

No. _____

**In the
Supreme Court of the United States**

ISAAC L. HOBBS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Michael Dominic Meuti

Counsel of Record

Nathan P. Nasrallah

BENESCH, FRIEDLANDER,

COPLAN & ARONOFF LLP

200 Public Square

Suite 2300

Cleveland, Ohio 44114

(216) 363-6246

mmeuti@beneschlaw.com

August 13, 2020

QUESTION PRESENTED

Does a constitutionally invalid guilty plea resulting from the government's failure to inform a defendant of the knowledge-of-status element of 18 U.S.C. § 922(g) constitute a structural error?

LIST OF PARTIES

Petitioner Isaac L. Hobbs (“Hobbs”) was the Defendant in the district-court proceedings and the Appellant in the Court of Appeals. Respondent the United States of America (the “Government”) was the Plaintiff in the district-court proceedings and the Appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Hobbs files this Petition as an individual. He is not a corporation.

STATEMENT OF RELATED CASES

Hobbs was convicted in federal district court under 18 U.S.C. § 922(g) and sentenced under 18 U.S.C. § 924(e), on the basis that he committed three prior violent felonies. A challenge to one of those predicate felonies is currently pending in Ohio state court.

The Court of Common Pleas for Cuyahoga County, Ohio convicted Hobbs on November 5, 2012. *See State of Ohio v. Isaac Hobbs*, Case No. 12-CR-564611 (Ohio Ct. Com. Pleas, Cuyahoga Cnty.) On April 7, 2020, Hobbs moved to set aside that conviction on the grounds that the conviction is invalid and void under Ohio law. On April 21, 2020, the Ohio trial court denied Hobbs’s motion without any opinion, findings, or explanation.

Hobbs timely appealed the trial court’s denial of that motion to the Ohio Court of Appeals for the Eighth Appellate District. *See Isaac Hobbs v. The State of Ohio*, Case No. CA-20-109706 (Ohio Ct. App., 8th Dist.). Hobbs’s appeal is currently pending.

TABLE OF CONTENTS

QUESTION PRESENTED.....	I
LIST OF PARTIES.....	II
CORPORATE DISCLOSURE STATEMENT	II
STATEMENT OF RELATED CASES	II
TABLE OF CONTENTS.....	III
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE.....	2
Hobbs’s Federal Conviction	3
The <i>Rehaif</i> Decision.....	4
Hobbs’s Appeal to the Sixth Circuit.....	5
REASONS FOR GRANTING THE PETITION	7
Structural Error Precedent	7
Circuit Split on Structural Error.....	9
CONCLUSION.....	12

APPENDIX INDEX

Appendix A - Opinion of the United States Court of Appeals for the Sixth Circuit, March 20, 2020	1a
Appendix B - Judgment, United States District Court for the Northern District of Ohio, April 16, 2019.....	10a
Appendix C - Indictment, United States District Court for the Northern District of Ohio, July 19, 2017	18a
Appendix D - Notice of Intent to Conditionally Plead Guilty, United States District Court for the Northern District of Ohio, April 26, 2019	21a
Appendix E - Plea Agreement, United States District Court for the Northern District of Ohio, August 22, 2018	24a
Appendix F - Transcript Of Proceedings - Change of Plea Hearing, July 15, 2019.....	36a
Appendix G - Transcript Of Proceedings - Sentencing, July 15, 2019	91a
Appendix H - Brief of Appellant Isaac L. Hobbs, United States Court of Appeals for the Sixth Circuit, September 25, 2019	140a

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000).....	10
<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991).....	7
<i>Bousley v. United States</i> , 523 U.S. 614 (1998).....	2, 11
<i>Boykin v. Alabama</i> , 395 U.S. 238 (1969).....	2
<i>Gary. United States v. Gary</i> , — F. 3d —, No. 18-4578, 2020 WL 3767152 (4th Cir. July 7, 2020).....	11
<i>Neder v. United States</i> , 527 U.S. 1 (1999).....	8
<i>Puckett v. United States</i> , 556 U.S. 129 (2009).....	8, 9
<i>Rehaif v. United States</i> , 139 S. Ct. 2191 (2019).....	<i>passim</i>
<i>Ruelas v. Wolfenbarger</i> , 580 F.3d 403 (6th Cir. 2009)	6, 10
<i>Stein v. New York</i> , 346 U.S. 156 (1953) (Douglas, J., dissenting), overruled, <i>Jackson v. Denno</i> , 378 U.S. 368 (1964).....	12

<i>Underwood v. Royal</i> , 894 F.3d 1154 (10th Cir. 2018)	8
<i>United States v. Bradley</i> , 455 F.3d 453 (4th Cir. 2006)	8
<i>United States v. Burghardt</i> , 939 F.3d 397 (1st Cir. 2019).....	11
<i>United States v. Coleman</i> , 961 F.3d 1024 (8th Cir. 2020)	10
<i>United States v. Conley</i> , 802 F. App'x 919 (6th Cir. 2020)	5
<i>United States v. Davila</i> , 569 U.S. 597 (2013).....	8, 9
<i>United States v. Dominguez Benitez</i> , 542 U.S. 74 (2004).....	9
<i>United States v. Gary</i> , 954 F. 3d 194 (4th Cir. 2020)	11
<i>United States v. Hicks</i> , 958 F.3d 399 (5th Cir. 2020)	10
<i>United States v. McAllister</i> , 693 F.3d 572 (6th Cir. 2012)	8
<i>United States v. McLellan</i> , 958 F.3d 1110 (11th Cir. 2020)	11
<i>United States v. Mojica–Baez</i> , 229 F.3d 292 (1st Cir. 2000), <i>cert. denied</i> , 532 U.S. 1065 (2001).....	10

<i>United States v. Nelson</i> , 725 F.3d 615 (6th Cir. 2013)	5
<i>United States v. Olano</i> , 507 U.S. 725 (1993).....	1, 2, 7, 8
<i>United States v. Prentiss</i> , 256 F.3d 971 (10th Cir. 2001)	10
<i>United States v. Stewart</i> , 306 F.3d 295 (6th Cir. 2002)	6, 9
<i>United States v. Syme</i> , 276 F.3d 131 (3d Cir. 2002).....	8
<i>United States v. Trujillo</i> , 960 F.3d 1196 (10th Cir. 2020)	10
<i>United States v. Vonn</i> , 535 U.S. 55 (2002).....	9
<i>United States v. Watson</i> , — F. App’x —, No. 19-3658, 2020 WL 4037923 (6th Cir. July 17, 2020).....	10
<i>United States v. Watts</i> , 896 F.3d 1245 (11th Cir. 2018)	8
<i>United States v. Williams</i> , 946 F.3d 968 (7th Cir. 2020)	11
<i>United States v. Wiman</i> , 875 F.3d 384 (7th Cir. 2017)	8
<i>United States v. Yamashiro</i> , 788 F.3d 1231 (9th Cir. 2015)	8

Weaver v. Massachusetts,
137 S. Ct. 1899 (2017).....2, 8, 9

In re Winship,
397 U.S. 358 (1970).....2

Statutes

18 U.S.C. Section 922(g)2, 4, 5

18 U.S.C. §§ 922(g) and 924(e). (App. C, at 20-21.)3

18 U.S.C. § 924(a)(2).....4

18 U.S.C. § 924(e)(1).....4

28 U.S.C. § 1254(1)1

Criminal Justice Act.....5

Other Authorities

Fifth Amendment2, 11

Sixth Amendment11

Federal Rule of Criminal Procedure 52(b).....1, 7

Federal Rule of Criminal Procedure 119

PETITION FOR A WRIT OF CERTIORARI

Hobbs seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 953 F.3d 853 (6th Cir., March 20, 2020). (*See* App. A, at 3.) The district court’s judgment and proceedings (App. B, at 12) are unreported.

JURISDICTION

The court of appeals entered its judgment on March 20, 2020. In light of the ongoing COVID-19 pandemic, the Court extended the time to file this Petition to 150 days from the date of the lower court judgment. This Petition is timely filed on August 13, 2020. Hobbs invokes this Court’s jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Criminal Procedure 52(b) permits an appellate court to correct a trial court’s plain error, even though the defendant did not object to that error in the trial-court proceedings. *United States v. Olano*, 507 U.S. 725, 732 (1993). Plain-error review requires the appellant to show that: (1) an error occurred; (2) the error was plain; and (3) the error affected his or her substantial rights. *Id.* If the appellant can meet this test, the appellate court has discretion to grant relief. *Id.*

By contrast, errors that are closely linked to “certain basic, constitutional guarantees that . . . define the

framework of any criminal trial,” are deemed “structural,” *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907–08 (2017), and may satisfy the third prong of plain-error review, regardless of their actual effect on the outcome of the proceedings. *See Olano*, 507 U.S. at 735.

The Fifth Amendment makes plain that no person shall be deprived of life, liberty, or property without due process of law. This command requires courts to ensure that a defendant’s guilty plea is made knowingly and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969). To that end, the government must prove every element of each offense charged beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 361 (1970). A defendant’s guilty plea is out of sync with his due-process rights if the defendant did not understand “the essential elements of the crime with which he was charged.” *Bousley v. United States*, 523 U.S. 614, 618–19 (1998).

Title 18 U.S.C. Section 922(g), the offense under which Hobbs was convicted, prohibits certain persons from knowingly possessing firearms. The Court set forth four essential elements of this offense in *Rehaif v. United States*, 139 S. Ct. 2191 (2019). For a valid conviction under § 922(g), the government must show that: (1) the defendant belonged to the category of persons barred from possessing firearms; (2) the defendant knew that he belonged to the category of persons barred from possessing firearms; (3) the defendant knowingly possessed a firearm; and (4) the firearm traveled in or affected interstate commerce. *Id.* at 2195–96.

STATEMENT OF THE CASE

Hobbs faces nearly a decade and a half in prison for possessing his wife’s firearm—a crime that, if properly

proven, carries a 10-year maximum sentence, unless enhanced. Hobbs's conviction and sentence are invalid because his indictment and guilty plea omitted § 922(g)'s knowledge-of-status element, an element that this Court deemed critical in *Rehaif*.

Hobbs's direct appeal to the Sixth Circuit raised a question in light of *Rehaif* that has not yet been resolved by this Court: Can a *Rehaif* error resulting in a constitutionally invalid plea qualify as a structural error? The Sixth Circuit's Opinion below, along with its prior precedent, answers in the negative. Because the Sixth Circuit's answer contradicts the decisions of other circuits, Hobbs now asks this Court to grant certiorari here, resolve this circuit split, and provide guidance to the lower courts.

Hobbs's Federal Conviction

On July 19, 2017, the Government filed in the U.S. District Court for the Northern District of Ohio, Eastern Division, a single-count indictment against Hobbs. The indictment charged him of being a Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g) and 924(e). (App. C, at 20-21.) The indictment alleges nothing about whether, on the day of the alleged crime, Hobbs knew that he was a prior felon. *See id.*

On August 22, 2018, Hobbs entered a conditional guilty plea, following extensive negotiations with the Government. (App. D, at 23; App. E, at 26; App. F, at 38, 48.) Like the indictment, the plea agreement says nothing about Hobbs's knowledge of his convictions and their terms on the date of the crime. (App. E, at 32-33.) Hobbs explicitly reserved the right to appeal (a) the district court's denial of his Motion to Suppress, (b) the district court's determination that he qualified for sentencing under ACCA, (c) any punishment in

excess of the statutory maximum, and (d) the district court's determination of his criminal history category. (*Id.*, at 30-31.)

On April 12, 2019, the U.S. District Court for the Northern District of Ohio sentenced Hobbs. (App. B, at 12; App. G, at 93.) Typically, convictions for violating § 922(g) carry a ten-year maximum sentence. 18 U.S.C. § 924(a)(2). But ACCA enhances sentences of offenders who have been convicted of three prior “violent felonies,” as ACCA defines that term. 18 U.S.C. § 924(e)(1). Over Hobbs's objections, the court applied an ACCA enhancement and sentenced Hobbs to 15 years in prison. (App. G, at 131-32.)

Hobbs was convicted and sentenced without ever having been informed by the Government that he was a prior felon within the meaning of § 922(g), or that knowing his felon status at the time of his possession was an element of § 922(g). Hobbs did not specifically object on this basis because the Court had not yet issued its decision in *Rehaif*.

The *Rehaif* Decision

Nearly a year after Hobbs entered his guilty plea and just months after sentencing, the United States Supreme Court held that convictions under § 922(g) require proof the defendant “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (June 21, 2019). In other words, the Supreme Court confirmed that § 922(g) has a knowledge-of-status element. In Hobbs's case, that element requires the Government to allege and prove that he “*actually knew*—not should have known or even strongly suspected but *actually knew*” that he was previously convicted of a crime that had a punishment of imprisonment exceeding one year. *Id.* at 2208 (Alito, J., dissenting).

Before *Rehaif*, the Sixth Circuit required the government to prove three elements for a § 922(g) conviction: “(1) the defendant had a prior felony conviction; (2) he knowingly possessed a firearm; and (3) the firearm traveled in or affected interstate commerce.” *United States v. Nelson*, 725 F.3d 615, 619 (6th Cir. 2013). Thus, *Rehaif* added a fourth, knowledge-of-status element to this equation. *United States v. Conley*, 802 F. App’x 919, 922 (6th Cir. 2020) (“[Before *Rehaif*,] we did not require the government to prove that the defendant knew of his prohibited status when he knowingly possessed a firearm.”).

Hobbs’s Appeal to the Sixth Circuit

Hobbs timely appealed the district court’s sentence imposed on April 12, 2019 as reflected in the judgment entry of April 16, 2019. (App. H, at 154.) The U.S. Court of Appeals for the Sixth Circuit appointed counsel under the Criminal Justice Act. (*Id.*)

Hobbs advanced two primary arguments on appeal. Both arguments were based on the Government’s failure to inform Hobbs of the knowledge-of-status element under § 922(g), as *Rehaif* requires.

First, the district court lacked subject-matter jurisdiction over Hobbs’s prosecution because Hobbs’s indictment omitted the required knowledge-of-status element and, thus, failed to validly charge a federal offense. (App. H, at 157-59, 160-63.)

Second, Hobbs’s guilty plea and conviction are constitutionally invalid in that they violate his due process rights. Specifically, Hobbs lacked notice of the true nature of the charge against him because the indictment and plea agreement omitted an essential element of § 922(g)—that

Hobbs actually knew that he belonged to the category of persons barred from possessing firearms. Because he did not raise this objection in the district-court proceedings (and he was not yet on notice that it may behoove him to object on this basis), this argument was subject to plain-error review. Accordingly, Hobbs argued that the error affected his substantial rights because it implicates a number of essential due-process rights and affects the fairness and integrity of the judicial proceedings. (App. H, at 159-60, 163-66.)

Hobbs did not directly argue that the constitutional invalidity in his guilty plea and conviction amounted to a “structural error” because prior Sixth Circuit precedent foreclosed that argument. In *United States v. Stewart*, 306 F.3d 295, 310 (6th Cir. 2002), the court held that failing to inform a defendant of an essential element of the crime charged does not amount to structural error. Similarly, in *Ruelas v. Wolfenbarger*, 580 F.3d 403, 408 11 (6th Cir. 2009), the court rejected the argument that a constitutionally invalid guilty plea resulting from the government’s failure to inform the defendant of the true nature of the offense constituted a structural error. In light of this precedent, Hobbs advanced his due-process arguments under the only legal framework at his disposal—the Sixth Circuit’s established plain-error test. (App. H, at 164-66.)

But the Sixth Circuit rejected both arguments. For Hobbs’s second argument, the court analyzed the plain-error issue without ruling on whether Hobbs’s plea and conviction were constitutionally valid. The court held that Hobbs did not demonstrate “a reasonable probability that, but for the alleged failure to inform him of the knowledge-of-status element], he would not have entered the plea.” (App. A, at 8 (quoting *Dominguez Benitez*, 542 U.S. at 76)). Had the Sixth Circuit applied a proper structural-error test, its analysis and its outcome would have been different.

This Petition followed.

REASONS FOR GRANTING THE PETITION

The decision below is part of an existing split of authority among the circuit courts regarding whether a *Rehaif* error affects a defendant's substantial rights. On one hand, the Fifth Circuit, Sixth Circuit, Seventh Circuit, Eighth Circuit, and Tenth Circuit, have held that a *Rehaif* error does not necessarily affect a defendant's substantial rights and that the error is not structural. On the other hand, the Fourth Circuit has held that a *Rehaif* error is structural.

A significant reason for this split is that the Court has not yet answered whether a constitutionally invalid plea based on the government's failure to inform the defendant of the essential elements of the offense counts as a structural error. Hobbs now asks the Court to provide an answer.

Structural Error Precedent

Typically, when the defendant raises a constitutional violation for the first time on appeal, the defendant must satisfy Federal Rule of Criminal Procedure 52(b) by showing that the violation was a plain error that affected his substantial rights. *United States v. Olano*, 507 U.S. 725, 731-32 (1993). If the government can show "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," then the error is deemed harmless and the defendant is not entitled to reversal. *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991) (citing *Chapman v. California*, 386 U.S. 18, 22 (1967)).

However, some errors cannot be measured for purposes of plain-error analysis, in large part because those errors are closely linked to "certain basic, constitutional guarantees

that should define the framework of any criminal trial.” *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907–08 (2017). Under the “structural error” doctrine, the Court has long held that these errors “trigger automatic reversal because they undermine the fairness of the criminal proceeding as a whole.” *United States v. Davila*, 569 U.S. 597, 611 (2013) (citing *United States v. Marcus*, 560 U.S. 258 (2010)). Indeed, structural errors are “fundamental constitutional errors that defy analysis by harmless error standards.” *Neder v. United States*, 527 U.S. 1, 7 (1999) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)).

Accordingly, this “special category” of errors “can be corrected regardless of their effect on the outcome,” *Olano*, 507 U.S. at 735, though the Court has not yet expressly stated that structural errors “automatically satisfy the third prong of the plain-error test,” *Puckett v. United States*, 556 U.S. 129, 140–41 (2009). Following this guidance, most circuit courts hold that structural errors satisfy the substantial-rights requirement for plain-error review. *See United States v. Syme*, 276 F.3d 131, 155 n.10 (3d Cir. 2002); *United States v. Bradley*, 455 F.3d 453, 461–62 (4th Cir. 2006); *United States v. McAllister*, 693 F.3d 572, 582 n.5 (6th Cir. 2012); *United States v. Wiman*, 875 F.3d 384, 387 (7th Cir. 2017); *United States v. Yamashiro*, 788 F.3d 1231, 1236 (9th Cir. 2015); *Underwood v. Royal*, 894 F.3d 1154, 1176 (10th Cir. 2018); *United States v. Watts*, 896 F.3d 1245, 1253 n.5 (11th Cir. 2018).

The Court recognizes three flexible categories of cases that count as structural errors: (1) cases where “the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest,” such as a “defendant’s right to conduct his own defense”; (2) cases where “the effects of the error are simply too hard to measure,” such as the denial of a defendant’s right to select

his or her own attorney; and (3) cases where “the error always results in fundamental unfairness,” such as denying an indigent defendant an attorney or a judge’s failure to give a reasonable-doubt instruction to the jury. *Weaver*, 137 S. Ct. at 1907–08. It is clear that “[a]n error can count as structural even if the error does not lead to fundamental unfairness in every case.” *Id.* at 1908.

The Court has not explained where constitutionally invalid pleas fit within this framework. On several occasions, the Court has held that various Rule 11 violations do not count as structural errors. *See Davila*, 569 U.S. at 608–10 (holding that the judge’s interference in plea discussions was not a structural error); *Puckett v. United States*, 556 U.S. 129 (2009) (holding that the government’s breach of a plea deal was not a structural error); *United States v. Dominguez Benitez*, 542 U.S. 74, 81 n.6 (2004) (noting that “[t]he omission of a single Rule 11 warning without more is not colorably structural”); *United States v. Vonn*, 535 U.S. 55, 59 (2002) (holding that “a silent defendant has the burden to satisfy the plain-error rule”).

But the Court’s guidance regarding the weight of an invalid guilty plea stops there. Indeed, the Court has not instructed how lower courts should weigh constitutionally invalid guilty pleas in their plain-error and structural-error analyses. As such, the lower courts have disagreed on whether a *Rehaif* error can count as structural.

Circuit Split on Structural Error

Prior to *Rehaif*, the Sixth Circuit twice rejected the argument that constitutionally invalid pleas or indictments can qualify as structural errors. In *United States v. Stewart*, 306 F.3d 295 (6th Cir. 2002), the defendants argued that the trial court committed constitutional error because the

indictment and plea agreement failed to specify the drug quantities attributable to each defendant, as required by *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The Sixth Circuit agreed. Yet, it affirmed the district court’s sentence, emphasizing that the “limited” reach of the structural error doctrine, as described by the Supreme Court, did not include constitutionally invalid indictments. *Id.* at 321–23. Similarly, in *Ruelas v. Wolfenbarger*, the Sixth Circuit held that constitutionally invalid guilty pleas resulting from the government’s failure to inform the defendant of the true nature of the offense was not a structural error. 580 F.3d 403, 408-11 (6th Cir. 2009).

Several other circuits, too, have limited the structural-error doctrine to only those cases previously identified by the Court and, in doing so, rejected the argument that other due-process violations count. *See, e.g., United States v. Prentiss*, 256 F.3d 971, 991 (10th Cir. 2001) (holding that an indictment’s failure to allege an essential element of an offense was not structural error); *United States v. Mojica-Baez*, 229 F.3d 292 (1st Cir. 2000), *cert. denied*, 532 U.S. 1065 (2001) (same).

Since *Rehaif*, the Fifth Circuit, Sixth Circuit, Eighth Circuit, and Tenth Circuit have rejected the argument that failing to notify a defendant of § 922(g)’s knowledge-of-status element could qualify as a structural error. *United States v. Watson*, — F. App’x —, No. 19-3658, 2020 WL 4037923, at *3 (6th Cir. July 17, 2020); *United States v. Coleman*, 961 F.3d 1024, 1028–30 (8th Cir. 2020); *United States v. Trujillo*, 960 F.3d 1196, 1201–08 (10th Cir. 2020); *United States v. Hicks*, 958 F.3d 399, 401 (5th Cir. 2020). By the same token, the First, Seventh, and Eleventh Circuits have rejected the argument that a *Rehaif* error affects a defendant’s substantial rights, as the Sixth Circuit did in Hobbs’s appeal. *United States v. McLellan*, 958 F.3d 1110,

1120 (11th Cir. 2020); *United States v. Williams*, 946 F.3d 968, 973–74 (7th Cir. 2020); *United States v. Burghardt*, 939 F.3d 397, 403–05 (1st Cir. 2019).

The Fourth Circuit reached a contrary conclusion in *United States v. Gary*, 954 F.3d 194 (4th Cir. 2020). In that case, the court held that a *Rehaif* error resulting in a constitutionally invalid guilty plea falls squarely within all three structural-error categories that the Court has identified. *Id.* at 205. First, the error affects a defendant’s Sixth Amendment right “to make an *informed* choice on whether to plead guilty or to exercise his right to go to trial.” *Id.* at 205–06. Second, the error affects a defendant’s Fifth Amendment due-process rights, and the precise consequences to the judicial process “are necessarily unquantifiable and indeterminate.” *Id.* at 206 (quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006)). Third, accepting an “uninformed plea” necessarily leads to “fundamental unfairness.” *Id.* at 206–07.

Earlier this month, the Fourth Circuit denied the government’s petition for rehearing en banc in *Gary*. *United States v. Gary*, — F.3d —, No. 18-4578, 2020 WL 3767152, at *1 (4th Cir. July 7, 2020). Four circuit judges concurred in the denial, urging that the issue is “of such importance that I think the Supreme Court should consider it promptly.” *Id.*

Hobbs agrees. “Real notice of the true nature of the charge” plays a fundamental and immeasurable role in ensuring that the due-process requirement is met whenever the government takes away life or liberty. *Bousley v. United States*, 523 U.S. 614, 618 (1998). Indeed, informing a defendant of all essential elements of a crime protects a number of due-process goals, including: the appearance of fairness and justice, the maintenance of the adversarial system, and the assurance of individual dignity. *See, e.g.,*

Stein v. New York, 346 U.S. 156, 207 (1953) (Douglas, J., dissenting) (“[Due process] is the product of a civilization which, by respecting the dignity even of the least worthy citizen, raises the stature of all of us and builds an atmosphere of trust and confidence in the government.”), overruled, *Jackson v. Denno*, 378 U.S. 368, 391 (1964). If the government’s failure to live up to this constitutional guarantee does not count as a structural error, then the guarantee melts into merely an illusory promise, which the government may disregard to the detriment of individual, indigent defendants and the adversarial process at large.

