

NO. _____

IN THE UNITED STATES SUPREME COURT

TOMMY LEE HUBBARD, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION APPENDIX

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NOT RECOMMENDED FOR PUBLICATION

File Name: 23a0039n.06

No. 21-6219

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Jan 19, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TOMMY LEE HUBBARD, JR.,

Defendant-Appellant.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
TENNESSEE

OPINION

Before: STRANCH, MURPHY, and DAVIS, Circuit Judges.

JANE B. STRANCH, Circuit Judge. Tommy Lee Hubbard, Jr. appeals his 60-month sentence for one charge of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Hubbard challenges two aspects of his sentence. He argues that the court improperly applied an enhanced base offense level under USSG § 2K2.1(a)(4)(A), which applies to defendants with a prior felony conviction of “either a crime of violence or a controlled substance offense.” Hubbard also argues that the district court improperly applied USSG § 2K2.1(b)(6)(B), which authorizes a four-level enhancement when the defendant used or possessed the firearm “in connection with another felony offense.” Because the sentencing court properly applied these enhancements, we **AFFIRM** Hubbard’s sentence.

I. BACKGROUND

In March 2021, law enforcement officers executed an outstanding arrest warrant for Hubbard while he was staying at another person’s apartment in Chattanooga, Tennessee. Officers

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approached the door to this apartment, knocked, and announced “police with a warrant, open the door.” The resident of the apartment answered the door, and Hubbard was observed standing behind her. After Hubbard stated that he did not reside there, the resident gave consent for law enforcement officers to search the apartment.

Officers found a loaded firearm—a Taurus .40 caliber pistol—in a storage container inside the bathroom closet. Inside the same container as the pistol, officers also found a clear zip-top plastic bag containing smaller baggies of what appeared to be marijuana, along with a digital scale. The “field weight” of the substance was approximately 107 grams, which an officer estimated to be “a couple of ounces of marijuana” without the weight of the packaging. Hubbard voluntarily surrendered to the officers, who arrested him and transported him to jail. After waiving his *Miranda* rights and agreeing to speak with the officers, Hubbard admitted that the gun, the scale, and the “weed” were his. Officers also spoke with the resident of the apartment. She stated that when the officers had knocked on the door, Hubbard “ran onto the balcony, came back into the apartment, and ran into the bathroom area,” which was “where the plastic bin with the items was recovered.”

Hubbard was charged with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He pleaded guilty. Based on Hubbard’s calculated offense level (21) and criminal history category (V), the Presentence Investigation Report (PSR) recommended a Guidelines range of 70 to 87 months’ incarceration. In calculating Hubbard’s total offense level, the PSR recommended an enhanced base offense level of 20 pursuant to USSG § 2K2.1(a)(4)(A), which is applicable under the Guidelines when the defendant “committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense.” USSG § 2K2.1(a)(4)(A). This enhancement was based on Hubbard’s prior

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conviction for robbery under Tennessee law. The PSR also recommended applying a four-level enhancement pursuant to USSG § 2K2.1(b)(6)(B) for possessing a firearm “in connection with another felony offense.” The other felony offense was Hubbard’s possession of “a felony amount of marijuana.” After a three-point reduction for acceptance of responsibility under USSG § 3E1.1, the PSR calculated a total offense level of 21.

Hubbard objected to the enhanced base offense level, arguing that his prior conviction for robbery under Tennessee law did not qualify as a “crime of violence” under USSG § 4B1.2(a). But the district court overruled Hubbard’s objection, determining that it was “well settled that a conviction for Tennessee robbery is a crime of violence under the United States sentencing guidelines.” Hubbard also objected to the four-level enhancement for possessing a firearm in connection with another felony offense. He argued that the Government could not prove facts to support the occurrence of another felony. Specifically, because the Government had failed to test the marijuana for its THC content, and marijuana containing less than 0.3% THC is legal under Tennessee and federal law, the Government could not prove he possessed illegal marijuana. The district court overruled this objection, finding that the Government proved “it was [illegal] marijuana” based on “all the evidence” including the “defendant’s own behavior at the scene when he was arrested.”

The district court adopted the PSR’s recommendation and calculated a total offense level of 21, criminal history category of V, and a Guidelines range of 70 to 87 months’ incarceration. Hubbard then requested a downward variance from this range, arguing that his criminal history was overstated. Hubbard had received 6 points for offenses he committed when he was 18 years old. The Government opposed the request, but the district court granted the downward variance, ultimately sentencing Hubbard to 60 months in prison. This timely appeal followed.

