APPENDIX

AO 245B (Rev. 09/19) Judgment in a Criminal Case
vl Sheet 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA
v.
Christopher Ronald Martin

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19-CR-00026-001

USM Number: 30163-424

Diane Z. Helphrey
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) One, Two, and Three of the Information filed on August 1, 2019.

☐ 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:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1951	Interference with Commerce by Robbery	12/27/2018	One
18 U.S.C. § 924(c)(1)(A)(i)	Using and Carrying a Firearm During and In Relation to a Crime of Violence	12/27/2018	Two
18 U.S.C. §§ 922(g)(1), 924(a)(2), 924(e)(1)	Felon in Possession of a Firearm	12/27/2018	Three

☐ See additional count(s) on page 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.

February 25, 2020
Date of Imposition of Judgment

Signature of Judge

John A. Jarvey, Chief U.S. District Judge
Name of Judge Title of Judge

2/26/20
Date

DEFENDANT: Christopher Ronald Martin
CASE NUMBER: 3:19-CR-00026-001

IMPRISONMENT

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

180 as to Count One and 120 months as to Count Three of the Information filed on August 1, 2019, both counts to be served concurrently, and 60 months on Count Two, to be served consecutively to Counts One and Three, for a total term of 240 months.

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

The Court recommends placement at FCI Estill, South Carolina, if commensurate with his security classification and needs, so that the defendant may be away from current influences and be near his sister who is relocating to the area.

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

☐ The defendant is remanded to the custody of the United States Marshal for surrender to the ICE detainer.

☐ 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 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 _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Christopher Ronald Martin
CASE NUMBER: 3:19-CR-00026-001

SUPERVISED RELEASE

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

Three years as to each of Counts One and Three, and five years as to Counts Two of the Information filed on August 1, 2019, all counts to be served concurrently.

MANDATORY CONDITIONS

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

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

DEFENDANT: Christopher Ronald Martin
CASE NUMBER: 3:19-CR-00026-001

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: Christopher Ronald Martin
CASE NUMBER: 3:19-CR-00026-001

SPECIAL CONDITIONS OF SUPERVISION

You must participate in a program of testing and/or treatment for substance abuse, as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Office. At the direction of the probation office, you must receive a substance abuse evaluation and participate in inpatient and/or outpatient treatment, as recommended. Participation may also include compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment. You must not use alcohol and/or other intoxicants during the course of supervision.

You must submit to a mental health evaluation. If treatment is recommended, you must participate in an approved treatment program and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment and/or compliance with a medication regimen. You will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

You must participate in a cognitive behavioral treatment program, which may include journaling and other curriculum requirements, as directed by the U.S. Probation Officer.

You will submit to a search of your person, property, residence, adjacent structures, office, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), and other electronic communications or data storage devices or media, conducted by a U.S. Probation Officer. Failure to submit to a search may be grounds for revocation. You must warn any other residents or occupants that the premises and/or vehicle may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your release and/or that the area(s) or item(s) to be searched contain evidence of this violation or contain contraband. Any search must be conducted at a reasonable time and in a reasonable manner. This condition may be invoked with or without the assistance of law enforcement, including the U.S. Marshals Service.

DEFENDANT: Christopher Ronald Martin
CASE NUMBER: 3:19-CR-00026-001

CRIMINAL MONETARY PENALTIES

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

☐ Pursuant to 18 U.S.C. § 3573, upon the motion of the government, the Court hereby remits the defendant's Special Penalty Assessment; the fee is waived and no payment is required.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 300.00	$0.00	$ 0.00	$ 0.00	$ 0.00

☐ 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.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
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:

*Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** 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: Christopher Ronald Martin
CASE NUMBER: 3:19-CR-00026-001

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary payments are to be made to the Clerk's Office, U.S. District Court, P.O. Box 9344, Des Moines, IA. 50306-9344.
While on supervised release, you shall cooperate with the Probation Officer in developing a monthly payment plan consistent with a schedule of allowable expenses provided by the Probation Office.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

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

a Beretta Pico .380 pistol (SN: PC009263) and .380 ammunition, as outlined in the Preliminary Order of Forfeiture entered on September 12, 2019.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

999 F.3d 636
United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff - Appellee
v.
Christopher Ronald MARTIN,
Defendant - Appellant

No. 20-1511
|
Submitted: January 15, 2021
|
Filed: June 7, 2021
|
Rehearing Granted, Opinion Vacated August 3, 2021

Synopsis

Background: Defendant was convicted, on conditional guilty plea entered in the United States District Court for the Southern District of Iowa, John A. Jarvey, Chief Judge, of using and carrying a firearm during and in relation to crime of violence, interference with commerce by robbery, and being a felon in possession of firearm, and he appealed from denial of his pretrial motion to suppress evidence, as well as from sentence imposed.

