

MIMS V. UNITED STATES APPENDIX

TENTH CIRCUIT
PUBLISHED OPINION

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS

July 28, 2026

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 25-5139

JAMES DERNES MIMS, JR.,

Defendant - Appellant.

**Appeal from the United States District Court
for the Northern District of Oklahoma
(D.C. No. 4:24-CR-00334-JDR-1)**

Jared T. Guemmer, Assistant Federal Public Defender (Julia L. O'Connell, Federal Public Defender, and Katherine Ann Greubel, Assistant Federal Public Defender, with him on the brief), Office of the Federal Public Defender, Northern District of Oklahoma, Tulsa, Oklahoma, for Defendant-Appellant.

Leena Alam, Assistant United States Attorney (Clinton J. Johnson, United States Attorney, Northern District of Oklahoma, with her on the brief), Office of the United States Attorney, Northern District of Oklahoma, Tulsa, Oklahoma, for Plaintiff-Appellee.

Before **TYMKOVICH**, **MURPHY**, and **CARSON**, Circuit Judges.

TYMKOVICH, Circuit Judge.

James Mims was charged with breaking and entering a pickup truck. During the burglary he stole a pistol that was in the truck. He pled guilty, and at sentencing, the district court enhanced Mims’s sentence because he “possessed [the] firearm or ammunition in connection with another felony offense,” *i.e.*, in connection with the burglary, applying U.S. Sentencing Guideline, § 2K2.1(b)(7)(B).¹ Mims appeals his sentence, contending that the district court erred in applying the enhancement because he did not commit “another felony offense” once he gained possession.

We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we **AFFIRM**. A firearm obtained through a felony is possessed “in connection with another felony offense” when it facilitates or has the potential to facilitate that same felony. Mims’s burglarized firearm fits that criterion: it bore the potential to facilitate Mims’s completion of and escape from the charged burglary.

I. Background

In September 2024, Mims broke into a truck and stole \$350, a Dewalt tool bag and drill, and a 9mm Kimber Model R7 Mako pistol. After a traffic stop the next day, officers searched Mims’s car and found various contraband items in his vehicle, including the stolen pistol and a .40-caliber Smith & Wesson pistol that was previously reported stolen.

¹ This opinion refers to the contested provision by its current numbering. Below, the parties and court referred to the provision by its numbering prior to the November 2025 amendments—§ 2K2.1(b)(6)(B).

Upon discovering that Mims had several prior felony convictions, the government charged him for unlawfully possessing the firearms as a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(8), and for possessing the stolen Kimber in violation of 18 U.S.C. §§ 922(j) and 924(a)(2). He was also separately charged by Oklahoma with third-degree burglary for breaking and entering the truck. Oklahoma later dismissed the burglary charge. At sentencing for the firearms offenses, the Presentence Investigation Report applied two enhancements to Mims's Guidelines sentence, and the district court adopted both. The first increased Mims's base level offense by two for possessing two stolen firearms. U.S.S.G. § 2K2.1(b)(4)(A). The second increased Mims's base level by four for "us[ing] or possess[ing] any firearm or ammunition in connection with another felony offense." *Id.* § 2K2.1(b)(7)(B).² The other felony offense was the burglary of the truck.

² The Application Notes provide guidance on applying this enhancement:

(A) In General.—Subsections (b)(7)(B) and (c)(1) apply if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense or another offense, respectively. . . .

(B) Application When Other Offense is Burglary or Drug Offense.—Subsections (b)(7)(B) and (c)(1) apply (i) in a case in which a defendant who, during the course of a burglary, finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary; and In these cases, application of subsections (b)(7)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.

Mims objected to the second enhancement, arguing that it did not apply to a firearm obtained through a single felony like the charged burglary (1) without its use or possession in connection with *additional* felonious conduct, (2) unless the single felony was “generic burglary,” a crime that Mims did not commit. Put differently, Mims argued that the enhancement bore a multi-felony requirement unless the “burglary exception” in the Application Notes applied. And that exception applied only when a defendant came to possess a firearm through a burglary that satisfied the generic definition of burglary, which does not cover breaking and entering vehicles. *See United States v. Mathis*, 579 U.S. 500, 507 (2016). Because Mims stole the firearm while allegedly committing third-degree burglary of a truck, he contended that neither the general multi-felony rule nor the burglary exception permitted application of the enhancement.

(C) Definitions.—

“Another felony offense”, for purposes of subsection (b)(7)(B), means any federal, state, or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.

....

(D) Relationship Between the Instant Offense and the Other Offense.—In determining whether subsections (b)(7)(B) and (c)(1) apply, the court must consider the relationship between the instant offense and the other offense, consistent with relevant conduct principles. See § 1B1.3(a)(1)-(4) and accompanying commentary.

....

U.S.S.G. § 2K2.1 cmt. n.13. Note 13 continues on, providing sample applications of the (b)(7)(B) enhancement.

The district court rejected Mims’s objection. It applied both enhancements, producing a Guidelines sentence range of 46 to 57 months’ imprisonment. The court sentenced Mims to 46 months.³

II. Discussion

Mims contends that the district court erred in applying the § 2K2.1(b)(7)(B) enhancement to his sentence. But examining the text and history of the enhancement provision, we see no error.

A. Legal Framework

“A challenge to the application of a sentencing enhancement tests the ‘procedural reasonableness’ of a sentence, ‘which requires, among other things, a properly calculated Guidelines range.’” *United States v. Zamora*, 97 F.4th 1202, 1207 (10th Cir. 2024) (quoting *United States v. Mollner*, 643 F.3d 713, 714 (10th Cir. 2011)). We review legal questions underlying the applicability of the Sentencing Guidelines de novo. *Id.* at 1207–08. The government bears the burden “to prove the applicability of a sentencing enhancement by a preponderance of the evidence.” *Id.* at 1207 (citing *United States v. Conley*, 131 F.3d 1387, 1389 (10th Cir. 1997)).

The Sentencing Guidelines provide a sentencing enhancement for unlawful firearm possession when a defendant “used or possessed any firearm or ammunition in connection with another felony offense.” U.S.S.G. § 2K2.1(b)(7)(B). The Guidelines Application Notes define “[a]nother felony offense” as “any federal, state,

³ Without this enhancement, Mims contends that his appropriately calculated sentencing range is 30 to 37 months.

or local offense, other than the explosive or firearms possession or trafficking offense, punishable by imprisonment for a term exceeding one year, regardless of whether a criminal charge was brought, or a conviction obtained.” *Id.* § 2K2.1 cmt. n.13(C).

To determine whether the offender used or possessed the firearm “in connection with” another felony offense, the Notes instruct courts to consider whether the firearm “facilitated, or had the potential of facilitating, another felony offense” separate from the felony possession. *Id.* § 2K2.1 cmt. n.13(A). The Notes explain that the enhancement applies when a defendant possesses a gun in the course of a burglary:

Subsection[] (b)(7)(B) . . . appl[ies] (i) in a case in which a defendant who, during the course of a burglary, *finds and takes a firearm, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary* In these cases, application of subsection[] (b)(7)(B) . . . is warranted because the presence of the firearm has the potential of facilitating another felony offense

Id. § 2K2.1 cmt. n.13(B) (emphasis added).

The Sentencing Commission amended the Guidelines in 2006 to include these Application Notes to address a circuit split about whether the § 2K2.1(b)(7)(B) enhancement applied to firearms obtained through burglary. U.S.S.G. app. C amend. 691 (2006) (“[T]he amendment addresses a circuit conflict pertaining to the application of current [§ 2K2.1(b)(7)], specifically with respect to the use of a firearm ‘in connection with’ burglary and drug offenses.”). The clarification came as

a result of some circuits refusing to apply the enhancement for possession arising from the same conduct through which the defendant obtained the gun, the same conduct at issue here. *See United States v. Brake*, 904 F.3d 97, 100–01 (1st Cir. 2018) (first citing *United States v. Fenton*, 309 F.3d 825, 827–28 (3d Cir. 2002); then citing *United States v. Szakacs*, 212 F.3d 344, 348–52 (7th Cir. 2000); and then citing *United States v. Sanders*, 162 F.3d 396, 399–402 (6th Cir. 1998)). These circuits permitted application of the enhancement only when a second felony offense was separated by time or conduct from the felony through which the gun was obtained. *Id.*

But other circuits disagreed, permitting application without a separate felony. *Id.* at 100 (first citing *United States v. Schaal*, 340 F.3d 196, 199 (4th Cir. 2003); then citing *United States v. Kenney*, 283 F.3d 934, 936–39 (8th Cir. 2002); and then citing *United States v. Luna*, 165 F.3d 316, 322–24 (5th Cir. 1999)). The Commission responded to the confusion. It set out a general rule: the enhancement for possession in connection with a felony “appl[ies] if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense.” U.S.S.G. § 2K2.1 cmt. n.13(A). And it applied that enhancement to burglary—“because the presence of the firearm has the potential of facilitating another felony offense”—*i.e.*, that burglary. *Id.* § 2K2.1 cmt. n.13(B).

The 2006 Amendment also addressed the relevant scope of conduct that courts should examine when determining whether the firearm facilitated or had potential to facilitate another felony offense. It instructed courts to consider the relationship

between the unlawful firearm possession and the other felony “consistent with relevant conduct principles.” *Id.* § 2K2.1 cmt. n.13D (citing § 1B1.3(a)(1)–(4)). “[T]he threshold question for the court” is whether the unlawful possession offense and the felony were “part of the same course of conduct or common scheme or plan.” *Id.* § 2K2.1 cmt. n.13(D)(ii) (quoting § 1B1.3(a)(2)). And the Guidelines’ conduct principles explain that “relevant conduct” includes “[a]ll acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and . . . all harm that was the object of such acts and omissions.” *Id.* §§ 1B1.3(a)(1), (3).

B. Analysis

Mims argues that the enhancement is inappropriate because (1) it requires that his stolen firearm be used in connection with a *separate* offense unless he committed generic burglary (which he says he did not commit), and (2) he did not possess the firearm *in connection with* the burglary because that offense was completed upon entry of the vehicle.

We disagree. Mims possessed the gun “in connection” with another felony offense for purposes of Guideline 2K2.1(b)(7)(B).

First, Mims’s burglary fits comfortably under the Guidelines definition for “another felony offense.” Mims was charged with Oklahoma third-degree burglary, a crime punishable by imprisonment of up to five years. Okla. Stat. tit. 21, §§ 20N(B), 1435. The charged burglary qualifies because it is a “federal, state, or local offense . . . punishable by imprisonment for a term exceeding one year, regardless of whether

a criminal charge was brought, or a conviction obtained.” U.S.S.G. § 2K2.1 cmt. n.13(C).⁴

Second, Mims possessed the stolen firearm “in connection with” that felony offense. The Commission amended the Application Notes precisely to address scenarios like Mims’s. The enhancement for possession “in connection with another felony” is applicable whenever the firearm “facilitated, or had the potential of facilitating, another felony offense.” *Id.* § 2K2.1 cmt. n.13(A). And a firearm obtained through a felony offense, like burglary, can facilitate that offense by enabling completion or escape. *See id.* § 2K2.1 cmt. n.13(B) (recognizing that the enhancement for burglarized firearms “is warranted because the presence of the firearm has the potential of facilitating [that] felony offense”). So the enhancement applies to Mims’s stolen firearm.

The Amendment history of the enhancement bolsters this application. The Commission amended the Notes to settle a circuit split about whether the enhancement applied to firearms obtained through burglary that were not used or possessed in connection with an *additional* felony. The Commission responded that it did apply. And, the Commission clarified that the enhancement applied broadly to the use or possession of firearms that had potential to facilitate any felony separate from, but connected to, the felony possession. U.S.S.G. app. C amend. 691 (2006).

⁴ Mims did not contend that his charge was insufficient to meet the Guidelines definition of “another felony offense.” In fact, for purposes of this appeal, he treated his then-pending burglary charge as “proven rather than merely alleged.” Apl’t. Br. at 16 n.3.

Precedent also supports applying the enhancement. In *United States v. Marrufo*, we affirmed the enhancement’s application when the defendant’s felony possession facilitated his state felony of tampering with evidence by hiding that same firearm. 661 F.3d 1204, 1205 (10th Cir. 2011). We rejected the argument that the enhancement applied only if the firearm was used to facilitate a “separate, active offense.” *Id.* at 1208. Because Marrufo’s possession of the firearm facilitated the state felony of tampering, it did not matter that the firearm was the *object* of the felony tampering. So too here. Mims’s possession of the firearm had the potential to facilitate his burglary, even though it was an object of that felony.

Mims urges that *Marrufo* nonetheless supports his argument because the case interprets the enhancement’s facilitation requirement to mean that the firearm possession “make[s] easier” the connected felony. *Id.* at 1207. And because Mims acquired the firearm through burglary, he contends that the firearm did not make his burglary easier. But even accepting that *Marrufo*’s interpretation of “facilitate” constrains the enhancement’s applicability, Mims fails to show error. Upon burglarizing the truck, he came to possess the firearm. And that firearm had potential to make commission of his burglary “easier” by preventing intervention and facilitating escape. *See United States v. Sanchez*, 22 F.4th 940, 941–42 (10th Cir. 2022) (applying enhancement because possession of firearm in stolen vehicle “had the potential to facilitate his possession of the stolen vehicle” by its potential use in intimidating anyone who might seek to interfere with continued possession of the stolen vehicle); *cf. United States v. Brooks*, 112 F.4th 937, 950 (11th Cir. 2024)

(“When considering a firearm’s *potential* use, there is a strong presumption that a defendant aware of the weapon’s presence will think of using it if his illegal activities are threatened.” (citation modified)).

We are not alone in concluding that the enhancement appropriately applies to a firearm obtained as the object of a felony—so long as the firearm facilitates, or has potential to facilitate, that felony. *See, e.g., Brooks*, 112 F.4th at 950 (affirming the enhancement for possession of a firearm obtained through felony of theft by receiving); *United States v. Canamore*, 916 F.3d 718, 721 (8th Cir. 2019) (same).

Mims’s remaining counterarguments also are unpersuasive.

First, he contends that the enhancement does not apply to firearms obtained through a single felony without further felonious conduct unless that single felony fits in the generic burglary “exception” (and his does not). Mims recognizes that the enhancement applies to firearms possessed through “a burglary . . . even if the defendant did not engage in any other conduct with that firearm.” U.S.S.G. § 2K2.1 cmt. n.13(B). But Mims urges that this provision is an *exception* to the enhancement’s rule requiring further felonious conduct, and that the exception does not apply to him. Because the Notes do not define “a burglary” for purposes of this exception to the general multi-felony requirement, Mims contends that we must look to the generic definition of burglary. And because the categorical approach excludes Oklahoma third-degree burglary from the generic definition of burglary, Mims urges that he does not fall under the single-felony burglary exception. *See Mathis*, 579

U.S. at 507 (concluding that Iowa’s burglary statute covers more than generic burglary in part because it includes unlawful entry into a “vehicle”).

But the Guidelines did not create a burglary exception to a general rule requiring further felonious conduct. As we explained above, they did not create a general requirement for further felonious conduct at all. Instead, they set out a different general principle: the enhancement “appl[ies] if the firearm or ammunition facilitated, or had the potential of facilitating, another felony offense.” U.S.S.G. § 2K2.1 cmt. n.13(A). And that principle applies to a firearm possessed through a burglary so long as the firearm facilitates, or has potential to facilitate, that burglary. The Application Notes make the general principle clear by explaining that the enhancement’s application to firearms obtained during a burglary “is warranted” without any other felonious conduct “because the presence of the firearm has the potential of facilitating another felony offense”—the burglary. *Id.* § 2K2.1 cmt. n.13(B). The structure of and explanation in the Notes shows that the Guidelines created no burglary exception—only a general rule. They state a general facilitation requirement in Note 13(A) and explain why it applies to burglary in Note 13(B). Mims’s charged Oklahoma felony falls under that general rule in Note 13(A). It does not matter much whether Note 13(B) refers to generic burglary and whether Mims’s third-degree burglary qualifies as such—Note 13(B) simply provides an example application of the rule that governs here.

Finally, Mims argues that he did not possess the firearm in connection with the burglary because he completed that felony *prior* to possessing the firearm, upon

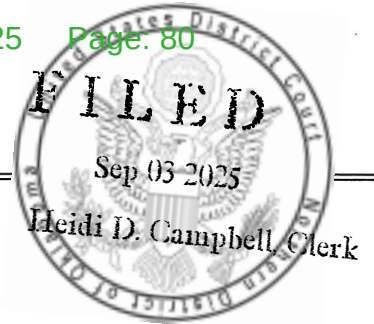
entering the vehicle. But the Guidelines do not make that distinction. Instead, they direct us to examine the relationship between Mims’s firearm possession and burglary using “relevant conduct principles.” *Id.* § 2K2.1 cmt. n.13(D) (citing § 1B1.3(a)(1)–(4)). And the Guidelines’ conduct principles explain that “relevant conduct” includes “[a]ll acts and omissions committed . . . ; and . . . all harm that was the object of such acts and omissions.” *Id.* §§ 1B1.3(a)(1), (3). Mims’s theft of the firearm from the truck is a harm that was an object of the burglary. So his possession of the firearm falls within the relevant scope of conduct connected to the burglary. It does not matter that Mims “committed” his burglary, as a matter of Oklahoma law, mere seconds prior to stealing the firearm, because he stole it within the same course of conduct. *See Brooks*, 112 F.4th at 951 (upholding the enhancement for a firearm obtained through theft-by-receiving because the defendant could have used the firearm he acquired through that theft “if he encountered the police or the firearm’s rightful owner”); *United States v. McCowan*, No. 21-8035, 2022 WL 572475, at *4 (10th Cir. Feb. 25, 2022) (upholding the enhancement against a similar challenge that a defendant possessed the firearm only *after* commission of a felony drug offense because the defendant participated in the drug offense and obtained the gun from a participant in the immediate aftermath). The enhancement is appropriate here even though the gun is a fruit of the burglary because “it makes little difference how [a] burglar[] obtained their firearms.” *Brooks*, 112 F.4th at 950 (quoting *United States v. Young*, 115 F.3d 848, 837 (11th Cir. 1997) (per curiam)).

In sum, the stolen firearm could have helped Mims escape the scene of the burglary if he encountered resistance. And such facilitation warrants application of the enhancement. Because Mims possessed the firearm “in connection with” his charged felony burglary, the district court appropriately applied 2K2.1(b)(7)(B)’s sentencing enhancement.

III. Conclusion

For the foregoing reasons, we affirm Mims’s sentence.

DISTRICT COURT
AMENDED JUDGMENT
AND SENTENCE



UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

JAMES DERNEST MIMS, JR.

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 4:24CR00334-1-JDR

USM Number: 43718-511

Katherine Ann Greubel
Defendant's Attorney

Date of Original Judgment: August 25, 2025, Dkt. # 37

(Or Date of Last Amended Judgment)

Reason for Amendment: Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

THE DEFENDANT:

☒ pleaded guilty to counts One and Two of the 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 offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 922(g)(1) and 924(a)(8)	Felon in Possession of a Firearm and Ammunition	9/18/24	1
18 U.S.C. §§ 922(j) and 924(a)(2)	Possession of a Stolen Firearm	9/18/24	2

The defendant is sentenced as provided in 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.

August 22, 2025

Date of Imposition of Judgment

Signature of Judge

John D. Russell, United States District Judge

Name and Title of Judge

September 3, 2025

Date

AO 245B (Rev. 10/17) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: James Darnest Mims, Jr.
CASE NUMBER: 4:24CR00334-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: Forty-six months, as to each of Counts One and Two. Said counts shall run concurrently, each with the other. Said sentence shall run concurrently with any anticipated sentences in Tulsa County District Court Case CF-2024-2029 and CF-2025-57 and any anticipated sentences in Stafford County Circuit Court Cases CR-19-323 and CR16000061, as well as any anticipated sentences in Prince William General District Court.

- ☒ The Court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the defendant be placed in a facility that will allow him the opportunity to participate in the most comprehensive substance abuse and mental health treatment programs available. The Court further recommends that the defendant be placed at a facility as close to Tulsa, Oklahoma, as possible.
- ☒ 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: James Dernest Mims, Jr.
CASE NUMBER: 4:24CR00334-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: Three years, as to each of Counts One and Two. Said terms shall run concurrently, each with the other.

MANDATORY CONDITIONS

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)*

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

DEFENDANT: James Dernest Mims, Jr.
 CASE NUMBER: 4:24CR00334-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervision, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when to report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by the probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person, such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may, after obtaining Court approval, notify the person about the risk or require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

AO 245B (Rev. 10/17) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: James Darnest Mims, Jr.
CASE NUMBER: 4:24CR00334-1

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit his person, property, residence, office, vehicle, cellular telephone, computer, or any other electronic communication device, to a search conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall successfully participate in a program of mental health treatment and follow the rules and regulations of the program. The probation officer, in consultation with the treatment provider, will determine the treatment modality, location, and treatment schedule. The defendant shall waive any right of confidentiality in any records for mental health treatment to allow the probation officer to review the course of treatment and progress with the treatment provider. The defendant must pay the cost of the program or assist (co-payment) in payment of the costs of the program if financially able.
3. The defendant shall successfully participate in a program of testing and treatment, to include inpatient treatment, for drug and alcohol abuse, at a treatment facility and on a schedule determined by the probation officer. The defendant shall abide by the policies and procedures of the testing and treatment program to include directions that the defendant undergo urinalysis or other types of drug testing consisting of no more than eight tests per month if contemplated as part of the testing and treatment program. The defendant shall waive any right of confidentiality in any records for drug and alcohol treatment to allow the probation officer to review the course of testing and treatment and progress with the treatment provider.
4. If the defendant is unemployed after the first sixty days of supervision, or if unemployed for sixty days after termination or lay-off from employment, or not employed at a regular lawful occupation, as deemed suitable by the probation officer, the defendant shall participate in workforce development programs and services for occupational and career development, to include but not limited to assessment and testing, educational instruction, training classes, career guidance, counseling, and job search and retention services, at a program and on a schedule as determined by the probation officer. Further, as directed by the probation officer, the defendant shall provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure suitable employment, participate in workforce development programs or provide verification of daily job search results, the defendant may be required to perform up to twenty-four hours of community service per week until employed. 18 U.S.C. §§ 3563(b)(4) and (12) and 3583(d) and USSG §5F1.3.

U.S. Probation Officer 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 _____

AO 245B (Rev. 10/17) Judgment in a Criminal Case
 Sheet 5 — Criminal Monetary Penalties

DEFENDANT: James Dernest Mims, Jr.
 CASE NUMBER: 4:24CR00334-1

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200	N/A	N/A	N/A	N/A

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

☐ The defendant must 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.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS \$ _____ \$ _____

☐ Restitution amount ordered pursuant to Plea Agreement \$ _____

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the Judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 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 ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** 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.

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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 \$ 200 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 90 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:
 Any monetary payment is due in full immediately, but payable on a schedule to be determined pursuant to the policy provision of the Federal Bureau of Prisons' Inmate Financial Responsibility Program if the defendant voluntarily participates in this program. If a monetary balance remains, payment is to commence no later than 60 days following release from imprisonment to a term of supervised release in equal monthly payments of \$50 or 10% of net income (take home pay), whichever is greater, over the duration of the term of supervised release and thereafter as prescribed by law for as long as some debt remains. Notwithstanding establishment of a payment schedule, nothing shall prohibit the United States from executing or levying upon property of the defendant discovered before or after the date of this Judgment.

Unless the Court has expressly ordered otherwise, if this Judgment imposes imprisonment, payment of criminal monetary penalties is due during 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:
 Firearms and ammunition are forfeited as directed in the Preliminary Order of Forfeiture, Dkt. # 26.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTa assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DISTRICT COURT
RULING ON PSR OBJECTION

1 found in Mr. Mims' possession the -- was found in Mr. Mims'
2 possession the reported stolen firearm, the tool bag, and the
3 tools found in the tool bag.

4 The fact that Mr. Mims' Tulsa County District Court case
5 for burglary is still pending does not negate the evidence
6 surrounding the burglary. An admission of guilt, an
7 adjudication of guilty, or a conviction is not a requirement to
8 determine a preponderance of the evidence. It is seen far too
9 often that a pending state court charge is dismissed in the
10 state in lieu of a federal prosecution, especially when the
11 federal prosecution is similar to or directly related to the
12 pending state charges.

13 But in any event, the standard of proof here has been met,
14 and the Court finds that the government has met its burden of
15 proof regarding the burglary committed on September the 17th of
16 2024. Accordingly, Mr. Mims' first objection is overruled.

17 Secondly, Mr. Mims objects to paragraph 16 of the
18 presentence report as it relates to the inclusion of a
19 four-level enhancement for possessing a firearm in connection
20 with another felony pursuant to Section 2K2.1(b)6(B) of the
21 sentencing guidelines. He argues that the generic definition
22 of Oklahoma third-degree burglary does not -- the statutory
23 definition does not satisfy the guideline requirement for a
24 felony offense used for -- in connection with another felony.

25 Under 2K2.1(b) (6) (B), a four-level enhancement is included

1 if the defendant used or possessed any firearm or ammunition in
2 connection with another felony offense or possessed or
3 transferred any firearm or ammunition with knowledge, intent,
4 or reason to believe that it would be used or possessed in
5 connection with another felony offense.

6 Application Note 14(B) of 2K2.1 states, "Subsections
7 (b)(6)(B) and (c)(1) apply (i) in a case in which a defendant
8 who, during the course of a burglary, finds and takes a
9 firearm, even if the defendant did not engage in any other
10 conduct with that firearm during the course of the burglary;
11 and (ii) in the case of a drug-trafficking offense in which a
12 firearm is found in close proximity to drugs,
13 drug-manufacturing materials, or drug paraphernalia. In these
14 cases, application of subsections (b)(6)(B) and, if the firearm
15 was cited in the offense of conviction, (c)(1) is warranted
16 because the presence of the firearm has the potential of
17 facilitating another felony offense or another offense,
18 respectively."

19 Oklahoma's third-degree burglary is found at Oklahoma
20 Statutes, Title 21, Section 1435(B), and is a crime punishable
21 by imprisonment exceeding one year and is defined in relevant
22 part as, in subsection (B), "Every person who breaks and
23 enters, climbs under, or uses any jack stands or any other item
24 to raise any automobile, truck, trailer, or vessel of another,
25 in which any property is kept, with intent to:

1 (1) Steal any property therein;
2 (2) Steal any property attached thereto; or
3 (3) Commit any felony, is guilty of burglary in the third
4 degree."

5 Based on the reasoning set forth in overruling Mr. Mims'
6 first objection and the relevant conduct analysis mentioned,
7 the burglary committed by Mr. Mims the day prior to his arrest
8 for the instant offenses constitutes another felony offense in
9 which the Kimber 9-millimeter pistol was stolen. Applying the
10 plain language from Section 2K2.1(b)(6)(B) and Application Note
11 14(B), the four-level enhancement is applicable as the firearm
12 was stolen during a burglary, a felony offense under Title 21,
13 Section 1435 of the Oklahoma statutes, and is relevant conduct
14 pursuant to Section 1B1.3.

15 Mr. Mims' argument that the Oklahoma burglary does not meet
16 the generic definition of burglary in his *Mathis vs. United*
17 *States* analysis is not relevant for purposes of the application
18 of Section 2K2.1(b)(6)(B) because Oklahoma third-degree
19 burglary is a felony offense, and that in and of itself
20 satisfies the underlying felony offense to which the firearm
21 was connected. Accordingly, Mr. Mims' second objection is
22 overruled.

23 Having ruled on the objections to the presentence report,
24 the Court orders that the presentence report will be placed in
25 the record under seal and that defendant and counsel will not