

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen  
United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



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NOTICE OF CASE OPENING

February 7, 2022

No. 22-1192	UNITED STATES OF AMERICA, Plaintiff - Appellee  v.  TERRANCE BROWN, Defendant - Appellant
<b>Originating Case Information</b>	
District Court No. 2:20-cr-00148-PPS-JPK-1 Northern District of Indiana, Hammond Division District Judge Philip P. Simon Clerk/Agency Rep Gary T. Bell	
Case filed: 02/07/2022 Case type: cr/D Fee status: In Forma Pauperis Date of Judgment: 02/02/2022 Date NOA filed: 02/07/2022	

The above-captioned appeal has been docketed in the United States Court of Appeals for the Seventh Circuit.

**Deadlines:**

Appeal No.	Filer	Document	Due Date
22-1192	Terrance Brown	Docketing statement due	02/14/2022
22-1192	Terrance Brown	Transcript information sheet	02/22/2022
22-1192	Terrance Brown	Appellant's brief	03/21/2022

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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FINAL JUDGMENT

July 21, 2023

*Before*

KENNETH F. RIPPLE, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1192	UNITED STATES OF AMERICA, Plaintiff - Appellee  v.  TERRANCE BROWN, Defendant - Appellant
<b>Originating Case Information:</b>	
District Court No: 2:20-cr-00148-PPS-JPK-1 Northern District of Indiana, Hammond Division District Judge Philip P. Simon	

The judgment of the District Court is **AFFIRMED**, in accordance with the decision of this court entered on this date.

*Christopher Conroy*  
Clerk of Court

form name: c7\_FinalJudgment (form ID: 132)

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 22-1192

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*v.*

TERRANCE BROWN,

*Defendant-Appellant.*

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Appeal from the United States District Court for the  
Northern District of Indiana, Hammond Division.  
No. 2:20-cr-00148 — Philip P. Simon, Judge.

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ARGUED APRIL 25, 2023 — DECIDED JULY 21, 2023

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Before RIPPLE, ST. EVE, and PRYOR, *Circuit Judges.*

RIPPLE, *Circuit Judge.* Terrance Brown was convicted of bank robbery in violation of 18 U.S.C. § 2113(a). At sentencing, the district court determined, over Mr. Brown's objection, that he was a career offender under U.S.S.G. §§ 4B1.1 and 4B1.2 and that the Sentencing Guidelines yielded an advisory range of 210 to 240 months' imprisonment. The court imposed a sentence of 180 months' imprisonment. Mr. Brown appeals his sentence, arguing that the district court erred in

considering him to be a career offender. We affirm the judgment of the district court.

## I

This case centers on the Sentencing Guidelines' definition of a "crime of violence" for purposes of the career-offender sentencing enhancement. Under § 4B1.1(a) of the Guidelines, certain defendants are deemed career offenders if they have at least two prior felony convictions of a crime of violence. The so-called "elements clause" of § 4B1.2(a)(1) defines a crime of violence as "any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that ... has as an element the use, attempted use, or threatened use of physical force against the person of another."<sup>1</sup>

The district court found that Mr. Brown had two prior convictions of crimes of violence, rendering him a career offender under the Guidelines. Relevant here is his 2010 Illinois conviction for aggravated vehicular hijacking. At the time of Mr. Brown's conviction, a person could be convicted of vehicular hijacking if he "t[ook] a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3 (2010).<sup>2</sup> The carrying of a dangerous weapon in the

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<sup>1</sup> In addition to the elements clause, § 4B1.2(a)(2) also contains an "enumerated clause," which provides that "murder, voluntary manslaughter, kidnapping," and other enumerated offenses are crimes of violence. Only the elements clause is at issue in this appeal.

<sup>2</sup> Section 18-3 was amended, effective 2013, to include an express *mens rea* requirement: "A person commits vehicular hijacking when he or she *knowingly* takes a motor vehicle from the person or the immediate presence of ( ... continued)

commission of the offense constitutes aggravated vehicular hijacking. *Id.* 5/18-4(a)(3)–(4).

