No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVAUDRICK ANTRON ETCHISONBROWN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

/s/ Maria Gabriela Vega

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APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 7, 2023
Lyle W. Cayce
Clerk

No. 22-10892

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

DAVAUDRICK ANTRON ETCHISONBROWN,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-612-1

Before WIENER, WILLETT, and DOUGLAS, *Circuit Judges*.

PER CURIAM:[*]

Davaudrick Antron EtchisonBrown pleaded guilty to possession of a firearm after a felony conviction, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). He was sentenced to 85 months of imprisonment and three years of supervised release. EtchisonBrown argues that § 922(g)(1) is unconstitutional, that the district court erred by enhancing his base offense by concluding his prior conviction for Texas robbery qualifies as a crime of

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

violence, and that the district court erred by not giving him a reduction for acceptance of responsibility. We AFFIRM.

I

In August 2019, EtchisonBrown was driving in Irving, Texas. He attempted to move into the middle lane, almost hit a passing vehicle, and swerved to avoid the collision. He then pulled alongside the vehicle, pointed a gun out his window, and shot. The vehicle was later found to have been hit thirteen times—one of the bullets even grazed the driver's head. EtchisonBrown fled the scene.

Officers detained him a few days later through a traffic stop. He consented to a search of his vehicle, and the officers recovered a Glock, Model 17, 9-millimeter pistol from under the driver's seat that was loaded with a 50 round drum magazine. EtchisonBrown confirmed that the firearm belonged to him, and shell casings recovered from the shot-at vehicle matched the firearm found in EtchisonBrown's vehicle.[1]

A federal grand jury charged EtchisonBrown with possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).[2]

EtchisonBrown was granted pretrial release. The conditions included that he must: (1) "not violate federal, state, or local law while on release;" (2) "not use or unlawfully possess a narcotic drug or other controlled substance defined in 21 U.S.C. § 802, unless prescribed to [him] by a licensed

[1] The Glock was determined not to have been manufactured in the state of Texas, to have traveled in interstate or foreign commerce to be present in Texas, and not to have been stolen.

[2] EtchisonBrown has one previous felony conviction for robbery from 2013 for stealing a woman's cell phone and assaulting her with three accomplices.

medical practitioner;" and (3) "submit to testing for a prohibited substance if required by the pretrial services office or supervising officer." Throughout 2020, EtchisonBrown repeatedly violated the above conditions by failing to submit drug tests, missing drug treatment, and testing positive for marijuana.[3] This conduct ultimately led the court to revoke his pretrial release and to remand him to custody in January 2021.

In July 2021, EtchisonBrown pleaded guilty to being a felon in possession of a firearm with no plea agreement. The district court accepted his plea.

The presentence report (PSR) recommended a base offense level of 22 under U.S.S.G. § 2K2.1(a)(3) because EtchisonBrown was "in possession of a semiautomatic firearm that can accept a large capacity magazine, and the defendant was convicted of Robbery, a crime of violence, on March 1, 2013." The PSR did not recommend giving EtchisonBrown a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a) because "he continued to engage in criminal conduct while on pretrial release."

EtchisonBrown objected to the PSR, arguing that he "entered his plea of guilty after the revocation of his pretrial release, knowing that Probation would most likely suggest a denial of the reduction for acceptance

[3] He failed to submit a urine specimen on June 19, July 17, and July 20, and tested positive for marijuana on June 22, 2020. He tested positive for marijuana again on August 5 and August 11. In response to these violations, the court modified his conditions to include participation in outpatient substance abuse therapy and counseling. EtchisonBrown then tested positive for marijuana again on September 17. He was permitted to remain on pretrial release after this violation. But on September 30, after testing positive for marijuana, he was referred to substance abuse treatment. On October 7, he was arrested for pending state warrants, and while he was incarcerated, he missed drug treatment sessions. Once he was released, EtchisonBrown failed to report for treatment sessions on November 4 and 18 and December 2 and 16. And on November 20, EtchisonBrown failed to submit a drug test.

of responsibility," and that "[t]his is significant evidence that [he] has shown remorse for both the offense of conviction and for violating conditions of pretrial release." Thus, he said he should receive the § 3E1.1(a) reduction. He also made a policy argument that to not give the acceptance-of-responsibility reduction "is to simply encourage those who have not succeed[ed] at pretrial release to go to trial" because they lose their only benefit "outside of the moral importance and self-value of accepting responsibility."

At sentencing he raised this same argument. The district court acknowledged the argument, but "after digging through the case law and getting to the bottom of it," concluded that "if there is a violation for some other commission of a crime, while on pretrial release, then that does constitute a lack of acceptance of responsibility." The district court viewed "the conduct that caused his revocation from pretrial release to amount to a lack of acceptance of responsibility" and overruled the objection.

The district court adopted the findings and conclusions from the PSR and concluded the total offense level was 26. The guideline range for imprisonment was accordingly 70 to 87 months. The district court imposed a sentence of 85 months and a three-year term of supervised release. It explained that the length of the sentence was mainly driven by the serious nature and circumstances of EtchisonBrown's offense but that EtchisonBrown's good performance in custody, his supportive family, and his troubled background persuaded it not to vary upward.

EtchisonBrown timely appealed.

II

EtchisonBrown raises four issues on appeal. He argues that 18 U.S.C. § 922(g)(1) is unconstitutional because (1) it exceeds Congress's enumerated powers under the Commerce Clause, and (2) it violates the Second

Amendment, (3) that his 85-month sentence was reversible error because Texas robbery by causing injury is not a "crime of violence" under U.S.S.G. § 5B1.2, and (4) he should have been granted a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1. We address the constitutional challenges first.

A

Because EtchisonBrown did not raise either constitutional challenge to § 922(g)(1) before the district court, we review only for plain error. *United States v. Howard*, 766 F.3d 414, 419 (5th Cir. 2014). He must therefore show that the error is clear or obvious and that it affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes those showings, we have discretion to the correct the error if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (alteration adopted) (quoting *United States v. Atkinson*, 297 U.S. 157, 160 (1936)).

EtchisonBrown maintains that 18 U.S.C. § 922(g)(1) exceeds Congress's enumerated powers under *United States v. Lopez*, 514 U.S. 549 (1995). He acknowledges that we have consistently upheld the constitutionality of § 922(g)(1) under the Commerce Clause. *See United States v. Alcantar*, 733 F.3d 143, 145 (5th Cir. 2013) (collecting cases); *see also United States v. Perryman*, 965 F.3d 424, 426 (5th Cir. 2020). And he makes no argument that there has been an intervening change in the law that permits a subsequent panel to reconsider the issue. Accordingly, we are bound by our prior precedents and conclude that this argument is foreclosed. *See Jacobs v. Nat'l Drug Intel. Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008).

EtchisonBrown also argues that the Supreme Court's recent decision in *New York State Rifle & Pistol Ass'n, Inc v. Bruen* suggests that § 922(g)(1) is unconstitutional under the Second Amendment. *See* 142 S. Ct. 2111 (2022). In *Bruen*, the Supreme Court established a new test for assessing the

constitutionality of firearm regulations under the Second Amendment: "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects the conduct. . . . [T]he government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* at 2126.

Before *Bruen*, we held that § 922(g)(1) does not violate the Second Amendment. *See, e.g.*, *United States v. Darrington*, 351 F.3d 632, 634 (5th Cir. 2003). But the constitutionality of § 922(g)(1) *after Bruen* is not clear or obvious. In *Bruen* itself, Justice Kavanaugh concurred and indicated that "nothing in [*Bruen*] should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill." *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J., concurring) (alteration adopted) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) and *McDonald v. City of Chi., Ill.*, 561 U.S. 742, 786 (2010)). But the circuits that have already faced this question have come to different conclusions. For example, the Third Circuit concluded that "the [g]overnment has not shown that the Nation's historical tradition of firearms regulation supports depriving [felons] of [their] Second Amendment right to possess a firearm." *Range v. Att'y Gen.*, 69 F.4th 96, 103–06 (3d Cir. 2023). However, the Eighth Circuit relied on *Heller* and *McDonald,* as well as Justice Kavanaugh's *Bruen* concurrence, to reach the contrary conclusion that "[t]he longstanding prohibition on possession of firearms by felons is constitutional." *United States v. Cunningham*, 70 F.4th 502, 506 (8th Cir. 2023).

"There is no plain error if the legal landscape at the time showed the issue was disputed . . . ." *United States v. Rodriguez-Parra*, 581 F.3d 227, 230 (5th Cir. 2009). On review for plain error, "a lack of binding authority is often dispositive." *United States v. McGavitt*, 28 F.4th 571, 577 (5th Cir. 2022) (citation and internal quotation marks omitted). "[E]ven where an argument merely requires extending existing precedent, the district court's failure to

do so cannot be plain error." *Jimenez v. Wood Cnty, Tex.*, 660 F.3d 841, 847 (5th Cir. 2011) (en banc). Because the constitutionality of § 922(g)(1) after *Bruen* is far from settled and there is no controlling authority, the district court's application of § 922(g)(1) to EtchisonBrown was not plain error.

B

EtchisonBrown claims that the district court erred in sentencing him to an 85-month term of imprisonment because it calculated his base offense level incorrectly by concluding that his prior Texas robbery conviction was a "crime of violence." When a defendant has been previously convicted of an offense that qualifies as a crime of violence under U.S.S.G. § 4B1.2(a)(2) and commits an offense that involved a semiautomatic firearm capable of accepting a large capacity magazine, the guidelines set a higher base offense level. U.S.S.G. § 2K2.1(a)(3). EtchisonBrown's base offense level was 22. Without the "crime of violence" finding, he contends that it should have been 20 under U.S.S.G. § 2K2.1(a)(4)(B). Because EtchisonBrown did not challenge his base offense level before the district court, we review only for plain error. *Howard*, 766 F.3d at 419.

Texas is unique in that it includes the mens rea of recklessness in its definition of robbery.[4] EtchisonBrown admits that this court has previously held that Texas robbery fits within the "generic" meaning of "robbery" in the Sentencing Guidelines and that it qualifies as a "crime of violence" under a similar Sentencing Guideline. *See United States v. Santiesteban-Hernandez*, 469 F.3d 376, 381 (5th Cir. 2006). He also acknowledges that this holding was

[4] The Texas Penal Code states that a person commits robbery "if, in the course of committing theft . . . and with intent to obtain or maintain control of the property, he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." Tex. Penal Code § 29.02(a)(1).

recently reaffirmed in the context of U.S.S.G. § 4B1.2's use of the term "crime of violence" in *United States v. Adair*, 16 F.4th 469, 471 (5th Cir. 2021), *cert. denied*, 142 S. Ct. 1215 (2022).

Even so, EtchisonBrown argues that the issue is not foreclosed. He characterizes *Santiesteban-Hernandez* as having adopted a broader definition of generic robbery in order to encompass Texas's definition, and he contends that recent Supreme Court precedent[5] reveals that *Santiesteban-Hernandez* is "likely incorrect" because generic robbery does not include recklessness.

"[W]e follow the well-settled rule of orderliness: Three-judge panels abide by a prior Fifth Circuit decision until the decision is overruled, expressly or implicitly, by either the United States Supreme Court or by the Fifth Circuit sitting en banc." *Gahagan v. U.S. Citizenship & Immigr. Servs.*, 911 F.3d 298, 302 (5th Cir. 2018) (alterations adopted) (internal quotation marks and citation omitted). In *Adair*, we considered *Santiesteban-Hernandez* and affirmed that there we "recognize[d] that the 'generic definition of robbery did not require a particular mens rea'" and that Texas robbery and generic robbery "substantially correspond," which could not be the case if the two offenses "do not require the same mens rea." *Adair*, 16 F.4th at 471 (quoting *United States v. Ortiz-Rojas*, 575 F. App'x 494, 495 (5th Cir. 2014) (per curiam) (unpublished)).

A suggestion that one of our holdings is "likely incorrect" does not present an occasion for us to revisit our precedent. Our consideration of the issue and reaffirmance of *Santiesteban-Hernandez* in *Adair* followed all of the cases EtchisonBrown cites. *Adair*, 16 F.4th at 470–71. No intervening

[5] He cites the following Supreme Court decisions: *Samuel Johnson v. United States*, 76 U.S. 591 (2015); *Esquivel-Quintana v. Sessions*, 581 U.S. 385 (2017); *Stokeling v. United States*, 139 S. Ct. 544 (2019); and *Borden v. United States*, 141 S. Ct. 1817 (2021).

Supreme Court decision has explicitly or implicitly overruled our holding. We are accordingly bound by our prior precedent. The district court's selection of the base offense level was not plain error.

C

Finally, EtchisonBrown argues that the district court did not give him a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1, comment n.3, because it erroneously believed that he had violated the conditions of his pretrial release *after* pleading guilty, when his violations all occurred *before* he pleaded guilty. "[D]eterminations regarding whether the defendant is entitled to a reduction for acceptance of responsibility are reviewed with particular deference." *United States v. Lord*, 915 F.3d 1009, 1017 (5th Cir. 2019). We "will affirm the denial of a reduction for acceptance of responsibility unless it is 'without foundation, a standard of review more deferential than the clearly erroneous standard.'" *Id.* (quoting *United States v. Juarez-Duarte*, 513 F.3d 204, 211 (5th Cir. 2008) (per curiam)).

EtchisonBrown contends that the district court erroneously believed that he had violated the conditions of his pretrial release after pleading guilty because of two statements it made at sentencing. Specifically, the district court stated that "playing ball can certainly constitute criminal offensive behavior that happens after there has been a rearraignment," and that it understood "not all judges agree with that line of thinking that post-rearraignment conduct that is unlawful can constitute a lack of acceptance."

While the district court erroneously referred to post-rearraignment conduct twice, context shows that the district court understood that EtchisonBrown violated his pretrial release conditions prior to pleading guilty. The district court specifically discussed the timeline and observed that while EtchisonBrown was on supervised release he "was skipping drug tests or testing positive for marijuana," but "post-rearraignment," his conduct

was "stellar." It also received a written objection from EtchisonBrown arguing that he should receive the reduction because all his violations occurred *before* he pleaded guilty and heard argument on the objection right before making this statement. After hearing argument on that objection at sentencing, the district court explained that it recognized the policy arguments about whether to give acceptance of responsibility to defendants who violate their pretrial release conditions. However, after reviewing the caselaw, it "came down on the line of thinking that if there is a violation for some other commission of a crime, while on pretrial release, then that does constitute a lack of acceptance of responsibility."

It is undisputed that EtchisonBrown repeatedly violated his pretrial release conditions by failing to submit drug tests, missing drug treatment, and testing positive for marijuana. The entry of a guilty plea before trial "does not entitle the defendant to a reduction as a matter of right." *United States v. Rickett*, 89 F.3d 224, 227 (5th Cir. 1996). A district court may "consider any violation of the defendant's pretrial release conditions" when deciding whether to grant a reduction for acceptance of responsibility and "[i]t is not reversible error for the district court to deny a § 3E1.1(a) reduction where the defendant broke the law while on bond." *United States v. Hinojosa-Almance*, 977 F.3d 407, 411 (5th Cir. 2020). Because of EtchisonBrown's violations of his conditions of release, there was foundation for the district court to deny the acceptance of responsibility reduction. *Lord*, 915 F.3d at 1017.

We AFFIRM.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

UNITED STATES OF AMERICA

v.

DAVAUDRICK ANTRON ETCHISONBROWN

JUDGMENT IN A CRIMINAL CASE

Case Number: **3:19-CR-00612-X(1)**
USM Number: **60097-177**
Douglas A Morris
Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☒	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	**Count One of the Indictment, filed on November 20, 2019.**
☐	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:

Title & Section / Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) and 924(a)(2) Possession of a Firearm by a Convicted Felon	09/03/2019	1

The defendant is sentenced as provided in pages 2 through 7 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.

September 7, 2022
Date of Imposition of Judgment

Signature of Judge

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

9/8/2022
Date

DEFENDANT: DAVAUDRICK ANTRON ETCHISONBROWN
CASE NUMBER: 3:19-CR-00612-X(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:

Eighty-Five (85) months as to count 1.

This sentence shall run concurrently with any future sentence which may be imposed in (Case Nos. F-2037248 and F-1934844) pending in Dallas County Criminal District Court 4 in Dallas, Texas, which are related to the instant offense.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to FCI - Texarkana or Seagoville; that the defendant participate in the Residential Drug Abuse Program (RDAP); that the defendant participate in vocational programs with an emphasis on getting his CDL; that the defendant participate in educational programs with an emphasis on getting his G.E.D.; that the defendant participate in remedial programs; and that the defendant participate in programs to help prevent recidivism.

☒ 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: DAVAUDRICK ANTRON ETCHISONBROWN
CASE NUMBER: 3:19-CR-00612-X(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **three (3) years.**

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 which 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 additional conditions on the attached page.

DEFENDANT: DAVAUDRICK ANTRON ETCHISONBROWN
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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, 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 your 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 you must 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 your 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 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 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.
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 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.

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. I understand additional information regarding these conditions is available at www.txnp.uscourts.gov.

Defendant's Signature _____ Date _____

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CASE NUMBER: 3:19-CR-00612-X(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in an outpatient program approved by the probation officer for treatment of narcotic, drug, or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, and contributing to the costs of services rendered (copayment) at the rate of at least $20 per month.

DEFENDANT: DAVAUDRICK ANTRON ETCHISONBROWN
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$.00	$.00	$.00	

☐ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case (AO245C)* 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine 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 the schedule of payments page 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 payments of $ 100.00 due immediately, balance due

☐ not later than , or

☒ in accordance ☐ 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 20 *(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:
It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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
See above for 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) 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.