth in Federal Rule of Criminal Procedure 11(b)(1)(J). Defendant also expressly waives his right to have a jury determine the forfeitability of his interest in the above identified firearm as provided by Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure.

5. OTHER CHARGES

If the Court accepts this agreement, the government will dismiss all remaining charges in this case. Specifically, the government will dismiss Count Three, Felon in Possession of a Firearm and Count Four, Possession of a Firearm with an Obliterated Serial Number.

6. EACH PARTY'S RIGHT TO WITHDRAW FROM THIS AGREEMENT

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty pleas, if the Court decides to impose a sentence higher than the maximum allowed by Part 3. This is the only reason for which Defendant may withdraw from this agreement. The Court shall advise Defendant that if he does not withdraw his guilty pleas under this circumstance, the Court may impose a sentence greater than the maximum allowed by Part 3.

7. WAIVER OF APPEAL

If the sentence imposed falls within the guideline range recommended by Defendant in Paragraph 2B, above, Defendant waives any right to appeal his convictions. Defendant retains his right to directly appeal the Court's adverse determination of any disputed sentencing issue that was raised at or before the sentencing hearing. The government agrees not to appeal any sentence within the guideline range it has recommended in Paragraph 2B, but retains the right to appeal any determination by the Court to apply a lower range or to impose a sentence below the guideline range that is unreasonable.

8. CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEAS OR VACATION OF CONVICTIONS

If Defendant is allowed to withdraw his guilty pleas or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this

agreement. If additional charges are filed against Defendant within six months after the date the order vacating Defendant's convictions or allowing him to withdraw his guilty pleas becomes final, which charges relate directly or indirectly to the conduct underlying the guilty pleas or to any conduct reflected in the attached worksheets, Defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. PARTIES TO PLEA AGREEMENT

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan.

10. SCOPE OF PLEA AGREEMENT

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were made at any time before the guilty pleas are entered in Court. Thus, no oral or written promises made by the government to Defendant or to the attorney for the Defendant at any time before Defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

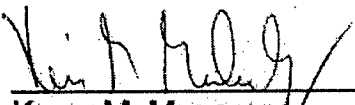
Notwithstanding the previous paragraph, if Defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against Defendant, or any forfeiture claim against any property, by the United States or any other party.


11. ACCEPTANCE OF AGREEMENT BY DEFENDANT

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by **5:00 P.M. on 8/29/2012**. The government reserves the right to modify or revoke this offer at any time before Defendant pleads guilty.

BARBARA L. MCQUADE
United States Attorney



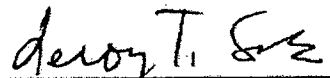
KEVIN M. MULCAHY
CHIEF, GENERAL CRIMES UNIT
ASSISTANT UNITED STATES ATTORNEY



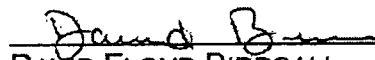
ADRIANA N. DYDELL
SPECIAL ASSISTANT UNITED STATES
ATTORNEY

DATE: 8/29/2012

BY SIGNING BELOW, DEFENDANT ACKNOWLEDGES THAT HE HAS READ (OR BEEN READ) THIS ENTIRE DOCUMENT, UNDERSTANDS IT, AND AGREES TO ITS TERMS. HE ALSO ACKNOWLEDGES THAT HE IS SATISFIED WITH HIS ATTORNEY'S ADVICE AND REPRESENTATION. DEFENDANT AGREES THAT HE HAS HAD A FULL AND COMPLETE OPPORTUNITY TO CONFER WITH HIS LAWYER, AND HAS HAD ALL OF HIS QUESTIONS ANSWERED BY HIS LAWYER.



LEROY T. SOLES
ATTORNEY FOR DEFENDANT



DAVID FLOYD BIRDSALL
DEFENDANT

DATE: 8/29/2012

WORKSHEET A (Offense Levels)

Defendant: DAVID FLOYD BIRDSALL Count: ONE AND TWO

Docket No: 12-cr-20468 Statute: 18 U.S.C. 2113(A); 924(C)

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all "closely related" to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u>2B3.1(a)</u>	<u>Robbery: Base Offense Level</u>	<u>20</u>
<u>2B3.1(b)(1)</u>	<u>Property of a financial institution</u>	<u>2</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

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☒ *If this is the only Worksheet A, check this box and skip Worksheet B.*

☐ *If the defendant has no criminal history, check this box and skip Worksheet C.*

WORKSHEET B (Multiple Counts)**Instructions (U.S.S.G. ch. 3, pt. D):**

- Group the counts of conviction into distinct Groups of Closely Related Counts. "All counts involving substantially the same harm shall be grouped together into a single Group." (See U.S.S.G. § 3D1.2.)
- Determine the offense level applicable to each Group. (See U.S.S.G. § 3D1.3.)
- Determine the combined offense level by assigning "units" to each Group as follows (see U.S.S.G. § 3D1.4):
 - assign 1 unit to the Group with the highest offense level,
 - assign 1 unit to each additional Group that is equally serious as, or 1 to 4 levels less serious than, the Group with the highest offense level,
 - assign ½ unit to each Group that is 5 to 8 levels less serious than the Group with the highest offense level,
 - assign no units to each Group that is 9 or more levels less serious than the Group with the highest offense level.

1. **GROUP ONE:** COUNTS _____
ADJUSTED OFFENSE LEVEL

2. **GROUP TWO:** COUNTS _____
ADJUSTED OFFENSE LEVEL

3. **GROUP THREE:** COUNTS _____
ADJUSTED OFFENSE LEVEL

4. **GROUP FOUR:** COUNTS _____
ADJUSTED OFFENSE LEVEL

5. **TOTAL UNITS**

6. **INCREASE IN OFFENSE LEVEL**

1 unit → no increase

1½ units → add 1 level

2 units → add 2 levels

2½-3 units → add 3 levels

3½-5 units → add 4 levels

>5 levels → add 5 levels

7. **ADJUSTED OFFENSE LEVEL OF GROUP
WITH THE HIGHEST OFFENSE LEVEL**

8. **COMBINED ADJUSTED OFFENSE LEVEL**

Enter the sum of the offense levels entered in Items 6 and 7.

WORKSHEET C (Criminal History)

Date of defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses):

1. PRIOR SENTENCES**Prior Sentence of Imprisonment Exceeding 13 Months (U.S.S.G. § 4A1.1(a)): 3 POINTS**

Enter 3 points for each prior adult sentence of imprisonment exceeding one year and one month that either (1) was imposed within 15 years of the defendant's commencement of the instant offenses (taking into account relevant conduct and stipulated offenses) or (2) resulted in the defendant's confinement during any part of that 15-year period. (See U.S.S.G. §§ 4A1.1(a), 4A1.2(d)(1), (e)(1).)

Prior Sentence of Imprisonment of at Least 60 Days (U.S.S.G. § 4A1.1(b)): 2 POINTS

Enter 2 points for each prior sentence of imprisonment of at least 60 days not counted under U.S.S.G. § 4A1.1(a) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(b), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and resulted in the defendant's confinement during any part of the 5-year period preceding the defendant's commencement of the instant offense (see U.S.S.G. §§ 4A1.1(b), 4A1.2(d)(2)(A)).

Other Prior Sentences (U.S.S.G. § 4A1.1(c)): 1 POINT

Enter 1 point for each prior sentence not counted under U.S.S.G. § 4A1.1(a) or (b) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and was imposed within 5 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(d)(2)(B)). NOTE: No more than 4 points may be added under this item.

<u>Date of Imposition</u>	<u>Status*</u>	<u>Offense</u>	<u>Sentence</u>	<u>Release Date**</u>	<u>Points</u>
5/18/2006	J	Misdemeanor Health and Safety; Larceny	Unknown		0
9/06/2006	J	Giving False Information/Disorderly Conduct	30 days or \$257 30 days or \$105		0
11/02/2007	A	Attempted Robbery with a Firearm	6 years probation; Fines; 3 years, 5 months, 26 days imprisonment	12/24/2010	3
11/02/2007	A	Grand Theft	5 years probation; Fines; 3 years, 5 months, 26 days imprisonment	12/24/2010	3
11/02/2007		Possession of a Controlled Substance	Fines; 3 years, 5 months, 26 days imprisonment	12/24/2010	3

* If the defendant committed the offense before turning 18, indicate whether he or she was sentenced as a juvenile (J) or as an adult (A).

