

No. 19-_____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRIS RAYVON STARKS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

APPENDIX

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
File Name: 19a0433n.06

Case No. 18-5309

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 v.)
)
 CHRIS RAYVON STARKS,)
)
 Defendant-Appellant.)
)

FILED
Aug 20, 2019
DEBORAH S. HUNT, Clerk

Before: MERRITT and LARSEN, Circuit Judges.*

PER CURIAM. The defendant pled guilty to illegally possessing a firearm in violation of 18 U.S.C. § 922(g). His appeal challenges a sentencing enhancement under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). The Act is a sentencing regime specifying mandatory minimum sentences for felons in possession of firearms. The question presented is whether the District Court erred in relying on facts in documents about defendant's older crimes to conclude that the career criminal enhancement applied. We affirm.

In August of 2016, law enforcement searched Chris Starks's home in Shelbyville, Tennessee, and discovered a loaded semi-automatic pistol. Starks pled guilty to the gun charge

* The third member of this panel, Judge Damon J. Keith, died on April 28, 2019. This order is entered by a quorum of the panel. 28 U.S.C. § 46(d).

without a plea agreement. The Presentence Report said that Starks had three convictions for aggravated robbery in Tennessee. Starks objected to being classified as an armed career criminal. The government responded to Starks's objections and submitted three state court judgments and accompanying indictments from Starks's prior violent felony convictions. At the sentencing hearing, the District Court overruled the defendant's objections and sentenced Starks to the mandatory minimum of 180 months. The defendant appealed.

The ACCA punishes recidivists caught possessing firearms. If a defendant meets certain standards specified by the statute, then he qualifies for a sentencing enhancement:

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.

18 U.S.C. § 924(e)(1) (emphasis added). The regime is applied in several stages. A sentencing court must first determine whether the previous convictions are for violent felonies, and then must determine whether those convictions occurred on occasions different from one another. The documents a District Court may examine in these stages are called *Shepard* documents. *See Mathis v. United States*, 136 S. Ct. 2243, 2249 (2016); *Shepard v. United States*, 544 U.S. 13, 26 (2005).

The defendant points to *United States v. King*, 853 F.3d 267 (6th Cir. 2017), to argue that the District Court was only empowered to review the *Shepard* documents for the elements of the crimes he committed rather than the dates and times of those crimes. Our recent precedent forecloses this argument. *United States v. Hennessee*, No. 18-5786, 2019 WL 3418957, at *4 (6th Cir. July 30, 2019). Even after *King*, our court has continued to use *Shepard* documents to determine whether the defendant's prior offenses were committed on different occasions. *See United States v. Pham*, 872 F.3d 799, 802 (6th Cir. 2017). The government need only prove to a

preponderance standard that the offenses were committed on different occasions. *Id.* at 801. In this case, the judgments meet the first or the second test under *Pham*. They show that the defendant committed aggravated robbery on “9/25/2008,” aggravated robbery on “9/28/2008,” and aggravated robbery again on “9/30/2008,” respectively. The District Court did not err by relying on these materials.

Starks also argues that the “different occasions” inquiry is an element of the ACCA that must be proven beyond a reasonable doubt by the government or, in the alternative, admitted by the defendants in a constitutionally protected proceeding (like a state court plea colloquy). Our precedent forecloses this argument too. *United States v. Burgin*, 388 F.3d 177, 186 (6th Cir. 2004). We conclude, therefore, that the government satisfied its burden in this case and affirm the defendant’s sentence.

MERRITT, Circuit Judge, Concurring in Judgment. As our *per curiam* in this case briefly explains, we recently decided the question of the standard to be followed in this case on the “different occasions” inquiry in *United States v. Hennessee*, No. 18-5786, 2019 WL 3418957 (6th Cir. July 30, 2019). We are now bound by the published opinion in this case. Chief Judge Cole issued a persuasive dissent in *Hennessee* with which I agree and would follow if not bound by the majority in *Hennessee*. In my opinion, as many lawyers and judges have said, the ACCA is a mess and should be extensively amended or repealed. *Cf. Williams v. United States*, 927 F.3d 427, 446 (6th Cir. 2019) (Merritt, J., concurring) (quoting Justices Breyer and Alito in calling the Act a “time-consuming legal tangle” and a “mess,” respectively).

1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TENNESSEE

3 AT CHATTANOOGA

4 :
5 UNITED STATES OF AMERICA, :
6 Plaintiff, :
-versus- : CR-4-17-8
7 :
8 CHRIS STARKS, :
9 :
10 Defendant. :
11

Chattanooga, Tennessee
March 7, 2018

12 BEFORE: THE HONORABLE CURTIS L. COLLIER,
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE PLAINTIFF:

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17 Assistant United States Attorney
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19 Chattanooga, Tennessee 37402

20 FOR THE DEFENDANT:

21 GIANNA MAIO, of
22 Federal Defender Services
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24 Chattanooga, Tennessee 37402

25 JUDGMENT PROCEEDINGS
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1 THE COURT: The Court will make the presentence
2 report and the attachments a part of the record and will order
3 that the report and the attachments be sealed.

4 Does the government have any objection to the
5 presentence report on Mr. Starks?

6 MR. PORTER: No, Your Honor.

7 THE COURT: Does Mr. Starks have any objection to
8 the presentence report prepared on him?

9 MS. MAIO: Yes, Your Honor.

10 THE COURT: Okay. Would you like to state them?

11 MS. MAIO: Yes, Your Honor.

12 We filed a notice and followed immediately by an
13 amended notice of objections to the presentence report,
14 specifically, to Mr. Starks's designation as an armed career
15 criminal. It's our position, Your Honor, that without the
16 armed career criminal designation that Mr. Starks would be
17 facing a base offense level of 20 with a criminal history
18 category of four, minus three points for acceptance of
19 responsibility, we believe that the appropriate guideline
20 range here would be 37 to 46 months. We base that primarily
21 on the *King* decision, which is a Sixth Circuit decision from
22 last summer in which they concluded that when courts are
23 looking at armed career criminal designation, specifically,
24 whether the offenses, the potential predicates were committed
25 on occasions different from one another that courts are

1 limited to facts that were either found beyond a reasonable
2 doubt at a jury trial or specifically admitted by the
3 defendant.

4 And there is a case that is similar to Mr. Starks,
5 which is the *United States versus Graham* decision. It's a
6 case out of the Middle District. It was decided on July 3rd
7 of last year. And they cited to the *King* decision with
8 approval in determining that Mr. Graham was not an armed
9 career criminal. Mr. Graham had a situation where he had four
10 potential predicates. He had one indictment and the
11 indictment alleged four separate dates of drug sales. They
12 were in June, July, September, and November of 2008. And what
13 the *Graham* court said is that under *King*, when you're looking
14 at *Apprendi* and *Mathis*, you cannot look to any *Shepard*
15 documents to determine whether those drug offenses were
16 committed on occasions separate from one another.

17 So, breaking that down just a little, a few steps
18 further, again, what I'm sure this Court is well aware, what
19 *Apprendi* requires is that under the Sixth Amendment a judge
20 may find only the fact of a prior conviction. Defendants are
21 entitled to a jury finding for a fact about a prior
22 conviction. And so, that's the central distinction that's at
23 issue here. So, anything else that would potentially increase
24 the penalty beyond the statutory maximum has to be submitted
25 to a jury.

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1 So, when *King* was looking at how to square *Apprendi*
2 following the *Mathis* decision, they were faced with a choice
3 between two options. One is to say, okay, after *Mathis* we can
4 either say that the requirement that the predicates be
5 committed on different occasions, we can treat that as an
6 element of the Armed Career Criminal Act and that would
7 satisfy *Apprendi*, or you can restrict the examination of a
8 prior conviction to *Shepard* documents, but you can look at
9 only two things. You can look at *Shepard* documents to
10 determine what crime someone committed, and what were the
11 elements of that crime because *Mathis* made very clear to the
12 courts who began down a path in many cases cited by the
13 government, in the *Brady* decision, this Court's decision in
14 *Humphries* and others that were all pre-*Mathis* that the courts
15 engaged down a course where they developed a test to look at,
16 okay, we can look at the *Shepard* documents, we can look at
17 where were these crimes committed, what were the locations,
18 what were the names of the victims, what were the dates of the
19 crime. And what *Mathis* and *Descamps* remind us is that in
20 *Apprendi*, you cannot go beyond an element. So, you cannot go
21 down the path of a fact specific analysis. And so, what the
22 courts must do, what *King* says is that courts must stop at
23 what is the crime of conviction, what are the elements of that
24 crime.

25 And so, they drew the conclusion that because the

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1 offense date -- well, going back to the *Graham* decision, Your
2 Honor. In *Graham*, again, we've got four drug offenses. And
3 so, what the Court concluded there is that the date of -- the
4 offense date is not an element of the crime. So, therefore,
5 it's improper for the Court to go beyond that. All the Court
6 can look at is was this person convicted of a felony drug
7 crime, yes. But going beyond that to say are these occasions
8 different from one another, they cannot do, because the
9 offense date is not an element of the crime. In fact, if
10 Mr. Graham were to -- if he were convicted by a jury, the jury
11 would not have to find specifically that on those specific
12 dates he distributed drugs. What the Tennessee jury
13 instructions say is that they merely have to find that he
14 committed those drug distribution offenses at some date prior
15 to the indictment.

16 And the same is true of the statute at issue for Mr.
17 Starks, with the Tennessee aggravated robbery conviction, you
18 have three elements of the crime. Those being taking goods
19 from another person by force, violence, or placing them in
20 fear, and that has to be accomplished with a deadly weapon, or
21 serious bodily injury. So, what we have with Mr. Starks is a
22 Bedford County indictment in which there are three counts with
23 separate offense dates. Those dates being September 25,
24 September 28, and September 30.

25 So, what the government urges the Court to do is to

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1 make a, basically, you know, open and shut analysis. Well, we
2 know that the judgment and we know that the indictment are
3 acceptable *Shepard* documents. So, all the Court has to do is
4 look at the *Shepard* documents, see that the counts allege
5 different offense dates, determine that they're on different
6 dates, and that's the end of the analysis. But, again, under
7 *King* and *Mathis*, that would be improper because of the fact
8 that Mr. Starks did not have to admit to those specific
9 offense dates as part of his plea to those crimes. And the
10 Court cannot consult the *Shepard* documents to determine
11 whether they were different dates because they're not
12 elements. And what *Mathis* again reminds the Court is that
13 under the Armed Career Criminal Act, as the Supreme Court has
14 always understood it, that we should concern ourselves not
15 about the facts, but only about the elements. And *Taylor* also
16 reminded courts that when Congress enacted the Armed Career
17 Criminal Act they meant to adopt an approach that required --
18 that did not require courts to engage in elaborate fact
19 finding regarding the prior offenses.

20 And so, what *King* and *Mathis* again have instructed
21 courts to do is to dial back the approach where courts were
22 going further and further afield and trying to determine the
23 facts of a particular crime beyond the elements. And we would
24 submit, Your Honor, that all of the case law that is cited by
25 the government in support of its position, specifically, on

1 Page 4, all of those opinions predate *King*. And all of them,
2 you know, *Brady* and others, again, were part of that line of
3 cases which considered things beyond the elements of the
4 crime. So, it's a very, very narrow analysis. And we submit
5 that you cannot go beyond that in Mr. Starks' case to
6 determine that these were committed on separate dates.

7 I would like to specifically address one of those
8 decisions, which as I referenced earlier is this Court's
9 earlier opinion in *Humphries*, which is from 2009. And there
10 what they address, what the Court addressed was, you know,
11 *Apprendi* says, you know, typically, you can't go to look at
12 anything beyond the fact of a prior conviction. However,
13 we've carved out this narrow exception, and that narrow
14 exception applies when you're looking at a prior commission of
15 a serious crime. But I think that in reviewing the *Humphries*
16 opinion in light of *Mathis*, what *Mathis* instructs is that in
17 order to fit within that narrow exception in *Apprendi* the
18 features of that prior conviction must be elements. Because,
19 again, what *Mathis* says is that you can only use *Shepard* to
20 look at two things; what is the crime and what are the
21 elements. And so, because the offense dates are not elements
22 of Tennessee aggravated robbery, then, you cannot look to the
23 *Shepard* documents to determine that question, Your Honor. And
24 Mr. Starks does not have any other potential armed career
25 criminal predicate offenses aside from those three aggravated

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1 robbery counts within that one indictment.

2 So, we submit under *King* and *Mathis* and *Descamps* and
3 *Shepard* and *Taylor* that it would be inappropriate to use the
4 *Shepard* documents to determine that Mr. Starks is an armed
5 career criminal.

6 THE COURT: If the Court accepted your argument,
7 would there be anything else left of the Armed Career Criminal
8 Act?

9 MS. MAIO: There would be, Your Honor. Because of
10 the fact that there are certainly -- there are post-*King*
11 decisions in the Sixth Circuit in which they have determined
12 that even within these narrow confines people can still be
13 determined to be an armed career criminal.

