

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13817
Non-Argument Calendar

D.C. Docket Nos. 1:16-cv-22802-RLR,
1:14-cr-20465-RLR-2

CARL LEE WILLIAMS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(October 26, 2018)

Before ED CARNES, Chief Judge, PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Carl Williams pleaded guilty to one count of carjacking resulting in serious bodily injury, in violation of 18 U.S.C. § 2119, and one count of carrying and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A). The following year he filed a 28 U.S.C. § 2255 motion claiming that his § 924(c) conviction must be vacated because federal carjacking does not qualify as a crime of violence. The district court denied the motion and Williams now appeals. We review the district court's legal conclusions de novo and its factual findings for clear error. Rhode v. United States, 583 F.3d 1289, 1290 (11th Cir. 2009).

To qualify as a crime of violence under § 924(c), federal carjacking must fall under that provision's "use-of-force" clause or "risk-of-force" clause. The use-of-force clause covers a felony that "has as an element the use, attempted use, or threatened use of physical force." 18 U.S.C. § 924(c)(3)(A). And the risk-of-force clause covers a felony that, "by its nature, involves a substantial risk that physical force . . . may be used in the course of committing the offense." Id. § 924(c)(3)(B). Williams claims that federal carjacking does not fall under the use-of-force clause because a person can commit federal carjacking by using intimidation, and that the risk-of-force clause is unconstitutionally vague in light of the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015).

Prior panel precedent forecloses both of Williams’ arguments. In In re Smith, 829 F.3d 1276, 1280–81 (11th Cir. 2016), this Court held that federal carjacking qualifies as a crime of violence under the use-of-force clause. See also Ovalles v. United States, ___ F.3d ___, 2018 WL 4868740, at *3–4 (11th Cir. Oct. 9, 2018) (reaffirming that In re Smith was correctly decided). And in Ovalles v. United States, ___ F.3d ___, 2018 WL 4830079, at *17 (11th Cir. Oct. 4, 2018), this Court sitting en banc held that § 924(c)(3)(B)’s risk-of-force clause is not unconstitutionally vague in light of the Supreme Court’s decisions in Johnson or Sessions v. Dimaya, 138 S. Ct. 1204 (2018). We are bound to follow this precedent. United States v. Vega-Castillo, 540 F.3d 1235, 1236 (11th Cir. 2008) (“Under the prior precedent rule, we are bound to follow a prior binding precedent unless and until it is overruled by this court en banc or by the Supreme Court.”) (quotation marks omitted).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-CV-22802-ROSENBERG/BRANNON

CARL LEE WILLIAMS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

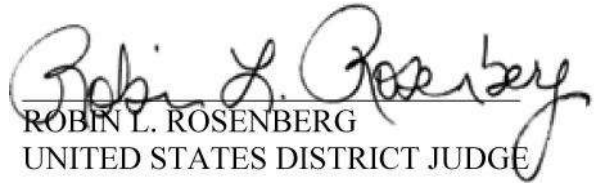
This matter is before the Court upon Movant's Motion to Vacate Conviction and Sentence under 28 U.S.C. § 2255 Based on the Authority of *Johnson v. United States* and *Welch v. United States*, DE 1. The Motion was previously referred to the Honorable Dave Lee Brannon for a Report and Recommendations on any dispositive matters. DE 11. On June 9, 2017, Judge Brannon issued a Report and Recommendations recommending that the Motion be denied and that the case be closed. DE 19. Judge Brannon also recommended that a certificate of appealability be granted. *Id.* Movant timely filed objections. DE 26. The Court has conducted a *de novo* review of Judge Brannon's Report and Recommendations, Movant's objections, the record, and is otherwise fully advised in the premises.

Upon review, the Court finds Judge Brannon's recommendations to be well reasoned and correct. The Court agrees with the analysis in Judge Brannon's Report and Recommendations and finds, for the reasons stated therein, that the Motion should be denied and the case closed. However, the Court also agrees that granting a certificate of appealability is appropriate.

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that Magistrate Judge Brannon's Report and Recommendations is **ADOPTED**. Accordingly, Movant's Motion to

Vacate Conviction and Sentence under 28 U.S.C. § 2255 Based on the Authority of *Johnson v. United States* and *Welch v. United States* is **DENIED**. DE 1. The case shall be **CLOSED**. All other pending motions are to be **DENIED AS MOOT**, all hearings **CANCELLED**, and all deadlines **TERMINATED**. However, a certificate of appealability **SHALL ISSUE**.

DONE and ORDERED in Chambers, Fort Pierce, Florida, this 19th day of July, 2017.


ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Carl Lee Williams

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 16-22802-Civ-Rosenberg/Brannon

CARL LEE WILLIAMS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

REPORT RECOMMENDING THAT
§ 2255 MOTION TO VACATE BE DENIED

Movant, an inmate at Coleman Medium Federal Correctional Institution in Sumterville, Florida, has filed a Motion to Vacate Conviction and Sentence Under 28 U.S.C. § 2255 Based on the Authority of *Johnson v. U.S.* and *Welch v. U.S.* (DE 1). The Government answered in opposition (DE 5), and Movant has replied (DE 9). The parties have also filed various notices of supplemental authority (DE 6, DE 8, DE 12, DE 13, DE 14, DE 15), as well as court-ordered status reports (DE 17, DE 18). For the reasons below, the Court **RECOMMENDS** that the § 2255 Motion be **DENIED**.

I. BACKGROUND

A. *Indictment and Pretrial Proceedings*

On June 27, 2014, a federal grand jury returned a three-count indictment against Movant and a co-defendant [DE 1].¹ Movant was charged in two counts: Count One for carjacking resulting in serious bodily injury, in violation of 18 U.S.C. § 2119(1) and (2); and

¹ Citations to the underlying criminal case, *U.S. v. Williams, et al.*, 14-20465-Cr-Rosenberg/Hopkins, are in brackets, “[DE__],” while citations to the instant § 2255 proceeding are in parentheses, “(DE__).”

