

No. 26-_____

IN THE UNITED STATES SUPREME COURT

Denico Hudson,
Petitioner,

v.

United States of America,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the
Sixth Circuit

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

VOLUME 2

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PRICE - Direct

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1 MR. BRACKE: Yes.

2 THE COURT: Very well. Thank you.

3 BY MR. BRACKE:

4 Q. Looking at Government Exhibit 7, the first page, there's
5 a series of communications. Can you tell what time those
6 communications were posted?

7 A. It states it was on May 5, 2022, at 9:30. The 9:30 shown
8 in UTC so it's going to be a difference from East Coast
9 standard time where we are.

10 Q. A few hours off?

11 A. I think it's about four hours, yes.

12 Q. What's the message sent to Mr. Hudson at that time?

13 A. The account with the Facebook name of Jay Ping asks him
14 if he has a switch for sale. Mr. Hudson replies with the
15 price for the switch, being 800. The person says that --
16 agrees to that and says that he'll be contacting him soon.

17 Q. Is there a further discussion about the switches between
18 these two parties on September -- I'm sorry, May 5, 2022?

19 A. Yeah. A little bit later, he asks if they're metal or
20 plastic switches. Mr. Hudson tells him that this particular
21 switch that's for sale is metal.

22 Q. This would be a different, an additional transaction
23 besides the plastic switches supplied by Mr. Smith through
24 Mr. Sturgeon to Mr. Hudson; is that correct?

25 A. That's correct. There's two primary types of Glock

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1 switches. They're either metal and typically have to be
2 imported from outside the country, or they're plastic and can
3 be 3D printed from anywhere inside the country.

4 Q. Moving down to the next series between a Kyran Collier,
5 also on May 6 of 2022, with a label at the time of the UTC
6 time of 8:33, what's the incoming message at that time?

7 A. It says, "Boy got them switches." He's asking Mr. Hudson
8 if he has switches. Mr. Hudson says, "No cap family," some
9 sort of emoji after. He's telling him that he does.

10 Q. And moving to the second page of Government's Exhibit 7,
11 I'm going to ask you about -- sorry, yeah, moving to the
12 second page. On April 28, 2022, a message from Kanan Stark,
13 what was the incoming message to Mr. Hudson?

14 A. He says, "What he charge you gang. Switches on them
15 bitches."

16 And then Mr. Hudson, he says, "No cap cuzz block box and
17 that Glock FRL," for real. He's telling him that he does have
18 switches available.

19 Q. Is there a further discussion at the label of 1600 UTC
20 about a drug transaction?

21 A. Yes. The account Stark says, "What you wanted for a
22 zip?" He's asking Mr. Hudson what he would charge him for an
23 ounce of some type of drug.

24 THE COURT: A zip is an ounce?

25 THE WITNESS: A zip is an ounce.

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1 THE COURT: How do you know that?

2 THE WITNESS: Training and experience. It's very
3 common slang for an ounce. I've had numerous drug traffickers
4 post-arrest interview tell me that that's what they mean when
5 they say an ounce. I've had drug users tell me that they
6 believe that's what an ounce is referring to. I've had drug
7 dealers confirm in their text messages confirm, when I show
8 them "zip" being used, that that's exactly what they meant.

9 BY MR. BRACKE:

10 Q. Does Mr. Hudson give a price for a zip to this Mr. Stark?

11 A. He tells him 150.

12 Q. And then moving to the next conversation on May 6, 8:33,
13 from Kyran Collier, what's the message at that point in time?

14 A. I think that's the same one we went through a second ago.
15 Kyran Collier is asking Mr. Hudson if he has switches.

16 Mr. Hudson is telling him that he does.

17 Q. Moving to the third page. On May 5th, 2022, from Mone
18 Zanders, what's the message there?

19 A. Mone Zanders is asking Mr. Hudson how much -- what the
20 price is for a switch. Mr. Hudson replies that it's 800.

21 Q. And then another exchange between those two individuals
22 from May 14th. Can you go through that for us?

23 A. Mr. Hudson says, "Where them 10s cuzz." He's referring
24 to a pill. It basically looks like the generic version of a
25 Percocet 10 milligram pill. Primarily, they're counterfeit

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1 and are manufactured by using fentanyl, but he's referring to
2 one of those pills or a quantity of those pills.

3 Q. And how does Mr. -- that's Mr. Hudson asking about them;
4 is that correct?

5 A. Correct.

6 Q. What response does he get?

7 A. The person tells him that he contacted the source of
8 these and he says he's going to -- that source is going to let
9 Zanders know when he gets more supply in.

10 Q. Did you receive information from Ms. Smith regarding
11 Mr. Hudson distributing Percocets to Mr. Sturgeon?

12 A. Yes. She said that she had been with Mr. Sturgeon to
13 Mr. Hudson's residence in Cincinnati before and that when they
14 went there, it was so that they could purchase pills from
15 Mr. Hudson.

16 Q. Moving down to the next set of communications on May 6th,
17 2022, what was the message sent to Mr. Hudson during this one?

18 A. Person asked him to purchase a switch. Mr. Hudson tells
19 him that it's \$900. They then basically haggle. The person
20 says it should be 500. Mr. Hudson tells him go find another
21 one if you want to pay 500 for it.

22 THE COURT: That's one of the more interesting names.
23 "Thenicest Icanbe." I saw that in your sentencing memo.

24 BY MR. BRACKE:

25 Q. Moving to the next page, there's a message labeled

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1 Richard Sherman. Do you know from your investigation who had
2 the Facebook account with Richard Sherman's name on it?

3 A. That was Mr. Demarco Sturgeon's account.

4 Q. Would you review this sequence of events starting on
5 August 20th and going through it?

6 A. So Mr. Sturgeon contacts him. Mr. Hudson says to come
7 by. Obviously, I'm kind of translating the verbiage. He
8 tells him to put the whole 1.3 in one pack and that he has a
9 scale and he can separate it himself.

10 Q. Now, that was something Mr. Sturgeon said to Mr. Hudson;
11 is that correct?

12 A. Correct.

13 Q. From your interview with Mr. Sturgeon and your knowledge
14 from this investigation, what did the 1.3 refer to?

15 A. We believed when reading it, based on the value of the
16 Glock switches and the price that Mr. Sturgeon had typically
17 been selling them for, that the 1.3 referred to fentanyl.

18 Q. Did Mr. Sturgeon ultimately confirm that for you?

19 A. He did.

20 Q. And the reference to Mr. Sturgeon was going to use a
21 scale and separate that, what's the significance of that to
22 you from your drug experience?

23 A. The reason he would need a scale to separate it is
24 because he planned on packaging it for further sale and
25 distribution. If he was going to use it himself, he wouldn't

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1 need to weigh it, and he certainly wouldn't need to separate
2 it.

3 Q. And did Mr. Hudson agree to put the whole 1.3 in one
4 pack?

5 A. He does.

6 Q. And do they continue to make arrangements to actually
7 meet?

8 A. Yes. Mr. Sturgeon asks him if he's going to be at the
9 same place he's met him before. Mr. Hudson tells him that he
10 is. He tells him he's on his way. They continue to have a
11 conversation about it. Eventually, Mr. Sturgeon confirms --
12 Mr. Sturgeon confirms with Mr. Hudson that he wanted two of
13 the switches.

14 Q. Go to the next page and go through that. This
15 conversation is actually on August 21st, the following day; is
16 that correct?

17 A. Yes. The following day from their initial conversation
18 about the 1.3. Mr. Sturgeon asks him if he wants him to bring
19 two, and Mr. Hudson confirms that.

20 Q. Moving to August 23rd, two days later, what's the
21 communications there between Mr. Sturgeon and Mr. Hudson?

22 A. Mr. Hudson asks -- he tells Demarco Sturgeon he needs
23 something. And then there's a call, and then he confirms he
24 wants him to bring two. And then Mr. Sturgeon asks him if he
25 wants black. Significance of that being that Mr. Sturgeon

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1 sold the 3D printed Glock switches in multiple colors. Some
2 were even made of a plastic that was glow-in-the-dark. Some
3 were black, red, blue. He's just confirming that he's
4 providing Mr. Hudson with the correct color of the switches
5 that he asked for.

6 Q. From your interviews with Mr. Smith, did he confirm that
7 this information about the switches being in multiple colors
8 and sold in multiple colors?

9 A. He did.

10 Q. Moving to the next page, on August 21st, 2022, what's the
11 message sent out by Mr. Hudson, the defendant, on this time?

12 A. He says, "We got them switches for 500 cuzz. Back plate
13 ones."

14 THE COURT: These are all part of Exhibit 7?

15 MR. BRACKE: Yes, these are all just different pages
16 in Exhibit 7.

17 BY MR. BRACKE:

18 Q. Moving to the next page in Exhibit 7, conversation
19 beginning on August 24th and moving through September 9, can
20 you outline that for us?

21 A. Yes. He's talking to someone who asks him what he can
22 buy a Glock for. Mr. Hudson tells him that he needs one, that
23 right now he has an XD. Referring to a Springfield XD model
24 pistol. And then Mr. Hudson tells him that he has a switch
25 for sale for \$450.

PRICE - Direct

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1 Q. This is a conversation with somebody separate from all
2 the other conversations we've been reviewing; is that correct?

3 A. Correct. It's a different Facebook account.

4 Q. Moving to this conversation on August -- sorry,
5 October 7th, 2022, who is this text conversation between?

6 A. This is Mr. Sturgeon talking to Mr. Hudson.

7 Q. And can you go through that?

8 A. Mr. Sturgeon asks if -- confirms that Mr. Hudson has the
9 same phone number. Mr. Sturgeon says, "Can I grab one them
10 buttons." By "button," he's referring to a Glock switch.
11 There's a style of the Glock switch designed -- majority of
12 them, up until recently, all had a button on the side. It was
13 basically a selector switch to select either semi or full
14 auto. Again, the "button" being why the group referred to
15 themselves as the Button Boys.

16 Q. Now moving to October 31, 2022, this exchange between
17 Mr. Hudson and Mr. Sturgeon, what happened on Halloween in
18 2022?

19 A. They made contact with each other, and Mr. Hudson --
20 there's a separate part of this investigation that involves
21 some fraud involving checks and getting accounts to use that
22 they knew would then be -- the accounts would be closed after
23 the fraud. He's discussing if -- asking Mr. Sturgeon if he
24 has any accounts available for him to use for that.

25 Mr. Sturgeon replies back and asks him the price for a

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1 metal switch.

2 Q. This is on November 5th, 2022, Sturgeon is asking Hudson
3 for a price on a metal switch; is that correct?

4 A. Correct.

5 THE COURT: Were metal switches more expensive than
6 plastic?

7 THE WITNESS: They are. The metal ones, for one,
8 they're less common because they're harder to get in through
9 Customs. But the primary reason most people prefer them is
10 they last much longer, whereas the plastic ones will wear out
11 over time.

12 THE COURT: The 3D printers are mostly used for
13 plastic, not metal; is that right?

14 THE WITNESS: Exactly. The 3D printed ones are
15 almost all -- every one I've ever seen has been plastic. It
16 will work but has a shorter life span than a metal switch.

