

NO. _____

In the
Supreme Court of the United States

JAMAILE HUEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

APPENDIX A
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Wesley P. Page
Federal Public Defender

Jonathan D. Byrne
Appellate Counsel
Counsel of Record

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Counsel for Petitioner

2023 WL 6638076

Only the Westlaw citation is currently available.

United States Court of Appeals, Fourth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Jamaile HUEY, a/k/a Jamaile L. Huey, Defendant - Appellant.

No. 21-4374

|

Submitted: April 25, 2023

|

Decided: October 12, 2023

Appeal from the United States District Court for the Southern District of West Virginia, at Huntington. [Robert C. Chambers](#), District Judge. (3:21-cr-00030-1)

Attorneys and Law Firms

ON BRIEF: [Wesley P. Page](#), Federal Public Defender, [Lex A. Coleman](#), Assistant Federal Public Defender, Jonathan D. Byrne, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Charleston, West Virginia, for Appellant. [William S. Thompson](#), United States Attorney, Charleston, West Virginia, Courtney L. Cremeans, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Huntington, West Virginia, for Appellee.



Before [WYNN](#), [THACKER](#), and [RUSHING](#), Circuit Judges.

Opinion

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

*1 Jamaile Huey pled guilty to possessing a firearm as a felon, in violation of  [18 U.S.C. §§ 922\(g\)\(1\)](#) and [924\(a\)\(2\)](#). The district court sentenced Huey to 80 months' imprisonment. On appeal, Huey contends the district court erred in concluding that his 2000 and 2002 convictions for unarmed robbery under [Michigan Compiled Laws \(M.C.L.\) § 750.530](#) were “crimes of violence” as defined in  [U.S.S.G. § 4B1.2\(a\)](#), and abused its discretion in imposing a special condition of

supervised release requiring Huey to submit to warrantless searches by a probation officer with reasonable suspicion of a supervised release violation.


We review de novo whether a prior conviction qualifies as a crime of violence under the United States Sentencing Guidelines. [!\[\]\(c507f772dba2b921f86777f01218e570_img.jpg\) *United States v. Simmons*, 917 F.3d 312, 316 \(4th Cir. 2019\)](#). The Guidelines define “crime of violence” as “any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in [!\[\]\(a75296508989caaa77a08d26cfccd4e5_img.jpg\) 26 U.S.C. § 5845\(a\)](#) or explosive material as defined in [!\[\]\(55463e2fc8fd9dd5cdf6584182081aba_img.jpg\) 18 U.S.C. § 841\(c\)](#).” [!\[\]\(fef9323b6f87c1ae579afe2ce735bcc8_img.jpg\) U.S.S.G. § 4B1.2\(a\)](#).

Robbery, as used in the crime of violence definition, is “the misappropriation of property under circumstances involving [immediate] danger to the person.” [!\[\]\(4729e517bc6a7cd81c8025b9646574fb_img.jpg\) *United States v. Gattis*, 877 F.3d 150, 156 \(4th Cir. 2017\)](#) (internal quotation marks omitted). The “immediate danger” element is categorically satisfied by taking property “from a person or person's presence by means of force or putting in fear.” [!\[\]\(90a2fb2f2c617b26262139ae4159c0a0_img.jpg\) *Id.* at 157](#) (internal quotation marks omitted). And larceny becomes robbery when the offender takes property by using force or by threatening immediate physical harm, which may be express or implicit so long as it is sufficient to induce the victim to part with the property. *Id.*

Michigan's unarmed robbery statute, as it existed in 2000 and 2002, is a categorical match for this definition of robbery. [M.C.L. § 750.530](#) punishes taking property from a person or in his presence “by force and violence, or by assault or putting in fear.” [!\[\]\(cbe80b694ebd74fcfe136a095b608235_img.jpg\) *Chaney v. United States*, 917 F.3d 895, 899 \(6th Cir. 2019\)](#) (internal quotation marks omitted). It requires the forcible taking of another's property by violence or “putting [him] in fear of immediate injury.” [!\[\]\(27df6be88af07602ea392719b144fe7f_img.jpg\) *Id.* at 900–01](#). Thus, Michigan unarmed robbery, just as generic robbery, requires the perpetrator to use force or put the victim in fear of immediate danger to induce the victim to part with his or her property, and it consequently qualifies as a crime of violence under the enumerated offenses clause in [!\[\]\(96f0a292e266dbee33329d5ab59a28c7_img.jpg\) U.S.S.G. § 4B1.2\(a\)\(2\)](#).

