

APPENDIX A**1a****UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4080

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY LEE DANIELS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Terrence W. Boyle, District Judge. (5:23-cr-00051-BO-RN-1)

Submitted: April 23, 2026

Decided: April 27, 2026

Before NIEMEYER, THACKER, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ON BRIEF: G. Alan Dubois, Federal Public Defender, Jaclyn L. Tarlton, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. W. Ellis Boyle, United States Attorney, David A. Bragdon, Assistant United States Attorney, Lucy Partain Brown, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Anthony Lee Daniels pled guilty to possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). The district court determined that Daniels had previously committed at least three violent felonies on different occasions, thus qualifying him for a sentencing enhancement under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e). The court sentenced Daniels to 180 months' imprisonment, the mandatory minimum sentence under the ACCA. Daniels appeals, arguing that it was improper for the district court to decide whether his ACCA predicate offenses were committed on different occasions. In light of our decision in *United States v. Brown*, 136 F.4th 87 (4th Cir. 2025), we conclude that the district court erred, but that the error is harmless. We therefore affirm.

The ACCA enhancement applies if a defendant convicted of a § 922(g) offense “has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another.” 18 U.S.C. § 924(e)(1). In *Erlinger v. United States*, the Supreme Court held that the facts relating to the different occasions question “must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea).” 602 U.S. 821, 834 (2024). Thus, a district court errs by deciding the different occasions issue at sentencing. *Id.* at 838-39.

But so-called “*Erlinger* errors” are subject to harmless error review. *Brown*, 136 F.4th at 92-96. Where, as here, the defendant was convicted after pleading guilty, the government establishes that an *Erlinger* error is harmless by “show[ing] beyond a reasonable doubt that if . . . [the defendant] had been correctly advised at his plea hearing that he was entitled to have a jury resolve [the different occasions] issue unanimously and beyond a reasonable doubt, he would have nonetheless waived that right and admitted as

part of his guilty plea that his prior offenses were committed on different occasions.” *Id.* at 97 (citation modified).

In concluding that the *Erlinger* error in *Brown* was harmless, we noted that “Brown chose to plead guilty to the firearm-possession offense *after* having been twice informed that ACCA’s mandatory minimum of 15 years and its maximum of life would apply if the judge found its requirements satisfied.” *Id.* at 98. And although Brown raised the different occasions issue at sentencing, he did not seek to withdraw his guilty plea. *Id.* Moreover, Brown did not contest the accuracy of his presentence report, even though the facts alleged therein provided the basis for the district court’s different occasions finding. *Id.*

Our analysis in *Brown* leads us to conclude that the error in this case was similarly harmless. First, both in the indictment and at his arraignment, Daniels was informed of the possible ACCA enhancement. The indictment specifically alleged that Daniels committed at least three previous convictions for violent felonies, and that those offenses were committed on occasions different from one another, and at the guilty plea hearing, Daniels confirmed that he understood the different statutory ranges that would apply depending on the sentencing court’s ACCA determination. Second, although he raised the different occasions issue at sentencing, Daniels did not seek to withdraw his plea. Thus, like in *Brown*, the district court’s failure to advise Daniels “that he was entitled to have a jury, rather than a judge, determine whether his previous offenses had been committed on different occasions . . . apparently played no role in his guilty plea.” *Id.* And third, Daniels did not dispute the accuracy of any of the information in his presentence report.

Finally, in *Brown*, we recognized an inverse relationship between the strength of the evidence supporting the ACCA enhancement and the likelihood that a defendant would

forgo the benefits of pleading guilty for the opportunity to have a jury decide the different occasions issue. *Id.* There, the evidence supporting Brown’s ACCA enhancement was exceptionally strong. *Id.* Thus, “given that the possibility of a favorable verdict on the different occasions issue would have been so exceedingly remote as to be practically irrelevant, we [could not] fathom that Brown would have traded the benefit of pleading guilty for such long odds.” *Id.* at 99.

So too here. When interpreting the ACCA, we apply the ordinary meaning of the word “occasion.” *Wooden v. United States*, 595 U.S. 360, 366 (2022). Predicate offenses “have nearly always” been treated “as occurring on separate occasions if a person committed them a day or more apart, or at a significant distance.” *Id.* at 370. In this case, each of Daniels’s five ACCA predicates—four robberies and one attempted robbery—was perpetrated on different days, at different locations, and against different victims. Specifically, Daniels’s predicate offenses spanned several months, occurring on April 19, May 12, June 5, June 28, and July 2, 2007. In our view, the evidence leaves “no doubt that [Daniels] would have pleaded guilty if . . . he had been informed that he was entitled to have a jury find [the different occasions] fact beyond a reasonable doubt.” *Brown*, 136 F.4th at 99. We therefore conclude that the *Erlinger* error in this case is harmless.

Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

5a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
<i>Plaintiff,</i>	)	File No.
	)	5:23-CR-00051-BO-RN-1
v.	)	
	)	
ANTHONY LEE DANIELS,	)	
	)	
<i>Defendant.</i>	)	

WEDNESDAY, JANUARY 24, 2024
SENTENCING HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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JENNIFER C. CARROLL, RMR, CRR, CRC
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

(Wednesday, January 24, 2024, at 10:23 a.m.)

P R O C E E D I N G S

THE COURT: Anthony Daniels.

(The defendant is present.)

THE COURT: You're asking for a continuance again?

MR. SAUNDERS: Yes, Your Honor.

THE COURT: Why?

MR. SAUNDERS: The reason is the *Erlinger* case which I -- we discussed last time we were here, we believe that that's going to be decided, and likely in the summertime around June -- or June of this year. And Mr. Daniels is on release. And so we were asking that the Court continue sentencing until then so we can get more guidance from the Supreme Court.

THE COURT: Yeah. You oppose that?

MR. AUBART: We do, Your Honor. There's binding Fourth Circuit precedent that it's your decision to make for armed career criminal.

THE COURT: Yeah. I'll deny your request for a continuance.

Does your client want to say anything by way of allocution?

THE DEFENDANT: Yes, Your Honor. I'm not --

(Mr. Saunders and the defendant confer.)

10:26:52 1 MR. SAUNDERS: Thank you, Your Honor.

10:26:55 2 THE DEFENDANT: Yes, I'm sorry for carrying
10:26:58 3 a concealed weapon. I done learned from that. Like I
10:27:06 4 say, I'm married. I got a family. I feel like the
10:27:14 5 things that I went through when I was younger and got in
10:27:19 6 trouble and without the knowledge of understanding of
10:27:24 7 what was going on, like, it's coming back to bite me
10:27:33 8 now. I just hope everything pan out for the better, you
10:27:44 9 know, and I can move on from the situation.

10:27:48 10 Like I said, like, I'm not no armed career
10:27:51 11 criminal. Like, I don't sit here and get in constant
10:27:56 12 trouble or nothing like that. It was just, like, one
10:28:01 13 mistake one night is what brought me here. Like, other
10:28:04 14 than that, I done always work, always provided for my
10:28:08 15 family. I'm not a violent person and I don't get in
10:28:13 16 trouble.

10:28:52 17 (Pause.)

10:28:52 18 THE COURT: You read paragraph 71, it says
10:28:54 19 Chapter 4 enhancement. He has three previous
10:29:03 20 convictions that are scored, and that results in his
10:29:10 21 being a level 33.

10:29:12 22 Is this -- he's an ACCA; he's not a
10:29:16 23 guideline.

10:29:17 24 MR. SAUNDERS: That's correct.

10:29:18 25 THE COURT: Yeah. Guideline would be two,

10:29:22 1 right? Not three. If you have two.

10:29:27 2 MR. AUBART: That's right, Your Honor. And
10:29:29 3 a guideline --

10:29:29 4 THE COURT: Chapter 4 guideline would be
10:29:32 5 two.

10:29:32 6 MR. AUBART: Yes, Your Honor.

10:29:34 7 THE COURT: But three qualifies you, if it's
10:29:36 8 a 922. For ACCA.

10:29:38 9 MR. AUBART: That's right. And the
10:29:39 10 guideline career offender wouldn't apply to a 922.

10:29:43 11 THE COURT: Right.

10:30:13 12 And his three are paragraph 23,
10:30:20 13 paragraph 22, and paragraph 20; is that right?
10:30:25 14 Probation.

10:30:25 15 Paragraph 20, counts. 22, that counts.

10:30:36 16 THE PROBATION OFFICER: Yes, Your Honor.

10:30:36 17 THE COURT: And 23, that counts.

10:30:40 18 THE PROBATION OFFICER: We've outlined
10:30:42 19 paragraph 20 and 22. And then for paragraph 22, those
10:30:46 20 robberies --

10:30:47 21 THE COURT: Speak up.

10:30:48 22 THE PROBATION OFFICER: Those robberies
10:30:49 23 occurred on separate occasions, under paragraph 22.

10:30:56 24 THE COURT: Paragraph 23, 22, and 20 are the
10:31:01 25 three predicate ones; right?

10:31:07 1 THE PROBATION OFFICER: We did not outline
10:31:12 2 paragraph 23, Your Honor. We -- the predicates we used
10:31:17 3 are in paragraph 20 and 22.

10:31:21 4 THE COURT: 20 and 22?

10:31:22 5 THE PROBATION OFFICER: Uh-huh.

10:31:23 6 THE COURT: Well, you need three.

10:31:25 7 MR. AUBART: Your Honor, 22 is a plea to
10:31:27 8 four counts of robbery with a dangerous weapon. And so
10:31:33 9 the narrative lays out the four different dates that
10:31:37 10 those occurred on.

10:31:53 11 THE COURT: So you can stack them with one
10:31:56 12 conviction?

10:31:57 13 MR. AUBART: For armed career criminal, as
10:32:00 14 long as the -- they can be sentenced on the same day.
10:32:03 15 They can be resolved on the same date. Plea to four
10:32:06 16 charges on the same date, as long as those four
10:32:08 17 counts --

10:32:08 18 THE COURT: Are separate offenses.

10:32:10 19 MR. AUBART: -- are separate occasions, then
10:32:12 20 they count.

10:32:24 21 THE COURT: So you're telling me that after
10:32:26 22 his conviction and sentence in paragraph 22, if he ever
10:32:33 23 had a gun again and was charged under 922, he would
10:32:38 24 automatically be an ACCA?

10:32:40 25 MR. AUBART: That's correct, Your Honor.

10:32:42 1 THE COURT: Okay.

10:33:10 2 (Pause.)

10:33:10 3 THE COURT: Is this a straight plea?

10:33:12 4 MR. SAUNDERS: Yes, Your Honor.

10:33:13 5 THE COURT: Okay. Well, if you -- if the
10:33:20 6 Supreme Court changes that, what would you do? Have a
10:33:24 7 habeas?

10:33:26 8 MR. SAUNDERS: I suppose so, Your Honor.

10:33:29 9 THE COURT: And what is it trying to change?

10:33:32 10 MR. SAUNDERS: The -- whether or not the --
10:33:34 11 talking about the issue that's before the Supreme Court
10:33:37 12 in *Erlinger*?

10:33:37 13 THE COURT: That's what I'm asking.

10:33:38 14 MR. SAUNDERS: Yes, sir. It's whether or
10:33:40 15 not it requires an indictment and a jury to find those
10:33:43 16 rather than the sentencing court find those predicates.

10:33:47 17 THE COURT: Okay.

10:33:49 18 MR. SAUNDERS: And that was the basis of his
10:33:51 19 objection. Didn't object earlier because as the
10:33:53 20 Government pointed out, there was Fourth Circuit -- a
10:33:56 21 Fourth Circuit case -- *Brown*, came out last year -- that
10:33:58 22 was against us. But when -- on November 20th of 2023
10:34:02 23 when the Supreme Court granted cert in *Erlinger*, it
10:34:06 24 renewed hope that they would reconsider that at the
10:34:10 25 Supreme Court. And that was the basis of his objection.

10:34:18 1 THE COURT: What would his guideline be if
10:34:20 2 he was not an ACCA? It says it would be 135 to 168? Is
10:34:29 3 that right?

10:34:30 4 THE PROBATION OFFICER: Your Honor, if we
10:34:32 5 did not apply the Chapter 4 enhancement, his base
10:34:38 6 offense level -- or, I'm sorry, his total offense level
10:34:42 7 would end up being a 17. The base offense level 20 and
10:34:48 8 then three for acceptance. So that would take him to a
10:34:53 9 total offense level of 17, Criminal History Category of
10:34:59 10 IV.

10:35:00 11 THE COURT: So what's the guideline on that?

10:35:02 12 THE PROBATION OFFICER: 37 to 46 months'
10:35:04 13 imprisonment.

10:35:58 14 (Pause.)

10:35:58 15 THE COURT: What do you want to say about
10:36:00 16 it?

10:36:00 17 MR. SAUNDERS: Your Honor -- and correct.
10:36:02 18 You asked if he would come back on a habeas if they did
10:36:04 19 change it. I think he would actually have to be on a
10:36:07 20 direct appeal since this is a procedural due process. I
10:36:10 21 don't think he would -- it would be retroactivity, just
10:36:13 22 for the record.

10:36:13 23 Your Honor, the night that this occurred,
10:36:15 24 what he's pled guilty to, he was -- he was impaired that
10:36:19 25 night to the extent that he really didn't remember the

10:36:22 1 details of it till we went through the discovery and saw
10:36:25 2 the video. He pled guilty to that same instance in
10:36:30 3 state court in Halifax County back in September of 2022.
10:36:34 4 Pled guilty to -- Nash County. I'm sorry. In Nash
10:36:37 5 County. He's been on supervised probation with the
10:36:41 6 State for that same firearm ever since that time. And
10:36:44 7 from all indications, he's done well. He's done fine on
10:36:47 8 probation. He's been engaging in his AA meetings since
10:36:52 9 then. He's had, since I've been working with him, three
10:36:55 10 different jobs. They were seasonal work. He's now
10:36:58 11 starting to work at Hardee's. Before that, he was
10:37:00 12 working with a tobacco company, which is seasonal, and
10:37:02 13 with an event rental company before that, Your Honor.

10:37:07 14 But for this incident, paragraph 22, what
10:37:11 15 Your Honor was talking about earlier, most of those --
10:37:15 16 most of those cases were consolidated for judgment. But
10:37:19 17 I've explained to him what the case law is on that as
10:37:22 18 far as whether or not they're consolidated. But for
10:37:24 19 that, he would have a significantly lower guideline
10:37:28 20 range. And I understand that moving forward today, the
10:37:32 21 Court's hands are tied.

10:37:34 22 I will say his wife is here with him today.
10:37:37 23 During the pendency of this case, he's been -- and
10:37:39 24 before, he's been taking care of his family. As far as
10:37:42 25 I can tell, staying out of trouble. He's always

10:37:45 1 available when I've needed to talk to him or when he's
10:37:48 2 needed to talk to me. And he's helping to support his
10:37:50 3 wife and her six children. And one of the things that
10:37:54 4 was important to him leading up through this process --

10:37:56 5 THE COURT: Who did he have the fight with
10:37:58 6 the day that he got arrested?

10:38:01 7 MR. SAUNDERS: That was a former -- it was
10:38:03 8 an ex -- his girlfriend or...

10:38:06 9 THE DEFENDANT: Yes, sir. It was my
10:38:10 10 ex-girlfriend at the time, like -- I think more so while
10:38:19 11 I was drinking, it kind of, like, edged it on. And I
10:38:22 12 wouldn't have did something that I wouldn't normally do
10:38:24 13 if I wasn't drinking. And it wasn't like I went over
10:38:28 14 there, like, with a firearm, throwing -- that never came
10:38:31 15 out, like. It was just when I had end up falling
10:38:39 16 asleep, drunk, and the police end up pulling up then.
10:38:46 17 That's when they found the firearm. But other than
10:38:49 18 that, like, I never went to her house, like, with a
10:38:51 19 firearm pointed or threatening her with a firearm or
10:38:54 20 nothing like that.

10:38:55 21 MR. SAUNDERS: When they got him out of the
10:38:57 22 car -- he was sitting on the side of the road, asleep in
10:39:00 23 the car. I believe he vomited at some point during the
10:39:03 24 incident.

10:39:04 25 I -- it didn't look like he even was

10:39:07 1 aware he had a -- it was a small firearm. It was in his
10:39:09 2 pocket. He shouldn't have had it. But he's not waving
10:39:11 3 it around, threatening anybody with it. But he had it.

10:39:14 4 THE COURT: Well, he's painted himself into
10:39:16 5 a corner, though. You know --

10:39:18 6 MR. SAUNDERS: He did something very stupid
10:39:19 7 to draw a lot of attention to himself and then was
10:39:22 8 sitting there with it.

10:39:23 9 THE DEFENDANT: Yes, sir. That's
10:39:25 10 definitely --

10:39:25 11 THE COURT: It's the end of his life.

10:39:28 12 THE DEFENDANT: Yes. Something that I
10:39:31 13 regret every day.

10:39:32 14 THE COURT: What can I do?

10:39:37 15 MR. SAUNDERS: Well, we would ask, Your
10:39:38 16 Honor, in imposing the sentence that you recommend
10:39:42 17 Butner so he can be closer to his family. We would ask
10:39:45 18 that you allow him to self-report since he's done well.
10:39:49 19 He's got two different probation officers and a wife.
10:39:53 20 We would ask for that, Your Honor. But I understand --
10:39:59 21 as proceeding as an armed career criminal, I understand
10:40:02 22 there's not much the Court can do at this stage.

10:40:05 23 THE COURT: I mean, the options are
10:40:08 24 nonexistent. There's no way around the ACCA, is there?

10:40:21 25 MR. AUBART: I don't believe so, Your Honor.

10:40:31 1 THE COURT: I'll impose a sentence of 180
10:40:34 2 months on Count 1. Supervised release of two years at
10:40:42 3 the expiration of his active sentence. Special
10:40:45 4 assessment of a hundred dollars. He's to abide by the
10:40:47 5 standard conditions of supervision in this district.
10:40:51 6 I'll allow him to self-report by April 30th and
10:41:00 7 recommend him to Butner.

10:41:03 8 MR. SAUNDERS: Thank you, Your Honor.

10:41:06 9 THE DEFENDANT: Can I...

10:41:09 10 (Mr. Saunders and the defendant confer.)

10:41:19 11 THE PROBATION OFFICER: I'm sorry, Your
10:41:20 12 Honor. Would you consider keeping him on the conditions
10:41:22 13 of release that he's on?

10:41:23 14 THE COURT: Yeah, the conditions of release
10:41:24 15 remain in force.

10:41:29 16 THE PROBATION OFFICER: Thank you.

10:41:33 17 THE COURT: Yeah, you can appeal that to the
10:41:35 18 Court of Appeals based on the rules of criminal and
10:41:39 19 appellate procedure.

10:41:47 20 (The proceedings concluded at 10:41 a.m.)

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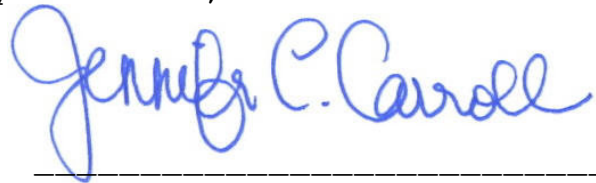
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C E R T I F I C A T E

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

This the 18th day of March, 2024.



Jennifer C. Carroll, RMR, CRR
Official Court Reporter

17a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
) *Plaintiff,*) File No.
) 5:23-CR-00051-BO-RN-1
)
 v.)
)
)
 ANTHONY LEE DANIELS,)
)
)
) *Defendant.*)

* * * * *

THURSDAY, NOVEMBER 30, 2023
MOTION HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

APPEARANCES :

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JENNIFER C. CARROLL, RMR, CRR, CRC
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Thursday, November 30, 2023, at 2:27 p.m.)

14:27:17 2 **P R O C E E D I N G S**

14:27:17 3 THE COURT: Anthony Daniels.

14:27:49 4 (The defendant is present.)

14:27:49 5 THE COURT: You can have a seat.

14:32:37 6 (Pause.)

14:32:37 7 THE COURT: Do you want to say anything,
14:32:38 8 Mr. Daniels?

14:32:43 9 THE DEFENDANT: Yes. I feel like I
14:32:50 10 shouldn't be tried as an armed career criminal for the
14:32:55 11 fact that when I took that plea deal back in 2009, I was
14:33:01 12 under the impression by my lawyer that I was just taking
14:33:05 13 two armed robberies and an attempted armed robbery. One
14:33:10 14 armed robbery and an attempted armed robbery was running
14:33:13 15 consecutive to one armed robbery. And then, like, I
14:33:16 16 found out by him that it was two more put on to one
14:33:21 17 sentence. So it was like three armed robberies and
14:33:24 18 attempted armed robbery was ran together for 61 to 83
14:33:28 19 months, boxcarred it with one armed robbery to 61 to 83
14:33:31 20 months. Which I never knew nothing -- that I never knew
14:33:34 21 nothing about.

14:33:35 22 And I would like to say, like, I'm not that
14:33:41 23 person that, I guess, like, they'll try to make you out
14:33:44 24 to be like you just mess up. Married, kids, working.
14:33:52 25 And I'm just really trying to put all of this behind me.

14:33:56 1 But, like, I'm not no armed career criminal.

14:34:03 2 MR. SAUNDERS: Your Honor, and I do have one
14:34:05 3 objection that I did not file previously because we had
14:34:08 4 a direct, very recent Fourth Circuit case that was
14:34:11 5 directly against our position. But just last week, the
14:34:15 6 Supreme Court granted cert on a case out of the Seventh
14:34:18 7 Circuit -- *Erlinger* case -- which does take up that
14:34:22 8 issue. So if the Court would allow me, I would like to
14:34:24 9 at least put on the record the armed career criminal
14:34:26 10 objection at this time.

14:34:29 11 THE COURT: Go ahead.

14:34:29 12 MR. SAUNDERS: Thank you.

14:34:30 13 We're objecting to his status -- of this
14:34:34 14 Court finding his status as being an armed career
14:34:37 15 criminal under the Sixth Amendment, and that's based on
14:34:39 16 the *Apprendi versus New Jersey* case which said that any
14:34:42 17 fact that increases the mandatory punishment has to be
14:34:47 18 found by a jury. A more recent case, the *Wooden* --
14:34:51 19 *United States versus Wooden* case found that the
14:34:54 20 occasions different clause in the Armed Career Criminal
14:34:57 21 Act statute is an actual fact that does have to be
14:35:00 22 determined. So although --

14:35:01 23 THE COURT: Say that again.

14:35:02 24 MR. SAUNDERS: Although -- it is a fact that
14:35:05 25 is an important fact that needs to be determined,

14:35:08 1 whether -- not just the fact of a conviction, but
14:35:11 2 whether or not the convictions occurred on different
14:35:15 3 occasions, is what *Wooden* stands for. So the line of
14:35:18 4 cases that have come down --

14:35:19 5 THE COURT: Well, how do you do that in a
14:35:21 6 guilty plea?

14:35:23 7 MR. SAUNDERS: That's the whole crux of the
14:35:26 8 argument, is there is no admission to any of those
14:35:30 9 allegations in a guilty plea. They would have to be
14:35:34 10 determined through some other procedure.

14:35:35 11 THE COURT: Like what?

14:35:37 12 MR. SAUNDERS: Either submit it to a jury or
14:35:39 13 either arraign just as you would on the elements of the
14:35:42 14 offense.

14:35:45 15 THE COURT: Okay.

14:35:45 16 MR. SAUNDERS: And --

14:35:48 17 THE COURT: In other words, have him plead
14:35:50 18 guilty to the predicate offenses and to acknowledge that
14:35:57 19 they are separate and successive.

14:36:01 20 MR. SAUNDERS: I suppose it would be similar
14:36:02 21 to what's done in an 851 enhancement --

14:36:05 22 THE COURT: What's that?

14:36:05 23 MR. SAUNDERS: I suppose it would be similar
14:36:07 24 to what's done in an 851 situation, where they specify
14:36:10 25 what those priors are when they're arraigned. I don't

14:36:13 1 know because that's -- we don't know what the procedure
14:36:16 2 is.

14:36:17 3 But as far as the Sixth Amendment goes, we
14:36:20 4 contend that unless it is pled to, like you would an
14:36:25 5 element of the offense, then it would need to be
14:36:27 6 submitted to a jury and proven.

14:36:29 7 And the other case is the *Descamps* case and
14:36:34 8 other cases that have found the categorical approach is
14:36:37 9 necessary --

14:36:37 10 THE COURT: Is it *Apprendi* that would be the
14:36:40 11 base decision for that?

14:36:43 12 MR. SAUNDERS: I believe that's the root of
14:36:45 13 it. Because it says that any fact that would increase
14:36:49 14 the maximum sentence would have to be submitted to a
14:36:52 15 jury and proven beyond a reasonable doubt. There's been
14:36:54 16 a long line of cases --

14:36:55 17 THE COURT: Is that what *Apprendi* says?

14:36:57 18 MR. SAUNDERS: Yes, Your Honor.

14:36:58 19 But it carved out an exception for the fact
14:37:02 20 of a prior conviction. And that's where the line of
14:37:04 21 cases since then, such as *Descamps*, said that you can
14:37:10 22 still only use the categorical approach as to the
14:37:15 23 elements of the offense, but any other facts you can't
14:37:18 24 use those Shepard documents for -- for any other facts.

14:37:22 25 So we are contending that whether or not the

14:37:26 1 offenses occurred on different occasions would be one of
14:37:28 2 those facts that's other than the fact of a conviction.
14:37:31 3 And I will concede that the State -- the *United States*
14:37:34 4 *versus Rico Brown*, which is a very recent Fourth Circuit
14:37:38 5 case, held that the Court can be the finder of fact in
14:37:42 6 that situation. And that's the case -- that's the
14:37:45 7 reason why we did not file this previously. But that
14:37:48 8 very issue is being taken up now by the Supreme Court.
14:37:51 9 They just filed -- or granted cert last week. Actually,
14:37:54 10 I think, on the 20th.

14:37:56 11 So we just want to have that on the record,
14:37:58 12 Your Honor. And I'll tell you more about Mr. Daniels.

14:38:02 13 THE COURT: What's that?

14:38:02 14 MR. SAUNDERS: And I would like to be heard
14:38:06 15 more about Mr. Daniels' personal life.

14:38:09 16 THE COURT: Yeah, but if you're wrong, then
14:38:13 17 my hands are tied. He's an ACCA, right? And he's got a
14:38:18 18 floor of 15 years.

14:38:19 19 MR. SAUNDERS: That's correct.

14:38:19 20 THE COURT: And there's -- that's the best
14:38:21 21 he can do.

14:38:22 22 MR. SAUNDERS: That's correct.

14:38:23 23 THE COURT: Okay.

14:38:28 24 Yeah.

14:38:30 25 THE DEFENDANT: When I took -- like, when

14:38:32 1 the charges happened, it wasn't like I got found
14:38:36 2 convicted of one armed robbery and I got out and went
14:38:40 3 back and committed numerous armed robberies. Like, when
14:38:44 4 I got caught, like, it was all at one time. So, like,
14:38:49 5 when I took my plea, it was all for one judgment.
14:38:54 6 Like -- so it ain't, like, like I got out and I went
14:38:57 7 back and committed another armed robbery after armed
14:39:01 8 robbery or nothing like that. Like, all my -- all my
14:39:04 9 convictions was at one -- at one time.

14:39:09 10 THE COURT: Okay. So let me ask probation:
14:39:17 11 How many ACCAs do we have nowadays a year? I mean, I
14:39:23 12 don't see that many. I haven't had one in I don't know
14:39:26 13 when. But we used to have them all the time.

14:39:32 14 THE PROBATION OFFICER: It happens, Your
14:39:33 15 Honor. We don't see them quite often. We call them
14:39:36 16 unicorns. They come through the office every now and
14:39:39 17 then, Your Honor.

14:39:40 18 THE COURT: And they're a shock --

14:39:42 19 THE PROBATION OFFICER: Yes, Your Honor.

14:39:42 20 THE COURT: -- because you're rolling along
14:39:44 21 thinking you got -- you used to be zero to ten and now
14:39:47 22 it's zero to 15, and you think your guideline is going
14:39:51 23 to be, like, 42 to 56, and all of a sudden, bam, it's
14:39:55 24 180.

14:39:55 25 THE PROBATION OFFICER: Right. That's

14:39:56 1 right, Your Honor.

14:40:05 2 THE COURT: Well, do you want to brief that?
14:40:09 3 I mean, he's going to get 180 today if we go through
14:40:11 4 with it.

14:40:12 5 MR. SAUNDERS: I would be happy to brief it,
14:40:13 6 Your Honor.

14:40:13 7 THE COURT: There's -- I don't have any
14:40:17 8 discretion at all. He doesn't have a 5K. He's got an
14:40:23 9 ACCA. And it's open and shut.

14:40:28 10 MR. SAUNDERS: I would really love the
14:40:30 11 opportunity to brief it, Your Honor. Because -- as I
14:40:32 12 said, I would have earlier had we not had that Fourth
14:40:36 13 Circuit case, and I was pressed for time today. So I
14:40:38 14 would like that opportunity --

14:40:39 15 THE COURT: Well, I'll let you brief it and
14:40:40 16 let the Government respond 15 days after you brief it,
14:40:45 17 and we'll reset it for a January term. I think this is
14:40:50 18 an important issue. It doesn't come up that often, and
14:40:54 19 it came up here in a context where the Court's hands are
14:40:59 20 tied. There's no 5K or any way to do other than give
14:41:04 21 him an 180-month sentence. So I'll wait for your
14:41:10 22 pleading.

14:41:11 23 MR. SAUNDERS: Thank you, Your Honor.

14:41:11 24 THE PROBATION OFFICER: Your Honor, just for
14:41:13 25 the record, is he to remain on the same previously

14:41:15 1 imposed conditions?

14:41:16 2 THE COURT: Yes.

14:41:17 3 THE PROBATION OFFICER: Thank you.

14:41:18 4 THE COURT: I mean, he's in compliance,
14:41:19 5 isn't he?

14:41:19 6 THE PROBATION OFFICER: Yes, sir, he is.

14:41:21 7 MR. SAUNDERS: Thank you, Your Honor.

14:41:27 8 THE COURT: I want you to file your brief by
14:41:31 9 December 22nd.

14:41:32 10 MR. SAUNDERS: Yes, Your Honor. Thank you.

14:41:35 11 THE COURT: And then the Government can
14:41:37 12 respond in 15 days.

14:41:40 13 (The proceedings concluded at 2:41 p.m.)

14 * * * * *

15

16 **C E R T I F I C A T E**

17

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

21 This the 18th day of March, 2024.

22

23

24

25



Jennifer C. Carroll, RMR, CRR
Official Court Reporter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
vs.	)	
	)	5:23-CR-51-BO
ANTHONY LEE DANIELS,	)	
	)	
Defendant.	)	
_____	)	

JULY 12, 2023
TRANSCRIPT OF ARRAIGNMENT HEARING
BEFORE THE HONORABLE TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On behalf of the Government:

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1 (Proceedings commence on Wednesday, July 12 2023, at
2 10:17 a.m. in the matter of *United States v. Anthony*
3 *Lee Daniels*, in the presence of the Defendant.)

4 THE COURT: Are you Anthony Daniels?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And are you going to enter a plea of
7 guilty in your case?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you swear to tell the truth?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How old are you?

12 THE DEFENDANT: 36.

13 THE COURT: How old?

14 THE DEFENDANT: 36.

15 THE COURT: Okay. And can you read, write, speak,
16 and understand English?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you now taking any drugs or alcohol?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you had enough time to meet with
21 your lawyer and be prepared for today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Can you understand him?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Mr. Saunders, do you have any question

1 about your client's competence?

2 MR. SAUNDERS: No, Your Honor.

3 THE COURT: Mr. Aboard, does the Government have any
4 reason to question his competence?

5 MR. AUBART: No, Your Honor.

6 THE COURT: The Court finds that the Defendant is
7 competent to proceed with this plea hearing.

8 Mr. Saunders, are you appointed or retained?

9 MR. SAUNDERS: Appointed.

10 THE COURT: Mr. Daniels, are you satisfied with the
11 law work that's been done for you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You have certain rights under federal law
14 and when you plead guilty you give those rights up. You won't
15 have them. I'm going to explain these rights to you. If
16 there's anything I say about these rights that you don't
17 understand, I'll let you speak to your lawyer or ask me. I
18 want to make sure that you understand that you have these
19 rights, that you know what your rights are and that you
20 understand that by pleading guilty you will waive or give those
21 rights up. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have the right to have your case
24 tried by a jury of 12 persons. You are presumed by the law to
25 be innocent. You don't have to prove anything. The burden of

1 proof at trial is on the Government. It's obligated to prove
2 you guilty by proof beyond a reasonable doubt. In order to do
3 that, the Government has to bring witnesses into court to
4 testify in your presence and in the presence of a jury. At
5 trial, your lawyer could object to improper evidence,
6 cross-examine the witnesses against you, present witnesses and
7 evidence on your behalf. You can either testify or not
8 testify. If you don't testify, that won't be used against you.
9 When you plead guilty you give those rights up. There won't be
10 a trial and the case will be decided on your admission of
11 guilt. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Is that what you want to do?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Have you seen a copy of the
16 charges against you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You're charged in Count 1 with possession
19 of a firearm by a convicted felon. Punishment for that is zero
20 to 10 years, a fine of up to \$250,000, 3 years of supervised
21 release. If your criminal history is extensive, you may be
22 classified as an armed career criminal, in which case the
23 punishment is 15 years to life, a fine, and supervised release.
24 Do you understand that that's the charge and punishment that
25 you face?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And are you going to enter a guilty plea
3 to that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has anyone put any pressure on you or
6 threatened you or given you any encouragement about pleading
7 guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you doing it of your own decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You understand that the plea is final,
12 you can come back later and reopen it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How do you plead to the charge of being a
15 felon in possession of a firearm, guilty or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: Are you, in fact, guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Aubart?

20 MR. AUBART: Your Honor, if this case had proceeded
21 to trial, the facts would show that on December 4, 2021, the
22 Rocky Mount Police Department responded to a damage to property
23 call. The Defendant's ex-girlfriend reported that she had seen
24 him throw an object at the windows of her child's father's
25 vehicle. Rocky Mount advised that she needed to get a

1 warrant -- a trespass warrant, so she did so, called the police
2 back and said that she had gotten the warrant and that he was
3 parked down at the end of the block.

4 The police went down to the end of the block where
5 they found the Defendant drunk in his vehicle, brought him out
6 to arrest him on the trespass warrant, searched his person
7 incident to arrest. They recovered a Ruger LCP .380 caliber
8 handgun in his right rear jeans pocket. That handgun was
9 examined for interstate nexus. It was found to have traveled
10 in interstate commerce before being recovered, and Rocky Mount
11 is in the Eastern District of North Carolina.

12 THE COURT: Based on the hearing and the evidence
13 presented, the Court finds that the plea is voluntarily made, a
14 factual basis exists, the Clerk is directed to enter a judgment
15 of guilty on the charge. A presentence report will be
16 prepared. The sentencing hearing is set for the week of
17 October 16th. He is on conditions of release?

18 MR. AUBART: He is, Your Honor. We're asking that he
19 be brought into custody at this time.

20 MR. SAUNDERS: We're asking that he remain out, Your
21 Honor. The probation office has filed a report and they
22 recommend he continue release. He's had no problems. He's
23 working full-time at Carolina Building and Rental. His wife is
24 here with him today. He is supporting her and her six
25 children. And also since October -- on October 13th of last

1 year, he pled guilty to the same conduct -- underlying conduct
2 in a state case in Nash County and has been on supervised
3 probation since then, has been complying with his AA meetings,
4 and from what I can tell hasn't had any problems. He came in
5 today, actually got here before I did knowing full well what
6 was going on today.

7 MR. AUBART: Your Honor, we agree with that summary,
8 however, we do believe that Mr. Daniels is going to qualify as
9 an armed career criminal and will be facing a minimum sentence
10 of 15 years and that's why we're asking for him to be brought
11 into custody.

12 MR. SAUNDERS: And he knew that before he came here
13 today.

14 THE COURT: All right. Has he been compliant?

15 THE PROBATION OFFICER: Yes, Your Honor. A review of
16 his probation records reflect that he has been compliant. His
17 last urinalysis was taken in May of this year and it yielded
18 negative results as well.

19 THE COURT: I will allow him to continue on the
20 conditions of release that were previously in place.

21 MR. SAUNDERS: Thank you, Your Honor.

22 (Proceedings concluded at 10:24 a.m.)

23 _____
24 (END OF TRANSCRIPT.)
25 _____

NORTH CAROLINA
JOHNSTON COUNTY

I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT
OF SAID PROCEEDINGS.

<u>/s/ CAROLYN E. HIGH</u>	<u>12/26/23</u>
CAROLYN E. HIGH	DATE
Contract Court Reporter	