

VII. APPENDIX

A. Index of Appendices

1. June 2, 2024 opinion of the United States Court of Appeals for the Eighth Circuit affirming United States District Court, United States v. Henry, 106 F.4th 763 (8th Cir. 2024)..... A-1
2. August 21, 2024 Order denying Mr. Henry’s Petition for RehearingA-12
3. Henry’s Sentencing MemorandumA-13
4. Henry’s Motion for Downward DepartureA-31

United States Court of Appeals
For the Eighth Circuit

No. 23-2542

United States of America

Plaintiff - Appellee

v.

Rodney Tyrone Henry

Defendant - Appellant

No. 23-2554

United States of America

Plaintiff - Appellee

v.

Daryl Strickland, Jr.

Defendant - Appellant

Appeals from United States District Court
for the Eastern District of Arkansas - Central

Submitted: February 13, 2024
Filed: July 2, 2024
[Published]

Before SMITH, Chief Judge,¹ BENTON and STRAS, Circuit Judges.

PER CURIAM.

Daryl Strickland, Jr., and Rodney Tyrone Henry pleaded guilty pursuant to written plea agreements to murder while discharging a firearm in furtherance of a crime of violence. Both were subsequently sentenced to life imprisonment by the district court.² On appeal, Strickland and Henry argue that the district court erred in finding that they committed the murder with premeditation. Henry also argues that the district court erred in calculating his criminal history score and that his sentence of life imprisonment is unreasonable. We affirm.

I. Background

Strickland and Henry were charged in a six-count indictment with two counts of conspiracy to interfere with commerce by robbery, one count of attempt to interfere with commerce by robbery, one count of murder while discharging a firearm in furtherance of a crime of violence, one count of interference with commerce by robbery, and one count of brandishing a firearm in furtherance of a crime of violence. Strickland and the government subsequently entered into a plea agreement. Strickland agreed to waive indictment and permit the government to file a superseding

¹Judge Smith completed his term as chief judge of the circuit on March 10, 2024. *See* 28 U.S.C. § 45(a)(3)(A).

²The Honorable James M. Moody, Jr., United States District Judge for the Eastern District of Arkansas.

information charging him with murder while discharging a firearm in furtherance of a crime of violence; in exchange, the government agreed to dismiss the indictment. Strickland stipulated that the following facts were true in his plea agreement:

On November 12, 2018, at 5:22pm, Daryl Strickland, Jr. and Rodney Tyrone Henry knocked on the front door of Wise Buck Pawn Shop in Pine Bluff, Arkansas, and asked if the store was still open. Wise Buck Pawn Shop was a federal firearms licensee, engaging in business that affected interstate commerce. The owner of the pawn shop, Brandon McHan, told Strickland and Henry through the locked front door that the store was closed for the night. Strickland and Henry then appeared to leave the area. McHan and his friend, Jason Booth, who were the only two in the store, continued closing. At approximately 5:30pm, McHan and Booth exited the front door of the pawn shop to start their vehicles because it was cold. Booth put his firearm in his car, and both went back inside the store. At 5:34pm, Strickland and Henry entered the threshold of the pawn shop, and Strickland fired several gunshots, striking both McHan and Booth multiple times. Strickland and Henry then retreated from the entrance of the store. Two minutes later, Strickland and Henry both returned to the front door of the pawn shop, and Strickland began shooting into the pawn shop. When McHan and Booth fired back, Strickland retreated. After Strickland retreated, Henry fired multiple gunshots into the pawn shop. Strickland then returned to the doorway of the pawn shop and fired more gunshots inside. Strickland and Henry then left the scene.

Approximately an hour later, Strickland and Henry entered the Alon gas station at 2800 South Olive Street in Pine Bluff, Arkansas, and held the store clerk at gun point. Henry, while pointing a firearm at the store clerk, went behind the counter and emptied the cash register. Strickland remained at the front of the counter, also holding the clerk at gunpoint. In addition to \$800, Henry stole the store clerk's firearm.

Brandon McHan died later that night. McHan's autopsy revealed three gunshot wounds, which caused his death. The first bullet entered his right abdomen and exited his back. The second bullet entered his

right thigh and exited his right hip. A third [gunshot] was a through-and-through wound to the right lower leg. Booth, who was near the door when Strickland initially opened fire into the pawn shop, was shot in the face near the chin area, and the bullet exited through his neck. Booth was also shot in the left hand.

R. Doc. 80, at 6–7.

Strickland’s plea agreement contains an appeal waiver. Strickland agreed to

waive[] the right to appeal all non-jurisdictional issues including, but not limited to, any issues relating to pre-trial motions, hearings and discovery and any issues relating to the negotiation, taking or acceptance of the guilty plea or the factual basis for the plea, including the sentence imposed or any issues that relate to the establishment of the Guideline range.

Id. at 3. The appeal waiver, however, does afford Strickland “the limited right to appeal the substantive reasonableness of the sentence of imprisonment if the [c]ourt determines that the murder of Brandon McHan was premeditated and applies Application Note 2(A) of U.S.S.G. [§] 2A1.1 and imposes a life sentence.” *Id.* at 3.

Henry also waived indictment and pleaded guilty pursuant to a plea agreement to the superseding information charging him with murder while discharging a firearm in furtherance of a crime of violence. During Henry’s change-of-plea hearing, the government read the same facts that Strickland stipulated to in his plea agreement and stated that it would present evidence at trial to prove those facts. Henry admitted to the district court that he had a weapon at the pawn shop and that he fired shots into the pawn shop. He also admitted that McHan was murdered with a firearm in the perpetration of the crime. As in Strickland’s case, the appeal waiver in Henry’s plea agreement prevents him from appealing, among other things, “the sentence imposed

or any issues that relate to the establishment of the Guideline range.” R. Doc. 91, at 3. But it permits him “to appeal claims of prosecutorial misconduct,” as well as

the limited right to appeal [1] the substantive reasonableness of the sentence of imprisonment if the sentence is above the Guideline range that is established at sentencing and if the defendant makes a contemporaneous objection; . . . [2] if the [c]ourt determines that the murder of Brandon McHan was premeditated and applies Application Note 2(A) of U.S.S.G. [§] 2A1.1; and [3] . . . the substantive reasonableness of the sentence of imprisonment if the [c]ourt imposes a life sentence

Id.

Prior to sentencing, Henry, Strickland, and the government all filed sentencing memoranda with the district court. Strickland requested a sentence of less than life imprisonment, and Henry requested a downward variance. Henry also filed a motion for a downward departure.

The district court held a joint sentencing hearing. It noted that the applicable statute provides for a maximum term of life imprisonment. The district court calculated Strickland’s Guidelines range to be 324 to 405 months’ imprisonment. Henry objected to three criminal history points that he was assessed for two Arkansas juvenile convictions, arguing that he should not have received criminal history points for those convictions because they should have been expunged under Arkansas law. The district court overruled Henry’s objection. It calculated Henry’s Guidelines range to be 360 months’ to life imprisonment.

Next, the parties litigated the issue of premeditation to determine the applicability of Application Note 2(A) of U.S.S.G. § 2A1.1. The government offered into evidence, among other things, security camera footage from the pawn shop

(Exhibit 1). The government played relevant clips of Exhibit 1 for the district court, which shows the following events. Strickland and Henry approached the pawn shop at approximately 5:22 p.m. and left at approximately 5:23 p.m. In his interview with law enforcement, Strickland admitted that he and Henry reentered the car and talked about how they were going to go back and approach the pawn shop. At approximately 5:35 p.m., Strickland entered the threshold of the pawn shop and began firing shots, Henry stuck his head into the threshold of the pawn shop, and then they both retreated. At 5:36 p.m., Strickland shot again, Henry shot, Strickland returned to fire more shots, and then they both retreated. The government played another clip from Exhibit 1, which is footage from a different camera inside the pawn shop. The government pointed out to the court that the shots fired by Henry were fired where Booth had been standing when Henry had previously stuck his head through the door.

After hearing the parties' arguments, the district court found that both Strickland and Henry acted with premeditation. The district court found that Strickland acted with "premeditation in his decisions to enter the Wise Buck Pawn Shop and essentially shoot first and ask questions later." R. Doc. 126, at 76. The district court further found that Henry did nothing to "dissuade[] Mr. Strickland in that first . . . fire fight" and that Henry intended "to kill the occupants inside" when he "shot into the store." *Id.*

Strickland moved for a downward variance from the application note stating that life imprisonment is the appropriate sentence and requested a sentence within what his Guidelines range would have been without the application note. The district court denied Strickland's motion for a downward variance and sentenced him to life imprisonment after "consider[ing] his presentence report in its entirety, the evidence received today, the comments of counsel, the comments of Mr. Strickland, the comments of the witnesses here today regarding their loss, and the factors found in 18 U.S.C. Section 3553." *Id.* at 110. The court concluded that a life sentence "is

sufficient but no greater than necessary to reflect the seriousness of the offense, promote respect for the law, but also address [Strickland's] needs.” *Id.* at 111.

The district court denied Henry's prior request for a downward variance and his motion for a downward departure. “After . . . consider[ing] Mr. Henry's presentence report in its entirety, comments of counsel, and the comments of Mr. Henry as well as those who have spoken on behalf of the McHan family, and considering the provisions found in 18, U.S.C., Section 3553,” the district court sentenced Henry to life imprisonment. *Id.* at 126. The court did not consider Henry to be any less culpable than Strickland based on the evidence.

II. Discussion

On appeal, Strickland and Henry both argue that the district court erred in finding that the killing of McHan was premeditated and therefore warranted a life sentence under Application Note 2(A) of U.S.S.G. § 2A1.1. Henry additionally argues that the district court erred in calculating his Guidelines range because it included criminal history points for juvenile adjudications. Finally, Henry argues that his life sentence is substantively unreasonable because the district court failed to consider his age at the time of the offense, childhood trauma, intellectual ability, lack of a male role model, and role in the offense.

A. Premeditation

Both Strickland and Henry challenge the district court's finding that they acted with premeditation in the killing of McHan for purposes of U.S.S.G. § 2A1.1. Strickland argues that the killing of McHan was an unplanned result of the botched robbery due to a victim who was “prepared for a firefight.” Strickland's Br. at 7. He notes the lack of any text messages, telephone calls, or statements showing that he had the intent to kill prior to entering the pawn shop. He also points out that only eight seconds elapsed from when he entered the pawn shop and engaged in gunfire with McHan. Henry argues that there is no evidence that he “knew Strickland was

going to immediately open fire on the inhabitants in the pawn shop” or that he “organized or led the robbery.” Henry’s Br. at 9.

