

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

TRACEY L. BROWN, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX

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TRACEY L. BROWN

APPENDIX A

**UNPUBLISHED MEMORANDUM OF THE
NINTH CIRCUIT COURT OF APPEALS**

MARCH 21, 2018

FILED

NOT FOR PUBLICATION

MAR 21 2018

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 16-10365

Plaintiff-Appellee,

D.C. No.
2:11-cr-00334-APG-GWF

v.

TRACEY L. BROWN,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Submitted March 16, 2018**
San Francisco, California

Before: McKEOWN, FUENTES,*** and BEA, Circuit Judges.

Defendant Tracey Brown appeals his jury conviction and sentence for Hobbs Act robbery in violation of 18 U.S.C. § 1951, brandishing a firearm during a crime

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Julio M. Fuentes, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

of violence in violation of 18 U.S.C. § 924(c)(1)(A)(ii), and being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Sufficiency of the Evidence

Brown argues that the government failed to present sufficient evidence that the robbery affected interstate commerce. We review *de novo* challenges to the sufficiency of the evidence supporting a conviction. *United States v. Bennett*, 621 F.3d 1131, 1135 (9th Cir. 2010). We construe the evidence “in the light most favorable to the prosecution” and consider whether it is “sufficient to allow any rational juror to conclude that the government has carried its burden of proof.” *United States v. Nevils*, 598 F.3d 1158, 1169 (9th Cir. 2010).

“[T]he government need only show a de minimis effect on interstate commerce to fulfill the jurisdictional element of the Hobbs Act.” *United States v. Rodriguez*, 360 F.3d 949, 955 (9th Cir. 2004). Here, items for sale in the store, including the cigarettes that Brown stole, were shipped from out of state. Moreover, as a result of the robbery, the store was closed and at least one customer was turned away. On this evidence, the jury rationally found that the robbery affected interstate commerce. See *United States v. Panaro*, 266 F.3d 939, 948

(9th Cir. 2001) (“[E]ven a slight impact on interstate commerce is sufficient to sustain a conviction . . . under the Hobbs Act.”).

2. Pretrial and Trial Errors

In addition to his sufficiency of the evidence challenge, Brown alleges a variety of pretrial and trial errors.

First, Brown contends that the district court erred in accepting the verdict before answering the jury’s request to distinguish “commerce” and “interstate commerce.” We review a district court’s response to a juror inquiry for abuse of discretion. *United States v. Verduzco*, 373 F.3d 1022, 1030 n.3 (9th Cir. 2004). Here, the jury withdrew its request before the district court could respond. Because the jury no longer “request[ed] clarification” when it gave its verdict, the district court did not abuse its discretion. *United States v. McIver*, 186 F.3d 1119, 1130 (9th Cir. 1999), *overruled on other grounds as recognized by United States v. Pineda-Moreno*, 688 F.3d 1087, 1091 (9th Cir. 2012).

Second, Brown asserts that the district court erred in denying his motion to suppress evidence obtained from a traffic stop and subsequent show-up in which the store clerk identified him. We address each argument in turn.

We review *de novo* the denial of a motion to suppress. *United States v. Crawford*, 372 F.3d 1048, 1053 (9th Cir. 2004). However, the underlying factual findings are reviewed for clear error. *Id.* Under the Fourth Amendment, law enforcement officials may conduct an investigatory stop of a vehicle only if they possess “reasonable suspicion.” *United States v. Twilley*, 222 F.3d 1092, 1095 (9th Cir. 2000) (citation and quotation marks omitted). After an evidentiary hearing, the magistrate judge found that the officer stopped the car carrying Brown because its headlights were off at night in violation of N.R.S. § 484D.100.1(a). In making this finding, which the district court adopted, the magistrate judge did not clearly err in crediting the officer’s testimony over Brown’s testimony. *See United States v. Nelson*, 137 F.3d 1094, 1110 (9th Cir. 1998) (“This court gives special deference to the district court’s credibility determinations.”).

We also review *de novo* the constitutionality of pretrial identification procedures. *United States v. Bagley*, 772 F.2d 482, 492 (9th Cir. 1985). “If under the totality of the circumstances the identification is sufficiently reliable, identification testimony may properly be allowed into evidence even if the identification was made pursuant to an unnecessarily suggestive procedure.” *Id.* Here, the store clerk accurately described Brown in a written statement after the

robbery and confidently identified him shortly thereafter. Accordingly, even if the show-up was impermissibly suggestive, the totality of the circumstances indicates that the identification was still sufficiently reliable.

Third, Brown argues that the district court erred in denying a mistrial based on his co-defendant's testimony that referenced "prior incidents." We review the denial of a motion for a mistrial for an abuse of discretion. *United States v. English*, 92 F.3d 909, 912 (9th Cir. 1996). Brown claims that this statement was impermissible character evidence that he committed other robberies. However, this argument fails because the district court gave a timely curative instruction and the government's case was strong.¹ See *United States v. Randall*, 162 F.3d 557, 559 (9th Cir. 1998) ("Ordinarily, cautionary instructions or other prompt and effective actions by the trial court are sufficient to cure the effects of improper comments, because juries are presumed to follow such cautionary instructions.").

Fourth, Brown contends that the district court erred in denying his motion for discovery regarding a non-testifying officer's personnel file. However, such discovery is not required as to an who officer does not testify. See *United States*

¹ For these reasons, we also reject Brown's argument that the district court erred in replaying—at the jury's request—the audio recording of his co-defendant's entire trial testimony.

v. Henthorn, 931 F.2d 29, 31 n.2 (9th Cir. 1991) (“We need not reach the issue [of] whether the prosecution had an obligation to examine [a detective’s] files, as the record shows that [the detective] did not testify at trial.”). Brown has also not shown that the government violated its obligation to disclose exculpatory material under *Brady v. Maryland*, 373 U.S. 83 (1963).

Fifth, Brown asserts that the district court erred in denying his challenge under *Batson v. Kentucky*, 476 U.S. 79 (1986), as to the prosecution’s claimed use of challenges to three African-American potential jurors. Whether a district court is obligated to apply the *Batson* analysis to a defendant’s claim of purposeful discrimination is a question of law reviewed *de novo*. See *United States v. Alanis*, 335 F.3d 965, 967 n.1 (9th Cir. 2003). In *Batson v. Kentucky*, the Supreme Court prescribed a three-step test for assessing claims of discriminatory jury selection. *Batson*, 476 U.S. at 96. At the first step, the defendant must establish a “prima facie case of purposeful discrimination” by showing that “he is a member of a cognizable racial group” and “the prosecutor . . . exercised peremptory challenges to remove . . . members of the defendant’s race.” *Id.* Here, Brown failed to make out a “prima facie case of purposeful discrimination.” As Brown admits, two of the African-American potential jurors were removed for cause, and the other was

not called to sit on the jury. No peremptory challenge was exercised as to the third potential juror. Thus, the *Batson* challenge was properly denied.

Sixth, Brown contends that the district court erred in not severing the felon in possession count. We review the denial of a motion for severance for an abuse of discretion. *United States v. Stinson*, 647 F.3d 1196, 1205 (9th Cir. 2011). Here, the evidence was substantial, the parties stipulated to the prior felony, and the district court instructed the jury that it could only consider the stipulation in connection with the felon in possession count. As such, the district court did not abuse its discretion in denying Brown's motion to sever. *See United States v. Vasquez-Velasco*, 15 F.3d 833, 845–46 (9th Cir. 1994) (noting that a defendant must show “clear, manifest, or undue prejudice” to justify reversal of the district court's failure to sever (citation and quotation marks omitted)).

Seventh, Brown maintains that the district court erred in denying his post-trial motion for grand jury transcripts. Under Rule 6(e)(3)(E) of the Federal Rules of Criminal Procedure, a court “may authorize disclosure” of grand jury transcripts “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” Fed. R. Crim. P. 6(e)(3)(E). Brown failed to show that “a ground may exist to dismiss the

indictment,” because “even if the grand jury might have been misled . . . the existence of probable cause [wa]s not in doubt” after Brown was convicted beyond a reasonable doubt. *United States v. Caruto*, 663 F.3d 394, 402 (9th Cir. 2011). Thus, the district court did not err in denying Brown’s motion.

3. Sentencing Errors

Brown also raises several issues with respect to his sentence.

First, Brown argues that the district court erred in sentencing him as a career offender based on his prior Nevada robbery convictions.² We review *de novo* a district court’s determination that a defendant qualifies as a career offender. *United States v. Crawford*, 520 F.3d 1072, 1077 (9th Cir. 2008). As the district court found, Nevada robbery “categorically qualifies as a crime of violence for purposes of the career offender sentencing enhancement.” *United States v. Harris*, 572 F.3d 1065, 1066 (9th Cir. 2009). Accordingly, Brown’s argument fails.³

² On August 1, 2016, an amended definition of “crime of violence” under U.S.S.G. § 4B1.2 took effect. However, since Brown’s sentence was originally scheduled for July 2016, the district court sentenced him—on his request—under the pre-August 2016 version of the Sentencing Guidelines. Accordingly, all references herein are to the pre-August 2016 definition of “crime of violence.”

³ To the extent that Brown argues otherwise, the district court also did not err in finding that Hobbs Act robbery is a crime of violence to which the career

Second, Brown asserts that his 2005 Nevada robbery conviction should not have qualified as a prior crime of violence because it was obtained through a plea agreement under *North Carolina v. Alford*, 400 U.S. 25 (1970). However, the fact that the 2005 Nevada robbery conviction resulted from an *Alford* plea—which allows a defendant to plead guilty while asserting innocence—does not alter our analysis. *See United States v. Guerrero-Velasquez*, 434 F.3d 1193, 1197 (9th Cir. 2006) (“The question under the sentencing guidelines is whether a defendant has ‘a conviction for a . . . crime of violence,’ not whether the defendant has admitted to being guilty of such a crime.” (citation omitted and emphasis in original)). As such, the district court correctly found that Brown’s 2005 Nevada robbery conviction was a valid predicate for career offender status.

Third, Brown contends that his 30-year prison sentence violates the Eighth Amendment. We review whether a sentence violates the Eighth Amendment *de novo*. *United States v. Shill*, 740 F.3d 1347, 1355 (9th Cir. 2014). “Generally, as long as the sentence imposed on a defendant does not exceed statutory limits, this court will not overturn it on Eighth Amendment grounds.” *United States v.*

offender guideline applies. *See United States v. Mendez*, 992 F.2d 1488, 1491 (9th Cir. 1993) (holding that conspiracy to commit Hobbs Act robbery is a “crime of violence” under 18 U.S.C. § 924(c)(3)(B)).

Parker, 241 F.3d 1114, 1117–18 (9th Cir. 2001). Here, Brown’s sentence is not “grossly disproportionate” to his offense, taken together with his criminal history. *United States v. Harris*, 154 F.3d 1082, 1084 (9th Cir. 1998) (citation and quotation marks omitted). Therefore, Brown’s Eighth Amendment claim fails.

Fourth, Brown maintains that he should be resentenced in light of the Supreme Court’s recent decision in *Dean v. United States*, 137 S. Ct. 1170, 1176–77 (2017), which held that a court may consider the consecutive mandatory minimum required by § 924(c) in calculating a just sentence for the underlying predicate offense. However, in *Dean*, the district court explicitly stated that it believed it “was required to disregard [the defendant’s] 30-year mandatory minimum when determining the appropriate sentences for [the defendant’s] other counts of conviction.” *Id.* at 1175. In contrast, here, the district court did not find—let alone suggest—that it could not consider the 7-year mandatory minimum sentence for the § 924(c)(1)(A)(ii) count in sentencing Brown on the other counts. Thus, Brown’s claim under *Dean* is unavailing.

Finally, Brown argues that cumulative error warrants reversal. We reject this argument as well. See *United States v. Jeremiah*, 493 F.3d 1042, 1047 (9th

Cir. 2007) (“[B]ecause we hold that there was no error committed by the district court, [the defendant’s] theory of cumulative error necessarily fails.”).