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Michael D. Meuti

Counsel of Record

Nathan P. Nasrallah

BENESCH, FRIEDLANDER,

COPLAN & ARONOFF LLP

200 Public Square, Ste. 2300

Cleveland, OH 44114

(216) 363-6246

mmeuti@beneschlaw.com

*Attorneys for Petitioner Isaac L.
Hobbs*

August 13, 2020

APPENDIX

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: March 20, 2020

Kristen-Elise DePizzo
Mr. Michael Dominic Meuti
Benesch Friedlander
200 Public Square, Suite 2300
Cleveland, OH 44114

Mr. Brian Michael McDonough
Office of the U.S. Attorney
801 W. Superior Avenue, Suite 400
Cleveland, OH 44113

Re: Case No. 19-3343, *USA v. Isaac Hobbs*
Originating Case No. : 1:17-cr-00280-1

Dear Counsel,

The court today announced its decision in the above-styled case.

Enclosed is a copy of the court's opinion together with the judgment which has been entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Yours very truly,

Deborah S. Hunt, Clerk

Cathryn Lovely
Deputy Clerk

cc: Ms. Sandy Opacich

Enclosures

Mandate to issue.

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 20a0087p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ISAAC L. HOBBS,

Defendant-Appellant.

No. 19-3343

Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.
No. 1:17-cr-00280-1—Benita Y. Pearson, District Judge.

Decided and Filed: March 20, 2020

Before: STRANCH, BUSH, and LARSEN, Circuit Judges.

COUNSEL

ON BRIEF: Michael D. Meuti, Kristen-Elise F. DePizzo, BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP, Cleveland, Ohio, for Appellant. Brian M. McDonough, UNITED STATES ATTORNEY’S OFFICE, Cleveland, Ohio, for Appellee.

OPINION

LARSEN, Circuit Judge. Isaac Hobbs pleaded guilty to being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). The district court accepted his plea and, finding Hobbs to be an armed career criminal, sentenced Hobbs to fifteen years’ imprisonment. *See* 18 U.S.C. § 924(e). Hobbs appealed. While his appeal was pending, the Supreme Court decided *Rehaif v. United States*, which held that, to obtain a conviction under § 922(g), the government must prove that the defendant “knew he belonged to the relevant category of persons barred from

possessing a firearm.” 139 S. Ct. 2191, 2200 (2019). Here, that would require proof that Hobbs knew he was a felon. Hobbs now challenges the district court’s jurisdiction and the validity of his plea, basing these claims on *Rehaif*. Because *Rehaif* does not support Hobbs’s challenges, we AFFIRM.

I.

Hobbs pleaded guilty on an indictment charging him with violating 18 U.S.C. § 922(g)(1), which forbids felons to possess firearms. The indictment reads, in relevant part: “[Hobbs], having been previously convicted of crimes punishable by imprisonment for a term exceeding one year, . . . did knowingly possess in and affecting interstate commerce a firearm.” The indictment listed three predicate felonies: Assault on a Peace Officer, Attempted Felonious Assault, and Aggravated Robbery with Firearm Specification. Hobbs had served a six-year sentence for the aggravated-robbery conviction.

Hobbs pleaded guilty to the indictment’s charge pursuant to a written plea agreement. Based on Hobbs’s prior convictions, the district court determined that Hobbs was an armed career criminal under § 924(e) and sentenced him to the statutory minimum, fifteen years’ imprisonment. Hobbs filed a timely notice of appeal.

After Hobbs filed his appeal, the Supreme Court decided *Rehaif*, which held that to obtain a conviction under § 922(g), “the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.” 139 S. Ct. at 2200. This court only recently recognized the latter mens rea requirement, however, *see United States v. Conley*, __F. App’x__, 2020 WL 571324, at *2 (6th Cir. Feb. 5, 2020), so Hobbs’s indictment did not expressly allege it and the district court did not advise him of it when taking his guilty plea.

Hobbs now argues that the indictment was deficient because it failed explicitly to allege that Hobbs knew he was a felon. This indictment defect, he argues, deprived the district court of jurisdiction over his case and requires that we dismiss the indictment and vacate his conviction and sentence. In the alternative, Hobbs argues that his plea was not knowing and voluntary

because the district court took his plea without informing him that knowledge of his felon status was an element of the offense. Neither argument has merit.

II.

Jurisdictional Challenge. Hobbs first challenges the district court’s jurisdiction. To establish a § 922(g)(1) violation after *Rehaif*, the government must show that Hobbs knew the facts underlying his status. 139 S. Ct. at 2198. That is, the government must prove that Hobbs knew that he had “been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1); *see also United States v. Bowens*, 938 F.3d 790, 797 (6th Cir. 2019), *cert. denied sub nom. Hope v. United States*, 140 S. Ct. 814 (2020) (concluding that “in a prosecution under § 922(g)(3)” after *Rehaif*, the government “must prove that defendants knew they were unlawful users of a controlled substance, but not . . . that they knew unlawful users of controlled substances were prohibited from possessing firearms under federal law”). Hobbs claims that, because the indictment did not allege this knowledge, the indictment “fail[ed] to charge any federal offense.” He argues that this indictment defect deprived the district court of subject matter jurisdiction over his case.

This argument is foreclosed by the Supreme Court’s decision in *United States v. Cotton*, 535 U.S. 625 (2002), and by our earlier opinion in *United States v. Cor-Bon Custom Bullet Co.*, 287 F.3d 576 (6th Cir. 2002). In *Cotton*, the Supreme Court rejected the argument that failure to charge a sentence-enhancing drug quantity—an *Apprendi* element—deprived the court of jurisdiction, declaring “that defects in an indictment do not deprive a court of its power to adjudicate a case.” *Cotton*, 535 U.S. at 630. Before *Cotton*, our court in *Cor-Bon* held the same. There, following a “majority of the circuits,” we “rejected the notion that the failure of an indictment to allege an element of an offense charged prevents a district court from having subject-matter jurisdiction.” 287 F.3d at 581.

Hobbs seeks to distinguish *Cotton* on the ground that *Cotton* involved the omission of an *Apprendi* element—a sentence-enhancing drug quantity. Even without that element, Hobbs argues, the indictment in *Cotton* still charged a federal narcotics offense, just one that carried a lower penalty. Hobbs contends that his case is different because, without the knowledge element

demanded by *Rehaif*, his indictment charged him with no crime at all. That, Hobbs argues, deprived the court of jurisdiction. We disagree.

Nothing in *Cotton* purported to limit its reasoning to the omission of *Apprendi* elements. Instead, *Cotton* broadly rejected “the view that indictment omissions deprive a court of jurisdiction.” 535 U.S. at 631. Moreover, as Hobbs acknowledges, our own binding decision in *Cor-Bon* involved a non-*Apprendi* element—“the failure of the indictment to allege affirmative acts of [tax] evasion.” 287 F.3d at 581. Finally, we note that our sister circuits have rejected the notion that an indictment’s failure to allege the “knowledge-of-status” element required by *Rehaif* deprives the court of jurisdiction. See *United States v. Balde*, 943 F.3d 73, 92 (2d Cir. 2019); *United States v. Burghardt*, 939 F.3d 397, 402 (1st Cir. 2019). That rule extends to other mens rea elements as well. See *United States v. Ketchen*, 877 F.3d 429, 433 n.2 (1st Cir. 2017) (noting that a “failure adequately to plead scienter in the indictment” is a “non-jurisdictional” defect); *United States v. Brown*, 752 F.3d 1344, 1347 (11th Cir. 2014) (“Brown alleges that the indictment was defective on its face because Count One did not include the required mens rea, an essential element of the § 473 crime. . . . [W]e agree with the government that this type of indictment defect is not jurisdictional.”). To the extent that Hobbs’s indictment may have been deficient, it did not deprive the district court of jurisdiction.¹

Plea Challenge. Next, Hobbs challenges his plea. He claims that because neither the indictment, his plea agreement, nor his change-of-plea hearing made any reference to the knowledge-of-status element, he did not have “notice of the true nature of the charge against him” and so his plea was not knowing and voluntary. Appellant Br. at 17–18 (quoting *Bousley v. United States*, 523 U.S. 614, 618 (1998)). But, as Hobbs acknowledges, he raised no objection below; we therefore review this challenge for plain error. See *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004).

To prevail on plain error, Hobbs must identify “an ‘(1) error (2) that was obvious or clear, (3) that affected [his] substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.’” *United States v. Crawford*, 943 F.3d 297, 308 (6th Cir.

¹Because Hobbs only challenged the indictment on jurisdictional grounds, we do not otherwise consider its sufficiency.

2019) (quoting *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc)). An error affects a defendant's substantial rights if there is "a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1343 (2016) (quoting *Dominguez Benitez*, 542 U.S. at 76, 82). The defendant bears the burden of establishing that reasonable probability. *Id.* Hobbs has not done so.

To establish the required prejudice, Hobbs must demonstrate "a reasonable probability that, but for the [alleged failure to inform him of the knowledge-of-status element], he would not have entered the plea." *Dominguez Benitez*, 542 U.S. at 76. Hobbs candidly acknowledges that "the record in this case may not reveal as much." Instead, Hobbs's reply brief states that he now "has informed [appellate] counsel that, if the indictment had properly alleged the knowledge-of-status element, he would have chosen not to plead guilty, but instead, to put the Government to its burden of proof." Appellant Reply Br. at 8. That is insufficient. The Supreme Court has cautioned that "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded," but "should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee v. United States*, 137 S. Ct. 1958, 1967 (2017). Here, as Hobbs has acknowledged, no contemporaneous evidence suggests that he would have rejected the plea deal had the indictment contained the knowledge-of-status element.

That is unsurprising. "Put[ting] the Government to its burden of proof," Appellant Reply Br. at 8, would have cost Hobbs the potential benefit of his plea without gaining him anything. It would have been exceedingly easy for the government to prove at trial that Hobbs knew he was a felon when he committed the firearms offense. Hobbs had previously been convicted of aggravated robbery in Ohio and had *served* six years in prison for that offense. No reasonable juror could have believed that he did not know he had "been convicted . . . of[] a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). The Supreme Court has cautioned that "a defendant facing such long odds will rarely be able to show prejudice from accepting a guilty plea that offers him a better resolution than would be likely after trial. . . . Where a defendant has no plausible chance of an acquittal at trial, it is highly

likely that he will accept a plea if the Government offers one.” *Lee*, 137 S. Ct. at 1966. It is true, of course, that “unusual circumstances” exist. *Id.* at 1967. And where “contemporaneous evidence” makes it reasonably probable that the defendant would have opted for trial despite the long odds, *id.*, “it is no matter that the choice may have been foolish.” *Dominguez Benetiz*, 542 U.S. at 85. But here, Hobbs admits that no such record exists. He has not shown, therefore, a reasonable probability that he would not have entered his plea if he had been told of § 922(g)’s knowledge-of-status requirement.

* * *

For the reasons stated, we AFFIRM the judgment of the district court.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 19-3343

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ISAAC L. HOBBS,

Defendant - Appellant.

FILED
Mar 20, 2020
DEBORAH S. HUNT, Clerk

Before: STRANCH, BUSH, and LARSEN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

§ **JUDGMENT IN A CRIMINAL CASE**

v.

§

§

§ Case Number: **1:17-CR-00280**

ISAAC L. HOBBS

§ USM Number: **64906-060**

§ **Bradley R. Iams, Esq.**

§ Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1 of the Indictment.
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1) - Felon In Possession Of A Firearm and Ammunition	06/05/2017	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.

- 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.

April 12, 2019

Date of Imposition of Judgment

/s/ Benita Y. Pearson

Signature of Judge

Benita Y. Pearson, United States District Judge

Name and Title of Judge

April 16, 2019

Date

DEFENDANT: ISAAC L. HOBBS
CASE NUMBER: 1:17-CR-00280

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
180 months as to Count 1 of the Indictment.

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

Defendant be evaluated for participation in the intensive 500-hour substance abuse rehabilitation program - RDAP.

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

DEFENDANT: ISAAC L. HOBBS
CASE NUMBER: 1:17-CR-00280

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

5 years as to Count 1 of the Indictment.

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 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.

DEFENDANT: ISAAC L. HOBBS
CASE NUMBER: 1:17-CR-00280

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. If not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
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. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
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. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ISAAC L. HOBBS
CASE NUMBER: 1:17-CR-00280

SPECIAL CONDITIONS OF SUPERVISION

Mandatory/Standard Conditions:

While on supervision, you must comply with the Mandatory and Standard Conditions that have been adopted by this Court and set forth in Part D of the Presentence Investigation Report, and you must comply with the following additional conditions:

Mandatory Drug Testing:

You must refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release from imprisonment and to at least two periodic drug tests thereafter, as determined by the Court.

Substance Abuse Treatment and Testing:

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

Cognitive Behavioral Treatment:

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

Search / Seizure:

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that 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: ISAAC L. HOBBS
CASE NUMBER: 1:17-CR-00280

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assesment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		\$.00	\$.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. 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 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:

* 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: ISAAC L. HOBBS
CASE NUMBER: 1:17-CR-00280

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 \$ _____ 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 20 (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:

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1 of the Indictment, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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.

- 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.

APPENDIX C

FILED

2017 JUL 19 PM 4:58

**U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND**

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ISAAC L. HOBBS.)
)
 Defendant.)

INDICTMENT
117 CR 280

CASE NO. _____
Title 18, Sections 922(g)(1),
and 924(e), United States Code

JUDGE PEARSON

COUNT 1

The Grand Jury charges:

On or about June 5, 2017, in the Northern District of Ohio, Eastern Division, ISAAC L. HOBBS, having been previously convicted of crimes punishable by imprisonment for a term exceeding one year, those being: Assault on a Peace Officer, with Peace Officer Specification, in Case Number 03-437274, in the Cuyahoga County Common Pleas Court, on or about August 11, 2003; Aggravated Robbery with Firearm Specification, in Case Number 05-462426, in the Cuyahoga County Common Pleas Court, on or about April 6, 2005; and Attempted Felonious Assault, in Case Number 12-564611, in the Cuyahoga County Common Pleas Court, on or about November 29, 2012, did knowingly possess in and affecting interstate commerce a firearm, to

wit: a Phoenix Arms, Model HP22A, .22 caliber long rifle pistol, serial number 4451571, and ammunition, in violation of Title 18, Sections 922(g)(1), and 924(e), United States Code.

A TRUE BILL.

Original document -- Signatures on file with the Clerk of Courts, pursuant to the E-Government Act of 2002.

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO: 1:17CR280
	:	
Plaintiff,	:	
	:	JUDGE BENITA Y. PEARSON
vs.	:	
	:	
ISAAC L. HOBBS,	:	<u>NOTICE OF INTENT TO</u>
	:	<u>CONDITIONALLY PLEAD GUILTY</u>
Defendant.	:	

The Defendant, Isaac L. Hobbs, through counsel, hereby provides notice to the Court of his intent to enter a conditional guilty plea at Trial scheduled for April 30, 2018. Furthermore, the undersigned counsel intends to file a Motion to Continue the trial scheduled for April 30, 2018, as he is engaged in trial preparation on another matter with opposing counsel on this case. The Motion to Continue will be filed April 27, 2018.

Respectfully submitted,
STEPHEN C. NEWMAN
Federal Public Defender
Ohio Bar No.: 0051928

/s/ Carlos Warner
CARLOS WARNER
Assistant Federal Public Defender
Ohio Bar No.: 0068736
Akron Centre Plaza
50 S. Main St., Suite 700
Akron, OH 44308
Phone: (330) 375-5739 Fax: (330) 375-5738
E-Mail: carlos_warner@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2018 a copy of the foregoing Notice of Intent to Plead Guilty was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's system.

/s/ Carlos Warner

CARLOS WARNER

Assistant Federal Public Defender

Ohio Bar No.: 0068736

APPENDIX E

FILED
18 AUG 22 PM 3:59
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
COLUMBUS, OHIO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:17CR280
)	
Plaintiff,)	JUDGE BENITA Y. PEARSON
)	
v.)	
)	
ISAAC L. HOBBS,)	PLEA AGREEMENT
)	
Defendant.)	

Pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney’s Office for the Northern District of Ohio (hereinafter “USAO”), by and through its undersigned attorney(s), and the defendant, ISAAC L. HOBBS (hereinafter “Defendant”), agree as follows:

**MAXIMUM PENALTIES AND OTHER
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or, with the consent of the United States, to trial by the Court, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense, the right to testify and present evidence, and the right to be protected from compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceedings and, if necessary, one will be appointed to represent Defendant. Defendant understands that by pleading guilty, Defendant specifically and voluntarily waives each of these trial rights, except the right to counsel.

Defendant's Initials *IH*

Plea Agreement of ISAAC L. HOBBS – page 2 of 11

Defendant understands that a guilty plea is a complete admission of guilt and if the Court accepts the guilty plea, the Court will find Defendant guilty without a trial.

2. **Statutory Penalties.** Defendant understands the statutory maximum penalties and minimum penalties (if applicable) for the count to which Defendant agrees to plead guilty. Defendant also understands that he may be subject to the Armed Career Criminal Act (“ACCA”) enhancement under 18 U.S.C. § 924(e), which carries a mandatory minimum sentence of 15 years imprisonment, and that the Court will determine at sentencing whether the ACCA enhancement applies to Defendant. Listed below are the statutory penalties that would be applicable (1) if the Defendant is subject to the ACCA enhancement, or alternatively, (2) if the Defendant is not subject to the ACCA enhancement.

Penalties if Defendant is Subject to ACCA

Count(s)	Statute and Description of Offense	Statutory Sentence Per Count
1	Title 18 U.S.C. § 922(g)(1): Possession of Firearm and/or Ammunition by Convicted Felon (with Armed Career Criminal Act enhancement under Title 18 U.S.C. § 924(e)).	Maximum imprisonment: Life
		Minimum imprisonment: 15 years
		Maximum Statutory fine: \$250,000
		Minimum period of supervised release: None
		Maximum period of supervised release: 5 years
		Special assessment: \$100

Penalties if Defendant is not Subject to ACCA

Count(s)	Statute and Description of Offense	Statutory Sentence Per Count
1	Title 18 U.S.C. § 922(g)(1): Possession of Firearm and/or Ammunition by Convicted Felon	Maximum imprisonment: 10 years
		Maximum Statutory fine: \$250,000
		Maximum period of supervised release: 3 years
		Special assessment: \$100

Defendant's Initials IH

Plea Agreement of ISAAC L. HOBBS – page 3 of 11

3. **Special Assessment.** As set forth above, Defendant will be required to pay a mandatory special assessment of \$100 for each count of conviction, for a total of \$100, due immediately upon sentencing.

4. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

5. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release.

6. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

7. **Immigration Consequences.** Defendant understands that a convicted person who is not a United States citizen may be removed from the United States, denied citizenship and denied admission to the United States in the future.

PLEA(S) AND OTHER CHARGE(S)

8. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to the Indictment in this case.

Defendant's Initials *IH*

ELEMENTS OF THE OFFENSE

9. The three elements of the offense(s) to which Defendant will plead guilty are:

Title 18 U.S.C. § 922(g)(1): Possession of Firearm and/or Ammunition by Convicted Felon
1: Defendant was convicted of a crime punishable by imprisonment for more than one year;
2: Following Defendant's conviction, Defendant knowingly possessed a firearm and/or ammunition; and
3: The specified firearm and/or ammunition crossed a state line prior to Defendant's possession.

SENTENCING STIPULATIONS AND AGREEMENTS

10. **Sentencing Guidelines.** Defendant understands that sentencing rests within the discretion of the Court; that federal sentencing law requires the Court to impose a sentence which is sufficient, but not greater than necessary, to comply with the purposes of 18 U.S.C. § 3553(a), and that the Court must consider among other factors the advisory United States Sentencing Guidelines in effect at the time of sentencing and that in determining the sentence, the Court may depart or vary from the advisory guideline range.

11. **Presentence Report.** Defendant understands that the advisory guideline range will be determined by the Court at the time of sentencing, after a presentence report has been prepared by the U.S. Probation Office and reviewed by the parties. Defendant further understands that the USAO may provide to the U.S. Probation Office all known information regarding Defendant's conduct subject to its limited use under U.S.S.G. § 1B1.8 and except as protected under the proffer agreement if any.

12. **No Agreement about Sentence or Sentencing Range.** The parties have no agreement about the sentencing range to be used or sentence to be imposed in this case. Each party is free to recommend whatever sentence it believes to be appropriate.

Defendant's Initials It

Plea Agreement of ISAAC L. HOBBS – page 5 of 11

13. **Allocution.** Defendant understands and agrees that the USAO reserves the opportunity to speak at Defendant's sentencing. The USAO agrees that Defendant reserves the right of allocution at sentencing.

14. **Stipulated Guideline Computation.** The parties have no agreement as to the applicable sentencing guidelines provisions.

15. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. The USAO agrees to recommend a two (2) level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a), provided Defendant's conduct continues to reflect Defendant's acceptance of responsibility. Defendant understands it will be up to the Court at the time of sentencing to determine whether a reduction for acceptance of responsibility is appropriate.

16. **Criminal History Category.** The parties have no agreement about the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

WAIVER OF APPEAL AND POST-CONVICTION ATTACK

17. Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255.

Defendant expressly and voluntarily waives those rights, except as specifically reserved below. Defendant reserves the right to appeal: (a) the District Court's denial of Defendant's Motion to Suppress, (b) the District Court's determination that Defendant qualifies as an Armed Career

Defendant's Initials IH

Plea Agreement of ISAAC L. HOBBS – page 6 of 11

Criminal under 18 U.S.C. § 924(e), with Defendant conceding that his conviction for Aggravated Robbery (Case No. 05-462426) qualifies as a violent felony under the ACCA under *United States v. Patterson*, 878 F.3d 215 (6th Cir. 2017), (c) any punishment in excess of the statutory maximum, and (d) the District Court's determination of Defendant's criminal history category. Nothing in this paragraph shall act as a bar to Defendant perfecting any legal remedies Defendant may otherwise have on appeal or collateral attack with respect to claims of ineffective assistance of counsel or prosecutorial misconduct.

WAIVER OF STATUTE OF LIMITATIONS

18. Defendant waives all defenses based on the statute of limitations with respect to any prosecution that is not already time-barred by the applicable statute of limitation on the date of Defendant's signing of this agreement and that is commenced within one year after any of the following events: (1) Defendant fails to plead guilty at the plea proceeding or the Court refuses to accept a guilty plea by Defendant pursuant to this agreement; (2) the Court permits Defendant to withdraw a guilty plea entered pursuant to this agreement or otherwise vacates such a guilty plea; or (3) the conviction obtained pursuant to this agreement is vacated, overturned, or otherwise set aside. Defendant understands the waiver of the statute of limitations is effective immediately upon Defendant's signing of this agreement and is not conditioned upon the approval of this agreement by the Court.

FACTUAL BASIS AND RELEVANT CONDUCT

19. Defendant agrees that the following summary fairly and accurately sets forth Defendant's offense conduct and a factual basis for the guilty plea. Defendant further agrees that the facts set forth in the summary are true and could be established beyond a reasonable doubt if the case were to proceed to trial:

Defendant's Initials Id

Plea Agreement of ISAAC L. HOBBS – page 7 of 11

a. On June 5, 2017 at approximately 7:30pm, RTA police officers were patrolling on Superior Avenue near Public Square in Cleveland, Ohio. They saw a Chevy Malibu enter the bus-only lane and make an illegal right turn onto East Roadway. The officers pulled over the Malibu and identified the driver as Isaac Hobbs. An adult male, Anthony Harris, was in the front passenger seat. The officers asked the Defendant if he had any weapons in the vehicle. The Defendant responded that there was a firearm in the center console. The Defendant stated that the firearm belonged to his wife. The Defendant also stated that he did not have a license to carry the firearm in his vehicle. The officers removed the Defendant from the vehicle and searched the center console. Inside the center console, the officers found a Phoenix Arms, Model HP22A, .22 caliber semiautomatic handgun (serial number 4451571). The handgun had one round in the chamber, but no magazine attached. The officers arrested the Defendant and searched the trunk, where they found a box of .22 caliber ammunition and a magazine matching the handgun. During a search incident to arrest, the officers found an additional five rounds of .22 caliber ammunition in the Defendant's pocket. The ammunition in the Defendant's pocket matched the make and caliber of the round found in the handgun's chamber, as well as the rounds found in the trunk.

b. ATF Special Agent Laurito, a firearms interstate nexus expert, conducted an examination of the firearm and ammunition seized during the traffic stop. Special Agent Laurito determined that the Phoenix Arms handgun was manufactured in California, and that the rounds of .22 caliber ammunition were manufactured in either Illinois or Mississippi. Thus, both the firearm and all rounds of ammunition traveled in interstate commerce prior to being seized on June 5, 2017.

Defendant's Initials IH

Plea Agreement of ISAAC L. HOBBS – page 8 of 11

c. The Defendant was previously convicted of the following crimes, all of which were felonies punishable by more than one year of imprisonment:

- Assault on a Peace Officer, with Peace Officer Specifications, in violation of Ohio Revised Code Section 2903.13, on or about August 11, 2003, in case number 03-43727, in the Cuyahoga County Common Pleas Court;
- Aggravated Robbery with Firearm Specification, in violation of Ohio Revised Code Sections 2911.01 and 2941.145, on or about April 6, 2005, in case number 05-462426, in the Cuyahoga County Common Pleas Court; and
- Attempted Felonious Assault, in violation of Ohio Revised Code Sections 2923.02 and 2903.11A(2), on or about November 29, 2012, in case number 12-564611, in the Cuyahoga County Common Pleas Court.

20. Defendant acknowledges that the above summary of Defendant's conduct does not set forth each and every fact that the USAO could prove at trial, nor does it encompass all of the acts which Defendant committed in furtherance of the offense(s) to which Defendant is pleading guilty.

OTHER PROVISIONS

21. **Financial Statement.** Defendant agrees upon request to submit to the USAO, prior to the date of sentencing, a complete and accurate financial statement on a Financial Statement of Debtor Form to be provided by the USAO.

22. **The Parties are Free to Advise the Court about Matters Not Expressly Addressed.** This agreement is silent about all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

Defendant's Initials IT

Plea Agreement of ISAAC L. HOBBS – page 9 of 11

23. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement, commits additional crimes, obstructs justice, attempts to withdraw Defendant's guilty plea, or if Defendant's guilty plea is rejected by the Court or is vacated or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any charges and make any recommendations with respect to sentencing that otherwise would be prohibited under the terms of the agreement. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty plea or conviction.

24. **Agreement not Binding on other Jurisdictions and Agencies.** Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio. It does not bind any other United States Attorney, any other federal agency, or any state or local government.

25. **Defendant is Satisfied with Assistance of Counsel.** Defendant makes the following truthful statements: I have discussed this case and this plea agreement in detail with my attorney who has advised me of my Constitutional and other trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, possible defenses, the advisory Sentencing Guidelines and other aspects of sentencing, potential losses of civil rights and privileges, and other potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have told my attorney everything I know about the charges, any defenses I may have to the charges, and all personal and financial circumstances in possible mitigation of sentence. I am satisfied with the legal services and advice provided to me by my attorney.

Defendant's Initials TH

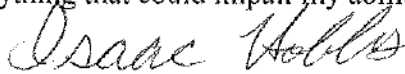
Plea Agreement of ISAAC L. HOBBS -- page 10 of 11

26. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement, including any addendums discussed in open court and on the record at the time of the change of plea (if any), is the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has threatened or coerced Defendant to do or to refrain from doing anything in connection with this case, including Defendant's decision to enter a guilty plea. Finally, Defendant acknowledges that this agreement cannot be modified unless in writing and subject to approval by the Court.

Defendant's Initials IH

SIGNATURES

Defendant: I have read (or have had read to me) this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I understand and approve the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impair my ability to understand this agreement.

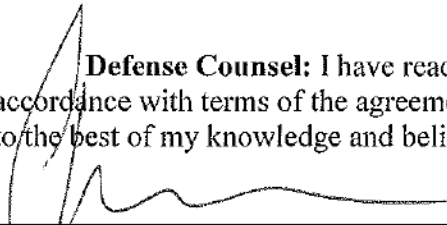


8/22/18

ISAAC L. HOBBS
Defendant

Date

Defense Counsel: I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.

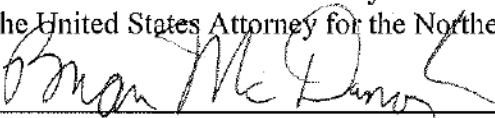


8/22/18

Carlos Warner (OH: 0068736)
Counsel for Defendant

Date

United States Attorney's Office: I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.



8/22/18

Brian McDonough (OH: 0072954)
Assistant United States Attorney
United States Court House
801 West Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 622-3965
(216) 522-8355 (facsimile)
Brian.McDonough@usdoj.gov

Date

APPROVED:



8/22/2018

BENITA Y. PEARSON
United States District Court JUDGE

Date

Defendant's Initials IH

APPENDIX F

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
) Case No. 1:17-cr-280
Plaintiff,) Youngstown, Ohio
) Wednesday, May 2, 2018
vs.) 12:25 p.m.
)
ISAAC L. HOBBS,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

CHANGE OF PLEA HEARING

VOLUME 1

APPEARANCES:

For the Plaintiff:

Office of the U.S. Attorney
Northern District of Ohio
By: Edward F. Feran, Esq.
Suite 400
801 Superior Avenue, West
Cleveland, Ohio 44113
(216) 622-3709
edward.feran@usdoj.gov

Mary L. Uphold, RDR, CRR
Thomas D. Lambros Federal Building and U.S. Courthouse
125 Market Street, Room 337
Youngstown, Ohio 44503-1780
(330) 884-7424
Mary_Uphold@ohnd.uscourts.gov

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 APPEARANCES (CONTINUED) :

2 **For the Defendant:**

3 Office of the Federal Public Defender
4 Northern District of Ohio
5 **By:** Carlos Warner, Esq.
6 700 Akron Centre Plaza
7 50 South Main Street
8 Akron, Ohio 44308
9 (330) 375-5739
10 carlos_warner@fd.org
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- - -

1 P R O C E E D I N G S

2 - - -

3 THE CLERK: The matter before the court is Case
4 Number 1:17-cr-280, the United States of America versus
12:25:09 5 Isaac L. Hobbs.

6 THE COURT: Good afternoon, everyone. You may
7 take your seats.

8 On behalf of the United States, will you introduce
9 yourselves for the record?

12:25:19 10 MR. FERAN: Good afternoon, Judge Pearson. Edward
11 Feran representing the United States. Judge Pearson, for a
12 limited purpose, I'm standing in today for AUSA McDonough
13 and Lewis who are previously engaged, as the court knows.
14 Thank you, Your Honor.

12:25:31 15 THE COURT: Welcome, Mr. Feran.

16 MR. FERAN: Thank you, Your Honor.

17 THE COURT: On behalf of Mr. Hobbs, counsel, will
18 you introduce yourself and also your client?

19 MR. WARNER: Good afternoon, Your Honor. Carlos
12:25:41 20 Warner, Assistant Federal Defender. I'm here with Isaac
21 Hobbs.

22 THE COURT: Welcome to you both.

23 This hearing has been scheduled as a change of
24 plea hearing. However, it's evident from the docket that
12:25:51 25 things may not be as settled as we thought they would be by

1 this day. By that I mean there's a motion for consent to
2 enter a conditional plea, and the court believes that plea
3 negotiations may not yet be resolved.

4 I'll hear the counsel who chooses to speak first
5 to bring the court up to speed.

6 MR. WARNER: Thank you, Your Honor. And I thank
7 the court for allowing us to discuss this a bit in chambers.

8 What we would do at this time is, first and
9 foremost, we'd move for a continuance of the trial date,
10 which I believe is next week, and we would ask for 45 days.
11 I've asked -- I've talked to Mr. Hobbs about this. He
12 understands his speedy trial rights. He understands this
13 will toll those rights while we're trying to work out the
14 plea.

15 I would also indicate to the court, as I did at
16 the motion to suppress, and I have in this consent to enter
17 a conditional plea, that Mr. Hobbs is doing all he can to
18 enter a guilty plea and get to the next phase of the case.

19 To that end, if things were to break down, we'd
20 put on the record already that we would consent at least to
21 a bench trial where we would stipulate to almost all the
22 facts, just so we can preserve the correct rights going
23 forward on the motion to suppress and any sentencing issues
24 that may exist on the case.

25 So I believe that's what we have.

1 And we've also agreed that Mr. Feran and I,
2 Mr. McDonough and Mr. Lewis will discuss it and we will get
3 back to the court by close of business on 5/8 as to where we
4 are in terms of our negotiation, whether or not we can come
12:27:27 5 up with an agreement or not.

6 And finally, I would say, and we can take this up
7 at a later time, I think that pursuant to the criminal rule,
8 the notice that we filed would be sufficient as a writing to
9 allow him to plead to Criminal Rule 11(a)(2), but I don't
12:27:46 10 think that that needs to be taken up yet. I'm still hopeful
11 that we can come to an agreement with the government that
12 will be most efficient for all parties involved, including
13 the court. Thank you.

14 THE COURT: Thank you, Mr. Warner.

12:27:59 15 Mr. Feran?

16 MR. FERAN: Thank you, Judge Pearson. Judge, I
17 agree with the representations made by Defense Counsel
18 Warner. We would ask -- we will inform the court, Judge, on
19 May 8 by close of business of the status of plea
12:28:12 20 negotiations.

21 I will represent to the court that they are
22 ongoing, that I've had conversations this morning with
23 Mr. Warner. We are diligently working to try to resolve
24 this case. I, quite frankly, Judge, don't know if this case
12:28:25 25 will resolve by way of plea, but there are good faith

1 efforts being made on both sides to that end.

2 Trial counsel, Mr. Lewis and Mr. McDonough, will
3 inform the court by close of business on 5/8 whether or not
4 we will resolve it.

12:28:37 5 Judge, at this time, I can't comment on the
6 viability of a bench trial. It has not been vetted to our
7 office, so we will get back to the court on that also on the
8 8th day of May.

9 And I have nothing further. Thank you, Your
12:28:49 10 Honor.

11 THE COURT: Thank you.

12 Mr. Hobbs, I'd like to speak directly to you, sir.
13 You are here -- thank you. He wants you to stand. And I'm
14 sure you heard what's happened and I'd like to make sure
12:29:02 15 that you understand what's being discussed and that you're
16 in agreement.

17 Essentially, today was set aside for a change of
18 plea hearing. You heard me say it appears to me that things
19 have not developed enough to allow you to enter a plea of
12:29:18 20 guilty today.

21 Is that correct?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. And I want to make sure
24 that you understand that while I'm willing to give you and
12:29:25 25 the government more time to negotiate and to think things

1 through, that requires that you once again waive your right
2 to a speedy resolution. Meaning you have right now until
3 next Wednesday, the 9th of May.

4 Do you understand that?

12:29:42 5 THE DEFENDANT: Yes.

6 THE COURT: What I have allowed the parties is
7 that by close of business on Wednesday, the -- pardon me,
8 Tuesday, the 8th, if you're still not in agreement with the
9 government on what you both would like to happen, meaning
10 the same thing in both minds, your mind and the mind of the
11 government, I'm going to allow Mr. Warner on your behalf to
12 ask that I continue matters for another time, this time
13 about 45 days, and then it may result in trial instead of a
14 plea.

12:30:13 15 Does that make sense?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. So with that record, what
18 I'll expect on the 8th is formalizing it. I'll have a
19 better idea of what time frame we're looking at, whether
20 it's plea or whether it's trial. If it's trial, bench or
21 jury.

22 Does all of that make sense?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. How are you doing?

12:30:32 25 THE DEFENDANT: I'm fine.

1 THE COURT: What are you doing to keep yourself
2 busy?

3 THE DEFENDANT: I'm working out, still going to
4 the law library. And they don't really have that many
12:30:41 5 programs. I done them all. I don't have nothing for -- in
6 there.

7 THE COURT: And you're here at Mahoning or --

8 THE DEFENDANT: CCA.

9 THE COURT: All right. Do you have family that
12:30:49 10 can give you books to read and things of that sort?

11 THE DEFENDANT: Yes.

12 THE COURT: Why don't you do that. You can be on
13 a self-study program. If you've exhausted what's available,
14 make up your own. All right?

12:31:02 15 THE DEFENDANT: Okay.

16 MR. WARNER: Will do. Thank you, Your Honor.

17 THE COURT: Certainly. Unless there's something
18 more that I should hear, I'll adjourn the hearing.

19 Mr. Feran?

12:31:11 20 MR. FERAN: No. Thank you for the court's
21 considerations in this matter.

22 THE COURT: Certainly.

23 Mr. Warner?

24 MR. WARNER: No, thank you, Your Honor.

12:31:18 25 THE COURT: Take care, Mr. Hobbs. The hearing is

1 adjourned.

2 THE DEFENDANT: Thank you.

3 THE CLERK: All rise.

4 (Proceedings concluded at 12:31 p.m.)

5 - - -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ Mary L. Uphold July 15, 2019
Mary L. Uphold, RDR, CRR Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
) Case No. 1:17-cr-280
Plaintiff,) Youngstown, Ohio
) Wednesday, August 22, 2018
vs.) 10:23 a.m.
)
ISAAC L. HOBBS,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

CHANGE OF PLEA HEARING

VOLUME 2

APPEARANCES:

For the Plaintiff:

Office of the U.S. Attorney
Northern District of Ohio
By: Brian M. McDonough, Esq.
Suite 400
801 Superior Avenue, West
Cleveland, Ohio 44113
(216) 622-3965
Brian.McDonough@usdoj.gov

AND

Mary L. Uphold, RDR, CRR
Thomas D. Lambros Federal Building and U.S. Courthouse
125 Market Street, Room 337
Youngstown, Ohio 44503-1780
(330) 884-7424
Mary_Uphold@ohnd.uscourts.gov

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 - - -

3 THE CLERK: The matter before the court is Case
4 Number 1:17-cr-280, the United States of America versus
10:23:25 5 Isaac L. Hobbs.

6 THE COURT: Good morning, everyone. Thank you for
7 standing. You may retake your seats.

8 Counsel for the United States, will you introduce
9 yourself for the record and the person seated with you at
10:23:33 10 counsel's table?

11 MR. McDONOUGH: May it please the court, Your
12 Honor. Brian McDonough and James Lewis on behalf of the
13 United States of America.

14 THE COURT: Welcome to you both.

10:23:43 15 Counsel for Mr. Hobbs, will you introduce yourself
16 and your client for the record?

17 MR. WARNER: Good morning, Your Honor. Carlos
18 Warner, Assistant Federal Defender, and I'm here with Isaac
19 Hobbs.

10:23:52 20 THE COURT: Welcome to you both as well.

21 This hearing has been scheduled to allow you,
22 Mr. Hobbs, to change your plea from not guilty to guilty to
23 the sole count brought against you by way of an indictment.

24 In preparation for today's hearing, I've been
10:24:11 25 provided with a plea agreement, and now I have a signed

1 version of that agreement. It appears to be what we'll call
2 a conditional plea agreement that allows you to enter a plea
3 of guilty to the charge in the indictment, and also to
4 preserve certain rights, and primarily those rights are
5 appellate rights to appeal the ruling on the motion to
6 suppress and also any determination that you qualify as an
7 armed career criminal.

8 Mr. Warner, does that match your understanding as
9 to why your client is here today?

10 MR. WARNER: Yes, Your Honor.

11 THE COURT: Mr. Hobbs, do you understand that too?

12 THE DEFENDANT: Yes.

13 THE COURT: Mr. McDonough and Mr. Lewis, that's
14 why you are here as well?

15 MR. McDONOUGH: That is correct, Your Honor.

16 THE COURT: All right. Counsel, let me ask you a
17 question. You remember there was a pending motion for
18 consent to enter into a conditional plea. It asked that
19 both the United States and this court agree to that.

20 Mr. McDonough, what's your thoughts on the ruling?
21 I hadn't ruled, and I would like to talk to you. It appears
22 to me now that that's a grant. But if you see it
23 differently, or it can be withdrawn or it can be denied as
24 moot.

25 But tell me, either one of you, Mr. Warner,

1 Mr. Lewis or Mr. McDonough.

2 MR. WARNER: Your Honor, if it pleases the court,
3 we can withdraw that motion. I think that the agreement
4 that we set forth to the court sufficiently protects
10:25:38 5 Mr. Hobbs and all of his appellate rights and conditionally
6 he'll be able to plea and continue forward and all of his
7 rights will be protected. I promised him that.

8 So I think that the motion that we filed on
9 that -- that the court mentioned is moot at this time.

10:25:54 10 THE COURT: Satisfies me.

11 You as well, Mr. McDonough?

12 MR. McDONOUGH: Yes, Your Honor.

13 THE COURT: ECF 33, motion for consent to enter a
14 conditional plea, is withdrawn.

10:26:06 15 All right, then. Let's attend to the matter at
16 hand. Mr. Hobbs and Mr. Warner, I'd like you to move to the
17 podium, and bring with you your copy of the written plea
18 agreement if you don't mind.

19 Messrs. Lewis and McDonough, I'll call on you for
10:26:23 20 assistance, and you'll move around so that we can have eye
21 contact as necessary.

22 Mr. Hobbs, I am going to conduct this hearing in
23 at least a couple of different pieces, really three I think
24 when I think about it.

10:26:44 25 The first piece is a piece wherein I just allow

1 you to start talking on the record, to become more
2 comfortable with that. It allows me, through asking you
3 some pretty basic questions, judging the answers that you
4 give, to make a competency determination. Because I think
10:26:58 5 you already know this. What you intend is important. It's
6 serious. And I need to make sure that you're in your right
7 mind to say "guilty" when I ask the question at the end of
8 the hearing.

9 Make sense?

10:27:11 10 THE DEFENDANT: Yes.

11 THE COURT: So in a moment I'll have you placed
12 under oath, ask you questions. None are meant to trick you.

13 And then I'll move from that piece to the
14 agreement, the agreement that's now initialed and signed.

10:27:23 15 And that's when you'll notice I'll be calling on
16 government's counsel to explain certain parts of it, and
17 then allow Mr. Warner to agree or disagree or to give a
18 fuller explanation.

19 And then I'll ask that you understand what's been
10:27:36 20 spoken about. And the very last piece is when I'll ask what
21 your plea is.

22 Make sense?

23 THE DEFENDANT: Yes.

24 THE COURT: All right, then. Let's start by
10:27:42 25 having you take an oath. I know that your hands are

1 restrained, but to the extent you can, thank you, raise your
2 right hand. Take the oath my assistant will now administer.

3 (Defendant sworn.)

4 THE COURT: Mr. Warner, do me a favor, take the
10:28:05 5 kink out of that microphone. Better.

6 All right. Here are the questions: State and
7 spell your full name for the record.

8 THE DEFENDANT: Isaac Lanard Hobbs, I-s-a-a-c,
9 L-a-n-a-r-d, H-o-b-b-s.

10:28:21 10 THE COURT: How old are you today, Mr. Hobbs?

11 THE DEFENDANT: Thirty-five.

12 THE COURT: When is your next birthday?

13 THE DEFENDANT: September 21st.

14 THE COURT: Coming up.

10:28:29 15 THE DEFENDANT: Uh-huh.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: Ninth grade. I got a GED in 2004.

18 THE COURT: Okay. And have you taken any
19 vocational or any --

10:28:43 20 THE DEFENDANT: Yes.

21 THE COURT: -- programs since then?

22 THE DEFENDANT: Yes.

23 THE COURT: Do me a favor. Wait until I finish
24 asking my question before you offer an answer.

10:28:51 25 So any vocational programs or anything that's

1 allowed you to earn a certificate?

2 THE DEFENDANT: No, not yet.

3 THE COURT: What are you interested in?

4 THE DEFENDANT: Well, my job on the street is
10:29:01 5 demolition. I'm interested in construction and stuff like
6 that.

7 THE COURT: Okay. Let's talk now a little bit
8 about your health. I'm going to ask about mental and
9 physical health. Let's start with your mental health.

10:29:15 10 Have you ever been diagnosed or treated for any
11 sort of mental health issue? And that's including
12 depression, anxiety, bipolar, ADHD. Anything at all?

13 THE DEFENDANT: No.

14 THE COURT: So that means no diagnosis?

10:29:31 15 THE DEFENDANT: No.

16 THE COURT: No treatment?

17 THE DEFENDANT: No.

18 THE COURT: And that includes talk therapy, not
19 just drugs. So no sitting down in a group or individually
10:29:40 20 with anyone?

21 THE DEFENDANT: No.

22 THE COURT: Not even in school?

23 THE DEFENDANT: No.

24 THE COURT: All right. So you'd consider your
10:29:46 25 mental health to be strong?

1 THE DEFENDANT: Yes.

2 THE COURT: Let's talk about your physical health.

3 Any physical health issues at all?

4 THE DEFENDANT: No.

10:29:53 5 THE COURT: When was the last time you had your
6 blood pressure taken?

7 THE DEFENDANT: Maybe a couple weeks ago.

8 THE COURT: What was it?

9 THE DEFENDANT: At a sick hall. I mean, I don't
10:30:05 10 know what the numbers were, but --

11 THE COURT: Yeah.

12 THE DEFENDANT: -- it was normal.

13 THE COURT: What is normal?

14 THE DEFENDANT: Whatever they say normal is. I
10:30:11 15 don't know the numbers. It's like 80 over -- I don't know
16 how that goes, but it was regular.

17 THE COURT: Okay. Well, you need to know your
18 numbers, because 80 over something is real sick.

19 THE DEFENDANT: Oh.

10:30:24 20 THE COURT: Okay? It should be like maybe 120/80.

21 THE DEFENDANT: Okay.

22 THE COURT: But next time, and I'm going to ask
23 you that question again, if you have a chance. It's
24 important. High blood pressure, as you know, it's a silent
10:30:34 25 killer. It's not as if you're going to feel boom, boom,

1 boom, boom and know that you have it.

2 But to your knowledge, yours is good.

3 THE DEFENDANT: Okay.

10:30:44

4 THE COURT: Any other issues, any at all, physical
5 issues?

6 THE DEFENDANT: No.

7 THE COURT: Well, that's good. Your eyesight is
8 good?

9 THE DEFENDANT: Yeah.

10:30:47

10 THE COURT: No need for glasses?

11 THE DEFENDANT: I've got glasses, I just don't --
12 I need them for reading.

13 THE COURT: Okay.

10:30:53

14 THE DEFENDANT: I should have had them today but I
15 rushed out and didn't grab them.

16 THE COURT: Uh-huh. Well, if you need cheaters, I
17 have some here.

18 And what about dentistry, when is the last time
19 you had an exam?

10:31:00

20 THE DEFENDANT: Last week. I go back on the 4th
21 for a cleaning.

22 THE COURT: Excellent. And good, I'm glad you're
23 on top of that then. So you'd agree, then, it sounds like
24 your physical health is good?

10:31:11

25 THE DEFENDANT: Yes.

1 THE COURT: Can you tell me, then, about any drugs
2 at all you've taken in the last 24 hours? I'm not trying to
3 get you in trouble.

4 THE DEFENDANT: (Shaking head from side to side.)

10:31:19 5 THE COURT: I don't care if you've breached a rule
6 of the facility and smoked a blunt. I just want to know
7 that you're sober enough, clear-thinking enough to assist
8 Mr. Warner.

9 So any drugs in the last 24 hours?

10:31:30 10 THE DEFENDANT: No, ma'am.

11 THE COURT: All right, then.

12 Mr. Warner, I'm satisfied that Mr. Hobbs is
13 competent.

14 Do you have any other questions you'd like me to
10:31:39 15 ask him?

16 MR. WARNER: No concerns, Your Honor.

17 THE COURT: Mr. McDonough, how about you?

18 MR. McDONOUGH: No concerns on behalf of the
19 government, Your Honor.

10:31:47 20 THE COURT: All right. Then let's transition to
21 the written agreement. I'm going to speak about some parts
22 and then I'll invite government's counsel to add in, as I've
23 said, and allow Mr. Warner to speak as well.

