

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13229
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20956-MGC-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHRISTOPHER STACY,

Defendant-Appellant.

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

(August 5, 2020)

ON REMAND FROM THE UNITED STATES SUPREME COURT

Before MARTIN, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

In this appeal on remand from the Supreme Court we address Christopher Stacy's arguments that his indictment was jurisdictionally deficient and, alternatively, that his plea was constitutionally invalid. After we affirmed Stacy's conviction for being a felon in possession of a loaded firearm in violation of 18 U.S.C. § 922(g)(1), *United States v. Stacy*, 771 F. App'x 956 (11th Cir. 2019), the Supreme Court issued its decision in *Rehaif v. United States*, 139 S. Ct. 2191 (2019). The Court then granted Stacy's petition for certiorari, vacated our judgment, and remanded his appeal for reconsideration in the light of *Rehaif*. We ordered the parties to file supplemental letter briefs addressing the effect of *Rehaif* on Stacy's conviction.

In *Rehaif*, the Supreme Court held that the government must prove that the defendant both knew that he possessed the firearm and that he knew of his prohibited status in order to be convicted under § 922(g). In so holding, the Court examined the language of § 922's penalty provision, 18 U.S.C. § 924(a)(2),¹ which

¹ Section 924(a)(2) provides: "Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more

includes the modifier “knowingly.” 139 S. Ct. at 2195-96. The Court also noted that such a reading was consistent with the basic principle of requiring *mens rea* in criminal statutes. *Id.* at 2196.

Stacy argues that the underlying indictment was jurisdictionally deficient because it failed to allege that he knew he was a felon when he possessed the firearm and because it failed to include a reference to 18 U.S.C. § 924(a)(2). Because he pled guilty, Stacy must show a jurisdictional defect to his indictment because the plea waived all non-jurisdictional defects. *United States v. Brown*, 752 F.3d 1344, 1347 (11th Cir. 2014). In *Brown*, we noted that the question to ask when examining whether an indictment defect is jurisdictional is “whether the indictment charged the defendant with a criminal ‘offense against the laws of the United States.’” 752 F.3d at 1353. While the omission of an element may render the indictment insufficient, it does not strip jurisdiction from the district court. *Id.* at 1353-54.

This court recently rejected both of Stacy’s jurisdictional arguments in *United States v. Bates*, 960 F.3d 1278 (11th Cir. 2020). There, the court relied on

than 10 years, or both.”

United States v. Moore, 954 F.3d 1322 (11th Cir. 2020), where the court explained that “the absence of an element of an offense in an indictment is not tantamount to failing to charge a criminal offense against the United States.” 954 F.3d at 1333. “So long as the indictment charges the defendant with violating a valid federal statute as enacted in the United States Code, it alleges an offense against the laws of the United States and, thereby, invokes the district court’s subject-matter jurisdiction.” *Brown*, 752 F.3d at 1354 (rejecting a jurisdictional challenge based on a missing *mens rea* element in the indictment) (quotation omitted).

Here, the indictment charges Stacy with “knowingly possess[ing] a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).” This sentence both charges Stacy with violating a valid federal statute and alleges an offense against the United States. Therefore, we reject Stacy’s argument that his indictment was jurisdictionally deficient.

Alternatively, Stacy argues that his guilty plea was constitutionally invalid because he was not informed of the nature of the charge against him when the indictment failed to allege and plea agreement failed to reveal that he knew he was a felon at the time he possessed the firearm. Because Stacy did not raise this issue below, we review it for plain error. “The plain-error test has four prongs: there

must be (1) an error (2) that is plain and (3) that has affected the defendant's substantial rights; and if the first three prongs are met, then a court may exercise its discretion to correct the error if (4) the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *United States v. Madden*, 733 F.3d 1314, 1320 (11th Cir. 2013) (quotation marks omitted). To demonstrate that an error affected his substantial rights, a defendant "must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *Molina-Martinez v. United States*, 578 U.S. ___, ___, 136 S. Ct. 1338, 1343 (2016) (quotation marks omitted).

