

# APPENDIX 1

UNITED STATES DISTRICT COURT  
Southern District of MississippiUNITED STATES OF AMERICA  
v.  
DAVID LAMONT LIDDELL

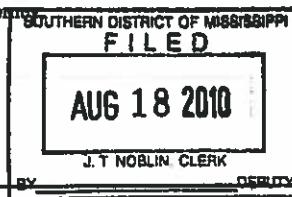
## JUDGMENT IN A CRIMINAL CASE

Case Number: 3:09cr112WHT-FKB-001

USM Number: 09745-043

Kathy Nester, 200 S. Lamar St., Suite 200 North, Jackson, MS 39201

Defendant's Attorney



## THE DEFENDANT:

 pleaded guilty to count(s) sole count of 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.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm	09/02/09	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 11, 2010

Date of Imposition of Judgment

The Honorable William H. Barbour, Jr. Senior U.S. District Court Judge  
Name and Title of Judge

8/18/10  
Date

DEFENDANT: DAVID LAMONT LIDDELL  
CASE NUMBER: 3:09cr112WHB-FKB-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

120 months

The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant shall serve his sentence of incarceration at the Federal Correctional Complex at Yazoo City, Mississippi if he meets the security classification criteria for that institution.

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:

by  a.m.  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

DEFENDANT: DAVID LAMONT LIDDELL  
CASE NUMBER: 3:09cr112WHT-FKB-001**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 60 month(s)

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

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

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

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

**STANDARD CONDITIONS OF SUPERVISION**

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

DEFENDANT: DAVID LAMONT LIDDELL  
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**SPECIAL CONDITIONS OF SUPERVISION**

- (A) The defendant is to provide any financial information, business or personal, to the U.S. Probation Office upon request and is prohibited from incurring new charges or opening additional lines of credit without the approval of the supervising U.S. Probation Officer.
- (B) The defendant shall submit to a search of his person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

DEFENDANT: DAVID LAMONT LIDDELL  
CASE NUMBER: 3:09cr112WHB-FKB-001**CRIMINAL MONETARY PENALTIES**

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

<u>TOTALS</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	\$100.00	\$1,500.00	

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* 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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<u>TOTALS</u>	\$ <u>0.00</u>	\$ <u>0.00</u>
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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.

DEFENDANT: DAVID LAMONT LIDDELL  
CASE NUMBER: 3:09cr112WHB-FKB-001

## SCHEDULE OF PAYMENTS

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

A  Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due  
 not later than \_\_\_\_\_, or  
 in accordance  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 monthly (e.g., weekly, monthly, quarterly) installments of \$ 50.00 over a period of 30 month(s) (e.g., months or years), to commence 60 day(s) (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 the U.S. District Clerk of Court, P. O. Box 23552, Jackson, MS 39225-3552.

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

Joint and Several

Case Numbers (including defendant number) and Defendant and Co-Defendant Names, 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:  
One (1) Professional Ordnance pistol, model Carbon 15, 5.56 caliber, SN B25208

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

# APPENDIX 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA

vs.

CRIMINAL NO. 3:09-cr-112-WHB  
CIVIL ACTION NO. 3:16-cv-480-WHB

DAVID LAMONT LIDDELL

OPINION AND ORDER

This cause is before the Court on Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody ("Motion to Vacate"). In addition to responding to the merits of the Motion to Vacate, the Government has moved for its dismissal on the grounds of waiver. Having considered the pleadings, the record in the underlying criminal case, as well as supporting and opposing authorities, the Court finds Defendant's Motion to Vacate is not well taken and should be denied.

**I. Factual Background and Procedural History**

David Lamont Liddell ("Liddell") pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Prior to sentencing, a Presentence Investigation Report ("PSI") was prepared to determine the applicable sentencing range under the United States Sentencing Guidelines ("U.S.S.G."). Although Liddell's initial Adjusted Offense Level was found to be 28, he was deemed to be an armed career criminal that required that

his sentence be calculated from an Adjusted Offense Level of 33 pursuant to U.S.S.G. § 4B1.4(b) (3) (B). The prior felony convictions used to support the armed career criminal designation included state court convictions for (1) burglary of an occupied dwelling, (2) armed robbery, and (3) aggravated assault with a weapon. Following a three-level reduction for acceptance of responsibility, Liddell's Total Offense Level was 30, which, when considered in conjunction with his Criminal History Level of V, resulted in a Sentencing Guideline Range of 151 to 188 months. Because of his three prior convictions, Liddell was to be subject to a statutory 15-year term of imprisonment pursuant to 18 U.S.C. § 924(e), which provides, in relevant part, that a person who violates Section 922(g)(1) and who has three previous convictions "shall be ...imprisoned not less than fifteen years." Prior to sentencing, however, the Government moved for the elimination of the 15-year mandatory minimum sentence under Section 924(e), and for a 3-level downward departure in Liddell's Total Offense Level. See Mot. for Downward Departure [Docket No. 24]. The Court granted the Motion. After the 3-level downward departure was applied, Liddell's Total Offense Level was 27, and the resulting Sentencing Range was 120 to 150 months. Liddell was sentenced to a 120-month term of imprisonment in August of 2010.