Count Three for carrying and brandishing a firearm during and in relation to a crime of violence as charged in Count One, in violation of 18 U.S.C. § 924(c)(1)(A) [*Id.*]. The Court appointed Criminal Justice Act attorney Deric Zacca to represent Movant [DE 25]. Following a detention hearing, Movant was ordered pretrial detained as a danger to the community [DE 44].

Following a successful motion to suppress [DE 69] and an order granting the parties' joint motion to continue trial based upon ongoing "discussions to try and achieve a global resolution of the charges in this case and the parallel state proceedings" involving Movant [DE 77, DE 78], Defendant decided to plead guilty and a hearing was set.

B. Guilty Plea and Sentencing

On April 8, 2015, Movant appeared with counsel and pled guilty to both counts as charged: Count One for carjacking with serious bodily injury and to Count Three for brandishing a firearm in furtherance of a crime of violence [DE 92]. According to the factual proffer filed simultaneously with the written plea agreement, both charges stem from a nighttime incident during which Movant and his co-defendant rushed victim "N.C." and forcibly took her 2014 Chevrolet Traverse and other property valued at over \$10,000 (including jewelry, a laptop computer, and credit/debit cards) [DE 95]. During the carjacking, "N.C." was physically restrained and a firearm was used to repeatedly strike her several times "causing N.C. to lo[se] teeth, suffer a fractured foot, several cuts and bruises, blood loss, and concussion." [*Id.*].

In exchange for Movant's guilty plea, the Government agreed to (1) recommend a two-level acceptance of responsibility reduction at sentencing; and (2) move for an additional one-level substantial assistance reduction under the U.S. Sentencing Guidelines if Movant's offense level were found to be 16 or greater [DE 94]. The parties further agreed to jointly

recommend an upward variance under 18 U.S.C. § 3553(a)² and the imposition of a total sentence of 15 years in prison [*Id.*].

On June 22, 2015, the Court granted an upward variance and sentenced Movant to a total of 15 years (180 months) in prison, as follows: 96 months as to Count One and 84 months as to Count Three, to be served consecutively [DE 118, DE 122].

C. Post-Conviction Proceedings

Movant did not file a direct appeal to the Eleventh Circuit. On June 26, 2015, the U.S. Supreme Court decided *Johnson v. U.S.*, 576 U.S. —, 135 S. Ct. 2551 (2015). In *Johnson*, the Supreme Court found the “residual clause” of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e)(2)(B)(ii), to be void for vagueness and a violation of the Constitution’s guarantee of due process. *Johnson*, 135 S. Ct. at 2563. On April 18, 2016, the U.S. Supreme Court decided *Welch v. U.S.*, 136 S. Ct. 1257, 1265 (2016) and held that the substantive decision in *Johnson* is retroactive in cases on collateral review. On June 24, 2016, Movant filed the instant § 2255 Motion seeking to have his § 924(c) conviction and sentence vacated in light of *Johnson* and *Welch*.

II. LEGAL STANDARD

To prevail on a § 2255 motion, a movant must demonstrate that: (1) the sentence was imposed in violation of the Constitution or laws of the United States; (2) the Court was without jurisdiction to impose such a sentence; (3) the sentence exceeded the maximum sentence authorized by law; or (4) the sentence is otherwise subject to collateral attack, *i.e.*, there is a fundamental defect that results in a complete miscarriage of justice. 28 U.S.C. § 2255(a). If a

² As explained by defense counsel at Movant’s change of plea hearing, the parties agreed to an upward variance as part of a global resolution regarding Movant’s parallel federal and state proceedings arising out of the same incident [DE 104 at 21-22].

movant makes this showing, a court “shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.” 28 U.S.C. § 2255(b). The movant bears a substantial burden in that he “must clear a significantly higher hurdle than would exist on direct appeal.” *U.S. v. Frady*, 456 U.S. 152, 153 (1982).

III. ANALYSIS

Tracking the parties’ briefing, the Court is confronted with two legal issues. First, the Court must first decide if Movant’s § 2255 motion is procedurally barred. If it is not, the Court must next decide if Movant’s § 924(c) conviction and sentence predicated on the federal offense of carjacking should be vacated in light of *Johnson*. As discussed below, the answer to both legal issues is no.

A. Movant’s § 2255 Motion is Timely and Not Procedurally Barred

Movant’s judgment of conviction became final on July 7, 2015. As the Government rightfully concedes, Movant timely filed his § 2255 Motion within one year of this date—on June 24, 2016. 28 U.S.C. § 2255(f)(1). Nonetheless, the Government argues that Movant procedurally defaulted on any challenge to his § 924(c) conviction by not raising the issue at his sentencing or on direct appeal. Not so.

Generally, the procedural default rule requires that a movant “advance an available challenge to a criminal conviction or sentence on direct appeal or else [be] barred from presenting that claim in a § 2255 proceeding.” *Lynn v. U.S.*, 365 F.3d 1225, 1234 (11th Cir. 2004). A movant, however, can avoid procedural default (1) by demonstrating good cause for not raising the arguments on appeal and that he suffered actual prejudice from the alleged error; or (2) if the constitutional violation has probably resulted in the conviction of a defendant who

is “actually innocent.” *Id.* The second exception is “exceedingly narrow in scope” and “requires proof of actual innocence, not just legal innocence.” *Ward v. Hall*, 592 F.3d 1144, 1157 (11th Cir. 2010).

