No. _____

IN THE

Supreme Court of the United States

ARTHUR LEE ROBINSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITIONER'S APPENDIX TO PETITION FOR CERTIORARI

DAVID L. BRENGLE
Assistant Federal Public Defender
650 Missouri Ave.
East St. Louis, IL 62201
(618) 482-9050
(618) 482-9057 fax
David_Brengle@fd.org
Counsel for Petitioner

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29 F.4th 370
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Arthur Lee ROBINSON, Defendant-Appellant.

No. 21-1622
|
Argued December 6, 2021
|
Decided March 24, 2022

Synopsis

Background: Defendant was convicted, on a guilty plea, in the United States District Court for the Southern District of Illinois, Staci M. Yandle, J., of being a felon in possession of a firearm, and was sentenced under the Armed Career Criminal Act (ACCA) to a 188-month prison term. Defendant appealed, challenging his sentence.

The Court of Appeals, Wood, Circuit Judge, held that Illinois conviction for aggravated discharge of a firearm qualified as predicate "violent felony" under ACCA.

Affirmed.

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

West Codenotes

Recognized as Unconstitutional
18 U.S.C.A. § 924(e)(2)(B)(ii)

***371** Appeal from the United States District Court for the Southern District of Illinois. No. 3:17-cr-30041-SMY-1 — **Staci M. Yandle**, *Judge.*

Attorneys and Law Firms

James M. Cutchin, Attorney, Office of the United States Attorney, Benton, IL, for Plaintiff-Appellee.

David Brengle, Attorney, Office of the Federal Public Defender, East St. Louis, IL, for Defendant-Appellant.

Arthur L. Robinson, pro se.
Before Ripple, Wood, and Kirsch, Circuit Judges.

Opinion

Wood, Circuit Judge.

***372** Arthur Robinson pleaded guilty, without the benefit of a plea agreement, to one count of being a felon in possession of a firearm. See 18 U.S.C. § 922(g)(1). Based largely on his willingness to admit his guilt, the court at first granted Robinson an acceptance-of-responsibility reduction to his offense level for sentencing purposes. See U.S.S.G. § 3E1.1(a). But after Robinson argued at his sentencing hearing that he should not be classified as an armed career criminal pursuant to 18 U.S.C. § 924(e), the district court revoked the acceptance reduction. It then found that Robinson was an armed career criminal and so was subject to a mandatory minimum sentence of 180 months. The court sentenced Robinson just above that line, to 188 months.

Robinson appealed the loss of the acceptance-of-responsibility reduction (but not the application of the mandatory minimum sentence). We agreed with him, vacated his sentence, and remanded for resentencing with the offense-level reduction restored. *United States v. Robinson*, 942 F.3d 767 (7th Cir. 2019) (*Robinson I*). On remand, the district court sentenced Robinson to the 180-month statutory minimum. Robinson again appealed. While that second appeal was pending, the Supreme Court decided *Borden v. United States*, —— U.S. ——, 141 S. Ct. 1817, 210 L.Ed.2d 63 (2021). Robinson now argues that after *Borden* he no longer qualifies for the armed-career-criminal mandatory minimum, and so his sentence should again be vacated. This time, we find no merit in his position, and so we affirm.

I

Because the substance of Robinson's appeal largely turns on his lengthy criminal history, we begin there. We draw the relevant facts from the Presentence Investigation Report (PSR). Robinson's criminal career began in 1991, when, at the age of 20, he pleaded guilty to unlawful delivery of a controlled substance. A year later, in March 1992, he pleaded guilty to aggravated discharge of a firearm and to possession of a weapon by a felon. In January 1993, he was convicted of various cocaine-distribution offenses and of another charge for unlawful possession of a firearm. His March 1992 and January 1993 convictions landed him in prison from 1993 to June 2000. In 2002, Robinson pleaded guilty to two more cocaine-distribution charges; that conduct led to both additional convictions and the revocation of his supervised release from the January 1993 sentence. He remained in prison until December 2013, when he was again granted supervised release. That period of supervision ended in February 2016.

