

Appendix

NOT RECOMMENDED FOR PUBLICATION
File Name: 22a0424n.06

No. 21-3896

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.)
JACKIE MITCHELL,)
Defendant-Appellant.)

)

FILED
Oct 21, 2022
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF OHIO

OPINION

Before: MOORE, CLAY, and NALBANDIAN, Circuit Judges.

KAREN NELSON MOORE, Circuit Judge. Jackie Mitchell appeals his sentence for his convictions under 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 26 U.S.C. § 5861(d). Mitchell argues that his prior felony convictions of domestic violence are not violent felonies or crimes of violence under 18 U.S.C. § 924(e) and § 4B1.1 of the U.S. Sentencing Guidelines because the statute allows for the possibility of a conviction without having committed violent force. Sixth Circuit precedent holds otherwise, so we **AFFIRM** Mitchell's sentence.

I. BACKGROUND

On November 10, 2020, a federal grand jury indicted Mitchell on one count of possessing a firearm despite prior felony convictions, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and one count of possessing an unregistered short-barrel shotgun, in violation of 26 U.S.C. § 5861(d). R. 1 (Indictment) (Page ID #1–3). The indictment identified as previous felonies three domestic-violence convictions, one cocaine-trafficking conviction, and three counts of assault. *Id.*

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¶ 1 (Page ID #1). Mitchell pleaded guilty to all counts without a plea agreement. R. 44 (Plea Hr'g Tr. at 35) (Page ID #217).

The Presentence Investigation Report (“PSR”) submitted to the district court identified four “prior violent felony convictions” of domestic violence under Ohio Revised Code § 2919.25(A). R. 27 (PSR ¶ 28) (Page ID #106). Because Mitchell was (1) at least eighteen years old at the time of his arrests and convictions for each domestic-violence felony, (*id.* ¶¶ 39, 48, 52, 60 (Page ID #108, 111, 113, 118)), (2) awaiting sentencing for a felon-in-possession conviction, and (3) “ha[d] at least three prior convictions for [] violent felony offenses,” the PSR classified him as an “armed career criminal and subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e).” *See id.* ¶ 28 (Page ID #106). Accordingly, the PSR stated that the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), required that Mitchell receive—at a minimum—a sentence of fifteen years of imprisonment for the felon-in-possession conviction. *See id.* ¶ 95 (Page ID #126). Section 4B1.1 of the U.S. Sentencing Guidelines designated Mitchell a “career offender,” resulting in a guideline sentencing range of 188 months to 235 months of imprisonment. *See id.* ¶¶ 28, 96 (Page ID #106, 126).

Mitchell objected to the classifications based on his four prior felony convictions of domestic violence,¹ (*see* R. 27 (PSR at 34–35) (Page ID #132–33)), but nonetheless acknowledged that binding Sixth Circuit precedent, *United States v. Gatson*, 776 F.3d 405, 411 (6th Cir. 2015), holds that domestic-violence convictions under Ohio Revised Code § 2919.25(A) are qualifying predicate offenses under the ACCA § 924(e) and the Guidelines, (R. 29 (Def.’s Sentencing Mem.

¹In light of his objection, Mitchell argued that his Total Offense Level should have been calculated at twenty-two, which would place him in the Guidelines range of sixty-three months to seventy-eight months. R. 27 (PSR at 35) (Page ID #133).

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at 7) (Page ID #147)). At sentencing, the district court also acknowledged *Gatson*'s binding effect. R. 45 (Sentencing Hr'g Tr. at 23–24) (Page ID #244–45). Bound by the mandatory minimum, the district court sentenced Mitchell to a term of incarceration of 180 months (fifteen years) for Count 1, and 120 months (ten years) for Count 2 to be served concurrently. *Id.* at 44, 47 (Page ID #265, 268).

Mitchell timely appealed. R. 35 (Def.'s Notice of Appeal) (Page ID #171). He challenges the designation of his prior felony convictions of domestic violence as violent felonies and crimes of violence and the corresponding sentence. The district court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction to hear Mitchell's appeal pursuant to 28 U.S.C. § 1291.

II. ANALYSIS

The ACCA mandates that an individual who violates 18 U.S.C. § 922(g) and “has three previous convictions . . . for a violent felony” shall be incarcerated for a minimum of fifteen years. 18 U.S.C. § 924(e)(1). The Guidelines similarly recommend a longer sentence for “career offenders.” U.S. Sent’g Guidelines Manual § 4B1.1 (U.S. Sent’g Comm’n 2021). Section 4B1.1 designates a defendant as a “career offender” if (1) they are “at least eighteen years old at the time” of the instant offense, “(2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense,” and (3) they have “at least two prior felony convictions of either a crime of violence or a controlled substance offense.” *Id.* § 4B1.1(a). Under both the ACCA and the Guidelines, a prior offense qualifies as a “violent felony” or a “crime of violence” if it satisfies either the “elements clause” or the “generic clause.” *See* 18 U.S.C. § 924(e)(2)(B); USSG § 4B1.2(a). The ACCA and Guidelines elements clauses, which are relevant here, are identical and define a “violent felony” or “crime of violence” as an offense that “has as an element

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the use, attempted use, or threatened use of physical force against the person of another.” 18 U.S.C. § 924(e)(2)(B)(i); USSG § 4B1.2(a)(1). Additionally, both schemes require that a predicate offense be punishable for more than one year of imprisonment. 18 U.S.C. § 924(e)(2)(B); USSG § 4B1.2(a).

Accordingly, in elements-clause cases, “we treat a holding that a crime is categorically a violent felony under the ACCA as controlling as to whether that same crime is a crime of violence under § 4B1.1.” *United States v. Williams*, 655 F. App’x 419, 422 (6th Cir. 2016) (quoting *United States v. Hibbit*, 514 F. App’x 594, 597 (6th Cir. 2013)). “[P]hysical force’ means *violent* force—that is, force capable of causing physical pain or injury to another person.” *Johnson v. United States*, 559 U.S. 133, 140 (2010). Thus, “a predicate crime of violence must have as an element the threat, attempt, or actual use of force capable of causing physical pain or injury to another person.” *United States v. Solomon*, 763 F. App’x 442, 444 (6th Cir. 2019).

We review de novo the district court’s finding that a prior offense constitutes a crime of violence or a violent felony. *Manners v. United States*, 947 F.3d 377, 379 (6th Cir. 2020). In doing so, we apply a “categorical approach,” in which “we ‘focus on the statutory definition of the offense, rather than the manner in which an offender may have violated the statute in a particular circumstance.’” *Id.* (quoting *United States v. Denson*, 728 F.3d 603, 607 (6th Cir. 2013)). “We assume that the defendant was convicted based on the least culpable conduct criminalized under the predicate offense and then ask whether that conduct would satisfy the Guidelines’ definition of ‘crime of violence’” and the ACCA’s definition of a violent felony. *United States v. Butts*, 40 F.4th 766, 770 (6th Cir. 2022) (quoting *United States v. Yates*, 866 F.3d 723, 728 (6th Cir. 2017)). “If, however, it is possible to violate the statute in a way that would constitute a ‘violent felony’

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and in way that would not, we then apply the ‘modified categorical approach,’ in which we consider certain judicial records . . . to assess whether the defendant pleaded guilty to a narrowed charge that would qualify as a violent felony.” *United States v. Barnett*, 540 F. App’x 532, 535 (6th Cir. 2013).

Under Ohio Revised Code § 2919.25(A), “[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member.” Ohio defines “[p]hysical harm to persons” as “any injury, illness, or other physiological impairment, regardless of its gravity or duration.” Ohio Rev. Code Ann. § 2901.01(A)(3). A felony violation of § 2919.25(A) is either a “felony of the fourth degree” or “felony of the third degree,” depending on a defendant’s prior criminal history. *Id.* § 2919.25(D)(3)–(4). Both classes of felonies are “punishable by imprisonment for a term exceeding one year.” *See* 18 U.S.C. § 924(e)(2)(B); USSG § 4B1.2(a); Ohio Rev. Code Ann. § 2929.14.

Mitchell argues that § 2919.25(A) does not have as “an element the threat, attempt, or actual use of force capable of causing physical pain or injury to another person,” *Solomon*, 763 F. App’x at 444, because Ohio defines physical harm to include “physiological impairment” that can result absent violent force. *See* Appellant Br. 17–23. Mitchell nonetheless concedes that *Gatson* answered this very question when it held that a defendant’s prior felony convictions of domestic violence under § 2919.25(A) were violent felonies under the ACCA. 776 F.3d at 410–11. Recognizing that *Gatson* controls, subsequent panels have continued to apply *Gatson* when considering domestic-violence convictions under § 2919.25(A). *See, e.g., United States v. Melendez-Perez*, No. 20-3925, 2021 WL 3045781, at *2–3 (6th Cir. July 20, 2021); *Solomon*, 763

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F. App'x at 445. We must do the same.² Accordingly, we hold that Mitchell's prior felony convictions of domestic violence in violation of Ohio Revised Code § 2919.25(A) are violent felonies under the ACCA's § 924(e) and crimes of violence under the Guidelines § 4B1.2, and Mitchell's sole challenge to his sentence fails.

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court.

²*Gatson* is binding precedent, although it has been criticized. *See, e.g., Melendez-Perez*, 2021 WL 3045781 at *3 (Moore, J., concurring) ("I . . . note that the panel in *Gatson* 'read in an assumption of force that the statutory language does not include.'" (quoting *Solomon*, 763 F. App'x at 449 (Moore, J., concurring))).

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UNITED STATES COURT OF APPEALS
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DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

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Plaintiff-Appellee,

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v.

)

JACKIE MITCHELL,

)

Defendant-Appellant.

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)

O R D E R

BEFORE: MOORE, CLAY, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

JACKIE MITCHELL

§ **JUDGMENT IN A CRIMINAL CASE**
 §
 §
 § Case Number: **5:20-CR-00738**
 § USM Number: **19105-509**
 § **Michael J. Goldberg, Esq.**
 § Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1 and 2 of the Indictment.
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	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): Felon in Possession of Firearm	10/21/2020	1
26 U.S.C. § 5861(d): Possession of Unregistered Short-Barrel Shotgun	10/21/2020	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.

September 21, 2021

Date of Imposition of Judgment

/s/ Benita Y. Pearson
 Signature of Judge

Benita Y. Pearson, United States District Judge
 Name and Title of Judge

September 22, 2021

Date

DEFENDANT: JACKIE MITCHELL
CASE NUMBER: 5:20-CR-00738

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 months as follows: 180 months as to Count 1 of the Indictment and 120 months as to Count 2 of the Indictment, each such term to be served concurrently.

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

1. Defendant receive credit for time already served in federal custody;
2. Defendant be designated to FCI Elkton, Lisbon, OH or such other facility that is close to Defendant's home;
3. Defendant be evaluated for participation in any drug treatment programs, including the intensive 500-hour substance abuse rehabilitation program – RDAP;
4. Defendant receive mental health treatment and medications;
5. Defendant be designated to a facility that offers vocational training programs for automotive mechanics, HVAC, welding, plumbing and other trades so that he can acquire as many skills as possible and become gainfully employed upon release; and
6. Defendant take advantage of any and all available programming.

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: JACKIE MITCHELL
CASE NUMBER: 5:20-CR-00738

SUPERVISED RELEASE

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

5 years as to Count 1 of the Indictment and 3 years as to Count 2 of the Indictment, each such term 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, if not already completed. (*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: JACKIE MITCHELL
CASE NUMBER: 5:20-CR-00738

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. If not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
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. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
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 the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JACKIE MITCHELL
CASE NUMBER: 5:20-CR-00738

SPECIAL CONDITIONS OF SUPERVISION

Mandatory/Standard Conditions:

While on supervision, you must comply with the Mandatory and Standard Conditions that have been adopted by this Court and set forth in Part D of the Presentence Investigation Report, and you must comply with the following additional conditions:

Mandatory Drug Testing:

You must refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release from imprisonment and to at least two periodic drug tests thereafter, as determined by the Court.

General Educational Development (GED):

You must enter an adult program and work toward obtaining a General Educational Development (GED) diploma at the discretion of the U.S. Pretrial Services & Probation Officer.

Substance Abuse Treatment and Testing:

The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

Mental Health Treatment:

You must undergo a mental health evaluation, to include a domestic violence assessment, and/or participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Medications:

Defendant shall take all medications prescribed by his mental health treatment provider.

Search / Seizure:

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

Alcohol Restriction:

Defendant must remain sober, and is prohibited from ingesting any alcohol in any type of liquid or solid form.

