

NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

JAMES LEE HERMAN, JR., a/k/a Herman Lee James, Jr., Petitioner,

v.

UNITED STATES OF AMERICA, Respondent.

APPENDIX A

**TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER**

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Counsel for Petitioner

828 Fed.Appx. 894

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 4th Cir. Rule 32.1.

United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

James Lee HERMAN, Jr., a/k/a Herman Lee James, Jr., Defendant-Appellant.

No. 19-4767

|

Submitted: September 30, 2020

|

Decided: October 7, 2020

Synopsis

Background: Defendant entered a conditional plea of guilty, in the United States District Court for the Southern District of West Virginia, Joseph R. Goodwin, J., to possession of a firearm by a convicted felon. He appealed.

[Holding:] The Court of Appeals held that District court did not err, in finding that, absent the discovery of the firearm, officer would have arrested defendant and inevitably would have discovered the firearm.

Affirmed.

Procedural Posture(s): Preliminary Hearing or Grand Jury Proceeding Motion or Objection; Appellate Review.

West Headnotes (2)

[1] [Criminal Law](#) ➔ [Trial judge as sole arbiter of credibility](#)

District court did not err, on motion to suppress in prosecution for possession of a firearm by a convicted felon, in crediting arresting officer's testimony and finding that the officer

had probable cause to arrest defendant for driving under the influence. [U.S. Const. Amend. 4](#);  [18 U.S.C.A. § 922\(g\)\(1\)](#).

[2] [Criminal Law](#) [Inevitable discovery](#)

District court did not err, in prosecution for possession of a firearm by a convicted felon, in finding that, absent the discovery of the firearm, arresting officer would have arrested defendant for driving under the influence, would have searched him incident to that arrest, and inevitably would have discovered the firearm. [U.S. Const. Amend. 4](#);  [18 U.S.C.A. § 922\(g\)\(1\)](#).

***895** Appeal from the United States District Court for the Southern District of West Virginia, at Charleston. [Joseph R. Goodwin](#), District Judge. (2:19-cr-00107-1)

Attorneys and Law Firms

[Wesley P. Page](#), Federal Public Defender, Jonathan D. Byrne, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [Michael B. Stuart](#), United States Attorney, Julie M. White, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, West Virginia, for Appellee.

Before [GREGORY](#), Chief Judge, [WYNN](#), and [HARRIS](#), Circuit Judges.

Opinion

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

James Lee Herman, Jr., ^{*} entered a conditional guilty plea to possession of a firearm by a convicted felon, in violation of  [18 U.S.C. § 922\(g\)\(1\)](#), reserving the right to appeal the district court's denial of his motion to suppress. In his motion, Herman argued that the arresting officer unlawfully searched him during a traffic stop, requiring that the firearm recovered during that search be excluded from evidence. In response, the Government argued that the officer had probable cause to arrest Herman for driving under the influence of alcohol; that, absent the discovery of the

firearm, the officer would have arrested Herman for driving under the influence and performed a search incident to that arrest; and that in performing that search, the officer inevitably would have discovered the firearm. The district court agreed with the Government and denied Herman's motion to suppress. Herman now appeals that ruling. For the reasons that follow, we affirm.

*
— Appellant asserts that his true name is Herman James. (Appellant's Br. (ECF No. 13) at 1 n.1). Because the district court's docket lists the named defendant as "James Lee Herman, Jr.," this court's practice is to do likewise in an effort to avoid inconsistency.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." [U.S. Const. amend. IV.](#) "Generally, the government is prohibited from using evidence discovered in an unlawful search against the individual whose constitutional right was violated." *[896 United States v. Seay, 944 F.3d 220, 223 \(4th Cir. 2019\), as amended](#) (Dec. 4, 2019). However, this rule is subject to certain exceptions. *Id.* "One such exception is the inevitable discovery doctrine, which allows the government to use evidence gathered in an otherwise unreasonable search if it can prove by a preponderance of the evidence that law enforcement would have ultimately or inevitably discovered the evidence by lawful means." *Id.* (internal quotation marks omitted). "'Lawful means' include an inevitable search falling within an exception to the warrant requirement ... that would have inevitably uncovered the evidence in question."  [United States v. Bullette, 854 F.3d 261, 265 \(4th Cir. 2017\).](#)

"[W]hen law enforcement officers have probable cause to make a lawful custodial arrest, they may —incident to that arrest and without a warrant—search the arrestee's person and the area within his immediate control."  [United States v. Ferebee, 957 F.3d 406, 418 \(4th Cir. 2020\)](#) (internal quotation marks omitted). "The constitutionality of a search incident to an arrest does not depend on whether there is any indication that the person arrested possesses weapons or evidence. The fact of a lawful arrest, standing alone, authorizes a search."  *Id.* (alteration and internal quotation marks omitted).

"It is well-settled under Fourth Amendment jurisprudence that a police officer may lawfully arrest an individual in a public place without a warrant if the officer has probable cause to believe that the individual has committed, is committing, or is about to commit a crime."  [United States v. Dickey-Bey, 393 F.3d 449, 453 \(4th Cir. 2004\)](#). "Probable cause to justify an arrest means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed an offense."  [Humbert v. Mayor & City Council of Balt. City, 866 F.3d 546, 555 \(4th Cir. 2017\)](#) (alterations and internal quotation marks omitted). "While probable cause requires more than bare

suspicion, it requires less than that evidence necessary to convict.”  [*Id.*](#) at 556 (internal quotation marks omitted).

In determining whether probable cause existed for an arrest, we must look at the totality of the circumstances surrounding the arrest.  [*Illinois v. Gates*](#), 462 U.S. 213, 230-32, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983);  [*Taylor v. Waters*](#), 81 F.3d 429, 434 (4th Cir. 1996). Determining whether the information surrounding an arrest is sufficient to establish probable cause is an individualized and fact-specific inquiry.  [*Wong Sun v. United States*](#), 371 U.S. 471, 479, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). “Whether probable cause exists in a particular situation always turns on two factors in combination: the suspect's conduct as known to the officer, and the contours of the offense thought to be committed by that conduct.”  [*Graham v. Gagnon*](#), 831 F.3d 176, 184 (4th Cir. 2016) (alteration and internal quotation marks omitted).

As relevant to the instant appeal, any person driving a vehicle in West Virginia while “in an impaired state” is guilty of a misdemeanor.  [*W. Va. Code § 17C-5-2\(e\)*](#) (2019). “Impaired state” means a person is under the influence of alcohol, any controlled substance, or any other drug.  [*W. Va. Code § 17C-5-2\(a\)\(1\)*](#).

When reviewing a district court's ruling on a motion to suppress, we review “conclusions of law de novo and underlying factual findings for clear error.” [*United States v. Fall*](#), 955 F.3d 363, 369-70 (4th Cir. 2020) (internal quotation marks omitted), *petition for cert. filed*, No. 19-8678 (U.S. June 3, 2020). “If, as here, the district court denied the motion to suppress, [we] construe[] the evidence in the light *897 most favorable to the government.” [*Id.*](#) (alterations and internal quotation marks omitted).

“Whether law enforcement would have inevitably discovered the evidence by lawful means is a question of fact” on which we accord “great deference to the district court's findings.”  [*Bullette*](#), 854 F.3d at 265. “A court reviewing for clear error may not reverse a lower court's finding of fact simply because it would have decided the case differently. Rather, a reviewing court must ask whether, on the entire evidence, it is left with the definite and firm conviction that a mistake has been committed.”  [*Ferebee*](#), 957 F.3d at 417 (internal quotation marks omitted). “If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.”  [*Id.*](#) (internal quotation marks omitted). When alternate views of the evidence are plausible in light of the record as a whole, “the district court's choice between them cannot be clearly erroneous.”  [*United States v. Stevenson*](#), 396 F.3d 538, 542 (4th Cir. 2005) (alterations and internal quotation marks omitted).

[1] [2] Based on our review of the record, we conclude that the district court did not err in crediting the arresting officer's testimony and finding that the arresting officer had probable cause to arrest Herman for driving under the influence. We further conclude that the district court did not err in finding that, absent the discovery of the firearm, the arresting officer would have arrested Herman for driving under the influence, would have searched him incident to that arrest, and inevitably would have discovered the firearm. Accordingly, we affirm the district court's judgment.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

All Citations

828 Fed.Appx. 894

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

JAMES LEE HERMAN, JR., a/k/a Herman Lee James, Jr., Petitioner,

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APPENDIX B

**TO PETITION FOR WRIT OF CERTIORARI
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**WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER**

**JONATHAN D. BYRNE
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300 Virginia Street East
Charleston, West Virginia 25301
Telephone: 304/347-3350
Counsel for Petitioner

1 inevitably would have been searched in this case.

2 THE COURT: Well, I'll try, before I finish
3 talking about this, to sort out the confusion between what
4 occurred and what by the evidence would have occurred that
5 would have led to the inevitable discovery had begun.
6 They're entirely two separate subjects.

7 As to what occurred, it was -- all of the searches and
8 seizures were illegal and the court so finds.

9 The only question before the court at this point is
10 whether the inevitable discovery doctrine, as adopted by the
11 United States Supreme Court, allows the evidence even after
12 the Fourth Amendment violation on the grounds of discovery.
13 Let me talk a little bit about it.

14 This is a motion to suppress to all evidence discovered
15 during a March 16th, 2019, search of the defendant,
16 including a Ruger P95 9-millimeter pistol. The indictment
17 in this matter charges the defendant with being a felon in
18 possession of a firearm.

19 The defendant argues that the physical evidence in this
20 case, including the Ruger P95 9-millimeter pistol, should be
21 excluded contending that Patrolman Montagu searched the
22 defendant for weapons during a traffic stop without having
23 reasonable suspicion that the defendant was armed and
24 dangerous.

25 The government contended at the earlier part of the

1 hearing that reasonable suspicion supported the search
2 despite failing to raise this argument in its brief.

3 In the alternative, however, the government argued at
4 the earlier part of this hearing held yesterday that the
5 evidence should not be suppressed because of the inevitable
6 discovery doctrine contending that the evidence in this case
7 would have been discovered through a search incident to an
8 arrest for driving under the influence.

9 The Fourth Amendment protects the right to be free from
10 unreasonable searches and seizures. Upon making a lawful,
11 routine traffic stop, a law enforcement officer may order
12 the driver to exit the vehicle without violating the Fourth
13 Amendment. *Pennsylvania v. Mimms*, 434 U.S. 106 at page 111
14 note 6.

15 Once the individual is out of the vehicle, however, the
16 officer may not search the person for weapons or contraband
17 unless the officer has, and I quote, "an articulable and
18 objectively reasonable belief that the suspect is
19 potentially dangerous," unquote. That's *Michigan v. Long*,
20 463 U.S. 1032 at 1051.

21 I find that Officer Montagu did not have a reasonable
22 suspicion sufficient to pat down the defendant as was
23 offered in evidence and on the video. Only Officer Hilbert,
24 who did not conduct that pat down, might have had reason to
25 believe that the defendant was potentially dangerous, but he

1 did not tell Officer Montagu about what he had heard about
2 this defendant being a triggerman back in the day or words
3 to that effect.

4 So Officer Montagu did not have the benefit of any of
5 that knowledge and Hilbert did not convey anything to
6 Officer Montagu to suggest a search. In fact, Patrolman
7 Montagu stated at the hearing prior to patting the defendant
8 down, the defendant did not, quote -- and I'm quoting the
9 patrolman -- pose what he perceived as a threat at the time
10 any more than anybody else does, unquote. Just flat out did
11 not pose a threat. That makes that search illegal under
12 settled -- long settled law.

13 Law enforcement officers cannot pat down a suspect
14 merely because the suspect is seized during a traffic stop
15 or merely because the officers plan to conduct a sobriety
16 test. There's some discussion about the proximity involved
17 and officer safety of being in proximity as justification
18 for such a search. That's not the standard. It could be
19 part of the standard if it was articulated as a reason to
20 believe that the defendant was a danger as outlined in case
21 law.

22 Because Officer Montagu lacked reasonable suspicion for
23 the pat down, that search was illegal. The gun discovered
24 during that search would be suppressed if we went no
25 further, but the government asserts that there is an

1 exception called the inevitable discovery doctrine. That
2 exception to the exclusionary rule permits the government to
3 use evidence obtained from an otherwise unreasonable,
4 illegal search if the government can establish by a
5 preponderance of the evidence that law enforcement would
6 have ultimately or inevitably discovered the evidence by
7 lawful means. *Nix v. Williams*, 467 U.S. 431 at page 444.

8 The Fourth Circuit has held that the inevitable
9 discovery doctrine, quote, "may apply where the facts
10 indicate another search inevitably would have occurred and
11 would inevitably have uncovered the evidence and that search
12 falls within an exception to the warrant requirement,"
13 unquote. That's *United States v. Allen*, 159 F.3d 832.

14 But speculation that evidence could be discovered is
15 insufficient. The evidence is only admissible where
16 evidence as introduced, which would give the court a
17 foundation upon which to find there would have been a
18 circumstance where the evidence would have inevitably
19 lawfully been discovered. Thus, it was not enough here for
20 the government to prove that a search incident to arrest
21 could have occurred or would have occurred, if my memory is
22 correct, and I did not read the transcript except for a
23 couple of quotes I pulled out. The officer testified that
24 he would have arrested this defendant, but as of yesterday
25 he did not testify that he would then have conducted a

1 search incident to that lawful arrest. It is a problem if
2 there is no such evidence.

3 Upon reopening the government presented that. We all
4 know that it's -- without having heard the testimony of this
5 officer or the policy from the Charleston Police Department
6 that it's likely that every arrest or nearly so results in a
7 search incident to that arrest, but without evidence that's
8 still a matter of speculation.

9 So the government has shown, based on Officer Montagu's
10 testimony, that he would have arrested the defendant. And I
11 find that there was probable cause for that arrest for DUI
12 because there were facts and circumstances within the
13 officer's knowledge sufficient to warrant a prudent person
14 or one of reasonable caution in believing that the
15 circumstances shown the suspect has committed or is about to
16 commit an offense.

17 At the hearing Officer Hilbert had testified that he
18 observed the defendant run a stop sign around 4:00 a.m.
19 Officers Montagu and Hilbert both testified that the
20 defendant appeared to be confused and impaired. I credit
21 their testimony. I also credit Officer Montagu's testimony
22 that there was an open container of alcohol in the vehicle
23 and even with the video there is evidence of a container
24 visible on the video. I credit, having listened to the
25 tape, that the defendant's speech was somewhat slurred,

1 although if that were the only criteria, I don't find that
2 would have been sufficient in this case. And Montagu
3 testified he could smell alcohol on the defendant as he
4 exited the car. Moreover, the defendant admitted to having
5 a few drinks after just leaving a club.

6 Based on those factors, probable cause existed for the
7 defendant's arrest for DUI. Officer Montagu testified that
8 he would have, in fact, arrested the defendant for that had
9 the pat down not occurred. I credit that testimony.

10 The government in testimony today, by recalling Officer
11 Montagu, proved by a preponderance that another search would
12 have occurred. That is the officer's testimony. That is he
13 would have, incident to the lawful arrest for DUI, searched
14 this defendant and the court finds that he would have
15 inevitably have discovered the pistol that is the subject
16 matter of this indictment.

17 There is sufficient evidentiary support for the
18 conclusion that the patrolman would have used the power to
19 search inherent to a lawful arrest and I find the government
20 has met its burden in this regard.

21 I grant the motion to suppress and suppress all
22 evidence discovered as a result of the March -- or, I mean,
23 I deny the motion to suppress as to the evidence discovered
24 on the March 16th, 2019 search of the defendant, including
25 the Ruger P95 9-millimeter pistol.

NUMBER _____

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APPENDIX C

**TO PETITION FOR WRIT OF CERTIORARI
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Counsel for Petitioner

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA)	JUDGMENT IN A CRIMINAL CASE
v.)	
)	
JAMES LEE HERMAN, JR.,)	Case Number: 2:19-cr-00107
also known as)	USM Number: 06203-088
HERMAN LEE JAMES, JR.)	Wesley P. Page
)	Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) one

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC §§ 922 (g) (1)	Felon in possession of a firearm	3/16/2019	One
and 924 (a) (2)			

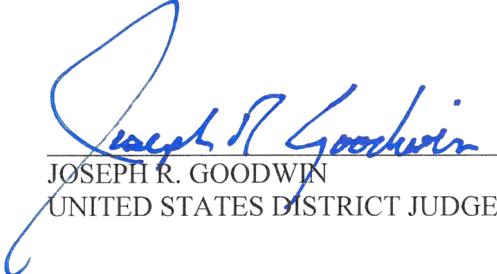
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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.

10/3/2019
Date of Imposition of Judgment


 JOSEPH R. GOODWIN
 UNITED STATES DISTRICT JUDGE
10/4/2019
 Date

DEFENDANT: JAMES LEE HERMAN, JR., also known as HERM.

CASE NUMBER: 2:19-cr-00107

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

40 months

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

that the defendant be housed at FCI Ashland.

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: JAMES LEE HERMAN, JR., also known as HERM.

CASE NUMBER: 2:19-cr-00107

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program 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: JAMES LEE HERMAN, JR., also known as HERM.
CASE NUMBER: 2:19-cr-00107

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.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JAMES LEE HERMAN, JR., also known as HERM.

CASE NUMBER: 2:19-cr-00107

SPECIAL CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, counseling and treatment for drug and alcohol abuse as directed by the probation officer.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

- 1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.
- 2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.
- 3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.
- 4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.
- 5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

DEFENDANT: JAMES LEE HERMAN, JR., also known as HERM.

CASE NUMBER: 2:19-cr-00107

CRIMINAL MONETARY PENALTIES

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

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

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

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

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

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ 0.00	\$ 0.00	

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: JAMES LEE HERMAN, JR., also known as HERM.

CASE NUMBER: 2:19-cr-00107

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The \$100 special assessment will be paid through participation in the Inmate Financial Responsibility Program.