Holdings: The Court of Appeals, Kobes, Circuit Judge, held that:

police officers had at least a reasonable suspicion of criminal activity, of kind required to stop a vehicle which was at the same intersection as cell phone taken during recent robbery based on global positioning satellite (GPS) data

any error in district court's denial as moot of a motion to suppress the use of the show-up lineup identification was harmless; and

defendant's prior convictions of Illinois offense of armed robbery were crimes of violence, of kind required in order to permit application of the "career offender" enhancement at sentencing.

Affirmed.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion; Sentencing or Penalty Phase Motion or Objection.

***637** Appeal from United States District Court for the Southern District of Iowa - Eastern

Attorneys and Law Firms

Craig Peyton Gaumer, Assistant U.S. Attorney, U.S. Attorney's Office, Des Moines, IA, William Reiser Ripley, U.S. Attorney's Office, Davenport, IA, for Plaintiff-Appellee.

Samuel Owen Cross, Assistant Federal Public Defender, Federal Public Defender's Office, Northern District of Iowa, Cedar Rapids, IA, for Defendant-Appellant.

Christopher Ronald Martin, U.S. Penitentiary, Atlanta, GA, Pro Se.

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

Opinion

KOBES, Circuit Judge.

***638** Christopher Martin challenges the district court's [1] denial of his motions to suppress and his objection to application of the career criminal enhancement in U.S.S.G. § 4B1.1(a). We affirm.

I.

Martin robbed a Sprint Wireless Express store in Davenport, Iowa at gunpoint, making off with cell phones and tablets. Little did he know, he also left with a GPS tracker, courtesy of the store employee. The employee called police, describing the robber as "5' 7" tall, heavyset, male, African American with a grey ski mask, a blue hooded sweatshirt and grey sweatpants." D. Ct. Dkt. 67 at 2. The employee described the getaway car as a dark-green Pontiac Grand Am or Grand Prix driven by someone he did not see, and said the vehicle went north on Elmore Avenue. He also reported that the robber had a tiny, silver handgun.

Officers responded to the robbery within minutes. The first on the scene received a slightly more detailed description that the robber was 300 pounds or more and carrying a duffel bag. Dispatch also began receiving location reports from the GPS tracker, which updated every six seconds. The data, collected

by a third-party provider, directed officers to the intersection of Kimberly and Spring streets, about 1.5 miles from the store.

At the intersection, officers saw two cars: a white one and a dark-blue, four-door Ford Contour. There were two black male passengers in the dark-blue car, and police noticed that the occupants were not looking around at the multiple squad cars. When the dark-blue car pulled through the intersection and into a gas station, one officer turned on his overhead lights.

After stopping the car, officers commanded the driver to exit the vehicle with his hands in the air and to walk backwards toward them. After the driver was secured, they did the same with **Martin**, who was in the passenger seat. The officers then searched the car and found the stolen cell phones and tablets. Police detained **Martin** and the driver of the car in separate squad cars.

Police brought the store employee to the scene for a show-up identification. Police removed a handcuffed **Martin** from the squad car and pointed a spotlight at him. The employee said he was ninety percent sure that **Martin** was the robber based on build and clothing.

Martin filed motions to suppress the evidence gathered during the stop and the out-of-court identification. The district court entered an order denying the motion to suppress the stop and denied the second motion as moot after the Government said that it would not use the out-of-court identification at trial. **Martin** pleaded guilty to the lesser included offense of using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(i) and a conditional guilty plea to interference with commerce by robbery in violation of 18 U.S.C. § 1951 and possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e)(1), preserving his right to appeal the district court's denial of his motions to suppress.

***639** At sentencing, **Martin's** final Presentence Investigation Report identified him as a career offender because of his prior convictions for: (1) Illinois armed robbery; (2) federal bank robbery; and (3) Iowa robbery in the second degree. **Martin** objected, arguing that two of the offenses were overbroad. The district court overruled **Martin's** objection and determined that he was a career offender.[2] The court adopted the PSR's Guidelines range of 262 to 327 months. The district court sentenced **Martin** to 180 months on Count I, 60 months on Count II to run consecutive to Count I, and 120 months on Count III to run concurrent to Counts I and II, for a total of 240 months in prison.

