APPENDIX A

NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0178n.06

No. 24-6072

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 17, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

REGINALD DEWAYNE BROWN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

OPINION

Before: SILER, MOORE, and BLOOMEKATZ, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. Reginald Brown was convicted by a jury of conspiracy to possess with intent to distribute cocaine and possession with intent to distribute cocaine. The district court sentenced Brown to 198 months' imprisonment followed by a six-year term of supervised release. On appeal, Brown argues that the district court erred in rejecting two Federal Rule of Criminal Procedure 11(c)(1)(C) plea agreements, denying Brown a *Franks* hearing, and admitting into evidence a receipt from AutoZone. Because none of his arguments has merit, we **AFFIRM** the judgment of the district court.

I. FACTUAL BACKGROUND

On September 21, 2022, Detective Cody Pfeiffer with the Louisville Metro Police Department (LMPD) obtained a search warrant to ping Reginald Brown's cell phone. R. 109-1 (Cell Phone Warrant at 1–3) (Page ID #493–95). According to the affidavit accompanying the warrant application, in July 2022 LMPD detectives were conducting surveillance at a local convenience store when they observed a known convicted felon standing by the door of a car "with a handgun with an extended magazine in his front waistband." *Id.* at 7 (Page ID #499). He was with another individual later identified as Brown. *Id.* at 7–9 (Page ID #499–501). Brown then drove away in that car. *Id.* at 7–8 (Page ID #499–500). Detectives followed the vehicle and initiated a traffic stop "with lights and sirens for excessive window tinting," but the "vehicle failed to yield and accelerated at a high rate of speed in a residential neighborhood fleeing detectives." *Id.* at 8 (Page ID #500). Detective Pfeiffer thereafter determined that Brown was currently on probation. *Id.* at 9 (Page ID #501). He filed a criminal complaint warrant for Brown with charges for fleeing, wanton endangerment, excessive window tinting, and disregarding a stop sign. *Id.* at 7 (Page ID #499). The cell-phone search-warrant affidavit "certif[ied] that the Louisville Metro Police Department is conducting a criminal investigation as well as a fugitive investigation of a violent felony offender in connection with possible violations of weapon possession." *Id.* at 11 (Page ID #503).

Two days later, Detective Pfeiffer used the information obtained through the search warrant to follow Brown. R. 217 (Trial Tr. Vol. 4 at 87–89) (Page ID #2352–54). Detective Pfeiffer observed Brown conducting a "heat check," driving in a loop to determine whether he was being followed. *Id.* at 94–95 (Page ID #2359–60). Detective Pfeiffer also realized that Brown was being followed by another vehicle, the driver of which Detective Pfeiffer later determined was Axel Diaz-Hernandez. *Id.* at 92, 95 (Page ID #2357, 2360). Other officers tracked Brown and Diaz-Hernandez to a house in Louisville. R. 215 (Trial Tr. Vol. 2 at 24) (Page ID #2090). A woman arrived and handed Brown a white shopping bag. *Id.* at 29 (Page ID #2095). Brown and another individual, Clarence Stott, then sat in the front of the vehicle Brown had been driving "for an extended amount of time before exiting . . . with the white shopping bag." *Id.* The woman returned and handed Stott a vacuum-sealer box and vacuum bags. *Id.* at 30 (Page ID #2096). Brown, Stott, and Diaz-Hernandez then entered the house. *Id.* Some time later, Brown left in Stott's car, drove to an AutoZone, then returned to the house. *Id.* at 31 (Page ID #2097); R. 216 (Trial Tr. Vol. 3 at 27–29) (Page ID #2230–2232). He handed Diaz-Hernandez a small box, which Diaz-Hernandez took to the "driver rear side" of the car he had been driving. R. 215 (Trial Tr. Vol. 2 at 31) (Page ID #2097).

During surveillance, officers observed the three men "in and out of the rear hatch" of the car Diaz-Hernandez had been driving, as well as around the driver's side wheel well. *Id.* at 29 (Page ID #2095). Officers also observed, at some point during surveillance, that the driver's side rear wheel had been removed and was resting on the ground. R. 217 (Trial Tr. Vol. 4 at 65–66) (Page ID #2330–31). Diaz-Hernandez later left in that vehicle. R. 215 (Trial Tr. Vol. 2 at 32) (Page ID #2098). Detective Pfeiffer and others followed Diaz-Hernandez to the parking lot of a local hotel. R. 217 (Trial Tr. Vol. 4 at 99–100) (Page ID #2364–65). Officers observed Diaz-Hernandez taking items from the car he was driving and placing them in a pickup truck. *Id.* at 104 (Page ID #2369). He then sat in the truck. *Id.* at 100 (Page ID #2365). Officers spoke with Diaz-Hernandez and located a kilogram of cocaine in a Starbucks bag underneath the driver's seat of the truck. *Id.* at 103–04 (Page ID #2368–69); R. 215 (Trial Tr. Vol. 2 at 52–53) (Page ID #2118–19).

After towing the vehicle that Diaz-Hernandez had driven from the house to the hotel, officers conducted a search and located a hidden compartment in the driver's side rear wheel well that contained \$59,110 in cash in vacuum-sealed bags. R. 215 (Trial Tr. Vol. 2 at 84–86) (Page ID #2150–52); R. 217 (Trial Tr. Vol. 4 at 41–42) (Page ID #2306–07). The compartment had been sealed and disguised with a glue called J-B Weld. R. 172 (Diaz-Hernandez Test. at 24–25) (Page ID #1391–92). Officers also obtained a search warrant for the house. R. 215 (Trial Tr. Vol. 2 at

34) (Page ID #2100). During the search, officers located money counters, "a large amount of narcotics, a large amount of money, vacuum seals," bags, cell phones, and digital scales. *Id.* at 57 (Page ID #2123). The narcotics recovered from the house were later determined to be cocaine with a net weight of 6.9 kilograms.[1] *Id.* at 108 (Page ID #2174). Brown was arrested with $5,877 on his person. R. 217 (Trial Tr. Vol 4 at 40, 133) (Page ID #2305, 2398).

Several days after the house search, officers obtained receipts from AutoZone from the time period Brown had been observed there. R. 217 (Trial Tr. Vol. 4 at 141) (Page ID #2406). One receipt from that time showed a cash purchase of J-B Weld along with another glue that Diaz-Hernandez admitted having. *Id.* at 143–44 (Page ID #2408–09); R. 172 (Diaz-Hernandez Test. at 24–25) (Page ID #1391–92).

II. PROCEDURAL BACKGROUND

On October 4, 2022, Brown was indicted on one count of conspiracy to possess with intent to distribute five kilograms or more of a mixture and substance containing a detectable amount of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A)(ii)(II), and one count of possession with intent to distribute five kilograms or more of a mixture and substance containing a detectable amount of cocaine, in violation of 21 U.S.C. § 841(b)(1)(A)(ii)(II). R. 18 (Indictment at 1–2) (Page ID #29–30). Brown was arraigned and pleaded not guilty. R. 28 (Arraignment Order at 1) (Page ID #71).

The following July, Brown moved for a change of plea hearing and advised the court that the parties had reached a plea agreement. R. 55 (Mot. to Schedule Change of Plea Hr'g at 1) (Page ID #127). The Government then filed a superseding information charging Brown with the same

[1]Both the Plea Agreement PSR and the factual statement in Brown's proffered plea agreement state that eight kilograms were found in the house. R. 72 (Plea Agreement PSR at 5) (Page ID #242); R. 60 (Plea Agreement at 2) (Page ID #140).

two offenses, but for the amount of "500 grams or more" under 21 U.S.C. § 841(b)(1)(B)(ii)(II). R. 57 (Superseding Information at 1–2) (Page ID #129–30). Brown and the Government presented a plea agreement under Rule 11(c)(1)(C), pursuant to which Brown agreed to plead guilty to the charges in the superseding information in exchange for a stipulated sentence of 60 months' imprisonment. R. 60 (Plea Agreement at 1–5) (Page ID #139–43). The district court accepted Brown's guilty plea but deferred deciding whether to accept the plea agreement until after the presentence investigation report (PSR) was prepared. R. 59 (Order at 2) (Page ID #135). Using the 2021 Sentencing Guidelines Manual, the Plea Agreement PSR calculated Brown's total offense level as 27, criminal history category as VI, and corresponding Guidelines range as 130 to 162 months' imprisonment. R. 72 (Plea Agreement PSR at 6, 20, 25) (Page ID #243, 257, 262).[2] Neither party objected to the Plea Agreement PSR. R. 72-1 (Plea Agreement PSR Addendum at 1) (Page ID #267).

At sentencing, the district court rejected the plea agreement. R. 203 (Sent'g Hr'g Tr. at 11) (Page ID #1741); R. 83 (Mem. of Hr'g & Order at 1) (Page ID #299). The court explained that the parties had not provided adequate justification for such a large downward variance from the low end of the Guidelines range, 130 months, to the agreed-to 60 months. R. 203 (Sent'g Hr'g Tr. at 10–12) (Page ID #1740–42). The court set a status conference for several months later to allow Brown to consider how he would like to proceed. *Id.* at 12–14 (Page ID #1742–44). The parties then presented the court with another Rule 11(c)(1)(C) plea agreement that contained the same terms, but with a recommended sentence of 72 months' imprisonment. R. 205 (Status Hr'g Tr. at

[2]For clarity, we refer to the PSR prepared for the district court's consideration of the plea agreement, R. 72, as the "Plea Agreement PSR." Of course, after the district court rejected the plea agreement and Brown withdrew his guilty plea and went to trial, the Plea Agreement PSR was no longer relevant. A new PSR was prepared after Brown's jury conviction—that post-trial PSR is not implicated in this appeal.

7) (Page ID #1756). The district court again rejected the plea agreement for the same reasons as it had rejected the first. *Id.*

Brown withdrew his guilty plea and proceeded to a jury trial on the original indictment. R. 115 (Mem. of Hr'g & Order at 1) (Page ID #536) (noting Brown's guilty-plea withdrawal and setting the case for trial); R. 120 (Order at 1–2) (Page ID #550–51) (dismissing the superseding information). The jury returned a guilty verdict on both counts of the indictment, R. 167 (Verdict at 1–2) (Page ID #1361–62), and the district court sentenced Brown to 198 months' imprisonment to be followed by a six-year term of supervised release, R. 185 (J. at 1–2) (Page ID #1624–25).

III. PLEA AGREEMENT[3]

The parties disagree as to whether the district court's rejection of the plea agreement should be reviewed for abuse of discretion or for plain error. We need not decide because we conclude that the district court did not err under either standard of review. Federal Rule of Criminal Procedure 11(c)(1)(C) states that a defendant and the government may enter into a plea agreement that recommends a specific sentence or sentencing range. If the court accepts the plea agreement, it is bound by the recommendation. FED. R. CRIM. P. 11(c)(1)(C). When presented with such a plea agreement, a district "court may accept [it], reject it, or defer a decision until the court has reviewed the presentence report." FED. R. CRIM. P. 11(c)(3). In general, "[a]cceptance or rejection of a plea agreement is the prerogative . . . of the district court." *United States v. Yates*, 698 F.2d 828, 829 (6th Cir. 1983) (per curiam). A district court must, however, give a sound explanation for rejecting a plea agreement. *In re United States*, 32 F.4th 584, 594 (6th Cir. 2022).

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[3]Although Brown briefly references the second, 72-month plea agreement, D. 29 (Appellant Br. at 17), he focuses primarily on the first, 60-month agreement, *id.* at 17–27. He makes no particular argument as to the 72-month plea agreement. *Id.* We therefore follow his lead and address the 60-month plea agreement.

The district court provided a sufficient explanation in this case. As is the "preferred practice," *United States v. Cota-Luna*, 891 F.3d 639, 647 (6th Cir. 2018), the district court deferred its decision on the plea agreement until after the Plea Agreement PSR was prepared. R. 201 (Change of Plea Hr'g Tr. at 25, 27, 30) (Page ID #1714, 1716, 1719). The Plea Agreement PSR calculated Brown's Guidelines range as 130 to 162 months. R. 72 (Plea Agreement PSR at 25) (Page ID #262). Neither Brown nor the Government filed any objections to the Plea Agreement PSR, R. 72-1 (Plea Agreement PSR Addendum at 1) (Page ID #267), or raised any objections at the initial sentencing hearing, R. 203 (Sent'g Hr'g Tr. at 3–4) (Page ID #1733–34). At that sentencing hearing, the district court indicated that it did not feel it "ha[d] the information [it thought] necessary to justify" the 60-month sentence provided for in the plea agreement, given the low-end of the Guidelines range at 130 months. *Id.* at 4 (Page ID #1734).[4] After hearing argument from the parties, and having reviewed the sentencing memoranda, the district court concluded that a 60-month sentence was "insufficient" and "would not provide just punishment given the nature and circumstances of the offenses of conviction and given the history and characteristics of Mr. Brown." *Id.* at 10 (Page ID #1740). The district court highlighted Brown's criminal history, recounting past convictions. *Id.* at 10–11 (Page ID #1740–41).

The district court's reliance on the wide disparity between the agreed-to 60-month sentence and the Guidelines range, as well as the failure of the 60-month sentence to reflect the seriousness of Brown's offenses and criminal history constituted a sound explanation for the court's rejection of the plea agreement. It is inarguable that there is quite a bit of daylight between 60 months and 130 months, and it was within the district court's discretion to conclude that, in these

[4]Ahead of the hearing, the district court had given notice on the docket that "it may reject the parties' Rule 11(c)(1)(C) plea agreement." R. 73 (Notice) (Page ID #268).

circumstances, a 60-month sentence would not adequately capture the seriousness of Brown's offense. *See In re United States*, 32 F.4th at 594 (noting that we have previously held that a district court may reject a plea agreement when "the agreement does not adequately reflect the seriousness of the offense" (citing *United States v. Doggart*, 947 F.3d 879, 882 (6th Cir. 2020))); *United States v. Lanier*, No. 25-3059, 2025 WL 3244491, at *3 (6th Cir. Nov. 20, 2025). In reaching that conclusion, the district court fulfilled its "independent obligation to ensure that" the plea agreement "stipulate[s] to an appropriate sentence within the applicable Guideline range, or else justify any departure from the Guidelines." *United States v. George*, 804 F. App'x 358, 362 (6th Cir. 2020) (quoting *United States v. Sabit*, 797 F. App'x 218, 221–22 (6th Cir. 2019)); *see also* U.S.S.G. § 6B1.2(c) (U.S. SENT'G COMM'N 2021). We therefore discern no error in the district court's rejection of the plea agreement.

Brown's argument that the district court improperly relied on a Guidelines range calculated using the wrong drug amount is unavailing. Brown complains that the Plea Agreement PSR's Guidelines calculation "was based on a quantity of five kilograms or more of cocaine, which in turn was based on the original indictment—even though that indictment had been replaced with a superseding information charging Brown with possession of 500 grams or more rather than five kilograms or more." D. 29 (Appellant Br. at 24). Brown is mistaken in several respects. First, the Plea Agreement PSR was not "based on" the original indictment (which charged violations of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(**A**)), but rather accurately reported the relevant offenses as conspiracy to distribute and possession with intent to distribute in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(**B**), as charged in the superseding information. *Compare* R. 72 (Plea Agreement PSR at 1) (Page ID #238), *with* R. 57 (Superseding Information at 1–2) (Page ID #129–30).

