

APPENDIX

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UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA)
vs.) PRESENTENCE INVESTIGATION REPORT
Zachery Joseph Cooley) 1128 1:17CR00021-005

Prepared for: The Honorable Callie V. S. Granade
Senior U. S. District Judge

Prepared by: Alan R. Watkins
Senior U.S. Probation Officer
251-441-6766

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Sentence Date: October 5, 2017

Offense: Count 1: Conspiracy to Possess With Intent to Distribute Methamphetamine
21 U.S.C. § 846, and 21 U.S.C. §841(b)(1)(A),
10 years to life imprisonment/\$10,000,000 fine
Min. 5 years SRT/a Class A felony

Counts 2,3&7: Possession With Intent to Distribute
Methamphetamine
21 U.S.C. § 841(a)(1), and 21 U.S.C. §841(b)(1)(B),
5 years to 40 years imprisonment/\$5,000,000 fine
Min. 4 years SRT/a Class B felony

Counts 5&9: Possession of a Firearm by a Prohibited Person (Misdemeanor Crime of Domestic Violence) 18 U.S.C. § 922(g)(9), and 18 U.S.C. §924(a)(2), Not more than 10 years imprisonment/\$250,000 fine 3 years SRT/a Class C felony

Date Prepared: August 23, 2017

Date Revised:

Count 6: Possession With Intent to Distribute
Methamphetamine
21 U.S.C. § 841(a)(1), and 21 U.S.C. §841(b)(1)(C),
Not more than 20 years imprisonment/\$1,000,000
fine
Min. 3 years SRT/a Class C felony

Count 8: Possession of a Firearm in Relation to a Drug
Trafficking Offense
18 U.S.C. § 924(c)(1)(A),
5 years to life imprisonment/\$250,000 fine
5 years SRT/a Class A felony

Release Status: On June 16, 2016, the defendant was arrested on related state charges. On June 20, 2016, Cooley was released on bond in the state case. On October 19, 2016, the defendant's bond was revoked. On February 6, 2017, Cooley was produced, via writ from state custody.

Detainers: None.

Codefendants: Jason Daniel Johnson - 1128 1:17CR00021-1, Sentenced
Michael Joseph Flores - 1128 1:17CR00021-2, Sentenced
Kebli Cyril Briggs - 1128 1:17CR00021-3, Sentenced
Jamark Lavarous Flanning - 1128 1:17CR00021-4, Pending Sentencing
Brandi Dawn Hickerson - 1128 1:17CR00021-6, Sentenced
Amber Nicole Cooper - 1128 1:17CR00021-7, Sentenced
Cheyenne Lynd Steiner - 1128 1:17CR00021-8, Pending Sentencing

Related Cases: None.

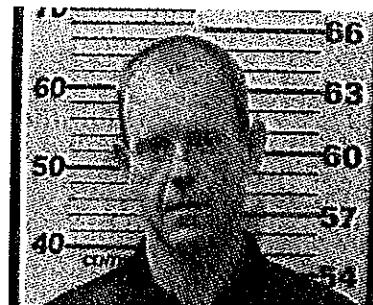
COOLEY, Zachery

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Identifying Data:

Date of Birth: February 8, 1982
Age: 35
Race: White
Hispanic Origin: Non-Hispanic origin
Sex: Male

SSN#: 425-49-3837
FBI#: 639309AH1
USM#: 16743-003
State ID#: AL02709198
ICE#:



PACTS#: 3245983

Marital Status: Divorced
Education: Voc/Apprentice Grad
Dependents: Three
Citizenship: U.S. Citizen
Immigration Status:
Country of Birth: United States

Legal Address: Escambia County Jail
316 Court Street
Brewton, AL 36426

Alias(es): Cooley, Zachary
"Red"

Alternate IDs: Alabama ID : 1972004
State ID Number: MS04482603

Restrictions on Use and Re-disclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and re-disclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is re-disclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further re-disclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Zachery Joseph Cooley and seven codefendants were named in a nine-count indictment by the January 2017 Federal Grand Jury for the Southern District of Alabama. The defendant and Cheyenne Lynd Steiner were subsequently named in a 12-count superseding indictment by the April 2017 Federal Grand Jury for the Southern District of Alabama. The defendant was named in counts one through ten of the superseding indictment. Count one charges that beginning in or about early 2016, and continuing through April 25, 2017, the defendants did conspire to distribute more than 50 grams of methamphetamine, in violation of 21 U.S.C. § 846. Count two charges that on February 19, 2016, the defendant possessed with intent to distribute approximately 168 grams of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Count three charges that on September 9, 2016, the defendant possessed with intent to distribute approximately 14 grams of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Count four charges that on September 9, 2016, the defendant did knowingly carry and use a firearm, namely a RG model RG23, .22-caliber revolver (serial #: T541027), during and in relation to a drug trafficking crime, in violation of 18 USC § 924(c)(1)(A). Count five charges that on September 9, 2016, the defendant, having been convicted of a misdemeanor crime of domestic violence, did possess a RG model RG23, .22-caliber revolver (serial #: T541027), in violation of 18 USC § 922(g)(9). Count six charges that on September 28, 2016, the defendant did knowingly distribute approximately 2.7 grams of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Count seven charges that on September 28, 2016, the defendant possessed with intent to distribute approximately 19.2 grams of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). Count eight charges that on September 28, 2016, the defendant did knowingly carry and use a firearm, namely a Ruger model LCP, .380-caliber pistol (serial #: 37126509), during and in relation to a drug trafficking crime, in violation of 18 USC § 924(c)(1)(A). Count nine charges that on September 28, 2016, the defendant, having been convicted of a misdemeanor crime of domestic violence, did possess a Ruger model LCP, .380-caliber pistol (serial #: 37126509), in violation of 18 USC § 922(g)(9). Count ten charges that on October 29, 2016, the defendant did knowingly distribute approximately 3.5 grams of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). There is also a forfeiture allegation.
2. On June 29, 2017, the defendant was found guilty by jury trial as to counts one through three and counts five through nine of the superseding indictment. The jury found the defendant not guilty as to count four, and the government dismissed count ten of the superseding indictment. Cooley is scheduled to be sentenced on October 5, 2017, by the Honorable Callie V.S. Granade.

Pretrial Adjustment

3. The defendant has been in custody since his arrest in the instant offense; therefore, pretrial adjustment is not applicable.

The Offense Conduct

4. The instant offense was investigated by the Mobile Police Department (MPD), the Mobile County Sheriff's Department (MCSO), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and Homeland Security Investigations (HSI), all located in Mobile, Alabama.
5. On February 19, 2016, MPD narcotics investigators executed a state search warrant at the residence of Derek Robinson. Upon entry, investigators encountered **Zachery Cooley**, who was on his knees in the bedroom weighing out and packaging approximately five ounces of methamphetamine ice into smaller amounts for distribution. Post-*Miranda*, **Cooley** told the officers that he did not know to whom the methamphetamine ice belonged, but he did not believe it belonged to Robinson. **Cooley** admitted he was a methamphetamine ice dealer, and that he sold it because he was recently out of work and needed to support his daughter. He speculated that the drugs belonged to John Loftin, one of the five people present in the house when police entered. Loftin had a syringe containing methamphetamine in his pocket when the police secured him. Loftin also made a post-*Miranda* statement in which he told police that he and **Cooley** had traveled to Mississippi the previous evening in Robinson's Tahoe. He stated that **Cooley** had made arrangements to get the methamphetamine ice from a connection of his in Mississippi, and that they had just returned shortly before the police entered. **Cooley**'s girlfriend also made a post-*Miranda* statement in which she admitted going with **Cooley** and Loftin to Mississippi in Robinson's Tahoe to pick up the methamphetamine ice.
6. On September 8, 2016, a confidential informant (CI) working with MCSO contacted Kebli "Diddy" Briggs to arrange for the purchase of a half-ounce of methamphetamine ice for \$450. They agreed to meet at a particular hotel on Inn Road in Mobile for the transaction. Deputies set up surveillance in that area, and the CI was searched and equipped with electronic devices to record the transaction. MCSO Deputy Raylene Busby took the CI to the hotel, and the CI exited the vehicle and approached room 153. Brandi Hickerson was sitting on the bed when the CI entered the room, and Briggs, who was also inside, informed the CI that the methamphetamine had not yet arrived. There was a discussion between Hickerson and the CI about Hickerson's children being taken by DHR, and her efforts to get them back. Briggs and the CI also discussed the price of the methamphetamine ice, and Briggs stated that he would lower the price on the next deal with the CI.
7. Within a few minutes, **Zachery Joseph Cooley** knocked on the door and was admitted. He sat down on the bed and handed Briggs a tied bag of methamphetamine ice. Hickerson told Briggs that the scales were in the nightstand. Briggs retrieved the scales, and weighed the methamphetamine ice. The CI then handed the money to Briggs, who passed the money to **Cooley**. The CI then left with the drugs. Hotel records reflect that the room where the meeting took place was rented in Hickerson's name.
8. Meanwhile, surveillance officers followed **Cooley** from the hotel on Inn Road, to the Bama Motel where he entered a room. A short time later, he and a female came from the room and got into **Cooley**'s vehicle. The deputies followed them to a service station at the corner of Demetropolis Road and Highway 90, and subsequently took **Cooley** into custody.

Recovered from his person was a RG model RG23, .22-caliber revolver containing five rounds of ammunition, and all but one \$20 bill of the "buy money." Deputies also confirmed that **Cooley** had recently been arrested on drug charges in Mississippi, and had been released on bond, and that he had been recently arrested by the Mobile Police Department for trafficking methamphetamine.

9. **Cooley** initially told the deputies that he wanted to cooperate. On that same date, he made several recorded phone calls to various subjects, including an individual he identified as "Chewie," subsequently identified as Jason Daniel Johnson. **Cooley** arranged for Johnson to provide him with one ounce of methamphetamine ice, and they agreed to meet in the parking lot of a CVS Pharmacy. Deputies traveled to the pharmacy and set up surveillance. At approximately 7:15 p.m., the deputies observed a vehicle matching the description of Johnson's truck arrive, and pull up next to **Cooley**'s vehicle. Johnson stepped out of the truck as the officers moved in to arrest him. The drugs recovered from Johnson's hand amounted to approximately 27.7 grams of methamphetamine ice. Johnson was advised of his rights, and he too stated that he wanted to cooperate. A post-arrest inventory of Johnson's vehicle revealed approximately 14 additional grams of methamphetamine ice, along with a toy plastic gun, a set of digital scales, and \$1,070 in U.S. currency. Johnson gave a statement, and discussed subjects against whom he could provide cooperation. He declined to cooperate against individuals in the Mobile area, but claimed he could assist with another subject in Mississippi.
10. On September 27, 2016, MCSO investigators used a CI to make a controlled purchase of methamphetamine ice from David "Texas" Jordan. Jordan met with the informant for the deal, but **Cooley** showed up in a separate vehicle to provide the drugs. The officers confronted Jordan, and he agreed to cooperate against **Cooley**, whom he identified as a methamphetamine ice supplier. MCSO investigators used Jordon to arrange a controlled buy with **Cooley** on September 28, 2016, which took place off Schimps Lane in west Mobile. **Cooley** brought the drugs to Jordan, then left. MCSO investigators followed **Cooley** and stopped his vehicle not far from the location of the controlled buy. **Cooley** threw something out of the vehicle before stopping it. Officers on the scene of the stop advised **Cooley** of his *Miranda* rights and asked him what was thrown from the vehicle. **Cooley** admitted that he threw drugs and a gun out of the vehicle. Officers subsequently found a brown zippered toiletry bag, which contained approximately 19 grams of methamphetamine ice, a pipe and a rubber tube, several small plastic zippered baggies, two scales and a Ruger model LCP, .380-caliber pistol.
11. **Cooley** told investigator in a taped interview that he had been selling methamphetamine ice since 2015. He identified his supplier at that time as Louis Butcher, who lived on his street. He told the officers he began to sell the drug to "make ends meet." He stated that his ex-girlfriend stole his truck and his tools, so he really need to make more money. **Cooley** advised that he was selling "small stuff," which he identified as 7 grams at a time. He identified Butcher's supplier as Jerry Fowler, who lived off Firetower Road. **Cooley** stated that he took a break from drug dealing for six or seven months, but his construction business "fell off again," and he needed more money in November or December. **Cooley** advised that he began to deal with John Loftin, Derek Robinson, and Joel Fuller. He also discovered that some people he knew in Mississippi were selling methamphetamine ice as

well. **Cooley** stated that he started getting methamphetamine ice from some of these people, who were from Benndale, Mississippi. He identified them as "PeeWee," "Gun," Adrian Fairley, and Jeffery Fairley. He also admitted he was getting methamphetamine ice from one guy in McClain, Mississippi. **Cooley** stated that he was getting a half-ounce at a time. **Cooley** reiterated that he did not deal drugs to get high, like others he knew. He stated that he sold them to make money when he needed money. **Cooley** told investigators that he met Jason Johnson at a laundromat in Tillman's Corner after he heard that Johnson was saying derogatory things about him. After their initial discussion, Johnson began to supply **Cooley** with methamphetamine ice. **Cooley** stated that Johnson's supplier in McClain, Mississippi, was "Spud," and that he picked up four ounces at a time. **Cooley** admitted selling eight-balls of methamphetamine ice to Briggs, Jordan, and "Pat-Pat." **Cooley** advised that he got a half-ounce from Johnson every 3 to 4 days.

12. During the investigation, HSI Special Agent (SA) Sharon Murphy requested, and received, certified copies of **Cooley**'s three prior convictions for Domestic Violence, Third Degree, in Mobile County Circuit Court, Mobile, Alabama. ATF SA Tom Nevin also determined that the firearms possessed by **Cooley** were manufactured outside of the State of Alabama, thus affecting interstate commerce.
13. The defendant was subsequently indicted in the Southern District of Alabama.
14. At the defendant's trial, a number of individuals testified as to the amount of methamphetamine ice they had received from, or supplied to, **Cooley**. Marvin Buckley testified that he met **Cooley** in 2014 at Chris Platt's house in north Mobile, and that he purchased gram and half-gram quantities of methamphetamine ice from **Cooley** from then until Buckley's arrest in January of 2016, for a total of one to one and a half ounces of methamphetamine ice. Justin Guy testified that he bought methamphetamine ice from **Cooley** four to six times over a couple of months in 2016, for a total of about two ounces. Jason Johnson testified that he met **Cooley** through a friend at a laundromat in Tillman's Corner. Johnson stated that he and **Cooley** established a routine in which he supplied **Cooley** with meth ice four or five days a week. Johnson estimated that he had supplied **Cooley** with at least eight ounces of methamphetamine ice during their involvement together. Cheyenne Steiner testified that she met **Cooley** in mid-June or July of 2016 at the Crest Motel. Steiner stated that she sold a half-ounce of methamphetamine ice for **Cooley** every day, for a total of four to five ounces. She testified that **Cooley** was selling two ounces of methamphetamine ice every day until his arrest in October of 2017.
15. Based on the discovery provided by the Government and testimony presented at trial, the defendant is accountable for three kilograms of methamphetamine ice as relevant conduct.

Victim Impact

16. This is a Title 21 offense and there is no identifiable victim.

Adjustment for Obstruction of Justice

17. The probation officer has no information indicating the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

18. The defendant denied the essential elements of this offense, and he put the government to its burden at trial. Therefore, the defendant has not exhibited acceptance of responsibility, and is not entitled to an adjustment, pursuant to U.S.S.G. § 3E1.1.

Offense Level Computation

19. The 2016 Guidelines Manual, incorporating all guideline amendments, was used to determine the defendant's offense level. U.S.S.G. §1B1.11. Counts 1, 2, 3, 5, 6, 7, and 9 are grouped pursuant to U.S.S.G. §3D1.2(c) and (d).

Count Group 1: Conspiracy to Possession With Intent to Distribute Methamphetamine

20. **Base Offense Level:** The guideline for 21 U.S.C. § 846 offenses is found in U.S.S.G. §2D1.1 of the guidelines. That section provides that the base offense level is determined by the amount of the controlled substance involved. Based on the Relevant Conduct Standard at U.S.S.G. §§1B1.3(a)(1)(A) and (B), all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant, and all reasonably foreseeable acts and omissions of others; and (2) solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) that were part of the same course of conduct or common scheme or plan as the offense of conviction, are included in the calculation of the offense level. The defendant is responsible for 3 kilograms of methamphetamine ice. Pursuant to U.S.S.G. §2D1.1(c)(2), offenses involving at least 1.5 kilograms, but less than 4.5 kilograms of methamphetamine ice, have a base offense level of 36.

21. Specific Offense Characteristics: None.	<u>36</u>
22. Victim Related Adjustment: None.	<u>0</u>
23. Adjustment for Role in the Offense: None.	<u>0</u>
24. Adjustment for Obstruction of Justice: None.	<u>0</u>
25. Adjusted Offense Level (Subtotal):	<u>36</u>
26. Chapter Four Enhancement: None.	<u>0</u>
27. Acceptance of Responsibility: None.	<u>0</u>

28. **Total Offense Level:** 36

Count Eight - Use of a Firearm During a Drug Trafficking Crime

29. **Base Offense Level:** The guideline for an 18 U.S.C. § 924(c) offense is found at U.S.S.G. § 2K2.4(b). This section provides that if the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. § 924(c)(1)(A)(ii), the term of imprisonment is that required by statute. The sentence required by statute for possession of a firearm during a drug trafficking crime is a mandatory term of five years imprisonment, to run consecutively to any other sentence imposed.

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

30. None known.

Adult Criminal Conviction(s)

	<u>Date of Arrest</u>	<u>Conviction/Court</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline</u>	<u>Pts</u>
31.	05/11/2001 (Age 19)	Stalking, Dkt.#159-331, George County Justice Court, Lucedale, MS	08/30/2001: Guilty, \$442.50 fine and assessment	4A1.2(e)(3)	0

Attorney representation is unknown. No further details were available.

32.	01/31/2003 (Age 20)	Profanity in Public Place, Dkt.#190-218, George County Justice Court, Lucedale, MS	02/03/2003: Guilty, \$281.88 fine and assessment	4A1.2(e)(3)	0
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Attorney representation is unknown. No further details were available.

33.	10/15/2014 (Age 32)	Domestic Violence, Third Degree (Assault), CC15-2442, Mobile County Circuit Court, Mobile, AL	10/06/2015: 120 days jail, 80 days jail credit, sentence to run concurrent with CC15-2441, CC15- 2443, and CC15-2245	4A1.1(b)	2
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The defendant was represented by counsel. On October 15, 2014, Cooley slapped Kasey Kiernan and shoved her to the ground.

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34.	03/26/2015 (Age 33)	Domestic Violence, Third Degree (Assault), CC15-2443, Mobile County Circuit Court, Mobile, AL	10/06/2015: 120 days jail, 80 days jail credit, sentence to run concurrent with CC15-2441, CC15-2442 and CC15-2445	4A1.1(b)	2
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The defendant was represented by counsel. On February 26, 2015, Cooley refused to leave Kasey Kiernan's residence and a physical altercation ensued. Kiernan attempted to leave the residence throughout the night, but was slammed to the ground upon trying to open the door. Cooley then pulled out a pocket knife and placed it across Kiernan's neck. The defendant told her, "If I kill you now it would be a crime of passion and I would get off." Cooley left the residence the following morning, at which time Kiernan called the police. Upon arrival, Mobile Police Officers observed abrasions on the victim's face, a swollen lip, a swollen left eye, bruising on her nose, and bruising on Kiernan's chest.

35.	03/30/2015 (Age 33)	1) Criminal Trespass, Third Degree, CC15-2441, 2) Interfering With an Emergency Call, CC15-2444, 3) Domestic Violence, Third Degree (Menacing), CC15-2445, 4) Unlawful Imprisonment, CC15-2446, 5) Receiving Stolen Property, Third Degree, CC15-2448, Mobile County Circuit Court, Mobile, AL	10/06/2015: 1&3) 120 days jail, 80 days jail credit, sentence to run concurrent with CC15-2442 and CC15- 2443, 2,4&5) Nolle prossed	4A1.2(a)(2)	0
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The defendant was represented by counsel. The above-noted offense occurred on February 26, 2015 (see paragraph 34).