DEFENDANT: JACKIE MITCHELL
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$.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:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> 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.

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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 20 (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 \$200.00 for Counts 1 and 2 of the Indictment, 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.

 - Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
 - 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:

Utas, 12 gauge shotgun, model Tac Star, with a defaced serial number; Smith and Wesson, Model M & P 22, .22 caliber pistol, bearing serial number HHV1074; Technetwork Inc., Model ASR, 9mm caliber rifle, bearing serial number L9270; SCCY Industries, LLC, Model CPX-2, 9mm caliber pistol, bearing serial number 883156; Ruger rifle, Model Mini 14 Rifle, .223 caliber, bearing serial number 18840024; and miscellaneous ammunition.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

OHIO REV. CODE § 2901.01 Definitions.

(A) As used in the Revised Code:

- (1) “Force” means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.
- (2) “Deadly force” means any force that carries a substantial risk that it will proximately result in the death of any person.
- (3) “Physical harm to persons” means any injury, illness, or other physiological impairment, regardless of its gravity or duration.
- (4) “Physical harm to property” means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. “Physical harm to property” does not include wear and tear occasioned by normal use.
- (5) “Serious physical harm to persons” means any of the following:
 - (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
 - (b) Any physical harm that carries a substantial risk of death;
 - (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
 - (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
 - (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.
- (6) “Serious physical harm to property” means any physical harm to property that does either of the following:
 - (a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;
 - (b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

(7) “Risk” means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.

(8) “Substantial risk” means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

(9) “Offense of violence” means any of the following:

(a) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.18, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2905.32, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2917.321, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, of division (A)(1) of section 2903.34, of division (A)(1), (2), or (3) of section 2911.12, or of division (B)(1), (2), (3), or (4) of section 2919.22 of the Revised Code or felonious sexual penetration in violation of former section 2907.12 of the Revised Code;

(b) A violation of an existing or former municipal ordinance or law of this or any other state or the United States, substantially equivalent to any section, division, or offense listed in division (A)(9)(a) of this section;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of this or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense under division (A)(9)(a), (b), or (c) of this section;

(e) A violation of division (C) of section 959.131 of the Revised Code.

(10)

(a) “Property” means any property, real or personal, tangible or intangible, and any interest or license in that property. “Property” includes, but is not limited to, cable television service, other telecommunications service, telecommunications devices, information service, computers, data, computer software, financial instruments associated with computers, other documents associated with computers, or copies of the documents, whether in machine or human readable form, trade secrets, trademarks, copyrights, patents, and property protected by a trademark, copyright, or patent. “Financial

instruments associated with computers" include, but are not limited to, checks, drafts, warrants, money orders, notes of indebtedness, certificates of deposit, letters of credit, bills of credit or debit cards, financial transaction authorization mechanisms, marketable securities, or any computer system representations of any of them.

(b) As used in division (A)(10) of this section, "trade secret" has the same meaning as in section 1333.61 of the Revised Code, and "telecommunications service" and "information service" have the same meanings as in section 2913.01 of the Revised Code.

(c) As used in divisions (A)(10) and (13) of this section, "cable television service," "computer," "computer software," "computer system," "computer network," "data," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.

(11) "Law enforcement officer" means any of the following:

(a) A sheriff, deputy sheriff, constable, police officer of a township or joint police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, or state highway patrol trooper;

(b) An officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority;

(c) A mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation;

(d) A member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission;

(e) A person lawfully called pursuant to section 311.07 of the Revised Code to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called;

(f) A person appointed by a mayor pursuant to section 737.10 of the Revised Code as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed;

- (g) A member of the organized militia of this state or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence;
- (h) A prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor;
- (i) A veterans' home police officer appointed under section 5907.02 of the Revised Code;
- (j) A member of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code;
- (k) A special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code;
- (l) The house of representatives sergeant at arms if the house of representatives sergeant at arms has arrest authority pursuant to division (E)(1) of section 101.311 of the Revised Code and an assistant house of representatives sergeant at arms;
- (m) The senate sergeant at arms and an assistant senate sergeant at arms;
- (n) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in section 119.3 of Title 14 of the Code of Federal Regulations, 14 C.F.R. 119.3, as amended, and that is required to be under a security program and is governed by aviation security rules of the transportation security administration of the United States department of transportation as provided in Parts 1542. and 1544. of Title 49 of the Code of Federal Regulations, as amended.