As for Huey's challenge to the special condition of supervised release, we review the imposition of that condition for abuse of discretion. [!\[\]\(a03a7eb2f4046e1d3c76772003e549ea_img.jpg\) *United States v. Dotson*, 324 F.3d 256, 259–60 \(4th Cir. 2003\)](#). District judges exercise “broad latitude” and significant discretion when imposing conditions of supervised release. [*United States v. Hamilton*, 986 F.3d 413, 419 \(4th Cir. 2021\)](#). “A district court can impose a discretionary supervised release condition if it is ‘reasonably related’ to various enumerated sentencing factors,” does not involve any greater deprivation of liberty than reasonably necessary, and is “‘consistent with any pertinent policy statements issued by the

Sentencing Commission.’ ” [United States v. Blake](#), 841 Fed. App. 535, 540 (4th Cir. 2021) (quoting  [18 U.S.C. § 3583\(d\)](#)).

*2 The district court thoroughly explained its reasons for imposing the condition requiring Huey to submit to a warrantless search by a probation officer with reasonable suspicion, including, consistent with  [Section 3583\(d\)](#), his criminal history, prior unarmed robbery convictions, numerous parole violations, and his commission of subsequent crimes while on parole from previous convictions. The district court observed that Huey's patterns of behavior exhibited a “willingness in the past to essentially ignore his obligations to law enforcement and supervision,” and that because any search under the condition would need to arise out of the probation officer's reasonable suspicion and be at a reasonable time and place, the condition was not a greater deprivation of liberty than necessary. J.A. 52. “[T]he condition reasonably closes gaps in the probation officer's authority to ensure [Huey] does not recidivate, while tempering the probation officer's discretion by limiting permissible searches to those conducted in a reasonable time and manner and on reasonable suspicion of a supervised release violation,” therefore imposing it was not an abuse of discretion. [Blake](#), 841 Fed. App. at 540.

Accordingly, we affirm Huey's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

All Citations

Not Reported in Fed. Rptr., 2023 WL 6638076

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APPENDIX B
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Counsel for Petitioner

1 THE COURT: All right. Anything else, Mr. Coleman?

2 MR. COLEMAN: In my mind, the government's position
3 and the probation office's response miss the point about the
4 mens rea. We're not talking about the level of force here,
5 and Borden didn't say if it was reckless, even if you use
6 force, it would be a crime of violence. Borden says if the
7 mens rea is recklessness, then it's not a crime of violence
8 even if force was involved. So -- and that was in part of the
9 provisions I quoted for the Court. I didn't paraphrase them.

10 As far as it being an enumerated offense, if Ms. Stone
11 takes into account recklessness, that would be broader I think
12 than the common law offense as enumerated or as a model
13 offense if you look at the model code. Then again it goes
14 back to how Michigan has worded their elements in their jury
15 instruction with no reference to mens rea at all, which I
16 found odd. In most robbery cases, you've got usually an
17 intentional mens rea, and the jury is instructed on that, but
18 that is not in the Michigan requirements for jury instruction.

19 So that's why I think with Borden, and the allowance
20 for recklessness under those elements, that it shouldn't apply
21 as a crime of violence here.

22 THE COURT: Well, I disagree. I agree with the
23 probation office and ultimately the government. I think these
24 unarmed robbery convictions both apply as predicate offenses.

25 First I think Borden explicitly deals with a case

1 where the charge in front of the court was a charge explicitly
2 based on recklessness, and I take Borden in that context.

