No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN GENE MCCOY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit

APPENDIX

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United States Court of Appeals
For the Eighth Circuit

No. 16-3953

Brian Gene McCoy,

Petitioner - Appellant,

v.

United States of America,

Respondent - Appellee.

Appeal from United States District Court
for the District of North Dakota - Bismarck

Submitted: October 15, 2019
Filed: May 26, 2020

Before COLLOTON, BEAM, and KELLY, Circuit Judges.

COLLOTON, Circuit Judge.

A jury found Brian McCoy guilty of voluntary manslaughter, in violation of 18 U.S.C. §§ 1112 and 1152, and using a firearm during and in relation to a "crime of violence," in violation of § 924(c)(1)(A). The district court[1] sentenced McCoy to

[1]The Honorable Daniel L. Hovland, United States District Judge for the District of North Dakota.

consecutive terms of 96 months' imprisonment for voluntary manslaughter and 120 months' imprisonment for the firearms offense.

McCoy later moved under 28 U.S.C. § 2255 to vacate his sentence for the firearms offense. He argued that voluntary manslaughter was not a "crime of violence" in light of Supreme Court decisions issued after his sentencing. As such, he urged that his use of a firearm during and in relation to manslaughter did not violate 18 U.S.C. § 924(c). We conclude that voluntary manslaughter under § 1112 qualifies as a "crime of violence" under the "force" clause of § 924(c)(3)(A), because it has as an element the use of force against the person of another. We therefore affirm the judgment of the district court.

McCoy's motion to vacate his sentence was premised on *Johnson v. United States*, 135 S. Ct. 2551 (2015). *Johnson* held that the residual clause of § 924(e)(2)(B)(ii) was unconstitutionally vague. 135 S. Ct. at 2563. That clause defined "violent felony" to include an offense punishable by imprisonment for a term exceeding one year that "otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). McCoy asserted that he was convicted on the theory that voluntary manslaughter was a "crime of violence" under the residual clause of § 924(c)(3)(B), and because the wording of that clause was comparable to the clause held unconstitutional in *Johnson*, his conviction could not stand.

The district court rejected the argument based on *United States v. Prickett*, 839 F.3d 697 (8th Cir. 2016) (per curiam), which held that *Johnson* did not render the residual clause of § 924(c)(3)(B) unconstitutionally vague. *Id.* at 700. McCoy unsuccessfully sought a certificate of appealability, but the Supreme Court eventually vacated and remanded the case for further consideration in light of *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).

On remand, we granted a certificate of appealability "on the issue of whether 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague and, if so, whether the appellant is entitled to relief." While the appeal was pending, the Supreme Court held in *United States v. Davis*, 139 S. Ct. 2319 (2019), that the residual clause of § 924(c)(3)(B) is unconstitutionally vague. Therefore, the remaining question is whether McCoy's conviction for voluntary manslaughter qualifies as a "crime of violence" under a different subsection of § 924(c), namely, the "force" clause of § 924(c)(3)(A). We consider that legal issue *de novo*.

The "force" clause provides that an offense qualifies as a "crime of violence" if it is a felony and "has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 924(c)(3)(A). To determine whether an underlying offense has as an element the "use . . . of physical force" against the person of another, we apply a categorical approach that compares the elements of the offense of conviction with the requirements of the "force" clause. *See United States v. Fogg*, 836 F.3d 951, 954 (8th Cir. 2016). Where the statute in question defines multiple crimes, we apply the modified categorical approach and consider only the offense of which the defendant was convicted. *See Mathis v. United States*, 136 S. Ct. 2243, 2249 (2016).

The federal manslaughter statute defines "two kinds" of manslaughter: voluntary manslaughter and involuntary manslaughter. 18 U.S.C. § 1112(a). McCoy implicitly concedes that the statute defines two separate crimes, and we agree. The statute requires the government to prove different elements for each offense, and it prescribes different punishments for the two crimes. *Id*. § 1112(b). These factors demonstrate that the alternative versions of manslaughter are separate crimes. *See Mathis*, 136 S. Ct. at 2256. It is undisputed that McCoy was convicted of voluntary manslaughter.

