

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 19-114 (WMW/BRT)

UNITED STATES OF AMERICA,

Plaintiff,

v.

**GOVERNMENT'S POSITION WITH
RESPECT TO SENTENCING**

DEANDRE DONTAL MCGOWAN,

Defendant.

The United States of America, by and through its attorneys, Erica H. MacDonald, United States Attorney for the District of Minnesota, and Miranda E. Dugi, Assistant United States Attorney, hereby submits its position with respect to sentencing of defendant Denadre Dontal McGowan. For the reasons described below, the United States respectfully requests that the Court impose a sentence of 109 months, which represents a modest upward variance from the applicable guideline range, restitution totaling \$36,303, and three years' supervised release.

Throughout this pleading, the government refers to 12 sentencing exhibits that have been provided on a disk for the Court's review prior to the hearing. An exhibit list is also provided for the Court's review.

I. Factual Background

A. The Instant Offense

On January 15, 2019, Deandre Dontal McGowan, then 33, and his accomplice robbed the Premier Bank in Northfield, Minnesota. More than a week prior to the robbery, McGowan repeatedly searched the internet for advertisements for firearms, small cities in

Minnesota (*e.g.*, “small undeveloped cities in mn”), banks in those cities, and information about the banks. (Presentence investigation report (“PSR”) PSR ¶ 12; Gov’t Ex. 3a). At the time, McGowan owed approximately \$3,500 in past due rent and was facing eviction. (PSR ¶ 11). The night before the robbery, McGowan texted his mother, promising to get her money. (PSR ¶¶ 13).

In the hour before the robbery, surveillance footage from two local businesses depicted and witnesses described seeing a car later identified as McGowan’s black Pontiac Grand Prix repeatedly circling the area surrounding the bank. (PSR ¶ 11).

At approximately 11:53am on January 15, bank surveillance footage reflects that McGowan, who was wearing a face mask and gloves, attempted to enter the bank from the side door while his accomplice entered from the front. (Gov’t Ex. 3c at 1). Finding the side door locked,¹ McGowan then entered the bank through the front door, joining his accomplice, who was brandishing a firearm and ordering bank employees and a customer to lie down on the ground. (PSR ¶¶ 9-10). Like McGowan, the accomplice wore a face mask and gloves. As McGowan’s accomplice brandished the firearm, McGowan restrained a victim with cable (“zip”) ties that he took out of a backpack he was carrying. (PSR ¶¶ 9-10; Gov’t Ex.3c at 4). When the accomplice asked McGowan, “Which one do you want?” McGowan chose an employee, whom he ordered into the vault to fill McGowan’s backpack with cash. (PSR ¶ 10; Doc. 62: Plea Agreement at 2; Gov’t Ex. 3c

¹ The victim bank reported having locked the side door after it was used during the October 27, 2018, robbery, further described below.

at 5). The men stole \$11,526 in FDIC insured bank funds and a victim teller's purse before fleeing the bank out the side door. (*Id.*; Gov't Ex. 3c at 6-7).

Surveillance footage from nearby businesses and traffic cameras depict their flight from the bank—approximately 37 miles up I-35N from Northfield to Bloomington—where McGowan's Pontiac Grand Prix exited less than a mile from his residence. (PSR ¶ 11). McGowan's Pontiac Grand Prix was followed by a blue Jeep, which—like the Grand Prix—was registered to McGowan's mother. Surveillance footage from McGowan's apartment complex shows McGowan's vehicle entering parking garage approximately 40 minutes after the robbery. (Gov't Ex. 3d).

Approximately 30 minutes after the robbery, McGowan texted his mother to tell her that he had money for her. (PSR ¶ 13). That afternoon, he gave her approximately \$3,500 in cash to obtain a cashier's check to pay his rent. (PSR ¶ 11).

Photos taken with McGowan's iPhone 6 within hours of the robbery depict McGowan and another associate in possession of firearms and large quantities of cash. (Gov't Ex. 3b at 9-13). Approximately two hours after the robbery, web history on McGowan's iPhone 6 reflects internet searches for news about the robbery. (Gov't Ex. 3a at 13). That same afternoon, McGowan received a text stating, "so you wanted me to throw away them boots and jackets too," and "I didn't wanna ride with that clip with bullets," to which he responded, "Naw," "Keep it the jacket," "Bring my clip you good!" (PSR ¶ 13).²

² Spacing and capitalization reflect the form of text messages from McGowan's iPhone 6 extraction rather than the edited version in the PSR.