14 THE COURT: You would not be able to determine the
15 date that the offense took place so how would a Court ever be
16 able to determine that these convictions were acts that took
17 place on occasions different from each other?

18 MS. MAIO: Well, there are two cases in which the
19 Court determined that they still could. In the *Southers*
20 decision, in the *Patterson* decision, both of which were Sixth
21 Circuit opinions from last year which followed *King*, they
22 found that they could still find a person to be -- the
23 defendant to be an armed career criminal because they had made
24 specific admissions either in federal court or as part of
25 their state court proceedings in which they have, they had

1 stated on the record that they had committed crimes on
2 specific separate occasions.

3 THE COURT: And the evidence of that would not be a
4 *Shepard* document?

5 MS. MAIO: Well, what -- again, what *King* said --

6 THE COURT: I assume that would be in a transcript,
7 those admissions?

8 MS. MAIO: Yes. And, Your Honor, what *Shepard*
9 instructs is that if there is a plea agreement or a plea
10 colloquy which would set forth some sort of admission or
11 agreement by the defendant that he or she committed these acts
12 on separate occasions, then that could be properly considered
13 to determine what the crime is and what the elements are.

14 THE COURT: So, the Armed Career Criminal Act would
15 be saved in a circumstance where a defendant on the record
16 under oath admitted the dates and the dates would be different
17 from one another?

18 MS. MAIO: Potentially, Your Honor.

19 THE COURT: What's the other exception?

20 MS. MAIO: Well, Your Honor, I think that there are
21 situations in which you may have separate charging documents,
22 so, if you had, for example, a gap of several years, and you
23 had separate charging documents, which alleged offense dates
24 separated by say five or 10 years, or something along those
25 lines, you may have a situation, but, again, I don't know,

1 because of the fact that the date is not, is not an element.

2 THE COURT: And just because an indictment is
3 returned in 2018 does not mean that the crime did not take
4 place in 2014?

5 MS. MAIO: That's correct, Your Honor. So, I don't
6 know that that would necessarily allow for the Court to
7 conclude that someone is an armed career criminal even if you
8 have some gap between the alleged offense dates and they are
9 contained within separate indictments. Under *King*, I don't
10 know that that would allow you to make the determination
11 however.

12 THE COURT: So, based upon your reading of *King* then
13 the only way then that a person would be eligible for armed
14 career criminal status would be if the person admitted on the
15 record during the course of their guilty plea or perhaps in a
16 plea agreement that they had committed the offense on dates
17 different from one another?

18 MS. MAIO: Or you would have a situation which *King*
19 acknowledged where someone would go to trial, if a jury were
20 to find beyond a reasonable doubt that the crimes were
21 committed -- I suppose, depending upon the verdict, I think
22 that there could be a potential for courts to conclude that
23 based upon the jury's finding beyond a reasonable doubt that
24 they were committed on separate occasions.

25 THE COURT: I thought though that the dates were not

1 elements of the offense, so, if it is not an element of the
2 offense, how could we ever tell if a jury determined that
3 there was a date beyond a reasonable doubt?

4 MS. MAIO: Well, I agree that the jury would not be
5 required to find on what date the crime occurred. However, if
6 there were a situation -- well, Your Honor, I don't know
7 because of the fact that none of the elements that the jury
8 would have to find beyond a reasonable doubt because none of
9 those directly impact whether they're committed on different
10 dates, I don't know that the Court could necessarily rely upon
11 a jury verdict to draw that conclusion.

12 THE COURT: And based upon your experience and also
13 from your reading cases, both federal and state cases, about
14 how often do we have a situations where a defendant in the
15 course of a guilty plea admits the specific dates that a crime
16 took place and that this crime took place on dates different
17 from another similar crime?

18 MS. MAIO: I really only have extensive experience
19 with one state jurisdiction, that would be in Knox County,
20 where the typical practice among all of the criminal court
21 judges was to have the assistant district attorney read into
22 the record a synopsis of -- essentially similar to a factual
23 basis that would be submitted here, where they would set forth
24 the facts that they think they would be able to prove had the
25 case gone to trial. And, typically, I think that they do

1 include an offense date. And, also, the offense dates, I
2 think, are often included with plea agreements, especially
3 where you've got a multi-count indictment, and you're
4 distinguishing between various counts I think that you
5 would -- there is plenty of times, I think, they could note a
6 date there to which the defendant would agree.