McCoy contends, however, that one can commit voluntary manslaughter without the "use" of force against another, because the minimum mental state required is recklessness. Voluntary manslaughter occurs when a defendant acts upon a sudden quarrel or heat of passion, and with a mental state constituting "a general intent to kill, intent to do serious bodily injury, or with depraved heart recklessness." *United States v. Serawop*, 410 F.3d 656, 666 (10th Cir. 2005); *see United States v. Steward*, 880 F.3d 983, 987-88 (8th Cir. 2018); 2 Wayne R. LaFave, *Substantive Criminal Law* § 15.2(a) (3d ed. 2017).

Our precedent all but resolves the issue against McCoy. In *Voisine v. United States*, 136 S. Ct. 2272 (2016), the Supreme Court concluded that reckless domestic assault qualifies as a "misdemeanor crime of violence" under 18 U.S.C. § 921(a)(33)(A)(ii) because it requires a "use . . . of physical force" committed by a person in certain domestic relationships with the victim. *Id.* at 2280. The Court ruled that reckless conduct "use[s] force, no less than one who carries out that same action knowingly or intentionally." *Id.* Applying *Voisine*, we held in *United States v. Fogg* that a reckless drive-by shooting involved the "use . . . of physical force against the person of another" under § 924(e)(2)(B)(i), and thus qualified as a violent felony under the Armed Career Criminal Act. 836 F.3d at 956. There is no material difference between the force clause at issue in *Fogg* and the force clause under § 924(c)(3)(A). We therefore conclude that voluntary manslaughter qualifies as a crime of violence under § 924(c)(3)(A).

McCoy's remaining arguments are unavailing. McCoy cites precedent holding that reckless driving resulting in injury does not involve the use of physical force. *See United States v. Schneider*, 905 F.3d 1088, 1092 (8th Cir.), *reh'g en banc denied*, 911 F.3d 504 (8th Cir. 2018); *United States v. Fields*, 863 F.3d 1012, 1015 (8th Cir. 2017). Whatever the merit of those decisions, the court specifically limited their scope to driving offenses on the view that reckless driving "is distinct from other crimes of recklessness." *Fields*, 863 F.3d at 1015 (8th Cir. 2017) (quoting *United*

States v. Ossana, 638 F.3d 895, 901 n.6 (8th Cir. 2011)). McCoy also contends that voluntary manslaughter does not require the use of physical force because the "unlawful killing of another human being" can be committed by means other than direct physical force, such as by poison or laying a trap. This argument is foreclosed by *United States v. Rice*, 813 F.3d 704 (8th Cir. 2016), which held that causing injury through indirect means such as poison constitutes a use of force. *Id.* at 706. Finally, McCoy cites *United States v. Flute*, 929 F.3d 584 (8th Cir. 2019), for the proposition that manslaughter can be committed without the use of force "against the person" of another, because *Flute* held that a woman could be convicted of manslaughter based on actions that harmed an unborn child. *Id.* at 589-90. *Flute*, however, involved a charge of involuntary manslaughter, so it does not speak to whether McCoy's discrete offense of *voluntary* manslaughter is a crime of violence.

The judgment of the district court is affirmed.

KELLY, Circuit Judge, concurring in the judgment.

I agree that Fogg "all but resolves the issue" McCoy raises. Ante at 4. Fogg, relying on Voisine, concluded that "reckless conduct . . . constitutes a 'use' of force under the ACCA." Fogg, 836 F.3d at 956. However, I write separately because I question whether the analysis in Fogg is sufficiently fulsome to warrant this conclusion.

