

APPENDIX A

United States v. Owens

United States Court of Appeals for the Fifth Circuit

February 22, 2018, Filed

No. 16-60741

Reporter

2018 U.S. App. LEXIS 4257 *; 2018 WL 1037109

UNITED STATES OF AMERICA, Plaintiff —
Appellee, v. FRANK GEORGE OWENS, JR.,
also known as State Raised; ERIC GLENN
PARKER, Defendants — Appellants.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.*

Prior History: [*1] Appeals from the United States District Court for the Northern District of Mississippi USDC 4:14-CR-00141.

[United States v. Parker, 2015 U.S. Dist. LEXIS 117130 \(N.D. Miss., Sept. 2, 2015\)](#)

Core Terms

conspiracy, murder, venue, counts, withdrawal, tattoos, reasonable jury, district court, vacate, methamphetamine, distributed, racketeering, kidnapping, argues, sever, co-conspirator, affiliation, involvement, leadership, sentence, killed, racketeering activity, competency hearing, reasonable doubt, suicide attempt, jury's verdict, prejudicial, activities, admitting, proceeds

Case Summary

Overview

HOLDINGS: [1]-Venue was proper because a reasonable jury could conclude from the

evidence that the ***RICO*** conspiracy count was based on statewide activity and that venue was therefore proper in the Northern District of Mississippi; [2]- Defendant failed to show that the district court erred in admitting the photos of the organization tattoos, because any error was harmless, since there was significant evidence of defendant's leadership in the organization and involvement with the charges in the indictment; [3]-Defendant failed to show the evidence was insufficient to convict him of the four counts because defendant had a leadership role in the organization, and there was no requirement that humans remains be produced in a VICAR prosecution.

Outcome

Judgment affirmed in part and vacated in part.

LexisNexis® Headnotes

Criminal Law & Procedure > Appeals > Standards of Review > De Novo Review

Criminal Law & Procedure > Jurisdiction & Venue > Venue

HN1 [down arrow] Standards of Review, De Novo Review

The appellate court reviews venue issues de novo.

Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

Evidence > Admissibility > Circumstantial & Direct Evidence

Evidence > Weight & Sufficiency

HN2 Substantial Evidence, Sufficiency of Evidence

A verdict will be affirmed if, viewing all the evidence in the light most favorable to the government, a rational jury could conclude, from the evidence presented at trial, that the government established venue by a preponderance of the evidence. Circumstantial evidence is sufficient to establish venue and the evidence need only show any single act that initiated, perpetuated, or completed the crime.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN3 Racketeer Influenced & Corrupt Organizations Act, Elements

A Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy is a continuing offense. Venue for continuing offenses is governed by 18 U.S.C.S. § 3237, which allows the prosecution of the offense in any district in which such offense was begun, continued, or completed. 18 U.S.C.S. § 3237(a). To prove a RICO conspiracy, the government must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense. The substantive RICO provision

requires that the government prove: (1) the existence of an enterprise that affected interstate commerce; (2) the defendant was associated with the enterprise; (3) the defendant participated in the conduct of the enterprise's affairs; and (4) participation constituted a pattern of racketeering activity. 18 U.S.C.S. § 1962(c). A pattern of racketeering activity occurs when the defendant commits at least two predicate acts within ten years. 18 U.S.C.S. § 1961(5).

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN4 Racketeer Influenced & Corrupt Organizations Act, Elements

A conviction for Racketeer Influenced and Corrupt Organizations Act conspiracy pursuant to 18 U.S.C.S. § 1962(d) does not require that a defendant actually commit two or more racketeering acts, only that the defendant adopt the goal of furthering or facilitating the criminal endeavor. A conspiracy can exist even if some members are unaware of the number or identities of their fellow conspirators.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN5 Racketeer Influenced & Corrupt Organizations Act, Elements

Under the Racketeer Influenced and Corrupt Organizations Act conspiracy statute, it is enough to prove that defendant knew of the organization's activities and agreed to facilitate the criminal enterprise.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN6 Racketeer Influenced & Corrupt Organizations Act, Elements

Because a Racketeer Influenced and Corrupt Organizations Act conspiracy is a continuing offense, the government only has to prove by a preponderance of the evidence that the conspiracy was begun, continued, or completed in the venue.

Criminal Law & Procedure > ... > Inchoate Crimes > Conspiracy > Elements

Criminal Law & Procedure > Jurisdiction & Venue > Venue

HN7 Conspiracy, Elements

Venue is proper in conspiracy offenses in any district where the agreement was formed or an overt act occurred. In a conspiracy to possess with intent to distribute controlled substances, the object of the conspiracy is for the co-conspirators to profit from the purchase and selling of controlled substances.

Criminal Law & Procedure > Criminal Offenses > Homicide, Manslaughter & Murder > Murder

HN8 Homicide, Manslaughter & Murder

Violent Crimes in Aid of Racketeering Act murder consists of four elements: (1) an enterprise engaged in racketeering; (2) the activities affected interstate commerce; (3) a murder; and (4) the murder was committed for

payment by the enterprise or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise. 18 U.S.C.S. § 1959(a)(1).

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Sufficiency of Evidence

HN9 De Novo Review, Sufficiency of Evidence

The appellate court's review is de novo, examining whether a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt when viewing the evidence in the light most favorable to the government.

Criminal Law & Procedure > ... > Racketeering > Racketeer Influenced & Corrupt Organizations Act > Elements

HN10 Racketeer Influenced & Corrupt Organizations Act, Elements

The elements of Racketeer Influenced and Corrupt Organizations Act conspiracy are: (1) an agreement to commit a substantive Racketeer Influenced and Corrupt Organizations Act offense; and (2) the defendant knew of and agreed to the overall objective of the Racketeer Influenced and Corrupt Organizations Act offense.

Criminal Law & Procedure > Criminal Offenses > Homicide, Manslaughter & Murder > Murder

Evidence > Admissibility > Circumstantial & Direct Evidence

HN11 [down] **Homicide, Manslaughter & Murder, Murder**

Mississippi law does not require the production of a body. The fact of death may be proved by circumstantial evidence.

Criminal Law & Procedure > Postconviction Proceedings > Motions for New Trial

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > New Trial

HN12 [down] **Postconviction Proceedings, Motions for New Trial**

The appellate court reviews the denial of a motion for new trial for abuse of discretion.

Criminal Law & Procedure > Appeals > Reversible Error > Prosecutorial Misconduct

Criminal Law & Procedure > Appeals > Prosecutorial Misconduct > Tests for Prosecutorial Misconduct

HN13 [down] **Reversible Error, Prosecutorial Misconduct**

A defendant has a substantial burden to establish that a prosecutor's comments constitute reversible error. The determinative question is whether the prosecutor's remarks cast serious doubt on the correctness of the jury's verdict. Three factors guide this analysis: (1) the magnitude of the prejudicial effect of the prosecutor's remarks, (2) the efficacy of any cautionary instruction by the judge, and (3) the strength of the evidence supporting the conviction.

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion

Criminal Law & Procedure > Appeals > Reviewability > Preservation for Review

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Harmless Error

HN14 [down] **Standards of Review, Abuse of Discretion**

The appellate court reviews preserved objections to evidentiary rulings for abuse of discretion, subject to the harmless error standard.

Criminal Law & Procedure > Trials > Witnesses

HN15 [down] **Trials, Witnesses**

Co-conspirator statements are non-testimonial.

Evidence > Relevance > Exclusion of Relevant Evidence

HN16 [down] **Relevance, Exclusion of Relevant Evidence**

Racially-charged tattoos should not be introduced into evidence to influence the jury when identity and membership are not at issue.

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion

Criminal Law & Procedure > Trials > Jury Instructions > Particular Instructions

HN17 Standards of Review, Abuse of Discretion

A district court's failure to give a requested withdrawal from conspiracy instruction is reviewed for abuse of discretion.

Criminal Law & Procedure > ... > Inchoate Crimes > Conspiracy > Elements

HN18 Conspiracy, Elements

A conspirator may withdraw from a conspiracy at any time, but the timing of the withdrawal determines the crimes for which the conspirator remains liable. Withdrawal is an affirmative defense, and for which the defendant has the burden. To demonstrate withdrawal, the defendant must show that he took affirmative acts that were inconsistent with the object of the conspiracy. Mere cessation of activity in furtherance of the conspiracy is not sufficient to show withdrawal.

Criminal Law & Procedure > ... > Accusatory Instruments > Joinder & Severance > Joinder of Defendants

HN19 Joinder & Severance, Joinder of Defendants

Denial of a motion to sever is reviewed under the exceedingly deferential abuse of discretion standard. Defendants charged with the same conspiracy should generally be tried together. To establish that the district court abused its discretion in denying a motion to sever, a defendant must show that: (1) the joint trial prejudiced him to such an extent that the district court could not provide adequate protection; and (2) the prejudice outweighed the government's interest in economy of judicial administration.

Criminal Law & Procedure > Appeals > Standards of Review > Abuse of Discretion

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Competency to Stand Trial

HN20 Standards of Review, Abuse of Discretion

The appellate court reviews the district court's decision not to hold a competency hearing for abuse of discretion. To determine whether there is reasonable cause to doubt a defendant's competence, the court considers: (1) any history of irrational behavior, (2) the defendant's demeanor at trial, and (3) any prior medical opinion on competency. A suicide attempt, by itself, is not necessarily sufficient to create reasonable cause for a competency hearing.

Counsel: For United States of America, Plaintiff - Appellee: Scott F. Leary, Esq., Assistant U.S. Attorney, Clayton Adair Dabbs, U.S. Attorney's Office, Northern District of Mississippi, Oxford, MS; Teresa Ann Wallbaum, U.S. Department of Justice, Washington, DC.

For Frank George Owens, Jr., also known as: State Raised, Defendant - Appellant: Gregory Joseph Weber, Madison, MS.

For Eric Glenn Parker, Defendant - Appellant: Joshua Aaron Turner, Esq., Oxford, MS.

Judges: Before WIENER, ELROD, and SOUTHWICK, Circuit Judges.

Opinion

PER CURIAM*:

Defendant-Appellants Frank George Owens, Jr. and Eric Glenn Parker bring this appeal. Parker contends that the government did not prove venue in the Northern District of Mississippi on his counts of conviction. Owens contends that there is insufficient evidence to support his counts of conviction. Additional arguments are raised on appeal regarding evidentiary admissions, jury instructions, denials of pretrial motions, and sentencing.

We affirm the judgment on all grounds, except as to Parker for Count II, which we vacate.

I.

This case involves accusations that Parker and Owens [*2] in their leadership roles with the Aryan Brotherhood of Mississippi (ABM) conspired to commit racketeering activity and committed acts of violence and drug offenses. The ABM is a state-wide organization that operates both within the Mississippi prison system and in the "free world" outside the prison system. ABM has a written constitution and a leadership hierarchy. The highest level of this hierarchy is "the Wheel," which consists of three to four leaders referred to as "Spokes." An order from the Wheel carries full authority throughout the state of Mississippi. Owens and Parker were Captains in the ABM.

At trial, Brandon Creel, who was a Spoke, testified that he and Parker distributed ten to twenty pounds of methamphetamine from 2010 to 2012. Creel testified that this drug trafficking was a personal business for him and Parker and that the proceeds did not get distributed to the ABM treasury. In 2010, Parker fronted methamphetamine to a fellow ABM member, Michael "Skip" Hudson, who

subsequently avoided paying. Creel ordered that "minutes" (a fistfight) occur between Parker and Hudson to settle the drug debt. Hudson did not show up for the ordered minutes, which was a violation of [*3] an ABM "direct order." Owens then ordered ABM member James Dean and ABM prospect Sonny Maxwell to kidnap Hudson so he could "gift wrap him and give him to Eric Parker."

Maxwell and Dean took Hudson to an ABM member's house where he was beaten by several ABM members, including Owens. Owens and two other ABM members put Hudson in the trunk of a car and told Dean and Maxwell that he was taking Hudson to Parker. Later that night, Creel received a panicked phone call from Parker saying that there had been a "situation" and that he needed help. Creel, at this time, was the ranking ABM officer not in prison. Parker and Owens were both present when Creel arrived at Parker's trailer. Parker explained that things had gotten out of hand and that he needed help getting rid of Hudson's body. Creel testified that he never actually saw a body because it was rolled up in a carpet when he arrived. He agreed to dispose of the body for Parker and Owens. The rolled carpet containing Hudson's body was then placed in a fifty-gallon drum, transported back to Creel's house, and then taken to a nearby property. Creel then burned the drum for four or five days before tossing the remnants into a nearby river. [*4]

Creel testified that Parker had told him that he choked Hudson to death. According to Creel, he did not authorize Hudson's death, and he did not think that there was ever an ABM-authorization for the incident. Parker's girlfriend, Jo Kalyn Henderson, testified that Parker had said that he and Owens strangled a man to death. Thomas Parker too testified that Owens told him about killing Hudson.

Owens moved from the Southern District of

* Pursuant to **5TH CIR. R. 47.5**, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in **5TH CIR. R. 47.5.4**.

Mississippi to the Northern District of Mississippi where he subsequently was incarcerated and rose to the level of Spoke with the ABM. Parker became less involved with the ABM but never covered or removed his tattooed ABM brand. Maxwell received his tattooed ABM brand for the kidnapping and beating of Hudson.

A federal grand jury in the Northern District of Mississippi indicted multiple ABM members, including Owens and Parker, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Violent Crimes in Aid of Racketeering Act (VICAR). Owens was indicted on Count I (RICO Conspiracy); Count III (VICAR Kidnapping); Count IV (VICAR Murder); and Count VII (VICAR Attempted Murder). Parker was indicted on Count I (RICO Conspiracy); [*5] Count II (Conspiracy with Intent to Distribute Methamphetamine); and Count IV (VICAR Murder). Parker and Owens were tried and convicted in the Northern District of Mississippi on all counts. Each timely appealed.

II.

Parker contests venue as to all three counts of conviction: (1) Count I: RICO Conspiracy; (2) Count II: Conspiracy with Intent to Distribute Methamphetamine; and (3) Count IV: VICAR Murder. HN1 We review venue issues *de novo*. United States v. Mendoza, 587 F.3d 682, 686 (5th Cir. 2009). HN2 A verdict will be affirmed "if, viewing all the evidence in the light most favorable to the government, a rational jury could conclude, from the evidence presented at trial, that the government established venue by a preponderance of the evidence." *Id.* Circumstantial evidence is sufficient to establish venue and the evidence need only show "any single act that initiated, perpetuated, or completed the crime." *Id.*

A.

Venue was proper in the Northern District for the RICO conspiracy count. HN3 A RICO conspiracy is a continuing offense. See Smith v. United States, 568 U.S. 106, 111, 133 S. Ct. 714, 184 L. Ed. 2d 570 (2013). Venue for continuing offenses is governed by 18 U.S.C. § 3237, which allows the prosecution of the offense "in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a). "To prove a RICO conspiracy, the government must establish [*6] (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense." United States v. Posada-Rios, 158 F.3d 832, 857 (5th Cir. 1998). The substantive RICO provision requires that the government prove: (1) the existence of an enterprise that affected interstate commerce; (2) the defendant was associated with the enterprise; (3) the defendant participated in the conduct of the enterprise's affairs; and (4) participation constituted a pattern of racketeering activity. See United States v. Jones, 873 F.3d 482, 489-90 (5th Cir. 2017); 18 U.S.C. § 1962(c). A pattern of racketeering activity occurs when the defendant commits at least two predicate acts within ten years. 18 U.S.C. § 1961(5). HN4 A conviction for RICO conspiracy pursuant to 18 U.S.C. § 1962(d) does not require that a defendant actually commit two or more racketeering acts, only that the defendant "adopt the goal of furthering or facilitating the criminal endeavor." Salinas v. United States, 522 U.S. 52, 65-66, 118 S. Ct. 469, 139 L. Ed. 2d 352 (1997). A conspiracy can exist even if some members are unaware of the number or identities of their fellow conspirators. See United States v. Greenwood, 974 F.2d 1449, 1457 (5th Cir. 1992).

Parker insists that the government never established that any of his criminal activity was ABM-related or that his ABM activity in the

Southern District was related to ABM activity in the Northern District. The government introduced [*7] evidence that Parker had a leadership role in the ABM and that under the ABM constitution he had the power to direct the group's activities in the entire state. The government does not need to prove that Parker committed an overt criminal act on behalf of the ABM. HN5 Under the RICO conspiracy statute, it is enough to prove that Parker knew of the ABM's activities and agreed to facilitate the criminal enterprise. See Salinas, 522 U.S. at 65.

Parker was an ABM leader. The ABM operated throughout the state of Mississippi. HN6 Because a RICO conspiracy is a continuing offense, the government only had to prove by a preponderance of the evidence that the conspiracy was begun, continued, or completed in the Northern District. See United States v. Nieto, 721 F.3d 357, 369 (5th Cir. 2013) (holding venue was proper in the Western District of Texas in a RICO conspiracy case in which the predicate acts occurred in the Northern District of Texas because the conspiracy was centered in the Western District). ABM members committed numerous overt acts and specific instances of racketeering activity in the Northern District, including: the attempted murder of Jeremy Bailey in the Marshall County Correctional Facility; the burglary of a pawnshop in Coldwater, Mississippi; methamphetamine [*8] trafficking directed from the Marshall County Correctional Facility; and the burglary of a pawnshop in Corinth, Mississippi. A reasonable jury could conclude from the evidence that the RICO conspiracy count was based on statewide activity and that venue was therefore proper in the Northern District of Mississippi.

B.

Venue was not proper as to Parker on the methamphetamine conspiracy count. HN7

"Venue is proper in conspiracy offenses in any district where the agreement was formed or an overt act occurred." United States v. Winship, 724 F.2d 1116, 1125 (5th Cir. 1984). "In a conspiracy to possess with intent to distribute controlled substances, the object of the conspiracy is for the co-conspirators to profit from the purchase and selling of controlled substances." United States v. Niamatali, 17-40150, 2018 U.S. App. LEXIS 1968, 2018 WL 580650, at *4 (5th Cir. Jan. 26, 2018) (citing United States v. Morris, 46 F.3d 410, 415 (5th Cir. 1995)).

Parker insists that the evidence showed that he engaged in drug trafficking in his personal capacity, not as an ABM member, and that no overt act or agreement as to his drug dealing occurred in the Northern District. The government responds that venue is proper in the Northern District because the ABM engaged in drug trafficking as racketeering activity in the Northern District and Parker was an ABM leader.

The government's evidence does not [*9] support the contention that it advances in support of venue on this count. The evidence shows that Brandon Creel and Parker distributed methamphetamine together and that Parker distributed drugs to fellow ABM members, including Michael Hudson. The uncontested evidence demonstrates that they were acting in their individual capacities in that particular conspiracy. No evidence shows that Parker's proceeds from his drug sales went to the ABM treasury.¹ Likewise, the

¹ At oral argument, the government contended for the first time that there was testimony from Perry Mask that Parker's drug proceeds went to the ABM treasury. Mask's trial testimony only stated that if the ABM loaned a funds that such member would need to pay back a portion of an income, including drug proceeds, to the ABM treasury. Mask did not testify that Parker's drug proceeds went to the ABM treasury. In his testimony about the conspiracy to distribute methamphetamine, Mask specifically testified that he did not know Parker, that Parker had nothing to do with Mask's drug

uncontradicted evidence at trial shows that Parker's drug-distribution activity exclusively occurred in the Southern District and was not part of the ABM's drug distribution efforts in the Northern District. Accordingly, we must vacate Count II.²

C.

Parker also contests venue in the Northern District on the VICAR murder count. HN8 [↑] VICAR murder consists of four elements: (1) an enterprise engaged in racketeering; (2) the activities affected interstate commerce; (3) a murder; and (4) the murder was committed for payment by the enterprise or "for the purpose of gaining entrance to or maintaining or increasing position in an enterprise." 18 U.S.C. § 1959(a)(1). Parker insists that even if a murder took place, it occurred in the Southern District. We conclude [*10] that a reasonable jury could infer that the murder was done in aid of racketeering by a unified, state-wide organization and that venue was in the state where the ABM primarily operated and the murder occurred. See United States v. Wilson, 116 F.3d 1066, 1078-79 (5th Cir. 1997), vacated on other grounds by United States v. Brown, 161 F.3d 256 (5th Cir. 1998) (en banc) (holding the inquiry is whether a reasonable jury could infer that the violent act was because of the defendant's membership in a racketeering enterprise); United States v.

distribution efforts, and that "[t]hey had their own thing going down south that I didn't have nothing to do with and I had what I had going. He didn't have nothing to do with what I had going."

² Parker's counsel asserted for the first time at oral argument on appeal that vacating his conviction on Count II would require that we also vacate the RICO Conspiracy conviction on Count I because the drug conspiracy was one of Parker's two predicate acts. A RICO conspiracy conviction, however, does not require that the defendant have committed two predicate acts. See Salinas, 522 U.S. at 65-66. As conceded by Parker's counsel at oral argument, if only Count II is vacated, we do not need to remand for resentencing because the guideline range was calculated based on Parker's convictions on Counts I and IV.

Jones, 873 F.3d 482, 493-95 (5th Cir. 2017) (holding on a sufficiency of the evidence challenge that "in aid of racketeering" was proved as to only some of the VICAR counts).

IV.

Owens challenges the sufficiency of the evidence on his four counts of conviction: (1) Count I: RICO conspiracy; (2) Count III: VICAR kidnapping; (3) Count IV: VICAR murder; and (4) Count VII: VICAR attempted murder. HN9 [↑] Our review is *de novo*, examining whether a "reasonable trier of fact [could have found] that the evidence established guilt beyond a reasonable doubt" when viewing the evidence "in the light most favorable to the government." United States v. Michelena-Orovio, 719 F.2d 738, 742 (5th Cir. 1983) (citations omitted).

Owens argues that the government failed to prove its case on Count I, the RICO conspiracy, because there is no evidence that he profited from drug-trafficking by other ABM members. The government [*11] counters that a specific link to ABM drug-trafficking activities is unnecessary given his leadership role and involvement in other ABM-related criminal acts. HN10 [↑] The elements of RICO conspiracy are: (1) an agreement to commit a substantive RICO offense; and (2) "the defendant knew of and agreed to the overall objective of the RICO offense." United States v. Rosenthal, 805 F.3d 523, 530 (5th Cir. 2015). Given the evidence of Owens's leadership role in the ABM, a reasonable jury could have found there was sufficient evidence to prove Owens's involvement in a RICO conspiracy.

On Count III, VICAR kidnapping, Owens claims that there was insufficient evidence to show his involvement in the kidnapping of Michael Hudson. There is evidence in the record, however, from which a reasonable jury could conclude that Owens ordered James Dean and Sonny Maxwell to kidnap Hudson

and told Maxwell that he would gain ABM membership for the act.

Turning to Count IV, VICAR murder, Owens argues that because Hudson's body was not found, there is insufficient evidence to support the VICAR murder conviction under Mississippi law. The government argues that VICAR employs the generic definition of murder that was in effect at the time 18 U.S.C. § 1959 was passed and does not incorporate state [*12] procedural or evidentiary requirements; therefore, there is no requirement that humans remains be produced in a VICAR prosecution. We need not resolve whether VICAR requires instruction on the state's substantive law for the offense or a generic definition for the offense because HN11 Mississippi law does not require the production of a body. See Miskelley v. State, 480 So. 2d 1104, 1107-08 (Miss. 1985) (stating that the fact of death may be proved by circumstantial evidence). There is sufficient circumstantial evidence for a reasonable jury to conclude beyond a reasonable doubt the fact of Michael Hudson's death.³

There is also sufficient evidence on Count VII, VICAR attempted murder, for a reasonable jury to find Owens guilty beyond a reasonable doubt. The government presented evidence that Owens ordered the stabbing of Bailey and that Ricky Jenkins received an ABM tattoo for the act. Accordingly, there was sufficient

evidence for a reasonable jury to convict Owens on all counts.

V.

Owens and Parker appeal the denial of their mistrial motion that was made during the prosecutor's direct examination. HN12 We review the denial of a motion for new trial for abuse of discretion. United States v. Runyan, 290 F.3d 223, 246 (5th Cir. 2002). The prosecutor asked a witness: [*13] "About when was Hudson killed?" Owens and Parker contend that asking this question was prejudicial error because the fact of Hudson's death had not been established. The government insisted that there was no prejudice because of the substantial circumstantial evidence that Hudson had been killed.

HN13 A defendant has a substantial burden to establish that a prosecutor's comments constitute reversible error. United States v. Virgen-Moreno, 265 F.3d 276, 290 (5th Cir. 2001). "The determinative question is whether the prosecutor's remarks cast serious doubt on the correctness of the jury's verdict." United States v. Weast, 811 F.3d 743, 752 (5th Cir. 2016) (quoting United States v. Davis, 609 F.3d 663, 677 (5th Cir. 2010)). Three factors guide this analysis: "(1) the magnitude of the prejudicial effect of the prosecutor's remarks, (2) the efficacy of any cautionary instruction by the judge, and (3) the strength of the evidence supporting the conviction." *Id.* Here, the objection was sustained outside the presence of the jury and no further cautionary remark was given. However, the other factors show that the remarks did not cast serious doubt on the correctness of the jury's verdict. There was sufficient evidence to establish the fact of Michael Hudson's death, and so, the prosecutor's question does not cast "serious doubt" on the correctness of the jury's verdict.

VI. [*14]

³ Owens also contends that there was insufficient evidence to convict him on Count IV because the jury was not properly instructed on the elements of *corpus delicti* under Mississippi law. *Corpus delicti* requires: "(1) the death of the victim, and (2) the existence of criminal agency as the cause of death." Taylor v. State, 672 So. 2d 1246, 1272 (1996). The jury was instructed that "a person may be convicted of murder if you find, beyond a reasonable doubt, that the person unlawfully, and with deliberate design, killed another human being." The jury instruction contained both elements of *corpus delicti* under Mississippi law, and the evidence was sufficient for a reasonable jury to find that both elements were proved beyond a reasonable doubt.

Owens and Parker raise three issues regarding admission of evidence: (1) the admission of co-conspirator statements, which they allege violates the *confrontation clause*; (2) the admission of what they allege were racially-charged photographs and ABM materials; and (3) the admission of government exhibits 1-43, which they allege was error under *Federal Rule of Evidence 401*. HN14 The "court reviews preserved objections to evidentiary rulings for abuse of discretion, subject to the harmless error standard." United States v. Valas, 822 F.3d 228, 239-40 (5th Cir. 2016).

A.

It is settled law in our court that HN15 co-conspirator statements are non-testimonial. See United States v. Holmes, 406 F.3d 337, 347-48 (5th Cir. 2005); Summers v. Dretke, 431 F.3d 861, 875-78 (5th Cir. 2005). Parker asks us to revisit our precedent but has not provided a reason under the rule of orderliness that we may do so. See Mercado v. Lynch, 823 F.3d 276, 279 (5th Cir. 2016) (quoting Jacobs v. Nat'l Drug Intelligence Ctr., 548 F.3d 375, 378 (5th Cir. 2008)) (stating under our rule of orderliness, "one panel of our court may not overturn another panel's decision, absent an intervening change in the law, such as by a statutory amendment, or the Supreme Court, or our *en banc* court"). In accordance with our precedent, we hold that the district court did not abuse its discretion in admitting the co-conspirator statements.⁴

B.

Both Parker and Owens urge that the district court erred in admitting the photos of the ABM tattoos, because under *Federal Rule of Evidence 403*, any probative value was outweighed [*15] by the prejudice of showing the jury racially-charged tattoos. Parker argues that there was no probative value in admitting the photographs because his identity was not in question and they were not admitted for the purposes of proving an element of the crime. Owens argues that the photographs were cumulative and prejudicial because they inflamed the passion of the jury due to the racial nature of the tattoos, especially given the numerous copies of the ABM constitution introduced at trial that included similar symbols.

Parker cites to a Sixth Circuit case for the proposition that gang affiliation evidence is not admissible if there is no connection between the evidence and charged offense. See United States v. Ford, 761 F.3d 641, 649-50 (6th Cir. 2014). Ford, however, supports holding that there was no error here: It states that evidence of gang affiliation is admissible when it is relevant to establish a relationship, such as in a conspiracy case. *Id.* The government needed to establish that there was a relationship between Parker's ABM affiliation and the crimes with which he was charged.

Moreover, at trial Parker put his continued affiliation with the ABM at issue. The government introduced the tattoos to show that Parker was still a member [*16] of the ABM because Parker would have had to remove them otherwise. We caution the government that HN16 racially-charged tattoos should not be introduced into evidence to influence the jury when identity and membership are not at issue. See Ford, 761 F.3d at 649-50 (quoting United States v. Anderson, 333 F. App'x 17, 24 (6th Cir. 2009)) ("[G]ang affiliation evidence 'is inadmissible if there is no connection between the gang

⁴ In his reply brief, Owens for the first time asserts that the admission of Parker's girlfriend's testimony that Parker confessed to her that he and Owens killed Hudson is error under Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968). Owens forfeited this ground for appeal by failing to adequately raise the issue in his opening brief. See United States v. Scroggins, 599 F.3d 433, 446-47 (5th Cir. 2010).

evidence and the charged offense.""). Here, however, the tattoos were relevant evidence of Parker's continued affiliation with ABM, so there was no error.

Owens cites an Eleventh Circuit case, United States v. Bowman, 302 F.3d 1228, 1240 (11th Cir. 2002), which held that the admission of unredacted gang documents containing racial statements was more prejudicial than probative. Bowman ultimately held, however, that the error was harmless because the defendant's substantial rights were not affected, given the overwhelming evidence of criminal activity. *Id.* We caution the government against the introduction of unredacted evidence that includes racial statements and racially-charged tattoos that are not probative of the ultimate issues in the case. See *id.* at 1240 (holding any probative value of an organization's whites-only policy was outweighed by the possibility that the jury's verdict might have been "clouded by racial issues"). [*17]

However, even assuming *arguendo* that there was any error here, it was harmless. See United States v. El-Mezain, 664 F.3d 467, 526 (quoting Kotteakos v. United States, 328 U.S. 750, 776, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946)) ("A nonconstitutional trial error is harmless unless it had 'substantial and injurious effect or influence in determining the jury's verdict.'"). There was significant evidence of Owens's leadership in the ABM and involvement with the charges in the indictment. Accordingly, the district court did not abuse its discretion in admitting such evidence.

C.

Parker and Owens collectively appeal the admission of government exhibits 1-43 at trial, urging that they are not relevant under Rule 401. The district court did not abuse its discretion in admitting the exhibits because

they were relevant to proving the broader conspiracy with which Parker and Owens were charged.

VII.

Parker appeals the district court's denial of a request for a jury instruction on withdrawal from conspiracy. HN17 A district court's failure to give a requested withdrawal from conspiracy instruction is reviewed for abuse of discretion. United States v. Rojas, 812 F.3d 382, 405 (5th Cir. 2016).

HN18 A conspirator may withdraw from a conspiracy at any time, but the timing of the withdrawal determines the crimes for which the conspirator remains liable. United States v. Salazar, 751 F.3d 326, 330 (5th Cir. 2014). Withdrawal is an affirmative defense, and for which [*18] the defendant has the burden. United States v. MMR Corp. (LA), 907 F.2d 489, 499 (5th Cir. 1990). To demonstrate withdrawal, the defendant must show that he took affirmative acts that were inconsistent with the object of the conspiracy. United States v. Heard, 709 F.3d 413, 428 (5th Cir. 2013). "Mere cessation of activity in furtherance of the conspiracy is not sufficient to show withdrawal." *Id.*

The district court denied Parker's request for a jury instruction on withdrawal from a conspiracy because it did not believe that Parker committed an affirmative act signifying withdrawal. Parker argues this was error because he stopped attending ABM meetings and participating in ABM activities after 2011. However, merely ceasing active involvement in ABM activity is not sufficient to show withdrawal. Even if Parker ceased activity with the ABM, he has not met his burden to show an affirmative act demonstrating that he withdrew from the RICO conspiracy.

VIII.

Parker also appeals the denial of two pre-trial

motions: (1) a motion to sever his trial from Owen's trial; and (2) a motion for an expedited psychiatric evaluation. We address the denials of these motions in turn.

A.

Parker argues the district court's denial of his motion for severance was prejudicial because: (1) his co-defendant, Owens, placed a Kill on Sight [*19] order on him; (2) the proof as to Parker's role in the RICO conspiracy only comprised three days of the trial and the ABM as a whole was put on trial; and (3) the co-conspirator statements would not have been admitted if there had been a severance.

HN19 Denial of a motion to sever is reviewed "under the 'exceedingly deferential' abuse of discretion standard." United States v. Chapman, 851 F.3d 363, 379 (5th Cir. 2017) (quoting United States v. Whitfield, 590 F.3d 325, 355 (5th Cir. 2009)). Defendants charged with the same conspiracy should generally be tried together. United States v. McCord, 33 F.3d 1434, 1452 (5th Cir. 1994). "To establish that the district court abused its discretion in denying a motion to sever, a 'defendant must show that: (1) the joint trial prejudiced him to such an extent that the district court could not provide adequate protection; and (2) the prejudice outweighed the government's interest in economy of judicial administration.'" United States v. Snarr, 704 F.3d 368, 396 (5th Cir. 2013) (internal citations omitted).

Parker's arguments do not meet this standard. He did not explain how a hostile co-defendant affected Parker's ability to prepare for trial or mount a defense. Neither has Parker cited case law stating that extreme hostility from a co-defendant is alone sufficient to show prejudice. Nor does potential prejudice from spillover evidence or a quantitative disparity in evidence between co-defendants [*20] warrant severance. See United States v. Broussard, 80 F.3d 1025, 1037 (5th Cir. 1996).

Moreover, the co-conspirator statements are non-testimonial in nature and therefore would have been admissible against Parker under *Federal Rule of Evidence 801(d)(2)(E)*, even if the trials had been severed. The district court, therefore, did not abuse its discretion.

B.

Parker asserts that he was prejudiced by the district court's failure to hold a competency hearing after he attempted suicide. The government responds that a suicide attempt alone does not require a competency hearing.

HN20 We review the district court's decision not to hold a competency hearing for abuse of discretion. United States v. Mitchell, 709 F.3d 436, 440 (5th Cir. 2013). To determine whether there is "reasonable cause" to doubt a defendant's competence, the court considers: "(1) any history of irrational behavior, (2) the defendant's demeanor at trial, and (3) any prior medical opinion on competency." United States v. Messervey, 317 F.3d 457, 463 (5th Cir. 2002). "[A] suicide attempt, by itself, is not necessarily sufficient to create 'reasonable cause' for a competency hearing." Mata v. Johnson, 210 F.3d 324, 330 (5th Cir. 2000).

Parker has not directed us to any evidence other than his suicide attempt. When the officer's responded to a report from Parker's mother, Parker had already abandoned his suicide attempt, and the attempt did not require medical attention. After initially being placed [*21] on suicide watch, Parker repeatedly told officials he was not suicidal and was removed from the watch. Under these circumstances the district court did not abuse its discretion in denying Parker's motion to hold a competency hearing.

IX.

Parker raises a generic challenge to his sentence based primarily on his contention

that venue was improper on all counts. He also asserts, without further explanation, that he was illegally sentenced because the presentence report violated United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), and the *Sixth Amendment*. We hold that Parker's generic challenge to his sentence is not sufficiently briefed and the argument is forfeited. See Scroggins, 599 F.3d at 446-47.

Vacating only Count II does not affect Parker's sentencing guideline range, as Parker's counsel conceded at oral argument. Because we conclude that venue in the Northern District was proper on Counts I and IV, which are the determinative counts for calculating Parker's guideline range, remand for resentencing is not required. Other than as to Count II, which we vacate, we affirm Parker's sentence.

X.

For the foregoing reasons, we VACATE Parker's conviction on Count II because venue is improper in the Northern District of Mississippi. The district court's judgment in all other aspects is [*22] AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-60741

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

FRANK GEORGE OWENS, JR., also known as State Raised; ERIC GLENN PARKER,

Defendants - Appellants

Appeals from the United States District Court
for the Northern District of Mississippi

ON PETITION FOR REHEARING EN BANC

(Opinion _____, 5 Cir., _____, _____ F.3d _____)

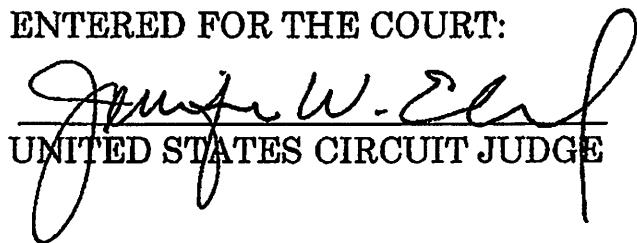
Before WIENER, ELROD, and SOUTHWICK, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, as to appellant, Eric Glenn Parker, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

() Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, as to appellant Eric Glenn Parker, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

APPENDIX C

United States v. Owens

United States District Court for the Northern District of Mississippi, Greenville Division

October 6, 2016, Decided; October 6, 2016, Filed

CRIMINAL NO. 4:14-cr-00141-GHD-SAA-1, -15

Reporter

2016 U.S. Dist. LEXIS 139970 *

UNITED STATES OF AMERICA v. FRANK GEORGE OWENS, JR. a/k/a State Raised and ERIC GLENN PARKER, DEFENDANTS

Prior History: United States v. Parker, 2015 U.S. Dist. LEXIS 117130 (N.D. Miss., Sept. 2, 2015)

Core Terms

murder, conspiracy, meth, venue, kidnapping, racketeering, racketeering activity, trafficking, indictment, superseding, killing, wheel, distribute, motions, trailer, attempted murder, co-conspirator, argues, overt act, exhibits, spoke, minutes, tattoos, photographs, stabbing, prison, gang, psychological evaluation, motion for a new trial, convicted

Counsel: [*1] For Frank George Owens, Jr., also known as State Raised, Defendant: William Andy Sumrall, LEAD ATTORNEY, WILLIAM A. SUMRALL, ATTORNEY, Jackson, MS.

For Perry Wayne Mask, Defendant: John Fletcher Perry, III, LEAD ATTORNEY, PERRY, WINFIELD & WOLFE, PA, Starkville, MS.

For Eric Glenn Parker, Defendant: Joshua A. Turner, LEAD ATTORNEY, JOSHUA A. TURNER - ATTORNEY AT LAW P.A., Oxford, MS.

For USA, Plaintiff: Scott F. Leary, LEAD ATTORNEY, Clayton A. Dabbs, Jamiel M.

Wiggins, U.S. ATTORNEY'S OFFICE - Oxford, Oxford, MS; Kelly Kathleen Pearson, U.S. DEPARTMENT OF JUSTICE, Washington, DC.

Judges: Glen H. Davidson, SENIOR UNITED STATES DISTRICT JUDGE.

Opinion by: Glen H. Davidson

Opinion

MEMORANDUM OPINION DENYING DEFENDANTS' MOTIONS FOR RECONSIDERATION OF THEIR REQUESTS FOR ACQUITTAL, OR ALTERNATIVELY, MOTIONS FOR NEW TRIAL

Presently before the Court are the motion for reconsideration of request for acquittal, or alternatively, motion for new trial [557] filed by Defendant Eric Glenn Parker ("Parker") and the motion for reconsideration of request for acquittal, or alternatively, motion for new trial [558] filed by Defendant Frank George Owens, Jr. ("Owens"). After an approximately seven-day trial, the jury found Parker and Owens [*2] guilty of all charged offenses relating to their involvement in the gang the Aryan Brotherhood of Mississippi (the "ABM"). Making many overlapping arguments, Parker and Owens contend the following: (1) the evidence at trial was insufficient to establish their guilt; (2) the jury verdicts were against the

overwhelming weight of the evidence; (3) their respective motions for mistrial should have been granted; (4) the Court improperly allowed the Government to take photographs of Parker and Owens and submit them to the jury; and (5) the Court erred in admitting a great deal of evidence at trial. In addition, Parker argues the following: (1) venue was not proper in the Northern District of Mississippi; (2) the Court should have granted all jury instructions offered by him; (3) his trial should have been severed from the trial of Owens, who was also found guilty; and (4) the Court should have granted his motion for expedited psychological evaluation and not required him to go to trial without additional time to prepare his defense. Upon due consideration of the motions, the Government's responses in opposition, Parker's reply to his particular motion, the entire record herein, and the applicable [*3] law, the Court finds that the motions must be denied for the following reasons.

I. Background

This case has encompassed as many as seventeen defendants charged with offenses related to their involvement in the ABM. All pled guilty except the two defendants who elected to proceed to trial, Parker and Owens. On April 23, 2015, a superseding indictment [203] charged Parker in Counts 1, 2, and 4 with conspiracy to participate in racketeering activity with the ABM in violation of the *Racketeer Influenced Corrupt Organizations ("RICO") Act*, 18 U.S.C. § 1962(d); one count of conspiracy to possess with intent to distribute methamphetamine ("meth"), 21 U.S.C. § 846; and one count of Murder in Aid of Racketeering ("VICAR murder"), 18 U.S.C. §§ 1959(a)(1) and (2). The superseding indictment [203] charged Owens in Counts 1, 3, 4, and 7 with conspiracy to participate in racketeering activity with the ABM in violation of the *RICO Act*, 18 U.S.C. § 1962(d); one

count of Kidnapping in Aid of Racketeering, 18 U.S.C. §§ 1959(a)(1) and (2); one count of VICAR murder, 18 U.S.C. §§ 1959(a)(1) and (2); and one count of Attempted Murder in Aid of Racketeering, 18 U.S.C. §§ 1959(a)(5) and 2.

The trial in the case sub judice lasted from April 4, 2016 until April 13, 2016. Presentation of evidence lasted approximately seven court days, and the jury deliberated for [*4] approximately one full day. The Government called twenty-seven witnesses and introduced fifty-two exhibits. Among the Government's evidence were audio recordings of wiretapped calls among ABM members, copies of the ABM Constitution, boxes of meth, and photographs of Owens' and Parker's ABM tattoos. The jury returned verdicts of guilty as to both defendants on all counts charged. See Jury Verdict as to Owens [551]; Jury Verdict as to Parker [552].

Parker and Owens filed timely renewed motions for judgment of acquittal, *see Fed. R. Crim. P. 29(c)(1)*, and for a new trial, *see Fed. R. Crim. P. 33(b)(2)*. In addition to their evidentiary challenges, Parker and Owens "renew" their previous motions, objections to evidence, and jury instructions made pretrial, during trial, and during the jury instruction conference.

II. Legal Standards

A. Motion for a Judgment of Acquittal

Rule 29 of the Federal Rules of Criminal Procedure provides that a court "must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." *Fed. R. Crim. P. 29(a)*. A court "do[es] not weigh evidence or assess the credibility of witnesses, and the jury is free to choose among reasonable constructions of the

evidence." United States v. Ramos—Cardenas, 524 F.3d 600, 605 (5th Cir. 2008); see United States v. Johnson, 381 F.3d 506, 508 (5th Cir. 2004) (citing United States v. Martinez, 975 F.2d 159, 161 (5th Cir. 1992), cert. denied, 507 U.S. 943, 113 S. Ct. 1346, 122 L. Ed. 2d 728 (1993) ("Determining the weight and credibility [*5] of the evidence is within the exclusive province of the jury.")). The jury verdict will be upheld if a reasonable trier of fact could conclude from the evidence that the elements of the offense were established beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); United States v. Percel, 553 F.3d 903, 910 (5th Cir. 2008). A court "views the evidence in the light most favorable to the verdict and draws all reasonable inferences from the evidence to support the verdict." Percel, 553 F.3d at 910 (internal quotation marks and citation omitted).

B. Motion for a New Trial

Rule 33 of the Federal Rules of Criminal Procedure provides in pertinent part that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(b). "In th[e Fifth] Circuit, the generally accepted standard is that a new trial ordinarily should not be granted 'unless there would be a miscarriage of justice or the weight of evidence preponderates against the verdict.'" United States v. Wright, 634 F.3d 770, 775 (5th Cir. 2011) (quoting United States v. Wall, 389 F.3d 457, 466 (5th Cir. 2004)). "A new trial is granted only upon demonstration of adverse effects on substantial rights of a defendant." Id. (quoting Wall, 389 F.3d at 466). Accordingly, "harmless error," which is defined as "rainy error, defect, irregularity or variance which does not affect substantial rights," Fed. R. Crim. P. 52(a), does not warrant a new trial. United States v. Akpan,

407 F.3d 360, 369-70 (5th Cir. 2005).

III. Discussion and Analysis

The Court addresses [*6] the issues presented in Parker's and Owens' motions as follows: (1) the defendants' shared arguments on the sufficiency of the evidence to support the guilty verdicts; (2) Parker's renewal of pretrial motions on venue, severance, and psychological evaluation; (3) the defendants' evidentiary objections; (4) the defendants' shared argument on their motions for mistrial; and (5) any other matters not already resolved in the discussion of the foregoing.

A. Sufficiency of the Evidence

When examining the sufficiency of the evidence underlying a conviction, this Court is "highly deferential to the verdict." See United States v. Herrera, 466 F. App'x 409, 414 (5th Cir. 2012) (per curiam) (quoting United States v. Moreno—Gonzalez, 662 F.3d 369, 372 (5th Cir. 2011) (quoting United States v. Harris, 293 F.3d 863, 869 (5th Cir. 2002) (internal quotation marks omitted))). The Court considers "whether any rational jury could have found the essential elements of the offenses beyond a reasonable doubt." See id. (quoting United States v. Valdez, 453 F.3d 252, 256 (5th Cir. 2006) (internal quotation marks omitted)). "It is not necessary that the evidence exclude every rational hypothesis of innocence or be wholly inconsistent with every conclusion except guilt, provided a reasonable trier of fact could find the evidence establishes guilt beyond a reasonable doubt." Id. (quoting Valdez, 453 F.3d at 256) (quoting United States v. Pruneda—Gonzalez, 953 F.2d 190, 193 (5th Cir. 1992)). The [*7] question is thus whether the jury's verdict was reasonable—not whether it was correct. Id. (citing Moreno—Gonzalez, 662 F.3d at 372) (citing United

States v. Williams, 264 F.3d 561, 576 (5th Cir. 2001)). "A defendant may be convicted on the uncorroborated testimony of a co-conspirator who has accepted a plea bargain unless the co-conspirator's testimony is incredible." United States v. Booker, 334 F.3d 406, 410 (5th Cir. 2003) (citing United States v. Villegas-Rodriguez, 171 F.3d 224, 228 (5th Cir. 1999)). "Testimony is incredible as a matter of law only if 'it relates to facts that the witness could not possibly have observed or to events which could not have occurred under the laws of nature.'" *Id.* (quoting United States v. Bermea, 30 F.3d 1539, 1552 (5th Cir. 1994)).

In sum, the Court must view the evidence and the inferences that may be drawn from it in the light most favorable to the verdict, and resolve all inferences and credibility assessments in favor of the verdict. *See id.*; United States v. Ortiz, 942 F.2d 903, 908 (5th Cir. 1991) (citing United States v. Singh, 922 F.2d 1169, 1173 (5th Cir. 1991)). Based on the foregoing standard, the Court finds that any rational trier of fact could have found that Parker and Owens guilty of the counts charged.

I. RICO Conspiracy (Parker and Owens)

Count 1 of the superseding indictment charged Parker, Owens, and other named and unnamed ABM members with RICO conspiracy arising from their membership in the ABM and participation in gang-related activities. *See* Superseding Indictment [*8] [203] ¶¶ 1-8. Specifically, the superseding indictment charged that Parker, Owens, and others conspired to participate in racketeering activity in violation of 18 U.S.C. § 1962(d) as part of the ABM, "a criminal organization whose members and associates engaged in narcotics distribution, firearms trafficking, money laundering, and acts of violence involving murder, attempted murder, assault,

and kidnapping, and which operated throughout Mississippi, including the Northern District of Mississippi and elsewhere." *Id.* ¶ 1. Both Parker and Owens argue—without reasoning or authorities in support—that there was insufficient evidence to convict them and that the jury verdict was against the overwhelming weight of the evidence as to Count 1. Parker's Mot. [557] ¶¶ 7, 10; Owens' Mot. [558] ¶¶ 2, 6. In response, the Government contends that the evidence clearly supported the jury's verdict on Count 1. Gov't's Resp. Opp'n [561] at 18; Gov't's Resp. Opp'n [562] at 16-17 (citing evidence introduced at trial through testimony and exhibits).

Parker and Owens were charged with and convicted of RICO conspiracy under 18 U.S.C. § 1962(d), which criminalizes conspiracy to violate the RICO statute, 18 U.S.C. § 1962(c). The RICO statute provides that it is unlawful [*9] for anyone "employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." *See* 18 U.S.C. §§ 1962(c)–(d). A "pattern of racketeering activity . . . requires at least two acts of racketeering activity" no more than ten years apart. 18 U.S.C. § 1961(5). "[R]acketeering activity" is defined to include a number of so-called predicate acts." Hemi Grp., LLC v. City of New York, N.Y., 559 U.S. 1, 6, 130 S. Ct. 983, 175 L. Ed. 2d 943 (2010). Racketeering activity includes, as relevant in the case sub judice, "any act or threat involving murder, kidnapping, . . . dealing in a controlled substance or listed chemical . . ." *See* 18 U.S.C. § 1961(1)(A).

Importantly, to convict a defendant of RICO conspiracy, the conspirator "need not have committed or agreed to commit the two

predicate acts." United States v. Delgado, 401 F.3d 290, 296 (5th Cir. 2005); see Herrera, 466 F. App'x at 420 (contrasting a § 1962(d) conviction with a § 1962(c) conviction, "which requires a showing of two predicate acts constituting a 'pattern of racketeering activity'"); Salinas v. United States, 522 U.S. 52, 63, 118 S. Ct. 469, 139 L. Ed. 2d 352 (1997) (RICO conspiracy conviction requires no overt act or specific act).

"A defendant need not know exactly what predicate acts the conspiracy intends to perpetrate so long as the defendant knows and agrees [*10] to facilitate the 'overall objective' of the conspiracy." Chaney v. Dreyfus Serv. Corp., 595 F.3d 219, 239 n.17 (5th Cir. 2010); see Salinas, 522 U.S. at 63, 118 S. Ct. 469 ("A conspiracy may exist even if a conspirator does not agree to commit or facilitate each and every part of the substantive offense."); Pinkerton v. United States, 328 U.S. 640, 646, 66 S. Ct. 1180, 90 L. Ed. 1489 (1946) ("[S]o long as the partnership in crime continues, the partners act for each other in carrying it forward"). "A person, moreover, may be liable for conspiracy even though he was incapable of committing the substantive offense." Salinas, 522 U.S. at 64, 118 S. Ct. 469 (citing United States v. Rabinowich, 238 U.S. 78, 86, 35 S. Ct. 682, 59 L. Ed. 1211 (1915)).

"The elements of a conspiracy under § 1962(d) are simply (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense." United States v. Rosenthal, 805 F.3d 523, 530 (5th Cir. 2015) (quoting United States v. Pratt, 728 F.3d 463, 477 (5th Cir. 2013) (emphasis added)). "The government may establish these elements with circumstantial evidence." Herrera, 466 F. App'x at 420 (citing Delgado, 401 F.3d at 296).

The evidence overwhelmingly supported the jury verdict on RICO conspiracy against both Parker and Owens.

First, the evidence clearly demonstrated, as the Fifth Circuit has upheld on appeal in another case, that the ABM "was a racketeering enterprise . . . bound together by a formal constitution and bylaws establishing a hierarchy and strict chain of command." See United States v. Harlow, 547 F. App'x 546, 548 (5th Cir. 2013) (per curiam). Witness testimony and numerous recorded conversations [*11] established the organization and structure of the ABM, as follows.

The Aryan Brotherhood originated in California in about 1967 and now operates throughout the entire United States. E.g., 04/05/2016 Trial Tr. 68:25-25, 69:1-4 (Stephen Hubanks' testimony); 04/06/2016 Trial Tr. 216:11-17 (Perry Mask's testimony). The ABM was a prison gang established in the mid-1980s within the Mississippi Department of Corrections, but over time expanded to include rural and suburban areas of Mississippi and both prison and free world members. E.g., 04/05/2016 Trial Tr. 69:5-15 (Hubanks' testimony); 04/06/2016 Trial Tr. 209:16-18, 216:18-20 (Mask's testimony). The ABM modeled itself on the Aryan Brotherhood of California and Texas. E.g., 04/05/2016 Trial Tr. 69:13-17 (Hubanks' testimony); 04/06/2016 Trial Tr. 216:2-22 (Mask's testimony).

Both Dwayne Smith and Don Douglas, former supervisor and special agent of the Oxford, Mississippi Drug Enforcement Administration, respectively, who each have twenty-five years of experience investigating criminal gang activity, testified that the ABM was a white-based prison gang involved in drug trafficking, money laundering, firearm trafficking, and acts of violence. [*12] 04/05/2016 Trial Tr. 11:5-11, 18-19; 16:18-22 (Smith's testimony); 04/05/2016 Trial Tr. 165:5-9 (Douglas'

testimony). Former ABM leaders who pled guilty confirmed the ABM's organized criminal activity and presence all over the State of Mississippi, particularly with respect to meth distribution. *E.g.*, 04/05/2016 Trial Tr. 56:10-16, 66:5-8 (Hubanks' testimony); 04/06/2016 Trial Tr. 213:21-25, 214:1-8 (Mask's testimony); 04/07/2016 Trial Tr. 519:10-12 (James Dean's testimony), 04/08/2016 Trial Tr. 666:5-23 (Mitchell Valentine's testimony); 04/08/2016 Trial Tr. 720:10-14 (Brandon Creel's testimony).

The ABM was an ongoing organization in 2009, the beginning date of the RICO conspiracy charged in Count 1, and pursued unification with the Aryan Brotherhood of California in 2013. *E.g.*, 04/05/2016 Trial Tr. 85:19-25, 86:1-6 (Hubanks' testimony); *id.* 165:10-17 (Douglas' testimony); 04/06/2016 Trial Tr. 209:10-13, 229:4-8 19-20 (Mask's testimony); 04/08/2016 Trial Tr. 663:25, 664:1-10 (Valentine's testimony); 04/08/2016 Trial Tr. 724:12-15 (Creel's testimony); 04/11/2016 Trial Tr. 788:8-11, 805:10-20 (Thomas Parker's testimony). The ABM was governed by a written constitution that formed the [*13] basis of the ABM structure and included a detailed statement of the organization and its rules of conduct and membership requirements; the constitution was distributed statewide to anyone who held rank within the ABM. *E.g.*, 04/05/2016 Trial Tr. 70:2-7 12-21 (Hubanks' testimony); 04/06/2016 Trial Tr. 210:13-15 22-25; 211:1-15 (Mask's testimony); 04/07/2016 Trial Tr. 530:22-247 (Dean's testimony); 04/08/2016 Trial Tr. 728:10-18 (Creel's testimony). ABM membership was signified by a certain tattoo or "brand" representing the State of Mississippi; advancement in the ABM to the role of an enforcer was signified by additional tattoos, including thunderbolts representing thunder warrior status for commission of three confirmed violent missions. 04/05/2016 Trial Tr. 76:16-23, 77:2-25, 78:1-19 (Hubanks'

testimony); 04/06/2016 Trial Tr. 206:16-19 22-25, 207:1-6, 223:12-25, 224:1-20 (Mask's testimony); 04/06/2016 Trial Tr. 334:1-6 (Jeremy Bailey's testimony); 04/06/2016 Trial Tr. 382:20-25, 383:1-20 (Terry Kelly's testimony); 04/07/2016 Trial Tr. 520:11-16, 521:18-25, 522:1-16 (Dean's testimony); 04/08/2016 Trial Tr. 716:15-18, 723:12-22 (Creel's testimony); 04/11/2016 Trial Tr. 188:8-13 (Thomas [*14] Parker's testimony). ABM members were required to pay monthly dues to the ABM treasury and attend "church meetings" in either prison or the free world to "discuss business" and occasionally mete out punishment for member violations. 04/05/2016 Trial Tr. 74:10-11, 75:20-25, 76:1-15 (Hubanks' testimony); 04/06/2016 Trial Tr. 220:11-17 25; 221:1-13 (Mask's testimony); 04/06/2016 Trial Tr. 387:3-11 (Kelly's testimony); 04/07/2016 Trial Tr. 516:16-17 22-25, 517:1 (Dean's testimony). The ABM had symbolic colors (purple, gold, black, red, and blue) and a five-step handshake. 04/06/2016 Trial Tr. 226:11-23 (Mask's testimony).

Trial testimony and recorded conversations further demonstrated that the ABM was militaristically structured with lingo to describe the various members of the organization. ABM "family" were the members; a three-member "wheel," referred to individually as "spokes," were the directors or shot callers, each overseeing a particular area of Mississippi and issuing direct orders to subordinates; "state captains" were appointed by the wheel to establish communication throughout the organization and a roster to keep track of ABM members state-wide, as well as violations, concerns [*15] with other gangs, and dues owed by members to the ABM; a "captain" presided over each of the three designated zones in Mississippi, known as North, Central, and Southern; and a facility "captain" presided over each prison facility with ABM presence. Each zone and facility could include two "lieutenants," who assisted the captain with

carrying out orders and delegated responsibilities to ABM members; a "sergeant-at-arms" to maintain order and discipline; a "treasurer" to collect, manage, and distribute ABM money throughout Mississippi; and numerous "soldiers." *E.g.*, 04/05/2016 Trial Tr. 56:3-9, 60:6-25, 61:15-18, 66:12-25, 67:1-6, 155:4-19 (Hubanks' testimony); 04/06/2016 Trial Tr. 218:14-25, 219:1-25, 221:14-16, 232:24-25, 233:1-2 (Mask's testimony); 04/06/2016 Trial Tr. 334:14-22 (Bailey's testimony); 04/06/2016 Trial Tr. 383:21-25, 384:1 (Kelly's testimony); 04/07/2016 Trial Tr. 519:15-25, 520:1-6 (Dean's testimony); 04/08/2016 Trial Tr. 720:19-22, 723:7-16 (Creel's testimony); 04/11/2016 Trial Tr. 883:5-9 (Marty Miller's testimony). Testimony and numerous wiretapped phone conversations demonstrated that ABM wheel members/spokes communicated at least twice weekly by mobile phones, [*16] which were contraband in the prison system and had to be smuggled in. *E.g.*, 04/05/2016 Trial Tr. 63:21-25, 64:1-7, 81:19-24, 90:21-23, 130:18-20 (Hubanks' testimony); 04/06/2016 Trial Tr. 211:16-20, 212:25, 213:1-7, 233:14-21, 236:3-6, 305:11 (Mask's testimony).

Wheels could issue direct orders and mete out punishment, ranging from assault of an ABM member who had violated ABM rules (a smash-on-sight or "S.O.S.") by forcefully removing the tattoo signifying gang membership by burning, cutting, or tattooing over the brand), to a kill-on-sight or "K.O.S.", meaning the murder of a rival gang member or an ABM member or associate who committed a serious violation of the ABM's rules; subordinates were required to follow direct orders or be in violation and subject to discipline. *E.g.*, 04/05/2016 Trial Tr. 72:3-25, 73:1-4, 132:13-14, 155:4-19 (Hubanks' testimony); 04/06/2016 Trial Tr. 218:14-15, 219:3-4 10-25, 220:1 (Mask's testimony); 04/06/2016 Trial Tr. 343:7-10 (Bailey's testimony); 04/06/2016 Trial Tr. 383:23-25,

384:1 10-11 22-25, 385:1-2 (Kelly's testimony); 04/07/2016 Trial Tr. 519:15-19, 525:10-17 (Dean's testimony); 04/08/2016 Trial Tr. 666:25-25, 667:1, 698:19-21, 699:5-7, 702:24-25, [*17] 703:1 (Valentine's testimony); 04/08/2016 Trial Tr. 714:13-17, 723:7-11 (Creel's testimony).

The evidence supported the existence of an organization with a hierarchical structure or chain of command, definitely within the scope of a RICO enterprise.

In addition to the proof that the ABM was criminal enterprise engaged in numerous criminal acts throughout Mississippi, the Government presented extensive testimony and audio recordings showing the specific involvement of Parker and Owens in the RICO conspiracy. The Court reiterates that there is no requirement that the Government show that each defendant personally agreed to or was even aware of each individual racketeering activity of the ABM; the Government need only show that "two or more people agreed to commit a substantive RICO offense and that the [particular] defendant knew of and agreed to the overall objective of the RICO offense." See *Rosenthal*, 805 F.3d at 530 (emphasis added).

Ample evidence showed that Parker and Owens at least knew of and agreed to the overall objective of the RICO offense; in fact, the evidence showed that Parker and Owens were committed members of the ABM criminal conspiracy who functioned in different leadership roles. The Government [*18] established that Parker and Owens were active ABM members by introducing photographs of each displaying their ABM tattoos. See, e.g., Gov't's Ex. 52 (photographs of Parker's tattoos); Gov't's Ex. 43 (photographs of Owens' tattoos).

Further evidence showed that Owens, who had attained ABM thunder warrior status and

was an area captain in 2010 and a wheel member/spoke in 2013, oversaw operations in the south Mississippi area of the ABM while incarcerated in north Mississippi at Marshall County and in south Mississippi in Greene County. 04/05/2016 Trial Tr. 61:22-25, 62:1-9, 78:20-21 (Hubanks' testimony); 04/06/2016 Trial Tr. 212:10-18, 233:10-11, 256:4-25, 264:20-25, 265:13-15 (Mask's testimony); 04/07/2016 Trial Tr. 521:16-17, 525:4-5 (Dean's testimony); 04/07/2016 Trial Tr. 601:15-16 (Walter Burns' testimony); 04/08/2016 Trial Tr. 723:23-24 (Creel's testimony); 04/11/2016 Trial Tr. 791:13-15, 794:18-19 (Thomas Parker's testimony). While an area captain, Owens handled trouble and personnel issues at each facility in the area. 04/06/2016 Trial Tr. 210:4-9 (Mask's testimony). Owens was in favor of the ABM's unification efforts to be recognized nationally and to further their drug trafficking [*19] efforts and developed plans to make the ABM's national unification a reality. *Id.* 230:6-11 (Mask's testimony); 04/08/2016 Trial Tr. 665:1-4 (Valentine's testimony); 04/08/2016 Trial Tr. 725:3-4 (Creel's testimony); 04/11/2016 Trial Tr. 806:13-25, 807:1-23 (Thomas Parker's testimony). Mask testified that he and Owens trafficked in meth together. 04/06/2016 Trial Tr. 243:16-22, 247:21-23, 285:16-21, 286:1-5, 288:22-25, 289:1, 291:21-25, 292:1-4, 293:7-13 18-25. Extensive evidence also supported that Owens orchestrated the kidnapping and murder of Hudson, and committed the murder of Hudson with Parker; evidence further demonstrated that after the murder of Hudson, Owens rose to the highest rank (wheel member/spoke) and was instrumental in the activities of the ABM, including meth trafficking, assaults, and attempted murder, particularly issuing the order to stab ABM member Jeremy Bailey and overseeing the stabbing.

The evidence further showed that in 2010 Parker was an area captain over south

Mississippi who committed racketeering acts with other members of the ABM, including meth trafficking and aiding and abetting in the murder of Hudson. *E.g.*, 04/07/2016 Trial Tr. 524:19-22 (Dean's [*20] testimony); 04/11/2016 Trial Tr. 794:9-10 16-17 (Thomas Parker's testimony); 04/11/2016 Trial Tr. 882:16-23 (Miller's testimony). Parker attained thunder warrior status and became the right-hand man of Brandon Creel, who was then a wheel member/spoke. 04/08/2016 Trial Tr. 723:25, 724:1-3 (Creel's testimony); 04/11/2016 Trial Tr. 793:19-20, 794:9-17 (Thomas Parker's testimony); 04/11/2016 Trial Tr. 831:21-25, 832:19-21, 833:20-23, 836:11-25, 837:9-10 21-25; 838:1-3 (Jo Kayln Henderson's testimony).

Accordingly, "the evidence sufficiently indicated that [Parker and Owens] knew of and agreed to further the overall objectives of the [ABM] enterprise." See *Herrera*, 466 F. App'x at 420. Thus, the Court holds there was sufficient evidence for a rational jury to find Defendants Parker and Owens guilty of a RICO conspiracy in violation of 18 U.S.C. § 1962(d).

2. Metizamplzetamine Trafficking Conspiracy (Parker)

The jury found Parker guilty on Count 2 for conspiracy to possess with intent to distribute meth in violation of 21 U.S.C. § 846, which was also a racketeering act of the ABM charged in the superseding indictment.

The elements of a conspiracy under 21 U.S.C. § 846 are that "(1) an agreement existed between two or more persons to violate federal narcotics law, (2) [*21] the defendant knew of the existence of the agreement, and (3) the defendant voluntarily participated in the conspiracy." *United States v. Thomas*, 690 F.3d 358, 366 (5th Cir.), cert. denied, ___ U.S. ___.

_____, 133 S. Ct. 673, 184 L. Ed. 2d 477 (2012). "The essence of the crime of conspiracy is the agreement to commit an unlawful act." United States v. Mills, 555 F. App'x 381, 385 (5th Cir.) (per curiam), cert. denied, 135 S. Ct. 140, 190 L. Ed. 2d 105 (2014) (citing Jannelli v. United States, 420 U.S. 770, 777, 95 S. Ct. 1284, 43 L. Ed. 2d 616 (1975)). "The agreement need not be explicit, but can be inferred from the facts and circumstances of the case." *Id.* (citing Jannelli, 420 U.S. at 777 n.10, 95 S. Ct. 1284; see United States v. Gonzales, 79 F.3d 413, 423 (5th Cir. 1996) (citing United States v. Gallo, 927 F.2d 815, 820 (5th Cir. 1991) (These elements "may be inferred from the development and collocation of circumstances.")). "[T]he government must prove beyond a reasonable doubt . . . that the accused knew of the conspiracy . . ." United States v. Jackson, 700 F.2d 181, 185 (5th Cir. 1983). However, "Rio be convicted of engaging in a criminal conspiracy, an individual need not know all the details of the unlawful enterprise or know the exact number or identity of all the co-conspirators, so long as he knowingly participates in some fashion in the larger objectives of the conspiracy." United States v. Garcia Abrego, 141 F.3d 142, 155 (5th Cir. 1998) (internal citation omitted).

First, the evidence at trial clearly supported the ABM's involvement in meth trafficking. Audio recordings and testimony from former ABM wheel members/spokes established that the ABM ran a drug operation with a focus on meth trafficking—for the purpose of obtaining money. *E.g. [*22]*, 04/05/2016 Trial Tr. 67:7-20 (Hubanks' testimony); 04/06/2016 Trial Tr. 209:19-25, 210:1-3, 213:21-25, 214:1-4 (Mask's testimony); 04/08/2016 Trial Tr. 725:22-25, 726:1-25, 736:14-18 (Creel's testimony). The drug operation was both inside prison facilities and in the free world, with a treasury containing money from the sale of drugs; drug proceeds were transferred within the prison system by Western Union,

MoneyGram, or Green Dot prepaid cards that could be purchased at retail stores in the free world. *E.g.*, 04/05/2016 Trial Tr. 67:15-20 (Hubanks' testimony); 04/06/2016 Trial Tr. 213:21-25, 214:1-4, 222:4-25, 223:1-11, 234:5-25 (Mask's testimony). It was customary for a purchaser to load money from his bank account to a prepaid card and ABM members to then distribute the drug proceeds from the ABM treasury to ABM members as determined necessary for bond money, electric bills (in the free world), debts owed by ABM members to other prison gangs, loans to ABM members, etc. *E.g.*, 04/05/2016 Trial Tr. 68:1-23 (Hubanks' testimony); 04/06/2016 Trial Tr. 236:20-25, 237:1-9 (Mask's testimony).

Extensive evidence further demonstrated that the ABM was pursuing unification with the national Aryan [*23] Brotherhood organization in 2013 to solidify meth trafficking and money laundering. *E.g.*, 04/05/2016 Trial Tr. 88:20-24 (Hubanks' testimony); 04/06/2016 Trial Tr. 229:4-25, 230:1-2 (Mask's testimony); 04/08/2016 Trial Tr. 664:23-25 (Valentine's testimony); 04/08/2016 Trial Tr. 724:16-25 (Creel's testimony). Although apparently unification never occurred, Perry Mask testified that if unification had occurred the ABM planned to deposit 10 to 25 percent of the drug proceeds in the ABM treasury. 04/06/2016 Trial Tr. 231:16-22.

Dwayne Smith, formerly of the Oxford DEA, testified that the ABM was identified as a drug trafficking organization operating in the Northern District of Mississippi and that law enforcement seized more than twenty pounds of meth and \$130,000 as a result of their investigation. 04/05/2016 Trial Tr. 17:1-4 12-13 16-17. Don Douglas of the Oxford DEA testified that the case sub judice began through a meth investigation that revealed at least part of the meth trafficking done by the ABM was being orchestrated from Marshall County Correctional Facility, specifically by

Perry Mask, who pled guilty in this case to meth trafficking. *Id.* 168:8-25, 169:1-2. According to Douglas, [*24] Mask orchestrated the pickup of meth in El Cajon, California by an associate, who then transported the drug south and was apprehended by law enforcement in Arkansas; five pounds of meth were seized in that investigation. *Id.* 181:12-25, 182:1-3.

Clay McCombs, investigator for Leake County Sheriff's Department and contract agent for the Mississippi Bureau of Narcotics with approximately twelve years experience in the field, testified that he investigated meth trafficking in 2013 involving a man named Michael McLemore, who sold vast quantities of meth—stored in two-pound bags, with each bag placed inside an empty hominy can—to a man named Charlie Carol, who then distributed it to Central Mississippi and North Mississippi; at least twenty pounds of the meth distributed to North Mississippi was then sold to members of the ABM. 04/07/2016 Trial Tr. 426:11-21, 427:4-24, 428:10-25, 429:1-25, 430:1-12, 432:7-9, 439:13-16. McCombs testified that this particular meth seizure was the largest one of his career, consisting of a total of nineteen pounds of meth. *Id.* 426:11-14, 436:25, 437:1-3. Jay Hoppenwasser with the DEA South Central Laboratory in Texas, an expert witness in chemistry for the Government, [*25] testified that the bags contained 97 percent meth hydrochloride and 3 percent dimethyl sulfone (cutting agent to increase volume). *Id.* 451:3-4, 452:2-3, 491:6-7.

Although some testimony was that Parker sold drugs independently of the ABM, or with another member of the ABM as a personal pursuit, what is critical for this conviction is that "(1) an agreement existed between two or more persons to violate federal narcotics law, (2) [Parker] knew of the existence of the agreement, and (3) [Parker] voluntarily

participated in the conspiracy." See *Thomas*, 690 F.3d at 366. The jury heard ample testimony that Parker engaged in a series of drug transactions geared toward the common purpose of possession and distribution of narcotics for profit with the ABM. A specific example was the sale of meth to Hudson, who was kidnapped and murdered after eventually refusing to repay the drug debt he owed to Parker.

Parker's involvement with the ABM's meth trafficking was also supported by evidence of other activity. For instance, Parker's former live-in girlfriend, Jo Kayln Henderson, testified that drug trafficking was Parker's main occupation and that she witnessed continuous small sales of meth to multiple ABM members, approximately [*26] two to three ounces weekly. 04/11/2016 Trial Tr. 836:11-25, 837:9-10 21-25, 838:1-3. Duane O'Clare, former narcotics officer at the West Memphis Police Department, testified that in 2010 he executed a traffic stop in Arkansas; Parker was the driver, and Owens was the passenger. O'Clare testified that when he questioned Owens and Parker about why they were in West Memphis, they advised that they were there to purchase over-the-counter pseudoephedrine at the West Memphis Walmart to transport to Mississippi and sell to cooks. 04/07/2016 Trial Tr. 419:1-7 14-25, 420:1-2 (O'Clare's testimony). Furthermore, Walter Burrus, former ABM soldier, testified that he once bought meth from an ABM member who was selling meth for Parker; that the meth was "bad," that is, cut with substances other than meth; that he later confronted Parker about it, telling him he either wanted a refund or a replacement with good meth; and that Parker agreed to make it right and replaced the bad meth with good meth. *Id.* 602:13-25, 603:1-5, 604:4-6. Valentine testified that Owens, his former roommate, had purchased \$1,000 worth of meth from Parker (likely an ounce) and owed him for it. 04/08/2016 Trial Tr. 669:13-25. [*27] Further,

Creel testified that he—a then-wheel member/spoke—teamed up with Parker from 2010 to the latter part of 2012 to sell meth, and that the two jointly moved ten to twenty pounds of meth during that time. *Id.* 725:25, 726:1-18 (Creel's testimony). Former ABM member Marty Miller also testified that he bought meth from Parker and several other different ABM members. 04/11/2016 Trial Tr. 882:16-23.

From that evidence, the jury could—and did—reasonably infer, based on the ABM's structure and objectives and the evidence linking Parker to the ABM, that Parker agreed to join the large conspiracy and that his meth sales were conducted as part of the ABM enterprise. See *Herrera*, 466 F. App'x at 416. Accordingly, the evidence allowed a rational jury to find beyond a reasonable doubt that Parker knowingly participated in a conspiracy to possess with intent to distribute meth in violation of 21 U.S.C. § 846.

3. Kidnapping in Aid of Racketeering (Owens)

The jury found Owens guilty on Count 3 for the kidnapping of Michael Hudson in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and (2), which was also a racketeering act of the ABM charged in the superseding indictment.

Title 18 U.S.C. § 1959 provides in pertinent part: "Whoever, . . . for the purpose of gaining entrance [*28] to or maintaining or increasing position in an enterprise engaged in racketeering activity, . . . kidnaps . . . any individual in violation of the laws of any State or the United States . . . [is guilty of kidnapping in aid of racketeering]." The superseding indictment alleged that Owens committed kidnapping under Mississippi law. See Superseding Indictment [203] ¶ 12. To establish Owens' guilt for Kidnapping in Aid of

Racketeering, the Government had to show five elements: (1) that the ABM was a RICO enterprise; (2) that the ABM was engaged in racketeering activity; (3) that Owens had a position in the ABM; (4) that Owens committed the kidnapping of Hudson in violation of Mississippi law; and (5) that Owens' general purpose in doing so was to maintain or increase his position in the ABM. For the reasons discussed *supra* regarding the RICO conspiracy charges, the first three elements were met. Therefore, the Court proceeds directly to analyzing the last two elements.

Under Mississippi law, the crime of kidnapping occurs when "[a]ny person . . . without lawful authority and with or without intent to secretly confine . . . forcibly seize[s] and confine[s] any other person." Miss. Code. Ann. § 97-3-53. "Circumstantial evidence is sufficient [*29] to prove the elements of kidnapping"; "direct evidence is unnecessary to support a conviction so long as sufficient circumstantial evidence exists to establish guilt beyond a reasonable doubt." Underwood v. State, 708 So. 2d 18, 35 (Miss. 1998).

The evidence at trial showed that the ABM authorized the kidnapping of Hudson by certain members and that the kidnapping of Hudson was in aid of the racketeering activities of the ABM, which, according to the Government's evidence, exercised forceful control over its members to ensure loyalty and obedience to the gang. The evidence further showed that Owens' general purpose in committing the kidnapping was to maintain or increase his position in the ABM.

Both former ABM sergeant-at-arms James Dean and former ABM lieutenant Walter Burros testified that the Hudson issue was first raised at an ABM "church" meeting in the summer or fall of 2010 in Gulfport, Mississippi, and that the church meeting was attended by ABM members, including Owens, Brandon

Creel, Mitchell Valentine, Sonny Maxwell, Thomas Burrus, and James Dean. 04/07/2016 Trial Tr. 538:7-9 18-25, 539:1-8 (Dean's testimony); *id.* 604:7-18 (Burrus' testimony). During the church meeting, then-area captain Owens discussed the approximately [*30] \$600 drug debt owed to Parker for meth. *Id.* 539:19-25, 540:23-25 (Dean's testimony); *id.* 604:19-24 (Burrus' testimony).

James Dean testified that several days later the ABM held another church meeting attended by Owens, Michael Hudson, Mitchell Valentine, Thomas Burrus, and Parker by speakerphone. *Id.* 540:9-22, 541:12-14. Dean further testified that in that second meeting Owens reiterated that Hudson (sometimes referred to as "Skip") owed the drug debt to Parker and was required to pay the debt. *Id.* 540:23-25. A dispute arose between Hudson and Parker concerning the quality of the meth Hudson purchased from Parker; Parker gave Hudson two weeks to pay half of the debt owed. *Id.* 541:25, 542:1-16 (Dean's testimony); 04/08/2016 Trial Tr. 672:8-10 (Valentine's testimony). Extensive testimony demonstrated that Hudson never paid Parker the debt owed, and that as a result, Hudson was subject to an ABM violation. 04/07/2016 Trial Tr. 543:1-5 (Dean's testimony), *id.* 604:25, 605:1 (Burrus' testimony); 04/08/2016 Trial Tr. 672:11-25 (Valentine's testimony). Brandon Creel testified that the situation was a personal issue between Parker and Hudson and that the ABM had no dog in that fight. 04/08/2016 [*31] Trial Tr. 736:25, 737:1-3. However, extensive testimony established the ABM's instrumental role in the events. See, e.g., 04/08/2016 Trial Tr. 673:12-15 (Valentine's testimony) that the situation "went from a minute thing with Parker to a violation in the family").

Testimony further demonstrated that Creel, as a wheel, had ordered minutes between Parker and Hudson. *Id.* 738:2-4 (Creel's testimony); *id.* 672:20-25 (Valentine's testimony) that

Hudson was ordered to submit to minutes between himself and Parker). See 04/06/2016 Trial Tr. 227:17-20, 228:2-7 (Mask's testimony that if one ABM member owed drug money to another ABM member, an order of "minutes" (a fistfight) between the two brothers was common).

Thomas Parker testified that, according to Owens, Creel had authorized a smash-on-sight against Hudson. 04/11/2016 Trial Tr. 801:3-5 (Thomas Parker's testimony). Burros testified that Owens was the ABM member responsible for coordinating the attack on Hudson, and that Owens said he was going to give Hudson the option of either thirteen punches to the chest while saluting—and if dropping the salute, being jumped on by all ABM members present—or "two minutes with two brothers," wherein an ABM [*32] member must fight two brothers for two minutes standing. 04/07/2016 Trial Tr. 605:5-25.

Extensive, mostly consistent testimony established the circumstances and events pertaining to the kidnapping and killing of Hudson. Dean testified that in late 2010 he was supposed to pick up Hudson at a gas station and bring him to the brothers to receive a smash-on-sight violation, and that Hudson told him over the phone that he would be there in about ten minutes, but did not show up. *Id.* 543:6-8 18-23. Dean testified that he called Owens and informed him Hudson had not shown up; Dean then left. *Id.* 543:23-25. Burrus testified that Owens was mad because he felt like he was lied to. *Id.* 606:6-9. Creel testified that a captain—such as Owens—was well within the scope of his authority to issue an order for violation of an order to have minutes. See 04/08/2016 Trial Tr. 738:17-18.

Dean and Maxwell, who was a then-ABM prospect recruited by Dean, both testified that the two of them went to the Waigreen's in Slidell, Louisiana to purchase

pseudoephedrine to make meth; Dean testified he saw Hudson there and told him that the ABM brothers wanted to kill him. 04/07/2016 Trial Tr. 544:15-25 (Dean's testimony); [*33] 637:12-17 (Maxwell's testimony). However, Dean did not report to Owens at that time that he had seen Hudson. *Id.* 546:19-21 (Dean's testimony).

Dean testified that about a month later Owens ordered that Hudson be kidnapped and violated, and that Owens told Dean he was going to gift-wrap Hudson and give him to Parker. *Id.* 547:23-24, 548:11-18. Accordingly, Burrus picked up Owens and Mitchell Valentine and, according to Owens' orders, transported them to ABM member Walter Eaves' residence in Gautier, Mississippi. *Id.* 607:14-25, 608:4-10 (Burrus' testimony); 04/08/2016 Trial Tr. 675:25-25, 676:1 (Valentine's testimony). Both Valentine and Burrus testified that Owens at least gave them an idea of what was going to happen to Hudson. According to Valentine, Owens said during the car ride over that Hudson would not be coming home that night, and that Owens had brought wire to bind Hudson. 04/08/2016 Trial Tr. 676:11-18, 677:7-9. Burrus testified that Owens had informed him five minutes before what was going to take place and that Owens instructed Burrus to park the car near the back door of the trailer, near the bedroom. 04/07/2016 Trial Tr. 608:19-22, 610:6-13. Valentine said at some point [*34] after arriving at Eaves' trailer, Owens cut the wire down to five feet. 04/08/2016 Trial Tr. 676:7-9.

Unequivocal testimony established that, according to Owens' orders, Dean and ABM prospect Maxwell kidnapped Hudson by asking him to help cook some meth at Eaves' trailer. 04/07/2016 Trial Tr. 549:16-256, 550:1-2 (Dean's testimony); *id.* 638:20-24 (Maxwell's testimony); 04/08/2016 Trial Tr. 675:17-23 (Valentine's testimony). Dean and Maxwell picked up Hudson in Maxwell's truck and drove

him to Eaves' house, according to Owens' instructions. 04/07/2016 Trial Tr. 550:24-25, 551:1 (Dean's testimony); *id.* 636:23-24, 637:5-6 (Maxwell's testimony). Dean testified that when the three arrived at the street where Eaves lived, Dean called Owens and told him were pulling up with Hudson; Owens responded that they were ready for him. 04/07/2016 Trial Tr. 551:18-20. The three then arrived at Eaves' trailer, and Eaves opened the door and escorted the three to the back bedroom, which was mostly bare except for a box springs and mattress propped against the wall. 04/07/2016 Trial Tr. 551:20-25, 552:1-4 (Dean's testimony); *id.* 608:14-17, 609:1-13 (Burrus' testimony); *id.* 639:15-16 21-25 (Maxwell's testimony); [*35] 04/08/2016 Trial Tr. 677:14-25, 679:16-21 (Valentine's testimony).

Extensive testimony further showed that Eaves, Valentine, Owens, Maxwell, and Burrus entered the bedroom and began to beat Hudson. 04/07/2016 Trial Tr. 552:12-14, 553:8-11 (Dean's testimony); *id.* 609:21-25, 610:1-3 (Burrus' testimony); *id.* 640:9-15 (Maxwell's testimony); 04/08/2016 Trial Tr. 680:4-7 (Valentine's testimony). Dean testified that Owens hit Hudson with his billy club in the middle of the forehead and that Hudson's forehead started bleeding and Hudson yelled. 04/07/2016 Trial Tr. 553:21-25, 554:1-6. Valentine testified that Owens hit Hudson in the back of the head with his billy club and Hudson bled on the floor. 04/08/2016 Trial Tr. 681:6-7 21-25. Valentine testified that after the beating, Owens removed the battery from Hudson's cell phone. *Id.* 682:3-5. Jackson "Jason" Price, special agent with the Bureau of Alcohol, Tobacco, Firearms & Explosives with fourteen years experience in the field, testified that law enforcement determined from mapping and determining GPS coordinates that the last location of Hudson's cell phone was near the cell tower in Gautier, Mississippi, and that that cell tower was less [*36] than

one mile from Eaves' residence in Gautier. 04/11/2016 Trial Tr. 934:7-256, 935:1-25, 936:1-9 (Price's testimony).

Testimony showed that Hudson was "hog tied," with the wire Owens brought along, both feet bound together and both hands bound together behind his back. 04/07/2016 Trial Tr. 610:15-16, 611:8-13 (Burru's testimony); *id.* 640:21-22 (Maxwell's testimony); 04/08/2016 Trial Tr. 681:14-20 (Valentine's testimony); 04/11/2016 Trial Tr. 800:6-12 (Thomas Parker's testimony).

Burru testified that Owens told him to open the trunk of his car. 04/07/2016 Trial Tr. 610:23-24 (Burru's testimony). Bonus then told Dean to follow him; Burru opened the trunk and told Dean to grab a piece of plastic that was lying nearby (described as a tent or tarpaulin). *Id.* 554:25, 555:1-2 11-12 (Dean's testimony); *id.* 611:3-4 (Burru's testimony). Dean grabbed the plastic and spread it over the trunk interior, and a couple of them threw Hudson in Burru's car trunk. *Id.* 555:12-14 (Dean's testimony); *id.* 611:14-17 (Burru's testimony); 04/08/2016 Trial Tr. 682:8-17 (Valentine's testimony); 04/11/2016 Trial Tr. 642:1-5 (Maxwell's testimony). Burru, Valentine, and Owens stepped into Burru's car, with Hudson [*37] in the trunk, and headed to Parker's house in Petal, Mississippi—about a one hundred mile drive; Dean and Maxwell got back into Maxwell's truck and followed for a short time but then headed another way. 04/07/2016 Trial Tr. 555:23-25, 556:1-2 8-22, 557:11-13 (Dean's testimony); *id.* 611:20-22, 612:4-6 (Burru's testimony); *id.* 642:6-16 (Maxwell's testimony); 04/08/2016 Trial Tr. 682:18-25, 683:22-25, 684:1-6 (Valentine's testimony); 04/11/2016 Trial Tr. 798:13-25, 799:1-6 19-25, 800:1-5 (Thomas Parker's testimony). Dean testified that after the kidnapping he did not want to follow Burru, Valentine, and Owens, because Dean did not want to witness a murder.

04/07/2016 Trial Tr. 556:25, 557:1.

Extensive testimony further established that ABM prospect Maxwell participated in the assaulting and kidnapping of Hudson to earn his ABM brand and become a member; that Owens instructed him to do so; and that at the conclusion of the act, Dean tattooed the ABM brand on Maxwell, based on Owens' instructions to do so. *Id.* 550:3-23 (Dean's testimony); *id.* 607:3-11 (Burru's testimony); *id.* 636:22-25, 637:1-2 (Maxwell's testimony). Although not particularly supported by other testimony, Valentine testified [*38] that then-ABM wheel Creel ultimately authorized Maxwell to receive his ABM brand for smashing out Hudson. 04/08/2016 Trial Tr. 20:14-16. Maxwell testified that the day following the Hudson incident Owens called him and he completed paperwork and officially joined the ABM. 04/07/2016 Trial Tr. 643:17-23.

4. *Murder in Aid of Racketeering (Parker and Owens)*

The jury found Parker and Owens guilty on Count 4 for the murder of Michael Hudson in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(1) and (2), which was also a racketeering act of the ABM charged in the superseding indictment.

Title 18 U.S.C. § 1959 provides in pertinent part: "Whoever, . . . for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, . . . murders . . . any individual in violation of the laws of any State or the United States . . . [is guilty of murder in aid of racketeering]." The superseding indictment charged that the murder of Michael Hudson constituted murder under Mississippi law. See Superseding Indictment [203] ¶ 14. Thus, to establish Parker's and Owens' guilt for VICAR murder, the Government had to

show five elements: (1) that the ABM was a RICO enterprise; (2) that the [*39] ABM was engaged in racketeering activity; (3) that Parker and Owens each had a position in the ABM; (4) that Parker and Owens committed the murder of Hudson in violation of Mississippi law; and (5) that Parker's and Owens' general purpose in doing so was to maintain or increase position in the ABM. For the reasons discussed *supra* regarding the RICO conspiracy charges, the first three elements were met. Therefore, the Court proceeds directly to analyzing the last two elements.

Under Mississippi law as relevant here, "(1) [t]he killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases: (a) When done with deliberate design to effect the death of the person killed, or of any human being, shall be first-degree murder . . ." Miss. Code Ann. § 97-3-19(1)(a). "[P]remeditation is an element of murder." Fears v. State, 779 So. 2d 1125, 1131 (Miss. 2000). By definition, premeditation "connotes a prior design to kill for some appreciable time. Appreciable time allows the opportunity for reflection and consideration before committing the act." *Id.*

Also under Mississippi law as relevant here, "[d]epraved-heart murder, now 'second-degree murder,' is a killing 'done in the commission of an act eminently dangerous to others and evincing a depraved [*40] heart, regardless of human life, although without any premeditated design to effect the death of any particular individual . . ." Holliman v. State, 178 So. 3d 689, 698 (Miss. 2015), *reh'g denied* (Dec. 3, 2015) (quoting Miss. Code Ann. § 97-3-19(1)(b)). "Depraved-heart murder encompasses a reckless and eminently dangerous act directed toward a single individual, from which malice is implied." *Id.* 698-99 (internal quotation marks and citation omitted).

The evidence at trial showed that the ABM authorized the murder of Hudson and that the murder of Hudson was in aid of the racketeering activities of the ABM, which, according to the Government's evidence, exercised forceful control over its members to ensure loyalty and obedience to the gang. The evidence further showed that Parker's and Owens' general purpose in committing the murder was to maintain or increase their respective positions in the ABM.

Following the kidnapping and assault of Hudson, Burrus testified that Owens decided to take Hudson to Parker's residence in Petal, Mississippi, so that Owens and Parker could finish out the violation. 04/07/2016 Trial Tr. 606:24-25, 607:1-2, 613:20-23. Similarly, Valentine testified that Owens wanted to ensure Hudson got to Parker's residence to face him about the unpaid debt. 04/08/2016 [*41] Trial Tr. 675:10-13.

Burrus testified that in the car, Valentine told Owens he could have killed Hudson with the billy club, and Owens responded that Hudson had better be glad he did not kill him. 04/07/2016 Trial Tr. 612:21-25, 613:1. Burrus then testified that Owens and Hudson cursed and talked back and forth while Hudson was confined to the trunk of the car, and Owens told Hudson he knew he would get him and he was going to have to face Parker. *Id.* 613:2-4 11-13. Valentine testified that Owens then told Hudson to shut up or they were going to pull over and Owens would "poke a hole in [Hudson's] lung." *Id.* 683:18-19.

Testimony then established that Owens told Parker in a cell phone conversation that he had a gift for him. *Id.* 614:1-3 (Burris' testimony); *id.* 683:11-15 23-24 (Valentine's testimony). Burrus, Valentine, and Owens then arrived at Parker's residence and took Hudson out of the car trunk; Hudson was conscious enough to take a drag off Valentine's cigarette;

Parker arrived about five minutes later. *Id.* 614:9-17 (Burru's testimony). Once Parker arrived, Owens told Valentine and Burru to go home; they did. *Id.* 614:18-20 (Burru's testimony); 04/08/2016 Trial Tr. 685:21-24 (Valentine's [*42] testimony). Once they left, Valentine and Burru removed the plastic from the trunk and cleaned out the trunk with Windex. 04/07/2016 Trial Tr. 615:2-13 (Burru's testimony); 04/08/2016 Trial Tr. 686:2-7 (Valentine's testimony).

According to extensive and unequivocal testimony, Parker and Owens were the only two involved in the killing of Hudson. Neither Parker nor Owens testified; therefore, the circumstances and events pertaining to the murder were established by testimony from those who talked to Owens or Parker after the fact.

Then-ABM state captain Thomas Parker testified that at Eric Parker's residence, a camping trailer, Owens put Eric Parker on the spot about what he was going to do about the drug debt owed to him by Hudson. 04/11/2016 Trial Tr. 798:12-25, 799:1. Thomas Parker further testified that Owens admitted to him that he and Parker killed Hudson together, and that Owens forced Parker to stab Hudson to make him guilty as well. *Id.* 799:8-13. Eric Parker's former girlfriend, Jo Kayln Henderson, testified that Parker had nightmares and once woke up screaming and sweating and saying that he murdered someone. *Id.* 850:11-14. Henderson further testified that Parker confessed to [*43] her that he strangled Hudson until he started bleeding out of his eyes, nose, ears, and mouth, and that Hudson was already halfway dead when he was first brought to Parker's trailer, *Id.* 851:8-11. Creel testified that Parker told him that he choked Hudson to death with a bat. 04/08/2016 Trial Tr. 754:22-23.

Valentine testified that the next morning he

called Eric Parker, who said he and Owens were finishing up some business and following Creel in a vehicle. *Id.* 687:14-25, 688:1-2. Testimony showed that later that day Owens called Valentine to pick him up at Eric Parker's trailer. Both Valentine and Henderson testified that the camping trailer smelled very clean. See *id.* 688:9-25 (Valentine's testimony); 04/11/2016 Trial Tr. 844:18-20 (Henderson's testimony).

The overwhelming evidence in the trial supported a murder conviction for both Parker and Owens. Some testimony by Creel supported that the murder was not committed in aid of racketeering, but was an isolated incident by Owens and Parker. See, e.g., 04/08/2016 Trial Tr. 736:25, 737:1-3 (testifying that the incident was due to a personal situation between Parker and Hudson), *id.* 744:12 (testifying that Parker told him the situation [*44] had gotten out of hand), *id.* 755:6-11 (testifying there was no authorization for the killing). However, extensive testimony and evidence supported that the murder was in fact committed in aid of racketeering. Former ABM wheel member/spoke Perry Mask testified that Owens told him that Hudson was killed because Hudson (an ABM member) owed Parker (an area captain) for drugs, and Parker, in turn, owed Creel (a then-wheel member/spoke) for drugs; thus, Parker was pressured for the money owed to Creel. 04/06/2016 Trial Tr. 269:13-19. Former ABM member Dean testified that when he and Maxwell saw Michael Hudson in the Slidell Walgreen's after Hudson had failed to show up for his violation, Dean told Hudson that the ABM brothers wanted to kill him. 04/07/2016 Trial Tr. 544:15-25, 546:4-5. Dean testified that prior to the kidnapping Owens asked him if he wanted to earn thunder warrior status in the ABM by stabbing Hudson; Dean said he rejected the offer. *Id.* 547:1-15. Dean testified that he believed that although the order against Hudson was initially a smash-on-sight,

it was elevated to a kill-on-sight order when Hudson did not show up for his violation. *Id.* 573:9-22. Henderson testified that [*45] Parker told her if he had not participated in killing Hudson, Owens would have killed Parker. 04/11/2016 Trial Tr. 851:4-5. Henderson also testified that Parker told her if she told anyone about the murder that Parker would tell the ABM and they would come after Henderson and her family. *Id.* 852:20-24.

Testimony from former ABM leaders who pled guilty further supported that the ABM kept the murder under wraps. Brandon Creel, then-ABM wheel member/spoke, testified that Parker contacted him by phone after the murder and told him he needed Creel to help with a situation; Creel went to Parker's camping trailer. 04/08/2016 Trial Tr. 742:21-25, 743:1-5. Thomas Parker testified that Owens said that he and Eric Parker called Creel for help because they trusted him. 04/11/2016 Trial Tr. 800:24-25. Creel testified that when he got to Parker's house Parker was a wreck and Owens was pale but calm. 04/08/2016 Trial Tr. 741:7-10. Creel further testified that—while a wheel member/spoke and "in charge"—he (Creel) planned to burn and did burn the body of Hudson and agreed to dispose of the body. *Id.* 745:11-19 (Creel's testimony); *see id.* 800:13-17 (Thomas Parker's testimony). Although Creel testified [*46] that he never actually saw Hudson's body because it was wrapped in carpet, *id.* 745:3-6, Creel testified in great detail about how he burned Hudson's body and all instruments involved in the murder over a four-to-five-day period and, further, how he disposed of the remains in a river, *see id.* 748:21-25, 749:1-25, 750:1-25, 751:1-25, 752:1-16, 753:1-25, 754:10-15. Henderson testified that Parker told her they needed to rent a carpet cleaner to clean the floors. *Id.* 847:5-10. Valentine testified that while he and Owens were riding back home, Owens said they wouldn't have to worry about Hudson

anymore, that he would never be found. 04/08/2016 Trial Tr. 691:20,23-24.

Thomas Parker testified that Owens and Eric Parker then burned the camping trailer because they could not remove all the blood from the trailer. 04/11/2016 Trial Tr. 803:5-7.

Extensive testimony further established that several meetings were held to discuss the Hudson incidents.

Dean, Burrus, and Valentine testified that days after the incident, Owens called a meeting at Mitchell Valentine's trailer (where Owens was living with Valentine) among Owens, Burrus, Maxwell, Dean, and Valentine. 04/07/2016 Trial Tr. 557:24-25, 558:1-4 (Dean's [*47] testimony); *id.* 615:14-23 (Burrus' testimony); 04/08/2016 Trial Tr. 692:17-18, 693:1-8 (Valentine's testimony). Owens told them that Hudson was not coming back, that they would not have to deal with him anymore, and that no one was to discuss the matter again. 04/07/2016 Trial Tr. 558:9-10 (Dean's testimony); *id.* 615:24-25, 616:1-4 (Bums' testimony); 04/08/2016 Trial Tr. 693:9-16 (Valentine's testimony).

Testimony further established that an ABM church meeting was held several weeks later at then-ABM state captain Thomas Parker's trailer; the ABM members who were involved in the Hudson incident were called to the back of Thomas Parker's trailer: Thomas Parker, Owens, Dean, Burrus, Valentine, Eaves, and Creel (and possibly Maxwell and Eric Parker). *Id.* 559:12-17 (Dean's testimony); *id.* 616:5-8 13-17 (Burrus' testimony); 04/08/2016 Trial Tr. 694:15-25, 695:17-20 (Valentine's testimony); 04/08/2016 Trial Tr. 756:4-7 (Creel's testimony). Dean testified that Owens said that the Harrison County Sheriff's Department had questioned him about the kidnapping, but that he had taken care of that. Owens then told them all to keep their mouth shut about the Hudson incident. 04/07/2016 Trial Tr. 559:18-

24 [*48] (Dean's testimony); *id.* 616:20-23 (Burrus' testimony); 04/08/2016 Trial Tr. 616:21-22 (Valentine's testimony). Some testimony was that Owens said that Eric Parker had talked to authorities about the incident and that Parker and Creel should be killed next. 04/08/2016 Trial Tr. 696:7-10 16-19 (Valentine's testimony); 04/11/2016 Trial Tr. 803:18-25, 804:1-2 (Thomas Parker's testimony). Creel testified that at the meeting he decommissioned all ABM members who were involved in the situation and told them never to speak of the incident again. 04/08/2016 Trial Tr. 756:9-18; *see also* 04/06/2016 Trial Tr. 318:23-25, 319:1-3 (Mask's testimony referring to the killing of Hudson as ABM business).

Based on all of the foregoing, overwhelming evidence supported the jury's verdict against Parker and Owens for the murder of Hudson in aid of racketeering.

5. Attempted Murder in Aid of Racketeering (Owens)

Finally, the jury found Owens guilty on Count 7 for the attempted murder of Jeremy Bailey in aid of racketeering in violation of 18 U.S.C. §§ 1959(a)(5) and 2, which was also a racketeering act of the ABM charged in the superseding indictment.

Title 18 U.S.C. § 1959 provides in pertinent part: "Whoever, . . . for the purpose of gaining entrance [*49] to or maintaining or increasing position in an enterprise engaged in racketeering activity, . . . murders . . . any individual in violation of the laws of any State or the United States, or attempts . . . to do so [is guilty of attempted murder in aid of racketeering]."

The superseding indictment charged that the stabbing of Jeremy Bailey (sometimes referred to as "J.B.") constituted attempted murder

under Mississippi law. See Superseding Indictment [203] ¶ 21. Under Mississippi law, an attempted murder conviction requires a showing of three elements: "(1) an attempt to commit a particular crime, (2) a direct ineffectual act done toward its commission[,] and (3) the failure to consummate its commission." McGowan v. State, 541 So. 2d 1027, 1030 (Miss. 1989) (citing Miss. Code. Ann. § 97-1-7).

Thus, to establish Owens' guilt for Attempted Murder in Aid of Racketeering, the Government had to show five elements: (1) that the ABM was a RICO enterprise; (2) that the ABM was engaged in racketeering activity; (3) that Owens had a position in the ABM; (4) that Owens committed the attempted murder of Bailey in violation of Mississippi law; and (5) that Owens' general purpose in doing so was to maintain or increase his position in the ABM. For the reasons discussed *supra* [*501] regarding the RICO conspiracy charges, the first three elements were met. Therefore, the Court proceeds directly to analyzing the last two elements.

Testimony established that at the time of the Bailey incident charged, Owens, Baron Goff, and Perry Mask were the three ABM wheel members/spokes. The three wheels voted to order a kill-on-sight against Bailey for violations, but later voted to reduce the order to a smash-on-sight. 04/05/2016 Trial Tr. 96:14-25, 98:22-24, 99:7, 100:5-10 (Hubanks' testimony); 04/06/2016 Trial Tr. 248:19-25, 249:1-7 (Mask's testimony). Testimony further established that Owens unilaterally elevated the order to a kill-on-sight, specifically ordering the stabbing of Bailey by ABM member Ricky Jenkins. 04/05/2016 Trial Tr. 100:12-13, 101:2 (Hubanks' testimony); 04/06/2016 Trial Tr. 249:19-25, 250:1-5 9-12 (Mask's testimony).

Uequivocal evidence demonstrated that Jenkins, Owens, and Bailey were housed at

Marshall County Correctional Facility, and that Jenkins stabbed Bailey at least five times in the back, based on Owens' instructions to do so. 04/06/2016 Trial Tr. 250:19-22, 252:17-18 (Mask's testimony); *id.* 334:23-25, 335:17-18, 336:4-8, 339:17-21 (Bailey's [*51] testimony). Some testimony supported that Owens improperly elevated the order to a kill-on-sight; however, as a result of stabbing Bailey, Jenkins attained ABM thunder warrior status, signified by a lightning bolts tattoo on his neck. 04/05/2016 Trial Tr. 102:6-22 (Hubanks' testimony), see 04/06/2016 Trial Tr. 253:2-7 (Mask's testimony). Perry Mask and former ABM treasurer Terry Kelly testified that Owens wanted Jenkins to be further rewarded for stabbing Bailey by receiving \$50 a month from the treasury. *Id.* 252:19-25, 253:1 (Mask's testimony); *id.* 391:7-21 (Kelly's testimony). Then-ABM treasurer Kelly testified that he honored that request at least once. See *id.* 402:1-8 (Kelly's testimony). Bailey himself testified that he felt that the stabbing was due to altercations he had had with Owens and Mask and that the order came from wheels Owens and Mask. *Id.* 341:18-23, 347:10-11.

Based on all of the foregoing, overwhelming evidence supported the jury's verdict against Owens for the attempted murder of Bailey in aid of racketeering.

6. Conclusion—Sufficiency of the Evidence

After viewing the evidence in the light most favorable to the jury verdicts, the Court concludes that the jury could [*52] have found that the Government showed beyond a reasonable doubt the essential elements of all counts of which Parker and Owens were found guilty. Thus, neither Parker nor Owens is entitled to a new trial or a judgment of acquittal based on their challenges to the sufficiency of the evidence.

B. Venue (Parker)

The Court next addresses Parker's principal and detailed argument that venue was improper in the Northern District of Mississippi because "no agreement was formed in the Northern District of Mississippi between [Parker] and anyone at all, and no overt act occurred by [Parker], or anyone that he had an agreement with, in the Northern District of Mississippi" and "[n]o evidence was submitted that any of the alleged criminal acts by Mr. Parker were committed in the Northern District or done in further[ance] of a conspiracy." See Parker's Mot. J. Acquittal [557] ¶ 6. Parker's position is that "[n]o proof was ever put forth that any criminal activity by Parker was Aryan Brotherhood[-]related." Parker cites to the testimony of Perry Mask and Stephen Hubanks that they did not personally know Parker and that the crimes they were orchestrating in the Northern District had nothing to do with Parker. Parker further [*53] cites to the testimony of Mask that the monies he received from his crimes were not used to further the ABM, as well as to the testimony of Brandon Creel that Parker's meth business had nothing to do with the ABM. Finally, Parker maintains that the only proof involving crimes in the Northern District of Mississippi began in late 2012.

The Government argues in response that the prosecution of Counts 1 and 2 are continuing offenses that may be brought in any district in which the offenses were begun, continued, or completed. The Government maintains that although proof of an overt act is not required to convict Parker of a RICO conspiracy, the Government alleged thirty-one overt acts committed in furtherance of the conspiracy, some of which were alleged to have been committed in the Northern District of Mississippi and were proven at trial to have been committed in the Northern District of Mississippi. The Government asserts that

because it offered evidence that Parker's co-conspirators committed numerous overt acts in the Northern District of Mississippi, venue is proper, despite that Parker may have never committed an overt act in the Northern District of Mississippi. The Government [*54] lists as some of these overt acts occurring in the Northern District of Mississippi the following: the attempted murder of Jeremy Bailey; numerous acts of meth trafficking; the burglary of the Pawn Shop and Barry's Trading Post; and every phone call made from inside the Mississippi State Prison facilities in Parchman, Marshall County, and Alcorn County, among others. All of the three facilities are located within the Northern District of Mississippi.

The Government further argues that venue is proper for the VICAR murder charged in Count 4 because the existence of an enterprise is an essential element of a Section 1959 offense; the ABM constituted the enterprise; and the Government proved at trial that Parker aided and abetted in the murder of Hudson for the purpose of gaining entrance to, maintaining, or increasing his position in the ABM. Thus, the Government maintains, this prosecution was properly brought in the Northern District of Mississippi, a district in which the enterprise conducted its affairs. The Government argues that the principles of venue, as they relate to conspiracy, also apply to aiding and abetting, which may be tried in the district where the principal committed the substantive [*55] crimes. The Government further argues that it was unnecessary to prove that Parker committed an overt act in the Northern District of Mississippi related to the murder of Hudson, but that Parker's involvement in the murder was for the purpose of gaining entrance to, maintaining, or increasing his position in the ABM, and that the ABM's criminal activities stretched into the Northern District of Mississippi. The Government maintains that the murder of Hudson was a direct result of him refusing an ABM order to engage in

minutes (a fistfight) with Parker, and that Owens and Parker carried out the murder as ranking ABM members. Accordingly, the Government maintains that because the murder was directly related to Parker's membership and rank in the ABM and because the ABM's criminal activities spanned the entire State of Mississippi, the Court had proper venue over the murder charged in Count 4.

The Court notes that Parker raised these venue arguments in a pretrial motion to dismiss which was later renewed at trial. The Court does not take lightly a challenge to venue, as "the venue right . . . is . . . borne of fundamental notions of fairness as conceived by our Constitution's framers." [*56] See United States v. Stratton, 649 F.2d 1066, 1079 (5th Cir. 1981). However, upon careful reconsideration of the issue, the Court finds, again, that venue was proper in the Northern District of Mississippi.

As this Court stated in both its memorandum opinion and bench opinion denying Parker's earlier motions concerning venue, the *Sixth Amendment to the United States Constitution* provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . ." *U.S. Const. amend. VI*. Rule 18 of the Federal Rules of Criminal Procedure provides:

Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.

Fed. R. Crim. P. 18. However, 18 U.S.C. § 3237(a) provides:

Except as otherwise expressly provided by an enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

"The burden of proof to establish venue is not as onerous as the burden [*57] required for proof of an element of a crime." United States v. Martino, 648 F.2d 367, 400 (5th Cir.), aff'd sub nom. Russello v. United States, 464 U.S. 16, 104 S. Ct. 296, 78 L. Ed. 2d 17 (1983). A defendant may be convicted despite a challenge to venue "if, viewing the evidence in the light most favorable to the Government, a rational jury could find that the Government established venue by a preponderance of the evidence." United States v. Ramirez, 555 F. App'x 315, 318 (5th Cir. 2014) (per curiam) (citing United States v. Garcia Mendoza, 587 F.3d 682, 686 (5th Cir. 2009)).

"[P]reponderance of the evidence . . . can be entirely circumstantial." United States v. Gonzalez, 236 F. App'x 962, 964 (5th Cir. 2007) (per curiam) (citing United States v. Solis, 299 F.3d 420, 444-45 (5th Cir. 2002)).

Thus, "there need not be direct proof of venue where circumstantial evidence in the record as a whole supports the inference that the crime was committed in the district where venue was laid." United States v. Turner, 586 F.2d 395, 397 (5th Cir. 1978), cert. denied, 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 480 (1979). "If the Government shows by a preponderance of the evidence that the crime was committed in the trial district, both territorial jurisdiction and proper venue are established." United States v. White, 611 F.2d 531, 535 (5th Cir. 1980).

The superseding indictment charges Parker in Counts 1, 2, and 4. Count 1 charges Parker, Owens, and others with conspiracy to participate in racketeering activity in violation

of 18 U.S.C. § 1962(d) as part of the ABM, "a criminal organization whose members and associates engaged in narcotics distribution, firearms trafficking, money laundering, and acts of violence involving murder, attempted murder, assault, and kidnapping, [*58] and which operated throughout Mississippi, including the Northern District of Mississippi and elsewhere." Superseding Indictment [203] ¶ 3. Specifically, Parker and others are charged as "h[olding] a leadership rank . . . in the ABM enterprise and direct[ing] subordinate members and associates of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs" and "participat[ing] directly in the criminal activities of the ABM enterprise," including the "criminal activities of murder, attempted murder, kidnapping, assault, drug distribution, and firearms trafficking." *Id.* ¶ 4.

As part of the overt acts, Parker was charged with conspiracy to possess with intent to distribute meth in violation of 21 U.S.C. § 846 "in the Northern District of Mississippi and elsewhere" in Count 2, *id.* ¶ 9; and aiding and abetting in the murder of Michael Hudson in violation of 18 U.S.C. § 1959(a)(1) and (2) in Count 4, *id.* ¶ 14.

"[V]enue in conspiracy cases is proper in any district where the agreement was formed or where an overt act in furtherance of the conspiracy was performed." Gonzalez, 236 F. App'x at 964 (quoting United States v. Pomranz, 43 F.3d 156, 158-59 (5th Cir. 1995) (emphasis added)); Ramirez, 555 F. App'x at 318.

In Ramirez, the Fifth Circuit stated:

Here, although many acts in the conspiracies occurred in Dallas, which is in the [*59] Northern District of Texas, there was also evidence of significant acts occurring within the Eastern District of Texas, especially in and around Lufkin.

The evidence showed that two individuals involved in the conspiracy, Melesio Noyola and Jonathan Beltran, lived in Lufkin, where multiple-kilogram shipments of cocaine were delivered. Some of the cocaine was then further distributed to Louisiana. Money was also delivered to and sent from Lufkin. These acts were all in furtherance of the conspiracies and supported venue in the Eastern District of Texas. The evidence also supported a conclusion that Ramirez and others traveled through the Eastern District of Texas in furtherance of the conspiracy as they distributed cocaine and transported drug proceeds.

Id. at 319. In *Gonzalez*, the Fifth Circuit reasoned that venue was proper because "the jury could reasonably have found a conspiracy . . . existed at the time of the conduct in" the particular district. *Gonzalez*, 236 F. App'x at 964.

Similarly, in the case sub judice, the evidence at trial showed that at least the overt act of conspiracy to possess with intent to distribute meth occurred in part in the Northern District of Mississippi, even if the kidnapping and murder of Hudson [*60] occurred in the Southern District of Mississippi. The jury reasonably found that the RICO conspiracy existed at the time of the conduct in the Northern District of Mississippi, particularly the meth trafficking, which by the nature of the crime was transient, but at least occurred in part in the Northern District of Mississippi. See, e.g., *United States v. Gray*, 626 F.2d 494 (5th Cir.), cert. denied, 449 U.S. 1038, 101 S. Ct. 616, 66 L. Ed. 2d 500 (1980) (although referencing a different crime, transportation of controlled substance in violation of 21 U.S.C. § 952(a) was found to be a "continuous crime" . . . not complete until the controlled substance reaches its final destination point" and "venue [was] proper in any district along the way").

Furthermore, the VICAR murder charge in Count 4 pursuant to 18 U.S.C. §§ 1959(a)(1) and (2) was "for the purpose of . . . maintaining or increasing position in an enterprise engaged in racketeering activity." Although the Fifth Circuit has not addressed the venue issue in the context of VICAR murder case, the Fifth Circuit has stated that "[a]iding and abetting crimes may be tried in the district where the principal committed the substantive crimes." See United States v. Winship, 724 F.2d 1116, 1124-1125 (5th Cir. 1984). The Second Circuit has stated: "[T]he furtherance of one's position in a racketeering enterprise is precisely what brings otherwise unrelated [*61] acts within the purview of a § 1959 prosecution. . . . Unlike criminal laws that proscribe isolated acts of violence (local actions in the common law), § 1959 is aimed at those kinds of violent crimes committed as part and parcel of membership in a RICO enterprise." United States v. Saavedra, 223 F.3d 85, 91 (2d Cir. 2000). "[Murders] contemplated by § 1959 are not single acts, but those that occur as part of the activities of the criminal enterprise." *Id.* Given this reasoning, as well as the detailed account *supra* of the trial testimony as it relates to these counts, venue lies in the Northern District, where at least part of the activities of the criminal enterprise were ongoing.

Therefore, Parker could have been properly tried and convicted in either the Northern District or the Southern District of Mississippi. See United States v. Nieto, 721 F.3d 357, 369 (5th Cir. 2013) (challenge that venue was improper because the drug purchases occurred in another district was not well taken because conspiracy was centered in the district where defendants were charged and convicted); *Garcia Mendoza*, 587 F.3d at 686, 687 ("Venue can be based on evidence of any single act that initiated, perpetuated, or completed the crime"; regularly transporting contraband through a district "would support

venue, for one co-conspirator's travel through a judicial district [*62] in furtherance of the crime alleged establishes venue as to all coconspirators"); *United States v. Davis*, 666 F.2d 195, 199 (5th Cir. 1982) ("Conspiracy, possession with intent to distribute methaqualone[,] and traveling in interstate commerce to carry on an unlawful business enterprise involving possession with intent to distribute methaqualone are continuing offenses which under 18 U.S.C. § 3237 may be tried in any district in which the crime took place."); *United States v. Cooper*, 606 F.2d 96, 97 (5th Cir. 1979), cert. denied, 444 U.S. 1024, 100 S. Ct. 685, 62 L. Ed. 2d 657 (1980) ("A conspiracy may be 'committed' in the constitutional sense in a number of places, particularly when it continues over a period of time and is pursued by overt acts in a number of places.").

Because the Government showed by a preponderance of the evidence that the RICO conspiracy charged in the superseding indictment was a continuing offense that took place, in part, in the Northern District of Mississippi, venue properly lay in the Northern District of Mississippi and Parker was properly tried in the Northern District of Mississippi. Thus, Parker's arguments with respect to venue are not well taken.

C. Renewal of Pretrial Motions (Parker)

The Court now turns to Parker's arguments that the Court erred in denying his pretrial motions and arguments, specifically his pretrial motions for [*63] severance [345] and for an expedited psychological evaluation [453 & 455].

The Court addressed the severance issue at length in its September 9, 2015 Order [373] and memorandum opinion [374] denying the motion for severance [345]. Parker has provided no argument or reasoning to support

the renewal of his motion for severance. To avoid repetition, the Court hereby incorporates the reasoning in its Order [373] and memorandum opinion [374]. Severance was not proper in this case, Accordingly, Parker's motion for severance [345] was properly denied.

With respect to Parker's pretrial motions for an expedited psychological evaluation [453 & 455], Parker has provided no argument or reasoning in support of the renewal of his psychological evaluation motions, aside from the statement that he was unable to prepare adequately for trial. At the time the pretrial psychological evaluation motions were filed, the Court held a hearing and determined after due consideration that a psychological evaluation was not warranted under the circumstances, particularly since nothing in the record or at the hearing demonstrated that Parker had an inability to understand or meaningfully participate in the proceedings [*64] against him. Accordingly, on March 10, 2016, the Court entered an Order [495] and memorandum opinion [496] denying the motions. To avoid repetition on this issue, the Court hereby incorporates the reasoning in its Order [495] and memorandum opinion [496] denying Parker's motions for expedited psychological evaluation. The Court notes that the indictment was originally filed on October 23, 2014; this cause was originally set for trial on January 12, 2015; and the Court granted no less than five continuances to allow the parties and counsel to adequately prepare for trial. The first mention of psychological problems occurred on the eve of trial on February 23, 2016. The representation of Joshua A. Turner, Esq. commenced on June 22, 2015, when he was appointed to represent Parker. Accordingly, the Court finds that Parker's motions for expedited psychological evaluation [453 & 455] were properly denied.

D. Evidentiary Challenges (Parker and Owens)

The Court next addresses Parker's and Owens' evidentiary challenges.

II. Admission of Co-conspirator Statements

Both Parker and Owens contend that the Court "erred by allowing in copious amounts of hearsay statements by alleged co-conspirators that [*65] had absolutely nothing to do with the allegations" against them. See Parker's Mot. J. Acquittal [557] ¶ 14; Owens' Mot. J. Acquittal [558] ¶ 10. Parker additionally argues, as an issue of first impression, that "[t]he massive amount of hearsay testimony allowed by the trial court was error," in light of Crawford v. Washington, 541 U.S. 36, 61, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), which Parker argues effectively abrogated Ohio v. Roberts, 448 U.S. 56, 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980)—upon which Bourjaily v. United States, 483 U.S. 171, 107 S. Ct. 2775, 97 L. Ed. 2d 144 (1978) relied. The Court notes that neither Parker nor Owens refers to any specific testimony, but instead makes blanket statements concerning the testimony in general.

The Court allowed several witnesses to testify regarding others' out-of-court statements, including the conversations between Maxwell and Dean while riding in an automobile, and Burrus and Valentine while riding in an automobile, among others. The Court allowed this testimony, reasoning that they were co-conspirator statements admissible under *Rule 801(d)(2)(E) of the Federal Rules of Evidence*. To admit evidence under *Rule 801(d)(2)(E)*, "[t]he [G]overnment must prove by a preponderance of the evidence (1) the existence of a conspiracy, (2) the statement was made by a co-conspirator of the party, (3) the statement was made during the course of the conspiracy, and (4) the statement was

made in furtherance of the conspiracy." United States v. Delgado, 401 F.3d 290, 298 (5th Cir. 2005); see Lutwak v. United States, 344 U.S. 604, 617, 73 S. Ct. 481, 97 L. Ed. 593 (1953) ("Declarations [*66] of one conspirator may be used against the other conspirator not present on the theory that the declarant is the agent of the other, and the admissions of one are admissible against both under a standard exception to the hearsay rule applicable to the statement of a party."). The Court "may consider the co-conspirator statements in determining whether the prosecution has met its burden." See United States v. Ruiz, 987 F.2d 243, 246-47 (5th Cir. 1993) (citing Bourjaily v. United States, 483 U.S. 171, 181, 107 S. Ct. 2775, 97 L. Ed. 2d 144 (1987)).

In the case sub judice, at the close of the Government's case, the Court made the following findings with respect to the existence of a conspiracy:

The Court finds, by a preponderance of the evidence, [1] that a conspiracy existed of which both the declarant and the defendants in this case were members; [2] that the declarants made the statements in the course of that conspiracy; and [3] that the declarants made the statement[s] in furtherance of the conspiracy [T]here were so many co-defendants who testified as to actual knowledge that the hearsay statements were at a very minimum in this case. Most of these people testified as to their personal observations.

04/11/2016 Trial Tr. 950:13-22. The Court finds, upon reconsideration of the issue, that the co-conspirators' statements were properly admitted [*67] against Parker and Owens. Specifically, based on the reasoning *supra* concerning the proof of RICO conspiracy, the Government presented ample evidence to establish both the conspiracy and Parker's and Owens' participation in the conspiracy, and that the statements in question were made in

the course of and in furtherance of the conspiracy. Thus, the statements were properly admitted under *Rule 801(d)(2)(E)*.

With respect to Parker's arguments concerning *Crawford v. Washington*, 541 U.S. 36, 53-55, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004) and the *Confrontation Clause*, the Court finds that the same are not well taken. The Fifth Circuit has stated: "The Supreme Court's *Confrontation Clause* jurisprudence was changed significantly when the Court decided in *Crawford v. Washington* that testimonial statements from an unavailable witness may not be introduced at trial without a prior opportunity for cross-examination, irrespective of any exceptions for hearsay." *Woodfox v. Cain*, 609 F.3d 774, 799 (5th Cir. 2010) (citation omitted; emphasis added). According to *Crawford*, "the *Confrontation Clause* prohibits the admission of an out-of-court testimonial statement unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness." *United States v. Bedoy*, 827 F.3d 495, 511 (5th Cir. 2016) (quoting *United States v. Pryor*, 483 F.3d 309, 312 (5th Cir. 2007) (citing *Crawford*, 541 U.S. at 59)). However, the *Confrontation Clause* bars only testimonial statements. *United States v. Tolliver*, 400 F. App'x 823, 830 (5th Cir. 2010) (per curiam) (citing *Crawford*, 541 U.S. at 68, 124 S. Ct. 1354; *United States v. Holmes*, 406 F.3d 337, 348 (5th Cir. 2005)). The statements in question were "made casually [*68] to a partner-in-crime" and thus were not "testimonial" under the *Confrontation Clause*. See *id.* The United States Supreme Court stated in *Crawford*: "A person who makes a casual remark to an acquaintance" does not "bear [] testimony." 541 U.S. at 51, 124 S. Ct. 1354. Because non-testimonial statements are governed by the Federal Rules of Evidence, and the Federal Rules of Evidence allow a hearsay exception for co-conspirator's statements, the statements at issue were

properly admitted in the trial. See *Crawford*, 541 U.S. at 68, 124 S. Ct. 1354.

2. Admission of Government's Evidence

Next, Parker and Owens contend that the Court erred by the following: (1) admitting all exhibits involving meth, specifically Government Exhibits 32 through 39; (2) allowing the testimony of Clay McCombs, Chris Goodman, David Bevis, Jay Hoppenwasser, Claire Carly Putt, and Scott Hardy; (3) admitting all exhibits involving a firearm, specifically Government Exhibit 31; (4) allowing testimony of the car chase of William "CC" Carroll and the recovery of meth by the Mississippi Highway Patrol; (5) admitting all audio recordings; and (6) allowing the Government to take photographs of Parker and Owens and submit to the jury. Parker and Owens argue that the exhibits and testimony were more prejudicial than [*69] probative and were not relevant to them. Owens additionally argues that no chain of custody was proved by the Government for the meth exhibits. Parker additionally argues that the Court erred by allowing testimony of Perry Mask, Stephen Hubanks, and Natasha Ellis and in admitting Government Exhibits 22 through 24 of David Willis' residence. Finally, Parker and Owens argue that the photographs of them were improperly submitted to the jury, as there was no proof of criminal activity associated with them.

The Government argues in response that this evidence and testimony of ABM's criminal enterprise and its pattern of racketeering activity were properly admitted in support of the RICO conspiracy charge against each defendant. The Government further argues that the Court properly determined that the evidence was admissible pursuant to the *Rule 403* balancing test.

The Court finds that the Government's arguments are well taken. The evidence was properly admitted, as in conducting the Rule 403 balancing test, the Court properly determined its "probative value [was not] substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly [*70] presenting cumulative evidence." See Fed. R. Evid. 403. As detailed *supra* in the discussion pertaining to both RICO conspiracy (against Parker and Owens) and meth trafficking (against Parker), the evidence pertaining to meth supported both of those charges and the racketeering activity of the ABM charged in the superseding indictment. With respect to Owens' argument concerning chain of custody and the meth exhibits, the Court finds that the exhibits were properly admitted. When Owens challenged the admission of this evidence at trial, the Government made the requisite *prima facie* showing of authenticity. See 04/07/2016 Trial Tr. 37:5-17. See also United States v. Barela, 294 F. App'x 857, 858 (5th Cir. 2008) (per curiam) (citing United States v. Sparks, 2 F.3d 574, 582 (5th Cir. 1993)). Accordingly, the meth exhibits were properly admitted. The exhibits involving firearms generally supported the broad RICO conspiracy charge against both defendants, being evidence of racketeering activity charged in the superseding indictment. The audio recordings supported all counts charged. The photographs, including those of Parker, Owens, and Willis' residence, were relevant for background on the charges and identification of ABM members.

Furthermore, the Court incorporates herein by reference its April 1, 2016 Order [531] and memorandum [*71] opinion [533] granting the Government's pretrial motion in limine [514] to have photographs taken of Parkers' and Owens' tattoos signifying membership in the ABM. In that Order and memorandum opinion,

the Court ruled the photographs were admissible to show membership in the ABM, but were not admissible as evidence of prior bad acts or crimes other than those charged in the superseding indictment [203].

For all of the foregoing reasons, the Court finds the evidentiary objections of both defendants are not well taken; the evidence was properly admitted pursuant to Rule 403.

E. Other Matters

Finally, the Court addresses the remaining issues raised by Parker's and Owens' motions.

First, Parker argues the Court erred by not granting his proposed instructions, specifically, D13 and D27. In the jury instruction conference in the case sub judice, the Court refused D13, Parker's proposed venue instruction, finding it was duplicative of the Government's venue instruction, G33, which was accepted. The Court also rejected D27, finding it was duplicative of the Government's instructions G48 and G49. 04/12/2016 Trial Tr. 53-54. The Court finds, upon reconsideration of the issues, that D13 and D27 were properly [*72] refused as duplicative of other instructions.

Second, Parker and Owens argue that the Court erred by denying their motions for mistrial; both contend that mistrial was proper because "the Government continued to claim that [Hudson] was murdered without proof of [Hudson's] death." See Parker's Mot. [557] ¶ 16; Owens' Mot. [558] ¶ 11. Based on the evidence and reasoning in the murder of Michael Hudson section *supra*, the Court finds that this argument is not well taken.

Finally, both Parker and Owens renew all motions, objections to evidence, motions, and jury instructions made pretrial, during trial, and during the jury instruction conference. The

Court finds that these motions were properly denied.

request for acquittal, or alternatively, motion for new trial [558] filed by Defendant Frank George Owens, Jr. is likewise DENIED.

IV. Conclusion

Defendants **Eric Glenn Parker** and Frank George Owens, Jr. have shown neither that the jury's guilty verdicts were unsupported by the evidence nor that the trial was afflicted by error affecting their substantial rights. Accordingly, these defendants are not entitled to a judgment of acquittal, nor does the interest of justice require that the Court grant them a new trial. Thus, the motion for reconsideration of request for acquittal, or alternatively, motion for new trial [557] [*73] filed by Defendant **Eric Glenn Parker** and the motion for reconsideration of request for acquittal, or alternatively, motion for new trial [558] filed by Defendant Frank George Owens, Jr. are DENIED.

SO ORDERED, this, the 6th day of October, 2016.

/s/ Glen H. Davidson

SENIOR U.S. DISTRICT JUDGE

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A separate order accordance with this opinion shall issue this day.

THIS, the 6th day of October, 2016.

/s/ Glen H. Davidson

SENIOR U.S. DISTRICT JUDGE

**ORDER DENYING DEFENDANTS' MOTIONS
FOR RECONSIDERATION OF THEIR
REQUESTS FOR ACQUITTAL, OR
ALTERNATIVELY, MOTIONS FOR NEW
TRIAL**

Pursuant to an opinion issued this day, the Court ORDERS:

- (1) the motion for reconsideration of request for acquittal, or alternatively, motion for new trial [557] filed by Defendant **Eric Glenn Parker** is DENIED; and
- (2) the motion for reconsideration of

APPENDIX D

FILED

APR 23 2015

DAVID CREWS, CLERK
BY *SC* Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

VS.

CRIM. NO. 4:14CR141

FRANK GEORGE OWENS, JR.	18 U.S.C. § 1962(d)
a/k/a "State Raised"	21 U.S.C. § 846
PERRY WAYNE MASK	18 U.S.C. § 1959(a)(1)
STEPHEN NEAL HUBANKS	18 U.S.C. § 1959(a)(3)
ERIC GLENN PARKER -	18 U.S.C. § 1959(a)(5)
JOSEPH BRANDON CREEL	18 U.S.C. § 922(u)
a/k/a "Oak"	18 U.S.C. § 922(j)
MITCHELL BURNELL VALENTINE -	18 U.S.C. § 924
a/k/a "Hollywood"	18 U.S.C. § 2
SONNY TODD MAXWELL	
a/k/a "Blue"	
JAMES MILTON DEAN	
a/k/a "JD"	
WALTER BURRUS	
a/k/a "T-bone"	
RICKY WAYNE JENKINS	
a/k/a "Scissorhands"	
DAVID LADRONE WILLIS	
a/k/a "Leprechaun"	
BRODIE LYNN MURPHY	
KATHY JUNE SHADBURN	
NATASHA BAXTER ELLIS	
a/k/a "Tasha"	
RUTHIE GAIL RUTLEDGE	
a/k/a "Goldmine"	
GARY BRIAN LEE	
WILLIAM ELLIS OVERTON	

SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

(Conspiracy to Participate in Racketeering Activity)

Introduction

1. At various times relevant to this Indictment, the defendants and others, known and unknown, were members of the Aryan Brotherhood of Mississippi (hereinafter the "ABM"), a criminal organization whose members and associates engaged in narcotics distribution, firearms trafficking, money laundering, and acts of violence involving murder, attempted murder, assault, and kidnapping, and which operated throughout Mississippi, including the Northern District of Mississippi and elsewhere.

Structure and Operation of the Enterprise

2. The structure of the ABM included, but was not limited to, the following:

a. The ABM was a violent, race-based, "whites only" prison-based gang with hundreds of members operating inside and outside of state penal institutions throughout Mississippi. The ABM offered protection to white inmates if they joined the gang.

b. The ABM was established in approximately 1984 within the Mississippi Department of Corrections (MDOC), where the traditional power centers of the ABM and members of the gang's leadership structure resided. Recently, the ABM's structure and influence expanded to rural and suburban areas throughout Mississippi. The ABM modeled itself after and adopted many of the precepts and writings of the Aryan Brotherhood, a California-based prison gang that was formed in the California prison system during the 1960's. In early 2013, the ABM pursued unification with the Aryan Brotherhood of California in order to achieve national recognition.

c. The ABM had a detailed and uniform organizational structure, which is outlined - along with various rules, procedures, and code of conduct - in a written "constitution" widely distributed to members throughout Mississippi and elsewhere.

d. The ABM had a defined militaristic structure. ABM members referred to the gang as the "Family." The ABM was overseen and directed by a three-member "Wheel," commonly referred to as "Spokes." The Wheel had ultimate authority in all gang matters. Subordinate ranking members served to support the Wheel to enforce gang members' discipline and adherence to established ABM rules and laws. "State Captains" were appointed by the Wheel. One State Captain was appointed to direct gang activity inside MDOC, while a companion State Captain was appointed to direct gang activity in the "free world," outside of the prison system. They worked together to carry out all Wheel directives and resolve issues under their authority. The ABM divided the state of Mississippi into three separate geographic areas, commonly referred to as North, Central and South. Each area had an assigned Captain. Areas were further separated into zones commonly referred to as East, Central and Western. Each zone also maintained a Captain in the free world. Further, each prison facility with an ABM presence had a facility Captain. In addition to the Captains, each area zone and facility could include two "Lieutenants," a "Sergeant-at-Arms," a "Treasurer" and numerous "Soldiers." The Lieutenants assisted the Captain with carrying out orders from the Wheel and delegated responsibilities to ABM members. The Sergeant-at-Arms was responsible for maintaining order and discipline. Sergeants-at-Arms could appoint two "brothers" to help investigate violations of gang rules and mete out punishment. The Treasurer position was occupied by a State Treasurer, who was responsible for the collection, management, and distribution of ABM money throughout Mississippi. The State Treasurer was assisted by area Treasurers in the free world and

Treasurers imprisoned within Mississippi's prison facilities. The ABM's ranking structure remained constant, although personnel changes (promotions, demotions, terminations) occurred frequently. Wheel members typically remained in place, unless they retired due to health, in which case the two remaining Wheel members would select a replacement.

e. ABM Wheel leaders had the authority within the gang to issue "D.O.'s" (direct orders) and mete out punishment. A D.O. was an assignment given to a subordinate ABM member that would serve a purpose for the ABM. The D.O. could range from a leader ordering a "violation," classified as "minor, serious, or major," an "S.O.S." (smash on sight), meaning the assault of an ABM member who had committed a violation of the ABM rules which usually resulted in the removal of that member's ABM "brand" (gang tattoo) and membership, to a "K.O.S." (kill on sight), meaning the murder of a rival gang member or of an ABM member or associate who had committed an egregious violation of the gang's rules. Failure to perform a D.O. resulted in the assigned member being in violation of the rules. Punishment for failing to complete the D.O. could range anywhere from a fine, written violation, beating, or death.

f. Members of the ABM greeted each other and showed their membership in the gang using a handshake intended to represent the phrase: "From Man to Man, From Brother to Brother, Together in Battle, For the Cause." The ABM employed a robust symbology as well, using depictions of Nazi-style inspired symbols and artwork to demonstrate their affiliation. Members often had tattoos incorporating one or more Nazi-style symbols as well as State-specific symbols including, but not limited to, the Iron Cross, eternal flame, "13" (for "M" the 13th letter in the alphabet), swastika, and Schutzstaffel ("SS") lightning bolts. The most coveted tattoo of the ABM membership was the ABM patch, which could be worn only by fully made members who generally ascended to full membership by committing a "blood-in mission"

(aggravated assault or murder) on behalf of the gang. The design and shape of the patch evolved over time. ABM's most recent design was modeled after the patch worn by the Aryan Brotherhood of California. It consisted of a shield adorned with a sword and battle axe, encompassing a swastika, lightning bolts, an Iron Cross – with "A" and "B" and "Sinn Fein" over the top of the shield – and "Mississippi" under the bottom of the shield. Phrases unique to the ABM lexicon included "Sinn Fein Mein Felagus," "we ourselves alone," the ABM Creed "Brothers Before Others" and the ABM Aryan Warrior Motto: "Where Aryan boots tread there will be Respect or Bloodshed!" The colors associated with the ABM were blue, blue and red combined, gold and silver, and black. Blue, the most dominant color, represented "blue blood" of the upper class society of Aryan Brotherhood. The blue and red combination represented the gang's "battle colors." Gold and silver represented the gang's beliefs, actions and goal to establish one supreme (Aryan) nation. Black represented the uniform colors of the Aryan warrior.

g. Once released from incarceration, ABM members were required to remain loyal to the ABM and were required to immediately report to outside leaders to further the goals of the ABM through criminal activity. One of the goals of the ABM was to recruit new members. ABM members were recruited from both inside and outside state penal institutions. In order to be considered for ABM membership, a person had to be sponsored by another ABM member. Once sponsored, a prospective member had to serve a "pre-prospect" term, during which he was referred to as a prospect, and his conduct was observed by other gang members. During this period, the prospect was required to study and learn the ABM constitution and by-laws. During the prospect period, the individual was considered part of the ABM family and entitled to the full protection of the gang. The prospect was also subject to the rules and orders

of the gang. If the prospect's conduct during the probationary period was deemed satisfactory, his membership to the gang was submitted to the gang members. The vote had to be unanimous to be admitted to the ABM. The prospect could be "black-balled" by a single member of the gang, and refused admission to the ABM. All ABM members were required to attend monthly "church" meetings where criminal activity was discussed, financial proceeds from criminal activity were collected including, but not limited to, collection of drug proceeds from subordinate gang members for senior ABM gang leaders, and disciplinary beatings of fellow ABM gang members were administered.

h. In addition to members, the enterprise included those closely affiliated with the ABM, who were called "associates." Wives or girlfriends of ABM members were often associates and could join the gang as "featherwoods" so long as they complied with the gang's rules and served to promote the goals of the "family." Associates and featherwoods functioned as communications hubs, facilitating gang communications and criminal activities among imprisoned members throughout the penal system through the use of the telephone, the internet, the United States Mail and common carriers. Featherwoods and associates also smuggled drugs, cellular telephones and other items of contraband to imprisoned gang members.

The Racketeering Enterprise

3. The ABM, including its leaders, members, and associates, constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4) (hereinafter "the enterprise"), that is, a group of individuals associated in fact. The enterprise constituted an ongoing organization whose members and associates, including its prospects, functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. This enterprise was engaged in, and its activities affected, interstate and foreign commerce.

The Defendants

4. At various times relevant to this Indictment, the following individuals, among others, were members or associates of the ABM in the various capacities set forth below:

a. **FRANK GEORGE OWENS JR., a/k/a "State Raised," PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, and JOSEPH BRANDON CREEL, a/k/a "Oak,"** each held a leadership rank of "Wheel" of the ABM enterprise, and directed other members and associates of the enterprise in carrying out unlawful activities and other acts in furtherance of the conduct of the enterprise's affairs. As leaders, **FRANK GEORGE OWENS JR., a/k/a "State Raised," PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, and JOSEPH BRANDON CREEL, a/k/a "Oak,"** were responsible for, among other things, supervising the criminal activities of the members and associates of the ABM enterprise; issuing K.O.S. or S.O.S. orders to assault or kill rival gang members and subordinate gang members whom they believed had violated ABM rules of conduct; and presiding over ABM "church". In addition, apart from supervising and directing the criminal activities of the members and associates of the ABM enterprise, **FRANK GEORGE OWENS JR., a/k/a "State Raised," PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, and JOSEPH BRANDON CREEL, a/k/a "Oak,"** also participated directly in the criminal activities of the ABM enterprise. Among their criminal activities were murder, attempted murder, kidnapping, assault, money laundering, drug distribution, and firearms trafficking.

b. **ERIC GLENN PARKER, JAMES MILTON DEAN, a/k/a "JD," and DAVID LADRONE WILLIS, a/k/a "Leprechaun,** each held a leadership rank of State

Captain, Captain, Lieutenant, or Recruiter of the ABM enterprise and directed subordinate members and associates of the enterprise in carrying out unlawful and other activities in furtherance of the conduct of the enterprise's affairs. As high-ranking ABM gang members, **ERIC GLENN PARKER, JAMES MILTON DEAN, a/k/a "JD," and DAVID LADRONE WILLIS, a/k/a "Leprechaun,"** were responsible for, among other things, supervising the criminal activities of subordinate members and associates of the ABM enterprise; carrying out issued K.O.S. and S.O.S. orders to kill rival gang members and subordinate gang members and associates whom they believed had violated ABM rules of conduct or acted inconsistent with ABM instructions; and presiding over ABM "church" meetings. In addition, apart from supervising and directing the criminal activities of the members and associates of the ABM enterprise, **ERIC GLENN PARKER, JAMES MILTON DEAN, a/k/a "JD," and DAVID LADRONE WILLIS, a/k/a "Leprechaun,"** also participated directly in the criminal activities of the ABM enterprise. Among their criminal activities were murder, attempted murder, kidnapping, assault, drug distribution, and firearms trafficking.

c. **MITCHELL BURNELL VALENTINE a/k/a "Hollywood," SONNY TODD MAXWELL, a/k/a "Blue," WALTER THOMAS BURRUS a/k/a "T-bone, RICKY WAYNE JENKINS, a/k/a "Scissorhandseach** held a rank of "Soldier" and/or "Brother" in the ABM enterprise, and were responsible for, among other things, carrying out murder, attempted murder, kidnapping, assault, and physical "disciplines" at the direction of senior ABM gang leaders. In addition, **MITCHELL BURNELL VALENTINE a/k/a "Hollywood," SONNY TODD MAXWELL, a/k/a "Blue," WALTER THOMAS BURRUS a/k/a "T-bone," RICKY WAYNE JENKINS, a/k/a "Scissorhands** also participated directly in other criminal

activities of the ABM enterprise including, but not limited to, murder, attempted murder, kidnapping, assault, and drug distribution.

d. **KATHY JUNE SHADBURN, NATASHA BAXTER ELLIS, a/k/a "Tasha," RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine" and BRODIE LYNN MURPHY** each were featherwoods or associates of the ABM gang. In such capacity, they, among other things, facilitated communication of criminal activities in furtherance of the conduct of the enterprise's affairs among imprisoned ABM gang members throughout the Mississippi state penal system, through the use of the telephone, the internet, the United States mail, and common carriers. **KATHY JUNE SHADBURN and RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine" and BRODIE LYNN MURPHY** also managed financial transactions connected to criminal activity of senior leaders of the ABM including purchases of drugs and contraband cell phones for use by imprisoned ABM gang members.

Purposes of the Enterprise

5. The purposes of the enterprise included, but was not limited to, the following:
 - a. Enriching the leaders, members, and associates of the enterprise through among other things, the illegal trafficking of controlled substances and firearms.
 - b. Preserving and protecting the power, territory, operations, and proceeds of the enterprise through the use of threats, intimidation, violence, and destruction, including, but not limited to, acts of murder, attempted murder, assault with a dangerous weapon, obstruction of justice, and other acts of violence.
 - c. Promoting and enhancing the enterprise and its members' and associates' activities.

d. Keeping victims in fear of the enterprise and in fear of its leaders, members, and associates through threats of violence and actual violence. The leaders, members, and associates of the enterprise undertook all steps necessary to prevent the detection of their criminal activities and sought to prevent and resolve the imposition of any criminal liabilities upon their leaders, members, and associates, by the use of murder, violence, and intimidation directed against witnesses, victims, and others.

e. Providing support to gang members who were charged with or incarcerated for gang-related activities.

f. Preserving and protecting the financial proceeds of the enterprise by money laundering funds through prepaid bank, debit and credit cards.

Manner and Means of the Conspiracy

6. The defendants agreed to participate in a scheme that included the operation and management of the enterprise. Members and associates of the enterprise operated and conducted their affairs through a series of rules and policies, some of which were codified in a constitution and by-laws of the gang.

a. The members and associates of the enterprise attended regular meetings, referred to as "church," where criminal activity was discussed, dues and financial proceeds from criminal activity were collected including, but not limited to, collection of drug proceeds from subordinate gang members for senior ABM gang leaders, and disciplinary beatings of fellow ABM gang members were administered.

b. To enforce discipline and the rules of the enterprise, members and associates of the enterprise engaged in a system of "violations," in which the defendants and others committed murder, attempted murder, conspired to murder, physically assaulted, and

threatened those members and associates of the enterprise who violated rules, questioned authority, or posed a threat to the leaders, members, or purposes of the enterprise.

c. Members and associates of the enterprise knowingly and willfully conspired to distribute and possessed with the intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine and 50 grams or more of methamphetamine (actual), in violation of Title 21, United States Code, Sections 841 and 846.

d. Members and associates of the enterprise committed kidnapping without lawful authority, by forcibly seizing and confining a person, or inveigling or kidnapping a person with intent to cause such person to be confined or imprisoned against his or her will, in violation of Mississippi Code Annotated Section 97-3-53.

e. Members and associates of the enterprise committed murder by killing a human being without the authority of law and 1) with deliberate design to effect the death of the person killed, in violation of Mississippi Code Annotated Section 97-3-19(1)(a); 2) by killing a human being while engaging in an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of the person killed, in violation of Mississippi Code Annotated Section 97-3-19(1)(b); and 3) by killing a human being, with or without any design to effect death, while engaged in the commission of the crime of kidnapping, in violation of Mississippi Code Annotated Section 97-3-19(2)(e).

f. Members and associates of the enterprise employed and used gang-related terminology, symbols, phrases, and gestures.

g. To perpetuate the enterprise and to maintain and extend their power, members and associates of the enterprise committed and conspired to commit acts including

murder, attempted murder, intimidation, and assault against individuals who posed a threat to the enterprise or jeopardized its operations, including rival gang members, ABM gang members, and witnesses to illegal activities of the enterprise.

h. Members and associates of the enterprise managed the procurement, transfer, use, concealment, barter, distribution and disposal of firearms and dangerous weapons within the enterprise to protect gang-related criminal activities, personnel, and operations to deter, eliminate, and retaliate against competitors and other rival criminal organizations and persons, and to raise money or obtain narcotics for the enterprise.

i. Members and associates of the enterprise regularly financed their activities through funds obtained in the illegal trafficking of controlled substances, including, but not limited to, the distribution and possession with the intent to distribute Suboxone, a Schedule III controlled substance, and methamphetamine, a Schedule II controlled substance.

j. Members and associates of the enterprise hid, misrepresented, concealed, and caused to be hidden, misrepresented, and concealed, the objectives of acts done in furtherance of the conspiracy, and used coded language and other means of communication to avoid detection and apprehension by law enforcement authorities.

The Racketeering Conspiracy

7. Beginning on a date unknown to the Grand Jury, but at least as of in or about 2009, and continuing through on or about the date of this Indictment, in the Northern District of Mississippi, and elsewhere, the defendants **FRANK GEORGE OWENS JR., a/k/a "State Raised," PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, ERIC GLENN PARKER, MITCHELL BURNELL VALENTINE, a/k/a "Hollywood," JOSEPH BRANDON CREEL, a/k/a "Oak," SONNY TODD MAXWELL, a/k/a "Blue," JAMES**

MILTON DEAN, a/k/a "JD," WALTER THOMAS BURRUS, a/k/a "T-bone," RICKY JENKINS, a/k/a "Scissorhands," DAVID LADRONE WILLIS, a/k/a "Leprechaun" and BRODIE LYNN MURPHY," KATHY JUNE SHADBURN, NATASHA BAXTER ELLIS, a/k/a "Tasha," and RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine," being persons employed by and associated with the ABM, an enterprise engaged in, and the activities of which affected, interstate and foreign commerce, and others known and unknown to the Grand Jury, did knowingly and intentionally conspire to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as defined in Sections 1961 (1) and (5) of Title 18, United States Code, involving:

- a. multiple acts involving narcotics trafficking, in violation of Sections 841(a)(1) (distribution and possession with the intent to distribute a controlled substance) and 846 (conspiracy to distribute and possession with the intent to distribute a controlled substance) of Title 21, United States Code;
- b. multiple acts indictable under Title 18, United States Code, Section 1956 (laundering of monetary instruments);

and multiple acts involving:

- c. murder, in violation of Mississippi Code Annotated, Sections 97-3-19(1)(a)-(b) and (2)(c), 97-1-1, 97-1-7(2), and 97-1-3; and,
- d. kidnapping, in violation of Mississippi Code Annotated, Section 97-3-53, 97-1-1, 97-1-7(1), and 97-1-3.

It was a further part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise, all in violation of 18 U.S.C. 1962 (d).

Overt Acts

8. In furtherance of the conspiracy and to achieve the objective thereof, the defendants performed or caused to be performed the following overt acts, among others, in the Northern District of Mississippi, the Southern District of Mississippi, and elsewhere.

a. Beginning on a date unknown to the Grand Jury, but at least in or about January 2009, and continuing to the date of this indictment, **PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, ERIC GLENN PARKER, JOSEPH BRANDON CREEL, a/k/a "Oak," DAVID LADRONE WILLIS, a/k/a "Leprechaun," BRODIE LYNN MURPHY, KATHY JUNE SHADBURN, NATASHA BAXTER ELLIS, a/k/a "Tasha," and RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine,"** others known and unknown to the Grand Jury, knowingly and willfully conspired to distribute and possess with the intent to distribute 500 grams or more of a mixture of substance containing a detectable amount of methamphetamine and 50 grams or more of methamphetamine (actual), in violation of Title 21, United States Code, Sections 841 and 846.

b. Beginning on a date unknown to the Grand Jury, but at least in or about January 2009, and continuing to the date of this indictment, **PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, RICKY JENKINS, a/k/a "Scissorhands," DAVID LADRONE WILLIS, a/k/a "Leprechaun," KATHY JUNE SHADBURN, RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine,"** and others known and unknown to the Grand Jury, laundered

the proceeds of ABM drug transactions utilizing prepaid bank, credit and debit cards, in violation of Title 18 U.S.C. Section 1956.

c. In or about May 2010 through on or about December 2, 2010, **ERIC GLENN PARKER** distributed methamphetamine to a subordinate gang member, Michael Hudson. Michael Hudson agreed to pay **ERIC GLENN PARKER** for the methamphetamine, but failed to make payment.

d. On or about July 11, 2010, **FRANK GEORGE OWENS, JR.**, a/k/a "State Raised," and **ERIC GLENN PARKER**, and others known and unknown to the Grand Jury, lured and maimed a subordinate gang member whom the ABM believed had violated gang rules.

e. From at least in or about October 2010, through on or about December 3, 2010, **FRANK GEORGE OWENS JR.**, a/k/a "State Raised," and others known and unknown to the Grand Jury, ordered a "K.O.S." (kill on sight) against Michael Hudson, a subordinate gang member whom the ABM believed had violated gang rules and failed to pay a debt owed to a **ERIC GLENN PARKER**.

f. On or about December 2, 2010, **FRANK GEORGE OWENS JR.**, a/k/a "State Raised," **MITCHELL BURNELL VALENTINE**, a/k/a "Hollywood," **SONNY TODD MAXWELL**, a/k/a "Blue," **JAMES MILTON DEAN**, a/k/a "JD," and others known and unknown to the Grand Jury, aiding and abetting each other, lured a subordinate gang member, Michael Hudson, to the residence of another ABM gang member under the guise that the gang was going to manufacture methamphetamine.

g. On or about December 2, 2010, **FRANK GEORGE OWENS**, a/k/a "State Raised," **MITCHELL BURNELL VALENTINE**, a/k/a "Hollywood," **SONNY**

TODD MAXWELL, a/k/a "Blue," JAMES MILTON DEAN, a/k/a "JD," WALTER THOMAS BURRUS, a/k/a "T-bone," and others known and unknown to the Grand Jury, aiding and abetting each other, bound, kidnapped and severely assaulted Michael Hudson, whom the ABM believed owed a drug debt to the ABM enterprise.

h. From on or about December 2, 2010, and continuing through December 3, 2010, **FRANK GEORGE OWENS JR., a/k/a "State Raised," ERIC GLENN PARKER, MITCHELL BURNELL VALENTINE, a/k/a "Hollywood," SONNY TODD MAXWELL, a/k/a "Blue," JAMES MILTON DEAN, a/k/a "JD," WALTER THOMAS BURRUS, a/k/a "T-bone," and others known and unknown to the Grand Jury, aiding and abetting each other, murdered Michael Hudson, whom the ABM believed owed a drug debt to the ABM enterprise.**

i. From on or about December 2, 2010 and continuing through December 8, 2010, **FRANK GEORGE OWENS JR., a/k/a "State Raised," ERIC GLENN PARKER, JOSEPH BRANDON CREEL, a/k/a "Oak," and others known and unknown to the Grand Jury, aiding and abetting each other, burned the body of Michael Hudson, along with his bloody clothing and other items used in connection with the killing.**

j. On or about December 2, 2010, **SONNY TODD MAXWELL, a/k/a "Blue,"** earned his ABM patch for participating in killing a fellow ABM gang member.

k. On or about December 2, 2010, **FRANKIE GEORGE OWENS, JR., a/k/a "State Raised"** earned his "lightning bolts" and status of ABM "executioner" for killing Michael Hudson.

l. From in or about 2011 and continuing to in or about May 2014, **PERRY WAYNE MASK** issued multiple S.O.S. orders to assault subordinate ABM gang members, whom the ABM believed had violated rules ABM gang rules.

m. From in or about September 2011, and continuing through on or about October 8, 2011, **JOSEPH BRANDON CREEL**, a/k/a "Oak," and others known and unknown to the Grand Jury, ordered subordinate gang members to burn the ABM brand from the chest of a fellow gang member whom the ABM believed had failed to pay a drug debt to the ABM enterprise.

n. From in or about December 2012, through in or about August 2013, **DAVID LADRONE WILLIS** a/k/a "Leprechaun," ordered and participated in the assault of numerous fellow gang members whom the ABM believed had violated gang rules.

o. In or about 2013, **RICKY JENKINS**, a/k/a "Scissorhands," threatened to assault another ABM gang member upon the orders of ABM gang superiors.

p. From in or about January 2013 through in or about June 2013, **BRODIE LYNN MURPHY** transported methamphetamine numerous times for ABM gang leadership.

q. From in or about April 2013 through in or about February 2014, **KATHY JUNE SHADBURN** collected and distributed thousands of dollars in proceeds from the sale of methamphetamine at the direction of ABM senior leaders.

r. In or about July 2013, **NATASHA BAXTER ELLIS**, a/k/a "Tasha," and others known and unknown to the Grand Jury, lured an ABM gang member to a secluded location where he was assaulted by fellow ABM gang members because it was believed he had violated ABM gang rules.

s. In or about August 2013, **FRANK GEORGE OWENS JR.**, a/k/a "State Raised," **PERRY WAYNE MASK**, and others known and unknown to the Grand Jury, approved the stabbing of a subordinate ABM member whom the ABM believed had disrespected the ABM enterprise.

t. In or about August 2013, **RICKY WAYNE JENKINS, a/k/a "Scissorhands,"** stabbed a subordinate ABM member whom the ABM believed had disrespected the ABM enterprise.

u. From in or about December 2012 through in or about November 2013 **BRODIE LYNN MURPHY** smuggled contraband packages that contained methamphetamine, cellular telephones, and tobacco to imprisoned ABM gang members for sale within the Mississippi Department of Corrections prison system.

v. From in or about October 2013, through in or about November 2013, **STEPHEN NEAL HUBANKS** issued at least one S.O.S. order and discussed the issuance of numerous other S.O.S orders to assault subordinate gang members whom the ABM believed had failed to perform sufficient "work" for the ABM enterprise.

w. From in or about 2013, through in or about May, 2014, **STEPHEN NEAL HUBANKS**, and others known and unknown to the Grand Jury, smuggled Suboxone, a Schedule III controlled substance, in the prison system for the sale and benefit of the ABM enterprise.

x. In or about 2013, ABM leaders sanctioned the stabbing of a subordinate gang member whom the ABM believed had violated ABM gang rules.

y. On or about November 1, 2013, **PERRY WAYNE MASK** and **STEPHEN NEAL HUBANKS** discussed the need to attack rival gang members whom the ABM believed had stolen property belonging to the ABM enterprise.

z. From on or about November 12, 2013, through on or about November 15, 2013, **RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine,"** wired money to fellow ABM gang associates to facilitate the transportation of five pounds of methamphetamine from California to Mississippi for the benefit of the ABM enterprise.

aa. From on or about November 12, 2013, through on or about November 16, 2013, **KATHY JUNE SHADBURN** sent money to ABM associates to facilitate the transportation of five pounds of methamphetamine from California to Mississippi.

bb. Beginning on a date unknown to the Grand Jury, but at least as of April 2013, and continuing to the date of this Indictment, **RUTHIE GAIL RUTLEDGE**, a/k/a "Goldmine," **KATHY JUNE SHADBURN**, and others known and unknown to the Grand Jury, facilitated communication of criminal activity regarding, among other things, movement of drug proceeds, among ABM gang members including those who were imprisoned.

cc. On or about July 29, 2013, **DAVID LADRONE WILLIS**, a/k/a "Leprechaun," and others known and unknown to the Grand Jury stole approximately eight firearms from Barry's Trading Post at the direction of an ABM superior.

dd. On or about July 31, 2013, **NATASHA BAXTER ELLIS**, a/k/a "Tasha," and others known and unknown to the Grand Jury, stole approximately thirty-six firearms from The Pawn Shop at the direction of ABM superior, **PERRY WAYNE MASK**.

ee. From on or about July 29, 2013 through on or about August 3, 2013, **DAVID LADRONE WILLIS**, a/k/a "Leprechaun," **NATASHA BAXTER ELLIS**, a/k/a "Tasha," and others known and unknown to the Grand Jury, sold stolen firearms at the direction of an ABM superior.

All in violation of 18 U.S.C. 1962(d).

COUNT TWO

Conspiracy to Possess with Intent to Distribute Methamphetamine
[21 U.S.C. § 846]

9. Beginning on an exact date unknown to the Grand Jury, but at least as of in or about January 2009, and continuing through the date of this Indictment, in the Northern District of Mississippi, and elsewhere, the defendants, **PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, ERIC GLENN PARKER, DAVID LADRONE WILLIS, a/k/a "Leprechaun", BRODIE LYNN MURPHY, KATHY JUNE SHADBURN, NATASHA BAXTER ELLIS a/k/a "Tasha," and RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine,"** and others known and unknown to the Grand Jury, did unlawfully, knowingly and willfully conspire and agree with each other, and with other persons both known and unknown to the grand jury, to distribute and possess with intent to distribute a controlled substance, to wit: 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine and 50 grams or more of methamphetamine (actual), in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A).

In violation of 21 U.S.C. § 846.

COUNT THREE

Kidnapping of Michael James Hudson
[18 U.S.C. §§ 1959 (a) (1) and (2)]

10. At all times relevant to this Indictment, the ABM as more fully described in Paragraphs One through Six of this Indictment, which are re-alleged and incorporated by reference as though fully set forth herein, constituted an enterprise as defined in Title 18, United States Code, Section 1959(b)(2), namely the ABM, that is, a group of individuals associated in fact, which was engaged in and the activities of which affected, interstate and foreign commerce. The ABM constituted an ongoing enterprise whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

11. At all times relevant to this Indictment, the above-described enterprise, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving drug trafficking in violation of Title 21, United States Code, Sections 841 and 846 and acts involving money laundering in violation of Title 18, United States Code, Section 1956.

12. On or about December 2, 2010, in the Southern District of Mississippi and elsewhere, the defendants, **FRANK GEORGE OWENS JR., a/k/a "State Raised,"** **MITCHELL BURNELL VALENTINE, a/k/a "Hollywood,"** **SONNY TODD MAXWELL,** **a/k/a "Blue,"** **JAMES MILTON DEAN, a/k/a "JD" and** **WALTER THOMAS BURRUS,** **a/k/a "T-bone"** and others known and unknown to the grand jury, aiding and abetting each other, for the purpose of maintaining and increasing position within the ABM, an enterprise engaged in racketeering activity, kidnapped Michael James Hudson, in violation of Mississippi Code Annotated, Section 97-3-53.

In violation of 18 U.S.C. §§ 1959(a)(1) and 2.

COUNT FOUR

Murder of Michael James Hudson
[18 U.S.C. §§ 1959(a)(1) & 2]

13. Paragraphs Ten and Eleven of this Indictment are re-alleged and incorporated by reference as though set forth fully herein.

14. On or about December 2, 2010, in the Southern District of Mississippi and elsewhere, for the purpose of gaining entrance to and maintaining and increasing position within the ABM, an enterprise engaged in racketeering activity, the defendants, **FRANK GEORGE OWENS JR., a/k/a "State Raised," ERIC GLENN PARKER, MITCHELL BURNELL VALENTINE, a/k/a "Hollywood," SONNY TODD MAXWELL, a/k/a "Blue," JAMES MILTON DEAN, a/k/a "JD," WALTER THOMAS BURRUS, a/k/a "T-bone,"** and others known and unknown to the Grand Jury, aiding and abetting each other, did knowingly and intentionally murder Michael James Hudson, in violation of Mississippi Code Annotated, Section 97-3-19(1)(a)-(b) and (2)(c).

In violation of 18 U.S.C. §§ 1959(a)(1) and (2).

COUNT FIVE

Kidnapping of D.W.
[18 U.S.C. §1959(a)(1)]

15. Paragraph Ten of this Indictment is re-alleged and incorporated by reference as though set forth fully herein.

16. At all times relevant to this Indictment, the above-described enterprise, through its members and associates, engaged in racketeering activity as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), namely, acts involving drug trafficking in violation of Title 21, United States Code, Sections 841 and 846, acts involving money laundering in violation of Title 18, United States Code, Section 1956, acts involving kidnapping in violation of Mississippi Code Annotated, Section, 97-3-53, and acts involving murder in violation of Mississippi Code Annotated, Section 97-3-19.

17. On or about October 8, 2011, in the Southern District of Mississippi and elsewhere, the defendant, **JOSEPH BRANDON CREEL, a/k/a “Oak,”** and others known and unknown to the Grand Jury, aiding and abetting each other, for the purpose of maintaining and increasing position within the ABM, an enterprise engaged in racketeering activity, kidnapped D.W., in violation of Mississippi Code Annotated, Section 97-3-53.
In violation of 18 U.S.C. §§ 1959(a)(1) and 2.

COUNT SIX

Assault of D.W.
[18 U.S.C. §§ 1959(a)(3) and 2]

18. Paragraphs Ten and Sixteen of this Indictment are re-alleged and incorporated by reference as though set forth fully herein.

19. On or about October 8, 2011, in the Southern District of Mississippi and elsewhere, for the purposes of maintaining and increasing position in the ABM, an enterprise engaged in racketeering activity, the defendant, **JOSEPH BRANDON CREEEL, a/k/a "Oak,"** and others known and unknown to the Grand Jury, aiding and abetting each other, did assault D.W., resulting in serious bodily injury, in violation of Mississippi Code Annotated, Section 97-3-59.

In violation of 18 U.S.C. §§ 1959(a)(3) and 2.

COUNT SEVEN

Attempted Murder of J.B.
[18 U.S.C. §§ 1959(a)(5) and 2]

20. Paragraphs Ten and Sixteen of this Indictment are re-alleged and incorporated by reference as though set forth fully herein.

21. On or about August 27, 2013, in the Northern District of Mississippi and elsewhere, the defendants, **FRANK GEORGE OWENS, JR., a/k/a "State Raised," PERRY WAYNE MASK, RICKY WAYNE JENKINS, a/k/a "Scissorhands,"** and others known and unknown to the Grand Jury, aiding and abetting each other, for the purpose of maintaining and increasing position within the ABM, an enterprise engaged in racketeering activity, did attempt to murder J.B., in violation of Mississippi Code Annotated, Sections 97-3-19 and 97-1-7(2).
In violation of 18 U.S.C. §§ 1959(a)(5) and 2.

COUNT EIGHT

Firearm Theft from a Licensed Firearms Dealer
[18 U.S.C. §§ 922(u) and 924]

22. On or about July 31, 2013, in the Northern District of Mississippi, the defendants, **PERRY WAYNE MASK**, and **NATASHA BAXTER ELLIS**, a/k/a "Tasha," aided and abetted by each other, and others known and unknown to the Grand Jury, knowingly stole and unlawfully took and carried away from the premises and business inventory of The Pawn Shop located in Coldwater, Mississippi, a business licensed to engage in the sale and purchase of firearms, the following firearms, to wit:

1. Howa, model 1500, 7mm caliber rifle, serial # B178028
2. Charter Arms, model undercover 38, .38 caliber revolver, serial # 105239
3. Winchester, model 94, 30-30 caliber rifle, serial# WC30734
4. Mossberg, model 835, 12 gauge shotgun, serial# UM603489
5. Savage, unknown model, .308 caliber rifle, serial# H356096
6. Remington, model 742, .308 caliber rifle, serial # A7008293
7. Winchester, model 1400, 12 gauge shotgun, serial # N618569
8. Winchester, model 9422M XTR, .22 caliber rifle, serial # F555828
9. Winchester, model 94, 30-30 caliber rifle, serial # 2579027
10. Remington, unknown model, 20 gauge shotgun, serial #1104456
11. Phoenix Arms, model HP22A, .22 caliber pistol, serial # 4249436
12. Jimenez Arms, model J.A. 22, .22 caliber pistol, serial # 1149545
13. Jimenez Arms, model J.A. 22, .22 caliber pistol, serial # 1135023
14. Harrington & Richardson, model 733, .32 caliber revolver, serial # AXX148643
15. Remington, model 710, 30-06 caliber rifle, serial # 71318611
16. Smith & Wesson, unknown model, .44 caliber revolver, serial # 34385
17. Hi Point, model C9, 9mm caliber pistol, serial # P104265
18. Jimenez Arms, model J.A. .25, .25 caliber pistol, serial # 1135989
19. Jimenez Arms, model J.A. .25, .25 caliber pistol, serial # 061177
20. Jimenez Arms, model J.A. .25, .25 caliber pistol, serial # 061176
21. Jimenez Arms, model J.A. .25, .25 caliber pistol, serial # 061178
22. Ruger, model M77, .270 caliber rifle, serial # 771-66753
23. Taurus, model R352, .38 caliber revolver, serial # CV24241
24. Franchi, unknown model, 12 gauge shotgun, serial # 010767
25. Mossberg, model 500, 20 gauge shotgun, serial # L669273
26. Remington, model 742, .308 caliber rifle, serial # B6916226
27. Mossberg, unknown model, 20 gauge shotgun, serial # 110729

28. Remington, model 870 Express, 12 gauge shotgun, serial # A068857M
29. Remington, model Sportsman, 16 gauge shotgun, serial # 1595531
30. Taurus, unknown model, .38 caliber revolver, serial # 1035999
31. Rossi, unknown model, 12 gauge shotgun, serial # SR374493
32. Remington, model 597, .22 caliber rifle, serial # A2797670
33. Remington, model 1100, 12 gauge shotgun, serial # L096305
34. Savage, unknown model, 20 gauge shotgun, serial # 1135023
35. Marlin, model 336W, 30-30 caliber rifle, serial # 96034426
36. Hermann Weihrauch, Model EA/R, .38 caliber revolver, S/N: 1557951

which firearms had previously been shipped and transported in interstate commerce.

In violation of 18 U.S.C. §§ 922(u) and 2.

COUNT NINE

Theft of Firearms Stolen from a Licensed Firearms Dealer
[18 U.S.C. §§ 922(u) and 924]

23. On or about July 29, 2013, in the Northern District of Mississippi, **PERRY WAYNE MASK** and **DAVID LADRONE WILLIS**, a/k/a "Leprechaun," aided and abetted by each other and others known and unknown to the Grand Jury, knowingly stole and unlawfully took and carried away from the premises and business inventory of Barry's Trading Post located in Corinth, Mississippi, a business licensed to engage in the sale and purchase of firearms, the following firearms, to wit:

1. Henry, model H002C, .22 caliber rifle, serial # U5007621C
2. Ruger, model 10/22, .22 caliber rifle, serial # 82479835
3. Ruger, model 10/22, .22 caliber rifle, serial # 82479953
4. Russian (Nagant), model 9130, 7.62x54 caliber rifle, serial # 9130325576
5. Smith & Wesson, model M&P15-22, .22 caliber rifle, serial #DZT2073
6. Colt, model M4, 5.56 / .223 caliber carbine, serial # LE161822
7. Taurus, model PT111 Millennium G2, 9mm caliber pistol, serial # TFX33366
8. Smith & Wesson, model 637-2, .38 caliber revolver, serial # CUD2130

which firearms had previously been shipped and transported in interstate commerce.

In violation of 18 U.S.C. §§ 922(u) and 2.

COUNT TEN

Receipt / Possession of Stolen Firearms

[18 U.S.C. §§ 922(j) and 924]

24. From on or about July 29, 2013 through on or about August 3, 2013, in the Northern District of Mississippi, **GARY BRIAN LEE** and **WILLIAM ELLIS OVERTON**, aided and abetted by each other and others known and unknown to the Grand Jury, received, possessed, concealed, stored, and disposed of stolen firearms which had been shipped or transported in interstate commerce, knowing or having reasonable cause to believe the firearms had been stolen, including, but not limited to, the following firearms: Hermann Weihrauch, Model EA/R, .38 caliber revolver, S/N: 1557951, Winchester, model 94, 30-30 caliber rifle, serial # 2579027, Smith & Wesson, model M&P15-22, .22 caliber rifle, serial #DZT2073, and others.

In violation of 18 U.S.C. §§ 922(j) and 2.

FORFEITURE NOTICE

The allegations contained in Paragraphs One through Twenty-Four of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 1963.

Pursuant to Title 18, United States Code, Section 1963, upon conviction of an offense in violation of Title 18, United States Code, Section 1962, the defendants, **FRANK GEORGE OWENS JR., a/k/a "State Raised," PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, ERIC GLENN PARKER, MITCHELL BURNELL VALENTINE a/k/a "Hollywood," JOSEPH BRANDON CREEL, a/k/a "Oak," SONNY TODD MAXWELL, a/k/a "Blue," JAMES MILTON DEAN, a/k/a "JD," WALTER THOMAS BURRUS, a/k/a "T-bone," RICKY JENKINS, a/k/a "Scissorhands," DAVID LADRONE WILLIS, a/k/a "Leprechaun," BRODIE LYNN MURPHY, KATHY JUNE SHADBURN, NATASHA BAXTER ELLIS, a/k/a "Tasha," and RUTHIE GAIL RUTLEDGE, a/k/a "Goldmine,"** shall forfeit to the United States of America:

- a. any interest acquired or maintained in violation of section 1962;
- b. any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which the defendants established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

- c. any property constituting, or derived from, any proceeds obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of 1962.

The United States will seek the entry of a money judgment, joint and several, in the event specific property subject to forfeiture cannot be determined or located.

If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 18, United States Code, Section 1963(m).

A TRUE BILL



UNITED STATES ATTORNEY

/s/ signature redacted

FOREPERSON

JAMES M. TRUSTY
CHIEF ORGANIZED CRIME AND GANG SECTION
UNITED STATES DEPARTMENT OF JUSTICE

APR 23 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v.

CRIM. NO. 4:14CR141

FRANK GEORGE OWENS, JR.	18 U.S.C. § 1962(d)
a/k/a "State Raised"	21 U.S.C. § 846
PERRY WAYNE MASK	18 U.S.C. § 1959(a)(1)
STEPHEN NEAL HUBANKS	18 U.S.C. § 1959(a)(3)
ERIC GLENN PARKER	18 U.S.C. § 1959(a)(5)
JOSEPH BRANDON CREEL	18 U.S.C. § 922(u)
a/k/a "Oak"	18 U.S.C. § 922(j)
MITCHELL BURNELL VALENTINE	18 U.S.C. § 924
a/k/a "Hollywood"	18 U.S.C. § 2
SONNY TODD MAXWELL	
a/k/a "Blue"	
JAMES MILTON DEAN	
a/k/a "JD"	
WALTER BURRUS	
a/k/a "T-bone"	
RICKY WAYNE JENKINS	
a/k/a "Scissorhands"	
DAVID LADRONE WILLIS	
a/k/a "Leprechaun"	
BRODIE LYNN MURPHY	
KATHY JUNE SHADBURN	
NATASHA BAXTER ELLIS	
a/k/a "Tasha"	
RUTHIE GAIL RUTLEDGE	
a/k/a "Goldmine"	
GARY BRIAN LEE	
WILLIAM ELLIS OVERTON	

PENALTIES

Count One

FRANK GEORGE OWENS, JR., PERRY WAYNE MASK, STEPHEN NEAL HUBANKS,
ERIC GLENN PARKER, JOSEPH BRANDON CREEL, MITCHELL BURNELL
VALENTINE a/k/a "Hollywood" SONNY TODD MAXWELL, JAMES MILTON DEAN,
WALTER BURRUS, DAVID LADRONE WILLIS, BRODIE LYNN MURPHY, KATHY
JUNE SHADBURN, NATASHA BAXTER ELLIS, RUTHIE GAIL RUTLEDGE
Not more than life imprisonment

18 U.S.C. § 1963 (a)

Not more than 5 years supervised release	18 U.S.C. § 3583 (b)(1)
Not more than \$250,000.00 fine	18 U.S.C. § 3571 (b)(3)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

RICKY WAYNE JENKINS

Not more than 20 years imprisonment	18 U.S.C. § 1963 (a)
Not more than 3 years supervised release	18 U.S.C. § 3583 (b)(2)
Not more than \$250,000.00 fine	18 U.S.C. § 3571 (b)(3)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

Count Two

21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A)

PERRY WAYNE MASK, STEPHEN NEAL HUBANKS, ERIC GLENN PARKER, DAVID LADRONE WILLIS, BRODIE LYNN MURPHY, KATHY JUNE SHADBURN, NATASHA BAXTER ELLIS, RUTHIE GAIL RUTLEDGE

NLT 10 years NMT life imprisonment	21 U.S.C. § 841(b)(1)(A)
NMT \$10,000,000 fine, or both	21 U.S.C. § 841(b)(1)(A)
At least 5 years supervised release	21 U.S.C. § 841(b)(1)(A)
Ineligibility of federal benefits up to 5 years after conviction	21 U.S.C. § 862(a)(1)(A)
\$100 special assessment	18 U.S.C. § 3013(a)(2)(A)

With respect to a defendant having a prior felony drug conviction and consistent with the provisions of 21 U.S.C. § 851:

NLT 20 years NMT life imprisonment	21 U.S.C. § 841 (b)(1)(A);
NMT \$20,000,000 fine, or both	21 U.S.C. § 841 (b)(1)(A);
At least 10 years supervised release	21 U.S.C. § 841 (b)(1)(A);
Ineligibility for federal benefits up to 10 years after conviction	21 U.S.C. § 862(a)(B);
\$100 special assessment	18 U.S.C. § 3013(a)(2)(A).

With respect to a defendant having two or more prior felony drug conviction and consistent with the provisions of 21 U.S.C. § 851:

Mandatory life imprisonment without release	21 U.S.C. § 841(b)(1)(A)
Not more than a \$20,000,000.00 fine, or both	21 U.S.C. § 841(b)(1)(A)
Not less than 10 yrs. supervised release	21 U.S.C. § 841(b)(1)(A)
Ineligibility for federal benefits up to 10 years after conviction	21 U.S.C. § 862(a)(B);
\$100 special assessment	18 U.S.C. § 3013(a)(2)(A).

Count Three
18 U.S.C. §§ 1959(a)(1) and (2)

Not more than life imprisonment	18 U.S.C. § 1959 (a)(1)
Not more than 5 years supervised release	18 U.S.C. § 3583 (b)(1)
Not more than \$250,000.00 fine	18 U.S.C. § 3571 (b)(3)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

Count Four
18 U.S.C. §§ 1959(a)(1) & 2

Not more than life imprisonment	18 U.S.C. § 1959 (a)(1)
Not more than 5 years supervised release	18 U.S.C. § 3583 (b)(1)
Not more than \$250,000.00 fine	18 U.S.C. § 3571 (b)(3)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

Count Five
18 U.S.C. §1959(a)(1)

Not more than life imprisonment	18 U.S.C. § 1959 (a)(1)
Not more than 5 years supervised release	18 U.S.C. § 3583 (b)(1)
Not more than \$250,000.00 fine	18 U.S.C. § 3571 (b)(3)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

Count Six
18 U.S.C. §§ 1959(a)(3) and 2

Not more than 20 years imprisonment	18 U.S.C. § 1959 (a)(3)
Not more than 3 years supervised release	18 U.S.C. § 3583 (b)(2)
Not more than \$250,000.00 fine	18 U.S.C. § 3571 (b)(3)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

Count Seven
18 U.S.C. §§ 1959(a)(5) and 2

Not more than 10 years imprisonment	18 U.S.C. § 1959(a)(5)
Not more than \$250,000 fine	18 U.S.C. § 3571(b)(3)
Not more than three years supervised release	18 U.S.C. § 3583(b)(2)
\$100 Special Assessment	18 U.S.C. § 3013 (a)(2)(A)

Counts Eight and Nine
18 U.S.C. §§ 922(u) and 924

Not more than 10 years imprisonment	18 U.S.C. § 924(i)(1)
Not more than \$250,000 fine	18 U.S.C. § 3571(b)(3)
Not more than 3 years supervised release	18 U.S.C. § 3583(b)(2)
\$100 special assessment	18 U.S.C. § 3013(a)(2)(A)

Count Ten
18 U.S.C. §§ 922(j) and 924

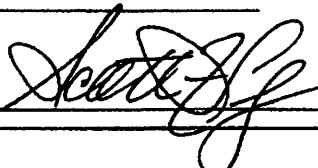
Not more than 10 years imprisonment	18 U.S.C. § 924(a)(2)
Not more than \$250,000 fine	18 U.S.C. § 3571(b)(3)
Not more than three years supervised release	18 U.S.C. § 3583(b)(2)
\$100 special assessment	18 U.S.C. § 3013(a)(2)(A)

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MS BAR NO. 8985

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CRIMINAL CASE COVER SHEET**U.S. DISTRICT COURT****Complete entire form****Place of Offense:**City Parchman
County Sunflower**Related Case Information:**Superseding: Yes No If yes, Case No. 4:14CR141
Same Defendant New Defendant XMagistrate Judge Case Number Search Warrant Case Number R20/R40 from District of Related Criminal Case Number **Defendant Information:**Juvenile: Yes No If yes, Matter to be sealed: Yes NoDefendant Name Eric Glenn ParkerAlias Name Address Richton, MSDOB 1980 SS# xxx-xx-560 Sex M Race W Nationality Represented by: **U.S. Attorney Information:** AUSA Scott F. Leary Bar # 8985Interpreter: Yes No List Language and/or dialect: **Location Status:**Pretrial Release Yes No In Custody Yes NoFederal State Date of Arrest Location **U.S.C. Citations**Total # of Counts 3 Petty Misdemeanor Felony

<u>Title & Section</u>	<u>Description of Offense Charged</u>	<u>Count(s)</u>
Set 1 <u>18:1961.F</u>	<u>RICO Conspiracy</u>	<u>1</u>
Set 2 <u>21:846=CD.F</u>	<u>Conspiracy to Distribute a Controlled Subs</u>	<u>2</u>
Set 3 <u>18:1959A.F</u>	<u>VICAR - Murder</u>	<u>4</u>
Set 4 <u> </u>	<u> </u>	<u> </u>

Date: 4/22/15Signature of AUSA **District Court Case Number:**(To be entered by Clerk)

CRIMINAL CASE COVER SHEET**U.S. DISTRICT COURT**

Complete entire form

Place of Offense:City Parchman**Related Case Information:**Superseding: Yes No If yes, Case No. 4:14CR141
Same Defendant New Defendant XCounty SunflowerMagistrate Judge Case Number Search Warrant Case Number R20/R40 from District of Related Criminal Case Number **Defendant Information:**Juvenile: Yes No If yes, Matter to be sealed: Yes NoDefendant Name Mitchell Burnell ValentineAlias Name HollywoodAddress Moss Point, MSDOB 1980 SS# xxx-xx-779 Sex M Race W Nationality Represented by: **U.S. Attorney Information:** AUSA Scott F. Leary Bar # 8985Interpreter: Yes No List Language and/or dialect: **Location Status:**Pretrial Release Yes No In Custody Yes NoFederal State Date of Arrest Location **U.S.C. Citations**Total # of Counts 3 Petty Misdemeanor Felony**Title & Section** **Description of Offense Charged** **Count(s)**Set 1 18:1961.F RICO Conspiracy 1Set 2 18:1959A.F VICAR - Kidnapping 3Set 3 18:1959A.F VICAR - Murder 4Set 4 Date: 4/22/15Signature of AUSA Scott F. Leary**District Court Case Number:**

(To be entered by Clerk)

CRIMINAL CASE COVER SHEETU.S. DISTRICT COURT

Complete entire form

Place of Offense:City Parchman
County SunflowerRelated Case Information:Superseding: Yes No If yes, Case No. 4:14CR141
Same Defendant New Defendant x Magistrate Judge Case Number Search Warrant Case Number R20/R40 from District of Related Criminal Case Number Defendant Information:Juvenile: Yes No If yes, Matter to be sealed: Yes NoDefendant Name Brodie Lynn MurphyAlias Name Address Iuka, MSDOB 1971 SS# xxx-xx-329 Sex M Race W Nationality Represented by: U.S. Attorney Information: AUSA Scott F. Leary Bar # 8985Interpreter: Yes No List Language and/or dialect: Location Status:Pretrial Release Yes No In Custody Yes NoFederal State Date of Arrest Location U.S.C. CitationsTotal # of Counts 2 Petty Misdemeanor FelonyTitle & Section Description of Offense Charged Count(s)Set 1 18:1961.F RICO Conspiracy 1Set 2 21:846-CD.F Conspiracy to Distribute a Controlled Subs 2Set 3 Set 4 Date: 4/20/15 Signature of AUSA Scott F. LearyDistrict Court Case Number: (To be entered by Clerk)