

No. _____

In The
Supreme Court of the United States

MAURICE McLAIN, a/k/a Mo,
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

Wainscott (Scott) W. Putney
Counsel of Record
SCOTT W. PUTNEY, P.C.
9512 Bay Front Drive
P. O. Box 14075
Norfolk, VA 23518
(757) 277-6818
Scott.Putney@cox.net

Counsel for Petitioner

TABLE OF CONTENTS
Appendix

Page:

Unpublished Opinion

**U.S. Court of Appeals For the Fourth Circuit
filed March 16, 2018..... Appendix A**

Judgment

**U.S. Court of Appeals For the Fourth Circuit
filed March 16, 2018..... Appendix B**

**Order Denying Petition for
Rehearing and Rehearing En Banc**

**U.S. Court of Appeals For the Fourth Circuit
filed April 24, 2018..... Appendix C**

Excerpts from Appendix

**U.S. Court of Appeals For the Fourth Circuit
filed December 29, 2017:**

Government Exhibits:

**D-1. 2007 Aerial Photo of 13209
Aqueduct Drive Site [2916]. Appendix D**

D-3a. Photograph of Crime Scene [2917]. Appendix E

D-3b. Photograph of Crime Scene [2918]. Appendix F

**D-34. Arial View Photograph of
Crime Scene [2919]. Appendix G**

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4108

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURICE MCLAIN, a/k/a Mo,

Defendant - Appellant.

No. 17-4056

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ERIC PRIDGEN, a/k/a Rabbit, a/k/a Rab,

Defendant - Appellant.

No. 17-4058

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

APPENDIX A

v.

HERBERT PRIDGEN, a/k/a Bok,

Defendant - Appellant.

No. 17-4132

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MAURICE MCLAIN, a/k/a Mo,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Newport News. Raymond A. Jackson, District Judge. (4:14-cr-00059-RAJ-RJK-1; 4:14-cr-00059-RAJ-RJK-2; 4:14-cr-00059-RAJ-RJK-4)

Submitted: February 28, 2018

Decided: March 16, 2018

Before KING, FLOYD, and HARRIS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Lawrence H. Woodward, Jr., SHUTTLEWORTH, RULOFF, SWAIN, HADDAD & MORECOCK, P.C.; Timothy J. Quick, TIMOTHY J. QUICK, PC, Virginia Beach, Virginia; Scott W. Putney, SCOTT W. PUTNEY, P.C., Norfolk, Virginia, for Appellants. Dana J. Boente, United States Attorney, Alexandria, Virginia, Howard J. Zlotnick, Lisa R. McKeel, Brian J. Samuels, Assistant United States Attorneys, OFFICE OF THE

UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In these consolidated cases, a jury convicted Defendants Maurice McLain (appeal No. 17-4132), Eric Pridgen (appeal No. 17-4056), and Herbert Pridgen (appeal No. 17-4058) of several crimes relating to an extensive scheme to commit racketeering, Hobbs Act robbery, and murder in aid of racketeering. All three Defendants appeal their convictions, and McLain appeals his 480-month sentence. In appeal No. 16-4108, McLain appeals the district court's ruling that his prosecution for racketeering conspiracy in the instant matter did not violate his double jeopardy rights. Finding no reversible error, we affirm.

First, all three Defendants claim that the evidence at trial was insufficient to support their convictions for racketeering conspiracy. Eric and Herbert Pridgen further argue that there was insufficient evidence to sustain their convictions for murder in aid of racketeering. "A defendant challenging the sufficiency of the evidence faces a heavy burden." *United States v. Foster*, 507 F.3d 233, 245 (4th Cir. 2007). "A jury's verdict must be upheld on appeal if there is substantial evidence in the record to support it." *Id.* at 244. Evidence is "substantial" if, viewed in the light most favorable to the government, "there is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Id.* at 245.

Having carefully reviewed the entire record, we find that the jury had ample evidence from which it could reasonably conclude that these Defendants were guilty beyond a reasonable doubt of the crimes with which they were charged. Because

Defendants have not met the heavy burden necessary to disturb the verdicts against them, we reject their claims of insufficient evidence.

We next turn to McLain's double jeopardy claim. McLain was previously convicted in 2012 of conspiracy to distribute narcotics and use of a firearm during drug trafficking, both in connection with a shooting that was alleged as an overt act of the racketeering conspiracy in the instant case. We review questions of double jeopardy de novo. *United States v. Schnittker*, 807 F.3d 77, 81 (4th Cir. 2015). On the facts present here, we conclude that McLain's successive prosecution was not barred by double jeopardy. *See United States v. Cole*, 293 F.3d 153, 160-62 (4th Cir. 2002); *United States v. Arnoldt*, 947 F.2d 1120, 1126-27 (4th Cir. 1991). McLain further contends that the Government breached his plea agreement in the 2012 case by prosecuting him in the present matter. However, as the district court held, McLain's prosecution for racketeering conspiracy does not run afoul of his plea agreement in the 2012 matter, and McLain's arguments are thus unavailing.

Defendants also contend that the district court erred in admitting testimony by a Government rebuttal witness that a Defense witness was untruthful. Herbert Pridgen additionally claims that the district court erroneously admitted evidence of a shooting that was linked to a firearm he was charged with possessing in this case. We review a trial court's evidentiary rulings for abuse of discretion and will only overturn evidentiary rulings that are arbitrary and irrational. *United States v. Cole*, 631 F.3d 146, 153 (4th Cir. 2011). We will not overturn a court's decision to admit evidence over a Fed. R. Evid. 403 objection "except under the most extraordinary of circumstances, where that

discretion has been plainly abused.” *United States v. Williams*, 445 F.3d 724, 732 (4th Cir. 2006) (internal quotation marks omitted).

Upon review, we discern no error in either ruling. The Government laid a proper foundation for its rebuttal witness’ testimony, and the district court did not abuse its discretion in admitting it. *See* Fed. R. Evid. 608(a), 701(a). Nor did it err in allowing the Government to present evidence of the shooting, which was relevant to prove that Herbert Pridgen possessed the firearm. Thus, there is no basis for us to disturb the district court’s evidentiary rulings.

McLain further contends that the district court erred in denying his motion to sever and in refusing to issue his proposed jury instruction relating to the statute of limitations for racketeering conspiracy. We review both issues for abuse of discretion, *see United States v. Sonmez*, 777 F.3d 684, 688 (4th Cir. 2015) (jury instruction); *United States v. Min*, 704 F.3d 314, 319 (4th Cir. 2013) (severance), and conclude that both rulings fall well within the discretion of the district court. McLain also challenges several other trial management decisions, which we review only for plain error because he failed to object to these rulings in the district court. *See United States v. Olano*, 507 U.S. 725, 731-33 (1993). Because McLain has not shown plain error, we reject his claims.

Finally, McLain challenges his sentence, which we review for both procedural and substantive reasonableness “under a deferential abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 41, 51 (2007). We must “ensure that the district court committed no significant procedural error, such as . . . improperly calculating[] the Guidelines range.” *Id.* at 51. If there is no significant procedural error, we then consider

the sentence's substantive reasonableness under "the totality of the circumstances." *Id.* We presume that a sentence below a properly calculated Guidelines range is reasonable. *Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

Having reviewed the record, we find that McLain has not rebutted the presumption of reasonableness that we afford his below-Guidelines sentence. Therefore, we affirm McLain's sentence.

In sum, we affirm the judgments of the district court with respect to all Defendants. 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

FILED: March 16, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 16-4108 (L), US v. Maurice McLain
4:14-cr-00059-RAJ-RJK-4

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.
(www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED

COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

APPENDIX B

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: March 16, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4108 (L)
(4:14-cr-00059-RAJ-RJK-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAURICE MCLAIN, a/k/a Mo

Defendant - Appellant

No. 17-4056
(4:14-cr-00059-RAJ-RJK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ERIC PRIDGEN, a/k/a Rabbit, a/k/a Rab

Defendant - Appellant

No. 17-4058
(4:14-cr-00059-RAJ-RJK-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

HERBERT PRIDGEN, a/k/a Bok

Defendant - Appellant

No. 17-4132
(4:14-cr-00059-RAJ-RJK-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAURICE MCLAIN, a/k/a Mo

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgments of the district

court are 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

FILED: April 24, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4108 (L)
(4:14-cr-00059-RAJ-RJK-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAURICE MCLAIN, a/k/a Mo

Defendant - Appellant

No. 17-4132
(4:14-cr-00059-RAJ-RJK-4)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAURICE MCLAIN, a/k/a Mo

Defendant - Appellant

APPENDIX C

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 Judge Harris.

For the Court

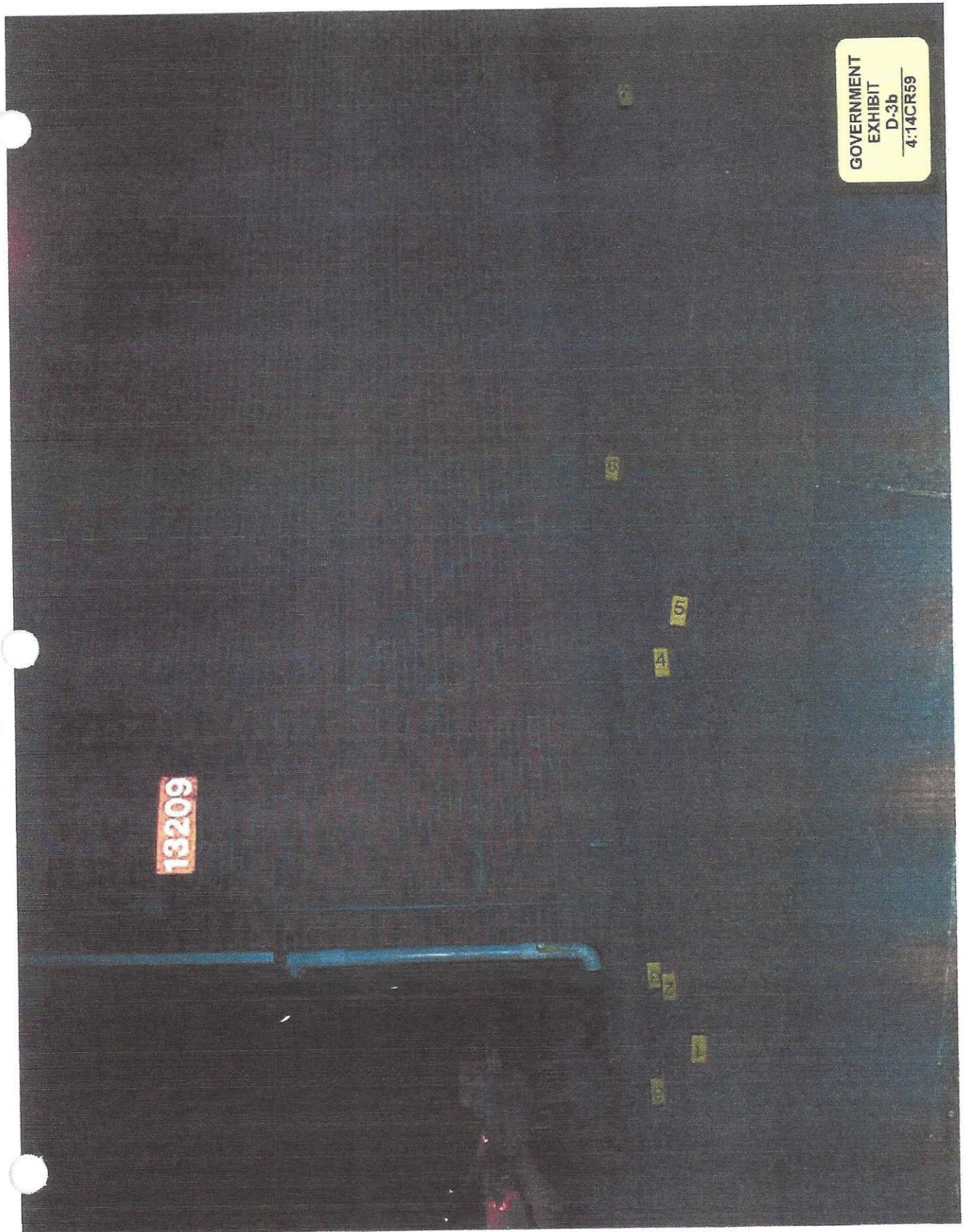
/s/ Patricia S. Connor, Clerk



D03a-001

2917

APPENDIX E



D03b-001

2918

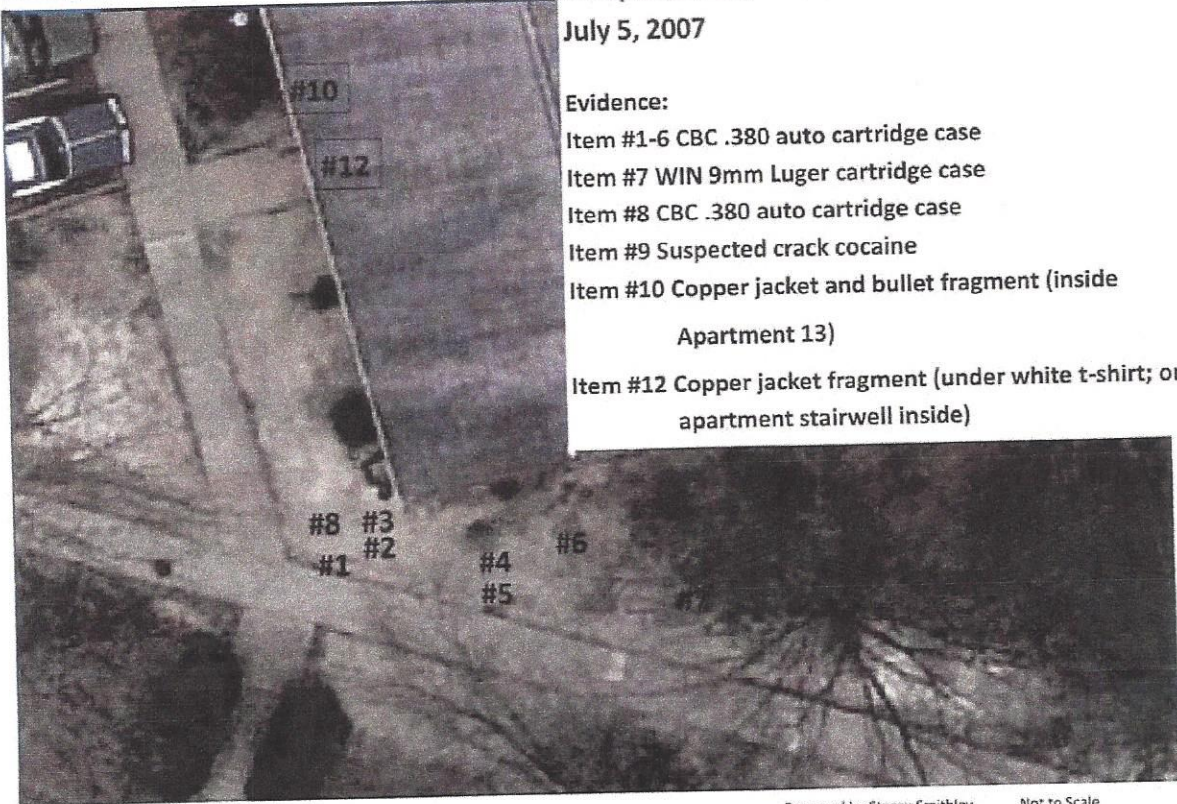
APPENDIX F

GOVERNMENT
EXHIBIT
D-34
4:14CR59

13209 Aqueduct Drive, Apartments #13-16
Newport News, VA 23602
July 5, 2007

Evidence:

- Item #1-6 CBC .380 auto cartridge case
- Item #7 WIN 9mm Luger cartridge case
- Item #8 CBC .380 auto cartridge case
- Item #9 Suspected crack cocaine
- Item #10 Copper jacket and bullet fragment (inside Apartment 13)
- Item #12 Copper jacket fragment (under white t-shirt; on apartment stairwell inside)



Prepared by Stacey Smithley Not to Scale

D34-001

13209 Aqueduct Drive, Apartments #13-16

Newport News, VA 23602

July 5, 2007

Evidence:

Item #1-6 CBC .380 auto cartridge case

Item #7 WIN 9mm Luger cartridge case

Item #8 CBC .380 auto cartridge case

Item #9 Suspected crack cocaine

Item #10 Copper jacket and bullet fragment (inside

Apartment 13)

Item #12 Copper jacket fragment (under white t-shirt; on
apartment stairwell inside)

