APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6627

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TRAVIS DEQUINCY CROFT,
Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina at Greenville.
J. Michelle Childs, District Judge
(6:10-cv-00064-JMC1; 6:16-cv-00064-JMC)

Argued: December 10, 2020

Decided: January 29, 2021

Before MOTZ, THACKER, and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Quattlebaum wrote the opinion, in which Judge Motz and Judge Thacker joined.

ARGUED: Anwar Lord Graves, O'Melveny & Myers LLP, Washington, DC, for Appellant. Kathleen Michelle Stoughton, Office of the United States Attorney, Columbia, South Carolina, for Appellee.

ON BRIEF: Shannon Barrett, David K. Roberts, Michael Rosenblatt, O'Melveny & Myers LLP, Washington, DC, for Appellant. Peter M. McCoy, Jr., United States Attorney, Brook B. Andrews, Assistant United States Attorney, Office of the United States Attorney, Columbia, South Carolina, for Appellee.

QUATTLEBAUM, Circuit Judge:

The question here is whether a conviction under South Carolina's carjacking statute, S.C. Code § 16-3-1075, which prohibits taking or attempting to take a motor vehicle "by force and violence or by intimidation while the person is operating the vehicle or while the person is in the vehicle," is a violent felony predicate under the Armed Career Criminal Act ("ACCA"). To qualify as a violent felony, a predicate crime must have as an element the use, attempted use or threatened use of physical force against another person. In appealing the district court's denial of his petition for writ of habeas corpus under 28 U.S.C. § 2255, Travis Croft claims that S.C. Code § 16-3-1075 does not. Croft's argument comes down to whether "intimidation," as it is used in the carjacking statute, requires the threat of physical force against the person in the vehicle. Although South Carolina courts have not explicitly interpreted the carjacking statute, the state has given us every indication that it meant "intimidation" in its carjacking statute to require the use, attempted use or threat of physical force against the person in the vehicle. Therefore, we affirm the district court's conclusion that South Carolina carjacking

is a violent felony under the ACCA and affirm the denial of Croft's petition.[1]

I.

We begin by recapping the events that led to Croft's sentence. In 2003, Croft pled guilty to carjacking in violation of S.C. Code § 16-3-1075 and was sentenced to thirty months in prison.[2] Seven years later, Croft pled guilty to the distribution of crack cocaine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), (e). At sentencing for those charges, the government asserted that Croft was an armed career criminal based on two prior convictions of distributing crack cocaine and the 2003 South Carolina carjacking conviction. The district court agreed and sentenced Croft to 188 months in prison, applying the ACCA's fifteen-year minimum. We affirmed Croft's sentence enhancement as an armed career criminal. *See United States v. Croft*, 533 F. App'x 187 (4th Cir. 2013).

During Croft's imprisonment, the Supreme Court held in *Johnson v. United States*, 576 U.S. 591, 597 (2015), that the ACCA's residual clause was unconstitutionally vague. Soon after, it determined that its holding in *Johnson* applied retroactively to cases on

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[1] Our task was made easier by the exemplary advocacy and briefing of both parties' counsel.

[2] The record does not contain the facts pertaining to this conviction as the relevant court destroyed the records pursuant to its document retention policy. In any event, they would not assist us in applying the categorical approach.

collateral review. *Welch v. United States*, 136 S. Ct. 1257, 1268 (2016).

That same year, Croft filed a § 2255 motion to collaterally attack his sentence, arguing that *Johnson* changed the substantive law of his conviction because his South Carolina carjacking offense no longer qualified as a predicate offense under the ACCA. More specifically, Croft argued that the South Carolina carjacking statute could only be a predicate offense under the ACCA's residual clause, and, therefore, he no longer had enough predicate offenses to be sentenced as an armed career criminal. The government disagreed, arguing that the statute describes a violent felony under the ACCA's force clause because it requires the use, attempted use or threat of physical force against another person.

The district court denied Croft's motion to vacate his sentence. It identified three predicate convictions: two drug offenses, which Croft conceded were "serious drug offenses" under the ACCA, and the carjacking offense. 18 U.S.C. § 924(e)(2)(A). The district court reasoned that, although South Carolina has no precedent directly on point, its carjacking statute was a violent felony under the ACCA's force clause because it shared the same intimidation element as South Carolina robbery, which we held was a violent felony in *United States v. Doctor*, 842 F.3d 306, 309 (4th Cir. 2016). The district court concluded that Croft was not sentenced under the ACCA's residual clause and, therefore, was not eligible for relief under *Johnson*. It noted, however, that "It is not a settled point of law that the South Carolina carjacking statute satisfies the physical force requirement" of an ACCA violent

felony predicate. J.A. 66. The district court thus granted Croft a certificate of appealability on this specific question.

Croft filed two motions for reconsideration, which the district court denied. He then timely appealed to this Court, advancing the same arguments he pressed below.

II.

To address Croft's arguments on appeal, we first describe the analytical framework for our inquiry before applying it to the South Carolina carjacking statute to determine whether the statute qualifies as a violent felony predicate under the ACCA.[3]

A.

To qualify as a violent felony under the ACCA, a predicate crime must "ha[ve] as an element the use, attempted use, or threatened use of physical force against the person of another." *Doctor*, 842 F.3d at 308 (quoting 18 U.S.C. § 924(e)(2)(B)(i)). Physical force "means *violent* force—that is, force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010). Force that is sufficient "to overcome a victim's physical resistance is inherently 'violent.'" *Stokeling v. United States*, 139 S. Ct. 544, 553 (2019).

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[3] In doing this analysis, we review de novo the district court's conclusions of law underlying denial of a § 2255 motion. *See United States v. Fulks*, 683 F.3d 512, 516 (4th Cir. 2012). Whether an offense constitutes a violent felony under the ACCA is a question of law, and therefore we review it *de novo*. *See United States v. Cornette*, 932 F.3d 204, 207 (4th Cir. 2019).

Whether a state crime is classified as a violent felony predicate under the ACCA is determined by either the categorical or the modified categorical approach. *See Descamps v. United States*, 570 U.S. 254, 271-72 (2013). The categorical approach applies when the statute has an indivisible set of elements, whereas the modified categorical approach applies when the statute is divisible. *Id.* Here, the parties agree that we should apply the categorical approach. Based on our precedent, we agree. *See United States v. Burns-Johnson*, 864 F.3d 313, 316 (4th Cir. 2017).

To apply the categorical approach, we review the elements of the offense to determine the minimum conduct necessary for a violation as defined by state law, disregarding the particular facts underlying the defendant's conviction. *Id.* at 316. In that assessment, we must "rely on the interpretation of the offense rendered by the courts of the state in question." *Id.* (citing *United States v. Winston*, 850 F.3d 677, 684 (4th Cir. 2017)). Thus, South Carolina law controls our inquiry here.

Additionally, in determining the "minimum conduct" required to obtain a conviction for a state crime, we must ask whether there is "'a realistic probability, not a theoretical possibility,' that a state would actually punish that conduct." *Doctor*, 842 F.3d at 308 (quoting *United States v. Gardner*, 823 F.3d 793, 803 (4th Cir. 2016)). Therefore, we need not "conjure up fanciful fact patterns in an attempt to find some nonviolent manner in which a crime can be committed." *United States v. Salmons*, 873 F.3d 446, 451 (4th Cir. 2017); *see also Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684-85 (2013) ("[O]ur focus on the minimum conduct

criminalized by the state statute is not an invitation to apply 'legal imagination' to the state offense . . . .") (quoting *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)).

B.

South Carolina's carjacking statute requires proof that the defendant "(i) took, or attempted to take, a motor vehicle from another person; (ii) by force and violence or by intimidation; (iii) while the person was operating the vehicle or while the person was in the vehicle." *State v. Elders*, 688 S.E.2d 857, 862 (S.C. Ct. App. 2010) (citing S.C. Code Ann. § 16-3-1075(B)). Under the categorical approach, the question becomes whether "intimidation," as it is used in S.C. Code § 16-3-1075, requires the use, attempted use or threat of violent, physical force against the person in the vehicle. If it does not, then it is possible a person could be convicted of carjacking in South Carolina without committing a violent felony as defined in the ACCA.

As Croft properly notes, South Carolina courts have not defined "intimidation" in the carjacking statute. Accordingly, Croft argues the plain, and thus broader, meaning of "intimidation" applies. Using that approach, he contends that "intimidation" includes non-violent threats and coercion. For example, one could threaten a car owner with economic harm in order to obtain the vehicle. Croft argues that example does not involve the threat of violence but still violates the statute. Therefore, according to Croft, a violation of the South Carolina carjacking statute is not categorically a violent felony.

We disagree. The statute's text, surrounding caselaw and the historical context of the statute's passage all demonstrate that "intimidation" in the carjacking statute requires the threat of physical force against the person in the vehicle. Croft's reference to other statutes in South Carolina and other state carjacking statutes does not save his argument. As all roads led to Rome during its empire, here all roads lead to the conclusion that S.C. Code § 16-3-1075 is categorically a violent felony under the ACCA.

1.

We begin with the statute's text. In order to commit carjacking, a defendant must take a motor vehicle from someone "while the person is in the vehicle." S.C. Code § 16-3-1075(B). This context narrows the scope of "intimidation." Wielding economic leverage may be intimidation in other contexts, but it does not make sense when taking a vehicle from a person who is in it. Simply put, context matters, and Croft's arguments are divorced from that statutory context.

Further, it is important to remember that our analysis must not devolve into the use of "legal imagination" to develop "fanciful fact patterns" that violate the statute without the threat of violence. *Moncrieffe*, 133 S. Ct. at 1685; *Salmons*, 873 F.3d at 451. Croft's arguments invite us to do just that. The examples Croft conjures up may be theoretically possible. But there is not a "realistic probability" they would occur. *Doctor*, 842 F.3d at 308. Consistent with that principle, no South Carolina courts have affirmed carjacking convictions that do not involve violence or the threat of violent force. Croft therefore cannot "point

to . . . actual cases in order to demonstrate that a conviction for a seemingly violent state crime could in fact be sustained for nonviolent conduct." *Salmons*, 873 F.3d at 451. Although not determinative, this absence militates against Croft's arguments.

2.

Croft claims the text of the carjacking statute supports his argument. According to Croft, by using "intimidation," the South Carolina General Assembly intended the broader interpretation of that term found in other statutes. Specifically, Croft points to the criminal sexual conduct in the third degree, witness intimidation and unlawful use of a telephone statutes. None of those examples are persuasive. The criminal sexual conduct statute uses the word "coercion" rather than "intimidation," so it does not tell us anything about how the legislature meant to define "intimidation" in carjacking. *See* S.C. Code § 16-3-654(2).

And the witness intimidation statute considers "intimidate" as the ends, not the means, of the criminal conduct. *See* S.C. Code § 16-9-340(A)(1) (prohibiting "by *threat or force* to intimidate or impede a judge, magistrate, juror, witness, or potential juror . . .") (emphasis added). Thus, the statute explicitly contemplates using non-violent "threat[s]" as leverage for the purpose of "intimidat[ing]" a judicial decision-maker. *Id.* The use of "intimidate" in the unlawful use of a telephone statute is similar. *See* S.C. Code § 16-17-430(A)(2) (prohibiting use of a telephone to "threaten . . . with the intent to . . . intimidate"). Those are wholly different uses than the carjacking statute's use of "intimidation," which prohibits it as

the means of taking a vehicle from a person while the person is in it.

3.

Turning next to caselaw, while South Carolina courts have not defined "intimidation" in the context of the carjacking statute, they have in the context of common-law robbery. In *State v. Rosemond*, the South Carolina Supreme Court defined robbery as the "felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." 589 S.E.2d 757, 758 (S.C. 2003). It explained that a defendant therefore can commit robbery by "violence" or by "intimidation." *Id.* at 758-59. In defining "intimidation" in the robbery context, the South Carolina Supreme Court borrowed from federal bank robbery law. Specifically, it explained, "[w]hen determining whether the robbery was committed with intimidation, the trial court should determine whether an ordinary, reasonable person in the victim's position would feel a threat of *bodily harm* from the perpetrator's acts." *Id.* at 759 (citing *United States v. Wagstaff*, 865 F.2d 626 (4th Cir. 1989)) (emphasis added). In *Wagstaff*, this Court concluded that "taking 'by intimidation' in the federal bank robbery statute, 18 U.S.C. § 2113(a), required a threat of bodily harm. 865 F.2d at 627. The South Carolina Supreme Court thus imputed the federal bank robbery statute's definition of "intimidation" into its common-law robbery definition.

In fact, we reached that very conclusion in *Doctor*. 842 F.3d 306. This Court held that South Carolina common-law robbery was a violent felony under the

ACCA because "the South Carolina Supreme Court modeled its definition of intimidation in robbery cases after the one this Circuit uses in federal bank robbery cases . . . ." *Id.* at 309. And because the *Wagstaff* definition of "intimidation" required "a threat of violent force," South Carolina robbery must categorically qualify as a "violent felony" ACCA predicate. *Id.* at 310.

South Carolina's definition of "intimidation" in robbery provides compelling weight to our interpretation of "intimidation" in the carjacking statute because carjacking is a type of robbery. Apart from whether carjacking is criminalized by statute, it is a specific example of common-law robbery. *See Jones v. United States*, 526 U.S. 227, 235 (1999) (noting that "carjacking is a type of robbery"); 4 Wharton's Criminal Law § 468 (15th ed.) ("A relatively modern variation of robbery is the offense of 'carjacking.'"). In fact, before carjacking statutes were enacted, carjacking was prosecuted as robbery, and it still is in states that lack a specific carjacking statute. *See United States v. Arnold*, 126 F.3d 82, 92 (2d Cir. 1997) (Miner, J., dissenting) (collecting cases and discussing New York state prosecutions of carjacking under its generalized robbery statute); *see also* NAT'L CONFERENCE OF STATE LEGISLATURES, AUTO THEFT & CARJACKING STATE STATUTES (2008) (listing states without carjacking statutes where such conduct "[m]ay be prosecuted under general robbery statute"). The elements of South Carolina carjacking neatly overlap the more generalized elements of common-law robbery: (1) the taking of personal property (a motor vehicle); (2) from the

person of another or in his presence (a person in a vehicle); (3) by violence (force and violence) or by putting such person in fear (intimidation). *Compare Rosemond*, 589 S.E.2d at 758, *with Elders*, 688 S.E.2d at 862. Carjacking in South Carolina can thus be characterized as a subset of robbery. We already know that South Carolina defines the intimidation element of common-law robbery as requiring a "threat of bodily harm." *Rosemond*, 589 S.E.2d at 759. Because carjacking is just one specific type of robbery, *Rosemond* provides strong evidence that South Carolina would define "intimidation" the same way in its carjacking statute.

Croft tries to distinguish the carjacking statute from common-law robbery, arguing that the South Carolina General Assembly intentionally chose to use different language in the carjacking statute. He points to the legislature's choice not to include the phrase "putting such a person in fear" in the carjacking statute, while it is an element of common-law robbery. Croft argues this difference imparts an intent to define "intimidation" differently in carjacking than in common-law robbery. It is true that we presume the legislature is aware of the common law, and a choice to use a phrase not rooted in the common law may be an indication that the legislature meant something different. *See United States v. Drummond*, 925 F.3d 681, 695-96 (4th Cir. 2019). But here, it is a distinction without a difference. Although in *Rosemond* the South Carolina Supreme Court outlines the analogous intimidation element in common-law robbery as "putting such person in fear," South Carolina courts have used "putting such person in fear" and

"intimidation" interchangeably even before the legislature passed the carjacking statute. *Rosemond*, 589 S.E.2d at 758; *see*, *e.g.*, *State v. Hiott*, 276 S.E.2d 163, 167 (S.C. 1981) ("The gravamen of a robbery charge is a taking from the person or immediate presence of another by violence or intimidation."); *Young v. State*, 192 S.E.2d 212, 214 (S.C. 1972) ("Robbery is larceny from the person or immediate presence of another by violence or intimidation."). Because South Carolina courts have used "intimidation" interchangeably with "putting such person in fear," the legislature's choice to use "intimidation" in the carjacking statute does not indicate any desire to depart from the common-law definition.

4.

If the carjacking statute's text and robbery caselaw were not enough, the historical context of the carjacking statute's passage bolsters our interpretation of it, rather than the one Croft proffers. South Carolina's carjacking statute was modeled off the federal one. In fact, S.C. Code § 16-3-1075 borrows the "by force and violence or by intimidation" phrase directly from the federal carjacking statute. *See* 18 U.S.C. § 2119. And the South Carolina statute was enacted shortly after the federal one. *See* Anti Car Theft Act of 1992, Pub. L. No. 102-519, 106 Stat. 3384 (1992); Act No. 163, 1993 S.C. Acts 529 (June 15, 1993). Federal courts have uniformly understood the "by force and violence or by intimidation" phrase to require the use, attempted use or threatened use of physical force, and this Court has already interpreted the federal carjacking statute in that manner. *See United States v. Evans*, 848 F.3d 242, 246-47 (4th Cir.

2017) (interpreting federal carjacking statute); *United States v. McNeal*, 818 F.3d 141, 153 (4th Cir. 2016) (collecting cases interpreting the same phrase in a variety of federal statutes).[4] Although federal law does not control our question here—South Carolina law does—to the extent Croft argues the South Carolina legislature intended to depart from its understanding of "intimidation" in common-law robbery, it seems that it intended to import the use of "intimidation" from the federal carjacking statute. Because we have already held that "intimidation" in the federal carjacking statute requires the use or threat of physical force, this theory does not help Croft.[5]

5.

In a final attempt to salvage the possibility of a broad interpretation of "intimidation" in S.C. Code § 16-3-1075, Croft points to other state carjacking statutes that have been interpreted to require merely non-violent intimidation. But those cases ground

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[4] Croft emphasizes that 18 U.S.C. § 2119 contains a specific intent requirement to cause "death or serious bodily harm," which S.C. Code § 16-3-1075 lacks. But this Court in *Evans* did not consider the intent requirement in reaching its interpretation. 848 F.3d at 246-47. The operative phrase, "by force and violence or by intimidation," has been consistently interpreted in federal law the same way, regardless of whether a statute contains the intent requirement. *See McNeal*, 818 F.3d at 153.

[5] Croft points to *United States v. Winston*, 850 F.3d 677 (4th Cir. 2017), in response to this point. *Winston* makes clear that a federal interpretation does not control the interpretation of the same language in a state law. 850 F.3d at 686. But it does not instruct us to ignore federal law altogether when there is evidence that the state law was modeled off federal law.

their interpretations on evidence from pattern jury instructions that define the intimidation element broadly to encompass non-violent conduct. *See United States v. Baldon*, 956 F.3d 1115, 1124-25 (9th Cir. 2020) (pointing to California's pattern jury instructions that allowed a carjacking conviction based upon intimidation of threatening a destruction of property); *Shropshire v. United States*, 259 F. Supp. 3d 798, 804-05 (E.D. Tenn. 2017) (pointing to Tennessee's pattern jury instructions which defined "intimidation" to include a broad understanding of coercion). We lack similar evidence from South Carolina. There is no evidence that South Carolina's pattern jury instructions describe a broad understanding of the intimidation element in carjacking. Nor is there a single case from South Carolina where courts have applied the carjacking statute to conduct involving intimidation that lacked a threat of force against another person.

III.

No matter how we trace "intimidation" in S.C. Code § 16-3-1075 back to discern the legislature's intent, all roads lead to the same place—a requirement of threatening physical force against the person in the vehicle. S.C. Code § 16-3-1075 is thus a violent felony predicate under the ACCA. Croft's § 2255 motion to vacate his sentence must therefore be denied. For the reasons set forth above, the judgment below is

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

Travis Dequincy Croft, Petitioner, v. United States of America, Respondent.	)	Civil Action No. 6:10-cr-01090-JMC **ORDER AND OPINION**

The matter before the court is Petitioner Travis Dequincy Croft's Motion for Reconsideration. (ECF No. 226.) Petitioner seeks to "reopen his motion to vacate, set aside, or correct because the district court failed to find if Petitioner's South Carolina drug offense satisfies the requirements of a 'controlled substance offense.'" (*Id.* at 1.) For the reasons set forth herein, the court **DENIES** Petitioner's Motion for Reconsideration (ECF No. 226).

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 3, 2010, Petitioner was indicted for distribution of crack cocaine, possession of marijuana with intent to distribute, being a felon in possession of a firearm, and using a firearm in furtherance of a drug trafficking crime. (ECF No. 2.) On February 22, 2011, Petitioner pled guilty to distributing crack cocaine and being a felon in possession of a firearm, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e). (ECF

Nos. 35, 64.) The United States Probation Office prepared a Presentence Investigation Report ("PSR") (ECF No. 64), which stated that Petitioner was an armed career criminal based on his three (3) prior state convictions for distribution of crack cocaine. (ECF No. 64 at ¶¶ 21, 27, 28, 52.)

On June 2, 2011, the court sentenced Petitioner to one hundred eighty-eight (188) months of imprisonment in the United States Bureau of Prisons. (ECF No. 82.) Petitioner appealed to the United States Court of Appeals for the Fourth Circuit, which remanded the case to this court for resentencing. (ECF Nos. 92, 109, 112.) On October 9, 2012, the court resentenced Petitioner to one hundred eighty-eight (188) months of imprisonment. (ECF Nos. 153, 154.) Petitioner appealed again to the Fourth Circuit, which affirmed the district court's decision. (ECF Nos. 157, 169.)

On January 7, 2016, Petitioner, proceeding *pro se*, filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 (ECF No. 176) asserting that his sentence should not have been enhanced under the Armed Career Offender Provision of the Residual Clause. (ECF No. 176-1.) The Government opposed and claimed that carjacking is a predicate offense under the Armed Career Criminal Act ("ACCA"). (ECF No. 185.) On September 16, 2016, an amended PSR was filed. (ECF No. 208.) On February 17, 2016, the Government filed a Motion for Summary Judgment asserting that the Section 2255 claim was without merit. (ECF No. 186.) On March 24, 2016, Petitioner responded in opposition. (ECF No. 193.) On August 11, 2018, the court denied Petitioner's Motion to Vacate, finding his

prior carjacking conviction to be a violent felony. (ECF No. 215.) On June 13, 2018, Petitioner filed a Motion for Reconsideration of his Motion to Vacate (ECF No. 224), which the court denied (ECF No. 225).

Petitioner filed another Motion for Reconsideration, requesting that the court reopen his Motion to Vacate because the court allegedly failed to determine whether his offense under South Carolina law satisfies the requirements of a "controlled substance offense." (ECF No. 226.) The Government filed a response in opposition on January 1, 2019, arguing that Petitioner has forfeited his right to appeal because he did not raise the argument in his previous appeals. (ECF No. 230.)

II. ANALYSIS

Petitioner asserts that the court must reconsider his motion, pursuant to Fed. R. Civ. P. 60(b). Rule 60(b) provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
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> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

> (4) the judgment is void
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Stated differently, Rule 60 does not authorize a motion merely for reconsideration of a legal issue. *See United States v. Williams*, 674 F.2d 310, 312 (4th Cir. 1982). A motion to reconsider "cannot appropriately be granted where the moving party simply seeks to have the [c]ourt rethink what [it] has already thought through . . . ." *United States v. Dickerson*, 971 F. Supp. 1023 (E.D. Va. 1997) (internal quotation marks omitted). Defendant cites to *United States v. Rhodes*, 736 F. App'x 375, 378 (4th Cir. 2018) as authority that prevents him from being subjected to the enhanced sentencing provisions under 18 U.S.C. § 924(e)(1). (ECF No. 226.) However, this is Petitioner's second Section 2255 motion, and successive filings are available only in limited circumstances because "courts must not allow prisoners to circumvent them by attaching labels other than 'successive application' to their pleadings." *United States v. Winestock*, 340 F.3d 200, 203-4 (4th Cir. 2003) (citing *Calderon v. Thompson*, 523 U.S. 538, 553 (1998). Here, Petitioner has failed to request pre-filing authorization from the Fourth Circuit and for relief under Section 2255, and therefore the court lacks jurisdiction.

Here, Petitioner requests that the court rule on his supplemental motion regarding whether his three (3)

prior state drug convictions are serious drug convictions under the ACCA. (ECF No. 201.) The record shows that Petitioner did not include any claim regarding his prior drug convictions qualifying as predicate offenses under the ACCA (*Id.*), and that the court denied Petitioner's supplemental motion on September 8, 2016. (ECF No. 206.) Petitioner seeks reconsideration of issues that he has appealed, and therefore, the court is without jurisdiction to address his motion.

III. CONCLUSION

For the reasons stated above, the court DENIES Petitioner's Motion for Reconsideration pursuant to Rule 60(b) (ECF No. 226).

IT IS SO ORDERED.

J. Michelle Childs
United States District Judge

October 15, 2019
Columbia, South Carolina

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

Travis Dequincy Croft, Petitioner, v. United States of America, Respondent.	)	Criminal No. 6:10-cr-01090-JMC **ORDER AND OPINION**

This matter is before the court on Petitioner's Motion for Reconsideration (ECF No. 224). Petitioner seeks review of the court's May 11, 2018 Order (ECF No. 215), denying Petitioner's Motion to Vacate under 28 U.S.C. § 2255 (ECF No 176) and denying as moot the Government's Motion for Summary Judgment (ECF No. 186). For the reasons stated herein, the court **DENIES** Petitioner's Motion for Reconsideration.

I. FACTUAL AND PROCEDURAL BACKGROUND

The court adopts its prior recitation of the facts from its May Order (ECF No. 186 at 1-2). On May 11, 2018, this court determined that Petitioner's prior state carjacking conviction qualified as a "violent felony" under the Armed Career Criminal Act ("ACCA"). (ECF No. 186 at 6.) The court made this determination by applying the "categorical approach" in which the court considered the elements of the offense and the fact of conviction. (ECF No. 186 at 4-6.) The court

concluded that both carjacking by means of violence or by means of intimidation fulfilled the requirements of the force clause of the criminal statute. (ECF No. 186 at 6.)

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 59(e), a court may "alter or amend [a] judgment if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or manifest injustice." *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 412 (4th Cir. 2010) (citing *Small v. Hunt*, 98 F.3d 789, 797 (4th Cir. 1996)). The moving party has the burden to establish one of these three grounds in order to obtain relief under Rule 59(e). *Loren Data Corp. v. GXS, Inc.*, 501 F. App'x 275, 285 (4th Cir. 2012). The decision whether to reconsider an order pursuant to Rule 59(e) is within the discretion of the district court. *See Hughes v. Bedsole*, 48 F.3d 1376, 1382 (4th Cir. 1995). Importantly, "reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted).

In addition, because Petitioner is a *pro se* litigant, the court is required to interpret his documents liberally and will hold those documents to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978); *see also Hardin v. United States*, C/A No. 7:12-cv-0118-GRA, 2012 WL 3945314, at *1 (D.S.C. Sept. 10, 2012).

III. DISCUSSION

In Petitioner's Motion for Reconsideration[1], he urges the court to reconsider its decision to deny his Motion to Vacate his sentence, claiming there has been an intervening change in the controlling law since he filed the Motion on January 11, 2016. Specifically, Petitioner claims that the United States Supreme Court's decision in *Mathis v. United States* warrants reconsideration of the court's determination in its May 11, 2018 Order. However, the United States Supreme Court's holding in that case that a prior state criminal conviction will not qualify as a predicate "violent felony" under the ACCA if an element of the crime of conviction is broader than an element of the generic offense does not change the law applied in Petitioner's case. *See Mathis v. United States*, 136 S. Ct. 2243, 2251 (2016). In support of his Motion, Petitioner asks this court to adopt the decision of the United States District Court for the Eastern District of Tennessee in *Shropshire v. United States*. In that case, the court applied the holding in

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[1] Under Rule 59(e), a Motion for Reconsideration "must be filed no later than 28 days after the entry of judgment." Fed. R. Civ. P. 59(e). The prison mailbox rule, established in *Houston v. Lack*, allows *a pro se* litigant's legal papers to be "considered filed 'upon delivery to prison authorities, not receipt by the clerk.'" *United States v. McNeill*, 523 F. App'x 979, 981 (4th Cir. 2013); *see also Amerson v. Stevenson*, C/A No: 4:11-cv-03266-DCN, 2012 WL 2856516, at *2 (D.S.C. July 11, 2012). This court entered judgment on May 11, 2018, so Petitioner was required to file his Motion by June 9, 2018. The prison mailbox rule is applicable in this case, and Petitioner delivered his Motion to prison authorities on June 11, 2018. Notwithstanding the fact that Petitioner's Motion was untimely, the court considered his Motion on the merits.

Mathis and found that Tennessee's carjacking statute was overly broad and prevented the defendant's prior carjacking conviction from qualifying as a "violent felony" under the ACCA. Specifically, the court in *Shropshire* determined that the Tennessee carjacking statute "is overly broad because some conduct covered by the criminal [carjacking] statute does not necessarily require the use of violent physical force." *Shropshire v. United States*, 259 F. Supp. 3d 798, 802 (E.D. Tenn. 2017). The court based this determination on the fact that carjacking by intimidation is "capable of commission without the use, attempted use, or threatened use of force capable of causing physical pain or injury." *Id.* at 805.

However, this court refuses to adopt the *Shropshire* court's determination because it is in direct contradiction to the mandatory law of this jurisdiction established by the United States Court of Appeals for the Fourth Circuit in *United States v. Doctor*. The Fourth Circuit, and this court by extension, has adopted the view of the South Carolina Supreme Court that "to constitute intimidation in South Carolina, a . . . victim must feel a threat of physical force based on the defendant's acts," meaning that "a defendant intimidates a victim by threatening physical force." *United States v. Doctor*, 842 F.3d 306, 309 (4th Cir. 2016). Therefore, the court rejects Petitioner's request and reaffirms its previous determination that Petitioner's previous carjacking conviction serves as a predicate offense under the ACCA.

IV. CONCLUSION

After careful consideration of Petitioner's arguments and for the reasons set forth above, the court

DENIES Petitioner's Motion for Reconsideration. (ECF No. 224.)

IT IS SO ORDERED.

J. Michelle Childs
United States District Judge

October 15, 2018
Columbia, South Carolina

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Travis Dequincy Croft, Petitioner, v. United States of America, Respondent.	)	Criminal Action 6:10-cr-01090-JMC **ORDER AND OPINION**

This matter is before the court on Petitioner's Motion to Vacate under 28 U.S.C. § 2255. (ECF No. 176.) Petitioner seeks relief from his sentence under *United States v. Johnson*, 135 S. Ct. 2551 (2015). (*See* ECF No. 176-1 at 7.) For the reasons stated below, the court **DENIES** Petitioner's Motion to Vacate under 28 U.S.C. § 2255 (ECF No. 176).

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2010, Petitioner was indicted for distribution of crack cocaine, being a felon in possession of a firearm, and using and carrying a firearm in furtherance of a drug trafficking crime. (ECF No. 2.) On February 22, 2011, Petitioner and the Government entered into a plea agreement whereby Petitioner agreed to plead guilty to the charges of distribution of crack cocaine and being a felon in possession of a firearm. (ECF No. 35.) A Presentence Investigation Report ("PSR") was prepared by the U.S. Probation Office. (ECF No. 64.) The PSR determined that Petitioner was an armed

career criminal based on two (2) prior convictions for distribution of crack cocaine and one (1) prior conviction for carjacking. (ECF No. 64 at ¶¶ 21, 27, 28, 52). On June 2, 2011, the court sentenced Petitioner to 188 months of incarceration. (ECF No. 82.) Petitioner filed an appeal which resulted in a remand for resentencing in order to allow Petitioner an opportunity to allocute. (ECF Nos. 92, 109, 112.) On October 9, 2012, Petitioner was resentenced (ECF No. 153) and his original sentence did not change (ECF No. 154). Petitioner appealed his sentence, and his sentence was affirmed by the United States Court of Appeals for the Fourth Circuit. (ECF No. 157, 169.)

On January 7, 2016, Petitioner filed a *pro se* Motion to Vacate under 28 U.S.C. § 2255. (ECF No. 176.) The Government responded (ECF No. 185), and Petitioner replied (ECF No. 197). On September 16, 2016, an amended Presentence Investigation Report was filed. (ECF No. 208.)

On February 17, 2016, the Government filed a Motion for Summary Judgment on Petitioner's 28 U.S.C. § 2255 claim. (ECF No. 186.) Petitioner responded in opposition on March 24, 2016. (ECF No. 193.)

II. LEGAL STANDARD

In order to move for relief under 28 U.S.C. § 2255, Petitioner must plead that he was sentenced "(1) in violation of the Constitution or laws of the United States, (2) the court was without jurisdiction to impose such sentence, (3) that the sentence was in excess of the maximum authorized by law, or (4) that his sentence is otherwise subject to collateral attack." 28 U.S.C. § 2255(a).

Pursuant to 28 U.S.C. § 2255(f), a petitioner has one year from the time his or her conviction becomes final to file a motion under this section, or one year from "the date on which the right asserted was initially recognized by the United States Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." *See* 28 U.S.C. § 2255 (f)(1), (3).

Because Petitioner is a *pro se* litigant, the court is required to liberally construe his arguments. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978); *see also Haines v. Kerner*, 404 U.S. 519, 520 (1972) (*pro se* plaintiffs "inartful pleadings" may be sufficient enough to provide the opportunity to offer supporting evidence.)

III. ANALYSIS

Petitioner asserts that his sentence is in excess of the maximum authorized by law because he does not fall under the Armed Career Criminal Act ("ACCA") given the Supreme Court's holding in *Johnson.* In *Johnson v. United States*, the United States Supreme Court held that the residual clause of the ACCA was unconstitutionally vague in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. 135 S. Ct. at 2563. The residual clause defines a violent felony as "[crimes that involve] conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B). *Johnson* was decided on June 26, 2015, and presented a new right for defendants sentenced to the mandatory minimum sentence of fifteen

(15) years based on the residual clause of the statutory definition of violent felony. In *Welch v. United States*, the Supreme Court held that *Johnson* had a retroactive effect in cases on collateral review. 136 S. Ct. 1257, 1268 (2016).

In *Johnson*, the Supreme Court only ruled as to the ambiguity of the residual clause within the statutory definition of violent felony under 18 U.S.C. § 924(e)(2)(B)(ii). *Johnson*, 135 S. Ct. at 2563. The Supreme Court did not address the statutory definition of "serious drug offense"[1] or call into question any other part of the statutory definition of violent felony. *Id.*

Petitioner's three predicate convictions were two (2) drug offenses and one (1) state carjacking conviction. Petitioner's two prior drug convictions qualify as "serious drug offenses;"[2] however, Petitioner posits that his carjacking conviction does not qualify as a "violent felony."

A. South Carolina's Crime of Carjacking Qualifies as a Violent Felony

The relevant portion of the ACCA defines a "violent felony" as "any crime punishable by imprisonment for a term exceeding one year" that "has as an

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[1] The term "serious drug offense" includes "an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law." 18 U.S.C. § 924(e)(2)(A)(ii).
[2] Petitioner concedes this in his Motion. (*See* ECF No. 176-1 at 4.)

element the use, attempted use, or threatened use of physical force against the person of another."[3] 18 US.C. § 924(e)(2)(B)(i). The Fourth Circuit has expressed concern about offenses which require nothing more than *de minimis* force satisfying the force clause and held, "'[p]hysical force' for purposes of the force clause does not include the 'slightest offensive touching' that might sustain a misdemeanor battery conviction under some state laws." *United States v. Gardner*, 823 F.3d 793, 803 (4th Cir. 2016). "Instead, 'physical force' within the context of the ACCA means 'violent force—that is, force capable of causing physical pain or injury to another person.'" *Id.*

Carjacking meets the one-year imprisonment requirement because it is punishable by twenty years of incarceration. S.C. Code Ann. § 16-3-1075 (2003).

To determine whether carjacking qualifies under the force clause, the court applies the "categorical approach" in which the court only considers the elements of the offense and the fact of conviction. *United States v. Baxter*, 642 F.3d 475, 476 (4th Cir. 2011) (citing *United States v. White*, 571 F.3d 365, 368 (4th Cir.2009)). The court considers only the elements of

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[3] Violent felonies also include "any crime punishable by imprisonment for a term exceeding one year" that "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." 18 U.S.C. § 924(e)(2)(B)(ii). The court will only address whether Petitioner's conviction falls under the force clause because carjacking is not an enumerated crime and the Supreme Court deemed the clause concerning risk of physical injury unconstitutionally vague in *Johnson.*

the state offense not the defendant's conduct.[4] *Id.* The court looks to the "minimum conduct" required for conviction. *Gardner*, 823 F.3d at 803 (quoting *Castillo v. Holder*, 776 F.3d 262, 267 (4th Cir. 2015)). However, when considering the minimum conduct, there must be a "realistic probability, not a theoretical possibility," that such conduct would be punished by the state. *Id.* (quoting *Moncrieffe v. Holder*, 590 U.S. 184, 190 (2013)).

The court looks to state courts to define the elements of an offense and identify the minimum conduct necessary for a conviction. *Id.* Conviction for carjacking in South Carolina requires proof that the defendant: "(1) took, or attempted to take, a motor vehicle from another person; (2) by force, violence, or intimidation; (3) while the person was operating the vehicle or while the person was in the vehicle." *State v. Elders*, 688 S.E.2d 857, 862 (2010) (interpreting S.C. Code Ann. § 16-3-1075 (2003)). Carjacking may be accomplished by violence or force or by means of intimidation. *Id.* If either carjacking by means of violence or by means of intimidation fails to satisfy the force clause definition, the crime is not a violent felony. *See Gardner*, 823 F.3d at 803. Carjacking by force or violence involves "force capable of causing physical pain or injury to another person." *Id.* Therefore, carjacking by means of force or violence requires

[4] Courts use the "modified categorical approach" for a narrow set of cases under § 924(e)(2)(B)(ii) (the "enumerated clause"). *Descamps v. United States*, 570 U.S. 254 (2013). Because carjacking is not enumerated in § 924(e)(2)(B)(ii), the modified categorical approach is not applicable.

more than *de minimis* force and fulfills the force clause.

The issue is whether carjacking by means of intimidation would fulfill the requirements of the force clause. In *United States v. Doctor*, the Fourth Circuit observed that "[a] review of South Carolina law reveals . . . that intimidation necessarily involves threatened use of physical force." 842 F.3d at 309 (4th Cir. 2016). Robbery and carjacking are separate offenses. *Doctor* addressed intimidation in relation to robbery; however, the observation of the Fourth Circuit in *Doctor* is instructive in this case because both crimes contain intimidation as a potential method to complete the crime. In South Carolina, robbery is defined as the "felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." *State v. Rosemond*, 589 S.E.2d 757, 758 (2003). A defendant can commit robbery by alternative means of violence or intimidation. *Id.* at 758-59. Intimidation requires "an ordinary, reasonable person in the victim's position [to] feel a threat of bodily harm from the perpetrator's acts." *Id.* (citing *United States v. Wagstaff*, 865 F.2d 626 (4th Cir.), *cert. denied*, 491 U.S. 907 (1989)). In *Doctor*, South Carolina's interpretation of intimidation for robbery fulfilled the "physical force" requirement described in *Gardner* and qualified robbery as a predicate offense under the force clause. 842 F.3d at 312.

The elements of South Carolina's crimes of carjacking and robbery are effectively the same. Carjacking simply specifies the goods and property taken

from the victim. South Carolina courts' interpretation of intimidation regarding robbery would likely apply in carjacking cases. *Gardner*, 823 F.3d at 803. Therefore, carjacking by means of intimidation satisfies the force clause.

Both carjacking by means of force or violence and carjacking by means of intimidation exceed the physical force threshold in *Gardner*. Thus, the South Carolina crime of carjacking satisfies the force clause, and Petitioner's previous carjacking conviction serves as a predicate offense under the ACCA.

B. Timeliness of Petitioner's Motion

Petitioner seeks relief under *Johnson*, but its holding does not affect Petitioner's sentence. As explained above, Petitioner was sentenced under the ACCA based on two (2) "serious drug offenses" and one (1) violent felony conviction. Because Petitioner was not sentenced under the residual clause at issue in *Johnson*, the Supreme Court's holding in *Johnson* does not change

Petitioner's status. Therefore, Petitioner cannot assert the new right recognized in *Johnson*, ultimately making his motion untimely under 28 U.S.C. § 2255(f).[5]

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[5] Petitioner's claim cannot fall under the auspices of 28 U.S.C. § 2255(f)(3), thus the one-year time period after *Johnson* in which to file his Motion is not applicable. *See United States v. Brown*, 868 F.3d 297, 304 (4th Cir. 2017) ("[The Fourth Circuit is] compelled to affirm [the untimeliness of the petitioner's motion regarding the residual clause of the mandatory Sentencing Guidelines] because only the Supreme Court can recognize the right which would render Petitioner's motion timely under

IV. CONCLUSION

For the reasons stated above, the court DENIES Petitioner's Motion to Vacate under 28 U.S.C. § 2255. (ECF No. 176.) This ruling moots the Government's Motion for Summary Judgment. (ECF No. 186.) Therefore, the court DENIES AS MOOT the Government's Motion for Summary Judgment (ECF No. 186).

CERTIFICATE OF APPEALABILITY

The law governing certificates of appealability provides that:

> (c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> (c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies this standard by demonstrating that reasonable judges would find this court's assessment of his constitutional claims is debatable or wrong and that any dispositive proce-

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§ 2255(f)(3).") Since Petitioner cannot assert the new right recognized in *Johnson*, Petitioner's claim must be timely under another subsection of 28 U.S.C. § 2255(f). The only other subsection that would be applicable to Petitioner's claim is 28 U.S.C. § 2255(f)(1). However, Petitioner's Motion would be untimely under this subsection because he pled guilty in 2011 and this Motion was filed well beyond the one-year statute of limitations set forth under 28 U.S.C. § 2255(f)(1).

dural ruling by the district court is likewise debatable. *See*, *e.g.*, *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has been met.

It is not a settled point of law that the South Carolina carjacking statute satisfies the physical force requirement in *Gardner*, and reasonable jurists could find Petitioner's constitutional claim debatable.

Because the court finds that Petitioner has made a substantial showing of the denial of a constitutional right and that reasonable jurists would find this court's assessment of Petitioner's constitutional claims to be debatable or erroneous, a certificate of appealability is granted as to Petitioner's claim that carjacking is not a violent felony.

IT IS SO ORDERED.

J. Michelle Childs
United States District Judge

May 11, 2018
Columbia, South Carolina

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 12-4890

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

TRAVIS DEQUINCY CROFT,
Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Greenville
J. Michelle Childs, District Judge
(6:10-cr-01090-JMC-1)

Submitted: June 27, 2013

Decided: July 16, 2013

Before DUNCAN, AGEE, and WYNN, Circuit Judges.

Affirmed by unpublished PER CURIAM opinion.

David W Plowden, Assistant Federal Public Defender, Greenville, South Carolina, for Appellant. Elizabeth Jean Howard, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

PER CURIAM:

Travis Dequincy Croft appeals the 188-month sentence imposed following his guilty plea to distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) (2006), and being a felon in possession of a firearm and aiding and abetting, in violation of 18 U.S.C. §§ 922(g), 924(a)(2), 924(e), 2 (2006). Counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting that there are no meritorious issues for appeal but questioning whether Croft's sentence is procedurally reasonable. Croft has filed a pro se supplemental brief moving this court to hold his appeal in abeyance pending the Supreme Court's decision in *Alleyne v. United States*, No. 11-9335. Finding no error, we deny Croft's motion and affirm the district court's judgment.

This court reviews a sentence for reasonableness, applying an abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 46 (2007). We first review for significant procedural error, and if the sentence is free from such error, we then consider substantive reasonableness. *Id.* at 51. Procedural error includes improperly calculating the Guidelines range, treating the Guidelines range as mandatory, failing to consider the 18 U.S.C. § 3553(a) (2006) factors, and failing to adequately explain the selected sentence. *Id.* To adequately explain the sentence, the district court must make an "individualized assessment," by applying the relevant § 3553(a) factors to the case's specific circumstances. *United States v. Carter*, 564 F.3d 325, 328 (4th Cir.2009). The individualized assessment need not be elaborate or lengthy, but it must be adequate to allow meaningful appellate review. *Id.* at

330. Substantive reasonableness is determined by considering the totality of the circumstances, and if the sentence is within the Guidelines range, this court applies a presumption of reasonableness. *United States v. Strieper*, 666 F.3d 288, 295 (4th Cir. 2012).

Our review of the record leads us to conclude that the district court did not commit procedural error in imposing Croft's sentence. The court properly calculated Croft's Guidelines la range, treated the range as advisory, considered the § 3553(a) factors, and provided an adequate individualized assessment. We further conclude that Croft's sentence is substantively reasonable, as he presents no evidence to rebut the presumption of reasonableness. We therefore affirm Croft's sentence.

In his *pro se* brief, Croft challenges the increase of his mandatory minimum sentence based on his status as an armed career criminal, which itself was based on the district court's finding of Croft's prior convictions by a preponderance of the evidence. Croft therefore moved this court to hold his appeal in abeyance pending the Supreme Court's decision in *Alleyne*. The Supreme Court has now issued its opinion, holding that any fact other than a prior conviction that increases a defendant's mandatory minimum sentence must be submitted to a jury and found beyond a reasonable doubt. *Alleyne v. United States*, No. 11-9335, 2013 WL 2922116, at *7 (June 17, 2013). In light of the Supreme Court's decision in *Alleyne*, we deny Croft's motion as moot. Moreover, because *Alleyne* did not disturb *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), which authorizes a district court to apply

an enhanced sentence based upon its finding of applicable prior convictions, Croft's challenge must fail. *Alleyne*, 2013 WL 29922116 at *9 n.1.

In accordance with *Anders*, we have reviewed the record in this case and have found no meritorious issues for appeal. The district court properly conducted the plea hearing in accordance with Federal Rule of Criminal Procedure 11 and ensured that Croft's plea was knowing and voluntary. We therefore deny Croft's motion to hold his appeal in abeyance, and affirm his conviction and sentence. This court requires that counsel inform Croft, in writing, of his right to petition the Supreme Court of the United States for further review. If Croft requests that a petition be filed, but counsel believes that such a petition would be frivolous, counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Croft. 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.

APPENDIX F

FILED: March 29, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6627
(6:10-cr-01090-JMC-1)
(6:16-cv-00064-JMC)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TRAVIS DEQUINCY CROFT,

Defendant-Appellant.

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX G

Docket No. 2003-GS-23005945
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS

AUGUST TERM 2003

THE STATE

vs.

TRAVIS DEQUINCY CROFT

Indictment for
2599

CARJACKING

VIOLATION § 16-3-1075

WITNESSES

M.D. NELSON
GPD
03/01/03

ARREST WARRANT NUMBER
H-342699

ACTION OF GRAND JURY
TRUE BILL
/s/ FOREMAN GRAND JURY

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	INDICTMENT FOR CARJACKING

At a Court of General Sessions, convened on August 19, 2003 the Grand Jurors of Greenville County present upon their oath:

That TRAVIS DEQUINCY CROFT did in Greenville County, on or about the 1st day of March, 2003, take or attempt to take a motor vehicle, to wit: a 1988 Chevrolet from Tanesha Wilson by force, and violence or intimidation while, Tanesha Wilson, was operating and/or in the said vehicle. This is in violation of §16-3-1075 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

/s/ SOLICITOR

STATE OF SOUTH CAROLINA	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF GREENVILLE	INDICTMENT/CASE#: 2003GS2305945
VS.	A/W#: H342699
CROFT, TRAVIS DEQUINCY	Date of Offense: 03-01-2003
AKA: _____	S.C. Code § 16-03-1075(B)(1)
Race: B Sex: M Age: 22	CDR Code #: 2599
Address: 25 CODY STREET GREENVILLE, SC 29609	□ CASE RESTORED SENTENCE ■ PLEA □ TRIAL
DL#: ____ SID#: _____	

In disposition of the said indictment comes now the Defendant who was

□ CONVICTED OF or ■ PLEADS
TO: CARJACKING

in violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599

■ NON-VIOLENT □ VIOLENT □ SERIOUS □ MOST SERIOUS □ 17-25-45

The charge is: ■ As Indicted, □ Lesser Included Offense, □ Defendant Waives Presentment to Grand Jury.

The plea is ■ Without Negotiations or Recommendation, □ Negotiated Sentence, □ Recommendation by the State.

ATTEST:

/s/ Solicitor /s/ Defendant /s/ Attorney for Defendant

WHEREFORE, the Defendant is committed to the ■ **State Department of Corrections,** □ **County Detention Center,** for a determinate term of 30 days/months/years or □ under the **Youthful Offender Act** not to exceed __ years and/or to pay a fine of $__: provided that upon the service of __ days/months/years and/or payment of $__; plus costs and assessments as applicable*; the balance is suspended with **probation** for __ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

■ CONCURRENT or □ CONSECUTIVE to sentence on: to present incarnation

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

□ RESTITUTION: □ Heard, □ Waived, □ Ordered
Total: $__ plus 20% fee: $__
Payment Terms: ___
□ set by SCDPPPS ___
Recipient: ___
*Fine: $___

§ 14-1-206 (Assessments 107.5%)		$_____
§ 14-1-211(A)(1) (Conv Surcharge)	$100	$100
§ 14-1-211(A)(2) (DUI Surcharg	$100	$_____
§ 56-5-2995 (DUI Assessment)	$12	$_____
§ 35.13 (Public Def/Prob)	$500	$_____
§ 73.3, 1B TP (Law enforce. Funding)	$25	$25
§ 33.7, 1B TP (Drug Court Surcharge)	$100	$_____
§ 50-21-114 (BUI Breath Test Fee)	$50	$_____
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$_____
3% to County (if paid in installments)		$_____
TOTAL		$_____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive
weekly/monthly pmts. of $_____ beginning _____
$_____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, 35.13 TP
Requires $500 be paid to Clerk during probation.

/s/ Clerk of the Court/Deputy Clerk

Court Reporter: /s/

PRESIDING JUDGE /s/
Judge Code: 2/1/3/2
Sentence Date: 9/4/03

APPENDIX H

IN THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF
SOUTH CAROLINA GREENVILLE DIVISION

UNITED STATES OF AMERICA	)	CR. NO. 6:10 1090
	)	18 U.S.C. § 922(g)(1)
	)	18 U.S.C. § 924(a)(2)
	)	18 U.S.C. § 24(c)(1)(A)
vs.	)	18 U.S.C. § 924(e)
	)	18 U.S.C. § 2
	)	21 U.S.C. § 841(a)(1)
	)	21 U.S.C. § 41(b)(1)(C)
TRAVIS DEQUINCY CROFT MARCUS JERRELL SEARLES	)	21 U.S.C. § 41(b)(1)(D)
	)	
	)	INDICTMENT

COUNT 1

THE GRAND JURY CHARGES

That on or about March 3, 2010, in the District of South Carolina, the Defendant, **TRAVIS DEQUINCY CROFT**, knowingly, intentionally and unlawfully did distribute a quantity of cocaine base (commonly known as "crack" cocaine), a Schedule II controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 2

THE GRAND JURY FURTHER CHARGES:

That on or about March 10, 2010, in the District of South Carolina, the Defendants, **TRAVIS**

DEQUINCY CROFT and **MARCUS JERRELL SEARLES**, knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of marijuana, a Schedule I controlled substance, and did aid and abet each other in the commission of the aforesaid offense;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D), and Title 18, United States Code, Section 2.

COUNT 3

THE GRAND JURY FURTHER CHARGES:

That on or about March 10, 2010, in the District of South Carolina, the Defendants, **TRAVIS DEQUINCY CROFT** and **MARCUS JERRELL SEARLES**, each having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in and affecting commerce, firearms and ammunition, all of which had been shipped and transported in interstate and foreign commerce, and did aid and abet each other in the commission of the aforesaid offense;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), 924(e), and 2.

COUNT 4

THE GRAND JURY FURTHER CHARGES:

That on or about March 10, 2010, in the District of South Carolina, the Defendants, TRAVIS DEQUINCY CROFT and MARCUS JERRELL SEARLES, knowingly used and carried firearms during and in relation to, and possessed the firearms in

furtherance of a drug trafficking crime, which is prosecutable in a court of the United States, and did aid and abet each other in the commission of the aforesaid offense;

In violation of Title 18, United States Code, Sections 924(c)(1)(A) and 2.

A TRUE Bill

REDACTED
Foreperson

REDACTED
WILLIAM N. NETTLES (EJH/twd)
UNITED STATES ATTORNEY

APPENDIX I

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA GREENVILLE DIVISION

UNITED STATES OF AMERICA	)	Criminal No: 6:10-1090
	)	
	)	**PLEA AGREEMENT**
V.	)	
	)	
TRAVIS DEQUINCY CROFT	)	

General Provisions

This PLEA AGREEMENT is made this 22nd day of February, 2011,between, the United States of America as represented by United States Attorney WILLIAM N. NETTLES, Assistant United States Attorney E. Jean Howard; the Defendant, **TRAVIS DEQUINCY CROFT** and Defendant's Attorney, David W. Plowden, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. The Defendant, **TRAVIS DEQUINCY CROFT**, agrees to plead guilty to counts 1 and 3 of an Indictment charging violations of Title 21, United States Code, §841(a)(1) and Title 18, §922(g)(1)

2. The Defendant agrees to provide detailed financial information to the United States Probation Office prior to sentencing. The Defendant understands and agrees that monetary

penalties [i.e., special assessments, restitution, fines and other payments required under the sentence] imposed by the Court are due immediately and subject to enforcement by the United States as civil judgements, pursuant to 18 U.S.C. § 3613. The Defendant also understands that payments made in accordance with installment schedules set by the Court are minimum payments only and do not preclude the government from seeking to enforce the judgment against other assets of the defendant at any time, as provided in 18 U.S.C. §§ 3612, 3613 and 3664(m).

The Defendant further agrees to enter into the Bureau of Prisons Inmate Financial Responsibility Program if sentenced to a term of incarceration with an unsatisfied monetary penalty. The Defendant further understands that any monetary penalty imposed is not dischargeable in bankruptcy.

(A) Special Assessment: Pursuant to 18 U.S.C. § 3013, the Defendant must pay a special assessment of $100.00 for each felony count for which he is convicted. This special assessment must be paid at or before the time of the guilty plea hearing.

(B) Restitution: The Defendant agrees to make full restitution under 18 U.S.C. § 3556 in an amount in an amount to be determined by the court at the time of sentencing, which amount is not limited to the count(s) to which the Defendant pled guilty, but will include restitution to each and every identifiable victim who may have been harmed by

his scheme or pattern criminal activity, pursuant to 18 U.S.C. § 3663. The Defendant agrees to cooperate fully with the government in identifying all victims.

(C) Fines: The Defendant understands that the Court may impose a fine pursuant to 18 U.S.C. §§ 3571 and 3572.

3. The Defendant understands that the matter of sentencing is within the sole discretion of the Court and that the sentence applicable to Defendant's case will be imposed after the Court considers as advisory the United States Sentencing Commission Guidelines, Application Notes and Policy Statements, as well as the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant also understands that Defendant's sentence has not yet been determined by the court, and that any estimate of a probable sentencing range Defendant may have received from Defendant's attorney, the Government or the United States Probation Office is only a prediction, not a promise, and is not binding on the Government, the Probation Office or the Court. The Defendant further understands that the Government retains the right to inform the Court of any relevant facts, to address the Court with respect to the nature of the offense, to respond to questions raised by the Court, to correct any inaccuracies or inadequacies in the presentence report, to respond to any statements made to the Court by or on behalf of the Defendant and to summa-

rize all evidence which would have been presented at trial establish a factual basis for the plea.

4. The Defendant agrees that all facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum (including facts that support any specific offense characteristic or other enhancement or adjustment) can be found by the court at sentencing by a preponderance of the evidence standard and the court may consider any reliable evidence, including hearsay. By executing this Agreement, the Defendant understands that he waives any argument that facts that determine his offense level under the Guidelines and pursuant to any mandatory minimum should be alleged in an indictment and found by a jury beyond a reasonable doubt.

5. The defendant understands that the obligations of the Government within the Plea Agreement are expressly contingent upon the Defendant's abiding by federal and state laws and complying with the terms and conditions of any bond executed in this case.

6. In the event that the Defendant fails to comply with any of the provisions of this Agreement, either expressed or implied, it is understood that the Government will have the right, at its sole election, to void all of its obligations under this Agreement and the Defendant will not have any right to withdraw his plea of guilty to the offense(s) enumerated herein.

Cooperation and Forfeiture

7. The Defendant agrees to be fully truthful and forthright with federal, state and local law enforcement agencies by providing full, complete and truthful information about all criminal activities about which he has knowledge. The Defendant must provide full, complete and truthful debriefings about these unlawful activities and must fully disclose and provide truthful information to the Government including any books, papers, or documents or any other items evidentiary value to the investigation. The Defendant must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the Government, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truful and forthright at any stage will, at the sole election of the Government, cause the obligations of the Government within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Government within this Agreement become null and void due to the lack of truthfulness on the part of the Defendant, the Defendant understands that:

(A) the Defendant will not be permitted to withdraw his plea of guilty to the offenses described above;

(B) all additional charges known to the Government may be filed in the appropriate district;

(C) the Government will argue for a maximum sentence for the offense to which the Defendant has pleaded guilty; and

(D) the Government will use any and all information and testimony provided by the Defendant in the prosecution of the Defendant of all charges.

8. The Defendant agrees to submit to such polygraph examinations as may be requested by the Government and agrees that any such examinations shall be performed by a polygraph examiner selected by the Government. Defendant further agrees that his refusal to take or his failure to pass any such polygraph examination to the Government's satisfaction will result, at the Government's sole discretion, in the obligations of the Government within the Agreement becoming null and void.

9. Provided the Defendant cooperates and otherwise compiles with all the conditions of this Plea Agreement, and the Defendant's cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person, the United States agrees to move to dismiss the remaining counts of the Indictment at sentencing. The Defendant understands that the dismissal of the remaining counts would be in lieu of a motion for downward departure pursuant to Section 5K1.1. of the U.S.S.G.. The Defendant understands that the Court may consider these dismissed counts as relevant conduct pursuant at

§1B1.3 of the United States Sentencing Guidelines.

10. The Defendant agrees to voluntarily surrender to, and not to contest the forfeiture by, the United States of America of any and all assets and property, or portions thereof, owned or purchased by the Defendant which are subject to the forfeiture pursuant to any provision of law and which are in the possession or control of the Defendant or Defendant's nominees. The Defendant further agrees to prevent the disbursement, relocation or encumbrance of any such assets and agrees to fully asset the government in the recovery and return to the United States of any assets, or portions thereof, as described above, where located. The Defendant further agrees to make a full and completed disclosure of all assets over which Defendant exercises control and those which are held or controlled by nominees. The Defendant further agrees to submit to a polygraph examination on the issue of assets if it is deemed necessary by the United States.

The Defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title and the signing of any other documents necessary to effectuate such transfers. The Defendant agrees not to object to any civil forfeiture proceedings brought against these properties pursuant to any provision of law and the Defendant further understands that any such civil proceedings may

properly be brought at any time before or after acceptance of Defendant's guilty plea in this matter and agrees to waive any double jeopardy claims he may have as a result of the forfeiture of these properties as provided for by this Agreement.

Merger and Other Provisions

11. The parties agree that if the Court determines the Defendant has readily demonstrated acceptance of responsibility for his offenses, that USSG § 3E1.1(a) applied, thereby providing for a decrease of two (2) levels. In addition, if the Defendant qualifies for a decrease under § 3E1.1(a), the Government will move that he receive the one level decrease set forth in 3E1.1(b), and requests that this provision be considered at that request.

12. The Defendant represents to the court that he has met with his attorney on a sufficient number of occasions and for a sufficient period of time to discuss the Defendant' case and receive advice; that the Defendant has been truthful with his attorney and related all information of which the Defendant is aware pertaining to the case; that the Defendant and his attorney have discussed possible defenses, if any, to the charges in the Indictment including the existence of any exculpatory or favorable evidence or witness, discussed the Defendant's right to a public trial by jury or by the Court, the right to the assistance of counsel throughout the processing, the right to confront and cross-examine the government's witnesses, the Defend-

ant's right to testify in his own behalf, or to remain silent and have no adverse inferences drawn from his silence; and that the Defendant, with the advice of counsel, has weighed the relative benefits of a trial by jury or by the Court versus a plea of guilty pursuant to his Agreement, and has entered this Agreement as a matter of the Defendant's free and voluntary choice, and not as a result of pressure or intimidation by any person.

13. The Defendant is aware that 18 U.S.C. § 3742 and 28 U.S.C. § 2255 afford every defendant certain rights to contest a conviction and/or sentence. Acknowledging those rights, the Defendant, in exchange for the concessions made by the Government in this Plea Agreement, waives the right to contest either the conviction or the sentence in any direct appeal or other post-conviction action, including any proceedings under 28 U.S.C. § 2255. This waiver does not apply to claims of ineffective assistance of counsel or prosecutorial misconduct. This Agreement does not affect the rights or obligations of the Government as set forth in 18 U.S.C. § 3742(b). Nor does it limit the Government in its comments or responses to any post-sentencing matters.

14. The Defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including without limitation any records that

may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

15. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement shall not be binding on any party until the Defendant tenders a plea of guilty to the court having jurisdiction over this matter; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

2 22 11	/s/
DATE	TRAVIS DEQUINCY CROFT, Defendant
2/22/11	/s/
DATE	David W. Plowden Attorney for the Defendant
2-22-11	WILLIAM N. NETTLES
DATE	UNITED STATES ATTORNEY
	By:/s/ E. Jean Howard Assistant U.S. Attorney

APPENDIX J

United States District Court
District of South Carolina

UNITED STATES OF AMERICA	JUDGMENT IN A CRIMINAL CASE
vs.	Case Number: 6:10-1090 (1)
TRAVIS DEQUINCY CROFT	USM Number: 22126-171
	David Plowden, AFPD Defendant's Attorney

The Defendant:

■ pleaded guilty to count(s) 1 and 3.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1), (b)(1)(C)	Please see indictment	November 8, 2010	1
18:922(g)(1), 924(a)(2) and 924(e)	Please see indictment	November 9, 2010	3

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

■ Counts 2 and 4 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 any material changes in economic circumstances.

June 2, 2011
Date of Imposition of Judgement

/s/
Signature of Judge

J. Michelle Childs, United States District Judge
Name and Title of Judge

6-6-11
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of one hundred eighty-eight (188) months. This term shall consist of 188 months as to Counts 1 and 3 to be served concurrently.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years. This term consists of three (3) years as to Count 1 and five (5) years as to Count 3.

The defendant shall participate in a program of testing and treatment for substance abuse as directed by the probation officer, until released from the program by the officer.

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 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 in a manner and frequency directed by the court or probation officer.

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 by 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

Assessment $200.00

SCHEDULE OF PAYMENTS

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

■ Lump sum payment of $200.00 special assessment due immediately, balance due

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

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

APPENDIX K

United States District Court
District of South Carolina

UNITED STATES OF AMERICA vs. TRAVIS DEQUINCY CROFT	AMENDED JUDGMENT IN A CRIMINAL CASE
Case Number: 6:10-1090 (1)	USM Number: 22126-171
Date of Original Judgment: June 8, 2011	David Plowden, AFPD Defendant's Attorney

Reason for Amendment:

■ Correction of Sentence on Remands (18 U.S.C. 3742(f)(1) and (2))

The Defendant:

■ Pleaded guilty to Count(s) 1 and 3 on February 22, 2012.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1), (b)(1)(C)	Please see indictment	Please see indictment	1
18:922(g)(1), 924(a)(2) and 924(e)	Please see indictment	Please see indictment	3

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed

pursuant to the Sentencing Reform Act of 1984.

■ Counts 2 and 4 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 any material changes in economic circumstances.

October 9, 2012
Date of Imposition of Judgement

/s/
Signature of Judge

J. Michelle Childs, United States District Judge
Name and Title of Judge

October 12, 2012
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of one hundred eighty eight (188) months. This term shall consist of 188 months as to Counts 1 and 3 to be served concurrently.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years. This term consists of three (3) years as to Count 1 and five (5) years as to Count 3.

The defendant shall participate in a program of testing and treatment for substance abuse as directed by the probation officer, until released from the program by the officer.

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 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 in a manner and frequency directed by the court or probation officer.

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 by 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.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

Assessment $200.00

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay,

payment of the total criminal monetary penalties is due as follows:

- Lump sum payment of $200.00 special assessment due immediately, balance due

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

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

APPENDIX L

RELEVANT STATUTORY PROVISIONS

18 U.S.C. § 924(e)(2)(B)(i)

(e)

. . .

(2) As used in this subsection—

. . .

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another . . .

S.C. Code § 16-3-1075

(A) For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(B) A person is guilty of the felony of carjacking who takes, or attempts to take, a motor vehicle from another person by force and violence or by intimidation

while the person is operating the vehicle or while the person is in the vehicle. Upon conviction for this offense, a person must:

(1) be imprisoned not more than twenty years; or

(2) if great bodily injury results, be imprisoned not more than thirty years.