Both parties agree that Stacy has met the first two prongs of plain-error review by showing an error that was clear or obvious. *See Henderson v. United States*, 568 U.S. 266, 273, 133 S. Ct. 1121, 1127 (2013) (explaining that the first two elements of plain error are met if an error becomes clear while the case is on appeal). Because the plea colloquy did not establish that Stacy knew he had been convicted of "a crime punishable by imprisonment for a term exceeding one year," 18 U.S.C. § 922(g)(1), the error was plain under *Rehaif*.

For the third prong of plain-error review, to establish that his substantial rights were affected, Stacy "must show a reasonable probability that, but for the error, he would not have entered the plea." *United States v. Dominguez Benitez*,

542 U.S. 74, 83, 124 S. Ct. 2333, 2340 (2004). Because the plain-error doctrine is intended to “correct only particularly egregious errors,” *United States v. Young*, 470 U.S. 1, 15, 105 S. Ct. 1038, 1046 (1985), we “may consult the whole record when considering the effect of any error on substantial rights,” *United States v. Vonn*, 535 U.S. 55, 59, 122 S. Ct. 1043, 1046 (2002).

In *Bates*, we rejected a similar challenge to a plea based on *Rehaif*. We noted that at neither his plea hearing nor his sentencing did Bates object to or express confusion about the government’s statement that he was a seven-time convicted felon. 960 F.3d at 1296. Bates had not asserted that he did not know his status. Had he raised the issue, we noted that there was “overwhelming evidence” that “Bates knew he was a felon at the time he possessed a firearm.” *Id.* (citing *Rehaif*, 139 S. Ct. at 2198, for the proposition that knowledge can be proven by circumstantial evidence). The court surmised that had Bates known of the enhanced burden on the government, “the probability is virtually zero that it would have changed his decision to plead guilty.” *Id.*

Here, Stacy cannot show that his substantial rights were affected. First, he has not asserted that he would not have pleaded guilty had he known of the additional burden on the government to show he knew he was a felon at the time that he possessed the firearm. Second, the record is clear that Stacy knew he had

been convicted of a felony “punishable by imprisonment for a term exceeding one year.” At the time he possessed the loaded firearm, he had received multiple sentences of more than one year of imprisonment for serious felonies—including attempted murder, robbery, and attempted carjacking. Most significantly, Stacy had over four and a half years in state prison resulting from his convictions for robbery and aggravated assault, and was released from that prison sentence less than two months before possessing the loaded firearm at issue here. Because the record indicates that Stacy was aware of his status as a convicted felon at the time of his possession of a firearm, there is no reason to believe that he would have continued to trial absent the district court’s error in not informing him that the government was required to prove “that he knew he belonged to the relevant category of persons barred from possessing a firearm.” *Rehaif*, 139 S. Ct. at 2200. In other words, it is clear that Stacy cannot demonstrate that, but for the error, there is a reasonable probability that he would not have entered the plea of guilty at issue here.

For the foregoing reasons, we affirm the district court.

AFFIRMED.

APPENDIX B

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-13229
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20956-MGC-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHRISTOPHER STACY,

Defendant-Appellant.

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

(May 8, 2019)

Before MARTIN, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Christopher Stacy appeals his 180-month sentence imposed after pleading guilty to possession of a firearm and ammunition by a previously convicted felon, in violation of 18 U.S.C. § 922(g)(1). On appeal, he argues that because Florida robbery and Florida attempted carjacking are not categorically violent felonies, and should not have been used as predicate offenses for purposes of the Armed Career Criminal Act (“ACCA”), he does not have the requisite number of predicate offenses for the armed career criminal designation to apply. The government responds, however, that Stacy’s argument against attempted carjacking should be reviewed for plain error because he presents a different legal theory on appeal regarding attempt that was not preserved before the district court.

We review *de novo* whether a particular conviction qualifies as a violent felony under the ACCA. *United States v. Seabrooks*, 839 F.3d 1326, 1338 (11th Cir. 2016). Federal law determines the meaning of the ACCA, while we are bound by the Florida Supreme Court’s interpretation of its state law offenses. *Curtis Johnson v. United States*, 559 U.S. 133, 138 (2010) (“*Curtis Johnson*”). We apply the same analysis for both ACCA violent felonies and crime of violence under the Sentencing Guidelines. *United States v. Lockley*, 632 F.3d 1238, 1243 n.5 (11th Cir. 2011).

