

In the
United States Court of Appeals
For the Seventh Circuit

No. 23-2489

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALVIN BEASLEY,

Defendant-Appellant.

Appeal from the United States District Court for the
Central District of Illinois
No. 20-cr-20009 — **Colin S. Bruce**, *Judge*.

ARGUED NOVEMBER 3, 2025 — DECIDED DECEMBER 19, 2025

Before ST. EVE, JACKSON-AKIWUMI, and MALDONADO,
Circuit Judges.

ST. EVE, *Circuit Judge*. A jury convicted Alvin Beasley under 18 U.S.C. § 922(g)(1) of possessing a firearm as a convicted felon after he shot a gun at his ex-girlfriend's house while on parole for a felony conviction. The district court, finding Beasley had three prior convictions for violent crimes, sentenced Beasley under the Armed Career Criminal Act

(“ACCA”), 18 U.S.C. § 924(e), which imposes a fifteen-year mandatory minimum.

Beasley argues his sentence violates his Fifth and Sixth Amendment rights because a jury rather than a judge should have made the fact-intensive determination of whether his prior convictions occurred on “different occasions” under ACCA. While Beasley’s appeal was pending, the Supreme Court held in *Erlinger v. United States*, 602 U.S. 821, 835 (2024), that the Fifth and Sixth Amendments require a jury to decide whether previous offenses occurred on occasions different from one another under ACCA. We agree with Beasley that the sentencing court erred under *Erlinger* by declining to send the different-occasions question to the jury but nevertheless affirm because the error was harmless.

I. Background

On May 23, 2019, police responded to a “shots fired” call at the home of Alvin Beasley’s ex-girlfriend in Danville, Illinois. At the scene, police observed two bullet holes on the outside of the ex-girlfriend’s home and learned that a witness saw a red Chevrolet Impala driving away immediately after the gunshots sounded. As the police tracked down and tailed the Impala, they saw someone toss a firearm out of its passenger side. The officers conducted a traffic stop of the vehicle and found Beasley sitting in the driver’s seat. Beasley, a convicted felon, could not lawfully possess a firearm.

A grand jury indicted Beasley, charging him with being a felon in possession of a firearm in violation of § 922(g)(1). The case went to trial in September 2021, and the jury returned a verdict of guilty on the sole count of the indictment.

In preparation for Beasley's sentencing, probation prepared a presentence investigation report ("PSR") highlighting three of Beasley's prior felony convictions: an armed robbery committed on March 21, 2004; an aggravated battery on June 11, 2005; and a second-degree murder on December 23, 2011. Based on the PSR, probation determined Beasley qualified as an armed career criminal and faced a mandatory minimum term of fifteen years and up to life in prison under ACCA, § 924(e). The Sentencing Guidelines recommended a sentence between 262 and 327 months in prison.

In a presentencing memorandum, Beasley acknowledged the prior convictions and conceded two of the offenses occurred over a year apart, on March 21, 2004, and June 11, 2005. During a colloquy at his sentencing hearing, Beasley confirmed the 2004 and 2005 offense dates and further conceded that the third offense occurred on December 23, 2011. Still, Beasley objected to probation's recommended mandatory minimum sentence under ACCA. He argued that the Supreme Court's decision in *Wooden v. United States*, 595 U.S. 360 (2022), requires extensive factfinding regarding whether prior convictions occurred on occasions different from one another and, pursuant to *Alleyne v. United States*, 570 U.S. 99 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), it falls within the province of the jury, not the court, to determine whether his prior convictions trigger ACCA's longer prison terms. The district court overruled Beasley's objection at sentencing based on our court's then-controlling precedent in *United States v. Hatley*, 61 F.4th 536 (7th Cir. 2023), explaining "separate occasions of prior offenses do not need to be alleged in the indictment and found beyond a reasonable doubt by the jury." The judge determined the three predicate offenses

occurred on different occasions and sentenced Beasley to 300 months' imprisonment and five years' supervised release.

