In the
United States Court of Appeals
For the Seventh Circuit

No. 24-1130

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

QUINTIN T. FERGUSON,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.
No. 3:21CR30 — **Damon R. Leichty**, *Judge*.

ARGUED FEBRUARY 4, 2025 — DECIDED MARCH 17, 2025

Before SYKES, *Chief Judge*, and EASTERBROOK and PRYOR, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Quintin Ferguson was sentenced to 240 months' imprisonment for violating 18 U.S.C. §844(i). The district court treated him as a career offender under U.S.S.G. §4B1.1(a) after concluding that §844(i) is a "crime of violence". Classification as a career offender is appropriate only if the current conviction and at least two prior convictions are for felony drug offenses or crimes of violence.

Guideline 4B1.2(a)(2) specifies that "arson" is a "crime of violence". In this appeal Ferguson denies that a violation of §844(i) counts as "arson" for the purpose of §4B1.2(a)(2).

Section 844(i) provides:

> Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

Maliciously destroying a building or vehicle by fire or explosives sounds like arson, but Ferguson says that it is not because §844(i) does not require proof that a defendant who burned his own property did so to collect insurance.

The parties agree that "arson" means generic arson rather than any particular variant. Observing that the American Law Institute's *Model Penal Code* §220.1 (1962), limits its definition, if the defendant owned the torched property, to acts designed to bilk insurers, Ferguson insists that §844(i) therefore departs from generic arson and cannot be treated as a crime of violence under §4B1.2(a)(2).

The Sentencing Guidelines do not define "arson" as that term is used in §4B1.2—though Appendix A to the Guidelines directs violations of §844(i) to be sentenced under U.S.S.G.

§2K1.4, which bears the caption "Arson; Property Damage by Use of Explosives". What is more, 18 U.S.C. §3295 treats §844(i) as an "arson offense". Perhaps these cross-references suffice to call the §844(i) crime "arson."

The parties' shared assumption that we must ask whether §844(i) deserves the label "generic arson" comes from the way the Supreme Court has treated the word "burglary" in 18 U.S.C. §924(e), the Armed Career Criminal Act, which classifies burglary as a crime of violence for some sentencing purposes. See *Taylor v. United States*, 495 U.S. 575 (1990). The Justices noted that §924(e) does not define "burglary" and concluded that it was necessary to devise a generic definition. The cross-reference from Appendix A in the Guidelines may make that step unnecessary when dealing with §4B1.2, but, as the parties have not argued this, we shall assume for current purposes that we need to define "generic arson" as *Taylor* and its successors needed to define "generic burglary." (As *Taylor* did when defining generic burglary, we ask whether the elements of the statute fit the generic definition, not what the defendant did in fact. This is known as the categorical approach.)

This isn't the first time we have been asked to define "generic arson." *United States v. Misleveck*, 735 F.3d 983, 988 (7th Cir. 2013), and *United States v. Gamez*, 89 F.4th 608, 610 (7th Cir. 2024), both adopt "the intentional or malicious burning of any property" as the definition of the generic offense. See also *Brown v. Caraway*, 719 F.3d 583, 589–91 (7th Cir. 2013) (willful or malicious burning). The definition does not limit coverage to the burning of a stranger's property plus the burning of one's own property to defraud an insurer. Section 844(i) fits comfortably within the generic definition that we have articulated. (The mental-state element in §844(i) is

malice; we need not consider whether other flavors of intent, such as a design to burn charcoal briquettes in a grill on one's patio, would qualify.)

Ferguson wants us to add an insurance qualifier to the destruction of one's own property, because the Supreme Court mentioned §220.1 of the *Model Penal Code* in *Begay v. United States*, 553 U.S. 137, 145 (2008). Yet *Begay* did not define "generic arson". The question it resolved was whether driving under the influence of alcohol was a crime of violence under 18 U.S.C. §924(e)(2)(B)(ii), which refers to "burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury". The Court mentioned arson to illustrate the sort of risks the "otherwise involves" language was getting at; it used the *Model Penal Code* only to observe that its text defined a crime that poses serious risks to persons and property. The Justices did not say anything about the effect of the *Model Penal Code*'s insurance proviso or the extent to which that clause affects the federal definition of "arson."

Although the Supreme Court has never tried to define "generic arson," its series of cases defining "generic burglary" illuminates the path. *Taylor* referred to definitions commonly followed under state law when §924(e) was enacted. 495 U.S. at 580. It wrote: "Congress meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States." *Id*. at 598. And it provisionally defined this as a crime "having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599. Many federal courts later held that this excludes entries into other dwelling places, such as houseboats. *United States v. Stitt*, 586 U.S. 27 (2018), asked

whether a state law making it a crime to enter a mobile home, trailer, or tent designed for overnight accommodation should be treated as generic burglary. It answered "yes" after canvassing state law and finding that statutes in force at the relevant time largely called this offense burglary. See also *Mathis v. United States*, 579 U.S. 500 (2016).

The Supreme Court's approach to burglary under §924(e) leads us to ask: When the Sentencing Guidelines were adopted in 1987, and when the career-offender guideline was added in 1989, did state laws defining arson require proof that a person who maliciously burned his own property did so in order to collect insurance? Did they require proof that the property belonged to another? Both answers are no.

By 1987 none of the states limited arson to burning the property of another. See John Poulos, *The Metamorphosis of the Law of Arson*, 51 Missouri L. Rev. 295, 446 (1986). And only two states (North Dakota and Wisconsin) then followed the *Model Penal Code*'s definition of arson as the burning of one's own property only when the goal was to collect insurance proceeds. The other states all treated arson as encompassing the burning of one's own property for reasons unrelated to the collection of insurance, including if the property was occupied (e.g., Alabama, Arizona, Connecticut, Kentucky), if the burning put another person at risk of harm whether or not the property was in use as a residence (e.g., Arkansas, Georgia, Ohio), or if the burning put another's property at risk of harm (e.g., Pennsylvania, Maine). The Appendix to this opinion, which we have modeled on the Appendix to *Stitt*, collects the state arson statutes in force in 1987.

When the Guidelines were adopted, the approach to arson prevailing among the states largely matched the definition in

§844(i). We therefore hold that a conviction under §844(i) is one for "arson" as that term appears in the career-offender guideline.

AFFIRMED

APPENDIX

ALA. CODE §§ 13A-7-41, 13A-7-43 (1977); *id.* § 13A-7-42 (1983); ALASKA STAT. §11.46.410 (1978); *id.* § 11.46.400 (1983); ARIZ. REV. STAT. ANN. §§ 13-1703; 13-1704 (1987); ARK. CODE ANN. §41-1902 (1987); CAL. PENAL CODE §451 (1986); COLO. REV. STAT. §§ 18-4-103; 18-4-105 (1977); *id.* §18-4-102 (1986); CONN. GEN. STAT. §53a-113 (1980); *id.* §53a-111 (1982); *id.* §53a-112 (1984); DEL. CODE ANN. tit. 11, §§ 801, 802, 803 (1972); D.C. CODE §§ 22-301, 22-302 (1901); *id.* § 22-303 (1965); FLA. STAT. §806.01 (1979); GA. CODE ANN. §§ 26-1401, 26-1402, 26-1403 (1979); HAW. REV. STAT. §§ 708-820, 708-821, 708-823 (1984); *id.* §708-822 (1986); IDAHO CODE §§ 18-801, 18-802 (1972); ILL. REV. STAT. ch. 38 §20-1 (1973); *id.* §20-1.1 (1985); IND. CODE §35-43-1-1 (1982); IOWA CODE §§ 712.1, 712.3, 712.4 (1976); *id.* §712.2 (1984); KAN. STAT. ANN. §21-3718 (1969); KY. REV. STAT. ANN. §§ 513.020, 513.030, 513.040 (1982); LA. STAT. ANN. §14:53 (1980); *id.* §14:51 (1981); *id.* §14:52 (1985); ME. STAT. tit. 17-A, §802 (1983); MD. CODE Art. 27, §6 (1969); MASS. GEN. LAWS ch. 266, §1 (1974); MICH. COMP. LAWS §750.72 (1945); MINN. STAT. §609.563 (1985); *id.* §§ 609.561, 609.562 (1986); MISS. CODE ANN. §§ 97-17-1, 97-17-5, 97-17-7, 97-17-9 (1932); *id.* §97-17-3 (1958); *id.* § 97-17-11 (1986); MO. REV. STAT. §§ 569.040, 569.050 (1987); MONT. CODE ANN. §§ 45-6-102; 45-6-103 (1985); NEB. REV. STAT. § 28-504 (1977); *id.* §§ 28-502, 28-503 (1981); NEV. REV. STAT. §§ 205.015, 205.020, 205.025 (1979); *id.* §205.010 (1987); N.H. REV. STAT. ANN. §634:1 (1975); N.J. STAT. ANN. §2C:17-1 (1981); N.M. STAT. ANN. §30-17-5 (1970); *id.* §30-17-6 (1963); N.Y. PENAL LAW §§ 150.05, 150.10, 150.15 (McKinney 1979); *id.* §150.20 (McKinney 1984); N.C. GEN. STAT. §§ 14-58.2, 14-63, 14-64, 14-65, 14-66 (1979); *id.* §§ 14-58, 14-59, 14-60, 14-61, 14-62, 14-62.1, 14-67.1 (1981); N.D. CENT.