We review for plain error issues which the defendant failed to preserve for appeal. *United States v. Ramirez-Flores*, 743 F.3d 816, 821 (11th Cir. 2014). “To

preserve an issue for appeal, one must raise an objection that is sufficient to apprise the trial court and the opposing party of the particular grounds upon which appellate relief will later be sought.” *United States v. Straub*, 508 F.3d 1003, 1011 (11th Cir. 2007) (internal quotations omitted).

Where, as here, a defendant is convicted of violating 18 U.S.C. § 922(g), the ACCA imposes a heightened mandatory minimum prison sentence if he has three prior convictions for either violent felonies or serious drug offenses. 18 U.S.C. § 924(e)(1)(B). The ACCA defines a “violent felony” as any crime punishable by a term of imprisonment exceeding one year that:

- (i) has *as an element the use, attempted use, or threatened use of physical force against the person of another*; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

Id. § 924(e)(2)(B) (emphasis added). The first prong of this definition is often referred to as the “elements” clause, while the second prong contains the “enumerated crimes” clause followed by what is often referred to as the “residual clause.” *United States v. Owens*, 672 F.3d 966, 968 (11th Cir. 2012). Robbery and carjacking are not listed as enumerated crimes, so neither can satisfy that prong. In *Samuel Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court held that the residual clause was unconstitutionally vague. 135 S. Ct. at 2257–58 (“*Samuel Johnson*”).

In *Curtis Johnson*, the Supreme Court defined the physical force required for a “violent felony” to mean “*violent* force—that is, force capable of causing physical pain or injury to another person.” *Curtis Johnson*, 559 U.S. at 140. Our test for determining whether an offense calls for the use of physical force under *Curtis Johnson* looks to “whether the statute calls for violent force that is capable of causing physical pain or injury to another.” *United States v. Vail-Bailon*, 868 F.3d 1293, 1302 (11th Cir. 2017) (*en banc*).

Whether a prior conviction is a predicate offense under the ACCA’s elements clause is determined by applying the categorical approach. *Taylor v. United States*, 495 U.S. 575, 600 (1990). The categorical approach requires courts to assess whether the elements, rather than the individual facts, of the statute of conviction in its ordinary case contains the same elements as the federal generic offense, or is defined even more narrowly than the federal generic. *Descamps v. United States*, 570 U.S. 254, 261 (2013); *see Samuel Johnson*, 135 S. Ct. at 2582 (adding language to assess the statute of conviction “in the ordinary case”). Under the categorical approach, we examine the statute of conviction to determine whether that conviction necessarily “ha[d] as an element the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i); *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013). Whether a

person actually used, attempted to use, or threatened to use physical force is irrelevant. *Id.*

We will address each statute of conviction in turn.

(i) Florida Robbery Conviction

In *Fritts*, we held that a Florida conviction for robbery is a violent felony under the elements clause of the ACCA. *United States v. Fritts*, 841 F.3d 937, 942-44 (11th Cir. 2016); *see* § 812.13, Fla.Stat. (2017). We have held that all Florida robbery convictions under § 812.13, even without a firearm, qualify as a crime of violence. *Lockley*, 632 F.3d at 1245; *see Fritts*, 841 F.3d at 940–42 (reaffirming *Lockley* post-*Samuel Johnson*, 135 S. Ct. 2551).

Our binding circuit precedent thus forecloses Stacy’s argument. *See Fritts*, 841 F.3d at 942. *Fritts* involved the ACCA and the term “violent felony,” while *Lockley* involved the career offender provisions of the Guidelines, U.S.S.G. §§ 4B1.1 and 4B1.2, and the term “crime of violence.” The cases held that Florida robbery under Fla. Stat. § 812.13 qualifies, under the elements clause and the categorical approach, as a “violent felony” (in *Fritts*, 841 F.3d at 942-44), and as a “crime of violence” (in *Lockley*, 632 F.3d at 1244-45). We apply the same analysis in both situations. *Lockley*, 632 F.3d at 1243 n.5. Florida robbery, in violation of Fla. Stat. § 812.13, is categorically a violent felony under the ACCA’s elements clause and may serve as a predicate crime of violence offense.

Accordingly, we affirm the district court's use of Stacy's two prior Florida robbery convictions as predicate offenses under the ACCA.

(ii) Florida Attempted Carjacking Offense

Florida carjacking is defined as:

the taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, *when in the course of the taking there is the use of force, violence, assault, or putting in fear.*

§ 812.133, Fla.Stat. (2017) (emphasis added). The Florida Supreme Court has determined that “the carjacking statute mirrors the language of the robbery statute:” both have the same elements except that carjacking is narrower, with a specific subject of the robbery, a car. *See Cruller v. State*, 808 So. 2d 201, 204 (Fla. 2002) (assessing whether a charge for both robbery and carjacking violated double jeopardy).

Attempt under Florida law is defined as “a person who attempts to commit an offense prohibited by law and in such attempt does any act toward the commission of such offense, but fails in the perpetration or is intercepted or prevented in the execution thereof.” § 777.04(1), Fla. Stat.

We have adopted the Model Penal Code (“MPC”) definition of attempt as the federal generic definition for purposes of the categorical rule. *See Lockley*, 632 F.3d at 1244 n.6. The MPC definition of attempt requires “an act or omission

constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.” *Id.* (quoting MODEL PENAL CODE § 5.01(1)) (internal quotations omitted). We held in *Lockley* that Florida’s attempt statute is a categorical match to generic attempt because Florida attempt requires an overt act, instead of mere preparation. *Id.*

In *Lockley*, we held that attempted robbery was categorically a crime of violence under the “elements” clause of § 4B1.2. *Lockley*, 632 F.3d at 1245; *see also Fritts*, 841 F.3d at 942 (reaffirming *Lockley* post-*Samuel Johnson*).

Regarding its attempt, we noted that Florida robbery required “the use of force, violence, a threat of imminent force or violence coupled with apparent ability, or some act that puts the victim in fear of death or great bodily harm,” and then elaborated, that “we find it inconceivable that any act which causes the victim to fear death or great bodily harm would not involve the use or threatened use of physical force.” *Lockley*, 632 F.3d at 1245; *see Cruller*, 808 So. 2d at 204 (equating the elements of Florida robbery and carjacking).

We agree with the government that Stacy did not properly preserve for appeal the particular challenge he raises on appeal with respect to his prior Florida conviction for attempted carjacking. Thus, we review for plain error. As Stacy concedes, whether Florida attempted carjacking is a violent felony is an open question in this Circuit. Therefore, because there is no binding case law, there can

be no plain error. *Straub*, 508 F.3d at 1011. Moreover, there is a very strong argument that Florida attempted carjacking involves the required physical force and is categorically a violent felony. Florida's interpretation that carjacking is a narrower subset of robbery, with the same force elements, leads to the determination that our assessment of Florida carjacking should follow our earlier categorical assessments of Florida robbery as a violent felony. *See Fritts*, 841 F.3d at 942; *Cruller*, 808 So. 2d at 204. Florida robbery is a categorical match to the federal generic definition and, therefore, carjacking is a categorical match too because it is defined even more narrowly by the state supreme court than the federal generic offense. *Descamps*, 133 S. Ct. at 2283; *Cruller*, 808 So. 2d at 204. We have also already found attempt in Florida to be a categorical match with generic attempt. *Lockley*, 632 F.3d at 1244 n.6. Taking these two principles together, because Florida attempt is a categorical match to the federal generic, and Florida carjacking follows our cases regarding Florida robbery under the ACCA, it is probable that—when this Court is faced with the issue on *de novo* review—we will probably hold that attempted Florida carjacking is categorically a violent crime under the ACCA. Accordingly, it was not plain error for the district court to use Stacy's prior Florida attempted carjacking conviction as a predicate offense under the ACCA.

In sum, the district court correctly found that Stacy's two prior convictions of Florida robbery were violent felonies, and it was not plain error for the district court to hold that the Florida attempted carjacking conviction was a violent felony, and to designate Stacy an armed career offender. Accordingly, we affirm.

AFFIRMED.

APPENDIX C

Dec 20, 2016

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
16-20956-CR-COOKE/TORRES
CASE NO. _____

18 U.S.C. § 922(g)(1)

18 U.S.C. § 924(e)(1)

18 U.S.C. § 751(a)

18 U.S.C. § 924(d)(1)

UNITED STATES OF AMERICA

vs.

CHRISTOPHER STACY,

Defendant.

_____ /

INDICTMENT

The Grand Jury charges that:

COUNT 1

**Possession of a Firearm and Ammunition by a Previously Convicted Felon
(18 U.S.C. § 922(g)(1))**

On or about December 6, 2016, in Miami-Dade County, in the Southern District of Florida, the defendant,

CHRISTOPHER STACY,

having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess a firearm and ammunition in and affecting interstate and foreign commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

COUNT 2
Escape from Federal Custody
(18 U.S.C. § 751(a))

On or about December 7, 2016, in Miami-Dade County, in the Southern District of Florida,
the defendant,

CHRISTOPHER STACY,

did knowingly escape from the custody of an officer and employee of the United States, that is, a law enforcement officer employed by the Bureau of Alcohol, Tobacco, Firearms and Explosives, United States Department of Justice, pursuant to a lawful arrest, in violation of Title 18, United States Code, Section 751(a).

FORFEITURE ALLEGATIONS

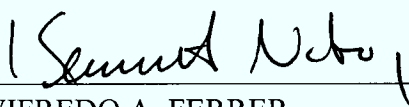
1. The allegations of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **CHRISTOPHER STACY**, has an interest.

2. Upon conviction of the violation of Title 18, United States Code, Section 922(g)(1) alleged in this Indictment, the defendant shall forfeit to the United States any firearm and ammunition involved in or used in the commission of such violation, pursuant to Title 18, United States Code, Section 924(d)(1).

All pursuant to Title 18, United States Code, Section 924(d)(1), the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 28, United States Code, Section 2461(c).

A TRUE F

FOREPEF



WIFREDO A. FERRER
UNITED STATES ATTORNEY



BRIAN J. SHACK
ASSISTANT UNITED STATES ATTORNEY

20a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: CHRISTOPHER STACY

Case No: _____

Count #: 1

Possession of a Firearm and Ammunition by a Convicted Felon

Title 18, United States Code, Sections 922(g)(1) and 924(e)(1)

***Max. Penalty:** Life Imprisonment

Count #: 2

Escape from Federal Custody

Title 18, United States Code, Section 751(a)

***Max. Penalty:** Five Years' Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

APPENDIX D

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NUMBER 16-20956-CR-COOKE

UNITED STATES OF AMERICA,

Plaintiff,

Courtroom 11-2

vs.

Miami, Florida

CHRISTOPHER STACY,

April 6, 2017

Defendant.

**CHANGE OF PLEA PROCEEDINGS
BEFORE THE HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE**

APPEARANCES:

FOR THE GOVERNMENT:

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EXHIBITS

Exhibits	Marked for Identification		Received in Evidence	
Description	Page	Line	Page	Line

1 (The following proceedings were held at 10:00 a.m.)

2 THE COURT: Good morning.

3 THE COURTROOM DEPUTY: We have our change of plea this
4 morning, Judge. United States of America versus Christopher
5 Stacy, Case Number 16-20956.

6 THE COURT: For the record, appearing on behalf of the
7 United States.

8 MR. SHACK: Good morning, Your Honor. Brian Shack on
9 behalf of the United States.

10 THE COURT: And appearing on behalf of Mr. Stacy.

11 MR. MCDONALD: Good morning, Your Honor. Ian McDonald,
12 Assistant Federal Public Defender, here on behalf of Mr. Stacy
13 who's present before the Court.

14 THE COURT: Today is the date and time, Mr. McDonald
15 set for Mr. Stacy to withdraw his previous plea of not guilty
16 and enter a plea of guilty to the Indictment with the Plea
17 Agreement. Is he prepared to proceed?