Beasley appealed his sentence. While his appeal was pending, the Supreme Court handed down its decision in *Erlinger*, which held that the Fifth and Sixth Amendments require ACCA's different-occasions element to be submitted to the jury. 602 U.S. at 835.

II. Discussion

ACCA imposes a mandatory minimum sentence of fifteen years' imprisonment for a defendant convicted under § 922(g)(1) who also has three previous convictions for violent felonies "committed on occasions different from one another." § 924(e)(1). This sentence enhancement also increases the maximum statutory sentence from ten years under § 922(g) to life in prison under the enhancement.

Under *Apprendi* and *Alleyne*, the government must prove to a jury beyond a reasonable doubt any sentencing factor—other than the fact of a prior conviction—that increases a defendant's maximum or minimum penalty. *Apprendi*, 530 U.S. at 490; *Alleyne*, 570 U.S. at 111–13. ACCA's different-occasions factor increases both the minimum and maximum penalties facing defendants sentenced under that statute. And because the different-occasions determination is an "intensely factual" question requiring "examination of a 'range' of facts," the inquiry goes beyond finding the fact of a prior conviction. *Erlinger*, 602 U.S. at 828 (citing *Wooden*, 595 U.S. at 369). Thus, building on *Wooden* in the context of *Apprendi* and *Alleyne*, the Court in *Erlinger* held the Fifth and Sixth Amendments require a unanimous jury—not a court—to resolve the different-occasions question beyond a reasonable doubt. *Id.*

The government concedes that the district court erred under *Erlinger*. We agree. The sentencing court, not the jury, found that Beasley committed the three prior violent crimes on different occasions. The different-occasions question was neither charged in the indictment nor submitted to the jury. And the different-occasions finding increased both the minimum and maximum penalties beyond what the jury's verdict authorized. The firmly entrenched principles from *Apprendi* and *Alleyne*, plus the newly articulated standard from *Erlinger*, expressly prohibit this. No one disputes an error occurred, nor could they.

At issue, then, is (1) whether we review the district court's error as a harmless error or a structural error and (2) if harmless error review applies, whether the error was harmless in this case.

A. Standard of Review for *Erlinger* Errors

A preserved trial error is subject to harmless error analysis unless it is a structural error necessitating automatic reversal. *Washington v. Recuenco*, 548 U.S. 212, 218–19 (2006). We reject Beasley's suggestion that his *Erlinger* error is structural. Instead, we review the error for harmless error, as every federal circuit to address the issue has done.

The Supreme Court has “repeatedly recognized that the commission of a constitutional error at trial alone does not entitle a defendant to automatic reversal.” *Recuenco*, 548 U.S. at 218; *Neder v. United States*, 527 U.S. 1, 8 (1999); see also *Arizona v. Fulminante*, 499 U.S. 279, 306 (1991); *Chapman v. California*, 386 U.S. 18, 22 (1967). Rather, “most constitutional errors can be harmless.” *Neder*, 527 U.S. at 8 (quoting *Fulminante*, 499 U.S. at 306). “[I]f the defendant had counsel and was tried by

an impartial adjudicator, there is a strong presumption that any other [constitutional] errors that may have occurred are subject to harmless-error analysis." *Id.* (quoting *Rose v. Clark*, 478 U.S. 570, 579 (1986)).

Structural errors are "not subject to harmless-error analysis because [they] 'vitiate[] all the jury's findings.'" *Neder*, 527 U.S. at 11 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 281 (1993)). Only in a "very limited class of cases" has the Court found structural errors requiring automatic reversal. *Johnson v. United States*, 520 U.S. 461, 468 (1997) (citing *Gideon v. Wainwright*, 372 U.S. 335 (1963) (complete denial of counsel); *Tumey v. Ohio*, 273 U.S. 510 (1927) (biased trial judge); *Vasquez v. Hillery*, 474 U.S. 254 (1986) (racial discrimination in selection of grand jury); *McKaskle v. Wiggins*, 465 U.S. 168 (1984) (denial of self-representation at trial); *Waller v. Georgia*, 467 U.S. 39 (1984) (denial of public trial); *Sullivan*, 508 U.S. 275 (defective reasonable-doubt instruction in death penalty case)).