** A release date is required in only three situations: (1) when a sentence covered under U.S.S.G. § 4A1.1(a) was imposed more than 15 years before the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) but resulted in his or her confinement during any part of that 15-year period; (2) when a sentence counted under U.S.S.G. § 4A1.1(b) was imposed for an offense committed before the defendant turned 18 but resulted in his or her confinement during any part of the 5-year period preceding his or her commencement of the instant offense (taking into account relevant conduct and stipulated offenses); and (3) when 2 criminal history points are added pursuant to U.S.S.G. §

4A1.1(e) because the defendant committed the instant offense (taking into account relevant conduct ~~and~~ stipulated offenses) shortly after or during imprisonment resulting from a sentence counted under U.S.S.G. § 4A1.1(a) or (b) or while he or she was on escape status for such a sentence.

(rev. 12/10)

2. COMMISSION OF INSTANT OFFENSE WHILE UNDER PRIOR SENTENCE (U.S.S.G. § 4A1.1(d))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) while under any criminal justice sentence having a custodial or supervisory component, including probation, parole, supervised release, imprisonment, work release, and escape status. (See U.S.S.G. §§ 4A1.1(d), 4A1.2(m), (n).) List the type of control and identify the sentence from which it resulted.

3. PRIOR SENTENCE RESULTING FROM CRIME OF VIOLENCE (U.S.S.G. § 4A1.1(e))

Enter 1 point for each prior sentence resulting from a conviction for a crime of violence that did not receive any points under U.S.S.G. § 4A1.1(a), (b), or (c) because such sentence was considered related to another sentence resulting from a conviction for a crime of violence. But enter no points where the sentences are considered related because the offenses occurred on the same occasion. (See U.S.S.G. §§ 4A1.1(e), 4A1.2(p).) Identify the crimes of violence and briefly explain why the cases are considered related. NOTE: No more than 3 points may be added under this item.

4. TOTAL CRIMINAL HISTORY POINTS

Enter the sum of the criminal history points entered in Items 1-3.

9

5. CRIMINAL HISTORY CATEGORYTotal Criminal History PointsCriminal History Category

0 – 1	I
2 – 3	II
4 – 6	III
7 – 9	IV
10 – 12	V
≥ 13	VI

IV

WORKSHEET D (Guideline Range)

1. (COMBINED) ADJUSTED OFFENSE LEVEL

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in Item 8 of Worksheet B.

22

2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY (U.S.S.G § 3E1.1)

-3

3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

19

4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

IV

5. CAREER OFFENDER / CRIMINAL LIVELIHOOD / ARMED CAREER CRIMINAL (U.S.S.G. ch. 4, pt. B)

a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1) or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. ch. 5, pt. A)

Enter the guideline range in the Sentencing Table (*see* U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

46-57
months

7. STATUTORY RESTRICTIONS ON OR SUPERSESSION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (*See* U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.

84
months

18 U.S.C. § 924(c) (84 month consecutive statutory minimum sentence for brandishing
firearm in commission of crime of violence)

WORKSHEET E (Authorized Guideline Sentences)

1. PROBATION (U.S.S.G. ch. 5, pt. B)

a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)

☒

1. Probation is not authorized by the guidelines (minimum of guideline range > 6 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

☐

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).

☐

3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range > 0 months but ≤ 6 months).

b. Length of Term of Probation (U.S.S.G. § 5B1.2)

☐

1. At least 1 year but not more than 5 years (total offense level ≥ 6).

☐

2. No more than 3 years (total offense level < 6).

c. Conditions of Probation (U.S.S.G. § 5B1.3)

The court must impose certain conditions of probation and may impose other conditions of probation.

2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(c)(2), (d)(2))

☒

- a. A split sentence is not authorized (minimum of guideline range = 0 months or > 10 months).