Relying on Johnson v. United States, 576 U.S. ---, 135 S.Ct. 2552 (2015), Liddell filed the subject Motion to Vacate. In his

Motion, Liddell argues that under Johnson, neither his armed robbery nor aggravated assault conviction should have been considered for the purposes of either sentencing him as a career offender under 18 U.S.C. § 924(e), or for the purpose of applying the enhancements under U.S.S.G. § 4B1.4 when calculating his sentence. In response, the Government argues that Liddell's Motion to Vacate should be dismissed on grounds including that he waived his right to seek post-collateral relief, it is barred by the applicable statute of limitations, and/or that his prior convictions were properly considered at sentencing. The Court now considers Liddell's Motion to Vacate.

## II. Discussion

In Johnson v. United States, 576 U.S. ---, 135 S.Ct. 2552 (2015), the United States Supreme Court considered a due process challenge to the Armed Career Criminal Act ("ACCA"), codified at 18 U.S.C. § 924(e). This statute provides, in relevant part:

(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court ... 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 ...

(2) As used in this subsection -

...

(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...

18 U.S.C. § 924(e). The specific issue raised to the Court was whether the residual clause in Section 924(e)(2)(B)(ii), which reads "or otherwise involves conduct that presents a serious potential risk of physical injury to another" was unconstitutionally vague. In deciding the issue, the Johnson Court held that an "increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution's guarantee of due process." Johnson, 133 S. Ct. at 2563. The Court also held that its decision did not "call into question application of the [ACCA] to the four enumerated offenses, or the remainder of the Act's definition of a violent felony." Id.

In his Motion to Vacate, Liddell argues that following Johnson, his state court convictions for aggravated assault and armed robbery can no longer be considered "violent felonies" under the residual clause of Section 924(e)(2)(B)(ii) of the ACCA for the purposes of enhancing his sentence.<sup>1</sup> Liddell further argues that

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<sup>1</sup> Liddell does not challenge whether his prior state court burglary of an occupied dwelling was properly considered when his sentence was imposed.

those same state court convictions cannot be considered "violent felonies" under the elements provision of Section 924(e)(2)(B)(i) of the ACCA, which defines the term "violent felony" to include certain crimes that have "as an element the use, attempted use, or threatened use of physical force against the person of another."

The Court finds Liddell's ACCA-related arguments lack merit, first because the holding in Johnson is not implicated in this case. Specifically, in Johnson the Supreme Court held that an "increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution's guarantee of due process." Johnson, 133 S. Ct. at 2563. Liddell, however, did not receive an increased sentence under the ACCA. In fact, the record shows that the Government moved for the elimination of the mandatory minimum 15-year sentence requirement of the ACCA, and the Court granted that Motion. See Mot. [Docket No. 24], and Minute Entry of Aug. 11, 2010. As the Docket shows that Liddell was not sentenced under the residual clause of the ACCA, and that he did not receive the mandatory minimum 15-year sentence required by that Act, the Court finds he has failed to show that he would be entitled to relief under Johnson. Second, even if Liddell had received an increased sentence under the ACCA, that sentence would have been proper because his state court convictions for aggravated assault and armed robbery both constitute "violent felonies" under the "elements clause" of the ACCA. See e.g. United States v.

Beckworth, 2016 WL 4203510 (N.D. Miss. Aug. 9, 2016) (finding that a conviction for aggravated assault under Mississippi law constitutes a violent felony for the purposes of sentencing); In re Collins, No. 16-60437, slip op. (5th Cir. Jul. 29, 2016) (finding that convictions of robbery and armed robbery under Mississippi law qualify as violent felonies for sentencing purposes).

Relying on Johnson, Liddell also challenges the armed career criminal enhancement under U.S.S.G. § 4B1.4 that was applied when his Sentencing Guideline Range was calculated. The Court finds this challenge is foreclosed by the decision in Beckles v. United States, --- U.S. ---, 137 S. Ct. 886 (2017), a case in which the Supreme Court held that provisions of the Sentencing Guidelines are not subject to due process vagueness challenges.

For these reasons, the Court finds Liddell's Motion to Vacate is not well taken and should be denied on its merits. The Court, therefore, does not consider the waiver issue raised by the Government in its Motion to Dismiss.

### **III. Conclusion**

For the foregoing reasons:

IT IS THEREFORE ORDERED that Defendant's Motion to Vacate Conviction and Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255 [Docket No. 28] is hereby denied.

IT IS FURTHER ORDERED that the Motion of the Government to

Dismiss [Docket No. 32] is hereby dismissed, without prejudice.

A Final Judgment dismissing this case with prejudice shall be entered this day.

IT IS FURTHER ORDERED that a Certificate of Appealability should not issue. Defendant has failed to make a substantial showing of the denial of a constitutional right.

SO ORDERED this the 1st day of May, 2017.

s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA

vs.

