

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13882

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MATTHEW WILLIAM PEDDICORD,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20208-DMM-1

Before NEWSOM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

The night of April 7, 2022, began for Matthew Peddicord with a minor fender-bender. It ended with an arrest for knowingly possessing a firearm and ammunition as a convicted felon in violation of 18 U.S.C. section 922(g)(1)—an offense for which he was ultimately convicted on July 27, 2022. The district court sentenced him to sixty-months’ imprisonment followed by three years of supervised release.

Peddicord admitted he knew he was a felon on the night of the incident that brought about his arrest, and he admitted that the firearm he possessed had traveled in interstate commerce. He insists, however, he had no idea he was sitting on the gun, and so he did not knowingly possess it. To prove he did know he was sitting on the gun, because he knew what a gun looks and feels like, the district court permitted the government to introduce into evidence Peddicord’s 1999 conviction for first-degree armed robbery.

Peddicord appeals his conviction, arguing that the district court abused its discretion under Federal Rule of Evidence 404(b) when it admitted his twenty-three-year-old armed robbery conviction. Because the probative value of the prior conviction was not substantially outweighed by its prejudicial effect, we affirm.

FACTUAL BACKGROUND

In April 2022, Peddicord lightly rear-ended a car stopped at a red light in Miami. Two teenage girls were in the car, and when they stepped out to look at the damage to their car, they saw Peddicord still sitting in the driver's seat of the truck. They approached him, and he implored them not to call the police. The girls then noticed a police car was passing by, so they flagged it down and asked the officer for help. At that point, Peddicord began acting "weird," screaming, ripping his shirt, and trying to climb out of the truck's window.

The officer observed Peddicord flailing his arms inside his vehicle and, believing he was suffering from a drug overdose or some other medical emergency, called Fire Rescue for medical assistance. In the meantime, the officer instructed Peddicord to exit the truck, but Peddicord did not initially comply. He continued to flail and scream until he eventually left his seat. The officer noticed that there was a holstered firearm in the middle of the driver's seat. The officer removed the gun, took it out of its holster, and saw that it contained a fully loaded magazine. Fire Rescue arrived soon after and administered a medicine used to treat a person who is suffering from an opioid overdose.

The government later arrested Peddicord at his girlfriend's home, where he lived. Peddicord's girlfriend said that, upon arriving home on the night of the incident, she mistakenly left her gun in her truck on the seat. She said that Peddicord took her truck the

night of the car accident without her knowledge or permission while she was taking a shower.

PROCEDURAL HISTORY

A federal grand jury charged Peddicord with knowingly possessing a firearm and ammunition as a felon in violation of section 922(g)(1). He pleaded not guilty.

The sole question presented to the jury was whether Peddicord knowingly possessed the firearm found in his seat that night. To show that Peddicord knew “what a firearm looks and feels like,” and therefore knew he was sitting on the gun, the government filed a notice under Rule 404(b) that it intended to introduce into evidence Peddicord’s 1999 Washington conviction for first-degree armed robbery.

Peddicord moved to exclude the conviction, arguing that its prejudicial effect outweighed its probative value because the prior conviction was too remote, it was violent in nature, and the government didn’t need the conviction evidence. He proposed instead stipulating that he was convicted of a crime involving a firearm in 1999. The government responded that the robbery’s special verdict finding that Peddicord used a firearm demonstrated his particular knowledge of firearms.

The district court denied Peddicord’s motion because the government “need[ed]” the conviction to show knowledge and respond to Peddicord’s claim that “he didn’t know the gun was there” in his seat. The government, the district court explained, could introduce the first page of Peddicord’s conviction but must

exclude details about the robbery itself as well as Peddicord's sentence and restraining order.

At trial, the district court gave limiting instructions regarding the prior conviction three times: at the outset of the trial, right before admitting the conviction into evidence, and while instructing the jury before deliberations. Before admitting the prior conviction and while instructing the jury before deliberations, the district court gave a pattern instruction, informing the jury that it was about to hear or had just heard:

evidence of acts allegedly done by the defendant that may be similar to those charged in the indictment. But, which were committed on other occasions. You must not consider this evidence to decide if the defendant engaged in the activity alleged in the indictment. But, you may consider this evidence to decide whether the defendant had the state of mind or intent necessary to commit the crime charged in the indictment.

STANDARD OF REVIEW

We review for an abuse of discretion a district court's admission of a prior crime under Rule 404(b). *See United States v. Ramirez*, 426 F.3d 1344, 1354 (11th Cir. 2005).

DISCUSSION

We have used the following three-part test to determine if prior bad act evidence is admissible under Rule 404(b): (1) is it

relevant to an issue other than the defendant's character; (2) is it established by sufficient proof to permit a jury finding that the defendant committed the extrinsic act; and (3) is the probative value of the evidence substantially outweighed by its undue prejudice, as required by Rule 403. *See United States v. Holt*, 777 F.3d 1234, 1266 (11th Cir. 2015) (quoting *United States v. McNair*, 605 F.3d 1152, 1203 (11th Cir. 2010)).