Later that evening, McGowan's iPhone 6 reflects searches for classified ads for handguns in Minnesota—including an ad for an AR (assault rifle) pistol—as well as men's Gucci sneakers. *Id.*

The day after the robbery, a law enforcement search of McGowan's apartment and vehicle pursuant to warrant yielded multiple items of evidence related to the robbery, including *inter alia*:

- keys to the black Pontiac Grand Prix;
- a black backpack containing cable ties like those used to restrain a victim;
- a large quantity of cash—including \$100 and \$2 bills, both of which were taken from the victim bank;
- distinctive clothing matching the robbers' (including face masks and gloves);
- a victim bank employee's purse;
- a loaded firearm, and multiple types of ammunition; and
- a case for a second firearm (a Glock 23), which was later recovered from McGowan's half-brother, Ralph Weekly, at the time of his arrest for being a felon in possession of firearms in February 2019.

(PSR ¶¶ 12-11).

B. Additional Conduct

a. Other Bank Robberies

The instant offense is one in a series of armed bank robberies that McGowan aided and abetted beginning at least in the fall of 2018, including a robbery of the same Premier Bank described above in Northfield, Minnesota on October 27, 2018, at approximately 11:30am, and the New Market Bank in Lakeville, Minnesota on December 22, 2018, at approximately 11:00am. (PSR ¶ 33). As with the instant offense, McGowan posted on social media and communicated with associates about the robberies before and after they

occurred. For example, a Snapchat screenshot from two days before the October 27 robbery depicts McGowan with a black face mask and hat, with a cartoon of a bank, a masked man holding a gun, with the caption “MIND.” (Gov’t Ex. 1a). In a text exchange with an associate on December 6, 2018—some 16 days before the next robbery—McGowan discussed multiple small cities in Minnesota as possible targets, stating, “I’m about to look up some cities now I’m thinking that 1 in chisago.” (Gov’t Ex. 2a at 1). McGowan’s associate responded, “Let me know we gotta take a dry run.” *Id.* McGowan initially stated that Little Falls “Look super sweet,” and texted “8,700” “Pop” in apparent reference to its population. *Id.* at 3. However, shortly thereafter, he noted, “Little falls a no go.”

Despite having no employment, McGowan possessed large quantities of cash in the days following each robbery. For example, on the day of the first Premier Bank robbery, McGowan purchased a \$1,000 money order. (PSR ¶ 33). He purchased a second \$1,000 money order two days later at the same location. *Id.* He then paid two months of overdue rent. *Id.* Like the instant offense, multiple photos, including social media posts, depict McGowan displaying firearms and large quantities of cash shortly after the robberies. (Gov’t Exs. 1b, 3b). For example, in an Instagram post recovered from his iCloud account, McGowan holds multiple, fanned-out \$100 bills in front of his face, with the caption, “I get the money and stay out the way.” (Gov’t Ex. 1b at 9).

b. Purchases of Firearms and Related Conduct

Some 10 days before the December bank robbery described above, McGowan purchased a firearm. (PSR ¶ 34). On January 2, 2019, McGowan took multiple photos of

firearms and magazines loaded with what appear to be hollow point bullets, as well as photos of himself wearing a facemask and pointing two firearms at the camera. (Gov't Ex. 3b at 1-8).

Approximately eight days before the January 2019 Premier Bank robbery, McGowan went to purchase two firearms with his half-brother, Ralph Weekly.³ The following day—a week before the January robbery—McGowan returned to purchase two additional firearms.⁴ McGowan's visits and correspondence with Weekly during a prior prison term for felony offenses before making these purchases reflect McGowan's apparent knowledge of Weekly's felon status. (PSR ¶ 33).

With respect to a Glock 23 found in Weekly's possession—the case for which was found in McGowan's apartment—McGowan apparently insists that he did not provide it to Weekly, (Doc. 67 at 3), although he is unable to account for how it arrived in Weekly's possession. (PSR ¶ 34). McGowan seems to suggest that perhaps it was taken when packing up his belongings from his apartment after McGowan's arrest, (Doc. 67 at 3), but law enforcement did not recover the firearm during the execution of the search warrant that preceded his arrest.

³ Weekly was recently sentenced to 78 months' imprisonment for being a felon in possession of firearms, (Case No. 19-CR-81 (ECT/SER):Doc. 83), including a firearm McGowan purchased while Weekly was with him or were otherwise tied to McGowan. (PSR ¶ 34).

⁴ Records related to these purchases, as well as photos from McGowan's iPhone depicting Weekly (in the multicolored jacket) holding a firearm in his right hand are provided in government's exhibits 4a and 4b, respectively.