24 When I speak about the written plea agreement,
10:32:02 25 Mr. Hobbs, I'm talking about this document that's 11 pages

1 long. My copy has your initials, I think, you'll tell me,
2 but it looks like IH is written at the bottom of each page.
3 And then, on the very last page, page 11, first typed
4 signature block says "Isaac L. Hobbs." And above it is
5 written "Isaac Hobbs."

10:32:23

6 Did you write your name there?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, given that you've obtained your
9 GED, am I correct in thinking that you can read and write?

10:32:32

10 THE DEFENDANT: Yes.

11 THE COURT: When you signed this, did you also add
12 the date, today's date, 8/22?

13 THE DEFENDANT: Yes.

14 THE COURT: Did you read this agreement before you
15 signed it?

10:32:38

16 THE DEFENDANT: Yes.

17 THE COURT: What about each page before you
18 initialed, did you read it?

19 THE DEFENDANT: With my lawyer.

10:32:46

20 THE COURT: Excellent. Did you understand it?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you need more time?

23 THE DEFENDANT: No.

24 THE COURT: Now, do you know if you said you

10:32:51

25 needed more time, I'd give it to you? It wouldn't be a big

1 problem. We'd have to move some things around, probably
2 even regroup still today, but I'd give you time if you
3 needed it. So don't say you don't if you really would like
4 it.

10:33:03 5 THE DEFENDANT: All right.

6 THE COURT: Do you need more time?

7 THE DEFENDANT: No.

8 THE COURT: Okay. And, Mr. Warner, your signature
9 is here as well, at least what I think you pass off as your
10:33:15 10 signature, but it's above your block.

11 MR. WARNER: Yes. Thank you, Your Honor.

12 THE COURT: Okay, that's you?

13 MR. WARNER: I'm sorry.

14 THE COURT: And today's date?

10:33:21 15 MR. WARNER: Yes, Your Honor.

16 THE COURT: Mr. McDonough, I don't know if you
17 smirked or not, I couldn't see you. Not a whole lot better,
18 but it does appear at least to say Brian something.

19 MR. McDONOUGH: Yes, Your Honor.

10:33:30 20 THE COURT: And you dated it today as well, sir?

21 MR. McDONOUGH: Yes.

22 THE COURT: All right. I'm going to put this one
23 aside, Mr. Hobbs, just so that I don't mark on it
24 inadvertently, and I'm going to continue to use my copy that
10:33:40 25 I've written on and highlighted. All right?

1 So let's talk about the first numbered paragraph.
2 So we're on page 1 of the plea agreement. And it says in a
3 box there, paragraph subtitled "Waiver of Constitutional
4 Trial Rights," that you understand what follows.

10:33:57 5 And, sir, it tells me that you understand that
6 you're presumed innocent. You've been in custody. You've
7 been indicted. But you've not yet been found guilty or pled
8 guilty. And until one of those two happens, you're presumed
9 innocent.

10:34:13 10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If at the end of this hearing I ask
13 what your plea is and you tell me it's guilty, you'll be
14 waiving that presumption of innocence.

10:34:22 15 Are you ready for that?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. It tells me that you
18 understand that you know you have a right to have the
19 indictment resolved at trial.

10:34:30 20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: It could be a trial to a jury or a
23 trial just to me, called a trial to the bench. But there
24 will be no trial of either sort if you enter a plea of
10:34:40 25 guilty today.

1 Do you understand that as well?

2 THE DEFENDANT: Yes.

3 THE COURT: Sir, do you know that if you were to
4 go to trial, the government's counsel, Messrs. McDonough and
10:34:47 5 Lewis, would have the full burden of proving your guilt
6 beyond a reasonable doubt. You wouldn't have any burden of
7 proof at all.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10:34:55 10 THE COURT: And what Mr. Warner could do on your
11 behalf, he could confront and cross-examine the government's
12 evidence, take on through cross-examination witnesses the
13 government would put on. But that won't happen if you enter
14 a plea of guilty.

10:35:10 15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Something else that Mr. Warner could
18 do with your help, the two of you could sit down and come up
19 with a list, a list of names, a list of entities, places and
10:35:21 20 people that you might issue subpoenas to, an order that
21 documents be brought in that might interrupt the
22 government's proof, or somebody come and take the stand,
23 even if they didn't want to, they'd have to if subpoenaed.
24 But there will be no issuing of subpoenas on your behalf for
10:35:38 25 trial if you plead guilty instead.

1 Are you prepared to waive that right as well?

2 THE DEFENDANT: Yes.

3 THE COURT: You have a right to testify at trial
4 and to present evidence. You won't have either opportunity,
10:35:53 5 you will have waived them if you plead guilty.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: You've been kind enough on this
9 occasion and others when we've been together to answer the
10:36:01 10 questions I've put to you. And I appreciate that. But you
11 also have a right of silence. It's the right to be heard
12 through your attorney.

13 So Mr. Warner, whenever he'd like to speak up for
14 you, maybe to improve one of your answers or to give an
10:36:13 15 answer in place of you, he could do that. You know that,
16 right?

17 THE DEFENDANT: Yes.

18 THE COURT: That would also happen at trial. So
19 you'd take your seat at defense table, and you could keep
10:36:24 20 it. You have a right not to testify. And if you chose to
21 let your attorney do all of the talking, I'd instruct the
22 jury they couldn't make anything of it. They couldn't
23 consider it at all in their deliberations.

24 Do you understand that?

10:36:35 25 THE DEFENDANT: Yes.

1 THE COURT: Okay. There's another right regarding
2 your voice, whether you use it or not and how you use it.
3 It's a Fifth Amendment privilege against self-incrimination.
4 That means, sir, you don't have to say anything that would
10:36:49 5 get you into trouble or more trouble.

6 And we can agree, can't we, that being indicted is
7 being in trouble, right?

8 THE DEFENDANT: Yes. Yes.

9 THE COURT: So at the end of this hearing when I
10:36:58 10 ask what your plea is, if you plead guilty, you'll be
11 waiving that Fifth Amendment privilege against
12 self-incrimination.

13 Do you intend that?

14 THE DEFENDANT: Yes.

10:37:06 15 THE COURT: You and I have been together in this
16 room before through the suppression hearing and hearings
17 outside of that, but I don't want you to mistake the
18 importance of this one, because if at the end of this
19 hearing, after I ask what your plea is and you tell me
10:37:25 20 guilty, and if I accept it, and I'll tell you whether or not
21 I do, I will adjudge you guilty. It will be as final as if
22 a jury had returned verdicts of guilty.

23 Do you understand that?

24 THE DEFENDANT: Yes.

10:37:36 25 THE COURT: And under very limited circumstances

1 would I allow you to withdraw that plea of guilty.
2 Certainly not if you didn't like the sentence, that wouldn't
3 be reason enough for me to allow you to take it back.

4 So once you give me your plea of guilty, more
10:37:52 5 likely than not, unless it's overturned by a higher court,
6 you'll remain guilty.

7 Are you prepared for that possibility?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay. So now we're on page 2.

10:38:05 10 Mr. McDonough -- and if I call on you and Mr. Lewis would
11 rather help, you just pop up, Mr. Lewis.

12 Can you spread on the record paragraph 2,
13 statutory penalties? And if you wouldn't mind, I think that
14 encompasses paragraph 3 on the second page. So -- pardon
10:38:21 15 me, on the third page as well.

16 MR. McDONOUGH: Your Honor, pursuant to the plea
17 agreement, defendant understands the statutory maximum
18 penalties for the count, and it depends on whether the
19 defendant would be subject to the armed career criminal
10:38:37 20 enhancement or if he is not.

21 If he is subject to the armed career criminal
22 enhancement, then under Title 18, United States Code,
23 Section 922(g)(1) and 924(e), the defendant would face a
24 maximum term of imprisonment of life, a mandatory minimum
10:38:59 25 term of imprisonment of 15 years, a maximum statutory fine

1 of \$250,000 and a maximum period of supervised release of
2 five years. Along with this conviction, there would be a
3 \$100 special assessment.

4 If the defendant is not subject to the armed
10:39:17 5 career criminal enhancement, then under Title 18, United
6 States Code, Section 922(g)(1), the maximum term of
7 imprisonment would be ten years. The maximum statutory fine
8 would be \$250,000. The maximum period of supervised release
9 would be three years. And the special assessment due upon a
10:39:38 10 conviction would be \$100.

11 THE COURT: Thank you, Mr. McDonough. Any
12 corrections or anything you'd like to add, Mr. Warner?

13 MR. WARNER: No, thank you, Your Honor.

14 THE COURT: Because of the effort gone into
10:39:49 15 reaching this agreement, I believe I know the answer, and
16 because you initialed this page, Mr. Hobbs. But do you
17 understand that paragraph 2 outlines two different
18 possibilities?

19 THE DEFENDANT: Yes.

10:40:02 20 THE COURT: And what I must know is that if the
21 worst possibility were to be your case, if I found that
22 you're an armed career criminal, are you still willing to
23 plead guilty knowing that I could, and I don't want to trick
24 you into thinking I think life is the right sentence, but
10:40:18 25 it's what the law allows.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: But the law would also require a
4 sentence of no less than 15 years.

10:40:25 5 Do you understand that as well?

6 THE DEFENDANT: Yes.

7 THE COURT: All right. I won't belabor the rest
8 of it, but do promise me this: If ever there is something
9 on a page or just a question that pops into your mind and I
10:40:36 10 don't bring it up, ask. If you don't want to ask me, just
11 lean in, ask Mr. Warner. But don't leave this room without
12 asking if you have a question.

13 Okay?

14 THE DEFENDANT: Uh-huh.

10:40:46 15 THE COURT: I know you're saying that, but I'm
16 waiting for --

17 THE DEFENDANT: Oh, yes.

18 THE COURT: Okay. So our court reporter can take
19 it down.

10:40:51 20 Let's go to page 3 now. And I won't talk about
21 everything there. I rarely impose costs. If I thought you
22 could pay costs, I would. But generally I don't impose
23 costs.

24 But paragraph 6, "Violation of Probation or
10:41:07 25 Supervised Release." In your case, we know it will be more

1 likely than not a case of supervised release, meaning the
2 supervision you're under after you're released from prison.

3 Just understand this: If you break the terms of
4 supervision, you violate supervision, you can go back to
10:41:23 5 prison. The good thing about supervision is that you have
6 the U.S. Probation Office on your side. Their goal and my
7 goal is to keep you in the community, to allow you to have
8 access to programs, whether it's therapy to get rid of any
9 demons or whether it's certification programs to get your
10:41:45 10 CDL license.

11 So it's a good system. It's nothing you should
12 shy away from. And I'll talk to you a lot more about that
13 on the day of sentencing.

14 Do you understand?

10:41:53 15 THE DEFENDANT: Yes.

16 THE COURT: Where were you born?

17 THE DEFENDANT: Cleveland.

18 THE COURT: Okay. So you're a U.S. citizen by
19 virtue of birth?

10:41:59 20 THE DEFENDANT: Yes.

21 THE COURT: I understand why paragraph 7 is there,
22 but because Mr. Hobbs is a citizen by virtue of birth, I'm
23 not worried about immigration consequences.

24 Mr. Warner, are you?

10:42:09 25 MR. WARNER: No, Your Honor. Thank you.

1 THE COURT: And you're not either, are you,
2 Mr. McDonough?

3 MR. McDONOUGH: No, Your Honor.

4 THE COURT: Okay. So now let's go to page 4. The
10:42:18 5 elements of the offense, Mr. McDonough, will you spread
6 those on the record?

7 MR. McDONOUGH: The elements of the offense to
8 which defendant will plead guilty are, under Title 18,
9 United States Code, Section 922(g)(1), possession of firearm
10:42:31 10 and/or ammunition by convicted felon:

11 One, defendant was convicted of a crime punishable
12 by imprisonment for more than one year;

13 Two, following defendant's conviction, defendant
14 knowingly possessed a firearm and/or ammunition;

10:42:51 15 And three, the specified firearm and/or ammunition
16 crossed a state line prior to defendant's possession.

17 THE COURT: Thank you, Mr. McDonough.

18 Mr. Warner, any corrections?

19 MR. WARNER: No, Your Honor.

10:43:03 20 THE COURT: Mr. Hobbs, those three elements in
21 paragraph 9, do they match your behavior leading to the
22 charge brought against you in the indictment, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: So we're still on page 4, now
10:43:18 25 paragraph 10. It tells me, sir, that you understand that

1 sentencing rests within my discretion, mostly. If I'm
2 forced to give a mandatory minimum like the 15 years, that's
3 something that I do that's outside of my discretion.

4 But even if I'm forced to give a minimum, that
10:43:34 5 doesn't mean that's the lowest sentence I could give. I
6 could decide to go higher. And as you know, it would be up
7 to life in your case, right?

8 THE DEFENDANT: Yes.

9 THE COURT: And, again, I don't tell you that to
10:43:43 10 frighten you, only to make sure that you are empowered by
11 full knowledge. Right now I don't think life or something
12 higher than 15 years would be the highest.

13 And I will make a record today as well as at
14 sentencing, if I should find that you're an armed career
10:43:59 15 criminal but for a mandatory minimum that I'm lawfully
16 required to follow, I think that would be too high, too long
17 a sentence for you, but I'd give it if I'm legally required
18 to.

19 Make sense?

10:44:12 20 THE DEFENDANT: Yes.

21 THE COURT: All right. So I'm going to do lots of
22 things. I'm going to follow the law, but I'm also going to
23 prepare myself by using this presentence report that's
24 spoken about at paragraph 11. That's going to tell me a lot
10:44:23 25 of information about you.

1 And then just jumping back to paragraph 10, when
2 I'm told that you understand that I should impose a sentence
3 that's sufficient, but not greater than necessary to comply
4 with the purposes of the 3553(a) factors, a lot of those
10:44:40 5 factors are told to me through the presentence report.

6 Mr. Warner and Mr. McDonough might decide to speak
7 about them during their allocution. I might also receive a
8 sentencing memo. But the nature and circumstances leading
9 to the indictment; history and characteristics, so it's your
10:44:59 10 criminal history, sure, but it's your education history,
11 it's your age, it's your family, it's your employment.

12 And then also, I consider the need for the
13 sentence to be imposed, to protect society, to promote
14 respect for the law, to deter you, to deter others, to
10:45:16 15 punish you.

16 So those are all things Section 3553(a) requires
17 that I keep in mind. And I'll use the presentence report as
18 a tool to assist me in preparing for your sentencing
19 hearing.

10:45:28 20 Make sense?

21 THE DEFENDANT: Yes.

22 THE COURT: So you should expect it of me, and
23 I'll do my best.

24 Paragraph 12 tells me there's no agreement about
10:45:35 25 the range to be imposed in this case. Each side is free to

1 recommend whatever sentence it believes is important. I'll
2 look forward to hearing that argument or maybe it will come
3 through the allocution, which is at the top of page 5.

4 Allocation is important, Mr. Hobbs. The
10:45:56 5 government has a right of allocution. So I'll hear from
6 government's counsel first. Then I'll hear Mr. Warner speak
7 on your behalf. And you have a right to be heard by the
8 judge who sentences you before sentencing.

9 And I will look forward to hearing what you have
10:46:11 10 to say, and I hope you'll put some thought into it. Make
11 notes if you have to. Bring your glasses that day.

12 THE DEFENDANT: Okay.

13 THE COURT: Even if you don't want to read what
14 you write, if you lose track, if you wonder before --
10:46:22 15 because I'll ask, "Have I fully heard you? Are you
16 finished"? Something like that. You'll run down your list
17 and you'll say, "Yes, I am." Or you'll remember a point
18 you've forgotten.

19 So take care, because what I really want you to be
10:46:37 20 able to answer is when I can trust you in society to respect
21 its laws, to be respectful of others in society. Despite
22 this big issue of Armed Career Criminal Act, you did a lot
23 of things that just didn't reflect good care for yourself
24 and for others.

10:46:56 25 I mean, driving with an open container, driving

1 with a weapon. I'm not even sure of the state of your
2 license. But, you know, good citizens take care. You drink
3 that at home and you don't drive until you're sober.

4 So just, you know, I want you to be a full
10:47:12 5 citizen, ready to observe all of the rights and obligations
6 of the United States. And I just want you to say, "Judge,
7 I'm ready, and this is what I'm doing to make myself ready,"
8 in a way that will allow me to decide if I trust it or not.

9 Does that make sense?

10:47:27 10 THE DEFENDANT: Yes.

11 THE COURT: And you'll have some other thoughts.
12 But, you know, there will be some folks who will want to
13 encourage you, sort of get in on your business, tell you
14 what I want to hear. They don't know what I want to hear.
10:47:39 15 Don't listen to that, unless he's standing at your side now.
16 He's the only one who can really advise you on this, unless
17 there is someone inside that you really trust; otherwise,
18 follow your own mind. I trust that you should too. Okay?

19 THE DEFENDANT: Yes.

10:47:52 20 THE COURT: All right, then. No agreement as to
21 the applicable guidelines, and that doesn't surprise me
22 given the conditional nature of the plea. But I am
23 encouraged that if you maintain the posture you have, the
24 government's inclined to ask that I find that you are
10:48:07 25 deserving of an adjustment downwards for acceptance of

1 responsibility.

2 Mr. McDonough, what do you think the guidelines
3 and criminal history category will be?

4 MR. McDONOUGH: Your Honor, we would anticipate --
10:48:26 5 this would be without a finding of the armed career criminal
6 enhancement?

7 THE COURT: Yes.

8 MR. McDONOUGH: Without that --

9 THE COURT: Yes.

10:48:37 10 MR. McDONOUGH: -- we would anticipate that before
11 acceptance of responsibility, we would be at an offense
12 level 24, with a criminal history category of IV, for a
13 range of 77 to 96 months before acceptance of
14 responsibility. And afterward, acceptance of
10:48:57 15 responsibility, we would be at an offense level 22, for a
16 range of 63 to 78 months.

17 THE COURT: Is it 22 or 21? I thought you said
18 24.

19 MR. McDONOUGH: I'm sorry. 24 before acceptance,
10:49:10 20 and then there would be a two-level reduction to take us to
21 offense level 22, Your Honor.

22 THE COURT: Why just two levels?

23 MR. McDONOUGH: There would be no -- the United
24 States, as part of the plea agreement, would not be making a
10:49:23 25 motion for the third point, Your Honor.

1 THE COURT: Understood. And thank you for that,
2 because I didn't understand that sentence to mean that.

3 All right. Mr. Warner, do you agree that both of
4 those possibilities, either a range of 77 to 96 or 63 to 78,
10:49:42 5 would result if there is no armed career criminal finding
6 and the base -- or the total offense before adjustment for
7 acceptance is 24?

8 MR. WARNER: Judge, it could even be less because
9 if these offenses are not crimes of violence, then they
10:49:59 10 wouldn't count for the guidelines either. So we are
11 conceding the one. So he's at, at a bare minimum, a level
12 20/Criminal History IV if that's where he were to come out.

13 So it could be less. But for the purpose of the
14 plea, I think we've talked about the worst-case scenario. I
10:50:17 15 did inform him about only two levels being in here, but I
16 told him that there's nothing in here that prevents us from
17 asking the court for that extra level if we were to beat the
18 armed career criminal provisions here, only because from the
19 beginning, Mr. Hobbs, although he has executed his
10:50:36 20 constitutional right to a suppression hearing, has accepted
21 responsibility for this behavior and has done his best to
22 short-circuit and make it easy for the government.

23 So we would contest that that third point is being
24 properly withheld, but nonetheless, it is being withheld
10:50:53 25 within the agreement, and I think 24 is the worst-case

1 scenario. I think he's likely, depending on what happens
2 with the Williams case, to come out as high as a 20.

3 THE COURT: And that's before any adjustment for
4 acceptance, 20?

10:51:09 5 MR. WARNER: That's correct.

6 THE COURT: All right, then. Do you have the
7 chart there with you?

8 MR. WARNER: Yes, Your Honor.

9 THE COURT: Mr. Hobbs, I trust that you've had
10:51:16 10 these discussions, perhaps more of them than the typical
11 defendant, regarding -- you've discussed to your
12 satisfaction the armed career criminal finding, have you,
13 sir?

14 THE DEFENDANT: Yes.

10:51:27 15 THE COURT: And then also the use of the advisory
16 sentencing guidelines. I'm legally obligated to use this
17 guideline system, but not legally obligated to follow it.
18 Meaning I can reason away the range. Meaning I can decide
19 the range is too low or the range is too high, but I must
10:51:44 20 find it and find it correctly and explain why I don't use
21 it.

22 You understand that, don't you?

23 THE DEFENDANT: Yes.

24 THE COURT: So if Mr. McDonough is correct, for
10:51:53 25 instance, that you are at a -- ultimately a 22 and the

1 intersection with a criminal history category of IV, what
2 range is that, sir? What range of numbers do you see?

3 MR. WARNER: Yeah, go ahead.

4 THE DEFENDANT: 63 to 78 months.

10:52:15 5 THE COURT: Okay, great, you understand that's
6 months.

7 And if Mr. Warner is correct, if you start more at
8 a 20 and then there is some adjustment downwards, and let's
9 take it down just two levels, right now 20 minus two is 18,
10:52:31 10 don't you agree?

11 THE DEFENDANT: Yes.

12 THE COURT: So then 18 and Criminal History
13 Category IV, which it sounds like you agree, IV would be the
14 category without armed career adjustment, Mr. Warner?

10:52:42 15 MR. WARNER: Yes, Your Honor.

16 THE COURT: So 18 and IV takes us to what range of
17 numbers?

18 THE DEFENDANT: 41 to 51 months.

19 THE COURT: Okay. So that's what, for the typical
10:52:53 20 defendant in court across the nation, that's what the
21 guidelines would suggest.

22 THE DEFENDANT: Okay.

23 THE COURT: And I would decide using those factors
24 I've talked to you about what's sufficient, what's best for
10:53:06 25 you.

1 Make sense?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. So now, Mr. McDonough, why
4 don't you spread on the record the "Waiver of Appeal and
10:53:15 5 Post-Conviction Attack" section, paragraph 17.

6 MR. McDONOUGH: Pursuant to the plea agreement,
7 defendant acknowledges having been advised by counsel of his
8 rights, in limited circumstances, to appeal the conviction
9 or sentence in this case, including the appeal right
10:53:30 10 conferred by 18, United States Code, Section 3742, and to
11 challenge the conviction or sentence collaterally through a
12 post-conviction proceeding, including a proceeding under 28,
13 United States Code, Section 2255. Defendant expressly and
14 voluntarily waives those rights, except as specifically
10:53:53 15 reserved below. Defendant reserves the right to appeal:
16 (a) the District Court's denial of defendant's motion to
17 suppress, (b) the District Court's determination that
18 defendant qualifies as an armed career criminal under 18,
19 United States Code, Section 924(e), with defendant conceding
10:54:16 20 that his conviction for aggravated robbery in Case Number
21 05-462426, qualifies as a violent felony under the Armed
22 Career Criminal Act under United States versus Patterson,
23 878 F.3d 215, Sixth Circuit, 2017, (c) any punishment in
24 excess of the statutory maximum, and (d) the District
10:54:54 25 Court's determination of defendant's criminal history

1 category. Nothing in this paragraph shall act as a bar to
2 defendant perfecting any legal remedies defendant may
3 otherwise have on appeal or collateral attack with respect
4 to claims of ineffective assistance of counsel or
10:55:13 5 prosecutorial misconduct.

6 THE COURT: Thank you, Mr. McDonough.

7 Mr. Warner, any corrections or additional comment?

8 MR. WARNER: No, Your Honor.

9 THE COURT: I think it's pretty clear as well,
10:55:24 10 Mr. Hobbs. Do you understand that paragraph 17 outlines
11 rights that you would typically have that you're waiving,
12 and rights that you're keeping and noting the concession
13 that you're making regarding at least one prior conviction
14 qualifying as a violent felony?

10:55:43 15 THE DEFENDANT: Yes.

16 THE COURT: All right. Paragraph 18 simply
17 regards timing. If for some reason, for instance, maybe you
18 are successful on appeal, or I allow you to withdraw your
19 plea of guilty for some other reason, it simply explains in
10:55:58 20 paragraph 18 that you give the government an additional year
21 to continue its prosecution of you, a year longer than it
22 may otherwise have had if the restart is triggered by those
23 events outlined in paragraph 18 as subparts 1, 2 and 3.