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II. ANALYSIS

A. The USSG § 2K2.1(a)(4)(A) Enhancement for a Prior “Crime of Violence”

The first issue on appeal is whether Hubbard’s prior robbery conviction under Tennessee law qualifies as a “crime of violence” as defined in the Guidelines. The so-called elements clause of USSG § 4B1.2(a) provides that a crime of violence is a crime that “has as an element the use, attempted use, or threatened use of physical force against the person of another.” To determine whether an offense is a crime of violence under the Guidelines, we employ a categorical approach, looking “to the elements of a defendant’s prior offenses, rather than the facts supporting the defendant’s convictions.” *United States v. Butts*, 40 F.4th 766, 770 (6th Cir. 2022) (citing *United States v. Camp*, 903 F.3d 594, 599 (6th Cir. 2018)). This approach assumes that “the defendant was convicted based on the least culpable conduct criminalized under the predicate offense and then ask[s] whether the conduct would satisfy the Guidelines’ definition of ‘crime of violence.’” *Id.* (citing *United States v. Yates*, 866 F.3d 723, 728 (6th Cir. 2017)). A district court’s determination that a prior offense constitutes a crime of violence is reviewed *de novo*. *Id.* (citing *United States v. Cooper*, 739 F.3d 873, 877 (6th Cir. 2014)).

Tennessee’s robbery statute provides that “[r]obbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” Tenn. Code Ann. § 39-13-401(a). Our circuit determined in *United States v. Mitchell*, 743 F.3d 1054, 1059-60 (6th Cir. 2014), that robbery as defined by Tennessee law is a “violent felony” under the Armed Career Criminal Act (ACCA)’s elements clause, which parallels the Guidelines’ elements clause. *See United States v. Patterson*, 853 F.3d 298, 305 (6th Cir. 2017) (“We have not hesitated to use authority interpreting the elements clause in the Armed Career Criminal Act in interpreting the same phrase in the Guidelines.”). Tennessee law defines robbery as theft either by violence or by

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“fear of bodily injury and of present personal peril from violence offered or impending,” which corresponds with the elements clause’s requirement that a crime of violence has as an element the use or threatened use of physical force. *See Mitchell*, 743 F.3d at 1059 (quoting *State v. Taylor*, 771 S.W.2d 387, 398 (Tenn. 1989)); *see also* USSG § 4B1.2(a).

Hubbard first argues that Tennessee robbery is not a crime of violence under the Guidelines because a defendant can be convicted of robbery by threatening force or putting someone in fear *negligently* rather than *intentionally*. He asserts that *Mitchell* was abrogated by *Elonis v. United States*, 575 U.S. 723 (2015), and *Borden v. United States*, 141 S. Ct. 1817 (2021), in which the Supreme Court held that crimes committed with a merely reckless or negligent *mens rea* do not qualify as crimes of violence. But our recent decisions in *United States v. Belcher*, 40 F.4th 430 (6th Cir. 2022), and *United States v. Riddle*, No. 21-5416, 2022 WL 2679102, at *1 (6th Cir. July 12, 2022) foreclose this argument.¹ *Belcher* reaffirmed *Mitchell*’s holding that Tennessee robbery is a crime of violence despite the defendant’s arguments that “a defendant can be convicted of that offense by threatening force negligently rather than intentionally” or by “negligently caus[ing] his victim to experience fear.” *Belcher*, 40 F.4th at 431-32 (discussing *Taylor*, 771 S.W.2d at 398, and *State v. Witherspoon*, 648 S.W.2d 279, 281 (Tenn. Crim. App. 1983)); *see also Riddle*, 2022 WL 2679102, at *1. Finding no basis “to conclude that *Mitchell* misapprehends Tennessee law,” we adhered “to our earlier holding that robbery as defined by Tennessee law is a violent felony under the ACCA,” and therefore a crime of violence under the Guidelines. *Belcher*, 40 F.4th at 432; *see Riddle*, 2022 WL 2679102, at *1.

¹ These cases were pending when Hubbard filed his opening brief but were decided before he filed his reply. Perhaps recognizing that these cases are issue-determinative here, Hubbard abandons this argument in his reply.

