

## **A P P E N D I X**

## APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>Steven Jackson v. United States</i> , 16-17334-FF and 16-17173-FF	.... A-1
Judgment imposing sentence .....	A-2

A-1

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

**FILED BY AP**  
**Dec 14, 2017**  
**STEVEN M. LARIMORE**  
**CLERK U.S. DISTRICT CT.**  
**S.D. OF FLA. MIAMI**

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December 14, 2017

Steven M. Larimore  
U.S. District Court  
400 N MIAMI AVE  
MIAMI, FL 33128-1810

Appeal Number: 16-17173-FF ; 16-17334 -FF  
Case Style: USA v. Steven Jackson; Steven Jackson v. USA  
District Court Docket No: 1:94-cr-00041-UU-1; 1:16-cv-22649-UU

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: James O'Donnell Delaney  
Phone #: 404-335-6113

Enclosure(s)

MDT-1 Letter Issuing Mandate

**UNITED STATES COURT OF APPEALS  
For the Eleventh Circuit**

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No. 16-17173  
Non-Argument Calendar

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D.C. Docket No. 1:94-cr-00041-UU-1

UNITED STATES OF AMERICA,  
Plaintiff-Appellant,

versus

STEVEN JACKSON,  
Defendant-Appellee.

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No. 16-17334  
Non-Argument Calendar

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D.C. Docket Nos. 1:16-cv-22649-UU; 1:94-cr-00041-UU-1

STEVEN JACKSON,  
Petitioner-Appellee,

versus

UNITED STATES OF AMERICA,  
Respondent-Appellant.

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Appeals from the United States District Court for the  
Southern District of Florida

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JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: November 27, 2017  
For the Court: DAVID J. SMITH, Clerk of Court  
By: Jeff R. Patch

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 16-17173  
Non-Argument Calendar

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D.C. Docket No. 1:94-cr-00041-UU-1

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

STEVEN JACKSON,

Defendant-Appellee.

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No. 16-17334  
Non-Argument Calendar

---

D.C. Docket Nos. 1:16-cv-22649-UU; 1:94-cr-00041-UU-1

STEVEN JACKSON,

Petitioner-Appellee,

versus

UNITED STATES OF AMERICA,

Respondent-Appellant.

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Appeals from the United States District Court  
for the Southern District of Florida

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(November 27, 2017)

Before HULL, WILLIAM PRYOR and JULIE CARNES, Circuit Judges.

PER CURIAM:

The United States appeals the judgment that vacated Steven Jackson's sentence to 360 months of imprisonment under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1), and resentenced him to 324 months of imprisonment. 28 U.S.C. § 2255. The district court ruled that Jackson lacked sufficient predicate offenses to be sentenced as an armed career offender because, in the wake of *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016), his conviction in 1976 for robbery with a firearm, Fla. Stat. § 812.13 (1974), was not a "violent felony," 18 U.S.C. § 924(e)(2)(B). Based on our recent decision in *United States v. Fritts*, 841 F.3d 937 (11th Cir. 2016), *cert. denied*, 137 S. Ct. 2264 (2017), we vacate Jackson's reduced sentence and remand for the district court to reinstate his original sentence of 360 months of imprisonment.

The district court erred by granting Jackson's motion to vacate. We have held repeatedly that a conviction in Florida for robbery, Fla. Stat. § 812.13,



qualifies categorically as a violent felony under the elements clause of the Act.

*Fritts*, 841 F.3d at 939–42 (discussing *United States v. Dowd*, 451 F.3d 1244 (11th Cir. 2006), and *United States v. Lockley*, 632 F.3d 1238 (11th Cir. 2011)); *United States v. Seabrooks*, 839 F.3d 1326, 1338–45 (11th Cir. 2016). It makes no difference that Jackson was convicted under the 1974 statute instead of the 1987 statute that we considered in *Fritts*. Both statutes require that the offender take property “by force, violence, assault, or putting in fear.” *See* Fla. Stat. § 812.13(1) (1974); *id.* § 812.13(1) (1987); *see also Seabrooks*, 839 F.3d at 1339 (“the robbery statute has included the requirement of ‘force, violence, assault, or putting in fear’ from the 1970’s to the present”). Jackson’s offense “requires [as an element] both ‘resistance by the victim’ and ‘physical force by the offender’ that overcomes that resistance.” *Fritts*, 841 F.3d at 943 (quoting *Robinson v. State*, 692 So.2d 883, 886 (Fla. 1997)); *see also Lockley*, 632 F.3d at 1245. *Fritts* “is the law of this Circuit[ and] . . . bind[s] all subsequent panels unless and until the . . . holding is overruled by the Court sitting en banc or by the Supreme Court.” *Seabrooks*, 839 F.3d at 1341 (quoting *Smith v. GTE Corp.*, 236 F.3d 1292, 1300 n.8 (11th Cir. 2001)).

We **VACATE** Jackson’s reduced sentence of 324 months of imprisonment and **REMAND** for the district court to reinstate Jackson’s original sentence of 360 months of imprisonment.

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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November 27, 2017

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 16-17173-FF ; 16-17334 -FF  
Case Style: USA v. Steven Jackson  
District Court Docket No: 1:94-cr-00041-UU-1

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.** Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or [cja\\_evoucher@ca11.uscourts.gov](mailto:cja_evoucher@ca11.uscourts.gov) for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Janet K. Mohler, FF at (404) 335-6178.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch  
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

A-2

**United States District Court**  
**Southern District of Florida**  
MIAMI DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number - 1:94-41-CR-UNGARO-

STEVEN JACKSON

USM Number: 15710-004

Counsel For Defendant: Vanessa Chen, AFPD  
Counsel For The United States: Randy Hummel, AUSA  
Court Reporter: Carly Horkencamp

The defendant was found guilty on Count(s) One, Two, Three and Four of the Indictment.  
The defendant is adjudicated guilty of the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
Title 18 USC 922(g)(1) and 924(e)(1)	Possession of a firearm by a convicted felon	1/26/91	One
Title 18 USC 111	Assault of a Federal Law Enforcement Officer	1/26/91	Two, Three and Four

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must 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 must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:  
9/23/2016

  
URSULA UNGARO  
United States District Judge

September 26, 2016

DEFENDANT: STEVEN JACKSON  
CASE NUMBER: 1:94-41-CR-UNGARO-

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **ONE HUNDRED AND EIGHT (108) MONTHS** as to **Counts Two, Three and Four** all to be served **CONSECUTIVELY** to each other and **ONE HUNDRED AND TWENTY (120) MONTHS** as to **Count One** to be served **CONCURRENTLY** to **Counts Two, Three and Four**. Total term **324 MONTHS**.

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

### 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: STEVEN JACKSON  
CASE NUMBER: 1:94-41-CR-UNGARO-

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS** as to **Counts One, Two, Three and Four all to be served CONCURRENTLY.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.**

**The defendant shall cooperate in the collection of DNA as directed by the probation officer.**

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

### **STANDARD CONDITIONS OF SUPERVISION**

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within **seventy-two (72) hours** of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: STEVEN JACKSON  
CASE NUMBER: 1:94-41-CR-UNGARO-

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall also comply with the following additional conditions of supervised release:

**Permissible Search** - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

**Substance Abuse Treatment** - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: STEVEN JACKSON  
CASE NUMBER: 1:94-41-CR-UNGARO-

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

**Total Assessment**

**\$200.00**

**Total Fine**

**\$**

**Total Restitution**

**\$**

\*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: STEVEN JACKSON  
CASE NUMBER: 1:94-41-CR-UNGARO-

### **SCHEDULE OF PAYMENTS**

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

A. Lump sum payment of \$ due immediately, balance due

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

**The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

**The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.**

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