24 Do you understand that?

10:56:16 25 THE DEFENDANT: Yes.

1 THE COURT: Mr. McDonough, back to you to assist
2 by spreading on the record the factual basis and relevant
3 conduct section, sir.

4 MR. McDONOUGH: Pursuant to the plea agreement,
10:56:28 5 defendant agrees that the following summary fairly and
6 accurately sets forth his offense conduct and a factual
7 basis for the guilty plea. He further agrees that the facts
8 set forth in this summary are true and could be established
9 beyond a reasonable doubt if the case were to proceed to
10:56:45 10 trial.

11 On June 5th, 2017, at approximately 7:30 p.m., RTA
12 police officers were patrolling on Superior Avenue --

13 MR. WARNER: Pardon me.

14 THE COURT: Mr. McDonough?

10:56:57 15 MR. McDONOUGH: Yes, Your Honor.

16 MR. WARNER: If it pleases the court, I have
17 covered this in detail with Mr. Hobbs. He's initialed each
18 one. I'm not sure what the court's practice is. I don't
19 need Mr. McDonough to read the entire factual basis again
10:57:09 20 unless the court pleases.

21 THE COURT: Well, I want him to be satisfied, so
22 it's fine knowing that, but I'll allow the government to
23 proceed in a way he'd like best.

24 MR. WARNER: Okay.

10:57:20 25 THE COURT: It's up to you, Mr. McDonough. You

1 can pick up where you were or you can summarize in some way.

2 MR. McDONOUGH: Oh, Your Honor, I'd be happy to
3 summarize it.

4 That on June 5th, 2017, at approximately 7:30
10:57:34 5 p.m., that in Cleveland, Ohio, which is in the Northern
6 District of Ohio, Eastern Division, that the defendant was
7 pulled over by RTA police.

8 When asked if there were firearms in the vehicle,
9 the defendant admitted that a firearm belonging to his wife
10:57:54 10 was in the vehicle. He did not have a license to carry the
11 firearm.

12 When the -- the officers found a Phoenix Arms,
13 Model HP22A, .22 caliber semiautomatic handgun, serial
14 number 4451571, that had one round in the chamber.

10:58:22 15 They also found a box of .22 caliber ammunition
16 and a magazine matching the handgun in the vehicle.

17 And then the defendant, also he had found on him
18 were five rounds of .22 caliber ammunition that matched the
19 gun itself.

10:58:39 20 ATF special agent conducted an examination of the
21 firearm and the ammunition and found that the firearm was
22 manufactured in California and that the ammunition was
23 manufactured in either Illinois or Mississippi, and both of
24 which have traveled in interstate commerce prior to being
10:58:56 25 seized on June 5th, 2017.

1 In addition, the defendant previously had -- was
2 convicted of felonies punishable by more than one year of
3 imprisonment, in Case Numbers 03-43727, Case 05-462426, and
4 Case Number 12-564611, all in Cuyahoga County Common Pleas
10:59:28 5 Court, for assault on a peace officer, a violation of Ohio
6 Revised Code Section 2903.13 on August 11th, 2003;
7 aggravated robbery with a firearm specification, in
8 violation of Ohio Revised Code Section 2911.01 and 2941.145
9 on April 6, 2005; and attempted felonious assault, in
10:59:55 10 violation of Ohio Revised Code Sections 2923.02 and
11 2903.11A(2) on November 29th, 2012.

12 Defendant acknowledges that that summary of his
13 conduct does not set forth each and every fact that the U.S.
14 Attorney's Office could prove at trial, nor does it
11:00:18 15 encompass all the acts which defendant committed in
16 furtherance of the offense to which he's pleading guilty.

17 THE COURT: Thank you, Mr. McDonough.

18 Mr. Warner, did you note any points you disagree
19 with or anything that's different than the text?

11:00:32 20 MR. WARNER: No, Your Honor.

21 THE COURT: All right. And I agree with your
22 attorney, Mr. Hobbs, you've initialed these pages. I can
23 imagine that there have been lots of discussion. But I
24 still need to hear from you that what's under this section,
11:00:47 25 "Factual Basis and Relevant Conduct" section, does this

1 accurately reflect your behavior, sir --

2 THE DEFENDANT: Yes.

3 THE COURT: -- leading up to the indictment?

4 THE DEFENDANT: Yes.

11:00:57 5 THE COURT: All right. So now we're at the bottom
6 of page 8. The parties are free to advise the court about
7 matters not expressly addressed. I'll look forward to that
8 if there's something more. And we know that there will be
9 your arguments about the sentence to be imposed.

11:01:16 10 The top of page 9, "Consequences of Breaching the
11 Plea Agreement."

12 What really is important for you to understand,
13 Mr. Hobbs, is that if you should breach the plea agreement,
14 you lose the benefits of the plea agreement but you remain
11:01:29 15 guilty. So breach of a plea agreement isn't taking back
16 your plea of guilty, it just means you're guilty but now you
17 don't have the conditional status.

18 Make sense?

19 THE DEFENDANT: Yes.

11:01:39 20 THE COURT: For example. All right.

21 Now, I hope you don't have any exposure in any
22 other jurisdiction, state or local.

23 Do you have any reason to believe he does,
24 Mr. McDonough?

11:01:53 25 MR. McDONOUGH: We do not, Your Honor.

1 THE COURT: Mr. Warner?

2 MR. WARNER: No, Your Honor.

3 THE COURT: Good. Now let's talk about paragraph
4 25. And you shouldn't worry about Mr. Warner, he's used to
11:02:01 5 this. He is open to it. And he, like I, would want to make
6 sure that you believe you've been fully and properly
7 assisted.

8 So all the things listed here in paragraph 25, the
9 discussions you were to have had with counsel about the
11:02:13 10 case, about trial, about appellate matters, about loss of
11 civil rights.

12 And by that I'm talking about while you're
13 incarcerated, you can't vote. For a while while you're on
14 paper, you can't vote. You have to re-establish voting
11:02:30 15 rights. You might have some difficulty getting federal
16 benefits, meaning like living in HUD housing.

17 Are you aware of some of those complications that
18 can result from a federal conviction?

19 THE DEFENDANT: Yes.

11:02:40 20 THE COURT: All right. So overall, can you tell
21 me, is it true what it says, the last sentence, that you're
22 satisfied with the legal services and advice provided to you
23 by Mr. Warner?

24 THE DEFENDANT: Yes, I'm satisfied.

11:02:51 25 THE COURT: So now I'm at page 10, sir. It's the

1 last paragraph, paragraph 26. Its subtopic heading is
2 "Agreement is Complete and Voluntarily Entered." And it
3 tells me lots of things there, but what I'm most interested
4 in hearing, Mr. Hobbs, is from you in your own words why
11:03:13 5 you've decided to enter a plea of guilty.

6 THE DEFENDANT: Right now?

7 THE COURT: Yes, sir.

8 THE DEFENDANT: Just ready to get it over with and
9 get down to the facts of this case and the outcome. Just
11:03:26 10 leave it in God's hands.

11 THE COURT: Okay. Because when I asked you about
12 the elements in the factual basis, you agreed that your
13 behavior matched the elements in the factual basis, am I
14 correct then in thinking that you are pleading guilty
11:03:40 15 because you are guilty of the felon in possession charge?

16 THE DEFENDANT: Yes.

17 THE COURT: And you're ready to move on to the
18 next steps?

19 THE DEFENDANT: Yes.

11:03:47 20 THE COURT: Now, tell me this: Has anybody
21 threatened you or coerced you, "Hobbs, don't go to trial or
22 something bad will happen to you, your family," any threats
23 at all?

24 THE DEFENDANT: No.

11:03:58 25 THE COURT: Promises that you rely on, are they in

1 this agreement?

2 THE DEFENDANT: No promises.

3 THE COURT: Well, there are some, such as the
4 right to be able to make certain appeals.

11:04:09 5 THE DEFENDANT: (Nodding head up and down.)

6 THE COURT: But I just want to make sure there is
7 nothing you are relying on that's not in this agreement.

8 THE DEFENDANT: No.

9 THE COURT: Okay, no other promises?

11:04:16 10 THE DEFENDANT: No promises.

11 THE COURT: Okay. All right. Then I'm satisfied
12 that you've decided to enter the agreement voluntarily and
13 knowingly, meaning knowing what the consequences may be, the
14 good or the bad.

11:04:30 15 Right?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Mr. Warner, I'm prepared
18 to ask your client his plea, but I'll continue the colloquy
19 if there's an area you'd like me to explore.

11:04:40 20 MR. WARNER: No, Your Honor. Thank you.

21 THE COURT: Sure.

22 Mr. McDonough?

23 MR. McDONOUGH: No, Your Honor.

24 THE COURT: Mr. Warner, will you waive a verbatim
11:04:48 25 reading of the indictment and just allow me to ask Mr. Hobbs

1 what his plea is to the sole count of the indictment?

2 MR. WARNER: Yes, Your Honor, and he has the
3 indictment before him.

11:05:02

4 THE COURT: All right. Mr. McDonough, are you all
5 right with that?

6 MR. McDONOUGH: Yes, Your Honor.

7 THE COURT: So I'll ask you that question,
8 Mr. Hobbs, and then I'll wait for your answer, what your
9 plea is to the sole count of the indictment.

11:05:11

10 Make sense?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Sir, a grand jury has
13 charged you by way of an indictment with being a felon in
14 possession.

11:05:20

15 What is your plea to the sole count brought
16 against you in the indictment, sir?

17 THE DEFENDANT: Guilty.

11:05:32

18 THE COURT: All right. Based on the opportunity
19 I've had today to talk with you, to conduct this colloquy
20 that the rules I follow require of me, I found you to be
21 attentive, to be forthright, a little eager, in fact. You
22 are ready to give answers before I've even finished the
23 question.

11:05:48

24 But the important thing is you haven't held back.
25 I think you've thought about what you wanted to say. You've

1 delivered honest answers in an understandable way, and I
2 appreciate that.

3 I think you're prepared to accept the worst, but
4 you're hoping for the best. I think you've assured me that
11:06:01 5 your behavior has indeed matched the elements of the offense
6 and the factual basis laid out in this agreement. And I
7 know that you're relying on the opportunities for appellate
8 review that this conditional plea agreement allows you.

9 I think you were honest when you told me you were
11:06:19 10 satisfied with the assistance of counsel and that you're
11 pleading guilty because you're ready to get on to the next
12 step and, I'll repeat your words, "put it in God's hands."

13 For all those reasons, sir, I find that you've
14 pled guilty because you are indeed guilty, and I hereby
11:06:35 15 adjudge you guilty.

16 Please announce the date of sentencing.

17 THE CLERK: Sentencing is scheduled for Tuesday,
18 December 11th, 2018, at 10:00 a.m.

19 THE COURT: Counselors, if you know of a conflict,
11:06:49 20 will you tell us now?

21 MR. WARNER: I'm okay, Your Honor. Thank you.

22 MR. McDONOUGH: No conflicts, Your Honor. Thank
23 you.

24 THE COURT: All right. Well, between now and
11:07:02 25 then, Mr. Hobbs, I'll refer the matter to probation for the

1 writing of that presentence report. Government's counsel is
2 obligated to help the probation officer.

3 Mr. Warner, I know you'll assist. You'll meet
4 with the probation officer and Mr. Hobbs?

11:07:17 5 MR. WARNER: Yes, Your Honor.

6 THE COURT: All right. I've signed the agreement
7 as well, sir, so it's now fully executed.

8 You've got your own homework. You have to think
9 about what you're going to talk to me about, your
10 allocation. Remember that?

11 THE DEFENDANT: Yes.

12 THE COURT: How are things going otherwise?

13 THE DEFENDANT: I'm fine. I'm just -- like I
14 said, I'm ready to get it over with. I stay in the library.
11:07:38 15 I, you know, work out, go to church Sundays and Mondays and
16 just stay out the way.

17 THE COURT: All right, then. Unless there's
18 something more, I'll adjourn the hearing.

19 Mr. McDonough, is there?

11:07:49 20 MR. McDONOUGH: Nothing further on behalf of the
21 United States, Your Honor.

22 THE COURT: Certainly. Thank you, sir.

23 Mr. Warner, on behalf of Mr. Hobbs?

24 MR. WARNER: No, thank you, Your Honor. May I
11:07:57 25 just approach off the record?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Sure.
(Proceedings concluded at 11:07 a.m.)

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ Mary L. Uphold July 15, 2019
Mary L. Uphold, RDR, CRR Date

APPENDIX G

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
) Case No. 1:17-cr-280
Plaintiff,) Youngstown, Ohio
) Friday, April 12, 2019
vs.) 2:36 p.m.
)
ISAAC L. HOBBS,)
)
Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

SENTENCING

APPEARANCES:

For the Plaintiff:
Office of the U.S. Attorney
Northern District of Ohio
By: James P. Lewis, Esq.
Suite 400
801 Superior Avenue, West
Cleveland, Ohio 44113
(216) 622-3958
james.lewis@usdoj.gov

Mary L. Uphold, RDR, CRR
Thomas D. Lambros Federal Building and U.S. Courthouse
125 Market Street, Room 337
Youngstown, Ohio 44503-1780
(330) 884-7424
Mary_Uphold@ohnd.uscourts.gov

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

1 **APPEARANCES (CONTINUED) :**

2 **For the Defendant:**

3 Bradley R. Iams, Esq.
4 301 Cleveland Avenue, NW
5 Canton, Ohio 44702
6 (330) 452-6400
7 briams@aol.com

8 - - -

- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 P R O C E E D I N G S

2 - - -

3 THE CLERK: The matter before the court is Case
4 Number 1:17-cr-280, the United States of America versus
14:36:18 5 Isaac L. Hobbs.

6 THE COURT: Good afternoon, everyone. Thank you
7 for standing. Please retake your seats.

8 Counsel for the United States, will you please
9 introduce yourself for the record?

14:36:28 10 MR. LEWIS: Yes, Your Honor. James Lewis on
11 behalf of the United States of America.

12 THE COURT: Welcome, Mr. Lewis.

13 Counsel for Mr. Hobbs, will you please introduce
14 yourself and your client for the record?

14:36:38 15 MR. IAMS: Good afternoon, Your Honor. Bradley
16 Iams appearing on behalf of the defendant, Isaac Hobbs, who
17 is seated to my left.

18 THE COURT: Welcome to you both.

19 And I'm pleased we have a representative from the
14:36:50 20 Office of Pretrial Services and Probation.

21 Would you like to introduce yourself for the
22 record?

23 PROBATION OFFICER: Good afternoon, Your Honor.
24 Brian Laffin, Supervisor, United States Probation Office.

14:36:59 25 THE COURT: Thank you, Mr. Laffin, for being here,

1 and also for your assistance in this case, which I know
2 began long before today's appearance.

3 Mr. Hobbs, this hearing has been scheduled to
4 allow me to impose sentence upon you, sir. As you know,
14:37:15 5 this day has been a long time coming. There's been much
6 work done on this case. And when we were last together,
7 there were issues that were not yet resolved, primarily
8 regarding whether or not there were predicate offenses, that
9 if they were found to be qualifying offenses, would require
14:37:37 10 that an Armed Career Criminal Act sentence be imposed. I
11 think that question has now been answered, and I'll
12 certainly talk with counsel about that as we proceed through
13 today's hearing.

14 Mr. Iams, you've done much work in a short period
14:37:53 15 of time. You filed at least two supplemental memoranda with
16 attachments, and I already had one filed by prior counsel.
17 So please know that I've consulted ECF 49 filed by prior
18 counsel, 56 with attachments filed by you, 57 with
19 attachment filed by you.

14:38:22 20 Mr. Williams, you've been -- pardon me, Lewis, I'm
21 sorry. Mr. Lewis, you've been equal to the task. I have
22 your original memorandum filed on behalf of the United
23 States, and that was filed back in December, ECF 50, and I
24 also have the most recent one, ECF Number 58.

14:38:41 25 Of course, while I've been present for all these

1 proceedings, I still took the time to again consult the
2 written plea agreement. As you know, after we were last
3 together, I issued an order on the denial of Mr. Hobbs'
4 motion to withdraw his plea of guilty. I trust that you've
14:39:03 5 received and had an opportunity to read that.

6 And probably most importantly, the final revised
7 presentence report. It's ECF Number 59, it's the one that
8 was last revised on the 8th of April, just filed this
9 Monday.

14:39:24 10 Mr. Lewis, do you have it?

11 MR. LEWIS: I do, Your Honor.

12 THE COURT: Have you had enough time to review it?

13 MR. LEWIS: I have, Your Honor.

14 THE COURT: When I look at the addendum, it says,
14:39:34 15 "No unresolved objections on behalf of the government." Is
16 that still the case?

17 MR. LEWIS: Yes, Your Honor.

18 THE COURT: All right. Mr. Iams, the April 8,
19 2019 final revised presentence report, you have it, don't
14:39:50 20 you, sir?

21 MR. IAMS: I do, Your Honor.

22 THE COURT: And have you had enough time to review
23 it?

24 MR. IAMS: I have, yes, ma'am.

14:39:56 25 THE COURT: With Mr. Hobbs?

1 MR. IAMS: Your Honor, I provided him with a copy
2 as we came in here today. I got here about 2:00 and wanted
3 to meet with him to go over that because I didn't think I
4 could get it to him in the mail. They were busy downstairs,
14:40:09 5 and so they weren't able to get him up here until a few
6 minutes ago.

7 I have provided him with a copy of it and he has
8 it in front of him. So I don't know whether he feels he's
9 had enough time to review it.

14:40:22 10 I think it's essentially the same report as the
11 previous report, subject to some of the issues that were
12 raised on the career offender issue. And I have attempted
13 to discuss those matters with him prior to the court taking
14 the bench today. I believe I've explained my theory and
14:40:41 15 position on those matters to him.

16 THE COURT: All right.

17 MR. IAMS: And I did previously send him copies of
18 some of the filings.

19 THE COURT: Certainly.

14:40:49 20 MR. IAMS: So he's had those for some time.

21 THE COURT: And when you compare the April 8, 2019
22 report to the last one we had when we were together,
23 November 28 I think was the date it was last revised, you're
24 right, there certainly isn't much difference between the
14:41:06 25 two.

1 What is significant are the objections as styled
2 in this one, which would be what you are the architect of.

3 MR. IAMS: And I did provide Mr. Hobbs with -- as
4 soon as I filed that, I mailed him a copy of that, and I
14:41:24 5 also mailed him a copy of the government's response to that.
6 So he's had those for at least several days or weeks.

7 What he hasn't had is the final revised
8 presentence report until today. But I don't know that
9 that's -- there's anything significant that's in there that
14:41:36 10 isn't in the things that have been filed.

11 THE COURT: All right. And thank you. You
12 understand, I believe, which is why you didn't mail it, that
13 you can't and you shouldn't provide that to him without your
14 supervision.

14:41:49 15 So, Mr. Hobbs, you've heard what Mr. Iams has
16 said. Do you need more time with him to review this report?

17 THE DEFENDANT: The PSI? No.

18 THE COURT: Yeah, the PSI, or PSR as I call it,
19 but both are the same. Presentence investigation report.

14:42:10 20 Then let's move forward. And as we do, if any one
21 of you needs more attention regarding any part of the
22 presentence report or any other item that pertains to the
23 sentence, speak up and that attention will be given.

24 Mr. Hobbs, the hearing will proceed with me first
14:42:29 25 working through the presentence report to correctly

1 calculate the advisory sentencing guidelines range. The
2 second part will be when I hear allocutions. The third part
3 will be when I impose sentence.

4 Allocation will be a time when I'll listen with an
14:42:48 5 eye towards applying the 3553(a) factors. Those are the
6 factors that require that I pay attention to things outside
7 of the guidelines and do my best to ensure that I impose a
8 sufficient, not greater than necessary sentence.

9 So looking at the April 8, 2019 presentence
14:43:11 10 report, while you can direct me to any part of the report in
11 advance of page 4, I first take you there under the subtopic
12 heading "Adjustment for Acceptance of Responsibility."

13 Paragraph 17 is attributed to Mr. Hobbs.
14 "Pursuant to my conditional plea, I accept responsibility
14:43:35 15 for my actions on this case. The past 14 months have been
16 the hardest 14 months of my life. I'm looking forward to
17 living the rest of my life in peace."

18 Your statement, sir? That is your statement?

19 THE DEFENDANT: Yes.

14:43:48 20 THE COURT: What comes next is the offense level
21 computation.

22 Mr. Clements appropriately compared the 2016 and
23 '18 guidelines manuals. Tells us in paragraph 18 that he
24 used ultimately the 2018 Guidelines Manual. And I believe,
14:44:13 25 Mr. Laffin, that's because, as paragraph 18 says, they both

1 lead to the same base offense level, and the '18 manual is
2 the one that's in effect today.

3 PROBATION OFFICER: That is correct, Your Honor.

4 THE COURT: Any objection to that, Mr. Lewis?

14:44:30 5 MR. LEWIS: No, Your Honor.

6 THE COURT: Mr. Bradley?

7 MR. IAMS: No, Your Honor.

8 THE COURT: Thank you.

9 And I apologize for calling you just now by the
14:44:42 10 wrong name, Mr. Iams.

11 MR. IAMS: I've been called worse.

12 THE COURT: I will try to keep it straight.

13 Mr. Iams, thank you for that.

14 So let's then move on to the next paragraph. And
14:44:53 15 it's the paragraph that attributes a base offense level to
16 Count 1. And this paragraph doesn't come as a surprise,
17 because it was anticipated in the written agreement that
18 while there'd be no stipulation, there is now no objection
19 by the government to the base offense level of 24.

14:45:33 20 And, Mr. Iams, Mr. Hobbs doesn't object to the
21 base offense level of 24, does he?

22 MR. IAMS: He does not, Your Honor.

23 THE COURT: All right. And there are no other
24 roles or no other adjustments suggested before paragraph 25
14:45:46 25 that speaks to the Chapter 4 enhancement. And I think this

1 is where most of the work has been done since we were last
2 together, and perhaps in this case regarding Mr. Hobbs
3 overall.

4 Mr. Iams, your briefing supplemental to that
14:46:03 5 originally had challenges two of the three prior offenses
6 addressed in paragraph 25. You challenged the assault on a
7 peace officer, which is paragraph 34, and the attempted
8 felonious assault, which is paragraph 37.

9 I've read and considered what you've submitted and
14:46:25 10 will give you an opportunity now if you'd like to say
11 anything more about the objections made to those being
12 considered predicate offenses, drawing your attention to
13 page 19.

14 MR. IAMS: Thank you, Your Honor. Your Honor,
14:46:41 15 first of all, I would also like to incorporate by reference
16 the presentence -- or the supplemental memorandum, the
17 sentencing memorandum filed by the Public Defender's Office.
18 I believe that those arguments are certainly appropriate and
19 we would incorporate those into our arguments.

14:46:57 20 I certainly don't want to waive or suggest we're
21 waiving any of those arguments today. However, I think for
22 purposes of today's hearing, I'd like to focus my remarks to
23 the attempt conviction, and more specifically, to applying
24 the categorical approach to those elements.

14:47:15 25 We've made a suggestion in our filings --

1 THE COURT: Let me -- to be sure I'm with you,
2 you're talking about the attempted felonious assault,
3 paragraph 37?

4 MR. IAMS: Yes, Your Honor.

14:47:24 5 THE COURT: All right, I'm with you then.

6 MR. IAMS: The government, in response to that,
7 has suggested that these -- that this conviction cannot be
8 collaterally attacked on a voidness basis. While I'm not
9 sure I necessarily agree with that, I would agree that
10 Custis and some of the cases they've cited would seem to
11 stand for the proposition that this sentencing hearing is
12 not the proper place to file -- to make a collateral attack.

13 So without waiving that, I would like to move on,
14 though, because I think more importantly, not only can this
14:47:55 15 court look at the elements of this amended offense, but I
16 think it's also required under the categorical approach to
17 determine whether this is a violent felony.

18 And I think it's fairly clear what happened in
19 this case. Originally was the defendant was charged with
14:48:13 20 the (a) (2) section of the felonious assault law under Ohio
21 law, which was to cause or attempt to cause physical harm by
22 means of a deadly weapon.

23 That's not the offense of conviction in this case.
24 What the offense of conviction was is a violation of the
14:48:27 25 Ohio attempt statute. And the Shepard documents and the

1 records of this case clearly show that the defendant did not
2 plead guilty to felonious assault, he plead guilty to an
3 attempt -- an attempt violation of a particular statute.