II.

A.

Martin argues police did not have probable cause or reasonable suspicion to stop the car. He suggests police should not have relied on the GPS device and that the description of the vehicle by the store's clerk was not a match. On a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions *de novo*. *United States v. Smith*, 648 F.3d 654, 658 (8th Cir. 2011).

The Fourth Amendment secures the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A traffic stop is a seizure and "must be supported by reasonable suspicion or probable cause." *United States v. Houston*, 548 F.3d 1151, 1153 (8th Cir. 2008). Police are permitted to make investigative stops of a vehicle if they have reasonable suspicion that an individual in that vehicle recently committed a crime in a general area. *See United States v. Roberts*, 787 F.3d 1204, 1209–10 (8th Cir. 2015) (applying reasonable suspicion standard to stop of a vehicle several blocks from crime scene); *United States v. Juvenile TK*, 134 F.3d 899, 900–04 (8th Cir. 1998) (applying reasonable suspicion standard for traffic stop where officers received two dispatch messages within forty-five minutes informing them that a vehicle had been involved in criminal activity in the area).

"A reasonable suspicion is a 'particularized and objective' basis for suspecting [criminal activity by] the person who is stopped." *United States v. Bustos-Torres*, 396 F.3d 935, 942 (8th Cir. 2005) (citation omitted). Reasonable suspicion is determined by "look[ing] at the totality of the circumstances of each case to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing [based on his] own experience and specialized training to make inferences from and deductions about the cumulative information available." *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740

(2002). "Reasonable suspicion must be supported by more than a mere hunch, but the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying the preponderance of the evidence standard." *Roberts*, 787 F.3d at 1209 (cleaned up).

The police had at least reasonable suspicion to stop the vehicle. The GPS tracker indicated that it was at the intersection of Kimberly and Spring. **Martin** argues the GPS was unreliable. In support, he points to cases in which courts heard testimony about the reliability and accuracy of GPS devices. *See* ***640** *United States v. Brooks*, 715 F.3d 1069, 1077–78 (8th Cir. 2013); *United States v. Espinal-Almeida*, 699 F.3d 588, 610–12 (1st Cir. 2012). But those cases are about the admission of the data at trial and do not address whether officers in the field can rely on third-party GPS data while pursuing suspects. Considering the tight window of opportunity officers have to locate a fleeing suspect, we find it reasonable for police to rely on third-party GPS data.

Other factors also supported the officers' suspicion. The intersection of Kimberly and Spring is in the general area of the crime scene. *United States v. Robinson*, 670 F.3d 874, 876 (8th Cir. 2012) (factors like the location of the parties may support an officer's decision to stop). When the five police cars arrived at the intersection, they saw two vehicles. Police could reasonably rule out one because it did not even remotely match the description given by the store employee. The Ford Contour roughly matched the description. While the employee said the vehicle was a coupe (the Ford Contour is a four-door), a Ford Contour has the same general shape as a Pontiac GrandAm and Grand Prix. Plus, the color (dark green) is close to the color of the Ford Contour (dark blue). Keeping in mind that the employee only saw the car briefly after dark, it was reasonable for officers to believe the employee made minor errors and that this was the car they were looking for. *See* *United States v. Quinn*, 812 F.3d 694, 699 (8th Cir. 2016) ("We have held that generic suspect descriptions and crime-scene proximity can warrant reasonable suspicion where there are few or no other potential suspects in the area who match the description.").

Police also noticed unusual behavior by the car's occupants, who did not acknowledge an overwhelming police presence. *See* *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) (irregular activities like repeatedly walking by the same store window can support reasonable suspicion); *United States v. Sokolow*, 490 U.S. 1, 8–9, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (irregularity of purchasing $2,100 in plane tickets with a roll of $20 bills could support reasonable suspicion). The totality of the circumstances gave police at least reasonable suspicion that criminal activity was afoot, so stopping the vehicle to investigate that suspicion comported with the Fourth Amendment.

B.