17 BY MR. BRACKE:

18 Q. Moving to the final page of Exhibit 7, an exchange on
19 November 5th, 2022. What's the beginning of this exchange?

20 A. So this other account named Zebulon Rahman asks
21 Mr. Hudson if he has metal switches for \$300. Mr. Hudson
22 tells him that it's \$800 for metal for the back plate. Not
23 sure what the "3" means in that. And then he confirms the
24 black plate. He asks, are they like the plastic ones but
25 painted black? He's just confirming exactly what the product

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1 is.

2 Q. And then the next series of exchanges from November 5
3 with a different individual, Tyree Alex, can you go through
4 that for us?

5 A. Yes. So Mr. Hudson tells him he can install the switches
6 for him and is only going to charge \$100 to actually install
7 it. Then the person tells him he can put it on himself.

8 Q. The other -- one of the other objections that has been
9 raised is whether or not Mr. Hudson was engaged in other --
10 possessed these Glock switches in connection with another
11 felony offense.

12 Did you do some investigation from the Facebook
13 information for Mr. Hudson regarding the issue of whether he
14 was engaged in drug trafficking, as you heard reported
15 by Mr. Sturgeon, the confidential informant, and other
16 witnesses?

17 A. Yes.

18 Q. Can you identify Government's Exhibit 8 for us?

19 A. These are Facebook messages from the exact same place as
20 the previous exhibit. These are just the portion that we
21 selected that describe drug trafficking.

22 MR. BRACKE: Move admission of Government Exhibit 8.

23 THE COURT: Any objection to 8?

24 MR. NEFF: No, sir.

25 THE COURT: Let it be received without objection.

PRICE - Direct

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1 BY MR. BRACKE:

2 Q. Can you review the exchange for us on -- with Saquon Alex
3 beginning on July 13, 2022?

4 A. He asked him, "What's that? A 30?" Just like the 10s we
5 talked to before, the 30 is referring to a pill that looks
6 like a generic Percocet, 30 milligram, but is most often
7 counterfeit and made of fentanyl. Mr. Hudson tells him that
8 it's not a 30. It's a 15. They discuss filling an order for
9 those.

10 The Saquon Alex account even asks specifically if the 15s
11 are real or fake, meaning are they the actual prescription or
12 a counterfeit, meaning fentanyl.

13 Q. Moving to the next page, moving to the time period on
14 August -- conversations on August 3rd through August of 2022,
15 can you go through those for us?

16 A. Yes. So the one at the top is that same Saquon Alex
17 account. He tells Mr. Hudson that they -- he says, "They can
18 be them fire ones too. Don't gotta be real as long as they're
19 hitters." He's saying he doesn't mind if they're counterfeit
20 fentanyl ones as long as they're very high strength. So a lot
21 of the pills look like a generic pill that are actually just
22 fentanyl made to look that way.

23 Q. In the middle, is there a later discussion between those
24 two parties again about the pills?

25 A. There is. He says, "What's the tickets on those. You

PRICE - Direct

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1 said they 10s." He's asking for the price on the pills
2 labeled 10.

3 Q. And then a little later, after that, is there a
4 transmission from Mr. Hudson?

5 A. Yes. He provides the Saquon Alex account with his
6 address at 1852 Sunset Avenue.

7 Q. And is that the same address that was identified by
8 Mr. Hudson -- I'm sorry, Mr. Sturgeon and Ms. Smith as to
9 where Mr. Sturgeon would go to get Percocets from Mr. Hudson?

10 A. It is. There's also -- so that address is an apartment
11 complex. There's multiple units. So it was the same place;
12 but, often, transactions would occur at different units in the
13 same apartment complex.

14 Q. And then at the -- on January 26th, 2023, Mr. Hudson sent
15 out a message regarding this?

16 A. Yeah, he says that he has a Glock 23 for sale.

17 Q. Something separate from the Glock switches? This is an
18 actual firearm he's selling?

19 A. Correct.

20 Q. Moving to the next page, there's an exchange with an
21 Andena Adkins. Can you review that and the significance of
22 that?

23 A. Yes, so down the page a little bit, they have a missed
24 call between each other, but then he tells the Adkins account
25 to get half, and he'll give them 80. They clarify to make

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1 sure that they can only spend 40. He agrees to that.

2 So he's telling them if you have half of the money, I'll
3 give you the 80 worth of drugs, but they're only going to
4 supply the half up front.

5 Q. That's on July 24th. Is there an additional exchange on
6 July 25th between those two?

7 A. Yes. That Adkins account asks Mr. Hudson if he has any
8 hard. "Hard" is a very common term used to describe crack
9 cocaine.

10 Q. How does Mr. Hudson respond?

11 A. He says, "Yup."

12 Q. And is there a question after that as well?

13 A. "How much" is his question. And then after that, it
14 follows up on the next page.

15 Q. Going to the next page, does that continue the
16 conversation?

17 A. It does. The Adkins account says, "I need a 20" and asks
18 if they should come to his house, and he tells them yes.

19 Q. And is there a reference, again, about what Ms. Adkins is
20 intending to do with it?

21 A. She says, "It's for my people. If she likes it, she'll
22 spend good money." She's stating she's coming to pick it up
23 to provide it to someone else that is going to be --
24 basically, she says this is going to be a good customer in the
25 future if it's good quality.

PRICE - Direct

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1 Q. At the end of this conversation on July 25th, is there a
2 comment between the two of them on July 27th about this?

3 A. So there's, again on the 25th, he asks, "How do you like
4 that hard?" He's asking how the person who used it liked the
5 quality of it. And then the next one jumps to the 27th, and
6 that person asks, "Can I come now?" And he asks, "How much
7 you got?"

8 Q. Continuing the July 27th conversation, can you review
9 that?

10 A. She says -- I believe it's a she. I'm not even sure.
11 The Adkins account says, "I'm on my way home. Only got \$5,
12 but I get paid tomorrow." And then, "I'm sick." And then, "I
13 can be there in five minutes."

14 So she then says that, "I need a 20 of dog for my
15 people." "Dog," she's referring to -- typically, that meant
16 heroin. Currently, the state of heroin, there's almost no
17 heroin in the entire area that doesn't have at least some
18 fentanyl in it as a cutting agent to increase its strength.
19 But that's the type of drug that she's asking for, or he.

20 Q. When does that request come in?

21 A. July 30th of 2022.

22 Q. And are there further conversations or further texts
23 between them about meeting or discussing it?

24 A. One minute later he texts her, or message, "Call my
25 phone. Stop texting me on here."

PRICE - Direct

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1 Q. Moving to the bottom of the page, on August the 10th, can
2 you review the nature of that particular discussion.

3 A. That account asks if he can deliver to their house and
4 that they need 30 worth of heroin or fentanyl. Then he tells
5 them to text his phone and that he's trying to find a ride to
6 bring him to deliver it.

7 Q. Continuing that on the next page of excerpts between the
8 two.

9 A. So the Adkins account asks him to bring a 20 and then
10 later asks him if he has a ride. He responds no. And then
11 that account says that they're at work and that they'll feed
12 him if he can get a ride. And then he asks what they want.

13 Q. And then on the last page conversation with Kanan Stark
14 on August 3rd.

15 A. So the beginning, it just says "switches on them
16 bitches." I think this is similar to what we looked at
17 earlier where he says no cap. Basically, has the switches.
18 And, later, they ask for an ounce. This is the conversation
19 we went over during the firearm portion, but it involves both
20 firearms and drug sales.

21 Q. Thank you. Overall, the communications regarding drug
22 trafficking, were they occurring during the same time period
23 as the communications regarding firearm -- Glock switch
24 trafficking?

25 A. They did.

PRICE - Cross

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1 Mr. Hudson responding in his Facebook to individuals, are you
2 saying there's more than 25 Facebook postings?

3 A. No.

4 THE COURT: I think there were seven or eight
5 different people --

6 MR. NEFF: Correct.

7 THE COURT: -- that I wrote down names.

8 BY MR. NEFF:

9 Q. So how are you getting more than 25? What events do you
10 believe supports more than 25?

11 A. Based on the numbers that the manufacturer told us he
12 made, that he sold the majority to Demarco Sturgeon, and that
13 Demarco Sturgeon told us he sold the majority of those to
14 Denico Hudson and that the cooperating witness stated that
15 Denico Hudson supplied the entire group, the Glock switches
16 that they had, and he was their primary source of those.

17 We don't see in these conversations with all these other
18 accounts we saw, we don't see him conversing very often, if at
19 all, with members of The 84 Gang or the Button Boys, his close
20 circle. They were physically around each other all the time.
21 There would be no need for a text or a social media exchange
22 to distribute to them. So he wouldn't need to make a record
23 in Facebook to sell or distribute the Glock switches to the
24 other members of his group.

25 And the amount of currency he shows off would -- those

PRICE - Cross

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1 seven or eight, however many that are in the Facebook record,
2 wouldn't justify that amount of money as well.

3 Q. I don't want to get too far afield on this particular
4 question, but the money, you have no idea where that money
5 came from, right?

6 A. No.

7 Q. It could have come from Glock switches, right?

8 A. Could have.

9 Q. Could have come from legal employment? Did you check to
10 see if Mr. Hudson was legally employed?

11 A. We did. I didn't find any legal employment during that
12 time. And I do -- based on the transactions we do have, we do
13 know he made at least some money from Glock switches.

14 Q. Are you aware that Mr. Hudson had received benefits from
15 at least one, probably more than one personal injury
16 settlement?

17 A. No.

18 Q. Did that come up in your investigation?

19 A. Did not.

20 Q. So go back to the number of switches. You're referring
21 to the bulk or the majority of. Do you know exactly how many
22 switches were produced in this case?

23 A. The best information we have is Mr. Smith said that it
24 was over 80.

25 Q. Over 80?

PRICE - Cross

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1 A. Yes.

2 Q. So if the bulk of those were Sturgeon, that's over 40?

3 Is that what you would --

4 A. Roughly, yes, sir.

5 Q. Over half? And if the bulk of that 40 were sent to

6 Mr. Hudson, we're talking 20?

7 A. Perhaps of that group, but those are the certain type of
8 plastic 3D printed Glock switches. That doesn't account for
9 the other style of plastic switches that we see in some of the
10 photos, and it doesn't account for the metal Glock switches
11 either.

12 Q. So we don't have any -- and I understand this is a
13 sentencing hearing, not a trial, but we don't have any direct
14 evidence, other than speculation or presumption, that
15 Mr. Hudson actually distributed 25 or more Glock switches?

16 A. What do you mean like -- I don't have 25 or more
17 conversations, separate conversations where he discusses
18 selling a Glock switch or some other sort of record of more
19 than 25 Glock switches, no.

20 Q. Correct. Which leads me to one of my other questions.
21 You never followed up with anyone who was the alleged
22 purchaser of a Glock switch to confirm that it was, indeed,
23 sold by Denico Hudson?

24 A. We attempted to follow up on some. But some of the ones
25 that we did ended up being, again, like people tied into the

PRICE - Cross

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1 group or the gang. Actually, that we had evidence that they
2 were actually out using them and shooting things in the city.

3 Most of those, either some became co-defendants, some
4 were charged in the Southern District, some were charged in
5 the state. But none of those, except for the cooperating
6 witness -- I believe there was actually two cooperating
7 witnesses. Only those two confirmed for us that they did
8 receive Glock switches from Mr. Hudson.

9 Q. Thank you. I want to clarify something, I guess,
10 factually, but at least to one of the objections. There's
11 been some evidence presented that Mr. Hudson was involved with
12 the distribution of Glock switches. We were just talking
13 about that?

14 A. Yes.

15 Q. There's also been some separate evidence produced at the
16 hearing today that Mr. Hudson is not charged with in this
17 criminal case, that Mr. Hudson was distributing controlled
18 substances. You mentioned fentanyl, heroin, crack cocaine
19 that were based on your interpretations of his Facebook
20 postings; is that right?

21 A. Correct.

22 Q. He's not charged with that here, right?

23 A. Correct.

24 Q. To your knowledge, he's never been charged with that in
25 any state court; is that correct?

PRICE - Cross

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1 A. Correct.

2 Q. Goes to say, since he's not been charged, he doesn't have
3 any convictions for that type of conduct, right?

4 A. I don't know about previous convictions. As far as the
5 specific period of time we're discussing, I don't believe he
6 has any convictions for drug trafficking.

7 Q. Had you reviewed his criminal history at all?

8 A. Not recently. I know he had a -- he had a conviction in
9 Ohio, which they refer to as an F5. I don't believe that
10 qualifies as a felony here in federal court.

11 Q. And that would have been for carrying a concealed
12 weapon --

13 A. It was.

14 Q. -- is that right?

15 I know your testimony earlier, I've heard it before,
16 about how and why individuals who might be selling drugs would
17 possess a firearm. I might be wrong. Might have been called
18 fortress theory or something in certain case law. Is that --

19 THE COURT: That was the case years ago, yes.

20 Q. Is that the basis for, I guess, your belief or your
21 support for the enhancement that Mr. Hudson was possessing,
22 distributing firearms in connection with another offense?

23 A. That's one reason, one basis.

24 Q. Okay. My understanding from the language in the
25 presentence report, and this is where I want to clarify the

PRICE - Cross

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1 facts, there's an allegation, I believe, unless I
2 misinterpreted it, that Mr. Hudson was actually trading Glock
3 switches for drugs. Is that your allegation, your
4 understanding?

5 A. Yes, sir.

6 Q. Do you have any direct evidence of that, other than the
7 Facebook posts?

8 A. The Facebook posts and then -- the Facebook conversation
9 with Demarco Sturgeon where he talks about trading the 1.3 for
10 two of the black ones. And then Mr. Sturgeon confirmed for me
11 that that discussion was about trading fentanyl for two black
12 plastic Glock switches.

13 Q. Okay. So your evidence there is your interpretation of a
14 Facebook message and then information obtained from a
15 co-defendant, right?

16 A. Yes.

17 Q. Other than that, again, there's an interpretation of a
18 message and information from a co-defendant, but there's no
19 independent evidence that Mr. Hudson was selling drugs,
20 correct?

21 A. There's the statement of Mariah Smith, Demarco Sturgeon's
22 girlfriend, who stated that she had been -- she knew
23 Mr. Hudson. She pointed out his picture. She'd been to his
24 residence so that Mr. Sturgeon could purchase drugs from him.
25 And then there's the other -- many other statements in the

PRICE - Cross

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1 Facebook that discuss drug trafficking.

2 Q. Thank you. The chart to your right looks like a chart of
3 the United States, almost. That has all the links from
4 individuals to other individuals and then from those
5 individuals to specific events, shootings, I suppose, is how I
6 describe them. Does that explain how that chart is designed?

7 A. Yes. So it's a combination of shooting scenes, which are
8 determined by the recovery of casings and then also recovery
9 of firearms that sometimes connected to shooting scenes,
10 sometimes connected to suspects that were connected to
11 shooting scenes.

12 Q. Now, I know where it's at from seeing it at the table,
13 but I can see where Denico Hudson's picture is at. Do you see
14 that where you're at?

15 A. Yes.

16 Q. He's connected with -- from where he's at, his two direct
17 connections, I don't know who they are, but there's two
18 individuals and a Facebook -- three individuals and a Facebook
19 account that come directly from him; is that right?

20 A. Yes, sir.

21 Q. Okay. If you trace those three individuals or that
22 Facebook account down to the events or the shootings, I'm
23 counting -- I'm guessing, at best, there's seven or eight
24 firearms involved. Does that seem fair?

25 A. Roughly. I'm not sure exactly.

PRICE - Cross

90

1 Q. And would it be true that all those firearms had Glock
2 switches on them?

3 A. I can't confirm that. Many did in this investigation
4 with this group, but I can't confirm that they all did.

5 Q. So some might not have?

6 A. Correct.

7 Q. Now, you see on the chart where Denico is?

8 A. Yes.

9 Q. Everything to my right, which would be to the right of a
10 person looking at that exhibit, is it your allegation that
11 Mr. Hudson knows everyone on that chart --

12 A. No.

13 Q. -- to the right?

14 Okay. So there may have been some activity that is
15 reflected on that chart that Mr. Hudson, one, was not involved
16 with, right?

17 A. Yes. So there's -- we do expect that there's people,
18 events that Mr. Hudson was not directly involved in.

19 Q. And there's information on there or events on there that
20 Mr. Hudson would have had absolutely no knowledge of as well,
21 right?

22 A. As far as, like, what occurred at the event?

23 Q. Mm-hmm.

24 A. Yes, that's very possible.

25 Q. With the jail calls, I know we listened to one, and we've

1 Mr. Neff kind of hinted at that during the
2 cross-examination of Agent Price. Smith acknowledged in his
3 plea agreement under oath that he produced 80 or more. And
4 then Demarco Sturgeon indicated that it was over 25, and then
5 some of those were then sold to Mr. Hudson then for resale to
6 various gang members, et cetera.

7 So you are relying, in part, on relevant conduct
8 principles to get to that 25; are you not?

9 MR. BRACKE: Yes.

10 THE COURT: Why can't he do that? You're razor
11 focused on this idea of just two. Only two. Everything else
12 is speculation. But principles of relevant conduct, is it
13 reasonably foreseeable? Did it further the jointly undertaken
14 criminal activity, et cetera?

15 MR. NEFF: Well, they can rely on 1B1.3, and I'm sure
16 it will be relied on.

17 THE COURT: That's the recommendation. You seem to
18 be focused on the two for 1.3.

19 MR. NEFF: Well, I think two is all we have evidence
20 of actual purchase or sale.

21 THE COURT: What about the Facebook messages where
22 seven or so odd folks were inquiring, and he was responding,
23 well, here's it's 700, 500, et cetera. That's evidence of
24 trafficking or at least attempted trafficking?

25 MR. NEFF: Attempted, yes. It might be sufficient to

1 prove that number, but there is not evidence of actual sales
2 or distribution.

3 And then what you were referring to a moment ago is
4 1B1.3, those principles, an individual can only be held
5 accountable, whether it's conspiracy or aiding and abetting,
6 for the conduct that occurs after they enter the conspiracy or
7 after they start aiding and abetting.

8 Unless I'm wrong, the principles of 1B1.3 don't go back
9 in time and make a person responsible for things that happened
10 before they entered.

11 THE COURT: I think the way we'd look at that is it
12 would not be reasonably foreseeable before they were part of
13 it. I think that's how I could characterize it.

14 MR. NEFF: Right. That's what I was laying the basis
15 for when I was asking Agent Price about the connections on
16 that chart. What would be foreseeable to Mr. Hudson? After
17 he enters the conduct of the group, what would be foreseeable
18 for him? And based on that chart, you know, you can count the
19 number of firearms listed and see the individuals listed. I
20 don't know that we have evidence that it is greater than 25.

21 THE COURT: Mr. Bracke, how do you respond to that?

22 MR. BRACKE: Judge, the information from the
23 confidential witness, as well as Mr. Sturgeon, as well as
24 Mr. Smith, indicated with regard to the plastic switches,
25 Mr. Smith made at least 80 of them. The majority of them were

1 distributed to Mr. Sturgeon. Mr. Sturgeon then distributed
2 the majority of them to Mr. Hudson and through Mr. Hudson.

3 THE COURT: And he was doing the math. Majority of
4 80 is 40. Majority of 40 is 20. 20 is not 25. Then we're at
5 a four-level enhancement not a six-level enhancement.

6 MR. BRACKE: I think 3 to 7 would be a two-level
7 enhancement, 7 to 24 would be a four-level enhancement.

8 THE COURT: Right.

9 MR. BRACKE: But, number one, that's strictly just
10 talking -- we don't know whether the majority means 51
11 percent, whether it means two-thirds, whether it means
12 three-fourths.

13 THE COURT: I tell you all these enhancements, it's
14 50 percent plus a little. That's what preponderance of the
15 evidence means. I'm not a jury. I'm not a juror. I'm not
16 finding all this by clear and convincing evidence, beyond a
17 reasonable doubt. I have to make all my findings on that
18 preponderance of the evidence standard. I'm saying that more
19 for folks who aren't used to this type of proceeding.

20 Go ahead.

21 MR. BRACKE: That's very specifically speaking about
22 the plastic switches in this particular case. With that --
23 under that pure math breakdown, right, 41 is a majority of 80,
24 20 and a half, 21 would be a majority of 41. Fair enough.
25 But that's only the plastic switches.

1 In this particular case, there's evidence of Mr. Hudson
2 possessing and offering to distribute metal switches as well.
3 First of all, in the video, Mr. Hudson is carrying a firearm
4 with a metal switch in it. We saw picture after picture of
5 that. Other individuals associated with him have firearms
6 with metal switches in it.

7 Mr. Sturgeon is directly reaching out to Mr. Hudson
8 asking about a metal switch. Mr. Hudson is directly
9 discussing and offering for sale items -- metal switches as
10 well as plastic switches, talking about different prices and
11 different ones.

12 When we look at the continued discussions about this --
13 and, again, as Agent Price talked about, the entirety of all
14 those discussions wasn't presented to the Court because it's
15 too much. We've been here for several hours. I don't know
16 that we need to be more than that.

17 If this were merely speculative talk, it wouldn't persist
18 from person to person and over a period of months. I mean, we
19 went through discussions about selling switches going back to
20 May through, I believe, November of 2022. It wouldn't have
21 extended through that period of time.

22 So with regard to those things -- and in the absence of
23 any testimony to the contrary, which Mr. Hudson has the right
24 not to offer any testimony, but there's no conflicting
25 information that the majority of the switches that were sold

1 and that when you add the metal switches that were possessed
2 and distributed by Mr. Hudson and by associates, those numbers
3 come out to more than 25 by a preponderance of the evidence.

4 THE COURT: All right. Do you want to address the
5 trafficking portion of this because you raise an objection to
6 the (b)(5) four-level enhancement for trafficking. You
7 acknowledge in your sentencing memo that there were at least
8 two. The trafficking aspect of this -- I mean, the (b)(5),
9 that's one of your objections. I just want to give you an
10 tenant to address that.

