

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Crim. No. 12-233 (DWF/TNL)

Plaintiff,

v.

**UNITED STATES'
SENTENCING MEMORANDUM**

CHRISTOPHER SEAN DANIELS,

Defendant.

The United States of America, by and through its attorneys, B. Todd Jones, United States Attorney for the District of Minnesota, and John E. Kokkinen and Julie E. Allyn, Assistant United States Attorneys, respectfully submits this memorandum detailing the Government's sentencing position.

I. INTRODUCTION

On April 10, 2013, a jury found Defendant guilty of the crime of being a felon in possession of a firearm. Following the guilty verdict, the U.S. Probation Office prepared a Presentence Investigation Report ("PSR"). The PSR provides an accurate summary of the offense conduct (PSR ¶¶ 4-13), and it accurately calculates Defendant's offense level (*id.* ¶¶ 15-28) and criminal history category. (PSR ¶¶ 4-13, 15-67). Specifically, the PSR correctly determines that Defendant is an Armed Career Criminal pursuant to Title 18, United States Code, Section 924(e), that his total offense level is 34, and that his criminal history category is a VI, resulting in a 180-month mandatory minimum sentence and a Guidelines range of 262-327 months' imprisonment. (*Id.* ¶¶ 28, 67, 121-122).

The Government is requesting a sentence of 300 months. Defendant's lengthy criminal history shows he is a recidivist who has no regard for the rule of law and poses a significant danger to the community. His criminal history includes crimes involving drug distribution, illegal possession of firearms, and violent crimes such as assault with a firearm or other dangerous weapon, assault on emergency personnel, fleeing police officers, and domestic violence. He has had multiple jail or prison sentences imposed and he has violated probation or supervised release on numerous occasions. In addition, he has been charged, though not convicted, on more than twenty other occasions for, among other things, six separate instances involving allegations of felony assaults or batteries. The conduct underlying the instant offense is yet another example in that long line of volatile and violent criminal conduct. A long prison sentence in the upper half of the Guidelines range *might be successful* in deterring Defendant from future criminal conduct, and it most assuredly *will be successful* in protecting the public from future crimes of Defendant.

II. FACTS

On the evening of September 3, 2012, St. Paul Police officers were dispatched to a residence on 7th Street East in St. Paul, Minnesota, to respond to multiple 911 calls reporting that a gun had been fired. (PSR ¶ 5.) One 911 caller reported that the person who fired the gun fled in a silver Grand Prix. (*Id.*) When officers arrived at the scene, they found a nine millimeter shell casing on the street in front of the residence. (*Id.* ¶ 7.)

Officers learned that a woman, later identified as Jamillia Hudson, Defendant's girlfriend, had gotten into a fight with two other women. (*Id.* ¶ 6.) Defendant and

Hudson then left the residence, but they returned a short time later in a silver Pontiac Grand Prix. (*Id.*) When they returned, some women (although not the same women who had fought with Hudson) were on the stoop in front of the residence on 7th Street East. (*Id.*)

One woman in that group was Ariole Charleston. Ms. Charleston testified at trial, in vivid detail, about Defendant's volatile, violent conduct that evening. Defendant approached the women, pointed a gun in Ms. Charleston's face, and numerous times threatened to "blow her fucking face off!" Ms. Charleston and the other women, which included Hudson's mother, all tried to tell Defendant that Ms. Charleston was not with the two women who had been involved in the fight with Defendant and Hudson. Defendant, however, could not be calmed down and instead continued to point the gun at Ms. Charleston while threatening her. As Defendant was threatening Ms. Charleston with a gun in her face, Ms. Charleston's brother, apparently having heard yelling, began walking from a nearby parking lot toward the stoop. As he came around the corner of the building, he asked what was going on, and Defendant pointed the gun in the direction of the brother and fired a shot. (*Id.*) Defendant and Hudson then got into the silver Grand Prix and fled.

Officers were able to determine that Hudson lived a short distance away on Conway Street and that a silver Grand Prix was registered in her name. Officers drove to Hudson's address, and when they arrived, they saw the silver Grand Prix parked in front. Ultimately, officers ordered everyone out of the house, and they arrested Defendant after he exited the house. (*Id.* ¶ 9.)

