No. 17-778

In the Supreme Court of the United States

JAMAR ALONZO QUARLES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 24, 2017
CERTIORARI GRANTED JANUARY 11, 2019

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TABLE OF CONTENTS

The following opinion and order have been omitted in printing this Joint Appendix because they appear at the following pages in the appendix to the Petition for a Writ of Certiorari:

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
v.	)	Case 1:14-cr-29 (RJJ)
JAMAR ALONZO QUARLES,	)	
Defendant.	)	

RELEVANT DOCKET ENTRIES

No.	Filed	Docket Text
1	02/26/2014	INDICTMENT as to Jamar Alonzo Quarles (ald) (Entered: 02/26/2014)
15	06/20/2014	MOTION regarding enhancement with brief in support by Jamar Alonzo Quarles (Attachments: # 1 Attachment 1 - Court Records) (Kaczor,

No.	Filed	Docket Text
		David) Modified text on 6/23/2014 (mrs). (Entered: 06/20/2014)
16	06/24/2014	ORDER TO CONTINUE - ends of justice continuance as to defendant Jamar Alonzo Quarles; jury trial reset for 9/23/2014 at 8:30 AM at 699 Federal Building, Grand Rapids, MI before Judge Robert J. Jonker; final pretrial conference reset for 9/11/2014 at 4:00 PM at 699 Federal Building, Grand Rapids, MI before Judge Robert J. Jonker; Defendant shall file brief not later than 7/7/2014 re ACCA question; government may file response not later than 7/21/2014; signed by Judge Robert J. Jonker (Judge Robert J. Jonker, ymc) (Entered: 06/24/2014)
17	07/07/2014	RESPONSE *to Court Order* by Jamar Alonzo Quarles re 15 (Kaczor, David) (Entered: 07/07/2014)
18	07/21/2014	BRIEF *In Response to R.17 as permitted by R.16* by USA as to defendant Jamar Alonzo Quarles re 16 (Lewis, Sean)

No.	Filed	Docket Text
		(Entered: 07/21/2014)
19	08/06/2014	ORDER denying motion regarding enhancement 15 as to Jamar Alonzo Quarles (1); signed by Judge Robert J. Jonker (Judge Robert J. Jonker, ymc) (Entered: 08/06/2014)
21	09/09/2014	MINUTES of CHANGE OF PLEA as to defendant Jamar Alonzo Quarles plead guilty to count(s) Count 1 of the Indictment held before Judge Robert J. Jonker (Court Reporter: Glenda Trexler) (Judge Robert J. Jonker, mil) (Entered: 09/09/2014)
23	12/24/2014	(RESTRICTED ACCESS) INITIAL PRESENTENCE REPORT as to Jamar Alonzo Quarles; an objection meeting, if necessary, is scheduled for January 7, 2015, at 10:00 a.m., in Grand Rapids with this U.S. Probation Officer [Access to this document is available to the Court and attorney(s) for USA, Jamar Alonzo Quarles only] (USPO Griffis, Rich) (Entered:

No.	Filed	Docket Text
		12/24/2014)
24	12/31/2014	(RESTRICTED ACCESS) OBJECTION/RESPONSE to presentence report 23 by USA [Access to this document is available to the Court and attorney(s) for USA, Jamar Alonzo Quarles only] (Lewis, Sean) (Entered: 12/31/2014)
25	01/15/2015	(RESTRICTED ACCESS) FINAL PRESENTENCE REPORT as to Jamar Alonzo Quarles [Access to this document is available to the Court and attorney(s) for USA, Jamar Alonzo Quarles only] (USPO Griffis, Rich) (Entered: 01/15/2015)
26	01/20/2015	SENTENCING MEMORANDUM by USA as to Jamar Alonzo Quarles (Attachments: # 1 Exhibit 1) (Lewis, Sean) Modified text on 1/21/2015 (mrs). (Entered: 01/20/2015)
29	01/21/2015	SENTENCING MEMORANDUM by Jamar Alonzo Quarles (Kaczor, David) Modified text on 1/22/2015 (jlg). Modified text

No.	Filed	Docket Text
		on 1/23/2015 per Order 31 (mrs). (Entered: 01/21/2015)
32	01/29/2015	RESPONSE by USA as to defendant Jamar Alonzo Quarles re 29 (Lewis, Sean) Modified text on 1/30/2015 (mrs). (Entered: 01/29/2015)
36	02/13/2015	MINUTES of SENTENCING for Jamar Alonzo Quarles (1), Count(s) 1, 204 months incarceration; 5 years supervised release; $2,500 fine; and $100 mandatory special assessment; defendant advised of right to appeal; held before Judge Robert J. Jonker (Court Reporter: Glenda Trexler) (Judge Robert J. Jonker, mil) (Entered: 02/13/2015)
37	02/17/2015	JUDGMENT as to defendant Jamar Alonzo Quarles; signed by Judge Robert J. Jonker (Judge Robert J. Jonker, ymc) (Entered: 02/17/2015)
38	02/18/2015	NOTICE OF APPEAL by Jamar Alonzo Quarles re Judgment 37 (Kaczor, David) (Entered: 02/18/2015)
	02/23/2015	CASE NUMBER 15-1161

No.	Filed	Docket Text
		assigned by the Sixth Circuit to appeal 38 as to defendant Jamar Alonzo Quarles (mkc) (Entered: 03/05/2015)
39	03/05/2015	APPEAL TRANSCRIPT of Plea Hearing as to defendant Jamar Alonzo Quarles held 09/09/2014 before Hon. Robert J. Jonker re appeal 38; NOTE: this transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the release of transcript restriction date; after that date it may be obtained through PACER; under the Policy Regarding Transcripts the parties have 14 days within which to file a Notice of Intent to Request Redaction, and 21 days within which to file a Redaction Request; if no Redaction Request is filed, the court will assume redaction of personal identifiers is not necessary and this transcript will be made available via PACER after the release of transcript restriction set for 6/3/2015; redaction request due 3/26/2015 (Court Reporter: Trexler,

No.	Filed	Docket Text
		Glenda (517)819-0396) (Entered: 03/05/2015)
40	03/05/2015	APPEAL TRANSCRIPT of Sentencing Hearing as to defendant Jamar Alonzo Quarles held 02/13/2015 before Hon. Robert J. Jonker re appeal 38; NOTE: this transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the release of transcript restriction date; after that date it may be obtained through PACER; under the Policy Regarding Transcripts the parties have 14 days within which to file a Notice of Intent to Request Redaction, and 21 days within which to file a Redaction Request; if no Redaction Request is filed, the court will assume redaction of personal identifiers is not necessary and this transcript will be made available via PACER after the release of transcript restriction set for 6/3/2015 ; redaction request due 3/26/2015 (Court Reporter: Trexler, Glenda (517)819-0396) (Entered:

No.	Filed	Docket Text
		03/05/2015)
43	03/21/2016	ORDER of USCA (certified copy) as to Jamar Alonzo Quarles re Notice of Appeal - Final Judgment 38 *vacating district court's judgment and remanding to district court for resentencing*; mandate to issue (clp) (Entered: 03/21/2016)
45	03/28/2016	SENTENCING MEMORANDUM by USA as to Jamar Alonzo Quarles (Attachments: # 1 Attachment 1) (Lewis, Sean) (Entered: 03/28/2016)
49	04/13/2016	MANDATE of USCA (certified copy) as to Jamar Alonzo Quarles re Notice of Appeal - Final Judgment 38 (clp) (Entered: 04/14/2016)
50	05/04/2016	SENTENCING MEMORANDUM by Jamar Alonzo Quarles *Upon Remand* (Tosic, Jasna) (Entered: 05/04/2016)
55	05/13/2016	CHARACTER REFERENCE LETTER(S) (*Notice of Filing Certificates of Achievement*) re Jamar Alonzo Quarles

No.	Filed	Docket Text
		(Attachments: # 1 Attachment Certificates) (Tosic, Jasna) Modified text on 5/13/2016 (clp) (Entered: 05/13/2016)
56	05/16/2016	MINUTES of remand hearing as to defendant Jamar Alonzo Quarles held before Chief Judge Robert J. Jonker (Court Reporter: Glenda Trexler) (Chief Judge Robert J. Jonker, sdb) (Entered: 05/16/2016)
57	05/17/2016	AMENDED JUDGMENT as to defendant Jamar Alonzo Quarles; signed by Chief Judge Robert J. Jonker (Chief Judge Robert J. Jonker, ymc) (Entered: 05/17/2016)
58	05/17/2016	(RESTRICTED ACCESS) STATEMENT OF REASONS re 57 as to Jamar Alonzo Quarles [Access to this document is available to the Court and attorney(s) for USA, Jamar Alonzo Quarles only] (Chief Judge Robert J. Jonker, ymc) (Entered: 05/17/2016)
59	05/18/2016	NOTICE OF APPEAL by Jamar Alonzo Quarles re Judgment - Amended 57 (Tosic, Jasna) (Entered:

No.	Filed	Docket Text
		05/18/2016)
	06/10/2016	CASE NUMBER 16-1690 assigned by the Sixth Circuit to appeal 59 as to defendant Jamar Alonzo Quarles (mkc) (Entered: 06/23/2016)
60	06/20/2016	APPEAL TRANSCRIPT of Resentencing Hearing as to defendant Jamar Alonzo Quarles held 05/16/2016 before Hon. Robert J. Jonker re appeal 59; NOTE: this transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the release of transcript restriction date; after that date it may be obtained through PACER; under the Policy Regarding Transcripts the parties have 14 days within which to file a Notice of Intent to Request Redaction, and 21 days within which to file a Redaction Request; if no Redaction Request is filed, the court will assume redaction of personal identifiers is not necessary and this transcript will be made available via PACER after the release of transcript restriction

No.	Filed	Docket Text
		set for 9/19/2016 ; redaction request due 7/11/2016 (Court Reporter: Trexler, Glenda (517)819-0396) (Entered: 06/20/2016)
61	03/10/2017	SLIP OPINION and JUDGMENT of USCA as to Jamar Alonzo Quarles re appeal 59 affirming the district court's decision; mandate to issue (pjw) Modified text on 3/10/2017 (pjw). (Entered: 03/10/2017)
62	07/07/2017	MANDATE of USCA (certified copy) as to Jamar Alonzo Quarles re Notice of Appeal - Final Judgment 59 (mg) (Entered: 07/07/2017)
63	11/30/2017	LETTER from Supreme Court of the United States that a petition for writ of certiorari was filed by defendant Jamar Alonzo Quarles on November 24, 2017 and assigned case number 17-778 re Notice of Appeal - Final Judgment 59 filed by defendant Jamar Alonzo Quarles (mg) (Entered: 12/01/2017)
64	01/11/2019	LETTER from Supreme Court

No.	Filed	Docket Text
		of the United States that the petition for writ of certiorari is granted re Notice of Appeal - Final Judgment 59 filed by defendant Jamar Alonzo Quarles (mg) (Entered: 01/18/2019)

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 15-1161

UNITED STATES OF AMERICA,
Plaintiff – Appellee
v.
JAMAR ALONZO QUARLES,
Defendant – Appellant.

RELEVANT DOCKET ENTRIES

No.	Filed	Docket Entry
1	02/19/2015	Criminal Case Docketed. Notice filed by Appellant Jamar Alonzo Quarles. Transcript needed: y. (CB) [Entered: 02/19/2015 11:05 AM]
9	04/02/2015	MOTION filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles to hold briefing in abeyance pending Supreme Court decision in Johnson v. US (13-7120). Certificate of Service: 04/02/2015.--[Edited 04/03/2015 by PJE] (PLN)

No.	Filed	Docket Entry
		[Entered: 04/02/2015 02:50 PM]
10	04/03/2015	ORDER filed GRANTING appellant's motion to hold case in abeyance [9] filed by Mr. Paul L. Nelson. Briefing in abeyance and requiring appellant to file status report every sixty days. Status report due 06/04/2015. (PJE) [Entered: 04/03/2015 01:22 PM]
11	04/03/2015	RULING to hold case in abeyance pending other litigation. Supreme Court decision in Johnson v. US (PJE) [Entered: 04/03/2015 01:41 PM]
17	09/08/2015	APPELLANT BRIEF filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles. Certificate of Service: 09/08/2015. Argument Request: requested. (PLN) [Entered: 09/08/2015 05:00 PM]
20	11/04/2015	APPELLEE BRIEF filed by Mr. Sean M. Lewis for USA. Certificate of Service: 11/04/2015. Argument Request: requested. (SML) [Entered: 11/04/2015 08:26 AM]

No.	Filed	Docket Entry
23	12/14/2015	REPLY BRIEF filed by Attorney Mr. Paul L. Nelson for Appellant Jamar Alonzo Quarles. Certificate of Service: 12/14/2015. (PLN) [Entered: 12/14/2015 04:29 PM]
24	12/16/2015	ADDITIONAL CITATION filed by Mr. Sean M. Lewis for USA. Certificate of Service: 12/16/2015. (SML) [Entered: 12/16/2015 04:43 PM]
26	01/05/2016	ADDITIONAL CITATION filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles. Certificate of Service: 01/05/2016. (PLN) [Entered: 01/05/2016 04:20 PM]
29	01/26/2016	CAUSE SUBMITTED on briefs to panel consisting of Judges Boggs, Siler and Batchelder. (KSC) [Entered: 03/17/2016 10:39 AM]
30	03/21/2016	Per Curiam OPINION filed: The district court's judgment is VACATED and this matter is REMANDED to the district court for resentencing, decision not for publication. Danny J. Boggs, Circuit Judge; Eugene E. Siler, Jr.,

No.	Filed	Docket Entry
		Circuit Judge and Alice M. Batchelder, Circuit Judge. (CB) [Entered: 03/21/2016 08:40 AM]
31	04/13/2016	MANDATE ISSUED with no costs taxed. (CB) [Entered: 04/13/2016 03:16 PM]

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
No. 16-1690

UNITED STATES OF AMERICA,
Plaintiff – Appellee,
v.
JAMAR ALONZO QUARLES,
Defendant – Appellant.