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Next, Hubbard argues that robbery under Tennessee law is not a crime of violence because robbery-by-fear can be committed by threatening to falsely accuse the victim of sodomy. Based on dicta in an 1846 Tennessee Supreme Court case, Hubbard argues that robbery-by-fear can be committed by falsely accusing the victim of the “*crimen innominatum*,” i.e., sodomy. *Britt v. State*, 26 Tenn. 45, 46 (1846). *Britt*’s actual holding is that “[t]he fear constituting an element of the crime is a fear of present personal peril from violence offered or impending.” *Id.* Accordingly, *Britt* reversed the conviction of a defendant who had committed robbery by “falsely charging” the victim “with the commission of a felony.” *Id.* The court did note the existence of a possible exception to the rule that robbery cannot be committed by threatening to falsely accuse the victim of a crime. It suggested that “threatening to prosecute an innocent man for . . . the *crimen innominatum*” could constitute robbery because of the “over-whelming and withering character of the charge and its damning infamy, so well calculated to unman and subdue the will and alarm the fears of the falsely accused.”² *Id.*

The Government argues that later Tennessee decisions have left that possible exception “if it exists, to languish as dicta.” Hubbard fails to point to any case that has cited *Britt* for the proposition that robbery could be committed by falsely accusing the victim of sodomy.³ Cases that have cited *Britt* have cited it for the proposition that robbery-by-fear requires “fear of ‘bodily

² This reasoning may have been abrogated by *Campbell v. Sundquist*, 926 S.W.2d 250 (Tenn. Ct. App. 1996) (appeal denied), which struck down as unconstitutional Tennessee’s Homosexual Practices Act and its criminalization of same-sex intimate sexual conduct. *Id.* at 266. See also *Lawrence v. Texas*, 539 U.S. 558, 563, 578 (2003). Moreover, Congress recently passed the Respect for Marriage Act, federally recognizing the validity of same-sex marriages. See Pub. L. 117-228, 136 Stat. 2305 (2022).

³ This is what distinguishes the present case from *United States v. White*, 987 F.3d 340 (4th Cir. 2021), where the Fourth Circuit certified a question to the Virginia Supreme Court, asking whether Virginia common law robbery could be committed by accusing the victim of sodomy. There, numerous Virginia decisions had recognized the so-called “sodomy exception.” *Id.* at 344-45. Hubbard has not shown that the same is true in Tennessee, nor requested that we certify a question to the Tennessee Supreme Court asking whether robbery-by-accusation-of-sodomy exists under Tennessee law.

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danger or impending peril to the person.” *See, e.g., State v. Bowles*, 52 S.W.3d 69, 80 (Tenn. 2001). Indeed, that is why we have held that robbery under Tennessee law satisfies the elements clause of the ACCA, as well as the Guidelines. *See Mitchell*, 743 F.3d at 1059; *Belcher*, 40 F.4th at 432.

The sentencing court did not err when it applied an enhanced base offense level pursuant to USSG § 2K2.1(a) for Hubbard’s prior conviction for robbery under Tennessee law. The district court was correct that it is “well settled that a conviction for Tennessee robbery is a crime of violence under the United States sentencing guidelines.”

B. The Enhancement for Possession of a Firearm in Connection with Another Felony Under USSG § 2K2.1(b)(6)(B)

Hubbard’s next argument is that the district court erred in applying the four-level enhancement for possessing a firearm in connection with another felony offense under USSG § 2K2.1(b)(6)(B) because the Government presented insufficient evidence to show that he possessed illegal marijuana. He argues that, because it is legal under Tennessee and federal law to possess marijuana containing a concentration of less than 0.3% of THC, the Government was required to test the marijuana-like substance found during the search to prove it was *illegal* marijuana.

“In the specific context of the § 2K2.1(b)(6)(B) firearm enhancement, ‘we review the district court’s factual findings for clear error and accord due deference to the district court’s determination that the firearm was used or possessed in connection with the other felony, thus warranting the application of the enhancement.’” *United States v. Seymour*, 739 F.3d 923, 929 (6th Cir. 2014) (quoting *United States v. Taylor*, 648 F.3d 417, 432 (6th Cir. 2011) (cleaned up)). “The Government bears the burden of establishing the factors supporting this enhancement by a preponderance of the evidence.” *Id.* (citation omitted).

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Hubbard does not dispute that the Government established the following facts at the sentencing hearing, through testimony by Special Agent Adam Baldwin of the Bureau of Alcohol, Tobacco, Firearms, and Explosives:

- Hubbard called the substance “weed.”
- The substance was packaged in “corner baggies” or “sandwich bags” which are typically used to contain controlled substances.
- The packaging had none of the hallmarks of the packaging used for legal CBD products or hemp, like brand names, store names, or other markings.
- After seeing the police, Hubbard ran into the bathroom area where the substance was later found.
- The amount of the substance was more consistent with distribution than personal use.
- The substance was found with a digital scale.
- The substance was found with a loaded gun.

Hubbard himself has never stated whether the substance was illegal marijuana or legal cannabis, hemp, or CBD; he referred to it only as “weed.” Instead, he contends that none of this circumstantial evidence shows that the THC content of the marijuana exceeded the legal threshold, which he posits is required. Hubbard, however, provides no case precedent establishing that the Government must perform a lab test to support the application of the sentencing enhancement in these circumstances. Even “in the more demanding context of a criminal trial,” we have long held that “scientific identification of a substance is [not] an absolute prerequisite to conviction for a drug-related offense,” and that the “government may establish the identity of a drug through cumulative circumstantial evidence.” *United States v. Malone*, 846 F. App’x 355, 361 (6th Cir. 2021) (alteration in *Malone*) (quoting *United States v. Schrock*, 855 F.2d 327, 334 (6th Cir. 1988));

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see also United States v. Swift, 276 F. App'x 439, 442 (6th Cir. 2008) (“[T]he lack of a lab report is not dispositive.”).

The facts in this record, especially the close proximity of the pistol, the scale, and the bag of marijuana inside the same storage container, support the application of the § 2K2.1(b)(6)(B) sentencing enhancement. *See United States v. Shanklin*, 924 F.3d 905, 921 (6th Cir. 2019) (noting that while “we have never established a bright-line test,” the proximity “of the weapon to drugs is often a key factor in applying the enhancement under § 2K2.1(b)(6)(B)”); *see also Taylor*, 648 F.3d at 432 (explaining that the “proximity of the gun to the drugs” is a relevant factor to be considered). “A factual finding is clearly erroneous when the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. Stafford*, 721 F.3d 380, 400 (6th Cir. 2013) (quoting *United States v. Moon*, 513 F.3d 527, 540 (6th Cir. 2008)). The sentencing court did not clearly err when it found that the cumulative and circumstantial evidence showed that the substance in this case was—more likely than not—illegal marijuana, making the four-level sentencing enhancement applicable.

III. CONCLUSION

For the foregoing reasons, we **AFFIRM** Hubbard’s sentence.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-6219

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TOMMY LEE HUBBARD, JR.,

Defendant - Appellant.

FILED
Jan 19, 2023
DEBORAH S. HUNT, Clerk

Before: STRANCH, MURPHY, and DAVIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the sentence imposed on Tommy Lee Hubbard, Jr. by the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE CHATTANOOGA DIVISION

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 1:21-CR-00047-CEA-SKL(1)

TOMMY LEE HUBBARD, JR

USM#45219-509

J Damon Burk
Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count: One 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.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense:

Title & Section and Nature of Offense	Date Violation Concluded	Count
18 U.S.C. § 922(g)(1): Felon in Possession of a Firearm	03/17/2021	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 and 18 U.S.C. § 3553.

- ☐ The defendant has been found not guilty on count(s).
☐ All remaining count(s) as to this defendant are dismissed upon motion of the United States.

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 the United States attorney of any material change in the defendant's economic circumstances.

December 9, 2021

Date of Imposition of Judgment


Signature of Judicial Officer

Charles E Atchley Jr., United States District Judge

Name & Title of Judicial Officer

December 9, 2021
Date

Petition Appendix 11a

DEFENDANT: TOMMY LEE HUBBARD, JR
CASE NUMBER: 1:21-CR-00047-CEA-SKL(1)

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IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **60 months as to Count One of the Indictment.**

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

The court recommends that the defendant receive 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program.

It is further recommended the defendant participate in educational classes and training to learn a trade or marketable skills while incarcerated.

It is further recommended the defendant participate in cognitive behavioral therapy, if available.

☒ 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: TOMMY LEE HUBBARD, JR
CASE NUMBER: 1:21-CR-00047-CEA-SKL(1)

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3) years as to Count One of the Indictment.**

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 sentencing of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: TOMMY LEE HUBBARD, JR
CASE NUMBER: 1:21-CR-00047-CEA-SKL(1)

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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 mandatory, standard, and any special conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: TOMMY LEE HUBBARD, JR
CASE NUMBER: 1:21-CR-00047-CEA-SKL(1)

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SPECIAL CONDITIONS OF SUPERVISION

The defendant must participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

The defendant must submit his or her person, property, house, residence, vehicle, papers, [computers (as defined in Title 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 or designee. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his/her 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.

DEFENDANT: TOMMY LEE HUBBARD, JR
CASE NUMBER: 1:21-CR-00047-CEA-SKL(1)

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment **</u>
TOTALS	\$100.00	\$0.00	\$0.00	\$0.00	\$0.00

- ☐ 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, 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.

- ☐ 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 under the Schedule of Payments sheet of this judgment 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.

DEFENDANT: TOMMY LEE HUBBARD, JR
CASE NUMBER: 1:21-CR-00047-CEA-SKL(1)

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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 payment of \$100.00 due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ 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:

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 **U.S. District Court, 900 Georgia Avenue, Joel W. Solomon Federal Building, United States Courthouse, Chattanooga, TN, 37402**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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:

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) JVT Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.