Here, the Court finds that Movant meets the first exception to the procedural default rule: cause and prejudice. A movant meets the “cause” requirement by “showing that the legal basis for a claim was not reasonably available to counsel” at the time of appeal. *Ward*, 592 F.3d at 1157. A movant makes this showing if “his situation is one where a court has articulated a constitutional principle that has not been previously recognized but which has been held to have retroactive application.” *Howard v. U.S.*, 374 F.3d 1068, 1072 (11th Cir. 2004). That decision must be “a sufficiently clear break with the past,” so that counsel would not reasonably have had the tools for presenting the claim. *Id.* The quintessential example of such a scenario is when the U.S. Supreme Court explicitly overrules one of its precedents because “there will almost certainly have been no reasonable basis upon which an attorney previously could have urged a state court to adopt the position that [the Supreme Court] has ultimately adopted.” *Reed v. Ross*, 468 U.S. 1, 17 (1984).

Applying the above principles here, the Supreme Court’s *Johnson* decision clearly broke with the past by explicitly overruling established precedent and holding that the ACCA’s residual clause is unconstitutionally vague. The Supreme Court had previously rejected vagueness challenges to the ACCA’s residual clause. *See, e.g., Sykes v. U.S.*, 564 U.S. 1, 15 (2011); *James v. U.S.*, 550 U.S. 192, 202 (2007). As such, there exists quintessential “cause” under the first exception to the procedural default rule.

Movant has also established the required “prejudice” under the exception. Movant argues that he was sentenced under a constitutionally defective statute and that he incorrectly

received a sentencing enhancement. Receiving an illegal sentence certainly satisfies the prejudice prong. *See Chatfield v. U.S.*, 2017 WL 1066776, at *5 (S.D. Fla. Mar. 2, 2017), *report & recommendation adopted* 2017 WL 1066779 (S.D. Fla. Mar. 21, 2017) (“if the Petitioner has suffered an ‘illegal sentence’ on any count of conviction, he has sufficiently alleged actual prejudice as a matter of law and habeas relief may be warranted.”).³

B. Movant is Not Entitled to the § 2255 Relief He Seeks

Having found the instant Motion procedurally valid, the Court turns next to the merits. Movant argues that his § 924(c) conviction and sentence should be vacated after *Johnson* because his companion offense of carjacking does not qualify as a “crime of violence” under 18 U.S.C. § 924(c). (DE 1 at 9). In support, Movant argues that just like the residual clause of the ACCA that was at issue in *Johnson*, § 924(c) is similarly void for vagueness (*Id.* at 9-12). Movant argues further that the federal offense of carjacking categorically fails to qualify as a “crime of violence” because it can be accomplished by “intimidation” which does not require the use, attempted use, or threatened use of violent physical force, and therefore cannot serve as a predicate offense for his § 924(c) conviction (*Id.* at 12-21).

Respondent counters that *Johnson* has no impact on Movant’s § 924(c) conviction and sentence because *Johnson* solely addressed ACCA cases and did not alter the definition of “crime of violence” under § 924(c) or otherwise open the door to collateral review of § 924(c) convictions (DE 5 at 10-16). Respondent asserts that even if the Court were to find § 924(c) (c)(3)(B) unconstitutional, Movant’s companion crime of carjacking clearly satisfies § 924(c)(3)(A) (*Id.* at 16-21). The Court will address the parties’ arguments in turn.

³ Because Movant meets the first exception, the Court need not address the second. *Chatfield*, 2017 WL 1066776, at *5 (“Because Petitioner has met the first exception to the procedural default rule, the Court need not consider the second exception”).

1. *Johnson* does not apply to § 924(c)(3)(B)

Johnson analyzed the ACCA, which provides for a 15 year minimum mandatory sentence for a defendant convicted of being a felon in possession of a firearm if he has at least three convictions for a “violent felony or a serious drug offense, or both.” 18 U.S.C. § 924(e). The ACCA defines a “violent felony” as one that:

- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another....*

Id. § 924(e)(2)(B) (emphasis added). *Johnson* held that the “residual clause” of subsection (ii), italicized above, is unconstitutionally vague. *Johnson*, 135 S. Ct. at 2563. The Supreme Court focused on “two features” of the clause. First, it requires courts to estimate the potential risk of physical injury posed by “a judicially imagined ‘ordinary case’ of [the] crime,” and then to consider how that risk compares to the risk posed by the four enumerated crimes preceding the clause, which are themselves “far from clear in respect to the degree of risk each poses.” *Id.* at 2557-58. It is these two ambiguities *in conjunction* that render the clause unconstitutionally vague. *Id.* at 2560 (explaining that “each of the uncertainties in the residual clause may be tolerable in isolation, but their sum makes a task for us which at best could be only guesswork”) (quotations omitted).

This case, unlike *Johnson*, involves § 924(c). In relevant part, § 924(c) provides for a separate consecutive sentence if a person uses or carries a firearm during and in relation to a “crime of violence.” 18 U.S.C. § 924(c)(1)(A). A “crime of violence” under § 924(c) is one that:

- (A) has an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

18 U.S.C. § 924(c)(3)(A),(B). While the Eleventh Circuit has noted the differing language and statutory purpose of the ACCA and § 924(c), *see In re Colon*, 826 F.3d 1301, 1303-04 & n.2 (11th Cir. 2016), it considers the issue of whether *Johnson* applies to § 924(c)(3)(B) an open question. *See In re Hines*, 824 F.3d 1334, 1336-37 (11th Cir. 2016); *In re Pinder*, 824 F.3d 977, 978-79 (11th Cir. 2016). Nonetheless, the Second, Sixth, and Eighth Circuits have upheld § 924(c)(3)(B) against *Johnson* vagueness challenges. *See U.S. v. Hill*, 832 F.3d 135, 145 (2d Cir. 2016); *U.S. v. Taylor*, 814 F.3d 340, 375 (6th Cir. 2016); *U.S. v. Prickett*, 839 F.3d 697, 699 (8th Cir. 2016); *but see U.S. v. Cardena*, 842 F.3d 959, 996 (7th Cir. 2016). And courts within this District have found that reasoning persuasive. *See e.g., Morton v. U.S.*, 2017 WL 1041568, at *4 (S.D. Fla. Mar. 2, 2017) (Altonaga, J.) (“Section 924(c)(3)(B)’s text is materially distinguishable from the ACCA’s residual clause invalidated in *Johnson*, and so section 924(c)(3)(B) remains valid.”).

Indeed, § 924(c)(3)(B) is substantially narrower than the ACCA’s residual clause, so much of the analysis in *Johnson* simply does not apply. Specifically, determining whether a felony falls within § 924(c)(3)(B)’s definition is a much “simpler undertaking than divining whether a felony, not being one of four enumerated, but disparate crimes, ‘otherwise involves conduct that presents a serious potential risk of physical injury to another.’” *Hill*, 832 F.3d at 146 (quotations omitted). To be sure, because § 924(c)(3)(B) “contains no mystifying list of offenses and no indeterminate ‘otherwise’ phraseology,” it is materially different from the ACCA’s residual clause. *Id.* *Johnson* made clear that it was limited to the specifically

troubling language in the ACCA's residual clause and it "stressed that its reasoning did not control other statutes that refer to predicate crimes." *Taylor*, 814 F.3d at 378.

The Court is persuaded by the "substantial majority of other courts" that have upheld the constitutionality of § 924(c)(3)(B) despite *Johnson*. See *Vasquez v. U.S.*, 2016 WL 378504 at *5 (S.D.N.Y. July 11, 2016); accord *Morton*, 2017 WL 1041568, at *4; *U.S. v. Dervishaj*, 169 F. Supp. 3d 339 (E.D.N.Y. 2016); *U.S. v. Green*, No. CR RDB-15-0526, 2016 WL 277982 (D. Md. Jan. 22, 2016); *U.S. v. Tsarnaev*, 157 F. Supp. 3d 57 (D. Mass. 2016).⁴

2. Carjacking is Independently a Crime of Violence Under § 924(c)(3)(A)

As explained above, *Johnson* narrowly and specifically ruled on the ACCA's Residual Clause and bears no impact on the validity of § 924(c)(3)(B). Nonetheless, even if *Johnson* were found to render § 924(c)(3)(B) unconstitutional, Movant's conviction for carjacking with serious bodily injury is a crime of violence under § 924(c)(3)(A) and his Motion should be denied for this independent reason.

Section 924(c)(3)(A) requires that the underlying felony offense have "as an element the use, attempted use, or threatened use of physical force against the person or property of another." *In re Smith*, 829 F.3d 1276, 1280-81 (11th Cir. 2016). Here, Movant pled guilty to Count One charging him with felony carjacking with serious bodily injury. Under federal law, carjacking is the "tak[ing of] a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation . . ." 18 U.S.C. § 2119. Moreover, "if serious bodily injury . . . results" from the carjacking, an enhanced penalty is to be imposed under the statute. 18 U.S.C. § 2119(2).

⁴ The Court notes Movant's argument that courts have applied *Johnson* to 18 U.S.C. § 16(b), which is nearly identical to § 924(c)(3)(B). While reasonable minds may differ, the Court is persuaded that the reasoning in *Johnson* simply does not apply to § 924(c)(3)(B), which is materially different than the ACCA's residual clause for the reasons expressed.

Movant also pled guilty to Count Three charging him with using and brandishing a firearm in furtherance of a crime of violence [DE 1 at 1-2; DE 94].

Importantly, the Indictment specifically identifies the carjacking with serious bodily injury charged in Count One as the crime of violence referred to in Count Three [DE 1 at 1-2]. Movant admitted his guilt to Counts One and Three and verified the facts of both counts, including that he actively participated in a carjacking during which he and a co-defendant forcibly took a victim's car and caused her to sustain serious bodily injury [DE 95; DE 100 at 4; DE 104 at 14].

Movant argues at length that his carjacking conviction under 18 U.S.C. § 2119 does not qualify as a categorical “crime of violence” under § 924(c)(3)(A). As pointed out by Respondent, this argument is squarely foreclosed by Eleventh Circuit precedent:

Even assuming that *Johnson* invalidated § 924(c)[(3)(B)], that conclusion would not assist [Movant] because the elements of the underlying conviction on which his § 924(c) conviction was based—carjacking, in violation of 18 U.S.C. § 2119—meet the requirements that the force clause in § 924(c)(3)(A) sets out for a qualifying underlying offense.... In short, our precedent holds that carjacking in violation of § 2119 satisfies § 924(c)[(3)(B)] and that ends the discussion.

In re Smith, 829 F.3d at 1280-81 (footnote omitted); *U.S. v. Moore*, 43 F.3d 568, 572-73 (11th Cir. 1994) (“The term ‘crime of violence’ as Congress defined it in 18 U.S.C. § 924(c)(3) clearly includes carjacking. ‘Tak[ing] or attempt[ing] to take by force and violence or by intimidation,’ 18 U.S.C. § 2119, encompasses ‘the use, attempted use, or threatened use of physical force. . .’”). Other courts have reached the same conclusion. *See U.S. v. Jones*, 854 F.3d 737, 740 (5th Cir. 2017) (holding that carjacking fits under the definition set forth in § 924(c)(3)(A)); *U.S. v. Evans*, 848 F.3d 242, 247 (4th Cir. 2017) (holding that the elements of carjacking under § 2119 satisfy § 924(c)(3)(A) and noting that the court is “not aware of any

case in which a court has interpreted the term ‘intimidation’ in the carjacking statute as meaning anything other than a threat of violent force”); *Smith v. U.S.*, 2017 WL 1833537, at *2-3 (N.D. Ala. May 8, 2017). Under this clear precedent, even if *Johnson* invalidates § 924(c)’s residual clause, the companion offense of carjacking with serious bodily injury underlying Movant’s challenged § 924(c) conviction separately qualifies as a crime of violence under § 924(c)(3)(A), and Movant is not entitled to the relief he seeks.