Peddicord admits that he satisfied both the first and second prongs. As to the first prong, Peddicord put his intent at issue when he pleaded not guilty to knowingly possessing the firearm. *See United States v. Matthews*, 431 F.3d 1296, 1311 (11th Cir. 2005) (stating that the defendant's "plea of not guilty, without an accompanying affirmative removal, made his intent a material issue"). He satisfied the second prong because he was convicted of the armed robbery. *See United States v. Sanders*, 668 F.3d 1298, 1314 (11th Cir. 2012) ("The second element was also met because [the defendant] was convicted of the prior act"). He insists, however, that the government did not satisfy the third prong because the probative value of the conviction was outweighed by its undue prejudice.

To determine whether the probative value of evidence outweighs its prejudicial effect, courts consider "the circumstances of the extrinsic offense." *United States v. Dorsey*, 819 F.2d 1055, 1061 (11th Cir. 1987). "[I]t cannot be said that a district court abused its discretion" if it admitted extrinsic evidence after considering "the overall similarity of the extrinsic and charged offenses, the amount of time separating the extrinsic and charged offenses, and whether

it appeared at the commencement of the trial that the defendant would contest the issue of intent.” *Id.* Courts may also consider whether the government “had . . . need” of the evidence to prove the defendant’s intent. *See United States v. Edouard*, 485 F.3d 1324, 1344–45 (11th Cir. 2007).

Here, the district court did not abuse its discretion by admitting Peddicord’s prior conviction at trial. The conviction showed that Peddicord had experience using a firearm, and it was relevant to Peddicord’s knowledge that he was sitting on a gun while he drove a vehicle for twenty minutes. “[T]he fact that [a defendant] knowingly possessed a firearm . . . on a previous occasion makes it more likely that he *knowingly* did so this time as well, and not because of accident or mistake.” *United States v. Jernigan*, 341 F.3d 1273, 1281–82 (11th Cir. 2003) *abrogated on other grounds by Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019); *see also United States v. Taylor*, 417 F.3d 1176, 1182 (11th Cir. 2005) (finding no abuse of discretion where the district court admitted evidence that the defendant “knowingly possessed a firearm at another point in time” to “satisfy the mens rea element of [knowing possession of a firearm]”).

Peddicord argues, first, that introducing his prior conviction created a substantial risk of unfair prejudice, and second, that the conviction’s probative value was minimal at best. As to prejudice, Peddicord contends that a jury would too easily misinterpret the conviction as evidence of his general propensity to commit crimes, that the violent nature of the 1999 conviction overshadows the

non-violent nature of the crime he faces here, and that the district court’s “boilerplate” limiting instructions failed to adequately temper the potential prejudice. As to the conviction’s probative value, he asserts that the conviction was too old, he was only twenty years old when he committed the crime, and the crime was factually dissimilar to the felon-in-possession conviction he faces here because of the old conviction’s violent nature.

We disagree. First, the prior conviction and the felon-in-possession conviction both involve the knowing use of a firearm. As already discussed, our prior precedent has concluded that such evidence is probative to show a defendant’s knowledge. *See Jernigan*, 341 F.3d at 1281–82; *see also Taylor*, 417 F.3d at 1182.

Second, as to the amount of time that passed between the prior and current convictions, we have previously upheld the admission of Rule 404(b) evidence that occurred fifteen years before the charged offense. *See United States v. Lampley*, 68 F.3d 1296, 1300 (11th Cir. 1995). Although “temporal remoteness depreciates the probity of the extrinsic evidence,” *United States v. Beechum*, 582 F.2d 898, 915 (5th Cir. 1978), we have no bright-line rule for when a district court may not admit a prior crime for being too remote. *See Matthews*, 431 F.3d at 1311. Any bright-line rule would be “of dubious value” because the inquiry is “so fact-specific.” *Id.* (quoting *United States v. Pollock*, 926 F.2d 1044, 1048 (11th Cir. 1991)). Moreover, Peddicord was incarcerated for thirteen of the twenty-three years that passed between the prior and current convictions, which diminishes the “significance” of the length of time that passed

between the prior conviction and the instant conviction. *See United States v. LeCroy*, 441 F.3d 914, 926 (11th Cir. 2006) (“[I]n this case, the significance of the ten-year time period between the previous and instant crimes is diminished because [the defendant] was incarcerated for most of that time . . .”); *see also United States v. Sterling*, 738 F.3d 228, 238 (11th Cir. 2013) (A “prior crime need not be very recent, especially where a substantial portion of the gap in time occurred while the defendant was incarcerated.”)

And third, Peddicord clearly contested the issue of his intent. His knowing possession was the central question in this case, so the conviction was probative to addressing that question. *See Jernigan*, 341 F.3d at 1281–82. Because there was no forensic evidence linking Peddicord to the gun, the prior conviction was neither “needless[]” nor “cumulative.” Fed. R. Evid. 403.

Peddicord’s remaining prejudice arguments did not substantially outweigh the probative value of the prior conviction. First, his young age at the time of the prior conviction did not make it less likely that he knew how a firearm felt in his hand or in the driver’s seat of his vehicle. *See Matthews*, 431 F.3d at 1312 n.15 (“Nor do we find any merit in the claim that [the defendant] was too young at the time of the 1991 incident for the prior act to be probative of intent.”).

Second, a district court’s limiting instructions will typically “mitigate[]” any “unfair prejudice possibly caused by admitting evidence” of a prior conviction. *Edouard*, 485 F.3d at 1346; *see also United States v. Ellisor*, 522 F.3d 1255, 1268 (11th Cir. 2008) (“[T]he

‘scalpel’ of an appropriate limiting instruction at the time [a prior conviction is] admitted can reduce the risk of inherent prejudice . . .”). Here, the district court, using a pattern instruction, instructed the jury three times that it could not use Peddicord’s prior conviction as evidence of a propensity to commit crimes. We have held that a district court does not abuse its discretion in giving the pattern instructions to a jury, and we presume that juries follow their instructions. *See United States v. Dominguez*, 661 F.3d 1051, 1072–73 (11th Cir. 2011) (“The district court gave the pattern instruction on similar act evidence and did not abuse its discretion in refusing to revise this instruction.”); *see also United States v. Wilson*, 149 F.3d 1298, 1302 (11th Cir. 1998) (“The jury is presumed to have followed these instructions.”).

In the end, Peddicord has failed to demonstrate that the prejudicial effect of his prior conviction substantially outweighed its probative value. He also failed to show how the district court abused its discretion by allowing the government to admit his prior conviction. Because “the district court is uniquely situated to make nuanced judgments on questions that require the careful balancing of fact-specific concepts like probativeness and prejudice,” we are “loathe to disturb the sound exercise of discretion in these areas.” *United States v. Troya*, 733 F.3d 1125, 1131 (11th Cir. 2013).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA

v.

MATTHEW WILLIAM PEDDICORD**JUDGMENT IN A CRIMINAL CASE**

§

§ Case Number: **1:22-CR-20208-DMM(1)**§ USM Number: **04066-510**

§

§ Counsel for Defendant: **Lauren Field Krasnoff**§ Counsel for United States: **Arielle Klepach****THE DEFENDANT:**

<input type="checkbox"/>	pleaded guilty to count(s)	
<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 checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	One

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18:922(g)(1) Possession Of Firearm and Ammunition By Convicted Felon

Offense Ended

04/07/2022

Count

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.

November 15, 2022

Date of Imposition of Judgment



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

November 15, 2022

Date

DEFENDANT: MATTHEW WILLIAM PEDDICORD
CASE NUMBER: 1:22-CR-20208-DMM(1)

IMPRISONMENT

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

SIXTY (60) MONTHS as to Count 1. This sentence shall run concurrent with any subsequent sentence imposed in Case No. F22-6460.

The court makes the following recommendations to the Bureau of Prisons:
The Defendant be designated to a facility in or as close to South Florida as possible.

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: MATTHEW WILLIAM PEDDICORD
CASE NUMBER: 1:22-CR-20208-DMM(1)

SUPERVISED RELEASE

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

MANDATORY CONDITIONS

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

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

DEFENDANT: MATTHEW WILLIAM PEDDICORD
 CASE NUMBER: 1:22-CR-20208-DMM(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: MATTHEW WILLIAM PEDDICORD
CASE NUMBER: 1:22-CR-20208-DMM(1)

SPECIAL CONDITIONS OF SUPERVISION

Anger Control / Domestic Violence: The defendant shall participate in an approved treatment program for anger control/domestic violence. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Mental Health Treatment: The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Permissible Search: The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Substance Abuse Treatment: The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: MATTHEW WILLIAM PEDDICORD
 CASE NUMBER: 1:22-CR-20208-DMM(1)

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	\$100.00	\$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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$
 The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
 The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 the interest requirement is waived for the fine restitution
 the interest requirement for the fine restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$0.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** 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: MATTHEW WILLIAM PEDDICORD
 CASE NUMBER: 1:22-CR-20208-DMM(1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payments of \$100.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
 ATTN: FINANCIAL SECTION
 400 NORTH MIAMI AVENUE, ROOM 8N09
 MIAMI, FLORIDA 33128-7716**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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

Joint and Several
 See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.