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**APPENDIX A**

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**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 18-4459**

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UNITED STATES OF AMERICA,  
Plaintiff - Appellant,

v.

MARTIN JOHNSON,  
Defendant - Appellee.

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**No. 18-4457**

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UNITED STATES OF AMERICA,  
Plaintiff - Appellee,

v.

MARTIN JOHNSON,  
Defendant - Appellant.

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Appeals from the United States District Court for the  
District of Maryland, at Baltimore. George L. Russell,  
III, District Judge. (1:16-cr-00552-GLR-1)

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Argued: October 31, 2019  
Decided: December 18, 2019

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Before MOTZ, DIAZ, and THACKER, Circuit Judges.

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Affirmed in part, vacated in part, and remanded for resentencing by published opinion. Judge Motz wrote the opinion, in which Judge Diaz and Judge Thacker joined.

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**ARGUED:** Jason D. Medinger, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellant/Cross-Appellee. Joshua Morgan Wesneski, GIBSON, DUNN & CRUTCHER LLP, Washington, D.C., for Appellee/Cross-Appellant. **ON BRIEF:** Robert K. Hur, United States Attorney, Zachary B. Stendig, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellant/Cross-Appellee. Paresh S. Patel, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greenbelt, Maryland; Matthew D. McGill, GIBSON, DUNN & CRUTCHER LLP, Washington, D.C., for Appellee/Cross-Appellant.

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DIANA GRIBBON MOTZ, Circuit Judge:

A jury found Martin Johnson, a convicted felon, guilty of unlawful possession of a firearm. The district court, declining to apply two enhancements under the Armed Career Criminal Act (ACCA) and United

States Sentencing Guidelines, sentenced Johnson to 51 months imprisonment and three years supervised release. The Government appeals, arguing that the district court erred in refusing to count Johnson's prior Maryland conviction for robbery as a violent felony under the ACCA and his prior Maryland conviction for possession with intent to distribute as a controlled substance offense under the Sentencing Guidelines. Johnson cross-appeals, raising two evidentiary challenges to his conviction and contesting the district court's two-level upward departure in calculating his criminal history at sentencing. For the reasons that follow, we affirm the conviction but vacate Johnson's sentence and remand the case for resentencing.

#### I.

Around 5:40 AM on September 14, 2016, Baltimore police officers ran a registration check on a car parked at a gas station. They learned that the car's registration was suspended. When the officers activated their lights and sirens and approached, the car was driven away. The police pursued the vehicle and quickly stopped it.

The officers asked the driver, Martin Johnson, to step out. When he refused, they opened a car door and removed him from the vehicle. The officers placed Johnson under arrest for fleeing and eluding police. The officers searched the car and found marijuana and then searched Johnson and found more marijuana. During the latter search, a firearm fell out of the leg of Johnson's pants. In total, the police recovered from Johnson's vehicle and person multiple

bags of marijuana, the gun, five rounds of ammunition, and \$1,363 cash.

The Government charged and a jury convicted Johnson of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g). The presentence report (PSR) asserted that Johnson qualified for a fifteen-year mandatory minimum sentence under the ACCA based on three prior convictions, including a 1995 Maryland robbery conviction. In calculating Johnson's base offense level, the PSR concluded that his prior Maryland conviction for possession with intent to distribute constituted a controlled substance offense under the Sentencing Guidelines, which would enhance Johnson's base offense level from 14 to 20.

At Johnson's sentencing hearing, the district court rejected both recommendations. The court held that Maryland robbery did not qualify as an ACCA predicate violent felony because it requires no or *de minimis* force, and consequently that Johnson was not subject to the ACCA's fifteen-year mandatory minimum. The court determined that Maryland possession with intent to distribute did not constitute a controlled substance offense under the Guidelines because its distribution element may be satisfied with a mere offer of distribution. The district court thus set Johnson's base offense level at 14. After enhancing Johnson's offense level for his obstructing or impeding the administration of justice and the gun at issue being stolen, the court reached a final offense level of 18. In determining Johnson's criminal history category, the court departed upward by two levels, from category III to V, based on an underrepresentation of Johnson's criminal history.

The offense level of 18 and criminal history category of V resulted in an advisory Guidelines range of 51-63 months. The district court sentenced Johnson to 51 months incarceration and three years supervised release.

The Government timely appealed and Johnson timely cross-appealed. We first address the trial challenges and then consider the sentencing challenges.