McGowan also takes pains to note that he was not a prohibited purchaser of firearms at the time of these transactions, (Doc. 67 at 3), though his description of his illegal drug use reflected in the PSR, (PSR ¶ 121), point to the contrary conclusion. *See* 18 U.S.C. § 922(g)(3).

c. McGowan's Post-Indictment Conduct

McGowan's correspondence with and about his associates has continued since he was charged with the instant offense. For example, McGowan called an associate on April 27, 2019 to ask him to change the passwords on McGowan's email accounts.

Additionally, in a recorded call on July 1, 2019—shortly after receiving discovery related to a witness⁵—McGowan advises an unknown associate of the content of discovery information. A recording of the call is provided in government's exhibit 5b. Specifically, McGowan appears to be using coded language to describe a witness's interview, which is summarized in government's exhibit 5a, with law enforcement about the identity of a coconspirator. The coded language begins at approximately :55, and includes McGowan repeatedly trying to get the other person on the call to understand the clues he is providing about the identity of the people he is describing (*e.g.*, by referring to someone having a girl's name, the pseudonym "the artist," instructing his associate to "put two and two together"). McGowan notes the "feds" must have "gotten on his ass" and that this person

⁵ McGowan was bound by the term of the protective order in this case, which included a provision limiting the use of discovery materials to the instant litigation. (Doc. 21: Protective Order at 3) ("Use of the Protected Material covered by the Protective Order for any purpose other than the instant litigation shall be deemed a violation of the Protective Order punishable by sanctions, including contempt of court.").

was trying to get another person (whom he refers to as “the artist,”) “jammed up.” McGowan also advises that they should “cross all your Ts and dot they Is” and to stay on their “Ps and Qs.” At approximately 5:30, McGowan states, “I’m probably about to go and do some time, man, but it ain’t, it ain’t fixin’ to be that long, though, at the most two years, you feel, my shit be back”

Contrary to McGowan’s claims that he was attempting to exonerate a wrongly accused person in the call, (PSR ¶ 16), the content of the call reflects: 1) McGowan’s awareness that his calls are being monitored, 2) his efforts to disguise the true identity of the people he is describing, and 3) his warning to his associates about the ongoing investigation. Curiously, McGowan’s protestations that he “knows who was involved, not the artist, and he felt it was unfair to have the artist face years in federal prison for something he did not do,” *id.*, have not prompted him to relay any information that would prevent such an outcome, further undermining the credibility of his claims.

C. McGowan’s Criminal History

McGowan has convictions related to firearms beginning at age 21, when he was convicted of a gross misdemeanor for carrying or possessing a pistol without a permit. (PSR ¶ 38). That offense arose from a burglary in progress, from which McGowan fled on foot. *Id.* McGowan later stated in a jail call that he had placed a gun in a truck, which police later found to be a semi-automatic handgun. *Id.* McGowan was also convicted of felony cocaine possession after law enforcement viewed him engaging in drug transactions (PSR ¶ 60). He also has a pending felony drug distribution and possession case in Hennepin County, Minnesota, arising from conduct in June 2018. (PSR ¶ 88).

According to the PSR, McGowan has multiple alias names and identifiers, including multiple dates of birth. (PSR p.F.2). At age 28, he provided two different false identities to officers during a traffic stop and was found in possession of marijuana. (PSR ¶ 54).

II. Analysis

The Court employs the U.S. Sentencing Guidelines as “the starting point and the initial benchmark” in imposing its sentence. *Gall v. United States*, 552 U.S. 38, 49 (2007). The Court then must consider the factors enumerated in 18 U.S.C. § 3553(a), in determining whether the applicable guideline range provides for an appropriate sentence. *United States v. Ruvalcava-Perez*, 561 F.3d 883, 886 (8th Cir. 2009). Where the Court finds that the Sentencing Guidelines adequately account for the offense and relevant circumstances, it “shall impose a sentence of the kind, and within the range” prescribed. 18 U.S.C. § 3553(b)(2).

A. U.S. Sentencing Guideline Calculations

The government concurs with the PSR’s calculation of the applicable U.S. Sentencing Guideline range of 78 to 97 months, based on a total offense level of 26 and a criminal history category of III. (PSR at ¶¶ 32, 66).

a. McGowan’s Objection to Victim’s Statement

The Court should deny McGowan’s objection to the PSR’s inclusion of a victim’s statement to law enforcement shortly after the robbery that McGowan stated, “[D]on’t fuck with me if you want to get out alive.” (PSR ¶ 10, p.A.1). McGowan offers no basis for his objection. The government concurs with the PSR’s inclusion of this information based upon the witness’s report, which was provided to McGowan in discovery.

