

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:18-cr-400-T-33SPF

TERRESE COLSTON

**NOTICE OF MAXIMUM PENALTIES, ELEMENTS OF OFFENSE,
PERSONALIZATION OF ELEMENTS AND FACTUAL BASIS**

The United States of America, by Maria Chapa Lopez, United States Attorney for the Middle District of Florida, hereby files this Notice of Maximum Penalties, Elements of Offense, Personalization of Elements and Factual Basis, stating as follows:

ESSENTIAL ELEMENTS

The essential elements of Count One which charges a violation of 18 U.S.C. § 2119, carjacking, are as follows:

- First:** The Defendant took a motor vehicle from or in the presence of another;
- Second:** The Defendant did so by force and violence and by intimidation;
- Third:** The motor vehicle had previously been transported, shipped, or received in interstate and foreign commerce; and

Fourth: The Defendant intended to cause death or serious bodily harm when the defendant took the motor vehicle.

The essential elements of Count Two which charges a violation of 18 U.S.C. § 924(c)(1)(A)(ii), knowingly using, carrying, and brandishing a firearm during and in relation to a crime of violence for which the defendant may be prosecuted in a Court of the United States, that is, carjacking in violation of 18 U.S.C. § 2119, are:

First: The Defendant committed the crime of violence charged in Count One of the Indictment;

Second: The Defendant knowingly used, carried, and brandished a firearm; and

Third: The Defendant used, carried, and brandished the firearm during and “in relation to” the violent crime.

The essential elements of Count Three which charges a violation of 18 U.S.C. 922(g)(1), felon-in-possession of a firearm and ammunition, are:

First: The Defendant knowingly possessed a firearm and ammunition in or affecting interstate commerce; and

Second: Before possessing the firearm and ammunition, the Defendant had been convicted of a felony—a crime punishable by imprisonment for more than one year.

PENALTY

Count One is punishable by a maximum term of imprisonment of 15 years, a fine not to exceed \$250,000, a term of supervised release of not more than 5 years, and a special assessment of \$100.00.

Count Two is punishable by a mandatory minimum term of imprisonment of 7 years up to life, to be served consecutively to any sentence imposed on Count One, any sentence imposed on Count Three, and any other term of imprisonment, a fine not to exceed \$250,000, a term of supervised release of not more than 5 years, and a special assessment of \$100.

Count Three carries a maximum term of imprisonment of 10 years, a fine not to exceed \$250,000, a term of supervised release of not more than 3 years, and a special assessment of \$100 per felony count for individuals.

With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offenses, or to the community. Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant must make full restitution to E.S.R.

Additionally, the defendant must forfeit property, pursuant to 18 U.S.C. §§ 924(d)(1) and 982(a)(5), and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, any firearm and ammunition involved in the offense.

ALLEYNE V. UNITED STATES AND
APPRENDI V. NEW JERSEY

Under Alleyne v. United States, 133 S. Ct. 2151 (2013), the defendant is subject to a mandatory minimum sentence of 7 years' imprisonment as to Count Two, and under Apprendi v. New Jersey, 530 U.S. 466 (2000), the Court may impose a maximum sentence of life imprisonment as to Count Two, because the following facts have been admitted by the defendant and are established by this plea of guilty: The defendant knowingly brandished a firearm during and in relation to a crime of violence for which the defendant may be prosecuted in a Court of the United States, that is, carjacking in violation of 18 U.S.C. § 2119, as charged in Count One.

FACTUAL BASIS

On July 11, 2018, in Lakeland, Florida, E.S.R. was in his parked 2000 Mazda 626 sedan, a motor vehicle manufactured in Michigan that had been previously transported, shipped, and received in interstate commerce by a global corporation headquartered in Japan. At approximately 7:00 p.m., Terrese Colston, the defendant, approached the driver's side window, pointed a loaded Smith & Wesson revolver at E.S.R., and told him to get out of the car. E.S.R. complied. E.S.R. was in fear for his life. Colston got into the Mazda and drove away.

About five and a half hours later, at approximately 12:43 a.m. on July 12, 2018, Lakeland Police Officer Alex Rethwisch saw the stolen Mazda on Griffin Road, Lakeland. The car turned westbound on Griffin Road from Pyramid Parkway. Officer Rethwisch had been on the lookout for the Mazda because it had been reported stolen. Officer Rethwisch checked the tag and confirmed that the vehicle was the stolen Mazda.

While Officer Rethwisch was driving behind the Mazda, and before he even activated his emergency lights, the Mazda began to speed away. Officer Rethwisch then activated his emergency lights and attempted to pull it over. The vehicle did not stop, but crashed during the pursuit, less than one minute after the initial sighting.

Colton got out of the car and fled. Officer Rethwisch gave chase on foot. Officer Rethwisch ordered Colton to stop. Officer Rethwisch used his Conducted Electrical Weapon but was not successful in stopping Colton. Colton then turned and faced Officer Rethwisch. Colton had a silver firearm in his hand. Colton raised the gun, pointed it at Officer Rethwisch, and fired. Officer Rethwisch felt shrapnel hitting his body. Officer Rethwisch was in fear for his life. Officer Rethwisch drew his department issued Glock handgun and shot back at Colton, striking Colton in the right leg. Officer Rethwisch then held Colton at gunpoint until backup arrived.

Officer Stephen Richburg arrived and found Colton's firearm near where Colton had been shot. It was a silver Smith & Wesson revolver, loaded with five CCI 9mm Luger rounds in the cylinder. ATF SA Jeff Burt subsequently examined the firearm and ammunition for interstate nexus purposes. He determined that the Smith & Wesson revolver was manufactured in Massachusetts, and that the four live rounds and one spent casing were manufactured in Idaho. The firearm and ammunition traveled in and affected interstate commerce.

Colton was a convicted felon at the time of the above-described carjacking, flight from law enforcement, and shooting. In fact, Colton was on felony probation at the time of the above-described incidents. His criminal

history includes 13 felony charges, four felony convictions, 32 misdemeanor charges, and 11 misdemeanor convictions. His prior felony convictions include: (1) sale of cannabis, on or about November 18, 2009; (2) fleeing/attempting to elude a police officer, on or about January 25, 2013; (3) possession of heroin with intent to sell, on or about May 19, 2015; and (4) possession of heroin, October 6, 2016. His right to possess firearms and ammunition has never been restored.

The above is merely a brief summary of the events, some of the persons involved, and other information relating to this case. It does not include, nor is it intended to include, all of the events, persons involved, or other information relating to this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Kathleen Sweeney

/s/ Christopher F. Murray

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