Voisine examined the mens rea of recklessness in the context of 18 U.S.C. § 922(g)(9), which prohibits anyone who has a prior conviction for a "misdemeanor crime of domestic violence" from possessing a firearm. Congress enacted § 922(g)(9) to "close a dangerous loophole in gun control laws" because "many perpetrators of domestic violence are charged with misdemeanors rather than felonies, notwithstanding the harmfulness of their conduct." Voisine v. United States, 136 S. Ct. 2272, 2276 (2016) (cleaned up). The Court noted that a majority of the states,

plus the District of Columbia, had adopted the Model Penal Code's view that the mens rea of recklessness established criminal liability for misdemeanor domestic assault, "[s]o in linking § 922(g)(9) to those laws, Congress must have known it was sweeping in some persons who had engaged in reckless conduct." Id. at 2280. Relying on this "[s]tatutory text and background alike," the Supreme Court concluded "that a reckless domestic assault qualifies as a 'misdemeanor crime of domestic violence'"—as defined in § 921(a)(33)(A)—such that the prohibitions of § 922(g)(9) would apply. Id. at 2278.

The Supreme Court also expressly stated that its decision in Voisine "concerning § 921(a)(33)(A)'s scope does not resolve whether [18 U.S.C.] § 16 includes reckless behavior." Voisine, 136 S. Ct. at 2280 n.4. The Court explained that "[c]ourts have sometimes given those two statutory definitions divergent readings in light of differences in their contexts and purposes, and we do not foreclose that possibility with respect to their required mental states." Id.; see also Leocal v. Ashcroft, 543 U.S. 1, 9 (2004) ("Particularly when interpreting a statute that features as elastic a word as 'use', we construe language in its context and in light of the terms surrounding it"); United States v. Middleton, 883 F.3d 485, 493 (4th Cir. 2018) (Floyd, J., concurring) ("[T]he Supreme Court expressly left open the possibility that two statutory definitions, even if they are similarly drafted, could have divergent readings or *mens rea* requirements 'in light of differences in their contexts and purposes. . . .'") (cleaned up). Section 924(c)(3)(A), the statute at issue in this case, has a nearly identical definition of a crime of violence as § 16.[2]

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[2]The relevant portion of 18 U.S.C. § 16 reads:

> The term "crime of violence" means--
> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

At least two other circuits have also considered whether, after Voisine, a reckless mens rea is sufficient for a conviction to qualify as a violent felony under the ACCA force clause. See 18 U.S.C. § 924(e)(2)(B)(i). They have determined it is not, both because a reckless offense is insufficient in light of ACCA's text, history, and purpose, and because of the specific context of Voisine. The First Circuit determined that an offense with the "mens rea element of mere recklessness" did not satisfy the ACCA force clause. Bennett v. United States, 868 F.3d 1, 24 (1st Cir.), vacated as moot, 870 F.3d 34 (1st Cir. 2017).[3] "We do not see how we could conclude, based on Voisine, that the key statutory phrase in ACCA's force clause—'use . . . of physical force against the person of another,' 18 U.S.C. § 924(e)(2)(B)(i)—must be construed to *include* reckless offenses when a version of that language was for so long and so uniformly construed to *exclude* them." Bennett, 868 F.3d at 8. The Fourth Circuit agreed, similarly concluding that the ACCA force clause requires a mens rea higher than recklessness. See Middleton, 883 F.3d at 493. It is this analysis of ACCA's history and purpose, along with a discussion of Voisine's narrow scope, that Fogg lacks, particularly in light of the deviation Fogg represents from our case law prior to that point. See Fogg, 836 F.3d at 956 (Bright, J., dissenting, and identifying this "important and far reaching" issue as one that would benefit from further briefing).

For these reasons, I agree that Fogg dictates the outcome of this case. But whether a reckless mens rea is sufficient for purposes of § 924(c)(3)(A) is a question deserving of a more thorough analysis than we have thus far provided.

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[3]After Bennett died, the panel withdrew its opinion as moot, but not before a different panel of the First Circuit "endorse[d] and adopt[ed]" the reasoning of Bennett. United States v. Windley, 864 F.3d 36, 37 n.2 (1st Cir. 2017).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Brian Gene McCoy, Petitioner, vs. United States of America, Respondent.	)	**ORDER DENYING DEFENDANT'S MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE** Case No. 1:16-cv-213
United States of America, Plaintiff, vs. Brian Gene McCoy, Defendant.	)	Case No. 1:05-cr-091

Before the Court is the Defendant's "Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 (*Johnson* Claim)" filed on June 21, 2016. See Docket No. 67. The Defendant's motion is based upon the Supreme Court's recent holding in *Johnson v. United States*, 135 S. Ct. 2551 (2015). After an initial review of the motion, the Court ordered the Government to file a response to the Defendant's motion. See Docket No. 68. The Government filed a response in opposition to the Defendant's motion on July 6, 2016. See Docket No. 69. The Defendant filed a reply on July 20, 2016. See Docket No. 72. For the reasons set forth below, the motion is denied.