## II.

Johnson contends that the district court made two evidentiary errors that, taken together, require vacatur. Because Johnson did not object to these evidentiary rulings at trial, we review for plain error. *See United States v. Olano*, 507 U.S. 725, 731 (1993). To prevail under this standard, a defendant must show that (1) there was error (2) that was plain and (3) affect[ed] substantial rights, and that (4) the error seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings. *Id.* at 732 (internal quotation marks omitted).

### A.

Johnson first argues that the many references made by the prosecutor and prosecution witnesses to the marijuana found in his car and on his person could have been understood by the jury to be prejudicial character evidence. Federal Rule of Evidence 404(b) provides that [e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. Fed. R. Evid. 404(b)(1). Although Johnson does not allege that the marijuana evidence was improperly admitted, he

contends that the district court plainly erred in failing to issue, *sua sponte*, a limiting instruction to the jury.

Johnson argues that because the marijuana evidence constituted 404(b) evidence, the district court was *required* to issue a limiting instruction, even though none was requested. He notes that in *United States v. Echeverri-Jaramillo*, 777 F.2d 933, 937 (4th Cir. 1985), we recognized that [i]n the normal instance, a limiting instruction for other acts or crimes evidence must be given to help guard against undue prejudice in admitting evidence under Rule 404(b). Johnson, however, ignores the next sentence in that case, which explains that a defendant's failure to request a limiting instruction is relevant in determining whether the lack of an instruction renders a conviction infirm. *See id.* (stating that given the lack of such a request by [the defendant], the district court's failure to give such an instruction [did] not amount to reversible error ).

The district court here, as in *Echeverri-Jaramillo*, clearly charged the jury that evidence concerning the defendant's guilt or innocence was to be considered only in relation to crimes outlined in the indictment, mitigating the risk that the jury would consider the evidence improperly. *Id.* Moreover, Johnson, unlike the defendant in *Echeverri-Jaramillo*, did not and does not challenge the *admissibility* of the evidence under Rule 404(b), and so gave the district court no notice at all of the potential need for a limiting instruction.

We recognize that [w]hile our cases suggest that a limited purpose instruction need be given only upon request, they leave open the possibility that the

district court must provide one *sua sponte* in some circumstances. *United States v. Brewer*, 1 F.3d 1430, 1435 (4th Cir. 1993) (citations omitted). We do not foreclose that possibility today, but we cannot say, given the record in this case, that the district court's failure to give a limiting instruction *sua sponte* constituted *plain error*. *See id.*

### B.

Johnson next contends that the district court erred in permitting the Government to cross-examine him about certain prior convictions. On direct examination, defense counsel asked Johnson about his criminal history, and Johnson recounted several prior convictions: a 1995 conviction for an unspecified offense, a 1998 conviction for drug possession, an unspecified assault conviction, a 2000 conviction for marijuana possession, and an unspecified conviction for possession with intent to distribute.

Before cross-examination, Government counsel argued that defense counsel's questioning opened the door to *all* of Johnson's prior convictions. Defense counsel responded, I don't disagree, and the district court permitted the questioning. After prompting Johnson to clarify that his 1995 conviction was for robbery, the Government then cross-examined him about several other convictions, including a 1996 conviction for battery, a 1999 conviction for unlawful manufacturing of controlled substances, a 2011 conviction for possession with intent to distribute, and a 2007 conviction for driving on a suspended license.

Johnson contends that in permitting the Government to elicit information about his prior convictions, the district court erred. He points out

that the Government can cite no authority holding that a criminal defendant's testimony about *some* prior convictions entitles the prosecution to cross-examine the defendant about *all* prior convictions. Johnson Reply Br. at 14. The problem for Johnson is that the Government does not bear the burden of showing that the district court ruled correctly. Rather, *Johnson* bears the burden of showing that the court plainly erred. See *United States v. Rodriguez*, 433 F.3d 411, 415 (4th Cir. 2006).

An error is plain if it is clear or obvious, rather than subject to reasonable dispute. *Puckett v. United States*, 556 U.S. 129, 135 (2009). In an attempt to meet this standard, Johnson relies on a handful of out-of-circuit cases. These cases speak to the limits of opening the door in evidentiary matters. See, e.g., *United States v. Schmitt*, 770 F.3d 524, 537–38 (7th Cir. 2014); *United States v. Osazuwa*, 564 F.3d 1169, 1175–76 (9th Cir. 2009). None holds that when a defendant freely testifies about an array of prior convictions, the prosecution, with defense counsel's concurrence, may not ask him about others. We cannot conclude that the district court *plainly* erred in permitting this questioning.

