

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

MIKE DUFFY, III

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
APPEALS FOR THE NINTH CIRCUIT**

**APPENDICES TO
PETITION FOR A WRIT OF CERTIORARI**

MICHAEL J. BRESNEHAN
Law Offices of Michael J. Bresnehan, P.C.
1761 East McNair Drive, Suite 101
Tempe, AZ 85283-5002
Telephone: (480) 345-7032
mbresnehan@hotmail.com
Attorney for Petitioner

DATE SENT VIA United States Postal Service: February 17, 2026

APPENDICES TABLE OF CONTENTS

APPENDIX A - District Court's 2024 Judgment and Sentence..... A-1-6

APPENDIX B – Ninth Circuit Court of Appeals' Memorandum Decision Denying
ReliefA-7-12

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America

v.

Mike Duffy, III

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

No. CR-22-08057-001-PCT-DGC

George F. Klink (CJA)

Attorney for Defendant

USM#: 01419-510

THERE WAS A VERDICT OF guilty on 9/29/2023 as to Counts 1, 2, and 3 of the Indictment.
THE DEFENDANT ENTERED A PLEA OF guilty on 12/12/2023 as to Count 4 of the Indictment.
The guilty plea was affirmed on 6/12/2024.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 18, U.S.C. §1153, 113(a)(3), and 2 - CIR: Assault with a Dangerous Weapon and Aid and Abet, a Class C Felony offense, as charged in Count 1 and Count 2 of the Indictment; Title 18, U.S.C. §924(c), and 2 - Discharging a Firearm During and in Relation to, and in Furtherance of, a Crime of Violence and Aid and Abet, a Class A Felony offense, as charged in Count 3 of the Indictment; Title 18, U.S.C. §922(g)(1) and 924(a)(2), Felon in Possession of a Firearm, a Class C Felony offense, as charged in Count 4 of the Indictment.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **ONE HUNDRED SIXTY-ONE (161) MONTHS**, with credit for time served, which consists of **ONE HUNDRED ONE (101) MONTHS** on Counts 1, 2, and 4, to run concurrently to one another, and **SIXTY (60) MONTHS** on Count 3 to run consecutively to Counts 1, 2, and 4. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THIRTY-SIX (36) MONTHS**, which consists of 36 months as to Counts 1, 2, 3, and 4, all terms to run concurrently.

IT IS FURTHER ORDERED that defendant's interest in the following property shall be forfeited to the United States: Anderson Manufacturing Rifle, Model AM-15, serial no. 14049892.

IT IS ORDERED that case CR-22-08042-PCT-DGC is dismissed on motion of the United States.

It is the Court's recommendation that the defendant be placed in a Bureau of Prisons facility in Arizona.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

CR-22-08057-001-PCT-DGC
USA vs. Mike Duffy, III

Page 2 of 5

SPECIAL ASSESSMENT: \$400.00 FINE: WAIVED RESTITUTION: N/A

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

The defendant shall pay a special assessment of \$400.00 which shall be due immediately.

The defendant shall pay a total of \$400.00 in criminal monetary penalties, due immediately. Having assessed the defendant's ability to pay, payments of the total criminal monetary penalties are due as follows: Balance is due in equal monthly installments of \$25.00 over a period of 16 months to commence 60 days after the release from imprisonment to a term of supervised release.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of \$400.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Counts 1, 2, 3, and 4 of the Indictment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, (10) costs, including cost of prosecution and court costs.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S. District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

SUPERVISED RELEASE

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
- 3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, you must submit to one drug test within 15 days of release and at least two periodic drug tests thereafter, as determined by the court.

STANDARD CONDITIONS

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or 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

CR-22-08057-001-PCT-DGC
USA vs. Mike Duffy, III

Page 4 of 5

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.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

- 1) You must participate as instructed by the probation officer in a program of substance abuse treatment, which may include testing for substance abuse. If substance abuse treatment includes inpatient treatment and you object, the probation officer must seek court authorization first. You must contribute to the cost of treatment in an amount to be determined by the probation officer.
- 2) You must submit to substance abuse testing. You must not attempt to obstruct or tamper with the testing methods. You must contribute to the cost of testing in an amount to be determined by the probation officer.
- 3) You must submit your person, property, house, residence, vehicle, papers, or office to a search conducted by a 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.
- 4) You must not contact the following victim(s), T.P. and F.D., and the probation officer will verify compliance.
- 5) You must not use or possess alcohol or alcoholic beverages.
- 6) You must cooperate in the collection of DNA as directed by the probation officer.

THE COURT FINDS that, as to Count 4, you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter. The waiver has been knowingly and voluntarily made with a factual basis and with an understanding of the consequences of the waiver.

THE DEFENDANT IS ADVISED OF HIS RIGHT TO APPEAL AS TO COUNTS 1, 2, AND 3 BY FILING A NOTICE OF APPEAL IN WRITING WITHIN 14 DAYS OF ENTRY OF JUDGMENT.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

The Court orders commitment to the custody of the Bureau of Prisons.

CR-22-08057-001-PCT-DGC
USA vs. Mike Duffy, III

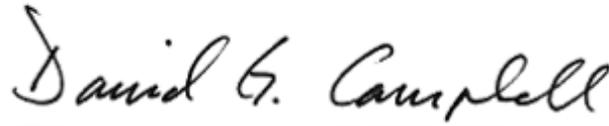
Page 5 of 5

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

It is the Court's recommendation that the defendant be placed in a Bureau of Prisons facility in Arizona.

Date of Imposition of Sentence: **Wednesday, June 12, 2024**

Signed this 13th day of June, 2024.



David G. Campbell
Senior United States District Judge

RETURN

I have executed this Judgment as follows:

_____ , the institution
defendant delivered on _____ to _____ at _____
designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.

United States Marshal

By: _____
Deputy Marshal

CR-22-08057-001-PCT-DGC- Duffy 6/11/2024 - 8:10 AM

APPENDIX B

FILED

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NOV 20 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MIKE DUFFY III,

Defendant - Appellant.

No. 24-3902

D.C. No.

3:22-cr-08057-DGC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Submitted November 17, 2025**
Phoenix, Arizona

Before: N.R. SMITH, HURWITZ, and COLLINS, Circuit Judges.

Mike Duffy III appeals his conviction and sentence for two counts of assault with a dangerous weapon under 18 U.S.C. §§ 113(a)(3) and 1153 and one count of discharge of a firearm during a crime of violence under 18

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 924(c)(1)(A)(iii). We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742 and affirm.

1. Duffy contends there was insufficient evidence to prove he aided and abetted the passenger of his vehicle in shooting at pursuing police officers. *See* 18 U.S.C. § 2(a). Duffy admits to driving the vehicle and being aware that the rifle used in the shooting was in the vehicle but denies having the intent to aid and abet the shooting. *United States v. Gaskins*, 849 F.2d 454, 459 (9th Cir. 1988) (noting one element “necessary to convict an individual under an aiding and abetting theory” is that “the accused had the specific intent to facilitate the commission of a crime by another”).

In reviewing the sufficiency of the evidence, we consider “only the legal question whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Musacchio v. United States*, 577 U.S. 237, 243 (2016) (cleaned up). When “faced with a record of historical facts that supports conflicting inferences a reviewing court must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution.” *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (cleaned up).

Viewed in the light most favorable to the prosecution, sufficient evidence

supported Duffy's conviction. He not only admitted to knowing the rifle was in the vehicle and to driving the vehicle before, during, and after the shooting, but there also was evidence that Duffy notably slowed the vehicle moments before the shooting and "took off" from the scene only after several more shots were fired and that he later buried the rifle in the desert. *See Rosemond v. United States*, 572 U.S. 65, 78 n.9 (2014) ("[I]f a defendant continues to participate in a crime after a gun was displayed or used by a confederate, the jury can permissibly infer from his failure to object or withdraw that he had [advance] knowledge."); *Shorter v. United States*, 412 F.2d 428, 430 (9th Cir. 1969) ("The evidence of flight after a crime has been committed, whether from the scene or at a later time, is admissible since such evidence may tend to prove the defendant's consciousness of guilt.").

2. Duffy also contends that the district court erroneously instructed the jury about when an assault is complete. Because Duffy failed to object to the instruction in the district court, our review is only for plain error. *See Fed. R. Crim P.* 30(d), 52(b). To establish plain error, Duffy must show that there was an "(1) error (2) that was plain and (3) that affects substantial rights, which generally means that there must be a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *United States v. Mitchell*, 65 F.4th 411, 414 (9th Cir. 2023) (cleaned up). "If those three requirements are met, an appellate court may grant relief if it concludes that the error had a serious effect on the fairness,

integrity or public reputation of judicial proceedings.” *Greer v. United States*, 593 U.S. 503, 508 (2021) (cleaned up). The district court did not plainly err in instructing the jury that aiding and abetting must occur before the charged assault “is completed” and that “[t]he crime of assault with a dangerous weapon was completed when the assault with the weapon ended.” Duffy has failed to show that the use of “was” rather than “is” in the second instruction was a plain error affecting his substantial rights. Even assuming that the use of “was” suggested that an assault *had* occurred, Duffy has not shown prejudice. Duffy does not contest that someone in his vehicle shot at the police officers, and ample evidence at trial confirmed the assault occurred.

3. A trial judge may not coerce the jury to reach a verdict. *See United States v. Evanston*, 651 F.3d 1080, 1084 (9th Cir. 2011). “[V]iewed in light of the context” in which the statements were made, *Locks v. Sumner*, 703 F.2d 403, 407 (9th Cir. 1983), the district judge’s initial estimates that the trial would last one week and his subsequent failure to remind jurors on Friday at 5:54 p.m. of their option to return the following Monday were not coercive. The judge set no deadline on deliberations and expressly instructed jurors not to “change an honest belief about the weight and effect of the evidence simply to reach a verdict.” The judge also told the alternate jurors—in the presence of all jurors—that they may need to return the following Monday.

The district court did not err in declining to consider a phone call by a juror to the judge's chambers after the trial ended because the call concerned statements made during jury deliberations, not extraneous information improperly brought to the jury's attention, any outside influence, or a mistake in entering the verdict. *See* Fed. R. Evid. 606(b)(2); *see also United States v. Leung*, 796 F.3d 1032, 1038 (9th Cir. 2015) (holding that the court could not consider testimony that jurors prematurely reached a verdict); *United States v. Marques*, 600 F.2d 742, 747 (9th Cir. 1979) (finding it improper to consider testimony that a compromise verdict was reached because jurors believed "the judge would probably keep us late again until some verdict was reached").

AFFIRMED.