Martin also challenges the district court's denial of his motion to suppress the use of the show-up lineup, which he says was unduly suggestive. The district court denied the motion as moot after the Government committed that it would not use the evidence at trial. While it may have been better for the district court to grant the motion as unopposed or defer ruling until the issue was raised at trial, *see* Fed. R. Crim. P. 12(d) (permitting deferral on a finding of good cause), any mistake of form was harmless. The district court strongly suggested that it believed the identification was inadmissible. This, combined with the Government's representation that it would not be used at trial, dissipated any reasonable concern that the identification would be introduced as evidence. Plus, nothing in the district court's ruling prevented **Martin** from reasserting his challenge at trial. Any error was harmless. *See* Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.").

III.

Martin last argues that the district court erred in finding that he was a career offender and subject to an enhancement under U.S.S.G. § 4B1.1. We review application of the career offender enhancement *de* ***641** *novo*. *United States v. Eason*, 643 F.3d 622, 623 (8th Cir. 2011). A career offender enhancement is appropriate when the offender is over 18, being sentenced for a crime of violence or a controlled substance offense, and has "at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1(a). **Martin** does not challenge the district court's finding that his current conviction or his previous conviction for federal bank robbery

are crimes of violence. *See United States v. Harper*, 869 F.3d 624, 626–27 (8th Cir. 2017) (federal bank robbery is a crime of violence). The question is whether one of his other prior two convictions should be similarly categorized.

Martin concedes as much. One of Martin's other prior convictions was for Illinois armed robbery. In *United States v. Brown*, 916 F.3d 706, 707–08 (8th Cir. 2019), we held that Illinois armed robbery is a crime of violence. Martin acknowledges this and says that he raises this argument "in order to preserve it." Martin Br. at 19. In any case, we are bound by the ruling of a prior panel. *See* *Mader v. United States*, 654 F.3d 794, 800 (8th Cir. 2011) (en banc).

Because Martin has two prior felony convictions for crimes of violence, we do not address his Iowa robbery conviction. We affirm the district court's career criminal enhancement.

IV.

The judgment of the district court is affirmed.

All Citations

999 F.3d 636

Footnotes

1 The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

2 At the sentencing hearing, the Government agreed that Martin was not an armed career criminal, and the PSR was amended to remove the reference to the armed career criminal enhancement.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1511

United States of America

Appellee

v.

Christopher Ronald Martin

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:19-cr-00026-JAJ-1)

ORDER

Appellant's petition for rehearing by the panel has been considered by the Court and is granted. The petition for rehearing en banc is denied as moot. The opinion and judgment of this Court filed on June 7, 2021 are vacated.

August 03, 2021

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

/s/ Michael E. Gans

United States Court of Appeals
For the Eighth Circuit

No. 20-1511

United States of America

Plaintiff - Appellee

v.

Christopher Ronald Martin

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Eastern

Submitted: August 3, 2021
Filed: October 18, 2021

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

KOBES, Circuit Judge.

Christopher Martin challenges the district court's[1] denial of his motions to suppress and his objection to application of the career criminal enhancement in U.S.S.G. § 4B1.1(a). We previously affirmed. *United States v. Martin*, 999 F.3d 636

[1]The Honorable John A. Jarvey, Chief Judge, United States District Court for the Southern District of Iowa.

(8th Cir. 2021), *reh'g granted and opinion vacated* (Aug.3, 2021). After panel rehearing, we again affirm.

I.

Martin robbed a Sprint Wireless Express store in Davenport, Iowa at gunpoint, making off with cell phones and tablets. Little did he know, he also left with a GPS tracker, courtesy of the store employee. The employee called police, describing the robber as "5' 7" tall, heavyset, male, African American with a grey ski mask, a blue hooded sweatshirt and grey sweatpants." D. Ct. Dkt. 67 at 2. The employee described the getaway car as a dark-green Pontiac Grand Am or Grand Prix driven by someone he did not see, and said the vehicle went north on Elmore Avenue. He also reported that the robber had a tiny, silver handgun.

Officers responded to the robbery within minutes. The first on the scene received a slightly more detailed description that the robber was 300 pounds or more and carrying a duffel bag. Dispatch also began receiving location reports from the GPS tracker, which updated every six seconds. The data, collected by a third-party provider, directed officers to the intersection of Kimberly and Spring streets, about 1.5 miles from the store.

At the intersection, officers saw two cars: a white one and a dark-blue, four-door Ford Contour. There were two black male passengers in the dark-blue car, and police noticed that the occupants were not looking around at the multiple squad cars. When the dark-blue car pulled through the intersection and into a gas station, one officer turned on his overhead lights.