### III.

Having rejected Johnson's evidentiary challenges, we turn to the sentencing issues.

#### A.

First, the Government argues that the district court erred in concluding that Johnson's prior conviction for robbery under Maryland law does not constitute an ACCA violent felony. The ACCA imposes a fifteen-year mandatory minimum sentence



on a defendant, like Johnson, convicted of violating 18 U.S.C. § 922(g) who also has three previous convictions . . . for a violent felony or a serious drug offense. 18 U.S.C. § 924(e)(1). Johnson concededly has two qualifying ACCA predicate convictions for drug offenses. If Johnson's 1995 Maryland conviction for robbery qualifies as a predicate violent felony, the ACCA's mandatory minimum applies; if the conviction does not qualify, the mandatory minimum does not apply. Our review is de novo. *United States v. Winston*, 850 F.3d 677, 683 (4th Cir. 2017).

As relevant here, an offense qualifies as a violent felony under the ACCA if it is punishable by imprisonment for a term exceeding one year, 18 U.S.C. § 924(e)(2)(B), and has as an element the use, attempted use, or threatened use of physical force against the person of another, *id.* § 924(e)(2)(B)(i) (the force clause). In deciding whether an offense satisfies the force clause, we employ the categorical approach. *Winston*, 850 F.3d at 683. We look to the elements of the offense to resolve whether the conduct criminalized by the statute, including the most innocent conduct, qualifies as a predicate. *United States v. Diaz-Ibarra*, 522 F.3d 343, 348 (4th Cir. 2008).

The Supreme Court has held that physical force, as used in the ACCA, means *violent* force—that is, force capable of causing physical pain or injury to another person. *Johnson v. United States*, 559 U.S. 133, 140 (2010). The *Johnson* Court considered whether battery under Florida law satisfied the force clause. Florida's highest court had held that *any* intentional physical contact, no matter how slight, satisfied the element of touching. *Id.* at 138 (quoting

*State v. Hearn*s, 961 So.2d 211, 218 (Fla. 2007)). Concluding that *de minimis* force did not amount to violent force, the Supreme Court held that Florida battery did not constitute an ACCA predicate violent felony. *See id.* at 138, 140, 145.

Here, we ask what force Maryland robbery requires. We look to the elements of the offense and their interpretation by Maryland courts. *See id.* at 138. Maryland's robbery statute simply provides that [a] person may not commit or attempt to commit robbery. Md. Code, Crim. Law § 3-402. Case law reveals two ways to commit Maryland robbery: (1) taking by threat of force and (2) taking by force. *See Coles v. State*, 821 A.2d 389, 395 (Md. 2003).

1.

An analysis of the former is straightforward. *Johnson* teaches that physical force as used in the ACCA means force capable of causing physical pain or injury to another person. 599 U.S. at 140. The ACCA's force clause provides that an offense that has as an element . . . the threatened use of physical force against the person of another qualifies as a violent felony. 18 U.S.C. § 924(e)(2)(B)(i). Accordingly, an offense involving a threat to use force capable of causing physical pain or injury amounts to a violent felony.

To determine whether a defendant may be convicted of robbery based on a threat of force, Maryland courts ask whether an ordinary, reasonable person under the circumstances would have been in fear of bodily harm. *Spencer v. State*, 30 A.3d 891, 898 (Md. 2011). In other words, a Maryland conviction for robbery based on a threat of force

requires that the defendant spoke and acted in a way that a reasonable person would have understood as a threat of harm. *Id.* at 899. A Maryland conviction for robbery based on a *threat* of force thus satisfies the ACCA's force clause.

## 2.

Due to the *Johnson* Court's focus on the quantum of force necessary to satisfy the ACCA, whether Maryland robbery committed by force constitutes a proper predicate involves a more complicated analysis. A conviction for robbery by force in Maryland requires proof that the defendant used either force that overcame the victim's resistance or force capable of causing personal injury. *See West v. State*, 539 A.2d 231, 234 (Md. 1988) ([I]f there is any injury to the person of the owner in the taking of the property, or if he resists the attempt to rob him, and his resistance is overcome, there is sufficient violence to make the taking robbery, however slight the resistance. (quoting *Cooper v. State*, 265 A.2d 569, 571 (Md. Ct. Spec. App. 1970))). Both kinds of force satisfy the ACCA's force clause.

Force that overcomes a victim's resistance unambiguously satisfies the force clause. *Stokeling v. United States*, 139 S. Ct. 544 (2019), reaffirmed *Johnson*'s premise that nominal contact cannot satisfy the ACCA's force clause. *See id.* at 552–53. *Stokeling* held, however, that the force necessary to overcome a victim's physical resistance is inherently violent in the sense contemplated by *Johnson* and so satisfies the force clause. *Id.* at 553. Consequently, after *Stokeling*, Maryland robbery committed by force

that overcomes a victim's resistance constitutes a violent felony.

[W]hen there is no resistance by the victim, the mere force that is required to take possession . . . is not enough to prove robbery under Maryland law. *West*, 539 A.2d at 234 (quoting *Cooper*, 265 A.2d at 571). The offense requires more than nominal contact. *See id.* at 235 (overturning robbery conviction where the only force applied was that necessary to take the pocketbook from [the victim's] hand); *Cooper*, 265 A.2d at 572 (overturning robbery conviction where the force used was that, and only that, necessary to remove the money from the victim's pocket). Rather, under Maryland law, the force necessary to prove robbery must be sufficient not only to take the property but also to cause injury to the person of the owner. *West*, 539 A.2d at 234 (quoting *Cooper*, 265 A.2d at 571). Such force is capable of causing physical pain or injury and so satisfies the ACCA's force clause. *Johnson*, 559 U.S. at 140.<sup>1</sup>

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<sup>1</sup> Johnson unpersuasively argues that when the victim does not resist, Maryland robbery requires only an offensive touching. He maintains that *West* and *Cooper* both reversed robbery convictions because of a lack of an offensive touching. But in fact both cases reversed because the defendant neither overcame the victim's resistance nor used force capable of causing her injury, not because any touching was inoffensive. *See West*, 539 A.2d at 235 (holding that where the victim was never placed in fear; she did not resist; she was not injured, the evidence was not sufficient to establish all elements of the crime of robbery); *Cooper*, 265 A.2d at 573 (holding that where the money was suddenly snatched from the victim's pocket no more force being used than that merely necessary to take possession, and there was no actual resistance to the taking, the record show[ed] a case of larceny, but not robbery).

Unsatisfied, Johnson makes one last attempt to persuade us that Maryland robbery does not require violent force. He hangs his hat on a snippet from *Snowden v. State*, 583 A.2d 1056 (Md. 1991). He directs us to the following: Robbery is a compound larceny. It is a larceny from the person accomplished by either an assault (putting in fear) or a battery (violence). *Id.* at 1059. Johnson argues that because battery requires only an offensive touching, so too does Maryland robbery. But that argument overlooks the parenthetical (violence) in *Snowden*, which confirms that Maryland would punish larceny accomplished by *violent* physical contact as robbery, but not necessarily larceny accomplished by *offensive*, less than violent, physical contact.<sup>2</sup> Moreover, the immediately preceding sentence in *Snowden* fatally undermines Johnson's argument, for there the *Snowden* court explained: Robbery is also a common law crime and refers to the felonious taking and carrying away of the personal property of another, from his person or in his presence, *by violence or putting in fear. Id.* (emphasis added).

In sum, Maryland robbery may be committed by force or threat of force, and each way satisfies the ACCA's force clause. Thus, Maryland robbery constitutes a violent felony under the ACCA.

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<sup>2</sup> For that matter, *none* of the Maryland robbery cases the parties have cited even hint at the possibility of a robbery conviction based on a taking accompanied only by an offensive touching. *See, e.g., Spencer*, 30 A.3d 891 (no mention of offensive); *Coles*, 821 A.2d 389 (same); *West*, 539 A.2d 231 (same); *Cooper*, 265 A.2d 569 (same).

## B.

The Government next contends that the district court erred in holding that Johnson's prior Maryland conviction for possession of a controlled substance with intent to distribute is not a controlled substance offense under the Sentencing Guidelines.