IV. RECOMMENDATION

Johnson is of no help to Movant. His felony conviction for carjacking with serious bodily injury is a crime of violence under § 924(c), and his Motion should be denied. That said, the Court finds that a certificate of appealability should be issued in this case. Rule 11(a) of the Rules Governing Section 2255 Proceedings provides that “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability shall issue “if the applicant has made a substantial showing of a denial of a constitutional right.” 28 U.S.C. § 2253(2). To make this showing, the applicant must show “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quotations omitted). Here, reasonable minds can differ on the issues involved in this report, and the Court finds that granting a certificate of appealability is appropriate.

Thus, the Court respectfully **RECOMMENDS** that Motion to Vacate Conviction and Sentence Under 28 U.S.C. § 2255 Based on the Authority of *Johnson v. U.S.* and *Welch v. U.S.* (DE 1) be **DENIED**. It is further **RECOMMENDED** that a certificate of appealability be **GRANTED** and that this case be **CLOSED**.

V. NOTICE OF RIGHT TO OBJECT

A party shall serve and file written objections, if any, to this Report and Recommendation with U.S. District Judge Robin L. Rosenberg within 14 days after being served with a copy. 28 U.S.C. § 636(b)(1)(C). Failure to file timely objections may limit the scope of appellate review of factual findings contained herein. *U.S. v. Warren*, 687 F.2d 347, 348 (11th Cir. 1982), *cert. denied*, 460 U.S. 1087 (1983).

DONE and RECOMMENDED in chambers at West Palm Beach, Florida, this 9th day of June, 2017.

DAVE LEE BRANNON
U.S. MAGISTRATE JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
CARL LEE WILLIAMS

JUDGMENT IN A CRIMINAL CASE

Case Number: **14-20465-ROSENBERG-(2)**
 USM Number: **06504-104**

Counsel For Defendant: **Deric Zacca, Esq.**
 Counsel For The United States: **Sean McLaughlin, AUSA**
 Court Reporter: **Pauline Stipes**

Date of Original Judgment: 6/22/2015
(or Date of Last Amended Judgment)

AMENDMENT REASON(S):

Correction of Sentence for Clerical Mistake of the victim's initials (Fed. R. Crim. P.36)

The defendant pleaded guilty to count(s) One and Three of the Indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 2119(2)	Carjacking with serious bodily injury	05/29/2014	1
18 U.S.C. § 924(c)(1)(A)(ii)	Brandishing a firearm in furtherance of a crime of violence	05/29/2014	3

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.

All remaining counts are dismissed on the motion of the government.

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 material changes in economic circumstances.

Date of Imposition of Sentence: **6/22/2015**


Robin L. Rosenberg
 United States District Judge

Date: 6/23/2015

DEFENDANT: CARL LEE WILLIAMS
CASE NUMBER: 14-20465-ROSENBERG-(2)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **180 Months Total. The term consists of 96 Months as to count 1 and 84 months as to count 3, to be served consecutively.**

The court makes the following recommendations to the Bureau of Prisons: That the defendant, Carl Lee Williams, shall receive credit for time served since May 29, 2014 from the BOP. That the defendant, Carl Lee Williams, receive occupational and vocational training from the BOP. In order to facilitate the successful, long-term rehabilitation of Carl Lee Williams, the Court recommends that, within the discretion of BOP policy, Defendant serve his period of incarceration in South Florida at the Federal Prison Camp in Miami, Florida and that Defendant be considered for admission to the 500-hour Residential Drug Abuse Program which is available at this institution.

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

DEPUTY UNITED STATES MARSHAL

DEFENDANT: CARL LEE WILLIAMS
CASE NUMBER: 14-20465-ROSENBERG-(2)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years as to counts 1 and 3 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 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 with 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 days prior to any change in residence or employment;
7. The defendant shall refrain from 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 of the probation officer;
11. The defendant shall notify the probation officer within seventy-two 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: **CARL LEE WILLIAMS**

CASE NUMBER: **14-20465-ROSENBERG-(2)**

SPECIAL CONDITIONS OF SUPERVISION

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: CARL LEE WILLIAMS
CASE NUMBER: 14-20465-ROSENBERG-(2)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	<u>\$200.00</u>	<u>\$0.00</u>	<u>\$35,032.25</u>

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 before the United States is paid.

<u>NAME OF PAYEE *(See Attached List)</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
--	-------------------------------	---------------------------------------	--

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$35,032.25. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

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

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: CARL LEE WILLIAMS
CASE NUMBER: 14-20465-ROSENBERG-(2)

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$200.00 due immediately.

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.

This 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 08N09
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.

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.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>		
14-20465-CR-Rosenberg- Ernest Hammett	\$0.00	\$35,032.25

The Government shall file a preliminary order of forfeiture within 3 days.

Restitution is owed jointly and severally by the defendant and co-defendants in the above case.

Also, the Court orders that all restitution owed to victim N.C., shall be paid first, then the remaining amount of restitution be paid to Blue Cross/Blue Shield.

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.

APPENDIX E

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 14-20465-CR-ROSENBERG

UNITED STATES OF AMERICA

vs.

CARL LEE WILLIAMS,

Defendant.