“Whether the defendant committed or attempted a murder with premeditation is a question of fact.” *United States v. Wilson*, 992 F.2d 156, 158 (8th Cir. 1993) (per curiam). We review for clear error the district court’s finding of premeditation. *United States v. Graham*, 323 F.3d 603, 609 (8th Cir. 2003).

“Section 2A1.1 sets a base offense level of 43 for first-degree murder.” *United States v. Barraza*, 982 F.3d 1106, 1114 (8th Cir. 2020). Its commentary provides: “In the case of *premeditated* killing, life imprisonment is the appropriate sentence if a sentence of death is not imposed.” *Id.* (emphasis added) (quoting U.S.S.G. § 2A1.1 cmt. n.2(A)). “The amount of time needed for premeditation must be long enough for the defendant, after forming the intent to kill, to be fully conscious of his intent, and to have thought about the killing.” *United States v. Angel*, 93 F.4th 1075, 1079 (8th Cir. 2024) (cleaned up). But the government is not required “to show that the defendant deliberated for any particular length of time” to prove premeditation. *Id.* (internal quotation marks omitted). A defendant’s “[s]wift but deliberate actions before shooting can demonstrate . . . the requisite premeditation.” *Id.* (cleaned up).

Here, the video shows that Strickland and Henry approached the pawn shop but left after being told it was closed. Twelve minutes later, they returned. Strickland entered the threshold of the pawn shop and began firing shots, Henry stuck his head into the threshold of the pawn shop, and then they both retreated. A couple of minutes later, they returned. Strickland fired shots into the pawn shop again. Booth and McHan returned fire. Strickland retreated. Henry then fired several shots toward Booth and McHan, not away from them. Strickland then went to the pawn shop’s front door and fired more shots. Thereafter, Strickland and Henry fled the scene. These facts show that Strickland and Henry “had enough time to be fully conscious

of [their] intent and to deliberate about [their] conduct. The district court did not clearly err in finding [they] acted with premeditation.” *Id.*

B. Henry’s Criminal History Score

Henry argues that the district court miscalculated his criminal history score by assessing three criminal history points for two juvenile offenses. The government has moved to dismiss Henry’s appeal in part, arguing that Henry’s claim of procedural error in calculating his criminal history score is barred by his appeal waiver. We agree.

“We review de novo the issue of whether a defendant has knowingly and voluntarily waived rights in a plea agreement.” *United States v. Guzman*, 707 F.3d 938, 941 (8th Cir. 2013) (internal quotation marks omitted). Our obligation is to “confirm that the appeal falls within the scope of the [appeal] waiver and that both the waiver and plea agreement were entered into knowingly and voluntarily.” *Id.* (internal quotation marks omitted). But we will not enforce an appeal waiver that a defendant entered knowingly and voluntarily if doing so “would result in a miscarriage of justice.” *Id.* (internal quotation marks omitted).

Henry’s appeal waiver explicitly waives all of his appellate rights *except* for claims of prosecutorial misconduct, as well as challenges to the “the substantive reasonableness of the sentence of imprisonment if the sentence is above the Guideline range that is established at sentencing and if [Henry] makes a contemporaneous objection,” the district court’s determination that Henry acted with premeditation as to the killing of McHan, and “the substantive reasonableness of the sentence of imprisonment if the [c]ourt imposes a life sentence.” R. Doc. 91, at 3. Henry’s argument that the district court procedurally erred in calculating his criminal history score because it included two state juvenile delinquency adjudications *does not* involve one of the enumerated exceptions listed in the appeal waiver. Instead, Henry’s claim that the district court miscalculated his criminal history score is a claim

of *procedural* error. *See United States v. Lazarski*, 560 F.3d 731, 733 (8th Cir. 2009) (treating a claim that the district court erroneously assessed criminal history points as a claim of procedural error); Henry’s Br. at 10 (“The district court committed *procedural* error by improperly calculating Mr. Henry’s criminal history score.” (emphasis added)). Henry’s appeal challenging the court’s calculation of his criminal history score falls within the scope of the appeal waiver, not one of its exceptions.

The record also shows that Henry entered his plea agreement knowingly and voluntarily. In the plea agreement, Henry affirmed that he had “read this Agreement and Addendum and carefully reviewed every part of it with his/her attorney,” that he “underst[ood] and voluntarily agree[d] to the terms and condition[s] of this Agreement and Addendum,” and that he had “consulted with his . . . attorney and fully underst[ood] his . . . rights with respect to the provisions of the United States Sentencing Guidelines which may apply to this case.” R. Doc. 91, at 13–14. Henry further acknowledged that he was not “threatened or forced . . . in any way to enter into this Agreement and Addendum” but instead “entered into this Agreement and Addendum, consciously and deliberately, by [his] free choice, and without duress, undue influence or otherwise being forced or compelled to do so.” *Id.* at 14. Additionally, the district court confirmed at the change-of-plea hearing that Henry had “gone over the waivers section [of the plea agreement] with [his] lawyers.” R. Doc. 125, at 16. Henry acknowledged that he was “giving up virtually every right of appeal [he] ha[s]” “by entering into this plea agreement.” *Id.* The appeal waiver in Henry’s plea agreement was entered into knowingly and voluntarily. *See Guzman*, 707 F.3d at 941.

“Based on the record, we conclude the appeal falls within the scope of the waiver and that both the waiver and plea agreement were entered into knowingly and voluntarily.” *Id.* at 942 (internal quotation marks omitted). Because Henry’s life sentence is within the applicable statutory range, no miscarriage of justice results from enforcement of the appeal waiver. *Cf. id.* (holding that enforcing the appeal

waiver when the sentence was below the statutory maximum did not amount to a miscarriage of justice).

C. Substantive Reasonableness of Henry's Life Sentence

Henry also contends that his life sentence is substantively unreasonable. He “argues that the district court failed to properly consider his history and characteristics. Specifically, his age at the time of the offense, childhood trauma, intellectual ability, lack of a male role model, and his role in the offense.” Henry’s Br. at 15.

“When we review the imposition of sentences, whether inside or outside the Guidelines range, we apply a deferential abuse-of-discretion standard.” *United States v. Feemster*, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). Because Henry’s life “sentence is within the Guidelines range,” we may afford it “a presumption of reasonableness.” *Id.* (internal quotation marks omitted).

The district court expressly noted at sentencing that it had considered Henry’s mitigation arguments, but it ultimately rejected them. Henry’s disagreement with the district court’s weighing of the mitigating and aggravating circumstances is insufficient to show that the sentence imposed is substantively unreasonable. *See United States v. Richart*, 662 F.3d 1037, 1054 (8th Cir. 2011) (“Simply because the district court weighed the relevant factors more heavily than [the defendant] would prefer does not mean the district court abused its discretion.”).

III. Conclusion

Accordingly, we grant the government’s motion to dismiss in part Henry’s appeal and affirm the judgments of the district court.

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-2542

United States of America

Appellee

v.

Rodney Tyrone Henry

Appellant

Appeal from U.S. District Court for the Eastern District of Arkansas - Central
(4:19-cr-00580-JM-2)

ORDER

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

August 21, 2024

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

/s/ Maureen W. Gornik

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

UNITED STATES OF AMERICA)	
)	
VS.)	4:19-CR-00580-02-JM
)	
RODNEY T. HENRY)	

**RODNEY HENRY’S SENTENCING MEMORANDUM AND REQUEST
FOR A VARIANCE FROM THE GUIDELINES FOR A SENTENCE OF
TWENTY-FIVE YEARS**

NOW COMES DEFENDANT, RODNEY HENRY, by and through counsel, and requests this Court respectfully impose a sentence of less than life and shows in support as follows:

INTRODUCTION

Mr. Henry, along with Daryl Strickland, was charged in a multi-count federal indictment and pled to one count of Murder While Discharging a Firearm in Furtherance of a Crime of Violence, in violation of 18 U.S.C. § 924 (j) (1) on or about October 3, 2019. This indictment is the result of a shooting that occurred during a robbery of the Wise Buck Guns & Pawn Shop on November 12, 2018. Mr. Henry was arrested on December 4, 2018 and originally held in state custody until December 5, 2019 when he was taken into federal custody on a detainer. He has been in custody since December 4, 2018.

**The § 3553 (a) FACTORS SUPPORT A
SENTENCE OF TWENTY FIVE YEARS**

When determining a sentence, the Court is required to consider the factors enumerated in 18 U.S.C. § 3553 (a) : (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for deterrence; (4) the need to protect the public; (5) the need to provide the defendant with needed educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims.

**RODNEY HENRY'S PERSONAL CHARACTERISTICS
SUPPORT A SENTENCE OF TWENTY FIVE YEARS**

Here, the facts of the case and the unique history and circumstances of Rodney Henry call for a sentence of twenty-five (25) years. A twenty-five-year sentence is a long sentence, but allows for the hope and redemption of a young man who had just turned 21 at the time of this offense.

Age and the Juvenile Brain

The most significant factor is that Rodney had just turned 21 years old at the time of this offense. To be clear: the facts of this case are serious, what happened was

serious, and the Sentencing Guidelines call for a serious sentence. Recent studies show adolescents' brains work differently than adults when they make decisions or solve problems. Their actions are guided more by the emotional and reactive amygdala and less by the thoughtful, logical frontal cortex. Research has shown that exposure to drugs and alcohol during the teen years can change or delay these developments. (American Academy of Child and Adolescent Psychiatry, 2023). Research has also found that teen brains may respond to stress differently than adults. This could increase teens' chances of developing stress-related mental illnesses such as anxiety and depression. (National Institute of Mental Health, 2023).

Moreover, based on the stage of their brain development, adolescents are more likely to: act on impulse, misread or misinterpret social cues and emotions, get into accidents of all kinds, get involved in fights and engage in dangerous or risky behavior. Adolescents are less likely to think before they act, pause to consider the consequences of their actions, or change their dangerous or inappropriate behaviors. (American Academy of Child and Adolescent Psychiatry, 2023)

Rodney is no exception to these findings. He fits all the criteria and his behavior proves it. His life history has been a series of numerous incidents of terrible trauma, involving a single parent upbringing, domestic violence at home, no positive adult role models, poverty, a serious fire that led to the loss of the family's

home and belongings. Rodney's family moved around frequently, but always in communities in Camden with drugs and gang activity. Rodney suffers from intellectual disabilities. Rodney should not have been associating with Mr. Strickland and should not have made the bad decision to leave Camden and go to Pine Bluff where this tragic incident occurred. Rodney was not thinking clearly nor rationally. However, it is important to understand that Rodney's adolescence, intellectual disabilities and his extensive childhood trauma all contributed to his poor judgment. He is worthy of compassion and he is capable of rehabilitation.

CHILDHOOD TRAUMA

Rodney was raised by his mother, Lisa Wright, along with his brother, Strodney, and half-brother, FranDarren. His father, Jerome Henry, did not participate in his sons' lives because he was in and out of jail or prison for the better part of Rodney's life. He is not even listed on Rodney's birth certificate. (Birth Certificate Attached as Exhibit 1). To this day Rodney has no contact with his father. In particular, Rodney's father refused to allow Rodney to come visit him even when Rodney's brother, FranDarren, would be invited to visit with their father. Rodney learned early it was because his father did not believe Rodney was his son because his skin was so much darker than his own or FranDarren's skin. Rodney has carried this devastating hurt throughout his entire life. (Photo of Rodney and his brothers, Attached as Exhibit 2).

The presence of other men in his life through his mother, in particular his stepfather, Carl Tate, also did not provide a good influence. Rodney never had any worthy male role models. Most of these men were drug users. In particular, as noted in the PSR, Rodney's stepfather, Carl Tate, was addicted to drugs and was even arrested for capital murder while he was married to Rodney's mother. (PSR, Par. 47). He is currently incarcerated. While he was married to Rodney's mother, he regularly used drugs in front of Rodney and his siblings and even encouraged Rodney to use drugs. The only two men in Rodney's life were both incarcerated for lengthy periods of time.

While Rodney's mother has always been employed and always found a place for her children to live, she continually struggled to make ends meet. The family has always received benefits. (Records Attached as Exhibit 3). Ms. Wright has worked for years at the Camden Arsenal. She has always tried her best to provide for the family. The family moved around the Camden area and attended numerous different schools in several school districts. Unfortunately, most of the places the family was able to afford to live did not provide a wholesome environment in which to grow up. Drugs, crime and poverty were commonplace. Rodney's school teachers at Camden recall him being teased by the other students because of the condition and quality of his tennis shoes and clothes.

Tragically, when Rodney was only four years old he was playing with a lighter in his bedroom in his family's apartment at Lincoln Center in the Camden Housing Authority and caught his bed on fire. The apartment went up in flames and the fire department was called. (Fire Record Attached as Exhibit 4). The apartment suffered severe smoke damage and the family lost everything and was displaced. The family was not able to save but a few belongings, including a few family photos. (Photo of Rodney, his mother and stepfather and brothers, Attached as Exhibit 5). Rodney has never forgotten this incident and he still suffers emotionally from it. (See, PSR- Par. 51). Rodney attended counseling since a young age at both the Ouachita Valley Family Clinic and Dayspring Behavioral Health Services. (Document, Attached as Exhibit 6).

While Rodney's mother, Lisa, did her best to support her children in their basic needs, she had a difficult time helping them to achieve in school because both Rodney and Strodney were in special education with severe learning disabilities. Rodney's teachers noted that Ms. Tate Wright attempted to help her sons, who both were in special education, and always attended the teacher/parent conferences.

Intellectual Disabilities and Special Education

Rodney was placed in special education classes early on in his education, as early as elementary school. (Camden Fairview Public Schools Decision, Attached as Exhibit 7). Rodney consistently scored Below Average in intellectual assessment

scales. (Psychoeducational Evaluation Attached as Exhibit 8). While Rodney's special education teachers and counselors all agree that Rodney tried very hard in school, they agreed he was just not able to achieve scholastic success. His Individualized Educational Plan indicated he needed service in math and literacy with the disability of Speech Language Impairment. Due to his disabilities, Rodney was determined to be at risk for a variety of factors, and it was recommended that his education plans include vocational training. (IEP, Attached as Exhibit 9). Rodney was enrolled in the Alternative Learning Environment (ALE). The ALE program used much smaller classes and a different curriculum. Indeed, because of Rodney's impaired language skills he was placed in individual mental health therapy because group mental health therapy would require greater verbal and understanding skills than he possessed. At the time, the clinician noted Rodney had difficulty understanding and communicating with his peers. Despite all of this, Rodney was not able to achieve. (Grade Report, Attached as Exhibit 10).

His special education teachers in the ALE program describe Rodney as having trouble comprehending what he just read and had difficulty processing language. Rodney's teachers described him as a polite and respectful young man that struggled mightily to understand his school work. They report that despite his difficulties in understanding the most basic concepts, he never gave up.

Rodney also had specific learning disabilities in reading and math, as well a speech language impairment. (Evaluation Attached as Exhibit 11). The class lessons would be modified to accommodate his learning disabilities. Even if his grades appeared average, the grades would be based on the curriculum taught in the ALE program and not actually reflective of his intellectual achievement. Rodney ranked 131 out of 158 students in his class at the time of his graduation. (Transcript Attached as Exhibit 12). It was a huge achievement for Rodney to graduate from high school and a testament to his perseverance and the skill and devotion of his teachers. (PSR, Par. 53).

His teachers describe Rodney as a student and a young man that would do what he was told to do. He was easily led and was never a behavior problem in class. His teachers all describe Rodney as a sweet person who had hopes and aspirations of achievement and taking care of his own family. Unfortunately, his intellectual limitations prevented him from most of those hopes and achievements. He struggled even with the modified discipline for the class.

Rodney deeply desired to improve himself and enrolled in Southern Arkansas University Tech despite his intellectual limitations. Unfortunately, Rodney was unable to complete even a semester and was on academic probation. (SAU Transcript Attached as Exhibit 13).

Rodney's behavior at school was that of a polite young man. The school resource counselor, Officer McKnight, remembers Rodney as always polite and with a good attitude and never rude. If she told him to do something, he would do it. She recalled Rodney's mother coming to appointments when advised, but that was the extent of her helping Rodney with his school work. She describes Rodney as having the most beautiful smile. (Photograph of Rodney as a young boy, Attached as Exhibit 14). Rodney was always eager to please and would help out at the school cleaning the football fields on Saturday mornings after Friday night football games.

The school janitor, Rev. Lannell Moore, who ran an after-school program for the Special Education children, described Rodney as kind and helpful. Rodney would help him every day after school. Rodney would cheerfully perform any task Rev. Moore assigned to him, whether it was cleaning the blackboards or sweeping and mopping the floors. Rodney was never able to operate any equipment, such as the buffer, because it was not safe for him to operate dangerous machinery. Rev. Moore would have to repeat his instructions to Rodney numerous times and Rodney required constant supervision because he could not remember how to complete the task. Rodney did well at repetitive tasks. These are examples of adaptive deficits of individuals with intellectual disabilities.

Rev. Jeffrey Fields, who supervised Rodney in the after school suspension program at Camden High School describes Rodney as socially challenged as well as

mentally and educationally challenged. Rodney had difficulty picking things up and was never developed any reasoning skills. Rev. Field states these challenges led to behavioral issues, nothing bad or violent, but joking and kidding around. Rev. Fields noted that the kids in the after-school program were labelled “bad kids” and after a while they started to believe they were “bad kids”. Rev. Fields stated none of these children had any plans for after school and this led to problems. Rev. Fields describes Rodney as a “someone who blends in and goes along to get along”. Rodney was a follower. (Letter from Rev. Fields, Attached as Exhibit 15).

Significantly, Chaplain Kenny Pugh with the Greene County Detention Center, wrote a compelling letter on behalf of Rodney. Chaplain Pugh has spent a lot of time with Rodney in the past several years. He noted that Rodney has completed many correspondence courses relating to religious enlightenment. Chaplain Pugh also detailed how Rodney, despite the difficulties of the jail environment has maintained his friendly personality and his ability to cooperate with others. Touchingly, Chaplain Pugh, in his letter, wanted the Court to know that Rodney has a great potential to help adolescents based on his own experiences. (Letter from Chaplain Pugh, Attached as Exhibit 16).

EMPLOYMENT

Rodney proudly graduated from high school, but his intellectual deficits have prevented him from achieving any meaningful employment. Indeed, his intellectual

deficits prevented him from maintaining even the most basic employment, such as McDonald's, Taco Bell, Dollar Tree or Wal-Mart because of his inability to follow instructions, appear on time, perform even the simplest of tasks, and, in the case of his job at Dollar Tree, even make change at the register. Rodney's longest job was at Tyson Chicken in Hope, Arkansas but he was not able to get reliable rides to and from work. Rodney does not have a driver's license because he was never able to pass the written part of the test. At the time of this offense, Rodney had just started working at Taco Bell. Rodney was always trying to stay employed, trying to improve his life and for that of his children. Due to his limitations Rodney had difficulty succeeding in anything but the most menial of jobs, but his job history shows he persevered. (PSR, Par. 54-59).

CRIMINAL HISTORY

Rodney has no significant adult criminal history, and no adult criminal history of violence. However, Rodney does have a juvenile history, that is commensurate with his upbringing of chaos and lack of parental supervision as well as his intellectual disabilities. Rodney's involvement with the criminal justice system started when he was 15 years old and was taken into the Department of Youth Services at aged 15. It is not surprising he continued to have trouble as a juvenile after being incarcerated at such a young age and taken away from his family.

ROLE

The defense respectfully notes the facts of the case support that Rodney was not the leader in this criminal venture. The facts of Rodney's life also support that he is a follower, not a leader, as his teachers noted. The forensic evidence shows the co-defendant, Mr. Strickland, was the primary aggressor and the primary shooter. (PSR, Par. 6). The Court can consider this fact in determining a reasonable sentence for Rodney. While this supports the requested variance, Mr. Henry has filed a separate motion for a downward departure based on his role in the offense.

FAMILY SUPPORT

Rodney is very close to his family. Throughout the many years he has been held in pre-trial, his family has supported him. He is particularly close to his mother and his brothers, Strodney and Frandarren. (Family and Friend Letters Attached as Exhibit 17). Rodney is the proud father of Jordan Henry, age 7 and Nikeya Henry, age 5. (Photos Attached as Exhibit 18). Despite being in pre-trial custody for years, Rodney has stayed in daily contact with his family.

A Life Sentence Without the Possibility of Parole is a Cruel Sentence and Does Not Meet The Goals of Sentencing

To receive a life sentence with no possibility of parole would leave a young man with no hope. Even if he served a substantial amount of time, it is unlikely he would emerge from the Bureau of Prisons a recidivist due to his likely age of release.

Between 2005-2016, the U.S. Supreme Court issued several decisions banning extreme adult sentences for youth. While Rodney was not technically a minor at the time of this crime, he had just turned 21 years old. In Roper v. Simmons, 543 U.S. 551 (2005), the Supreme Court banned the death penalty for children under age 18. In Graham v. Florida, 560 U.S. 48 (2010), the Court banned life without parole sentences for youth convicted of non-homicide crimes; and in Miller v. Alabama, 567 U.S. _ (2012), the Court banned mandatory sentences of life without parole in homicide cases. While youth may still be sentenced to discretionary life without parole in homicide cases, these sentences should be rare and uncommon and reserved only for individuals who the court has deemed are incapable of rehabilitation.

Here, it is clear that Rodney is capable of rehabilitation. He graduated from high school, attempted to go to college, albeit unsuccessfully due to his intellectual disabilities, maintained a series of jobs and has loving relationships with his family. He has two children he loves dearly. Rodney has shown he was able to adapt under difficult circumstances while incarcerated. Rodney was housed in jail conditions at Greene County that were less than exemplary for an extraordinary amount of time. The jail records show no significant disciplinary actions. He was held in pretrial conditions for years due to his case being continued and due to the global pandemic,

which effectively shut down the court system. Rodney suffered from Covid numerous times.

Rodney was involved in a terrible crime. However, the specific circumstances of Rodney, his age and the stated policy goals of the United States Sentencing Guidelines as well as society's current understanding of the limitations of a juvenile brain and the concept of rehabilitation call for a sentence of less than life without parole. A sentence of 25 years is a reasonable sentence and meets all the requirements of the §3553 (a) factors.

GUIDELINE OBJECTIONS

The following arguments are made in support of the objections previously made to the presentence report as noted in the addendum of such. Mr. Henry contends that because the Arkansas juvenile code does not allow the trial court to determine the length of confinement for juvenile offenders, a finding that Mr. Henry was sentenced to confinement of at least sixty days is prohibited.

Under Arkansas law, should a court deem it appropriate to sentence a juvenile delinquent to confinement, the sentencing court does not determine the length of that confinement. Instead, the length of confinement is solely determined by the Division of Youth Services of the Department of Human Services. See Ark. Code Ann. § 9-27-330. LexisNexis (2013-2014). "Upon receipt of an order of commitment, with recommendations for placement, the division shall *consider* the recommendations

of the committing court in placing the juvenile in a youth services facility or community-based program.” 9-27-330(a)(1)(B)(iv) LexisNexis (2013-2014) emphasis added.

Here, the sentencing court did not specifically sentence Mr. Henry to confinement of at least 60 days. The sentencing court lacked the authority to determine the appropriate length of confinement for Mr. Henry. The actual determination of the length of confinement was made extra-judicially by DYS. Should any points be attributed to Mr. Henry’s conduct in paragraphs 32, 34, or 35, it should not exceed 1 point per offense.

Furthermore, as to paragraph 32 of the PSR, Mr. Henry’s juvenile adjudication for residential burglary has been expunged and should not be counted according to USSG 4A1.2(j). Ark. Code Ann. § 9-27-309 provides that

[r]ecords of delinquency adjudications for which a juvenile could have been tried as an adult shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding of guilt as an adult.

(B) Thereafter they may be expunged.

(2) The court may expunge other juvenile records at any time and *shall expunge all the records of a juvenile upon his or her twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.*

As Mr. Henry was aged fifteen at the time of the residential burglary, he could not be tried as an adult for that offense. See Ark. Code Ann. § 9-27-318. Mr. Henry

reached his twenty-first birthday shortly before the present offense. Therefore, this offense was expunged prior to November 12, 2018.

The same applies to paragraph 34 of the PSR, Mr. Henry's juvenile adjudication for disorderly conduct has been expunged and should not be counted according to USSG 4A1.2(j).

Pursuant to USSG 4A.1.2(c)(1), the offense of disorderly conduct shall not be counted unless the sentence was a term of probation of more than one year or a term of imprisonment of at least thirty days. Mr. Henry was committed to DYS for an indeterminate period of confinement, and he was sentenced to one year probation. Neither sentence authorizes a criminal history point.

As to Paragraph 36, Mr. Henry does not recall this conviction and believes it was associated with the subsequent felony charge that is referenced in paragraph 41, which remains pending. Mr. Henry further objects to the assignment of one criminal history point because he lacked counsel at the time of his plea.

CONCLUSION

For the above and foregoing reasons, Mr. Rodney Henry respectfully requests this Court grant his Motion for a Variance from the Sentencing Guidelines and impose a sentence of less than life without parole.

Respectfully submitted,

Robby Golden, AR Bar No. 2003134
3700 Cantrell Road, Suite 102
Little Rock, Arkansas 72202
(501) 372-8600
(888) 830-6252 *facsimile*
Attorney.robby.golden@gmail.com

Leslie Borgognoni
AR Bar No. 85013
424 E. 6th Street
Little Rock, AR 72202
lborgognoni@sbcglobal.net

ATTORNEYS FOR DEFENDANT

SANDRA MICHAELS
Mitigation Specialist for Rodney Henry
Georgia Bar No. 504014
965 Virginia Ave, N.E.
Atlanta, Georgia 30306
(404) 312-5781
SLMichaelsLaw@gmail.com

CERTIFICATE OF SERVICE

I, Robby Golden, hereby certify that this Motion was filed using the CM/ECF and serves as notice to all parties on June 15, 2023:

Ms. Benecia Moore
Assistant United States Attorney

Ms. Kristin Bryant
Assistant United States Attorney

Robby Golden, No. 2003134
3700 Cantrell Road, Suite 102
Little Rock, Arkansas 72202
(501) 372-8600
(888) 830-6252
Attorney.robby.golden@gmail.com

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
VS.)	4:19-CR-00580-02-JM
)	
RODNEY T. HENRY)	

MOTION FOR A DOWNWARD DEPARTURE OR VARIANCE

Comes now Rodney Henry, by and through counsel, for his motion for a downward departure.

U.S.S.G § 3B1.2 MITIGATING ROLE

Mr. Henry respectfully requests a departure from the offense level as calculated in his presentence report based on U.S.S.G. §3B1.2. Mr. Henry disputes the Government’s contention that he is equally culpable and responsible for the death of Mr. McHan.

The application notes to U.S.S.G §3B1.2 state, “[t]he determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, is based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.” Application Note 3(C) to U.S.S.G. § 3B1.2 (2021). The notes provide a non-exhaustive list of factors that the sentencing court should consider. Those are as follows:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
- (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
- (v) the degree to which the defendant stood to benefit from the criminal activity.

Id.

Nothing indicates that Mr. Henry knew Mr. Strickland was going to enter the shop and immediately open fire on Mr. Booth and Mr. McHan. Also, nothing indicates that Mr. Henry organized the robbery or murder of Mr. McHan, or that he exercised any decision making authority in the murder of Mr. McHan. In fact, the video evidence indicates otherwise. Mr. Strickland leads the way in both robberies.

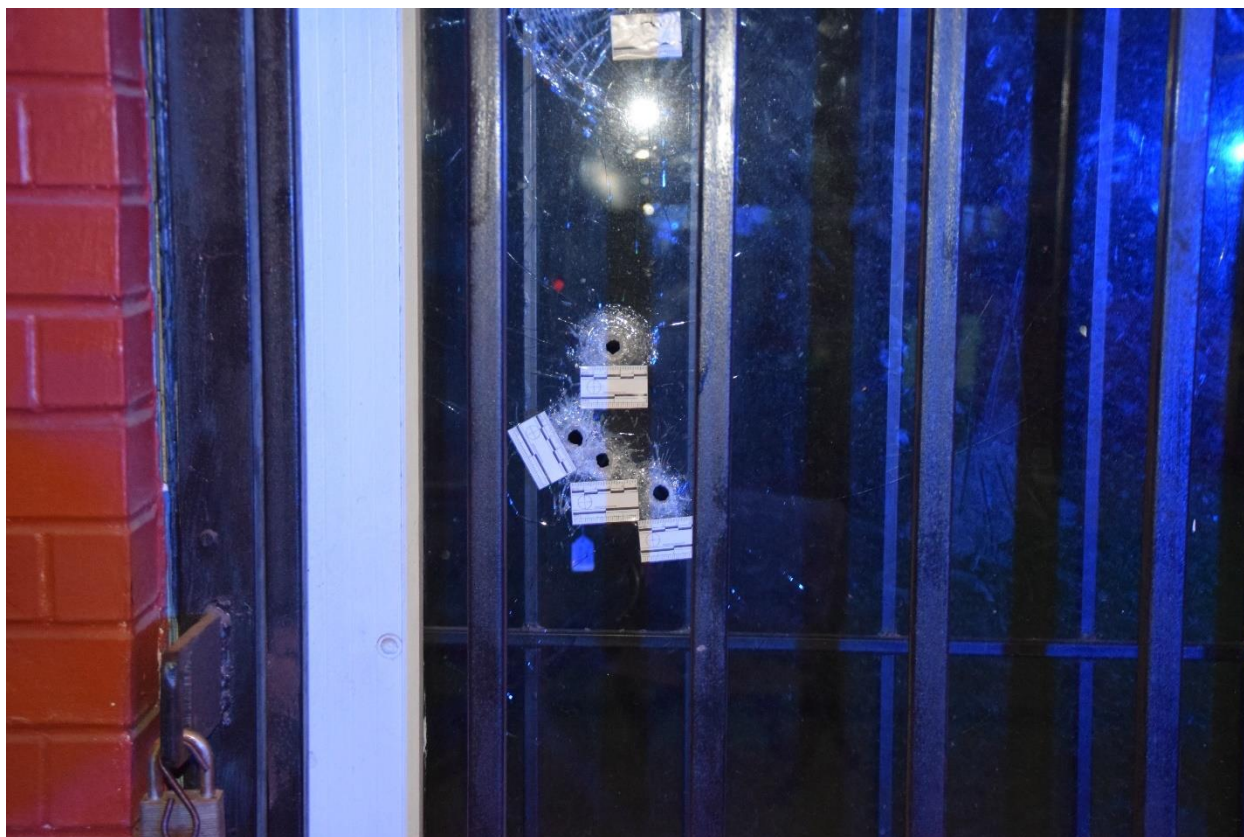
It is without dispute that Mr. Strickland entered the pawn shop alone and immediately began shooting. (Government's Exhibit 1, file 1421-4516 at timestamp 5:34:52, file 1844-4433 at 5:34:52). When Mr. Strickland enters the shop, Mr. McHan is located behind the counter, and Mr. Booth is outside the counter in the store itself. Approximately six seconds after Strickland opens fire, Mr. Henry reaches the entrance of the shop. Id. at 5:35:02. The two run into each other when Mr. Henry reaches the entrance and both run away. Mr. Henry fired no shots. After Mr. Strickland exits the first time, Mr. Booth retreats behind the

counter where Mr. McHan is located. (Government's Exhibit 2, file 2107-4510 at time stamp 5:35:28, file 1844-4433 at time stamp 5:35:18). Both remain behind the counter until the police arrive.

Both Strickland and Mr. Henry return to the entrance with Mr. Strickland in front leading the way. (Government's Exhibit 1, file 1421-4516 at timestamp 5:36:42). At this point, Mr. Henry fires four shots through the glass door. Id. at 5:37:00. The shots by Mr. Henry are fired away from where Mr. Booth and Mr. McHan are located taking cover behind the counter.

Numerous shell casings were recovered from the scene and subsequently submitted to the Arkansas State Crime Laboratory. All casing recovered were classified as .40 caliber except four. The four remaining casings recovered were classified as .45 caliber. It appears from the video and the evidence at the crime scene that Mr. Henry fired four shots. Defendant Henry's Exhibit "A".





The .45 caliber casings recovered and assigned evidence numbers E-1, E-2, E-3, and E-4. The casings were submitted to the crime lab where they were found to have been fired from the same weapon.



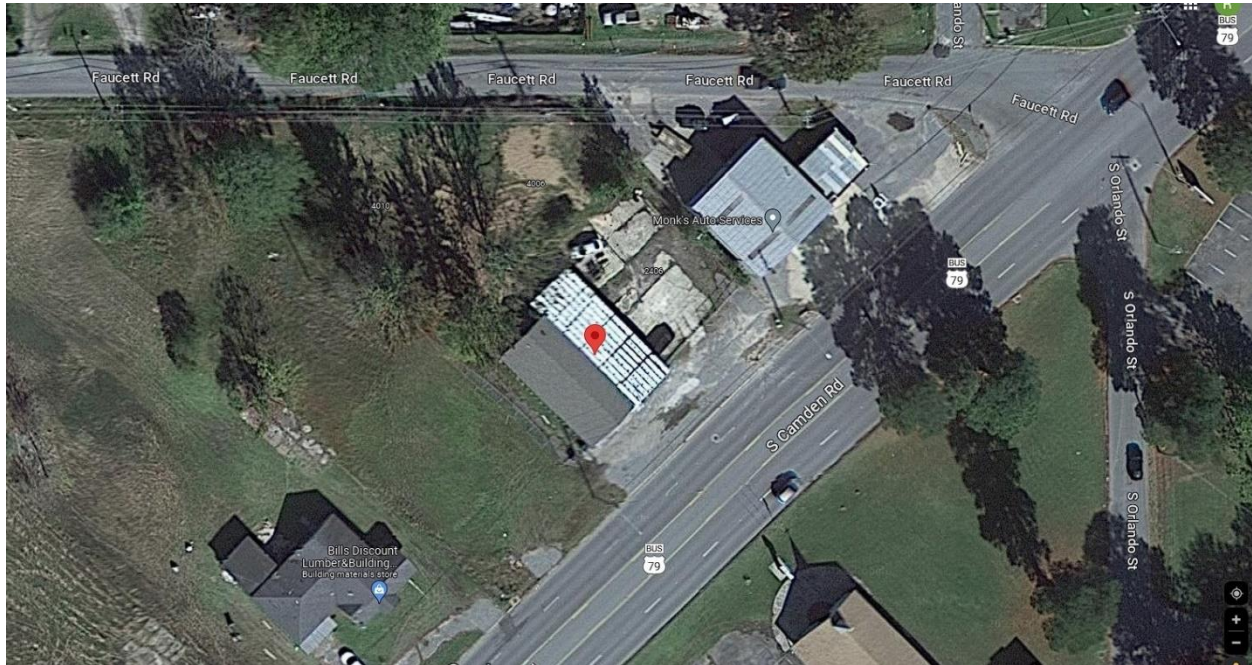
Of the four shots fired by Mr. Henry, three projectiles were recovered and assigned evidence numbers E-29, E-30, and BW-4. These projectiles were submitted to the Arkansas State Crime Laboratory and identified as .45 caliber class bullets. E-29 and E-30 were recovered from the opposite side of the room from where Mr. Booth and Mr. McHan were taking cover.



[Wide angle view of the interior of the shop for perspective.]



The recovery of BW-4 was not documented by photograph, but it was described as being recovered from the “inside business west wall near the exit door.” The westerly portion of the shop is also opposite from the location of Mr. McHan and Mr. Booth.

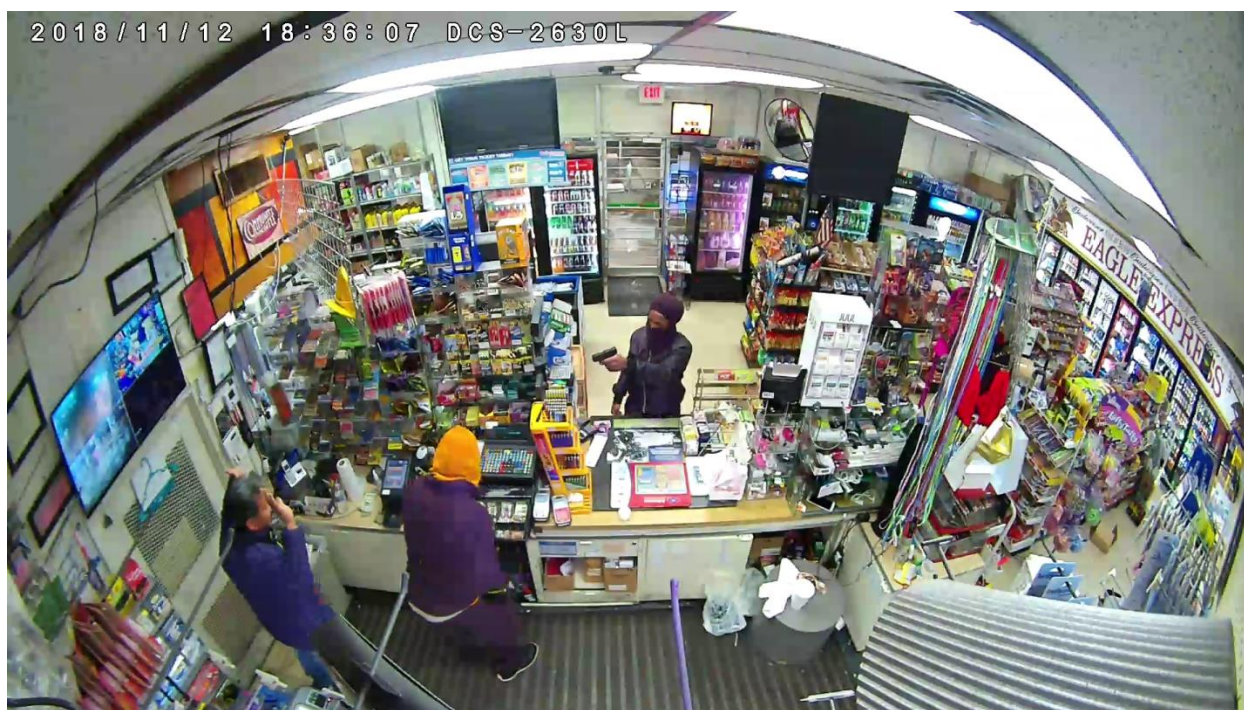


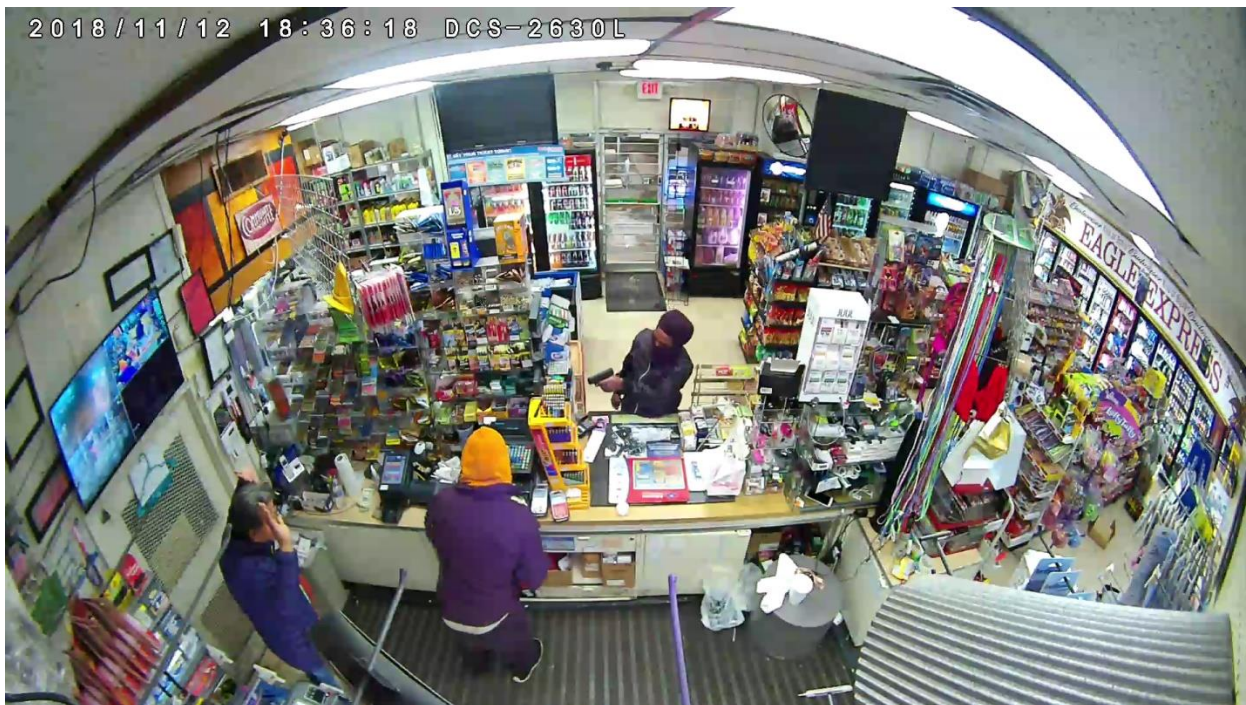
Evidence from the crime scene suggests that the fourth projectile fired by Mr. Henry struck the headlight of the riding lawnmower, which also indicates that the path of Mr. Henry's shots were directed away from the location of Mr. McHan and Mr. Booth. This projectile was not recovered.