The Sentencing Guidelines set a base offense level of 20 for possession of a firearm by a felon if the defendant has a prior felony conviction for a controlled substance offense. U.S.S.G. § 2K2.1(a)(4). The Guidelines define a controlled substance offense in pertinent part as an offense under federal or state law . . . that prohibits . . . the possession of a controlled substance . . . with intent to manufacture, import, export, distribute, or dispense. *Id.* § 4B1.2(b). Johnson has a 2012 Maryland conviction for possession (of marijuana) with intent to distribute. The district court held that the conviction did not qualify as a controlled substance offense because it requires only an offer of distribution and so set Johnson's base offense level at 14. As with the ACCA, we review de novo and apply the categorical approach. *United States v. Dozier*, 848 F.3d 180, 182–83 (4th Cir. 2017).

Johnson claims that under Maryland law, a defendant may be convicted of possession with intent to distribute merely for *offering* drugs, even if he does not actually intend to complete the sale. He argues that such a bare offer to sell drugs does not constitute a controlled substance offense without proof of *intent* to distribute. The three federal courts of appeals to confront this question have agreed. See *United States v. Madkins*, 866 F.3d 1136, 1145 (10th

Cir. 2017); *United States v. Hinkle*, 832 F.3d 569, 572 (5th Cir. 2016); *United States v. Savage*, 542 F.3d 959, 965 (2d Cir. 2008).

These cases, in which our sister circuits found that state offenses did not amount to controlled substance offenses under the Guidelines, are instructive. In each, the state statute at issue *expressly criminalized* an offer to sell drugs. See *Madkins*, 866 F.3d at 1145 (Kansas statute criminalizing offer for sale ); *Hinkle*, 832 F.3d at 572 (Texas statute defining deliver to include offering to sell ); *Savage*, 542 F.3d at 961 (Connecticut statute defining [s]ale as any form of delivery, including an offer ).

By contrast, such offer to sell language is nowhere to be found in Maryland law. The offer to sell language is also absent from the criminal code's definitional section. Md. Code, Crim. Law § 5-101. The statute at issue here not only makes no mention of an offer ; it *requires* proof that a person possess[ed] a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance. *Id.* § 5-602(2).

Moreover, Maryland cases interpreting current law never discuss an offer. Rather, they unambiguously demand proof of intent to distribute. See, e.g., *Holloway v. State*, 157 A.3d 356, 359 (Md. Ct. Spec. App. 2017) (identifying intent to distribute as element of the offense); *Rich v. State*, 44 A.3d 1063, 1069 (Md. Ct. Spec. App. 2012) (requiring proof that the defendant intended to distribute some or all of the cocaine ); *Johnson v. State*, 788 A.2d 678, 696 (Md.

Ct. Spec. App. 2002) (explaining that the element of intent is generally proved by circumstantial evidence ).

Johnson asks us to ignore the language of the Maryland statute and its construction by Maryland courts and instead rely on the following Maryland jury instruction: The defendant distributed a controlled dangerous substance if [he] sold the substance, which includes exchanging, bartering, or offering it for money. 2 David E. Aaronson, *Maryland Criminal Jury Instructions and Commentary* § 7.46 (3d ed. 2011). We are not persuaded that this instruction demonstrates that a defendant may be convicted solely for offering drugs for money, absent intent to complete the sale. The instruction expressly states that it is derived from *Rosenberg v. State*, 276 A.2d 708 (Md. Ct. Spec. App. 1971). The instruction notes that *Rosenberg* rested on the language of a previous statute, and since then, many of the definitions have been rewritten and supplemented. 2 Aaronson § 7.46 cmt. B. Johnson himself concedes that *Rosenberg*, decided nearly fifty years ago, interpreted a now-superseded statute. Johnson Principal & Response Br. at 45.<sup>3</sup>

Johnson's myopic focus on the word "offer" misses the point of the inquiry: whether Maryland possession with intent to distribute requires the intent necessary

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<sup>3</sup> Johnson also relies on Maryland's drug forfeiture statute, which provides for the seizure of a controlled substance that is unlawfully possessed, transferred, sold, or offered for sale. Md. Code, Crim. Proc. § 12-201(a)(1). Although that statute uses the word "offered," it does not purport to define "distribute" and does not reference the statutory offense at issue here. *See id.*



to qualify as a controlled substance offense. Because the state offense unmistakably requires proof of actual or constructive possession of a controlled substance and the intent to sell or distribute it, Johnson's offer to sell theory comes up short. *United States v. Olson*, 849 F.3d 230, 232 (5th Cir. 2017). Accordingly, Maryland possession with intent to distribute constitutes a controlled substance offense under the Guidelines.