☐

- b. A split sentence is authorized (minimum of guideline range > 0 months but ≤ 10 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 8, 9, or 10 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, or 6 months). The authorized length of the term of supervised release is set forth below in Item 4.b

3. IMPRISONMENT (U.S.S.G. ch. 5, pt. C)

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)**a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)**

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)

1. At least 3 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment ≥ 25 years.



2. At least 2 years but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment ≥ 5 years but < 25 years.



3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment > 6 months but < 5 years.



4. The statute of conviction requires a minimum term of supervised release of _____ months.

c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

5. RESTITUTION (U.S.S.G. § 5E1.1)

1. The court will determine whether restitution should be ordered and in what amount.



2. Full restitution to the victim(s) of the offense(s) of conviction is *required* by statute. (See, e.g., 18 U.S.C. §§ 3663A, 2327.) The parties agree that full restitution is \$_____.



3. The parties agree that the court may order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$ 274.00. (See 18 U.S.C. §§ 3663(a)(3).)



4. The parties agree that the court may *also* order restitution to persons other than the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3).)



5. Restitution is not applicable.

6. FINE (U.S.S.G. § 5E1.2)**a. Fines for Individual Defendants**

The court must impose a fine unless “the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine.” (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))

<u>Minimum Fine</u>	<u>Maximum Fine</u>
<u>\$6,000</u>	<u>\$60,000</u>

7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are

- \$100.00 for every count charging a felony (\$50.00 if the offense was completed before April 24, 1996)
- \$ 25.00 for every count charging a Class A misdemeanor,
- \$ 10.00 for every count charging a Class B misdemeanor, and
- \$ 5.00 for every count charging a Class C misdemeanor or an infraction.

The defendant must pay a special assessment or special assessments in the total amount of \$200.00.

8. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES

List any additional applicable guideline, policy statement, or statute.

9. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range. _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THE UNITED STATES OF AMERICA,

CRIMINAL NO. 12-20468

Plaintiff,

HONORABLE DAVID LAWSON

v.

D-1, DAVID FLOYD BIRDSALL,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by and through its attorneys, United States Attorney Barbara L. McQuade and Special Assistant United States Attorney, Adriana N. Dydel, respectfully submits this Sentencing Memorandum. For the reasons stated below, the Government recommends a term of incarceration of 52 months on Count One plus a consecutive mandatory minimum of 84 months on Count Two.

I. PROCEDURAL HISTORY AND ADVISORY SENTENCING GUIDELINES

On August 29, 2012, the defendant, DAVID FLOYD BIRDSALL ("Mr. Birdsall"), pled guilty to Counts One and Two of the four-count Indictment. Count One charges Bank Robbery, in violation of Title 18, United States Code, section 2113(a). Count Two charges Possession of a Firearm in Furtherance of a Crime of Violence, in violation of Title 18, United States Code, section 924(c).

The Rule 11 Agreement anticipated a sentencing guidelines range of 46-57 months on Count One, based on a total offense level of 19, and a Criminal History Category IV plus a consecutive mandatory minimum of 84 months on Count Two. In the Presentence Investigation

Report (“PIR”), the Probation Department agreed with the consecutive mandatory minimum sentence of 84 months on Count Two, but calculated the sentencing guidelines range for Count One as 37-46 months. (PIR ¶ 64.) The Government disagrees with this calculation.

II. STATEMENT OF FACTS

On July 5, 2012, Mr. Birdsall entered the Jackson City County Credit Union in Jackson, Michigan intending to commit a robbery. Mr. Birdsall approached a teller, pulled a loaded Sterling .25 caliber handgun with an obliterated serial number from his pocket, brandished it at the teller and handed the teller a black plastic bag. The teller took \$8,139.00 from her teller drawer, including five \$20 bait bills, placed it into the plastic bag and handed it to Mr. Birdsall who fled on foot.

III. SENTENCING GUIDELINES CALCULATION AND RELEVANT 18 U.S.C. § 3553(a) FACTORS

18 U.S.C. § 3553(a) provides the relevant objectives and factors to be considered by sentencing courts when determining a “sentence sufficient, but not greater than necessary.” Those objectives are: (1) the nature and circumstances of the offense, and the history and characteristics of the Defendant; (2) the need for a sentence to reflect the basic aims of sentencing (including retribution, deterrence, incapacitation, and rehabilitation); (3) the kinds of sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need for restitution. This Sentencing Memorandum evaluates the most relevant factors to Mr. Birdsall’s case.