4 But it's a separate statute under Ohio law. The
14:48:46 5 attempt law is a different law. And that's what he pled
6 guilty to.

7 And if you look at the elements as best we can
8 reconstruct them, without looking at the facts of the case,
9 simply the elements of the offense as I've attempted to do
14:48:59 10 in our memorandum, is you'd have to figure out a way to
11 attempt to attempt to cause physical harm by means of a
12 deadly weapon.

13 Now, there's a good reason why the Ohio courts
14 consider that to be a void conviction, because it doesn't
14:49:14 15 make sense in the statute. In Ohio, when they enacted that
16 statute, it was done with the legislative service commission
17 recommending or suggesting. This doesn't apply to an
18 offense where an attempt is already part of the elements of
19 the offense.

14:49:29 20 But be that as it may, if you look at what he pled
21 to and you try and determine what could have been the
22 elements to that offense, it has to be something other than
23 an attempt to cause physical harm, because if that had been
24 the intent of the court and the parties in that case,
14:49:44 25 there's no reason for that amendment.

1 That amendment has to be given some effect. And
2 that amendment does something other than refer to an attempt
3 to cause physical harm. It's some preparatory action,
4 perhaps, as I've laid out in our memorandum, to suggest that
14:50:01 5 perhaps the elements -- the first attempt was laying in wait
6 or surveillance or purchasing a weapon or something that
7 would fall short of actually causing or attempting to cause
8 physical harm.

9 Now, I'm not saying that that's the most logical
14:50:16 10 thing to have happened, but I'm not the one that made the
11 amendment. The government did that in the state court.
12 They amended that charge. And the defendant did not plead
13 guilty to felonious assault. He certainly didn't plead
14 guilty to attempting to cause physical harm to someone.

14:50:30 15 So the only elements left in that are an attempt
16 to attempt something. And if we look at those elements and
17 lay those out, I don't believe that you can say that
18 everyone convicted of that would necessarily have had to
19 either cause or attempted or threatened to cause physical
14:50:49 20 harm to another person. And that's what's required under
21 Burris and the other cases for this to be a violent felony.

22 So I think -- initially I think it's a void
23 conviction. But if we can't attack it here, I think the
24 burden is still on the government to show that this is a
14:51:10 25 violent felony, and I've yet to hear from the government or

1 the probation officer, frankly, how that happens. They've
2 concluded that this is a violent felony because an attempt
3 to cause physical harm would clearly qualify. And I can't
4 really argue with that, an attempt.

14:51:24 5 But this isn't what that -- this isn't what he
6 pled guilty to. And I don't think that's debatable. If
7 they hadn't -- if they hadn't amended the indictment, then
8 that would have been an attempted felonious assault, or an
9 attempt to cause harm. But this is -- this is something
14:51:42 10 different.

11 And we didn't create that problem, but I think at
12 this point, given -- given the seriousness of what's
13 involved here, I don't think the government gets the benefit
14 of the doubt on something like that. I think they have to
14:51:54 15 establish that this is a violent felony. And I think
16 looking at the elements of that offense, I don't see how
17 they can do it. And we believe that the court need go no
18 further than that, and that this would not be a predicate
19 offense.

14:52:06 20 THE COURT: But aren't you asking that I allow you
21 to collaterally attack this state conviction?

22 MR. IAMS: I think what we're looking at is just
23 lay out the elements. Let somebody explain what are the
24 elements of this offense.

14:52:20 25 THE COURT: Well, first of all, when I look at the

1 journal entry that you kindly attached, I think this is --
2 or the United States does.

3 MR. IAMS: I think I did too, but yes.

4 THE COURT: Okay. Well, both of you do. It
14:52:33 5 doesn't appear to be a wholesale amendment from, I mean, one
6 statute to the other, but rather, both are there with a
7 slash in between, 2923.02/2903.11.

8 MR. IAMS: Well, I think that that's required
9 under Ohio law, because that determines the level of the
14:52:54 10 offense. So they amended it to a different code section, to
11 the attempt code section. But then in order for the court
12 in Ohio to determine the level of the offense, they have to
13 attach another code section to it. It's an attempt to
14 commit this offense. Because what it does is it lowers the
14:53:10 15 offense level from a felony 2 to a felony 3, which
16 corresponds with exactly what these documents reflect, is
17 that it was originally a second degree felony, it was
18 amended to attempt, and then in order to determine the level
19 of that offense, that's where the felonious assault statute
14:53:28 20 is again referred to. But I think if it -- sorry.

21 THE COURT: Well, if I do that, doesn't Burris
22 already answer this question, the Burris decision, the Sixth
23 Circuit decision in Burris? I mean, it's a very recent one.

24 MR. IAMS: Well, I have a confession to make. I
14:53:45 25 was trial counsel in the Burris case, so I'm somewhat

1 familiar with the facts in that case.

2 And that was a defendant who was trying to argue
3 that a felonious assault itself wasn't a predicate felony.
4 But that was -- that individual was convicted of the primary
14:54:03 5 offense, it was not an attempt offense. It was within the
6 context of those facts, I think the argument was he
7 attempted to run somebody over with a car.

8 But the offense of conviction was felonious
9 assault in that case. The offense of conviction in this
14:54:18 10 case is clearly 2923.0 -- it's an attempt violation.

11 THE COURT: Well, that's, again, you say it's
12 clearly that when it's not.

13 MR. IAMS: Well --

14 THE COURT: It's 2923.02/2903.11.

14:54:36 15 MR. IAMS: Well, I guess what makes it unclear is
16 the fact -- and that's why the State of Ohio, in the cases
17 we've supplied, indicate that when they analyze those
18 things, it's hard for them to come up with an offense and
19 that's why they say this is actually a void conviction.

14:54:52 20 I'm not suggesting I can make that argument here.
21 But I still think we have to look at the elements that he
22 was convicted of, and he was certainly convicted of
23 something other than felonious assault. Because if he had
24 been felonious assault, it would have been second degree
14:55:07 25 felony and he would have been subjected to different

1 penalties.

2 THE COURT: Thank you.

3 Mr. Lewis.

4 MR. LEWIS: Yes, Your Honor. Well, we would
14:55:19 5 respectfully disagree with that. Two points of law by way
6 of background.

7 First, as the court pointed out, that in the
8 Burris case this year, the Sixth Circuit, in an en banc
9 decision, unequivocally held that the (a)(2) variant of
14:55:33 10 felonious assault, which is the exact same statute that's
11 listed here in the journal entry on page ID 412, an
12 attachment to the government's sentencing memorandum, that
13 that unequivocally, categorically, qualifies as a violent
14 felony under the Armed Career Criminal Act.

14:55:48 15 The second point of law I would direct the court's
16 attention to is the actual statutory language of the Armed
17 Career Criminal Act under 18, U.S.C., 924(e). And that
18 specifically says that an attempt to -- and I'm paraphrasing
19 here -- but an attempt to commit a violent felony is a
14:56:07 20 violent felony, is a predicate under the Armed Career
21 Criminal Act.

22 So the combination of those two things would lead
23 to a very straightforward result here, which is that the
24 defendant was convicted, according to the journal entry, of
14:56:22 25 attempted felonious assault. And if it did not list the

1 (a) (2) variant, I agree we might have a problem here since
2 the (a) (1) variant was held to not be a violent felony, but
3 it specifically lists the (a) (2) variant of felonious
4 assault.

14:56:37 5 So it's an attempt to commit felonious assault,
6 which is a violent felony. It's an attempt to commit a
7 violent felony. So I think that's a very straightforward
8 application of the statute and the binding Sixth Circuit
9 case that this court has to consider. So that's why I
14:56:52 10 believe, Your Honor, it would qualify as a predicate
11 offense.

12 THE COURT: I'll ask you the same question I asked
13 defense counsel, because I'm looking at the language on page
14 ID 412, and there is this 2923.02, and then 2903.11, subpart
14:57:10 15 (a) (2), which you rely on.

16 What do you make of the combination of the two
17 offenses?

18 MR. LEWIS: Your Honor, what it appears is that it
19 was reduced from a second degree felony to a third degree
14:57:25 20 felony, but that would have no effect whatsoever I don't
21 think on whether it would qualify as an ACCA predicate.

22 If it were amended from a fourth degree felony
23 down to a fifth degree felony, at that point we would be
24 under the one-year maximum penalty provision and take it out
14:57:45 25 of the realm of the ACCA or a felony. But that's not what

1 happened here, it's simply being taken from an F2 to an F3.
2 It's still an attempt to commit felonious assault, the
3 (a) (2) variant, which the Sixth Circuit held to be
4 categorically a violent felony.

14:58:02 5 So I don't see how that would have any effect on
6 whether this was a predicate offense, Your Honor.

7 THE COURT: Sir, would you like the last word?

8 MR. IAMS: I would, Your Honor. Because what I
9 don't hear the government doing is applying the categorical
14:58:15 10 approach to this. They're going back to the statute.

11 But if we learn anything from these recent cases
12 is the courts have said you have to go to state law. Look
13 at the state law where this predicate offense occurred to
14 determine what the elements of that offense were. And is it
14:58:31 15 possible that someone could have been convicted of those
16 elements and not met the burden of making that a violent
17 felony. And they --

18 THE COURT: But in this case, Burris has done just
19 that regarding this very offense, that being 2903.11(a) (2).

14:58:48 20 MR. IAMS: I guess that's where we have to agree
21 to disagree.

22 THE COURT: But that's when you want me to go back
23 and challenge the providence of the state court's
24 conviction.

14:58:56 25 MR. IAMS: What the state court convicted him of

1 was a violation of the attempt statute. He wasn't convicted
2 of violating the felonious assault statute, he was convicted
3 of violating the law against attempting. And that's what
4 the amendment was and that's what the defendant pleaded
14:59:13 5 guilty to.

6 The reference to the felonious assault, as I've
7 indicated before, is a method of allowing the court to
8 determine the level of the offense. Because the attempt is
9 already in the language of the felonious assault statute.

14:59:25 10 So if they had intended to convict him of
11 attempting to cause physical harm, there's no reason for the
12 amendment. The amendment wouldn't make any sense. The
13 amendment was made to remove it from the felonious assault
14 statute and to move it to something else, and what they
14:59:43 15 moved it to was a violation of the attempt law.

16 And I think the court can review some of these
17 other cases, even without it being a collateral attack on
18 that conviction, but the cases we've submitted from Ohio
19 courts in analyzing similar issues where they struggle with
14:59:59 20 this idea, what does it mean to attempt to attempt
21 something.

22 And I think that's instructive that that's how the
23 Ohio law works. And I think we have to look initially to
24 Ohio law under this categorical approach to look at the
15:00:12 25 elements of that offense.

1 I would agree, if this conviction had been for an
2 (a) (2) violation of the felonious assault statute, Burris
3 would clearly handle that. But that's a different -- that's
4 a different offense of conviction.

15:00:27 5 THE COURT: Well, I've heard you. And I wish I
6 could find that your position is prevailing, but I don't
7 believe it is. I think Burris controls. I don't think the
8 plea agreement prohibits Mr. Hobbs from appealing my finding
9 that he's an armed career criminal.

15:00:45 10 You don't see it differently, do you, Mr. Lewis?
11 The only conviction that he conceded was the aggravated
12 robbery, not the assault on a police officer or the
13 attempted felonious assault?

14 MR. LEWIS: That's correct, Your Honor.

15:01:00 15 THE COURT: So if you are deserving of a different
16 ruling, Mr. Hobbs, you may get it from an appellate court.
17 But I just don't see that there is a way I can find that
18 your attempted felonious assault, as accurately described in
19 paragraph 37, is anything other than a violent felony under
15:01:19 20 the Armed Career Criminal Act. I believe that it is.

21 I think the argument made is one that necessarily
22 collaterally attacks the state conviction. I'm not aware
23 that there is any ongoing proceedings regarding what I think
24 is pretty old by now, maybe 2012. But I'll leave it to you
15:01:43 25 if there is any opportunity for that to be changed.

1 Meanwhile, when I conclude the sentencing today,
2 I'll remind you of your appellate rights, and certainly
3 within those rights, you'll be able to take on the finding
4 that I believe I'm necessarily required to make, and that
15:02:00 5 is, that Chapter 4 enhancements identified in paragraph 25
6 are correct.

7 I overrule the objection that the predicate
8 offense in paragraph 34 is not a predicate offense under the
9 Armed Career Criminal Act. Also, that the predicate offense
15:02:23 10 under paragraph 37 is not.

11 And while it's not challenged beyond your attempt
12 to withdraw your plea of guilty, the aggravated robbery is
13 the third and final predicate offense necessary.

14 Look, I don't like doing this, but I wasn't there.
15:02:40 15 I didn't commit any of these crimes. And today I will not
16 abridge what I think is pretty clear in the law. If I'm
17 wrong, the Sixth Circuit will have no problem in telling me
18 that. And your plea agreement doesn't stop you from asking
19 for a review.

15:02:57 20 The real pity in this is that you didn't take as
21 seriously your freedom when you had it, but now all of these
22 things have caught up to you and there's nothing I can do
23 about it.

24 So we're at paragraph 25, which attributes the
15:03:18 25 base offense level of 33 to Mr. Hobbs because he is an armed

1 career criminal. Your objections are preserved, although
2 overruled.

3 Next we move on to acceptance of responsibility.
4 I find that Mr. Hobbs is deserving of the two levels
15:03:31 5 downward suggested in paragraph 26.

6 Mr. Lewis, would you like to move for the third
7 level?

8 MR. LEWIS: Your Honor, I apologize, I did
9 overlook this earlier when the court asked me about any
15:03:44 10 objections to the PSR. I do note that in the plea
11 agreement, the government is only agreeing to recommend a
12 two-level reduction. So, no, the government would not make
13 that motion.

14 THE COURT: Because there was some dragging of
15:03:56 15 feet?

16 MR. LEWIS: Your Honor, I believe the primary
17 reason is that the defendant litigated a motion to suppress,
18 which caused the government to undergo some pretty
19 significant preparation, not that much less than what had
15:04:07 20 been required if we actually went to trial in this case.

21 So that's the reasoning for why that was not
22 included in the plea agreement. And that was also something
23 that was bargained for with the prior defense counsel,
24 Mr. Warner.

15:04:17 25 THE COURT: All right, then, and you stick by that

1 now.

2 So with that, the government doesn't move the
3 court for the third level down. Therefore, I will only
4 reduce by two. Meaning that the offense level of 33 is
15:04:30 5 reduced by two, defense counsel, resulting in, instead of 30
6 at paragraph 28, 31.

7 And I'm not asking you to relent on any of your
8 objections, but to agree with the math.

9 MR. IAMS: Your Honor, I believe the math is
15:04:49 10 correct. However, as you've indicated, I believe Mr. Hobbs
11 would maintain his objections.

12 THE COURT: Certainly.

13 So when we turn now to the criminal history
14 section, you can see that of the convictions there, the
15:05:04 15 first one that's been given attention as a predicate is at
16 paragraph 34. And I believe that even when I incorporate,
17 Mr. Iams, the first defense sentencing memorandum, the one
18 that you reference as filed by the Defender's Office, the
19 allegations there that Evans doesn't control, that somehow
15:05:33 20 maybe Castleman abrogated that decision, I don't believe
21 that's accurate.

22 So I did consider that so that you know that
23 Castleman, in my mind, casts no doubt on the Evans decision.
24 And any attempt to describe Evans as no longer being good
15:05:55 25 law is just not the case. Evans is good law. And an

1 assault on a police officer is a violent felony under the
2 Armed Career Criminal Act.

3 35 is conceded and otherwise an Armed Career
4 Criminal Act predicate.

15:06:12 5 And as we've discussed, 37 is the attempted
6 felonious assault. I think I understand Mr. Hobbs'
7 argument. I think Burris controls. A conviction under
8 Section (a) (2) of 2903.11(a) (2), and/or 2923.02, part (E)
9 are felony -- violent felonies under the Armed Career
15:06:39 10 Criminal Act.

11 And I do believe that the argument made by
12 Mr. Hobbs, any successful argument would require that the
13 court collaterally attack that state conviction. And that's
14 simply not something that a sentencing court can do, and I
15:06:55 15 won't do it. But I'll certainly read with interest any
16 result the Sixth Circuit reaches regarding my ruling.

17 So with that, page 10 is where the criminal
18 history computation is summarized.

19 Paragraph 40 tells us that Mr. Hobbs' criminal
15:07:19 20 history score before any adjustment is an 8. That would
21 naturally put him in a criminal history category of IV.
22 Because he is an armed career criminal, he's elevated to a
23 criminal history category -- Mr. Laffin, is it correct where
24 it says in 42 that it remains a IV?

15:07:44 25 PROBATION OFFICER: Yes, that is correct, Your

1 Honor. The armed career criminal provision provides
2 options. It's either what's determined under Chapter 4, or
3 if it's less than a Criminal Category IV, it moves up to a
4 Category IV.

15:08:01 5 THE COURT: All right, then.

6 PROBATION OFFICER: And they're the same, so it
7 remains Criminal History Category IV.

8 THE COURT: Mr. Lewis, any objection to any part
9 of that criminal history computation, the paragraphs leading
10 up to it or paragraph 40, 41 and 42?

11 MR. LEWIS: No, Your Honor.

12 THE COURT: Mr. Iams?

13 MR. IAMS: Your Honor, if you'll note in the first
14 supplemental memorandum that we filed, on the last page, we
15 did object to the criminal history points being assessed on
16 his attempted felonious assault charge, under the theory
17 that it was a void offense.

18 Now, I understand the arguments the government's
19 made about collateral attacks. I just want to make sure
20 it's indicated, we don't waive that right. If at some point
21 it is determined that that was a void offense, we would
22 think that those criminal history points assessed in
23 paragraph 37 would not be proper if it's -- if it's a void
24 offense.

15:08:53 25 So I just want to make that note for the record.

1 THE COURT: Right. And I didn't overlook that.
2 And if you look at the guidelines, I think what the
3 probation officer cites to is accurate, note 6 of 4A1.2, and
4 unless expressly provided for in Section 851 of Title 21,
15:09:16 5 and I don't think any of us believes that's applicable here,
6 Mr. Hobbs may not collaterally attack a prior conviction.
7 But certainly if the prior conviction were voided, it
8 wouldn't be there and there wouldn't be points assessed.

9 So I'm not -- I understand it. And all I think
15:09:34 10 you're asking of me now is to acknowledge it and to repeat
11 the ruling that it's overruled. Just as I won't eliminate
12 paragraph 37 from being a predicate offense, I won't remove
13 the three points. But I do reserve -- I do reserve your
14 opportunities to attend to that later on appeal or in any
15:10:02 15 other circumstance you think might be appropriate.

16 MR. IAMS: Thank you.

17 THE COURT: Deputies, are we okay?

18 DEPUTY MARSHAL: Yeah, Your Honor. They keep
19 communicating. We're telling them not to talk.

15:10:12 20 THE DEFENDANT: I was talking to her. She didn't
21 say anything.

22 UNIDENTIFIED SPEAKER: I --

23 THE COURT: Listen, don't speak or I'll have you
24 leave the room.

15:10:19 25 You focus here for now, all right? You'll have an

1 opportunity -- look, it's a heavy day, and I'll tell you
2 now, without the statute requiring it, I wouldn't give you
3 the sentence that I'm going to give you in a few minutes.
4 And if you win on appeal as to any one of these, I'll
15:10:38 5 happily lighten the load. But today is what it is. So be
6 attentive and be respectful.

7 Understand, everyone?

8 UNIDENTIFIED SPEAKER: Yes.

9 THE COURT: All right, then. So with that
15:10:51 10 understanding, that it's overruled but preserved, Mr. Iams,
11 the question is your client is a Category IV, correct?

12 MR. IAMS: I believe so, yes, ma'am.

13 THE COURT: All right, then. So when we look at
14 the advisory guidelines chart, offense level 31 intersects
15:11:09 15 with Criminal History Category IV, suggesting a range of
16 incarceration within Zone D, as in "David," 151 months at
17 the low end, 188 at the high end.

18 Mr. Iams, 151 to 188?

19 MR. IAMS: Was that with the three levels for --
15:11:30 20 I'm sorry, I -- you're at an adjusted offense level 30? I'm
21 sorry, I'm in the wrong --

22 THE COURT: I used --

23 MR. IAMS: No, I have it right, I'm in the wrong
24 category. Yes, I agree it's 151 to 188.

15:11:46 25 THE COURT: It's not 30, it's 31. That's what

1 threw you off.

2 MR. IAMS: I was in Category V. I've got it now.

3 THE COURT: Okay. All right, then.

4 Mr. Lewis?

15:11:56 5 MR. LEWIS: I agree with those numbers, Your
6 Honor.

7 THE COURT: All right, then.

8 PROBATION OFFICER: Your Honor?

9 THE COURT: Sir.

15:12:01 10 PROBATION OFFICER: If I may. 151 to 188 months
11 is the range that corresponds to total offense level 31 and
12 Criminal History Category IV. However, because of the
13 defendant's -- the statutory mandatory minimum sentence in
14 this case of 180 months, the guideline range would be 180
15:12:20 15 months to 188 months.

16 THE COURT: We understand that.

17 PROBATION OFFICER: Okay.

18 THE COURT: We understand that. Thank you.

19 All right. With that understanding, Mr. Laffin is
15:12:30 20 pointing out the obvious, that I can't give you a 151-month
21 sentence today, Mr. Hobbs.

22 I'll tell you for the record, and it's recorded,
23 if it weren't for the Armed Career Criminal Act, I probably
24 wouldn't even give you a 151-month sentence. I'd give you a
15:12:48 25 hefty sentence, but it wouldn't be as long as 151 months,

1 and it certainly wouldn't be the 15-year sentence that
2 you'll receive before we separate today.

3 So with that, Mr. Lewis, I am prepared to hear
4 your allocution.

15:13:02 5 MR. LEWIS: Thank you, Your Honor. In terms of
6 the nature of the offense, the court recalls the testimony
7 from the suppression hearing, that this is a case involving
8 Mr. Hobbs making a decision to drive through downtown
9 Cleveland on a summer night at 7:30 p.m. with his friend,
10 and Mr. Hobbs decided that he was going to have a firearm
11 and ammunition in his car.

12 It's also the other things, Your Honor, that were
13 in his car that we think the court should pay attention to.
14 As the court I know remembers, the defendant had an open
15:13:39 15 24-ounce can of beer in the center console that he told the
16 officers was his. I don't know if there was direct evidence
17 he was drinking it, but I think certainly the inference is
18 there that he's drinking and driving with a firearm.

19 He had a suspended driver's license. He had
15:13:53 20 ammunition in his pocket and ammunition in the trunk of the
21 car. And he had a front seat passenger who had marijuana
22 and an open arrest warrant.

23 I brought up the fact that this was in downtown
24 Cleveland, and I am sure the court knows that area, that
15:14:09 25 this was on Public Square on a summer night, where the

1 defendant decided to violate several traffic laws.

2 So I think you put all of those together, Your
3 Honor, and what you have in terms of the nature and
4 circumstances of the offense is someone who made a conscious
15:14:24 5 decision to put himself and other people who happened to be
6 walking or driving through that area in danger, because when
7 you drink alcohol, your judgment becomes impaired.

8 Then in terms of the history and circumstances of
9 the -- history and characteristics, excuse me, of the
15:14:42 10 defendant and the other 3553(a) factors that the court would
11 consider, Your Honor, the government would point out the
12 defendant's criminal history. And it's not something you
13 look at in isolation.

14 Really since he was 18 years old, he has not had
15:14:55 15 any significant periods without run-ins with the law. When
16 he was 18 and 19, he was arrested for and convicted of
17 selling drugs.

18 When he was 20 years old, he assaulted a police
19 officer.

15:15:09 20 When he was 22 years old, he robbed a person at
21 gunpoint. He served a sentence of six years for that.

22 And at age 28, he was arrested for and convicted
23 of selling drugs near a school.

24 At age 29 is when the felonious assault with, it
15:15:27 25 appears like a piece of wood or a stick and he took someone

1 else's dog occurred.

2 And he also has several other ones, including this
3 case, including a burglary where he broke into an apartment
4 and caused damage to it. He also appears to have committed
15:15:43 5 some sort of fire offense where he lit a bush or something
6 on fire, and that was evidently pretty serious.

