
SUPREME COURT OF THE UNITED STATES

ANTHONY LOMAX, Petitioner

vs.

UNITED STATES OF AMERICA, Respondent

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

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NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued April 25, 2018

Decided July 18, 2018

Before

DANIEL A. MANION, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

CERTIFIED COPY



No. 17-2440

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANTHONY LOMAX, a.k.a. ANT,
Defendant-Appellant.

Appeal from the United States District
Court for the Southern District of Indiana,
Indianapolis Division.

No. 1:12-CR-00189-3

Sarah Evans Barker,
Judge.

ORDER

Anthony Lomax appeals his sentence for a gun crime and distributing heroin. He challenges the district court's conclusions that he is responsible for the total heroin quantity attributed to a joint drug operation with his two cousins, and that his prior conviction for attempted murder in Indiana is a "crime of violence" under the career-offender guideline. We affirm. The judge's drug-quantity finding is supported by evidence that Anthony coordinated activities, shared resources, and pooled profits with his two cousins, who were convicted of conspiring to possess and sell heroin. And Anthony's crime-of-violence argument is foreclosed by our recent decisions.

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Background

Anthony and his cousins, Brandon Lomax and Demond Glover, sold heroin in Indianapolis, often at "Spray 'Em Auto," a business Brandon owned. Authorities investigated them beginning in early 2011 until late 2012, when their drug operations ceased. Anthony bought heroin from Brandon, and from Glover at least once, and sold it to his own customers. Brandon and Glover also sold heroin, which they each obtained from their own single sources; each purchased about 100 to 300 grams about every two weeks, sometimes more frequently, for a total of 16.8 kilograms.

Anthony, while armed, chauffeured Brandon to heroin sales "multiple" times. He also agreed to "come through" for Brandon on short notice by repaying Brandon money he needed for a drug transaction. At least once Anthony sold heroin he obtained from Glover's car. One time Brandon was without heroin and referred a customer to Anthony, who made the sale. Another time, though, Anthony tried to convince one of Brandon's customers to buy heroin from him instead of Brandon. When a supplier came to Spray 'Em Auto and told Anthony that Brandon owed him for two kilograms of heroin, Anthony immediately relayed the message to Brandon.

Anthony sold a total of a kilogram of heroin to one customer who purchased up to ten grams from him as often as three times a week during 2012. To a confidential informant, Anthony sold about 63 grams of heroin in five controlled buys between September and November 2012.

A grand jury indicted Anthony, Brandon, and Glover for conspiring to possess and distribute heroin, 21 U.S.C. § 846. Anthony also was indicted on five counts of distributing heroin, 21 U.S.C. § 841(a)(1), and one count of possessing a firearm as a felon, 18 U.S.C. § 922(g)(1). The co-defendants were convicted on all counts after a jury trial, and Anthony was sentenced to 400 months in prison. All three appealed.

This court vacated Anthony's conspiracy conviction because he was wrongly denied a buyer-seller jury instruction. *United States v. Lomax*, 816 F.3d 468, 477 (7th Cir. 2016). Although there was "some evidence that Anthony was part of the conspiracy," there was also evidence that he simply bought heroin from the conspirators. *Id.* at 476–77. This court affirmed the conspiracy convictions of Brandon and Glover. *Id.* at 479.

On remand the government moved to dismiss the conspiracy charge and to resentence Anthony on the distribution and gun convictions. Anthony agreed to dismissal, and the charge was dismissed.

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A probation officer revised Anthony's presentence report, but nonetheless recommended finding him responsible for the total heroin attributed to the conspiracy—16.8 kilograms. The officer also recommended application of the career-offender guideline, U.S.S.G. § 4B1.1, based on Anthony's prior felony convictions that included attempted murder in Indiana, though application of this guideline did not affect his guidelines range of 360 months to life in prison. Anthony objected to the PSR, arguing there was insufficient evidence that his drug dealing was part of a common scheme with the convicted co-conspirators or that the conspiracy's total drug quantity was reasonably foreseeable to him.

At resentencing the district judge adopted the revised presentence report and re-imposed a term of 400 months. The judge found that 16.8 kilograms was an accurate estimate of the total quantity of heroin distributed by the conspiracy and, if anything, it understated the amount. The judge further found that this quantity was attributable to Anthony as relevant conduct under U.S.S.G. § 1B1.3; "from the evidence as a whole," the judge concluded that Anthony was a part of Brandon's "jointly undertaken criminal activity," and that the total quantity of heroin trafficked by the joint operation was reasonably foreseeable to Anthony. The judge incorporated her analysis from the original sentencing, at which she said Anthony was responsible for 16.8 kilograms of heroin based on the "interactions between and among" Anthony, Brandon, and Glover. The judge also found that Indiana attempted murder is a crime of violence for purposes of the career-offender guideline.

Analysis

A. Relevant-Conduct Finding

Anthony first contests the district judge's conclusion that he is accountable for the quantity of heroin attributed to the conspiracy. Uncharged offenses are relevant conduct if they are part of the same "common scheme or plan" as the offense of conviction. U.S.S.G. § 1B1.3(a)(2); *United States v. Zehm*, 217 F.3d 506, 511 (7th Cir. 2000). "Offenses are part of a common scheme or plan if they are connected by at least one common factor," such as common accomplices, a shared purpose, or a similar modus operandi. *Zehm*, 217 F.3d at 511. In drug distribution cases, the defendant's relevant conduct will include drug quantities from transactions carried out by others, if those transactions were within the scope, and in furtherance, of criminal activity that the defendant agreed to jointly undertake, and the transactions were reasonably foreseeable to the defendant. See U.S.S.G. § 1B1.3(a)(1)(B); *United States v. Stadfeld*, 689 F.3d 705, 713 (7th Cir. 2012). The district judge's factual findings in determining the defendant's

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relevant conduct are reviewed for clear error. *United States v. Patterson*, 872 F.3d 426, 437 (7th Cir. 2017); *United States v. Seymour*, 519 F.3d 700, 710–11 (7th Cir. 2008).

Anthony argues that the district judge clearly erred in concluding that his heroin distributions were part of Brandon and Glover's criminal scheme, U.S.S.G. § 1B1.3(a)(2), and that the total quantity of heroin attributed to this scheme was reasonably foreseeable to him, *id.* § 1B1.3(a)(1)(B)(iii). He does not contest the accuracy of 16.8 kilograms as the total heroin weight attributable to Brandon and Glover's conspiracy. Anthony concedes there is "evidence in support of" the district judge's relevant-conduct finding, but argues there is also "substantial evidence" that his distributions were not part of a common scheme.

His concession that some evidence supports the district court's relevant-conduct finding dooms his argument that his offense was separate from the conspiracy. "If two permissible views exist, the fact-finder's choice between them cannot be clearly erroneous." *Stadfeld*, 689 F.3d at 713 (quotations and internal alterations omitted). In Anthony's first appeal, this court pointed to evidence that he was part of the conspiracy. *See Lomax*, 816 F.3d at 476 (Anthony sold heroin at Spray 'Em Auto, like Brandon and Glover; received customer from Brandon; and acted as Brandon's armed chauffeur for heroin deals). Nonetheless, a finding of fact may be clearly erroneous, even though it is supported by evidence, if this court "is left with the definite and firm conviction that a mistake has been committed." *United States v. Ortiz*, 431 F.3d 1035, 1040 (7th Cir. 2005). However, none of Anthony's arguments reveals a mistake by the district judge.