Officers then obtained and executed a search warrant for the residence on Conway Street. (*Id.*) In the basement, they found a blue hooded sweatshirt tucked into a laundry chute. Wrapped inside the sweatshirt was a plastic bag containing a Smith and Wesson, Model M&P, nine millimeter pistol, bearing serial number DTS3950, and a magazine containing twelve rounds of nine millimeter ammunition matching the shell casing recovered from the address on 7th Street East. (*Id.*)

St. Paul Police officers interviewed Defendant, who waived his *Miranda* rights, both orally and in writing. The audio recording of that interview was played for the jury. In the approximately thirty-minute interview, Defendant admitted he possessed and fired the gun at the address on 7th Street East on the evening of September 3, 2012. (*Id.* ¶ 11.)

III. ARGUMENT

In *Gall v. United States*, the Supreme Court set forth the appropriate sentencing methodology: the district court calculates the advisory Guidelines range and, after hearing from the parties, considers the 18 U.S.C. § 3553(a) factors to determine an appropriate sentence. 552 U.S. 38, 49-50 (2007). Section 3553(a) requires the Court to analyze a number of factors, including, the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide punishment for the offense, afford adequate deterrence to criminal conduct, and protect the public from further crimes of the defendant; and the need to avoid unwarranted sentence disparities

among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. § 3553(a).

A. Defendant is an Armed Career Criminal.

The Armed Career Criminal Act (“ACCA”), Title 18, United States Code, Section 924(e), provides that in the case of a person who violates 18 U.S.C. § 922(g)—felon in possession of a firearm—and who has three prior convictions for “a violent felony or a serious drug offense, or both, committed on occasions different from one another, . . . shall be . . . imprisoned not less than fifteen years.” The term “serious drug offense” is defined in Section 924(e) as including an offense under state law that involves the manufacturing, distribution, or possession with intent to manufacture or distribute, a controlled substance, for which a maximum term of imprisonment of ten years or more is prescribed by law. 18 U.S.C. § 924(e)(2)(A)(ii). The term “violent felony” is defined as including “any crime punishable by imprisonment for a term exceeding one year . . . that has as an element the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i). A defendant who is subject to the enhanced sentence under the provisions of Section 924(e) is deemed “an armed career criminal” under the Sentencing Guidelines. U.S.S.G. § 4B1.4(a).

It appears Defendant does not dispute the PSR’s conclusion that his criminal history includes at least three prior convictions that qualify him as an Armed Career Criminal. (PSR ¶ 28.) Defendant’s criminal history includes one “serious drug offense.” He was convicted on July 24, 1997, for delivery of a controlled substance in violation of Ill. Stat. § 507/401(d). (PSR ¶ 35.) At the time of that conviction, Defendant had a prior

conviction (July 18, 1995) under the same provision of the Illinois Controlled Substances Act. (PSR ¶ 34.) The prior 1995 conviction resulted in the seven-year statutory maximum being doubled to fourteen years on the 1997 conviction. *See* Ill. Stat. § 570/408(a); (PSR ¶ 35.) Thus, the 1997 conviction for delivery of a controlled substances qualifies as a serious drug offense under Section 924(e)(2)(A)(ii) because it involved the distribution of a controlled substance and carried a maximum term of imprisonment of ten years or more. *See United States v. Perkins*, 449 F.3d 794, 795-97 (concluding that a second or subsequent conviction under section 507/401(d) is a serious drug offense under the ACCA because of the doubling of the statutory maximum).

Defendant's two convictions on July 25, 2005, for second-degree assault each qualify as a violent felony for purposes of the ACCA. (PSR ¶ 53.) Although those two assault convictions arose out of the same case, they each qualify as a violent felony because they were "committed on occasions different from one another." 18 U.S.C. § 924(e)(1). As the PSR notes, the two assault convictions were based on (1) two different days, November 11, 2004, and November 12, 2004, and (2) two different victims. (PSR ¶ 53.) Therefore, the two assault convictions arose from "separate and distinct criminal episodes," and, as such, each qualifies as a prior violent felony for purposes of the ACCA. *United States v. Rush*, 840 F.2d 580, 581 (8th Cir. 1988).

Although the three convictions discussed above render Defendant an Armed Career Criminal, Defendant's criminal history includes a fourth conviction that qualifies as an ACCA predicate: Defendant's November 8, 2010 conviction for fourth degree assault under Minn. Stat. § 609.2231, subd. 2. (PSR ¶ 59.) Section 609.2231, subd. 2,

requires proof of an assault that inflicts demonstrable bodily injury. Thus, it is “has as an element the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i). And because the statute prohibits only one kind of behavior, an assault that inflicts demonstrable bodily harm, it categorically qualifies as a violent felony. *See United States v. Salean*, 583 F.3d 1059, 1060-61 (8th Cir. 2009) (concluding that a prior version of Section 609.2231, subd. 3, that was identical to subd. 2 in that it prohibited an assault that inflicts demonstrable bodily injury, qualified categorically as a violent felony).

B. Defendant Used a Firearm in Connection with a Crime of Violence.

Under the Sentencing Guidelines, the offense level for an armed career criminal such as Defendant normally is 33. U.S.S.G. § 4B1.4(b)(3)(B). However, if the defendant used or possessed the firearm in connection a crime of violence, the offense level is 34. U.S.S.G. § 4B1.4(b)(3)(A). In addition, the use or possession of the firearm in connection with a crime of violence automatically imposes a criminal history category of VI. U.S.S.G. § 4B1.4(c)(2). The term “crime of violence” as used in Sections 4B1.4(b)(3)(A) and 4b1.4(c)(2) includes, in pertinent part, aggravated assault, as well as other offense that have as an element the use, attempted use, or threatened use of physical force against the person of another. The PSR correctly concludes that Sections 4B1.4(b)(3)(A) and 4B1.4(c)(2) apply because Defendant used or possessed the firearm in connection with a crime of violence (namely, an assault with a dangerous weapon). (PSR ¶¶ 28, 67.)

Minnesota law makes it a felony to “assault[] another with a dangerous weapon.” Minn. Stat. § 609.222(1). An “assault” includes “an act done with intent to cause fear in another of immediate bodily harm or death,” Minn. Stat. § 609.02(10)(1), and a “dangerous weapon” is defined as including “any firearm, whether loaded or unloaded,” Minn. Stat. § 609.02(6). The evidence at trial, in particular Ms. Charleston’s testimony, shows that Defendant committed such an assault. Defendant stuck the gun in Ms. Charleston’s face and several times threatened to shoot her. That conduct is itself sufficient to qualify as an assault with a dangerous weapon. If there were any doubt about whether that conduct qualifies, there can be no doubt that Defendant’s conduct a moment later of pointing the gun at Ms. Charleston’s brother and firing one shot qualifies as an assault with a dangerous weapon.

The facts warranting the application of Sections 4B1.4(b)(3)(A) and 4B1.4(c)(2)—Defendant’s possession of the firearm in connection a crime of violence—have been proven by a preponderance of the evidence. It appears Defendant does not dispute the PSR’s conclusion that the enhancement applies. The PSR correctly calculates Defendant’s offense level to be 34 and his criminal history to be VI.¹

C. Section 3553(a) Factors.

The United States requests that the Court impose a prison sentence of 300 months in light of all of the relevant factors set forth in 18 U.S.C. § 3553(a).

¹ Should the Court conclude that Defendant is not an armed career criminal and that his guidelines range should instead be calculated under Section 2K2.1, the Court should find, for the same reasons set forth in the above analysis, that Defendant’s possession of a firearm in connection with a crime of violence warrants a four-level increase in the offense level pursuant to Section 2K2.1(b)(6)(B).

1. The Nature and Circumstances of the Offense.

A sentence of 300 months is appropriate in light of the nature and circumstances of Defendant's offense for being a felon in possession of a firearm. This was not a case involving seemingly passive, constructive possession. And Defendant's crime was not limited to mere possession. As discussed above, the evidence at trial showed that after Defendant's girlfriend, Hudson, had gotten into a fight with two other women, Defendant and Hudson left the area. They returned a short time later, and Defendant was armed with a gun, evidently believing that it was acceptable to escalate a relatively minor confrontation that had already been defused by injecting gun violence. The events that happened next indicate that Defendant's intentions were to inflict terror and bodily harm (or perhaps worse).

Defendant jumped out of the silver Grand Prix, walked up to Ms. Charleston, who had in no way been involved in the earlier fight, shoved a gun in her face, and proceeded to threaten to "blow her fucking face off." When Ms. Hudson's brother came around the corner of the building to find out what all the commotion was about, Defendant pointed the gun in the direction of Ms. Hudson's brother and fired one shot. Thankfully, nobody was physically injured. It is clear from Ms. Hudson's trial testimony that she did, however, suffer psychological injuries as a result of Defendant's conduct. The trauma Defendant inflicted on Ms. Hudson was so acute that Ms. Hudson could barely bring herself to even look at Defendant during her testimony. Defendant's aggressive outburst on the evening of September 3, 2012, was volatile, misdirected at an innocent bystander, and severely disproportionate to the events that had happened earlier in the evening.

Defendant's conduct makes him more culpable than the typical defendant convicted of being a felon in possession of a firearm. In addition, his conduct shows that he poses a greater danger to the community than the typical felon in possession. Accordingly, the United States requests that the Court sentence Defendant to a term of imprisonment of 300 months, the upper half of the Guidelines range.

2. The History and Characteristics of the Defendant.

The PSR accurately and adequately describes Defendant's criminal history, personal history, and characteristics. The Guidelines range found by the PSR adequately accounts for these factors, and a sentence within that range would be reasonable.

In the 18 years since he became an adult in March 1995, Defendant has been convicted of five felonies involving drugs, guns, violence, or some combination thereof. In addition, his criminal history includes three misdemeanors involving violence and another six felony charges that were ultimately dismissed involving allegations of violence. He was released from custody on his January 2006 convictions for violent felonies, which also is his longest felony sentence (60 month sentence, of which he served 34 months), on November 22, 2008. (PSR ¶ 53). In October 2009, less than a year after his release and while he was still on supervised release, he again committed another violent felony. (*Id.* ¶ 59.) He then committed the instant offense less than three years later, again while still on probation. (*Id.*)

Defendant's complete inability to remain law abiding for even relatively short periods of time and even while under court supervision supports a sentence on the higher end of the Guidelines range. The term "Armed Career Criminal" is a fitting description

given Defendant's history of guns, drugs, and violence. A sentence of 300 months would be reasonable in light of his long criminal history and inability to remain law abiding.

3. Need for the Sentence Imposed to Reflect the Seriousness of the Offense, Promote Respect for the Law, Provide Just Punishment for the Offense, Afford Adequate Deterrence to Criminal Conduct, and Protect the Public from Further Crimes.

A sentence at the higher end of the Guidelines Range would reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, and protect the public. Specifically, a sentence of 300 months would reflect how serious of an offense it is for a felon on probation with a criminal history such as Defendant's—one that includes a serious drug offense, multiple violent felonies, and other offenses involving drugs, violence, and threatened violence—to not only possess a firearm but to also use that firearm to threaten and shoot at innocent bystanders. Such a sentence also affords adequate deterrence to felons similarly situated to Defendant to possess firearms. Furthermore, given Defendant's long history of recidivism, protecting the public from further crimes by Defendant is a real concern—perhaps the most important concern in this case—and a sentence of 300 months' imprisonment would be appropriate to alleviate that concern.

4. Need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

Defendant has earned his status as an Armed Career Criminal, he earned the enhancement for using a firearm in connection with a crime of violence, and he should be sentenced in accordance with the Guidelines range contemplated for such a situation.

Because a sentence of 300 months is within the applicable Sentencing Guidelines range, it is unlikely to result in sentencing disparities.

Respectfully submitted,

Dated: August 15, 2013

B. TODD JONES
United States Attorney

s/ John Kokkinen

BY: JOHN KOKKINEN
Attorney ID No. 388356
Assistant United States Attorney
300 South Fourth Street, Suite 600
Minneapolis, MN 55415
(612) 664-5600