United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 30, 2022
Lyle W. Cayce
Clerk

No. 20-11169

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEVORIS LAMONT JACKSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CR-637

Before SMITH, COSTA, and WILSON, *Circuit Judges*.

GREGG COSTA, *Circuit Judge*:

When Devoris Jackson unlawfully possessed a firearm, our precedent did not treat his burglary convictions as violent felonies that could enhance his sentence under the Armed Career Criminal Act (ACCA). But by the time he was sentenced for the gun crime, the Supreme Court had rejected our view. The district court thus counted Jackson's burglary convictions as violent felonies. The principal issue on appeal is whether using the new precedent to enhance Jackson's sentence violated due process.

I

It is unlawful for felons to possess a firearm. 18 U.S.C. § 922(g)(1). Felon-in-possession convictions typically carry a maximum ten-year penalty. 18 U.S.C. § 924(a)(2). But the ACCA increases the penalty to a fifteen-year minimum if the defendant "has three previous convictions . . . for a violent felony." *Id.* § 924(e)(1). A "violent felony" is any crime punishable by more than one year in prison that "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson, or extortion, [or] involves the use of explosives." *Id.* § 924(e)(2)(B).

The district court applied the ACCA at Jackson's sentencing—imposing the minimum sentence of fifteen years—after he pled guilty to possessing a firearm as a felon. The court treated Jackson's Texas aggravated robbery conviction and two Texas burglary-of-a-habitation convictions as the violent felonies compelling the enhanced sentence.

II

As he did in the district court, Jackson concedes that his Texas burglary-of-a-habitation convictions qualify as violent felonies under current precedent.[1] *See United States v. Herrold* (*Herrold II*), 941 F.3d 173, 177, 182 (5th Cir. 2019) (en banc), *cert. denied*, 141 S. Ct. 273 (2020). Jackson argues, however, that the Due Process Clause required the district court to instead apply our precedent as it existed when he committed the gun crime in August 2018.

[1] He challenges that caselaw only to preserve an attempt to seek its reversal in the Supreme Court.

Understanding Jackson's claim requires a brief history of our changing precedent on whether Texas burglary of a habitation is an ACCA predicate. When Congress named "burglary" a violent felony, it "had in mind a modern 'generic' view" of the crime. *Taylor v. United States*, 495 U.S. 575, 589 (1990). Generic burglary is the "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599. Shortly before Jackson was caught in possession of the firearm, we held that Texas burglary of a habitation was broader than generic burglary because it reached defendants who formed intent to commit a crime after entering the building. *United States v. Herrold (Herrold I)*, 883 F.3d 517, 532–36 (5th Cir. 2018) (en banc), *vacated*, 139 S. Ct. 2712 (2019). That precedent was short-lived. The following year, the Supreme Court resolved a circuit split and held that generic burglary occurs regardless of when intent is formed. *Quarles v. United States*, 139 S. Ct. 1872, 1875 (2019). Because we were on the wrong side of the split, the Supreme Court returned *Herrold* to us. 139 S. Ct. 2712 (2019). Bound by *stare decisis*, we then held that Texas burglary of a habitation is generic burglary and thus is a violent felony. *Herrold II*, 941 F.3d at 177, 182. *Herrold II* was on the books when Jackson was sentenced.

Jackson contends that it was unconstitutional for the district court to apply the law as it existed when he was sentenced rather than when he committed the crime. He relies on the due process principle that guarantees notice of what conduct is criminal and the punishment that attaches to each crime. *See Johnson v. United States*, 576 U.S. 591, 595–96 (2015). One corollary of that notice requirement is a bar on the retroactive application of a judicial interpretation of a criminal law when the decision is "unexpected and indefensible by reference to the law which had been expressed prior to the conduct at issue." *Bouie v. City of Columbia*, 378 U.S. 347, 354 (1964).