#### IV.

For the foregoing reasons, we affirm Johnson's conviction but vacate his sentence and remand for resentencing consistent with this opinion. Because Johnson will be resentenced on remand, we need not and do not decide whether the district court erred in departing upward by two levels in assigning his criminal history category.

*AFFIRMED IN PART,  
VACATED IN PART, AND  
REMANDED FOR  
RESENTENCING*

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**APPENDIX B**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

UNITED STATES OF	)	
AMERICA,	)	CRIMINAL CASE
	)	NO. GLR-16-0552
vs.	)	
	)	
MARTIN JOHNSON,	)	
	)	
Defendant.	)	

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Wednesday, April 18, 2018  
Courtroom 7A  
Baltimore, Maryland

**BEFORE: THE HONORABLE GEORGE L.  
RUSSELL, III, Judge**

**SENTENCING**

**For the Plaintiff:**

Zachary Stendig, Esquire  
James Wallner, Esquire  
Assistant United States Attorneys

**For the Defendant:**

Thomas J. Maronick, Esquire  
Law offices of Thomas J. Maronick, Jr., LLC

Paresh Patel, Esquire  
Office of the Federal Public Defender

Also Present:

Paige Cameron, Probation Agent  
Agent James Keay, ATF

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Reported by:

Nadine M. Gazic, RMR  
Federal Official Court Reporter  
101 W. Lombard Street, 4th Floor  
Baltimore, Maryland 21201  
410-962-4753

...

**THE COURT:** Mr. Stendig?

**MR. STENDIG:** Your Honor, the Government intends to rely on the exhaustive briefing that we submitted in this matter. And I would just note that --

**THE COURT:** Well wait, you re leaving me with just the papers? Because I ve got -- I ve got a fairly comprehensive argument regarding the use of force clause and the Fourth Circuit appearing to affirm statutes similar to Maryland as not requiring any force. And then how could it possibly be a violent felony? I m just asking. I tell you, it s counterintuitive to me, so I m trying to fit a square peg into a round hole, but it s not going in because the Fourth Circuit appears to have ruled that under -- that statutes precisely like the one in Maryland doesn t require a

violent physical force in order for the felony to be committed.

**MR. STENDIG:** I understand, Judge.

**THE COURT:** Okay.

**MR. STENDIG:** We're relying on our papers. We'll mention the decisions in Garrett and Overton that we attached as well. It's the Government's position that Maryland robbery is a crime of violence under the Armed Career Criminal Act.

**THE COURT:** All right, and I disagree. Based upon the pleadings here, as well as the arguments made by Counsel and the decisions rendered by the Fourth Circuit in analogous statutes very similar to the Government's robbery statute, the state's robbery statute, that precisely the circumstances and the requirements necessary for robbery in those instances has been determined not to be a violent felony for the purposes of the Armed Career Criminal Act. You know, and while I certainly appreciate that it's counterintuitive to this Court and that the Court definitely needs some guidance regarding what the law is in this matter and the interpretation of what constitutes a violent felony, in this instance it appears as though the Fourth Circuit in its interpretation of robbery and similar statutes to Maryland has concluded that no force or de minimus force is necessary and that doesn't constitute the kind of force required to constitute an armed career criminal eligibility.

Furthermore, I can't look to the underlying facts which if I looked at the statement of probable cause, would be abhorrently violent, but I'm stuck there. I can't do that and I acknowledge I can't do it.

So, with that, I have to interpret the guidelines as Mr. Johnson being a noncareer offender in this case.

Mr. Stendig, are you satisfied that the Government has made an appropriate record?

**MR. STENDIG:** Yeah, I would note our exception, thank you.

**THE COURT:** Mr. Patel, are you satisfied the Court has made an appropriate record?

**MR. PATEL:** Yes, Your Honor.

**THE COURT:** All right, very good. So the base offense level if Mr. Johnson is not an armed career criminal is at least initially according to the presentence report, looks like a 24 according to the presentence report; is that correct? Base level of 20 and then we would add potentially 4 levels for the possession being in connection to another felony offense?

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**APPENDIX C**

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FILED: January 14, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 18-4457  
(1:16-cr-00552-GLR-1)

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UNITED STATES OF AMERICA  
Plaintiff - Appellee

v.