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida (hereinafter "this Office") and Carl Lee Williams (hereinafter "the defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count 1 and Count 3 of the Indictment. Count 1 charges the Defendant with carjacking, with serious bodily injury, in violation of 18 U.S.C. §§ 2119(1) and (2). Count 3 charges the defendant with using and brandishing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i)-(ii).

C.W. *Dr* 2. ~~This Office agrees to seek dismissal of Count 2 of the Indictment, as to this defendant, after sentencing.~~ *SM*

3. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office (U.S. Probation), which investigation will commence after the guilty plea has

been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the Count 1 and Count 3 offenses identified above in paragraph 1 and that the defendant may not withdraw his plea solely as a result of the sentence imposed.

4. The defendant understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 25 years for Count 1, followed by a term of supervised release of up to five (5) years. For Count 3, the Court shall impose a statutory minimum term of imprisonment of seven (7) years, and may impose a statutory maximum term of imprisonment of up to life imprisonment, followed by a term of supervised release of up to five (5) years. The defendant's sentence for Count 3 shall run consecutive to any sentence for Count 1. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000 each as to Count 1 and Count 3.

5. Based on the Count 1 and Count 3 offenses, the defendant understands and acknowledges that the Court shall order restitution pursuant to 18 U.S.C. §§ 3633 and 3663A. The defendant agrees that he will make restitution, jointly and severally with co-defendant Ernest

Hammett. The parties will execute a separate restitution agreement prior to sentencing. Pursuant to the restitution agreement set forth in this paragraph, the United States will recommend that no criminal fine be imposed as part of the defendant's sentence.

6. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraphs 4 and 5 of this Plea Agreement, a special assessment in the amount of \$200 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing. If a defendant is financially unable to pay the special assessment, the defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the defendant's failure to pay.

7. This Office reserves the right to inform the Court and U.S. Probation of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The United States agrees that it will recommend at sentencing that the Court reduce by two (2) levels the sentencing guideline level applicable to the defendant's offenses, pursuant to Section 3E1.1(a) of the Sentencing Guidelines (U.S.S.G.), based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the Government will make a motion requesting an additional one (1) level decrease pursuant to U.S.S.G. § 3E1.1(b), stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by

timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The United States, however, will not be required to make these motions or recommendations if the defendant: (a) fails or refuses to make a full, accurate and complete disclosure to U.S. Probation of the circumstances surrounding the relevant offense conduct; (b) is found to have misrepresented facts to the Government prior to entering into this Plea Agreement; or (c) commits any misconduct after entering into this Plea Agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

9. As to Count 1, the United States and the defendant further agree that, although not binding on U.S. Probation or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

- a. Base Offense Level: Pursuant to U.S.S.G. § 2B3.1, the base offense level is twenty (20).
- b. Bodily Injury: Pursuant to U.S.S.G. § 2B3.1(b)(3)(B), the victim sustained serious bodily injury, resulting in a four-level increase.
- c. Physical Restraint: Pursuant to U.S.S.G. § 2B3.1(b)(4)(B), the victim was physically restrained, resulting in a two-level increase.
- d. Carjacking: Pursuant to U.S.S.G. § 2B3.1(b)(5)(B), because the offense(s) involved carjacking, the defendant should receive another two-level increase.
- e. Loss: Pursuant to U.S.S.G. § 2B3.1(b)(7)(B), the amount of loss was more than \$10,000, but less than \$50,000, resulting in a one-level increase.

f. Total Adjusted Offense Level: Pursuant to paragraphs 9(a)-(e) above, and assuming a three-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), the Defendant's total offense level for Count 1 should be 26.

As to Count 3, pursuant to U.S.S.G. § 2K2.4(b) and 18 U.S.C. § 924(c)(1)(A)(i)-(ii), the United States and the defendant acknowledge, agree, and understand that the defendant's guideline range is seven (7) years imprisonment, which shall run consecutive to any sentence imposed for Count 1.

10. The United States and the defendant agree that they will jointly recommend that the Court vary upward pursuant to 18 U.S.C. § 3553(a) and impose the following total sentence:

a. Imprisonment: 15 years of imprisonment, to consist of eight (8) years imprisonment for Count 1, and seven (7) years imprisonment for Count 3, which shall run consecutive to Count 1; and

b. Supervised Release: Five (5) years of supervised release.

11. To the extent the parties' agreed sentence in paragraph 10 departs upward from the Court's calculated guideline range the agreed sentence departs for justifiable reasons under U.S.S.G. § 6B1.2(b). It is anticipated that the defendant's plea will facilitate his subsequent guilty plea in *State of Florida v. Carl Lee Williams*, F14-012574-B, thus resolving these other matters in lieu of trial. Finally, a total sentence of 15 years imprisonment and five (5) years supervised release achieves justice in holding the defendant responsible for his actions, securing restitution for the victim, and in deterring others from contemplating similar criminal conduct.

12. The United States and the defendant acknowledge and understand that, although not binding on U.S. Probation or the Court, the defendant currently faces charges in *State of Florida v.*

Carl Lee Williams, F14-012574-B based on the underlying facts and conduct in 14-20465-CR-ROSENBERG. The United States and the defendant further expect that should the Court impose the agreed recommended sentence, as set forth above in paragraph 10, that the defendant will subsequently plead guilty and receive a sentence in *State of Florida v. Carl Lee Williams*, F14-012574-B that will begin upon completion of his federal term of imprisonment. The defendant's state criminal liability is the subject of separate proceedings. The defendant also agrees, acknowledges, and understands that any agreement or sentence that he currently has or later receives regarding *State of Florida v. Carl Lee Williams*, F14-012574-B is not binding on this Court or the United States and will not later be grounds for any withdrawal of his federal guilty plea in 14-20465-CR-ROSENBERG.

13. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or U.S. Probation, is a prediction, not a promise, and is not binding on this Office, U.S. Probation, or the Court. The defendant further understands that any recommendation that this Office or the defendant's attorney makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges that he may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by the defendant and this Office.

14. The defendant also agrees to forfeit to the United States voluntarily and immediately all of his right, title and interest to all assets, and/or their substitutes which are subject to forfeiture

pursuant to 18 U.S.C. § 924(d)(1) and 981(a)(1)(c) as incorporated by 28 U.S.C. § 2461 and 21 U.S.C. § 853, including but not limited to:

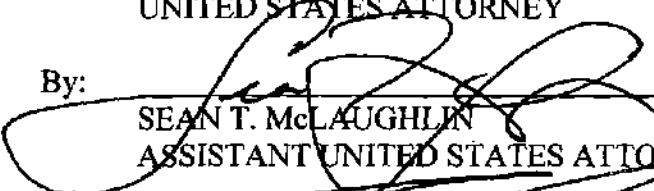

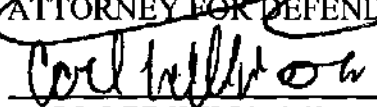
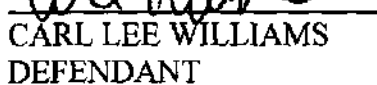
- a. one (1) High Point .40 caliber firearm and magazine, serial #7128662; and
- b. approximately six (6) rounds of .40 caliber ammunition.

As a result of the offenses alleged in Count 1 and Count 3, the defendant agrees that the property is property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 1951(a) is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(c) as incorporated by 28 U.S.C. § 2461 (c); and the procedures set forth at 21 U.S.C. § 853. The defendant also knowingly and voluntarily agrees to waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited assets. The defendant agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or further notification of any judicial or administrative forfeiture proceedings brought against said assets. The defendant agrees to waive any appeal for the forfeiture.

15. The defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 1291 afford him the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this Plea Agreement, the defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal the sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or does not comport with the parties' agreed recommended sentence in paragraph 10. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. §

3742(b) and 28 U.S.C. § 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant also acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney.

16. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

Date: <u>4/8/15</u>	By: <u></u> WIFREDO A. FERRER UNITED STATES ATTORNEY
Date: <u>4/8/15</u>	By: <u></u> SEAN T. McLAUGHLIN ASSISTANT UNITED STATES ATTORNEY
Date: <u>4/8/15</u>	By: <u></u> DERIC ZACCA ATTORNEY FOR DEFENDANT
	By: <u></u> CARL LEE WILLIAMS DEFENDANT

APPENDIX F

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 14-20465-CR-ROSENBERG

UNITED STATES OF AMERICA

vs.

CARL LEE WILLIAMS,

Defendant.

FACTUAL PROFFER

If this matter were to proceed to trial, the Government would prove the following facts beyond a reasonable doubt. The Parties agree that these facts, which do not include all facts known to the Government and the Defendant, Carl Lee Williams, are sufficient to prove the guilt of the Defendant of Counts 1 and 3 of the above-referenced Indictment.

On or about May 29, 2014, at approximately 8:00 p.m., victim N.C. attempted to enter N.C.'s vehicle, a 2014 Chevrolet Traverse manufactured in Lansing, MI, at the South Miami Metrorail parking garage in Miami, FL. When N.C. entered the vehicle, the Defendant and co-defendant Ernest Hammett rushed N.C. and forcibly took N.C.'s property, valued at over \$10,000, including jewelry, a laptop computer, credit and debit cards, and the 2014 Chevrolet Traverse. During the course of the carjacking, ^{N.C. WAS} ~~the Defendant and co-defendant Hammett~~ ^{SM 7/2 C.W.} ~~physically restrained, punched, and choked N.C. and caused N.C. to sustain serious bodily injury.~~ ^{CAUSING ↑ HER TO} A High Point .40 caliber pistol was brandished and utilized the firearm to repeatedly strike N.C. several times, causing N.C. to loose teeth, suffer a fractured foot, several cuts and bruises, blood loss, and concussion.

As another vehicle arrived in the garage, N.C. managed to escape and notify security at the

Metrorail station. Defendant and co-defendant Hammett promptly fled in N.C.'s vehicle, which was equipped with an OnStar GPS navigation system. Thereafter, law enforcement contacted OnStar in order to locate N.C.'s vehicle.

Law enforcement located the empty, parked 2014 Chevrolet Traverse in and around the Brownsville neighborhood of Miami, FL. Thereafter, officers observed the Defendant and co-defendant Hammett enter the vehicle. When officers approached, the Defendant and co-defendant Hammett fled on foot and were subsequently arrested.

During the pursuit, officers observed co-defendant Hammett and the Defendant discard the High Point .40 caliber firearm, serial #7128662, which contained one (1) round of ammunition in the chamber. Upon arrest, officers recovered the firearm's magazine, loaded with five (5) rounds of ammunition, and N.C.'s credit cards from co-defendant Hammett. From the Defendant, they uncovered N.C.'s wedding ring and other property stolen during the carjacking. Subsequent DNA testing revealed N.C.'s DNA on the seized firearm. N.C.'s DNA was located on the shirts worn by the Defendant and co-defendant Hammett at the time of their arrest.

Date:

4/8/15

By:

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date:

4/8/15

By:

SEAN T. McLAUGHLIN
ASSISTANT UNITED STATES ATTORNEY

Date:

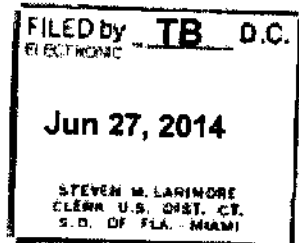
4/8/15

By:

DERIC ZACCA
ATTORNEY FOR DEFENDANT

CARL LEE WILLIAMS
DEFENDANT

APPENDIX G



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
14-20465-CR-MOORE/MCALILEY
CASE NO.