(12) "Privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

(13) "Contraband" means any property that is illegal for a person to acquire or possess under a statute, ordinance, or rule, or that a trier of fact lawfully determines to be illegal to possess by reason of the property's involvement in an offense. "Contraband" includes, but is not limited to, all of the following:

- (a) Any controlled substance, as defined in section 3719.01 of the Revised Code, or any device or paraphernalia;
- (b) Any unlawful gambling device or paraphernalia;

(c) Any dangerous ordnance or obscene material.

(14) A person is “not guilty by reason of insanity” relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person’s acts.

(B)

(1)

(a) Subject to division (B)(2) of this section, as used in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense, “person” includes all of the following:

(i) An individual, corporation, business trust, estate, trust, partnership, and association;

(ii) An unborn human who is viable.

(b) As used in any section contained in Title XXIX of the Revised Code that does not set forth a criminal offense, “person” includes an individual, corporation, business trust, estate, trust, partnership, and association.

(c) As used in division (B)(1)(a) of this section:

(i) “Unborn human” means an individual organism of the species *Homo sapiens* from fertilization until live birth.

(ii) “Viable” means the stage of development of a human fetus at which there is a realistic possibility of maintaining and nourishing of a life outside the womb with or without temporary artificial life-sustaining support.

(2) Notwithstanding division (B)(1)(a) of this section, in no case shall the portion of the definition of the term “person” that is set forth in division (B)(1)(a)(ii) of this section be applied or construed in any section contained in Title XXIX of the Revised Code that sets forth a criminal offense in any of the following manners:

(a) Except as otherwise provided in division (B)(2)(a) of this section, in a manner so that the offense prohibits or is construed as prohibiting any pregnant woman or her physician from performing an abortion with the consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the

approval of one otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that violates the conditions described in the immediately preceding sentence may be punished as a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.05, 2903.06, 2903.08, 2903.11, 2903.12, 2903.13, 2903.14, 2903.21, or 2903.22 of the Revised Code, as applicable. An abortion that does not violate the conditions described in the second immediately preceding sentence, but that does violate section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.15, 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable. Consent is sufficient under this division if it is of the type otherwise adequate to permit medical treatment to the pregnant woman, even if it does not comply with section 2919.12 of the Revised Code.

(b) In a manner so that the offense is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any of the following:

- (i) Her delivery of a stillborn baby;
- (ii) Her causing, in any other manner, the death in utero of a viable, unborn human that she is carrying;
- (iii) Her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is a viable, unborn human;
- (iv) Her causing her child who is born alive to sustain one or more injuries while the child is a viable, unborn human;
- (v) Her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to a viable, unborn human that she is carrying.

(C) As used in Title XXIX of the Revised Code:

- (1) “School safety zone” consists of a school, school building, school premises, school activity, and school bus.
- (2) “School,” “school building,” and “school premises” have the same meanings as in section 2925.01 of the Revised Code.

(3) “School activity” means any activity held under the auspices of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district; a governing authority of a community school established under Chapter 3314. of the Revised Code; a governing board of an educational service center, or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code.

(4) “School bus” has the same meaning as in section 4511.01 of the Revised Code.

History

142 v H 708 (Eff 4-19-88); 143 v S 24 (Eff 7-24-90); 144 v H 77 (Eff 9-17-91); 144 v S 144 (Eff 8-8-91); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 445 (Eff 9-3-96); 146 v S 239 (Eff 9-6-96); 146 v S 277 (Eff 3-31-97); 147 v H 565 (Eff 3-30-99); 148 v S 1 (Eff 8-6-99); 148 v H 162 (Eff 8-25-99); 148 v S 107 (Eff 3-23-2000); 148 v S 137 (Eff 5-17-2000); 148 v H 351 (Eff 8-18-2000); 148 v S 317 (Eff 3-22-2001); 149 v S 184 (Eff 5-15-2002); 149 v H 675 (Eff 3-14-2003); 149 v H 545 (Eff 3-19-2003); 149 v H 364. Eff 4-8-2003; 151 v H 241, § 1, eff. 7-1-07; 153 v S 235, § 1, eff. 3-24-11; 2011 HB 153, § 101.01, eff. Sept. 29, 2011; 2012 HB 487, § 101.01, eff. Sept. 10, 2012; 2016 sb227, § 1, effective April 6, 2017; 2018 sb145, § 1, effective March 22, 2019; 2022 hb462, § 1, § 1, effective April 3, 2023; 2022 sb164, § 1, § 1, effective April 3, 2023; 2022 sb288, § 1, effective April 4, 2023.

