APPENDIX

Application for Extension of Time to File Petition for Writ of Certiorari
Thomas Bradley v. United States
App. No. _____

Order of the Court of Appeals
United States v. Bradley, No. 23-5440 (6th Cir. Apr. 17, 2025)

NOT RECOMMENDED FOR PUBLICATION

No. 23-5440

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
THOMAS BRADLEY,	)	TENNESSEE
	)	
Defendant-Appellant.	)	

O R D E R

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

Thomas Bradley appeals his sentence, arguing that it was improperly enhanced under the Armed Career Criminal Act (ACCA) after he was convicted of being a felon in possession of a firearm. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because the claimed error was harmless, we affirm.

Bradley pleaded guilty to being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). His sentence was enhanced under 18 U.S.C. § 924(e) and USSG § 4B1.4(b)(3)(A) because the district court determined that he had committed a total of 26 prior aggravated burglaries that qualified as predicate offenses under the ACCA. Based on a guidelines range of 188 to 235 months, the district court sentenced him to 210 months of imprisonment. Bradley objected to the armed-career-criminal enhancement, arguing that only a jury, not the district court, could decide whether at least three of his prior aggravated burglaries were committed on different occasions. The court overruled this objection. Bradley now appeals.

Bradley's appeal was held in abeyance until the Supreme Court decided *Erlinger v. United States*, 602 U.S. 821 (2024). There, the Court held that whether a defendant's prior ACCA-qualifying convictions were committed on different occasions is a factual determination that must be found by a jury beyond a reasonable doubt or admitted to by the defendant to avoid violating the Fifth and Sixth Amendments. *Id*. at 830-35. Bradley's appeal then proceeded to briefing.

Meanwhile, we held in *United States v. Campbell*, 122 F.4th 624, 630-31 (6th Cir. 2024), that a constitutional error under *Erlinger* is subject to harmless-error review. Citing *Campbell*, the government argues that the error here is harmless because it is clear that at least three of Bradley's aggravated burglaries were committed on different occasions. In response, Bradley acknowledges that, "[a]ssuming *Campbell* stands, its reasoning resolves this appeal without additional briefing." He argues, however, that *Campbell* was wrongly decided.

A defendant convicted of a § 922(g) offense is subject to an enhanced sentence under the ACCA if he has at least three prior convictions "for a violent felony or a serious drug offense, or both, committed on occasions different from one another." 18 U.S.C. § 924(e)(1). As noted above, after *Erlinger*, whether a defendant's prior ACCA-qualifying convictions were committed on different occasions must be found by a unanimous jury beyond a reasonable doubt or admitted by the defendant. *See Erlinger*, 602 U.S. at 830-35. But an *Erlinger* error is harmless if "the government has made it clear 'beyond a reasonable doubt that the outcome would not have been different' without the constitutional violation." *Campbell*, 122 F.4th at 630 (quoting *United States v. Mack*, 729 F.3d 594, 608 (6th Cir. 2013)). And in determining whether the error is harmless, we may consider any "relevant and reliable information" in the record, including judicial records and the presentence report. *Id*. at 632-33 (quoting *Greer v. United States*, 593 U.S. 503, 511 (2021)).

Despite Bradley's disagreement, we are bound by our prior decision in *Campbell*. *See Brumbach v. United States*, 929 F.3d 791, 795 (6th Cir. 2019); *Salmi v. Sec'y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985) (explaining that a panel of this court cannot overrule a prior panel's decision absent an inconsistent decision of the Supreme Court or this court sitting

en banc). When defendants plead guilty to a crime and the district court fails to alert them of an element of the crime during the plea colloquy, the harmless-error test might ask whether the government has shown beyond a reasonable doubt that they *still would have pleaded guilty* if the court had explained the missing element. *Cf. Greer*, 593 U.S. at 508 (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004)). Here, though, the parties ask us to apply the harmless-error test that governs after a jury trial. In particular, they consider whether the government has shown beyond a reasonable doubt that *any reasonable jury would have found* the missing element. *Cf. Campbell*, 122 F.4th at 629-32. Admittedly, *Campbell* itself applied this test even though the defendant had pleaded guilty to his crime. *Id*. at 627. Yet neither party in that case had briefed which harmless-error test the court should apply. We can save the proper test in this plea context (and whether *Campbell* binds us to apply the one for jury verdicts) for another day because the error was harmless under the parties' framing.

To determine whether prior offenses were committed on separate occasions, multiple factors are considered, including the timing, location, character, and relationship of the offenses. *Wooden v. United States*, 595 U.S. 360, 369 (2022). "Substantial time and distance gaps will generally indicate different offense occasions." *Campbell*, 122 F.4th at 629 (citation omitted). According to the indictments and judgments that the government presented in the district court, Bradley's predicate offenses were committed on 24 separate dates, and almost were committed in separate residences over several years. As Bradley himself concedes after *Campbell*, it is evident that Bradley committed these offenses on different occasions. *See id.* at 632. We can therefore confidently conclude that the failure to have a jury consider whether Bradley's prior offenses occurred on separate occasions had no effect on his sentence, and the error was thus harmless beyond a reasonable doubt. *See id*.

Bradley also argues that being punished under the ACCA when he had only pleaded guilty to violating the simple form of § 922(g)(1) violates the Double Jeopardy Clause. But he did not raise this argument in the district court, so we review it for plain error. *See Greer*, 593 U.S. at 507. And he has not shown any obvious error. To the contrary, "[t]he Double Jeopardy Clause protects

a defendant by prohibiting a judge from even *empaneling* a jury when the defendant has already faced trial on the charged crime." *Erlinger*, 602 U.S. at 845. In contrast, the "Fifth and Sixth Amendments' jury trial rights provide a defendant with entirely complementary protections at a different stage of the proceedings by ensuring that, once a jury *is* lawfully empaneled, the government must prove beyond a reasonable doubt to a unanimous jury the facts necessary" to support the sentence sought. *Id*. The district court thus did not commit an obvious error by concluding that the Double Jeopardy Clause is not implicated here.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk