

IMPORTANT NOTE: This fact pattern is **for training purposes only** and is not meant for use in litigation. Some supporting authorities, including statutes, have been edited for purposes of this training.

Fact Pattern

Your client, Mr. Jones was charged in the Southern District of Iowa in a one-count indictment for a violation of 18 U.S.C. § 922(g). You need to determine whether Mr. Jones is an Armed Career Criminal under 18 U.S.C. § 924(e), and if not, whether any of his prior convictions impact his base offense level under U.S.S.G. §2K2.1(a).

Mr. Jones' Criminal History

Conviction Date	Location	Offense of Conviction	Sentence
March 29, 2008	Des Moines, Iowa	Arson	5 years imprisonment
July 14, 2014	Des Moines, Iowa (Federal District Court)	Using a communications facility in committing a drug offense	24 months imprisonment
October 5, 2017	Lancaster, Wisconsin	Burglary of a Dwelling	18 months imprisonment; 12 suspended

Relevant Statutes & Guidelines

18 U.S.C. § 924(e): Armed Career Criminal Act

- (1) In the case of a person who violates section 922(g) of this title and has three previous convictions . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years . . .
- (2) As used in this subsection—
 - (A) the term “serious drug offense” means—
 - (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, for which a maximum term of imprisonment of ten years or more is prescribed by law; or
 - (ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a

controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term “violent felony” means any crime punishable by imprisonment for a term exceeding one year . . . that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.

U.S.S.G. §2K2.1: Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition

(a) Base Offense Level (Apply the Greatest):

(1) 26, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(2) 24, if the defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense;

(3) 22, if (A) the offense involved a (i) semiautomatic firearm that is capable of accepting a large capacity magazine; or (ii) firearm that is described in 26 U.S.C. § 5845(a); and (B) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense;

(4) 20, if--

(A) the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of either a crime of violence or a controlled substance offense; or

(B) the (i) offense involved a (I) semiautomatic firearm that is capable of accepting a large capacity magazine; or (II) firearm that is described in 26 U.S.C. § 5845(a); and (ii) defendant (I) was a prohibited person at the time the defendant committed the instant offense; (II) is convicted under 18 U.S.C. § 922(d); or (III) is convicted under 18 U.S.C. § 922(a)(6) or §

924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

(5) 18, if the offense involved a firearm described in 26 U.S.C. § 5845(a);

(6) 14, if the defendant (A) was a prohibited person at the time the defendant committed the instant offense; (B) is convicted under 18 U.S.C. § 922(d); or (C) is convicted under 18 U.S.C. § 922(a)(6) or § 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;

...

§2K2.1 COMMENTARY

...

1. Definitions.--For purposes of this guideline: . . .

“Controlled substance offense” has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

“Crime of violence” has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.

U.S.S.G. §4B1.2 Definitions of Terms Used in Section 4B1.1

(a) The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that--

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as defined in 18 U.S.C. § 841(c).

(b) The term “controlled substance offense” means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

. . .

§4B1.2 COMMENTARY

1. Definitions.--For purposes of this guideline—

. . .

Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. § 843(b)) is a “controlled substance offense” if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a “controlled substance offense.”

. . .

4. Upward Departure for Burglary Involving Violence.--There may be cases in which a burglary involves violence, but does not qualify as a “crime of violence” as defined in § 4B1.2(a) and, as a result, the defendant does not receive a higher offense level or higher Criminal History Category that would have applied if the burglary qualified as a “crime of violence.” In such a case, an upward departure may be appropriate.

IOWA ARSON: QUESTIONS 1 & 2

QUESTION 1: Does the arson conviction count as a “violent felony” under the ACCA?

QUESTION 2: Does the arson conviction count as a “crime of violence” under the Guidelines?

Relevant Statutes, Case Law Excerpts & Other Authorities

Iowa Stat. Ann. §712.1

1. Causing a fire in any real or personal property of another with the malicious intent to destroy or damage such property.

2. Causing a fire or explosion that damages or destroys real or personal property in which a controlled substances is manufactured, is arson. Even if a person who owns property which the defendant intends to destroy or damage, or which the defendant knowingly endangers, consents to the defendant's act, and even if an insurer has not been exposed fraudulently to any risk, and even if the act was done in such a way as not to unreasonably endanger the life or property of any person, the act constitutes arson.

Iowa Stat. Ann. § 712.3

Arson which is not arson in the first degree is arson in the second degree when the property which is the subject of the arson is a building or a structure, or real property of any kind, or standing crops, or is personal property the value of which exceeds five hundred dollars. Arson in the second degree is a class “C” felony.

Iowa Stat. Ann. § 902.9

The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class “A” felony shall be determined as follows:

. . . 4. A class “C” felon, not a habitual offender, shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.

United States v. Whaley, 552 F.3d 904 (8th Cir. 2009)

Based on the foregoing, we conclude that the generic offense of arson . . . has as elements the malicious burning of real or personal property of another.

United States v. Dittmar, 897 F.3d 958 (8th Cir. 2018)

Under Iowa Rule of Criminal Procedure 2.5(1), a prosecution can be commenced by filing “[a]n information charging a person with an indictable offense.” Rule 2.5(3) further provides that the prosecutor “shall, at the time of filing such information, also file the minutes of evidence of the witnesses,” which lists “each witness upon whose expected testimony the information is based, and a full and fair statement of the witness’ expected testimony.” The trial court examines the information and the minutes of evidence to determine whether there is probable cause to proceed. See Iowa R. Crim. P. 2.5(4), 2.11(6)(a); State v. Shank, 296 N.W.2d 791, 792 (Iowa 1980).

Iowa Pattern Jury Instructions § 1200.3 Arson In The Second Degree - Elements.

The State must prove the following elements of crime of Arson in the Second Degree:

1. On or about the _____ day of _____, 20____, the defendant caused a fire to property.
2. The defendant maliciously intended to destroy or damage the property.
3. The property was real or personal property of another.
4. The value of the property exceeded \$500.

[No pattern jury instructions exist for subsection (2) of Iowa Stat. Ann. §712.1]

IN THE DISTRICT COURT OF IOWA, IN AND FOR POLK COUNTY, IOWA

THE STATE OF IOWA

vs.

Michael Alan Jones,
Defendant.

TRIAL INFORMATION

Criminal No. FECR 087691

Cross Ref. Crim. No. _____

Co. Atty. No. _____

Agency Case No. _____

I: _____, II: _____, III: _____, IV: _____

COMES NOW CATHERINE M. MARTINO as Prosecuting Attorney of Polk County, State of Iowa, and in the name and by the authority of the State of Iowa, accuses

of the crime(s) of: **COUNT I: ARSON IN THE 2ND DEGREE,**

in violation of Section(s): **COUNT I: 712.1 and 712.3,**

of the 2008 Code of Iowa, as amended, committed as follows:

That said Defendant(s) on or about **July 22, 2007**, in Polk County, Iowa

Count I: did destroy the real property of another by malicious burning, to wit: a house valued in excess of \$500, with the address of 1230 Biltmore Street, which was used to manufacture a controlled substance, to wit: methamphetamine.

TRUE INFORMATION



Prosecuting Attorney

IN THE DISTRICT OF IOWA, IN AND FOR POLK COUNTY

STATE OF IOWA

vs.

MICHAEL A. JONES

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)
)
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)

MINUTES OF EVIDENCE

The State of Iowa expects to prove by the testimony of Rachel Fitch that she is the ex-girlfriend of Michael Jones and that she owns the residence at 1230 Biltmore Street, Des Moines, Iowa. She will testify that her home was worth in excess of \$500. On the morning of July 22, 2007, she and Mr. Jones had a disagreement and she kicked him out of her residence. At approximately 11:15 PM, Ms. Fitch was working the night shift at MercyOne Des Moines Medical Center when she received a call that there was a fire at her house.

The State of Iowa expects to prove by testimony of Mitchell Calhoun, Derek Reaves, and Martin Frayer, that they are firefighters for Polk County and were dispatched to an active house fire on July 22, 2007 at approximately 10:45 PM. They will testify that the active fire was at 1230 Biltmore Street. They will further testify that part of the residence was destroyed by fire upon their arrival and that because of the significant nature of the fire damage, they contacted the fire marshal.

The State of Iowa expects to prove by the testimony of Mark Moyer that he is the assistant fire marshal for the Polk County Fire Department. He will testify that he was assigned to investigate a house fire on July 22, 2007 at 1230 Biltmore Street and spoke with Officers Mitchell Calhoun and Derek Reaves. Mr. Moyer will testify that he determined the cause of the fire was arson by malicious burning, in part, because there was no evidence of a gas or electrical fire.

The State of Iowa expects to prove that on July 22, 2007, at approximately 10:30 PM, Jim Patel (Rachel Fitch's next-door neighbor), saw Mr. Jones walk towards the back patio of 1230 Biltmore Street shortly before noticing that a fire started at the house. Mr. Patel will testify that, upon seeing the fire, he immediately called the police.

FILED
IN THE IOWA DISTRICT COURT, IN AND FOR POLK COUNTY, IOWA

STATE OF IOWA,
Plaintiff
Vs.
Michael Alan Jones,
Defendant.

Case No. FECR 087691

DISPOSTION AND JUDGMENT

On August 15, 2007, the State filed a trial information alleging the offense of **Arson in the 2nd degree in violation of Iowa Code sec. 712.1 and 712.3**. The Court proceeded to conduct an arraignment, wherein the Defendant desired to enter a plea of guilty. The Defendant's guilty plea is found to be voluntarily and intelligently entered having a basis in fact. This guilty plea is taken pursuant to Iowa Rule of Criminal Procedure 2.10.

The Defendant was informed of the right to challenge the entry of the plea of guilty by filing a motion in arrest of judgment and that the motion must be filed within forty-five (45) days of pleading guilty and no later than five (5) days before the imposition of sentence. The Defendant was further informed that if these deadlines are not met, the Defendant loses the right to raise the challenges of the guilty plea on appeal. The Defendant waived his right to challenge the entry of the guilty plea and asked to proceed to sentencing.

Defendant was also informed of his right to participate in the preparation of a pre-sentence investigation for purposes of use by the Court in sentencing. The Defendant waived this right and asked to proceed to sentencing.

The defendant's guilty plea is accepted as well as his waiver for a delay in sentencing and time for filing a motion in arrest of judgment as well as review of a PSI for sentencing.

The Court hereby finds no reason that Judgment and sentencing should not be imposed at this time.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. **JUDGMENT:** Judgment concerning the offenses of **Arson in the 2nd degree in violation of Iowa Code sec. 712.1 and 712.3** is pronounced:
2. **INCARCERATION:** The Defendant is committed to the custody of the Director of the Department of Corrections as follows:
 - a. A term not to exceed five (5) years.

3. **FINE: \$1,000.00 (X) suspended**

If a total balance of costs and fees is not stated within this order due to the fact it has been sent to the Attorney of record via electronic mail, Defendant shall review of *Iowa Courts on Line* financial information, which will indicate the total balance due. It is defendant's obligation to be made aware of the balance owing.

4. **TRANSPORATION ORDER:** The Sheriff of this Iowa County is directed to transport the Defendant to the Iowa Medical and Classification Center, Oakdale, Iowa, and there deliver the Defendant into the custody of the Director of the Department of Corrections.

If the Defendant is not in custody at the time of this plea and sentencing, the defendant shall surrender himself/herself to the Dubuque County Sheriff on the _____ day of _____, 200__ at _____ o'clock _____.m. for transportation as ordered herein.

5. **ADDITIONAL TERMS:** The following additional terms are imposed:

- (a) X The Defendant is ordered to participate in counseling for Substance Abuse and participate in all programs as recommended by his counselors and probation officer.
- (b) _____ The Defendant is hereby placed on the Corrections Continuum pursuant to Iowa Code sec. 901B.
- (c) X **DNA PROFILING:** Pursuant to Iowa Code sec. 81.2 & 901.5(8A) the defendant shall submit DNA profiling. Defendant shall report immediately to the Department of Correctional Services after sentencing for a determination of the requirement to fulfill this term. The defendant qualifies for profiling if granted a deferred judgment or convicted as follows:
 - i. on any felony,
 - ii. under Iowa Code sec. 229A.7(5A) (Sexually violent predators),
 - iii. if required to register as a sex offender under Iowa Code sec. 692A,

- iv. if found guilty by reason of insanity to any offense requiring DNA profiling,
 - v. if adjudicated delinquent of an offense that requires DNA profiling of an adult offender under Iowa Code sec. 232.52(10),
 - vi. or if determined to be necessary under Iowa Code sec. 901.5(8A) .
- (d) X If Defendant was represented by court-appointed counsel, the Defendant must pay restitution for attorney fees pursuant to Section 815.9 for any costs incurred, and judgment is ordered for same.
- (e) X Victim restitution shall be paid in the amount and to the parties as set forth in the Statement of Pecuniary Damages, and judgment is entered therefore. The State has 60 days from the date of this order to submit a pecuniary damage statement. As to any co-defendants, the restitution is joint and several. Co-Defendants in this matter are:
- (f) _____ The Defendant is ordered to pay the Law Initiative Surcharge pursuant to Iowa Code sec. 911.3 in the amount of \$125.00 pursuant to a schedule to be established by the Department of Corrections.
- (g) _____ Defendant shall pay the D.A.R.E. surcharge in the amount of \$10.00.
- (h) X Defendant shall pay the court costs.
- (i) X Defendant shall pay 35% surcharge pursuant to Iowa Code sec. 911.1 on fine(s) in the amount of \$ _____.
- (j) X Defendant shall be fingerprinted and his photographed before he is transported to IMCC.

REASONS FOR SENTENCE: In imposing sentence, the Court has considered those factors set out in Section 907.5 of the Iowa Code. Although all such factors are important in this case, the Court gives special significance to: the negotiations of the parties, nature of the offenses and the Defendant's criminal conduct which continues despite previous intervention by the judicial system.

The Defendant is advised that this is a final judgment of the Court and that the Defendant has a right to take an appeal from it. In order to take an appeal, a written notice of appeal must be given to the Clerk of Court within thirty days of this judgment. Failure to give this notice of appeal will result in the Defendant's losing the right to appeal.


In the event of an appeal, the Defendant shall be admitted to bail in the amount of \$10,000.00.

In the event this matter involves a drug related offense, the Department of Transportation is hereby ordered to revoke the Defendant's driving privileges for a period of 180 day / 6 years

under Iowa Code sec. 901.5. If the Defendant's driving privileges are suspended or revoked at the time of the sentencing, this suspension period shall commence at the expiration of all other suspensions or revocations. The Department shall not issue any temporary restricted licenses to the Defendant during the revocation period, without further order of the court.

If the Defendant has posted bond, his bond is exonerated and shall be returned to the posting party. However, if the Defendant personally posted a cash bond, the bond shall first be applied to any outstanding obligation to the court.

Done and Ordered this March 29, 2008.


MONICA E. CULLENS
JUDGE OF THE DISTRICT COURT
POLK COUNTY, IOWA

On 03-29-08
Copies Mailed to: CA

By: DCS

Electronically filed:

sheriff (1) cert
Imcc (2) cert
Jail (1) cert

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (563) 833-3332. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942).

FEDERAL PHONE COUNT: QUESTIONS 3 & 4

QUESTION 3: Will a conviction for 21 U.S.C. § 843(b) qualify as a “serious drug offense” under the ACCA?

QUESTION 4: Will this conviction count as a “controlled substance offense” under the Guidelines?

Relevant Statutes, Case Law Excerpts & Other Authorities

21 U.S.C. § 843(b)

(b) Communication facility

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication. . .

(d) Penalties

(1) Except as provided in [not applicable subsection], any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine under Title 18, or both.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

v.

Michael Jones,

Defendant.

INFORMATION

(Title 21, U.S.C. § 843(b))

COUNT I

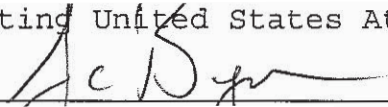
The United States Attorney Charges:

Between on or about the 11th day of December 2013 and the 13th day of January 2014, in the Southern District of Iowa the defendant, Michael Jones, did knowingly, intentionally and unlawfully use a communication facility, that is, a telephone, in committing, causing and facilitating the commission of acts constituting felonies under Title 21, United States Code, Sections 841(a)(1) and 846, that is, the possession with intent to distribute and distribution of cocaine, a Schedule II controlled substance, and conspiracy to do so; all in violation of Title 21, United States Code, Section 843(b).

Dated: May 1, 2014

GEORGE C. THOMAS
Acting United States Attorney

BY:


Polly Wynn
Assistant U.S. Attorney
United States Attorney's Office
Southern District of Iowa

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,

v.

MICHAEL JONES,

Defendant.

PLEA AGREEMENT

The defendant **Michael Jones** and the United States Attorney for the Southern District of Iowa (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and to plead guilty to a one count Information charging a violation of Title 21, United States Code, Section 843(b) (use of communication facility to commit a drug trafficking crime), for which the maximum possible sentence is a term of imprisonment of 4 years, a fine of \$250,000, a mandatory \$100 special assessment and a term of supervised release of 1 year. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that, if it is determined that the defendant has violated any of the terms or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 1 year, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in paragraph 1 of this agreement.

II. ELEMENTS AND FACTUAL BASIS

3. The defendant understands the nature of the offense set forth in paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime: that the defendant used a communication facility, that is, a telephone, that the defendant used the communication facility with the intent to commit, to cause or to facilitate the commission of a controlled substance felony offense and that the defendant did so knowingly or intentionally.

FACTUAL BASIS

4. The defendant and the government agree to the following facts, which form the basis for the entry of the plea of guilty including relevant conduct:

a) On 12/11/2013, 12/29/2013, 01/03/2014, 01/13/2014, and other dates, the defendant utilizing a cell phone made arrangements with Marty Ray Meecham, a/k/a Michie for the purchase of cocaine in Des Moines, Iowa. The cocaine was being purchased for resale

b) At least 25 grams, but less than 50 grams, of cocaine is the amount involved in the defendant's relevant conduct encompassed in Count 1 of the Information which could be readily proven by the government at trial against the defendant.

United States District Court

SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA

V.

MICHAEL ALAN JONES

JUDGMENT IN A CRIMINAL CASE

Case Number: 2014-CR-4905CBH

USM Number: 05467-029

Sam K. Mitchell

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Information

☐ 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>
21 U.S.C. § 843(b)	Using a communications facility in committing a drug offense	01/15/2014	1

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

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

☒ Counts The criminal complaint is dismissed 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 change in economic circumstances.

Gloria G. Deale

Date of Imposition of Judgment



Signature of Judicial Officer

United States District Court Judge

Name and Title of Judicial Officer

July 14, 2014

Date

DEFENDANT: **MICHAEL ALAN JONES**
CASE NUMBER: **CR -4905CBH**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **24 months on Count 1 of the Indictment.**

- The court makes the following recommendations to the Bureau of Prisons:
That the defendant be designated to a Bureau of Prisons facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.
That the defendant participate in the Bureau of Prisons' 500-Hour Comprehensive Residential Drug Abuse Treatment Program or an alternate substance abuse treatment program.
That the defendant participate in a Bureau of Prisons' Vocational Training Program specializing in the culinary arts, carpentry, horticulture, HVAC, and/or welding.
- 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

WISCONSIN BURGLARY: QUESTIONS 5 & 6

QUESTION 5: Will Wisconsin burglary count as a “violent felony” under the ACCA?

QUESTION 6: Will Wisconsin burglary count as a “crime of violence” under the Guidelines?

Relevant Statutes, Case Law Excerpts & Other Authorities

Wisconsin Stat. Ann. § 943.10(1m)

Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class F felony:

- (a) Any building or dwelling; or
- (b) An enclosed railroad car; or
- (c) An enclosed portion of any ship or vessel; or
- (d) A locked enclosed cargo portion of a truck or trailer; or
- (e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in such home; or
- (f) A room within any of the above.

Wisconsin Stat. Ann. § 939.50

(3) Penalties for felonies are as follows:

. . . (f) For a Class F felony, a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.

Taylor v. United States, 495 U.S. 575 (1990)

We conclude that a person has been convicted of burglary for purposes of a § 924(e) enhancement if he is convicted of any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime.

United States v. Stitt, --- U.S. ---, 139 S. Ct. 399 (2018)

The Armed Career Criminal Act requires a federal sentencing judge to impose upon certain persons convicted of unlawfully possessing a firearm a 15-year minimum prison term. The judge is to impose that special sentence if the offender also has three prior convictions for certain violent or drug-related crimes. 18 U.S.C. § 924(e). Those prior convictions include convictions for “burglary.” § 924(e)(2)(B)(ii). And the question here is whether the statutory term “burglary” includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation. We hold that it does.

United States v. Lamb, 847 F.3d 928 (8th Cir. 2017)

Without question, [the Wisconsin burglary statute], § 943.10(1m), viewed as a whole, encompasses a broader range of conduct than generic burglary as defined in Taylor, such as burglary of railroad cars, ships, trucks, and motor homes. But viewing subsections (a)-(f) as a whole, we agree with the District of Minnesota that Section (1m) is a divisible statute, indeed, “a textbook example of one with alternative elements.” United States v. Jones, 2016 WL 4186929, at *3 (D. Minn. Aug. 8, 2016).

We find support for this conclusion in Wisconsin precedent and practice. Consistent with the face of the statute, prior reported decisions all reflect that defendants were convicted of violating a specific subsection of § 943.10(1m). See, e.g., Anderson v. State, 66 Wis.2d 233, 223 N.W.2d 879, 882 (1974) (subsection (d), locked cargo trailer of truck); State v. Champlain, 307 Wis.2d 232, 744 N.W.2d 889, 899 (App. 2007) (subsection (a), building); State v. Curtis, 144 Wis.2d 691, 424 N.W.2d 719, 719–20 (App. 1988) (subsection (f), room inside a dwelling)

Section 943.10(1m) is part of the Trespass subchapter of the Wisconsin Statutes Crimes Against Property chapter. Although “dwelling” is not defined in § 943.10, the term is defined in another section of this subchapter, entitled criminal trespass to dwellings, as meaning “a *structure or part of a structure* that is used or intended to be used as a home or residence.” Wis. Stat. § 943.14(1) (emphasis added). In § 943.10(1m), burglary of a dwelling is linked in subsection (a) to burglary of a building, a linkage that strongly suggests the word “dwelling” means a particular type or subset of a “building or other structure,” consistent with the express definition in § 943.14. As the Seventh Circuit reasoned in Edwards, “the phrase ‘building or dwelling’ in subsection (a) is best understood as ... providing two examples of enclosed structures.” 836 F.3d at 837.

State of Wisconsin vs. Michael Alan Jones

Judgment of Conviction
CLERK OF CIRCUIT COURT
FILED

Date of Birth [REDACTED]

Case No.: 2016CF000945

DIANE PERKINS, Clerk
GRANT COUNTY, WIS.

The defendant was found guilty of the following crime(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	Burglary-Building or Dwelling	943.10(1m)(a)	No Contest	Felony F	12-05-16		10-05-17

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Agency	Comments
1	10-05-17	imprisonment	18 mos	Department of Corrections	12 mos suspended.

Sentence Concurrent With/Consecutive Information:

Ct.	Sentence	Type	Concurrent with/Consecutive To	Comments
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Conditions of Sentence or Probation

Obligations: (Total amounts only)

Fine	Court Costs	Attorney Fees	<input checked="" type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge
10.00	20.00		TBD	13.00	92.00		

Conditions

Ct.	Condition	Agency/Program	Comments
1	Costs		Def. to pay the court costs in the matter including the drug offender diversion surcharge.
1	Employment / School		If not incarcerated, def. is to have full time employment and if not employed to seek work as deemed appropriate by the Dept. of Corrections.
1	Restitution		Def. to pay restitution jointly and severally responsible. The amount is to be determined.

Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:

The Defendant is ☐ is not ☐ eligible for the Challenge Incarceration Program.The Defendant is ☐ is not ☐ eligible for the Earned Release Program.

IT IS ADJUDGED that 0 days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department.

BY THE COURT:

Circuit Court Judge/Clerk/Deputy Clerk

October 5, 2017
Date