MARTIN JOHNSON  
Defendant - Appellant

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No. 18-4459  
(1:16-cr-00552-GLR-1)

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UNITED STATES OF AMERICA  
Plaintiff - Appellant

v.

MARTIN JOHNSON  
Defendant - Appellee

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O R D E R

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Motz, Judge Diaz, and Judge Thacker.

For the Court

/s/ Patricia S. Connor, Clerk

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**APPENDIX D**

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**United States District Court  
District of Maryland**

UNITED STATES OF  
AMERICA

**JUDGMENT IN A  
CRIMINAL CASE**

v.

**MARTIN JOHNSON**

(For Offenses Committed  
on or After November 1,  
1987)

Case Number:  
GLR-1-16-CR-00552-001

Defendant s Attorney:  
Thomas J Maronick, Jr,  
(Ret.) & Paresh Patel,  
AFPD

Assistant U.S. Attorney:  
Zachary B Stendig

**THE DEFENDANT:**

- pleaded guilty to count(s)\_\_\_\_
- pleaded nolo contendere to count(s)\_\_\_\_, which  
was accepted by the court.
- was found guilty on count 1 of the Indictment  
after a plea of not guilty.



<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18:922 (g)(1)	Possession of Firearm and Ammunition by a Convicted Felon	09/14/2016	1

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Counts \_\_\_\_\_ is/are dismissed on the motion of the United States.

**IT IS FURTHER ORDERED** that the defendant shall 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.

April 18, 2018  
Date of Imposition of Judgment

\_\_\_\_\_  
George L. Russell III Date  
United States District Judge

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **51 months as to Count 1 of the Indictment with credit for time served on this offense.**

- The court makes the following recommendations to the Bureau of Prisons:
  - That the defendant participate in any substance abuse program for which he may be eligible, including the Residential Drug Abuse Program (RDAP).
  - That the defendant be placed in a facility consistent with his security level that is as close as possible to Baltimore, MD.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
  - at \_\_\_\_\_ a.m./p.m. on
  - as notified by the United States Marshal.
- The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:
  - before 2pm on Monday, July 23, 2018.

**A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.**

**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

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years. **The defendant shall comply with all of the following conditions:**

The defendant shall 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.

#### **A. MANDATORY CONDITIONS**

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must 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 above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4)  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5)  You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 6)  You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 7)  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page

**B. STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements

(such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

**C. SUPERVISED RELEASE ADDITIONAL  
CONDITIONS**

1. You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
2. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information.

The probation office may share financial information with the U.S. Attorney s Office.

3. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

4. You must submit to substance abuse testing to determine if you have used a prohibited substance. You must pay the costs of the testing as directed by the probation officer. You must not attempt to obstruct or tamper with the testing methods.

5. You must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant s Signature \_\_\_\_\_ Date \_\_\_\_\_



**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>
<b>TOTALS</b>	\$100.00	\$.00	N/A

- CVB Processing Fee \$30.00
- The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
		0	

**TOTALS**    \$ \_\_\_\_\_    \$ 0 \_\_\_\_\_

\* 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.

- Restitution amount ordered pursuant to plea agreement \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the  
 fine     restitution
  - the interest requirement for the  restitution is modified as follows:

**SCHEDULE OF PAYMENTS**

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.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A  Special Assessment shall be paid in full immediately.
- B  \$\_\_\_\_\_ immediately, balance due (in accordance with C, D, or E); or
- C  Not later than \_\_\_\_\_; or

- D  Installments to commence \_\_\_\_ day(s) after the date of this judgment.
- E  In \_\_\_\_\_ (*e.g. equal weekly, monthly, quarterly*) installments of \$\_\_\_\_\_ over a period of \_\_\_\_ year(s) to commence when the defendant is placed on supervised release.

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

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

**NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.**

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- in equal monthly installments during the term of supervision; or
- on a nominal payment schedule of \$ \_\_\_\_\_ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

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.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

---

**APPENDIX E**

---

**UNITED STATES DISTRICT COURT**

**District of Maryland**

UNITED STATES  
OF AMERICA

v.

**MARTIN  
JOHNSON**

**AMENDED JUDGMENT IN  
A CRIMINAL CASE**

(For Offenses Committed  
on or After November 1,  
1987)

Case Number:  
GLR-1-16-CR-00552-001

Defendant s Attorney:  
Thomas J Maronick, Jr.  
(Ret.) & Paresh Patel,  
AFPD

Assistant U.S. Attorney:  
Zachary B Stendig

Date of Original  
Judgment: April 18, 2018  
(or date of last amended  
judgment)

**Reason for Amendment:**

- Correction of Sentence on Remand
- Reduction of Sentence for Changed Circumstances  
(Fed.R.Crim.P.35(b))
- Correction of Sentence by Sentencing Court  
(Fed.R.Crim.P.35(a))

- Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)
- Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant to:
  - 28 U.S.C. § 2255;
  - 18 U.S.C. § 3559(c)(7); or 0
  - Modification of Restitution Order
- Order of Court

**THE DEFENDANT:**

- pleaded guilty to count(s)
- pleaded nolo contendere to count(s) \_\_\_\_\_, which was accepted by the court.
- was found guilty on count 1 of the Indictment after a plea of not guilty

<b>Title &amp; Section</b>	<b>Nature of Offense</b>	<b>Date Offense Concluded</b>	<b>Count Number(s)</b>
18:922 (g)(1)	Possession of Firearm and Ammunition by a Convicted Felon	09/14/2016	1

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Counts \_\_\_\_\_ is/are dismissed on the motion of the United States.

**IT IS FURTHER ORDERED** that the defendant shall 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.

May 11, 2018  
Date of Imposition of Judgment

\_\_\_\_\_  
George L. Russell III Date  
United States District Judge

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **51 months as to Count 1 of the Indictment with credit for time served in this case, to include time spent in state custody for related Baltimore City Circuit Court Case 116272002 from September 15, 2016 through February 7, 2017.**

- The court makes the following recommendations to the Bureau of Prisons:
- That the defendant participate in any substance abuse program for which he may be eligible, including the Residential Drug Abuse Program (RDAP).
  - That the defendant be placed in a facility consistent with his security level that is as close as possible to Baltimore, MD.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
- at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_
  - as notified by the United States Marshal.
- The defendant shall surrender, at his own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:



before 2pm on Monday, July 23, 2018.

**A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.**

**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

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

**The defendant shall comply with all of the following conditions:**

The defendant shall 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.

**A. MANDATORY CONDITIONS**

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must 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 above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4)  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5) You must cooperate in the collection of DNA as directed by the probation officer.
- 6)  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

- 7)  You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page

**B. STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

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- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.

- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or

interact with that person without first getting the permission of the probation officer.

- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

### **C. SUPERVISED RELEASE ADDITIONAL CONDITIONS**

1. You must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

2. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney s Office.
3. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
4. You must submit to substance abuse testing to determine if you have used a prohibited substance. You must pay the costs of the testing as directed by the probation officer. You must not attempt to obstruct or tamper with the testing methods.
5. You must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see Overview of Probation and Supervised Release Conditions, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant s Signature \_\_\_\_\_

Date \_\_\_\_\_

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$100.00	\$0.00	N/A

- CVB Processing Fee \$30.00
- The determination of restitution is deferred until [Click here to enter a date..](#) An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ \_\_\_\_\_ \$ 0

- Restitution amount ordered pursuant to plea agreement \_\_\_\_\_
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the
    - fine     restitution
  - the interest requirement for the  fine  restitution is modified as follows:

---

\* 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.



### SCHEDULE OF PAYMENTS

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.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A  Special Assessment shall be paid in full immediately.
- B  \$\_\_\_\_\_ immediately, balance due (in accordance with C, D, or E); or
- C  Not later than \_\_\_\_\_; or
- D  Installments to commence \_\_\_\_ day(s) after the date of this judgment.
- E  In \_\_\_\_\_ (*e.g. equal weekly, monthly, quarterly*) installments of \$\_\_\_\_\_ over a period of \_\_\_\_ year(s) to commence when the defendant is placed on supervised release.

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

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

**NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.**

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- in equal monthly installments during the term of supervision; or
- on a nominal payment schedule of \$ \_\_\_\_\_ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

- 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.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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**APPENDIX F1**

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**U.S. Const. Amend. V**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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**APPENDIX F2**

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**TITLE 18 CRIMES AND CRIMINAL PROCEDURE**

**§ 924. Penalties**

...

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection

(A) the term serious drug offense means-

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C.

53a

802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term violent felony means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, 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; and

(C) the term conviction includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.