11 MR. NEFF: The trafficking of Glock switches?

12 THE COURT: Glock switches, yes. That your client,
13 for purposes of the enhancement, engaged in the trafficking of
14 those, which means offer for sale, et cetera.

15 MR. NEFF: I have a duty of candor to the Court.
16 There is evidence that he -- well, there's direct evidence
17 that he purchased or distributed at least two. If the Court
18 considers that trafficking, then that's what it is.

19 THE COURT: Well, if I sell something --

20 MR. NEFF: Right.

21 THE COURT: The definition of trafficking in the
22 Sixth Circuit would include transfer, even if it was --

23 MR. NEFF: I think Mr. Hudson would see trafficking
24 as a much larger operation, not one sale, two sales. It would
25 be many sales where it was part of a larger operation.

1 THE COURT: Is that required as a matter of law?
2 That may be what he and others think of trafficking, but if
3 I'm a drug dealer and I sell an ounce -- a couple of grams of
4 something to the probation officer, that's trafficking. One
5 time, one amount, that's considered trafficking under federal
6 law.

7 I appreciate your candor. I really do. Of the
8 objections you raise, likely the least strong, in your view?
9 Fair?

10 MR. NEFF: Yes, sir.

11 THE COURT: All right. I don't need you to address
12 that one.

13 Now let's do the (b)(6)(B) enhancement because that one,
14 as we know from the *Fugate* case, which I put you all on notice
15 of yesterday, requires that -- and I don't want to mess it up
16 here. I want to use the actual language. When in doubt, I go
17 to the language of the guideline. "If the defendant used or
18 possessed any firearm or ammunition."

19 Now, "firearm or ammunition" in this case includes auto
20 sear Glock switches, et cetera. We can substitute the term
21 Glock switch for firearm because they are deemed to be machine
22 guns under the statute. Used or possessed Glock switches in
23 connection with another felony offense or possessed or
24 transferred any firearm or ammunition -- Glock switches --
25 with knowledge, intent, or reason to believe that it would be

1 used or possessed in connection with another felony offense.

2 So "used or possessed in connection with another felony
3 offense." Doesn't have to be used, necessarily, in connection
4 with a shooting if it were possessed in connection with that,
5 even if it wasn't used, perhaps. But you have evidence here
6 in this chart that some of them were used. That's what (b)(6)
7 requires, and it has to be something other than the actual
8 firearms themselves.

9 So address that, if you would.

10 MR. BRACKE: Judge, I think what we see is the
11 interconnection between Mr. Hudson's trafficking in the
12 switches and trafficking in drugs. Indeed, we actually saw at
13 least one exchange where he engaged in a continuing series of
14 comments about selling a switch to a person as well as selling
15 pills to a person. He's also engaged in drug trafficking,
16 both obtaining pills and distributing pills at the same time
17 he's engaged in all this activity regarding the switches.

18 He's overtly displaying Glock switches both in the video
19 that we saw, firearms armed with Glock switches, as well as in
20 social media posts. Over and over again, we see pictures of
21 him and associates, including associates directly linked to
22 shootings, directly linked to drug trafficking, displaying
23 firearms with Glock switches.

24 The evidence from Agent Price talked about advantages of
25 that. The reason to do it is not just, hey, I have a firearm

1 and I can shoot you. I've got a Glock switch. I can fill you
2 up with -- like an automatic weapon and being shot with a
3 machine gun. Regardless of the effectiveness of using a Glock
4 switch for self-defense, it's a message that does deter people
5 from trying to rob you, which is a main focus of drug dealers.

6 The evidence shows Mr. Hudson was engaged in drug
7 trafficking during the exact same period of time when he was
8 engaged in obtaining and selling these Glock switches.

9 Therefore, his possession of those things and, indeed, his
10 discussion of these things is tied into drug deals involving
11 Glock switches, drug deals while having Glock switches, and
12 the Glock switches did provide a protective element for him
13 while engaged in the activity.

14 So with regard does he know or have reason to know
15 himself that he is engaged in activity, and are they in
16 connection with it? I think the evidence shows that they were
17 by the time length and by the communications length regarding
18 both.

19 Does he have reason to believe the individuals he's
20 distributing the Glock switches to are engaged in felony
21 activity? Over and over again, we've seen the connection to
22 multiple shootings, very specifically connected to a very
23 specific shooting that happened in the middle of this
24 particular event from an individual who is standing with the
25 defendant in our video carrying a handgun with a Glock switch

1 while the defendant's carrying a handgun with a Glock switch.

2 THE COURT: Do we know -- it was before the shooting
3 because the gentleman didn't have any -- I can't remember the
4 gentleman's name. What's his name again?

5 MR. BRACKE: Byron [sic] -- Brian Wright.

6 THE COURT: Brian Wright, that's right. He didn't
7 have injuries to his face so it was sometime before. There
8 wasn't any particular evidence as far as the date the video
9 was filmed. We know it was beforehand.

10 MR. BRACKE: We know it's beforehand, and we know
11 it's during the period of time that these discussions are
12 occurring because we have the Facebook posting where they're
13 wearing the same clothing. And that puts us in the same time
14 frame that we're looking at, which is basically the time
15 period charged in the indictment. That's where the search
16 warrants with the Facebook material came from that we're
17 looking at. So I do believe that because we see the video and
18 we see the clothing link from the images posted by those
19 individuals -- by Mr. Sturgeon about that, that does put us
20 within the conspiracy time.

21 THE COURT: The shooting was July of '22?

22 MR. BRACKE: Yes, July 25th.

23 THE COURT: It looked like the video -- and I was
24 making a mental note. It looks like some of them had certain
25 clothing on and some of the foliage may have been earlier in

1 the spring. I can't say that for certain. It looks like it
2 was perhaps cooler than maybe the dead of summer.

3 MR. BRACKE: Not winter, not dead of summer. Could
4 be autumn, could be spring. I think that's fair. We know and
5 I think that the evidence supports it being within the time
6 period of the conspiracy.

7 The videos may -- again, the continuing association both
8 before the shooting happened and the continuing afterwards,
9 Mr. Hudson did continue to associate with these individuals,
10 including Mr. Wright, who was involved in this shooting;
11 including Mr. Knox, Mr. Tyler, and other individuals,
12 Mr. Mitchell, who you heard where drugs and guns were found in
13 connection with all these people.

14 So it's not just what he himself did but what he knew or
15 had reason to know his customers were doing with these guns.

16 THE COURT: That's what the language of the guideline
17 requires.

18 Mr. Neff, would you like to respond?

19 MR. NEFF: Judge, I think the language of the statute
20 is under 2K2.1(5)(B), which you read to us.

21 THE COURT: (5)(B) is trafficking. We're talking
22 about (b)(6)(B).

23 MR. NEFF: I'm sorry. (6)(B), that's right, which
24 you read to us, requires that a person possess the firearm or
25 ammunition in connection with another offense with the

1 knowledge, intent, or reason to believe that it would be used
2 in connection with another felony offense.

3 I don't know that we have any evidence that Mr. Hudson,
4 one, intended it to happen, anything to happen. We don't have
5 any evidence that he knew it was going to be connected to
6 another offense. The Court would have to determine whether
7 there's evidence to show that he had a reason to believe that
8 it happened -- it was connected to another offense. I don't
9 think that evidence is here. That's the question the Court
10 would have to answer, I believe.

11 THE COURT: All right. Now let me turn to the
12 obstruction enhancement, the chirps based upon the jail calls.

13 Mr. Bracke?

14 MR. BRACKE: It's pretty straightforward. Mr. Hudson
15 verbally instructed people to storm the person he had
16 repeatedly identified as what he believed to be a cooperating
17 witness against him, the person he believed to be the reason
18 he was in jail, the person he believed that the police were
19 cracking down on. He and his associates. He instructed them
20 to storm them. He asked if he'd been beat on. He said he got
21 to get beat on.

22 Mr. Hudson repeatedly looked at people to retaliate
23 against this person he perceived to be a cooperating witness
24 in this case. Not just in chirps from his own account, but he
25 also -- and chirps from other accounts, but he also would ask

1 about, after making the statement, that these things should
2 happen, after making this verbal statement, he then, in text
3 messages, asks about it, continues to follow up, and continues
4 to emphasize to his associates how important that witness is
5 to his case and how this needs to happen.

6 THE COURT: Mr. Neff.

7 MR. NEFF: In my original objection to the
8 obstructing enhancement, I saw there were three aspects to it.
9 One is I don't think the Court can hold him accountable and
10 enhance him for obstruction for conduct that's not related to
11 this case. For example, he does have a pending case in
12 Cincinnati. That's the case where he got pulled over and
13 there was a gun in the car. That case is pending and will be
14 until he's finished here.

15 Part of the -- if I understand this right, part of the
16 allegation on the obstructing enhancement is that he was
17 alleged to have been asking a person to take responsibility
18 for the gun found in the car because then he wouldn't have the
19 criminal history. That conduct is not related to this offense
20 at all, as far as I know. We don't even know what kind of
21 firearm it was.

22 THE COURT: What about the discovery, the reference
23 to the discovery in the other case?

24 MR. NEFF: Again, I saw it as three parts. The
25 second part is I don't know you can hold him accountable for

1 information that's sent to him if he's receiving the
2 information. He has no control --

3 THE COURT: He certainly would be able to react to
4 it.

5 MR. NEFF: Correct. That leaves us with the third
6 part, which would be his text messages, his phone calls. We
7 listened to one phone call, and it was difficult to hear, but
8 I didn't hear anything in the phone call itself that would
9 rise to the level of obstructing. That leaves us with a text
10 message or what are called chirps.

11 The Court would have to interpret those. It's in
12 evidence. You would have to interpret those. However, I
13 want to caution the Court, what I was getting at with
14 Agent Price towards the end there is part of those text
15 messages that support this allegation were made on another
16 person's devices, and there is some -- it's not clearcut,
17 because of timing issues, the video time stamp versus the
18 audio time stamp. No follow-up with individuals to confirm
19 that Mr. Hudson, indeed, did use their device. So I don't
20 know that that's black and white.

21 THE COURT: Would those other people have had any
22 reason to even talk about those things, though?

23 MR. NEFF: Well, I understand.

24 THE COURT: These names, it was an odd name. I wrote
25 it down, but I can't recall the person and the picture.

1 MR. BRACKE: DT and Baby Tay.

2 THE COURT: No, not that person.

3 MR. BRACKE: Oh, Maximilian Demunnik.

4 THE COURT: Not Maximilian Kolbe. Catholics in the
5 room would know who that is. Maximilian Demunnik, okay.

6 MR. NEFF: That would be a question for the Court. I
7 definitely want to rule out the conduct involved in Ohio, rule
8 out conduct that he really had no part in. What remains are
9 text messages, whether the Court believes that -- the standard
10 you would have to apply here, preponderance of the evidence --

11 THE COURT: Right.

12 MR. NEFF: -- that he actually sent those and that he
13 meant to obstruct justice.

14 THE COURT: Okay. Thank you.

15 Now, respond to the first argument he made there about it
16 not being obstruction related to this but another state
17 offense.

18 MR. BRACKE: Two areas. Number one, it offers
19 context for us because it's the same person. He offers to pay
20 the attorney, and I'll pay for your attorney if you claim this
21 gun. I'll get less criminal history points. He then, in that
22 same conversation, moves on to you need to know about DT,
23 Baby Tay, the cooperating witness.

24 The fact that Mr. Hudson is seeking to obtain somebody to
25 claim this gun for his own so that Mr. Hudson will get a

1 benefit shows that obstructing justice is something that he's
2 willing to do. He's engaged. He has an intent to do it. He
3 engages in it. When he moves from that same person to then
4 say to that same person and he continues to discuss with that
5 same person you need to get -- you need to storm this guy.

6 THE COURT: It's kind of in the nature of a 404(b)
7 evidence for the enhancement?

8 MR. BRACKE: Yes, that's exactly right.

9 THE COURT: That's how I view that argument.

10 Okay. Now, let's take up this issue of the potential
11 role reduction because there are some factors I have to
12 consider under 3B1.2 and, in essence, they're the inverse of
13 the same factors that I consider in determining whether or not
14 someone is entitled to a role enhancement. The absence of
15 certain things would perhaps allow me to make that
16 determination.

17 Of course, the burden is on you here because you're
18 seeking the reduction if you'd like to be heard on that one.

19 MR. NEFF: Judge, I apologize. I did file that
20 beyond the time deadline.

21 THE COURT: I'm considering it on the merits so
22 there's not going to be any potential prejudice to your
23 client.

24 MR. NEFF: Thank you. The reason I say that is that
25 it occurred if I'm not successful in the enhancement for the

1 number of firearms, then Mr. Hudson's being held responsible
2 for the conduct of others. Sturgeon --

3 THE COURT: Let me tell you, the application note
4 discusses that very point.

5 MR. NEFF: So as a starting point, he's being held
6 responsible for more than just what he did. He's being held
7 responsible for the scope of what others did. As I indicated
8 in the brief objection, when you look at the entire scope of
9 the -- I'll call it a conspiracy. It's not charged that way.
10 But of the group, he's not an organizer. He was not a leader.
11 At best, given the government's argument, he's third or
12 farther down the line in the distribution chain.

13 So if we're not successful in defending against the
14 enhancement for the number of firearms, I think a mitigating
15 role is legitimate and comes into play. I'll rest with that.
16 Thank you.

17 THE COURT: Mr. Bracke, response.

18 MR. BRACKE: Just as to that, frankly, the
19 defendant's not offered any evidence to support his burden to
20 show that he had a lesser role in this matter. The only
21 question before the Court is basically a partnership between
22 Mr. Sturgeon and Mr. Hudson to distribute these firearms,
23 these Glock switches, to gang members in Cincinnati.

24 They worked together. Mr. Hudson was the connection that
25 enabled Mr. Sturgeon to begin to sell to them. Mr. Hudson was

1 profiting individually off of it. Initially, he was buying
2 them from Mr. Sturgeon and then selling them at a profit to
3 this gang. And then eventually, even after -- because of the
4 connections that Mr. Hudson created, Mr. Sturgeon was able to
5 eventually continue to sell to the members of this gang.

6 But that's certainly something that would have been
7 reasonably foreseeable to the defendant, given that he was
8 present at the sales. They happened at his location. He made
9 the introduction between Mr. Sturgeon and the buyers, and he
10 continued to serve in a go-between role even when he wasn't
11 independently selling this stuff, the items.

12 So based upon that, the evidence -- the only actual
13 evidence you have, based upon what Mr. Sturgeon had to say,
14 based upon what the cooperating witness had to say, is that --
15 and based upon his own text messages independently selling
16 these things, there aren't any text messages where he says,
17 hey, I can reach out to Demarco and see if I can get you one
18 and see what Demarco wants to pay for it. He's directly
19 quoting prices and arguing and haggling about prices.

20 Those things all support the fact that Mr. Hudson was
21 basically a partner with Mr. Sturgeon and independently
22 engaged in directly trafficking in these devices. And there's
23 no evidence to support a contrary decision.

24 THE COURT: Do you wish to be heard further?

25 MR. NEFF: Judge --

1 THE COURT: The idea that it's just argument, there's
2 no evidence.

3 MR. NEFF: I think there is evidence. If I'm wrong,
4 I apologize, but I think there was evidence, one, that
5 Mr. Hudson was not creating. Is Sturgeon or Smith who had the
6 3D printer and was actually the one creating --

7 THE COURT: Oh, sure. I'm not holding him
8 responsible for the production or manufacturing.

9 MR. NEFF: And then we go back to the argument of
10 it's described in plea agreements as well, we were talking
11 about the majority. The majority starts with the manufacture,
12 and then the bulk of that is sold to a second person, and the
13 bulk of that is sold to a third person. Again, that was
14 discussed. That's in evidence.

15 Mr. Hudson is, at best, the third person in that chain,
16 if not farther down. So I think there is evidence that he
17 played a lesser role in the entire operation, if you will.

18 THE COURT: Thank you. I'm going to take
19 approximately 15 minutes. I want to review my notes, review
20 some of the case law that I've read in preparation for this
21 sentencing relating to these various enhancements that are
22 being recommended. So we're going to be in recess until 2:15.

23 I apologize to the lawyers who are here for the afternoon
24 docket. I'll be with you as soon as I can. If you do have
25 other matters in other courts, I'm willing to call the other

1 judges to make sure that you all are taken care of.

2 We'll be in recess until 2:15.

3 (Recess from 1:54 p.m. until 2:20 p.m.)

4 THE COURT: Okay. Well, I've had a chance to review
5 my notes, the testimony of the case agent, Agent Price. Of
6 course, I haven't reviewed each and every chirp or Facebook
7 message specifically, but my notes reflect what the testimony
8 was regarding those items so I am prepared to make formal
9 rulings on the various objections.

10 I'm not going to be entering a written order. Any
11 reviewing Court will have the ability to review my oral
12 findings, and then that will be the Court's rulings. So you
13 can indicate in the minutes, Madam Clerk, that the objections
14 are ruled on as stated in open court, and I'm going to take
15 them up in the order in which they are raised.

16 First, based upon the sworn statements of the defendant's
17 co-defendants, Mr. Sturgeon and Mr. Smith, as well as the
18 principles of relevant conduct under sentencing guideline
19 section 1B1.3, the Court concludes that Defendant Hudson was
20 properly enhanced in the recommended six-level enhancement for
21 25 or more Glock switches, also known as machine gun
22 conversion devices, by the probation officer in the
23 presentence report as well as the addendum.

24 Here the testimony of Agent Price and statements of the
25 co-defendants, Mr. Sturgeon and Mr. Smith, establish that

1 they, as well as Defendant Hudson, worked together to
2 distribute these Glock switches, and that number did exceed
3 25.

4 Pursuant to guideline section 1B1.3(a)(1)(A) and (B), of
5 course, Defendant Hudson is responsible for not only what he
6 did to further the jointly undertaken activity, but also the
7 reasonably foreseeable acts of his co-defendants that were
8 within the scope of that activity and furthered that activity.

9 Here Defendant Smith's manufacturing and Defendant Hudson
10 and Co-Defendant Sturgeon's sale of the Glock switches easily
11 satisfy, in the Court's view, the standards of relevant
12 conduct under the guidelines.

13 Based upon the defendant's own admissions during the plea
14 colloquy with the Court that he had with me a few months ago,
15 Defendant Sturgeon and Smith's own admissions in their own
16 plea agreements, and the statements by an informant identified
17 by Agent Price as CD2, which was identified in the sentencing
18 memo as a gang member from Cincinnati, which corroborated
19 Defendant Sturgeon's statements and numerous Facebook messages
20 by Sturgeon and Hudson, the Court does conclude by a
21 preponderance of the evidence that the number of Glock
22 switches involved in this particular case exceeded 25 and that
23 that number was reasonably foreseeable to Defendant Hudson.

24 His own Facebook messages, admitted during the sentencing
25 hearing as Government Exhibit 7, show that he attempted to

1 sell Glock switches to at least seven different individuals
2 himself. Smith's manufacture of and Sturgeon's sales of those
3 Glock switches easily exceeded 25, and that number was
4 reasonably foreseeable to Hudson. In fact, he tried to
5 sell -- at least what we can gather -- seven or eight times to
6 other individuals.

7 As stated by Agent Price, and this makes a lot of sense,
8 if you're going to sell to a friend of yours who is a gang
9 member, you're not going to post something on Facebook
10 Messenger. You're going to do it with one another, and
11 there's not going to be a record of that. And to say because
12 there's no record it didn't happen, that's inconsistent with
13 what Smith -- what Sturgeon and CD2 said.

14 The defendant in this particular case, the evidence
15 supports the fact that he was Co-Defendant Sturgeon's primary
16 buyer of Glock switches, which were those plastic ones
17 manufactured by Smith.

18 The testimony and evidence also established that the
19 defendant was also offering metal Glock switches for sale. In
20 fact, I think some of the Facebook posts or messages at
21 Government Exhibit 7 referenced that some of those were on the
22 higher end, perhaps close to \$800, versus the lower end, 500
23 for the plastic ones. And I'm not exactly sure about that,
24 but I do recall there being a reference to metal switches as
25 well.

1 other inmate was using his chirp -- or the defendant, I'm
2 sorry, the defendant was using the other inmate's chirp
3 account to kind of hide behind his own. And I think in that
4 regard, it also supports the enhancement. There's even a
5 reference to that he knows he can catch another charge for
6 messing with witnesses. That, again, is kind of indicative of
7 intent. Finally, he told this Arnold individual, known as
8 Dada, to beat the suspected cooperator.

9 All of this, in combination with everything else,
10 supports the obstruction enhancement, in the Court's view.

11 Finally, there is an additional objection that was raised
12 earlier this week. I am considering it on the merits. This
13 idea that he should also receive a minor role adjustment.

14 As the record has reflected, I am, in part, holding the
15 defendant responsible, under 2K2.1(b)(1)(C), for a six-level
16 enhancement based upon the number of Glock switches in this
17 case. So I am relying in part on relevant conduct principles
18 in reaching that determination.

19 Now, if we look at 3B1.2, application note 3(A), it says
20 here, "Substantially less culpable than the average
21 participant. This section provides a range of adjustments for
22 a defendant who plays a part in committing the offense that
23 makes him substantially less culpable than the average
24 participant in a criminal activity."

25 And then it specifically references 1B1.3, relevant

1 conduct. "A defendant accountable under 1B1.3 only for the
2 conduct in which the defendant personally was involved and who
3 performed a limited function in criminal activity may receive
4 an adjustment under this guideline."

5 Well, the commission uses the term "limited function" and
6 "substantially less culpable than the average participant."

7 In this particular case, as charged in this conduct,
8 we've got the manufacturer, Mr. Smith; Mr. Sturgeon, who was
9 the purchaser, if you will, of those plastic 3D printer Glock
10 switches; and then we have the defendant, Mr. Hudson.

11 Of course, the burden to establish that the defendant is
12 entitled to this reduction is on the defendant by a
13 preponderance of the evidence.

14 In reviewing the factors here, I mentioned application
15 note 3(C) to 3B1.2. I already mentioned 3(A) when it talks
16 about substantially less culpable than the average participant
17 and performing a limited function. 3(C) of application
18 note -- or to 3B1.2 lists a nonexhaustive list of factors the
19 Court should consider.

20 They include the degree to which the defendant understood
21 the scope and structure of the criminal activity. He
22 certainly did that.

23 The degree to which the defendant participated in
24 planning or organizing the criminal activity. Well, he was
25 selling the Glock switches to the other gang members himself.

1 And then once the other members got to know Sturgeon, they
2 just kind of started to deal directly with him, but he was
3 still kind of acting as a middleman, if you will, on those
4 transactions. That's what the testimony and evidence
5 establishes here.

6 Additionally, the degree to which the defendant exercised
7 decision-making authority or influenced the exercise of
8 decision-making authority. The nature and extent of his
9 participation in the commission of the criminal activity,
10 including the acts the defendant performed and the
11 responsibility and discretion he had in performing those acts.

12 The degree to which he stood to benefit from the criminal
13 activity. For example, a defendant who does not have
14 proprietary interest in the criminal activity and who was
15 simply being paid to perform certain tasks should be
16 considered for an adjustment under this guideline.

17 The fact that the defendant performs an essential or
18 indispensable role in the criminal activity is not
19 determinative. Such a defendant may receive an adjustment
20 under this guideline if he or she is substantially less
21 culpable than the average participating criminal activity.

22 Now, a couple of those are perhaps neutral, in the
23 Court's view, in making this determination. The evidence as
24 found by the probation officer in the presentence report was
25 he really didn't have a lot of income from other sources.

1 There was some reference on cross-examination about him
2 working at a dispensary. The amount of money that he was
3 flashing on the Facebook posts is certainly not indicative of
4 that type of employment. So this is a situation where he was
5 profiting. He's not someone who was merely transporting,
6 let's say, Glock switches from Sturgeon to members of the gang
7 or a situation where he, perhaps, was just letting his house
8 be used for purposes of these transactions. He was profiting.

9 And, in fact, from the photos -- and I'll never
10 understand why people post things on social media like this
11 because, as we can see, it's being used at a federal
12 sentencing here in court in a way that is prejudicial to
13 Defendant Hudson's cause. So perhaps all of us, as we're
14 sitting here, might think twice about what we put out on
15 social media.

16 Be that as it may, in reviewing the nonexhaustive list of
17 factors in application note 3(C) to 3B1.2, the Court concludes
18 that he is not entitled to a minor role adjustment pursuant to
19 3B1.2(b).

20 In reaching this conclusion, the Court believes he did
21 understand the scope and structure of the criminal activity.
22 He introduced Sturgeon to his fellow gang members who were
23 then interested in purchase Glock switches. He also
24 participated in the planning of some of the sales, doing the
25 sales himself, and then acting as a middleman after Sturgeon

1 got to know his fellow gang members, and he certainly made
2 quite a bit of money on the sales in conversion of the gang
3 members -- I'm sorry, of the conversion devices based upon the
4 photos. And there are lots of photos in the Facebook
5 photographs. I think it's Exhibit 6 or 7, maybe 8 that are
6 the photos.

7 He did have a proprietary interest in the criminal
8 activity, versus merely being paid as perhaps a mule, as I
9 described earlier, who was transporting things back and forth.

10 The commentary supports the denial of the role
11 adjustment.

12 Now, I am going to consider, in determining the ultimate
13 sentence, this idea that he's being enhanced to some extent
14 for the relevant conduct as it relates to the 2K2.1(b)(1)(C)
15 enhancement. I think it's fair to do so, objectively
16 reasonable to do so. So I very well may vary slightly for
17 that reason, but that's not a guideline application. That's
18 potentially a 3553(a) variance discussion.

19 So the guidelines will remain as calculated.

20 Mr. Bracke, are you moving for the third level for
21 acceptance?

22 MR. BRACKE: Yes, sir.

23 THE COURT: That motion is granted. After the three
24 levels for acceptance, with a criminal history category of 1,
25 the advisory guideline range is 108 to 120 months.

1 Now, the guidelines are 108 to 135. I think the
2 obstructive behavior, the other 3553(a) factors, including the
3 nature and circumstances of the offense, the seriousness of
4 the offense, affording adequate deterrence to others, all of
5 those objectively point to a sentence of 120 months. The
6 guidelines without the statutory cap would be 108 to 135.

7 Now, I mentioned the word vary, consider varying. In my
8 view, this case starts at 120, and then I move off of that,
9 and I am going to move off of that because I think it's
10 objectively fair to say and to consider the fact that that
11 six-level increase under 2K2.1(b)(1)(C) is based, in part, on
12 relevant conduct. And in a situation like that, I think it's
13 appropriate to move, not vary. Very means below the
14 guideline. I'm moving downward from 120 to 108.

15 For all these reasons, I'm going to impose a sentence of
16 108 months on both Counts 1 and 2, to be served concurrently
17 with each other. That's 108 months for each count for a total
18 sentence of 108 months.

19 I'm going to recommend several things to the Bureau of
20 Prisons. I'm going to recommend a facility as close to
21 Cincinnati as possible. I'm going to recommend that he
22 receive credit for the time he's been in custody from
23 June 27th, 2023, through today.

24 I'm also going to recommend that he participate in
25 substance abuse treatment for which he qualifies, including

1 I would anticipate the judgment perhaps being entered
2 sometime tomorrow, given the fact that I still have two more
3 sentencings today and we probably won't be getting judgments
4 out before 5:00. So it will likely be two weeks from tomorrow
5 that you have to effectuate the appeal.

6 If you want to appeal and, Mr. Neff, you don't want him
7 to prosecute the appeal for you, as indicated by the clerk, an
8 attorney will be appointed who does appeals to prosecute the
9 appeal for you.

10 Do you understand that, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Anything else to take up?

13 MR. NEFF: I have the signed notice.

14 THE COURT: We'll file that of record.

15 Anything else?

16 MR. BRACKE: No, sir.

17 THE COURT: Defendant will be remanded to custody of
18 the marshal. We'll be in recess.

19 (Proceedings concluded at 3:25 p.m.)

20 - - -

21 C E R T I F I C A T E

22 I, LISA REED WIESMAN RDR-CRR, certify that the
23 foregoing is a correct transcript from the record of
24 proceedings in the above-entitled case.

25 /s/ Lisa Reed Wiesman
LISA REED WIESMAN, RDR-CRR
Official Court Reporter

September 30, 2024
Date of Certification

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APPENDIX ITEM 5

INDICTMENT

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON**

**Eastern District of Kentucky
FILED**

JUN 08 2023

**AT COVINGTON
Robert R. Carr
CLERK U.S. DISTRICT COURT**

UNITED STATES OF AMERICA

V.

INDICTMENT NO. 23-28-DLB-CJS

**ISAIAH M. SMITH,
DENICO N. HUDSON, and
DEMARCO STURGEON**

* * * * *

THE GRAND JURY CHARGES:

**COUNT 1
18 U.S.C. § 922(o)
18 U.S.C. § 2**

On or about January 1, 2020, and continuing through on or about January 25,
2023, in Kenton County, in the Eastern District of Kentucky, and elsewhere,

**ISAIAH M. SMITH,
DENICO N. HUDSON, and
DEMARCO STURGEON,**

aiding and abetting one another, knowingly possessed and transferred a machinegun, that
is, a weapon which shoots, is designed to shoot, or can be readily restored to shoot,
automatically more than one shot, without manual reloading, by a single function of the
trigger, including any part designed and intended solely and exclusively for use in
converting a weapon into a machinegun, all in violation of 18 U.S.C. §§ 922(o) and 2.

COUNT 2
26 U.S.C. § 5861(j)
18 U.S.C. § 2

On or about January 1, 2020, and continuing through on or about January 25, 2023, in Kenton County, in the Eastern District of Kentucky, and elsewhere,

ISAIAH M. SMITH,
DENICO N. HUDSON, and
DEMARCO STURGEON,

aiding and abetting one another, knowingly transported, delivered, and received, in interstate commerce, a firearm, that is, a machinegun, not registered as required by Chapter 53 of Title 26, all in violation of 26 U.S.C. § 5861(j) and 18 U.S.C. § 2.

FORFEITURE ALLEGATIONS

18 U.S.C. § 924(d)
26 U.S.C. § 5872
28 U.S.C. § 2461

1. By virtue of the commission of the offense alleged in Count 1 of the Indictment, **ISAIAH M. SMITH** shall forfeit to the United States any and all firearms and ammunition involved in or used, or intending to be used, in the violations of 18 U.S.C. § 922(o). Any and all interest that **ISAIAH M. SMITH** has in this property is vested in and forfeited to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461.

2. By virtue of the commission of the offense alleged in Count 2 of the Indictment, **ISAIAH M. SMITH** shall forfeit to the United States any and all firearms involved in the violation of 26 U.S.C. § 5861(j). Any and all interest that **ISAIAH M.**

SMITH has in this property is vested in and forfeited to the United States pursuant to 26 U.S.C. § 5872.

3. The property to be forfeited includes, but is not limited to, the following:

FIREAMS AND AMMUNITION:

- a. A Glock, Model 19X nine-millimeter pistol, bearing serial number BSLE615, inventory #E17, ATF Item #84, seized on April 4, 2023;
- b. Polymer-80, 40 caliber handgun, no serial number, inventory #E7, ATF Item #82, seized on April 4, 2023;
- c. Polymer-80, nine-millimeter pistol, no serial number, inventory #E6, ATF Item #83, seized on April 4, 2023;
- d. Machine Gun Conversion Device, metal switch, inventory #E24, ATF Item #74, seized on April 4, 2023;
- e. All ammunition seized in conjunction with these firearms.

A TRUE BILL



CARLTON S. SHIER, IV
UNITED STATES ATTORNEY

PENALTIES

COUNT 1: Imprisonment for not more than 10 years, a fine of not more than \$250,000, and supervised release for not more than 3 years.

If 18 U.S.C. § 924(e) applies, imprisonment for not less than 15 years and not more than life, a fine of not more than \$250,000, and supervised release for not more than 5 years.

COUNT 2: Imprisonment for not more than 10 years, a fine of not more than \$10,000, and supervised release for not more than 3 years.

PLUS: Forfeiture of all listed property.

PLUS: Mandatory special assessment of \$100 per count.

PLUS: Restitution, if applicable.

APPENDIX ITEM 6

USSG §1B1.3 AND APPLICABLE APPLICATION NOTES

United States Sentencing Guidelines §1B1.3. Relevant Conduct (Factors that Determine the Guideline Range) – See Appendix

(a) Chapters Two (Offense Conduct) and Three (Adjustments).--Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

(1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were--

(i) within the scope of the jointly undertaken criminal activity,

(ii) in furtherance of that criminal activity, and

(iii) reasonably foreseeable in connection with that criminal activity;

that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense;

(2) solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction;

(3) all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions; and

(4) any other information specified in the applicable guideline.

(b) Chapters Four (Criminal History and Criminal Livelihood) and Five (Determining the Sentencing Range and Options Under the Guidelines).--Factors in Chapters Four and Five that establish the guideline range shall be determined on the basis of the conduct and information specified in the respective guidelines.

(c) Acquitted Conduct.--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.

Application Note 1

<1. Sentencing Accountability and Criminal Liability.--The principles and limits of sentencing accountability under this guideline are not always the same as the principles and limits of criminal liability. Under subsections (a)(1) and (a)(2), the focus is on the specific acts and omissions for which the defendant is to be held

accountable in determining the applicable guideline range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator.>

Application Note 3

<3. Jointly Undertaken Criminal Activity (Subsection (a)(1)(B)).-->

<(A) In General.--A “jointly undertaken criminal activity” is a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy.>

<In the case of a jointly undertaken criminal activity, subsection (a)(1)(B) provides that a defendant is accountable for the conduct (acts and omissions) of others that was:>

<(i) within the scope of the jointly undertaken criminal activity;>

<(ii) in furtherance of that criminal activity; and>

<(iii) reasonably foreseeable in connection with that criminal activity.>

<The conduct of others that meets all three criteria set forth in subdivisions (i) through (iii) (i.e., “within the scope,” “in furtherance,” and “reasonably foreseeable”) is relevant conduct under this provision. However, when the conduct of others does not meet any one of the criteria set forth in subdivisions (i) through (iii), the conduct is not relevant conduct under this provision.>

<(B) Scope.--Because a count may be worded broadly and include the conduct of many participants over a period of time, the scope of the “jointly undertaken criminal activity” is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant. In order to determine the defendant's accountability for the conduct of others under subsection (a)(1)(B), the court must first determine the scope of the criminal activity the particular defendant agreed to jointly undertake (i.e., the scope of the specific conduct and objectives embraced by the defendant's agreement). In doing so, the court may consider any explicit agreement or implicit agreement fairly inferred from the conduct of the defendant and others. Accordingly, the accountability of the defendant for the acts of others is limited by the scope of his or her agreement to jointly undertake the particular criminal activity. Acts of others that were not within the scope of the defendant's agreement, even if those acts were known or reasonably foreseeable to the defendant, are not relevant conduct under subsection (a)(1)(B).>

<In cases involving contraband (including controlled substances), the scope of the jointly undertaken criminal activity (and thus the accountability of the defendant for the contraband that was the object of that jointly undertaken activity) may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities.>

<A defendant's relevant conduct does not include the conduct of members of a conspiracy prior to the defendant joining the conspiracy, even if the defendant knows of that conduct (e.g., in the case of a defendant who joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant joining the conspiracy is not included as relevant conduct in determining the defendant's offense level).>

<(C) In Furtherance.--The court must determine if the conduct (acts and omissions) of others was in furtherance of the jointly undertaken criminal activity.>

<(D) Reasonably Foreseeable.--The court must then determine if the conduct (acts and omissions) of others that was within the scope of, and in furtherance of, the jointly undertaken criminal activity was reasonably foreseeable in connection with that criminal activity.>

<Note that the criminal activity that the defendant agreed to jointly undertake, and the reasonably foreseeable conduct of others in furtherance of that criminal activity, are not necessarily identical. For example, two defendants agree to commit a robbery and, during the course of that robbery, the first defendant assaults and injures a victim. The second defendant is accountable for the assault and injury to the victim (even if the second defendant had not agreed to the assault and had cautioned the first defendant to be careful not to hurt anyone) because the assaultive conduct was within the scope of the jointly undertaken criminal activity (the robbery), was in furtherance of that criminal activity (the robbery), and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).>

<With respect to offenses involving contraband (including controlled substances), the defendant is accountable under subsection (a)(1)(A) for all quantities of contraband with which he was directly involved and, in the case of a jointly undertaken criminal activity under subsection (a)(1)(B), all quantities of contraband that were involved in transactions carried out by other participants, if those transactions were within the scope of, and in furtherance of, the jointly undertaken

criminal activity and were reasonably foreseeable in connection with that criminal activity.>

<The requirement of reasonable foreseeability applies only in respect to the conduct (i.e., acts and omissions) of others under subsection (a)(1)(B). It does not apply to conduct that the defendant personally undertakes, aids, abets, counsels, commands, induces, procures, or willfully causes; such conduct is addressed under subsection (a)(1)(A).>

Application Note 4

<4. Illustrations of Conduct for Which the Defendant is Accountable under Subsections (a)(1)(A) and (B).-->

<(A) Acts and omissions aided or abetted by the defendant.-->

<(i) Defendant A is one of ten persons hired by Defendant B to off-load a ship containing marihuana. The off-loading of the ship is interrupted by law enforcement officers and one ton of marihuana is seized (the amount on the ship as well as the amount off-loaded). Defendant A and the other off-loaders are arrested and convicted of importation of marihuana. Regardless of the number of bales he personally unloaded, Defendant A is accountable for the entire one-ton quantity of marihuana. Defendant A aided and abetted the off-loading of the entire shipment of marihuana by directly participating in the off-loading of that shipment (i.e., the specific objective of the criminal activity he joined was the off-loading of the entire shipment). Therefore, he is accountable for the entire shipment under subsection (a)(1)(A) without regard to the issue of reasonable foreseeability. This is conceptually similar to the case of a defendant who transports a suitcase knowing that it contains a controlled substance and, therefore, is accountable for the controlled substance in the suitcase regardless of his knowledge or lack of knowledge of the actual type or amount of that controlled substance.>

<In certain cases, a defendant may be accountable for particular conduct under more than one subsection of this guideline. As noted in the preceding paragraph, Defendant A is accountable for the entire one-ton shipment of marihuana under subsection (a)(1)(A). Defendant A also is accountable for the entire one-ton shipment of marihuana on the basis of subsection (a)(1)(B) (applying to a jointly undertaken criminal activity). Defendant A engaged in a jointly undertaken criminal activity and all three criteria of subsection (a)(1)(B) are met. First, the conduct was within the scope of the criminal activity (the importation of the shipment of

marihuana). Second, the off-loading of the shipment of marihuana was in furtherance of the criminal activity, as described above. And third, a finding that the one-ton quantity of marihuana was reasonably foreseeable is warranted from the nature of the undertaking itself (the importation of marihuana by ship typically involves very large quantities of marihuana). The specific circumstances of the case (the defendant was one of ten persons off-loading the marihuana in bales) also support this finding. In an actual case, of course, if a defendant's accountability for particular conduct is established under one provision of this guideline, it is not necessary to review alternative provisions under which such accountability might be established. See Application Note 2.>

<(B) Acts and omissions aided or abetted by the defendant; acts and omissions in a jointly undertaken criminal activity.-->

<(i) Defendant C is the getaway driver in an armed bank robbery in which \$15,000 is taken and a teller is assaulted and injured. Defendant C is accountable for the money taken under subsection (a)(1)(A) because he aided and abetted the act of taking the money (the taking of money was the specific objective of the offense he joined). Defendant C is accountable for the injury to the teller under subsection (a)(1)(B) because the assault on the teller was within the scope and in furtherance of the jointly undertaken criminal activity (the robbery), and was reasonably foreseeable in connection with that criminal activity (given the nature of the offense).>

<As noted earlier, a defendant may be accountable for particular conduct under more than one subsection. In this example, Defendant C also is accountable for the money taken on the basis of subsection (a)(1)(B) because the taking of money was within the scope and in furtherance of the jointly undertaken criminal activity (the robbery), and was reasonably foreseeable (as noted, the taking of money was the specific objective of the jointly undertaken criminal activity).>

<(C) Requirements that the conduct of others be within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable.-->

<(i) Defendant D pays Defendant E a small amount to forge an endorsement on an \$800 stolen government check. Unknown to Defendant E, Defendant D then uses that check as a down payment in a scheme to fraudulently obtain \$15,000 worth of merchandise. Defendant E is convicted of forging the \$800 check and is accountable for the forgery of this check under subsection (a)(1)(A). Defendant E is not

accountable for the \$15,000 because the fraudulent scheme to obtain \$15,000 was not within the scope of the jointly undertaken criminal activity (i.e., the forgery of the \$800 check).>

<(ii) Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains \$20,000. Defendant G fraudulently obtains \$35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount (\$55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was within the scope of the jointly undertaken criminal activity (the scheme to sell fraudulent stocks), was in furtherance of that criminal activity, and was reasonably foreseeable in connection with that criminal activity.>

<(iii) Defendants H and I engaged in an ongoing marihuana importation conspiracy in which Defendant J was hired only to help off-load a single shipment. Defendants H, I, and J are included in a single count charging conspiracy to import marihuana. Defendant J is accountable for the entire single shipment of marihuana he helped import under subsection (a)(1)(A) and any acts and omissions of others related to the importation of that shipment on the basis of subsection (a)(1)(B) (see the discussion in example (A)(i) above). He is not accountable for prior or subsequent shipments of marihuana imported by Defendants H or I because those acts were not within the scope of his jointly undertaken criminal activity (the importation of the single shipment of marihuana).>

<(iv) Defendant K is a wholesale distributor of child pornography. Defendant L is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Similarly, Defendant M is a retail-level dealer who purchases child pornography from Defendant K and resells it, but otherwise operates independently of Defendant K. Defendants L and M are aware of each other's criminal activity but operate independently. Defendant N is Defendant K's assistant who recruits customers for Defendant K and frequently supervises the deliveries to Defendant K's customers. Each defendant is convicted of a count charging conspiracy to distribute child pornography. Defendant K is accountable under subsection (a)(1)(A) for the entire quantity of child pornography sold to Defendants L and M. Defendant N also is accountable for the entire quantity sold to those defendants under subsection (a)(1)(B) because the entire quantity was

within the scope of his jointly undertaken criminal activity (to distribute child pornography with Defendant K), in furtherance of that criminal activity, and reasonably foreseeable. Defendant L is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K because he is not engaged in a jointly undertaken criminal activity with the other defendants. For the same reason, Defendant M is accountable under subsection (a)(1)(A) only for the quantity of child pornography that he purchased from Defendant K.>

<(v) Defendant O knows about her boyfriend's ongoing drug-trafficking activity, but agrees to participate on only one occasion by making a delivery for him at his request when he was ill. Defendant O is accountable under subsection (a)(1)(A) for the drug quantity involved on that one occasion. Defendant O is not accountable for the other drug sales made by her boyfriend because those sales were not within the scope of her jointly undertaken criminal activity (i.e., the one delivery).>

<(vi) Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable in connection with that criminal activity.>

<(vii) Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R. Defendant S is not accountable under subsection (a)(1)(B) for the other quantities imported by Defendant R because those quantities were not within the scope of his jointly undertaken criminal activity (i.e., the 500 grams).>

<(viii) Defendants T, U, V, and W are hired by a supplier to backpack a quantity of marihuana across the border from Mexico into the United States. Defendants T, U, V, and W receive their individual shipments from the supplier at the same time and coordinate their importation efforts by walking across the border together for mutual assistance and protection. Each defendant is accountable for the aggregate quantity of marihuana transported by the four defendants. The four defendants engaged in a jointly undertaken criminal activity, the object of which was the importation of the four backpacks containing marihuana (subsection (a)(1)(B)), and aided and abetted each other's actions (subsection (a)(1)(A)) in carrying out the jointly undertaken criminal activity (which under subsection (a)(1)(B) were also in furtherance of, and reasonably foreseeable in connection with, the criminal activity). In contrast, if Defendants T, U, V, and W were hired individually, transported their individual shipments at different times, and otherwise operated independently, each defendant would be accountable only for the quantity of marihuana he personally transported (subsection (a)(1)(A)). As this example illustrates, the scope of the jointly undertaken criminal activity may depend upon whether, in the particular circumstances, the nature of the offense is more appropriately viewed as one jointly undertaken criminal activity or as a number of separate criminal activities. See Application Note 3(B).>

APPENDIX ITEM 7

USSG §2K2.1 AND APPLICABLE APPLICATION NOTES

USSG §2K2.1. Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

(a) Base Offense Level (Apply the Greatest):

(1) 26, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(3) 22, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(4) 20, if—

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. § 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (III) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(5) 18, if the offense involved a firearm described in 26 U.S.C. § 5845(a);

(6) 14, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; (B) is convicted under 18 U.S.C. § 922(d), § 932, or § 933; or (C) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(7) 12, except as provided below; or

(8) 6, if the defendant is convicted under 18 U.S.C. § 922(c), (e), (f), (m), (s), (t), or (x)(1), or 18 U.S.C. § 1715.

(b) Specific Offense Characteristics

(1) If the offense involved three or more firearms, increase as follows:

Number of Firearms		Increase in Level
(A)	3-7	add 2
(B)	8-24	add 4
(C)	25-99	add 6
(D)	100-199	add 8
(E)	200 or more	add 10

(2) If the defendant, other than a defendant subject to subsection (a)(1), (a)(2), (a)(3), (a)(4), or (a)(5), possessed all ammunition and firearms solely for lawful sporting purposes or collection, and did not unlawfully discharge or otherwise unlawfully use such firearms or ammunition, decrease the offense level determined above to level 6.

(3) If the offense involved--

(A) a destructive device that is a portable rocket, a missile, or a device for use in launching a portable rocket or a missile, increase by 15 levels; or

(B) a destructive device other than a destructive device referred to in paragraph (A), increase by 2 levels.

(4) If (A) any firearm was stolen, increase by 2 levels; or (B)(i) any firearm had a serial number that was modified such that the original information is rendered illegible or unrecognizable to the unaided eye; or (ii) the defendant knew that any firearm involved in the offense was not otherwise marked with a serial number (other than a firearm manufactured prior to the effective date of the Gun Control Act of 1968) or was willfully blind to or consciously avoided knowledge of such fact, increase by 4 levels.

The cumulative offense level determined from the application of subsections (b)(1) through (b)(5) may not exceed level 29, except if subsection (b)(3)(A) applies.

(5) (Apply the Greatest) If the defendant--

(A) (i) possessed four or more machinegun conversion devices; or (ii) transferred or sold any machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale, increase by 2 levels; or

(B) possessed 30 or more machinegun conversion devices, increase by 4 levels.

For purposes of subsection (b)(5), “machinegun conversion device” means any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun (i.e., any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger).

(6) (Apply the Greatest) If the defendant--

(A) was convicted under 18 U.S.C. 933(a)(2) or (a)(3), increase by 2 levels;

(B) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, a firearm or any ammunition knowing or having reason to believe that such conduct would result in the receipt of the firearm or ammunition by an individual who (I) was a prohibited person; or (II) intended to use or dispose of the firearm or ammunition unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received a firearm or any ammunition as a result of inducing the conduct described in clause (i), increase by 2 levels; or

(C) (i) transported, transferred, sold, or otherwise disposed of, or purchased or received with intent to transport, transfer, sell, or otherwise dispose of, two or more firearms knowing or having reason to believe that such conduct would result in the receipt of the firearms by an individual who (I) had a prior conviction for a crime of violence, controlled substance offense, or misdemeanor crime of domestic violence; (II) was under a criminal justice sentence at the time of the offense; or (III) intended to use or dispose of the firearms unlawfully; (ii) attempted or conspired to commit the conduct described in clause (i); or (iii) received two or more firearms as a result of inducing the conduct described in clause (i), increase by 5 levels.

Provided, however, that subsection (b)(6)(C)(i)(I) shall not apply based upon the receipt or intended receipt of the firearms by an individual with a prior conviction for a misdemeanor crime of domestic violence against a person in a dating relationship if, at the time of the instant offense, such individual met the criteria set forth in the proviso of 18 U.S.C. 921(a)(33)(C).

(7) If the defendant--

(A) possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.

(8) If a recordkeeping offense reflected an effort to conceal a substantive offense involving firearms or ammunition, increase to the offense level for the substantive offense.

(9) If the defendant--

(A) receives an enhancement under subsection (b)(6); and

(B) committed the offense in connection with the defendant's participation in a group, club, organization, or association of five or more persons, knowing or acting with willful blindness or conscious avoidance of knowledge that the group, club, organization, or association had as one of its primary purposes the commission of criminal offenses;
increase by 2 levels.

(10) If the defendant--

(A) receives an enhancement under subsection (b)(6);

(B) does not have more than 1 criminal history point, as determined under § 4A1.1 (Criminal History Category) and § 4A1.2 (Definitions and Instructions for Computing Criminal History), read together; and

(C) (i) was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense; or
(ii) was unusually vulnerable to being persuaded or induced to commit the offense due to a physical or mental condition;
decrease by 2 levels.

(c) Cross Reference

(1) If the defendant used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense, apply--

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that other offense, if the resulting offense level is greater than that determined above; or
(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Application Note 14 – Language in effect on the date of Mr. Hudson’s sentencing.
Current application notes go through Note 13.

<14. Application of Subsections (b)(6)(B) and (c)(1).-->

<(A) In General.--Subsections (b)(6)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively. However, subsection (c)(1) contains the additional requirement that the firearm or ammunition be cited in the offense of conviction.>

<(B) Application When Other Offense is Burglary or Drug Offense.--Subsections (b)(6)(B) and (c)(1) apply (i) in a case in which a defendant who, during the course

of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and (ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(6)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.>

<(C) Definitions.-->

<“Another felony offense”, for purposes of subsection (b)(6)(B), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.>

<“Another offense”, for purposes of subsection (c)(1), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, regardless of whether a criminal charge was brought, or a conviction obtained.>

<(D) Upward Departure Provision.--In a case in which the defendant used or possessed a firearm or explosive to facilitate another firearms or explosives offense (e.g., the defendant used or possessed a firearm to protect the delivery of an unlawful shipment of explosives), an upward departure under § 5K2.6 (Weapons and Dangerous Instrumentalities) may be warranted.>

<(E) Relationship Between the Instant Offense and the Other Offense.--In determining whether subsections (b)(6)(B) and (c)(1) apply, the court must consider the relationship between the instant offense and the other offense, consistent with relevant conduct principles. See § 1B1.3(a)(1)-(4) and accompanying commentary.>

<In determining whether subsection (c)(1) applies, the court must also consider whether the firearm used in the other offense was a firearm cited in the offense of conviction.>

<For example:>

<(i) Firearm Cited in the Offense of Conviction. Defendant A's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant A used the shotgun in connection with a robbery. Ordinarily, under these circumstances, subsection (b)(6)(B) applies, and the cross reference in subsection (c)(1) also applies if it results in a greater offense level.>

<Ordinarily, the unlawful possession of the shotgun on February 10 will be “part of the same course of conduct or common scheme or plan” as the unlawful possession of the same shotgun on October 15. See § 1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 5(B) to § 1B1.3). The use of the shotgun “in connection with” the robbery is relevant

conduct because it is a factor specified in subsections (b)(6)(B) and (c)(1). See § 1B1.3(a)(4) (“any other information specified in the applicable guideline”).>

<(ii) Firearm Not Cited in the Offense of Conviction. Defendant B's offense of conviction is for unlawfully possessing a shotgun on October 15. The court determines that, on the preceding February 10, Defendant B unlawfully possessed a handgun (not cited in the offense of conviction) and used the handgun in connection with a robbery.>

<Subsection (b)(6)(B). In determining whether subsection (b)(6)(B) applies, the threshold question for the court is whether the two unlawful possession offenses (the shotgun on October 15 and the handgun on February 10) were “part of the same course of conduct or common scheme or plan”. See § 1B1.3(a)(2) and accompanying commentary (including, in particular, the factors discussed in Application Note 5(B) to § 1B1.3).>

<If they were, then the handgun possession offense is relevant conduct to the shotgun possession offense, and the use of the handgun “in connection with” the robbery is relevant conduct because it is a factor specified in subsection (b)(6)(B). See § 1B1.3(a)(4) (“any other information specified in the applicable guideline”). Accordingly, subsection (b)(6)(B) applies.>

<On the other hand, if the court determines that the two unlawful possession offenses were not “part of the same course of conduct or common scheme or plan,” then the handgun possession offense is not relevant conduct to the shotgun possession offense and subsection (b)(6)(B) does not apply.>

<Subsection (c)(1). Under these circumstances, the cross reference in subsection (c)(1) does not apply, because the handgun was not cited in the offense of conviction.>

APPENDIX ITEM 8
USSG SENTENCING TABLE

United States Code Annotated
 Federal Sentencing Guidelines (Refs & Annos)
 Chapter Five. Determining the Sentencing Range and Options Under the Guidelines (Refs & Annos)
 Part A. Sentencing Table

USSG Sentencing Table, Ch. 5, Pt. A, 18 U.S.C.A.

Sentencing Table

Currentness

The Sentencing Table used to determine the guideline range follows:

SENTENCING TABLE

(in months of imprisonment)

Criminal History Category (Criminal History Points)

ZONE A

Offense	I	II	III	IV	V	VI
Level	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	
3	0-6	0-6	0-6	0-6		
4	0-6	0-6	0-6			
5	0-6	0-6				
6	0-6					
7	0-6					
8	0-6					

ZONE B

Offense	I	II	III	IV	V	VI
Level	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
2						1-7
3					2-8	3-9
4				2-8	4-10	6-12

5			1-7	4-10	6-12	9-15
6		1-7	2-8	6-12	9-15	
7		2-8	4-10	8-14		
8		4-10	6-12			
9	4-10	6-12	8-14			
10	6-12	8-14				
11	8-14					

ZONE C

Offense	I	II	III	IV	V	VI
Level	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)

6						12-18
7					12-18	
8				10-16		
9				12-18		
10			10-16			
11		10-16	12-18			
12	10-16	12-18				
13	12-18					

ZONE D

Offense	I	II	III	IV	V	VI
Level	(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)

7						15-21
8					15-21	18-24
9					18-24	21-27
10				15-21	21-27	24-30
11				18-24	24-30	27-33
12			15-21	21-27	27-33	30-37
13		15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46

15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life