Although we previously had held that Illinois vehicular hijacking constituted a crime of violence for purposes of § 4B1.2(a)(1), *see United States v. Norris*, 835 F. App'x 892, 893–94 (7th Cir. 2021), Mr. Brown argued to the district court that that characterization could not survive the Supreme Court's decision in *Borden v. United States*, 141 S. Ct. 1817 (2021). In *Borden*, the Court construed the term "violent felony" under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(i), which contains an elements clause identical to § 4B1.2(a)(1). The Court held that, under the categorical approach, an offense does not involve the "use of physical force against the person of another" if the offense can be committed with a *mens rea* of recklessness. *Borden*, 141 S. Ct. at 1825 (plurality opinion); *id.* at 1834–35 (Thomas, J., concurring in the judgment).

The district court rejected Mr. Brown's argument. The court "readily conclude[d]" that Illinois vehicular hijacking is

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another by the use of force or by threatening the imminent use of force." Criminal Code of 2012, P.A. 97-1108 (H.B. 2582), 2012 Ill. Laws 5685, 5696 (emphasis added). This change was part of comprehensive amendments aimed at reorganizing and clarifying the Criminal Code, and we are not aware of any evidence that the legislature intended any substantive change. *See* 97 Ill. Gen. Assem., Senate Proceedings, May 22, 2012, at 150–51 (statement of Senator Dillard) (describing the bill as effecting "a number of technical changes, including cross-references, reorganizing, definitions and definition Sections, and sentence restructuring"); *see also People v. Bradford*, 50 N.E.3d 1112, 1115 (Ill. 2016) (approving consideration of "the reason for the law, the problems to be remedied, the purposes to be achieved," and, in some circumstances, "legislative history, in order to discern the intent of the legislature").

a crime of violence and explained that, "if *Borden* somehow calls into question that finding," it would be a matter for us to address on appeal.<sup>3</sup> The court stated, however, that if it were mistaken in its calculation of the advisory sentencing range, it would have imposed a different sentence.

Mr. Brown appeals his sentence, arguing that the district court erred in finding that vehicular hijacking was a crime of violence and that he was, as a result, subject to the career-offender sentencing enhancement.

## II

We review *de novo* the district court's determination that Illinois vehicular hijacking is a crime of violence within the meaning of § 4B1.2(a)(1). *United States v. Maxwell*, 823 F.3d 1057, 1060 (7th Cir. 2016). The categorical approach controls our analysis. Under this approach, we do not look to the specific facts underlying Mr. Brown's conviction; rather, we examine only whether the Illinois criminal statute "has as an element the 'use, attempted use, or threatened use of physical force against the person of another,'" as required by § 4B1.2(a)(1). *Id.* at 1060–61; *see also Zaragoza v. Garland*, 52 F.4th 1006, 1013 (7th Cir. 2022) ("We compare [the federal] definition with the [state] offense as defined by statute and as applied by the [state] courts."). In other words, vehicular hijacking can serve as a predicate offense of the career-offender sentencing enhancement only if the statute of conviction "always requires the government to prove ... the use, attempted use, or threatened use of force." *United States v. Taylor*, 142 S. Ct. 2015, 2020 (2022). If the crime may be committed in a

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<sup>3</sup> Sent. Tr. 17.

less culpable manner, there is a categorical mismatch, and the crime cannot be a predicate offense of the federal sentencing guideline.

Mr. Brown contends that the district court erred in determining that he was a career offender under the Sentencing Guidelines because there is a categorical mismatch between the elements clause of § 4B1.2(a) and the pre-2013 version of the Illinois vehicular hijacking statute. As he notes, the Supreme Court held in *Borden* that an offense does not involve the “use of physical force against the person of another” if the offense may be committed with a reckless mental state. 141 S. Ct. at 1825 (plurality opinion); *id.* at 1835 (Thomas, J., concurring in the judgment). The *Borden* plurality explained that the word “against,” as used in the elements clause, “expresses a kind of directedness or targeting”; thus, a use of force *against* the person of another results from “purposeful and knowing acts” but not from “reckless conduct.” *Id.* at 1826; *see also id.* at 1835 (Thomas, J., concurring in the judgment) (“[A] crime that can be committed through mere recklessness does not have as an element the ‘use of physical force’ because that phrase ‘has a well-understood meaning applying only to intentional acts designed to cause harm.’”).

In Mr. Brown’s view, *Borden*’s construction of the elements clause precludes treating vehicular hijacking as a crime of violence. At the time of his conviction, he observes, the state statute did not include an express *mens rea* requirement. And, according to a separate, “catchall” provision of the Illinois Criminal Code, if a statute “does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability),” a mental state of intent, knowledge, or recklessness will apply. 720 ILCS 5/4-

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3(b). Therefore, Mr. Brown submits, a straightforward reading of §§ 18-3 and 18-4 in conjunction with § 4-3(b) resolves this case: Vehicular hijacking can be committed with a reckless use of force, making it categorically overbroad with respect to § 4B1.2(a)(1).

We cannot accept this argument. The Illinois vehicular hijacking statute, even before it was amended to add an express *mens rea* of “knowingly,” included as an implied element the knowing or purposeful use or threat of force—namely, the use or threat of force aimed at taking control or possession of a motor vehicle.

Under the pre-2013 version of § 18-3, “[a] person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.” At the outset, we must bear in mind the significance of the object of this offense: a motor vehicle. Unlike other forms of property which might, conceivably, be taken recklessly or even accidentally, it is difficult, if not impossible, to conceive of taking a motor vehicle from another person in any manner other than knowingly and purposefully. Operating or directing a motor vehicle involves conscious and deliberate action.

With that in mind, we further note that the language of the statute—which proscribes taking *by* the use or threat of force—strongly suggests that force or intimidation must be aimed or directed at the taking of the motor vehicle. *Cf. People v. Dennis*, 692 N.E.2d 325, 334 (Ill. 1998) (construing the similarly worded robbery statute and concluding that “the gist of the offense” is “the force or fear of violence *directed at the victim in order to deprive him of his property*” (emphasis added)); *People v. Lewis*, 651 N.E.2d 72, 88 (Ill. 1995) (“[T]he necessary

force or threat of force must be used *as a means of taking* the property from the victim." (emphasis added)). Employing force or intimidation in order to facilitate the taking of a vehicle is not the sort of reckless use of force that *Borden* found to be beyond the scope of the elements clause. *See* 141 S. Ct. at 1825 (plurality opinion) ("[T]he perpetrator [must] direct his action at, or target, another individual. Reckless conduct is not aimed in that prescribed manner."). Rather, inasmuch as taking and operating a motor vehicle is, by its nature, a conscious and deliberate action, using force or issuing threats as a means of accomplishing that goal is purposeful and knowing.<sup>4</sup>

The statutory history reinforces this conclusion. As the parties recognize, the language of the vehicular hijacking statute tracks closely the language of the robbery statute. But when the Illinois legislature created the offense in 1993, it was careful to identify it as an offense separate and distinct from robbery, simultaneously amending the robbery statute to apply to the taking of "property, except a motor vehicle covered by Section 18-3 or 18-4." 720 ILCS 5/18-1; *see* Vehicular Hijacking Act, P.A. 88-351 (S.B. 902), 1993 Ill. Legis. Serv. (West). The Supreme Court of Illinois has explained the purpose of this change: In contrast to the robbery statute, which was consistently interpreted in light of the "common-law understanding" of that offense, "[t]he vehicular hijacking offense is not derived from the common law but was newly enacted in

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<sup>4</sup> We have no occasion to consider or comment on the appropriate analysis after *Borden* when the prior conviction is for robbery as defined by Illinois law. *See Klikno v. United States*, 928 F.3d 539, 547, 549 (7th Cir. 2019); *United States v. Love*, No. 22-2035, 2023 WL 2546507, at \*2-3 (7th Cir. Mar. 17, 2023).

1993.” *People v. Reese*, 102 N.E.3d 126, 138 (Ill. 2017). With this “entirely new offense,” the legislature “intended to address criminal conduct distinct from robbery of a motor vehicle.” *Id.* This conduct is in fact different in kind from robbery. Robbery presents the inherent risk that violence and injury will result from the forceful affront to personal and bodily integrity. But vehicular hijacking addresses a new and serious danger: Forceful conflict for control of a dangerous piece of equipment. Thus, *Reese* made clear that the taking of a motor vehicle did not simply entail dispossession of the vehicle but could also, perhaps more importantly, “include circumstances when the defendant takes a vehicle by exercising control,” such as by “directing the driver through the use of force or the threat of force.” *Id.*; *see also id.* at 139 (“The legislature also intended to criminalize taking control of a vehicle by force or threat of force, including when the victim remains inside the vehicle.”).<sup>5</sup>

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<sup>5</sup> The floor debates of the General Assembly show that legislators were specifically concerned with the confrontational and violent nature of vehicular hijacking. One of the bill’s sponsors, Senator Hawkinson, explained that the statutory language “from the person or the immediate presence of another” would limit the statute’s application to such situations as when the victim “was yanked out of the car or was right at the car.” 88th Ill. Gen. Assem., Senate Proceedings, May 11, 1993, at 24–25 (statement of Senator Hawkinson). By contrast, if the victim had “left the car at the pump” and was inside “the gas station or the 7-11,” a person who took the vehicle would commit “[t]heft of a motor vehicle,” not hijacking. *Id.* at 25.

The legislature’s decision to enact a vehicular hijacking statute in 1993 appears to reflect a national panic about carjackings in the wake of several high-profile crimes in the early 1990s. *See* Mary Ellen Beekman, *Auto Theft: Countering Violent Trends*, 62 FBI L. Enforcement Bull. 17, 17 (Oct. 1993) ( ... continued)

The legislature's decision to create a unique offense for vehicular hijacking reveals a specific legislative purpose: to criminalize the deliberate act of taking a motor vehicle from another person, using force or intimidation to accomplish that goal. As *Reese* recognizes, the legislature intended to treat that conduct as a unique, and uniquely serious, criminal offense. Implicit in the conduct proscribed by the statute is a mental state of at least knowing or purposeful action.

Nonetheless, Mr. Brown invokes the catchall provision of the Illinois Criminal Code, § 4-3(b), as something of a trump card. Despite the implications of the statutory language, the nature of the act criminalized, and the logic of the legislature's intentions, he insists that § 4-3(b) mechanically modifies each provision of the Criminal Code to insert "recklessly, knowingly, or intentionally" wherever a mental state has not been

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("Armed vehicle theft, led by its most infamous and widespread variety—carjacking—represents a violent escalation in an already-booming area of criminal activity. ... [T]he random nature, acute sense of violation, and threat of violence inherent in carjacking provoke intense community fear of this crime."). Senator Hawkinson stated when introducing the bill: "We're all too familiar with the tragedies around the country of ... car hijacking where someone armed or unarmed attacks a car, and ... snatches the driver out." 88th Ill. Gen. Assem., Senate Proceedings, Apr. 15, 1993, at 281 (statement of Senator Hawkinson). He recalled a recent story where the victim was "dragged, because they're caught in the rush, and ... caught by a seat belt or something and dragged and seriously injured or killed; sometimes these carjackings occur where a young child is a passenger in the car and is taken for a ride after a mother or father is ... yanked from the car." *Id.* Senator Hawkinson was apparently referencing a particularly brutal Maryland case in which the victim, a thirty-four-year-old mother, was killed after getting tangled in the car seatbelt and dragged outside the car for over a mile. See Don Terry, *Carjacking: New Name for Old Crime*, N.Y. Times, Dec. 9, 1992, at A18.

expressly prescribed (and where it is concluded that the legislature did not intend to impose absolute liability).

As far as we can tell, the Illinois courts do not understand § 4-3(b) to operate in the manner Mr. Brown supposes. There is some support in the Illinois case law for his view that all three mental states covered by § 4-3(b) are implied in the absence of an express requirement. *See, e.g., People v. Anderson*, 591 N.E.2d 461, 465 (Ill. 1992) (holding that an offense could be committed with a mental state of recklessness, knowledge, or intent because the statute was silent as to *mens rea* but was not meant to create an absolute liability offense); *People v. Burmeister*, 497 N.E.2d 1212, 1215–16 (Ill. App. Ct. 1986) (same); *People v. Childs*, 948 N.E.2d 105, 112 (Ill. App. Ct. 2011) (similar). In other cases, however, the Supreme Court of Illinois has suggested that, “[w]here a statute neither prescribes a particular mental state nor creates an absolute liability offense,” it is left to the court to “determin[e] which mental state element is implied” by the statutory language and the legislative intent. *People v. Sevilla*, 547 N.E.2d 117, 121–22 (Ill. 1989) (emphasis added) (inferring a mental state of knowledge in a statute with no express *mens rea*); *see also People v. Witherspoon*, 129 N.E.3d 1208, 1214–15 (Ill. 2019) (same); *People v. Gean*, 573 N.E.2d 818, 821–22 (Ill. 1991) (same); *People v. Whitlow*, 433 N.E.2d 629, 633–35 (Ill. 1982) (“[I]t is necessary to determine which of [§ 4-3(b)’s] mental states should apply to [the offense].” (emphasis added)). Thus, we are unable to read § 4-3(b) to mean that the mere absence of an express *mens rea* element inevitably leads to the conclusion that an offense may be committed recklessly. It is more likely that § 4-3(b) simply serves as a constitutional savings clause, narrowing the menu of potential implied mental states to ensure that a provision that is silent as to *mens rea* will not be read to criminalize

behavior involving the less culpable mental states of negligence, § 4-7, or ignorance or mistake, § 4-8. Cf. *In re K.C.*, 714 N.E.2d 491, 496 (Ill. 1999) (a statute is unconstitutional “if it potentially subjects wholly innocent conduct to criminal penalty without requiring a culpable mental state”); *Elonis v. United States*, 575 U.S. 723, 734 (2015) (“[T]he general rule is that a guilty mind is a necessary element in the indictment and proof of every crime.” (internal quotation marks omitted)).

In sum, the premise of Mr. Brown’s § 4-3(b) argument is faulty; the catchall provision does not require that the mental state of recklessness be implied into the vehicular hijacking statute as a means of committing the offense. His appeal to § 4-3(b) therefore does not overcome our conclusion that Illinois vehicular hijacking is a knowing or purposeful offense.

### Conclusion

We conclude that a pre-2013 conviction of Illinois vehicular hijacking is a crime of violence under the elements clause of U.S.S.G. § 4B1.2(a). Accordingly, we affirm the judgment of the district court.

AFFIRMED



United States Court of Appeals  
For the Seventh Circuit  
Chicago, Illinois 60604

August 22, 2023

**Before**

KENNETH F. RIPPLE, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-1192

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

Appeal from the United States District  
Court for the Northern District of  
Indiana, Hammond Division.

*v.*

No. 2:20-cr-00148

TERRANCE BROWN,  
*Defendant-Appellant.*

Philip P. Simon,  
*Judge.*

**O R D E R**

On consideration of the Petition for Rehearing, filed by Defendant-Appellant on August 4, 2023, all members of the original panel have voted to DENY the Petition for Panel Rehearing.

Accordingly, the Petition for Rehearing is DENIED.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA

Plaintiff,

vs.

TERRANCE BROWN

Defendant.

CASE NUMBER: 2:20CR148-001

USM Number: 18431-027

PETER L BOYLES - FCD  
DEFENDANT'S ATTORNEY

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT was found guilty on Count 1 of the Indictment after a plea of not guilty at a Bench Trial which concluded on October 4, 2021.

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

<u>Title, Section &amp; Nature of Offense</u>	<u>Date Offense Ended</u>	<u>Count Number(s)</u>
18:2113(a) BANK ROBBERY BY FORCE VIOLENCE AND INTIMIDATION	September 2020	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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 any material change in economic circumstances.

January 27, 2022

\_\_\_\_\_  
Date of Imposition of Judgment

s/ Philip P. Simon

\_\_\_\_\_  
Signature of Judge

Philip P. Simon, United States District Judge

\_\_\_\_\_  
Name and Title of Judge

February 2, 2022

\_\_\_\_\_  
Date

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **180 months**.

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

That the defendant be permitted to participate in the RDAP Program while incarcerated.

That the defendant be permitted to participate in the Prison Industries Program to develop employment skills.

The defendant is REMANDED to the custody of the United States Marshal.

### RETURN

I have executed this judgment as follows:

Defendant delivered \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_  
with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **2 years.**

Within 72 hours of the judgment or after the defendant's release from the custody of the Bureau of Prisons, defendant shall report in person to the nearest United States Probation Office for this district between the hours of 8:00 a.m. and 4:30 p.m. While the defendant is on supervision pursuant to this judgment, the defendant shall comply with the following conditions:

### **MANDATORY CONDITIONS OF SUPERVISION**

1. Defendant shall not commit another federal, state or local crime.
2. Defendant shall not unlawfully use, possess, or distribute a controlled substance.
3. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic tests thereafter for use of a controlled substance.
4. Defendant shall cooperate in the collection of DNA as directed by the probation officer.

### **DISCRETIONARY CONDITIONS OF SUPERVISION**

While on supervision, the defendant shall comply with the following discretionary conditions:

1. The defendant shall not knowingly leave the federal judicial district without the permission of the court or probation officer. The probation office will provide a map or verbally describe the boundaries of the federal judicial district at the start of supervision.
2. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons. Thereafter, the defendant shall report to the probation officer in the manner and as frequently as reasonably directed by the court or probation officer during normal business hours.
3. The defendant shall not knowingly answer falsely any inquiries by the probation officer. However, the defendant may refuse to answer any question if the defendant believes that a truthful answer may incriminate him.
4. The defendant shall follow the instructions of the probation officer as they relate to the conditions as imposed by the court. The defendant may petition the Court to seek relief or clarification regarding a condition if he believes it is unreasonable.
5. The defendant shall make reasonable effort to obtain and maintain employment at a lawful occupation unless he is excused by the probation officer for schooling, training, or other acceptable reasons such as childcare, elder care, disability, age or serious health condition.