In contrast, "[e]rrors that 'infringe upon the jury's factfinding role' are 'subject to harmless-error analysis.'" *United States v. Johnson*, 114 F.4th 913, 917 (7th Cir. 2024) (quoting *Neder*, 527 U.S. at 18). Specifically, a district court's "[f]ailure to submit a sentencing factor to the jury . . . is not structural error" and a court should review it for harmless error. *Recuenco*, 548 U.S. at 222. Unlike the structural errors identified above, the failure to submit a sentencing factor to the jury does not "vitiate" the jury's entire verdict; it impacts only the jury's ability to make a finding on one discrete issue, leaving the jury's verdict on the defendant's substantive offenses entirely intact. *Neder*, 527 U.S. at 11. Our court has consistently followed *Recuenco's* precedent, applying harmless error review where the district court failed to submit a sentencing factor to the

jury. See, e.g., *United States v. Williams*, 493 F.3d 763, 765 (7th Cir. 2007); *United States v. Hollingsworth*, 495 F.3d 795, 806 (7th Cir. 2007).

Beasley's case is nearly indistinguishable from *Recuenco*, and the same result follows. Here, as there, the district court imposed a sentence enhancement based on factual findings not submitted to the jury. Under *Recuenco*'s clear holding, the district court's failure to submit the ACCA different-occasions sentencing factor to the jury does not vitiate the jury's entire holding and accordingly is subject to harmless error review.

Beasley fails to engage with the substantial precedent holding harmless-error review applies to *Apprendi*-like errors, seeming to suggest *Erlinger* errors are distinguishable. But that the error here arose under *Erlinger* rather than *Apprendi* or *Alleyne* makes no difference to our analysis. *Erlinger*, by its own description, is a straightforward application of the rule from *Apprendi* and *Alleyne* that a jury must find all facts that increase a defendant's statutory penalties. 602 U.S. at 835 (“[*Erlinger*] is as nearly on all fours with *Apprendi* and *Alleyne* as any [case] we might imagine.”). As such, we review *Erlinger* errors, like other sentencing-factor errors, for harmless error. See *Johnson*, 114 F.4th at 917 (applying harmless error analysis to *Erlinger* error); *United States v. Santana*, 141 F.4th 847 (7th Cir. 2025) (reviewing unpreserved *Erlinger* error for harmlessness within plain error review).¹

¹ Each of our sister circuits to consider an *Erlinger* error has uniformly reviewed for harmlessness, too. See *United States v. Brown*, 136 F.4th 87, 95 (4th Cir. 2025); *United States v. Butler*, 122 F.4th 584, 589 (5th Cir. 2024); *United States v. Campbell*, 122 F.4th 624, 631 (6th Cir. 2024); *United States v.*

Nor does our analysis change because the court failed to charge the ACCA-related sentencing factor in the indictment. It is “well established in this circuit that *Apprendi* errors in both the indictment and the charge to the jury are subject to harmless error analysis.” *United States v. Adkins*, 274 F.3d 444, 454 (7th Cir. 2001); *see also United States v. Nance*, 236 F.3d 820, 825 (7th Cir. 2000) (holding *Apprendi* error not structural because an incomplete indictment is analogous to a jury instruction error, which the Court in *Neder* held we review for harmless error).

Beasley urges that his error rises to the level of a constructive amendment to the indictment, which “is per se reversible error.” *United States v. Muresanu*, 951 F.3d 833, 839 (7th Cir. 2020) (quoting *United States v. Galiffa*, 734 F.2d 306, 311 (7th Cir. 1984)). Beasley relies on two cases, *Stirone* and *Muresanu*, in which the trial court constructively altered the indictment by convicting the defendant of an offense not charged in the indictment, which was structural error because it violated the substantial right to be tried only on charges in the grand jury’s indictment. *Stirone v. United States*, 361 U.S. 212, 217 (1960); *Muresanu*, 951 F.3d at 839. Both cases, however, involved the subsequent addition of an *entire offense* not charged in the indictment—in *Stirone* the erroneous jury instructions allowed conviction for a separate Hobbs Act violation not charged in the indictment, 361 U.S. at 214, and in *Muresanu*, the indictment charged the defendant with an attempted crime but the jury convicted him for the completed crime because the judge

Xavior-Smith, 136 F.4th 1136, 1137 (8th Cir. 2025); *United States v. Rivers*, 134 F.4th 1292, 1304–05 (11th Cir. 2025); *United States v. Saunders*, No. 23-6735-cr, 2024 WL 4533359, at *2 (2d Cir. Oct. 21, 2024).

omitted the word “attempt” from the jury instructions, 951 F.3d at 834–835. Here, by contrast, the indictment “fail[ed] to allege . . . *but one element* of the ACCA sentencing enhancement to be decided by the jury.” *Brown*, 136 F.4th at 96. Cases involving the addition of new offenses to the indictment, therefore, are not instructive here.

Accordingly, our court has never extended the principles from *Stirone* to cases concerning the failure to charge a sentencing factor, instead consistently reviewing for harmlessness. *See, e.g., Santana*, 141 F.4th at 852 (applying harmless-error review to *Erlinger* error where different-occasions question was neither charged in the indictment nor submitted to the jury); *United States v. Gamez*, 77 F.4th 594, 598 (7th Cir. 2023) (same); *United States v. Mansoori*, 480 F.3d 514, 518, 523 (7th Cir. 2007) (applying harmless error review where indictment failed to charge factor that ultimately mandated a life sentence). Other circuits to consider the issue agree. *Brown*, 136 F.4th 87, 95 (noting, in *Erlinger* context, that “failure to charge” error is not structural error and rejecting argument that sentencing under ACCA without charging ACCA violation constituted constructive amendment of the indictment); *United States v. Robinson*, 367 F.3d 278, 286 (5th Cir. 2004) (“[T]he absence of an indictment on the aggravating factors used to justify a death sentence is not structural error and is susceptible to harmless error review.”).

Finally, Beasley argues that harmless error review cannot apply because, absent a jury verdict on the different-occasions question, we have no point of comparison for what a properly instructed jury could have found. He bases this argument on language from *Sullivan* stating that without a “jury verdict of guilty-beyond-a-reasonable-doubt, the question whether the

same verdict of guilty-beyond-a-reasonable-doubt would have been rendered absent the constitutional error is utterly meaningless.” 508 U.S. at 280. But while “this strand of the reasoning in *Sullivan* does provide support for [Beasley’s] position, it cannot be squared with [the Supreme Court’s] harmless-error cases.” *Neder*, 527 U.S. at 11; *see, e.g., Pope v. Illinois*, 481 U.S. 497, 499–501 (1987). The Supreme Court rejected the same argument in *Neder* and *Recuenco*, both cases in which the jury failed to return a verdict of guilty-beyond-a-reasonable-doubt on the issue in question (an element of the offense in *Neder*; a sentencing factor in *Recuenco*). The Supreme Court’s repeated rejection of Beasley’s proposed application of the language from *Sullivan* “compels our rejection of this argument here.” *Recuenco*, 548 U.S. at 222 n.4. Further, we have applied harmless error to *Apprendi* and *Erlinger* errors even when the defendant pleaded guilty and there was no trial or jury verdict at all. *See Johnson*, 114 F.4th at 917 (reviewing *Erlinger* error for harmless error after guilty plea).

Beasley attempts to deflect this precedent by again casting his error as a charging error, noting *Recuenco* did not involve analysis of a charging error. But the issue highlighted—that there was no guilty verdict to use as a comparison for harmless-error review—exists whether the sentencing factor was omitted from the indictment, the jury instructions, or both. We are not convinced Beasley has identified a meaningful distinction, so we follow our precedent.

B. Harmless Error Analysis

A district court’s “failure to submit a sentencing factor to a jury is harmless only if it is ‘clear beyond a reasonable doubt’ that a properly instructed jury would have found the same facts as the court.” *Johnson*, 114 F.4th at 917 (quoting

Hollingsworth, 495 F.3d at 806); *see also Chapman*, 386 U.S. at 24. Here, “[a] properly instructed jury would have considered ‘a range of circumstances,’ including timing, proximity of location, and the character and relationship of the offenses.” *Id.* (citing *Wooden*, 595 U.S. at 369).

Beasley argues as a threshold matter that the government cannot meet its burden of showing the error in this case was harmless because we may not rely on *Shepard* documents, without which the record contains no evidence regarding the three predicate convictions’ timing, location, or relatedness.² Here, we need not turn to *Shepard* documents because Beasley conceded in his sentencing memorandum that two of the offenses occurred over a year apart, and during the sentencing hearing confirmed that the three past convictions at issue were “an armed robbery on March 21st, 2004; an aggravated battery on June 11th of [2005]; and [] a homicide on December 23rd of 2011.” These concessions alone are sufficient to support our harmless analysis. *See United States v. Robinson*, 964 F.3d 632, 638 (7th Cir. 2020) (finding no plain error where court based sentence on defendant’s admission to drug quantity without submitting that fact to the jury because “[a]n admission is even better than a jury’s finding” (quoting *United States v. Warneke*, 310 F.3d 542, 550 (7th Cir. 2002))).

² Beasley raised an even broader challenge at oral argument, arguing that we may not rely on anything outside the trial record that was before the jury when we conduct harmless error review. Beasley did not make this argument prior to oral argument, however, and arguments raised for the first time at oral argument are waived. *Marvin v. Holcomb*, 72 F.4th 828, 833 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 557 (2024) (citing *Harden v. Marion Cnty. Sheriff’s Dep’t*, 799 F.3d 857, 863 (7th Cir. 2015)).

With Beasley's concessions in mind, we consider the *Wooden* factors: "timing, proximity of location, and the character and relationship of the offenses." *Id.* (citing *Wooden*, 595 U.S. at 369). Often, "a single factor—especially of time or place—can decisively differentiate occasions." *Wooden*, 595 U.S. at 370. "When the crimes are separated by a day or more, for example, they will 'nearly always' be treated as different occasions." *Santana*, 141 F.4th at 853 (quoting *Wooden*, 595 U.S. at 370). And we have said following *Wooden* that "no colorable argument" could support treating two robberies as having been committed on the same occasion when they were separated by thirty-six hours. *United States v. Richardson*, 60 F.4th 397, 399 (7th Cir. 2023).

In *Johnson*, we held the *Erlinger* error at issue was not harmless because the offenses occurred "within minutes" and less than a mile of each other. 114 F.4th at 917. Similarly, in *Santana*, we held the jury could have reasonable doubt the crimes were committed on different occasions where the defendant committed them four miles and ten minutes apart. In contrast, courts have found *Erlinger* errors harmless where substantial gaps in time and distance separated the offenses and the nature of the crimes differed. *See, e.g., Brown*, 136 F.4th at 98–99 (robberies separated by two months); *Butler*, 122 F.4th at 590 (four drug crimes committed months to years apart involving different buyers and different drugs); *Campbell*, 122 F.4th at 632 (three drug crimes committed months and hundreds of miles apart, involving different drugs).

This is the kind of case where the "single factor . . . of time . . . decisively differentiate[s] occasions." *Wooden*, 595 U.S. at 370. The record shows Beasley committed each offense over a year apart (in 2004, 2005, and 2011), far beyond the thirty-six-

hour limit we described in *Richardson*. 60 F.4th at 399. We can think of “no colorable argument” for treating offenses separated by over a year as having been committed on the same occasion. *Id.* Further, the offenses differed in nature: an armed robbery, an aggravated battery, and a homicide. It is clear beyond a reasonable doubt that a properly instructed jury would have found that Beasley committed the three offenses on different occasions.

One final note. Beasley argues the district court’s error cannot be harmless because remanding to the district court to allow the government to properly charge and prove the ACCA enhancement would violate double jeopardy principles. Regardless of whether Beasley is correct that double jeopardy would bar subsequent proceedings on the different-occasions question, his argument does not show the district court’s error was harmful. It has nothing to do with our inquiry, which is whether it is clear a properly instructed jury would have found beyond a reasonable doubt the offenses occurred on separate occasions. In any event, we are not remanding in this case because the district court’s *Erlinger* error was harmless, so our decision does not implicate Beasley’s double jeopardy concerns.

* * *

We review for harmless error a district court’s failure to charge ACCA’s different-occasions factor in the indictment or submit it to the jury. The error here was harmless.

The judgment of the district court is

AFFIRMED.

UNITED STATES DISTRICT COURT

Central District of Illinois

UNITED STATES OF AMERICA

v.

ALVIN BEASLEY

JUDGMENT IN A CRIMINAL CASE

Case Number: 20-20009-001

USM Number: 23108-026

Joshua B. Adams

Defendant's Attorney

FILED

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) 1
after a plea of not guilty.

JUL 26 2023

CLERK OF THE COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA, ILLINOIS

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. 922(g)(1)	Possession of a Firearm by a Felon	5/23/2019	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

7/21/2023

Date of Imposition of Judgment

s/COLIN S. BRUCE

Signature of Judge

COLIN S. BRUCE U.S. DISTRICT JUDGE

Name and Title of Judge

Date

7-26-23

DEFENDANT: ALVIN BEASLEY
CASE NUMBER: 20-20009-001

IMPRISONMENT

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

300 MONTHS.

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

1. It is recommended that the defendant serve his sentence in a facility as close to his family in Danville, Illinois or Joplin, Missouri, as possible, as determined by the Bureau of Prisons. 2. It is further recommended that he serve his sentence in a facility that will allow him to participate in the Residential Drug Abuse Program, mental health counseling, and maximize his exposure to educational and vocational opportunities.

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

The defendant shall surrender to the United States Marshal for this district:

- at _____ a.m. p.m. on _____ .
- as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before 2 p.m. on _____ .
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ALVIN BEASLEY
CASE NUMBER: 20-20009-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
Five 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.

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

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 following conditions:

1. The defendant shall not knowingly leave the federal judicial district without the permission of the court or the probation officer.
2. You shall report to the probation office in the district to which you are released within 72 hours of release from custody. You shall report to the probation officer in a reasonable manner and frequency as directed by the court or probation officer.
3. The defendant shall notify the probation officer at least ten days prior, or as soon as knowledge is gained, to any change of residence or employment which would include both the change from one position to another as well as a change of workplace.

DEFENDANT: ALVIN BEASLEY
CASE NUMBER: 20-20009-001

ADDITIONAL SUPERVISED RELEASE TERMS

4. The defendant shall permit a probation officer to visit him at home or any other reasonable location between the hours of 6 a.m. and 11 p.m., unless investigating a violation or in case of emergency. The defendant shall permit confiscation of any contraband observed in plain view of the probation officer.
5. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
6. The defendant shall not knowingly meet, communicate, or otherwise interact with any person whom he knows to be a convicted felon or to be engaged in, or planning to engage in, criminal activity, unless granted permission to do so by the Court.
7. The defendant shall not knowingly be present at places where controlled substances are illegally sold, used, distributed, or administered.
8. You shall not purchase, possess, use, distribute, or administer any controlled substance or psychoactive substances that impair physical or mental functioning except as prescribed by a physician. You shall participate in a program for substance abuse treatment as approved by the U.S. Probation Office including not more than six tests per month to determine whether you have used controlled substances. You shall abide by the rules of the treatment provider. You shall pay the costs of the treatment to the extent you are financially able to pay. The U.S. Probation Office shall determine your ability to pay and any schedule for payment, subject to the court's review upon request.
9. The defendant shall attempt to secure regular and lawful employment, unless excused by the probation office for schooling, training, or other acceptable reasons. The defendant shall keep the probation officer advised of any changes in his employment status.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: ALVIN BEASLEY
CASE NUMBER: 20-20009-001

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:

Unless the court has expressly ordered otherwise, 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.

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), Total Amount, 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:

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

1 Now, let's get to the other two objections
2 that you raised, Mr. Adams, in the sentencing
3 memorandums, et cetera.

4 So as I, as I

5 All right. So when I read your objection and
6 then I read the government's resp-- your objection in
7 the sentencing memorandum that you filed on
8 December 12th and then I read the government's
9 response, I saw that you had -- I thought very
10 wisely -- cited *Ramirez v. United States*, talking about
11 how it's a good idea if you, if you, if you can -- I
12 think the language used is *sufficiently foreshadow*, is
13 the language you talked about, --

14 MR. ADAMS: Yeah.

15 THE COURT: -- a possible change in the law.

16 So on the one hand, we've got the *Hatley* case,
17 61 F.4th 536 -- that's a Seventh Circuit case from this
18 year -- that sort of forecloses your argument right now
19 in the Seventh Circuit.

20 I take it by that footnote you're not arguing
21 with that; but if they change the law, you want to
22 preserve this objection for appeal.

23 Is that accurate?

24 MR. ADAMS: That's accurate, Judge. Yes.

25 THE COURT: Okay. All right. So I'm going to

1 overrule the objection based on *Hatley* and find that
2 the, the arguments being raised about -- well, first
3 off, the fact that the armed robbery conviction in
4 Illinois can be a predicate offense for the, for the
5 Armed Career Criminal Act -- that's *Klikno*,
6 K-l-i-k-n-o, v. *United States*, 928 F.3d 539, a Seventh
7 Circuit case from 2019 -- that disposes of that part of
8 the, portion of the argument.

9 The other part, based on the Supreme Court's
10 decision in *Wooden*, that harkens me back to two earlier
11 situations involving the Supreme Court. We had the
12 *Booker* situation where -- I don't know about you,
13 Mr. Adams, but I know Mr. Freres and I were all
14 thinking there is no way the Supreme Court is going to
15 get rid of the sentencing guidelines. And then
16 suddenly they're gone.

17 MR. ADAMS: I was a clerk at the time, so I
18 was --

19 THE COURT: Oh.

20 MR. ADAMS: Yeah.

21 THE COURT: Really?

22 MR. ADAMS: Yes.

23 THE COURT: That threw us all off.

24 MR. ADAMS: Yeah.

25 THE COURT: And that was immediate cha-- I

1 mean, nobody would have predicted that.

2 And then *Almendarez-Torres* came out, the same
3 kind of thing. We're all thinking one direction, and
4 then --

5 MR. ADAMS: Totally opposite.

6 THE COURT: -- it's a totally different thing.

7 And I -- there was a third case that kind of
8 threw all of us off. Help me out here.

9 MR. FRERES: *Alleyne*.

10 THE COURT: Or *Apprendi*.

11 MR. FRERES: Yeah, *Apprendi*.

12 THE COURT: *Apprendi* kind of threw us all off,
13 so

14 I don't -- I mean, I read *Wooden*, and I think
15 they're going one direction. But if they go a
16 different direction, I think you need to preserve that
17 for appeal. So I understand.

18 As far as it stands right now, I'm going to
19 base my decision on the *Hatley* case; and in doing so,
20 I'm going to find that the current state of the law in
21 the Seventh Circuit is that separate occasions of prior
22 offenses do not need to be alleged in the indictment
23 and found beyond a reasonable doubt by the jury as it
24 stands right now.

25 You, you agree that's where it stands -- it is

1 right now, correct?

2 MR. ADAMS: Judge, yes.

3 But I have a second, second part to that.

4 THE COURT: You want to talk about the DOJ --

5 MR. ADAMS: Yes, Your Honor.

6 THE COURT: I don't know what the Northern
7 District of Indiana is doing.

8 MR. FRERES: Well, --

9 THE COURT: Go ahead.

10 MR. FRERES: -- I can short-circuit this.

11 DOJ took that position in *Hatley* actually. So
12 the *Hatley* decision already baked that in the analysis.
13 DOJ said in *Hatley*, basically, that we need to do it
14 this way, and the Seventh Circuit rejected it. So
15 there's -- it's already been kind of decided.

16 THE COURT: Okay.

17 MR. ADAMS: Well, I would object to that as
18 *decided* in the sense that DOJ is certainly not
19 enforcing any ACCA enhancement on 922(g) cases like
20 Mr. Beasley.

21 So my concern is we're going to have separate
22 sentences for similarly situated people, which the
23 sentencing guidelines were designed to prohibit.

24 THE COURT: I, I -- okay. I'm just going to
25 go with what *Hatley* says now. I don't know what the

1 Northern District is -- of Indiana was doing.

2 When I looked around, I couldn't find any
3 other District Courts in the Seventh Circuit who have
4 been presented with a similar DOJ memo from a different
5 U.S. Attorney's Office. I certainly haven't seen one
6 from this district.

7 MR. FRERES: Well, Judge, just to be clear,
8 that is DOJ's official position. But the position has
9 been foreclosed by the Seventh Circuit, and Your Honor
10 is bound by that foreclosure.

11 So whatever DOJ's position is at this point --
12 especially for you as a district judge -- in the wake
13 of the *Hatley* decision, it just doesn't matter.

14 THE COURT: Fair point. Okay.

15 All right, so -- but those issues, as far as
16 I'm concerned, are preserved for appeal.

17 Is that sufficient for you, Mr. -- do you want
18 us to do anything else, or is that good enough?

19 MR. ADAMS: That's good enough. Along with
20 the briefs, Judge, I think --

21 THE COURT: Okay.

22 MR. ADAMS: -- I've sufficiently preserved it.

23 THE COURT: And just so the record is clear,
24 I've read all the briefs; and to the extent that
25 there's any issue on appeal, I'll say that all the

1 issues raised in both those briefs are, from -- at
2 least from my point of view, not that the Seventh
3 Circuit cares anything about what I say regarding
4 preserving issues. But I think they're all preserved.

5 Okay. All right, so with that being said,
6 then, I'm going to adopt the revised -- the second
7 revised presentence report, all of its findings and
8 paragraphs contained therein.

9 So preserving, Mr. Adams, all of your
10 objections you raised for appeal, to the extent that I
11 can help you out doing that, the applicable adjusted
12 offense level is 34. The defendant's a criminal
13 history category VI.

14 He faces a guideline range of 262 to
15 327 months;

16 Supervised release of two to five years;

17 He's not eligible for probation;

18 A fine of 35,000 to \$250,000;

19 Restitution's not applicable; and

20 A \$100 special assessment.

21 Is that correct?

22 MR. FRERES: Yes, Your Honor.

23 THE COURT: Do you agree?

24 MR. ADAMS: Yes, Judge.

25 THE COURT: All right. And statutorily --

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Wednesday, 05 February, 2020 02:31:26 PM
Clerk, U.S. District Court, ILCD

FEB 05 2020

CLERK OF THE COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 20-20009
)	
vs.)	Title 18, United States Code,
)	Section 922(g)(1)
ALVIN BEASLEY,)	
)	
Defendant.)	

INDICTMENT

COUNT 1

(Possession of a Firearm by a Felon)

THE GRAND JURY CHARGES:

On or about May 23, 2019, in Vermilion County, in the Central District of Illinois,

ALVIN BEASLEY,

defendant herein, knowing he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess, in and affecting commerce, a firearm, that is, a Glock 9mm handgun bearing serial number TNR082.

In violation of Title 18, United States Code, Section 922(g)(1).

A TRUE BILL.

s/Foreperson

FOREPERSON

s/John C. Milhiser

JOHN C. MILHISER
United States Attorney
BDF