36.	04/10/2015 (Age 33)	Violation of a Protection Order, MC15-1455, Municipal Court, Mobile, AL	07/08/2015: 30 days jail, credit for time served	4A1.1(c)	1
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The defendant was represented by counsel. On April 3, 2015, Cooley attempted to call Kasey Kiernan on several occasions from the Mobile Metro Jail, after having been ordered by the Mobile Municipal Court to have no contact with the victim.

Criminal History Computation

37. The total criminal history score is five. According to the sentencing table in U.S.S.G. Chapter 5, Part A, a criminal history score of five establishes a criminal history category of III.

Other Criminal Conduct

	<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
38.	12/01/2014 (Age 32)	Violation of a Protection Order, MC14-5733	Municipal Court, Mobile, AL	04/15/2015: Nolle prossed
39.	02/28/2015 (Age 33)	Domestic Violence, Third Degree, CC15-2447	Mobile County Circuit Court, Mobile, AL	10/06/2015: Nolle prossed
40.	10/01/2015 (Age 33)	Receiving Stolen Property, First Degree, DC15-9030	Mobile County District Court, Mobile, AL	01/31/2017: No Billed
41.	06/13/2016 (Age 34)	Fugitive from Justice, DC16-5512	Mobile County District Court, Mobile, AL	06/27/2016: Nolle prossed

Pending Charges

	<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
42.	08/29/2015 (Age 33)	1) Public Intoxication, MC15-3699, 2) Resisting Arrest, MC15-3700, 3) Failure to Obey a Police Officer, MC15-3701	Municipal Court, Mobile, AL	11/08/2016: Alias warrant issued
43.	10/01/2015 (Age 33)	Pistol-Carrying Without a Permit, CC16-6716	Mobile County Circuit Court, Mobile, AL	03/23/2017: Alias warrant issued

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44.	12/29/2015 (Age 33)	1) Possession of a Controlled Substance, 2) Simple Possession of Marijuana, 3) Possession of Drug Paraphernalia, 2016-10,0009	George County Circuit Court, Lucedale, MS	01/20/2016: Released on bond, 10/19/2016: Bond revoked, case pending
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The above-listed charges are related to the instant federal offense.

45.	02/19/2016 (Age 34)	1) Possession of Marijuana, Second Degree, DC16-1662, 2) Trafficking Methamphetamine, DC16-1663	Mobile County District Court, Mobile, AL	05/17/2016: 1&2) Waived to the Grand Jury
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The above-listed charges are related to the instant federal offense.

46.	06/16/2016 (Age 34)	1) Possession of a Controlled Substance, 2) Simple Possession of Marijuana, 3) Resisting Arrest, 2016-10,055	George County Circuit Court, Lucedale, MS	06/20/2016: Released on bond, 10/19/2016: Bond revoked, case pending
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The above-listed charges are related to the instant federal offense.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

47. Zachery Joseph Cooley was born on February 8, 1982, in Lucedale, Mississippi, to the marital union of Steve and Tracey (nee: Rogers) Cooley. The defendant's parents reside at 215 Eubanks Drive, Lucedale, Mississippi. Cooley's father (age 59) is retired, and his mother (age 58) is a homemaker. The defendant advised of one sibling. Benton Cooley (age 41) is a home builder, and lives in Lucedale, Mississippi.
48. The defendant reported that he was reared by both parents in a middle-income home in Lucedale, Mississippi. Cooley advised that his parents worked for a construction company doing shutdown work, and regularly spent months away from home. The defendant stated that he would stay with a neighbor when his parents were out of town. Cooley also advised that his parents were recreational drug users (pills, marijuana and alcohol) and often neglected him when they were home. The defendant denied any physical or sexual abuse. Cooley reported that he now shares a good relationship with both parents, but has a distant relationship with his brother.

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49. The defendant reported that he has been married on two occasions. On March 12, 1999, Cooley married Brandy Clymer in Lucedale, Mississippi. The couple divorced on October 17, 2005, in George County Chancery Court, Lucedale, Mississippi. Two children were born to this union. Hailey Cooley (age 17) and Kevin Cooley (age 15) live with their mother in Lucedale, Mississippi. On October 22, 2005, the defendant married April Holland in Lucedale, Mississippi. The couple divorced on June 30, 2011, in George County Chancery Court. One child was born to this union. Alexis Cooley (age 12) lives with the defendant's parents in Lucedale, Mississippi.
50. The defendant indicated that he plans to reside with his parents at 215 Eubanks Drive, Lucedale, Mississippi, upon his release from custody.
51. On August 23, 2017, the probation officer interviewed the defendant's father, via phone. Mr. Cooley verified the personal and background information the defendant reported during the initial presentence interview. Mr. Cooley also advised that his son served as chief of the volunteer fire department in their community. Mr. Cooley stated that it is his belief that his son suffers from Post-Traumatic Stress Disorder due to the deaths he has witnessed over the years as an EMT/firefighter, and feels that this contributed to his drug addiction.

Physical Condition

52. The defendant is described as a 35-year-old, white, non-Hispanic male, standing 5'7" tall, weighing 168 pounds, with blue eyes and red (shaved) hair. Cooley sported a full beard at the time of the presentence interview. The defendant reported no scars, and tattoos of a dream catcher on his left upper arm and the Superman symbol on his right upper arm.
53. The defendant reported that he recently fell at the Escambia County Jail, which resulted in a torn pectoral muscle. Cooley stated that he is in need of surgery for this condition, but is currently receiving no treatment, and is prescribed no medication by the medical staff at Escambia County Jail. The defendant advised that he has never been hospitalized for any serious illness, or injury.

Mental and Emotional Health

54. The defendant stated that he has never been treated for any mental or emotional problems. Cooley appears to understand the serious nature of the charges he is facing. The defendant was cooperative during the presentence interview.

Substance Abuse

55. Cooley reported that, prior to his arrest on the instant offense, he smoked five to six marijuana "joints" and one to two grams of methamphetamine, "daily." The defendant advised that he began using illicit drugs at age 12, and last used the above-listed substances on October 19, 2016. The defendant stated that he has never received substance abuse treatment, and feels he would benefit from treatment while incarcerated.

56. The defendant was not subject to urinalysis as he has been in custody since arrest for this offense.

Educational, Vocational and Special Skills

57. The defendant dropped out of the eighth grade at George County Middle School in Lucedale, Mississippi, on December 2, 1997. School records reflect that he earned average grades. Cooley reported that he earned an Emergency Medical Technician (EMT) certificate through Mississippi Gulf Coast Community College in Lucedale, Mississippi, in 2004. The probation officer requested the defendant's transcripts from Mississippi Gulf Coast Community College; however, no response has been received, to date. Vocationally, the defendant reported special skills as a carpenter and EMT/firefighter.

Employment Record

58. October 19, 2016, to the present, the defendant has been in custody.
59. The defendant reported that for the past ten years, he has been self-employed as a carpenter in George County, Mississippi, and Mobile County, Alabama, earning approximately \$500 a week. Cooley advised of no other employment within the past ten years.

Financial Condition: Ability to Pay

60. Cooley submitted a personal financial statement which reported no assets, and listed liabilities totaling \$5,000 (child support). The probation officer also made inquiry with Equifax Credit Information Services. The defendant's credit report reflects five collection accounts with a total amount owed of \$4,285. The probation officer requested tax information from the Internal Revenue Service (IRS); however, no records have been received, to date.
61. The defendant is incarcerated. Consequently, he has no monthly income and no necessary monthly expenses, resulting in a net monthly cash flow of zero. Based on this analysis of the defendant's financial condition, he does not possess the current ability to pay a fine. Further, the defendant's lack of marketable job skills and extended absence from the job market make it unlikely that he will possess the future ability to pay a fine.

PART D. SENTENCING OPTIONS

Custody

62. **Statutory Provisions:** Count 1: The minimum term of imprisonment is 10 years and the maximum term is life. 21 U.S.C. §846 and 21 U.S.C. §841(b)(1)(A). Counts 2, 3 and 7: The minimum term of imprisonment is 5 years and the maximum term is 40 years per count. 21 U.S.C. §841(a)(1) and 21 U.S.C. §841(b)(1)(B). Counts 5 and 9: The maximum term of imprisonment is 10 years per count. 18 U.S.C. §922(g)(9) and 18 U.S.C. §924(a)(2). Count 6: The maximum term of imprisonment is 20 years. 21 U.S.C. §841(a)(1) and 21 U.S.C. §841(b)(1)(C). Count 8: The minimum term of imprisonment is five years and the maximum term is life. 18 U.S.C. §924(c)(1)(A).

63. The term of imprisonment on Count 8 must be imposed consecutively to any other counts.
64. **Guideline Provisions:** Based upon a total offense level of 36 and a criminal history category of III, the guideline imprisonment range is 235 to 293 months. The guideline sentence for Count 8 is the minimum term of imprisonment required by statute. USSG §2K2.4(b).

Impact of Plea Agreement

65. Not applicable.

Supervised Release

66. **Statutory Provisions:** The Court must impose a term of supervised release of at least five years on Count 1. 21 U.S.C. §841(b)(1)(A). The Court must impose a term of supervised release of at least four years on each of Counts 2, 3 and 7. 21 U.S.C. §841(b)(1)(B). The Court may impose a term of supervised release of not more than three years on each of Counts 5 and 9. 18 U.S.C. §3583(b)(2). The Court must impose a term of supervised release of at least three years on Count 6. 21 U.S.C. §841(b)(1)(C). The Court may impose a term of supervised release of not more than five years on Count 8. 18 U.S.C. §3583(b)(1).
67. Multiple terms of supervised release shall run concurrently. 18 U.S.C. §3624(e).
68. **Guideline Provisions:** Count 1: The guideline range for a term of supervised release is five years to life. U.S.S.G. §5D1.2(c). Counts 2, 3 and 7: The guideline range for a term of supervised release is four years to life per count. U.S.S.G. §5D1.2(c). Counts 5 and 9: Since each count is a Class C Felony, the guideline range for a term of supervised release is 1 year to 3 years per count. U.S.S.G. §5D1.2(a)(2). Count 6: The guideline range for a term of supervised release is three years to life. U.S.S.G. §5D1.2(c). Count 8: Since the offense is a Class A Felony, the guideline range for a term of supervised release is 2 years to 5 years. U.S.S.G. §5D1.2(a)(1).