3 Here it's pretty clear that the unarmed robbery has as
4 an element the threatened use of force to take property from
5 another. I think that covers it under the first prong, but
6 it's also one of the enumerated offenses of robbery.

7 I think I grasp your point about whether it might be
8 theoretically possible for some type of recklessness element
9 here, but I don't think that is the case. And I think the
10 fact that you can't find anything explicit is really a matter
11 of the fact that even at common law when an offense like
12 robbery is charged, it involves a mens rea of intentional act
13 directed at a specific person. And here the robbery is a
14 larceny and intent to commit larceny, so I don't see this
15 as -- I don't see Borden as opening up a door for every
16 offense to then be determined and reviewed whether or not it
17 includes -- might include a recklessness element. I don't
18 think that it does. And so for what it's worth, I disagree
19 with you, and I think that these predicate -- these are both
20 predicate offenses, so I deny the objection.

21 I take it that's the only other objection that you
22 raised that relates to the Sentencing Guidelines and how --

23 MR. COLEMAN: That's correct, Your Honor.

24 THE COURT: All right. So the rest will be deferred
25 until I discuss supervised release.

NO. _____

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APPENDIX C

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Counsel for Petitioner

UNITED STATES DISTRICT COURT

Southern District of West Virginia

UNITED STATES OF AMERICA

v.

JAMAILE HUEY

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:21-00030

USM Number: 26515-509

Lex Coleman, AFPD

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) single count Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	1/8/2021	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.


☐ 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.

7/12/2021

Date of Imposition of Judgment


ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

7/14/2021

Date

DEFENDANT: JAMAILE HUEY
CASE NUMBER: 3:21-00030

IMPRISONMENT

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

80 months.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed as close to Huntington, WV, as possible;
that the defendant be allowed to participate in a drug abuse treatment program.

☒ 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: JAMAILE HUEY

CASE NUMBER: 3:21-00030

SUPERVISED RELEASE

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

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 the location where 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: JAMAILE HUEY
CASE NUMBER: 3:21-00030**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: JAMAILE HUEY
CASE NUMBER: 3:21-00030

SPECIAL CONDITIONS OF SUPERVISION

The defendant will participate in a program of testing, counseling, and treatment for drug and alcohol abuse as directed by the probation officer.

The defendant shall comply with the Standard Conditions of Supervision adopted by the Southern District of West Virginia in Local Rule of Criminal Procedure 32.3, as follows:

1) If the offender is unemployed, the probation officer may direct the offender to register and remain active with Workforce West Virginia.

2) Offenders shall submit to random urinalysis or any drug screening method whenever the same is deemed appropriate by the probation officer and shall participate in a substance abuse program as directed by the probation officer. Offenders shall not use any method or device to evade a drug screen.

3) As directed by the probation officer, the defendant will make copayments for drug testing and drug treatment services at rates determined by the probation officer in accordance with a court-approved schedule based on ability to pay and availability of third-party payments.

4) A term of community service is imposed on every offender on supervised release or probation. Fifty hours of community service is imposed on every offender for each year the offender is on supervised release or probation. The obligation for community service is waived if the offender remains fully employed or actively seeks such employment throughout the year.

5) The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

6) The defendant shall not purchase, possess, or consume any organic or synthetic intoxicants, including bat salts, synthetic cannabinoids, or other designer stimulants.

7) The defendant shall submit [his/ her person], property, house, residence, vehicle, papers, or office to a search conducted by a United States probation officer when there is reasonable suspicion that the defendant has violated a condition of supervision. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation of release. The defendant shall inform other occupants that the premises may be subject to searches pursuant to this condition.

DEFENDANT: JAMAILE HUEY
CASE NUMBER: 3:21-00030**CRIMINAL MONETARY PENALTIES**

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.

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

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$	0.00	\$	0.00
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JAMAILE HUEY

CASE NUMBER: 3:21-00030

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

The special assessment is due immediately.