APPENDIX

TABLE OF CONTENTS

APPENDIX A

[FILED: FEBRUARY 5, 2026]

[NOT FOR PUBLICATION]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-14191

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEITH PHARMS,
a.k.a. B-Boy,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

D.C. Docket No. 1:23-cr-00004-JPB-JSA-2

Before JORDAN, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

A jury convicted Keith Pharms of five criminal charges arising from his involvement in a shooting at a federal officer in the aftermath of a car theft and his subsequent conduct while in custody. He now appeals his 192-month sentence, arguing that it violates the Fifth and Sixth Amendments and is procedurally unreasonable

because it is based on clearly erroneous facts. For the reasons which follow, we affirm.

I

Testimony at Mr. Pharms' trial established the following course of events.

On February 24, 2022, Mr. Pharms and two others, Jokava Harris and Blake Beard, drove a black Chevrolet SS (the "Chevy") to an apartment complex parking garage where they stopped next to an orange Dodge Charger Hellcat (the "Charger"). Mr. Harris broke into the Charger and drove away. Mr. Pharms and Mr. Beard followed in the Chevy. An Atlanta Police Department ("APD") Sergeant and FBI Task Force Officer, Will Johnson, was on patrol surveilling for stolen cars and believed the Chevy was suspected to be involved in the thefts, so he followed it. As he was following, Officer Johnson heard two separate rounds of gunfire; in the second round, his vehicle was struck, and a bullet narrowly missed him. Officer Johnson reported the event to dispatch, and after a pursuit, APD officers were able to disable the tires on the Charger, but the Chevy got away.

The next day, the South Fulton Police Department found the Chevy, and APD officers retrieved shell casings at the location of the shooting. Mr. Pharms and Mr. Harris were arrested on state charges about a month later, and they and Mr. Beard were ultimately connected with the car theft and shooting.

Mr. Pharms was charged in a superseding federal indictment with one count of assault on a federal officer using a deadly and dangerous weapon, in violation of 18 U.S.C. §§ 111(a)(1) & (b); one count of using a firearm during a crime of violence, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) & (iii); one count of possession of a firearm

by a convicted felon, in violation of 18 U.S.C. § 922(g)(1); one count of possession of cell phones and other electronic devices while in prison, in violation of 18 U.S.C. §§ 1791(a)(2) & (d)(1)(F); and one count of possessing, while in prison, a prohibited object designed to facilitate escape, in violation of 18 U.S.C. §§ 1791(a)(2) & (d)(1)(B).

Mr. Pharms proceeded to trial. At his trial, Mr. Beard testified for the government, as did Avery Hardy, a cellmate of Mr. Pharms' while he was in custody. Mr. Beard testified that after Mr. Harris took the Charger, he was driving the Chevy, and, when they noticed a vehicle trailing them, Mr. Pharms fired shots at the vehicle following them. Corroborating that testimony, Mr. Hardy testified that Mr. Pharms told him he had shot at the vehicle following them after the theft and that he had later given the gun he used to Mr. Harris, the third person involved in the car theft.

The government also presented social media evidence depicting Mr. Pharms with a gun resembling the one matching the shell casings recovered from the scene. And it presented video evidence of the Chevy leaving the parking garage, in which the passenger was wearing clothes consistent with what Mr. Pharms was wearing on that day. On appeal, Mr. Pharms denies that the evidence showed he discharged a firearm during the offense.

Mr. Pharms was convicted on all five counts. However, by a special interrogatory, the jury was asked, "As to Count 2, was the firearm discharged?" The jury checked the "no" box.

After the trial, a probation officer prepared Mr. Pharms' presentence investigation report ("PSR"), which calculated the recommended sentencing range under the United States Sentencing Guidelines. The PSR grouped Counts 1 and 3 pursuant to U.S.S.G. § 3D1.2(c) into Group

A, and Counts 4 and 5 pursuant to § 3D1.2(b) into Group B.

For Group A, the PSR calculated an offense level of 22, consisting of the greater of the adjusted offense levels of Counts 1 and 3, which reflected: (1) a base offense level of 20 for Count 3; (2) no enhancement pursuant to § 2K2.1(b)(6)(b), which permits an increase in the offense level by four if a firearm was used in connection with another felony offense unless, according to the probation officer's reading of § 2K2.4 Note 4, a sentence on that underlying offense is also being imposed; and (3) a two-level upward adjustment for obstruction of justice. The government objected to the probation officer's denial of the enhancement under § 2K2.1(b)(6)(b), which the district court overruled. Mr. Pharms' counsel objected to any factual finding in the PSR that Mr. Pharms discharged the firearm during the offense.

For Group B, the PSR calculated an offense level of 13, consisting of the greater of the adjusted offense levels of Counts 4 and 5, which reflected: (1) a base offense level of 13 Counts 4 and 5 and (2) no enhancements or adjustments. Based on the adjusted offense levels for Groups A and B, the PSR calculated a total offense level of 22, reflecting the greater adjusted offense levels of the two groups and no adjustments for acceptance of responsibility or any other reason.

As to Count 2, pursuant to § 2K2.4(b), the PSR calculated the applicable guideline sentence as the minimum term of imprisonment required by statute: five years, running consecutively with any other term of imprisonment. *See* 18 U.S.C. § 924(c)(1)(A)(i). The defense and the government both agreed with this calculation.

Based on these calculations, the PSR calculated a recommended guideline range of 63 to 78 months, plus 60 months consecutive to all other counts.

After the PSR was filed, the government moved for an upward variance, in light of the fact that Mr. Pharms shot at the vehicle following him, nearly striking Officer Johnson, and pressed its contention that a four-level enhancement should have applied to Count 3. The government therefore submitted that a 204-month total sentence was appropriate. Mr. Pharms filed a memorandum in response, arguing that the four-level enhancement did not apply, that his sentence should reflect credit for his time in state custody, and that the 18 U.S.C. § 3553 factors did not favor a longer sentence for several reasons. Mr. Pharms requested a 114-month sentence.

At the sentencing hearing, the district court denied the four-level enhancement, but concluded that the evidence supported a finding by the preponderance of the evidence that Mr. Pharms had been the shooter. The court reasoned that, "even if we were, as the defense would argue, going to throw out Mr. Hardy's testimony entirely, we still have . . . Mr. Beard's testimony," and reasoned further that "it makes a lot more sense that it be [sic] the passenger who is firing the shots, and especially here, someone who was able to fire a shot accurately enough from one car to another to come within inches of hitting the person." D.E. 172 at 38–39. Thus, the court found that it was more likely than not that Mr. Pharms had shot at Officer Johnson. The court also noted that the social media evidence and Mr. Hardy's testimony—even if not entirely credited—added weight to its conclusion.

Thus, over the defense's objection, the district court varied upward based on the finding that Mr. Pharms had

discharged the weapon at Officer Johnson and sentenced him to 192 months in prison, reduced by his time served in state custody. That sentence fell within the maximum sentence authorized by the jury's verdict because Mr. Pharms' conviction for assault on a federal officer carried at 240-month statutory maximum, but the court noted that the sentence would have been lower had it not found that Mr. Pharms was the shooter.

Mr. Pharms now contends that this sentence is both unconstitutional and procedurally unreasonable.

II

We review constitutional challenges to a sentence de novo. *See United States v. Pope*, 461 F.3d 1331, 1333 (11th Cir. 2006). We review the procedural reasonableness of a sentence for abuse of discretion. *See United States v. Gyetvay*, 149 F.4th 1213, 1239 (11th Cir. 2025). And we review factual findings for clear error. *See United States v. Ford*, 784 F.3d 1386, 1396 (11th Cir. 2015).

III

Mr. Pharms first contends that the district court violated the Sixth Amendment when it enhanced his sentence based on a finding that he committed conduct of which the jury acquitted him—namely, that he shot at Officer Johnson. He argues that because the Sixth Amendment, in conjunction with the Due Process Clause, requires that each element of a crime be proven to the jury beyond a reasonable doubt, enhancement of a sentence based upon acquitted conduct violates the Sixth Amendment right to a jury trial. The government asserts that this argument is foreclosed by our precedents, namely *United States v. Maddox*, 803 F.3d 1215 (11th Cir. 2015), and *United States v. Rushin*, 844 F.3d 933 (11th Cir. 2016), as well as Supreme Court precedent in *United*

States v. Watts, 519 U.S. 148 (1997). We agree with the government.

We have long permitted sentencing courts to take into account acquitted conduct proven by a preponderance of the evidence. *See e.g.*, *United States v. Faust*, 456 F.3d 1342, 1347 (11th Cir. 2006). Sentencing enhancements on the basis of such a finding "do not punish a defendant for crimes of which he was not convicted, but rather increase his sentence because of the manner in which he committed the crime of conviction." *Id.* (quoting *Watts*, 519 U.S. at 154). Thus, a host of cases from this Court have upheld, over Sixth Amendment challenges, sentence enhancements that were based on facts or conduct for which a defendant was acquitted but which the sentencing court found established by a preponderance of the evidence. *See, e.g.*, *United States v. Duncan*, 400 F.3d 1297, 1304–05 (11th Cir. 2005) (affirming sentence based on a fact that had been acquitted by the jury in a special verdict). *See also Faust*, 456 F.3d at 1348; *United States v. Smith*, 741 F.3d 1211 (11th Cir. 2013); *Rushin*, 844 F.3d at 942. For example, in *Maddox*, we affirmed the application of a sentencing enhancement under U.S.S.G. § 1B1.3, permitting a district court to consider "all relevant conduct" in calculating the appropriate sentence that was based on conduct of which the defendant had been acquitted. *See* 803 F.3d at 1220–1222. And in *Faust*, we again upheld a sentence enhancement based on acquitted conduct where the ultimate sentence fell below the maximum sentence authorized by the jury verdict. *See* 456 F.3d at 1348.

Mr. Pharms resists this conclusion, first arguing that the Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Ring v. Arizona*, 536 U.S. 584 (2002), *Blakely v. Washington*, 542 U.S. 296 (2004), and *United States v. Booker*, 543 U.S. 220 (2005), demonstrate

that his sentence based on acquitted conduct is unconstitutional. Not so. These cases stand for the proposition that a sentencing court must submit to the jury any question of fact necessary to enhance punishment or a sentence *above* the maximum sentence authorized by the statute and the jury verdict. *See Apprendi*, 530 U.S. at 490 ("[A]ny fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury, and proved beyond a reasonable doubt."); *Ring*, 536 U.S. at 589 ("Capital defendants . . . are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment."); *Blakely*, 542 U.S. at 301–04 (applying *Apprendi* to reverse three-year enhancement based on facts not admitted by the defendant or found by the jury); *Booker*, 543 U.S. at 226–27 (holding that the Sixth Amendment limitation on sentencing enhancements as construed in *Blakely* applies to the Sentencing Guidelines).

The Supreme Court has "never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *Booker*, 543 U.S. at 233 (citing *Apprendi*, 530 U.S. at 481). Thus, "when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination on the facts the judge deems relevant." *Id.* Here, the jury verdict—convicting Mr. Pharms of assault on a federal officer and use of a deadly weapon—authorized a maximum statutory penalty of 240 months. Mr. Pharms is not entitled to a jury determination on a fact the sentencing court deemed relevant in selecting a sentence (here, 192 months) within the range authorized by statute and the jury's verdict.

Mr. Pharms next points to a recent amendment to U.S.S.G. § 1B1.3, which excludes consideration of

acquitted conduct, in certain circumstances, for purposes of the Sentencing Guidelines calculations: "Relevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction." § 1B1.3(c) (effective Nov. 1, 2024).

The impact of that amendment on our acquitted conduct sentencing precedents is yet to be determined. *See United States v. Touray*, 151 F.4th 1317, 1332 (11th Cir. 2025) (declining to address the effect of this amendment, which had not yet taken effect at the time of the defendant's sentencing); *United States v. Romeu*, 2026 WL 36113, at *3 (11th Cir. Jan. 6, 2026) (explaining that this amendment has not been made retroactive). But we have no occasion to question our precedents or those of the Supreme Court in this appeal. As two other federal courts of appeals have reasoned, this amendment to the Guidelines does not limit the scope of conduct a sentencing court can consider under § 3553(a), i.e., the sentencing court's sentencing authority separate from calculating the Guideline range. *See United States v. Ware*, 141 F.4th 970, 974 n.2 (8th Cir. 2025) ("[T]he [amended] Guideline [§ 1B1.3(c)] does not prohibit a court from considering acquitted conduct when analyzing the factors from § 3553(a), as the district court did here."); *United States v. Ralston*, 110 F.4th 909, 921 (6th Cir. 2024) ("[T]he 'amendment precludes consideration of acquitted conduct in the context of *calculating the [G]uidelines*,' but . . . a court may still consider acquitted conduct when 'imposing a sentence.'") (quoting Vice Chair Claire Murray, Remarks at United States Sentencing Commission Public Meeting, Apr. 17, 2024). Thus, the amendment does not affect the district court's discretionary application of the § 3553 factors here.

In sum, our precedents confirm that the district court did not act unconstitutionally in varying upward on the basis of conduct of which Mr. Pharms was acquitted under the higher beyond-a-reasonable-doubt standard. *See Faust*, 456 F.3d at 1348 ("[U]nder an advisory Guidelines scheme, courts can continue to consider relevant acquitted conduct so long as the facts underlying the conduct are proved by a preponderance of the evidence and the sentence imposed does not exceed the maximum sentence authorized by the jury verdict."). The remaining authorities to which Mr. Pharms refers us—all nonbinding, non-majority decisions—do not persuade us otherwise.[1]

Mr. Pharms was sentenced to a term of imprisonment within the maximum sentence authorized by the jury's verdict, and the use of acquitted conduct to vary upward within that range did not violate the Sixth Amendment.

IV

Mr. Pharms next contends that the same variance—an enhancement of his sentence based on conduct for which he was acquitted by the jury—violated the Due Process Clause of the Fifth Amendment. Mr. Pharms argues that *In re Winship*, 397 U.S. 358 (1970), establishes that due process protects him from conviction except upon proof beyond a reasonable doubt of every element of the crime and that enhancement of a sentence based upon facts found by a preponderance of the evidence violates that constitutional protection. And he

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[1] We acknowledge the growing number of opinions, to which Mr. Pharms refers, criticizing the use of acquitted conduct at sentencing. But until either this Court sitting en banc or the Supreme Court abrogates our existing precedents, we are bound to follow them. *See Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy County*, 59 F.4th 1158, 1164 (11th Cir. 2023).

contends that reliance on acquitted conduct increases the risk of inaccurate sentencing and violates the fair notice requirement.

Like his Sixth Amendment argument, Mr. Pharms' Fifth Amendment due process arguments are foreclosed by our precedents. *See Touray*, 151 F.4th at 1332 ("So long as the sentence imposed by the district court does not 'exceed the sentence authorized by the jury verdict' and is supported by a preponderance of the evidence, it does not violate the Fifth or Sixth Amendments to consider acquitted conduct at sentencing.") (quoting *United States v. Culver*, 598 F.3d 740, 752–53 (11th Cir. 2010). *See also Culver*, 598 F.3d at 752–53 (holding that a sentence based on acquitted conduct that is within the maximum authorized by the jury verdict does not violate the due process clause of the Fifth Amendment); *Maddox*, 803 F.3d at 1221 n.2 (citing *United States v. Clay*, 483 F.3d 739, 744 (11th Cir. 2007)).

In *Clay*, for example, we upheld a sentencing enhancement over a due process challenge similar to the one Mr. Pharms brings here. *See* 483 F.3d at 744. There, the defendant, Clay, was indicted for his participation in a conspiracy to manufacture and possess with intent to distribute methamphetamine and for possession of pseudoephedrine, but the jury acquitted him of the conspiracy charges, convicting him only of possession of pseudoephedrine. *See id.* at 742. Nonetheless, the sentencing court found by a preponderance of the evidence that Clay had participated in the manufacture of 1.5 kilograms of methamphetamine and enhanced his sentence accordingly. *Id.* While acknowledging the possibility that a due process violation could occur in "extreme circumstances," we affirmed the enhanced sentence over Clay's due process argument, reasoning that it was not extraordinary and was within the range

authorized by the jury's verdict. *See id.* at 744. So too here, the district court's imposition of an enhanced sentence—neither extraordinary nor exceeding the maximum authorized by the jury verdict—did not violate due process.

Mr. Pharms' arguments about fair notice and inaccuracy fare no better. Mr. Pharms relies on *Townsend v. Burke*, 334 U.S. 736, 740–41 (1948), but in that case a defendant, without the benefit of counsel, was sentenced on "a foundation so extensively and materially false" as to render "the proceedings lacking in due process." *Id.* at 741. The Supreme Court made clear that it was "not reaching th[e] result because of [the] petitioner's allegation that his sentence was unduly severe." *Id.* Here, as we explain below, the district court's factual findings in support of the sentencing enhancements were supported by a preponderance of the evidence, a far cry from established to be "materially false." *Townsend* is inapposite.

We therefore hold, consistent with our precedents, that Mr. Pharms' sentence was not imposed in violation of the Due Process Clause of the Fifth Amendment.

V

Lastly, Mr. Pharms contends that his sentence is procedurally unreasonable because it is based upon clearly erroneous facts. "For a finding to be clearly erroneous, this Court must be left with a definite and firm conviction that a mistake has been committed." *United States v. Almedina*, 686 F.3d 1312, 1315 (11th Cir. 2012). Based on the evidence presented at trial and referred to in the sentencing hearing, we do not have such a conviction.

Two principles guide our decision here. First, the district court may make reasonable inferences from the evidence presented at trial and the sentencing hearing. *See United States v. Green*, 981 F.3d 945, 953 (11th Cir. 2020) ("The district court may base factual findings on evidence presented at trial . . . or evidence presented at the sentencing hearing, and it may make reasonable inferences from the evidence.") (citations omitted). And second, "[w]here a fact pattern gives rise to two reasonable and different constructions, 'the factfinder's choice between them cannot be clearly erroneous.'" *Almedina*, 686 F.3d at 1315 (quoting *United States v. Izquierdo*, 448 F.3d 1269, 1278 (11th Cir. 2006)).

There was ample evidence to support the district court's factual finding that Mr. Pharms was the shooter. Video evidence showed that Mr. Pharms was the passenger in the Chevy from which a firearm was discharged, while Mr. Beard was the driver. It was a reasonable inference for the district court to draw, as it did, from that evidence that Mr. Pharms was the more likely to have discharged the firearm. That inference is further supported by testimony from Mr. Pharms' cellmate, Mr. Hardy, who testified that Mr. Pharms told him as much, and, more critically, by Mr. Beard who testified that he was driving the car and that Mr. Pharms fired the shots. In light of this evidence, we cannot say that the district court's finding was clearly erroneous. Even if it were equally reasonable to infer that Mr. Beard discharged the firearm, we still could not say that the district court's factual finding constituted reversible error. *See Almedina*, 686 F.3d at 1315.

Mr. Pharms nevertheless asserts that the district court's finding that he discharged the firearm in the course of the relevant incident was clearly erroneous because it (1) disregarded the jury's conclusion on that

issue; (2) was based on Officer Johnson's testimony, but Officer Johnson did not see who was shooting from the other car; (3) was inconsistent with the fact that the bullet in Officer Johnson's car matched a gun found at a co-defendant's home; and (4) was based on testimony of "convicted criminals who were plainly incentivized to testify in a way which could potentially lessen their sentences." *See* Appellant's Brief at 31. None of these arguments establish clear error.

First, the standard of proof for a fact determined at sentencing is preponderance of the evidence, on which the government bears the burden. *See Maddox*, 803 F.3d at 1220 (citing *Faust*, 456 F.3d at 1347, 1348). Therefore, the jury's response to the special interrogatory in the negative does not establish that the district court clearly erred in finding that the government *did* establish that Mr. Pharms discharged the firearm by the lower preponderance of the evidence standard. *See id.* at 1221 ("[A]n acquittal does not mean that the defendant is innocent of any particular aspect of the charged criminal conduct; it simply means that the Government failed to prove the defendant guilty beyond a reasonable doubt.") (citation omitted). *See also Watts*, 519 U.S. at 155 ("An acquittal is not a finding of any fact. An acquittal can only be an acknowledgement that the government failed to prove an essential element of the offense beyond a reasonable doubt.") (quotations and citations omitted).

Second, with or without Officer Johnson's personal knowledge of who discharged the firearm, the district court found Mr. Beard to be credible, and he testified that Mr. Pharms was the shooter. Mr. Pharms contends that Mr. Hardy and Mr. Beard were both unreliable because they are convicted criminals who are incentivized to testify in a way which could lessen their sentences, but we afford substantial deference to the district court's

credibility determinations. *See Maddox*, 803 F.3d at 1220. Thus, "[w]e will accept a factfinder's credibility determination unless the proffered evidence is 'contrary to the laws of nature' or is 'so inconsistent or improbable on its face that no reasonable factfinder could accept it.'" *Id.* (quoting *United States v. Ramirez-Chilel*, 289 F.3d 744, 749 (11th Cir. 2002)). A criminal history or a motive to lie does not establish that Mr. Beard's testimony was incredible. *See id.* ("The fact that a witness is of dubious character does not, by itself, render his testimony incredible." (citing *United States v. Flores*, 572 F.3d 1254, 1263 (11th Cir. 2009)). We therefore decline Mr. Pharms' invitation to ignore the district court's credibility determination as to Mr. Beard. That testimony, in addition to the video evidence and reasonable inferences drawn therefrom, adequately supports the district court's factual finding by the preponderance of the evidence.

Because the district court's factual finding was not clearly erroneous and Mr. Pharms does not argue his sentence was procedurally unreasonable for any other reason, the district court did not abuse its discretion in imposing the sentence it did.

VI

We hold that Mr. Pharms' sentence is neither constitutionally infirm nor procedurally unreasonable.

AFFIRMED.

APPENDIX B

[FILED: DECEMBER 19, 2024]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA v. KEITH PHARMS	)	**JUDGMENT IN A CRIMINAL CASE** Case Number: 1:23-CR-00004-2-JPB-JSA USM Number: 38243-510 Emily Strongwater Defendant's Attorney

THE DEFENDANT:

The defendant was found guilty on Counts 1–5 of the First Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. §§ 111(a) & (b)	ASSAULT ON A FEDERAL OFFICER	On or about February 24, 2022	1
18 U.S.C. § 924(c)	USE OF A FIREARM DURING A CRIME OF VIOLENCE	On or about February 24, 2022	2

18 U.S.C. § 922(g)(1)	POSSESSION OF A FIREARM BY A CONVICTED FELON	On or about February 24, 2022	3
18 U.S.C. § 1791	POSSESSING, OBTAINING AND ATTEMPTING TO OBTAIN AND POSSESS PROHIBITED OBJECT, CELLULAR PHONES	On or about July 10, 2024	4
18 U.S.C. § 1791	POSSESSING, OBTAINING AND ATTEMPTING TO OBTAIN AND POSSESS PROHIBITED OBJECT, OBJECT DESIGNED TO FACILITATE ESCAPE	On or about July 10, 2024	5

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

United States Attorney of material changes in economic circumstances.

December 19, 2024
Name and Title of Judge

/s/ J.P. Boulee
J. P. BOULEE
United States District Judge

December 19, 2024

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **ONE HUNDRED EIGHTY-TWO MONTHS AND TEN DAYS.** This sentence consists of one hundred twenty-two months and ten days as to Count 1 (originally one hundred thirty-two months, which the Court then reduced by nine months and twenty days to allow credit for time served in state custody, pursuant to U.S.S.G. § 5G1.3(b)(2)), sixty months each as to Counts 2 and 3, twelve months as to Count 4, and twenty-four months as to Count 5. The Court **ORDERS** Counts 1, 3, 4 and 5 shall run concurrently to each other and Count 2 shall run consecutive to Counts 1, 3, 4 and 5.

IT IS FURTHER ORDERED that this sentence shall be served concurrently with any sentence imposed in Fulton County Case No. 23SC187795, pursuant to U.S.S.G. § 5G1.3(c).

The Court makes the following recommendations to the Bureau of Prisons: Designation to a facility nearest to Atlanta, Georgia as possible, commensurate with the security risk involved in this case based on the defendant's repeated contraband violations while in custody, with access to a mental health evaluation and treatment program.

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

RETURN

I have executed this judgment as follows:

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

_____
UNITED STATES MARSHAL

_____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **THREE YEARS, consisting of three years as to Counts 1, 2, 3 and 5 and one year as to Count 4, to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
4. You must cooperate in the collection of DNA as directed by the probation officer.

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

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the

probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated

circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see Overview of Probation and Supervised Release Conditions, available at: www.uscourts.gov

I understand that a violation of any of these conditions of supervised release may result in modification, extension, or revocation of my term of supervision.

Defendant's Signature _____

Date _____

USPO's Signature _____

Date _____

SPECIAL CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following special conditions of supervision:

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you violated a condition of your supervision and that areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

You must permit confiscation and/or disposal of any material considered to be contraband or any other item which may be deemed to have evidentiary value of violations of supervision.

You must participate in an alcohol and / or other substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay all or part of the costs of the program based on your ability to pay unless excused by the probation officer.

You must submit to substance abuse testing to determine if you have used a prohibited substance. You must not obstruct, attempt to obstruct, or tamper with any testing methods. You must pay all or part of the costs of testing based on your ability to pay unless excused by the probation officer.

CRIMINAL MONETARY PENALTIES

Special Assessment

TOTAL

$500

The Court finds that the defendant does not have the ability to pay a fine and cost of incarceration. The Court waives the fine and cost of incarceration in this case.

Fine

TOTAL

$0

APPENDIX C

Section 924 of Title 18 of the United States Code provides:

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

> **(i)** be sentenced to a term of imprisonment of not less than 5 years;
>
> **(ii)** if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and
>
> **(iii)** if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection--

> **(i)** is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or
>
> **(ii)** is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall--

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law--

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and--

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of

another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section--

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition–

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

APPENDIX D

[FILED: SEPTEMBER 23, 2024]

FILED IN OPEN COURT
U.S.D.C. – Atlanta
Jul 23 2024
KEVIN P. WEIMER, Clerk
By: /s/ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	
v.	Criminal Indictment
KEITH PHARMS,	No. 1:23-CR-004
A.K.A. B-BOY	Superseding

THE GRAND JURY CHARGES THAT:

Count One
(Assault on a Federal Officer -
18 U.S.C. §§ 111(a) & (b))

On or about February 24, 2022, in the Northern District of Georgia, the defendant, KEITH PHARMS, a.k.a. B-Boy, aided and abetted by Jokava Harris and Blake Beard, using a deadly and dangerous weapon., that is, a firearm, did knowingly and forcibly assault, resist, oppose, impede, intimidate, and interfere with a federal officer, that is, Federal Bureau of Investigation Task Force Officer WJ, who was then engaged in the performance of his official duties, all in violation of Title

18, United States Code, Sections 111(a)(1) and (b), and Section 2.

Count Two
(Use of a Firearm during a Crime of Violence - 18 U.S.C. § 924(c))

On or about February 24, 2022, in the Northern District of Georgia, the defendant, KEITH PHARMS, a.k.a. B-Boy, aided and abetted by Jokava Harris and Blake Beard, did knowingly carry and use a firearm during and in relation to a crime of violence for which the defendant may be prosecuted in a court of the United States, that is, assault of a federal officer, in violation of Title 18, United States Code, Sections 111(a)(1) and (b), as alleged in Count One of this Indictment, and during and in relation to the commission of the offense, did brandish and discharge a firearm, all in violation of Title 18, United States Code, Sections 924(c)(1)(A), 924(c)(1)(A)(ii), and 924(c)(1)(A)(iii), and Section 2.

Count Three
(Possession of Firearm by Convicted Felon - 18 U.S.C. § 922(g)(1))

On or about February 24, 2022, in the Northern District of Georgia, the defendant, KEITH PHARMS, a.k.a. B-Boy, knowing that he had previously been convicted of a felony offense punishable for a term of imprisonment exceeding one year, did knowingly possess a firearm in and affecting interstate and foreign commerce, that is, a Glock, model 19, Gen 5 nine-millimeter pistol, in violation of Title 18, United States Code, Section 922(g)(1).

Count Four
(Possessing, Obtaining, and Attempting to Obtain and Possess Prohibited Object, Cellular Phones - 18 U.S.C. § 1791)

At all times relevant to Count Four:

1. The Robert A. Deyton Detention Facility (RADDF) in Lovejoy, Georgia, in the Northern District of Georgia, was a "prison" as that the term is used in Title 18, United States Code, Section 1791(d)(4), in that it is a prison, institution, and facility in which persons are held in custody by direction of and pursuant to a contract and agreement with the Attorney General.

2. Defendant KEITH PHARMS, a.k.a. B-Boy, was an inmate of RADDF.

3. On or about each date listed in the chart below, defendant KEITH PHARMS, a.k.a. B-Boy, aided and abetted by others unknown to the Grand Jury, did knowingly possess, obtain and attempt to possess and obtain, a prohibited and forbidden object, that is, at least one or more cellular phones, as described below:

Count	**Date**	**Description of Cellular Phone(s)**
Four	July 10, 2024	• Two (2) black Samsung Galaxy Notes, found in door of Defendant's cell; and • White Apple iPhone, found in door of Defendant's cell

All in violation of Title 18, United States Code Sections, 1791(a)(2), 1791(d)(1)(F), and Section Two.

Count Five
(Possessing, Obtaining, and Attempting to Obtain and Possess Prohibited Object, Object Designed to Facilitate Escape - 18 U.S.C. § 1791)

On or about July 10, 2024, in the Northern District of Georgia, defendant KEITH PHARMS, a.k.a. B-Boy, an inmate of the Robert A. Deyton Detention Facility (RAOOF), in Lovejoy, Georgia, in the Northern District of Georgia, a "prison" as that the term is used in Title 18, United States Code, Section 1791(d)(4), in that it is a prison, institution, and facility in which persons are held in custody by direction of and pursuant to a contract and agreement with the Attorney General, aided and abetted by others unknown to the Grand Jury, did knowingly possess, obtain, and attempt to possess and obtain a prohibited and forbidden object, that is, a handcuff key, which was an object designed and intended to facilitate an escape from prison; all in violation of Title 18, United States Code, Sections 1791(a)(2), 1791(d)(1)(B), and Section 2.

Forfeiture

Upon conviction of one or more of the offenses alleged in Counts One through Three of the Indictment, the defendant, KEITH PHARMS, a.k.a. B-Boy, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 924(d)(1) and Title 28, United States Code, Section 2461(c), any firearms and ammunition involved in or used in the commission of the offenses.

If, any of the property subject to forfeiture, as a result of any act or omission of the defendant:

(a) cannot be located upon the exercise of due diligence;

[omission of subsection (b) per original]

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

the United States intends, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property up to the value of the forfeitable property.

A true
BILL
FOREPERSON

RYAN K. BUCHANAN
United States Attorney

/s/ Joseph Plummer
JOSEPH PLUMMER
Assistant United States Attorney
Georgia Bar No. 003006

/s/ Jessica Morris
JESSICA MORRIS
Assistant United States Attorney
Georgia Bar No. 100907

600 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, GA 30303
404-581-6000; Fax: 404-581-6181

APPENDIX E

[FILED: SEPTEMBER 26, 2024]

FILED IN OPEN COURT
U.S.D.C. – Atlanta
Sep 26 2024
KEVIN P. WEIMER, Clerk
By: /s/ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* KEITH PHARMS	Criminal Action No. 1:23-cr-0004-JPB-JSA

Verdict

Count One

1. As to Count One of the indictment charging assault on a federal officer, we the jury find the defendant:

Guilty ___√___ Not Guilty _____

Count Two

2. As to Count Two of the indictment charging the use or carrying of a firearm during and in relation to a crime of violence, we the jury find the defendant:

Guilty ___√___ Not Guilty _____

3. As to Count Two, was the firearm discharged?

Yes _____ No ___√___

Count Three

4. As to Count Three of the indictment charging felon in possession of a firearm, we the jury find the defendant:

Guilty ___√___ Not Guilty _____

Count Four

5. As to Count Four of the indictment charging possession of a contraband cell phone, we the jury find the defendant:

Guilty ___√___ Not Guilty _____

Count Five

6. As to Count Five of the indictment charging possession of a contraband cell phone, we the jury find the defendant:

Guilty ___√___ Not Guilty _____

SO SAY WE ALL.

Signed and dated at the United States Courthouse, Atlanta, Georgia, this 26 day of Sept, 2024.

/s/ Gary Beauford
Foreperson's Signature

Gary Beauford
Foreperson's Printed Name

APPENDIX F

[FILED: MARCH 19, 2025]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, - VS - KEITH PHARMS, DEFENDANT.	))))))))	DOCKET NO. 1:23-CR-00004-JPB SENTENCING

TRANSCRIPT OF SENTENCING PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
DECEMBER 19, 2024

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
JOSEPH PLUMMER, ESQ.
JESSICA MORRIS, ESQ.
ASSISTANT UNITED
STATES ATTORNEYS

ON BEHALF OF THE DEFENDANT:
EMILY STRONGWATER, ESQ.

[2] (PROCEEDINGS HELD IN OPEN COURT AT 10:10 A.M. ATLANTA, GA)

* * *

[28] THE COURT:

* * *

[29] Let's move into the various objections to the PSR to the extent the PSR describes Mr. Pharms as the shooter.

Ms. Strongwater or Officer Logan, you can double-check me, but I think the list of paragraphs for that is 30, 39, 41, 42, 50, 69, 72 and 76. Any additions or [30] subtractions?

MS. STRONGWATER: No, your Honor. I don't want to take up your time and reread everything, but any -- we object to any insinuation factually I guess -- not insinuation, any factual finding that Mr. Pharms is the shooter. And in terms --

THE COURT: So, I guess, including but not limited to those paragraphs?

MS. STRONGWATER: Yes. And also a little different with the statements made by cooperators, because those are their statements, right? I can't say those are not their statements. But we object to the finding that those statements are truthful and accurate.

THE COURT: Understood. To the extent there's other paragraphs in the PSR where it's a description of what someone said in their interview, for example --

MS. STRONGWATER: Correct, your Honor.

THE COURT: -- to the extent those interviews said he was the shooter, you object to that fact, but you don't object to the fact that they said it?

MS. STRONGWATER: Correct, your Honor.

THE COURT: All right. Very well. One moment.

All right. You know, I think someone in -- looking into the 2K enhancement issue someone mentioned we had more of a legal issue than a factual issue. And for this I think it's [31] perhaps the -- almost the opposite. I don't know that the law on this is very difficult, but it's more of a factual question.

Here the jury in the verdict form was asked -- after finding him guilty on Count 2, the use or carrying of a firearm during and in relation to a crime of violence, the jury was asked if the firearm was discharged. And it said -- the jury verdict was no. And the government -- well, the defense has objected to anything in the PSR about him being the shooter.

The government's outlined in its memo, and I've looked into this and I think the law is pretty clear, I just want to establish the law first, that the case they cited on page 12 of their memo, Document 148, is the *McKinney* case, an Eleventh Circuit case, non-published but citing a published case, saying, A jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge so long as that conduct has been proved by a preponderance of evidence.

Does everyone agree that's the law and that I can indeed, if I find by the preponderance of the evidence he was the shooter, use that fact if I so find it in this sentencing even though the jury acquitted him on the discharge?

MS. STRONGWATER: Yes, your Honor. And I expected the Court would do that. My objection is primarily factual [32] for purposes of appeal or changes in law. I'm not expecting you to change any sort of calculation on it or anything like that. I just am setting my client up for all possible things moving forward.

THE COURT: Understood. All right.

Well, I would be happy to hear -- well, let me ask you, I mean, do you concede that the evidence showed by at least a preponderance that he discharged --

MS. STRONGWATER: I do not, your Honor, but you can make that ruling yourself.

THE COURT: Very well.

Well, Ms. Morris, I'll let you -- if you would like to summarize the evidence that you think established at least by a preponderance that he was the shooter and discharged the weapon, I would be happy to hear from you briefly.

MS. MORRIS: Yes, your Honor, briefly.

We heard from two witnesses that had direct evidence about this, and that is the driver of the vehicle when the shooting occurred, Blake Beard, who testified that Pharms shot the gun out the window not on one occasion but two occasions in a short manner of time.

We heard from Avery Hardy who didn't know -- had no prior connection at all with the defendant. That when he was incarcerated with him in Douglas County Jail, that the defendant made admissions to him about his role in the [33] shooting, mentioned that he had given the gun over to ManMan, who is Jokava Harris, and which was consistent with how things turned out. That particular firearm was recovered from Jokava Harris's house.

And circumstantial evidence that supports those two witnesses included photographs of the defendant possessing what appeared to be the identical firearm around the time of the incident.

So that's -- in sum we have two witnesses who testified directly about that issue and then some circumstantial evidence supporting them.

THE COURT: All right. Thank you.

Ms. Strongwater.

MS. STRONGWATER: Just briefly, your Honor.

I know you sat through the same trial I did, so I won't spend too much time going over again why I think both these witnesses were unreliable. But I will say that Blake Beard was inconsistent on the stand. He admitted on the stand that he continued to participate in car thefts after this evening. And I think he was, frankly, someone looking for a deal. And I think the jury agreed with me, which is why they filled out the verdict form the way they did.

The same goes for Mr. Hardy. I told you what I could get out in trial but he has spent most of his life incarcerated going to authorities, trying to get them to give [34] him deals in different cases. It's what he does. He also admitted on the stand he read an article about this case before he talked to the government. He is a pathological cooperator. And, again, I think the jury agreed that his statement was unreliable, otherwise they wouldn't have filled out the verdict form the way they did.

A couple of just sort of factual points that I think speak against the fact that Mr. Pharms was the one that was the shooter. The first is the gun in question was found at Harris's home.

They also now are saying that the gun Keith possessed that day was a Glock 23, which is not the 9-millimeter they claimed was the firing weapon during trial. It's a completely different weapon. Again, they sort of seem to pick facts where they fit.

There were two guns fired that night. One of them was found at Harris's home. There was a gun found at Keith's home that did not match either of those two shell casings. That was testified to at trial. They were, in fact, tested, the gun from Keith's home was tested, and they were not matches to either of the two firearms that were fired the night of the offense.

Aside from most of this relying on testimony of two people I think the jury found completely unreliable, the facts point to Harris being the person that fired that weapon. The [35] gun was found at his house. The gun found at Keith's house did not match either of the guns fired that night.

And this is an issue more for proportionality, but it seems like this whole trial and sentencing and memos sort of ignore the fact there were two shooters. I don't think either of them was Keith personally. But that's a proportionality issue I'll get to later today. But it seems like the government just sort of picks and chooses facts since the beginning in a way that everything gets blamed on Keith. And I think that's why Keith went to trial frankly.

So I think the evidence points to a very good chance that Keith was not the person who discharged the 9-millimeter in question. And I think the jury found that for a reason.

THE COURT: What do you say about the -- I don't remember if it was a video or a still shot of when they were leaving the parking garage where the car was stolen, what do you say to the fact that your client, Mr. Pharms, was the passenger in the car at that time?

MS. STRONGWATER: He was the passenger in the car at that time. And if you read -- may I grab my notes real quick?

THE COURT: Sure.

MS. STRONGWATER: He was the passenger in the car that time. It's not impossible or unheard of for someone driving to shoot a gun out of a vehicle.

Further in the PSR, which is unobjected to, Johnson's [36] initial statement says that people were shooting out of both cars.

So I do think he was in that car but that does not necessarily mean he was the one who fired the weapon. People driving cars unfortunately can also fire out of their windows when they're driving.

You'll hear testimony at trial TFO Johnson was saying he couldn't see anything, he couldn't see necessarily which side it was coming from, which car it was coming from. It was dark.

So I do think he was in the passenger seat. And I think that's a bad fact. I don't think it shows by a preponderance of evidence that he was the one that fired. Thank you.

THE COURT: Ms. Morris?

MS. MORRIS: I guess I just want to clarify, your Honor. I keep referring to it as a Glock 23. That was the model number. There's no ambiguity about which firearm that was being discussed at trial. It was a 9-millimeter, that was the pictures that were -- so I was just -- I was kind of referring to the model rather than the caliber, but I didn't mean to create any confusion with respect to that issue.

And the government agrees with your Honor, that the evidence does show and is uncontested that Mr. Pharms was the passenger in the Chevy SS. And that TFO Johnson, he testified [37] he couldn't see who was shooting him, he ducked. And you'll recall that one of the bullets penetrated the window of the car and nearly missed the headrest. So there's certainly no issue as to the discharge, which is a little confusing in light of the jury's verdict.

But we're happy to answer any other factual questions you have.

THE COURT: All right. Thank you.

I'll start off by saying I think this is the first time that I can recall in a sentencing I've been faced with an issue

where the jury reached a verdict on something and I'm asked at sentencing to make the same decision, albeit at a much different level of proof. But I think the law is clear. I mean, the standard is different beyond a reasonable doubt as the jury had to do versus preponderance of the evidence from me here at sentencing.

And I do find by a preponderance of the evidence that the defendant, Mr. Pharms, was a shooter the night in question. I think the evidence is fairly considerable to that effect, even if we were, as the defense would argue, going to throw out Mr. Hardy's testimony entirely, we still have the fact -- we still have Mr. Beard's testimony. And I understand the defense argument that, hey, he was cooperating to get a deal, he also was facing charges here. I get that. And I get discounting his testimony somewhat for that reason. But I [38] think a very important fact here is that when they left the parking garage where the car was stolen, Mr. Beard was driving, Mr. Pharms was the passenger. Certainly a driver of a car can shoot a firearm, whether that -- whether it's the driver of one car, Mr. Beard, or the driver of the other car, Mr. Harris. But I think it makes a lot more sense that it be the passenger who is firing the shots, and especially here, someone who was able to fire a shot accurately enough from one car to another to come within inches of hitting the person they were shooting at's head, with a pistol no less.

And then we also have, as the government referenced, the social media evidence of photographs of Mr. Pharms with either -- I'll just say similar, at least, weapon as the one that was used here.

And although I do agree there are questions about Mr. Hardy's testimony, it does at least add some slight weight to a conclusion that the government's met its burden by a preponderance that he was a shooter on the night in question. So I'm going to overrule those objections by the defense.

One moment.

Overrule and find by a preponderance of the evidence that he was a shooter.

MS. STRONGWATER: Your Honor, if I may say something for the record.

THE COURT: Certainly.

[39] MS. STRONGWATER: I would like to continue -- I accept the Court's ruling, but I would like to continue in including those objections as remaining in the PSR for purposes of any appeal or change of law in the future.

THE COURT: Certainly. Understood.

* * *

[51] MS. STRONGWATER:

* * *

[53] The other thing I want to point out is not so much mitigation but proportionality here. As I touched on earlier, there appears to be two shooters in this situation. You know, the Court has found by preponderance that one of those is Keith. That still leaves someone else. And in our case Mr. Harris received a sentence of 100 months. What the government's asking for here is more than double that. And presumably, based upon the evidence, it would suggest that he was one of the shooters. I don't want to say "the other" because I want to maintain my objection, but he fired the [54] firearm at the officer, he got 100 months, and now the government is asking for twice as much.

And while I understand Keith has -- he's had some trouble with contraband and has a criminal history, Mr. Harris had all those problems as well. When he was indicted in this case, he had an outstanding federal case

completely unrelated. This is a person who has been involved in shootouts prior to this arrest.

So while I understand that Keith is positioned in a place that's going to get him a very substantial sentence, my argument is two-part. 123 months is a very substantial sentence. I mean, that's all of his kid's youth. That's most of his young adulthood, if not all of it.

My other argument is it shouldn't be so much more than someone who roughly participated in the same exact conduct. It's not fair. So with those things in mind I think that -- you know, I will be honest and say this is the first time in my career I have not asked for a below guideline sentence, and that's because I understand this is very serious. And Mr. Pharms and I discussed this. He understands that it's very serious. And we think 123 months both reflects the seriousness of this offense and is quite a substantial sentence.

So, with all that said, I think the low-end guideline is an appropriate sentence here in this case.

[55] THE COURT: All right. Thank you.

Let's do this, let's go ahead and break for a short lunch at this point. Is 40 minutes enough time? If we were to come back at 12:30, does that work?

MS. MORRIS: Yes, your Honor.

MS. STRONGWATER: Yes, your Honor.

THE COURT: Is that enough time that Mr. Pharms can get some lunch as well?

DEPUTY U.S. MARSHAL: Yes, sir.

THE COURT: Very well. I'll see y'all at 12:30 then. Thank you.

(After a recess at 11:48 a.m., the proceedings continued at 12:35 p.m. as follows:)

THE COURT: One quick note, when I was describing my decision about Mr. Pharms having been a shooter the

night in question, I went through, you know, what I considered there. And I will say I also evaluated the credibility of Mr. Beard and I found him credible on the stand.

* * *

[69] THE COURT: Mr. Pharms, if you would please stand, sir.

Pursuant to the Sentencing Reform Act of 1984 it's the judgment of the Court that you, Keith Pharms, are committed to the custody of the Bureau of Prisons to be imprisoned for a term of 132 months on Count 1, 60 months on Count 2, 60 months on Count 3, 12 months on Count 4, and 24 months on Count 5, for a total sentence of 192 months.

Sir, you can be seated while I break that down in a little bit more detail.

Counts 1, 3, 4 and 5, those sentences will all be served concurrently with each other for a total sentence of 132 months. But Count 2, the sentence of 60 months, will be consecutive to the 132 months, for a total sentence of 192 months in custody.

* * *

[76] THE COURT:

* * *

[77] The sentence is made in view of the sentencing goals delineated in 18 USC, Section 3553(a) and the parties' arguments as to those factors, including:

The nature and circumstances of the offense and the history and characteristics of the defendant;

The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense;

To afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner;

The kinds of sentences available;

The kinds of sentence in the sentencing range established for the applicable category of offense committed as set forth in the sentencing guidances;

Any pertinent policy statement;

The need to avoid sentencing disparity;

And the need to provide restitution to victims.

The sentence meets the criteria of punishment, deterrence and incapacitation and is sufficient but not [78] greater than necessary to comply with the directives of Section 3553(a).

Based on these considerations, I find this is a just and appropriate sentence.

I was asked by the government to vary upwards, and I did vary upwards. I did not think a guideline sentence would have resulted in a sentence that was sufficient under the 3553(a) factors.

In particular, I did not think a guideline sentence would have been sufficient based on the nature and circumstances of this offense, based on the history and characteristics of the defendant, the seriousness of this offense, the need to provide respect for the law and provide just punishment, concerns about deterrence in this case and protecting the public.

I want to discuss some of these concerns in particular. And I didn't consider just those, I considered all of the

3553(a) factors, but it's some of those that I want to highlight as to why a guideline sentence would not have been sufficient in my view.

* * *

[80] Turning to the seriousness of the offense. This is in my view an incredibly serious offense. After stealing a car he and his co-defendants notice that they're being followed by someone. And what does the defendant do in response? He fires on the person following them, fired shots. Fortunately, he missed. The shots did not hit their intended target, who turned out to be Task Force Officer Johnson. Nevertheless, the individual in that car who they didn't know [81] who it was based on the evidence here exactly, was almost hit and would have obviously been potentially seriously injured, if not killed. As far as assault on a federal officer, I don't think it gets a whole lot worse than that, other than when the bullet actually strikes the target.

In addition, as I've noted, he was a felon in possession of the firearm that he shot. And over and above that, we have the high-speed chase that followed, as well as the contraband when he was in custody, both the cellphones and a key that could have been used as part of potentially an escape. I don't know -- excuse me. Strike that.

Although there's no evidence that he attempted to escape, certainly having a cellphone and having keys can be very problematic to the guards that are trying to hold him, whether it's at the facility or in transport to the courthouse or medical care or what have you. This is particularly egregious behavior and at the end of the day I did not think that the guideline sentence would be sufficient here.

One argument that I want to address was sentencing disparity. I do not believe that this sentence results in

sentencing disparity. The defense has noted the sentences of the co-defendants in this case. I will note that although there is now evidence in front of me of a second gun being fired and a second shooter, at the time of Harris's sentencing I was told by both the government and the defense that Harris [82] was not -- or I was told by the defense and the government didn't object to the representation that Harris was not a shooter. So I think the fact that Mr. Pharms was, as I found by a preponderance of the evidence, a shooter makes his case different from both the Harris and the Beard cases.

I will also note that it's important here that Mr. Pharms was on state felony probation at the time of these crimes. Neither Beard nor Harris were on state felony probation.

Also what I'm looking at here and the crimes that he's been convicted of are different than the ones I was considering for either of those sentencings. And it also doesn't take into account Beard's significant cooperation. I believe, instead, that this sentence, when viewed in light of other cases, particularly in this district, is consistent with those.

* * *

[85] THE COURT: All right. One moment.

I mentioned specific deterrence, but I also do believe general deterrence is important in this case.

But, in sum, looking at the entirety of the 3553(a) factors I think a variance of that level is appropriate. I was careful to think about the guidelines, both the original guideline of 22 and then also adding the 60-month when I was thinking about how much to vary upwards.

I will say I don't think this results in sentencing disparity, but I was concerned about more than doubling [86] Harris's sentence here and the government's

recommendation of 204 months. I was troubled by that and elected not to vary as much up as the government had requested. Again, my sentence was based on the entirety of the 3553(a) factors, but I will say part of what I considered was the disparity that arguably could result, as the defense argued, if Mr. Pharms's sentence was more than double of what Mr. Harris's sentence was. Although, again, their two cases were not equal, it was something that I thought about.

The record should reflect that this sentence would have been the same irrespective of my ruling on the disputed guideline issues. Both guideline issues I resolved in favor of the defense. In other words, I would have sentenced him to the same period of incarceration of -- well, one to the defense and one to the government. In other words, I would have sentenced him to the same period of incarceration on -- and, I'm sorry, strike what I just said.

Had I found differently on the objections as to shooter and if I had ruled in the defense's favor on that, my sentence would not have been the same. However, my sentence would have been the same even if I had gone differently on the 2K motion that the government -- that I ruled in favor of the defense and against the government.

Is that clear to everyone? And I'm sorry I missed it the first time.

[87] MS. STRONGWATER: Yes, your Honor.

MS. MORRIS: Yes.

THE COURT: All right. Thank you.

In sum, the 2K would not have changed my sentence had I gone the other way. But if I had found that he by the preponderance of the evidence was -- if I hadn't found that he was a shooter, my sentence would not have been the same.

Before I advise the defendant of his appeal rights, does the government or defense have any further objections to the findings of the Court, the guideline calculations or the sentence or manner in which it's been pronounced?

MS. STRONGWATER: Only those previously stated through my objections in court and the PSR.

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