

APPENDIX

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UNITED STATES DISTRICT COURT
Southern District of Florida
Fort Lauderdale Division

UNITED STATES OF AMERICA
v.
JOSSAINT JOSIAH ARISTIL

JUDGMENT IN A CRIMINAL CASE

Case Number: **18-60071**
USM Number: **17460-104**

Counsel For Defendant: **Chantel Doakes**
Counsel For The United States: **Corey Steinberg**
Court Reporter: **Yvette Hernandez**

The defendant pleaded guilty to count(s) 1 & 2 of the indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 2119(1)	Carjacking	2/16/18	1
18 U.S.C. 1 924(c)(1)(A)(ii)	Brandishing a firearm with relation to crime of violence	2/16/18	2

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

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

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

Date of Imposition of Sentence: **10/15/2018**



Beth Bloom
United States District Judge

Date: 10/15/18

**DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **121 months ; 37 months as to Count 1 and 84 months as to Count 2 to run consecutively.**

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

The court makes the following recommendations to the Bureau of Prisons: For the Defendant to be designated to a South Florida facility due to his newborn child living in Miami.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **4 years; 3 years as to Count 1 and 4 years as to Count 2 to run concurrently.**

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

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

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

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

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

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: JOSSAINT JOSIAH ARISTIL

CASE NUMBER: 18-60071

SPECIAL CONDITIONS OF SUPERVISION

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

Mental Health Treatment - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

Defendant is to obtain his GED.

DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071

CRIMINAL MONETARY PENALTIES

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

TOTALS	<u>Assessment</u> \$200.00	<u>Fine</u> \$0.00	<u>Restitution</u> \$3,127.00
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The defendant must make restitution (including community restitution) to the attached list of 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>
S.M. C/O USPO	\$0.00	\$3,127.00	

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$3,127.00. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

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

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

DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$200 due immediately.

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

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

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

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716**

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

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

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.

A-2

UNITED STATES DISTRICT COURT
Southern District of Florida
Fort Lauderdale Division

UNITED STATES OF AMERICA
v.
JOSSAINT JOSIAH ARISTIL

JUDGMENT IN A CRIMINAL CASE

Case Number: **18-60071**
USM Number: **17460-104**

Counsel For Defendant: Tracy Dreispul
Counsel For The United States: **Sajaad Matin**
Court Reporter: **Yvette Hernandez**

The defendant pleaded guilty to count(s) 1 & 2 of the indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 2119(1)	Carjacking	2/16/18	1
18 U.S.C. 1 924(c)(1)(A)(ii)	Brandishing a firearm with relation to crime of violence	2/16/18	2

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

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

Date of Imposition of Sentence: **12/13/2019**



Beth Bloom
United States District Judge

Date: 12/13/2019

**DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **117 months; 33 months as to Count 1 and 84 months as to Count 2 to run consecutively.**

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

The court makes the following recommendations to the Bureau of Prisons: For the Defendant to be designated to a Coleman Medium in South Florida due to his child living in South Florida and so that he can continue his studies at the facility.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **4 years; 3 years as to Count 1 and 4 years as to Count 2 to run concurrently.**

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

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

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

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

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

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
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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
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DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071

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CASE NUMBER: 18-60071

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TOTALS	\$200.00	\$0.00

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<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
S.M. C/O USPO	\$0.00	\$3,127.00	

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

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

DEFENDANT: JOSSAINT JOSIAH ARISTIL
CASE NUMBER: 18-60071

SCHEDULE OF PAYMENTS

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A. Lump sum payment of \$200 due immediately.

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U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

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

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.

A-3

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14584
Non-Argument Calendar

D.C. Docket No. 0:18-cr-60071-BB-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOASSAINT JOSIAH ARISTIL,

Defendant-Appellant.

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

(September 17, 2019)

Before TJOFLAT, JORDAN, and NEWSOM, Circuit Judges.

PER CURIAM:

Joassaint Josiah Aristil appeals his 121-month sentence for carjacking, in violation of 18 U.S.C. § 2119, and brandishing a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A). Aristil makes two arguments on appeal. First, Aristil argues that his conviction for carjacking does not qualify as a crime of violence under either § 924(c)(3)(A) (the “elements clause”) or § 924(c)(3)(B) (the “residual clause”). *See Ovalles v. United States*, 905 F.3d 1231, 1234 (11th Cir. 2018) (en banc), *abrogated by United States v. Davis*, 139 S. Ct. 2319 (2019). Second, Aristil argues that the district court committed plain error in its application of § 4A1.2(d) of the Sentencing Guidelines.