Second, and more to the point, the Plea Agreement PSR correctly determined drug quantity based on Brown's "relevant conduct," pursuant to the Guidelines. "In order to determine the base offense level for sentencing purposes, the district court must determine the quantity of drugs for which a defendant is responsible." *United States v. Sengmany*, 590 F. App'x 494, 497 (6th Cir. 2014); *see* U.S.S.G. § 2D1.1(a)(5) (stating that the base offense level is that specified in the Drug Quantity Table). As with all crimes, the offense level is determined by Brown's "relevant conduct." *See United States v. Knipp*, 138 F.4th 429, 437 (6th Cir. 2025). The drug quantity attributed to a defendant must be supported by a preponderance of the evidence. *See United States v. Gardner*, 32 F.4th 504, 524 (6th Cir. 2022). Here, the PSR attributed to Brown a quantity of 11.58 kilograms of cocaine, comprised of one kilogram located in the truck, eight kilograms located in the house, and 2.58 kilograms converted from seized cash. R. 72 (Plea Agreement PSR at 5) (Page ID #242); *see United States v. Russell*, 595 F.3d 633, 646 (6th Cir. 2010) ("Seized funds can be converted into an equivalent amount of drugs."). Thus, a preponderance of the evidence supported the PSR's drug-quantity calculation, which was appropriately used to determine Brown's offense level.

In sum, contrary to Brown's argument, the district court did not rely on an improperly calculated Guidelines range when rejecting the plea agreement. The district court did not err in rejecting the plea agreement.

We observe that this result is in some ways harsh. With Brown citing his mitigating characteristics, including childhood abuse and extreme childhood disadvantage, R. 203 (Sent'g Hr'g Tr. at 9–10) (Page ID #1739–40), the parties initially took the position that the 18 U.S.C. § 3553(a) factors supported a 60-month sentence. Then, with full information about Brown's criminal history, the parties agreed that a 72-month sentence was appropriate. Yet the district court rejected the parties' positions both times, and after all was said and done, the district court sentenced Brown to 198 months: over ten years above the Government's initial recommendations. Nevertheless, on this record, we cannot say that the district court abused its discretion.

IV. *FRANKS* HEARING

Brown argues that the district court erred by refusing to hold a hearing under *Franks v. Delaware*, 438 U.S. 154 (1978), on Brown's motion to suppress related to the phone-tracking warrant. With respect to the denial of a *Franks* hearing, we review the district court's findings of fact for clear error and questions of law de novo. *United States v. Poulson*, 655 F.3d 492, 503 (6th Cir. 2011). To be entitled to a *Franks* hearing a defendant must "make[] a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and . . . the allegedly false statement is necessary to the finding of probable cause." *Franks*, 438 U.S. at 155–56. The burden a defendant faces is "high." *United States v. Reed*, 163 F.4th 338, 355 (6th Cir. 2025). The defendant "should specify the portions of the warrant he claims are false, state the reasons for that claim, and either provide reliable witness statements or explain their absence." *Id.*

Brown failed to make the requisite showing, and the district court did not err in declining to hold a *Franks* hearing. Brown takes issue with the statement in the affidavit that "the Louisville Metro Police Department is conducting a criminal investigation as well as a *fugitive* investigation of a violent felony offender in connection with possible violations of weapon possession." R. 109-1 (Warrant Affidavit at 11) (Page ID #503) (emphasis added). Brown claims that he was not a "fugitive" "[u]nder any prevailing definition." D. 29 (Appellant Br. at 31). His argument falls flat. Even assuming *arguendo* that the affidavit's statement regarding a "fugitive investigation" was false, Brown offered no evidence either before the trial court or here that the affiant included the false statement "knowingly and intentionally, or with reckless disregard for the truth." *Franks*, 438 U.S. at 155; *see, e.g.*, *United States v. Bateman*, 945 F.3d 997, 1010 (6th Cir. 2019); *Reed*, 163 F.4th at 355; *see also* R. 112 (Order Denying Mot. to Suppress at 8) (Page ID #531) ("Brown has not provided evidence to support his conclusory allegations that [the affiant]'s statements were false."). The district court, therefore, did not err in declining to hold a *Franks* hearing.

V. AUTOZONE RECEIPT

Finally, Brown argues that the district court erroneously admitted without proper authentication the AutoZone receipt. Specifically, Brown argues that (1) the Government failed to provide the notice required by Rule 902(11), and (2) because the receipt was not self-authenticating, the Government needed to authenticate it through a live witness, which it failed to do because Detective Pfeiffer was not qualified under Rule 803(6)(D). We "review[] evidentiary rulings for abuse of discretion." *United States v. Ramer*, 883 F.3d 659, 669 (6th Cir. 2018). Federal Rule of Evidence 902 provides that certain categories of "evidence are self-authenticating" and "require no extrinsic evidence of authenticity in order to be admitted." Self-authenticating evidence includes domestic records that are "certifi[ed]" as meeting the requirements of Rule 803(6)(A)–(C) by "the custodian or another qualified person." FED. R. EVID. 902(11). In order to come within this subsection, "[b]efore the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them." *Id.*

At trial, Brown objected that the AutoZone receipt was not "self-authenticating under Rule 902." R. 217 (Trial Tr. Vol. 4 at 120) (Page ID #2385). The Government responded that it had "receive[d] a certification from AutoZone that [the receipts] are a business record" and had "provided" the certification "to defense counsel." *Id.* at 121 (Page ID #2386). The district court asked the Government whether it "gave the defense notice of your intent to admit this record under Rule 902(11) pretrial," to which the Government replied that it had "tendered it in discovery" and listed it in its exhibit list, but it "didn't provide any additional notice." *Id.* at 122 (Page ID #2387). Brown's counsel "acknowledge[d] that they sent all that to [him]." *Id.*[5] Brown's counsel explained that he "assumed one of [the Government's] witnesses would be somebody from AutoZone." *Id.* at 126 (Page ID #2391). After some back and forth, the district court overruled the objection and admitted the receipt and certification. *Id.* at 140–41 (Page ID #2405–06) (district court stating that the exhibit "qualifies" and "[t]he certificate of business record is sufficient").