18 MR. MCDONALD: Yes, Your Honor.

19 THE COURT: I ask the defendant to remain standing,
20 raise his right hand for the oath.

21 (The defendant was sworn in by the courtroom deputy.)

22 THE COURTROOM DEPUTY: Thank you.

23 Please state your full name for the record.

24 THE DEFENDANT: Christopher Stacy.

25 THE COURTROOM DEPUTY: Thank you.

1 THE COURT: Sir, do you understand that you're now
2 under oath in connection with this matter and any answer that
3 you give that is false could later be used against you in a
4 prosecution for perjury or making a false statement?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Where were you born?

7 THE DEFENDANT: Alabama.

8 THE COURT: How old are you?

9 THE DEFENDANT: 23.

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

11 THE DEFENDANT: 10th, ma'am.

12 THE COURT: 10th grade?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Was that in the United States?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Are you a citizen of the United States?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Sir, have you ever been treated for any
19 mental illness?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Have you ever been treated for any
22 addiction to drugs or alcohol?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Are you currently taking any medicine given
25 to you by a doctor?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Prior to coming to court today, have you
3 had any alcohol?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Have you had any drugs not prescribed for
6 you by a doctor?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Counsel, in your opinion, is your client
9 competent to proceed this morning?

10 MR. MCDONALD: Yes, Your Honor.

11 THE COURT: Sir, have you had an opportunity to review
12 the Indictment, Plea Agreement and Factual Proffer with your
13 attorney?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And have you discussed these charges,
16 including defenses, if you decided that you wanted to go to
17 trial?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And are you satisfied with the
20 representation that you'd received?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Is there anything about your representation
23 that you're not satisfied with, sir?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Sir, you're agreeing to plead guilty to

1 Count 1 of the Indictment that charges you with being in
2 possession of a firearm and ammunition after having previously
3 been convicted of a felony.

4 Do you understand that, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: You should understand that as to count, you
7 can be sentenced up to -- excuse me.

8 Counsel, I'm reviewing -- I'm looking at paragraph 4
9 and it says that if he's found to qualify, he could be sentenced
10 as an armed career criminal. If he's not an armed career
11 criminal, what would be the maximum sentence in this matter?

12 MR. SHACK: 10 years with no minimum.

13 THE COURT: Sir, do you understand that's the maximum
14 penalty if you're found not to be an armed career criminal in
15 this matter?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you also understand that if you're found
18 to be an armed career criminal, I must impose a sentence of 15
19 years imprisonment?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Now, in addition to any term of
22 imprisonment there's a supervised release of three years and
23 there may be a fine of up to \$250,000. Do you understand that?

24 THE DEFENDANT: No, ma'am, not the fine part.

25 THE COURT: Okay. There could be a fine. I'm not

1 saying there will be, but there could be a fine of up to
2 \$250,000. Do you understand that now?

3 THE DEFENDANT: I understand.

4 THE COURT: Okay. And do you also understand that you
5 must pay the special assessment of \$100?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Now, sir, have you had an opportunity to
8 discuss the Sentencing Guidelines with your attorney?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And you understand that I use those
11 guidelines to help me determine what your sentence will be in
12 this case?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And do you also understand that any
15 estimate of any sentence that's been given you, is just that, an
16 estimate? I won't know what your sentence is until I've had an
17 opportunity to review the Presentence Report that will be
18 prepared for me.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And do you also understand you will not be
21 allowed to withdraw, and by that I mean, take back your guilty
22 plea just because you don't like the sentence imposed?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Now, sir, under certain circumstances, you
25 may be able to appeal the sentence; under other circumstances

1 the United States may be able to appeal the sentence. So for
2 example, if I were to sentence you to higher than the advisory
3 guideline range, you may be able to appeal the sentence. If I
4 sentence you to lower than the advisory guideline range, the
5 United States may be able appeal the sentence. Do you
6 understand that, sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Counsel, for the United States, in summary
9 what are the terms of the Plea Agreement for Mr. Stacy?

10 MR. SHACK: Your Honor, Mr. Stacy agrees to plead
11 guilty to Count 1. The Government agrees to dismiss Count 2
12 following sentencing. The defendant agrees to forfeit all
13 interest in firearms and ammunition involved in this case and to
14 assist in forfeiture. The defendant agrees to waive his right
15 to appeal except for the circumstances Your Honor mentioned, if
16 Your Honor imposes a sentence higher than the applicable
17 guideline range, and that concludes the Plea Agreement.

18 THE COURT: Sir, is that your understanding of the Plea
19 Agreement in this case?

20 THE DEFENDANT: The last part, one time, ma'am.

21 THE COURT: I'm sorry?

22 THE DEFENDANT: The last part, one time.

23 THE COURT: The last part?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: What about the last part don't you

1 understand?

2 THE DEFENDANT: I understand the first part. The last
3 part that he was saying about the appealing.

4 THE COURT: Oh. What he is saying is that you are
5 waiving your appeal except if I sentence you to higher than the
6 statutory range.

7 THE DEFENDANT: I understand now.

8 THE COURT: So do you understand that now?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Now, sir, other than the Plea
11 Agreement, has anyone offered you anything else to have you
12 plead guilty this morning?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Now, sir, do you understand that you're
15 pleading guilty to a felony offense?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Now, you should understand that in this
18 country that deprives you of certainly valuable civil rights;
19 your right to vote, the right to hold office, the right to serve
20 on a jury and the right to possess any kind of firearm. Do you
21 understand that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Now, sir, do you also understand that by
24 pleading guilty, you're giving up your right to a jury trial?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And you're giving up the following rights
2 that come with a trial: The right to be presume innocent and
3 the Government would have to prove your guilty beyond a
4 reasonable doubt. You're giving up the right to cross-examine
5 witnesses through your attorney. You're giving up your right to
6 the subpoena power of the Court. This would require people to
7 come to court and testify in your favor and you're also giving
8 up your right not to testify unless you chose to testify and the
9 jury would not be able to hold it against you during their
10 deliberations that you did not testify.

11 Sir, do you understand that by pleading guilty, this
12 means you are waiving, giving up all of these rights and there
13 will be no trial.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Counsel for the United States, had this
16 matter proceeded to trial, what would the Government be prepared
17 to prove?

18 MR. SHACK: Your Honor, had this case proceeded to
19 trial, the Government would have been able to prove the
20 following facts beyond a reasonable doubt, which occurred in the
21 Southern District of Florida:

22 On or about December 6, 2016 law enforcement observed a
23 black Nissan Altima bearing Florida Tag BVB1223 pulling out of a
24 parking lot near 132nd Street and Northwest 27 Avenue in Opa
25 Locka, Florida. After a records check revealed that the tag did

1 not match the description of the vehicle, law enforcement
2 activated their emergency police lights to conduct a traffic
3 stop. The Nissan attempted to flee but law enforcement was able
4 to stop the Nissan with law enforcement vehicles.

5 As law enforcement approached the Nissan on foot, the
6 driver continued to attempt to flee by accelerating in reverse
7 and striking the front of a law enforcement vehicle. Law
8 enforcement approached the driver's side of the Nissan and
9 observed the driver, later confirmed to be the defendant,
10 attempt to put the gear shift into drive. Law enforcement open
11 the driver's side door and pulled the defendant out of the
12 vehicle and onto the ground.

13 Law enforcement frisked the defendant and discovered a
14 silver and black Smith & Wesson Model SD9VE, .9 millimeter
15 semi-automatic pistol in his waistband. The firearm was loaded
16 with 15 rounds of Winchester .9 millimeter ammunition.

17 A nexus analysis revealed that both the firearm and
18 ammunition were manufactured outside of Florida and thus
19 traveled in interstate commerce.

20 While the defendant was being transported, he
21 spontaneously admitted his guilt. The defendant also admitted
22 his guilty after waiving his Miranda rights in writing.

23 The defendant was brought to the Federal Detention
24 Center in Miami, Florida on or about December 7, 2016. As the
25 Federal agent was driving the defendant into FDC, he opened the

1 door, took one of his hands out of his handcuffs and began
2 sprinting west. The defendant, after several minutes of chase
3 was recaptured by law enforcement.

4 On December 6, 2016 the defendant was a convicted felon
5 prohibited from a possessing a firearm and ammunition, and his
6 right to possess a firearm and ammunition had not been restored.

7 THE COURT: Counsel is the date correct in the last
8 paragraph?

9 MR. SHACK: Yes, Your Honor. It's as of that date,
10 when he possessed the firearm.

11 THE COURT: So as of December 6. All right. I thought
12 maybe it was "on." All right.

13 MR. SHACK: Well, on, before, during and after.

14 THE COURT: All right. Sir, do you agree with the
15 Factual Proffer as made by the United States?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: How do you plead to the charge set forth in
18 Count 1, guilty or not guilty?

19 THE DEFENDANT: Guilty, ma'am.

20 THE COURT: It is the finding of the Court that in this
21 case the defendant is fully competent and capable of entering an
22 informed plea, he is aware of nature of these charges and the
23 consequences of the plea and the plea of guilty is knowingly and
24 voluntarily supported by an independent basis in fact containing
25 each of the essential elements of the offense.

1 The plea is, therefore, accepted and he is now adjudged
2 guilty of the offense charged in Count 1.

3 I'll order a Presentence Report. Set sentencing for
4 June --

5 THE COURTROOM DEPUTY: June 14, at 2 p.m.

6 THE COURT: Anything further on behalf of the United
7 States?

8 MR. SHACK: No, Your Honor.

9 THE COURT: Anything further on behalf of Mr. Stacy?

10 MR. MCDONALD: No, Your Honor.

11 THE COURT: Thank you very much, counsel.

12 MR. SHACK: Thank you.

13 THE COURT: Court is in recess.


14 (The hearing was concluded at 10:25 a.m.)

15
16 C E R T I F I C A T E

17 I hereby certify that the foregoing is an accurate
18 transcription of proceedings in the above-entitled matter.

19
20 08-23-17

21 DATE

22 
23 GILDA PASTOR-HERNANDEZ, RPR, FPR
24 Official United States Court Reporter
25 Wilkie D. Ferguson Jr. U.S. Courthouse
400 North Miami Avenue, Suite 13-3
Miami, Florida 33128 305.523.5118
gphofficialreporter@gmail.com

APPENDIX E

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
CHRISTOPHER STACY

JUDGMENT IN A CRIMINAL CASE

Case Number: **16-20956-CR-COOKE**
USM Number: **09741-104**

Counsel For Defendant: **Ian McDonald, AFPD**
Counsel For The United States: **Brian Shack, AUSA**
Court Reporter: **Francine Salopek**

The defendant pleaded guilty to Count One of the Indictment.

The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18, U.S.C. 922(g)(1) and 924(e)(1)	Felon in possession of firearm and ammunition.	12/06/2016	1

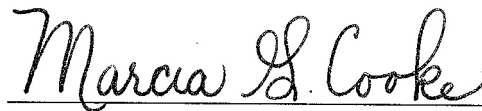
The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Count 2 is 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.

Date of Imposition of Sentence:

7/12/2017



MARCIA G. COOKE

United States District Judge

July 12, 2017

DEFENDANT: **CHRISTOPHER STACY**
CASE NUMBER: **16-20956-CR-COOKE**

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**.

The court makes the following recommendations to the Bureau of Prisons: For the defendant to be designated to a facility in, or near, the Southern District of Florida.

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

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **CHRISTOPHER STACY**

CASE NUMBER: **16-20956-CR-COOKE**

SUPERVISED RELEASE

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

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

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

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

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

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

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

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: **CHRISTOPHER STACY**
CASE NUMBER: **16-20956-CR-COOKE**

SPECIAL CONDITIONS OF SUPERVISION

Anger Control / Domestic Violence - The defendant shall participate in an approved treatment program for anger control/domestic violence. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Employment Requirement - The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

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

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

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

DEFENDANT: **CHRISTOPHER STACY**
CASE NUMBER: **16-20956-CR-COOKE**

CRIMINAL MONETARY PENALTIES

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

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

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

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

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

DEFENDANT: **CHRISTOPHER STACY**
CASE NUMBER: **16-20956-CR-COOKE**

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100.00 due immediately.

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

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

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

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

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

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

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