The "unexpected and indefensible" qualifier recognizes that most judicial decisions apply retroactively. After all, an outright prohibition on

retroactive application "would place an unworkable and unacceptable restraint on normal judicial processes and would be incompatible with the resolution of uncertainty that marks any evolving legal system." *Rogers v. Tennessee*, 532 U.S. 451, 461 (2001).

What makes a judicial ruling "unexpected and indefensible"? The Civil Rights Era case that gave rise to this antiretroactivity doctrine is illustrative. In *Bouie v. City of Columbia*, the Supreme Court invalidated convictions of two African-American college students who were arrested for 'sitting in' at a whites-only lunch counter. 378 U.S. at 348–49. The students had been charged under South Carolina's criminal trespass statute, which prohibited "entry" onto another's property "after notice prohibiting [the] same." *Id.* at 349 n.1. South Carolina courts had long read the statute to require pre-entry notice. *Id.* at 356. The state supreme court nonetheless affirmed the students' convictions, holding that the law also criminalized remaining on another's property after being asked to leave. *Id.* at 350. That novel reading of the statute could not be applied retroactively, the Supreme Court of the United States held, because the state's preexisting law did not suggest that the students might be jailed for "sit[ting] quietly" in the restaurant. *See id.* at 348.

The hallmarks of the *Bouie* situation when a law cannot apply retroactively include stark divergence from the statutory text, departure from prior caselaw, inconsistency with the expectations of the legislature and law enforcement, and the criminalization of otherwise innocent conduct. *Bouie*, 378 U.S. at 355–56, 361–63.[2] Those hallmarks are absent here.

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[2] Only one other time has the Supreme Court found a *Bouie* violation. *Marks v. United States*, 430 U.S. 188 (1977)—a decision better known for trying to explain which of many separate opinions in a decision is controlling, *see id.* at 192–94—barred the retroactive application of the obscenity definition announced in *Miller v. California*, 413 U.S. 15 (1973).

First and foremost, classifying Texas burglary of a habitation as a violent felony is not "clearly at variance" with the ACCA's text. *See Bouie*, 378 U.S. at 356. The ACCA defines "violent felony" to include "burglary." 18 U.S.C. § 924(e)(2)(B)(ii). Judges can debate whether this generic reference to "burglary" includes a burglary law that allows intent to be formed after entry, but a layperson reading the law would likely expect Texas burglary to be an ACCA predicate. *Contrast Bouie*, 378 U.S. at 355–56 (holding that extending South Carolina's trespassing statute to remaining on another's property after being asked to leave was inconsistent with the law's text barring only "entry" upon another's property). Treating Texas burglary as a violent felony did not read into the statute "an intention which the [ACCA's] words themselves did not suggest." *See id.* at 362 (quoting *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 86 (1820) (Marshall, C.J.)).

Nor was counting Jackson's burglary convictions as violent felonies "unexpected" in light of precedent. In fact, *Herrold I*'s fleeting holding—that Texas burglary of a habitation was not generic burglary—departed from a quarter century of Fifth Circuit caselaw. *Compare Herrold I*, 883 F.3d at 517, *with United States v. Silva*, 957 F.2d 157, 162 (5th Cir. 1992); *United States v. Constante*, 544 F.3d 584, 586–87 (5th Cir. 2008); *and United States v. Uribe*, 838 F.3d 667, 671 (5th Cir. 2016) (all considering Texas burglary of a habitation an ACCA predicate). *Herrold I* was a closely divided (8-7) *en banc* decision. And it clashed with other circuits' view that generic burglary includes burglaries with post-entry intent. *See United States v. Bonilla*, 687

Miller, which asked whether the materials lack "serious literary, artistic, political, or scientific value," punished conduct innocent under the prior "utterly without redeeming social value" test. *Marks*, 430 U.S. at 194. In the 45 years since *Marks*, the Supreme Court thrice has rejected *Bouie* claims. *See* BRIAN R. MEANS, POSTCONVICTION REMEDIES § 41:2 (2021) (reviewing those decisions and generally noting the narrowness of the doctrine).

F.3d 188, 193–94 (4th Cir. 2012) (finding Texas burglary generic and thus a "violent felony" under the ACCA); *see also United States v. Priddy*, 808 F.3d 676, 684 (6th Cir. 2015) (deeming Tennessee's similar burglary statute generic). That circuit split created a reasonable likelihood that the Supreme Court would resolve the disagreement. It soon did so. *Quarles*, 139 S. Ct. at 1872; *Herrold*, 139 S. Ct. at 2712 (vacating *Herrold I* and remanding for reconsideration in light of *Quarles*).

That the Supreme Court's resolution of a circuit split prompted the ruling Jackson calls "unexpected and indefensible" reveals bigger problems with his argument. It is difficult to see how a high court decision overruling an intermediate one could be an *unforeseeable* change in law; our decisions are always subject to Supreme Court review. And it is not even clear that applying *Herrold II* to Jackson was in any way retroactive because it was a later phase of the very case he says should control. At a minimum, it is not reasonable to treat a divided decision of an intermediate court like ours as providing the unalterable notice that *Bouie* contemplates. *Contrast Bouie*, 378 U.S. at 356–57 (noting that the Supreme Court of South Carolina's ruling upholding the trespass prosecution for the sit-in went against almost a hundred years of the state high court's having "uniformly emphasized the notice-before-entry requirement").

Finding a retroactivity problem when a high court overrules a lower one would undermine vertical precedent. It would mean that anytime the Supreme Court resolves a circuit split on the interpretation of a criminal statute in favor of the government, the high court's decision could not be applied to pending prosecutions in the circuit that had taken the pro-defendant position (it could not apply even to the Supreme Court defendant if the decision reversed circuit precedent that predated the defendant's crime).

We are not aware of any case ever so holding despite this being a common occurrence. Consider a Supreme Court decision from just a few years before *Quarles*. *Voisine v. United States*, 579 U.S. 686 (2016), likewise resolved a circuit split in favor of the government, holding that reckless domestic assault counts as a "misdemeanor crime of domestic violence" that prevents one from possessing a gun. At least two circuits (including ours) that had pre-*Voisine* caselaw requiring a mens rea higher than recklessness for similarly-worded provisions applied the Supreme Court's reasoning to cases already in the pipeline when *Voisine* issued. *See United States v. Burris* (*Burris I*), 920 F.3d 942, 952–53 (5th Cir. 2019), *vacated on other grounds*, 141 S. Ct. 2781 (2021); *United States v. Pam*, 867 F.3d 1191, 1207–08 (10th Cir. 2017).[3] The contrary idea—that due process prevents us from applying Supreme Court caselaw that overrides earlier circuit precedent to already-pending cases—would deprive the Supreme Court of its final say.

What we have said so far is enough to doom Jackson's due process claim. We also note that *Quarles* did not "make previously innocent conduct criminal." *See Proctor v. Cockrell*, 283 F.3d 726, 732 (5th Cir. 2002). Possessing a firearm with a prior felony conviction was a federal crime long before Jackson's offense. *See* 18 U.S.C. § 922(g)(1); *contrast Marks*, 430 U.S. at 191 (finding a due process violation because new definition of obscenity criminalized acts that were legal at the time of the challenged conduct).

None of the features of the egregious state court decision that led *Bouie* to find a due process violation exist here. And our court has never

[3] These cases' view that *Voisine*'s holding about *mens rea* also governed the ACCA's definition of "violent felony" requiring the "use . . . of physical force" was later rejected by the Supreme Court. *See Borden v. United States*, 141 S. Ct. 1817, 1825 (2021) (holding that a crime requiring only a *mens rea* of recklessness does not qualify as a "violent felony" under ACCA's element clause). Our point, however, is that neither *Burris* nor *Pam* saw a problem with applying *Voisine* to crimes that occurred before *Voisine* issued.

recognized a *Bouie* violation. *See United States v. Kay*, 513 F.3d 432, 441–46 (5th Cir. 2007); *United States v. Martinez*, 496 F.3d 387, 389–90 (5th Cir. 2007) (both rejecting *Bouie* claims). Nor have we seen a case from any court holding that the Supreme Court's abrogation of circuit precedent cannot be applied to conduct occurring before the high court ruled. This case should not be the pioneer in either of those categories. It was neither "unexpected" nor "indefensible" when the Supreme Court abrogated an 8-7 decision of our en banc court, siding with circuits that had held generic burglary did not require intent to commit a crime contemporaneous with entry into the building. Applying that same interpretation of the law to crimes occurring in this circuit during the brief interregnum between *Herrold I* and *Quarles* was neither unexpected nor indefensible.

It did not violate due process to count Jackson's burglary convictions as violent felonies.

III

The district court thus properly sentenced Jackson as an armed career criminal if his Texas aggravated robbery conviction is a third violent felony. This conviction qualifies under the ACCA's elements clause if it "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).

On this issue, Jackson is aided rather than hindered by a recent Supreme Court decision that abrogated some of our caselaw. A crime falls within the elements clause only if it requires the defendant to act with purpose or knowledge. *Borden*, 141 S. Ct. at 1834 ("Offenses with a *mens rea* of recklessness do not qualify as violent felonies under ACCA . . . [because] [t]hey do not require . . . the active employment of force against another person."); *see United States v. Greer*, 20 F.4th 1071, 1076 (5th Cir. 2021) (recognizing *Borden* as an intervening change in the law abrogating our

inconsistent precedent). Jackson points out that one predicate for Texas aggravated robbery—robbery-by-injury, *see* TEX. PENAL CODE § 29.02(a)(1)—allows conviction based on mere recklessness. *United States v. Garrett*, 24 F.4th 485, 488–89 (5th Cir. 2022). It follows under the categorical approach, he contends, that no Texas aggravated robbery conviction is a volent felony.

Normally Jackson might have a point; courts usually look at the elements of the entire statute to determine if all iterations of the crime have the required force element. *Borden*, 141 S. Ct. at 1822. But when a statute is divisible into multiple crimes, the court may look to "a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of." *Mathis v. United States*, 136 S. Ct. 2243, 2249 (2016). Those documents show that the predicate for Jackson's aggravated robbery was robbery-by-threat, *see* TEX. PENAL CODE § 29.02(a)(2), which does require a *mens rea* higher than recklessness.[4] *Garrett*, 24 F.4th at 491 (holding that "intentionally or knowingly threatening or placing another in fear of imminent bodily injury or death plainly constitutes the 'threatened use of physical force' under the ACCA").

Jackson's reliance on the insufficient *mens rea* of robbery-by-injury thus depends on his showing that the Texas simple robbery statute is indivisible and must be viewed as a whole. But we recently reaffirmed that the robbery statute is divisible and creates two distinct crimes. *Garrett*, 24

[4] Jackson's judicial confession and the corresponding indictment show that his predicate offense was robbery-by-threat. Both documents explain that Jackson "did . . . intentionally and knowingly threaten and place [the victim] in fear of imminent bodily injury and death." These documents closely track the language of the robbery-by-threat statute and do not mention the bodily injury required for a robbery-by-injury conviction.

F.4th at 489–90. Because the modified categorical approach shows that Jackson was convicted of the qualifying predicate of robbery-by-threat, it does not matter that a different predicate is not considered a violent felony.

Garrett addressed only a simple robbery conviction. But as common sense suggests, the fact that Jackson committed an aggravated robbery does not transform his violent felony into a nonviolent one. *United States v. Powell*, No. 18-11050, 2022 WL 413943, at *2 n.3 (5th Cir. 2022) (unpublished) ("[R]obbery-by-threat, whether simple or aggravated, is a violent felony under the ACCA."). Aggravated robbery requires a simple robbery predicate plus an aggravating circumstance such as serious bodily injury, the use or exhibition of a deadly weapon, or a vulnerable victim. TEX. PENAL CODE § 29.03(a). When the underlying robbery—here robbery-by-threat—has as an element "the use, attempted use, or threatened use of physical force against the person of another," the aggravating circumstance is irrelevant for ACCA purposes. To establish the underlying simple robbery, the state had to prove a crime that falls within the ACCA's elements clause.

Jackson's aggravated robbery conviction is also a violent felony.

***

We AFFIRM.

United States Court of Appeals for the Fifth Circuit

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No. 20-11169

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DEVORIS LAMONT JACKSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CR-637-1

Before SMITH, COSTA, and WILSON, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

DEVORIS LAMONT JACKSON

JUDGMENT IN A CRIMINAL CASE

Case Number: **3:18-CR-00637-L(1)**
USM Number: **58408-177**
Christopher W Lewis
Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	**Count 1 of the Superseding Information filed August 21, 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 §§ 922(g)(1) and 924(a)(2) Felon in Possession of a Firearm	08/31/2018	1

The defendant is sentenced as provided in pages 2 through 8 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) 1 of the Indictment filed 12/18/2018 ☒ 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.

November 23, 2020
Date of Imposition of Judgment

Sam A. Lindsay
Signature of Judge

Sam A. Lindsay, United States District Judge
Name and Title of Judge

November 23, 2020
Date

DEFENDANT: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(1)

IMPRISONMENT

Pursuant to the Sentencing Reform Act of 1984, but taking the Guidelines as advisory pursuant to United States v. Booker, and considering the factors set forth in 18 U.S.C. Section 3553(a), 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 (180) months as to Count 1. This sentence shall run concurrently with any sentences imposed in Case Nos. F-1870618, F-1859240 and F-1860116, in the 363rd Judicial District Court of Dallas County; MA1755231, in Dallas County Criminal Court 10; and MA1854298 and MB1863141, imposed in Dallas County Criminal Court 7.** ***Pursuant to United States Sentencing Commission Guidelines Manual, in particular, Section 5G1.3(c), the November 2018 Edition, the court intends for Devoris Lamont Jackson to receive a sentence adjustment to account for any time that he has spent in custody beginning on February 6, 2019, that the Bureau of Prisons will not credit under Title 18 United States Code 3585(b).***

☒ The court makes the following recommendations to the Bureau of Prisons:
The court recommends that Defendant be allowed to serve his sentence at a facility in the Dallas/Fort Worth, Texas area and that he be allowed to participate in the Residential Drug Abuse Treatment Program, if he is eligible.

☒ 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: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(1)

SUPERVISED RELEASE

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

MANDATORY CONDITIONS

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

DEFENDANT: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(1)

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. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a outpatient program approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall abstain from the use of excessive alcohol and/or all other intoxicants during and after completion of treatment. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least $10 per month.

The defendant shall participate in outpatient mental health treatment services as directed by the probation officer until successfully discharged. These services may include medications prescribed by a licensed physician. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least $10 per month.

The defendant shall provide to the probation officer any requested financial information.

DEFENDANT: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$.00	$.00	$.00	$.00

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ 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 the Schedule of Payments page 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: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(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 payments 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:
It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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 the court.

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

☐ Joint and Several
See above for 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:

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.

DEFENDANT: DEVORIS LAMONT JACKSON
CASE NUMBER: 3:18-CR-00637-L(1)

ADDITIONAL FORFEITED PROPERTY

Pursuant to 18 U.S.C. §924(d) and 28 U.S.C. §2461(c), the following property is forfeited to the United States of America:

a Berretta, Pietro S.P.A., Model APX Centurion, 9 millimeter pistol, bearing serial number A051310X, and all ammunition recovered.