On appeal, Brown does *not* argue that the certification substantively failed to comply with Rule 803(6). Rather, he takes issue only with the alleged lack of notice as required under Rule 902(11). Caselaw addressing Rule 902(11) in this circuit is extremely sparse, but we have not previously taken an overly restrictive approach to compliance with the rule's notice requirement. In *United States v. Jordan*, the defendant (representing himself *pro se*) objected at trial that he had received notice from the government under Rule 902(11) for records corresponding to one phone number, but had received no records for that number and instead received records for a different phone number. 544 F.3d 656, 669 (6th Cir. 2008). The district court attributed the mistake to a

[5]Context makes clear that defense counsel was referring to both the receipt itself and the certification:

> [DEFENSE COUNSEL]: Judge, I would acknowledge that they sent all that to me.
> THE COURT: I didn't hear that.
> [DEFENSE COUNSEL]: That I would acknowledge they sent those forms to me.
> THE COURT: You got this?
> [DEFENSE COUNSEL]: I did.
> THE COURT: I have 27A and 27B.
> [DEFENSE COUNSEL]: Yes, sir.

R. 217 (Trial Tr. Vol. 4 at 122) (Page ID #2387). Exhibit 27A is the certification and exhibit 27B is the receipt.

typographical error and ordered the government to file a corrected notice, which it did, and served such notice on the defendant the following day. *Id.* We concluded that the district court did not abuse its discretion "in dealing with th[at] matter." *Id.* at 669–70.

Despite that the provided notice was certainly less than ideal in this case, we conclude that the district court did not abuse its discretion by admitting the AutoZone receipt. The day before trial, the Government filed an amended exhibit list that listed number 27A, "Certification for Auto Zone Receipt," and number 27B, "Certified Auto Zone Receipt." R. 144 (Am. Ex. List at 2–3) (Page ID #1103–04). At trial, defense counsel acknowledged having received both exhibits 27A and 27B. R. 217 (Trial Tr. Vol. 4 at 122) (Page ID #2387). Thus, although the Government did not provide a separate "notice" document, the tendering of the certification itself, which referenced Rule 902(11) in its title, *see* D. 30 (Appellee Br. at 23), provided adequate *actual* notice. *See United States v. Komasa*, 767 F.3d 151, 155–56 (2d Cir. 2014) (concluding that actual notice sufficed). In the circumstances of this case, such notice was sufficient to comply with Rule 902(11). Again, Brown does not argue that the certification failed to meet the strictures of Rule 902(11) in any respect other than notice. We conclude, therefore, that the district court did not abuse its discretion in admitting the receipt as self-authenticating under Rule 902(11).

Because the receipt was self-authenticating under Rule 902(11), it did not need to be authenticated by a live witness under Rule 803(6)(D). Whether or not Detective Pfeiffer could be considered a proper "custodian or []other qualified witness" to authenticate the receipt under that rule is therefore irrelevant.

VI. CONCLUSION

The district court did not err in rejecting the plea agreement, refusing to hold a *Franks* hearing, or admitting the AutoZone receipt as self-authenticating evidence. Accordingly, we **AFFIRM** the judgment of the district court.

APPENDIX B

No. 24-6072

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 12, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. REGINALD DEWAYNE BROWN, Defendant-Appellant.	)	O R D E R

BEFORE: SILER, MOORE, and BLOOMEKATZ, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v. Criminal Action No. 3:22-cr-123-DJH-2

REGINALD DEWAYNE BROWN, Defendant.

* * * * *

MEMORANDUM OF HEARING AND ORDER

This matter came before the Court for a sentencing hearing on November 27, 2023, with the following counsel participating:

For the United States: Alicia P. Gomez

For Defendant: John Casey McCall
Rob Eggert

The defendant was present. On the record in open court, the Court informed the parties that it rejected their Rule 11(c)(1)(C) plea agreement and advised the defendant of his rights and options pursuant to Federal Rule of Criminal Procedure 11(c)(5). The Court concluded that the disparity is too great between the agreed-upon sentence and the range recommended by the sentencing guidelines. Based on the discussion during the hearing, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) This matter is **SET** for a status hearing on **January 18, 2024, at 9:30 a.m.** at the U.S. Courthouse in Louisville, Kentucky. At that hearing, the defendant shall inform the Court whether he wishes to withdraw his previously entered plea and proceed to trial, or proceed to sentencing.

(2) Pursuant to 18 U.S.C. § 3161(h)(7)(A), (h)(7)(B)(i), (h)(7)(B)(ii), and (h)(7)(B)(iv), the Court finds that **the period of delay from November 27, 2023, to January 18, 2024, is excludable in computing the time within which the trial must commence under the Speedy Trial Act**. The Court finds that the ends of justice served by this delay outweigh the best interests of the public and the defendant in a speedy trial because the defendant and his counsel would otherwise be denied the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. *See* § 3161(h)(7)(B)(iv); *Zedner v. United States*, 547 U.S. 489 (2006). This delay is not due to "general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government." § 3161(h)(7)(C).