As for the Alon robbery, again, Mr. Strickland enters the store first and aggressively points his firearm at the store clerk. (Government's Exhibit 2, file 20181112_183519 time stamp 18:35:53). Mr. Henry follows behind Mr. Strickland and goes behind the counter. Mr. Henry is holding his firearm in his left hand and never points it at the clerk. While behind the counter, Mr. Henry positions himself between Strickland's firearm and the store clerk. (Government Exhibit 2).





During this event no shots were fired by either Henry or Strickland, and nothing from the circumstances at Alon indicate that Mr. Henry organized or led in the commission of this robbery. Furthermore, this is proof that the shooting at the pawn shop was not a premeditated killing. While the reasoning behind Mr. Strickland opening fire at the pawn shop is unknown, there is no evidence that it was anything other than the rogue independent actions of Mr. Strickland, and Mr. Henry had no role in it.

The guidelines recognize a departure of 2 to 4 levels, depending on the circumstances of the participation. After consideration of the factors mentioned above, the court may find that the defendant was a “minimal participant” and award a four-level reduction. The court may also find that the defendant was

“minor participant,” awarding a two-level reduction. Or, the court may find that a participant falls in between a minimal and minor participant and award a three-level reduction.

A minimal participant is described as defendants “who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant’s lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.” Application Note 4 to U.S.S.G. § 3B1.2 (2021). Whereas, a “minor participant” is described as those that are “less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” *Id.*

Mr. Henry contends that the totality of the circumstances in this case establish that he falls in between minor and minimal and requests that he be awarded a three-level reduction. Mr. Henry did not exercise any leadership or control over the crimes that were committed. It was never Mr. Henry’s intent to cause the loss of life or serious physical injury to another person. Without question, when you participate in a robbery with firearms, there is a substantial risk that someone can be killed or injured. Mr. Henry acknowledges his assistance in the commission of the crimes, which is why he entered his plea of guilty and accepted responsibility. However, the facts clearly show that he was not the cause of the

shooting of either Mr. Booth or Mr. McHan, and a role reduction should be granted.

**U.S.S.G. § 4A1.3 DEPARTURES BASED ON
INADEQUACY OF CRIMINAL HISTORY CATEGORY**

Pursuant to U.S.S.G. § 4A1.3, the court may grant a downward departure “if reliable information indicates that the defendant’s criminal history category substantially over-represents the seriousness of the defendant’s criminal history.” (2021). This guideline applies here.

Per the presentence report, Mr. Henry’s criminal history score is six, which places him in category three. This score substantially overrepresents the seriousness of Mr. Henry criminal history. Mr. Henry’s criminal history as an adult consists of one misdemeanor for theft by receiving.¹ The remainder of Mr. Henry’s criminal history occurred as a juvenile for offenses he committed at the ages of fifteen and sixteen.

As noted in paragraph 35 of the presentence report, Mr. Henry received two points for stealing chips, cookies, and loose change from Camden Fairview Middle School. Mr. Henry received one point for the offense of disorderly conduct when he was sixteen years old. Paragraph 34 of the PSR. Mr. Henry received an additional two points because his juvenile probation was revoked for not behaving in school, not following curfew, and failing a drug test. Paragraph 32 of the PSR.

¹ Mr. Henry did not receive the assistance of counsel at the time of conviction.

It is likely that had the above-referenced “offenses” occurred when the defendant was an adult, he most likely would not have received similar “sentences of imprisonment” and five (5) criminal history points for the same. Mr. Henry requests that the court find that a criminal history score of six overrepresents the seriousness of his criminal history and grants a downward departure to criminal history category two.

Respectfully submitted,

Robby Golden, AR Bar No. 2003134
3700 Cantrell Road, Suite 102
Little Rock, Arkansas 72202
(501) 372-8600
(888) 830-6252 *facsimile*
Attorney.robby.golden@gmail.com

Leslie Borgognoni
AR Bar No. 85013
424 E. 6th Street
Little Rock, AR 72202
lborgognoni@sbcglobal.net

ATTORNEYS FOR DEFENDANT

PINE BLUFF POLICE DEPARTMENT**Crime Scene Unit / Forensic Laboratory**200 E 8th Avenue

Pine Bluff, Arkansas, 71601

Office: (870) 850-2470 | Fax: (870) 850-2474

**Crime Scene Unit
Evidence Log****Incident Number: 2018-045404****Reference: Homicide****Location: 2408 S. Camden****Victim(s): Brandon McHan, W/M, [REDACTED]; Jason Booth, W/M, [REDACTED]****Suspect(s): Unknown****Attention: Detective T. Smith****Date Of Incident: November 12, 2018****Date and****Time Out:****Supervisor's Approval:**

Evidence Number:	Description:	Disposition:	Collected By:
E-1	WRA 69 Spent casing	CL/E	AH
E-2	RP 45 Auto spent casing	CL/E	AH
E-3	WRA 69 spent casing	CL/E	AH
E-4	WCC Match 18 spent casing	CL/E	AH
E-5	NFCR 40 S&W spent casing	CL/E	AH
E-6	WIN 40 S&W spent casing	CL/E	AH
E-7	WIN 40 S&W spent casing	CL/E	AH
E-8	NFCR 40 S&W spent casing	CL/E	AH
E-9	NFCR 40 S&W spent casing	CL/E	AH
E-10	Hornady 40 S&W spent casing with possible blood on it	CL/E	AH
E-11	Hornady 40 S&W spent casing with possible blood on it	CL/E	AH
E-12	Hornady 40 S&W spent casing	CL/E	AH
E-13	Hornady 40 S&W spent casing	CL/E	AH
E-14	Hornady 40 S&W spent casing	CL/E	AH
E-15	Hornady 40 S&W spent casing	CL/E	AH
E-16	Hornady 40 S&W spent casing	CL/E	AH
E-17	NFCR 40 S&W spent casing	CL/E	AH
E-18	Remington 12ga Peters spent shell	E	AH
E-19	Black in color Remington 870 12ga shotgun		
	Serial# RF41093A with 4-Remington 12ga Peters live shells	E	AH
E-20	Black in color I-Phone belonging to victim Brandon McHan	KM	AH
E-21	Dark green and black in color Glock Gen4 40mm with		
	Wise Buck and B.McHan on it serial# PVF243 with magazine		

EXHIBIT "A"

A-46

PINE BLUFF POLICE DEPARTMENT***Crime Scene Unit / Forensic Laboratory*****200 E 8th Avenue****Pine Bluff, Arkansas, 71601****Office: (870) 850-2470 | Fax: (870) 850-2474**

	And possible blood on it	CL/E	AH
E-22	Hornady 40 S&W spent casing	CL/E	AH
E-23	Hornady 40 S&W spent casing	CL/E	AH
E-24	Hornady 40 S&W spent casing	CL/E	AH
E-25	Green in color jacket 2xl with possible blood on it belonging to one of the victim's	E	AH
E-25a	Key ring with 9 keys, two keyless entry remotes and a Planet fitness card	E	AH
E-26	Black in color t-shirt with possible blood on it belonging To one of the victims	E	AH
E-27	Hornady 40 S&W spent casing	CL/E	AH
E-28	Projectile	CL/E	AH
E-29	Projectile	CL/E	AH
E-30	Projectile	CL/E	AH
E-31	Projectile	CL/E	AH
E-32	Route 44 Sonic cup	E	AH
E-33	NFCR 40 S&W spent casing	CL/E	AH
E-34	Red in color bandana	CL/E	AH
E-35	NFCR 40 S&W live rounds	CL/E	AH
E-36	black in color Smith &Wesson 40mm handgun Serial# MRB1586 with magazine and 10 WIN 40 S&W live rounds	CL/E	AH
BW-1	NFCR 40 S&W shell casing	CL/E	BW
BW-2	Copper jacket	CL/E	BW
BW-3	Projectile	CL/E	BW
BW-4	Projectile	CL/E	BW
BW-5	Blue Nike shoes size 14, one pair white socks Belonging to Jason Booth	E	BW

Amanda Hale
Crime Scene Technician



ARKANSAS STATE CRIME LABORATORY EVIDENCE SUBMISSION FORM

P.O. Box 8500
3 Natural Resources Drive
Little Rock AR 72215
Phone: (501) 227-5747
Fax: (501) 227-0713

P.O. Box 868
Hope AR 71802
Phone: (870) 722-8530
Fax: (870) 722-8534

www.arkansas.gov/crimelab

Has any evidence been previously submitted on this case by any agency? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Agency Case # 2018-045404		ASCL Case #	
If known, please list ASCL Case #					
Investigating Agency PINE BLUFF POLICE DEPARTMENT			Investigating Officer (Prefix, First, Last) Tamina Smith		
If applicable, please list additional agencies involved			Phone 8707302090		
			Mobile (optional)		
Type of Offense Homicide	Date of Offense 11/12/2018	County of Offense Jefferson	E-Mail Address		

	Suspect	Victim	Name (LAST, First)	Arrested?	SID/SSN	DOB	Race	Sex
1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McHan, Brandon	<input type="checkbox"/> YES <input type="checkbox"/> NO		██████	W	M
2	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Booth, Jason	<input type="checkbox"/> YES <input type="checkbox"/> NO		██████	W	M
3	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> YES <input type="checkbox"/> NO				
4	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> YES <input type="checkbox"/> NO				
5	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> YES <input type="checkbox"/> NO				
6	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/> YES <input type="checkbox"/> NO				

Juli's Law—If a felony arrest was made, please answer the following:

Was a DNA sample collected on a DNA database kit for CODIS? ☐ Yes ☐ No Comments: _____

Were suspect known samples collected (on cotton swabs) to be used as references in this case? ☐ Yes ☐ No Comments: _____

If this case involves a sexual assault—Was there a consensual sexual act within the past 96 hours? ☐ Yes ☐ No Comments: _____

Detailed Summary of Crime (Use provided addendum if necessary):
SEE ATTACHED

Important—please note the following:

- The Arkansas State Crime Laboratory (ASCL) shall select and use appropriate testing methods/procedures (please visit the ASCL website www.arkansas.gov/crimelab to see methods available).
- The ASCL reserves the right to transfer evidence to another accredited laboratory when deemed necessary
- All evidence shall be properly packaged and sealed to prevent contamination and tampering
- All biologically contaminated evidence must be marked BIOHAZARD
- Sharps must be packaged in such a manner as to protect personnel during handling

PE / DNA Requests—Copies of Investigative Reports are requested.
Report attached: ☐ Yes ☐ No
If not, please forward to Evidence Receiving.