AFFIRMED.

APPENDIX B

ORDER OF THE NINTH CIRCUIT COURT OF APPEALS
DENYING PETITION FOR PANEL REHEARING

MAY 4, 2018

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 04 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
TRACEY L. BROWN,
Defendant-Appellant.

No. 16-10365
D.C. No.
2:11-cr-00334-APG-GWF

ORDER

Before: McKEOWN, FUENTES,* and BEA, Circuit Judges.

Defendant-Appellant's motion to extend time to file a petition for panel rehearing (Dkt. 44) is **GRANTED**.

The petition for panel rehearing (Dkt. 45) is **DENIED**. The panel unanimously voted to deny the petition for panel rehearing. No future petitions shall be entertained.

* The Honorable Julio M. Fuentes, United States Circuit Judge for the U.S. Court of Appeals for the Third Circuit, sitting by designation.

APPENDIX C

**JUDGMENT IN A CRIMINAL CASE OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEVADA**

AUGUST 18, 2016

UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA) **JUDGMENT IN A CRIMINAL CASE**
 v.)
 TRACEY BROWN) Case Number: 2:11-cr-00334-APG-GWF-1
) USM Number: 46286-048
) Angela Dows
) Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) 3, 4 and 5 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1951 and 18 U.S.C. § 2	Interference with commerce by robbery	7/26/2011	3
18 U.S.C. §§ 924(c)(1)(A)(ii); 18 U.S.C. 2	Brandishing a firearm during a crime of violence	7/26/2011	4
18 U.S.C. §§ 922(g)(1); 924(a)(2)	Felon in possession of a firearm	7/26/2011	5

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

The defendant has been found not guilty on count(s) all remaining

Count(s) _____ is are dismissed on the motion of the United States.

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

August 11, 2016
Date of Imposition of Judgment



Signature of Judge

ANDREW P. GORDON, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

August 18, 2016
Date

DEFENDANT: TRACEY BROWN
CASE NUMBER: 2:11-cr-00334-APG-GWF-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Count 3: 240 months; Count. 5: 36 months consecutive to Count. 3; Ct. 4: 84 months consecutive to Counts. 3 and 5, for a Total Sentence of 360 months, and to be served concurrently with Eighth Judicial District Court Case No.: 11-276549.

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

Due to the proximity of family, the Court recommends the defendant be permitted to serve his term of incarceration in Arizona. Further, the Court recommends the defendant be permitted to participate in RDAP.

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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TRACEY BROWN

CASE NUMBER: 2:11-cr-00334-APG-GWF-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

3 years for Counts 3 and 5, and 5 years for Count 4, all to be served concurrently.

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, not to exceed 104 tests annually. Revocation is mandatory for refusal to comply.

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 with 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 of 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: TRACEY BROWN
CASE NUMBER: 2:11-cr-00334-APG-GWF-1

SPECIAL CONDITIONS OF SUPERVISION

1. Substance Abuse Treatment - You shall participate in and successfully complete a substance abuse treatment and/or cognitive based life skills program, which will include drug/alcohol testing and/or outpatient counseling, as approved and directed by the probation office. You shall refrain from the use and possession of beer, wine, liquor, and other forms of intoxicants while participating in substance abuse treatment. Further, you shall be required to contribute to the costs of services for such treatment, as approved and directed by the probation office based upon your ability to pay.
2. Mental Health Treatment - You shall participate in and successfully complete a mental health treatment program, which may include testing, evaluation, and/or outpatient counseling, as approved and directed by the probation office. You shall refrain from the use and possession of beer, wine, liquor, and other forms of intoxicants while participating in mental health treatment. Further, you shall be required to contribute to the costs of services for such treatment, as approved and directed by the probation office based upon your ability to pay.
3. No Contact Condition - You shall not have contact, directly or indirectly, associate with, or be within 500 feet of any known gang member, their residence or business, and if confronted by a gang member in public place, you shall immediately remove yourself from the area.
4. Warrantless Search - You shall submit your person, property, residence, place of business and vehicle under your control to a search, conducted by the United States probation officer or any authorized person under the immediate and personal supervision of the probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.
5. Possession of Weapons - You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
6. Report to Probation Officer After Release from Custody - You shall report, in person, to the probation office in the district to which you are released within 72 hours of discharge from custody.

ACKNOWLEDGEMENT

Upon finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant

Date

U.S. Probation/Designated Witness

Date

DEFENDANT: TRACEY BROWN

CASE NUMBER: 2:11-cr-00334-APG-GWF-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	Assessment	Fine	Restitution
	\$ 300.00	\$ WAIVED	\$ N/A

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) 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	\$ 0.00	\$ 0.00	

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 the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 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: TRACEY BROWN
CASE NUMBER: 2:11-cr-00334-APG-GWF-1

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 \$ 300.00 due immediately, balance due
 not later than _____, or
 in accordance C, D, E, or F below; or

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

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

D Payment in equal _____ (*e.g., weekly, monthly, quarterly*) installments of \$ _____ over a period of _____ (*e.g., months or years*), to commence _____ (*e.g., 30 or 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 the period of 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 the 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:
(see attached final order of forfeiture)

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.

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 UNITED STATES OF AMERICA,) 2:11-CR-334-APG-(GWF)
9 Plaintiff,)
10 v.) Final Order of Forfeiture
11 TRACEY BROWN,)
12 Defendant.)

13 The United States District Court for the District of Nevada entered a Preliminary Order
14 of Forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(1) and (2); Title 18, United States Code,
15 Section 924(d)(1) with Title 28, United States Code, Section 2461(c); and Title 18, United
16 States Code, Section 924(d)(1), (2)(C), and (3)(A) with Title 28, United States Code, Section
17 2461(c), based upon the jury verdict finding defendant Tracey Brown guilty of criminal
18 offenses, forfeiting specific property set forth in the Settlement Agreement and the Forfeiture
19 Allegations of the Superseding Indictment and shown by the United States to have the requisite
20 nexus to the offenses to which defendant Tracey Brown was found guilty. Superseding
21 Indictment, ECF No. 146; Minutes of Jury Trial, ECF No. 199; Verdict Form, ECF No. 200;
22 Settlement Agreement for Entry of Preliminary Order of Forfeiture as to Tracey Brown and
23 Order, ECF No. 213; Preliminary Order of Forfeiture, ECF No. 219.

24 This Court finds the United States of America published the notice of forfeiture in
25 accordance with the law via the official government internet forfeiture site, www.forfeiture.gov,
26 //

1 consecutively from November 5, 2015, through December 4, 2015, notifying all potential third
2 parties of their right to petition the Court. Notice of Filing Proof of Publication, ECF No. 223.

3 This Court finds no petition was filed herein by or on behalf of any person or entity and
4 the time for filing such petitions and claims has expired.

5 This Court finds no petitions are pending with regard to the property named herein and
6 the time for presenting such petitions has expired.

7 THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all
8 right, title, and interest in the property hereinafter described is condemned, forfeited, and vested
9 in the United States of America pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (B); Fed. R.
10 Crim. P. 32.2(c)(2); Title 18, United States Code, Section 924(d)(1) with Title 28, United States
11 Code, Section 2461(c); Title 18, United States Code, Section 924(d)(1), (2)(C), and (3)(A) with
12 Title 28, United States Code, Section 2461(c); and Title 21, United States Code, Section
13 853(n)(7) and shall be disposed of according to law:

14 1. Any and all firearms, including, but not limited to, a 12-gauge Revelation

15 Western Auto Supply Company shotgun, model # R310AB, bearing serial number
16 H518278; and

17 2. Any and all ammunition

18 (all of which constitutes property).

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any and all forfeited
20 funds, including but not limited to, currency, currency equivalents, certificates of deposit, as well
21 as any income derived as a result of the United States of America's management of any property
22 forfeited herein, and the proceeds from the sale of any forfeited property shall be disposed of
23 according to law.

24 ///

25 ///

26 ///

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk send copies
2 of this Order to all counsel of record.

3 Dated: August 12, 2016.

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6 UNITED STATES DISTRICT JUDGE
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