We are unpersuaded by Anthony's argument that the judge was required to explain how his offense conduct—five heroin distributions—was related to the conspiracy in timing, regularity, and *modus operandi*. Anthony likens his case to *Ortiz*, where we said a district judge's "terse" relevant-conduct finding was clearly erroneous because the judge failed to address differences between the relevant conduct and offense conduct in temporal proximity, regularity, and *modus operandi*, 431 F.3d at 1041–43. But *Ortiz* is distinguishable because, there, the offense of conviction involved a drug different from that in the conspiracy, occurred in one location while the conspiracy spanned several states, and happened after the conspiracy "was exposed." *Id.* at 1041–42. Here, on the other hand, Anthony was convicted of distributing the only drug known to be involved in this conspiracy (heroin), in the same location used as the conspiracy's headquarters (a conspirator's auto-body shop), and only at times while the conspiracy still operated (late-2012).

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Anthony makes three unpersuasive arguments that his heroin distributions were not part of his cousins' scheme. He points out the occasion when he tried to steal Brandon's customer and contends that he must have had his own scheme. But taking resources from each other allows co-conspirators to gain personally, without eliminating the possibility of a joint venture. *Cf. United States v. Adams*, 746 F.3d 734, 741 (7th Cir. 2014) (deciding that drug dealers who competed for commissions could be found to have sold drugs in furtherance of shared enterprise). Anthony argues that he must not have been involved in his cousins' scheme because he personally distributed much less heroin than they. Selling disparities among dealers, however, is consistent with those dealers operating within one scheme. *See United States v. Miller*, 834 F.3d 737, 742 (7th Cir. 2016). Lastly, Anthony contends that Brandon and Glover were merely his suppliers because he generally had his own customers. But we rejected this argument in *United States v. Melendez*, 819 F.3d 1006 (7th Cir. 2016), where we clarified that even if a defendant's distributions are part of a "separate business," the defendant is accountable for all reasonably foreseeable drug transactions made in furtherance of the jointly undertaken criminal activity. *Id.* at 1011–12.

At bottom, the district judge's finding of jointly undertaken criminal activity is well-supported. Joint criminal activity may be shown where dealers share customers, swap selling duties, and travel together to sell drugs. *See Miller*, 834 F.3d at 742. Here, Anthony sold heroin to a customer at Brandon's request and acted as his armed chauffeur for drug deals. Anthony also quickly repaid Brandon a debt, not just to clear his own books, but specifically so that Brandon could complete a sale. *Cf. United States v. Fouse*, 578 F.3d 643, 654 (7th Cir. 2009) (determining that joint drug enterprise could be found where defendant sold drugs on credit knowing buyers needed them to be of sufficient quality for cutting and resale). And Anthony sold heroin from Spray 'Em Auto, the drug operation's home base, owned by Brandon.

Anthony next argues that the judge adopted the drug-quantity recommendation in the presentence report, 16.8 kilograms, without explaining why this amount ascribed to the conspiracy was reasonably foreseeable to him. *See U.S.S.G. § 1B1.3(a)(1)(B)(iii)*. Anthony says the only evidence that he was aware of any amount distributed by Brandon or Glover is his conversation about Brandon's two-kilogram heroin debt.

But reasonable foreseeability "does not require that a coconspirator be aware of the precise quantity involved in each of an ongoing series of illegal transactions." *United States v. Longstreet*, 567 F.3d 911, 924 (7th Cir. 2009). The essential factor in deciding whether the total drug quantities were reasonably foreseeable to the defendant

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is the degree of his or her participation in the joint undertaking. *See United States v. Goodwin*, 496 F.3d 636, 642–43 (7th Cir. 2007); *United States v. Edwards*, 945 F.2d 1387, 1393–94 (7th Cir. 1991). Anthony needed a “substantial degree of commitment” before the entire amount attributed to the joint undertaking can be found reasonably foreseeable to him. *See United States v. Magana*, 118 F.3d 1173, 1206 (7th Cir. 1997); *Edwards*, 945 F.2d at 1393–94.

The judge fulfilled her obligation to “explicitly state and support” her finding that the entire amount of drugs distributed by the joint scheme was reasonably foreseeable to Anthony. *See Zehm*, 217 F.3d at 511. At resentencing the judge incorporated her determination from the first sentencing hearing that 16.8 kilograms was reasonably foreseeable to Anthony based on the “interactions between and among” him, Brandon, and Glover. At that first hearing, she credited testimony that Anthony shared resources by selling drugs from Brandon’s business and Glover’s car, pooled profits with Brandon by repaying a debt so he could complete a heroin sale, and had coordinated with Brandon by acting as his armed chauffeur. This is exactly the degree of involvement that Application Note 4(C)(vi) to § 1B1.3 describes as sufficient to hold a drug dealer accountable for the drug quantity attributed to other dealers. If, as here, the judge has found that the required relationship was present and the record supports this relevant-conduct finding, this court will not remand for a more detailed finding. *See United States v. Singleton*, 548 F.3d 589, 593 (7th Cir. 2008).

Lastly, Anthony argues that the agreed dismissal of the conspiracy charge prevented a jury from “acquitt[ing] him of the charge,” thereby “prov[ing]” that the drug quantity attributed to the conspiracy was unforeseeable to him. This argument is meritless. Relevant conduct includes “all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, whether or not charged as a conspiracy.” *United States v. Acosta*, 534 F.3d 574, 582–83 (7th Cir. 2008) (quotation and citation omitted); *see also* U.S.S.G. § 1B1.3 cmt. n.1, cmt. n.3(B). Neither acquittal on a conspiracy charge, nor a jury’s drug-quantity finding, precludes a sentencing judge from finding, by the lower, preponderance-of-the-evidence standard, that the defendant’s offense conduct was part of a joint drug scheme that dealt quantities reasonably foreseeable to the defendant. *See United States v. Austin*, 806 F.3d 425, 433 (7th Cir. 2015); *Goodwin*, 496 F.3d at 643. And although there was no retrial, a defendant, like Anthony, has a “meaningful opportunity” to rebut evidence of his involvement in an uncharged drug conspiracy if, at sentencing, he is given the chance to testify, cross-examine the government’s witnesses, and call his own. *See Miller*, 834 F.3d at 743–44. Anthony declined these opportunities.

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In sum, the district judge did not clearly err by holding Anthony accountable for the quantity of heroin attributed to the uncharged conspiracy.

B. Career-Offender Guideline

Anthony contends that his Indiana attempted murder conviction is not a “crime of violence” under the career-offender guideline because this conviction does not require the use, attempt, or threat of physical force. After briefing, we decided *Michael Hill v. United States*, 877 F.3d 717 (7th Cir. 2017), which holds that Illinois attempted murder is a violent felony under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B), because an attempt to commit a violent felony is itself a violent felony, 877 F.3d at 719. Since the ACCA’s definition of violent felony applies interchangeably with the Guidelines’ definition of crime of violence, see *United States v. Edwards*, 836 F.3d 831, 834 n.2 (7th Cir. 2016); *United States v. Taylor*, 630 F.3d 629, 633 n.2 (7th Cir. 2010), we ordered the parties to brief the effect of *Michael Hill* in this appeal.

Anthony argues against applying *Michael Hill* here because, he says, attempted murder in Illinois “involve[s] the use of force,” whereas attempted murder in Indiana does not. Contrary to Anthony’s belief, Illinois attempted murder *does not* categorically require actual use or threats of physical force; intent to commit violence is enough. *Michael Hill*, 877 F.3d at 718. So, for example, purchasing a weapon to be used to kill someone or planning an assassination suffices. *Id.* We said in *Hill* that “[w]hen the intent element of the attempt offense includes intent to commit violence against the person of another, ... it makes sense to say that the attempt crime itself includes violence as an element.” *Id.* at 719 (citing *Morris v. United States*, 827 F.3d 696, 698–99 (7th Cir. 2016) (Hamilton, J., concurring)). After all, the ACCA does not itself require the *actual* use of force; an attempted use also satisfies § 924(e)(2)(B)(i). *Michael Hill*, 877 F.3d at 719. The reasoning of *Michael Hill* applies equally here because the career-offender guideline’s definition of crime of violence, like § 924(e)(2)(B)’s definition of violent felony, treats attempted force and completed force the same, U.S.S.G § 4B1.2(a)(1).

We also conclude that Anthony’s Indiana attempted-murder conviction is a crime of violence under the reasoning of *Antoine Hill v. United States*, 827 F.3d 560 (7th Cir. 2016). There we held that Illinois attempted murder is a crime of violence under the career-offender guideline because U.S.S.G. § 4B1.2(a)(1) says that a “‘crime of violence’ include[s] the offenses of aiding and abetting, conspiring, and attempting to commit such’ crimes.” *Id.* at 561. The guideline at issue here and in *Antoine Hill* is the same, and there is no meaningful distinction, for our purposes, between the Illinois

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statutes that punish attempt and murder, *see* 720 ILCS §§ 5/8-4(a), 5/9-1(a)(1), and the corresponding statutes in Indiana, *see* Ind. Code §§ 35-41-5-1(a), 35-42-1-1(1).

The judgment of the district court is

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

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FINAL JUDGMENT

July 18, 2018

Before:

DANIEL A. MANION, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY C. BARRETT, *Circuit Judge*

No. 17-2440	UNITED STATES OF AMERICA, Plaintiff - Appellee v. ANTHONY LOMAX, also known as ANT, Defendant - Appellant
Originating Case Information:	
District Court No: 1:12-cr-00189-SEB-MJD-3 Southern District of Indiana, Indianapolis Division District Judge Sarah Evans Barker	

The judgment of the District Court is **AFFIRMED**, in accordance with the decision of this court entered on this date.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604



Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

NOTICE OF ISSUANCE OF MANDATE

August 9, 2018

To: Laura A. Briggs
UNITED STATES DISTRICT COURT
Southern District of Indiana
United States Courthouse
Indianapolis, IN 46204-0000

No. 17-2440	UNITED STATES OF AMERICA, Plaintiff - Appellee v. ANTHONY LOMAX, also known as ANT, Defendant - Appellant
Originating Case Information:	
District Court No: 1:12-cr-00189-SEB-MJD-3 Southern District of Indiana, Indianapolis Division District Judge Sarah Evans Barker	

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

RECORD ON APPEAL STATUS:

No record to be returned

This notice sent to:

☐ United States Marshal

☒ United States Probation Officer

NOTE TO COUNSEL:

If any physical and large documentary exhibits have been filed in the above-entitled cause, they are to be withdrawn ten (10) days from the date of this notice. Exhibits not withdrawn during this period will be disposed of.

Please acknowledge receipt of these documents on the enclosed copy of this notice.

Received above mandate and record, if any, from the Clerk, U.S. Court of Appeals for the Seventh Circuit.

Date:

Received by:

form name: c7_Mandate(form ID: 135)

UNITED STATES DISTRICT COURT

Southern District of Indiana

UNITED STATES OF AMERICA

v.

ANTHONY LOMAX,
A/K/A "ANT"

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:12CR00189-003

USM Number: 11112-028

Mario Garcia
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) 1, 12 and 13 (indicted counts 14 and 15) 16, 17 and 18 (indicted counts 18, 19 and 20)
after a plea of not guilty. and 20 (indicted count 22)

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 846, and 851	Conspiracy to Distribute 1,000 Grams or More of Heroin	10/11/2012	1
21 U.S.C. §§ 841(a)(1) and 851	Distribution of Heroin	9/26/2012	12

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.

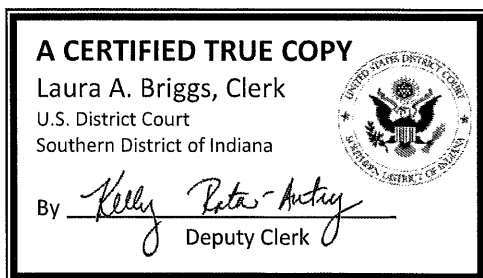
- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

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.

APPENDIX 2
7/30/2014

Date of Imposition of Judgment

8/12/2014



SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

APPENDIX 2

DEFENDANT: ANTHONY LOMAX
CASE NUMBER: 1:12CR00189-003**ADDITIONAL COUNTS OF CONVICTION**

(Continual)

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. §§ 841(a)(1) and 851	Distribution of Heroin	10/2/2012	13
21 U.S.C. §§ 841(a)(1) and 851	Distribution of Heroin	10/13/2012	16
21 U.S.C. §§ 841(a)(1) and 851	Distribution of Heroin	10/16/2012	17
21 U.S.C. §§ 841(a)(1) and 851	Distribution of Heroin	11/19/2012	18
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm	12/05/2012	20

AO 245B (Rev. 09/13) Judgment in Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 5

DEFENDANT: ANTHONY LOMAX, A/K/A "ANT"
CASE NUMBER: 1:12CR00189-003

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 400 months. 400 months on Count 1; 360 months on each of Counts 12, 13, 16, 17 and 18 (indicted Counts 14, 15, 18, 19, and 20) 120 months on Count 20 (indicted Count 22), all to be served concurrently

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

That the defendant be allowed to participate in the residential drug and alcohol program and be designated as close to Indianapolis as possible.

☒ 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: ANTHONY LOMAX, A/K/A "ANT"

CASE NUMBER: 1:12CR00189-003

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 10 years

10 years on Count 1; 6 years on each of Counts 12, 13, 16, 17, and 18 (indicted Counts 14, 15, 18, 19, and 20); and 3 years on Count 20 (indicted Count 22), 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.

- ☐ 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: ANTHONY LOMAX, A/K/A "ANT"
CASE NUMBER: 1:12CR00189-003

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall provide the probation officer access to any requested financial information.
2. The defendant shall participate in a substance abuse treatment program at the direction of the probation officer, which may include no more than eight drug tests per month. The defendant shall abstain from the use of all intoxicants, including alcohol, while participating in a substance abuse treatment program. The defendant is responsible for paying a portion of the fees of substance abuse testing and/or treatment in accordance with his ability to pay.
3. The defendant shall submit to the search of his person, vehicle, office/business, residence and property, including computer systems and Internet-enabled devices, whenever the probation officer has a reasonable suspicion that a violation of a conditions of supervision or other unlawful conduct may have occurred or be underway involving the defendant. Other law enforcement may assist as necessary. The defendant shall submit to the seizure of any contraband that is found, and should forewarn other occupants that the property may be subject to being searched.

Upon a 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 condition 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 Officer/Designated Witness

Date

DEFENDANT: ANTHONY LOMAX, A/K/A "ANT"
CASE NUMBER: 1:12CR00189-003

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 700.00	\$ 1,000.00	\$

☐ 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 \$ _____ \$ _____

☐ 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: ANTHONY LOMAX, A/K/A "ANT"
CASE NUMBER: 1:12CR00189-003

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 _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C ☐ D ☐ E, or ☐ G below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ G 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 ☐ If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.
- G ☐ 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 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.

Defendant Name

Case Number

Joint & Several Amount

- ☐ 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:

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.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

2013 OCT 23 PM 3:54

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BANCOS
CLERK

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Cause No. 1:12-cr-00189-SEB-MJD

BRANDON LOMAX,)

a/k/a Buns,)

-01

DEMOND GLOVER,)

a/k/a Mont,)

-02

ANTHONY LOMAX,)

a/k/a Ant, and)

-03

MARK WHITLOCK,)

a/k/a Fat Mark,)

-04

Defendants.)

FOURTH SUPERSEDING INDICTMENT

The Grand Jury charges that:

Count One

(Conspiracy to Possess with Intent to Distribute and to Distribute Controlled Substances)

Beginning in 2009, and continuing up to and including December 5, 2012, in the Southern District of Indiana and elsewhere, BRANDON LOMAX a/k/a Buns, DEMOND GLOVER a/k/a Mont, ANTHONY LOMAX a/k/a Ant, and MARK WHITLOCK a/k/a Fat Mark, defendants herein, did knowingly conspire together and with diverse other persons, known and unknown to the Grand Jury, to possess with intent to distribute and to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

OBJECT OF THE CONSPIRACY

The object of the conspiracy was to possess with intent to distribute and to distribute controlled substances, including 1,000 grams or more of a mixture or substance containing a detectable amount of heroin, a Schedule I Controlled Substance.

MANNER AND MEANS

1. BRANDON LOMAX and DEMOND GLOVER obtained heroin from sources in Northern Indiana and Chicago, Illinois.
2. BRANDON LOMAX and DEMOND GLOVER would bring the heroin to Indianapolis, Indiana, where they would distribute it to other individuals.
3. ANTHONY LOMAX would assist BRANDON LOMAX in his distribution activities, distributing BRANDON LOMAX's heroin to mid-level heroin distributors.
4. MARK WHITLOCK and others obtained heroin from BRANDON LOMAX, which they would then distribute to other individuals. MARK WHITLOCK also assisted BRANDON LOMAX in LOMAX's efforts to obtain additional sources of heroin.
5. Throughout the conspiracy, the defendants used telephones to facilitate their heroin trafficking operation. The defendants spoke on telephones using coded and cryptic language to discuss their heroin trafficking operation.

All in violation of Title 21, United States Code, Section 846.

Count Two

(Distribution of Controlled Substances)

On or about April 4, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing

a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Three

(Distribution of Controlled Substances)

On or about April 13, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Four

(Distribution of Controlled Substances)

On or about April 19, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18 United States Code, Section 2.

Count Five

(Distribution of Controlled Substances)

On or about May 1, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Six

(Distribution of Controlled Substances)

On or about May 17, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a

Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Seven

(Distribution of Controlled Substances)

Between May 29, 2012 and May 30, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Eight

(Distribution of Controlled Substances)

On or about July 13, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Nine

(Distribution of Controlled Substances)

On or about July 31, 2012, in the Southern District of Indiana, BRANDON LOMAX a/k/a Buns, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Ten

(Possession with Intent to Distribute Controlled Substances)

On or about August 2, 2012, in the Southern District of Indiana, MARK WHITLOCK, defendant herein, knowingly and intentionally possessed with the intent to distribute a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Eleven

(Possession of a Firearm in Furtherance of a Drug Trafficking Crime)

On or about August 2, 2012, in the Southern District of Indiana, MARK WHITLOCK, defendant herein, did knowingly possess a firearm, that is, a Ruger P95 9 millimeter semi-automatic pistol, in furtherance of a drug trafficking crime for which he may be prosecuted in a court of the United States, that is, the drug offense charged in Count One; all in violation of Title 18, United States Code, Section 924(c)(1)(A).

Count Twelve

(Distribution of Controlled Substances)

On or about August 8, 2012, in the Southern District of Indiana, DEMOND GLOVER a/k/a Mont, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Thirteen

(Distribution of Controlled Substances)

On or about August 14, 2012, in the Southern District of Indiana, DEMOND GLOVER a/k/a Mont, defendant herein, knowingly and intentionally distributed a mixture or substance

containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Fourteen

(Distribution of Controlled Substances)

On or about September 26, 2012, in the Southern District of Indiana, ANTHONY LOMAX a/k/a Ant, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Fifteen

(Distribution of Controlled Substances)

On or about October 2, 2012, in the Southern District of Indiana, ANTHONY LOMAX a/k/a Ant, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Sixteen

(Distribution of Controlled Substances)

On or about October 8, 2012, in the Southern District of Indiana, DEMOND GLOVER a/k/a Mont, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

Count Seventeen

(Possession with Intent to Distribute Controlled Substances)

On or about October 11, 2012, in the Southern District of Indiana and elsewhere,

DEMOND GLOVER a/k/a Mont, defendant herein, knowingly and intentionally possessed with the intent to distribute 100 grams or more of a mixture or substance containing a detectable amount of monoacetylmorphine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Eighteen

(Distribution of Controlled Substances)

On or about October 13, 2012, in the Southern District of Indiana, ANTHONY LOMAX a/k/a Ant, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Nineteen

(Distribution of Controlled Substances)

On or about October 16, 2012, in the Southern District of Indiana, ANTHONY LOMAX a/k/a Ant, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Twenty

(Distribution of Controlled Substances)

On or about November 19, 2012, in the Southern District of Indiana, ANTHONY LOMAX a/k/a Ant, defendant herein, knowingly and intentionally distributed a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

Count Twenty One

(Felon in Possession of a Firearm)

On or about December 5, 2012, in the Southern District of Indiana, the defendant, BRANDON LOMAX a/k/a Buns, having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, to wit: conviction on or about September 19, 2001 of Firearm Possession by Serious Violent Felon, Marion County Superior Court, Cause Number 49G060104CF094171, did knowingly possess in and affecting interstate commerce, a firearm, that is: a Draco semi-automatic pistol, Serial Number 1971DH0492, said firearm having been shipped and transported in interstate commerce; in violation of Title 18, United States Code, Sections 922(g)(1).

Count Twenty Two

(Felon in Possession of a Firearm)

On or about December 5, 2012, in the Southern District of Indiana, the defendant, ANTHONY LOMAX a/k/a Ant, having been previously convicted of a crime punishable by imprisonment for a term exceeding one year, to wit: conviction on or about April 8, 2003 of Aggravated Battery, Marion County Superior Court, Cause Number 49G050112CF236379, did knowingly possess in and affecting interstate commerce, a firearm, that is: a Smith and Wesson .40 caliber pistol, Serial Number DSP3312, and/or a Ruger 9 millimeter pistol, Serial Number 333-07778, said firearm having been shipped and transported in interstate commerce; in violation of Title 18, United States Code, Sections 922(g)(1).

FORFEITURE

1. Pursuant to Federal Rule of Criminal Procedure 32.2, the United States hereby gives the defendant notice that it will seek the forfeiture of property as part of any sentence in accordance with Title 21, United States Code, Section 853.

2. If convicted of any of the offenses set forth in Counts 1 through 10, or 12 through 20 of the Indictment, BRANDON LOMAX a/k/a Buns, DEMOND GLOVER a/k/a Mont, ANTHONY LOMAX a/k/a Ant, and MARK WHITLOCK a/k/a Fat Mark, the defendants herein, shall forfeit to the United States any and all property constituting or derived from any proceeds the defendants obtained directly or indirectly as a result of the offenses of which they are convicted, and any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the offenses of which they are convicted.

3. Pursuant to Title 21, United States Code, Section 853(p), the court shall order the forfeiture of any other property of the defendants, up to the value of any property described in paragraph 2, if, by any act or omission of the defendants, the property described in paragraph 2, or any portion thereof:

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

In keeping with the foregoing, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of all forfeitable property as described above in Paragraph 2.

4. If convicted of the offense set forth in Counts Twenty One or Twenty Two, BRANDON LOMAX a/k/a Buns and ANTHONY LOMAX a/k/a Ant, defendants herein, shall

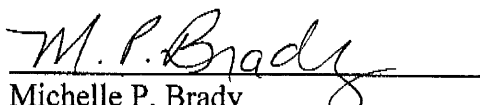
also forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearm or ammunition involved in or used in the offense.

A TRUE BILL


Foreperson

JOSEPH H. HOGSETT
United States Attorney

By:


Michelle P. Brady
Assistant United States Attorney