CRIMINAL NO. 3:09-cr-112-WHB  
CIVIL ACTION NO. 3:16-cv-480-WHB

DAVID LAMONT LIDDELL

FINAL JUDGMENT

In accordance with Rule 58 of the Federal Rules of Civil Procedure, and with the Opinion and Order that denied Defendant David Lamont Liddell's Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, this case is hereby dismissed with prejudice.

SO ORDERED this the 1st day of May, 2017.

s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE

# APPENDIX 3

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 17-60361  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 4, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID LAMONT LIDDELL,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:16-CV-480

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Before STEWART, Chief Judge, and HIGGINSON and COSTA, Circuit  
Judges.

PER CURIAM:\*

David Lamont Liddell, federal prisoner # 09745-043, was convicted of being a felon in possession of a firearm, and the district court determined that he was subject to sentencing under the Armed Career Criminal Act (ACCA). Although, on the Government's motion, the district court disregarded the ACCA's mandatory minimum sentence and imposed a 120-month term of

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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imprisonment, Liddell filed a 28 U.S.C. § 2255 motion challenging the five-year term of supervised release that was imposed as part of his sentence, in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). The district court denied relief, concluding that Liddell’s prior Mississippi convictions of armed robbery and aggravated assault qualify as violent felonies under the ACCA. This court granted a certificate of appealability on whether the district court erred in that decision.

We review the district court’s determination that a prior conviction qualifies as a ‘violent felony’ under ACCA de novo. *United States v. Seyfert*, 67 F.3d 544, 546 (5th Cir. 1995); *United States v. Vidaure*, 861 F.2d 1337, 1340 (5th Cir. 1988). A “violent felony” is a crime punishable by more than one year in prison that (1) has as an element the use, attempted use, or threatened use of physical force against another (the elements clause), (2) is the enumerated offense of burglary, arson, or extortion, or involves the use of explosives (the enumerated offenses clause), or (3) “otherwise involves conduct that presents a serious potential risk of physical injury to another” (the residual clause). 18 U.S.C. § 924(e)(2)(B); *United States v. Taylor*, 873 F.3d 476, 477 n.1 (5th Cir. 2017). *Johnson* has no effect on the elements or enumerated offenses clauses, but a sentence imposed under the residual clause is now unconstitutional. See 135 S. Ct. at 2563.

Under Mississippi Code Annotated § 97-3-79, armed robbery is committed by “feloniously tak[ing] or attempt[ing] to take from the person or from the presence the personal property of another and against his will by violence to his person or by putting such person in fear of immediate injury to his person by the exhibition of a deadly weapon.” Liddell challenges his armed robbery conviction as a valid ACCA predicate because § 97-3-79 can be violated by putting a victim in fear. His argument is unavailing, however, in light of

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recent holdings that similarly-worded robbery statutes involve sufficient force to meet the elements clause definition of “violent felony.” *See Stokeling v. United States*, 139 S. Ct. 544, 554 (2019); *United States v. Burris*, 920 F.3d 942, 958 (5th Cir. 2019).

In 2005, when Liddell was convicted under Mississippi Code Annotated § 97-3-7(2) (West. 2005), aggravated assault was committed by “attempt[ing] to cause serious bodily injury to another, or caus[ing] such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life” or by “attempt[ing] to cause or purposely or knowingly caus[ing] bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm.” *Hutchinson v. State*, 594 So. 2d 17, 19 n.1 (Miss. 1992); *see also Snowden v. State*, 131 So. 3d 1251, 1255-56 & n.2 (Miss. Ct. App. 2014) (recognizing that statute’s 2012 amendment). Liddell contends that his aggravated assault conviction is not a valid ACCA predicate offense because it can be committed using non-violent force, such as poison.

In *United States v. Reyes-Contreras*, 910 F.3d 169, 180-84 (5th Cir. 2018) (en banc), we considered 18 U.S.C. § 16(a), which defines “crime of violence” as “an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” Overruling prior caselaw to the extent it distinguished between direct and indirect force, we held that the use of force can include knowing or reckless conduct, indirect force can constitute the use of physical force, and there is no distinction between causation of injury and use of force. *Id.* (relying on, *inter alia*, *United States v. Castleman*, 572 U.S. 157 (2014), and *Voisine v. United States*, 136 S. Ct. 2272 (2016)).

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In light of the foregoing, the district court correctly ruled that Liddell's armed robbery and aggravated assault convictions qualified as predicate offenses under § 924(e)(2)(B)(i)'s elements clause definition. The judgment of the district court is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 17-60361  
Summary Calendar  
D.C. Docket No. 3:16-CV-480

United States Court of Appeals  
Fifth Circuit

**FILED**  
September 4, 2019

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

DAVID LAMONT LIDDELL,

Defendant - Appellant

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

Before STEWART, Chief Judge, and HIGGINSON and COSTA, Circuit  
Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is  
affirmed.



Certified as a true copy and issued  
as the mandate on Oct 28, 2019

Attest: *Lyle W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit