

CATEGORICAL APPROACH SCENARIO

You are tasked to drafting a Presentence Report for a defendant named Mark Jones. He has pleaded guilty to one count of bank robbery in violation of 18 U.S.C. § 2113(a) and (d). You have gathered records from his prior convictions as well the relevant statutes.

Based on the information below, you have to decide whether Mr. Jones' prior convictions are crimes of violence under U.S.S.G. §4B1.2 and, if so, whether Mr. Jones is a career offender.

Crime of Violence Definition §4B1.2

- *has as an element* the use, attempted use, or threatened use of physical force against the person of another, or
- *is* murder, voluntary manslaughter, kidnapping, aggravated assault, forcible sex offense, robbery, arson, or extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. § 5949 (a) or explosive material as defined in 18 U.S.C § 841 (c).

For each conviction you have to decide:

- Whether the statute divisible?
- If the offense serves as a predicate for career offender under §4B1.2?

Conviction #1: Causing Injury to a Child

Statute § 351.512: Causing Injury to a Child

- (A) Whoever uses physical force against a child with intent to cause bodily injury is guilty of a felony in the third degree. Maximum penalty shall not be more than 5 years of imprisonment.
- (B) Whoever negligently places a child in an unsafe environment which results in the child suffering bodily injury is guilty of a felony in the fourth degree Maximum penalty shall not be more than 2 years of imprisonment

Documents Gathered:

- A **judgment** stating that Mr. Jones has been convicted of State Statute § 351.512 but does not specify which section of the statute he pleaded guilty to.
- The **indictment** citing the language from both sections of the statute and stating that Mr. Jones' three-year-old child suffered bodily injury in a fall down an open stairwell.
- The **police report** in the case states that Mr. Jones' wife called the police when her husband in a fit of rage kicked the child down the open stairwell.

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Conviction #2 Rioting

State Statute 164.225: Rioting

A person is guilty of the crime of riot, if, acting with three or more other persons, he or she knowingly and unlawfully uses or threatens to use force against any person or property.

Documents Gathered:

- A **Judgment** showing that Mr. Jones has been convicted of riot and citing the statute.
- A **transcript of a plea colloquy** where Mr. Jones admits that after a night of drinking, he, along with three friends, attempted to rob Victim A and punched Victim A in the face when he resisted.

Conviction #3: Failure to Stop for a Blue Light

Statute § 450.233 Failure to Stop for a Blue Light

Whoever willfully fails to stop the vehicle upon notification by a blue light operated by an authorized law enforcement officer is guilty of a felony fourth degree

Documents Gathered:

- A **Judgment** stating that Mr. Jones was convicted of failure to stop for a blue light.
- A **statement of facts in the plea agreement** stating that the law enforcement officer pursued the car driven by the defendant for 15 miles, at speeds up to 100 miles per hour, and that the defendant swerved his car into the law enforcement officer's car in an attempt to force the officer's car into a bridge abutment.