We conclude that notwithstanding the Supreme Court’s recent decision in *Davis*, Aristil’s challenge to the application of § 924(c)(3) fails because we have repeatedly concluded that carjacking in violation of § 2119 qualifies as a crime of violence under the elements clause of § 924(c)(3). *See, e.g., In re Smith*, 829 F.3d 1276, 1280 (11th Cir. 2016). Aristil is nonetheless correct that the district court ignored § 4A1.2(d)’s limitation to offenses committed within five years of the instant offense. We therefore vacate Aristil’s sentence and remand for the district court to resentence Aristil pursuant to his correct criminal-history score.

I

Beginning with Aristil’s challenge to his conviction for violating

§ 924(c)(3),¹ that section provides for an increased sentence when a defendant uses a firearm during the commission of a drug trafficking crime or a crime of violence. 18 U.S.C. § 924(c)(1)(A). Section 924(c)(3) goes on to define “crime of violence” as:

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

In its opinion in *Davis*, the Supreme Court agreed with Aristil’s first argument that the residual clause in § 924(c)(3) is unconstitutionally vague. 139 S. Ct. at 2336.

But note the “or” that separates the elements and residual clause. The carjacking statute under which Aristil was convicted states that “[w]hoever, with the intent to cause death or serious bodily harm takes a motor vehicle . . . from the person or presence of another by force and violence or by intimidation” will be guilty of carjacking. 18 U.S.C. § 2119. We have repeatedly concluded that this statute satisfies the elements clause of § 924(c)(3). *See, e.g., In re Smith*, 829 at 1280 (“[A]n element requiring that one take or attempt to take by force and violence or by intimidation, which is what the federal carjacking statute does, satisfies the [elements] clause of § 924(c), which requires the use, attempted use,

¹ We review the district court’s legal interpretation of sentencing statutes and the Sentencing Guidelines *de novo*. *United States v. Burge*, 407 F.3d 1183, 1186 (11th Cir. 2005).

or threatened use of physical force.”); *United States v. Moore*, 43 F.3d 568, 572–73 (11th Cir. 1994). This holding was not affected by *Davis*, and we are bound by our prior precedent. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). Accordingly, we affirm as to this issue.

II

Aristil also argues that the district court plainly erred when it calculated his criminal-history category for purposes of determining his sentence. Aristil points out that the district court applied § 4A1.2(d)(2)(B) of the Sentencing Guidelines to his December 2012 conviction for shoplifting despite the fact that the provision applies only to convictions within a five-year window, and the carjacking occurred in February 2018.²

We review issues that were not raised before the district court for plain error. *United States v. Bennett*, 472 F.3d 825, 831 (11th Cir. 2006). Under plain-error review, we may correct an error where the defendant demonstrates that (1) an error occurred that was not deliberately abandoned, (2) the error was plain, and (3) the error affects the defendant’s substantial rights. *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1904–05 (2018). “Once those three conditions have been met,

² In relevant part, § 4A1.2(d), “Offenses Committed Prior to Age Eighteen,” instructs the district court to “(A) add 2 points under § 4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense; (B) add 1 point under § 4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant’s commencement of the instant offense not covered in (A).”

“the court of appeals should exercise its discretion to correct the forfeited error if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.”” *Id.* at 1905 (quoting *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1343 (2016)). A plain error affects the defendant’s substantial rights if it was prejudicial—meaning that the error actually made a difference in the defendant’s sentence. *United States v. Shelton*, 400 F.3d 1325, 1332 (11th Cir. 2005).

Under § 4A1.2(d)(2)(B), the court adds one criminal-history point for “each adult or juvenile sentence imposed within five years” of the instant offense. Aristil’s carjacking occurred on February 16, 2018. The district court nonetheless added a criminal-history point for a sentence imposed on December 13, 2012. Aristil received a criminal-history score of 4 when his score should have been 3, and as a result, his criminal-history category should have been II rather than III. Combined with the total offense level of 19, Aristil’s Guideline range should have been 33–41 months rather than the 37–46 months under which he was sentenced.

“[I]n the ordinary case a defendant will satisfy his burden to show prejudice by pointing to the application of an incorrect, higher Guidelines range Absent unusual circumstances, he will not be required to show more.” *Molina-Martinez*, 136 S. Ct. at 1347. We see no unusual circumstances here, and so conclude that

the district court plainly erred. Accordingly, we vacate and remand for the district court to resentence Aristil under the correct Guideline range.

AFFIRMED IN PART AND VACATED AND REMANDED IN PART.