After stopping the car, officers commanded the driver to exit the vehicle with his hands in the air and to walk backwards toward them. After the driver was secured, they did the same with Martin, who was in the passenger seat. The officers

then searched the car and found the stolen cell phones and tablets. Police detained Martin and the driver of the car in separate squad cars.

Police brought the store employee to the scene for a show-up identification. Police removed a handcuffed Martin from the squad car and pointed a spotlight at him. The employee said he was ninety percent sure that Martin was the robber based on build and clothing.

Martin filed motions to suppress the evidence gathered during the stop and the out-of-court identification. The district court entered an order denying the motion to suppress the stop and denied the second motion as moot after the Government said that it would not use the out-of-court identification at trial. Martin pleaded guilty to the lesser included offense of using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(i) and a conditional guilty plea to interference with commerce by robbery in violation of 18 U.S.C. § 1951 and possession of a firearm by a felon in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e)(1), preserving his right to appeal the district court's denial of his motions to suppress.

At sentencing, Martin's final Presentence Investigation Report identified him as a career offender because of his prior convictions for: (1) Illinois armed robbery; (2) federal bank robbery; and (3) Iowa robbery in the second degree. Martin objected, arguing that two of the offenses were overbroad. The district court overruled Martin's objection and determined that he was a career offender.[2] The court adopted the PSR's Guidelines range of 262 to 327 months. The district court sentenced Martin to 180 months on Count I, 60 months on Count II to run consecutive to Count

[2]At the sentencing hearing, the Government agreed that Martin was not an armed career criminal, and the PSR was amended to remove the reference to the armed career criminal enhancement.

I, and 120 months on Count III to run concurrent to Counts I and II, for a total of 240 months in prison.

II.

A.

Martin argues police did not have probable cause or reasonable suspicion to stop the car. He suggests police should not have relied on the GPS device and that the description of the vehicle by the store's clerk was not a match. On a motion to suppress, we review the district court's factual findings for clear error and its legal conclusions *de novo*. *United States v. Smith*, 648 F.3d 654, 658 (8th Cir. 2011).

The Fourth Amendment secures the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." A traffic stop is a seizure and "must be supported by reasonable suspicion or probable cause." *United States v. Houston*, 548 F.3d 1151, 1153 (8th Cir. 2008). Police are permitted to make investigative stops of a vehicle if they have reasonable suspicion that an individual in that vehicle recently committed a crime in a general area. *See United States v. Roberts*, 787 F.3d 1204, 1209–10 (8th Cir. 2015) (applying reasonable suspicion standard to stop of a vehicle several blocks from crime scene); *United States v. Juvenile TK*, 134 F.3d 899, 900–04 (8th Cir. 1998) (applying reasonable suspicion standard for traffic stop where officers received two dispatch messages within forty-five minutes informing them that a vehicle had been involved in criminal activity in the area).

"A reasonable suspicion is a 'particularized and objective' basis for suspecting [criminal activity by] the person who is stopped." *United States v. Bustos-Torres*, 396 F.3d 935, 942 (8th Cir. 2005) (citation omitted). Reasonable suspicion is determined by "look[ing] at the totality of the circumstances of each case to see

whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing [based on his] own experience and specialized training to make inferences from and deductions about the cumulative information available." *United States v. Arvizu*, 534 U.S. 266, 273 (2002). "Reasonable suspicion must be supported by more than a mere hunch, but the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying the preponderance of the evidence standard." *Roberts*, 787 F.3d at 1209 (cleaned up).

The police had at least reasonable suspicion to stop the vehicle. The GPS tracker indicated that it was at the intersection of Kimberly and Spring. Martin argues the GPS was unreliable. In support, he points to cases in which courts heard testimony about the reliability and accuracy of GPS devices. *See United States v. Brooks*, 715 F.3d 1069, 1077–78 (8th Cir. 2013); *United States v. Espinal-Almeida*, 699 F.3d 588, 610–12 (1st Cir. 2012). But those cases are about the admission of the data at trial and do not address whether officers in the field can rely on third-party GPS data while pursuing suspects. Considering the tight window of opportunity officers have to locate a fleeing suspect, we find it reasonable for police to rely on third-party GPS data.