Firearms Submissions—By signing, I hereby certify all listed firearms are unloaded.
Signature: _____ Date: _____

LAB USE ONLY

HC USPS UPS FedEx DHL



ARKANSAS STATE CRIME LABORATORY EVIDENCE SUBMISSION FORM

All fields required except where noted

www.arkansas.gov/crimelab

ASCL Case #

Agency Case # 2018-045404

Evidence will be analyzed using a priority based system. List the priority of your evidence for analysis (1= highest)

Evidence #	Evidence Description	Physical Evidence/DNA Requests: 1. List where item was collected 2. List who the item belongs to (if known)	Requested Service (refer to codes below)
1	E-1 WRA 69 spent casing	outside business	DNA/LP/F
2	E-2 RP 45 Auto spent casing	outside business	DNA/LP/F
3	E-3 WRA 69 spent casing	outside business	DNA/LP/F
4	E-4 WCC Match 18 spent casing	outside business	DNA/LP/F
5	E-5 NFCR 40 S&W spent casing	outside business	DNA/LP/F
E-6	WIN 40 S&W spent casing	inside business near front door	DNA/LP/F
E-7	WIN 40 S&W spent casing	inside business near front door	DNA/LP/F
E-8	NFCR 40 S&W spent casing	inside business right of front door (south side of counter)	DNA/LP/F
E-9	NFCR 40 S&W spent casing	inside business right of front door (south side of counter)	DNA/LP/F
E-10	Hornady 40 S&W spent casing with possible blood on it	inside business north side of counter	DNA/LP/F
E-11	Hornady 40 S&W spent casing with possible blood on it	inside business north side of counter	DNA/LP/F
E-12	Hornady 40 S&W spent casing	inside business north side of counter	DNA/LP/F

Type of Analysis Requested:

PLEASE CHECK ALL SPENT CASING FOR DNA. IF LOCATED PLACE INTO CODIS. CHECK ALL SPENT CASING FOR LATENTS AND ENTER INTO AFIS. PLACE ALL SPENT CASINGS AND PROJECTILES INTO NIBIN AND COMPARE TO WEAPONS SUBMITTED.

Submitting Officer (print):

Signature

Date

Requested Service Codes:

DE: Digital Evidence

DA: Drug Analysis

FA: Firearms / Tool Marks / NIBIN

IL: Illicit Laboratories

LP: Latent Prints

PE/DNA: Physical Evidence / DNA

TOX: Toxicology



ARKANSAS STATE CRIME LABORATORY EVIDENCE LIST ADDENDUM

www.arkansas.gov/crimelab

ASCL Case #

Agency Case # 2018-045404

Evidence #	Evidence Description	Physical Evidence/DNA Requests: 1. List where item was collected 2. List who the item belongs to (if known)	Requested Service (refer to codes below)
E-13	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-14	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-15	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-16	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-17	NFCR 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-22	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-23	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-24	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-27	Hornady 40 S&W spent casing	inside business north side of counter	DN/LP/FA
E-28	Projectile	inside business south side of business	FA
E-29	projectile	inside business south side of business	FA
E-30	projectile	inside business south side of business	FA

Type of Analysis Requested:
see first page

Submitting Officer (print):

Signature

Date

Requested Service Codes:

DE: Digital Evidence

DA: Drug Analysis

FA: Firearms / Tool Marks / NIBIN

IL: Illicit Laboratories

LP: Latent Prints

PE/DNA: Physical Evidence / DNA

TOX: Toxicology



ARKANSAS STATE CRIME LABORATORY

EVIDENCE LIST ADDENDUM

www.arkansas.gov/crimelab

ASCL Case #

Agency Case #

Evidence #	Evidence Description	Physical Evidence/DNA Requests: 1. List where item was collected 2. List who the item belongs to (if known)	Requested Service (refer to codes below)
E-31	Projectile	south side of business inside	DN/LP/FA
E-33	NFCR 40 S&W spent casing	inside business between filing cabinet and fridge north side of counter	DN/LP/FA
E-35	NFCR 40 S&W live round	outside southeast side of business in puddle near fence	DN/LP/FA
BW-1	NFCR 40 S&W shell casing	inside business right door frame	DN/LP/FA
BW-2	Copper jacket	inside business south wall	FA
BW-3	Projectile	inside business west wall near exit door	FA
BW-4	Projectile	inside business west wall near exit door	FA
E-21	Dark green and black in color Glock Gen4 40mm with Wise Buck and B.McHan on it serial# PVF243 with magazine	NORTH side of counter	FA
E-36	black in color Smith &Wesson 40mm handgun Serial# MRB1586 with magazine and 10 WIN 40 S&W live rounds	inside victim's (Jason Booth) vehicle	FA

Type of Analysis Requested:
SEE FIRST PAGE

Submitting Officer (print):	Requested Service Codes: DE: Digital Evidence DA: Drug Analysis FA: Firearms / Tool Marks / NIBIN IL: Illicit Laboratories LP: Latent Prints PE/DNA: Physical Evidence / DNA TOX: Toxicology
Signature	
Date	



Arkansas State Crime Laboratory
P.O. Box 8500
3 Natural Resources Drive
Little Rock, Arkansas 72215



ALI-351-T
An ASCLD/LAB Accredited Laboratory
(Since December 13, 2004)

Laboratory Services
(501) 227-5747

FIREARMS
REPORT OF LABORATORY ANALYSIS

Investigating Officer/Agency/Address:

Laboratory Case Number: 2018-027335

Page 1 of 5

Tamina Smith
Pine Bluff Police Department
P. O. Box 8963
Pine Bluff, AR 71611
Suspect(s):

Agency Case Number: 2018-045404

ME Case Number: 1320-18

Victim(s):

Jason Booth
Brandon McHan

Date of Report: 12/07/2018

I do hereby attest and confirm, as specified by A.C.A 12-12-313, that the information listed below is a true and accurate report of the results of analysis performed on evidence received in a sealed condition at the Arkansas State Crime Laboratory. The results stated below relate only to the items tested and represent the interpretations/opinions of the undersigned analyst. This is only an official Arkansas State Crime Laboratory report when reproduced in full.

ITEMS SUBMITTED:

0001-AA-09-aa	(01) Damaged copper total metal jacketed bullet, listed as from shirt of Brandon McHan
0001-AA-09-ab	(01) Damaged copper jacket fragment of a bullet, listed as from right lung of Brandon McHan
0002-AB	(01) Damaged copper full metal jacketed bullet, listed as E-31
0002-AC	(01) Damaged copper jacketed hollowpoint bullet, listed as E-28
0002-AD	(01) Damaged brass full metal jacketed bullet, listed as E-29
0002-AE	(01) Damaged copper colored steel full metal jacketed bullet, listed as E-30
0002-AF	(01) Damaged copper jacketed hollowpoint bullet, listed as BW-3
0002-AG	(01) Damaged copper full metal jacketed bullet, listed as BW-4
0003-AA	(01) .40 S&W caliber, Glock, model 22 Gen 4, semi-automatic pistol, serial number PVF243, listed as E-21
0004-AA	(01) .40 S&W caliber, Smith & Wesson, model M&P 40c, semi-automatic pistol, serial number MRB1586, listed as E-36
0004-AB	(10) .40 S&W caliber, Winchester full metal jacket ammunition, listed as E-36
0005-AA	(01) Expended .45 Auto caliber, Remington cartridge case, listed as E-2
0005-AB	(01) Expended .40 S&W caliber, Federal cartridge case, listed as E-5
0005-AC	(01) Expended .40 S&W caliber, Winchester cartridge case, listed as E-6
0005-AD	(01) Expended .40 S&W caliber, Winchester cartridge case, listed as E-7
0005-AE	(01) Expended .40 S&W caliber, Federal cartridge case, listed as E-8
0005-AF	(01) Expended .40 S&W caliber, Federal cartridge case, listed as E-9
0005-AG	(01) Expended .40 S&W caliber, Hornady cartridge case, listed as E-10
0005-AH	(01) Expended .40 S&W caliber, Hornady cartridge case, listed as E-11
0005-AI	(01) Expended .40 S&W caliber, Hornady cartridge case, listed as E-12
0005-AJ	(01) Expended .40 S&W caliber, Hornady cartridge case, listed as E-13
0005-AK	(01) Expended .40 S&W caliber, Hornady cartridge case, listed as E-14
0005-AL	(01) Expended .40 S&W caliber, Hornady cartridge case, listed as E-15



Arkansas State Crime Laboratory
P.O. Box 8500
3 Natural Resources Drive
Little Rock, Arkansas 72215



ALI-351-T
An ASCLD/LAB Accredited Laboratory
(Since December 13, 2004)

Laboratory Services
(501) 227-5747

FIREARMS
REPORT OF LABORATORY ANALYSIS

Investigating Officer/Agency/Address:

Laboratory Case Number: 2018-027335

Page 2 of 5

Tamina Smith
Pine Bluff Police Department
P. O. Box 8963
Pine Bluff, AR 71611
Suspect(s):

Agency Case Number: 2018-045404

ME Case Number: 1320-18

Victim(s):

Jason Booth
Brandon McHan

Date of Report: 12/07/2018

I do hereby attest and confirm, as specified by A.C.A 12-12-313, that the information listed below is a true and accurate report of the results of analysis performed on evidence received in a sealed condition at the Arkansas State Crime Laboratory. The results stated below relate only to the items tested and represent the interpretations/opinions of the undersigned analyst. This is only an official Arkansas State Crime Laboratory report when reproduced in full.

0005-AM	(01)Expended .40 S&W caliber, Hornady cartridge case, listed as E-16
0005-AN	(01)Expended .40 S&W caliber, Federal cartridge case, listed as E-17
0005-AO	(01)Expended .40 S&W caliber, Hornady cartridge case, listed as E-22
0005-AP	(01)Expended .40 S&W caliber, Hornady cartridge case, listed as E-23
0005-AQ	(01)Expended .40 S&W caliber, Hornady cartridge case, listed as E-24
0005-AR	(01)Expended .40 S&W caliber, Hornady cartridge case, listed as E-27
0005-AS	(01)Expended .40 S&W caliber, Federal cartridge case, listed as E-33
0005-AT	(01) .40 S&W caliber, Federal full metal jacket ammunition, listed as E-35
0005-AU	(01)Expended .40 S&W caliber, Federal cartridge case, listed as BW-1
0005-AV	(01)Expended .45 Auto caliber, Winchester cartridge case, listed as E-1
0005-AW	(01)Expended .45 Auto caliber, Winchester cartridge case, listed as E-3
0005-AX	(01)Expended .45 Auto caliber, Winchester cartridge case, listed as E-4
0005-AY	(01)Damaged copper jacket of a bullet, listed as BW-2

RESULTS OF EXAMINATION:

The 01-AA-09-aa and 02-AB bullets were microscopically compared to one another and to bullets test fired through the barrel of the 04-AA pistol with **INCONCLUSIVE RESULTS**. Due to damage and limited individual characteristics, the two bullets could neither be **identified nor eliminated** as having been fired through the same firearm barrel or as having been fired through the barrel of the Smith & Wesson pistol.

The 01-AA-09-aa and 02-AB bullets were **ELIMINATED** as having been fired through the barrel of the 03-AA pistol based on differences in class characteristics.

The 02-AC, 02-AF, and 05-AY bullets and jacket of a bullet were microscopically compared to one another and to bullets test fired through the barrel of the 03-AA pistol with **INCONCLUSIVE RESULTS**. Due to damage and limited individual characteristics, the two bullets and one jacket of a bullet could neither be **identified nor eliminated** as having been fired through the same firearm barrel or as having been fired through the barrel of the Glock pistol.



Arkansas State Crime Laboratory

P.O. Box 8500
3 Natural Resources Drive
Little Rock, Arkansas 72215



ALI-351-T
An ASCLD/LAB Accredited Laboratory
(Since December 13, 2004)

Laboratory Services
(501) 227-5747

FIREARMS
REPORT OF LABORATORY ANALYSIS

Investigating Officer/Agency/Address:

Laboratory Case Number: 2018-027335

Page 3 of 5

Tamina Smith
Pine Bluff Police Department
P. O. Box 8963
Pine Bluff, AR 71611
Suspect(s):

Agency Case Number: 2018-045404

ME Case Number: 1320-18

Victim(s):

Jason Booth
Brandon McHan

Date of Report: 12/07/2018

I do hereby attest and confirm, as specified by A.C.A 12-12-313, that the information listed below is a true and accurate report of the results of analysis performed on evidence received in a sealed condition at the Arkansas State Crime Laboratory. The results stated below relate only to the items tested and represent the interpretations/opinions of the undersigned analyst. This is only an official Arkansas State Crime Laboratory report when reproduced in full.

The 02-AC, 02-AF, and 05-AY bullets and jacket of a bullet were **ELIMINATED** as having been fired through the barrel of the 04-AA pistol based on differences in class characteristics.

The 01-AA-09-aa and 02-AB bullets were **ELIMINATED** as having been fired through the same firearm barrel(s) as the 02-AC, 02-AF, and 05-AY bullets and jacket of a bullet based on differences in class characteristics.

The 02-AD, 02-AE, and 02-AG bullets were microscopically compared to one another with **INCONCLUSIVE RESULTS**. Due to damage and limited individual characteristics, the three bullets could neither be **identified nor eliminated** as having been fired through the same firearm barrel.

The 01-AA-09-ab jacket fragment of a bullet was microscopically compared to the 01-AA-09-aa, 02-AB, 02-AC, 02-AD, 02-AE, 02-AF, 02-AG, and 05-AY bullets, bullets test fired through the barrel of the 03-AA pistol, and bullets test fired through the barrel of the 04-AA pistol with **INCONCLUSIVE RESULTS**. Due to damage and limited individual characteristics, the jacket fragment of a bullet could neither be **identified nor eliminated** as having been fired through the same firearm barrel as any of the seven bullets and one jacket of a bullet, through the barrel of the Glock pistol, or through the barrel of the Smith & Wesson pistol.

The 01-AA-09-aa and 02-AB bullets are .40 caliber class bullets fired through a conventionally rifled barrel with five lands and five grooves with a right twist. Some manufacturers that market firearms with similar general rifling characteristics include, but are not limited to, Charter Arms and Smith & Wesson. However, any firearm recovered in the course of this investigation should be submitted to the Arkansas State Crime Laboratory for comparison examinations.

The 02-AC bullet and 05-AY jacket of a bullet are .40 caliber class bullets fired through a polygonally rifled barrel with six lands and six grooves with a right twist. Some manufacturers that market firearms with similar general rifling characteristics include, but are not limited to, Bersa, Glock, Heckler & Koch, IMI, Kahr Arms, and Vektor. However, any firearm recovered in the course of this investigation should be submitted to the Arkansas State Crime Laboratory for comparison examinations.

The 02-AF bullet is a .40 caliber class bullet fired through a polygonally rifled barrel. Some manufacturers that market firearms with similar general rifling characteristics include, but are not limited to, Bersa, Dornaus & Dixon, Glock, Heckler & Koch, IMI, Kahr Arms, and Vektor. However, any firearm recovered in the course of this investigation should be submitted to the Arkansas State Crime Laboratory for comparison examinations.

EXHIBIT "A"

A-54



Laboratory Services
(501) 227-5747

Arkansas State Crime Laboratory
P.O. Box 8500
3 Natural Resources Drive
Little Rock, Arkansas 72215



ALI-351-T
An ASCLD/LAB Accredited Laboratory
(Since December 13, 2004)

FIREARMS
REPORT OF LABORATORY ANALYSIS

Investigating Officer/Agency/Address:

Tamina Smith
Pine Bluff Police Department
P. O. Box 8963
Pine Bluff, AR 71611
Suspect(s):

Laboratory Case Number: 2018-027335

Agency Case Number: 2018-045404

Page 4 of 5

ME Case Number: 1320-18

Victim(s):

Jason Booth
Brandon McHan

Date of Report: 12/07/2018

I do hereby attest and confirm, as specified by A.C.A 12-12-313, that the information listed below is a true and accurate report of the results of analysis performed on evidence received in a sealed condition at the Arkansas State Crime Laboratory. The results stated below relate only to the items tested and represent the interpretations/opinions of the undersigned analyst. This is only an official Arkansas State Crime Laboratory report when reproduced in full.

The 02-AD, 02-AE, and 02-AG bullets are .45 caliber class bullets fired through a polygonally rifled barrel with eight lands and eight grooves with a right twist. Some manufacturers that market firearms with similar general rifling characteristics include, but are not limited to, Bersa and Glock. However, any firearm recovered in the course of this investigation should be submitted to the Arkansas State Crime Laboratory for comparison examinations.

The 01-AA-09-ab jacket fragment of a bullet is too damaged to determine general rifling characteristics.

The 05-AA, 05-AV, 05-AW, and 05-AX expended cartridge cases were microscopically compared to one another with **POSITIVE RESULTS**. The four expended .45 Auto caliber cartridge cases **were fired** in the same firearm.

The 05-AB, 05-AC, 05-AD, 05-AE, 05-AF, 05-AN, 05-AS, and 05-AU expended cartridge cases were microscopically compared to one another with **POSITIVE RESULTS**. The eight expended .40 S&W caliber cartridge cases **were fired** in the same firearm.

The 05-AB, 05-AC, 05-AD, 05-AE, 05-AF, 05-AN, 05-AS, and 05-AU expended cartridge cases were microscopically compared to cartridge cases test fired in the 04-AA pistol with **NEGATIVE RESULTS**. Due to the sufficient disagreement of individual characteristics, the eight expended cartridge cases **were not fired** in the Smith & Wesson pistol.

The 05-AG, 05-AH, 05-AI, 05-AJ, 05-AK, 05-AL, 05-AM, 05-AO, 05-AP, 05-AQ, and 05-AR expended cartridge cases were microscopically compared to cartridge cases test fired in the 03-AA pistol with **POSITIVE RESULTS**. The eleven expended cartridge cases **were fired** in the Glock pistol.

No tests were conducted on or with the 04-AB and 05-AT ammunition.

A "NIBIN HIT LETTER" was generated on December 3, 2018, for the following evidence: **2018-027335** 05-AB, 05-AC, 05-AD, 05-AE, 05-AF, 05-AN, 05-AS, and 05-AU (Pine Bluff PD case number 2018-045404) and **2018-028848** 01-AA (Pine Bluff PD case number 2018-047529).



Arkansas State Crime Laboratory
P.O. Box 8500
3 Natural Resources Drive
Little Rock, Arkansas 72215



ALI-351-T
An ASCLD/LAB Accredited Laboratory
(Since December 13, 2004)

Laboratory Services
(501) 227-5747

FIREARMS
REPORT OF LABORATORY ANALYSIS

Investigating Officer/Agency/Address:

Tamina Smith
Pine Bluff Police Department
P. O. Box 8963
Pine Bluff, AR 71611
Suspect(s):

Laboratory Case Number: 2018-027335

Page 5 of 5

Agency Case Number: 2018-045404

ME Case Number: 1320-18

Victim(s):

Jason Booth
Brandon McHan

Date of Report: 12/07/2018

I do hereby attest and confirm, as specified by A.C.A 12-12-313, that the information listed below is a true and accurate report of the results of analysis performed on evidence received in a sealed condition at the Arkansas State Crime Laboratory. The results stated below relate only to the items tested and represent the interpretations/opinions of the undersigned analyst. This is only an official Arkansas State Crime Laboratory report when reproduced in full.

The **2018-027335** 05-AB, 05-AC, 05-AD, 05-AE, 05-AF, 05-AN, 05-AS, and 05-AU expended cartridge cases were microscopically compared to the **2018-028848** 01-AA expended cartridge case with **POSITIVE RESULTS**. The nine expended cartridge cases **were fired** in the same firearm.

Jennifer P. Floyd, Firearm and Toolmark Examiner
jenni.floyd@crimelab.arkansas.gov