7 So, Your Honor, this is somebody who to this point
8 in his life -- and I acknowledge that this is a very
9 significant sentence, but the law is what it is, and it's my
15:15:58 10 job to come into the courtroom and make sure that law is
11 upheld. But this is somebody who has committed a number of
12 very serious violent offenses and made a decision to put
13 other people and himself in danger when he got in that car
14 with that gun and that alcohol.

15:16:14 15 So, Your Honor, we think a sentence of 180 months,
16 which is what's required by statute, would be what's
17 necessary and appropriate in this case.

18 THE COURT: Thank you, Mr. Lewis.

19 Mr. Iams, I am prepared to hear your allocution on
15:16:26 20 behalf of Mr. Hobbs.

21 MR. IAMS: Your Honor, I've reviewed the
22 presentence report and haven't been on this case as long as
23 all of you have, but I've had the benefit of reading
24 Mr. Warner's presentation in his initial memorandum, and I
15:16:40 25 would tend to agree with many of the things he says there.

1 That this is an individual that's not had an easy life. He
2 certainly has committed some criminal offenses and he
3 certainly has paid the price for these. He spent a long
4 time incarcerated.

15:16:52 5 I guess in comparison to some of those things, the
6 events that bring him here, while not insignificant, kind of
7 pale in comparison.

8 THE COURT: But you know that's not how it works.

9 MR. IAMS: I understand.

15:17:07 10 THE COURT: There is no level of law-abidingness
11 expected of somebody who's never been in trouble, but we
12 expect less law-abidingness from somebody like Mr. Hobbs.
13 We all are called upon to adhere to the same basic rules of
14 law, right?

15:17:23 15 MR. IAMS: I certainly agree with that. Just the
16 idea of a 15-year sentence is certainly a significant
17 sentence for this conduct.

18 THE COURT: Well, I won't disagree with you on
19 that.

15:17:32 20 MR. IAMS: The defendant has a demonstrated
21 history of substance abuse problems to the extent that the
22 court can order, or at least recommend that he receive some
23 type of substance abuse treatment, perhaps some mental
24 health treatment while he's incarcerated. I think that
15:17:47 25 those things would be appropriate. I certainly can't think

1 of any reason why the court would want to sentence him to
2 more than 15 years.

3 And he, of course, is indigent and would not be
4 able to pay a fine.

15:18:01 5 THE COURT: Thank you, sir.

6 Mr. Hobbs, I know this process hasn't been easy
7 for you, but you shouldn't let this opportunity to speak to
8 me go by without you taking advantage of it.

9 What would you like to say before I impose
10 sentence?

11 THE DEFENDANT: No, I ain't coming with no sad
12 story or nothing. I know I made mistakes. No, I say bad
13 choices. But I did make a change in my life. I got
14 married. I kept a job and all of that stuff. They don't
15 talk about all the good stuff that I did. All they bring up
16 is all the bad stuff that I did.

17 I'm not no bad dude for real. It's just certain
18 situations, my being in an environment, and I've got an
19 alcohol and drug problem, that's what leads me to do certain
20 things that I do.

21 But like I said, I've been praying, I've been
22 fasting, I've been going to church, all that. And you will
23 say, "Okay, up to this point. You wasn't doing that
24 before." Now I'm in trouble. But it's not that I'm in
15:19:05 25 trouble, it's okay, that's what God wanted me to do, and

1 I've been doing it ever since I've been locked up.

2 And you ask me every time I come in here, what
3 have I been doing. I have been going to the law library.
4 That's what I do. That's what all this paperwork is for.

15:19:18 5 And I disagree with that, because I didn't have
6 a -- I didn't have an input in none of this stuff. It's
7 like, okay, they come in and they talk. They say what they
8 say. We talking about my life. You're not fighting for
9 your life, I'm fighting for mine.

15:19:29 10 I've got paperwork that can possibly get me under
11 that sentence. That's what I fired the last dude for.

12 And then he just said something about under a year
13 sentence, is that part of that new First Step Act, is that
14 applied to me?

15:19:42 15 THE COURT: What did -- I'm not sure that I heard
16 what you heard Mr. Iams say.

17 MR. IAMS: There's a reference in the First Step
18 Act to prior convictions not counting unless the person
19 actually served a one-year sentence. I've explained to him
15:19:55 20 that that doesn't apply to the ACCA predicates, unless
21 Congress has done something in the last week or so. There
22 was some changes to the predicate offenses for purposes of
23 drug offenses and the mandatory life sentence, but I've
24 researched that and it does not apply to the ACCA.

15:20:15 25 THE COURT: Mr. Laffin, I think Mr. Iams is

1 correct. Do you think differently? Is there any benefit
2 the First Step Act provides Mr. Hobbs that we haven't spoken
3 about here yet?

4 PROBATION OFFICER: No, Your Honor. The First
15:20:28 5 Step Act addresses mandatory minimums found in 21, United
6 States Code, 841(b)(1)(A) and (b)(1)(B), not to the
7 predicates for armed career criminal.

8 THE COURT: All right. So I'm not sure what you
9 thought he said, but no, there is no benefit to be given
10 you. Right now I'm not aware of any circumstance that
11 prevents me finding that you are an armed career criminal.

12 With that finding, a mandatory minimum 15-year or
13 180-month sentence must be imposed. It's not the lowest
14 sentence, but it's the -- it's not the highest sentence I
15:21:04 15 can impose, but it's the lowest. And Mr. Iams is right. I
16 can't imagine why I'd impose one higher than that.

17 THE DEFENDANT: And then another reason I say I
18 wasn't -- like I didn't have any really input, because I was
19 looking up, you know, the categor- -- I know the difference
15:21:21 20 between the categorical approach and the modified
21 categorical approach, and when you compare the elements of
22 the Armed Career Criminal Act to an assault or just
23 attempted felonious assault, that physical harm and that
24 serious physical harm, I think both of them is too broad to
15:21:36 25 qualify, because when you compare that physical harm to the

1 armed career criminal elements, it says by force, attempted
2 use of physical force.

3 We're talking about physiological harms. What is
4 physiological impairment? I've got the definition over here
15:21:55 5 somewhere. I just -- like I said, I needed my cuffs off so
6 I can follow along. But I'm going to try to do the best I
7 can.

8 Physiological impairment, what type of force was
9 used in that, when you apply these approaches. That's what
15:22:08 10 I wanted to have input. I haven't seen this man since when
11 we had the withdraw hearing.

12 MR. IAMS: That's not true. I came and saw you
13 afterwards.

14 THE DEFENDANT: Regardless --

15:22:19 15 THE COURT: Listen, and I don't need an argument
16 between you because he's been present on the docket, which
17 is all that matters when it comes to persuading me. And
18 he's been here now and he's argued forcefully on issues that
19 I cannot sustain.

15:22:31 20 So I understand you. I know what you've done.
21 And I'll listen to you reasonably. So if you have more to
22 say, say it.

23 THE DEFENDANT: Yeah, but like I really never had
24 any input on this stuff, because there was things that I
15:22:47 25 wouldn't like -- like the attempted felonious assault, like

1 I looked up the difference between the lesser offenses and
2 the lesser degrees. Attempted felonious assault is not even
3 a lesser offense of attempted felonious -- I mean, of
4 felonious assault. I've got that paperwork over here.

15:23:02 5 It says in order for a case to be a lesser
6 offense, it has to be committed. So that's wrong. It might
7 be what they talking about collaterally attacking, but it's
8 not even a lesser offense.

9 And all my paperwork over here, Carlos was saying
15:23:17 10 it's not Shepard documents, but it's got lesser offense on
11 every piece of paper that I've got. And it's not right.
12 And that's the argument that he say I wanted to go pro se
13 on.

14 I don't know about the federal rules and codes and
15:23:28 15 all that stuff, but I know my case. And like for real, like
16 he can't even tell me nothing. Like if, okay, if there's
17 some new stuff about that First Act, I know I read it said
18 about violent offenders in that packet, and it says that you
19 have to do a year, more than a year for a violent offense to
15:23:44 20 count. But I could be wrong.

21 But I'm just saying, like, I'm not going to go
22 down and just be a dummy and not try to learn nothing.
23 That's what I was doing all this for, because I wanted to
24 learn about my case and, you know, I didn't want to just be
15:24:00 25 sitting in the courtroom and not knowing what's going on.

1 So, that's it.

2 THE COURT: All right. Mr. Iams?

3 MR. IAMS: Well, Your Honor, I just wanted to --
4 as I had indicated to Mr. Hobbs, we didn't intend to waive
15:24:11 5 any of those arguments. Those arguments have been prepared
6 in writing and presented to the court. And as I suggested
7 to him, just because we're not arguing about them today in
8 court, they are before the court and the court has
9 considered those and will rule on, it has ruled on those.
15:24:26 10 So they haven't been waived, they've been argued.

11 THE COURT: Absolutely. All right, then. I've
12 heard you all and I've considered what I must, the advisory
13 guidelines, the statutory obligations, the 3553(a) factors,
14 and please listen, Mr. Hobbs, as I impose the following
15:24:42 15 sentence:

16 Pursuant to the Armed Career Criminal Act, I
17 hereby commit you to the custody of the United States
18 Attorney General to serve a 180-month term of incarceration.
19 I impose that mandatory minimum term of incarceration
15:24:58 20 because I'm obligated to do so, as I understand the law.

21 If I weren't obligated by the Armed Career
22 Criminal Act, I'd give you a longer sentence than you'd
23 like, but it wouldn't be nearly as long as even the minimum
24 range of the guidelines range, the 151 months, and it
15:25:15 25 certainly wouldn't be anything close to 180 months. But

1 today that's the sentence I impose.

2 When you complete that 180-month term of
3 incarceration, you will be on a term of supervised release
4 for five years. I think you understand what that means, but
15:25:31 5 it means you're out of custody, in the community, but you're
6 not free. You're not free to do things that you would like
7 to do without making sure that it's in accordance with the
8 law and the rules that I'll tell you about now and that your
9 probation officer will revisit when you leave prison.

15:25:48 10 Because 72 hours, sir, after you leave prison, you
11 must have your first meeting with your federal probation
12 officer. And all the things I discuss with you today will
13 be revisited then.

14 Mr. Iams, I am waiving the imposition of a fine.
15:26:02 15 I don't think there's a bases for restitution. So there
16 will be only one financial penalty. It's the \$100 special
17 assessment.

18 Mr. Lewis, there's no bases for restitution,
19 right?

15:26:13 20 MR. LEWIS: That's correct, Your Honor.

21 THE COURT: Mr. Iams, so your reminder of
22 indigency makes sense.

23 Mr. Hobbs, the \$100 special assessment is court
24 costs. You owe it. You must pay it. While you're
15:26:28 25 incarcerated, you'll work. Moneys will be taken from what

1 you earn and applied towards that \$100 special assessment.
2 Should you owe any part of it after you leave prison, you'll
3 still be obligated to pay it and to pay consistently until
4 the balance is zero.

15:26:44

5 The mandatory conditions all listed in the
6 presentence report are basic, but they must be abided by
7 during this five-year period after you're released from
8 prison. Such as not committing another crime.

15:27:02

9 It's a crime to have a weapon, sir, when you're a
10 felon.

11 You understand that, don't you?

12 THE DEFENDANT: Yes.

15:27:10

13 THE COURT: It's a crime to drive with an open
14 container. No violations of law. Absolutely none are
15 permitted while you're on supervision.

15:27:31

16 And I won't detail every one in the list, but I
17 will remind you that the mandatory conditions also include
18 mandatory drug testing. I am ordering that you be required
19 to undergo that, but also that you be subject to additional
20 substance abuse treatment and testing if you need it when
21 you're released and if it's of assistance to you.

22 I'll allow the probation officer to decide who the
23 service provider is and what that treatment looks like,
24 whether it's inpatient or outpatient treatment.

15:27:47

25 If you need treatment that you're not receiving,

1 ask for it. Because I don't want you drinking to excess or
2 smoking marijuana and risking violating your supervision and
3 going back to prison when all you'd need to do is ask for
4 help and it will be given to you.

15:28:04 5 Mr. Iams, I am going to recommend that your client
6 be considered at least by the BOP for the 500-hour drug
7 treatment program. I don't know if you meant something less
8 than that. There are other programs as well.

9 MR. IAMS: I'm not sure what he's going to be --
15:28:24 10 who knows in the time period he'll be in there how that
11 program had changed, but I would certainly appreciate if the
12 court would at least recommend the 500-hour program. It may
13 have changed by the time he gets to --

14 THE COURT: Sure. Any objection to that,
15:28:39 15 Mr. Lewis?

16 MR. LEWIS: No, Your Honor.

17 THE COURT: It will be up to you, Mr. Hobbs, to
18 gain entry. A lot of people will want to be in that
19 program, because not only is it a program designed to help
15:28:49 20 you maintain and remain sober, but it's also an opportunity
21 to shorten your sentence when it can be achieved.

22 When you leave prison, I'm ordering that you
23 participate in cognitive behavioral treatment. If you leave
24 prison and you can prove up that you've already done
15:29:09 25 substantially what the cognitive behavioral treatment on

1 supervision would be, you have a certificate or something
2 that shows within the recent past you've done this work
3 already, I'll relent on that because I don't want to waste
4 your time.

15:29:27 5 But if you haven't done it or if you can't prove
6 up that you've successfully completed it in the fairly
7 recent past, then I am going to have you do it when you're
8 on the outside.

9 Do you understand?

15:29:38 10 THE DEFENDANT: Yes.

11 THE COURT: I'm ordering that you be subject to a
12 search and seizure provision. And what that means, sir, is
13 based upon your history of having things that you shouldn't,
14 such as a weapon while on disability, that you be searched
15 based on reasonable suspicion. And that's reasonable
16 suspicion that you're in violation of your term of
17 supervision or that you're in violation of law. So your
18 body can be searched. The place where you live can be
19 searched. Any car that you drive or are typically driven
15:30:08 20 in.

21 The search can also be a search of your workplace.
22 It can also be a search of private places, like a safe where
23 you store things, or a computer where you store books and
24 papers. So please be mindful of that.

15:30:24 25 And never do anything to interfere with the

1 search, because interfering with the search could simply
2 mean a revocation of supervision.

3 Also, never do anything to interfere with any drug
4 test. Always show up, take the test, even if you believe
15:30:41 5 you'll test positive. Because failing to be tested will
6 lead to revocation of your supervision.

7 You know about your appellate rights. We've
8 discussed them before. I've alluded to some part of them
9 today.

15:30:55 10 Your written plea agreement, Mr. Hobbs, has waived
11 certain of your appellate rights, but it keeps many of those
12 that I believe are of most importance to you.

13 For instance, you have not waived your right to
14 appeal my ruling on your motion to suppress. So you can
15:31:12 15 appeal that. You have not waived your right to appeal my
16 finding that you're an armed career criminal.

17 The only concession you made was regarding the
18 aggravated robbery case. The two that we've spent most of
19 the time talking about today, paragraph 34, the assault on a
15:31:34 20 peace officer, and paragraph 37, attempted felonious
21 assault, the one that I think most of your papers regard,
22 you can still appeal.

23 Do you understand?

24 THE DEFENDANT: (Nodding head up and down.)

15:31:44 25 THE COURT: And, of course, you can still appeal

1 if you believe I've imposed a sentence in excess of the
2 maximum, and in your case, I don't believe I've done that.

3 And you can also appeal the ruling I've made on
4 criminal history, which was the point Mr. Iams went back to.
15:32:01 5 Because he wanted to be clear that you're objecting not only
6 to the predicate offenses, but also to the three points.
7 You can appeal that.

8 Do you understand?

9 THE DEFENDANT: I can appeal that right now?

15:32:13 10 THE COURT: Right. When I put the judgment entry
11 on the books. Okay?

12 But what you must do is file your notice of appeal
13 within 14 days after I reduce to writing the sentence that
14 I've just articulated. You don't need to worry about
15:32:29 15 whether or not you can afford counsel. You're indigent.
16 You have been throughout these proceedings. Counsel will be
17 appointed to represent you.

18 Mr. Iams, will you at least timely file the notice
19 of appeal for Mr. Hobbs?

15:32:41 20 MR. IAMS: I will, Your Honor. In fact, I think
21 they want me to file it and then withdraw later. But I'll
22 make sure the notice of appeal is timely filed.

23 THE COURT: Good. And I certainly won't be a
24 barrier to your withdrawal so there can be appointment of
15:32:55 25 other counsel. But you do need to file it timely. And my

1 great suspicion is I'll have this on the docket by Monday,
2 so start to look for it then.

3 MR. IAMS: All right.

4 THE COURT: Mr. Laffin, thank you for being here
15:33:08 5 and for chiming in and for reminding us all of the harsh
6 obligation of not being able to go below the 180-month.

7 What else? What do you think I may have missed or
8 failed to adequately explain?

9 PROBATION OFFICER: I'm not aware of anything that
15:33:26 10 you have not adequately explained or that you failed to
11 explain.

12 THE COURT: All right. Mr. Iams, I am going to
13 circle back to you last.

14 Mr. Lewis, let me start with you. What about your
15:33:42 15 objections for the record regarding any part of the
16 proceedings? And then separately, any objection to the
17 sentence imposed?

18 MR. LEWIS: No to both of those, Your Honor.

19 THE COURT: And while I take pains to remind
15:33:56 20 Mr. Hobbs of his appellate rights, you certainly have them
21 as well. And you know that the government has a similar
22 obligation to make known its intentions, and you will do
23 that timely as well, I expect?

24 MR. LEWIS: Yes, Your Honor.

15:34:10 25 THE COURT: All right. Mr. Iams, thank you for

1 jumping into the fray. As you said, we've all been on this
2 case longer than you. But you performed admirably. I don't
3 think you've missed any of the marks. This was going to be
4 a difficult pill to swallow no matter who stood at
15:34:27 5 Mr. Hobbs' side. So I appreciate you being willing to step
6 in and do what you've done.

7 But do take the moment, don't think you have to
8 articulate in detail the objections already made but
9 overruled, but any new ones for sure, make sure you tell me
15:34:44 10 about them now.

11 MR. IAMS: Your Honor, I can't think of anything.
12 I think the record is pretty clear on what our objections
13 are and what we intend to appeal. So I can't think of
14 anything else.

15:34:57 15 THE COURT: All right, then. The record is
16 closed, Mr. Hobbs. I'll do my best to get that judgment and
17 commitment order on the docket as soon as possible so that
18 you can start your appellate process.

19 My hope is that the law develops in your favor.
15:35:12 20 What you've done is deserving of attention and even
21 punishment, but it wouldn't be a 15-year sentence if I had
22 anything to say about it.

23 The hearing is adjourned.

24 THE CLERK: All rise.

15:35:25 25 (Proceedings concluded at 3:35 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/ Mary L. Uphold July 15, 2019
Mary L. Uphold, RDR, CRR Date

APPENDIX H

No. 19-3343

**IN THE
United States Court of Appeals
FOR THE SIXTH CIRCUIT**

ISAAC L. HOBBS
Appellant,
v.
UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO, EASTERN DIVISION
CASE No. 1:17-cr-00280-BYP

BRIEF OF APPELLANT ISAAC L. HOBBS

MICHAEL D. MEUTI
KRISTEN-ELISE F. DEPIZZO
NATHAN P. NASRALLAH (ADMISSION
PENDING)
BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP
200 Public Square, Suite 2300
Cleveland, Ohio 44114-2378
Telephone: 216.363.4500
Facsimile: 216.363.4588

Attorneys for Appellant Isaac L. Hobbs

TABLE OF CONTENTS

INTRODUCTION2

STATEMENT OF JURISDICTION.....3

STATEMENT OF THE ISSUES.....4

STATEMENT OF THE CASE.....6

SUMMARY OF THE ARGUMENT9

ARGUMENT11

I. Legal standard and standard of review.11

II. *Rehaif* demands that Hobbs’s conviction be vacated.14

 A. No subject-matter jurisdiction exists for Hobbs’s
 prosecution.....14

 B. Hobbs’s guilty plea is void.17

 C. No proof exists as to Hobbs's guilt.21

CONCLUSION.....22

CERTIFICATE OF COMPLIANCE.....24

CERTIFICATE OF SERVICE25

DESIGNATION OF ORIGINATING COURT DOCUMENTS26

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Bousley v. United States</i> , 523 U.S. 614 (1998).....	17, 21, 22
<i>Gilmore v. Taylor</i> , 508 U.S. 333 (1993).....	23, 24
<i>Gonzalez v. Thaler</i> , 565 U.S. 134 (2012).....	17
<i>Hamling v. United States</i> , 418 U.S. 87 (1974).....	23
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979).....	25
<i>Peretz v. United States</i> , 501 U.S. 923 (1991).....	17
<i>Rehaif v. United States</i> , 139 S. Ct. 2191 (June 21, 2019)	<i>passim</i>
<i>Rivers v. Roadway Exp., Inc.</i> , 511 U.S. 298 (1994).....	16
<i>United States v. Cotton</i> , 535 U.S. 625 (2002).....	19
<i>United States v. Davis</i> , 306 F.3d 398 (6th Cir. 2002)	17
<i>United States v. Harrod</i> , 168 F.3d 887 (6th Cir. 1999)	17
<i>United States v. Hubble</i> , 772 F.2d 909, 1985 WL 13619 (6th Cir. 1985).....	21
<i>United States v. Inman</i> , 902 F.2d 35, 1990 WL 54215 (6th Cir. 1990).....	21

United States v. Martin,
 526 F.3d 926 (6th Cir. 2008)19, 20

United States v. Moon,
 513 F.3d 527 (6th Cir. 2008)20

United States v. Oliver,
 397 F.3d 369 (6th Cir. 2005)18, 22, 23

United States v. Peter,
 310 F.3d 709 (11th Cir. 2003)19

United States v. Titterington,
 374 F.3d 453 (6th Cir. 2004)17, 18

Vachon v. New Hampshire,
 414 U.S. 478 (1974) (per curiam).....18, 25

In re Winship,
 397 U.S. 358 (1970).....23

Federal Statutes

18 U.S.C.
 § 922(g).....*passim*
 § 924(a)(2)10, 11, 20
 § 3006A.....12
 § 3231.....7
 § 3742.....7
 28 U.S.C. § 12917

Rules

Sixth Circuit Rule 34(a)5

Fed. R. App. P. 32(a)(5).....28

Fed. R. App. P. 32(a)(6).....28

Fed. R. App. P. 32(a)(7)(B)28

Fed. R. App. P. 32(f).....28

Fed. R. Crim. P. 12(b)(2)17
Fed. R. App. P. 34(a)(1).....5

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Appellant Isaac Hobbs requests oral argument under Federal Rule of Appellate Procedure 34(a)(1) and Sixth Circuit Rule 34(a). Oral argument will assist this Court in evaluating whether the failure to include 18 U.S.C. § 922(g)'s knowledge-of-status element renders an indictment jurisdictionally defective and any accompanying plea and conviction invalid.

INTRODUCTION

Isaac Hobbs faces nearly a decade and a half more in prison for possessing his wife's firearm—a crime that, if properly proven, carries a 10-year maximum sentence, unless enhanced. Hobbs's sentence is unjust because Hobbs was never convicted of a valid federal crime, making his guilty plea and sentence constitutionally invalid.

The indictment to which Hobbs pleaded guilty, brought under § 922(g), omitted a critical knowledge element. Hobbs's indictment, plea, and conviction therefore cannot support Hobbs's current sentence. For one thing, the indictment did not charge a valid federal offense, and a district court lacks jurisdiction over prosecutions that do not charge a federal offense. Further, even if the district court somehow had jurisdiction, Hobbs's plea was constitutionally invalid since Hobbs lacked notice of the true charges against him, rendering the plea could not knowing and voluntary. Under these circumstances, this invalid plea cannot support Hobbs's current sentence. Finally, because Hobbs's conviction relied on the defective plea, his conviction cannot support his sentence either. The Court should overturn Hobbs's conviction, vacate his sentence, and dismiss the indictment.

STATEMENT OF JURISDICTION

Hobbs timely filed his notice of appeal on April 16, 2019 from the sentence imposed on April 12, 2019, as reflected in the judgment entry of April 16, 2019. (Notice of Appeal, RE. 64, PageID # 518.) For the reasons set forth in Section II.A, however, the Supreme Court's recent decision in *Rehaif v. United States*, 139 S. Ct. 2191 (June 21, 2019), has made clear that the district court did *not* have jurisdiction over this case pursuant to 18 U.S.C. § 3231, because the defendant was not charged with an offense against the laws of the United States.