RELEVANT DOCKET ENTRIES

No.	Filed	Docket Entry
1	05/27/2016	Criminal Case Docketed. Notice filed by Appellant Jamar Alonzo Quarles. Transcript needed: y. (LAJ) [Entered: 05/27/2016 11:29 AM]
15	09/26/2016	APPELLANT BRIEF filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles. Certificate of Service: 09/26/2016. Argument Request: requested. (PLN) [Entered: 09/26/2016 04:42 PM]

No.	Filed	Docket Entry
18	10/28/2016	ADDITIONAL CITATION filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles. Certificate of Service: 10/28/2016. (PLN) [Entered: 10/28/2016 02:37 PM]
19	11/08/2016	APPELLEE BRIEF filed by Mr. Sean M. Lewis for USA. Certificate of Service: 11/08/2016. Argument Request: not requested. (SML) [Entered: 11/08/2016 11:16 AM]
28	01/17/2017	CAUSE SUBMITTED on briefs to panel consisting of Judges Siler, Moore and Griffin. (KSC) [Entered: 03/08/2017 10:55 AM]
22	02/01/2017	REPLY BRIEF filed by Attorney Mr. Paul L. Nelson for Appellant Jamar Alonzo Quarles. Certificate of Service: 02/01/2017. (PLN) [Entered: 02/01/2017 04:50 PM]
25	02/28/2017	ADDITIONAL CITATION filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles. Certificate of Service: 02/28/2017.

No.	Filed	Docket Entry
		(PLN) [Entered: 02/28/2017 04:53 PM]
27	03/02/2017	RESPONSE in opposition filed regarding an additional citation, [25]. Response from Attorney Mr. Sean M. Lewis for Appellee USA. Certificate of Service: 03/02/2017. (SML) [Entered: 03/02/2017 02:06 PM]
29	03/10/2017	OPINION and JUDGMENT filed: AFFIRMED. Decision for publication. Eugene E. Siler, Jr. (AUTHORING), Karen Nelson Moore, and Richard Allen Griffin, Circuit Judges. (CL) [Entered: 03/10/2017 11:35 AM]
30	03/24/2017	PETITION for en banc rehearing filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles. Certificate of Service: 03/24/2017. (PLN) [Entered: 03/24/2017 03:51 PM]
31	04/11/2017	LETTER SENT to Mr. Sean M. Lewis for USA, notifying that he is directed to respond to the petition for en banc rehearing filed by Mr. Paul L.

No.	Filed	Docket Entry
		Nelson. Response due 04/25/2017. (BLH) [Entered: 04/11/2017 01:35 PM]
33	04/25/2017	RESPONSE to petition for en banc rehearing, [30], previously filed by filed by Mr. Paul L. Nelson in 16-1690. Response filed by Ms. Jennifer L. McManus for USA. Certificate of service: 04/25/2017. (JLM) [Entered: 04/25/2017 01:53 PM]
34	06/27/2017	MOTION filed by Mr. Paul L. Nelson for Jamar Alonzo Quarles to file supplemental brief. Certificate of Service: 06/27/2017. (PLN) [Entered: 06/27/2017 04:32 PM]
35	06/28/2017	ORDER filed denying petition for en banc rehearing [30] filed by Mr. Paul L. Nelson. Eugene E. Siler , Jr., Karen Nelson Moore, and Richard Allen Griffin, Circuit Judges. (BLH) [Entered: 06/28/2017 01:22 PM]
36	07/07/2017	MANDATE ISSUED with no costs taxed. (LAJ) [Entered: 07/07/2017 10:57 AM]

No.	Filed	Docket Entry
37	11/30/2017	U.S. Supreme Court notice filed regarding a petition for a writ of certiorari filed by Appellant Jamar Alonzo Quarles. Supreme Court Case No:17-778, 11/24/2017. (ACB) [Entered: 11/30/2017 04:18 PM]
38	01/15/2019	U.S. Supreme Court letter filed granting the petition for a writ of certiorari [37] filed by Jamar Alonzo Quarles. Supreme Court Case No: 17-778, 01/11/2019. (CL) [Entered: 01/15/2019 02:46 PM]

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	**INDICTMENT**
JAMAR ALONZO QUARLES,	)	
Defendant.	)	

The Grand Jury charges:

(Felon in Possession of a Firearm)

On or about August 24, 2013, in Kent County, in the Southern Division of the Western District of Michigan,

JAMAR ALONZO QUARLES,

being a person who had been convicted of one or more offenses punishable by imprisonment for a term exceeding one year under the laws of the State of Michigan, did knowingly possess a firearm: a loaded Charles Daly, .45 caliber semiautomatic pistol, in and affecting commerce.

18 U.S.C. § 922(g)(1)

18 U.S.C. § 921(a)
18 U.S.C. § 924(e)(1)

FORFEITURE ALLEGATION
(Felon in Possession of a Firearm)

The allegation contained in this Indictment is hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

Upon conviction of the offense in violation of 18 U.S.C. § 922(g) charged in this Indictment, the defendant,

JAMAR ALONZO QUARLES,

shall forfeit to the United States, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), any firearms and ammunition involved in the commission of the offense, including, but not limited to: a loaded Charles Daly, .45 caliber semiautomatic pistol.

18 U.S.C. § 924(d)
28 U.S.C. § 2461(c)
18 U.S.C. § 924(e)(1)18 U.S.C. § 922(g)(1)

A TRUE BILL

/s/
GRAND JURY FOREPERSON

PATRICK A. MILES, JR.
United States Attorney

/s/
SEAN C. MALTBIE
Assistant United States Attorney

APPENDIX E

STATE OF MICHIGAN DISTRICT COURT CIRCUIT COURT 61	INFORMATION FELONY MH	CASE NO. DISTRICT NO. CIRCUIT CT.

THE PEOPLE OF THE STATE OF MICHIGAN V JAMAR ALONZO QUARLES 41 01 236725 99 DOB: 05/16/80 Defendant	OFFENSE INFORMATION	
	Date 06/13/01	Police agency report no. GR0158347
	City/Twp./Village and County in Michigan 1189 STONEBROOK CT NE, GRAND RAPIDS	
	Complaining witness BRIAN GROOMS	
Charge(s) HOME INVASION 3RD	Victim(s) or Complainant(s) CARLA ANN WINTERINGHAM	

Witnesses

MARLA RIETH	PHIL NEVINS	BRIAN GROOMS
CARLA ANN WINTERINGHAM	CASEY GREG	THOMAS MARTIN ZINK
TIFFANY SEYMORE	LISA LINGENBERG	

STATE OF MICHIGAN, COUNTY OF KENT.

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN: The Prosecuting Attorney for this County appears before the court and informs the court that on the date and at the location above described, the Defendants(s):

JAMAR ALONZO QUARLES did break and enter, or did enter without permission, a dwelling located at 1189 STONEBROOK CT NE, WITH THE INTENT TO COMMIT AN ASSAULT, A MISDEMEANOR THEREIN OR AND, WHILE ENTERING, PRESENT IN, OR EXITING THE DWELLING DID COMMIT AN ASSAULT, A MISDEMEANOR; contrary to MCL 750.110a(4); NISA 28.305(a)(4).

FELONY: 5 Years and/or $2,000.00 [750.110A4]

and against the peace and dignity of the State of Michigan.

Prosecuting Attorney

Date By: /s/_____

STATE OF MICHIGAN JUDICIAL DISTRICT 17TH JUDICIAL CIRCUIT	JUDGMENT OF SENTENCE ☐ COMMITMENT TO JAIL	CASE NO. 01–08617–FH

ORI MI-410025J	Court address	Court telephone no.
Police Report No.	180 Ottawa Ave., NW, Grand Rapids, MI 49503	

THE PEOPLE OF ☐ The State of Michigan ☐_____ _____	V	Defendant's name, address, and telephone no. JAMAR ALONZO QUARLES		
		CTN	SID	DOB
		41 01 236725 99	2036193H	5/16/80

THE COURT FINDS:

1. Defendant was found guilty on 11/14/01 of the crime(s) as stated below:

Count	CONVICTED BY			CRIME	CHARGE CODE(S)
	Plea*	Court	Jury		MCL citation/PACC Code
	NC			HOME INV 3	750.110A4

*Plea: insert "G" for guilty plea; use "NC" for nolo contendere; use "MI" for guilty but mentally ill.

2. Defendant
☒ represented by an attorney: D. CARLSON
☐ advised of right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.

☐ 3. Conviction reportable to Secretary of State**. Defendant's driver license number is: _____

☐ 4. Licensing sanction reportable to State Police**.
☐ Revoked ☐ Suspended ____ days
☐ Restricted ____ days
☐ 5. HIV testing was ordered on _____. Confidential test results are on file. **(see back)

IT IS ORDERED:

☐ 6. Defendant is sentenced to jail as follows:

☐ Report at ____ m.

Count	Date Sentence Begins	Sentenced		Credited		To Be Served		Release Authorized for the Following Purpose	Release Period	
		Mos.	Days	Mos.	Days	Mos.	Days		From	To
	8/7/01	12			156			☐ Upon payment of fine and costs ☐ To work or seek work ☐ For attendance at school ☐ For medical treatment ☐ Other		

7. Defendant shall pay as follows:

Count	Fine	Costs	Restitution	Crime Victim	Other (specify)	Total	Due Date	Jail for Failure to Pay on Time
		600.00	332.50	60.00				☐ Beginning ____ serve ___ days

Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed. If a cash bond/bail was personally deposited by defendant, payment toward the total is to first be collected out of that bond/bail.

☒ 8. Defendant shall be placed on probation for 30 months and abide by the terms of probation. (See separate order.)

☐ 9. Defendant shall complete the following rehabilitative services.

☐ Alcohol Highway Safety Education ☐ Treatment (☐ outpatient, ☐ inpatient, ☐ residential, ☐ mental health.)

Specify:

☐ 10. Other:

1-9-02	(SEAL)	/s/	JRL 1621 PG 0844
Date		Judge	Bar No.

Under MCL 769.16a the clerk of the court shall send a copy of this order to the Michigan State Police Central Records Division to create a criminal history record.

APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,	JUDGMENT IN A CRIMINAL CASE
	Case Number: 1:14-CR-29-01
v.	USM Number: 18038-040
JAMAR ALONZO QUARLES,	David L. Kaczor and Jasna Tosic Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to the one-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 offense(s):

Title & Section	**Offense Ended**	**Count No.**
18 U.S.C. § 922(g)(1), 924(a)(2) and 924(e)(1)	8/24/13	1

Nature of Offense

Felon in Possession of a Firearm

The defendant is sentenced as provided in the following pages 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 material changes in economic circumstances.

Dated: February 17, 2015	Date of Imposition of Sentence: February 13, 2015
	/s/ Robert J. Jonker ROBERT J. JONKER UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of two hundred-four (204) months.

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

The defendant be evaluated for substance abuse and provided treatment, if necessary.

The defendant be evaluated for mental health counseling and provided treatment, if necessary.

☒ 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 _____ 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 2:00 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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years**.

The defendant must report 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.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse.

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

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) As directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

☐ The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;

7. The defendant shall refrain from all use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where

controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of testing and treatment for substance abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer, and shall pay at least a portion of the cost according to his ability, as determined by the probation officer.

2. The defendant shall participate in a program of mental health treatment, which may include cognitive restructuring programming (MRT), as directed by the probation officer, until such time as the defendant is released from the program by the probation officer, and shall pay at least a portion of the cost according to his ability, as determined by the probation officer.

3. The defendant shall provide the probation officer with access to any requested financial information.

4. The defendant shall maintain full-time employment as approved by the probation officer.

CRIMINAL MONETARY PENALTIES[1]

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

Assessment	Fine	Restitution
$100.00	**$2,500.00**	**-0-**

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

☐ The defendant shall 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.

Name of Payee	Total Loss	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement: $

☐ The defendant must pay interest on restitution and/or a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after

[1] 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.

the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments 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.

☐ the interest requirement is waived for the restitution.

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

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

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 payment of **$100.00** due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F, below; or

B ☐ Payment to begin immediately (may be combined with C, D, or F, below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment, or

D ☐ Payment in equal _____(e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The fine is to be paid in minimum quarterly

> installments of $25.00 based on IFRP participation, or minimum monthly installments of $20.00 based on UNICOR earnings, during the period of incarceration, to commence 60 days after the date of this judgment. Any balance due upon commencement of supervision shall be paid, during the term of supervision, in minimum monthly installments of $25.00 to commence 60 days after release from imprisonment. The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: Charles Daly, .45 caliber semiautomatic pistol

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Docket No.: 1:14-cr-29
JAMAR ALONZO QUARLES, Defendant.	)	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE
GRAND RAPIDS, MICHIGAN
February 13, 2015

Court Reporter: Glenda Trexler
Official Court Reporter
United States District Court 685
Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

Proceedings reported by stenotype, transcript produced by computer-aided transcription.

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* * * * *

Grand Rapids, Michigan
February 13, 2015
11:10 a.m.

P R O C E E D I N G S

THE COURT: All right. We're here on the case of the United States against Jamar Quarles, 1:14-cr-29. It's the time set for sentencing.

Let's start appearances, please.

MR. LEWIS: Good morning, Your Honor, Sean Lewis [3] appearing on behalf of the United States. I'm joined by Special Agent Kubiak with the ATF.

THE COURT: All right.

MR. KACZOR: Good morning, Your Honor, David Kaczor and Jasna Tosic from the Federal Defenders Office on behalf of Mr. Quarles who is present and seated to my right.

THE COURT: Okay. Thank you.

I have from our first sentencing hearing all the same materials that I had, and I haven't seen anything new. So anything more from the government?

MR. LEWIS: No, Your Honor.

THE COURT: Or anything more in writing from the defense?

MR. KACZOR: No, Your Honor. Thank you.

THE COURT: Okay. And that was the reason we adjourned last time was because each of the parties had submitted an opening sentencing memorandum that addressed, among other things, the armed career criminal enhancement, which is a significant driver here of both guidelines and penalty ranges. The government filed a response to that shortly before the hearing, like the day or so before. And Mr. Kaczor wanted time to go through that with other people in his office who had been assisting in the research, and I certainly thought that was appropriate and the appropriate way to give everybody the opportunity to deal with the issues on [4] the same footing.

So with that, if there's nothing else new, I think what we ought to do is go into the sentencing issues. There isn't a plea agreement to think about. So what

I'd like to do is just ask each party to address their position on the Armed Career Criminal Act. I think I want to start with that. Once we get a ruling on that, then we can go on to the other sentencing issues.