Probation

69. **Statutory Provisions:** The defendant is ineligible for probation on Count 1 because it is expressly precluded by statute. 21 U.S.C. §841(b)(1)(A). The defendant is ineligible for probation on Counts 2, 3 and 7 because it is expressly precluded by statute. 21 U.S.C. §841(b)(1)(B). The defendant is ineligible for probation on Counts 5 and 9 because the defendant will be sentenced at the same time to a term of imprisonment for the same or a different offense. 18 U.S.C. §3561(a)(3). The defendant is ineligible for probation on Count 6 because it is expressly precluded by statute. 21 U.S.C. §841(b)(1)(C). The defendant is ineligible for probation on Count 8 because it is expressly precluded by statute. 18 U.S.C. §3561(a)(2).
70. Multiple terms of probation shall run concurrently. 18 U.S.C. §3564(b).
71. **Guideline Provisions:** Counts 1, 2, 3, 6, 7 and 8: The defendant is ineligible for probation because probation has been expressly precluded by statute. U.S.S.G. §5B1.1(b)(2). Counts

5 and 9: The defendant is ineligible for probation because the defendant will be sentenced at the same time to a term of imprisonment for the same or a different offense. U.S.S.G. §5B1.1(b)(3).

Fines

72. **Statutory Provisions:** The maximum fine for Count 1 is \$10,000,000. 21 U.S.C. §841(b)(1)(A). The maximum fine for each of Counts 2, 3 and 7 is \$5,000,000. 21 U.S.C. §841(b)(1)(B). The maximum fine for each of Counts 5 and 9 is \$250,000. 18 U.S.C. §3571(b). The maximum fine for Count six is \$1,000,000. 21 U.S.C. §841(b)(1)(C). The maximum fine for Count 8 is \$250,000. 18 U.S.C. §3571(b).
73. A special assessment of \$100 is mandatory as to each of Counts 1, 2, 3, 5, 6, 7, 8 and 9. 18 U.S.C. §3013.
74. **Guideline Provisions:** The fine range for this offense is \$50,000 to \$26,000,000. This range reflects a two-level increase in the offense level which is required, because the offense level for the underlying offense did not include a specific offense characteristic that involved a weapon. U.S.S.G. §2K2.4(d)(1).

Restitution

75. **Statutory Provisions:** The restitution provisions of 18 U.S.C. §3663(a)(1)(A) apply in this case and there is no identifiable victim. Community restitution may be ordered in offenses where the defendant has been convicted under 21 U.S.C. §§841, 848(a), 849, 856, 861 or 863 and the Court has considered the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and any other factors as the Court deems appropriate in determining whether to award this type of restitution. 18 U.S.C. §§3663(c)(1) and 3663(a)(1)(B)(i)(II).
76. **Guideline Provisions:** There is no identifiable victim and the defendant was convicted of an offense involving 21 U.S.C. §841. Therefore, the Court, taking into consideration the amount of public harm caused by the offense and other relevant factors, shall order an amount of community restitution not to exceed the fine imposed under U.S.S.G. §5E1.2. U.S.S.G. §5E1.1(d).

Denial of Federal Benefits

77. **Statutory Provisions:** At the discretion of the Court, the defendant, having been convicted of a first drug distribution offense, shall be ineligible for any or all federal benefits for up to five years after such conviction. 21 U.S.C. §862(a)(1)(A).
78. **Guideline Provisions:** The Court, pursuant to 21 U.S.C. §862, may deny the eligibility for certain federal benefits of any individual convicted of distribution or possession of a controlled substance. U.S.S.G. §5F1.6.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

Presentation of information in this section does not necessarily constitute a recommendation by the probation officer.

79. The probation officer has no information concerning the offense or the offender which would warrant a departure from the prescribed sentencing guidelines.
80. The Court is required to impose a sentence that is sufficient but not greater than necessary to comply with 18 USC § 3553(a) which outlines the factors to be considered when imposing a sentence. In addition to considering the U.S. Sentencing Guidelines, the Court should also consider a sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. The Court shall also consider the nature and circumstances of the offense, the history and characteristics of the defendant.

PART F. SPECIAL CONDITIONS OF SRT/PROBATION

The defendant is hereby put on notice that the Court may impose one, or a combination, of any of the following special conditions at the sentencing hearing.

- a) The defendant shall submit to periodic urine surveillance and/or breath, saliva and skin tests for the detection of drug abuse as directed by the probation officer. The defendant may incur costs associated with such detection efforts, based upon ability to pay as determined by the probation officer;
- b) The defendant shall participate in an assessment or a program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency or abuse, as instructed and as deemed necessary by the probation officer. The defendant may incur costs associated with such drug/alcohol detection and treatment, based upon the ability to pay, as determined by the probation officer;
- c) The defendant shall participate in a mental health evaluation and any recommended treatment, as instructed and as deemed necessary by the probation officer. The defendant may incur costs associated with such mental health treatment, based upon the ability to pay, as determined by the probation officer;
- d) The defendant shall submit his/her person, house, residence, vehicle(s), papers, [computers (as defined by 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media], business or place of employment, and any other property under the defendant's control to a search, conducted by a United States 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 release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition;

COOLEY, Zachery

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- e) The defendant is prohibited from making major purchases, incurring new credit charges, or opening additional lines of credit without approval of the probation officer, until such time as the financial obligations imposed by this order have been satisfied in full;
- f) The defendant shall provide the Probation Office access to any requested financial information;
- g) The defendant shall not travel out-of-district throughout the term of supervision without written consent of the Probation Office. If travel is approved, the defendant may be required to participate in the location monitoring program, and follow location monitoring procedures specified by the Probation Office. The defendant may be required to pay the daily cost of such monitoring;
- h) The defendant shall participate in the Location Monitoring Program (NOTE: MAXIMUM PERIOD THAT CAN BE IMPOSED FOR HOME CONFINEMENT IS 180 DAYS) for a period to be determined. During this time, the defendant shall remain at his place of residence at all times and shall not leave except when such leave is approved in advance by the U.S. Probation Office. The defendant shall be monitored by a form of location monitoring as determined by the Probation Office. The defendant shall comply with location monitoring procedures specified by the Probation Office and abide by all associated technology requirements. The Court orders/does not order that the defendant pay the costs associated with such monitoring.

Respectfully Submitted,

**JENNIFER M. CHILDRESS
CHIEF UNITED STATES PROBATION OFFICER**

s/Alan R. Watkins

By: Alan R. Watkins
Senior U.S. Probation Officer

Approved:

s/Elizabeth P. Meadows

REVISED ADDENDUM TO THE PRESENTENCE REPORT

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
UNITED STATES V. ZACHERY JOSEPH COOLEY, DKT. 1128 1:17CR00021-001**

The probation officer certifies that the presentence report has been disclosed to all parties. The Addendum fairly states any objection the parties have made.

OBJECTIONS

By the Government

On September 20, 2017, Assistant U.S. Attorney Gloria A. Bedwell, Esq., filed a "Position of Parties with Respect to Sentencing Factors," advising of the following objection to the presentence report.

1. The government objects to paragraphs 17 and 24 of the presentence report in which the defendant did not receive a two-level upward adjustment for obstruction of justice. The government contends that the adjustment is warranted because a witness that testified at Cooley's trial told the government that Cooley had another inmate deliver a message indicating that he would retaliate against the witness if he gave testimony against him during the trial.

Probation Officer's Response: The probation officer was not present at trial, and information received from the government concerning the obstructive conduct is insufficient to apply an adjustment pursuant to USSG § 3C1.1. The Government's witness indicated that a third party made a threat on behalf of Cooley, but there is no information as to whether the third party has acknowledged that Cooley made an indirect threat against the witness, or that Cooley commanded, induced, procured, or willfully caused the third party to threaten the witness. The government, as well as defense counsel, should be prepared to provide further information concerning the obstructive conduct at sentencing.

By the Defendant

On October 11, 2017, the defendant, through counsel, filed his "Position of Parties with Respect to Sentencing Factors," advising of the following objection to the presentence report.

1. The defendant objects to paragraphs 15 and 20 of the presentence report in which he was held accountable for three kilograms of methamphetamine ice.

Probation Officer's Response: The probation officer was not present at trial, and has relied upon information provided by the Government (concerning witness testimony as to drug amounts) to determine the base offense level. The government has indicated that it intends to prove at sentencing, that the defendant is accountable for three kilograms of methamphetamine ice. Defense counsel should be prepared to argue at sentencing, why a lower drug weight should be attributed to the defendant.

COOLEY, Zachery Joseph

Page 2

Respectfully Submitted,

JENNIFER M. CHILDRESS
CHIEF U.S. PROBATION OFFICER

s/Alan R. Watkins

By:

Alan R. Watkins
Senior U.S. Probation Officer

PSR and Addendum Approved:

s/Marc V. Seibert

Marc V. Seibert
Supervisory U.S. Probation Officer

Addendum Prepared: October 13, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

*

V.

*

CASE NO. 17-00021-005

*

ZACHERY JOSEPH COOLEY

*

DEFENDANT'S POSITION WITH RESPECT TO SENTENCING FACTORS

Comes now the Defendant, Zachery Joseph Cooley, by and through undersigned counsel, and as his position with respect to sentencing factors submit as follows:

1. The Defendant objects to the finding that he is accountable for three kilograms of methamphetamine ice as reported in paragraph 15 of the Presentence Investigation Report (PSI).
2. The Defendant objects to the finding that the proper Base Offense Level in this case is a level 36 as reported in paragraph 20 of the PSI.
3. The PSI correctly reports on page 2 and paragraph 46 that the Defendant was arrested on related state charges on June 16, 2016. On June 20, 2016, he was released on bond in the state cases and on October 19, 2016 his Bond was revoked. On February 6, 2017, Cooley was produced via writ from state custody. Because the state cases is part of the relevant conduct in the present case, the Defendant is seeking an adjustment for the time he spent in detention from October 19, 2016 through October 25, 2017 pursuant to USSG §5G1.3, which would not automatically be awarded toward the federal sentence by the Bureau of Prisons under 18 U.S.C § 3585(b). The Defendant also respectfully requests that this Honorable Court note on the Judgment and Commitment order that any such adjustment was applied under USSG 5G1.3(b) to assist the Bureau in resolving issues concerning the court's intent, which often arise years after the sentence was imposed.

Respectfully Submitted,

/s/ Neil L. Hanley
NEIL L. HANLEY
Attorney at Law
158 Congress Street
Mobile, AL 36603
Tel: (251) 432-5579
Fax: (251) 432-5507
Email: NHlawoffice@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this the 11th day of October, 2017 upon all counsel of record by electronically filing the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

\s\ Neil L. Hanley

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA

v.

ZACHERY JOSEPH COOLEY

§ JUDGMENT IN A CRIMINAL CASE
§
§
§ Case Number: **1:17-CR-00021-005**
§ USM Number: **16743-003**
§ **Neil L. Hanley, Esquire**
§ 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 counts 1,2,3,5,6,7,8 & 9 of the Superseding Indictment on 6/29/2017, after a plea of not guilty

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section / Nature of Offense	Offense Ended	Count
21 USC § 846 - Conspiracy to possess with intent to distribute methamphetamine	04/25/2017	1
21 USC § 841(a)(1) - Possession with intent to distribute methamphetamine	02/19/2016	2
21 USC § 841(a)(1) - Possession with intent to distribute methamphetamine	09/09/2016	3
18 USC § 922(g)(9) - Prohibited person (convicted of domestic violence misdemeanor) in possession of a firearm	09/09/2016	5 & 9
21 USC § 841(a)(1) - Possession with intent to distribute methamphetamine	09/28/2016	6 & 7
18 USC § 924(c)(1)(A) - Using, carrying, possessing a firearm in relation to and in furtherance of a drug trafficking felony	09/28/2016	8

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 was found not guilty on count 4 of the Superseding Indictment on 6/29/2017.
 Count 10 was dismissed on the motion of the United State at trial pursuant to Order issued on 6/29/2017.

IT IS FURTHER ORDERED that the defendant shall 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.

October 25, 2017

Date of Imposition of Judgment

/s/ Callie V. S. Granade
Signature of Judge

CALLIE V. S. GRANADE
SENIOR UNITED STATES DISTRICT JUDGE
Name and Title of Judge

October 27, 2017

Date

DEFENDANT: ZACHERY JOSEPH COOLEY
CASE NUMBER: 1:17-CR-00021-005

IMPRISONMENT

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

TWO HUNDRED EIGHTY-THREE (283) MONTHS. Said term consists of 223 months as to counts 1,2,3,6, & 7, which is an adjustment pursuant to 5G1.3 of 12 months for time served on the related states cases in Mobile Count Circuit Court Cases CC15-2444 through CC-15-2446; 120 months as to each of Counts 5 & 9; and 60 months as to Count 8. The terms imposed as to Count 1,2,3,5,6 & 9 are to be served concurrently with each other. The term imposed as to Count 8 shall be served consecutively to the terms imposed as to Counts 1,2,3,5,6,7 & 9. The 283 month term shall run concurrently with any sentence imposed in any related case pending in the Circuit Court of George County, Mississippi.

- The court makes the following recommendations to the Bureau of Prisons: that the defendant be imprisoned at an institution where a residential, comprehensive, substance abuse treatment program is available.
- 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: ZACHERY JOSEPH COOLEY
CASE NUMBER: 1:17-CR-00021-005

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Three (3) years on each of Counts 5 & 9, and Five (5) years on each of Counts 1,2,3,6,7 & 8. All such terms are to run concurrently with each other.**

Special Conditions:

- 1) The defendant shall submit to periodic urine surveillance and/or breath, saliva, and skin tests for the detection of drug and/or alcohol abuse as directed by the Probation Office. Defendant may incur costs associated with such detection efforts based upon ability to pay as determined by the Probation Office, and availability of any third-party payments.
- 2) The defendant shall participate in an assessment or program, inpatient or outpatient, for the treatment of drug and/or alcohol addiction, dependency, or abuse as instructed and as deemed necessary by the Probation Office. Defendant may incur costs associated with such drug/alcohol detection and treatment based upon ability to pay as determined by the Probation Office, and availability of any third-party payments.
- 3) The Defendant shall submit his person, house, residence, vehicle(s), papers, computer(s) (as defined by 18 U.S.C., § 1030(e)(1)), or other electronic communication or data storage devices or media, business or place of employment and any other property under the defendant's control, to a search conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon a reasonable suspicion of contraband, or evidence of violation of condition of release. Failure to submit to a search in accordance with this condition may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

For offenses committed on or after September 13, 1994: 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 directed by the probation officer.

- 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 register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

If this judgment imposes a fine or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment. 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 illegally possess a controlled substance.

The defendant shall comply with the standard conditions that have been adopted by this court.

The defendant shall also comply with the additional conditions on the attached page.

See Page 4 for the
"STANDARD CONDITIONS OF SUPERVISION"

DEFENDANT: ZACHERY JOSEPH COOLEY
CASE NUMBER: 1:17-CR-00021-005

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;
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.
14. the defendant shall cooperate, as directed by the probation officer, in the collection of DNA, if applicable, under the provisions of 18 U.S.C. §§ 3563(a)(9) and 3583(d) for those defendants convicted of qualifying offenses.

DEFENDANT: ZACHERY JOSEPH COOLEY
 CASE NUMBER: 1:17-CR-00021-005

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Page 6.

TOTALS	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
	\$800.00		

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below. (or see attached) However, pursuant to 18 U.S.C. § 3644(i), all non-federal victims must be paid in full prior to the United States receiving payment.

- If applicable, restitution amount ordered pursuant to plea agreement \$ 800.00
- The defendant must pay interest on any fine or restitution 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 Page 6 may be subject to penalties for 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: ZACHERY JOSEPH COOLEY
 CASE NUMBER: 1:17-CR-00021-005

SCHEDULE OF PAYMENTS

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

- A Lump sum payments of \$800.00 due immediately, balance due not later than _____, or
 in accordance with 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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$800.00 for Counts 1, 2, 3, 5, 6, 7, 8 and 9, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

Joint and Several

- Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- 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.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF ALABAMA

4 UNITED STATES OF AMERICA

5 v.

6 ZACHERY J. COOLEY, aka RED,
7 Defendant.

CASE NO. CR17-00021

COURTROOM 2B

MOBILE, ALABAMA

WEDNESDAY, OCTOBER 25, 2017

8 * * * * *

9 SENTENCING

10 BEFORE THE HONORABLE CALLIE V. S. GRANADE,
11 SENIOR UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 FOR THE GOVERNMENT:

14 GLORIA A. BEDWELL
15 United States Attorney
16 Assistant United States Attorney
17 United States Attorney's Office
18 63 S. Royal Street, Suite 600
19 Mobile, AL 36602
20 (251) 441-5845

21 FOR THE DEFENDANT:

22 NEIL L. HANLEY
23 Attorney At Law
24 158 Congress Street
25 Mobile, AL 36602
 (251) 432-5579

21 THE CLERK: MARY ANN BOYLES

22 PROBATION: ALAN WATKINS

23 COURT REPORTER: ROY ISBELL, CCR, RDR, CRR

24 Proceedings recorded by OFFICIAL COURT REPORTER
25 Qualified pursuant to 28 U.S.C. 753(a) & Guide to
 Judiciary Policies and Procedures Vol. VI, Chapter III, D.2.
 Transcript produced by computerized stenotype.

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1 (9:53 a.m., in open court, defendant present.)

2 THE CLERK: Case set for sentencing in United States
3 of America versus Zachery Joseph Cooley, criminal case number
4 17-21. Is the government ready to proceed?

5 MS. BEDWELL: Ready, Your Honor.

6 THE CLERK: Is the defendant ready to proceed?

7 MR. HANLEY: (No response.)

8 THE CLERK: Mr. Hanley, are you ready to proceed?

9 MR. HANLEY: I'm ready.

10 THE COURT: All right.

11 THE CLERK: Mr. Cooley and Mr. Hanley, please come
12 forward.

13 THE COURT: All right. Mr. Hanley, have you and
14 Mr. Cooley been over the presentence report?

15 MR. HANLEY: Yes, ma'am.

16 THE COURT: All right. And are there objections
17 outstanding?

18 MR. HANLEY: Yes, ma'am.

19 THE COURT: All right. Is that the drug amount? Is
20 that the objection?

21 MR. HANLEY: Yes, ma'am.

22 THE COURT: All right.

23 MR. HANLEY: And I also have a request that he be
24 given credit for some time he had been serving in Mississippi
25 in related cases.

1 THE COURT: All right. I'll address that in a minute.
2 But let me ask the government, first, do you intend to put on
3 any evidence concerning your drug amounts?

4 MS. BEDWELL: No additional evidence concerning the
5 drug amount, Your Honor. We submit to the Court that the
6 evidence from the trial provides a sufficient basis from which
7 the Court can find that the 3.1 kilograms was supported by
8 evidence. And just by way of summary, I'll note that the
9 formulation requires the inclusion of relevant conduct, which
10 often exceeds the amount that the defendant is personally
11 accountable for. But the testimony in this case, even from
12 just two witnesses -- Jason Johnson indicated that a total of
13 60 ounces was distributed through his participation in the
14 conspiracy and he was directly involved with this defendant in
15 exchanging drugs back and forth over a period of time, and then
16 Cheyenne Steiner testified that the defendant was responsible
17 for distributing two ounces every day during the time that she
18 associated with him from July of 2016 through October, I think,
19 of that same year -- and just those two witnesses alone provide
20 a total well in excess of the 3.1 kilograms. So we submit to
21 the Court that that is a conservative estimate when relevant
22 conduct is included to establish a drug amount for which this
23 defendant can reasonably be held responsible.

24 THE COURT: Any response to that, Mr. Hanley?

25 MR. HANLEY: Yes, ma'am. Well, Judge, first I'd like

1 to go to the indictment. In count one the jury did find a
2 conspiracy of over 50 grams.

3 In count two, although the charge was 168 grams, the
4 jury returned a verdict of between five and 50 grams.

5 On count three the charge was 14 grams and the jury
6 returned a verdict of between five and 50 grams.

7 Count six, it was 2.7 grams.

8 And in count seven the charge was 19.2 grams, and the
9 jury returned a verdict of between five and 50 grams.

10 And that is the total amount of drugs in the
11 possession charges or possession with intent and the
12 conspiracy.

13 Now, the defendant did give a statement where he
14 admitted to dealing drugs. But his statement said that he had
15 been in it for a fairly short time, he did just grams for a
16 while and then some half ounces. But you can't tell from the
17 statement what the total amount is in there. So, Judge, all of
18 this weight, this three and a half -- most of this weight, a
19 tremendous majority of this weight, comes from the testimony,
20 uncorroborated pretty much, of these witnesses.

21 Now, in this case -- and I guess hundreds of cases
22 before this -- you have always charged the jury that some
23 witnesses' testimony should be received and viewed or
24 considered with more caution than others. One of those classes
25 of witnesses are people that have entered into plea bargains,

1 although there's nothing wrong with it; that a witness who
2 hopes to gain more favorable treatment may have a reason to
3 make a false statement. Another classification of these people
4 that you have to consider more carefully are people that were
5 using addictive drugs at the time. And then lastly, if a
6 person was convicted of a felony, then you can also consider
7 that. And I would respectfully submit to you that most of
8 these people were all three.

9 Marvin Buckley had five felony convictions. He was an
10 addict and was awaiting sentencing on carjacking.

11 Justin Guy had 11 prior felonies and awaiting
12 sentencing on carjacking.

13 Jason Johnson, who Ms. Bedwell mentioned, had four
14 felony convictions, including robbery, and was awaiting
15 sentencing in a federal drug case; an addict, but also had
16 reason to make a false statement to strike a good bargain.

17 Cheyenne Steiner, the other person that Ms. Bedwell
18 referred to, was Zack's old girlfriend. And when she gave a
19 statement, she testified in Court that she believed Zack had
20 set her up to get busted. Now, she entered into a plea
21 bargain. She admitted to selling a half ounce a day. But, of
22 course, she said she got it from Zack, Zack was her source.

23 Well, Zack went to jail October 19th, 2016, and he's
24 been in ever since. On January 18, 2017, a search warrant was
25 executed at, I think, a hotel room where Ms. Steiner was at and

1 drugs and a gun were found. That was in January 2017, when
2 Zack had been incarcerated for a few months. She gave a
3 statement and supposedly cooperated.

4 Three months later, on April 20th, there was a search
5 of her hotel room again where 38 grams of ice and pills were
6 found.

7 She testified at trial that she continued to sell
8 large amounts of ice all the way from October through April, a
9 tremendous amount. So she didn't need Zack. Zack was in
10 jail. She didn't need Zack and Zack wasn't her source.

11 I just think that when we are -- when the weight --
12 when it's such a large amount of weight -- and, you know, these
13 small-gram sales that he's making sort of is consistent with
14 his lifestyle. He didn't have any money, he didn't have any
15 property. He was living in hotels, cheap hotels, out in
16 Tillman's Corner. When he was arrested, several times he never
17 had any money on him. They never found any money. There are
18 none of those objects that you find from a big dope dealer like
19 fancy cars and things like that.

20 It just seems to me, Judge, to be fair, that in a case
21 where almost all of the weight comes from the testimony of
22 people that are convicted felons, thieves, drug dealers, almost
23 all of it, that we should look -- we should accept the same
24 principles as the principles that you charged the jury with and
25 it's not fair to put this much weight on him. I'd respectfully

1 submit to you that the level should be more like a 30 or 32
2 than a 36.

3 THE COURT: All right. Any response?

4 MS. BEDWELL: Well, Your Honor, initially the
5 government notes that the burden of proof is different at this
6 point with regard to establishing the guideline range. The
7 burden is different for sentencing than for conviction beyond a
8 reasonable doubt. The jury made those findings to establish
9 the statutory framework for the pronouncement of the sentence.
10 And clearly -- and obviously it's the Court's responsibility to
11 come up with a guideline range based on the evidence from the
12 trial to establish, by the necessary burden at this point for
13 this hearing, what is a reasonable drug amount that the
14 defendant can be held accountable for. And to point out the
15 obvious, once again, the Court seldom has the ability to do
16 that in any other way, to establish relevant conduct, than
17 relying on people who were involved in this activity.

18 The government submits that there was sufficient
19 corroboration of the testimony of the witnesses not only from
20 the testimony of each other, but also from other evidence in
21 the trial, that the Court can believe that testimony to the
22 extent that the government has suggested that three kilograms
23 is a reasonable amount, based on the evidence from the trial,
24 to hold this defendant accountable for.

25 As I mentioned a moment ago, the drug amount, from

1 strictly just looking at the trial evidence, establishes well
2 in excess of six kilograms of meth ice. We have asked the
3 Court to consider half of that, at 3.1, and we submit that that
4 is a reasonable calculation based on a review of the testimony
5 of the witnesses which sufficiently establishes the relevant
6 conduct at this time.

7 THE COURT: All right. Well, based upon the evidence
8 presented at trial, I do find that at least by a preponderance
9 of the evidence the 3-kilogram amount is supported and I
10 therefore find that that is an appropriate amount to arrive at
11 a base offense level one.

12 Now, the government did file an objection to the
13 presentence report, asking for an obstruction of justice -- my
14 mind went blank for a second -- obstruction of justice
15 enhancement.

16 MS. BEDWELL: There was brief testimony in the trial
17 about that. We didn't go into it. We have that witness and
18 will be prepared to call him to provide additional details
19 about that.

20 THE COURT: All right. Why don't y'all have a seat
21 while she puts that on?

22 MS. BEDWELL: It will just take a minute for the
23 marshals to bring him in.

24 MR. HANLEY: Can we approach? Can we approach, Your
25 Honor?

1 THE COURT: Yeah. Do you need this on the record?

2 MR. HANLEY: No.

3 (A discussion was held off the record at side bar.)

4 (In open court, defendant present.)

5 THE CLERK: Sir, let me get you to raise your right
6 hand.

7 MARVIN PRENTIS BUCKLEY, III

8 was sworn and testified as follows:

9 THE WITNESS: I do.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MS. BEDWELL:

13 Q Tell us your name, please, sir.

14 A Marvin Prentis Buckley, III.

15 Q Mr. Buckley, you testified as a witness against the
16 defendant during his trial; is that correct?

17 A Yes, ma'am.

18 THE COURT: Can you lean forward to the microphone a
19 little bit so that we can pick up your voice better?

20 THE WITNESS: (Complying.)

21 BY MS. BEDWELL:

22 Q And just prior to your appearance as a government witness
23 in that trial, did you receive information that was passed to
24 you from another person sent by the defendant, Mr. Cooley?

25 A Yes.

1 MR. HANLEY: I object to hearsay, Your Honor.

2 THE COURT: Well, there's been no testimony yet. So
3 you object to what you think his answer is going to be? Or the
4 question?

5 MR. HANLEY: I object to what his answer's going to
6 be. I object that she is -- she is trying to get evidence that
7 somebody told him something from my client. I certainly can't
8 cross-examine the person who supposedly came down there and
9 said that to him. If they had that person, then I think it may
10 be proper, that supposedly talked to Mr. Cooley. But I can't
11 cross-examine the person who supposedly told him something.

12 THE COURT: Well, I understand. But I overrule your
13 objection insofar as you object to the question as being
14 hearsay. Go ahead.

15 MS. BEDWELL: And, Your Honor, we would point out that
16 rule 1101 permits hearsay. The nature of the testimony, the
17 Court will take the weight of the testimony based on the nature
18 of the testimony, if the Court finds it reliable. So even
19 under 1101 the government submits the testimony is admissible,
20 and then the Court assigns it what weight is appropriate.

21 THE COURT: All right. Go ahead.

22 BY MS. BEDWELL:

23 Q And you received a message that was sent by Mr. Cooley; is
24 that right?

25 A Yes, yes, ma'am.

1 MR. HANLEY: I object to that, Judge. She's
2 assuming -- she is asking this question with the assumption
3 that the message was sent from Mr. Cooley.

4 THE COURT: You can cross-examine him on that.
5 Apparently that's his understanding.

6 BY MS. BEDWELL:

7 Q And what message was delivered?

8 A The guy at the jail said that Zack Cooley said when he sees
9 -- that he's going to see me around and, when he does, he's got
10 me.

11 Q And how did you interpret the statement, that he had you?

12 A That he was threatening my life.

13 Q Have you known Mr. Cooley to exhibit violent tendencies
14 during your association with him?

15 A Yes.

16 Q And what have you seen that would lead you to believe that
17 he can be violent at times?

18 A I've seen him trying to fight people.

19 Q Have you ever heard him threaten others?

20 A I've heard him threaten, but I've never seen him actually
21 do it.

22 Q And did you know the inmate who passed the message from
23 Mr. Cooley?

24 A No, ma'am.

25 Q That person didn't have any grudges against you; is that

1 right?

2 A No, ma'am.

3 Q It was somebody you didn't even know?

4 A No, I didn't know.

5 Q Did the inmate tell you how it was that he had seen Cooley,
6 to get this message delivered to you?

7 A It was in the holding cell here together.

8 Q Here in the federal courthouse?

9 A Yes, ma'am.

10 MS. BEDWELL: That's all.

11 CROSS EXAMINATION

12 BY MR. HANLEY:

13 Q Mr. Buckley, in July 2015 you were convicted of receiving
14 stolen property; is that correct?

15 A Yes.

16 Q And then in that same month you were convicted of a forged
17 instrument in the first degree; correct?

18 A Yes.

19 Q And then also in that month possession of a controlled
20 substance; correct?

21 A Yes.

22 Q And you were revoked on all of those; correct?

23 A Yes, sir.

24 Q And then in April 2016 were you convicted of robbery?

25 A Yes, sir, robbery second.

1 Q And then later on in 2016 you -- have you also been
2 convicted of carjacking?

3 A Yes.

4 Q When were you convicted of carjacking?

5 A This year. I don't remember the exact month, but it was
6 this year.

7 Q And when you testified at trial, this carjacking case was
8 pending; correct? Your sentence was pending? You hadn't been
9 sentenced yet; correct?

10 A Yes.

11 Q And you had entered into an agreement with the government
12 to cooperate; correct?

13 A Yes.

14 Q Now, some guy comes up to you and says -- delivers a threat
15 to you; correct?

16 A Yes.

17 Q You don't even ask him his name?

18 A His name's Mike something. I don't remember his last name.
19 It's Mike. I ain't -- I don't know. He was just in
20 Monroeville with us.

21 Q You didn't ask him his name? You didn't ask him his last
22 name?

23 A No.

24 Q And you have no idea whether that guy was telling the truth
25 or not, do you?

1 A No, sir.

2 Q When was this?

3 A It was before -- before I took the stand.

4 Q It was during the trial?

5 A It was actually right before.

6 MR. HANLEY: That's all.

7 THE COURT: Any redirect?

8 MS. BEDWELL: That's all.

9 THE COURT: All right. You may step down. Thank you.

10 Anything else?

11 MS. BEDWELL: That's all we have on that objection,
12 Your Honor.

13 THE COURT: All right. Do you have other objections?

14 MS. BEDWELL: No, ma'am.

15 THE COURT: Okay. Y'all step back up here, if you
16 will.

17 I have no reason to doubt Mr. Buckley's testimony
18 concerning what happened. But the problem is the dotted line
19 is really not connected to the defendant simply because I think
20 the government had the opportunity or the capability of finding
21 out who Mike was and examining the situation further if it had
22 felt the need to actually prove a threat. I mean, we don't
23 know -- we don't know what Mike's motivation was for making the
24 threat, whether he wanted to get back at Mr. Cooley for
25 something or whether it was a threat directly from Mr. Cooley

1 to Mr. Buckley. But because the dot was not connected as to
2 how the threat came about, I don't feel like I can add the
3 obstruction-of-justice enhancement based upon what was
4 presented.

5 I therefore find the total offense level is 36 with a
6 criminal history category of III. Are there further
7 objections?

8 MR. HANLEY: No further objections, Your Honor.

9 MS. BEDWELL: No, ma'am.

10 THE COURT: All right.

11 MR. HANLEY: I've got that one request that we can do
12 at your --

13 THE COURT: All right. Let's talk about that. The
14 Mississippi cases are still pending; is that correct?

15 MR. HANLEY: They are still pending. But I am -- I
16 can't say I'm certain. But I feel like after this trial and
17 after the testimony that the drugs are coming from Mississippi
18 and the substantial sentence that I'm sure that Mr. Cooley's
19 going to get, that they will probably drop them.

20 THE COURT: All right. Well, and so how much custody
21 are you talking about, from October of 16 --

22 MR. HANLEY: October 19th, 2016, I guess through the
23 sentencing today.

24 THE COURT: All right. That's about a year's worth.

25 MR. HANLEY: Yes, ma'am.

1 THE COURT: Okay. And all right. Does the government
2 have anything to say about that?

3 MS. BEDWELL: Just trying to see where the arrest
4 date --

5 THE COURT: The arrest date was in June, apparently,
6 but he made bond after about four days and then he was picked
7 up again in October, I think.

8 MR. HANLEY: October 19th.

9 THE COURT: Yes. It's on page two of the presentence
10 report.

11 MS. BEDWELL: Paragraph --

12 THE COURT: Page two, it's not a numbered paragraph.

13 MS. BEDWELL: I was looking at the criminal history.

14 THE COURT: No. Look at the very front of the
15 presentence report, page two, where it says release status. It
16 says he was arrested on State charges June 16th of last year,
17 made bond on June 20th, and on October 19th his bond was
18 revoked and he's been in custody ever since in State custody.

19 MS. BEDWELL: I see that. And it is listed in
20 paragraph 44 on the criminal history with regard to his
21 Lucedale -- I guess the Lucedale charges. So we see that now,
22 Judge. Thank you.

23 THE COURT: Okay. Well, I think you are due credit
24 for that, and the easiest way is to just take that time off the
25 sentence imposed under 5G1.3. I think that's right.

1 So okay. Anything else? Do you have any other -- do
2 you have anything you want to say as to what is an appropriate
3 sentence? The guideline range is 235 to 293, plus 60 months
4 consecutive.

5 MR. HANLEY: Yes, ma'am. I think the guideline range
6 at the bottom end of the guideline would be appropriate. I'm
7 not trying to minimize what he has done. Zack spent a long
8 time being a law-abiding person, a working person. He fell
9 into some hard times when he moved back to Mobile. It's no
10 excuse whatsoever. Prior to this he had no felony
11 convictions. And what he did or what he was accused of doing
12 is wrong, but he did spend a long time being a law-abiding and
13 hard-working person.

14 THE COURT: All right. Mr. Cooley, do you have
15 anything that you would like to say?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. Does the government have any
18 further comments?

19 MS. BEDWELL: Yes, ma'am. The Court considers the
20 statutory factors when determining an appropriate
21 sentence. And clearly the nature of this offense is one that
22 is very serious, not only in terms of the amounts of drugs that
23 were trafficked, but in terms of the impact on the community,
24 not just the defendant himself. The defendant was also
25 involved in the use of the controlled substance. So he

1 personally knows how devastating this drug is to those who use
2 it and he made it his business to distribute this drug in
3 enormous quantities in our community. And because of that, the
4 government submits that that factor weighs heavily in favor of
5 a serious and significant period of imprisonment.

6 While the defendant claims previous employment, the
7 government submits that that mitigating factor does not
8 overcome the additional factors, which include the need to
9 punish those engaged in this type of activity and punishment,
10 deterrence, and incapacitation are part of the goals of
11 sentencing and it is necessary to punish this defendant to
12 create deterrence for others who are engaging in this type of
13 activity. The government likewise submits that it is necessary
14 to imprison him, as the likelihood of recidivism is very high,
15 based on the defendant's criminal history and the serial
16 arrests that occurred during the time that he was engaged in
17 this illegal activity.

18 The guideline range clearly has been established. The
19 Court had the benefit of a trial to hear the evidence of this
20 defendant's participation in this activity which occurred over
21 a period of time, and to hear the testimony of the others who
22 were engaged in this activity in concert with him. We have not
23 attempted to color that beyond the recollection of the
24 testimony we provided this morning in terms of establishing the
25 drug amount. But the Court is well aware of that testimony and

1 that information and the government submits that that should
2 likewise be taken into account at this time.

3 And finally, the defendant has shown no remorse for
4 this crime. He took the government to trial on these
5 offenses. He was armed at various times during the commission
6 of these offenses. And while the jury may not have found that
7 he was accountable for the 924(c) violation for which he was
8 acquitted, he was in possession of a firearm at the time that
9 he had that drug money, and we submit that he was headed --
10 clearly, the evidence in this case shows that he was
11 reinvesting his drug profits in additional quantities of drugs
12 to have access to them to distribute.

13 So all of those factors taken into account, the
14 government submits that a sentence at the high end of the
15 guideline range, along with the 60-month consecutive sentence,
16 is a reasonable sentence in light of all of the sentencing
17 factors.

18 THE COURT: Yes? Do you have any response,
19 Mr. Hanley?

20 MR. HANLEY: Just one thing about this remorse and
21 taking this case to trial. My offer was 45 years in this
22 case. That was the offer, plead to everything and it's 45
23 years. So I just wanted to respond, Your Honor.

24 MS. BEDWELL: With the opportunity to cooperate, as
25 numerous other participants in the illegal activity incurred,

1 since he brought it up. I'm not sure that that's relevant,
2 but --

3 THE COURT: Well, it doesn't figure into my
4 consideration on either side of that. So I have considered the
5 guidelines, I've considered the statutory purposes of
6 sentencing. As in the previous case, the guidelines are high
7 in this case and this case merits a high sentence. But I do
8 think a sentence at the low end of the guidelines is
9 appropriate; that is, with the 60 months tacked on for the gun
10 charge.

11 I'm now going to state the sentence I intend to
12 impose. After I've stated it, I will allow counsel to make
13 legal objection prior to the imposition of the sentence.

14 Pursuant to the Sentencing Reform Act of 1984, it is
15 the judgment of the Court that the defendant, Zachery Joseph
16 Cooley, is committed to the custody of the United States Bureau
17 of Prisons to be imprisoned for a total term of 283
18 months. This term consists of 223 months as to each of counts
19 one, two, three, six, and seven, 120 months as to each of
20 counts five and nine, said terms to be served concurrently; and
21 60 months as to count eight, to be served consecutive to the
22 sentences on counts one, two, three, five, six, seven, and
23 nine. This does not match up with the guidelines, because I'm
24 giving him credit under 5G1.3, or whatever the appropriate
25 section is, for the 12 months that he's done in local custody

1 on a related case. So that amount was subtracted from the 235
2 month low-end sentence.

3 So I do recommend that the defendant be imprisoned at
4 an institution where a residential comprehensive substance
5 abuse treatment program is available.

6 Upon release from imprisonment, the defendant shall be
7 placed on supervised release for a term of three years on each
8 of counts five and nine, five years on each of counts one, two,
9 three, six, seven, and eight, all such terms to run
10 concurrently.

11 Within 72 hours of release from custody of the Bureau
12 of Prisons, the defendant shall report in person to the
13 probation office in the district to which he is
14 released. While on supervised release, the defendant shall not
15 commit any federal, state, or local crimes, he shall be
16 prohibited from possessing a firearm or other dangerous device,
17 and shall not possess a controlled substance.

18 In addition, the defendant shall comply with the
19 standard conditions of supervised release as recommended by the
20 United States Sentencing Commission and that are on record with
21 this Court.

22 The Court orders that the defendant also comply with
23 the following special conditions of supervised release as
24 referenced in part F of the presentence report: First is urine
25 surveillance, second is drug and/or alcohol treatment, and

1 third is the model search condition.

2 The Court finds that the defendant does not have the
3 ability to pay a fine, and therefore a fine is not imposed.

4 As I said earlier, I find the guideline range
5 appropriate to the facts and circumstances of this case in that
6 it provides for a reasonable sentence, given the statutory
7 purposes of sentencing.

8 The sentence imposed addresses the seriousness of the
9 offense and the sentencing objectives of punishment,
10 deterrence, and incapacitation.

11 It is ordered that the defendant pay a special
12 assessment in the amount of \$100 on counts one, two, three,
13 five, six, seven, eight, and nine, for a total of \$800, which
14 shall be due immediately.

15 Now, having stated the sentence I intend to impose,
16 are there legal objections to it?

17 MR. HANLEY: Judge, did you mention the institution
18 with a drug program?

19 THE COURT: I did.

20 MR. HANLEY: It is? Okay. None that I -- none other
21 than what I've already raised.

22 THE COURT: All right. The government?

23 MS. BEDWELL: Your Honor, we'd ask the Court to
24 consider a Keene statement in this case with regard to the
25 calculation of the guidelines.

1 THE COURT: Well, I don't think -- the only objection
2 was to the drug amount.

3 MS. BEDWELL: Yes, ma'am.

4 THE COURT: But I do think that the sentence is
5 appropriate, given all of the evidence presented in the case,
6 regardless of what the guideline calculations turn out to be.
7 So anything further?

8 MS. BEDWELL: No, ma'am.

9 MR. HANLEY: No, ma'am.

10 THE COURT: Mr. Cooley, you have a right to appeal
11 both your conviction and your sentence. If you do decide to
12 appeal, you must do so within 14 days of entry of judgment in
13 this case, and Mr. Hanley could file that notice for you.

14 If I didn't say it, I do impose the sentence as
15 previously stated. That's what you have a right to appeal
16 from.

17 We're adjourned.

18 (This hearing concluded at approximately 10:25 a.m.)

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1 C E R T I F I C A T E

2 STATE OF ALABAMA)

3 COUNTY OF BALDWIN)

4

5 I do hereby certify that the foregoing proceedings
6 were taken down by me and transcribed using computer-aided
7 transcription and that the foregoing is a true and correct
8 transcript of said proceedings.

9 I further certify that I am neither of counsel nor of
10 kin to any of the parties, nor am I in anywise interested in
11 the result of said cause.

12 I further certify that I am duly licensed by the
13 Alabama Board of Court Reporting as a Certified Court Reporter
14 as evidenced by the ACCR number following my name found below.

15

16 s/ Roy Isbell 12/12/2017

17 ROY ISBELL, CCR, RDR, RMR, RPR, CRR
18 ACCR #22
19 COURT REPORTER, NOTARY PUBLIC
20 STATE OF ALABAMA AT LARGE

21 My Commission Expires: 10/25/2021

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-14952
Non-Argument Calendar

D.C. Docket No. 1:17-cr-00021-CG-B-5

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ZACHERY JOSEPH COOLEY,
a.k.a. Red,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Alabama

(September 5, 2018)

Before TJOFLAT, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Zachery Cooley appeals his convictions and 283-month total sentence for: 1 count of conspiracy to possess methamphetamine with the intent to distribute, in violation of 21 U.S.C. § 846; 4 counts of possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1); 1 count of possessing a firearm during and in relation to a drug trafficking felony, in violation 18 U.S.C. § 924(c)(1)(A); and 2 counts of being a prohibited person in possession of a firearm, in violation of 18 U.S.C. § 922(g)(9). On appeal, Cooley argues that:

(1) the evidence the government presented at trial was not sufficient to prove he used or carried a firearm during and in relation to a drug trafficking offense; and

(2) the district court miscalculated his guideline range because it failed to determine whether all three kilograms attributable to him met the purity threshold standard for “ice” methamphetamine.

I.

We review challenges to the sufficiency of the evidence *de novo*, viewing the evidence in a light most favorable to the verdict and drawing all reasonable inferences and credibility choices in the verdict’s favor. *United States v. Godwin*, 765 F.3d 1306, 1319 (11th Cir. 2014). The verdict must be affirmed unless there is no reasonable construction of the evidence from which the jury could have found the defendant guilty beyond a reasonable doubt. *Id.* at 1319-20. A jury is free to choose among reasonable constructions of the evidence. *Id.* at 1320. It is therefore

not necessary that the evidence exclude every reasonable theory of innocence or be wholly inconsistent with every conclusion except that of guilt. *Id.* Moreover, credibility determinations are left to the jury. *United States v. Flores*, 572 F.3d 1254, 1263 (11th Cir. 2009). We will not disregard them unless the testimony is unbelievable on its face or incredible as a matter of law, meaning it contains facts that the witness could not have possibly observed or events that could not have occurred under the laws of nature. *Id.*

We apply the same standard in evaluating the sufficiency of the evidence regardless of if the evidence presented was direct or circumstantial. *United States v. Focia*, 869 F.3d 1269, 1279 (11th Cir. 2017). However, if the government relied on circumstantial evidence, “reasonable inferences, not mere speculation, must support the conviction.” *United States v. Martin*, 803 F.3d 581, 587 (11th Cir. 2015) (quotation marks omitted).

It is unlawful for an individual to use or carry a firearm during and in relation to a drug trafficking crime. 18 U.S.C. § 924(c)(1)(A). In order to sustain a conviction in violation of § 924(c)(1), the government must present sufficient evidence that the defendant (1) used or carried a firearm; (2) during; and (3) in relation to any drug trafficking crime. See *United States v. Timmons*, 283 F.3d 1246, 1250 (11th Cir. 2002). A defendant satisfies the “carry” prong if a firearm is on his person or within his vehicle. *United States v. Frye*, 402 F.3d 1123, 1128

(11th Cir. 2005). The Supreme Court has held that the “use” prong is not satisfied when a defendant merely receives a firearm in exchange for narcotics. *See Watson v. United States*, 552 U.S. 74, 80-81 (2007).

In order to prove that the firearm was used or carried “during and in relation to” the drug trafficking crime, the government must demonstrate that the firearm had “some purpose or effect with respect to the drug trafficking crime; its presence or involvement cannot be the result of accident or coincidence.” *Timmons*, 283 F.3d 1246 at 1251 (quotation marks omitted). The firearm is required to facilitate or have the potential of facilitating the offense. *Id.* We have previously held that the “in relation to” prong was satisfied where the gun is loaded, in close proximity to the drugs, and within easy reach inside a car. *See United States v. Young*, 131 F.3d 1437, 1439 (11th Cir. 1997). We reasoned that, given the large quantity of drugs involved in the particular transaction, it “stretche[d] the imagination to assume the guns were there by accident or coincidence.” *Id.*

We have frequently “recognized that guns are a tool of the drug trade. There is a frequent and overpowering connection between the use of firearms and narcotics traffic.” *United States v. Folk*, 754 F.3d 905, 910-11 (11th Cir. 2014) (quotation marks omitted).

A reasonable jury could have inferred that Cooley carried a firearm during and in relation to a drug trafficking crime from the government’s evidence that:

(1) Cooley had a loaded firearm in his vehicle during a drug transaction, which he threw from his car while the police attempted to perform a traffic stop; (2) the gun was found next to drugs and drug paraphernalia; and (3) firearms were often used in methamphetamine trafficking, which Cooley was involved with. Therefore, there was sufficient evidence for the jury to find Cooley guilty of possessing a firearm during and in relation to a drug trafficking felony.

II.

We typically review the determination of the quantity of drugs attributable to a defendant at sentencing for clear error. *United States v. Almedina*, 686 F.3d 1312, 1315 (11th Cir. 2012). At sentencing, the government has the burden of establishing, by a preponderance of the evidence, the drug quantity attributable to the defendant. *United States v. Rodriguez*, 398 F.3d 1291, 1296 (11th Cir. 2005).

A defendant's base offense level will be calculated at 36 if the defendant can be attributed with at least 1.5 kilograms, but less than 4.5 kilograms, of methamphetamine (actual) or methamphetamine "ice." U.S.S.G. § 2D1.1(c)(2). "Ice" is defined as "a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity." *Id.* § 2D1.1(c)(C). In contrast, a defendant to whom is attributed more than 1.5 kilograms, but less than 5 kilograms, of regular methamphetamine is assigned a base offense level of 32. *Id.* § 2D1.1(c)(4).

Although the Guidelines are no longer mandatory, the district court is still required to consult, consider, and correctly apply them. *See United States v. Martinez*, 584 F.3d 1022, 1025 (11th Cir. 2009). “[O]nce the court of appeals has decided that the district court misapplied the Guidelines, a remand is appropriate unless the reviewing court concludes, on the record as a whole, that the error was harmless, *i.e.*, that the error did not affect the district court’s selection of the sentence imposed.” *Williams v. United States*, 503 U.S. 193, 203 (1992). Thus, remand is not appropriate when we determine that the district court’s error did not impact the district court’s ultimate sentence and the ultimate sentence is substantively reasonable. *See United States v. Keene*, 470 F.3d 1347, 1348-50 (11th Cir. 2006). If the district court states that its sentence would not have changed with a different guidelines calculation, we assume there was an error, calculate the guideline range without the error, and analyze whether the sentence would be substantively reasonable under that guideline range. *Id.* at 1349-50.

On substantive reasonableness review, we may vacate the sentence only if we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors to arrive at an unreasonable sentence based on the facts of the case. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (*en banc*). The district court must issue a sentence “sufficient, but not greater than necessary” to comply with the purposes

of § 3553(a)(2), which include the need for a sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, deter criminal conduct, and protect the public from future criminal conduct. 18 U.S.C. § 3553(a). The weight given to any § 3553(a) factor is a matter committed to the discretion of the district court. *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008). A sentence imposed well below the statutory maximum penalty is an indicator of a reasonable sentence. *United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008). Further, it is “well-settled that a district court is not authorized to sentence a defendant below the statutory mandatory minimum unless the government filed a substantial assistance motion . . . or the defendant falls within the safety-valve.” *United States v. Castaing-Sosa*, 530 F.3d 1358, 1360 (11th Cir. 2008).

The district court stated that its sentence was appropriate regardless of any guidelines error. Moreover, the ultimate sentence was substantively reasonable even assuming a guidelines error. Thus, we need not address Cooley’s challenge to the calculation of his guidelines range, specifically the use of methamphetamine “ice” in the calculation.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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September 05, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-14952-HH
Case Style: USA v. Zachery Cooley
District Court Docket No: 1:17-cr-00021-CG-B-5

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Christopher Bergquist, HH at 404-335-6169.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion