

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-15303
Non-Argument Calendar

D.C. Docket No. 1:15-cr-00246-WS-B-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES ANDREW GOSS RICHARDS,
a.k.a. Junior,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(December 7, 2017)

Before MARTIN, ROSENBAUM, and JILL PRYOR, Circuit Judges.

PER CURIAM:

Charles Andrew Goss Richards appeals his convictions and total sentence of 630 months of imprisonment after pleading guilty to one count of conspiring to distribute methamphetamine, in violation of 21 U.S.C. § 846, and two counts of discharging a firearm during and in relation to and in furtherance of a crime of violence or drug-trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). After careful review, we affirm.

I.

On September 20, 2015, Richards and his girlfriend arrived in a stolen van at “Kelly’s Clay Pit” near Foley, Alabama, to sell another couple \$25’s worth of methamphetamine ice. After the exchange, Richards accosted one of the buyers for “talking bad” about him in the county jail. Richards then pulled out a gun and shot the man in the arm. As the man began to run away, Richards shot at him again but missed. Turning to the other buyer, Richards told her he was going to take her car and grabbed the keys from her hand. Richards and his girlfriend then drove away in the two cars, leaving the two buyers. Eventually, Richards’s girlfriend picked him up in the stolen van. They were later apprehended after leading police on a high-speed chase.

After his arrest, Richards was indicted on five counts: (1) conspiring to distribute methamphetamine, in violation of 21 U.S.C. § 846; (2) distributing methamphetamine, in violation of 21 U.S.C. § 841(a)(1); (3) discharging a firearm

during and in relation to and in furtherance of a drug-trafficking crime (distributing methamphetamine), in violation of 18 U.S.C. § 924(c)(1)(A); (4) carjacking, in violation of 18 U.S.C. § 2119; and (5) discharging a firearm during and in relation to and in furtherance of a crime of violence (carjacking). Under a written plea agreement, Richards agreed to plead guilty to the drug-conspiracy offense (Count 1) and the two firearms offenses (Counts 3 and 5). The government agreed to dismiss the remaining counts.

At the change-of-plea hearing, Richards was informed that he faced up to 20 years of imprisonment on Count 1, a mandatory consecutive term of at least 10 years on Count 3, and a mandatory consecutive term of at least 25 years on Count 5. After confirming that he understood the penalties he faced and the elements of the offenses, Richards admitted to the facts of his offense conduct summarized above and then pled guilty to Counts 1, 3, and 5 of the indictment. The district court accepted the plea as knowing and voluntary.

Richards's presentence investigation report calculated an advisory guideline range of 210 to 240 months for the drug-conspiracy offense, plus mandatory consecutive terms of 10 and 25 years for the firearms offenses.

At his sentencing, Richards argued that it violated the Fifth Amendment's Double Jeopardy Clause to impose multiple terms of imprisonment for a single act of discharging a firearm. The district court rejected this argument and then

sentenced him to 210 months on Count 1, 120 months on Count 3, and 300 months on Count 5, with all terms to be served consecutively. Richards now appeals.

II.

On appeal, Richards offers two reasons why, in his view, the district court could not have imposed multiple, consecutive punishments for the two § 924(c) convictions. First, he asserts that Count 5 lacks a sufficient evidentiary basis because he was not convicted of the predicate crime of violence (carjacking), which the government dismissed as part of his plea. Second, he maintains that his § 924(c) convictions and corresponding sentences violate the Fifth Amendment's guarantee of protection against multiple punishments for the same offense because, in his view, both firearm convictions were based on the same predicate offense.¹

¹ The government contends that Richards has waived his right to raise these arguments on appeal for two distinct reasons. First, the government cites the plea agreement's limited waiver of Richards's right to file a direct appeal challenging "his guilty plea, conviction, or sentence." After Richards filed his initial brief on appeal, the government filed a motion to dismiss the appeal as barred by the waiver. That motion was carried with the case, and the government then filed its response brief. We find that the waiver does not apply because Richards primarily challenges his convictions and, to the extent the waiver applies to such arguments, the district court did not specifically address that aspect of the waiver during Richards's plea colloquy. See *United States v. Bushert*, 997 F.3d 1343, 1350–51 (11th Cir. 1993). Accordingly, we **DENY** the government's motion to dismiss. In any case, even if the waiver applies, the government has already addressed the merits of the appeal, so we will not be depriving the government of the central benefit of its bargain by deciding the merits. See *United States v. Buchanan*, 131 F.3d 1005, 1008 (11th Cir. 1997).

Second, the government argues that Richards waived his arguments by pleading guilty. See *United States v. Smith*, 532 F.3d 1125, 1127 (11th Cir. 2008) ("The general rule is that a guilty plea waives all non-jurisdictional challenges to a conviction"). The government is likely correct in this regard. See *United States v. Fairchild*, 803 F.2d 1121, 1124 (11th Cir. 1986) (holding that a guilty plea waived the argument that "there was an insufficient factual basis to support the indictment"); *Smith*, 532 F.3d at 1127–28 (holding that a guilty plea waives some,

We review claims of double jeopardy and questions of statutory interpretation *de novo*. *United States v. Bobb*, 577 F.3d 1366, 1371 (11th Cir. 2009); *United States v. Rahim*, 431 F.3d 753, 756 (11th Cir. 2005).

The Fifth Amendment’s Double Jeopardy Clause protects against, among other things, multiple punishments for the same offense. *Bobb*, 577 F.3d at 1371. The multiple-punishment inquiry focuses on congressional intent. *See id.* (“Congress, of course, has the power to authorize multiple punishments arising out of a single act or transaction.”). If the same act or transaction violates two statutory provisions, courts must first determine whether the legislature clearly intended each violation to be a separate offense with separate punishments. *See id.* at 1371–72. When legislative intent is unclear, we apply the “same elements” test established in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). *United States v. Smith*, 532 F.3d 1125, 1128 (11th Cir. 2008). “Under this test, two offenses are different for the purposes of double jeopardy analysis if each requires proof of an additional fact which the other does not.” *Id.* (internal quotation marks omitted).

Section 924(c) provides that “any person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the

but not all, double-jeopardy challenges). However, we would engage in a similar double-jeopardy analysis to determine if Richards waived his argument, *see Smith*, 532 F.3d at 1128–29, and Richards is not entitled to relief on the merits in any event, so we proceed directly to the merits.

United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm” shall be sentenced to an additional term of imprisonment depending on the facts. 18 U.S.C. § 924(c)(1)(A). A minimum penalty of 10 years applies if the firearm was discharged, while a lesser penalty applies if the firearm was brandished or merely possessed. *Id.* § 924(c)(1)(A)(iii). In the case of a “second or subsequent” § 924(c) conviction, the defendant must be sentenced to at least 25 years. *Id.* § 924(c)(1)(C)(i). This enhanced penalty provision “applies to multiple offenses, even if the offenses are charged in a single indictment.” *United States v. Hamilton*, 953 F.2d 1344, 1346 (11th Cir. 1992) (citing *United States v. Rawlings*, 821 F.2d 1542, 1545–46 (11th Cir. 1987)).

Notably, the penalties for violating § 924(c) must be “stacked.” That is, each term of imprisonment for a § 924(c) offense must be imposed consecutive to the term of imprisonment for any other offense, including the underlying predicate offense. 18 U.S.C. § 924(c)(1)(D)(ii).

Here, Richards has not shown that the district court erroneously imposed multiple punishments for the two § 924(c) convictions. Richards first argues that his conviction on Count 5 cannot stand because he was not convicted of the predicate carjacking offense. But a “conviction under section 924(c) does not require either that the defendant be convicted of or charged with the predicate offense.” *United States v. Frye*, 402 F.3d 1123, 1127 (11th Cir. 2005). Instead,

§ 924(c) “requires only that the drug trafficking crime be one that ‘may be prosecuted.’” *Id.* (quoting 18 U.S.C. § 924(c)(1)(A)). Richards admitted as part of his guilty plea that he in fact committed the offense of carjacking, even if he was not convicted of that offense. Thus, the fact that he was not convicted of carjacking does not undermine his § 924(c) conviction for discharging a firearm during and in relation to the predicate offense of carjacking. *See id.* at 1127–28.

Richards’s second contention—that it violates the Double Jeopardy Clause to base multiple § 924(c) convictions on the same predicate offense—is misguided because his two § 924(c) convictions rest on distinct predicate offenses.

In *Rahim*, we held that two or more convictions under § 924(c) can arise from the same course of conduct when the convictions are based on distinct predicate crimes. 431 F.3d at 757–58 (declining to “reach the issue whether predicate offenses consisting of ‘virtually the same conduct’ can support multiple § 924(c) convictions”). And multiple § 924(c) convictions do not violate the Double Jeopardy Clause so long as “each of the two offenses charged requires proof of an additional fact”—the predicate crime—“which the other does not.” *Id.* at 758 (internal quotation marks omitted). Thus, in *Rahim*, we held that the defendant’s multiple § 924(c) convictions for (1) use of a firearm during a robbery and (2) use of a firearm during a carjacking, did not violate the Double Jeopardy Clause, even though they arose from a single course of conduct, because each

conviction required proof of a different predicate crime of violence. *Id.*

Here, Richards's multiple § 924(c) convictions do not violate the Double Jeopardy Clause. Even though his convictions arose out of the same course of conduct, each conviction required proof of an element the other does not. *See id.* at 757–58; *see also Blockburger*, 284 U.S. at 304. Specifically, Count 3 charged Richards with discharging a firearm during and in relation to and in furtherance of the predicate crime of selling methamphetamine. Count 5 charged Richards with discharging a firearm during and in relation to and in furtherance of the predicate crime of carjacking. Thus, Richards is incorrect that his § 924(c) convictions were based on the same predicate offense. And because his § 924(c) convictions rest on distinct predicate offenses, no double-jeopardy violation occurred. *See Rahim*, 431 F.3d at 758.

In sum, the district court properly concluded that Richards's multiple § 924(c) convictions did not violate the Double Jeopardy Clause because they were based on distinct predicate offenses. For that reason, we likewise find no error in the court's imposition of multiple, consecutive terms of imprisonment, as directed by the statute. *See* 18 U.S.C. § 924(c)(1)(C)(i), (D)(ii). Accordingly, Richards's convictions and total sentence are affirmed.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 07, 2017

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-15303-DD
Case Style: USA v. Charles Richards
District Court Docket No: 1:15-cr-00246-WS-B-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir. R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1.

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Sandra Brasselmon, DD at (404) 335-6181.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA

v.

CHARLES ANDREW GOSS RICHARDS

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: 1:15-CR-00246-WS-B(1)

§ USM Number: 14573-003

§ T. Jefferson Deen

§ Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) One, Three and Five of the Indictment
☐ pleaded nolo contendere to count(s) which was accepted by the court
☐ was found guilty on count(s) after a plea of not guilty

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:846=Cd.F Conspiracy To Distribute Controlled Substance	09/20/2015	One
18:924C.F Using, Carrying, Possessing, Brandishing and Discharging A Firearm In Relation To and In Furtherance Of A Drug Trafficking Crime	09/20/2015	Three
18:924C.F Using, Carrying, Possessing, Brandishing and Discharging A Firearm In Relation To and In Furtherance Of A Drug Trafficking Crime	09/20/2015	Five

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

- ☐ The defendant has been found not guilty on count(s)
☒ Count(s) Two and Four ☐ is ☒ are dismissed on the motion of the United States

IT IS FURTHER ORDERED that the defendant shall 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.

August 2, 2016

Date of Imposition of Judgment

s/WILLIAM H. STEELE

Signature of Judge

WILLIAM H. STEELE

CHIEF UNITED STATES DISTRICT JUDGE

Name and Title of Judge

August 5, 2016

Date

DEFENDANT: CHARLES ANDREW GOSS RICHARDS
CASE NUMBER: 1:15-CR-00246-WS-B(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:

210 months as to Count One; 120 months as to Count Three; 300 months as to Count Five; said term to run consecutively to the custody sentence imposed in Counts One and Three.

☒ The court makes the following recommendations to the Bureau of Prisons: **that the defendant be allowed to participate in residential, comprehensive substance abuse treatment and a mental health treatment program, both while incarcerated.**

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CHARLES ANDREW GOSS RICHARDS
CASE NUMBER: 1:15-CR-00246-WS-B(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **five (5) years**; said term consists of three years as to Count One and five years as to Counts Three and Five; said terms to run concurrently.

- ☒ **Special Conditions:** the defendant shall submit to periodic urine surveillance and/or breath, saliva and skin tests for the detection of drug abuse as directed by the probation officer. The defendant may incur costs associated with such detection efforts, based upon ability to pay as determined by the probation officer; the defendant shall participate in an assessment or a program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency or abuse, as instructed and as deemed necessary by the probation officer. The defendant may incur costs associated with such drug/alcohol detection and treatment, based upon the ability to pay, as determined by the probation officer; the defendant shall participate in a mental health evaluation and comply with any treatment consistent with the findings of said evaluation, as directed by the Probation Office; and, the defendant shall submit his person, house, residence, vehicle(s), papers, [computers (as defined by 18 U.S.C. Section 1030(e)(1)) or other electronic communications or data storage devices of media], business or place of employment, and any other property under the defendant's control to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation.

For offenses committed on or after September 13, 1994: 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 directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. 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.

The defendant shall not illegally possess a controlled substance.

The defendant shall comply with the standard conditions that have been adopted by this court.

The defendant shall also comply with the additional conditions on the attached page.

See Page 4 for the
"STANDARD CONDITIONS OF SUPERVISION"

DEFENDANT: CHARLES ANDREW GOSS RICHARDS
CASE NUMBER: 1:15-CR-00246-WS-B(1)

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 in a manner and frequency directed by the court or probation officer;
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.
14. the defendant shall cooperate, as directed by the probation officer, in the collection of DNA, if applicable, under the provisions of 18 U.S.C. §§ 3563(a)(9) and 3583(d) for those defendants convicted of qualifying offenses.

DEFENDANT: CHARLES ANDREW GOSS RICHARDS
CASE NUMBER: 1:15-CR-00246-WS-B(1)

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00	\$.00	\$.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

☐ If applicable, restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Page 6 may be subject to penalties for default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the

☐ fine

☐ restitution

☐ the interest requirement for the

☐ fine

☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: CHARLES ANDREW GOSS RICHARDS
CASE NUMBER: 1:15-CR-00246-WS-B(1)

SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payments of \$ \$300.00 , \$0.00, \$0.00 due immediately, balance due not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of \$300.00 for Counts 1, 3 and 5 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

- ☐ Joint and Several
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

* * * * *

UNITED STATES OF AMERICA,

VS.

EDWARD JOSEPH BAKER,

Defendant.

* * * * *

UNITED STATES OF AMERICA,

VS.

CHARLES ANDREW GOSS RICHARDS,

Defendant.

* * * * *

CRIMINAL NO.: 15-0212-WS

DECEMBER 18, 2015

COURTROOM 2A

U.S. FEDERAL COURTHOUSE

MOBILE, ALABAMA

CRIMINAL NO.: 15-0246-WS

GUILTY PLEA HEARING

BEFORE THE HON. WILLIAM H. STEELE

CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE GOVERNMENT:

Christopher J. Bodnar, Esquire
Gloria A. Bedwell, Esquire
Assistant U.S. Attorneys
U.S. Attorney's Office
63 S. Royal Street, Suite 600
Mobile, Alabama 36602

1 APPEARANCES-Continued.

2 FOR THE DEFENDANTS: T. Jefferson Deen, III, Esquire
3 Attorney at Law
4 P. O. Box 2705
5 Mobile, Alabama 36652-2705

10

11

12

13

14

15

16

17

18

19

20

21 COURT REPORTER: Mary Frances Giattina, CCR, RDR, CRR
22 Official Court Reporter
23 P. O. Box 3021
 Mobile, Alabama 36652-3021
 (251) 690-3003

24 Proceedings reported by machine stenography.

25 Transcript produced by computer.

MARY FRANCES GIATTINA, CCR, RDR, CRR, OFFICIAL COURT REPORTER
P. O. BOX 3021, MOBILE, ALABAMA 36652-3021 (251) 690-3003

1 (December 18, 2015, 10:15 a.m.) (In open court.)

2 (Defendants present with Counsel.)

3 THE COURT: Good morning.

4 MS. BEDWELL: Good morning, Judge.

5 THE CLERK: The following cases are set for guilty
6 pleas: Criminal Action 15-212, United States of America
7 versus Edward Joseph Baker. What says United States?

8 MR. BODNAR: United States is ready, Chris Bodnar
9 standing in for Donna Dobbins.

10 THE COURT: All right.

11 THE CLERK: What says the Defendant?

12 MR. DEEN: Ready, Your Honor.

13 THE COURT: All right. Come on up, please. Mr.
14 Baker, let me get you to come forward.

15 THE CLERK: Criminal Action 15-246, United States of
16 America versus Charles Andrew Goss Richards. What says United
17 States?

18 MS. BEDWELL: Ready, Your Honor.

19 THE CLERK: What says the Defendant?

20 MR. DEEN: We're ready, Your Honor.

21 THE COURT: All right. Come on up, please. Let me
22 get Mr. Richards on this side (indicating). Yeah, that will
23 be good.

24 And Melanie, did you say 246 or 245?

25 THE CLERK: 246.

1 THE COURT: Okay. The plea agreement shows 245. Is
2 it a 246 case or a 245?

3 MS. BEDWELL: It's 246, Your Honor. That would be a
4 typo. I apologize for that.

5 THE COURT: All right. 246. Okay. All right. I
6 have Mr. Baker; is that right?

7 DEFENDANT BAKER: Yes, sir.

8 THE COURT: All right. And Mr. Richards?

9 DEFENDANT RICHARDS: Yes, sir.

10 THE COURT: All right. Let me get both of you to
11 raise your right hand and take an oath, please.

12 (The Defendants were placed under oath.)

13 THE COURT: All right. And I'll start with Mr.
14 Baker. If you'll state your true, full name for the record,
15 please, sir.

16 DEFENDANT BAKER: Edward Joseph Baker.

17 THE COURT: All right. Mr. Deen, to the best of
18 your knowledge, is Mr. Baker fully competent to enter a valid
19 plea today?

20 MR. DEEN: Yes, sir.

21 THE COURT: And Mr. Richards, if you'll state your
22 true, full name for the record, please.

23 DEFENDANT RICHARDS: Charles Andrew Goss Richards.

24 THE COURT: And Mr. Deen, to the best of your
25 knowledge, is Mr. Richards fully competent to enter a valid

1 plea today?

2 MR. DEEN: Yes, sir.

3 THE COURT: All right. Have either of you ever been
4 treated for any mental illness or addiction to narcotic drugs
5 of any kind? Mr. Baker?

6 DEFENDANT BAKER: No, sir.

7 THE COURT: No? All right. How about you, Mr.
8 Richards?

9 DEFENDANT RICHARDS: No, sir.

10 THE COURT: All right. Are either of you currently
11 under the influence of any drug or medication or alcoholic
12 beverage of any kind? Mr. Baker?

13 DEFENDANT BAKER: No, sir.

14 THE COURT: Mr. Richards?

15 DEFENDANT RICHARDS: No, sir.

16 THE COURT: Okay. Have each of you received a copy
17 of the indictment in your case, had a full opportunity to read
18 it and review it with your attorney, and do you fully
19 understand the charge or charges contained in the indictment?
20 Mr. Baker?

21 DEFENDANT BAKER: Yes, sir.

22 THE COURT: Mr. Richards?

23 DEFENDANT RICHARDS: Yes, sir.

24 THE COURT: Are each of you fully satisfied with the
25 representation you've received from your attorney in this

1 case, and have you fully discussed with your attorney all of
2 the facts surrounding the charge? Mr. Baker?

3 DEFENDANT BAKER: Yes, sir.

4 THE COURT: Mr. Richards?

5 DEFENDANT RICHARDS: Yes, sir.

6 THE COURT: All right. Now, I've been furnished a
7 written plea agreement in each of your cases. This plea
8 agreement appears to have your signature in a couple of
9 places, at the end of the plea agreement and also at the end
10 of the factual resume.

11 Did you, in fact, sign the document, Mr. Baker?

12 DEFENDANT BAKER: Yes, sir.

13 THE COURT: Mr. Richards?

14 DEFENDANT RICHARDS: Yes, sir.

15 THE COURT: By signing the document, you're
16 acknowledging that you've received a copy of it, that you've
17 had an opportunity to read it and review it with your
18 attorney, that you fully understand the terms and conditions
19 of the plea agreement and the factual resume, and that you
20 agree with it. Is that true, Mr. Baker?

21 DEFENDANT BAKER: Yes, sir.

22 THE COURT: Mr. Richards?

23 DEFENDANT RICHARDS: Yes, sir.

24 THE COURT: Have there been any promises made to you
25 by anyone or has anyone attempted in any way to force you to

1 plead guilty or to pressure you or threaten you in any way?
2 Mr. Baker?

3 DEFENDANT BAKER: No, sir.

4 THE COURT: Mr. Richards?

5 DEFENDANT RICHARDS: No, sir.

6 THE COURT: Now, the penalties that could be imposed
7 are outlined in the plea agreement. For Mr. Baker, if
8 convicted of Counts 1 and 3 of the indictment, as to Count 1,
9 you could receive a term of imprisonment of ten years to life,
10 a fine not to exceed \$10 million, a supervised release term up
11 to five years, a mandatory special assessment of \$100, and any
12 restitution that may be ordered by the Court.

13 For Count 3, if convicted of that count, you could
14 receive a term of five years consecutive to any other
15 sentence, a fine not to exceed \$250,000, a supervised release
16 term up to three years, a mandatory special assessment of
17 \$100, and any restitution that may be ordered by the Court.
18 Do you understand that, Mr. Baker?

19 DEFENDANT BAKER: Yes, sir.

20 THE COURT: For Mr. Richards, if convicted of Counts
21 -- of Count 1 of the indictment, you could receive a term of
22 imprisonment up to 20 years, a fine not to exceed \$1 million,
23 a supervised release term up to three years, a mandatory
24 special assessment of \$100, and any criminal forfeiture.

25 As to Count 3 of the indictment, you could receive a

1 mandatory consecutive sentence of ten years to life, a fine
2 not to exceed \$250,000, a supervised release term up to five
3 years, a mandatory special assessment of \$100, and criminal
4 forfeiture of firearms.

5 For Count 5, you could receive a mandatory consecutive
6 sentence of 25 years to life, a fine not to exceed \$1 million,
7 a supervised release term up to three years, a mandatory
8 special assessment of \$100, and any criminal forfeiture.

9 Do you understand that?

10 DEFENDANT RICHARDS: Yes, sir.

11 THE COURT: All right. Are either of you presently
12 on probation, parole, or supervised release as the result of a
13 conviction in any other case? Mr. Baker?

14 DEFENDANT BAKER: No, sir.

15 THE COURT: Mr. Richards?

16 DEFENDANT RICHARDS: No, sir.

17 THE COURT: All right. Also, if convicted of the
18 charges in this case, you could lose valuable rights,
19 including the right to vote, the right to hold public office,
20 the right to serve on a jury, and the right to possess any
21 kind of firearm. If it's a drug offense, you could lose
22 certain Federal benefits.

23 Do you understand that, Mr. Baker?

24 DEFENDANT BAKER: Yes, sir.

25 THE COURT: Mr. Richards?

1 DEFENDANT RICHARDS: Yes, sir.

2 THE COURT: Now, the United States Sentencing
3 Commission has issued Sentencing Guidelines for judges to
4 consider in determining the sentence in a criminal case. Have
5 you and your attorney talked about how those guidelines might
6 affect your case? Mr. Baker?

7 DEFENDANT BAKER: Yes, sir.

8 THE COURT: And Mr. Richards?

9 DEFENDANT RICHARDS: Yes, sir.

10 THE COURT: The way in which the Sentencing
11 Guidelines apply to your case might be affected by what you
12 say to the Court and to the probation officer. The Court will
13 not be able to determine an appropriate sentence for your case
14 until after a presentence report has been completed and you
15 and the United States have had an opportunity to challenge the
16 facts reported by the probation officer. The sentence imposed
17 might be different from any estimate your attorney or anyone
18 else might have given you.

19 After it has been determined what guideline applies to a
20 case, the judge has the authority to impose a sentence that is
21 more severe or less severe than the sentence called for in the
22 Guidelines.

23 Do you understand that, Mr. Baker?

24 DEFENDANT BAKER: Yes, sir.

25 THE COURT: Mr. Richards?

1 DEFENDANT RICHARDS: Yes, sir.

2 THE COURT: Also, if the sentence is more severe
3 than you expected or if I do not accept the sentencing
4 recommendation in your plea agreement, you'll still be bound
5 by your plea. Even if you do not like the sentence imposed by
6 the Court, you will not be able to withdraw your plea. The
7 time to make that decision is now.

8 Do you understand that, Mr. Baker?

9 DEFENDANT BAKER: Yes, sir.

10 THE COURT: Mr. Richards?

11 DEFENDANT RICHARDS: Yes, sir.

12 THE COURT: Under some circumstances, you and the
13 United States each may have the right to appeal any sentence
14 the judge imposes. You also have the right to waive your
15 right to appeal, and I see by your plea agreement that you're
16 waiving your right to appeal any sentence imposed with the
17 following exceptions: And that would be any punishment in
18 excess of the statutory maximum, any punishment constituting
19 an upward departure of the guideline range, and any claim of
20 ineffective assistance of counsel.

21 Do you understand that, Mr. Baker?

22 DEFENDANT BAKER: Yes, sir.

23 THE COURT: Mr. Richards?

24 DEFENDANT RICHARDS: Yes, sir.

25 THE COURT: You each have the right to plead not

1 guilty to any offense charged against you and to persist in
2 that plea. You would then have the right to trial by jury.
3 During that trial, you would have the right to the assistance
4 of counsel for your defense and to the appointment of counsel
5 if you could not afford to hire one, the right to see and hear
6 all of the witnesses and to have your attorney cross-examine
7 them, the right to testify yourself or to decline to testify
8 and remain silent, and the right to have the Court issue
9 subpoenas for any witnesses you wish to call in your defense.

10 At the trial, you'd be presumed to be innocent, and the
11 United States would have the burden of proving that you are
12 guilty beyond a reasonable doubt. Before you can be
13 convicted, all 12 jurors must be convinced that the United
14 States has met that burden.

15 If you're found guilty after a trial, you would then have
16 the right to appeal that conviction to a higher court, and if
17 you could not afford to pay the cost of an appeal, the
18 Government would pay those costs for you.

19 Do you understand all of that, Mr. Baker?

20 DEFENDANT BAKER: Yes, sir.

21 THE COURT: Mr. Richards?

22 DEFENDANT RICHARDS: Yes, sir.

23 THE COURT: If you plead guilty, however, and if the
24 Court accepts your plea, there will be no trial; you'll be
25 waiving or giving up your right to a trial and all the other

1 rights that I just described.

2 Do you understand that, Mr. Baker?

3 DEFENDANT BAKER: Yes, sir.

4 THE COURT: Mr. Richards?

5 DEFENDANT RICHARDS: Yes, sir.

6 THE COURT: Also included in your plea agreement is
7 a factual resume. This factual resume has a statement of the
8 elements of the offense, for Mr. Baker, charged in Counts 1
9 and 3 of the indictment, Count 1 stating a violation of Title
10 21, United States Code, Section 846.

11 The elements are that two or more people in some way
12 agreed to accomplish a shared and unlawful plan to possess
13 with intent to distribute methamphetamine ICE; that you knew
14 of the unlawful purpose of the plan and willfully joined in
15 it; and that the object of the unlawful plan was to possess
16 with intent to distribute a control II controlled substance --
17 a Schedule II controlled substance.

18 Do you understand that those are the elements of the
19 offenses -- I'm sorry. In Count 3 of the indictment, stating
20 a violation of Title 18, United States Code, Section 924(c).

21 The elements of that offense are that you committed the
22 drug trafficking crime that could be prosecuted in a court of
23 the United States; that you possessed the firearms as
24 described in the indictment; and that the possession of the
25 firearms was in furtherance of the drug trafficking crime

1 alleged in the indictment.

2 Do you understand that those are the elements of the
3 offenses to which you're pleading guilty, Mr. Baker?

4 DEFENDANT BAKER: Yes, sir.

5 THE COURT: All right. Also included is a statement
6 of offense conduct. Did you, in fact, commit the acts and do
7 the things that you have admitted doing in this statement?

8 DEFENDANT BAKER: Yes, sir.

9 THE COURT: Then I find that the facts and acts to
10 which you have admitted support a violation of the charge or
11 charges contained in the indictment. How do you now plead to
12 those charges, guilty or not guilty?

13 DEFENDANT BAKER: Guilty.

14 THE COURT: For Mr. Richards, the factual resume in
15 your case has a statement of the elements of the offense or
16 offenses charged in Counts 1, 3, and 5 of the indictment,
17 Count 1 charging a violation of Title 21, United States Code,
18 Section 846, conspiracy to distribute methamphetamine.

19 The elements are that two or more individuals came to a
20 mutual understanding to commit an unlawful act, in this case,
21 the distribution of methamphetamine; and that you, knowing of
22 the unlawful purpose of the plan, knowingly and intentionally
23 joined in the plan.

24 Counts 3 and 5 state a violation of Title 18, United
25 States Code, Section 924(c)(1)(A), using, carrying,

1 possessing, and discharging a firearm in relation to and in
2 furtherance of a drug trafficking felony and a crime of
3 violence.

4 The elements are that you committed the drug trafficking
5 crime or crime of violence charged in the indictment; that you
6 knowingly used, carried, or possessed a firearm; that you used
7 the firearm in relation to, carried the firearm in relation
8 to, or possessed the firearm in furtherance of the drug
9 trafficking crime or crime of violence; and that the firearm
10 was discharged.

11 Do you understand that those are the elements of the
12 offenses to which you are pleading guilty, Mr. Richards?

13 DEFENDANT RICHARDS: Yes, sir.

14 THE COURT: Also included is a statement of offense
15 conduct. Did you, in fact, commit the acts and do the things
16 that you have admitted doing in this statement?

17 DEFENDANT RICHARDS: Yes, sir.

18 THE COURT: Then I find that the facts and acts to
19 which you have admitted support a violation of the charges
20 contained in Counts 1, 3, and 5 of the indictment. How do you
21 now plead to those charges, guilty or not guilty?

22 DEFENDANT RICHARDS: Guilty.

23 THE COURT: Then it is the finding of this Court in
24 the case of United States versus Edward Joseph Baker and
25 Charles Andrew Goss Richards that each of you are fully

1 competent and capable of entering an informed plea, that you
2 are aware of the nature of the charges and the consequences of
3 your plea, and that your plea of guilty is a knowing and
4 voluntary plea supported by an independent basis in fact
5 containing each of the essential elements of the offense.
6 Your plea is therefore accepted, and you're now adjudged
7 guilty of those offenses.

8 Do we need more than 90 days for preparation of a
9 presentence report for Mr. Baker?

10 MR. BODNAR: Yes, Your Honor. We ask for a hundred
11 and eighty.

12 THE COURT: All right.

13 THE CLERK: Monday, June 20th, at 10 a.m.

14 THE COURT: And how about for Mr. Richards?

15 MS. BEDWELL: We'd ask for a hundred and twenty in
16 that case, Your Honor.

17 THE COURT: All right.

18 THE CLERK: Monday, April 11th, at 9:30.

19 THE COURT: All right. Check your calendars. If
20 there's any conflicts, let me know and we'll adjust as
21 necessary.

22 It appears that Mr. Baker is on conditions of release.
23 Mr. Deen, do you know any reason to modify those?

24 MR. DEEN: No, sir.

25 THE COURT: Does the Government have any reason to

1 modify?

2 MR. BODNAR: No, Your Honor.

3 THE COURT: Mr. Baker, you'll remain on those same
4 conditions of release previously imposed. I assume that you
5 understand what those are?

6 DEFENDANT BAKER: Yes, sir.

7 THE COURT: And Mr. Richards is in custody. Is that
8 status subject to change?

9 MR. DEEN: No, sir.

10 THE COURT: All right. Anything further from --
11 well, let me ask you is it free to advise -- am I free to
12 advise Judge Granade that she can remove the case from the
13 trial docket for Mr. Richards?

14 MS. BEDWELL: Yes, sir.

15 THE COURT: Okay. Anything further from the
16 Government at this time?

17 MS. BEDWELL: No, sir.

18 MR. BODNAR: No, Your Honor.

19 THE COURT: From the Defendants, anything?

20 MR. DEEN: No, Your Honor.

21 THE COURT: Okay. We'll see you at the sentencing
22 hearing. Thank you.

23

24 (Proceedings concluded at 10:30 a.m. this date.)

25

CERTIFICATE

STATE OF ALABAMA)

COUNTY OF MOBILE)

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision using computer-aided transcription, and that the foregoing represents a true and correct transcript of the proceedings upon said hearing.

I further certify that I am neither of counsel nor related to the parties to the action, nor am I in anywise interested in the result of said cause.

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter as evidenced by the ACCR number following my name found below.

s/Mary Frances Giattina
Mary Frances Giattina, CCR, RDR, CRR
FCRR, ACCR #181
Official Court Reporter
U.S. District Court
Southern District of Alabama
P.O. Box 3021
Mobile, Alabama 36652-3021
(251) 690-3003

MARY FRANCES GIATTINA, CCR, RDR, CRR, OFFICIAL COURT REPORTER
P. O. BOX 3021, MOBILE, ALABAMA 36652-3021 (251) 690-3003

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

* * * * *

1	UNITED STATES OF AMERICA,	*	CRIMINAL NO.: 15-0246-WS
2		*	
3	VS.	*	AUGUST 2, 2016
4		*	COURTROOM 2A
5	CHARLES ANDREW GOSS RICHARDS,	*	U.S. FEDERAL COURTHOUSE
6		*	MOBILE, ALABAMA
7	Defendant.	*	
8		*	
9		*	
10		*	

* * * * *

SENTENCING HEARING

BEFORE THE HON. WILLIAM H. STEELE
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES

15	FOR THE GOVERNMENT:	Gloria A. Bedwell, Esquire
16		Assistant U.S. Attorney
17		U.S. Attorney's Office
18		63 S. Royal Street, Suite 600
19		Mobile, Alabama 36602
20		
21	FOR THE DEFENDANT:	T. Jefferson Deen, III, Esquire
22		Attorney at Law
23		P. O. Box 2705
24		Mobile, Alabama 36652-2705
25		
26	COURT REPORTER:	Mary Frances Giattina, CCR, RDR, CRR
27		Official Court Reporter
28		P. O. Box 3021
29		Mobile, Alabama 36652-3021
30		(251) 690-3003

Proceedings reported by machine stenography.

Transcript produced by computer.

MARY FRANCES GIATTINA, CCR, RDR, CRR, OFFICIAL COURT REPORTER
P. O. BOX 3021, MOBILE, ALABAMA 36652-3021 (251) 690-3003

I N D E X

WITNESS:	EXAMINATION:	PAGE:
1. Dep. Austin Welch	Direct-Ms. Bedwell	4
Imposition of Sentence by the Court		21
Court Reporter's Certificate		24

(No exhibits were marked during these proceedings.)

1 (August 2, 2016, 2:30 p.m.) (In open court.)
2 (Defendant present with counsel.)
3 (Probation Off. Kelli Cleveland present in court.)

4 THE COURT: Good afternoon.

5 ALL: Good afternoon.

6 MS. BEDWELL: Good afternoon, Judge.

7 THE CLERK: Case set for a sentencing hearing in
8 Criminal Action 15-246, United States of America versus
9 Charles Richards. What says the United States?

10 MS. BEDWELL: Ready, Your Honor.

11 THE CLERK: Says the Defendant?

12 MR. DEEN: Ready, Your Honor.

13 THE COURT: All right. I understand there's going
14 to be testimony; is that right, Ms. Bedwell?

15 MS. BEDWELL: Yes, sir.

16 THE COURT: All right. Let me put some matters on
17 the record and then we'll take the testimony and then we'll
18 proceed with the balance of the sentencing hearing after that.

19 We're here today for a sentencing hearing following entry
20 of a guilty plea on December 18 of 2015 to Counts 1, 3, and 5
21 of an indictment, Count 1 charging conspiracy to distribute
22 methamphetamine, Count 3 charging using or possessing and
23 discharging a firearm in -- during and in relation to a drug
24 trafficking offense, and Count 5 also charging using or
25 possessing and discharging a firearm during and in relation to

1 a drug trafficking offense.

2 The plea was entered subject to a written plea agreement.
3 The Presentence Report has been published in this case. Mr.
4 Deen, I assume that you've received a copy of the report and
5 had a chance to discuss it with Mr. Richards?

6 MR. DEEN: That is correct, Your Honor.

7 THE COURT: All right. And I note that you have
8 filed some objections which are now the subject of some
9 testimony.

10 So, Ms. Bedwell, I'll allow you to present your
11 witnesses.

12 MS. BEDWELL: Yes, sir.

13 (Brief pause.)

14 THE COURT: Let me get you to step right around
15 here, if you would, please, sir (indicating). If you'll raise
16 your right hand and take an oath, please.

17 DEP. AUSTIN WELCH,

18 having first been sworn, testified as follows:

19 THE COURT: All right. You can have a seat
20 (pointing).

21 DIRECT EXAMINATION

22 BY MS. BEDWELL:

23 Q. State your name, please, sir.

24 A. Dep. Welch, Baldwin County Sheriff's Office.

25 Q. And how long have you been employed with Baldwin County

1 Sheriff's Office?

2 A. Approximately five years.

3 Q. And did you have previous law enforcement experience?

4 A. Yes, ma'am, I did, with Mobile Police Department.

5 Q. And for how long?

6 A. Approximately eight years.

7 Q. Pursuant to your employment, did you have occasion to
8 participate in the investigation involving the Defendant?

9 A. Yes, ma'am, I did.

10 Q. How did you first become involved in that case?

11 A. We -- when I came on shift during the date in question,
12 there had been a BOLO and a shooting of a person involving a
13 possible robbery. And the dispatch advised us, all the units
14 coming out, that during that day that to be on the lookout for
15 that vehicle involved in the crime.

16 Q. And did you receive a description of the vehicle in that
17 transmission?

18 A. Yes, ma'am, I did. It was a dark-colored Dodge Caravan.

19 Q. And did it come to your attention at some point during
20 your shift that you might be looking at that vehicle?

21 A. Yes, ma'am. Our dispatch was actually pinging a phone
22 that was -- possibly one of the subjects had. And I
23 positioned my vehicle on the interstate on I-10 facing
24 westbound towards Mobile and Daphne exit. I was there
25 approximately 2 to 3 minutes when the van matching the

1 description of the BOLO passed my vehicle.

2 Q. And what did you do next?

3 A. At that time, I initiated my lights and sirens to try to
4 conduct a traffic stop. At that time, the subject sped up to
5 speeds of a hundred and twenty miles an hour, and an active
6 pursuit ensued.

7 Q. And what -- was this on the interstate on I-10?

8 A. Yes, ma'am, it was. We continued on the Bayway and went
9 through actually the tunnel into Downtown Mobile where they
10 exited onto Water Street. And we continued for several --
11 several hours.

12 Q. And describe the manner in which the vehicle was being
13 operated and your judgment as to whether or not that manner of
14 operation created a substantial danger of injury to others.

15 A. During the pursuit, speeds were a hundred miles an hour
16 on average. We got up to speeds to a hundred and twenty. We
17 actually exceeded a hundred and twenty-eight miles an hour
18 several times during the pursuit. Several times during the
19 pursuit, and one actually coming out of the tunnel onto Water
20 Street, the subject exited, actually forcing -- almost forcing
21 a vehicle into the guardrail, cutting them off. He evaded in
22 dangerous manners, weaving in and out of traffic several
23 times, cutting off 18-wheelers. Basically, anyone that got in
24 his way, he would use them as a barrier between himself and
25 law enforcement.

1 Q. And how did the pursuit go after he exited there on Water
2 Street? Where did he go next?

3 A. We actually came into Downtown Mobile when he did a
4 U-turn down by the Convention Center, and we proceeded back up
5 on I-10 and proceeded into Mississippi westbound through
6 Mobile County, speeds ranging anywhere from a hundred to a
7 hundred and twenty. We used every lane of the interstate
8 during that pursuit. He was, like I said, he was using any
9 vehicle he could use as a barrier to attempt to elude, wreck,
10 just cause basically havoc on the interstate to try to get
11 away from us.

12 Q. How many law enforcement vehicles were engaged in the
13 pursuit?

14 A. At one time, I would roughly say -- the most was in
15 Mobile City. When they helped engage, there was probably over
16 20. When we got into Mobile County, they assisted, the Mobile
17 County, so we got probably around 30.

18 Once we got into Mississippi where Mississippi Highway
19 Patrol, Greene County and George County Sheriff's Office
20 assisted, I would roughly say 15 to 20 law enforcement in
21 Mississippi as well.

22 Q. And were there any efforts made during that pursuit to
23 utilize a device called spikes to stop the Defendant's
24 vehicle?

25 A. Yes, ma'am. Several attempts were made. We tried --

1 Mississippi Highway Patrol and Gulfport PD tried to spike him
2 on I-10 at one of their exits. At that time, the subject
3 actually veered around the spikes, putting the officers in
4 danger, actually swerving towards several officers to try to
5 go around the spikes. He actually forced three law
6 enforcement officer vehicles to hit the spikes to keep from
7 causing a wreck and hitting anyone.

8 We also attempted to spike him again approximately 3 to
9 4 miles after that. Again, he evaded the spikes and went
10 around between the guardrail and continued on until he could
11 exit the interstate and get on back roads.

12 Q. Okay. And what happened that caused the pursuit to stop?
13 How did it finally end?

14 A. Mississippi Highway Patrol was, once we got on the back
15 roads, was able to set up spike devices at basically a choke
16 point where a bridge came into play, and they were able to
17 spike the vehicle. And even after the vehicle was spiked, he
18 attempted to swerve around the spikes, but the highway patrol,
19 the way they positioned the spikes, they were in the grass all
20 the way across the road. There was really no way to go around
21 them. Once he hit the spikes, he continued all the way until
22 his -- basically, his tire was on the rim and the vehicle
23 could no longer be operational.

24 Q. And you -- what was your position in the pursuit of this
25 vehicle? Where were you in relation to the Defendant's

1 vehicle?

2 A. At the end of the pursuit, I was actually back in the
3 lead. During 90 percent of the pursuit, I was the lead
4 vehicle. I was never more than one vehicle behind the
5 pursuit. So I was never any more than two vehicles behind
6 him.

7 Q. And so you were able to observe for yourself the manner
8 in which the Defendant was operating the vehicle?

9 A. Yes, ma'am.

10 Q. And again, do you -- did you form an opinion as to
11 whether or not the Defendant recklessly created a substantial
12 risk of death or serious bodily injury to another person in
13 the course of the flight that you observed?

14 A. Absolutely. Several times, he would use any means
15 necessary to get away, whether it was to force us or any
16 private citizen off the roadway just to clear the way and
17 cause a danger to everyone involved.

18 MS. BEDWELL: I believe that's all.

19 THE COURT: All right. Mr. Deen?

20 MR. DEEN: I have no questions, Your Honor.

21 THE COURT: All right. You can step down. Thank
22 you.

23 Other testimony with regard to any of the other issues
24 raised?

25 MS. BEDWELL: That's the only one, Your Honor, that

1 I think the Government is required to produce a factual
2 underpinning for.

3 THE COURT: All right. Mr. Deen, you have any
4 argument with regard to your objection to the two-level
5 enhancement for reckless endangerment?

6 MR. DEEN: No, sir.

7 THE COURT: All right. Based on the testimony
8 produced by the Government, I find that the two-level
9 enhancement for reckless endangerment applies and will
10 consider that in calculation of the guidelines.

11 Mr. Deen, you want to be heard on any of the other
12 objections that you've raised?

13 MR. DEEN: Do you want me to go up there, Judge, or
14 stay here?

15 THE COURT: You can stay there just as long as we
16 can hear you. You can remain seated, if you'd like, so that
17 we can hear you through the microphone.

18 MR. DEEN: Judge, we've objected to the imposition
19 of consecutive sentences on Count 3 and Count 5 based on --
20 it's our understanding it's one act that was involved. The
21 Government can allege two separate crimes, but the double
22 jeopardy clause has two prongs, the second prong being
23 punishment where you can't be punished twice for the same
24 event.

25 And, basically, 3 charges a drug trafficking-crime, to

1 wit: Distribution of meth, Count 3, which Count 5 is a crime
2 of violence, carjacking.

3 And then the two after that, they're identical. They're
4 brandishing or discharging a firearm in furtherance of that
5 and then intentionally actually discharge -- intending to do
6 it and then actually doing the discharging.

7 The event that occurred was a methamphetamine sale
8 between Mr. Richards and his girlfriend -- huh?

9 (Off the record discussion between Counsel and the
10 Defendant.)

11 MR. DEEN: -- and another couple at some pit in
12 Baldwin County. An argument ensued about the women and cell
13 phones and who said what about who in jail. But in the midst
14 of all that, he shot and wounded the other gentleman. And his
15 girlfriend drove off, leaving him there, so he jumped in
16 another car and drove off. So there was a discharge but only
17 one.

18 And I think, technically, the Government would have the
19 elements of both the Count 3 and Count 5 because it would be
20 in furtherance of either one of those crimes. So he could be
21 guilty of both, and he's pled guilty to both, but our
22 objection is that he can't be punished twice for that one
23 event. So it would be either one or the other running
24 consecutive to the drug count.

25 THE COURT: All right. Ms. Bedwell?

1 MS. BEDWELL: Your Honor, Mr. Deen's argument is
2 noticeably without legal support. He has not cited any
3 authority to support his positions, and the Government submits
4 that the reason for that is because that is simply not the
5 state of the law.

6 The Court can and is required to, under the statutes to
7 which the Defendant has entered his guilty plea, sentence the
8 Defendant to consecutive terms of imprisonment, and that's, I
9 think, what the law requires at this point.

10 MR. DEEN: I also -- the ten amendments were
11 considered to be present and in the law. That's for a strict
12 constructionist.

13 THE COURT: Well, as I understand the indictment,
14 Count 3 relates to the drug offense; Count 5 relates to the
15 carjacking offense; is that correct?

16 MS. BEDWELL: That's correct, Your Honor.

17 THE COURT: All right. Count 3 is possessing,
18 brandishing, or discharging a firearm in relation to the drug
19 trafficking offense, and Count 5 is possessing, brandishing,
20 and discharge -- or discharging a firearm in furtherance of
21 the carjacking offense; correct?

22 MS. BEDWELL: That's correct, Your Honor.

23 THE COURT: All right.

24 MR. DEEN: Judge, will you accept my rendition of
25 the facts for the record, or do I need to put the Defendant to

1 testify to that?

2 THE COURT: Summarize your rendition of the facts as
3 they apply to your argument, if you would, please, sir.

4 MR. DEEN: As to the -- that it was one firearm, one
5 discharge, one event.

6 THE COURT: Ms. Bedwell, do you have --

7 MS. BEDWELL: I was just looking back at the factual
8 resume, Your Honor. I believe there were multiple shots fired
9 at the scene of that carjacking.

10 MR. DEEN: I stand corrected, Judge. I've been
11 informed there were two shots fired, but the same argument
12 that it was all one event.

13 (Brief pause.)

14 THE COURT: Ms. Bedwell, any --

15 MS. BEDWELL: I was just checking the --

16 THE COURT: Okay. Go ahead.

17 MS. BEDWELL: Yeah. On page three of the factual
18 resume, there's an indication and reports were that there were
19 other shots fired. After the victim had been shot by the
20 Defendant, he again shot at the victim, who kept running.

21 And then I believe there was a statement given by the
22 second witness that there were multiple shots fired. I think
23 that portion of Mr. Deen's statement is contradicted by the
24 factual resume.

25 THE COURT: All right. Does it matter? Does the

1 purpose for which the shots were fired matter with regard to
2 the -- in counts of the indictment, Count 3 being the drug
3 trafficking offense and Count 5 being the carjacking offense?

4 MS. BEDWELL: I don't see how it matters, but in the
5 event that it does, I think the record should reflect what's
6 in the factual resume as the accurate rendition of the facts
7 that the Government would be -- stand to prove. So --

8 THE COURT: Let me see the factual resume. I don't
9 have it readily available to me here.

10 MS. BEDWELL: May I approach?

11 THE COURT: Sure.

12 (Brief pause.)

13 THE COURT: All right. I think the information
14 contained in the factual resume as well as what's been
15 presented to the Court here today during the course of this
16 sentencing hearing establishes that Counts 3 and 5 are
17 independent of each other and that the discharge of the
18 firearm counts as to both of those counts, 3 and 5. So that
19 his conviction as to both of those counts carries the
20 statutory punishment as indicated in the Presentence Report,
21 ten years in one count and 25 years in the other count. So
22 the objection is overruled.

23 Anything further with regard to the objections, Mr. Deen?

24 MR. DEEN: No, sir.

25 THE COURT: All right. Then having heard the

1 evidence in this case, having overruled the objections to the
2 Presentence Report, the Court will adopt the Presentence
3 Report as published.

4 I note that the Sentencing Guidelines have been
5 accurately calculated, starting with a base offense level of
6 36. There's a two-level enhancement for reckless
7 endangerment. Mr. Richards is entitled to a three-level
8 reduction for acceptance of responsibility, producing an
9 adjusted offense level of 35. He has four criminal history
10 points, placing him in Criminal History Category III. That
11 generates a guideline range as to Count 1 of 210 to
12 262 months. Count 3 carries a 10-year consecutive sentence,
13 and Count 5 carries a 25-year consecutive sentence.

14 All right. Mr. Deen, you have anything you want to
15 present on Mr. Richards's behalf before sentence is imposed?

16 MR. DEEN: Yes, sir. His mother would like to say
17 something, Your Honor.

18 THE COURT: All right. She can come forward. Let
19 me get you to use the podium, if you would, please, ma'am.
20 Mr. Deen, would you direct her to the podium, please?

21 MR. DEEN: Yes, sir.

22 THE COURT: Okay.

23 (Brief pause.)

24 THE COURT: That's fine, yes, ma'am. Tell me your
25 name, please, ma'am.

1 UNIDENTIFIED SPEAKER: My name is Patricia Island
2 Heptinstall.

3 THE COURT: Could you spell your last name for me?

4 MS. HEPTINSTALL: H-e-p-t-i-n-s-t-a-l-l.

5 THE COURT: All right. Ms. Heptinstall. What would
6 you like to tell me this afternoon?

7 MS. HEPTINSTALL: Well, I'm not going to stand up
8 here and say that my son is innocent and he's a good kid, but
9 I want to make clear that at an early age, I was told that I
10 had to put him on Ritalin or Adderall for him to be able to
11 attend school because they just couldn't control him.

12 It is a family trait in our men, we're American Indian,
13 that they tend to sleep-walk at night and go for days without
14 sleep. He is one of those people.

15 He has Tourette's Syndrome, which makes him make ugly
16 faces and noises which teachers and other students take as
17 disrespect. And you're sent to the office, and you're sent
18 off the bus, and you're ostracized from everyone else as a bad
19 kid.

20 He also has oppositional defiance disorder, which means
21 he gets mad at himself, and he's not sure what to do with the
22 anger, and he takes it out on others.

23 And he is also obsessive compulsive. He would get up 15
24 times a day to see if the doors were locked or what time is
25 it. As a matter of fact, I know of twice he has asked what

1 time it is in this courtroom today.

2 I'm not saying he's innocent, and I'm not saying that he
3 deserves any special treatment, but I am taking this
4 opportunity today to let anybody that will listen know that we
5 are raising a generation of my son by putting them on Adderall
6 when they're 8, 9, and 10 years old. And when they can't get
7 it at 19 and their bodies have gotten used to that up, then
8 this is what we get.

9 Thank you.

10 THE COURT: All right. Thank you, ma'am. Mr. Deen?

11 MR. DEEN: That's all, Your Honor. He does not wish
12 to allocute.

13 THE COURT: All right. Mr. Richards, do you want to
14 be heard?

15 (No audible response.)

16 THE COURT: Would you like to be heard, Mr.
17 Richards?

18 DEFENDANT: No, sir.

19 THE COURT: All right. Ms. Bedwell.

20 MS. BEDWELL: Your Honor, the Court has a flavor for
21 the harmful nature of the Defendant's criminal conduct just
22 from hearing the live testimony this afternoon about that part
23 of the events that resulted in the Defendant's charges here in
24 Federal Court.

25 As the Court is aware from the Presentence Report and the

1 factual resume, the Defendant immediately prior to that had
2 shot someone in connection with a drug transaction which
3 involved methamphetamine distribution, one of the most serious
4 crimes that tears at the fabric of our community. The
5 Defendant as a distributor of the drug certainly contributed
6 to the harm that results from drug trafficking.

7 And then, in addition to that, he engaged in the violent
8 behavior that resulted in the carjacking and the chase that
9 occurred through not only Alabama, two counties here, but also
10 in Mississippi, putting numerous innocents who were just going
11 about their day at risk in addition to the officers who were
12 trying to catch up with him and bring him to justice.

13 So the Government acknowledges that the Defendant faces
14 serious statutory mandatory penalties, but he deserves them,
15 and society needs to be protected from people like this
16 Defendant.

17 And the statutory minimum penalties -- first of all, the
18 low-end guidelines and the statutory minimum mandatory
19 penalties are appropriate in this Defendant's case. And the
20 Government submits that they are reasonable under the
21 statutory factors that the Court has to consider and that the
22 Defendant deserves to serve every day.

23 THE COURT: All right. Mr. Deen, anything further?

24 MR. DEEN: Judge, we'd ask that you sentence him at
25 the low end of the guidelines as to the drug count. I

1 understand the mandatory minimums you have to impose.

2 THE COURT: All right. Mr. Richards, that's true.
3 To a great extent, my discretion is eliminated by virtue of
4 the fact that Congress has declared that certain offenses
5 require mandatory minimum sentences for which the Court cannot
6 deviate unless and until the Government files a motion for a
7 downward departure based on your substantial cooperation.
8 That hasn't happened in this case, so there's nothing that I
9 have available to me that would allow me to go below the
10 mandatory minimums which are in operation in your case.

11 That being said, there's no question based on what I've
12 read in the report, what I've seen in the plea agreement and
13 also heard by virtue of the testimony that was presented here
14 in court today that the offenses for which you have been
15 convicted are quite serious, and they rise to a level that is
16 as serious as anything that I see in this Court.

17 We heard testimony of your conduct which placed a number
18 of people in jeopardy. I have evidence contained in the
19 Presentence Report and your plea agreement that indicates that
20 you severely injured another individual by shooting them. You
21 possessed firearms during -- a firearm during the course of a
22 drug offense, which is a serious offense, and you committed
23 the offense of carjacking. Although your plea was not to that
24 offense, those circumstances were part and parcel of the
25 events that occurred on September 20 of 2015.

1 So the nature of the offenses for which you stand
2 convicted are quite serious. I have heard the -- in the
3 testimony of your mother here. I've also read of your medical
4 issues, psychological issues. I take that into account
5 because it can be part of the sentencing package which I have
6 to consider, and I will consider that.

7 To the extent that there is any mitigation there, there's
8 nothing that rises to the level which would direct or compel
9 this Court to give you any benefit except as to Count 1 within
10 the limits of the guidelines.

11 I find no reason to enter a variance in this case for
12 Count 1 and, to the extent that there's any mitigation, a
13 sentence at the low end of the guidelines will take that into
14 account.

15 When I consider all of the factors in this case under
16 Section 3553(a), as I'm required to, it's the judgment of this
17 Court that a sentence at the low end of the guidelines
18 enhanced by the consecutive sentence in Count 3 and the
19 consecutive sentence in Count 5 is the sentence that I am
20 obligated to impose, and it is a sentence that certainly is
21 sufficient but not more than necessary to accomplish those
22 sentencing objectives.

23 I think that you are entitled to and should receive
24 treatment for any of the medical or psychological issues that
25 you're dealing with, and I will order that you be incarcerated

1 in an institution where those benefits can be afforded you.
2 But you'll have to be the one to take advantage of those and
3 to hopefully find some way to resolve whatever it is that
4 you're dealing with and move forward with your life.

5 Accordingly, and pursuant to the Sentencing Reform Act of
6 1984, it's the judgment of this Court that you, Charles Andrew
7 Goss Richards, are hereby committed to the custody of the
8 United States Bureau of Prisons to be imprisoned for a term of
9 630 months. This term consists of 210 months as to Count 1,
10 120 months as to Count 3, and 300 months as to Count 5, said
11 terms to be served consecutively.

12 I will recommend that you be imprisoned at an institution
13 where a residential, comprehensive substance abuse treatment
14 program is available and also at a facility where you can
15 receive mental health treatment and counseling.

16 Upon release from imprisonment, you shall be placed on
17 supervised release for a term of three years as to Count 1 and
18 5 years as to each of Counts 3 and 5, all such terms to run
19 concurrently.

20 Within 72 hours of release from the custody of the Bureau
21 of Prisons, you are to report in person to the probation
22 office in the district to which you are released.

23 While on supervised release, you shall not commit any
24 Federal, state, or local crimes, you shall be prohibited from
25 possessing a firearm or other dangerous device, and shall not

1 possess a controlled substance. In addition, you shall comply
2 with the standard conditions of supervised release as
3 recommended by the Sentencing Commission and on record with
4 this Court.

5 It's ordered that you also comply with the following
6 special conditions of supervised release as referenced in Part
7 F of the Presentence Report: That is, that you are to undergo
8 urine surveillance, drug and/or alcohol treatment as directed,
9 mental health evaluation and recommended treatment, and you
10 are to submit to the model search condition.

11 The Court finds that you do not have the ability to pay a
12 fine; therefore, no fine is imposed.

13 For the reasons given, the Court finds that the sentence
14 imposed addresses the seriousness of the offense and the
15 sentencing objectives of punishment, deterrence, and
16 incapacitation.

17 It's ordered that you pay a special assessment in the
18 amount of \$100 on Counts 1, 3, and 5, for a total of \$300,
19 which is due immediately.

20 You can appeal your conviction if you believe that your
21 guilty plea was somehow unlawful or involuntary or if there's
22 some other fundamental defect in the proceedings not waived by
23 your guilty plea or your plea agreement.

24 You have the right to apply for leave to appeal in forma
25 pauperis, and the Clerk of Court will prepare and file notice

1 of appeal upon your request. With few exceptions, any notice
2 of appeal must be filed within 14 days of the date of
3 judgment.

4 I note that there are remaining counts of the indictment.
5 Does the United States have a motion?

6 MS. BEDWELL: Move to dismiss remaining counts as to
7 this Defendant, Your Honor.

8 THE COURT: Motion is granted. Counts 2 and 4 as to
9 Mr. Richards are hereby dismissed.

10 Anything further from the United States?

11 MS. BEDWELL: That's all, Your Honor.

12 THE COURT: From Probation, anything further?

13 PROBATION OFFICER KELLI CLEVELAND: No, Your Honor.

14 THE COURT: Mr. Deen, any objections or other
15 matters we need to put on the record at this time?

16 MR. DEEN: Not other than as previously stated, Your
17 Honor.

18 THE COURT: All right. If there's nothing further,
19 we stand adjourned. Good luck to you, Mr. Richards. That's
20 all.

21

22 (Proceedings concluded at 3:10 p.m. this date.)

23

24

25

CERTIFICATE

STATE OF ALABAMA)

COUNTY OF MOBILE)

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision using computer-aided transcription, and that the foregoing represents a true and correct transcript of the proceedings upon said hearing.

I further certify that I am neither of counsel nor related to the parties to the action, nor am I in anywise interested in the result of said cause.

I further certify that I am duly licensed by the Alabama Board of Court Reporting as a Certified Court Reporter as evidenced by the ACCR number following my name found below.

s/Mary Frances Giattina
Mary Frances Giattina, CCR, RDR, CRR
FCRR, ACCR #181
Official Court Reporter
U.S. District Court
Southern District of Alabama
P.O. Box 3021
Mobile, Alabama 36652-3021
(251) 690-3003

MARY FRANCES GIATTINA, CCR, RDR, CRR, OFFICIAL COURT REPORTER
P. O. BOX 3021, MOBILE, ALABAMA 36652-3021 (251) 690-3003