Beyond this factual objection—which does not affect the applicable guideline range—McGowan does not dispute material facts underlying the application of the guideline provisions. As such, the Court may adopt the facts as alleged in the PSR. *United States v. Lee*, 570 F.3d 979, 982 (8th Cir. 2009) (“[T]he district court is entitled to rely on facts in the PSR when the defendant object[s] not to the facts themselves but to the PSR’s recommendation based on those facts.”) (internal quotation marks omitted) (alteration in original).

b. Application of USSG §2B3.1(b)(2)(C)

The government agrees with the PSR’s application of USSG §2B3.1(b)(2)(C) because a firearm was brandished. (PSR ¶ 21). McGowan objects solely on the basis that he “did not carry the gun.” (Doc. 67 at 3). However, USSG §1B1.3 does not require that McGowan carried the gun. Instead, McGowan is liable for:

(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

....

USSG 1B1.3(a)(1).

As the PSR rightly notes, the January 15, 2019, bank robbery was McGowan's joint undertaking with his accomplice. The evidence reflects that McGowan and his accomplice coordinated transportation and clothing prior to the robbery, as well as orchestrated their entry into the bank (though McGowan's initial plan appears to have been thwarted by an unexpectedly locked door). Once inside, they continued to work in concert—the accomplice holding the victim employees and customer at bay, while McGowan restrained a victim with cable ties and obtained money from the bank's vault. Indeed, the accomplice appears to have deferred to McGowan when asking McGowan, "Which one do you want?" with reference to the victim employees. Both robbers fled the bank together out the side door on foot, then in vehicles. Both robbers' clothing was found in McGowan's vehicle the day after the robbery.

Moreover, evidence from McGowan's phone shows that he engaged in strategic planning for days prior to the robbery, searching for small banks outside the immediate vicinity of his residence. Such banks would not only likely have fewer security safeguards than larger, wealthier banks, but would be less geographically linked to McGowan. McGowan's phone and social media accounts contain multiple images of him and others in possession of a large quantity of cash within hours of the bank robbery. McGowan's iPhone also contains a screenshot from his Instagram account (ogcloudz_119), with an image of an associate pointing a firearm at the camera, with the caption, "Got A Real Shooter No Need To Recruit! #epodgang #moneygang." (Gov't Ex. 3b at 15). Metadata

for the image reflects that the screenshot was created on the phone the evening of the robbery.⁶ *Id.* at 16.

Beyond the January robbery itself, both the previous October and December robberies in which McGowan is implicated involved the use of firearms. *See, e.g. United States v. Daudinot*, 809 F.3d 1027, 1029 (8th Cir. 2016) (knowledge of “past use of a firearm in a bank robbery” made coconspirator’s use of firearm during instant bank robbery reasonably foreseeable). Additionally, the prior robbery of the Northfield bank in October also involved restraining the victims with zip ties.

Under such circumstances, there is ample basis to conclude that the robbery was undoubtedly a joint enterprise, and that McGowan could hardly claim that the use of firearm was not reasonably foreseeable to him. This is particularly true when the use of that firearm is what made him able to ziptie a victim and fill his backpack with the bank’s money.⁷

⁶ Universal Time Coordinated (UTC) was six hours ahead of Central Time.

⁷ Indeed, the brandishing of the firearm coupled with threats communicated by McGowan and his accomplice might qualify for an additional upward adjustment of one point for being “otherwise used,” pursuant to USSG § 2B3.1(b)(2)(B). *See United States v. Paine*, 407 F.3d 958, 964 (8th Cir. 2005) (After drawing the weapon, Paine, with his finger on the trigger of the gun, emphasized the threat saying: ‘I mean it.’ In doing so, he did more than display the gun. He employed the gun to convey a threat directed at this specific teller which was intended to intimidate her into complying with his demands.”). However, the parties did not contemplate the adjustment in the plea agreement, and the PSR does not apply it. Accordingly, the government does not object to the absence of this adjustment.

c. McGowan's Criminal History Category

McGowan was not assessed criminal history points for multiple offenses, including the firearm conviction related to an apparent burglary, (¶ 38). McGowan makes a factual objection to one such offense, which he attributes to his brother. The U.S. Probation Officer has provided underlying documents, including McGowan's picture, related to the offense. Regardless of the Court's determination, it appears not to affect the applicable criminal history category.

B. Considerations under 18 U.S.C. § 3553(a)

The government is requesting that the Court impose a sentence that represents an upward variance of 12 months from the applicable guideline range. The circumstances surrounding the January 15, 2019, robbery alone would justify a lengthy term of imprisonment within the guideline range based on the need to protect the public and to reflect the seriousness of the nature of the offense. McGowan's internet history reflects a careful plan to target the most vulnerable banks—banks in “small undeveloped cities” that were less capable of protecting themselves. Indeed, among his internet searches for target banks three days before the robbery, McGowan visited a website titled, “These Are the 10 Poorest Cities In Minnesota For 2019.” (Gov't Ex. 3a at 10). McGowan not only carefully planned a bank robbery in which his accomplice brandished a firearm, but he also restrained and threatened his victims. Further aggravating is McGowan's willingness to enlist his mother's assistance to launder the proceeds of the January robbery prior to paying his rent.

McGowan's statement of acceptance of responsibility refers to this robbery as a "mistake" that resulted from dire financial need: "I needed it fast, so I decided to make the biggest mistake of my life and commit a bank robbery." (PSR ¶ 17). It is perhaps unsurprising that McGowan would be in financial need; few without financial need would engage in a crime as dangerous as bank robbery just for their enjoyment. However, this crime was not an isolated "mistake" borne solely of sheer desperation. McGowan found sufficient funds to purchase multiple firearms in the weeks before the December and January robberies, and yet his rent remained unpaid. The January robbery was part of a longer, coordinated crime spree. The robberies focused on victimizing small banks, using firearms and sometimes zipties to terrorize the victims and gain access to bank vaults—apparently unsatisfied with only the contents of teller drawers. During the January robbery, McGowan and his accomplice even stole a victim's purse, apparently still not satisfied by stealing only the bank's funds. Within hours of the January robbery, McGowan was apparently shopping online for firearms and men's luxury shoes.

Moreover, McGowan's newfound regret is inconsistent with his behavior after each robbery. McGowan clearly gloried in the use of firearms and displaying his spoils afterwards, as clear from the many posed photos and social media posts involving cash and firearms.

And yet, none of this accounts for McGowan's facilitation of his half-brother's illegal possession of firearms, including by apparently making at least one straw purchase of a firearm on his behalf. The Court need not be intimately acquainted with Weekly's lengthy and violent criminal history to know the danger such straw purchasing poses.

Finally, although McGowan recounts a history of hardship in his PSR, he is perhaps smarter and luckier than many defendants who come before the Court. His planning, execution, and post-charging concealment of his associates' involvement has demanded considerable law enforcement resources to investigate these crimes—an investigation which remains ongoing. Despite having been implicated in multiple drug and violent crimes prior to the instant offense beginning in his 20s, McGowan managed to emerge without felony convictions until the instant offense—years after he was old enough to know better. Additionally, he has both more education (some college) and work history than many violent criminals engaged in gang activity. (PSR ¶¶ 124-127).

Far from an isolated mistake, this pattern of behavior evinces a clear need for serious punishment and deterrence. The need to protect the public from McGowan's crimes is likewise apparent. From his July 2019 jail call, it appears that McGowan expects a relatively brief period of punishment—"at the most two years," by his estimate, which he describes as not "that long," after which time his "shit be back." (Gov't Ex. 5b). The government submits that a considerably longer term is necessary to achieve the goals of 18 U.S.C. § 3553(a). The applicable guideline range accounts only for a single robbery, and omits much of McGowan's recent conduct and relevant history. Together, these factors counsel in favor of a lengthy term of imprisonment. Therefore, the government respectfully requests that the Court impose a sentence that includes an upward variance of 12 months from the guideline range to 109 months' imprisonment.

C. Restitution

In his plea agreement, McGowan acknowledged that the Mandatory Victim Restitution Act (18 U.S.C. § 3663A) applies. As such, McGowan agreed that he was required to pay restitution to the victim of the offense of conviction, namely \$11,526, in restitution to Premier Bank in Northfield, Minnesota. *See* 18 U.S.C. §§ 3663A(a)(1),(c)(1)(A)(i), (c)(1)(B).

Additionally, he agreed to pay restitution to the other two victim banks described above in exchange for the government not pursuing additional charges, specifically \$19,678, to the Premier Bank in Northfield, Minnesota for the bank robbery on October 27, 2018, and \$5,099, to the New Market Bank in Lakeville, Minnesota for the bank robbery on December 22, 2018. *See* 18 U.S.C. §§ 3663A(a)(3).

In total, McGowan has agreed to pay \$36,303 in restitution.

III. Conclusion

For the foregoing reasons, the United States respectfully requests that the Court impose a sentence that includes a term of imprisonment of 109 months' imprisonment, \$36,303, and three years' supervised release.

Date: November 18, 2019

Respectfully Submitted,

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