The conduct underlying Robinson's March 1992 guilty plea to aggravated discharge of a firearm is relevant to the current appeal. That conviction came about, as the PSR put it, after Robinson "shot a handgun at least twice, at a van operated by undercover police officers, who were attempting to purchase drugs from [him]." At the time, the relevant Illinois criminal statute provided that "[a] person commits aggravated discharge of a firearm when he knowingly ... [d]ischarges a firearm in the direction of another person or in the direction of a vehicle he knows to be occupied." Ill. Rev. Stat. 1991, ch. 38, par. 24-1.2(a)(2).[1]

***373** Fast forward to September 2016. Early one morning, a police officer noticed an improperly parked vehicle on the street. The officer approached and observed Robinson asleep inside with a Glock 9mm handgun in his lap. The Glock had an extended 31-round magazine and (the officer later learned) had been reported stolen in 2002. Upon being awakened, Robinson volunteered that he was a convicted felon who had served 15 years in prison. Naturally he was arrested at that point. The next day, during an investigatory interview, Robinson explained that a man whom he claimed to know only as "Cory" had left the

gun in the car after Robinson gave him a lift from a club. Robinson said that he had intended to discard the gun but had been intoxicated and had fallen asleep before he remembered to do so.

As we noted at the outset, Robinson pleaded guilty without a plea agreement to one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He raised two arguments at sentencing. The first concerned his eligibility for an offense-level discount for acceptance of responsibility. That issue was ultimately resolved in his favor in *Robinson I.* The second argument related to his status as an armed career criminal for purposes of 18 U.S.C. § 924(e)(1). A person is subject to that statute if he "has three previous convictions ... for a violent felony or a serious drug offense, or both, committed on occasions different from one another." *Id.* The Armed Career Criminal Act (the Act) defines a "violent felony" as one having "as an element the use, attempted use, or threatened use of physical force against the person of another." *Id.* § 924(e)(2)(B). Section 924(e)(1) provides that armed career criminals convicted of violating section 922(g) "shall be ... imprisoned not less than fifteen years[.]"

In *Robinson I*, we commented that Robinson did not contest the court's finding that he was an armed career criminal at that time. 942 F.3d at 772. But at the original sentencing proceeding, he did generally object to the PSR's classification of his 1992 aggravated-discharge conviction as a predicate violent felony. (All agree that Robinson has two other qualifying predicate convictions; the classification of the aggravated-discharge conviction thus is determinative of his status.) The district court overruled the objection but there is some ambiguity as to why. On the relevant form, the district court initialed both the box for "Court adopts probation officer's position" (*i.e.*, that the conviction in question was a qualifying "crime of violence") and the box for "Other: moot as withdrawn." In either case, there is no question that Robinson did not litigate the issue further.

In March 2021, on remand from *Robinson I*, the district court sentenced Robinson to the statutory minimum of 180 months (15 years). (By this time, Judge Yandle had taken over the case from Judge Herndon, who had retired.) In so doing, the district court criticized the mandatory minimum sentence and suggested that it was likely "greater than necessary." But the court indicated that its hands were tied by the Act. Robinson filed a timely notice of appeal. In June 2021, before any briefs were filed in the second appeal, the Supreme Court issued its opinion in *Borden v. United States*, —— U.S. ——, 141 S. Ct. 1817, 210 L.Ed.2d 63 (2021). *Borden* addressed the meaning of "use ... of physical force against the person of another" in section 924(e)(2)(B) of the Act.

***374 II**

In this appeal, Robinson contends that crimes akin to his Illinois aggravated-discharge offense may no longer serve as predicates for section 924(e), because of the Supreme Court's ruling in *Borden.* It was thus error, he reasons, to classify him as an armed career criminal at sentencing. The government counters that any such argument has long since been waived; that our remand in *Robinson I* was confined to the acceptance issue and did not permit Robinson to re-open other arguments, thus making his armed-career-criminal status the law of the case; and that, regardless, Robinson misreads *Borden.*

Normally, we review *de novo* the question whether a district court correctly enhanced a sentence under the Act, *United States v. Foster*, 652 F.3d 776, 792 (7th Cir. 2011), except insofar as the alleged error implicates a factual finding, in which case we review for clear error, *id.* But this appeal presents a prior question: whether the mandate rule and law-of-the-case doctrine preclude our consideration of Robinson's arguments. We thus begin there.

A

"The mandate rule requires a lower court to adhere to the commands of a higher court on remand." *United States v. Polland*, 56 F.3d 776, 777 (7th Cir. 1995). The law of the case doctrine performs a related function. It "is a corollary to the mandate rule and prohibits a lower court from reconsidering on remand an issue expressly or impliedly decided by a higher court ...." *Id.* at 778. But this bar to reconsideration is not absolute. The appellate court has "some flexibility ... to revisit an issue if an intervening change in the law, or some other special circumstance, warrants" doing so. *United States v. Thomas*, 11 F.3d 732, 736 (7th Cir. 1993).

Our decision in Robinson's first appeal did not address the question whether his 1992 aggravated-discharge conviction was a predicate under the Act's elements clause. That means, Robinson contends, that this issue was neither expressly nor impliedly decided in *Robinson I* and it is properly before us now. Moreover, he continues, even if we did rule on it earlier, he sees *Borden* as just the sort of "intervening change in the law" that *Thomas* had in mind. We do not need to choose between these alternatives. One way or the other the question is whether the Supreme Court's *Borden* decision compelled a change in the law of this circuit. We therefore turn immediately to that issue.

B

The Act's "elements clause" defines a violent felony as one that "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U.S.C. § 924(e)(2)(B)(i). In *United States v. Curtis*, 645 F.3d 937, 940 (7th Cir. 2011), we had before us the nearly identical definition of "crime of violence" found in section 4B1.1(a) of the Sentencing Guidelines. We asked whether the elements of a later version of the Illinois aggravated-discharge statute than the one at issue in Robinson's case fit that definition. *Id.* The amended statute read as follows (with changes from the 1991 version underlined):

> A person commits aggravated discharge of a firearm when he or she knowingly or intentionally:
>
> (1) Discharges a firearm at or into a building he or she knows or reasonably should know to be occupied and the firearm is discharged from a place or position outside that building; [or]
>
> ***375** (2) Discharges a firearm in the direction of another person or in the direction of a vehicle he or she knows or reasonably should know to be occupied by a person[.]

720 ILCS 5/24-1.2(a) (2011).

The defendant in *Curtis* had argued that "because the elements of aggravated discharge of a firearm do not require the firearm's discharge to result in *injuring* or *striking* a person" the crime lacked the requisite element of physical force. 645 F.3d at 941 (emphasis added). We were unpersuaded that the statute had a separate "injuring-or-striking" requirement; this reading seemed inconsistent with the fact that the statute covered both "attempted and threatened uses." *Id.* In that connection, we held that "there are no methods of committing the actions in subsection (a)(2) without using, attempting to use, or threatening to use physical force against another person." *Id.* at 940.

To distinguish that holding in his first appeal, Robinson would have needed to convince us that the phrase "against the person of another" means two very different things in the guidelines and the Act. That would have been an uphill battle, given the many cases that have found the guidelines and the Act to be identical on this point. See, *e.g.*, *United States v. Jennings*, 860 F.3d 450, 453 (7th Cir. 2017); *United States v. Evans*, 924 F.3d 21, 29 n.4 (2d Cir. 2019). Accordingly, Robinson has satisfied

the first half of his burden: the law in this circuit on the question whether this Illinois law required the use of force was settled before *Borden* came along.

In *Borden*, the Supreme Court had to decide "whether a criminal offense can count as a 'violent felony' [under the elements clause of the Act] if it requires only a *mens rea* of recklessness." 141 S. Ct. at 1821. A fractured majority held that reckless offenses do not so qualify. *Id.* Four of the justices reached that result without qualification. The plurality explained that reckless offenses "do not require, as the Act does, the active employment of force against another person." *Id.* at 1834. They distinguished "recklessness" from "purpose" and "knowledge," employing the standard definitions: "A person acts purposefully when he consciously desires a particular result" and "acts knowingly when he is aware that a result is practically certain to follow from his conduct, whatever his affirmative desire." *Id.* at 1823 (cleaned up). In contrast, a person acts recklessly "when he consciously disregards a substantial and unjustifiable risk attached to his conduct, in gross deviation from accepted standards." *Id.* at 1824 (cleaned up).

Justice Thomas cast the deciding vote. While he agreed with the plurality that reckless offenses do not fit the elements-clause definition found in section (e)(2)(B)(i), he would have found that they do fit within the so-called residual clause found in section (e)(2)(B)(ii) of the Act: "... or otherwise involves conduct that presents a serious potential risk of physical injury to another." *Id.* at 1834 (Thomas, J., concurring in the judgment). But, acknowledging the *stare decisis* effect of *Johnson v. United States*, 576 U.S. 591, 597, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015), which held the residual clause to be void for vagueness, Justice Thomas concurred in the judgment. *Id.* at 1836–37.

Robinson contends that *Borden* changed the significance, under the Act, of his 1992 Illinois aggravated-discharge conviction, but we do not see how it could have done so. *Borden*, as we just said, was about *mens rea.* Yet there is no *mens rea* issue here. The Illinois statute in question had a *mens rea* of knowing in 1991, and it still does today. *Borden* is thus irrelevant. A ***376** quick look at the statute under which Robinson was charged drives the point home:

> A person commits aggravated discharge of a firearm when he *knowingly*:
>
> (1) Discharges a firearm at or into a building he *knows* to be occupied and the firearm is discharged from a place or position outside that building; or
>
> (2) Discharges a firearm in the direction of another person or in the direction of a vehicle he *knows* to be occupied.
>
> Ill. Rev. Stat. 1991, ch. 38, Ill. par. 24-1.2(a)(1)-(2) (emphasis added).

This provision is replete with words indicating that it covers only knowing actions: the *knowing* discharge of a firearm (1) into a building the person *knows* to be occupied, (2) in the direction of another person, or (3) or in the direction of a vehicle the person *knows* to be occupied. This calls for knowledge of the target, not just knowledge that one is pulling the trigger. *Cf. Rehaif v. United States*, —— U.S. ——, 139 S. Ct. 2191, 2195, 204 L.Ed.2d 594 (2019) ("[W]e start from a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding each of the statutory elements that criminalize otherwise innocent conduct.") (internal quotation marks omitted). And as for the prohibition against shooting in the direction of another person, a reading in which this provision did *not* require the shooter to know there is a person in the direction of the discharge would defy grammatical logic.

The Illinois Supreme Court has confirmed that the *mens rea* for aggravated discharge is "knowing" for both the discharge element and the target element. In *People v. Fornear*, 176 Ill. 2d 523, 525, 224 Ill.Dec. 12, 680 N.E.2d 1383 (1997), the defendant had been convicted by a jury of both aggravated discharge of a firearm and of reckless conduct after he shot his

fiancée. The intermediate appellate court, in affirming both convictions, had reasoned that "aggravated discharge of a firearm required only that the jury find that defendant knowingly or intentionally performed the act of firing the pistol in the direction of the victim." *Id.* at 531, 224 Ill.Dec. 12, 680 N.E.2d 1383 (quoting 283 Ill. App. 3d 171, 179, 218 Ill.Dec. 618, 669 N.E.2d 939 (1996)). It saw no tension between that conviction and the reckless-conduct conviction: "Assuming the jurors also found that [the] defendant intentionally fired the weapon with a conscious disregard for whether his actions would endanger or injure the victim, they could have concluded properly that [the] defendant was guilty of both aggravated discharge of a firearm and reckless conduct." *Id.* But the Illinois Supreme Court rejected that reasoning. It explained that "recklessness and knowledge are mutually inconsistent culpable mental states," *id.* at 531, 224 Ill.Dec. 12, 680 N.E.2d 1383, and that "aggravated discharge of a firearm depended on a finding that defendant knowingly discharged a firearm in the direction of another person," *id.* at 532, 224 Ill.Dec. 12, 680 N.E.2d 1383. In short, *Fornear* establishes that Illinois aggravated discharge requires a *mens rea* higher than the recklessness considered in *Borden.*

Further confirmation is found in the longstanding distinction in Illinois law between reckless discharge and aggravated discharge. Illinois law defines "the offense of reckless discharge of a firearm as 'discharging a firearm in a reckless manner which endangers the bodily safety of an individual.' " *People v. Giraud*, 2012 IL 113116 ¶ 19, 366 Ill.Dec. 748, 980 N.E.2d 1107 (quoting 720 ILCS 5/24-1.5(a)). The Illinois Supreme Court has concluded that "reckless discharge of a firearm does not ***377** require 'the intentional firing of a weapon knowingly and directly at someone[,]' " because "the act of intentionally firing at a particular individual would be the offense of aggravated discharge of a firearm." *Id.* (quoting *People v. Collins*, 214 Ill. 2d 206, 215, 291 Ill.Dec. 686, 824 N.E.2d 262 (2005)).

Text, case law, and statutory context all point to the same conclusion: The *mens rea* for Illinois's aggravated-discharge offense is knowledge, not recklessness. *Borden*, it follows, is irrelevant to Robinson's status, because his predicate violent offense was not a reckless crime.

***

Because Robinson has not identified "an intervening change in the law" that bears on his sentence, *Thomas*, 11 F.3d at 736, we have no reason to disregard the mandate rule. Accordingly, we hold that Robinson's status under the act was settled at his initial sentencing proceeding and remains settled after *Borden.*

C

Before we conclude, a brief comment on waiver is in order. The government contends that everything we have just said is unnecessary because Robinson "waived" the issue of his armed-career-criminal status when he elected not to raise it in his first appeal. We realize that we have written that "any issue that could have been but was not raised on appeal is waived and thus not remanded." *United States v. Husband*, 312 F.3d 247, 250 (7th Cir. 2002). But that statement, in context, did not purport to sweep away the well-recognized distinction between waiver and forfeiture. See *United States v. Olano*, 507 U.S. 725, 733, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993); *United States v. Flores*, 929 F.3d 443, 447 (7th Cir. 2019); *United States v. Hyatt*, No. 21-1212, 28 F.4th 776, 781–82 (7th Cir. Mar. 14, 2022). Waiver is the intentional relinquishment of a point, while forfeiture results from a lack of action. The latter is a better description of Robinson's case. At best, he forfeited this issue, thereby entitling us to reach it under the plain-error standard of review. But he would stumble immediately on the first point—was there an error at all? See *Olano*, 507 U.S. at 733–34, 113 S.Ct. 1770. We have concluded that the answer to that question is no. That is the end of this line for Robinson. We thus have no need to consider how aggressively his lawyer should have challenged existing circuit law on the first appeal.

III

We affirm the judgment of the district court.

All Citations

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Footnotes

[1] Illinois switched to a new statutory compilation scheme effective January 1, 1993. Criminal statutes moved from chapter 38 to chapter 720, and the section numbering system also changed significantly. This opinion cites the older statutory compilation when discussing the state of the law prior to 1993.

AO 245C (SDIL Rev. 10/19) Amended Judgment in a Criminal Case (NOTE: Identify Changes with Asterisks(*))

UNITED STATES DISTRICT COURT
Southern District of Illinois

UNITED STATES OF AMERICA

V.

ARTHUR L. ROBINSON

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: **3:17-CR-30041-SMY-1**
USM Number: **02527-025**

DAVID L BRENGLE
Defendant's Attorney

Date of Original Judgment: May 31, 2018
(Or Date of Last Amended Judgment)

Reason for Amendment:

☒ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P.35(b))
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P.35(a))
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P.36)
☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583))
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment
☐ 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. §§ 922(g)(1) and 924(a)(2)	Felon In Possession of a Firearm	9/18/2016	1

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.

☒ No fine ☐ Forfeiture pursuant to order filed , included herein.

☒ Forfeiture pursuant to Order of the Court. See page 7 for specific property details.

It is ordered that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Restitution and/or fees may be paid to:
Clerk, U.S. District Court*
750 Missouri Ave.
East St. Louis, IL 62201

*Checks payable to: Clerk, U.S. District Court

March 23, 2021
Date of Imposition of Judgment

Signature of Judge
Staci M. Yandle, United States District Judge
Name and Title of Judge

Date Signed: March 25, 2021

DEFENDANT: ARTHUR L. ROBINSON
CASE NUMBER: 3:17-CR-30041-SMY-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **180 months. Defendant shall receive credit for time served since original sentencing**

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

☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐a.m. ☐ p.m. on
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ARTHUR L. ROBINSON
CASE NUMBER: 3:17-CR-30041-SMY-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years**

Other than exceptions noted on the record at sentencing, the Court adopts the presentence report in its current form, including the suggested terms and conditions of supervised release and the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3583(d):

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 mandatory drug testing condition is suspended, as the defendant poses a low risk of future substance abuse.

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

ADMINISTRATIVE CONDITIONS

The following conditions of supervised release are administrative and applicable whenever supervised release is imposed, regardless of the substantive conditions that may also be imposed. These conditions are basic requirements essential to supervised release.

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

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Pursuant to the factors in 18 U.S.C. § 3553(a) and 18 U.S.C. § 3583(d), the following special conditions are ordered. While the Court imposes special conditions, pursuant to 18 U.S.C. § 3603(10), the probation officer shall perform any other duty that the Court may designate. The Court directs the probation officer to administer, monitor, and use all suitable methods consistent with the conditions specified by the Court and 18 U.S.C. § 3603 to aid persons on probation/supervised release. Although the probation officer administers the special conditions, final authority over all conditions rests with the Court.

The defendant shall participate in treatment for narcotic addiction, drug dependence, or alcohol dependence, which includes urinalysis and/or other drug detection measures and which may require residence and/or participation in a residential treatment facility, or residential reentry center (halfway house). The number of drug tests shall not exceed 52 tests in a one-year period. Any participation will require complete abstinence from all alcoholic beverages and any other substances for the purpose of intoxication. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

The defendant shall not knowingly visit or remain at places where controlled substances are illegally sold, used, distributed, or administered.

The defendant shall participate in any program deemed appropriate to improve job readiness skills, which may include participation in a Workforce Development Program or vocational program. The Court directs the probation officer to approve the program and monitor the defendant's participation.

While any financial penalties are outstanding, the defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

While any financial penalties are outstanding, the defendant shall apply some or all monies received, to be determined by the Court, from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligation. The defendant shall notify the probation officer within 72 hours of the receipt of any indicated monies.

DEFENDANT: ARTHUR L. ROBINSON
CASE NUMBER: 3:17-CR-30041-SMY-1

The defendant shall pay any financial penalties imposed which are due and payable immediately. If the defendant is unable to pay them immediately, any amount remaining unpaid when supervised release commences will become a condition of supervised release and be paid in accordance with the Schedule of Payments sheet of the judgment based on the defendant's ability to pay.

The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to a search, conducted by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

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

Defendant's Signature _____ Date _____

U.S. Probation Officer _____ Date _____

DEFENDANT: ARTHUR L. ROBINSON
CASE NUMBER: 3:17-CR-30041-SMY-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 7.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100	N/A	waived	N/A	N/A

Defendant shall receive credit for any payments he has made toward the special assessment imposed in the original sentence and judgment.

☐ 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

☐ 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 judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 7 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 ☐ fine ☐ restitution.

☐ the interest requirement for ☐ 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: ARTHUR L. ROBINSON
CASE NUMBER: 3:17-CR-30041-SMY-1

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 $_____ 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 penalties are due immediately and payable through the Clerk, U.S. District Court. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be paid in equal monthly installments of $10 or ten percent of his net monthly income, whichever is greater. The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

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 criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

☐ Joint and Several
Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and 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 Glock 19, 9 mm pistol bearing serial number BKS994US and any ammunition contained therein.

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