A. The Advisory Guidelines Range

Although advisory, the United States Sentencing Guidelines (“USSG”) remain an important factor under section 3553(a) when determining an appropriate sentence. As the

Supreme Court noted in *Rita v. United States*, 551 U.S. 338, 350 (2007), “it is fair to assume that the Guidelines, insofar as practicable, reflect a rough approximation of sentences that might achieve section 3553(a)’s objectives.” *Id.*

In the Rule 11 Agreement, the parties calculated the sentencing guidelines range at 46-57 months, based on a total offense level of 19, and a Criminal History Category IV. Consistent with section 2B3.1(a) of the USSG, Mr. Birdsall’s base offense level is 20. Both the Rule 11 Agreement and the PIR added two levels to Mr. Birdsall’s base offense level pursuant to USSG section 2B3.1(b)(1) because the money stolen was the property of a financial institution. The Rule 11 Agreement classified Mr. Birdsall as a Criminal History Category IV based on 9 criminal history points, including 3 points for a November 2, 2007 conviction for Attempted Robbery with a Firearm and 3 points for a November 2, 2007 conviction for Grand Theft. In the PIR, the Probation Department classified Mr. Birdsall as a Criminal History Category III based on 6 criminal history points because the Probation Department does not believe the Attempted Robbery with a Firearm conviction and the Felony Grand Theft conviction are separated by an intervening arrest. (PIR ¶ 64.) For the reasons that follow, the Government disagrees with the calculation of the Probation Department. The Government believes a guidelines range of 46-57 months incarceration is the appropriate starting point from which to consider Mr. Birdsall’s sentence on Count One.

Under section 4A1.2(a)(2) of the USSG, “[p]rior sentences *always* are counted separately if the sentences were imposed for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense) (emphasis added).” Here, a review of Mr. Birdsall’s criminal history reveals the following: Mr. Birdsall was arrested on December 1, 2004 for Attempted Armed Robbery. (PIR ¶ 30.) Based on the docket for the Attempted Armed Robbery case, Mr. Birdsall was on bond from approximately

December 2004 through April 22, 2005¹ and from approximately April 29, 2005 through November 15, 2005.² Mr. Birdsall surrendered bond in the Attempted Armed Robbery case on November 15, 2005. Mr. Birdsall was booked in the Grand Theft case (PIR ¶ 31) on December 24, 2005 after he had been remanded to custody in the attempted armed robbery case.

The description of the grand theft offense contained in paragraph 31 of the PIR states the following: On December 23, 2005, Mr. Birdsall's grandfather contacted the Pinellas (Florida) County Sheriff's office and reported that he believed his grandson stole his Ruger Police .357 Magnum revolver. In the police report for the offense, Mr. Birdsall's grandfather also stated that he cleaned the firearm once or twice a year. The investigating officer contacted Mr. Birdsall's mother who reported that Mr. Birdsall admitted to her that he had taken the firearm and that it was at the home of a friend. When contacted, the friend's parents admitted to having found the stolen firearm in their son's laundry basket approximately three weeks prior to being contacted. The charging document for the Grand Theft offense alleges that Mr. Birdsall committed the offense between January 1, 2005 and December 21, 2005. Mr. Birdsall pled guilty to the Grand Theft offense on February 24, 2006. Copies of the case docket, the police report, and the charging document will be available for the Court to review at the sentencing hearing.

Based on the foregoing facts, the Government has established that Mr. Birdsall stole the firearm between January 1, 2005 and December 21, 2005. First, Mr. Birdsall pled guilty to the offense charged and therefore, necessarily admitted to stealing the firearm between January 1, 2005 and December 21, 2005. Second, Mr. Birdsall was not in custody during much of the relevant time frame between January 1 and December 21, 2005 and had ample opportunity to steal the firearm. Finally, logic dictates that Mr. Birdsall's grandfather would have noticed that

¹ Mr. Birdsall was arrested on April 19, 2005 for burglary in a separate case (PIR ¶ 40).

² On August 22, 2005, Mr. Birdsall was ordered to serve 5 days detention for violating probation in another case. (PIR ¶ 29).

the firearm was stolen no more than a year after the theft occurred since he acknowledged cleaning the firearm once or twice a year. For the foregoing reasons, Mr. Birdsall's December 1, 2004 arrest occurred between the date he committed Attempted Armed Robbery and the date he committed Grand Theft.

When prior sentences are separated by an intervening arrest, they are always treated separately pursuant to USSG section 4A1.2(a)(2). *See also U.S. v. Smith*, 549 F.3d 355, 362 (6th Cir. 2008) (holding that prior sentences should be counted separately where defendant committed second offense while on bond for first offense). Therefore, the sentences for Attempted Armed Robbery and Grand Theft must be counted separately and the Grand Theft offense must receive 3 criminal history points. Based on this analysis, Mr. Birdsall remains a Criminal History Category IV and Mr. Birdsall's guidelines range on Count One is 46-57 months.

B. Nature and Circumstances of the Offense, and the History and Characteristics of the Defendant, 18 U.S.C. § 3553(a)(1)

1. Nature of the Offense

Possession of a firearm by a convicted felon is a serious offense in and of itself. Here, Mr. Birdsall did more than just possess a firearm -- he used it to rob the Jackson City County Credit Union. Armed robbery is a crime of violence that could have had severe consequences, including the injury or death of civilians. Mr. Birdsall admitted to commission of this crime to the Jackson County Sheriff's Office and pled guilty to this Court. The conviction herein is Mr. Birdsall's second conviction involving armed robbery and third conviction involving theft. Notwithstanding these facts, Mr. Birdsall made the conscious decision to repeat prior behavior when he entered the Jackson City County Credit Union and pointed a gun at the teller. Mr.

Birdsall's actions on July 5 establish that he is willing to endanger the lives of others in order to resolve personal problems.

2. History and Characteristics of the Defendant

Despite his young age, Mr. Birdsall has a long history of contact with law enforcement. Mr. Birdsall's criminal history begins at the age of 13 and continues more than 10 years and through three states. Mr. Birdsall has obtained adult felony convictions for Attempted Armed Robbery, Grand Theft, and Possession of a Controlled Substance. The PIR describes in detail much of Mr. Birdsall's criminal history. (PIR ¶¶ 27-36 and ¶¶ 40-45.)

The conviction herein is Mr. Birdsall's second conviction involving armed robbery. As stated in the PIR, on December 1, 2004, Mr. Birdsall also pointed a firearm at an individual's face and demanded money. When the victim of that offense advised that he did not have any money, Mr. Birdsall ordered the victim to empty his pockets and fled when the victim could not produce any money.

Mr. Birdsall has also accumulated convictions for larceny, possession of marijuana, giving false information to police, disorderly conduct, and open intoxicant in motor vehicle. (PIR ¶¶ 32-34 and ¶ 36.) Mr. Birdsall also has three juvenile adjudications. (PIR ¶¶ 27-29.) The details of those offenses are set forth in the PIR and not repeated in this publicly filed document. Finally, Mr. Birdsall has been charged with additional offenses both as a juvenile and adult, including assault of a prison employee. (PIR ¶¶ 40-45.) The PIR also identifies that Mr. Birdsall has admitted to a history of gambling addiction, substance abuse, and mental health problems. (PIR ¶¶ 51-53.) Mr. Birdsall's decision to violate the law has been unabated for more than 10 years. While not all of Mr. Birdsall's criminal conduct involved violence, collectively the offenses demonstrate a complete lack of respect for the law.

C. Seriousness of the Offense, Promoting Respect for Law, and Providing Just Punishment, 18 U.S.C. § 3553(a)(2)(A)

The USSG create a sentencing range so the courts can consider certain factors in determining the appropriate sentence, including the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment. As stated herein, Mr. Birdsall's actions on July 5, 2012 could have had severe consequences. Use of a firearm in any crime is considered a serious offense. This is particularly true where innocent civilians may suffer harm.

It is also important to note that Mr. Birdsall committed the offenses at issue, Bank Robbery and Possession of a Firearm in Furtherance thereof, less than a year and a half after being released from prison in Florida. Mr. Birdsall's previous conviction for very similar conduct combined with his history of unmitigated criminal behavior, establishes that Mr. Birdsall has not learned from past conduct and does not have any respect for local, state, or federal law.

D. The Sentence Imposed Must Afford Adequate Deterrence to Criminal Conduct and Protect the Public from Further Crimes of the Defendant, 18 U.S.C. § 3553 (a)(2)(B) and (C)

Deterrence is also an important consideration when fashioning a sentence to persuade Mr. Birdsall not to engage in additional criminal behavior and to protect the public from further crimes. The Court should also consider the need to discourage others who are inclined to involve themselves in similar criminal conduct. *United States v. Phinazee*, 515 F.3d 511 (6th Cir. 2008); *United States v. Blackwell*, 459 F.3d 739, 774 (6th Cir. 2006) (sentencing in the federal system has long contemplated the ability to provide both specific and general deterrence).

Mr. Birdsall has had ample opportunity to make changes in his life. Mr. Birdsall has repeatedly received sentences of probation. For example, Mr. Birdsall received sentences of

probation for offenses committed in 2002, 2004, and 2005. (PIR ¶¶ 27-31.) Most of these sentences either terminated without improvement (PIR ¶¶ 27-28) or resulted in modified sentences based on new criminal conduct. (PIR ¶¶ 30-31.) In fact, Mr. Birdsall committed many of his prior offenses while on probation for other offenses. For example, while Mr. Birdsall was on probation for Attempted Armed Robbery and Grand Theft, he committed larceny, possessed marijuana and Xanax, gave false information to police, and engaged in disorderly and other illegal conduct. (PIR ¶¶ 32-35 and ¶ 41.) It is clear that Mr. Birdsall has not taken advantage of sentences of probation to make changes in his life.

Similarly, Mr. Birdsall has not been deterred by prior terms of imprisonment. Mr. Birdsall served three concurrent sentences of 41.85 months. (PIR ¶¶ 30-31 and ¶ 35.) One of these sentences was for the 2004 Attempted Armed Robbery. (PIR ¶ 30.) Despite his time behind bars, Mr. Birdsall chose to commit the instant offense approximately a year and a half after he was released from prison.

Here, deterrence is an important consideration when fashioning a sentence to persuade Mr. Birdsall away from continuing a life of crime. Mr. Birdsall's pattern of behavior and previous failures make it highly unlikely that he will stop committing crime unless a harsher sentence is imposed. With each violent crime, the consequences for Mr. Birdsall should be greater. The Court needs to send a strong message to Mr. Birdsall that it will not tolerate repeated violent behavior, particularly behavior involving a firearm. Deterrence may also serve to generally discourage others who are inclined to repeatedly reenter the criminal justice system.

E. Sentencing Commission Policy Statements
18 U.S.C. § 3553 (a)(5)

Section 4A1.3 provides for upward departures in cases "[i]f reliable information indicates that the defendant's criminal history category substantially under-represents the seriousness of the

defendant's criminal history or the likelihood that the defendant will commit other crimes." In the alternative, the Court can vary upward under Title 18 section 3553(a) for the reasons articulated herein. *U.S. v. Lanning*, 633 F.3d 469 (2011) (upward variance under 18 U.S.C. § 3553(a) based on need for deterrence and protection of the public was not an abuse of discretion). If the Court agrees with the Probation Department that Mr. Birdsall is a Criminal History Category III, the Government moves for an upward variance under 18 U.S.C. § 3553(a). As stated herein, any sentence imposed needs to provide deterrence and protect the public safety. For these reasons, the Government believes a sentence of no less than the mid-point of the guidelines range contained within the Rule 11 agreement is appropriate.

V. CONCLUSION

Mr. Birdsall poses a serious danger to the community. Mr. Birdsall's criminal history reveals little respect for the law. Further, court supervision has not deterred Mr. Birdsall from committing new crimes. This Court should consider a sentence that incapacitates Mr. Birdsall from committing additional crimes, particularly those which endanger the public. For these reasons, the Government recommends that the Court impose a sentence of 52 months on Count One followed by a consecutive mandatory minimum of 84 months on Count Two.

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Dated: November 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2012, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Leroy Soles
Deputy Defender
Federal Defender Office

s/Adriana N. Dydel
ADRIANA N. DYDELL
Special Assistant United States Attorney
211 West Fort Street, Suite 2001
Detroit, Michigan 48226-3211
(313) 226-9125
adriana.dydell@usdoj.gov

Date: November 27, 2012

United States District Court
Eastern District of Michigan

United States of America
V.
DAVID FLOYD BIRDSALL

JUDGMENT IN A CRIMINAL CASE

Case Number: 12CR20468-1
USM Number: 47409-039

Leroy T. Soles
Defendant's Attorney

THE DEFENDANT:

Pleaded guilty to count(s) **1 and 2 of the Indictment.**

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2113(a)	Bank Robbery	July 5, 2012	1
18 U.S.C. § 924(c)	Possession of a Firearm in Furtherance of a Crime of Violence	July 5, 2012	2

The defendant is sentenced as provided in pages **2 through 6** of this judgment. This sentence is imposed pursuant to the Sentencing Reform Act of 1984

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.

December 4, 2012
Date of Imposition of Judgment


s/David M. Lawson
United States District Judge

December 18, 2012
Date Signed

DEFENDANT: DAVID FLOYD BIRDSALL
CASE NUMBER: 12CR20468-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **37 months on Count 1 and 84 months on Count 2, to be served consecutively.**

See next page for recommendations.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a
_____, with a certified copy of this judgment.

United States Marshal

Deputy United States Marshal

DEFENDANT: DAVID FLOYD BIRDSALL
CASE NUMBER: 12CR20468-1

ADDITIONAL IMPRISONMENT TERMS

None

ADDITIONAL RECOMMENDATIONS

The court recommends that the defendant be designated to FCI Milan, Michigan.

The court recommends that the defendant be designated to an institution which offers the Comprehensive Drug Treatment Program and mental health treatment.

The Court waives the imposition of a fine, the costs of incarceration and the costs of supervision, due to the lack of financial resources of the defendant.

While in custody, the defendant shall participate in the Inmate Financial Responsibility Program (IFRP). The Court is aware of the requirements of the IFRP and approves the payment schedules of this program and hereby orders the compliance of the defendant.

DEFENDANT: DAVID FLOYD BIRDSALL
CASE NUMBER: 12CR20468-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years on each Count, to run concurrently.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

If the defendant is convicted of a felony offense, DNA collection is required by Public Law 108-405.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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. Revocation of supervised release is mandatory for possession of a controlled substance.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 14) the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. Revocation of supervised release is mandatory for possession of a firearm.

DEFENDANT: DAVID FLOYD BIRDSALL
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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall make monthly payments on any remaining balance of the: **restitution** at a rate and schedule recommended by the Probation Department and approved by the Court.

The defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer.

The defendant shall provide the probation officer access to any requested financial information.

The defendant shall participate in a program approved by the Probation Department for mental health counseling.

As directed by the Probation Department, the defendant shall participate in a program approved by the Probation Department for substance abuse and mental health treatment which may include testing to determine if the defendant has reverted to the use of drugs or alcohol. The defendant shall take any medication as prescribed by a psychiatrist and/or physician.

The defendant is prohibited from engaging in any gambling activity, games of chance, lotteries or wagering of any kind, including computer gambling and stock day trading, and from being in the presence of anyone engaging in this activity.

The defendant is prohibited from entering the premises of any gambling casinos or other places where gambling activity is conducted, such as horse tracks, bingo parlors, dog races/fights, etc., whether legal or illegal.

As directed by the probation department, the defendant shall participate in a program approved by the probation department for the treatment of gambling addictions.

As directed by the probation department, the defendant shall attend Gamblers Anonymous (GA) meetings and provide verification of participation, if necessary.

DEFENDANT: DAVID FLOYD BIRDSALL
 CASE NUMBER: 12CR20468-1

CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS:	\$ 200.00	\$ 0.00	\$ 274.00

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Jackson City Counsel Credit Union	\$274.00	\$274.00	
TOTALS:	\$ 274.00	\$ 274.00	

* 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.

United States District Judge