OHIO REV. CODE § 2919.25 Domestic violence.

- (A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.
- (B) No person shall recklessly cause serious physical harm to a family or household member.
- (C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.
- (D)
 - (1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (6) of this section.
 - (2) Except as otherwise provided in divisions (D)(3) to (5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.
 - (3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the second degree.
 - (4) If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, a

violation of division (A) or (B) of this section is a felony of the third degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in division (D)(3) or (4) of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of division (A) or (B) of this section is a felony of the fifth degree, and the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the third degree.

(6) If division (D)(3), (4), or (5) of this section requires the court that sentences an offender for a violation of division (A) or (B) of this section to impose a mandatory prison term on the offender pursuant to this division, the court shall impose the mandatory prison term as follows:

(a) If the violation of division (A) or (B) of this section is a felony of the fourth or fifth degree, except as otherwise provided in division (D)(6)(b) or (c) of this section, the court shall impose a mandatory prison term on the offender of at least six months.

(b) If the violation of division (A) or (B) of this section is a felony of the fifth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of twelve months.

(c) If the violation of division (A) or (B) of this section is a felony of the fourth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of at least twelve months.

(d) If the violation of division (A) or (B) of this section is a felony of the third degree, except as otherwise provided in division (D)(6)(e) of this section and notwithstanding the range of definite prison terms prescribed in division (A)(3) of section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of six months or one of the prison terms prescribed in division (A)(3)(b) of section 2929.14 of the Revised Code for felonies of the third degree.

(e) If the violation of division (A) or (B) of this section is a felony of the third degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, notwithstanding the range of definite prison terms prescribed in division (A)(3) of section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of one year or one of the prison terms prescribed in division (A)(3)(b) of section 2929.14 of the Revised Code for felonies of the third degree.

(E) Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially similar to this section or in connection with the prosecution of any charges so filed.

(F) As used in this section and sections 2919.251 and 2919.26 of the Revised Code:

(1) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the offender:

(i) A spouse, a person living as a spouse, or a former spouse of the offender;

(ii) A parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

(3) “Pregnant woman’s unborn” has the same meaning as “such other person’s unborn,” as set forth in section 2903.09 of the Revised Code, as it relates to the pregnant woman. Division (C) of that section applies regarding the use of the term in this section, except that the second and third sentences of division (C)(1) of that section shall be construed for purposes of this section as if they included a reference to this section in the listing of Revised Code sections they contain.

(4) “Termination of the pregnant woman’s pregnancy” has the same meaning as “unlawful termination of another’s pregnancy,” as set forth in section 2903.09 of the Revised Code, as it relates to the pregnant woman. Division (C) of that section applies regarding the use of the term in this section, except that the second and third sentences of division (C)(1) of that section shall be construed for purposes of this section as if they included a reference to this section in the listing of Revised Code sections they contain.

History

137 v H 835 (Eff 3-27-79); 138 v H 920 (Eff 4-9-81); 140 v H 587 (Eff 9-25-84); 142 v S 6 (Eff 6-10-87); 142 v H 172 (Eff 3-17-89); 143 v S 3 (Eff 4-11-91); 144 v H 536 (Eff 11-5-92); 145 v H 335 (Eff 12-9-94); 146 v S 2 (Eff 7-1-96); 147 v S 1 (Eff 10-21-97); 147 v H 238 (Eff 11-5-97); 149 v H 327 (Eff 7-8-2002); 149 v H 548. Eff 3-31-2003; 150 v S 50, § 1, eff. 1-8-04; 152 v H 280, § 1, eff. 4-7-09; 153 v H 10, § 1, eff. 6-17-10; 153 v S 58, § 1, eff. 9-17-10; 2018 sb201, § 1, effective March 22, 2019.