CODE §12.1-21-01 (1979); OHIO REV. CODE ANN. §§ 2902.02, 2902.03 (1982); OKLA. STAT. tit. 21, §§ 1401, 1402, 1403, 1404 (1979); OR. REV. STAT. §§ 164.315, 164.325 (1971); 18 PA. CONS. STAT. § 3301 (1982); 11 R.I. GEN. LAWS §§ 11-4-6, 11-4-8 (1980); *id.* §§ 11-4-2, 11-4-3, 11-4-4, 11-4-5, 11-4-7 (1983); S.C. CODE ANN. §16-11-110 (1982); S.D. CODIFIED LAWS §§ 22-33-1, 22-33-2 (1977); TENN. CODE ANN. §39-1-505 (1968); *id.* §§ 39-3-202, 39-3-205 (1984); TEX. PENAL CODE ANN. § 28.02 (1981); UTAH CODE ANN. §§ 76-6-102, 76-6-103 (1986); VT. STAT. ANN. tit. 13, § 501 (1957); *id.* §§ 502, 503, 504, 505 (1981); VA. CODE ANN. §§ 18.2-79, 18.2-82, 18.2-86 (1975); *id.* §18.2-77 (1978); *id.* §§ 18.2-80, 18.2-81 (1981); WASH. REV. CODE §9A.48.030 (1975); *id.* §9A.48.020 (1981); W. VA. CODE §§ 61-3-1, 61-3-2, 61-3-4 (1935); *id.* § 61-3-3 (1957); WIS. STAT. §§ 943.02, 943.03, 943.04 (1977); WYO. STAT. ANN. §§ 6-3-101, 6-3-102 (1983); *id.* §§ 6-3-103, 6-3-104 (1984).

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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FINAL JUDGMENT

March 17, 2025

Before
DIANE S. SYKES, *Chief Judge*
FRANK H. EASTERBROOK, *Circuit Judge*
DORIS L. PRYOR, *Circuit Judge*

No. 24-1130	UNITED STATES OF AMERICA, Plaintiff - Appellee v. QUINTIN T. FERGUSON, Defendant - Appellant
Originating Case Information:	
District Court No: 3:21-cr-00030-DRL-MGG-1 Northern District of Indiana, South Bend Division District Judge Damon R. Leichty	

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

Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA **Plaintiff,** **vs.** **QUINTIN FERGUSON** **Defendant.**	**CASE NUMBER: 3:21CR30-001** **USM Number: 13455-027** **THOMAS A DURKIN** **DEFENDANT'S ATTORNEY**

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT pleaded guilty to count 1 of the Indictment on January 20, 2023.

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

Title, Section & Nature of Offense	Date Offense Ended	Count Number(s)
18:844(i) ARSON	January 10, 2021	1

The defendant is sentenced as provided in pages 2 through 6 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 19, 2024
Date of Imposition of Judgment

s/ Damon R. Leichty
Signature of Judge

Damon R. Leichty, United States District Judge
Name and Title of Judge

January 22, 2024
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **240 months.**

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

The court recommends that the Bureau of Prisons designate as the place of the defendant's confinement, consistent with his security classification as determined by the Bureau of Prisons, FCI Oxford where he may participate in a residential drug abuse program (RDAP) or other appropriate drug treatment program.

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** subject to the following conditions:

CONDITIONS OF SUPERVISION

1. You must not commit another federal, state, or local crime.

2. You must not unlawfully possess a controlled substance.

3. You must not unlawfully use any controlled substance, including marijuana, and must submit to one drug test within 15 days of the beginning of supervision and at least 2 periodic tests after that for use of a controlled substance. T

4. You must cooperate with the probation officer with respect to the collection of DNA.

5. You must be lawfully employed full-time (at least 30 hours per week). If you are not employed full-time, you must try to find full-time employment under the supervision of the probation officer. If you become unemployed, or change your employer, position, or location of employment, you must tell the probation officer within 72 hours of the change. If after 90 days you do not find employment, you must complete at least 10 hours of community service per week until employed or participate in a job skills training program approved and directed by your probation officer.

6. You must report in person to the probation office, in the district which you are released, within 72 hours of release from the custody of the Bureau of Prisons. You must report to the probation officer in the manner and as frequently as the court or the probation officer directs; and you must notify the probation officer within 48 hours of any change in residence, and within 72 hours of being arrested or questioned by a police officer.

7. You must not travel knowingly outside the federal judicial district without the permission of the court. Alternatively, the probation officer will grant such permission when doing so will reasonably assure the probation officer's knowledge of your whereabouts and that travel will not hinder your rehabilitation or present a public safety risk.

8. You must truthfully answer any inquiry by the probation officer and must follow the instruction of the probation officer pertaining to your supervision and conditions of supervision. This condition does not prevent you from invoking the Fifth Amendment privilege against self-incrimination.

9. You must permit a probation officer to meet at your home or any other reasonable location and must permit confiscation of any contraband the probation officer observes in plain view. The probation officer will not conduct such a visit between the hours of 11:00 p.m. and 7:00 a.m. without specific reason to believe a visit during those hours would reveal information or contraband that wouldn't be revealed through a visit during regular hours.

10. You must not possess a firearm, ammunition, destructive device, or any other dangerous weapon (meaning an instrument designed to be used as a weapon and capable of causing death or serious bodily harm).

11. Unless an assessment at the time of release from imprisonment or commencement of probation indicates to the court that participation is unnecessary, you must participate in a substance abuse and/or anger management treatment program or aftercare program. The court will receive notification of such assessment. You must abide by all treatment program requirements and restrictions, consistent with the conditions of the treatment provider. You will be required to participate in drug and /or alcohol testing, not to exceed 85 drug and/or alcohol tests per year. At the request of a treatment provider, probation officer, or you, the court may revise these conditions. While under supervision, you must not consume alcoholic beverages. You must pay all or a part of the costs for participation in the program, not to exceed the sliding fee scale as established by the Department of Health and Human Services and adopted by this court. Failure to pay these costs will not be grounds for revocation unless the failure is willful.

12. You must participate in a job skill training and counseling program as approved and directed by the probation officer.

13. You must pay restitution to the United States District Court Clerk's Office, South Bend, Indiana, which will be due immediately, to be disbursed to the following victim(s): Flaherty and Collins Property, $TBD. You must 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 court is notified by you, the victim(s), or government that there has been a material change in your ability to pay. Restitution will be paid at a minimum rate of $TBD per month commencing 60 days after placement on supervision until said amount is paid in full. Failure to pay according to this condition will not be grounds for imprisonment unless the failure is willful.

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.

Total Assessment	Total Fine	Total Restitution
$100.00	NONE	NONE

The defendant shall make the special assessment payment payable to Clerk, U.S. District Court, 102 Robert A. Grant Courthouse, 204 South Main Street, South Bend, IN 46601. The special assessment payment shall be due immediately.

FINE

No fine imposed.

RESTITUTION

No restitution imposed.

Name: QUINTIN FERGUSON
Docket No.:3:21CR30-001

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)

Defendant	Date
U.S. Probation Officer/Designated Witness	Date