So it's your objection, Mr. Kaczor or Ms. Tosic. Whoever is going to make the argument, I'd invite you to do that now.

MR. KACZOR: Thank you, Your Honor.

MS. TOSIC: We have filed a sentencing memorandum which in detail sets out our arguments. I'll try to be brief at this time. Just some main points from our brief.

THE COURT: All right. And I will say both sides have done a nice job, I think, of pulling together the relevant authority. But I do want to give each side a chance to highlight the key points from their perspective.

Go ahead.

MS. TOSIC: Mr. Quarles convicted of a Michigan offense home invasion in the third degree, and this offense can qualify as a violent felony in one of the two ways: If it's considered a generic burglary or if it qualifies under residual clause.

[5] Generic -- it does not qualify as a generic burglary for two main reasons. The Supreme Court in Taylor specifically stated what the elements of a generic burglary are.

THE COURT: What do I do as a district judge, in your opinion, with Horton and Gibbs from the Sixth Circuit? Because even if I think you're right or that you have the better of it, it seems like at least in an unpublished case, Horton, the Sixth Circuit says

Michigan third is categorically a crime of violence, it's categorical burglary. And Gibbs in a published case, I think, says it for Michigan second degree in 2010. And I think your argument, if it's right, would apply to both. I mean, then both Gibbs and Horton would be wrong. And, I mean, you can say the Sixth Circuit got it wrong, but they don't like it when I say they got it wrong.

MS. TOSIC: Well, I think, for instance, in Horton, that was a case that predated Descamps.

THE COURT: Okay.

MS. TOSIC: And Descamps says we have to divide -- if the statute is divisible, we have to look at like each clause of the statute. And this was before -- Horton was before that, and it kind of just looked at the statute as a whole and did not engage in that analysis.

THE COURT: All right. So in your view what's changed is Descamps from the Supreme Court, and I'd have a chance, even as a district judge, to point that out and come to [6] a different conclusion?

MS. TOSIC: Yes.

THE COURT: Okay. Go ahead.

MS. TOSIC: So as I said in our brief, there are two main reasons why this offense doesn't qualify as a generic burglary. One is that there was no contemporaneous intent to commit a crime. And the Fourth Circuit that I could find -- actually five -- Fourth, sorry -- addressed this issue and the weight of authorities is to find that if there's no contemporaneous intent, the offense is not a generic burglary. That would be a Fifth Circuit case, Constante, United States versus Constante. And these cases are all cited in both my and

the government's brief. And a First Circuit case Peterson, Fourth Circuit case Martin, Seventh Circuit case Hampton.

One case cited by the government, United States versus Bonilla, which is also a Fourth Circuit case, found in a two-to-one decision that contemporaneous is not -- contemporaneous intent is not a requirement. But clearly more circuits do require that element.

And when we look at what the Supreme Court said, it clearly said there has to be breaking and entering with intent to commit a crime. And I think that we are -- courts are not at liberty to eliminate or dilute this element.

The second argument is the types of places that this offense encompasses. Generic burglary involves breaking into a [7] building or structure. And in Shepard the Supreme Court said the act makes burglary a violent felony only if committed in a building or enclosed spaces.

This offense involves breaking into a dwelling, but "dwelling" is defined very broadly to include structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter. So when we think about what can that be, what is a shelter, a shelter can be a car, it can be a boat, it can be a tent. And these are all places that the Supreme Court specifically excluded from the definition of burglary.

Also appurtenant structure attached to a building. So what can that be? That can be like, for instance, a carport. Sometimes people attach a carport to their house. Or they have like a garbage shed kind of a structure enclosed. Maybe not even fully enclosed, like

two or three sides where they put their garbage bins.

This would not occur to me, but a friend of mine right here in East Grand Rapids attached to his house has a chicken coop. I would not think of that, but I just happen to note it.

So these places are clearly not buildings, not enclosed spaces, and for that reason this offense is not generic burglary.

So now I would move into the residual clause, unless [8] the Court has some questions about it.

THE COURT: No.

MS. TOSIC: Okay. So residual clause -- my first argument is that residual clause is unconstitutionally vague. And I understand that a circuit precedent precludes that argument at this point, but the Supreme Court is going to hear arguments on this issue soon, so we just want to preserve that.

THE COURT: All right.

MS. TOSIC: The second -- home invasion third degree is not similar to enumerated offenses. So a residual clause basically says that an offense is a violent felony if it involves conduct that presents a serious potential risk of physical injury to another.

And in James the Supreme Court held that burglary, generic burglary, presents serious potential risk because it poses a risk of confrontation that can lead to violence.

But I think it's important to keep in mind that the Supreme Court stated that in the context of a true generic burglary, a burglary that has all of the elements, breaking and entering, building or structure, with intent to commit a crime. And just because the offense

involves some risk of confrontation should not be enough, which is what the First Circuit recognized in United States versus Farrell, 672 F.3d. 27. And it stated that such an argument -- that there was a possibility of confrontation. Such an argument [9] could be applied to almost any crime in which getting caught in an act escalates the potential for violence. We require a more fine-toothed approach.

After the James was decided, the year later in Begay the Supreme Court significantly narrowed the scope of residual clause and held that offense is a violent felony only if it involves similar risk of injury as enumerated offenses of burglary, arson, extortion, and offenses involving use of explosives.

So I think in order to fall under residual clause, this offense must contain elements that are truly comparable to a burglary so that the offense poses equivalent risk of physical injury.

And there are several reasons why the risk involved is less. And while I say them separately, I think it's important that we keep in mind that this is not alternative reason. We just look at how this offense is committed. So this offense can be committed by entering or without any intent to commit a crime. And that is a different type of offense than when the reason intends to commit a crime. Which is what the First Circuit recognized in Peterson and refused to include a Rhode Island breaking and entering offense because it lacked the element of intent to commit a crime.

The Court stated that it seems obvious that a person who breaks into a building intending to steal, rape, or murder [10] poses a greater risk of violence than one who breaks and enters without such intention.

So when we have an offender who is intruding in a space and who is determined and ready and prepared to commit a crime, I think that is a different kind of offender than just one who enters without permission and then kind of spots an opportunity and does some minor crime. This offender is more likely to abscond and defuse a situation so the risk of confrontation is less likely.

The other one is, again, places that are intruded. This offense can be committed by entering, as I said, a carport, a garbage shed, or a chicken coop. Which is very different than entering someone's home. I think that a risk of violent encounter in such a situation is far less likely. I mean, someone is not going to run out of their house to confront an intruder in a garbage bin as someone would confront an intruder in their own home.

The more likely response, as Justice Scalia stated in his dissenting opinion in James, is that the so-called confrontation between a burglar and a third party while the burglar is still outside the home is likely to consist of nothing more than the occupant yelling "Who's there?" from his window and the burglar is running away.

So given these differences, the risk of confrontation, the risk of violence and injury is less than in [11] generic burglary or offenses involving use of explosives or arson. And I think overall it's important to keep in mind what's the purpose of armed career criminal. The purpose is to apply to those offenders who repeatedly commit truly violent crime.

A person who enters, as I said for example, an unenclosed garbage shed attached to a house without any

intent to commit any kind of crime and then while there commits a minor crime, like for instance public urination, that is a far less likely -- far less serious offense than generic burglary.

Where a person enters a chicken coop attached to a structure or a shelter without intent to commit a crime and then while exiting takes a few eggs, that's a less crime, less-serious crime. Judge Rogers stated in dissenting opinion in the United States versus Phillips, "When pilfering a few stray eggs from the fenced yard of a chicken coop is considered violent, the term "violent" becomes unmoored from its meaning." So for all these reasons, this offense should not be found to be a violent felony.

THE COURT: Okay. Horton is unpublished Sixth Circuit, I realize, but still Sixth Circuit that says Michigan third-degree home invasion is also in the residual clause. And Descamps, as you said, might give you a reason to say the other part of Horton doesn't apply anymore that it's generically a burglary. Is there anything in your view that's [12] changed since Horton on the residual clause?

MS. TOSIC: Descamps also is -- Descamps is used -- applied to residual clause too. So there has to be a categorical approach also that we compare the elements of the offense with the elements of the generic offense. And because this is a divisible, we have to look at each possible way to commit Michigan home invasion third in Descamps.

So while there are parts of this statute, the Michigan statute that would qualify --

THE COURT: Okay.

MS. TOSIC: -- as a burglary and as -- under the

residual clause, part of it do not.

The other argument I would also say, the court in Horton did not consider all of the arguments that we are raising here. It did not consider that the offense doesn't have an intent. It did not -- intent to commit an offense. It did not consider that there are various places that can be entered into. And kind of just lumped it all together.

THE COURT: All right. Thank you. I appreciate it. Let me hear from Mr. Lewis for the government's position.

MR. LEWIS: Thank you, Your Honor. For the reasons that we have outlined in our briefing, we do believe that Michigan home invasion third degree is categorically a generic burglary. Horton says so, Fields, it's a district court case, [13] also says so. And Descamps didn't change the paradigm. Horton was still looking at -- contrary to what the defense implies, it didn't just look at the statute as a whole, it drilled in and said there's no part to recognize there are different ways to violate the statute and said we recognize that. And there is no variation on this. It doesn't qualify. So I really don't think Descamps does the defense any good here nor does it undermine Horton or Gibbs.

THE COURT: Well, apparently Judge Boggs thought so. At least in Prater he seemed to take a different approach than he did in the earlier cases. Prater is New York, it's a different statute, but what about that? I mean, to say it didn't change the paradigm --

MR. LEWIS: Because -- I'm sorry.

THE COURT: At least one of the authors of those earlier Horton/Gibbs -- I can't remember if he was on Horton or Gibbs or both -- but he certainly seemed to

take a different approach in Prater.

MR. LEWIS: Well, I guess I would answer that in two ways. One -- and what I meant, if one looks at the way the court went about analyzing the statute in Horton, it is fully consistent with what the Supreme Court said in Descamps. So it's not as if the approach in Descamps is inconsistent with what the Sixth Circuit did in Horton.

And then second, Prater actually strengthens our [14] argument. In that case -- again, I think it was the New York statute -- where that statute fell apart or failed to qualify was because it included a much broader array of places such as vehicles, enclosed motor trucks, and trailers that simply are not at issue here. Here Michigan statute is limited to dwellings.

And the defense says, Well, why couldn't that be a tent? Why couldn't it be -- we don't really know what it could be. But if you -- if you look at the definition in the statute, the common definitions that we cited from the dictionary, Michigan statute appeared to be more along the lines of the minor variations spoken of in Taylor than the broad, very broad set of places discussed in Prater or some of the other cases.

In terms of the argument that the statute doesn't qualify because there's no required intent at entry, again for the reasons that we've pointed out, I don't think that's accurate. Even Taylor that sets out the generic definition of burglary doesn't require intent at entry. The requirement there, the definition there, is entry or remaining in with intent. If somebody has gone in, broken and entered, and then forms the intent once they are inside, that's still sufficient to meet the generic definition set out in Taylor.

And the cases we cited, Horton and Bonilla, certainly stand for that proposition. The defense relies on Martin, but [15] that case really doesn't help them. That case in terms of the statute was pure breaking and entering with no requirement that a crime be committed inside.

And they also cited the case of Hampton. And again, there my recollection is that again it's the type of pure breaking and entering. And it says where that statute failed to meet the definition of generic burglary, because there was no intent required anywhere, it was just breaking and entering, it wasn't intent at entry or later on, which is the case in Michigan statute.

With regard to their argument that the risk of injury is not comparable -- and this is moving on to the residual clause -- because the statute includes it in its definition structures that are attached to a dwelling, that argument is simply inconsistent with James itself which dealt with curtilage and the Sixth Circuit case of Phillips.

And again their argument that the Michigan statute doesn't present a comparable risk of harm, it's inconsistent with the Sixth Circuit's opinions in Horton, Skipper, Brown, Moore. And even Martin, that Fourth Circuit case they rely on, the first half of that opinion rejects the very argument that they make here and say of course the risk is comparable. They just go on to the second half of the Begay analysis and under that statute said, well, it could be committed I think it was negligently, so it doesn't qualify. And I'm not sure if they [16] have abandoned or just are relying on their written pleadings that specific intent is required if a crime is to qualify under the residual clause. Again, that's simply inconsistent with the Sixth Circuit case of

Meeks. Begay did not impose that as a requirement. So we would submit that based on the Sixth Circuit -- the body of Sixth Circuit case law that the Court has in front of it with Horton, Gibbs, Meeks, and Phillips, this statute qualifies both as a generic burglary and in any event it qualifies under the residual clause. For those reasons we ask that the Court overrule the objection.

THE COURT: All right. Thank you.

Anything else, Ms. Tosic?

MS. TOSIC: No, Your Honor.

THE COURT: Okay. Well, again I want to thank the parties for their work on the briefing which was, I think, thorough. The arguments today have been good summaries. And the question is under the Armed Career Criminal Act whether or not in particular Mr. Quarles' prior conviction for Michigan home invasion third degree qualifies as a crime of violence. Obviously if it does, there's not only a guideline impact, there's a penalty range impact, and moving from a maximum 10 years under the normal felon-in-possession statutory terms to a minimum 15 years of imprisonment. So obviously the parties have properly focused considerable time and attention on this issue. And I've looked at it myself with care.

[17] I'm going to go in a way backwards and start with the residual clause, because in my mind this Michigan home evasion third definitely falls within the residual clause of the Armed Career Criminal Act, and I think for that reason alone we do have a proper predicate act in that earlier conviction, and then Mr. Quarles does qualify as an Armed Career Criminal Act -- under the Armed Career Criminal Act for that

treatment.

First of all, I think in my mind the risk under home invasion third in Michigan is plainly comparable to a traditional generic burglary in its most restrictive definition and to the other listed categorical crimes of violence. It's important, I think, to remember that Michigan still does require that the home invasion be to a "dwelling." And although I recognize and agree with the defense that the term "dwelling" is defined quite broadly in Michigan, and I would say could well include the kind of tent or perhaps even a boat or something like that -- we'll talk about that more in a minute on the other prong of the Armed Career Criminal Act -- it still requires some place of abode, either permanent or temporary. And I think that's key and that's critical. That's really what even the Supreme Court in James recognized as the key risk of generic burglary, namely, that risk of confrontation between the dweller, the person in that place of abode, even if it's a tent, and the perpetrator of the wrongdoing. So to me the risk is very similar, very hard to [18] distinguish, and for the reasons indicated falls within that prong of the residuary clause. I think that's what the case law has recognized as well as the government has cited within the circuit, including Phillips.

And I note even though the Sixth Circuit most recently in discussing the Prater or in deciding the Prater case under the New York statute came to a different conclusion, it's important to note the difference between the New York statute and the Michigan statute. Unlike Michigan, New York doesn't necessarily require occupation, and under those circumstances maybe you have a stronger argument, but that's not Michigan. Michigan does require a place of abode,

some occupation. And I think that is alone enough to keep it within the residuary clause.

Begay is another Supreme Court case that the defense has cited in noting that not only do you need the same type of risk but you need something in the words of Begay that's purposeful, violent, aggressive. And I do think that the Michigan home invasion third qualifies in all relevant ways with that. There's certainly purpose. There's certainly if not automatic violence in the way that you think of a fist hitting somebody in the face or a gun in the face, to violate somebody's dwelling is in fact one of the things that I think James recognizes makes the crime risky. You walk into somebody's place of abode, whether it's a tent or a mansion, [19] and you have confronted even in the outbuildings private space. And that is the kind of activity that I think fairly qualifies. Unlike the drunk driving that they were looking at in Begay. So I don't see that as any different.

And that really leads to the third reason that I have for finding this within the residuary clause, and that is I think that's what our circuit has squarely held in Horton for sure and certainly has alluded to that in comparable context for other similar statutes. And at least in my mind nothing since Horton has changed -- whether Descamps, Begay, or anything else -- that would detract from that holding, so I do believe that the residual clause covers this.

The defense has certainly argued that, well, under the residuary clause it can't be enough because that's void for vagueness. Our circuit has certainly rejected that. Case law is, I think, cited by both the government and even the defense recognizes that, so there's published authority to the contrary, including very recent

authority in this circuit. So I have to overrule the defense objection on that.

Of course, the Sixth Circuit -- or not the Sixth Circuit -- but the Supreme Court is going to look at the vagueness issue. It has that case on cert. And we'll see what they do.

That leads me to the question of whether a Michigan third-degree home invasion is also falling within the generic [20] burglary prong of the Armed Career Criminal Act.

On the one hand, if I were in the parties' positions I might say, "You ought to make at least a provisional ruling on that because who knows what's going to happen in the Sixth Circuit." On the other hand, I'm kind of concerned to do that, and I don't intend to do it. I'm going to make some comments but not make a final ruling for two reasons. One, I really do think this is a much closer case in light of Descamps in particular and what the Sixth Circuit did in Prater. And, number 2, although I know the Supreme Court has just granted cert on the vagueness issue under the residuary clause, part of me wonders if they can really manage a ruling that doesn't in some way impact both the categorical listings and the residuary clause. Whether, for example, if they find the residuary clause is void for vagueness, do they have a severance problem? Because honestly, for me, some of the most confusing literature in this area is on what qualifies as the generic listing. And if you have to compare under the residuary clause the crime of conviction to what qualifies as the generic listing, I'm not sure how you separate those two things. So I think the better course is to wait. We'll let the Supreme Court have its say, we'll see what the implications are, and if the residuary clause is voided

for vagueness, I'm sure this case will come back because I'm sure the defense will preserve its objections going up to the Sixth Circuit, and then we'll deal with [21] whatever the ground looks like then.

So just a couple quick comments. I think the parties have certainly highlighted the issues, and from the government's point of view Horton and Gibbs are already existing Sixth Circuit precedent that says the defense arguments on this generic burglary are wrong, that Michigan's third degree does qualify as a categorical and that Michigan second degree does too. And if the defense is right, Michigan's second degree wouldn't be a generic crime of burglary either.

I do think Descamps has changed the look, has at least forced the courts to say, with greater focus than they did prior, how can the particular offense of conviction be committed in all of its ways? You have to break down all pieces of it. And that means in the more minimal case for Michigan third, somebody could commit the crime without any intent as they are crossing the threshold to commit some other crime that could be formed while they are on the premises, number 1. And number 2, it could be a dwelling that's a very temporary structure, that doesn't fall within the building or structure as Taylor, the Supreme Court itself, required back in 1990. Under those circumstances I'm not so sure Michigan's third-degree home invasion qualifies anymore as a categorical crime of violence of generic burglary. I think it's a much closer case.

[22] And when I look at Prater and its analysis on the Descamps approach to a particular burglary or home invasion statute, I think it wouldn't be hard to imagine the defense argument prevailing. Particularly on the scope of what's covered by dwelling. I think it's

a little closer case and a tougher case for the defense on the intent, but that's another matter. And, again, if I'm not making a final decision on that today, I don't have to go further than that.

But I do think that we have a qualifying conviction. I don't think -- and we have it under the residuary clause. And I don't think that we have any vagueness issue that this Court can go with on the defense side of that coin.

So that's the ruling that I'm going to make on the Armed Career Criminal Act. It has both penalty range and guideline implications.

By my count there was one other guideline objection, namely to the scoring of the three points for the earlier domestic violence and malicious destruction convictions. I don't remember what paragraph that was.

But do you want to address that, Mr. Kaczor?

MR. KACZOR: Yes, Your Honor. It's paragraph 48.

THE COURT: All right. Thank you.

MR. KACZOR: Your Honor, let me begin by saying that it could appear that this is a moot question, because regardless of whether he receives three points for this [23] conviction, he's still going to be an armed career criminal. He's still going to be in category VI.

THE COURT: Right.

MR. KACZOR: On the other hand, in speaking with Mr. Quarles, he understands the use that the Bureau of Prisons will make of his presentence report, and they will look at the criminal history points. So he would like me to proceed.

And I think it's a real interesting objection. Interesting argument. And the argument is simply this: That Mr. Griffis scored him three criminal history points because he received an accumulated sentence of 480 days. Being more than 13 months, the guidelines say that he should receive three points for that.

Now, if it were less than 13 months, he would only receive two points, and it would be outside the 10-year period, so he wouldn't receive any points at all.

It appears that just about everything is against me. We have Mr. Griffis making the recommendation --

THE COURT: Well, why should today be any different, right?

MR. KACZOR: Well, and I guess really what I wanted to get to is I was going to say all I have on my side is common sense, but when I think about it, this situation really is different than just about everything else that's been addressed, and been addressed by Chief Judge Maloney, in that [24] the guidelines say -- and I understand this -- that you score not the time that someone served but the time that someone was sentenced to. We hear that all the time from our clients. You know, "I was served" -- "I was sentenced to 13 months, but I only served 11." Well, you get guidelines on 13 months.

Or in a state case, you know, "I got six months to two years." Well, you score it on two years. Because you don't score it on the six months, you score it on the two years. And that's what the guidelines say. You don't look at how much time you did, you don't look at how much time credit you got, you look at how much time you were sentenced to.

And so then we have the case that seems to be right

on point and that's the Ramirez-Perez case that was decided by Chief Judge Maloney. A little bit different because they are talking about a felony and a felony that qualified as an aggravated felony. And in that case they are adding up the 365 days and 234 days. And I guess my argument is what happens when in a state court someone gets six months to 20 years? Well, he's going to get three points for the 20 years, not for the six months. Well, what happens if he goes beyond the 20 years? And I just don't think that there's any -- I'm not sure of the word I want -- I can see it happening in federal court because we have the -- you're given a sentence, you're given, you know, a 40-month sentence, you get out, you're given [25] three years of supervised release, and if you continue to violate your supervised release, you can get up to another three years even if it's more than the original sentence. But there's no provision for that in the state court. And so when he first went to sentencing, he pled guilty to a 12-month misdemeanor. He couldn't have received any more than 12 months in the Kent County Jail. So it seems like in no time, regardless of whether he violates his probation or not, would he qualify for a three-point enhancement, because he can never get more than 12 months. And that's what makes it different than these other cases, because in each of these other cases the sentence that's aggravated doesn't exceed the maximum penalty. And that's what makes it different. That's what makes it real interesting to me. And, again, it's a common-sense argument. How can you get -- how can you get three points for a sentence that exceeds 12 months when the maximum is 12 months? And I understand you accumulate, but I think in everything that we've looked at, the guidelines, the cases, you know, the Galvin case, each of those deals

with a sentence that when accumulated was less than the maximum amount sentence. And that's the argument, Your Honor.

THE COURT: All right. Now, paragraph 48 has two separate convictions, though, right? I mean, well, what about, at least from a potential outside risk point of view, simply stacking those? You get 12 months on Count 1, you get [26] 12 months on Count 2, so you could have, you know, up to 24 months or two years. Certainly if we have multiple convictions here, we don't do it very often, but we could consecutively stack them. Why wouldn't that mean the court was within its rights in imposing and then having Mr. Quarles serve a period of time that exceeded the term of one of those convictions but not both combined?

MR. KACZOR: Well, and that's an interesting question too and something that I looked into. Because what was interesting to me was when you looked at the judgment, it never said one year on Count 1 and one year on Count 2 to run concurrent. It just said one year. And so all you can assume is that he was being sentenced in both and it was to run concurrent.

So the next question would be could it be consecutive? And I don't know that it could have been consecutive. There's only certain situations in the state court where you can run it consecutive. And if this is -- this is one particular case, two counts, probably that occurred at the same time, so it's not a question that he was on bond, released on bond, committed another offense. It's not an escape. I don't know that they could have run it consecutive, Your Honor. But I understand the argument, and that's why I wanted to look at the judgments.

THE COURT: Okay. Thank you.

[27] *MR. KACZOR*: You're welcome.

THE COURT: Let me hear what Mr. Lewis has to say on this issue.

MR. LEWIS: Your Honor, I think that Mr. Kaczor is correct that there simply is no support for his position. The guidelines address squarely how to deal with this situation. I don't think it's fair to assume they didn't foresee the situation of a period of time being imposed and then somebody serving less. They clearly did. And it happens all the time. So his argument is inconsistent with the guidelines, it's inconsistent with U.S. v. Ramirez-Perez, and he doesn't cite either today or in his briefing any authority whatsoever.

And I think I honed in on the same thing the Court did, is that his factual premise for his common-sense argument in terms of if he only could have gotten 12 months because that was the max just factually doesn't hold water here because as the Court points out, he in fact was convicted of two offenses. The defense says one was a 93-day misdemeanor and the other one was a year long. In any event, stacking up the time we're still within that window. So common sense doesn't support him, guidelines don't support him, Sixth Circuit case law doesn't support him, and we would ask that the objection be overruled.

THE COURT: All right. Well, the objection is to the scoring of paragraph 48 for three points. 48 lists a conviction on two state misdemeanors. It scored three points, [28] though, because there were probation violations and ultimately a sentence imposed by the Court that exceeded a year and a month or 13 months. Even though each of the underlying offenses of

conviction would have been a misdemeanor capping out at 12 months. And the question is: Do you have three points scored there or not? In the defense view it should never get worse than two points, and since the time limit then wouldn't be triggered, it would fall away altogether.

And from a guideline point of view in view of my Armed Career Criminal Act sentencing it no longer matters, but it's still worth addressing and resolving for the other reasons that Mr. Kaczor mentions. And because we don't know for sure what's going to happen with the Armed Career Criminal Act and the Court's ruling on that.

I am going to overrule this objection, though. I do think both legally and factually there are problems with it. Legally, as I think all people here concede, the defense really doesn't have authority to stand on, either from case law or from the guidelines. Certainly under the case law and the guidelines Mr. Griffis scored it properly based on the sentence actually imposed by the state court and then also the time actually served by Mr. Quarles on that.

The thing I would say is, well, what if the state got it wrong? What if Mr. Kaczor's intuition is correct that the state really didn't have the right to sentence in total more [29] than 12 months? And I think we would treat that issue the same way we would treat other attempts to collaterally attack otherwise final adjudications and we'd say we don't look behind the actual adjudication. Somebody would have to go back to the state court, get that vacated, if they could. But other than that, I'd charge and I think the guidelines require me to simply look at what the conviction actually showed. And when I just add those days up, whether

the state court was right or not, I think clearly the days add up to more than the 13 months and we'd have the premise for the score.

The last point is the more factual one that it seems to me when you have two offenses of conviction, each of them could be sentenced separately and stacked on the other one. There's actually a third related charge that was dismissed, I think, as part of this case. So, you know, how that all worked out as a practical matter I don't know. But I guess that's also further support for the idea that I shouldn't look behind the actual days on the judgment when I apply the guidelines. So for that reason I am going to overrule the objection and leave the 48 scored as it is.

Are there other objections from the defense to the guidelines or any other objection to the presentence report that we ought to take up at this point?

MR. KACZOR: No, there are none, Your Honor.

THE COURT: Okay. And in particular there was [30] at least at one point an objection to including paragraphs 19 to 23 and that's withdrawn as the I think sentencing memo indicated?

MR. KACZOR: That's correct, Your Honor.

THE COURT: Okay. And no objection to the four-point enhancement as well for the use of the firearm in connection with another felony?

MR. KACZOR: No, Your Honor.

THE COURT: Okay. And in that light, Mr. Lewis, is there an objection to the government on acceptance? Or since the four-point enhancement isn't objected to, is the government satisfied that in its view acceptance was properly credited here?

MR. LEWIS: Yes, Your Honor, we are satisfied and we do not object.

THE COURT: Okay.

MR. LEWIS: And if the Court is awarding acceptance, we would move for that third point.

THE COURT: I will go ahead and award the acceptance. I do think there's certainly portions of the presentence report that describe Mr. Quarles' description of the underlying offense of conviction in a way which if he's right would not warrant the four-point enhancement. Namely, that he used the firearm, pointed it at his companion in the car at the time, all of which was another felony which warranted four points. [31] His own description of the offense doesn't correspond with that in all respects, but by not objecting to the basis in the PSR that Mr. Griffis used for those four points, I do think all things considered acceptance of responsibility is still appropriate, so I'll grant those two. And with the third point that goes along with Mr. Lewis's motion, we go from a level of offense 34 where the Armed Career Criminal Act takes us in this case down to 31, criminal history category is VI either way, and the guideline range there is 188 to 235 months on a 15-year or 180-month mandatory minimum.

Any guideline objections from the government?

MR. LEWIS: No, Your Honor.

THE COURT: Or anything other than what we've already talked about, Mr. Kaczor?

MR. KACZOR: No, Your Honor.

THE COURT: Okay. Then let me hear from the parties on sentencing considerations generally. And, Mr. Kaczor, I'll invite you to begin.

MR. KACZOR: Thank you.

Your Honor, I know that you've read the sentencing memorandum. Probably more than once. Because I know how much time you spend and how much consideration you give to these cases. And we certainly appreciate it.

So I'm going to add just a little bit more knowing that you've read that.

[32] *THE COURT*: All right.

MR. KACZOR: Just a little bit more about Mr. Quarles. Let me tell you that he's an extremely intelligent individual. I mean, he's easy to get along with. I've represented him for what seems like a number of --

THE DEFENDANT: 18 months.

MR. KACZOR: 18 months. So we've met a number of times. And we've had a number of conversations. And I don't think we've ever had an angry word or he's never gotten really upset with me or said, "It's my way or the highway," which often happens. He's always been respectful of me and we've always had good conversations. He hasn't always agreed with me, but he's been extremely respectful.

It kind of surprises me, you know, when I read his criminal history and some of the things that have been attributable to him because he doesn't -- he doesn't seem like that kind of individual to me, Your Honor. And he accepts responsibility for this. He's indicated to me from the very beginning that he wanted to step

up to the plate, so to speak, and accept responsibility. And I might have had some disagreement with the description of what happened, but he was willing to forego that argument. You know, he wants to be heard today. But other than what I put in there -- and in some ways it's not that different than what most of my clients go through in their life -- they certainly have a different [33] upbringing than I had, than I'm sure just about anyone in this court has had, but he has struggled. And, again, he's been respectful. Thank you.

THE COURT: Okay. Thank you, Mr. Kaczor. And thanks for the written materials as well.

Mr. Quarles, you certainly have the privilege to speak. You don't have to, but you may. I'll be happy to listen to you. I've read your letter as well, which I think I forwarded on to Mr. Kaczor.

THE DEFENDANT: I would like to scratch that too because I went in the law library trying to get my last little shot to Sean trying to fight, but I fight it from the civil book, it wasn't even right, so you can scratch that.

THE COURT: All right. Well, that's all right. You're simply talking about the timing of the motion there.

But go ahead. If you would like to use your opportunity to speak, I would be happy to listen.

THE DEFENDANT: Well, I want to start off by sayin' I know everybody in here you're all free so you all don't get the feelin' of a defendant, the feelin' a defendant might feel. But this is close to -- like I don't know how it feels to go to the death penalty, but it's an eerie feeling coming in here when you're a defendant, you know. And I'm not gonna lie, it really give me a funny feelin' comin' in here.

By you bein' so far up there and me bein' back here, [34] I get the sense of like I'm almost a baseball player and I'm throwing the ball at you and you're just windin' that bat up like "I'm about to knock you out the park." I know you all don't feel it because you're all not a defendant, but it's an eerie feeling.

But I don't want to deviate from why we're here, and it's a serious matter on my behalf. Judge Jonker, I know you see all types of defendants come in here out of all walks of life and everybody has a reason why they shouldn't get this much time or their upbringin' or a drug problem or I grew up in a crack house or such, et cetera, et cetera. But the thing with me is I do have some issues about when I came up and, you know, how I came up, but I do know right from wrong. And I know I wasn't supposed to have constructive possession of a firearm.

My hardest thing in my life is as far as really knowin' how to love. You know, I know right from wrong, I'm a good guy, I just never knew how to love right. So I hope in my road to redemption I probably can harness my little issues and come to terms and learn a little bit more about myself and seek help.

Other than that, I would just like to apologize. Like I told Sean before anybody came in here, I actually kind of thanked him. Because I actually became a man. You know, I'm not sayin' that the federal government they scared me, but [35] actually it's like, "Oh, you can spend the rest of your life, you will never get out of prison if you commit -- keep committin' crimes." And even though my crime is not a CSC or an armed robbery or a bank robbery, it's still a crime. I still broke the law. And, you know, I'm tryin' to right my wrongs, you know. I'm just tired of fallin' down and I'm tryin'

to right my wrongs. So I actually kind of thanked him. He kind of opened my eyes up a little bit.

So with that being said on the legal matter, as far as the relevant conduct, I just want to put this on record, I was kind of scared to object to it. I wanted to object to it, and I was willing to come in here and get higher than you was gonna give me because I didn't really do what was said in it. You know, I don't want to step on my own foot, but I was kind of scared because they came in and said, "If you object to this, you're going to get" such and such time. And I'm like -- so I was scared to object to a lot of other things that was in the PSI. So I just wanted to put that on record.

Dave did what he could, and I guess I've got to step up to the plate, Your Honor.

THE COURT: Okay. Thank you.

THE DEFENDANT: Yep.

THE COURT: Anything else at this point, Mr. Kaczor?

MR. KACZOR: No, Your Honor. Thank you.

THE COURT: Okay. You can both be seated and we'll [36] give Mr. Lewis a chance.

MR. LEWIS: Your Honor, we are asking for a within-guideline sentence in this case. We realize that's in excess of 15 years. But when one looks at the seriousness of this crime and the defendant's background, I think it is appropriate.

Here, four months to the day after he was released to parole, the defendant got into an altercation with his girlfriend, held her against her will, pointed a gun at her, and threatened to kill her. Two days before he had threatened an ex-girlfriend. These are -- and with

a gun. These are incredibly serious offenses. Especially because he was on parole for shooting at somebody back in 2008. Including the two incidents that occurred on August 22nd and 24th, that's his fifth firearm-related crime. He has a long violent history. Particularly against women. And based on the trajectory, it doesn't appear that absent a very serious sentence from this Court this pattern of conduct is going to end until somebody is dead.

We think that a sentence in excess of 15 years is necessary to protect the public, to deter the defendant and others.

Your Honor, I would note for the record that we did reach out to both of the women who were threatened in this case to see if they wanted to come, to submit a victim impact [37] statement. They did not want to do so and they are not here today, but I did want to put on the record that we did make those efforts. So with that I would leave the precise details of the defendant's sentence to the Court's discretion. Thank you.

THE COURT: All right. Thank you.

Anything else, Mr. Kaczor?

MR. KACZOR: No, Your Honor. Thank you.

THE COURT: All right. Well, again I want to thank the parties for the work they did on the legal issues in particular but also on presenting their respective views of the case and what's an appropriate sentence.

We have the guideline range based on the rulings that I've made. We then have all of the Section 3553 factors to consider, which include the need to punish appropriately, the need to deter this kind of conduct in Mr. Quarles and others, certainly the need to promote

rehabilitative opportunities as well. All of those things are in the mix. And that's where I want to go now.

We know we have a bottom end of 180 months and a guideline range of 188 to 235 months. What's the sentence that's sufficient but not greater than necessary to comply with the purposes of the sentencing statute?

I want to say, first of all, that, you know, for Mr. Quarles to present to his lawyer, Mr. Kaczor, in the way [38] that Mr. Kaczor describes doesn't surprise me because that's the way he's presented every time he's been in front of me. That's the way he presents in the written communications I get from him. An intelligent, respectful, pleasant, easy-to-get-along-with man. The kind of person that it would be a pleasure just in first meeting to get to know better. The problem is that's not the person who comes through in the history of contacts. Especially with women that have been an important part of his life. And that's really what lands Mr. Quarles here with the count of conviction. It's what triggered the Armed Career Criminal Act, because virtually all of his criminal history has roots in some struggle either with or over a female in his life. Most of them also have roots in drug- and alcohol-fueled activity, and most of them involve firearms. You know, that's a really troubling picture. And unfortunately it's a picture that I don't think Mr. Quarles himself has even fully taken in. He still, I think, wants to limit the picture of what he thinks happened. Perhaps because from my reading of the file a lot of the most egregious things that are happening out there happened when he was high on drugs or alcohol or both. He may not have a clear memory of what what's going on.

And if you had just one situation where there was variance between what Mr. Quarles might remember and what law enforcement and the offenses of conviction establish, that's [39] one thing. But when we have a litany from 2001, 2002, 2004, 2008, and now today, the pattern is pretty clear and unmistakable, and that's something that I think is very, very troubling and needs a punitive and a deterrent sanction. So in a way I'm surprised to hear one of the defense arguments that, "Look, please remember the purpose of the Armed Career Criminal Act, we really want to get to violent repeat offenders." I say, "That's true, but in my mind the pattern of conduct for Mr. Quarles, however it might break out on a technical Descamps parsing of the way particular crimes can be committed, as a matter of practical fact, he would be the paradigm picture for somebody, in my mind, that should fall within the Armed Career Criminal Act, because in many ways on multiple occasions he's demonstrated that there's a very dangerous mix for Mr. Quarles: Firearms, a former girlfriend, and drugs and alcohol."

I don't take pleasure in saying that, but it's the reality that I face and the one that is part of the presentence record that's been accepted now with only the objections that I've ruled on and none others. So we haven't had to take testimony from victims and the like. And when I look at that, I think the guideline range is entirely appropriate, even though it's still lengthy, and I do intend a sentence within the guideline range but somewhat higher than the low end to recognize these factors.

And the intended custodial sentence of the Court is [40] 204 months, which is still within the guideline range, neither high nor low, and not as high as the

next level up, but I think an important statement that this kind of behavior has serious consequences, that the public is in need of significant protection, and that Mr. Quarles has to internalize the seriousness of what's been happening in his life.

Just to quickly summarize, I won't say everything, I think the presentence report is clear and I think the government's sentencing memorandum is also quite pointed on these things. Let's start with the offense of conviction. It may be that Mr. Quarles in his heart of hearts still doesn't like the way that the PSR describes it, but the reality is nobody has objected, so we didn't go through the exercise of bringing in witnesses to say what actually happened, but the description in the PSR that now stands demonstrates again an alcohol- and drug-fueled problem, a firearm, and a former girlfriend or maybe even a current girlfriend in Ms. Warren who had a gun pulled on her and threats made directly to her face like "Do you want to go to a wedding or a funeral?"

The description of what happened, multiple law enforcement contacts, locking herself in a bathroom at a gas station initially, this is the kind of danger and risk to not just Ms. Warren but other people in that community that is very egregious and in need of appropriate response.

More than that, two days before, on August 22 instead [41] of August 24, we have a very similar description of the same kind of activity involving a different woman, Ms. Moore. That's bad enough, but these things happened while Mr. Quarles was on probation for shooting at somebody in Saginaw, Michigan, in 2008. He had been released in April of 2013 on parole and then had these incidents just four months later.

The shooting in Saginaw didn't involve directly a woman but was over a woman, Ms. Turner. Ms. Turner was the person he first had serious law enforcement problems with in 2001.

And then he had another home invasion with Ms. Seymore, I think that was 2002, and Ms. Cruzado in 2004. Each of these serious violence or threats of violence perpetrated against the women involved had progressive consequences moving all the way to the most severe in 2008, but then, as I said, four months after he's on parole we have the repeat incidents.

I just can't ignore that. And I think for those reasons something within guidelines, which are still very long, but a little bit above the low end is appropriate, and that's the reasons for it.

I'm certainly going to recommend to the Bureau of Prisons that Mr. Quarles receive substance abuse assessment and treatment. In my mind it's shocking that he hasn't received that before, but that's what the PSR says. I know that's partly because he doesn't think he has a problem. I would say [42] only, you know, read the reports of the criminal activity, and if every time you're running into those kinds of violence encounters there's substance abuse involved, I think you have a problem, and I think one of the things you need to do, Mr. Quarles, is get a handle on it.

I'm also going to recommend mental health assessment and treatment so that you can work on and come to grips with the repeated violent interaction patterns that you've had with the women in your life. That's not good for you, it's not good for them, and it's not good for the communities in which you live.

In terms of supervised release, I do intend the five years, which I think is the minimum in the Armed Career Criminal Act context, and I think an appropriate length anyway to manage reentry.

The normal mandatory conditions including cooperation in the collection of DNA, drug testing, and a ban on firearms or other weapons. Standard conditions including no alcohol. And standard conditions that -- or special conditions rather that Mr. Quarles participate in a program of testing and treatment for substance abuse as directed by the probation officer until released, paying a portion of the costs as he's determined able; (2) that he participate in a program of mental health treatment as directed by the probation officer until released, paying a portion of the costs as he's determined [43] able. And that could include what we now call MRT in this district, which is a program designed to assist in helping people restructure the way they make decisions and hopefully be better at choosing to comply with the law. (3) that he provide the probation officer with access to requested financial information. And (4) that he maintain legitimate full-time employment approved by the probation officer.

In terms of a fine, there's not in my view an ability to pay a fine within the guideline range. There's really no significant history of work and there's no asset base. There is ability to work in the prison setting and hopefully when he's out, so I'm going to go below guidelines and intend a fine of $2,500 on the normal custodial terms which are $25 minimum quarterly installments under the Inmate Financial Responsibility Program or minimum monthly installments of $20 otherwise and then the balance due in supervision in minimum monthly installments of $25.

The forfeiture in this case if it hasn't already occurred administratively would also be a part of the Court's judgment, the 45-caliber semiautomatic. And the special assessment is $100. So that's the intended sentence of the Court.

For the government, legal objections?

MR. LEWIS: No objections. Thank you, Your Honor.

THE COURT: And, Mr. Kaczor, other than the [44] objections that are of record, others you want to make at this point?

MR. KACZOR: No new objections, Your Honor. Thank you.

THE COURT: All right. I'm going to go ahead and impose that as the sentence of the Court, then, which is 204 months of custody followed by supervised release of five years, a fine of $2,500, forfeiture of the 45-caliber semiautomatic, and a special assessment of $100.

And I'll make that the sentence and judgment of the Court now, Mr. Quarles. I'm going to make it the written judgment too, and then you've got that appeal window. Fourteen days. You have probably already talked to Mr. Kaczor and Ms. Tosic about it, but do that again, get your appeal on file within 14 days, and then you can raise all the issues that you've preserved here.

Any questions about that?

THE DEFENDANT: Um, I just -- do you determine if I get my time credited from where I've been? Because I know they have got me marked down for March 4th, but I've been on the same case since August 24th.

THE COURT: The people who resolve that normally are the Bureau of Prisons, and they look at their grid and whether that time has been credited anywhere else. And if it hasn't, then normally the time that you've been in marshal custody [45] would be credited against the sentence. But that's a Bureau of Prisons decision in the ordinary case.

THE DEFENDANT: Okay.

THE COURT: Anything else?

THE DEFENDANT: No. You told me I was gonna lose. You did tell me that.

THE COURT: Well, I remember the plea, and I at least told you you had to be prepared to lose if you wanted to go ahead with the plea.

THE DEFENDANT: You told me I had a bad hand. I won't lie about that.

THE COURT: That's probably true. I probably did say that. You know, the issue will continue to come along. And you have capable counsel that have helped you.

And, you know, I wish, Mr. Quarles, that you can get to the point, I hope you do, where the women in your life experience you the same way as Mr. Kaczor and I do and the way that you interact here and with them. You clearly have intelligence. You clearly have the capability to be respectful, engaging. And unfortunately that hasn't been your pattern with the people --

THE DEFENDANT: Right.

THE COURT: -- that I've talked about. And believe me, they would rather have that, and I'm sure you would too. And the community needs that.

[46] *THE DEFENDANT*: Well, I thank you, Judge Jonker. One more thing I want to say is that, you know, no hard feelin's against nobody, you know. And I don't want to sound like I'm usin' a crutch from my mother, but I just wish she would have taught me -- I never knew how to love. I was never shown no love. So I think with the women, I don't want to seem like I come off as being disrespectful towards women, but I think if she would have shown me to love, I never was taught how to love. So when I feel like I'm gonna lose somebody that I love, you know, that's some issues that I have to deal with. And that's been since I was a kid. My mother never really loved me. So, you know, that's some issues that I was tellin' you about I'll have to deal with on my road to redemption. So it's no hard feelin's. I appreciate it.

THE COURT: Well, we hope for your road to redemption. That would be the outcome we would all like to see.

THE DEFENDANT: Well, hopefully I'll see you this summer, so . . .

THE COURT: Okay.

THE DEFENDANT: Thank you.

THE COURT: Anything else today from the defense?

MR. KACZOR: No, Your Honor. Thank you.

THE COURT: Government?

MR. LEWIS: No, Your Honor. Thank you.

[47] *THE COURT*: Thank you.

THE CLERK: All rise, please. Court is in recess. (Proceeding concluded at 12:19 p.m.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: March 5, 2015

/s/ Glenda Trexler
Glenda Trexler, CSR-1436, RPR, CRR

APPENDIX H

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 16a0158n.06

No. 15-1161

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JAMAR ALONZO QUARLES, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

BEFORE: BOGGS, SILER, and BATCHELDER, Circuit Judges.

PER CURIAM. Jamar Alonzo Quarles, a federal prisoner, appeals a sentence of 204 months of imprisonment imposed following the entry of his guilty plea to a charge of being a felon in possession of a firearm.

Quarles raises two issues on appeal: 1) whether he qualifies as an armed career criminal within the meaning of the Armed Career Criminal Act, and 2) whether his criminal-history score was correctly calculated with respect to two prior misdemeanors that the

district court assigned three criminal-history points pursuant to USSG §4A1.1(a).

The district court determined that Quarles was an armed career criminal under 18 U.S.C. § 924(e) based in part on a prior Michigan conviction for third-degree home invasion, *see* Mich. Comp. Laws § 750.110a(4)(a), which the district court found was a violent felony under what is known as the residual clause of 18 U.S.C. § 924(e). See 18 U.S.C. § 924(e)(2)(B)(ii) (defining "violent felony" as a crime that "involves conduct that presents a serious potential risk of physical injury to another"). The Supreme Court recently held that the residual clause is unconstitutionally vague. *Johnson v. United States*, 135 S. Ct. 2551, 2563 (2015). However, the government argues that the crime of Quarles's prior conviction is a "generic" form of burglary and that we may thus affirm the district court's determination that Quarles is an armed career criminal. *See Descamps v. United States*, 133 S. Ct. 2276, 2281–86 (2013) (delineating the contours of "generic" burglary and clarifying the application of the "formal categorical" and "modified categorical" approaches). Upon consideration, we conclude that this issue is best determined in the first instance by the sentencing court.

We do not reach Quarles's argument regarding the district court's calculation of his criminal-history score because resolution of that issue will become necessary only if the court determines that Quarles is not an armed career criminal. If Quarles is determined to be an armed career criminal, his criminal-history score will be VI irrespective of whether the district court correctly awarded three points for the two prior misdemeanors at issue. Accordingly, the district court's judgment is **VACATED** and this matter is **REMANDED**

to the district court for resentencing.

APPENDIX I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN,
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	
	Docket No.: 1:14-cr-29
v.	
JAMAR ALONZO QUARLES, Defendant.	

TRANSCRIPT OF RESENTENCING HEARING
BEFORE THE HONORABLE ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE
GRAND RAPIDS, MICHIGAN
May 16, 2016

Court Reporter: Glenda Trexler
Official Court Reporter
United States District Court 685
Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

Proceedings reported by stenotype, transcript produced by computer-aided transcription.

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* * * * *

Grand Rapids, Michigan
May 16, 2016
2:04 p.m.

P R O C E E D I N G S

THE COURT: All right. We're here on the case of the United States against Jamar Quarles, 1:14-cr-29. The time set for resentencing following remand. And let me start with appearances, please.

MR. LEWIS: Good afternoon, Your Honor, Sean Lewis appearing on behalf of the United States. I'm joined at counsel table by Task Force Officer Matthew Kubiak.

THE COURT: All right. Thank you.

MS. TOSIC: Good afternoon, Your Honor, Jasna Tosic [3] from the Federal Defenders Office, and seated at counsel table is Mr. Jamar Quarles.

THE COURT: All right. Thank you.

So let me summarize what I have. Of course I have the original file intact. That didn't change. We have the Court of Appeals remand order, which was, as I read it, pretty a flat remand after Johnson saying do this again in light of Johnson. Then I have sentencing memoranda from each of the parties. So one from Mr. Lewis and one from Ms. Tosic. And then I also got from the Defenders' Office a filing of some Certificates of Achievement on behalf of Mr. Quarles. I think that's it.

Should I have anything else in writing from the government?

MR. LEWIS: I'm not aware of anything else, Your Honor.

THE COURT: Or the defense?

MS. TOSIC: No, Your Honor. That's all.

THE COURT: So the big issue, I think -- well, let me start out with the plea agreement because there wasn't one, so we can pass by that.

In terms of the guidelines, with respect to including the information in paragraphs 19 to 23, I'll just incorporate the ruling I did at the original sentencing.

The big issue is certainly how the career-offender [4] enhancement applies now in light of Johnson. We know the residual clause is out, but the question is: Does the Michigan home invasion third degree still qualify under either the categorical or modified

categorical as the equivalent of generic burglary? And the parties have focused on that.

So let me hear the parties' positions, make sure I understand it, and then we'll go from there. Certainly the ruling on that strikes me as the big one. If I go with the government's position, we'll still go ahead and rule on the other objection, which is to the criminal history scoring, though it won't materially affect that. On the other hand, if I go with the defense, that issue will be in play, so we'll deal with it then. But I would like to start with career offender.

Are there any other guideline objections beyond the career offender and the criminal history scoring on those three points?

MR. LEWIS: Not from the government.

MS. TOSIC: No, Your Honor.

THE COURT: All right. So why don't we go ahead and, Ms. Tosic, I'll start with you since you're objecting to the probation officer's position, and then we'll go to the government after that and give you some rebuttal.

MS. TOSIC: Thank you, Your Honor.

Well, as the Court said, the issue here is whether [5] home invasion third degree under Michigan law is a generic burglary. We briefed this issue twice in the court, so I'll just be brief and focus on the main points.

THE COURT: All right.

MS. TOSIC: Our argument that home invasion third degree is not a generic burglary because it is broader than generic burglary for two reasons.

The first reason is that the Supreme Court and the Sixth Circuit made clear that an offense is a burglary

only if it involves entering a building or a structure. And the offense is not a generic burglary if it involves entry into places like tents, boats, vehicles, motor trucks, motor truck trailers, and similar places.

So what we have in this statute is that home invasion third degree involves breaking into a dwelling, and "dwelling" is defined in a separate statute -- actually a separate subsection of the statute -- as a "Structure or shelter that is used permanently or temporarily as a place of abode, including appurtenant structure attached to that structure or shelter."

So a "shelter" that is part of the dwelling can include structures that are not buildings. Can include tents. It can be a motor vehicle. It can be other similar places that the Supreme Court specifically excluded from the definition of burglary. And, therefore, the statute is broader than generic burglary.

[6] The issue previously came up whether some previous Sixth Circuit cases, Gibson, Horton, are controlling because they previously held that home invasion second degree is -- the argument is that these cases are not controlling in light of subsequent decision in Descamps, which focuses -- which requires that courts focus more rigorously on all the different ways that the offense can be committed. And in these cases the court didn't really look at what is a definition of dwelling. It did not consider that it can involve -- include other places. And, therefore, these decisions are not controlling.

I think instead the Court should look to United States versus Prater which held that post Descamps that New York third-degree burglary is not generic

burglary because it involves entering into places other than a building. So that's the argument number 1.

THE COURT: All right.

MS. TOSIC: The issue then becomes in context of that argument whether the Court can look to Shepard documents. We had previously argued that this statute is divisible, and I think that that is still a controlling law in this district under United States versus Prater because Prater involves a substantially similar statute that prohibited entering into a building and then defined a building in a separate statute to include buildings and nonbuildings. So that is still controlling law and I would say probably one that governs these [7] proceedings today.

However, in light of this new case, Mathis versus United States, we wish to preserve the argument that this actually should not be considered a divisible statute. And the issue in Mathis is basically elements versus means. It involves a substantially similar statute to the one that we have here. The statute there prohibits entry into an occupied dwelling, occupied structure, which is defined in a different part of the statute or different statute as encompassing some nonbuildings. And the argument that's made is that the element of the offense is occupied structure. So that's the element that the state has to prove -- charge in the document and prove or defendant has to admit to it.

And that separate section which defines is just illustration and it's basically the means that it can be. And the argument that's made there is that because the Court may not apply modified categorical approach. So we are preserving that argument.

If the Court looks at the Shepard documents, they do not establish that Mr. Quarles broke into a building because the charging document said that he broke into a dwelling that is located at Stonebrook Court.

"Dwelling" is really a term of art, and what is identified here is a specific address, specific parcel of land, but the actual place that was broken into still could be a [8] tent, could be a vehicle, could be a boat, so, therefore, the Shepard documents don't establish that breaking was done into a building.

And then I would move to my second argument, the second reason why this offense is not generic burglary. Unless the Court --

THE COURT: What do you do with the other Shepard document, the transcript of the plea? Which you can so contest, and the court is saying there that Mr. Quarles broke into a screen window and assaulted her while in the house. Even if your other arguments are right, doesn't that necessarily mean the factual basis here involves a structure?

MS. TOSIC: Right.

THE COURT: So how -- I realize you're preserving your Mathis argument, but put Mathis to the side, why isn't the Shepard document as a whole, even if I accept your argument that dwelling alone isn't enough, don't we have a factual basis recited that involves going through a screen window in a house?

MS. TOSIC: As far as screen window goes, two arguments about that. First, the Court may consider the transcript or the colloquy at the plea if the defendant assented to it, if he admitted it. And in this case he did not admit to it. The court stated that he pushed the screen window in, but Mr. Quarles did not admit that.

The court did not ask him whether that's true, so he did not necessarily admit that.

[9] *THE COURT*: Then you don't think his no contest essentially admits the factual basis that the court recited at that point?

MS. TOSIC: The court recited that, but Mr. Quarles did not assent it.

THE COURT: Yeah, but I'm saying you don't think he assented by saying no contest?

MS. TOSIC: No.

THE COURT: That's what happened. So what do you do with that? The no contest is just to the language of the Felony Information in your view and everything beyond that is off limits for Shepard's?

MS. TOSIC: Yes, Your Honor.

THE COURT: Okay. All right.

MS. TOSIC: And even if he assented, like pushing the screen window in, a tent can have a screen window, a boat can have a screen window.

THE COURT: Right, but it says screen window and assaulted her while in the house. So if you have a screen window in a house, it sounds like a structure. But I understand your position that I can't use that. Right?

Okay. So go ahead to your other argument.

MS. TOSIC: I'm sorry, Your Honor?

THE COURT: So you can proceed to your other argument.

[10] *MS. TOSIC*: To the second argument?

THE COURT: Right.

MS. TOSIC: The second argument is that Michigan offense of home invasion third is not categorically generic burglary because it includes entry or remaining in without intent to commit a crime.

The Supreme Court said that a prior conviction qualifies if the statute elements are same or narrower than generic offense. And the Supreme Court stated that definition of generic burglary requires all of the following elements: An unlawful or unprivileged entry into or remaining in, number 2, building or structure, and number 3, which is important here, with intent to commit a crime.

So the issue becomes whether this intent has to be contemporaneous, has to be present at the time of entry or at the time of the decision to remain in. And the Sixth Circuit did not -- and why that is important is that one of the ways to commit this offense is if the person -- while there are several ways to commit, and some of these do say based on enter with intent, one of the ways to commit offense is to break and enter the dwelling or enter the dwelling without permission and at any time while he or she is entering, present, or exiting the dwelling commits the misdemeanor.

So when we look at this, there is no contemporaneous intent. And as I said, Sixth Circuit did not address that [11] issue, but several other courts did.

And the Fifth and the Ninth Circuit held in a statute that was substantially similar to the statute involved here where there was an entry without a contemporaneous intent and defendant later on commits a crime, these courts stressed that Model Penal Code, Black's Law Dictionary require contemporaneous intent, and they held that these offenses are not generic

burglary, even though the defendant committed offense later because there was no contemporaneous intent.

Fourth Circuit went the other way and held that even if there was no intent at the time of the entry or remaining therein, defendant committed a crime, so he necessarily developed the intent to commit a crime while in the building. But dissent is along the line of the Fifth and Ninth Circuit stating that contemporaneous intent is the essence of burglary at common law. And that Taylor, Supreme Court Taylor definition states that burglary definition approximates the Model Penal Code which does require contemporaneous. And dissent concluded the crime must -- that defendant's intent to commit a crime must exist contemporaneously with unlawful entry or unlawful remaining.

And because this element is missing, this offense is not categorically a crime of violence. Which then again brings us to a modified categorical approach, and the charging document does not establish that there was a contemporaneous [12] intent.

THE COURT: Okay. Thank you.

Let's hear what Mr. Lewis's position is, and we'll see if there's any rebuttal after that.

MR. LEWIS: Thank you, Your Honor. We too have briefed this extensively, and I attached to my sentencing memo the brief that I filed with the Sixth Circuit where I laid out -- and I'll just very briefly hit the high points today -- that I believe that the PSR, the presentence report, got the guidelines right for three independent reasons. And I would ask the Court to rule on each of these bases today.

I think there are three independently -- independent and sufficient reasons to impose a sentence under the ACCA today.

First, we maintain our position that there is controlling case law in the form of Gibbs and Horton. The Sixth Circuit case law is what it is. Perhaps if the Court were writing on a clean slate, it would engage in a more rigorous analysis. But I was just looking at Horton before the Court came in here today, and the Court actually does lay out in significant detail the statute and look at the different iterations and ways in which the Michigan burglary or home invasion statute can be violated. So it's not accurate, I think, that the court -- the Sixth Circuit simply has given short shrift to the analysis over the years. So that's the [13] first independently sufficient reason to impose a sentence under the ACCA.

The second is, even if the Court says, "Well, all that was before Descamps, so I'm going to go ahead and look in a very detailed fashion at the statute," I went through and did that in my brief the four different ways that the statute can be violated, and each of them is the same as or narrower than generic burglary. And I think what we're really talking about here is the third and fourth possibilities where the Michigan statute is narrower because it requires the actual commission of an offense and not just intent. And then -- so that's the second reason.

The third independently sufficient reason is if we get past Gibbs and Horton, if we get past the categorical analysis, and if the Court says, "Well, this statute is divisible," I can then go ahead and look at the Shepard documents. Here the Shepard documents do establish that the place was a building or other structure

within the meaning of Taylor. I cited a good number of cases in my briefing from the Fifth Circuit and the Ninth Circuit, which certainly tends not to be government-oriented, but there are a number of decisions affirming convictions, holding that the Shepard documents are sufficient on records analogous to what we have here.

And the Court also has the defendant's concessions here in court about pushing in the screen, which is further [14] evidence that the Court can use. The Court doesn't even need to go there, but I think the Court is, under the case law, entitled to rely on those in-court concessions about the defendant pushing in a screen.

And then, again, in that third category there is with regard to the offense that was charged in this case a requirement of specific intent. And I laid that out again in my briefing. The defendant was charged with either committing an assault or intending to commit an assault while in the building. And those are specific-intent crimes under Michigan law. Those are elements. They are not means. So whichever of these three avenues we take, all of them lead us to the same conclusion that the defendant does have a qualifying conviction, that it is the equivalent of generic burglary, and the Court should, therefore, impose a sentence under the ACCA. Now I'll just say a couple words about the defense argument. I think the biggest impediment to their place argument is all they have given the Court is hypotheticals. They haven't cited a single case where the statute has been used to prosecute someone for invading a tent or anything else. And under the Supreme Court case of Gonzalez, which was in 2007, that is fatal to their argument. They simply theorize, as any lawyer would do, that, well, maybe this could be

stretched. But legal imagination I think is the words the Supreme Court used, it just isn't enough.

[15] And the statutory framework, the argument that we listened to today, would work if the defendant were convicted under 750.110, which does include a litany like tents and a variety of other areas that fall outside of the definition of generic burglary, but that's not the statute that we're dealing with today.

Their argument about the intent, I'm not entirely sure whether they are adhering to their initial argument, which was that intent at entry was required. Their briefing seems to bounce back and forth on that. I'm not entirely sure where they are at. But the recent Sixth Circuit case of Priddy addressed a very similar statute and held that remaining and committing a crime while remaining, I believe it was unlawfully in a building, is the equivalent of generic burglary.

So in addition to the other arguments in my briefing, I think Priddy raises an impediment that they haven't addressed much less can get around.

So unless the Court has questions about that, I would rest on the briefing. I guess I would note when the Court was asking defense counsel about the plea transcript for the underlying conviction, I think -- unfortunately I think defense counsel is right that there isn't much we can do with the uncontested fact that this was in fact a burglary of a building because it says so in the plea transcript. I think that defense had previously in this case cited the case of McMurray [16] in the Sixth Circuit. That was an Alford plea situation. Unfortunately, I think counsel is right about that. But I don't think that we need to rely on that transcript. There is, if we are in that third category, more than

ample information in the Shepard documents to justify a sentence under the ACCA.

THE COURT: All right. So you're saying the Michigan statute 750.110 explicitly covers things like boats or tents?

MR. LEWIS: Yes.

THE COURT: And that that ought to be a part of the Court's construction of what dwelling means in 750.110a?

MR. LEWIS: Yes.

THE COURT: When I have to interpret what a structure or shelter means in that context, I can use the 750.110 to suggest, at least in Michigan, you couldn't define, in your view, shelter to include the boat or tent in part because Michigan has a different section that covers that kind of thing?

MR. LEWIS: In part, yes, that is certainly true. We've got Gonzalez in the first instance, the absence. And I looked and couldn't find any instance where this statute, 750.110a, have been used outside of what we traditionally think about as generic burglary. Of course take that for what it's worth.

But with Gonzalez, with the defense inability to offer anything other than hypotheticals and the statutory [17] structure showing that where the legislature intended to encompass things like tents, they certainly knew how to do so, they didn't do so in 750.110a.

THE COURT: Okay. I think that's all for now.

Any rebuttal from the defense?

MS. TOSIC: Just one quick comment about the last question that the Court -- the argument that a separate statute covers boats and tents.

Statutes can be overlapping in some sense. And just because a separate statute covers boat and tent does not mean that a home invasion third degree can also not include that. And it is also -- 750.110a is different from that in that this shelter has to be used permanently or temporarily as a place of abode, so that adds the element to it.

So in one sense they are overlapping, but in other sense they are different. So just because this other section includes this particular place does not mean they are excluded from 750.110a.

THE COURT: Okay. Thank you.

All right. The issue now that the residual clause is out is whether or not the home invasion third under 750. -- that is MCLA 750.110a is nonetheless a crime of violence because it's the functional equivalent of generic burglary. That's what's on the table today. And as both counsel have indicated, they briefed it thoroughly. I appreciate that. [18] About the only thing I'm sure about today is that this issue isn't going to be settled here and that whoever wins needs to take it up and get it resolved in the Sixth Circuit, because I think that there's room to argue both directions here. I don't think it's as clean and clear an issue as either side presents in the briefing.

So let me start with the government's first argument, which is that you've got controlling case law in this circuit in Horton and Gibbs, and that that ought to settle the matter.

You sure would think so on the face of things because you've got the unpublished decision on home invasion third and then you've got a published decision on home invasion second treating it as a generic functional equivalent of burglary, and yet both of those decisions do predate Descamps, and I think that's significant, particularly when I look at what the Circuit itself did in Prater. Not a Michigan statute to be sure, a New York penal code statute, but nonetheless a similar analysis, a similar opportunity to parse the different ways in which a crime can be committed. And I think even though there's not an explicit reference in any way that overrules Gibbs or overrules Horton, that it's at least prudent to say in light of Descamps I've got to look a little closer. And I think that's the fundamental message that I get out of the Supreme Court in Descamps and out of the circuit itself in Prater.

[19] So on the first argument for the government, although I acknowledge the case law is there and I may swing back to that when we get to the intent issue later, I don't think it closes the door to what the defense is arguing here. I think it's a better approach to move on and press under the next approach as what do we have here in this statute?

The real issue, certainly, in the first argument that the defense is making is that, look, 750.110a requires breaking and entering a dwelling, but "dwelling" is a defined term and you have to look at what those definitions or that definition includes. And it includes "A structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter." That's the quote from the statute.

I'll talk about that in a minute, but before I do that, I understand the defense is preserving what it called its Mathis argument. And, of course, you can do that, but I'm certainly not accepting the Mathis argument. It seems to me the other message of Prater, the one that maybe isn't so good for the government but the one that I don't think is good for the defense, is that it shouldn't matter whether the statute separately lists out all of those things or simply uses the term "dwelling" and then defines it someplace else, that that's in part what the whole effort is under Descamps and Taylor to get at generic burglary. To get beyond the labels, to get [20] beyond the way a given state defines particular crimes and say, whether it's in a definitional section or whether it's in a string, a list, you ought to get to the same result. So I understand their argument is preserved, but it's not a persuasive one to me.

When I look at what 750.110a means by "dwelling," let's look at the definition, if that's all I'm looking at, I understand the defense position that when you have "structure" or "shelter" that "shelter" is a potentially broader term that could in some situations include things like a tent or a boat. And we know from Taylor that that's not good enough. Tents or boats aren't going to fit within generic burglary. So that's potentially a problem for the government.

The thing, though, that I think is different about the Michigan statute is that a dwelling isn't in isolation. We have other sections of the Michigan code, including 750.110, that talks about other unlawful entries into structures or things, specifically including a tent, a boat, ship, shipping container, a whole series of other things. Railroad cars. And when I look at it against that, when I'm seeing what the Michigan

legislature is defining as criminal ways to break and enter or home invasion, everything about the way Michigan defines 750.110a suggests to me a desire to be more limiting, to focus on dwelling, on the place of abode that's permanent or temporary. And it seems to me against that, the best argument, [21] the one I'm accepting anyway, is the one from the government that the dwelling has to be something that is fundamentally structural other than a boat or a tent. It seems to me in this particular unique situation Michigan is different than the New York statute in Prater, and perhaps that's what the judge had in mind in the Eastern District in Fields, he didn't articulate it that way, but the net result of Fields is to say that the Michigan home invasion sequence is in fact a categorical crime of violence apart from the residual clause. So I think that makes sense, and I'm going with the government position on that.

But that also informs the Shepard's documents inquiry, it seems to me, if we get to that level, because we're talking about not just a dwelling, which is asserted in the Felony Information, but a dwelling with a specific street address. I think when you couple that with the admission in this case that the screen was pushed in, we have all of the elements that would create a structural entry, one that would fall within the Taylor definition of generic burglary, and so I think that even without any reference or reliance on what the judge in the state case articulated as factual basis, we would be there on the Shepard documents in any event on the dwelling. So that would be on the main first argument that the defense makes.

The other argument is, "Well, generic burglary also [22] requires some intent that's either

contemporaneous with the entry, intent to commit a crime, or an intent that's formed while remaining unlawfully on the property. And at times I was a little confused too with whether the defense was saying it has to be there as you're walking in the door, or through a window in this case, but in any event, this is an argument that I don't think works for the defense.

In my mind the way the Michigan law defines the necessary intent, particularly with what we have here which is a specific-intent state crime, state misdemeanor, no matter which version of the intent element you're proceeding under, 750.110a, whichever, you're either having the intent at the time of entry through the screen or while still remaining in an unprivileged access in the house or in the structure. So either way on this case when we get to the Shepard document inquiry, it seems to me in the admission that the defense made here in this case we are where we need to be for generic burglary, and I do think the Priddy decision from the Sixth Circuit recently, albeit in a somewhat different context involving a Tennessee statute, essentially reaches the same result. I don't see how you could have a specific-intent crime committed while residing or remaining in an unprivileged entry status and not satisfy what Taylor describes as the generic burglary.

The one issue that nobody is raising, and I probably [23] shouldn't raise it myself, but in light of Friday's decision from the Sixth Circuit on Johnson's applicability or the vagueness applicability to the career offender language of the guidelines as well as the ACCA itself, I have to say, you know, this whole enterprise that we've just spent 35 minutes on as two counsel and

the Court, that both of you have spent a lot of time briefing and the cases going in many different directions, it would sure seem to me that a reasonable argument could be made that trying to functionally equate a state statute with some concept of generic burglary is probably just as vague as some of the other things that courts, whether the Supreme Court in Johnson or the Sixth Circuit in Pawlak on Friday, have found to be unconstitutionally vague. It's a very fresh issue, nobody has briefed it, I'm not relying it, but it's something that I hope the circuit addresses when they get this issue once again.

So I'm going to go ahead and overrule the defense objection on the crime of violence, finding that Michigan home invasion third degree does qualify as the functional equivalent of generic burglary for the reasons outlined. And what that means is that the guidelines go to 34 as level of offense, and criminal history VI regardless of any other issue on criminal history. I would, once again, find acceptance of responsibility appropriate. And I assume that the government is still moving for the third point?

[24] *MR. LEWIS*: Yes, Your Honor.

THE COURT: Okay. So we're down to 31 by granting that motion, criminal history VI, and 188 to 235 months as the guideline range.

Let me just say provisionally on the criminal history issue that the defense raised and briefed, and the government briefed as well, I'm going to incorporate what I did before. It seems to me the only way to read the text of the guidelines and the application note is to say you add the original time that the Court imposed plus whatever additional time the Court imposed on

the two revocations. And when you do that, you add up to 480 days, which puts you beyond the 13 months, and it seems to me it's properly counted by the presentence officer at that point as a three-point score. It doesn't matter to the outcome if in fact the ruling on the career offender is correct. But if it isn't, I would find that the three points were correctly scored for that reason.

So let me hear from the parties on sentencing issues, allocution and the like, and we'll start with Ms. Tosic.

MS. TOSIC: So does the Court want to hear allocution?

THE COURT: Anything else that the parties have in mind for sentencing. Allocution, arguments on any other sentencing issue, or variance, or whatever. Whatever your package would be at this point for sentencing.

[25] *MS. TOSIC*: Well, I want to highlight that Mr. Quarles since he has been incarcerated in the Bureau of Prisons has done really well. I have submitted a letter from a warden, Mr. Strunk, in which he said that Mr. Quarles maintained good conduct. That he had a good work report. He was working in a gym, cleaning up the gym, and he received all good work reports.

He took to heart what the Court told him last time he was here, so he enrolled in drug education program, and the certificate is submitted to the Court. He completed some vocational training. He was in a one-year wiring program and was very proud to tell me that now he can wire any house. So basically he now has a trade that he can rely on when he gets out of prison.

He also enrolled in a class called Thinking for Change, which is another drug-addiction program

which is a year long, and he committed -- completed three and a half months of that.

He also enrolled in a beading class, and that is a class --

THE COURT: In a what class?

MS. TOSIC: Beading class.

THE COURT: Oh, beading class. What is that?

MS. TOSIC: That is a class that teaches people how to make jewelry from beads. And the reason he said he enrolled [26] in that class is to have some positive activity. That he's doing something positive. And also it's a skill that he can perhaps use later on.

He is planning to take a so-called RDAP class, which is a drug education program, and he already had an interview to be placed in that program and is on a waiting list for yet another drug program.

He's planning to take culinary program and is on a waiting list for that too, because he loves to cook and it would give him another skill. Something that he can do and get a job when he gets out.

And then he's on a waiting list also for a leather class where he would learn how to make belts and how to make purses, which is, again, another skill that he can use.

Also I think it is significant that what he said, his family did not give up on him. He has support of his family still. His mother, his grandmother, his children. He keeps in contact with phone calls, with emails. His mother visited him in the prison. And this is going to be important for him to have these people be there for him when he gets out and kind of see him through all these years that he's going to be away.

And just one -- my personal observation. I've had many contacts with Mr. Quarles. He called me quite often. He was always very respectful of me and expressed his appreciation and was always very grateful for all -- all the work that I [27] have done for him. Thank you.

THE COURT: All right. Thank you.

Mr. Quarles, you certainly have the privilege of speaking, and I would be happy to listen to you if you would like to address anything to me right now.

THE DEFENDANT: Your Honor, I just want to say that I'm clearly not the man that stood in front of you a year ago. I don't want to use this analogy, but I will. It's like to me a person has like two wolves inside of them, and you have one that's probably -- they are fighting each other. One is prosperity, trust, dependable. And then you have another one that's probably envious, negativity, violence. And to me the person that wins that battle is the one you feed. And I've come to be a man of action. And I'm living life through the eyes of a righteous man now.

To me being locked up at U.S.P. McCreary is almost like a gift and a curse. Because I've kind of found myself, you know. I'm in a very violent, hostile environment, and for me to maneuver around all that, be a likable guy, be in the church community and get around that, I mean, to me it's like a big step up for me.

So I just want to say that I see the change in myself. You know, I know a lot of people might come up and say, well, I'm doing it for my kids or my mother, I'm doing it for them. I'm doing it for me first. That's just

what I want [28] to say. I am a different person. Thank you.

THE COURT: Thank you.

MS. TOSIC: If I may add one more thing that I forgot to say.

THE COURT: Sure.

MS. TOSIC: Mr. Quarles also completed this one thinking class.

THE DEFENDANT: Well, that's the class I'm in. I'm in an anger, thinking and anger class.

MS. TOSIC: Anger management. Because previously the Court indicated when there was some hostile situation that Mr. Quarles tends to kind of lose his common sense and commit a crime. So he's addressing that through that class. Thank you.

THE DEFENDANT: Your Honor, I just want to state, that's one of the reasons why I waived my appearance, because it's a year-long class and I'm in the unit for it, so I didn't want to lose that bed space. So that is one of the reasons why I waived my appearance. But --

THE COURT: Did you end up losing it?

THE DEFENDANT: No, no, they are going to let me back into the program.

THE COURT: Good. I'm glad. Okay. Thanks. I appreciate that.

Anything else at this point, Ms. Tosic?

MS. TOSIC: No, thank you, Your Honor.

[29] *THE COURT*: Mr. Lewis?

MR. LEWIS: Your Honor, I'm glad to hear that Mr. Quarles is doing well, and I certainly hope that the change that he feels is real. Unfortunately, the best predictor of future conduct is past performance, and I think the Court really did get it right the first time when we were here before when he looked at the defendant's conduct in this case and the long history of violence, particularly gun violence, violence involving women. And the Court fashioned a sentence, and I would ask the Court to reimpose the same sentence or in that same vicinity.

I'll just be brief because I know the Court is familiar with the facts of the case. But within four months of being released for shooting at someone, the defendant acquired a gun and threatened two women. That would be bad enough, but when the Court looks at the litany of similar conduct over the years, I think the Court rightly observed that there's a dangerous mix for the defendant of firearms, a former girlfriend, and when he gets intoxicated, be it drugs or alcohol.

This type of conduct with this type of history is what the ACCA was designed for, and we would ask the Court to impose an appropriate sentence in light of that history and conduct. Thank you.

THE COURT: All right. Thank you.

[30] Well, I want to thank the parties for addressing all of these issues again. You come back to a case after whatever time has passed and everybody is in a different place. And the question is still what's appropriate under Section 3553 considering the underlying offense conduct, considering all of the individual circumstances that are a part of us, both pro and con for the defendant, both pro and con for the government.

Where do we balance everything out? And I have no doubt that as I hear Mr. Quarles today that he is taking advantage of the things that have been offered to him and that that's all to the good. It's all positive.

I also feel like it's very difficult in sentencing in this case to let that make up for what is a long list of trouble. Not just trouble but serious trouble. The kind of thing I summarized in the first go around and will just incorporate here. The kind of thing that the government had in its original sentencing memorandum on page 2 summarizing the litany of issues from 2000 to 2008. Which are all the, you know, the volatile mix of the drugs, the anger, the violence, and usually an ex-girlfriend, sometimes a present girlfriend. And alcohol, if I didn't say alcohol. That might even be more important than other illegal drugs for this particular defendant. And that's still there. And although I'm so glad that we see improvement for Mr. Quarles, that we see him taking a more positive engagement -- and I can hear in his words today [31] a desire to do that, and I'm glad he came to talk today, even though he had to do some extra work to preserve his placement in the program that he's going back to -- there's still a concern that I think the history justifies here that when he's outside of the structured setting of the Bureau of Prisons, all of those triggers and factors and dangers that led to all of the other things we see in the presentence report reignite.

I, frankly, imagine that when Mr. Quarles wasn't high on drugs or drunk on alcohol or enraged by an ex-girlfriend that he was probably the same personable, intelligent, articulate kind of person we hear today and that he was able to address at his first sentencing.

But I think the Section 3553 factors still balance out where the Court was at the original sentence. And although I recognize that the defense can and should appeal the ruling on the ACCA, and we'll see what the circuit says about that, if the circuit affirms that, if in fact Mr. Quarles does qualify as I've held for the Armed Career Criminal Act enhancement even apart from the residual clause, then I think his record and what we see in the file makes him the kind of person that the ACCA was directed to. Not an accidental application but somebody that through a series of actual encounters visited violence on people that were close to him with guns while on supervision to other courts, in this case the State of Michigan, and that's exactly the kind of danger that I think [32] we're meant to address when the ACCA applies. So I intend to impose the same sentence I did the first time, and if the circuit thinks the ACCA ruling is wrong, we'll come back, we'll do this another time. And, of course, then the whole array is different because then we'd have a count of conviction that has a 10-year cap. But once this ruling is affirmed, if it is, I would still balance these factors in the same way that I did the first time, and so I'm going to reimpose that, at least that's my intent to do it, with the 204 months of custody for the reasons indicated today and incorporate it from the original sentencing. And I also intend the same recommendations I made before, which is ongoing substance abuse assessment and treatment and mental health counseling and treatment. And the terms of supervised release, the Court intends again a five-year term of supervised release on the normal mandatory terms which include cooperation in the collection of DNA, the ban on firearms, and no -- and drug testing. And that standard conditions including no alcohol. And special

conditions that Mr. Quarles participate in a program of testing and treatment for substance abuse as directed by the probation officer until released, paying a portion of the costs as he's determined able. Next, that he participate in a program of mental health treatment which may include MRT or cognitive restructuring programming as directed by the probation officer until released, paying a portion of [33] the costs as he's determined able. (3) that he provide the probation officer with access to requested financial information. And (4) that he maintain legitimate full-time employment approved by the probation officer.

In terms of the fine, the Court intends the fine of $2,500, which is below guidelines, but appropriately so in my view based on ability to pay. The normal custodial terms continue for that, which would be 25 minimum quarterly dollar payments for the IFRP program or minimum monthly installments of $20 otherwise, with a balance due on supervision in minimum monthly installments of $25. The forfeiture of the 45-caliber semiautomatic Charles Daly I also intend once again. And the special assessment is $100.

So that's the overall intended sentence of the Court. For the government, legal objections?

MR. LEWIS: No, thank you, Your Honor.

THE COURT: Okay. And, Ms. Tosic, other than the ones you've preserved, other legal objections?

MS. TOSIC: We do preserve our objections to both of the arguments raised here, that Mr. Quarles should not be -- does not qualify for the armed career criminal enhancement and also that his prior conviction for two of the misdemeanor offenses should not be scored.

THE COURT: Sure. Okay. And I understand those and those are preserved, but I'm going to go ahead, then, and [34] impose the sentence as I announced my intent to do it, which is a custodial term of 204 months, supervised release of five years, and a fine of $2,500, the forfeiture of the 45-caliber semiautomatic, and the special assessment of $100.

And I'll impose it again, Mr. Quarles. I'll make it the judgment of the Court once again. You know the road to Cincinnati. And talk to Ms. Tosic about that. Because as I indicated, I think that's an issue the Court of Appeals needs to settle. But make sure you let her know you want to appeal, and she'll do that for you within 14 days.

Do you have any other questions?

THE DEFENDANT: As far as the $100 assessment fee, are they going to stack it on me?

THE COURT: It's not a new one. No, it would be a vacated one. So I'm imposing it again. If you've already paid that, you'll get credit for that. But that's my intent. Okay?

THE DEFENDANT: Yep.

THE COURT: And I hope things continue to go well for you. I know you hoped for a different outcome today, but regardless, I'm glad you're continuing to make use of the programs, and I hope you continue to do that.

THE DEFENDANT: Thank you.

THE COURT: Anything else, Ms. Tosic?

MS. TOSIC: No, Your Honor.

THE COURT: Mr. Lewis?

[35] *MR. LEWIS*: No, thank you.

THE COURT: All right. Thank you.

THE CLERK: Court is in recess.

(Proceeding concluded at 2:57 p.m.)

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

Date: June 20, 2016

/s/ Glenda Trexler
Glenda Trexler, CSR-1436, RPR, CRR

APPENDIX J

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,	AMENDED JUDGMENT IN A CRIMINAL CASE (Note Changes with Asterisks **)
v.	Case Number: 1:14-CR-29-01
	USM Number: 18038-040
JAMAR ALONZO QUARLES	Jasna Tosic
	Defendant's Attorney

Date of Imposition of Original Judgment: February 13, 2015
(Or Date of Last Amendment Judgment)

Reason for Amendment: Correction of Sentence on Remand (18 U.S.C. § 3742(f)(1) and (2))

THE DEFENDANT:

☒ pleaded guilty to the one-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 offense(s):

Title & Section	**Offense Ended**	**Count No.**
18 U.S.C. § 922(g)(1), 924(a)(2) and 924(e)(1)	8/24/13	1

Nature of Offense

Felon in Possession of a Firearm

The defendant is sentenced as provided in the following pages 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 material changes in economic circumstances.

Dated: May 17, 2016

Date of Imposition of Sentence: May 16, 2016

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **two hundred and four (204) months**.

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

The defendant be evaluated for substance abuse and provided treatment, if necessary.

The defendant be evaluated for mental health counseling and provided treatment, if necessary.

☒ 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 _____ 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 2:00 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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five (5) years**.

The defendant must report 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.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse.

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

☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) As directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

☐ The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;

2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;

3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4. The defendant shall support his or her dependents and meet other family responsibilities;

5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;

7. The defendant shall refrain from all use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8. The defendant shall not frequent places where

controlled substances are illegally sold, used, distributed, or administered;

9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of testing and treatment for substance abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer, and shall pay at least a portion of the cost according to his ability, as determined by the probation officer.

2. The defendant shall participate in a program of mental health treatment, which may include cognitive restructuring programming (MRT), as directed by the probation officer, until such time as the defendant is released from the program by the probation officer, and shall pay at least a portion of the cost according to his ability, as determined by the probation officer.

3. The defendant shall provide the probation officer with access to any requested financial information.

4. The defendant shall maintain full-time employment as approved by the probation officer.

CRIMINAL MONETARY PENALTIES[1]

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

Assessment	Fine	Restitution
$100.00	**$2,500.00**	**-0-**

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

☐ The defendant shall 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.

Name of Payee	Total Loss	Restitution Ordered	Priority or Percentage

☐ Restitution amount ordered pursuant to plea agreement: $

☐ The defendant must pay interest on restitution and/or a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after

[1] 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.

the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options in the Schedule of Payments 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.

☐ the interest requirement is waived for the restitution.

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

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

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 payment of **$100.00** due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F, below; or

B ☐ Payment to begin immediately (may be combined with C, D, or F, below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment, or

D ☐ Payment in equal _____(e.g., weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:

The fine is to be paid in minimum quarterly

installments of $25.00 based on IFRP participation, or minimum monthly installments of $20.00 based on UNICOR earnings, during the period of incarceration, to commence 60 days after the date of this judgment. Any balance due upon commencement of supervision shall be paid, during the term of supervision, in minimum monthly installments of $25.00 to commence 60 days after release from imprisonment. The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate:

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States: Charles Daly, .45 caliber semiautomatic pistol

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

APPENDIX K

United States District Court for the Western District of Michigan

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	)	**CASE NO.** 1:14-CR-29-01
JAMAR ALONZO QUARLES,	)	
Defendant.	)	

Notice is hereby given that Jamar Alonzo Quarles, hereby appeal to the United States Court of Appeals for the Sixth Circuit from the Amended Judgment entered in this action on the 17th day of May, 2016.

(s) /s/ Jasna Tosic

Address: Federal Public Defenders
50 Louis NW, Suite 300
Grand Rapids, Michigan 49503

Attorney for Jamar Alonzo Quarles

cc: Opposing Counsel ☑
Court of Appeals ☑

APPENDIX L

(Order List: 586 U.S.)

FRIDAY, JANUARY 11, 2019

CERTIORARI GRANTED

17-778 QUARLES, JAMAR A. V. UNITED STATES

The petition for a writ of certiorari is granted.

* * *