7 THE COURT: A factual basis would be a *Shepard*
8 document, though, wouldn't it?

9 MS. MAIO: The plea agreement certainly would be,
10 Your Honor, and the plea colloquy, yes, would both be
11 considered *Shepard* documents.

12 THE COURT: Okay. Thank you.

13 Mr. Porter.

14 MR. PORTER: Judge, the first thing that I would
15 like to do is move into evidence the judgments and indictments
16 in this case. I have them here.

17 THE COURT: And those are *Shepard* documents?

18 MR. PORTER: Yes, they are, Judge.

19 THE COURT: Okay.

20 MR. PORTER: And I will argue to the Court precisely
21 why I think that it's appropriate to rely on them in this
22 case.

23 THE COURT: They are admitted.

24 (Government's Exhibit 1 was received into evidence.)

25 MR. PORTER: Judge, to begin, I disagree with Ms.

1 Maio's reading of *King*. And I think it's important to focus
2 on the underlying facts of *King*. What the *King* court was
3 faced with was a situation where the indictments listed the
4 same offense date for all three of the predicates that
5 Mr. *King* had. The *King* court never rejected the concept or
6 the principle courts can turn to the indictment to derive the
7 offense date when determining whether offenses were committed
8 on occasions different from one another under the Armed Career
9 Criminal Act. I think that, in fact, that the *King* court
10 encouraged that, but the problem in *King* was that that
11 wouldn't solve the riddle in that case because, again, the
12 indictment all referenced the same offense date.

13 So, what the United States attempted to do in *King*
14 was they relied on bills of particular under Ohio law. My
15 understanding of bills of particular they are either police
16 reports or they are documents that are drafted by prosecutors.
17 They are not *Shepard* approved documents. *Shepard* approved
18 documents fall into a limited class. We know what they are.
19 They are judgments, they are indictments, they are transcripts
20 of plea colloquies. What the *King* court held was that it was
21 inappropriate to rely on those bills of particulars because
22 they were not *Shepard* approved documents. And because the
23 indictment in that case which are *Shepard* approved documents
24 did not shed any light on the issue, the Court was unable to
25 conclude the district court had appropriate evidence in front

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1 of it to determine that those predicates took place on
2 occasions different from one another.

3 To further illustrate the holding of the *King* court,
4 in *United States v. Southers*, which is a case that originated
5 out of this Court, the Court was faced with a very similar
6 situation to Mr. Starks. And in that case the Court had to
7 look at the indictments. They were Tennessee indictments, one
8 of the offenses was a robbery, another one of the offenses was
9 attempted aggravated robbery. The Court had to look to the
10 indictment, again, *Shepard* approved documents to determine
11 that those offenses occurred on occasions different from one
12 another.

13 Judge, I have the *Southers* opinion, and I
14 respectfully submit to the Court that the Sixth Circuit did
15 not hinge its analysis on admissions from the defendant. The
16 Court noted that the defendant had, in fact, made admissions
17 that those offenses were committed on occasions different from
18 one another in federal court, however, the Court rested its
19 decision on the fact that the indictments in that case gave
20 the Court enough evidence to determine that the offenses
21 occurred on occasions different from one another at places
22 different from one another. The *Southers* court went on to
23 distinguish *King* on that specific basis. What the *Southers*
24 court noted was that *King* was dealing with Ohio bills of
25 particular, not *Shepard* documents. So, the *Southers* court

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1 expressly distinguished *King* on that basis, so did the
2 *Patterson* court. *Southers* and *Patterson* were both decided
3 post-*Mathis* and post-*King*.

4 And the United States respectfully submits that they
5 both stand for the proposition that courts are able to look to
6 *Shepard* documents when determining whether or not an offense
7 was committed on occasions different from one another for
8 purposes of the Armed Career Criminal Act. *King* does not
9 support the conclusion that the Court is only allowed to look
10 at those documents when the defendant expressly admits that or
11 when the offense date is an element of the offense.

12 Here, what we have is judgments and indictments.
13 The judgments list the offense dates for each one of Mr.
14 Starks' offenses. They are September 25th, September 28th and
15 September 30th. The indictments that the United States
16 provided also reference the same offense dates that correspond
17 to each count. We respectfully submit that the Court is
18 permitted to consult the *Shepard* documents in this case, the
19 judgments and the indictments, and that they clearly establish
20 that these offenses were, in fact, committed on occasions
21 different from one another.

22 THE COURT: And *Southers* was decided after *King*?

23 MR. PORTER: It was, Your Honor. And, in fact,
24 *Southers* distinguishes *King* on the exact basis that I'm
25 attempting to distinguish *King* on right now.

1 THE COURT: And one panel of the circuit cannot
2 overrule another panel of the circuit?

3 MR. PORTER: That is correct, Your Honor. And I
4 don't think that the *Southers* court purported to overrule
5 *King*, they distinguished it.

6 THE COURT: If the *Southers* court, though, had
7 interpreted *King* to mean what Ms. Maio argues it means, then
8 they could not render the decision that it did?

9 MR. PORTER: They could not have, Judge.

10 THE COURT: Now, the Court asked Ms. Maio the
11 question, what would be left of the ACCA if the Court accepted
12 her argument. And she indicated that what would be left would
13 be in instances where a defendant on the record admitted under
14 oath that the crimes took place at either times different from
15 one another or on specific occasions. Do you agree that
16 that's all that would be left of the Armed Career Criminal
17 Act?

18 MR. PORTER: I can't think of much more, Judge. And
19 I do take Ms. Maio at her word that in Knox County they did
20 have plea colloquies where a defendant would admit these type
21 of things. I can tell you from my experience, and I have
22 looked at plea transcripts from several of the counties that
23 I'm responsible for in the Eastern District of Tennessee, and
24 I can tell Your Honor that on very few occasions are we able
25 to look at a, in my experience, a plea colloquy transcript and

1 derive an offense date. I am also -- Judge, I've been doing
2 this for six years and I've yet to see a state plea agreement,
3 I do not dispute that they exist in certain cases, but I have
4 yet to see a state case where there is actually a plea
5 agreement. Typically, the way the process works in state
6 court is that the judgment is, in fact, the plea agreement,
7 the negotiation between the state and the defendant. I have
8 yet to see a written plea agreement with a written factual
9 basis in a state case. I don't dispute that state prosecutors
10 can do that and they have done that in the past, I just don't
11 think it is very common, at least not in our district.

12 I don't believe that there would be very much of the
13 Armed Career Criminal Act left if courts were not allowed to
14 look to the judgments and indictments especially in states
15 like Tennessee to determine offense dates because one of the
16 things that the Court has to conclude under the Armed Career
17 Criminal Act if the defendant does have three predicates is
18 that each of those predicates occurred on occasions different
19 from one another. The way that we do that is we look at the
20 *Shepard* documents, usually it is the judgment which has an
21 offense date on it in this case or it is the indictment, or a
22 combination of both.

23 THE COURT: Thank you.

24 Ms. Maio, I'll give you a chance to respond.

25 MS. MAIO: Thank you, Your Honor.

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1 I think that what the government is overlooking
2 here, Your Honor, is that, yes, *Shepard* documents may be used.
3 But, again, the Supreme Court under *Mathis* has put certain
4 conditions, constitutional limitations on how those may be
5 used. And, again, the only proper basis for doing so would be
6 to look at what the crime is and what the elements are. When
7 you look at the way in which the *Southers* and *Patterson* cases
8 distinguished *King*, I disagree with the government's
9 interpretation of the holding there. Yes, the court in *King*
10 initially did look at the bill of particulars to try to answer
11 the question because what Mr. King was indicted, there were
12 three separate robberies. There were, there was a robbery
13 alleged against an Arthur Lundberg, February 18, against a
14 David Mariano on February 18, and then a count alleging
15 aggravated robbery against five victims on that same day. So,
16 the Ohio court looked to the bill of particulars, which was
17 recognized later as not a *Shepard* document. But the ultimate
18 holding in *King*, what the Sixth Circuit said there was
19 specifically because the time and place of the robberies were
20 not elements of the offense, it is improper to infer that *King*
21 admitted the time or place of the 2002 offenses. So, we have
22 a situation where the *King* court is not just saying oh, okay,
23 Ohio court, you didn't look at a *Shepard* document and that's
24 where you got it wrong. What they're saying is that those
25 offense dates were not elements and you cannot make an

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1 inference that *King* admitted to that.

2 And so, I think it does carve out an exception and
3 the Court raised an issue, concern about before that if you
4 have a situation where, again, someone has admitted or been
5 found guilty beyond a reasonable doubt of separate offenses on
6 separate dates, they could still be subject to the Armed
7 Career Criminal Act. But the *King* decision did not hinge
8 merely on the fact that it involved a bill of particulars.
9 They said the offense date is not an element, and, therefore,
10 armed career criminal does not apply.

11 THE COURT: Thank you.

12 This is an interesting issue. And I expect it will
13 taken up on appeal so we may have another pronouncement from
14 the Court of Appeals. The *Southers* decision, I believe, is
15 the most recent decision and actually arose out of this Court.
16 And the Court reads *Southers* as approving looking at *Shepard*
17 documents to determine that crimes took place at times
18 different from one another to serve as predicates for the
19 Armed Career Criminal Act.

20 The Court also believes that the courts in general
21 have an obligation to interpret statutes so they make some
22 sense. And I think that both Mr. Porter and Ms. Maio would
23 agree that if *King* is read in the manner that Ms. Maio is
24 advocating that there really would not be much left of it.
25 So, the Court is going to deny the defendant's objection to

1 treating the defendant's predicates as sufficient for armed
2 career criminal purposes. That means with that objection the
3 Court has found that the presentence report is correct
4 factually and unless there is another objection, that also
5 means that the presentence report has correctly calculated,
6 has correctly calculated the guidelines that apply to the
7 defendant. And the presentence report indicates that the
8 defendant's offense level because he's considered an armed
9 career criminal is a 30 and his criminal history category is a
10 four, which results in a guideline range of 133 to 168 months
11 but because of the Armed Career Criminal Act, his effective
12 guideline range becomes 180 months. The mandatory minimum
13 sentence is 15 years. Mr. Porter, is that correct?

14 MR. PORTER: Yes, Your Honor.

15 THE COURT: Ms. Maio, is that correct?

16 MS. MAIO: Yes, Your Honor.

17 THE COURT: Although the Court has determined the
18 guideline range, the Court understands that this range is
19 advisory and not binding on the Court. However, the mandatory
20 nature of the range is. The Court is required to consult the
21 guidelines and the Court must take them into account as well
22 as the sentencing goals stated in 18 U.S.C. Section 3553 in
23 arriving at an appropriate sentence.

24 The Court will now afford the defendant and Ms. Maio
25 the chance to speak on the defendant's behalf. Ms. Maio,

UNITED STATES DISTRICT COURT
24a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For Offenses committed on or after November 1, 1987)

v.

Case Number: **4:17-CR-00008-CLC-CHS(1)**

CHRIS RAYVON STARKS
USM#52269-074

Gianna Maio

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count: One of the indictment.
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section and Nature of Offense

18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(e) Felon in Possession of a Firearm and Ammunition (Armed Career Criminal)

Date Violation Concluded Count

08/16/2016 1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- The defendant has been found not guilty on count(s).
- All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS 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. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

March 7, 2018

Date of Imposition of Judgment

/s/

Signature of Judicial Officer

Curtis L Collier, United States District Judge

Name & Title of Judicial Officer

March 15, 2018

Date

25a

DEFENDANT: CHRIS RAYVON STARKS
CASE NUMBER: 4:17-CR-00008-CLC-CHS(1)

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **180 months as to Count One.**

- The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program.

- 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 for service of sentence at the institution designated by the Bureau of Prisons:
 - before 2 p.m. on .
 - as notified by the United States Marshal.
 - as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

26a

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years**.

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 sentencing 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 (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 which 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.

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.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the mandatory, standard, and any special 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.

Defendant's Signature _____ Date _____

DEFENDANT: CHRIS RAYVON STARKS
CASE NUMBER: 4:17-CR-00008-CLC-CHS(1)

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SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

The defendant shall submit his property, house, residence, vehicle, papers, computers, or office, to a search conducted by a United States Probation Officer or designee. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when a reasonable suspicion exists that the defendant has violated a condition of his supervision, and the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: CHRIS RAYVON STARKS
CASE NUMBER: 4:17-CR-00008-CLC-CHS(1)

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* 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.

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 under the Schedule of Payments sheet of this judgment 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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** 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.

DEFENDANT: CHRIS RAYVON STARKS
CASE NUMBER: 4:17-CR-00008-CLC-CHS(1)

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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 payments of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or
- D** Payment in equal *(e.g., weekly, monthly, quarterly)* installments of \$ _____ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties:

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 **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

- Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- 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:

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.