

APPENDIX

APPENDIX TABLE OF CONTENTS

	<u>Page</u>
Unpublished Opinion of The United States Court of Appeals For the Fourth Circuit entered August 2, 2019	1a
Judgment of the United States Court of Appeals for The Fourth Circuit entered August 2, 2019	8a
Order of The United States Court of Appeals For the Fourth Circuit Re: Denying Petition for Rehearing entered September 17, 2019	9a
Judgment in a Criminal Case entered September 13, 2018	10a

[ENTERED AUGUST 2, 2019]

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4697

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCUS TERRELL MARSH,

Defendant - Appellant.

Appeal from the United States District Court for the
District of South Carolina, at Columbia. Terry L.
Wooten, Senior District Judge. (3:17-cr-01197-TLW-1)

Submitted: July 22, 2019 Decided: August 2, 2019

Before KING, FLOYD, and QUATTLEBAUM,
Circuit Judges.

Affirmed by unpublished per curiam opinion.

Arthur Kerr Aiken, Columbia, South Carolina, for Appellant. Sherri A. Lydon, United States Attorney, Stacey D. Haynes, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following the denial of a motion to suppress, Marcus Terrelle Marsh pled guilty pursuant to a plea agreement to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) (2012). The Government notified Marsh that he was subject to an enhanced sentence pursuant to the Armed Career Criminal Act, 18 U.S.C. § 924(e) (2012). As part of the plea agreement, Marsh reserved the right to appeal the denial of the motion to suppress and any determination at sentencing concerning his status as an armed career criminal. At sentencing, the district court overruled Marsh's objection to his status as an armed career criminal and sentenced him to 180 months in prison. Marsh noted this timely appeal.

Marsh contends that the district court erred in denying his motion to suppress. He argues that Corporal Brandon Eggleston of the Benedict College Police Department did not have a valid constable's commission and was outside of his jurisdiction when Eggleston stopped him. In reviewing the denial of a motion to suppress, "we review legal conclusions de novo and factual findings for clear error." *United States v. Seerden*, 916 F.3d 360, 365 (4th Cir. 2019).

“In doing so, we consider the evidence in the light most favorable to the Government.” *Id.*

A court reviewing for clear error may not “reverse a lower court’s finding of fact simply because [it] would have decided the case differently. Rather, a reviewing court must ask whether, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed.”

United States v. Wooden, 693 F.3d 440, 451 (4th Cir. 2012) (quoting *Easley v. Cromartie*, 532 U.S. 234, 242 (2001)).

The district court found that Eggleston’s constable commission was valid and he was within his jurisdiction when he stopped Marsh on July 25, 2017. In South Carolina, campus police “officers must be commissioned as constables pursuant to Section 23-1-60 and take the oath of office prescribed by law and the state Constitution for those officers.” S.C. Code Ann. § 59-116-20 (2004). The duration of appointments is governed by a separate statute:

All appointments of deputies, constables, security guards, and detectives appointed pursuant to this section without compensation expire sixty days after the expiration of the term of the Governor making the appointment. Each Governor shall reappoint all deputies, constables, security guards, and detectives who are regularly salaried as provided for by law within sixty days after taking office unless the

deputy, constable, security guard, or detective
is discharged with cause as provided for by law.

S.C. Code Ann. § 23-1-60(B) (Cum. Supp. 2018).

Governor Nikki Haley issued Eggleston's commission on April 26, 2015. She resigned in January 2017, and Henry McMaster assumed the office. Governor McMaster did not issue a new commission to Eggleston. Marsh argues, therefore, that Eggleston's commission expired in March 2017, 60 days after Governor Haley's resignation.

We disagree. Eggleston's commission "expire[d] sixty days after the expiration of the term of the Governor making the appointment." S.C. Code Ann. § 23-1-60(B). At the time of the stop, the four-year term to which Governor Haley was elected had not expired. Thus, Eggleston had a valid constable's commission when he stopped Marsh. *See* 1965 S.C. Op. Atty. Gen. 108, 1965 WL 8665 (May 5, 1965) ("[S]uch appointments continue for the term to which the Governor was elected and do not expire upon resignation of appointing Governor.").

We also conclude that Eggleston acted within his jurisdiction. "The jurisdiction of [campus police officers] is limited to the campus grounds and streets and roads through and contiguous to them." S.C. Code Ann. § 59-116-20. "Campus" is defined as "the grounds and buildings owned and occupied by a college or university for education purposes and streets and roads through and contiguous to the grounds." S.C. Code Ann. § 59-116-10(1) (2004). "Campus police officers may arrest persons outside the territory described in [§ 59-116-10(1)] when the person arrested has committed a criminal offense

within that territory, and the arrest is made during the person's immediate and continuous flight from that territory." S.C. Code Ann. § 59-116-30(B) (2004). After reviewing the record, we conclude that the district court did not err in finding that Eggleston was within his jurisdiction when he stopped Marsh.

Marsh next challenges his designation as an armed career criminal. At sentencing, the district court found that Marsh had three prior convictions for a serious drug offense, which qualified him as an armed career criminal pursuant to 18 U.S.C. § 924(e). A defendant qualifies as an armed career criminal if he violates § 922(g) and has three previous convictions "for a violent felony or a serious drug offense, or both, committed on occasions different from one another[.]" 18 U.S.C. § 924(e)(1). A serious drug offense includes "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance . . . for which a maximum term of imprisonment of ten years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii). Determining whether an offense constitutes an ACCA predicate is an issue of law, which we review de novo. *United States v. Burns-Johnson*, 864 F.3d 313, 315 (4th Cir.), *cert. denied*, 138 S. Ct. 461 (2017).

"We generally employ a categorical approach to determine whether a prior conviction serves as a predicate conviction under § 924(e)[.]" *United States v. Williams*, 326 F.3d 535, 538 (4th Cir. 2003). The categorical approach requires a consideration of whether "the elements of the prior offense . . . correspond in substance to the elements of the enumerated offense," irrespective of the actual facts

underlying the conviction. *United States v. Dozier*, 848 F.3d 180, 183 (4th Cir. 2017). (alteration, brackets, and internal quotation marks omitted). *See also Mathis v. United States*, 136 S. Ct. 2243, 2257 (2016).

When a state statute is divisible, however, we apply the modified categorical approach. *Mathis*, 136 S. Ct. at 2249. A statute is divisible if it “list[s] elements in the alternative, and thereby define[s] multiple crimes.” *Id.* A statute is not divisible if it “enumerates various factual means of committing a single element,” rather than “lists multiple elements disjunctively.” *Id.* Elements of an offense “are factual circumstances of the offense the jury must find unanimously and beyond a reasonable doubt.” *Omargharib v. Holder*, 775 F.3d 192, 198 (4th Cir. 2014) (internal quotation marks omitted).

If a state statute is divisible, a court must then determine which crime forms the basis of the conviction. *Mathis*, 136 S. Ct. at 2249. Pursuant to the modified categorical approach, a court may consider a “limited class of documents” approved by the Supreme Court to determine the particular crime of conviction (*Shepard** documents). *Id.* The court then compares the elements of that crime with the generic federal definitions. *Id.* at 2249, 2256.

Marsh contends that his South Carolina drug convictions do not qualify as ACCA predicates because the statutes are not divisible and include a prohibition on the purchase of controlled substances, which is broader than the definition of a serious drug

* *Shepard v. United States*, 544 U.S. 13 (2005).

offense in the ACCA. We recently held otherwise. *United States v. Furlow*, __ F.3d __, No. 18-4531, 2019 WL 2621773, at *4-8 (4th Cir. June 27, 2019). Accordingly, we conclude that the state statutes at issue are divisible, and the district court properly considered Shepard documents to determine that Marsh qualifies as an armed career criminal.

We therefore affirm Marsh's conviction and sentence. We dispense with oral argument because the fact and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

[ENTERED: AUGUST 2, 2019]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4697
(3:17-cr-01197-TLW-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARCUS TERRELLE MARSH

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court,
the judgment of the district court is affirmed.

This judgment shall take effect upon issuance
of this court's mandate in accordance with Fed. R.
App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

[ENTERED SEPTEMBER 17, 2019]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4697
(3:17-cr-01197-TLW-1)

UNITED STATES OF AMERICA

Plaintiff – Appellee

v.

MARCUS TERRELL MARSH

Defendant - Appellant

O R D E R

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

Entered at the direction of the panel:
Judge King, Judge Floyd, and Judge Quattlebaum.

For the Court

/s/ Patricia S. Connor, Clerk

[ENTERED SEPTEMBER 12, 2018]

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA)
)
 vs.)
)
 MARCUS TERRELL MARSH)
)

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:17-1197(1)

USM Number: 33070-171

Allen Burnside, FPD
Defendant's Attorney

THE DEFENDANT

☒ Pleaded guilty to count 1 of the indictment on
May 22, 2018.

☐ 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:

<u>Title and Section</u>	<u>Nature of Offense</u>
18:922(g)(1), 924(a)(2) and 924(e)	Please see indictment
<u>Offense Ended</u>	<u>Count</u>
July 25, 2017	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.

☒ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

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 monetary penalties, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

September 11, 2018
Date of Imposition of Judgment

/s/ Terry L. Wooten
Signature of Judge

Terry L. Wooten,
Chief United States District Court
Name and Title of Judge

September 12, 2018
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of One Hundred Eighty (180) months.

☒ The Court makes the following recommendations to the Bureau of Prisons:

***For defendant to be placed in a Federal Institution in South Carolina.**

☒ 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 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

SUPERVISED RELEASE

Upon release from imprisonment, the
defendant shall be on supervised release for a term
of Three (3) 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 sentence of restitution. (*check if applicable*)
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. §20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)

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

You must comply with the standard conditions that have been adopted by this court as well as the following conditions:

- 1) The defendant shall submit to random drug testing and treatment as administered by the U.S. Probation Office. The defendant shall contribute to the costs of such program not to exceed an amount determined reasonable by the court approved "U.S. Probation Office's Sliding Scale for Service."
- 2) Unless able to secure stable and verifiable employment, the defendant shall participate in a Vocational Training or Work Force Development Program as approved by the US Probation Office.

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 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 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 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 _____

CRIMINAL MONETARY PENALTIES

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

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

☐ The determination of restitution is deferred until _____ *An Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ 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 judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 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:

*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.

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 \$100.00 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 ____ (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 the clerk of court.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):

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

As directed in the Preliminary Order of Forfeiture, filed _____ and the said order is incorporated herein as part of this judgment.

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.