This Court has limited jurisdiction to hear this appeal since 28 U.S.C. § 1291 and 18 U.S.C. § 3742 give the court of appeals jurisdiction over all final decisions and sentences of the district courts of the United States and this Court has jurisdiction to consider a challenge to its jurisdiction. Nevertheless, for the reasons set forth in Section II.A, this Court does not have jurisdiction over any other issues since the crime charged was not an offense against the United States.

STATEMENT OF THE ISSUES

1. A district court has subject-matter jurisdiction over a prosecution only if the indictment before it validly charges a federal offense, identifying each statutory element that offense. An element of an 18 U.S.C. § 922(g) offense is that the defendant knew that he belonged to a category of persons barred from possessing firearms. Does an indictment that omits this knowledge-of-status element confer subject-matter jurisdiction over a prosecution in spite of this defect?

If the Court answers no, then the Court need not address the remaining issues.

2. A guilty plea must be voluntary and knowing and must notify the defendant of the true nature of the charges against him. Hobbs pleaded guilty to violating 18 U.S.C. § 922(g), but the indictment to which he pleaded guilty omitted the knowledge-of-status element necessary for a § 922(g) violation and thus did not apprise Hobbs of the full nature of the charges against him. Was Hobbs's guilty plea constitutionally valid (and, thus, not plain error)?

If the Court answers no, then the Court need not address the remaining issue.

3. A valid conviction must be based on valid proof (or admission) of each statutory element of an offense. Hobbs's guilty plea omitted any reference to the knowledge-of-status element required under 18 U.S.C. § 922(g), the offense of

which he was charged. Hobbs was convicted pursuant to that plea. Is Hobbs's conviction under that flawed plea constitutionally valid (and, thus, not plain error)?

STATEMENT OF THE CASE

This direct appeal addresses a question that this Court has yet to decide: does the Supreme Court’s decision in *Rehaif* necessitate vacating a conviction and sentence under 18 U.S.C. § 922(g), when neither the underlying indictment nor the defendant’s guilty plea include—or even refer to—the knowledge-of-status element? Put differently, if an indictment fails to allege that the defendant knew that he belonged to a category of persons barred from possessing firearms, can a guilty plea under that indictment support a § 922(g) conviction after *Rehaif*?

Hobbs’s Federal Conviction

On July 19, 2017, the Government filed in the U.S. District Court for the Northern District of Ohio, Eastern Division, a single-count indictment against Hobbs. The indictment charged him of being a Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g) and 924(e). (Indictment, RE. 1, PageID # 1.) The indictment states that Hobbs had “been previously convicted of crimes punishable by imprisonment for a term exceeding one year” and had “knowingly possess[ed] in and affecting interstate commerce a firearm.” *Id.* The indictment also identifies the type of firearm and ammunition that Hobbs possessed. *Id.* The indictment alleges nothing about whether, on the day of the alleged crime, Hobbs knew that he was a prior felon. *See id.*

After extensive negotiations between the Government and Hobbs, on August 22, 2018, Hobbs entered a conditional guilty plea. (Notice, RE. 30, PageID # 135; Plea Ag., RE. 44, PageID # 329; Change of Plea Tr. vol. 1, RE. 70, PageID # 553; Change of Plea Tr. vol. 2, RE. 72, PageID # 581.) Like the indictment, the plea agreement lists Hobbs's prior felonies punishable by more than one year of imprisonment, but says nothing about Hobbs's knowledge of those convictions and their terms on the date of the crime. (Plea Ag., RE. 44, PageID # 336.) Hobbs explicitly reserved the right to appeal (a) the district court's denial of his Motion to Suppress, (b) the district court's determination that he qualified for sentencing under ACCA, (c) any punishment in excess of the statutory maximum, and (d) the district court's determination of his criminal history category. (*Id.*, PageID ## 333-34.)

Hobbs's Federal Sentencing

On April 12, 2019, the U.S. District Court for the Northern District of Ohio sentenced Hobbs (Judgment, RE. 62, Page ID# 507; Sentencing Tr., RE. 74, PageID # 653.). Typically, convictions for violating § 922(g) carry a ten-year maximum sentence. 18 U.S.C. § 924(a)(2). But ACCA enhances sentences of offenders who have been convicted of three prior "violent felonies," as ACCA defines that term. 18 U.S.C. § 924(e)(1). In spite of Hobbs's objections, the court applied an ACCA enhancement and sentenced Hobbs to 15 years in prison. (Sentencing Tr., RE. 74, PageID ## 691-92.)

The Supreme Court’s Rehaif Decision

Nearly a year after Hobbs entered his guilty plea and just months after the Court sentenced him, the United States Supreme Court held that convictions under § 922(g) require proof the defendant “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (June 21, 2019). In other words, the Supreme Court confirmed that § 922(g) has a knowledge-of-status element. In Hobbs’s case, that element requires the Government to allege and prove that he “*actually knew*—not should have known or even strongly suspected but *actually knew*” that he was previously convicted of a crime that had a punishment of imprisonment exceeding one year. *Id.* at 2208 (Alito, J., dissenting).

Current Procedural Posture

Hobbs appealed the district court’s sentence imposed on April 12, 2019 as reflected in the judgment entry of April 16, 2019. (*See* Notice of Appeal, RE. 64, PageID # 518.) This Court appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A. (Appointment Letter, R. 6, PageID # 1.)

SUMMARY OF THE ARGUMENT

Rehaif exposed three errors in the proceedings below.

First, the district court improperly (albeit, understandably) entered a judgment of conviction based on a jurisdictionally defective indictment. The underlying indictment fails to charge any federal offense since its sole count, brought under § 922(g), never alleges that Hobbs knew that he was a member of a category of individuals who are not allowed to possess a firearm. Because this indictment charges no valid federal offense, the district court lacked subject-matter jurisdiction over this prosecution.

Second, the district court erred by accepting Hobbs's guilty plea—which, in light of *Rehaif*, was not voluntary and knowing—and further erred by sentencing Hobbs under that plea. Because the underlying indictment omits a requisite statutory element of § 922(g) and nothing in either the record or the plea agreement itself rectifies this omission, Hobbs lacked notice of the true charges against him. This deficiency constitutes plain error, because Hobbs is currently serving a sentence for which he may not be guilty.

And finally, even if the guilty plea itself were not void, the district court erred by entering a judgment against Hobbs and sentencing him based on that plea. Valid convictions must be based on sufficient proof (or admissions) as to each statutory

element of an offense. But here, the guilty plea omits the required knowledge-of-status element, so Hobbs's conviction under that plea is invalid.

Well-established federal case law confirm that these deficiencies may not stand. The Court should overturn Hobbs's conviction, vacate his current sentence, and dismiss the indictment.

ARGUMENT

I. Legal standard and standard of review.

On June 21, 2019, the Supreme Court held in *Rehaif* that § 922(g) requires proof the defendant “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (June 21, 2019). The two dissenting Justices criticized the Court's “overtun[ing] the long-established interpretation” of § 922(g), which “has been used in thousands of cases for more than 30 years,” and the fact that a “great many convictions will be subject to challenge.” *Id.* at 2201 (Alito, J., dissenting). The dissenters further complained about “requiring proof that the defendant actually knew—not should have known or even strongly suspected but actually knew” that he was previously convicted of a crime that had a punishment of imprisonment exceeding one year. *Id.* at 2208. Furthermore the dissent noted that “[t]hose for whom direct review has not ended will likely be entitled to a new trial” and that “every one of those prisoners [who were convicted under § 922(g)] will be able to seek relief by one route or another.” *Id.* at 2213.

Unsurprisingly then, the *Rehaif* opinion has created high expectations. Many expect it to have monumental impact, and, given its recency, much confusion exists about its proper application. Yet, in the wake of *Rehaif*, one thing is clear: § 922(g) requires proof that the defendant “knew he belonged to the relevant

category of persons barred from possessing a firearm.” 139 S. Ct. at 2200. Here, *Rehaif* requires the Government to prove that Hobbs knew, on the date of his alleged offense, that he’d been “convicted in any court, of a crime punishable by imprisonment for a term exceeding one year.” 18 U.S.C. § 922(g)(1).

Importantly, “when th[e Supreme] Court construes a statute [as it has done here], it is explaining its understanding of what the statute has meant continuously since the date when it became law.” *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 313 n.12 (1994). “Thus, it is not accurate to say that the Court’s decision in [*Rehaif*] ‘changed’ the law. . . . Rather, given the structure of our judicial system, the [*Rehaif*] opinion finally decided what § [922(g)] had always meant and explained why the Courts of Appeals had misinterpreted the will of the enacting Congress.” *Id.*; *see also id.* at 312–13 (“A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.”). Now, however, § 922(g)’s knowledge-of-status requirement is crystal clear.

Thus, § 922(g) indictments that do not allege this knowledge-of-status element and § 922(g) pleas that contain no facts regarding this element are defective and require reversal. Three types of deficiencies are relevant to this appeal, each with a separate standard for this Court’s review.

First, the failure to actually allege an “offense[] against the laws of the United States” means that no federal jurisdiction exists for prosecutions of § 922(g) offenses without this element. *United States v. Titterington*, 374 F.3d 453, 458–59 (6th Cir. 2004). The Court must consider that issue, even if it was not raised below. “Subject-matter jurisdiction can never be waived or forfeited.” *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012); *see also Titterington*, 374 F.3d at 458–59 (“A true jurisdictional problem . . . cannot be waived or altered by the parties’ conduct during the proceeding.”). And, “a court’s subject-matter jurisdiction may be raised at any point.” *Peretz v. United States*, 501 U.S. 923, 953 (1991); *see also* Fed. R. Crim. P. 12(b)(2) (“A motion that the court lacks jurisdiction may be made at any time while the case is pending.”); *United States v. Harrod*, 168 F.3d 887, 890 (6th Cir. 1999) (citing cases and concluding that defendant did not waive his objection by failing to object before trial).

This Court therefore must consider *de novo* Hobbs’s arguments that the district court lacked jurisdiction over his case. *See United States v. Davis*, 306 F.3d 398, 411 (6th Cir. 2002) (“The Court generally reviews challenges to the sufficiency of an indictment *de novo*.”).

Second, guilty pleas to indictments lacking the knowledge-of-status element for § 922(g) offenses are void because, without that element, a pleading defendant has no “notice of the true nature of the charge.” *Bousley v. United States*, 523 U.S.

614, 618 (1998). Since this issue was not raised in the court below, this Court must apply plain-error review to Hobbs's arguments on this issue. Under the plain-error test, before an appellate court may correct an error not raised at the district court, three prongs must be met: (1) there must be an error, (2) the error must be plain, and (3) the error must affect "substantial rights." *United States v. Oliver*, 397 F.3d 369, 378 (6th Cir. 2005). Where all three prongs are met, however, the appellate court should exercise its discretion to correct an error where the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.*

Third, convicting "on a record lacking any relevant evidence as to a crucial element" also "violates due process." *Vachon v. New Hampshire*, 414 U.S. 478, 480 (1974) (per curiam). Once again, because this issue is raised for the first time on appeal, this Court must apply plain-error review. *Oliver*, 397 F.3d at 377.

II. *Rehaif* demands that Hobbs's conviction be vacated.

A. No subject-matter jurisdiction exists for Hobbs's prosecution.

Because the district court did not have subject-matter jurisdiction over the Government's case against Hobbs, this Court should overturn Hobbs's conviction, dismiss the indictment against him, and vacate his sentence. "The federal courts' subject-matter jurisdiction to hear federal criminal prosecutions . . . grants '[t]he district courts of the United States . . . original jurisdiction . . . of all offenses against the laws of the United States.'" *United States v. Titterington*, 374 F.3d 453, 458–59

(6th Cir. 2004) (quoting 18 U.S.C. § 3231). The Sixth Circuit has acknowledged that an indictment that fails to charge any federal crime cannot confer jurisdiction upon the federal courts.¹ See *United States v. Martin*, 526 F.3d 926, 934 (6th Cir. 2008) (“To successfully challenge the district court’s jurisdiction, a defendant who enters a guilty plea must establish that the face of the indictment failed to charge the elements of a federal offense.” (citations omitted)).

Precedent from a sister circuit shows as much. Research did not locate any case in which this Court considered the effect of a defective indictment that failed to charge *any* federal crime. But the Eleventh Circuit has held that a district court lacks jurisdiction to accept a plea to conduct that does not constitute a federal offense. See, e.g., *United States v. Peter*, 310 F.3d 709 (11th Cir. 2003) (concluding that the federal courts lacked jurisdiction because the conduct alleged in the indictment did not amount to a violation of the mail-fraud statute). A failure to charge *any* federal offense in an indictment thus vitiates a district court’s jurisdiction for any given prosecution.

Rehaif shows that the district court had no subject-matter jurisdiction over Hobbs’s prosecution here. Generally, to establish subject-matter jurisdiction, an

¹ To be clear, not every defect in an indictment deprives a court of jurisdiction. See *United States v. Cotton*, 535 U.S. 625, 628-30 (2002) (finding no jurisdictional defect where indictment charged a valid federal offense but neglected to allege levels of drug quantity that would justify the enhanced penalties that the Government sought). However, if an indictment does not charge the elements of a federal offense on its face, subject matter jurisdiction cannot exist. See *United States v. Martin*, 526 F.3d 926, 934 (6th Cir. 2008).

indictment must charge a federal offense. And to charge a federal offense, the indictment must allege each statutory element of the relevant offense. *See United States v. Martin*, 526 F.3d 926, 934 (6th Cir. 2008). In *Rehaif*, the Supreme Court clarified that knowledge of status is an element of a § 922(g) offense. In other words, the government must allege and prove that the defendant knew, when he possessed a firearm, that he had a prior conviction punishable by a term of imprisonment exceeding a year (or, knew other facts placing him in a category of people prohibited from possessing a firearm). *Rehaif*, 139 S. Ct. 2191, 2200. Thus, § 922(g) indictments that lack the knowledge-of-status element fail to charge a valid federal offense, and such defective indictments cannot confer subject-matter jurisdiction.

Here, the indictment could not confer subject-matter jurisdiction to the district court. Hobbs's single-count indictment alleges that Hobbs was a felon in possession of a firearm in violation of §§ 922(g) and 924(e). (Indictment, RE. 1, PageID ## 1-2.) Understandably at the time, Hobbs's indictment alleged only that he had been "previously convicted of crimes punishable by imprisonment for a term exceeding one year"—and nothing about whether he knew as much. (*Id.*) *Rehaif* makes clear that this omission is fatal to § 922(g) prosecutions. The appropriate result is for the Court to dismiss the indictment, overturn Hobbs's conviction, and vacate Hobbs's sentence. *See, e.g., United States v. Moon*, 513 F.3d 527, 533 (6th

Cir. 2008) (describing that the district court dismissed the original and superseding indictments because it failed to include an interstate commerce element).

Hobbs's guilty plea does not change this result. The Sixth Circuit has held that "[a] guilty plea is not an admission of essential elements not stated in the indictment." *United States v. Inman*, 902 F.2d 35, 1990 WL 54215, at *2 (6th Cir. 1990) (quoting *United States v. Crockett*, 812 F.2d 626, 629 (10th Cir. 1987)). Moreover, "[a] guilty plea does not waive subsequent objection to an indictment for failure to allege a necessary element of the offense charged." *United States v. Hubble*, 772 F.2d 909, 1985 WL 13619, at *2 n.9 (6th Cir. 1985) (citing cases). Thus, Hobbs's guilty plea does not affect his ability to object to the indictment's defective omission and the district court's lack of jurisdiction.

B. Hobbs's guilty plea is void.

Even if the Court concludes that the indictment sufficiently confers subject-matter jurisdiction (which it should not), the Court should overturn Hobbs's conviction and vacate his sentence for the separate and independent reason that Hobbs's guilty plea is void. "A plea of guilty is constitutionally valid only to the extent it is 'voluntary' and 'intelligent' [A] plea does not qualify as intelligent unless a criminal defendant first receives real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process." *Bousley*, 523 U.S. at 618 (citations and quotation marks omitted). Where the "record

reveals that neither [the defendant], nor his counsel, nor the court correctly understood the essential elements of the crime with which he was charged,” his guilty plea is “constitutionally invalid.” *Id.* at 618–19.

That is the case here. At the time of Hobbs’s plea, no one understood § 922(g) to require the Government to prove that Hobbs “knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif*, 139 S. Ct. at 2200. As described above, the indictment alleges nothing about Hobbs’s knowledge of his status. Similarly, the plea agreement merely mentions Hobbs’s prior convictions and contains no facts establishing Hobbs’s knowledge about them or the terms of imprisonment they carried. (*See* Plea Ag., RE. 44, PageID ## 334–35.) And, Hobbs’s change-of-plea hearing omitted any reference to Hobbs’s knowledge of his status. (*See* Change of Plea Tr. vol. 2, RE. 72, PageID ## 611–17.) These omissions comprise error that, in light of *Rehaif*, makes Hobbs’s plea “constitutionally invalid,” as Hobbs did not receive “notice of the true nature of the charge.” *Bousley*, 523 U.S. at 618.

Of course, because this issue was not raised in the district court and does not amount to a jurisdictional defect, this Court’s inquiry may not end here. Rather, the Court must vacate Hobbs’s sentence and overturn his conviction only if the invalidity of Hobbs’s plea constitutes plain error. *See Oliver*, 397 F.3d at 377. Here, Hobbs easily meets the first two prongs of the plain-error test. *Id.* First, as described

above, an error occurred when Hobbs entered a guilty plea without being informed of one of the offense's elements.

Second, the error here is “plain,” meaning that is “clear or obvious.” *Id.* Where, as here, “the law [when the issue at the district court occurred] was settled and clearly contrary to the law at the time of the appeal [] it is enough that an error be ‘plain’ at the time of appellate consideration.” *Id.* at 379 (citing *Johnson v. United States*, 520 U.S. 461, 468 (1997)). After *Rehaif*, it is clear that § 922(g) indictments must include a knowledge-of-status element—that is, they must allege that the defendant belonged to the relevant category of persons barred from possessing a firearm is error. *Rehaif*, 139 S. Ct. 2200.

Hobbs meets the third prong, as well, as the error affected Hobbs's substantial rights. Constitutionally invalid guilty pleas obviously implicate numerous due-process rights, including the right to be charged with a valid federal crime, to be told the true nature of the charge, and to be convicted only on proof of guilt. *See Hamling v. United States*, 418 U.S. 87, 117 (1974) (an indictment must charge a federal offense and fairly inform the defendant of the charge against him so he may plead if he wants); *In re Winship*, 397 U.S. 358, 364 (1970) (Due Process Clause protects the accused against conviction except upon proof of every fact necessary to constitute the charged crime); *Gilmore v. Taylor*, 508 U.S. 333, 341 (1993) (same). Before entering his plea, Hobbs had no opportunity to even consider whether he could, or

would, agree that he knew on June 5, 2017, that he was not supposed to possess a firearm.

Finally, under these circumstances, Hobbs's invalid plea "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* As described above, Hobbs has been convicted of and is serving a prison sentence for an offense of which he may not be guilty. Further, had the indictment charged him with all of the actual elements of the offense, he may never have agreed to plead guilty. The timeline, history, and form of Hobbs's plea agreement all support this conclusion. Hobbs's negotiation with the Government over a plea agreement was long (requiring a second change of plea hearing) and complicated (containing a conditional plea). (*See* Plea Ag., RE. 44, PageID # 329; Change of Plea Hearing Tr. vol. 1, RE. 70, PageID # 553; Change of Plea Hearing Tr. vol. 2, RE. 72, PageID #581.) This history alone suggests that Hobbs did not plead guilty reflexively. Despite these long negotiations, Hobbs entered his plea agreement in August 2018, well before certiorari was granted in *Rehaif*, and thus before he was on notice that it may behoove him to object to the Government's failure to allege the knowledge-of-status element. *See Rehaif*, No. 17-9560, Docket Entry, Granting Petition for a Writ of Certiorari (1/11/2019). Put differently, it stands to reason that if Hobbs had known that the Government had to prove the knowledge-of-status element, he would not

have pleaded guilty to the indictment as drafted or agreed to the plea agreement in its current form.

C. No proof exists as to Hobbs's guilt.

Finally, this Court should also overturn Hobbs's conviction and vacate his sentence for the additional reason that no proof exists as to his guilt. It is well-settled that convicting "on a record lacking any relevant evidence as to a crucial element . . . violates due process." *Vachon v. New Hampshire*, 414 U.S. 478, 480 (1974) (per curiam). Where neither evidence nor an admission exists sufficient to prove the existence of every element of the offense, a conviction cannot stand. *See Jackson v. Virginia*, 443 U.S. 307, 316 (1979) (noting under the due process clause, "no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense").

No valid conviction exists here. No one ever alleged, proved, or admitted § 922(g)'s knowledge-of-status element in this case. As described above, Hobbs's plea was not knowing or voluntary, and fails to address in any way a required element of a § 922(g) offense. Moreover, the record here contains nothing to suggest that Hobbs actually knew that he was a member of a category of people prohibited from possessing firearms. And, finally, the Government's factual predicate provides no basis from which to draw a different conclusion.

Thus, the district court's judgment of conviction based on Hobbs's guilty plea is plain error for the same reasons that he is able to show that a plain error occurred when the Court accepted his constitutionally invalid guilty plea. And therefore, Hobbs's conviction should not stand. To let his conviction and sentence stand would threaten the judicial system's integrity and erode the rights at the heart of the American criminal justice.

CONCLUSION

Hobbs's conviction and sentence are invalid for three separate reasons. First, they are based on an indictment that did not charge a valid federal crime and, thus, never conferred subject-matter jurisdiction upon the district court. Second, they are based on a constitutionally invalid guilty plea that failed to give Hobbs notice of all of the elements of the crime with which he was charged. And, finally, they are based on a lack of proof as to a critical element of § 922(g).

Consequently, the Court should vacate Hobbs's sentence, overturn his conviction, and dismiss his indictment.

Respectfully submitted,

/s/ Michael D. Meuti

MICHAEL D. MEUTI

KRISTEN-ELISE F. DEPIZZO

Nathan P. NASRALLAH (Admission
Pending)

Benesch, Friedlander, Coplan &
Aronoff LLP

200 Public Square, Suite 2300

Cleveland, Ohio 44114-2378

Telephone: 216.363.4500

Facsimile: 216.363.4588

Attorneys for Appellant Isaac Hobbs

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the documents exempted by Fed. R. App. P. 32(f), this document contains 4,468 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14pt Times New Roman font.

/s/ Michael D. Meuti

One of the Attorneys for
Appellant Isaac Hobbs

CERTIFICATE OF SERVICE

The foregoing Brief of Appellant Isaac Hobbs has been served upon Brian M. McDonough this 25th day of September, 2019 by email and through the Court's electronic filing system.

/s/ Michael D. Meuti

One of the Attorneys for
Appellant Isaac Hobbs

DESIGNATION OF ORIGINATING COURT DOCUMENTS

DISTRICT COURT DOCKET			
<u>ECF</u>	<u>Date</u>	<u>Item</u>	<u>PageID</u>
1	July 19, 2017	Indictment	1-2
14	November 6, 2017	Detention Hearing Transcript	42-62
30	April 26, 2018	Notice of Intent to Conditionally Plead Guilty	135-36
44	August 22, 2018	Plea Agreement	329-39
49	December 4, 2018	Defendant's Sentencing Memorandum	387-96
50	December 6, 2018	United States' Sentencing Memorandum	397-414
51	January 25, 2019	United States' Supplemental Sentencing Memorandum	417-20
56	April 2, 2019	Defendant's Supplemental Sentencing Memorandum	435-47
57	April 4, 2019	Defendant's Second Supplemental Sentencing Memorandum	448-54
61	April 16, 2019	Presentence Investigation Report ("PSR")	487-506
62	April 16, 2019	Judgment in a Criminal Case	507-13
64	April 16, 2019	Notice of Appeal	518
70	July 15, 2019	Change of Plea Hearing Transcript vol. 1	553-62
72	July 15, 2019	Change of Plea Hearing Transcript vol. 2	581-624
74	July 15, 2019	Sentencing Transcript	653-700
SIXTH CIRCUIT DOCKET			
6	May 28, 2019	Appointment Letter	1-2