18 U.S.C. § 2119(2)
18 U.S.C. § 922(g)(1)
18 U.S.C. § 924(c)(1)(A)(ii)
18 U.S.C. § 924(d)(1)

UNITED STATES OF AMERICA

v.

**ERNEST BERNARD HAMMETT and
CARL LEE WILLIAMS,**

Defendants.

INDICTMENT

The Grand Jury charges that:

COUNT 1

On or about May 29, 2014, in Miami-Dade County, in the Southern District of Florida,
the defendants,

**ERNEST BERNARD HAMMETT and
CARL LEE WILLIAMS,**

with the intent to cause death and serious bodily harm, did take a motor vehicle that had been transported, shipped, and received in interstate and foreign commerce, that is, a 2014 Chevrolet Traverse, from the person and presence of another, that is, "N.C.," by force and violence, and by intimidation, in violation of Title 18, United States Code, Sections 2119(1) and 2.

Pursuant to Title 18, United States Code, Section 2119(2), it is further alleged that serious bodily injury resulted, as defined by Title 18, United States Code, Section 1365.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

**18 U.S.C. § 2119(2)
18 U.S.C. § 922(g)(1)
18 U.S.C. § 924(c)(1)(A)(ii)
18 U.S.C. § 924(d)(1)**

UNITED STATES OF AMERICA

v.

**ERNEST BERNARD HAMMETT and
CARL LEE WILLIAMS,**

Defendants.

INDICTMENT

The Grand Jury charges that:

COUNT 1

On or about May 29, 2014, in Miami-Dade County, in the Southern District of Florida,
the defendants,

**ERNEST BERNARD HAMMETT and
CARL LEE WILLIAMS,**

with the intent to cause death and serious bodily harm, did take a motor vehicle that had been transported, shipped, and received in interstate and foreign commerce, that is, a 2014 Chevrolet Traverse, from the person and presence of another, that is, "N.C.," by force and violence, and by intimidation, in violation of Title 18, United States Code, Sections 2119(1) and 2.

Pursuant to Title 18, United States Code, Section 2119(2), it is further alleged that serious bodily injury resulted, as defined by Title 18, United States Code, Section 1365.

COUNT 2

On or about May 29, 2014, in Miami-Dade County, in the Southern District of Florida,
the defendant,

ERNEST BERNARD HAMMETT,

having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Section 922(g)(1).

COUNT 3

On or about May 29, 2014, in Miami-Dade County, in the Southern District of Florida,
the defendants,

**ERNEST BERNARD HAMMETT and
CARL LEE WILLIAMS,**

did knowingly use and carry a firearm during and in relation to a crime of violence, and did knowingly possess a firearm in furtherance of a crime of violence, an offense for which the defendant may be prosecuted in a court of the United States, that is, a violation of Title 18, United States Code, Section 2119(2), as charged in Count 1 of this Indictment, in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

Pursuant to Title 18, United States Code, Section 924(c)(1)(A)(ii), it is further alleged that the firearm was brandished.

FORFEITURE ALLEGATIONS


a. The allegations of Counts 1, 2, and 3 of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant has an interest.

b. Upon conviction of any of the violations alleged in Counts 1 through 3 of this Indictment, the defendants shall forfeit to the United States all of their right, title, and interest in any firearm and ammunition involved in or used in the commission of such violation, pursuant to Title 18, United States Code, Section 924(d)(1), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 924 and Title 28, United States Code, Section 2461.

A TRUE BILL

FOR PERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


IGNACIO J. VÁZQUEZ, JR.
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY

ERNEST BERNARD HAMMETT and
CARL LEE WILLIAMS,

Defendants.

Superseding Case Information:

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No
Number of New Defendants
Total number of counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect

4. This case will take 4-5 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days <u>X</u>	Petty <u> </u>
II 6 to 10 days <u> </u>	Minor <u> </u>
III 11 to 20 days <u> </u>	Misdem. <u> </u>
IV 21 to 60 days <u> </u>	Felony <u>X</u>
V 61 days and over <u> </u>	

6. Has this case been previously filed in this District Court? (Yes or No)

If yes: Judge: Case No.

(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No)

If yes: Magistrate Case No.

Related Miscellaneous numbers:

Defendant(s) in federal custody as of

Defendant(s) in state custody as of 05/29/2014

Rule 20 from the District of

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No

IGNACIO J. VAZQUEZ, JR.
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 16275

*Penalty Sheet(s) attached

REV 4/8/08

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

Defendant's Name: ERNEST BERNARD HAMMETT

Case No: _____

Count: 1

Carjacking with Serious Bodily Injury

Title 18, United States Code, Sections 2119(2) and 2

*** Max. Penalty:** 25 Years' Imprisonment

Count: 2

Firearm Possession by a Convicted Felon

Title 18, United States Code, Section 922(g)(1)

*** Max. Penalty:** 10 Years' Imprisonment

Count: 3

Brandishing a Firearm in Furtherance of a Crime Of Violence

Title 18, United States Code, Section 924(c)(1)(A)(ii)

*** Max. Penalty:** Life Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

Defendant's Name: CARL LEE WILLIAMS

Case No: _____

Count: 1

Carjacking with Serious Bodily Injury

Title 18, United States Code, Sections 2119(2) and 2

*** Max. Penalty:** 25 Years' Imprisonment

Count: 3

Brandishing a Firearm in Furtherance of a Crime of Violence

Title 18, United States Code, Section 924(c)(1)(A)(ii)

*** Max. Penalty:** Life Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**