6. The defendant shall notify the probation officer at least ten days prior to any change in residence or any time the defendant leaves a job or accepts a job. In the event that a defendant is involuntarily terminated from employment or evicted from a residence, the offender must notify the Probation Officer within forty-eight (48) hours.
7. The defendant shall not knowingly and intentionally be in the presence of anyone who is illegally selling, using or distributing a controlled substance and if such activity commences when he is present, the defendant must immediately leave the location.
8. The defendant shall not meet, communicate, or otherwise interact with a person whom he knows to be engaged or planning to be engaged in criminal activity.
9. The defendant shall permit a probation officer to visit him at any time at home or any other reasonable location between the hours of 8:00 a.m. and 10:00 p.m. and shall permit confiscation of any contraband observed in plain view by the probation officer.
10. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
11. The defendant shall not enter into any agreement to act as an informant for a law enforcement agency without the permission of the court.
12. The defendant shall notify the probation officer within 72 hours of any material change in his economic circumstances that might affect his ability to pay any unpaid amount of restitution and fines. Additionally, the defendant shall provide a probation officer with specific financial information regarding the defendant's ability to pay restitution, forfeiture, or a fine, upon a written or oral request by a probation officer, made to and approved by the Court. The request must be prompted by the defendant's failure to comply with a payment schedule ordered for a period of 60 consecutive days, and the request must describe the specific financial information needed for determining the defendant's current ability to pay.
13. The defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
14. The defendant shall participate in a program approved by the United States Probation Office for substance abuse, which may include testing for the detection of alcohol, controlled substances, or illegal mood-altering substance, if necessary after evaluation at the time of release. The defendant shall pay all or part of the costs for participation in the ordered program not to exceed his ability to pay for it. Failure to pay due to financial inability to pay shall not be grounds for revocation.
15. The defendant is ordered to pay restitution to First Midwest Bank in the amount of \$12,724.00. The defendant shall commence restitution payments in the manner and schedule as determined by the Court. The imposed payment schedule will remain in effect until such time as the defendant, victim, or government notifies the Court that there has been a material change in the defendant's ability to pay. Restitution shall be paid at a minimum rate of \$100 per month commencing one month after placement on supervision until said amount is paid in full.

16. The defendant is advised that he may pay any portion of this restitution from any wages earned in prison in accordance with the Bureau of Prisons Inmate Financial Responsibility Program. The defendant is also advised that participation in the program is voluntary. The defendant should note that failure to participate in the Financial Responsibility Program while incarcerated may result in the denial of certain privileges to which he might otherwise be entitled while imprisoned, and that the Bureau of Prisons has the discretion to make such a determination. Any portion of the restitution that is not paid in full at the time of the defendant's release from imprisonment shall become a condition of supervision.

Based on a thorough review of the defendant's financial condition as detailed in the presentence report, the Court finds that the defendant does not have the ability to pay a fine. The Court will waive the fine in this case.

The defendant shall pay to the United States a total special assessment of \$100, which shall be due immediately. (18 U.S.C. §§ 3013.)

#### **CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

<b><u>Total Assessment</u></b>	<b><u>Total Fine</u></b>	<b><u>Total Restitution</u></b>
\$100	NONE	\$12,724.00

The defendant shall make the special assessment payment payable to Clerk, U.S. District Court, 5400 Federal Plaza, Suite 2300, Hammond, IN 46320. The special assessment payment shall be due immediately.

#### **FINE**

No fine imposed.

#### **RESTITUTION**

Restitution in the amount of \$12,724.00 to First Midwest Bank is hereby imposed.

Name: TERRANCE BROWN  
Docket No.: 2:20CR148-001

### **ACKNOWLEDGMENT OF SUPERVISION CONDITIONS**

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

I have reviewed the Judgment and Commitment Order in my case and the supervision conditions therein. These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

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Defendant

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Date

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U.S. Probation Officer/Designated Witness

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Date