Other factors also supported the officers' suspicion. The intersection of Kimberly and Spring is in the general area of the crime scene. *United States v. Robinson*, 670 F.3d 874, 876 (8th Cir. 2012) (factors like the location of the parties may support an officer's decision to stop). When the five police cars arrived at the intersection, they saw two vehicles. Police could reasonably rule out one because it did not even remotely match the description given by the store employee. The Ford Contour roughly matched the description. While the employee said the vehicle was a coupe (the Ford Contour is a four-door), a Ford Contour has the same general shape as a Pontiac GrandAm and Grand Prix. Plus, the color (dark green) is close to the color of the Ford Contour (dark blue). Keeping in mind that the employee only saw the car briefly after dark, it was reasonable for officers to believe the employee made

minor errors and that this was the car they were looking for. *See United States v. Quinn*, 812 F.3d 694, 699 (8th Cir. 2016) ("We have held that generic suspect descriptions and crime-scene proximity can warrant reasonable suspicion where there are few or no other potential suspects in the area who match the description.").

Police also noticed unusual behavior by the car's occupants, who did not acknowledge an overwhelming police presence. *See Terry v. Ohio*, 392 U.S. 1 (1968) (irregular activities like repeatedly walking by the same store window can support reasonable suspicion); *United States v. Sokolow*, 490 U.S. 1, 8–9 (1989) (irregularity of purchasing $2,100 in plane tickets with a roll of $20 bills could support reasonable suspicion). The totality of the circumstances gave police at least reasonable suspicion that criminal activity was afoot, so stopping the vehicle to investigate that suspicion comported with the Fourth Amendment.

B.

Martin also challenges the district court's denial of his motion to suppress the use of the show-up lineup, which he says was unduly suggestive. The district court denied the motion as moot after the Government committed that it would not use the evidence at trial. While it may have been better for the district court to grant the motion as unopposed or defer ruling until the issue was raised at trial, *see* Fed. R. Crim. P. 12(d) (permitting deferral on a finding of good cause), any mistake of form was harmless. The district court strongly suggested that it believed the identification was inadmissible. This, combined with the Government's representation that it would not be used at trial, dissipated any reasonable concern that the identification would be introduced as evidence. Plus, nothing in the district court's ruling prevented Martin from reasserting his challenge at trial. Any error was harmless. *See* Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.").

III.

Last, Martin argues that the district court erred in finding that he was a career offender and subject to an enhancement under U.S.S.G. § 4B1.1. We review application of the career offender enhancement *de novo*. *United States v. Eason*, 643 F.3d 622, 623 (8th Cir. 2011). A career offender enhancement is appropriate when the offender is over 18, being sentenced for a crime of violence or a controlled substance offense, and has "at least two prior felony convictions of either a crime of violence or a controlled substance offense." U.S.S.G. § 4B1.1(a). Martin does not challenge the district court's finding that his current conviction and his previous conviction for federal bank robbery are crimes of violence. *See United States v. Harper*, 869 F.3d 624, 626–27 (8th Cir. 2017) (federal bank robbery is a crime of violence). The question is whether one of his other prior two convictions should be similarly categorized.

We previously held that Martin's Illinois armed robbery conviction qualified as a crime of violence under the "force" clause of the Sentencing Guidelines. *United States v. Martin*, 999 F.3d 636 (8th Cir. 2021), *reh'g granted and opinion vacated* (Aug. 3, 2021). The Supreme Court later decided *Borden v. United States*, holding that a criminal offense that can be accomplished with a *mens rea* of recklessness cannot be a "violent felony" under the elements clause of the Armed Career Criminal Act. 141 S. Ct. 1817, 1821–22 (2021). The Sentencing Guidelines's definition of "crime of violence" is so similar to the ACCA's definition of "violent felony" that "we generally consider cases interpreting them interchangeably." *United States v. Brown*, 916 F.3d 706, 707–08 (8th Cir. 2019) (citation omitted). We granted Martin's petition for rehearing to reconsider the enhancement after *Borden*. We think Martin's conviction for Illinois armed robbery still qualifies as a crime of violence under the "enumerated offenses" clause of the Sentencing Guidelines. U.S.S.G. § 4B1.2(a)(2).