November 27, 2023

David J. Hale, Judge
United States District Court

Court Time: 00/25
Court Reporter: Dena Legg

 APPENDIX D

United States District Court

Western District of Kentucky

LOUISVILLE DIVISION

UNITED STATES OF AMERICA
V.
Reginald DeWayne Brown

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:22-CR-123-2-DJH
US Marshal No: 16264-033
Counsel for Defendant: **John Casey McCall, Retained**
Counsel for the United States: **Alicia Gomez and Marisa Ford, Asst. U. S. Attys**
Court Reporter: **Dena Legg**

THE DEFENDANT:

☐ Pursuant to plea agreement

☐ Pleaded guilty to count(s)

☐ Pleaded nolo contendere to count(s) which was accepted by the court.

☒ **Was found guilty August 16, 2024, on counts 1 and 2 of the Indictment after a plea of not guilty.**

ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offense(s):

Title / Section and Nature of Offense	Date Offense Concluded	Count

FOR CONVICTION OFFENSE(S) DETAIL - SEE COUNTS OF CONVICTION ON PAGE 2

The defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) (Is) (are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and the United States Attorney of any material change in the defendant's economic circumstances.

11/18/2024
Date of Imposition of Judgment

David J. Hale, Judge
United States District Court

November 18, 2024

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

COUNTS OF CONVICTION

Title / Section and Nature of Offense	Date Offense Concluded	Count
21:846, 841(a)(1) and 841(b)(1)(B)(ii)(II) CONSPIRACY TO DISTRIBUTE CONTROLLED SUBSTANCE	9/22/2022	1s
21:841(b)(1)(B)(ii)(II) and Title 18 POSSESSION WITH INTENT TO DISTRIBUTE CONTROLLED SUBSTANCE	9/23/2022	2s

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for terms of **198 months as to each of Counts 1 and 2 of the Indictment which shall run concurrently for a TOTAL TERM of 198 months.**

☒ **The Court makes the following recommendations to the Bureau of Prisons, in order of priority: 1) That the Defendant be evaluated for participation in the Residential Drug Abuse Program or any appropriate substance abuse program; 2) That the Defendant be housed in a facility as close as possible to his family in Louisville, Kentucky; and 3) That the Defendant be evaluated for placement in any available educational or vocational training.**

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

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

- ☐ at A.M. / P.M. on
- ☐ as notified by the United States Marshal.

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

- ☐ Before 2:00 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.
- ☐ The defendant shall continue under the terms and conditions of his/her present bond pending surrender to the institution.

RETURN

I have executed this judgment as follows:

____

____

____

Defendant delivered on _________________ To ______________________________

at ____________________________ , with a certified copy of this judgment.

____
UNITED STATES MARSHAL

By ____________________________
Deputy U.S. Marshal

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for terms of **6 years as to each of Counts 1 and 2 of the Indictment which shall run concurrently for a total term of 6 years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. ☒ **You must cooperate in the collection of DNA as directed by the probation officer.**
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense.
7. ☐ You must participate in an approved program for domestic violence.

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

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the U.S. Probation Office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

SPECIAL CONDITIONS OF SUPERVISION

14. The defendant shall participate in a substance abuse treatment program as approved by the U.S. Probation Office and follow the rules and regulations of the program. The defendant shall contribute to the Probation Office's cost of services rendered based upon his ability to pay as reflected in his monthly cash flow as it relates to the court-approved sliding fee scale.
15. The defendant shall submit to testing to determine if he has used a prohibited substance. The defendant shall contribute to the Probation Office’s cost of services rendered based upon his ability to pay as it relates to the court approved sliding fee scale. The defendant must not attempt to obstruct or tamper with testing methods.
16. The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers [as defined in 18 USC 1030(e)(1)], other electronic communications or data storage devices or media, or office to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

U.S. Probation Office Use Only

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

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant	Date
U.S. Probation Officer/Designated Witness	Date

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	**$ 200.00**		

☒ **The fine and the costs of investigation, prosecution, incarceration and supervision are waived due to the defendant's inability to pay.**

☐ The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ **Restitution is not an issue in this case.**

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

Criminal debt may be paid by check or money order or may be paid online at www.kywd.uscourts.gov (See Online Payments for Criminal Debt). Your mail-in or online payment must include your case number in the exact format of DKYW322CR000123-003 to ensure proper application to your criminal monetary penalty. If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	**** Total Amount of Loss**	**Amount of Restitution Ordered**	**Priority Order Or Percentage Of Payment**

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

☐ The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. 3612(f). All of the payment options on Sheet 5, Part B may be Subject to penalties for default and delinquency pursuant to 18 U.S.C. 3612(g).

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

☐ The interest requirement is waived for the ☐ Fine and/or ☐ Restitution

☐ The interest requirement for the ☐ Fine and/or ☐ Restitution is modified as follows:

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

DEFENDANT: **Brown, Reginald DeWayne**
CASE NUMBER: **3:22-CR-123-2-DJH**

SCHEDULE OF PAYMENTS

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

A ☒ **Lump sum payment of $200 Due immediately, balance due**

☐ not later than , or

☒ **in accordance with C, D, or E below); or**

B ☐ Payment to begin immediately (may be combined with C, D, or E below); or

C ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of $
Over a period of (E.g. months or years) year(s) to commence (E.g., 30 or 60 days)
after The date of this judgment, or

D ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of $
Over a period of (E.g. months or years) year(s) to commence (E.g., 30 or 60 days)
after Release from imprisonment to a term of supervision; or

E ☒ **Special instructions regarding the payment of criminal monetary penalties:**

Any balance of criminal monetary penalties owed upon incarceration shall be paid in quarterly installments of at least $25 based on earnings from an institution job and/or community resources (other than Federal Prison Industries), or quarterly installments of at least $60 based on earnings from a job in Federal Prison Industries and/or community resources, during the period of incarceration to commence upon arrival at the designated facility.

Upon commencement of the term of supervised release, the probation officer shall review your financial circumstances and recommend a payment schedule on any outstanding balance for approval by the court. Within the first 60 days of release, the probation officer shall submit a recommendation to the court for a payment schedule, for which the court shall retain final approval.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the United States District Court, Gene Snyder Courthouse, 601 West Broadway, Suite 106, Louisville, KY 40202, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ **The defendant shall forfeit the defendant's interest in the following property to the United States: Forfeiture shall be addressed by further order of the Court.**

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

CONSTITUTIONAL, STATUTORY, AND GUIDELINES PROVISIONS INVOLVED

U.S. Const. art. II, § 3 provides in relevant part:

. . . he shall take Care that the Laws be faithfully executed . . . .

Federal Rule of Criminal Procedure 11(c) provides:

(c) Plea Agreement Procedure.

(1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:
(A) not bring, or will move to dismiss, other charges;
(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) Disclosing a Plea Agreement. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) Judicial Consideration of a Plea Agreement. (A)To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. (B)To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) Accepting a Plea Agreement. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) Rejecting a Plea Agreement. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):
(A) inform the parties that the court rejects the plea agreement;
(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and
(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

21 U.S.C. § 841(b)(1) provides in relevant part:

(b) Penalties. Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving— . . . (ii) 5 kilograms or more of a mixture or substance containing a detectable amount of— . . . (II) cocaine, its salts, optical and geometric isomers, and salts of isomers . . . such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life . . . .

(B) In the case of a violation of subsection (a) of this section involving— . . . (ii) 500 grams or more of a mixture or substance containing a detectable amount of— . . . (II) cocaine, its salts, optical and geometric isomers, and salts of isomers . . . such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years . . . .

United States Sentencing Guidelines § 6B1.2 (Policy Statement) provides:

§6B1.2. Standards for Acceptance of Plea Agreements (Policy Statement)

(a) In the case of a plea agreement that includes the dismissal of any charges or an agreement not to pursue potential charges (Rule 11(c)(1)(A)), the court may accept the agreement if the court determines, for reasons stated on the record, that the remaining charges adequately reflect the serious- ness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing or the sentencing guidelines.

However, a plea agreement that includes the dismissal of a charge or a plea agreement not to pursue a potential charge shall not preclude the con- duct underlying such charge from being considered under the provisions of §1B1.3 (Relevant Conduct) in connection with the count(s) of which the defendant is convicted.

(b) In the case of a plea agreement that includes a nonbinding recommenda- tion (Rule 11(c)(1)(B)), the court may accept the recommendation if the court is satisfied either that:

(1) the recommended sentence is within the applicable guideline range; or

(2) (A) the recommended sentence is outside the applicable guideline range for justifiable reasons; and (B) those reasons are set forth with specificity in the statement of reasons form.

(c) In the case of a plea agreement that includes a specific sentence (Rule 11(c)(1)(C)), the court may accept the agreement if the court is satis- fied either that:

(1) the agreed sentence is within the applicable guideline range; or

(2) (A) the agreed sentence is outside the applicable guideline range for justifiable reasons; and (B) those reasons are set forth with specificity in the statement of reasons form.

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,	)	Case No. 3:22-CR-00123-DJH
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
REGINALD DEWAYNE BROWN,	)	
	)	November 27, 2023
Defendant.	)	Louisville, Kentucky

* * * * *

TRANSCRIPT OF SENTENCING
BEFORE HONORABLE DAVID J. HALE
UNITED STATES DISTRICT JUDGE

* * * * *

APPEARANCES:

For United States:	Alicia P. Gomez U.S. Attorney's Office 717 West Broadway Louisville, KY 40202
For Defendant:	Rob Eggert 600 West Main Street, Suite 100 Louisville, KY 40202
	John Casey McCall 600 West Main Street, Suite 300 Louisville, KY 40202

[Defendant present.]

Dena Legg, RDR, CRR, CCR-KY
Official Court Reporter
208 U.S. Courthouse
Louisville, KY 40202
(502) 625-3778

Proceedings recorded by certified stenographer, transcript produced by computer.

THE COURT: I will then note for the record that I will adopt the PSR without objection. It will be filed in the record under seal. In the event of an appeal, of course, the parties, Court, and counsel will have access to it.

Now, in the absence of objections to take up, I think -- well, let me ask if there are any motions.

MS. GOMEZ: No, Your Honor.

THE COURT: Let's then get to the heart of the matter here, which is that the parties' (C) plea calls for a sentence of 60 months. The guidelines recommend a low end sentence of 130 months.

Mr. McCall, I'm -- I went into this open-minded. I'm just not seeing here in the record that is provided to me -- whether it be from the information gleaned at the change of plea hearing, the information contained in the PSR, which is substantial, or what was provided in the parties' sentencing memoranda, I just don't have the information I think necessary to justify a sentence at this level. So I'm open.

MR. MCCALL: Sure, Judge.

THE COURT: I'm open to hearing further argument.

MR. MCCALL: Judge, we did underestimate what his criminal history was gonna be, and that was in our memorandum last week. There's a huge disparity between Criminal History I and Criminal History VI at a level 27. It's seven months or it's on the low end at -- at VI it's 130 months. So that is a

Mr. Brown's change of plea hearing. As I indicated at the outset, I studied the PSR to include those facts that Mr. Eggert just underscored.

The guidelines here, as we discussed, recommend a sentence of between 130 and 162 months. I have reviewed carefully the sentencing memoranda of counsel. I have now considered the additional arguments of counsel, and I reach the conclusion that the agreed upon sentence of 60 months is inefficient -- I'm sorry -- is insufficient in this case and would not provide just punishment given the nature and circumstances of the offenses of conviction and given the history and characteristics of Mr. Brown.

I'll highlight a couple of sticking points for me here. Mr. Brown's criminal history is troubling. It is no doubt true, as I just acknowledged and as Mr. Eggert argued, that his -- that his very troubling childhood contributed to poor decision-making into his adulthood.

He is a Criminal History Category VI. That was not anticipated by counsel. His convictions include wanton endangerment first degree paragraphs 59 and 68, multiple convictions for possession of cocaine, a domestic violence conviction as noted in paragraph 63, another conviction involving a domestic incident with a gun in paragraph 67, and multiple firearms-related convictions, the last as we've discussed here in this court involving the sale of heroin and a firearm. And as I noted earlier, in that case Mr. Brown received a modest sentence of 30 months but then had his supervised release revoked, and he was returned to prison for eight more months.

In light of these observations and conclusions, I reject the parties' (C) plea agreement and further conclude that a sentence of 60 months would not properly reflect the seriousness of these offenses. The disparity between the agreed upon sentence and the guideline recommended sentence is not justified here.

Mr. Brown, under the rules I must advise you personally now, as we discussed during your change of plea hearing, that I am not required to accept your (C) plea agreement. Also, Mr. Brown, having now rejected the (C) plea agreement, you will be given an opportunity to withdraw your guilty plea. That decision does not need to be made today. I'll talk with your lawyers in just a minute about a time frame for going forward.

And, Mr. Brown, please understand that if your guilty plea is not withdrawn, I may dispose of this case -- that is, I may ultimately sentence you in a manner less favorably than your plea agreement contemplated.

I also want to point out to counsel that I am not sending any hidden messages here. I simply cannot agree that 60 months is appropriate in this case. But as I acknowledged with Mr. Eggert as to his arguments -- or his pointing out the circumstance and the history and characteristics of Mr. Brown may very well justify a substantial downward variance, I cannot agree that that alone justifies a variance from 130 to 60.

Any questions about next steps here?

To your point, Mr. McCall, about the few number of (C) pleas, I have only rejected a few (C) pleas in all of the time that I've been on the bench. In each case, after discharging the responsibilities imposed by the rule, I have given the parties some time to confer and time for the defendant to consider his or her options under the rule, which one option would be to withdraw the guilty plea and again enter a plea of not guilty, set the matter for trial. Another would be to leave in place the guilty plea and submit another plea agreement.

It does not matter to me. I'm not advocating for either one. I'm simply listing the option. In either case, it seems to me the most orderly thing to do would be to give you-all some time. So I'm happy to include in the order that follows our hearing here, after noting that I complied with the rule and informed Mr. Brown that I was rejecting the (C) plea, to give you-all a set period of time as agreed to determine next steps. How much time would you like?

MR. MCCALL: I would ask for middle of January, Judge. I'm starting a trial the first week with Judge Bunning in Ashland, but it's only a three-day trial. But after that -- that will give us some time. I have a number of sentencings and pleas the next couple of weeks. We've waived whatever speedy

APPENDIX G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA,) Case No. 3:22-CR-00123-DJH
)
Plaintiff,)
)
v.)
)
REGINALD DEWAYNE BROWN,)
) February 1, 2024
Defendant.) Louisville, Kentucky

* * * * *

TRANSCRIPT OF STATUS HEARING
BEFORE HONORABLE DAVID J. HALE
UNITED STATES DISTRICT JUDGE

* * * * *

APPEARANCES:

For United States: Alicia P. Gomez
U.S. Attorney's Office
717 West Broadway
Louisville, KY 40202

For Defendant: John Casey McCall
600 West Main Street, Suite 300
Louisville, KY 40202

[Defendant present.]

Dena Legg, RDR, CRR, CCR-KY
Official Court Reporter
208 U.S. Courthouse
Louisville, KY 40202
(502) 625-3778

Proceedings recorded by certified stenographer, transcript produced by computer.

to hear it.

MR. MCCALL: No, sir.

THE COURT: Mr. Brown, we went through this a few weeks ago. And so what I have to tell you now pursuant to Rule 11 is probably already familiar, but I need to formally tell you that I am not required to accept your (C) plea agreement. And I am, in fact, going to reject the agreed upon sentence of 72 months contained in your revised plea agreement.

Having now rejected the (C) plea agreement, Mr. Brown, you will be given an opportunity, after you have a chance to confer with Mr. McCall, to withdraw your guilty plea. And you need to understand that if your guilty plea is not withdrawn, I may dispose of this case -- that is sentence you in a manner less favorably than your current plea agreement contemplates.

Now, having discharged the requirements of Rule 11, what would the parties prefer? We can set a telephonic status conference in a week or so and give you-all some time for initial discussion, or if you -- if at that time you wish to ask for a trial date, we can do that.

MR. MCCALL: We would ask for a couple weeks, Your Honor.

THE COURT: Let's find a date for a telephonic status conference. And I will enter a memorandum of hearing and order that indicates we went back on the record in the sentencing hearing, and we'll largely repeat what was included in the last