On September 22, 2006, the Defendant was found guilty by a jury of voluntary manslaughter in violation of 18 U.S.C. §§ 1112 and 1152(a) and use and carry of a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A). See Docket No. 38. On December

21, 2006, the Court sentenced the Defendant to consecutive terms of 96 months on the voluntary manslaughter offense and 120 months on the firearm offense. See Docket No. 46.

The Defendant's Section 924(c)(1) conviction was based on his use of a firearm in connection with voluntary manslaughter. This offense was found to be a "crime of violence" as that term is defined by 18 U.S.C. § 924(c)(3). In *Johnson,* the United States Supreme Court announced a new rule of constitutional law when it concluded the residual clause of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)(2)(B)(ii), was vague and the application of the residual clause violates the Constitution's guarantee of due process. Johnson v. United States, 135 S. Ct. 2551, 2563 (2015). The holding of *Johnson* applies retroactively on collateral review. Welch v. United States, 136 S. Ct. 1257, 1268 (2016). Here, the Defendant contends that *Johnson's* invalidation of the residual clause in the ACCA extends to invalidate the residual clause of 18 U.S.C. § 924(c)(3)(B).

The Defendant's claim is not actually based upon the new rule announced in *Johnson,* and made retroactive to cases on collateral review in *Welch.* See Donnell v. United States, No. 15-2581, 2016 WL 3383831 (8th Cir. June 20, 2016) (finding a claim is based on a new rule only when the new rule recognizes the right asserted and not when the claim depends on the recognition of a second new rule). Instead, the Defendant's contention is an attempt to create a second new rule by extending *Johnson* to convictions under Section 924(c)(3)(B). More importantly, the Eighth Circuit has rejected the argument that Section 924(c)(3)(B) is unconstitutionally vague under *Johnson*. United States v. Prickett, No. 15-3486, slip op. at 3 (8th Cir. July 27, 2016) (holding "Section 924(c)(3)(B) is the very type of statute that the *Johnson* Court explained would not be unconstitutionally vague under its holding").

After carefully reviewing the entire record and the relevant law, the Court issues the following **ORDER**:

1) The Defendant's motion (Docket No. 67) is **DENIED**.

2) The Court certifies that an appeal from the denial of this motion may not be taken in forma pauperis because such an appeal would be frivolous and cannot be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

3) Based upon the entire record before the Court, dismissal of the motion is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Tiedman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997). If the defendant desires further review of his motion, he may request issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated this 4th day of October, 2016.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 16-3953

Brian Gene McCoy

Appellant

v.

United States of America

Appellee

Appeal from U.S. District Court for the District of North Dakota - Bismarck
(1:16-cv-00213-DLH)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

Judge Erickson did not participate in the consideration or decision of this matter.

August 03, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

APPENDIX C

United States District Court
District of North Dakota

UNITED STATES OF AMERICA
v.
BRIAN GENE McCOY

JUDGMENT IN A CRIMINAL CASE

Case Number: **1:05-CR-091**

USM Number: 09202-059

William D. Schmidt
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s): ___.
[ ] pleaded nolo contendere to counts(s) ___ which was accepted by the court.
[✔] was found guilty by the jury on count 1 of the lesser included offense of voluntary manslaughter and guilty on count 2 as charged in the Indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such counts, which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §§ 1112 & 1152(a)	Voluntary Manslaughter	October, 2005	1
18 U.S.C. § 924(c)(1)(A)	Use & carry firearm during crime of violence	October, 2005	2

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

[✔] The defendant has been found not guilty by the jury of second degree murder as charged in count 1 and is discharged as to such offense.

[ ] Count(s) ___ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall 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.

December 21, 2006
Date of Imposition of Judgment

Signature of Judicial Officer

DANIEL L. HOVLAND, Chief U.S. District Judge
Name & Title of Judicial Officer

December 21, 2006
Date

APPENDIX D

CASE NUMBER: 1:05-CR-091
DEFENDANT: BRIAN GENE McCOY

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **216 MONTHS. (96 MONTHS on Count 1, and 120 MONTHS on Count 2, to run consecutive to Count 1), with credit for time served.**

[✔] The court makes the following recommendations to the Bureau of Prisons: That the defendant be placed at a facility as close to North Dakota as possible, and if determined eligible, he be placed at a facility that will afford him the opportunity to participate in the Bureau of Prisons' 500-Hour Residential Drug & Alcohol Treatment 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 ___ 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 _ on ___.
[ ] as notified by the United States Marshal.
[ ] as notified by the Probation or Pretrial Services Officer.

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 U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **60 MONTHS. (36 MONTHS on Count 1 and 60 MONTHS on Count 2), to run concurrently.**

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

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

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

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

[ ] The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)

The defendant has been convicted of an offense listed in the DNA Analysis Backlog Elimination Act of 2000 or the Justice for All Act of 2004. These acts require the defendant to cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties page 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 permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
4) the defendant shall support his or her dependants 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 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 narcotic or other controlled substance, or any paraphernalia related to such substances;
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;
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.

SPECIAL CONDITIONS OF SUPERVISION

1. if not completed while incarcerated, the Defendant shall participate in a program approved and arranged by the supervising probation officer for the treatment of substance abuse.

2. The Defendant shall abstain from the use of alcohol and use of illegal drugs or the possession of a controlled substance as defined in Title 21 U.S.C. § 802.

3. The Defendant will submit to random substance abuse testing as directed by the supervising probation officer.

4. The Defendant shall participate in a mental health treatment program as directed by the supervising probation officer.

5. The Defendant shall submit his person, residence, workplace, vehicle, computer, and/or possession to a search conducted by a United States Probation Officer based upon evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation, additional criminal charges, and arrest. The Defendant shall notify any other residents that the premises may be subject to searches pursuant to this condition.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth on Sheet 5, Part B. The special assessment shall be due immediately and payable to the Clerk, U.S. District Court.

	Assessment	Fine	Restitution
Totals:	$ 200.00 ($100 for Count 1 & $100 for Count 2)	$ 0	$ 6,767.61

[ ] If applicable, restitution amount ordered pursuant to plea agreement ..... $_____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _.

The defendant shall pay interest on any fine of more than $2500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency 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.

[ ] The interest requirement is modified as follows:

RESTITUTION

[ ] The determination of restitution is deferred in a case brought under Chapters 109A, 100, 110A and 113A of Title 18 for offenses committed on or after 09/13/1994, until up to 60 days. An amended Judgment in a Criminal Case will be entered after such determination.

[ ] The court modifies or waives interest on restitution as follows:

[✔] The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order of percentage payment column below.

** 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.

Name of Payee & Address	**Total Amount of Loss	Amount of Restitution Ordered	Priority Order or % of Pymnt
ND Crime Victim's Compensation PO Box 5521 Bismarck, ND 58506-5521	$6,224.00	$6,224.00	
Donna Deegan 570 3rd Ave. E. White Shield, ND 58540	$543.61	$543.61	
TOTALS:	$6,767.61	$6,767.61	

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A [✔] in full immediately. **Special Assessment.**

B [ ] $ _ immediately, balance due (in accordance with C, D, or E); or

C [ ] not later than _ ; or

D [ ] in installments to commence _ day(s) after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or

E [ ] in _ (e.g. equal, weekly, monthly, quarterly) installments of $ _ over a period of _ year(s) to commence _ day(s) after the date of this judgment.

Special instructions regarding the payment of criminal monetary penalties:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shalal be due during the period of imprisonment. All criminal monetary payments are to be made as directed by the court, the probation officer, or the United States Attorney.