

RECORD NO. _____

**IN THE
SUPREME COURT of the UNITED STATES**

MARTIN LOUIS BALLARD,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS TO
APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Appendix A:	Unpublished Opinion, <i>United States of America v. Martin Louis Ballard</i> , 16-4092, of the United States Court of Appeals for the Fourth Circuit decided March 15, 2018.....	App. 1
Appendix B:	Judgment, <i>United States of America v. Martin Louis Ballard</i> , No. 16-4696, of the United States Court of Appeals for the Fourth Circuit filed March 15, 2018.....	App. 9
Appendix C:	Petition for rehearing and/or rehearing <i>en banc</i> , <i>United States of America v. Martin Louis Ballard</i> , No. 16-4696 of the United States Court of Appeals for the Fourth Circuit filed March 29, 2018.....	App. 11
Appendix D:	Order Denying Petition for Rehearing and Petition for Rehearing <i>En Banc</i> , <i>United States of America v. Martin Louis Ballard</i> , No. 16-4696, of the United States Court of Appeals for the Fourth Circuit Filed April 17, 2018.....	App. 21
Appendix E:	Judgment in a Criminal Case, <i>United States of America v. Martin Louis Ballard</i> , No. 2:12-cr-232 of the United States District Court for the District of South Carolina filed October 20, 2016.....	App. 23

Appendix A

No. 16-4696, *United States of America v. Martin Louis Ballard*

Unpublished Opinion

In the United States Court of Appeals for the Fourth Circuit

Decided March 15, 2018

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 16-4696

UNITED STATES OF AMERICA,**Plaintiff - Appellee,****v.****MARTIN LOUIS BALLARD,****Defendant - Appellant.**

Appeal from the United States District Court for the District of South Carolina, at Charleston. Margaret B. Seymour, Senior District Judge. (2:12-cr-00232-MBS-14)

Submitted: February 26, 2018**Decided: March 15, 2018**

Before KING and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Charles R. Brewer, Asheville, North Carolina, for Appellant. Beth Drake, United States Attorney, Julius N. Richardson, Sean Kittrell, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Following a bench trial, Martin Louis Ballard was convicted of numerous charges related to drug trafficking and murder for hire conspiracies. The district court sentenced Ballard to life imprisonment. Ballard appeals, asserting several challenges to his convictions. For the reasons that follow, we affirm.

In his first claim on appeal, Ballard argues that the pretrial seizure of his business bank account interfered with his Sixth Amendment right to select counsel of his own choosing. The Sixth Amendment preserves a defendant's "right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 624-25 (1989). Although a defendant does not have a Sixth Amendment right to use tainted, forfeitable assets to hire counsel of his choice, *id.* at 631, "the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment," *Luis v. United States*, 136 S. Ct. 1083, 1088 (2016).

We need not resolve whether the funds in question were tainted because the seizure did not affect Ballard's choice of counsel. Ballard initially retained private counsel. After his assets were seized and he could no longer pay counsel, the district court appointed the same attorney to continue representing Ballard under the Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A (2012). Although counsel twice moved to withdraw from representation prior to being appointed under the CJA, nothing in the record on appeal suggests that Ballard desired different counsel or that counsel's motions

were motivated by anything beyond financial considerations. Indeed, counsel's second motion sought permission to withdraw or to be appointed under the CJA, and the court granted counsel's request for court appointment. We therefore conclude that Ballard is not entitled to relief on this claim.

Next, Ballard asserts that the three-year delay between his initial accusation and trial violated his right to a speedy trial.* Because he raises this argument for the first time on appeal, we review for plain error. Fed. R. Crim. P. 52(b); *United States v. Olano*, 507 U.S. 725, 731-32 (1993); *see also Barker v. Wingo*, 407 U.S. 514, 528 (1972) (holding that defendant who fails to demand speedy trial does not forever waive that constitutional right). To assess whether a pretrial delay violates the Sixth Amendment's speedy trial guarantee, we balance four factors: “[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.” *Barker*, 407 U.S. at 530. Although the first factor—the length of the delay—weighs in favor of Ballard, *see Doggett v. United States*, 505 U.S. 647, 651-52 & n.1 (1992), the remaining factors favor the Government.

With respect to the second *Barker* factor, “[t]he reasons for a trial delay should be characterized as either valid, improper, or neutral.” *United States v. Hall*, 551 F.3d 257,

* Although Ballard's statement of issues asserts claims under both the Speedy Trial Act and the Sixth Amendment, the argument section of Ballard's brief does not put forth an argument under the Speedy Trial Act. Consequently, Ballard has forfeited any challenge based on his statutory speedy trial rights. *See United States v. White*, 836 F.3d 437, 443 (4th Cir. 2016) (noting that this court generally “consider[s] contentions not raised in the argument section of the opening brief [to be] abandoned” (internal quotation marks omitted; second alteration in original)).

272 (4th Cir. 2009). “Deliberate delay to hamper the defense weighs heavily against the prosecution,” while “delay caused by the defense weighs against the defendant.” *Vermont v. Brillon*, 556 U.S. 81, 90 (2009) (internal quotation marks omitted). As for the delay in this case between the initial indictment in March 2012 and Ballard’s February 2014 arrest for the attempted murder of his coconspirator, Ivory Brothers, this was a complex drug trafficking conspiracy case involving numerous defendants charged in multiple counts. During this time, the delay resulted from the multitude of motions filed by all parties, including Ballard, and continuances. We deem the delay during this period to be neutral. Between the attempted murder and trial, however, Ballard’s own criminal conduct, namely seeking to obstruct justice by conspiring to have a key witness killed, was the primary cause for delay. Consequently, we conclude that, on balance, this factor weighs against Ballard.

The third factor weighs heavily against Ballard because he failed to assert his right to a speedy trial in the district court. *See Barker*, 407 U.S. at 532 (“We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.”). Ballard concedes that he filed no formal speedy trial motions in the district court, but he argues that his objections to continuances should be construed as objections on constitutional speedy trial right grounds. Additionally, Ballard claims that a pro se letter he sent to the court is tantamount to a speedy trial motion. While Ballard’s letter expressed a desire to have his case heard, the letter itself requested reinstatement of Ballard’s bond, citing health reasons and a need to work to generate income. Merely expressing a preference to have a case heard sooner rather than later does not amount to

the assertion of a speedy trial right. *See United States v. Thomas*, 55 F.3d 144, 150 (4th Cir. 1995).

Lastly, Ballard has made no showing of prejudice; thus the final *Barker* factor also weighs in favor of the Government. Although Ballard claims that his incarceration limited his ability to prepare for his defense, he fails to show how a faster trial would have avoided this purported hardship. Similarly, his conclusory claim that his inability to earn a living hampered his defense is unsupported by any specifics, and, even when he no longer had funds to pay for an attorney, his retained counsel became court-appointed CJA counsel. Finally, Ballard's generalized claims of anxiety are insufficient to establish prejudice. Having balanced the *Barker* factors, we conclude that the delay did not contravene Ballard's constitutional right to a speedy trial.

Next, Ballard claims that he was denied effective assistance of counsel because, on the first day of trial, defense counsel remarked, incorrectly, that Ballard potentially faced a mandatory life sentence if convicted. Unless an attorney's ineffectiveness conclusively appears from the record, ineffective assistance claims generally are not cognizable on direct appeal. *United States v. Benton*, 523 F.3d 424, 435 (4th Cir. 2008). Instead, such claims should be raised in a motion pursuant to 28 U.S.C. § 2255 (2012), in order to permit sufficient development of the record. We conclude that ineffective assistance of counsel does not conclusively appear on the face of the record, and, hence, this claim is not cognizable on direct appeal.

Ballard also challenges the district court's admission of the testimony of several cooperating witnesses who interpreted slang or code that Ballard used. Four cooperating

witnesses interpreted, without objection, Ballard's cryptic statements in conversations they had had with Ballard addressing the drug trade as well as the hit on Brothers. A fifth cooperating witness, who listened in real time to recorded telephone calls that he arranged between Ballard and third parties, also testified for the Government, interpreting what Ballard meant in recorded telephone conversations pertaining to the hit on Brothers.

Rule 701 of the Federal Rules of Evidence permits lay opinion testimony as long as it is based on the witness' own perception, is helpful to the jury in understanding facts at issue, and is "not based on scientific, technical, or other specialized knowledge." Fed. R. Evid. 701(c). "[A] witness's understanding of what the defendant meant by certain statements is permissible lay testimony, so long as the witness's understanding is predicated on his knowledge and participation in the conversation." *United States v. Hassan*, 742 F.3d 104, 136 (4th Cir. 2014). Here, four of the five cooperating witnesses actively participated in the conversations with Ballard. As for the fifth cooperating witness, while he may not have spoken, he placed the calls and listened in real time to the conversations about which he testified. We conclude that the district court did not err in admitting these witnesses' lay testimony.

Next, Ballard argues that the district court should have excluded testimony about statements made by Jimmie Harris, the man who carried out the attempted hit on Brothers. When Harris refused to testify, the court permitted the Government to call other witnesses regarding statements Harris made to them in jail, holding that the statements were admissible under Fed. R. Evid. 804(b)(3) as statements against penal

interest. Ballard claims that the introduction of Harris' statements through the testimony of other witnesses violated his constitutional right to confront witnesses.

The Sixth Amendment's Confrontation Clause "bars the admission of 'testimonial' statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" *United States v. Dargan*, 738 F.3d 643, 650 (4th Cir. 2013) (quoting *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004)). "Only 'testimonial' statements are excludable under the Sixth Amendment's Confrontation Clause . . . , and we have held that statements by one prisoner to another are 'clearly nontestimonial.'" *United States v. Moore*, 810 F.3d 932, 939 (4th Cir. 2016) (internal citations omitted). Therefore, the court's admission of testimony about statements Harris made to others while in jail did not violate Ballard's rights under the Confrontation Clause.

Finally, Ballard argues that his due process rights were violated when the trial court repeatedly indicated it had not heard or comprehended statements made during the trial. The examples cited by Ballard as shortfalls instead demonstrate that the judge was paying close attention and was fully engaged in the proceedings and that his questions reflected his efforts to ensure that the record was clear with regard to exhibits the parties were introducing, questions the parties were asking and witnesses' responses, and the nature of various objections. Ballard's claim of a due process violation is meritless.

Accordingly, we affirm the criminal judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

No. 16-4696, *United States of America v. Martin Louis Ballard*

Judgment

In the United States Court of Appeals for the Fourth Circuit

Decided March 15, 2018

FILED: March 15, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4696
(2:12-cr-00232-MBS-14)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARTIN LOUIS BALLARD

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

Appendix C

No. 16-4696, *United States of America v. Martin Louis Ballard*

Petition for Rehearing and Rehearing *En Banc*

In the United States Court of Appeals for the Fourth Circuit

Decided March 29, 2018

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RECORD NO. 16-4696

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

V.

MARTIN LOUIS BALLARD,

Defendant-Appellant.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AT CHARLESTON**

**DEFENDANT- APPELLANT'S PETITION FOR REHEARING AND
REHEARING *EN BANC***

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(NC Bar No. 6051)

Counsel for Appellant

NOW COMES the defendant-appellant, by and through counsel, pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure, moving for a panel rehearing and/or a rehearing *en banc*.

Rule 35(b)(1) Statement

In the opinion of the undersigned counsel for petitioner this appeal involves a question of exceptional importance, to wit: whether the pretrial restraint of legitimate and untainted assets of petitioner necessary to retain counsel of his choice violates his Sixth Amendment right to the selection of counsel of his choice

Issue presented¹

WHETHER THE PANEL'S OPINION CORRECTLY DETERMINED THAT THE TRIAL COURT DID NOT COMMIT PREJUDICIAL ERROR IN ALLOWING THE PRETRIAL RESTRAINT OF LEGITIMATE AND UNTAINTED ASSETS BELONGING TO PETITIONER THEREBY PREVENTING PETITIONER FROM OBTAINING COUNSEL OF HIS CHOICE IN VIOLATION OF THE SIXTH AMENDMENT'S RIGHT TO COUNSEL.

ARGUMENT

THE PANEL'S OPINION INCORRECTLY DETERMINED THAT THE TRIAL COURT DID NOT COMMIT PREJUDICIAL ERROR IN ALLOWING THE GOVERNMENT'S PRETRIAL RESTRAINT OF LEGITIMATE AND UNTAINTED ASSETS BELONGING TO PETITIONER THEREBY PREVENTING PETITIONER FROM OBTAINING COUNSEL OF HIS CHOICE.

¹ By electing to limit the argument in this petition to the following argument, petitioner does not intend to abandon the other arguments raised in his opening brief. The petitioner's opening brief and reply brief are incorporated herein by reference.

The arguments contained in petitioner's opening brief at pp 10-25 in regard to this issue are incorporated herein by reference. Likewise, the arguments contained in petitioner's reply at pp 1-13 in regard to this issue are incorporated herein by reference.

The original indictment against petitioner was filed on March 14, 2012. JA 1694. On March 19, 2012, a search warrant was executed in which an account was discovered in petitioner's trucking business, and it had \$20,000 in it. JA 47. At a hearing the government's counsel argued to the court that the government doesn't "contest that he does have a legitimate income coming in through the business..." JA 57. On or about March 23, 2012, the government seized petitioner's business accounts according to the forfeiture section of the superseding indictment. JA 134. The superseding bill of indictment filed September 12, 2012, added a forfeiture provision naming petitioner. The provision relates, in part, to the "(a)pproximately \$26,043.25 in United States currency seized from MARTIN LEWIS BALLARD, Account No. xxxx075 (in name of Martin Trucking, LLC), South Carolina Federal Credit Union, on or about March 23, 2012." (Emphasis added). JA 128.

On February 25, 2014, a second superseding bill of indictment was returned which significantly expanded the charges against petitioner by accusing him of attempting to kill a victim in retaliation of the victim providing information to law

enforcement relating to drug trafficking crimes involving petitioner. JA 210. The alleged assault had taken place on June 6, 2013. This second superseding indictment followed the jury selection in this case as to petitioner which had occurred on January 6, 2014. JA 172. Petitioner's counsel was directed to notify the court within ten days of the status of representation. On March 12, 2014, petitioner's counsel filed a motion to be relieved as his counsel. In that motion petitioner's counsel sought the appointment of new counsel and requested "that this Motion be heard *in camera*, in order to protect the attorney-client privileged communications which form the basis for this Motion." This motion was not served on petitioner. JA 233. On May 15, 2014, the motion of defendant's counsel to withdraw was denied without explanation. JA 240. A scheduling notice was entered on November 13, 2014, setting jury selection for January 14, 2015. On November 21, 2014, petitioner's counsel filed a second motion to be relieved and alternatively sought appointment as a CJA defense attorney for petitioner. JA 330. On December 19, 2014, the court granted CJA status for petitioner's counsel. JA 386.

The Panel opinion at p 2 quoting *Luis v. United States*, 136 S. Ct. 1083, 1088 (2016) notes that "the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment." The Panel

opinion, however, did not resolve the issue as to whether the funds were tainted. Instead, it concluded that the seizure did not affect petitioner's choice of counsel. Petitioner did retain private counsel to represent him when the charges were limited to drug related charges. The Panel opinion noted that "(a)lthough counsel twice moved to withdraw from representation prior to being appointed under the CJA nothing in the record on appeal suggests that Ballard desired different counsel nor that counsel's motions were motivated by anything beyond financial considerations." Petitioner contends, however, that he was not in a position to object to counsel's continued representation in that the taking of his funds left him with no leverage.

With the filing of the enhanced attempted murder charges on February 25, 2014, petitioner would have desired to at least pursue other counsel in light of petitioner's perception of the ability of his current counsel to be effective in representing him on those enhanced charges. Those charges were contained in the second superseding bill of indictment which was returned on February 25, 2014. Less than a month later petitioner's counsel filed a motion to be relieved as counsel. The motion did not set out any reason for its filing and was not served on petitioner. When the case was set for jury selection for January 15, 2015, in a scheduling notice of November 13, 2014, petitioner's counsel filed a second motion

to be relieved --slightly a week after the entry of the scheduling notice. Petitioner would rightly be concerned at angering his privately retained attorney while not being in position to retain new counsel in that his money had been seized. Petitioner contends herein that he received diminished level of advocacy which resulted from monetary situation. While the petitioner's counsel was granted CJA status despite the fact that he was not a member of the CJA panel, the court in its order stated that the court "may require counsel to provide and explain his records regarding payments he received prior to his CJA appointment." JA 388. The record reflects that petitioner's counsel on multiple occasions failed to object to various continuances and thereby prejudicing petitioner's ability to raise speedy trial challenges on appeal. Further, petitioner felt compelled to send a *pro se* letter to the trial court dated August 26, 2014. JA 284.

As noted in Argument III in petitioner's opening brief, petitioner's counsel on the first day of petitioner's bench trial wrongly advised the court that petitioner was facing a mandatory life sentence. JA 440. It is axiomatic that at a minimum defense counsel must properly advise a criminal defendant of any applicable mandatory minimum sentence. None of the charges in any of the bills of indictment, could have resulted, upon conviction, of a mandatory life sentence. While the Panel's opinion rejected Argument III by holding that ineffective assistance of counsel

claims must normally be raised in a Section 2255 proceeding, the nature of the misinformation provided by petitioner's counsel to the court on the very opening day of the trial shows a significant misapprehension of the law or carelessness on the part of petitioner's counsel. Petitioner contends that these errors on behalf of his counsel resulted from his counsel being required to continue in his representation of petitioner against his will.

Conclusion

For the reasons set forth above the Panel should rehear this appeal and/or this Court should conduct a rehearing *en banc*.

Respectfully submitted this the 29th day of March, 2018.

s/Charles R. Brewer
Charles R. Brewer
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Petitioner
79 Woodfin Place, Suite 206
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(828) 251-5002

CERTIFICATE OF SERVICE

The undersigned certifies that on March 29, 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Sean Kittrell, Assistant United States Attorney
Sean.kittrell@usdoj.gov

Jay Richardson
Jay.N.Richardson@usdoj.gov

s/ Charles R. Brewer
Charles R. Brewer

Certificate of compliance with type-volume limit

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/s/ Charles R. Brewer
Charles R. Brewer

March 29, 2018

Appendix D

No. 16-4696, *United States of America v. Martin Louis Ballard*

Order Denying Petition for Rehearing and Rehearing *En Banc*

In the United States Court of Appeals for the Fourth Circuit

Decided April 17, 2018

FILED: April 17, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4696
(2:12-cr-00232-MBS-14)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARTIN LOUIS BALLARD

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Floyd, and Senior Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix E

No. 2:12cr232

United States of America v. Martin Louis Ballard

Judgment in a Criminal Case

In the United States District Court for the District of South Carolina

Decided October 20, 2016

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

MARTIN LOUIS BALLARDCase Number: 2:12-cr-00232-MBS-14
 USM Number: 23865-171Jerry Theos, CJA
 Defendant's Attorney**THE DEFENDANT:**

was found guilty on Count 1, guilty of the lesser included offense of Count 3, guilty on Counts 5-11, after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21:841(b)(1)(A),846	Please see fourth superseding indictment	3/19/12	1
21:844	Please see fourth superseding indictment	3/19/12	3
18:1958 and 2	Please see fourth superseding indictment	6/6/13	5,6
18:373	Please see fourth superseding indictment	6/6/13	7
18:1512(a)(1)(A) and 2	Please see fourth superseding indictment	6/6/13	8
18:1513(a)(1)(B) and 2	Please see fourth superseding indictment	6/6/13	9
18:924(o)	Please see fourth superseding indictment	6/6/13	10
18:924(c)(1)(A)(iii) and 2	Please see fourth superseding indictment	6/6/13	11

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on Count 4.

Count 2 is dismissed with prejudice as the Government did not proceed with this count.

Forfeiture provision is hereby dismissed on motion of the United States Attorney.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

October 18, 2016Date of Imposition of Judgment/s/ Margaret B. Seymour
 Signature of JudgeMargaret B. Seymour, Senior United States District Judge
 Name and Title of JudgeOctober 19, 2016
 Date

DEFENDANT: MARTIN LOUIS BALLARD
CASE NUMBER: 2:12-cr-00232-MBS-14

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of LIFE, plus 10 years. Said term consists of LIFE as to Count 1, 12 months as to Count 3, 240 months as to Counts 5, 6, 7, and 10, and 360 months as to Counts 8 and 9, all to run concurrently; and 120 months as to Count 11, to run consecutively to all other counts. The defendant shall pay a mandatory fine of \$1,000.00 as to Count 3 and a special assessment fee of \$825.00, both due beginning immediately.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MARTIN LOUIS BALLARD
CASE NUMBER: 2:12-cr-00232-MBS-14

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years; said term consists of 5 years as to Counts 1, 8, 9, and 11; 1 year as to Count 3; and 3 years as to Counts 5, 6, 7, and 10; said terms to run concurrently. While on supervised release, the defendant shall comply with the mandatory and standard conditions of supervision and the following special conditions.

1. The defendant shall pay any remaining fine in the amount of \$1,000 at a rate of no less than \$50 per month, beginning within 60 days of release. The payments shall be made payable to "Clerk, U.S. District Court" and mailed to PO Box 835, Charleston, SC 29402. Interest on any fine ordered as to this defendant is waived. Payments shall be adjusted accordingly, based upon the defendant's ability to pay as determined by the Court. 2. The defendant shall participate in a program of testing for substance abuse as approved by the U.S. Probation Officer. 3. The defendant shall contribute to the costs of any treatment, drug testing and/or location monitoring not to exceed an amount determined reasonable by the court approved U.S. Probation Office's Sliding Scale for Services, and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MARTIN LOUIS BALLARD
CASE NUMBER: 2:12-cr-00232-MBS-14

CRIMINAL MONETARY PENALTIES

The defendant shall pay the total criminal monetary penalties under the schedule of payments on Sheet 5.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS <u>\$825.00</u>	<u>\$1,000.00</u>	<u>\$</u>

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- The interest requirement is waived for the fine restitution.
- The interest requirement for the fine restitution is modified as follows:

**Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MARTIN LOUIS BALLARD
CASE NUMBER: 2:12-cr-00232-MBS-14

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of a \$1,000.00 fine and a special assessment fee of \$825.00, both due immediately.
 not later than _____, or
 in accordance with C, D, or E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (weekly, monthly, quarterly) installments of \$_____ over a period of _____ (e.g., months or years), to commence _____ (30 or 60 days) after the date of this judgment; or

D Payment in equal monthly installments of \$50.00 to commence 60 days after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed November 17, 2015 and the said order is incorporated herein as part of this judgment.

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

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

PRELIMINARY ORDER OF FORFEITURE

This matter is before the court on the motion of the United States for a Preliminary Order of Forfeiture as to Defendant Martin Louis Ballard ("Ballard", "Defendant"), based upon the following:

1. On November 12, 2014, a multi-count Fourth Superseding Indictment ("Indictment") was filed charging Ballard with the following:

Counts 1 and 3: Drug trafficking, in violation of 21 U.S.C. §§ 841 and 846;

Counts 2, 4, 10-11: Conspiracy to and possession of a firearm in furtherance of a drug crime, in violation of 18 U.S.C. §§ 924(c) and 924(o);

Counts 5 and 6: Conspiracy to and use of interstate commerce facilities in the commission of murder for hire, in violation of 18 U.S.C. § 1958;

Counts 8 and 9: Obstruction of justice, in violation of 18 U.S.C. §§ 1512 and 1513.

2. Pursuant to Fed. R. Crim. P. 32.2(a), the Indictment contained a notice of forfeiture providing that upon Ballard's conviction, certain properties

enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States. As specified therein, such assets include, but are not limited to the following:

Proceeds/Money Judgment:

(A) A sum of money equal to all property the Defendants obtained as a result of the drug offenses charged in Count 1 of the Superseding Indictment, that is a minimum of \$1,000,000.00 in United States currency, and all interest and proceeds traceable thereto for which the defendants are jointly and severally liable.

U.S. Cash/Currency:

(B) Approximately \$26,043.25 in United States currency seized from Martin Louis Ballard, account number xxxx075 (in the name of Martin Trucking, LLC), South Carolina Federal Credit Union, on or about March 23, 2012.
Asset ID: 12-DEA-562783

3. A bench trial was held and on May 19, 2015, at which the Court found Ballard guilty of the following charges:

Count 1: Drug trafficking, in violation of 21 U.S.C. § 846;

Count 3: Drug trafficking (lesser included offense), in violation of 21 U.S.C. § 841;

#23
Counts 4, 10-11: Conspiracy to and possession of a firearm in furtherance of a drug crime, in violation of 18 U.S.C. §§ 924(c) and 924(o);

Counts 5 and 6: Conspiracy to and use of interstate commerce facilities in the commission of murder for hire, in violation of 18 U.S.C. § 1958;

Count 7: Solicitation of murder for hire, in violation of 18 U.S.C. §§ 1958 and 373;

Counts 8 and 9: Obstruction of justice, in violation of 18 U.S.C. §§ 1512 and 1513.

4. Based upon Defendant's convictions and other matters of record, the Court has determined that Ballard has an interest in the below-described property, and that the property is subject to forfeiture to the United States pursuant to 21 U.S.C. §§ 853 and 881, 18 U.S.C. §§ 981(a)(1)(C), and 982(a)(1), and 28 U.S.C. § 2461(c).

5. The Court has further determined that the government has established the requisite nexus between the said property subject to forfeiture and the offense for which Ballard has been convicted; therefore, the United States is entitled to a preliminary order of forfeiture, subject to the provisions of 21 U.S.C. § 853 governing third party rights.

Accordingly, it is hereby **ORDERED**,

1. The following property is hereby forfeited to the United States of America, along with all right, title, and interest of the Defendant, Martin Louis Ballard, in and to such property:

U.S. Cash/Currency:

#3
(A) \$26,043.25 seized on or about March 23, 2012, from account number xxxx075 (in the name of Martin Trucking, LLC), with South Carolina Federal Credit Union.

Asset ID: 12-DEA-562783

This forfeiture is subject to the rights of third parties in such property under 21 U.S.C. § 853(n).

2. **FORFEITURE IS ORDERED** against Ballard and in favor of the United States in the amount of \$100,000 (one hundred thousand dollars), along with appropriate costs and interest thereon at the rate provided for in 28 U.S.C. § 1961. The United States may at any time move pursuant to Rule 32.2(e) to amend this Order to

2:12-cr-00232-MBS Date Filed 11/17/15 Entry Number 1605 Page 4 of 6

substitute property to satisfy the money judgment.

3. The United States may sell or otherwise dispose of any substitute assets in accordance with law as required to satisfy the above imposed money judgment.

4. Upon the entry of this Order, the United States Attorney is authorized to conduct proper discovery in identifying, locating, or disposing of the described property, or other substitute assets, in accordance with Fed. R. Crim. P. 32.2(b)(3); and to commence proceedings that comply with statutes governing third party rights, if applicable.

5. The government is not required to publish notice regarding the personal money judgment against Defendant; however, the Order shall be recorded in the records of the County Clerk's Office in the County of the debtor's residence, place of business, and any and all other counties in which the debtor has either real or personal property, as a lien thereon.

6. The United States shall publish notice of this Order and its intent to dispose of the property in such manner as the Attorney General may direct. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

7. Upon entry of this Order, the United States Marshals Service or their designee is authorized to seize the above-described forfeited property as directed by the United States Attorney's Office and to commence proceedings that comply with statutes governing third party rights.

*#4
ZP*

8. Any person, other than the named Defendant, asserting a legal interest in the property may, within thirty days of the final publication of notice or receipt of notice,

whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and Fed. R. Crim. P. 32.2(c).

9. Any petition filed by a third party asserting an interest in the property shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title, or interest in the subject property, the time and circumstances of the petitioner's acquisition of the right, title or interest in such property, and additional facts supporting the petitioner's claim and the relief sought.

10. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

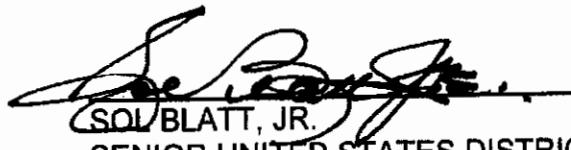
11. The United States shall have clear title to the property following the court's determination of all third party interests, or, if no petitions are filed, following the expiration of the period provided in 21 U.S.C. § 853(n)(2) for the filing of third party petitions.

12. The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

13. Upon entry of the criminal judgment, this Order becomes final as to Defendant, and shall be made a part of the sentence and included in the criminal judgment.

14. The Clerk, United States District Court, shall provide one (1) certified copy of this Order to the United States Attorney's Office.

AND IT IS SO ORDERED.



SOL BLATT, JR.

SENIOR UNITED STATES DISTRICT JUDGE

November 17, 2015

Charleston, South Carolina