The career offender provision of the Sentencing Guidelines defines "crime of violence" as one that has an element of physical force against the person of another, or is one of a list of enumerated offenses. U.S.S.G. § 4B1.2(a). The enumerated offenses include robbery. *Id.* at § 4B1.2(a)(2). But the analysis doesn't end there. We must decide whether "the state statute defining the crime of conviction categorically fits within the generic federal definition of a corresponding crime of violence." *United States v. Stovall*, 921 F.3d 758, 759 (8th Cir. 2019) (citation omitted). The "generic federal definition of a crime of violence means the sense in which the term is now used in the criminal codes of most States." *Id.* (citation omitted) (cleaned up).

To decide whether Illinois armed robbery falls within the generic federal definition, we start by "identifying the elements of the generic enumerated offense." *Id.* (citation omitted). We define generic robbery as "aggravated larceny, or the misappropriation of property under circumstances involving immediate danger to a person." *Id.* at 760 (citation omitted). At the time of Martin's conviction, Illinois defined robbery as "knowingly tak[ing] property . . . from the person or presence of another by the use of force or by threatening the imminent use of force." 720 Ill. Comp. Stat. 5/18-1(a). Illinois defined armed robbery as a violation of Section 18-1 coupled with one of the following: (1) carrying a dangerous weapon other than a firearm; (2) carrying a firearm; (3) discharging a firearm during the commission of the offense; or (4) discharging a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person. 720 Ill. Comp. Stat. 5/18-2(a).

The statute shows that Illinois armed robbery has the same elements as our generic definition of robbery—misappropriation of property under circumstances involving immediate danger to a person. *Stovall*, 921 F.3d at 760. Martin argues, though, that it is possible to accomplish Illinois armed robbery without circumstances

involving immediate danger to a person because one could commit the crime by only using force[3] against property.

The plain language of the statute forecloses Martin's argument. Illinois armed robbery requires either carrying a dangerous weapon, carrying a firearm, or discharging a firearm. 720 Ill. Comp. Stat. 5/18-2(a). So armed robbery necessarily involves immediate danger to a person because there must be a dangerous weapon present. *See Stovall*, 921 F.3d at 760–61 ("While Stovall cites Arkansas cases that potentially involve actions insufficient to constitute 'violent force' . . . —jerking a victim's hand, blocking a victim's exit, cornering a victim, and grabbing a victim's dress—the actions are sufficient to constitute 'immediate danger.'").

Illinois case law further refutes Martin's argument. The Illinois Supreme Court held that armed robbery requires force "such that the power of the owner to retain his property is overcome, either by actual violence physically applied, or by putting him in such fear as to overpower his will." *People v. Bowel*, 488 N.E.2d 995, 997 (Ill. 1986) (citation omitted). Illinois courts have repeatedly distinguished theft from robbery by emphasizing that theft only requires "the mere physical effort of taking the [property] from the victim's person and transferring it to the defendant," but robbery requires force "to overcome the physical resistance created by the attachment of an item to the person or clothing of the owner." *People v. Taylor*, 541 N.E.2d 677, 679 (Ill. 1989) (citation omitted) (cleaned up); *see also People v. Patton*, 389 N.E.2d 1174, 1176 (Ill. 1979) ("where it appeared that the article was taken without any sensible or material violence *to the person* . . . rather by sleight of hand and adroitness than by open violence, and without any struggle on his part, it is merely larceny from the person") (emphasis added) (citation omitted); *People v. Campbell*, 84 N.E. 1035,

[3]The discussion of "force" here relates to the elements of an enumerated offense; it is independent of the analysis for the "force clause" of the Sentencing Guidelines.

1036 (Ill. 1908) ("The difference between stealing from the person of another and robbery lies in the force or intimidation used."). If Martin was right and robbery could be accomplished by only using force against the property itself, there would be no distinction between robbery and theft.

Illinois armed robbery qualifies as "generic" robbery under the enumerated offense clause. Because Martin has two prior felony convictions for crimes of violence, we do not consider his Iowa robbery conviction. We affirm the district court's career offender enhancement.

IV.

The judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1511

United States of America

Plaintiff - Appellee

v.

Christopher Ronald Martin

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:19-cr-00026-JAJ-1)

JUDGMENT

Before LOKEN, GRASZ, and KOBES, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

October 18, 2021

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States,* 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file pro se a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California,* 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petion for writ of certiorari.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 20-1511

United States of America

Appellee

v.

Christopher Ronald Martin

Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Eastern
(3:19-cr-00026-JAJ-1)

ORDER

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

December 01, 2021

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

/s/ Michael E. Gans