No. _____

In The
Supreme Court of the United States

MICHAEL KENNETH YOUNG,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the Fourth Circuit Court of Appeals err in upholding the denial of Petitioner Michael Young's motion to sever his unrelated charges arising out of four distinct arrests?
2. Did the Fourth Circuit Court of Appeals err in affirming the District Court's denial of Petitioner Michael Young's motion to suppress a firearm and 3.5 grams of crack cocaine seized in an April 2014 traffic stop that was made by an officer who did not witness the alleged traffic violation and where officers extended the stop in order to search the vehicle in which Petitioner Michael Young was a passenger?
3. Did the Fourth Circuit Court of Appeals err in affirming the District Court's denial of Michael Young's motion to suppress a firearm seized in a November 2014 traffic stop that was extended well beyond the time period necessary for an alleged speeding violation of a vehicle in which Michael Young was a passenger?

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The judgment of the Court of Appeals is included in the Appendix at App-1. The opinion of the Court of Appeals is unpublished and included in the Appendix at App-4. The judgment of the district court is included in the Appendix at App-19. The Order denying Petition for Rehearing from the Court of Appeals is included in the Appendix at App-28.

JURISDICTION

The Court of Appeals entered its Order denying the Petition for Rehearing on November 20, 2018. This Court's jurisdiction is invoked under 28 U.S.C. section 1254 (1).

PROCEDURAL HISTORY

The undersigned counsel for Petitioner Michael Kenneth Young is not admitted to practice before the United States Supreme Court. However, he was appointed to represent the Petitioner in this case at trial pursuant to the Criminal Justice Act of 1964 (CJA) and was also appointed to represent Mr. Young on appeal to the Fourth Circuit Court of Appeals. By an unpublished opinion filed October 25, 2018, the Fourth Circuit Court of Appeals affirmed in part, reversed in part, vacated in part and remanded the case to the District Court for resentencing in Case No. 17-4124. The Fourth Circuit affirmed the District Court's decision in regard to the conviction of Mr. Young on Counts Four and Five; Mr. Young was sentenced on those Counts concurrently to Two Hundred Thirty Five (235) months imprisonment. Mr. Young sought rehearing and rehearing *en banc* by the Fourth Circuit. That Petition was denied by Order filed November 20, 2018. Mr. Young now seeks review from this Court of the decision affirming his convictions on Counts Four and Five and the 235 month sentence imposed by the District Court.

STATEMENT OF THE CASE

Petitioner Young was convicted by a jury on three Counts of Possession of a Weapon by a Felon. He was acquitted on three counts charging drug crimes. The counts of conviction resulted in a concurrent sentence of 235 months. Following oral argument, as noted above, the conviction on one count was reversed by the Fourth Circuit Court of Appeals. Mr. Young has asked the undersigned counsel to

seek review from this Court and now requests relief in regard to his convictions on the two remaining counts and his sentence.

ARGUMENT

MICHAEL YOUNG WAS DEPRIVED OF A FAIR TRIAL DUE TO UNRELATED CHARGES BEING IMPROPERLY JOINED TOGETHER IN A SINGLE TRIAL.

At oral argument the Fourth Circuit Court of Appeals questioned Government's counsel regarding throwing several charge at the wall and seeing what might stick. Although Michael Young was acquitted of distribution of crack cocaine (Count 1), the joinder of that Count with Counts Four and Five allowed the Government to put up expert testimony of FBI Special Agent Michael Stansbury about the relationship between drugs and guns. That expert testimony by an experienced Federal agent about the connection between drugs and guns may well have led to the jury's conviction of Mr. Young on the felon-in-possession charges. Special Agent Stansbury's testimony bolstered the Government's case which was cobbled together from three different local law enforcement agencies (West Columbia Police Department on Count 1, Richland County Sheriff's Department on Counts 2-4, and the Columbia Police Department on Count 5). Absent the testimony from the well-trained, longtime FBI Agent, the Government's case would have been substantially weaker on the firearms charges.

The Court of Appeals determined that reversal of the District Court's decision re: joinder was not warranted because Mr. Young did not suffer prejudice at trial. The Court of Appeals cited its decision in United States v. Blair, 661 F.3d 755 (4th

Cir. 2011) regarding the evidence of Mr. Young's guilt and the steps taken by the court to mitigate the effects of the error of misjoinder. The Court of Appeals referenced the instructions by the District Court to the jury for support of its conclusion that prejudice did not result from misjoinder (if any) given the jury's decision to acquit Mr. Young on all three drug related charges. However, the fact that there was such a mishmash of charges brought by three separate local law enforcement agencies with a specific target (Michael Young) in mind shows that there was no way to mitigate the prejudice of the numerous charges against Mr. Young. The total amount of drugs actually seized in the case by local law enforcement was less than four grams. However, the Government presented testimony seeking to prove that Michael Young was a large scale drug dealer. The acquittal of Mr. Young on the drug counts and the convictions rendered on the firearms charges may well have been the result of a compromise verdict. The portrayal of Michael Young as a major drug dealer which included the expert testimony of one of the top FBI agents in South Carolina made the case appear much larger than the actual facts uncovered in the investigation by the three local law enforcement agencies. Counsel respectfully seeks review by the Supreme Court of the United States to correct the error made by the lower federal courts in this matter. Mr. Young has been in Federal custody since February 2015 and seeks relief on behalf of himself and his family.

THE FIREARMS SEIZED IN THE TWO TRAFFIC STOPS SHOULD HAVE BEEN SUPPRESSED AS THE STOPS VIOLATED THE FOURTH AMENDMENT.

Michael Young argued to the Fourth Circuit that law enforcement (specifically the Richland County Sheriff's Department) illegally stopped the vehicle in which he was a passenger on April 2, 2014. Mr. Young cited Rodriguez v. United States, 135 S.Ct. 1609 (2015) at page 5 of his Reply Brief for the proposition that any extension of a traffic stop absent a reasonable, articulable suspicion violates the Fourth Amendment. At page 28 of its Brief, the Government stated that in this traffic stop, Deputy Puckett noticed that the passenger Michael Young was breathing heavily and nervously rubbing his hands together. The Government appeared to argue that the alleged nervous behavior by Mr. Young justified further investigation. However, in a supplemental filing a week before oral argument, Young's counsel cited the recent case of United States v. Bowman, 884 F.3d 200 (4th Cir. 2018) which made clear that the nervousness of the suspect is not a sufficient test to determine suspicion. Like the stop in Bowman which was held to violate the Fourth Amendment, Young's traffic stop was extended for reasons that do not pass constitutional muster. Specifically, the nervousness of the suspect in Bowman (shaking hands and failure to make eye contact with the officer) as noted by the arresting officer was not sufficient to justify the extension of the traffic stop. The Fourth Circuit Court of Appeals stated that "it is common for most people to exhibit signs of nervousness when confronted by a law enforcement officer whether or not the person is currently engaged in criminal activity. Thus, absent signs of nervousness beyond the norm, we will discount the detaining officer's reliance on

the detainee's nervousness as a basis for reasonable suspicion." Bowman, at 214 citing United States v. Massenburg, 654 F.3d 480, 490 (4th Cir. 2011).

There is no question what the local sheriff's department was doing on April 3, 2014. A community action team (CAT) was watching a suspected drug house in the Olympia neighborhood of Columbia, South Carolina. Deputies observed Mr. Young exiting the house they were watching. The CAT team predetermined that Mr. Young was going to be investigated that day. There was a "traffic stop" in the sense that there was a vehicle being driven by Mr. Young's lady friend (now wife) Amelia Cunningham from the house where she picked up Mr. Young. The officer who supposedly saw the alleged traffic violation (failure to stop at a stop sign) could not identify the color of the vehicle. That did not matter to the officer (Deputy Puckett) who made the stop and who approached the vehicle from the passenger side because the CAT team was interested in the passenger not the driver of the vehicle. The video/audio of the April 2014 traffic stop (Joint Appendix, hereinafter "JA" Vol. IV entitled Government Exhibit 5) shows that law enforcement extended the traffic stop well beyond the time needed to conduct the normal protocol of a traffic stop for allegedly rolling through a stop sign. To reiterate, arresting officer Deputy Puckett did not see the alleged traffic violation and no traffic ticket (or even a warning citation) was issued to Ms. Cunningham. In the early moments following the traffic stop, Deputy Puckett is heard on the police radio in her vehicle calling in the stop to a supervisor and indicating to the supervisor that the driver and passenger are clear. The supervisor then instructs Deputy Puckett to go back to the vehicle and

see what she can find; that instruction to Deputy Puckett authorizes her and her colleague Deputy Owens to conduct a "fishing expedition" in the vehicle occupied by Michael Young. That fishing expedition illegally extended the traffic stop far beyond what was necessary and ultimately resulted in the finding of a firearm. The illegal search resulted in the conviction of Mr. Young in Count Four of the Superseding Indictment. The firearm was the fruit of the poisonous tree and should have been suppressed.

Mr. Young challenged the validity of the November 3, 2014 stop as violating both prongs of Terry v. Ohio, 392 U.S. 1 (1968). The Columbia Police Department was the arresting agency in this instance. Young offers further argument in support of his contention that the first prong of Terry was violated in that the police officer's action was not justified at its inception because the traffic stop was not valid. In regard to the initial stop, Mr. Young calls the Court's attention to the proposition in United States v. Sowards, 690 F.3d 583 (4th Cir. 2012) that an officer's visual estimate of speed alone is not sufficiently reliable to justify a traffic stop for speeding. Young submits that Officer Hinson's estimate of speed is not properly supported at page 8 of his Reply Brief to the Fourth Circuit. The Government had argued at Page 30 of its Brief that Officer Hinson was a "highly experienced law enforcement officer" who "observed a vehicle coming toward him which appeared to be speeding, based on estimation and the sound of his Doppler system." The Government further states at Page 30 that Officer Hinson noted that his radar indicated that the driver of Young's vehicle was traveling 38 miles per

hour. However, as noted at page 7 of Young's Reply Brief, the actual video of Officer Hinson's traffic stop showed a speed of 20 miles per hour on the screen. The Sowards case states that if "a vehicle is traveling in only slight excess of the legal speed limit, and particularly where the alleged violation is at a speed differential difficult for the naked eye to discern, an officer's visual speed estimate requires additional indicia of reliability to support probable cause." Sowards at 592. A careful review of the video of the November 3, 2014 traffic stop (JA, Vol. IV, Government's Exhibit 10) shows that Officer Hinson was not justified in stopping the vehicle in which Mr. Young was a passenger because the vehicle was not speeding according to the radar screen shown on camera as noted above (20 mph). Officer Hinson indicated on audio that the driver of the vehicle was 40-50 years old when in fact Ms. Cunningham was in her early thirties. Ms. Cunningham claimed ownership of the firearm found in the console of the vehicle that she had been driving. On the video, Officer Hinson can be seen and heard trying to convince Ms. Cunningham not to claim ownership of the firearm but Ms. Cunningham maintains that it is her firearm. Young respectfully submits that there was not sufficient additional indicia of reliability to support probable cause for the traffic stop for speeding in a school zone and that the stop itself violated Terry.

However, as with the April 2014 traffic stop, the main thrust of Young's argument for reversal of his conviction is that the stop was prolonged well beyond the time period that was necessary for an alleged speeding charge. Officer Hinson, who as referenced above, was described by the Government as a highly experienced

law enforcement officer inexplicably called another officer to perform a search. That officer, a K-9 officer who did not bring his dog with him, conducted a search of the vehicle driven by Ms. Amelia Cunningham. As with the April 2014 traffic stop, the local law enforcement agency did not comply with the well-established Fourth Amendment law regarding a Terry stop. The traffic stop for alleged speeding in a school zone stretched for well over an hour. As with the April 2014 stop, the illegal search eventually resulted in the finding of a firearm. The failure by the Columbia Police Department officers to comply with the Fourth Amendment should result in the reversal of Mr. Young's conviction on Count 5 of the Superseding Indictment.

CONCLUSION

The District Court erred in denying the severance motion as Mr. Young suffered severe prejudice by being tried on unrelated charges that painted him in an unfavorable light. The District Court further erred in denying Mr. Young's Motion to Suppress the evidence seized in the April 2014 and November 2014 traffic stops. Those two stops violated the Fourth Amendment. The firearms found in the vehicles in which Mr. Young was a mere passenger were improperly admitted into evidence and provided a basis for the jury to convict Mr. Young on Counts Four and Five of the Superseding Indictment. The Fourth Circuit Court of Appeals failed to correct these evidentiary errors made by the District Court and Mr. Young remains wrongly convicted.

Michael Young has already served four (4) years in Federal custody for the offenses which are on appeal. Those are four precious years that he cannot recover.

The two convictions based on illegal searches that resulted in the imposition of a 235 month sentence scream for review by this Court. Counsel for Michael Young respectfully requests that this Court grant this Petition for Writ of Certiorari and review this case.

Respectfully Submitted,

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February 14, 2019

No. _____

In The
Supreme Court of the United States

MICHAEL KENNETH YOUNG,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX:

FILED: October 25, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4124, US v. Michael Kenneth Young
3:15-cr-00051-MBS-1

NOTICE OF JUDGMENT

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

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

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

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

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

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

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

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

FILED: October 25, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4124
(3:15-cr-00051-MBS-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL KENNETH YOUNG, a/k/a Mizzle

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part, reversed in part, and vacated in part. This case is remanded to the district court for further proceedings consistent with the court's decision.

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

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4124

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL KENNETH YOUNG, a/k/a Mizzle,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Margaret B. Seymour, Senior District Judge. (3:15-cr-00051-MBS-1)

Argued: September 25, 2018 Decided: October 25, 2018

Before GREGORY, Chief Judge, and WYNN and HARRIS, Circuit Judges.

Affirmed in part, reversed in part, vacated in part, and remanded by unpublished opinion. Judge Harris wrote the opinion, in which Chief Judge Gregory and Judge Wynn joined.

ARGUED: William Michael Duncan, AUSTIN & ROGERS, PA, Columbia, South Carolina, for Appellant. Benjamin Neale Garner, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee. **ON BRIEF**: Beth Drake, United States Attorney, Jimmie Ewing, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PAMELA HARRIS, Circuit Judge:

Michael Kenneth Young was charged in a single indictment with six drug- and gun-related offenses, stemming from four separate encounters with the police. The jury acquitted Young on three of those charges, each related to drugs, but convicted him on the remaining three charges, each related to possession of a firearm.

On appeal, Young challenges, first, the joinder of the offenses against him in a single indictment, and the district court's refusal to sever and try separately certain of the charges. A misjoinder or failure to sever requires reversal only if it results in prejudice to the defendant, and because we conclude that there was no such prejudice here, we find that the district court did not reversibly err in denying Young's motion.

Young also challenges the district court's refusal to suppress evidence seized in connection with three of his arrests. We agree with the district court as to the first two arrests, but disagree as to the third, in which the government invoked the inventory search exception to justify a warrantless search of a car. Because the government failed to present any evidence that the search was conducted pursuant to standardized criteria, the inventory search exception does not apply, and we therefore conclude that the district court erred in denying Young's motion to suppress the firearms recovered from that search.

I.

A.

We begin by describing the four incidents that gave rise to the six charges against Young. First, law enforcement officers arranged for a confidential informant to purchase crack cocaine in a controlled buy on July 28, 2012. The informant later identified Young, a convicted felon, as the person who sold him the crack cocaine. Second, on April 2, 2014, law enforcement officers pulled over a car in which Young was riding as a passenger while his then-girlfriend (now wife), Amelia Cunningham, drove. The officers searched the car, and recovered a gun from the passenger-side door and crack cocaine from above the passenger-side visor. Within throwing distance of the car, they found a bag of marijuana. Young was then stopped again, on November 3, 2014, once more riding as a passenger while Cunningham drove. Again, officers searched the car, and this time, they recovered a gun from between the passenger's seat and the center console.

It was Young's fourth and final arrest that led to the inventory search at issue in this appeal. On January 30, 2015, Deputy Kimberly MacGregor of the Richland County Sheriff's Department followed Young's car into a hotel parking lot. Young, who had been driving, got out of the car, and MacGregor asked him for his license. MacGregor discovered that Young's license was suspended, and arrested him. MacGregor then attempted to locate the owner of the car, and when she was unsuccessful, arranged to impound the car and have it towed. At around the same time, officers working with MacGregor searched the car, and recovered two guns under the passenger seat.

B.

The government charged Young with crimes relating to these four incidents in a six-count indictment. Count 1 of the indictment, arising from the controlled buy in July

2012, charged Young with possession with intent to distribute and distribution of cocaine base, and aiding and abetting the same, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) (2012) and 18 U.S.C. § 2 (2012). As to the April 2014 traffic stop and vehicle search, Young was charged with three counts: possession with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) (Count 2); using and carrying a firearm during and in relation to, and possession of a firearm in furtherance of, a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i) (2012) (Count 3); and being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), (e) (2012) (Count 4). For the November 2014 traffic stop and vehicle search, Young was charged with a second count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), (e) (Count 5). And as a result of the January 2015 vehicle search, Young was charged with a third count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), (e) (Count 6).

Before trial, Young moved to sever Counts 1 and 5 from each other and from Counts 2, 3, and 4.[1] Young, in other words, sought three separate trials: one on the drug charge arising out of the July 2012 controlled buy (Count 1); a second on the drug and gun charges arising out of the April 2014 traffic stop and vehicle search (Counts 2, 3, and 4); and a third on the gun charge arising out of the November 2014 traffic stop and

[1] Count 6 was not initially included in the indictment against Young. The grand jury returned a superseding indictment on July 7, 2015, which added Count 6 based on Young's January 2015 arrest. By then, Young already had filed his severance motion, and he did not amend that motion or otherwise move to sever Count 6 in response to the superseding indictment.

vehicle search (Count 5). The district court denied Young's motion, recognizing that the Federal Rules of Criminal Procedure permit broad joinder and concluding that the allegations in each count appeared to be "related to a common scheme or plan." J.A. 44. If necessary at trial, the district court explained, it would give "limiting instructions to the jury . . . to cure any issue with regard to these counts." *Id.*

Young also moved to suppress the physical evidence collected from the April 2014, November 2014, and January 2015 vehicle searches. As to the April 2014 and November 2014 searches, Young argued that the traffic stops that preceded the searches were unlawful. This, according to Young, warranted suppression of all the evidence discovered as a result of each stop. The district court disagreed, finding that on both occasions, the officers had the requisite reasonable suspicion to stop the car, and that in the course of each valid stop, the officers developed probable cause to search the car under the automobile exception to the warrant requirement.

The warrantless search of the car in January 2015 was different: Instead of arguing that probable cause justified the search under the automobile exception, the government invoked the inventory search exception. As the district court explained, that exception allows for searches of cars that are lawfully impounded – taken into police custody – without a warrant and without probable cause, so long as the government establishes that the search was "performed pursuant to standardized criteria such as a uniform policy," and that "such criteria [was] administered in good faith." J.A. 179.

To support the application of the inventory search exception, the government relied on the testimony of arresting officer Deputy MacGregor. At the suppression

hearing, MacGregor explained that after she arrested Young, she and other officers began to prepare an inventory of the contents of the car Young had been driving. When asked why, MacGregor responded that "[the car] was being towed and that way we were not responsible for anything left in that vehicle." J.A. 148. The government introduced no other testimony or documentary evidence regarding Richland County Sheriff's Department policy on inventory searches of cars.

At the close of the suppression hearing, Young argued that the government had failed to justify application of the inventory search exception because MacGregor never testified that the January 2015 search was conducted pursuant to a standard departmental policy or procedures. The district court acknowledged the requirement that inventory searches be "performed pursuant to standardized criteria," J.A. 179, but concluded that MacGregor's testimony was sufficient to satisfy this requirement because it showed that the search was "undertaken in good faith and for the purpose of securing objects in the vehicle and not because of any suspicion of criminal activity," J.A. 180. Accordingly, the district court found that the January 2015 search was valid under the inventory search exception, and denied Young's motion to suppress the evidence recovered from that search.

The case proceeded to a jury trial. After a three-day trial, the jury acquitted Young on all of the drug-related charges – Counts 1, 2, and 3 – and convicted Young on the felon-in-possession charges – Counts 4, 5, and 6. Young was sentenced to 235 months' imprisonment on each count of conviction, to run concurrently.

This timely appeal followed.

II.

A.

We begin with Young's contention that the charges against him were improperly joined in the indictment and at trial. Specifically, Young argues that under Federal Rule of Criminal Procedure 8(a), which governs the initial joinder of offenses, Counts 1 and 5 were improperly joined with Counts 2, 3, and 4 in the indictment. Even if there was no misjoinder, Young contends, these Counts should have been severed for trial under Federal Rule of Criminal Procedure 14(a), which allows a district court to order separate trials if joinder will prejudice a defendant. "Although the joinder rules are related, we apply a different standard of review to each rule." *United States v. Blair*, 661 F.3d 755, 768 (4th Cir. 2011). We review de novo whether charges are properly joined in an indictment under Rule 8(a), and for abuse of discretion whether the district court erred in denying a motion to sever under Rule 14(a). *Id.*

Under Rule 8(a), two or more offenses may be charged in the same indictment when the offenses "are of the same or similar character," "are based on the same act or transaction," or "are connected with or constitute parts of a common scheme or plan." Fed. R. Crim. P. 8(a). Rule 8, as we have recognized, permits "very broad joinder because the prospect of duplicating witness testimony, impaneling additional jurors, and wasting limited judicial resources suggests that related offenses should be tried in a single proceeding." *United States v. Hawkins*, 776 F.3d 200, 206 (4th Cir. 2015) (internal quotation marks and citations omitted). If joinder is proper under Rule 8, district courts

nevertheless may, in certain circumstances, order separate trials of counts in the indictment under Rule 14(a). *See* Fed. R. Crim. P. 14(a). "Such cases, however, will be rare." *United States v. Cardwell*, 433 F.3d 378, 387 (4th Cir. 2005). "[B]ecause of the efficiency in trying [a] defendant on related counts in the same trial[,]" *Hawkins*, 776 F.3d at 206 (quoting *Cardwell*, 433 F.3d at 385), our precedent makes clear that "joinder is the 'rule rather than the exception,'" *id.* (quoting *United States v. Armstrong*, 621 F.2d 951, 954 (9th Cir. 1980)).

Young argues that his case fits within the exception, not the rule. Specifically, Young contends that the charges related to each incident – the July 2012 controlled buy (Count 1), the April 2014 traffic stop and vehicle search (Counts 2, 3, and 4), and the November 2014 traffic stop and vehicle search (Count 5) – should have been tried separately. Those incidents, Young notes, occurred months – and in some cases, years – apart, and involved different law enforcement agencies and different trial witnesses. And according to Young, the presence of the drug-related charges from July 2012 and April 2014 could well have affected his trial on the felon-in-possession charge from November 2014: Because of the drug-related charges, the government was able to elicit trial testimony that drug dealers often carry firearms, encouraging the jury to infer from the drug charges against Young that he also was likely guilty on the firearm charge. More generally, Young cites the cumulative effect of the evidence from the multiple charges against him, and its potential to confuse or overwhelm the jury into believing that he must be guilty of something, notwithstanding weaknesses in each individual case.

We disagree. As we have explained, under either Rule 8(a) or Rule 14(a), reversal is warranted only where a misjoinder or failure to sever caused the defendant to suffer prejudice at trial. *Blair*, 661 F.3d at 768 (reversal under Rule 8 is required only if the misjoinder results in "actual prejudice" (quoting *United States v. Hawkins*, 589 F.3d 694, 704 (4th Cir. 2009), *amended and superseded on other grounds by* 776 F.3d 200)); *id.* at 770 (reversal under Rule 14 is required only if the trial resulted in "clear prejudice" (quoting *Cardwell*, 433 F.3d at 387–88)). In assessing whether a misjoinder or failure to sever resulted in prejudice, we consider three "indicia of harmlessness":

> (1) whether the evidence of guilt was overwhelming and the concomitant effect of any improperly admitted evidence on the jury's verdict; (2) the steps taken to mitigate the effects of the error; and (3) the extent to which the improperly admitted evidence as to the misjoined counts would have been admissible at trial on the other counts.

Id. at 769 (quoting *Hawkins*, 589 F.3d at 704).

The government contends that the first two indicia show that any misjoinder or failure to sever in this case did not prejudice Young, and we agree.[2] First, the evidence of Young's guilt as to the three felon-in-possession charges – the only charges on which he was convicted – was overwhelming. At trial, Young stipulated that he previously had been convicted of a felony, making him ineligible to possess a firearm. As to whether he nevertheless did possess firearms, the government elicited highly probative testimony from the arresting officers and from DNA experts. The officers who arrested Young in

[2] The government does not rely on the third factor, involving the cross-admissibility of evidence. We need not address that factor here because we agree with the government that the first two are dispositive.

April and November of 2014 both testified that when they conducted their traffic stops, they observed guns in close proximity to the passenger seat in which Young was sitting: in the passenger-side door in April and between the passenger seat and the center console in November. A DNA expert bolstered that account, explaining that her analysis tied Young's DNA to the DNA found on both guns. As to Young's January 2015 arrest, the arresting officer testified that two guns were found underneath the passenger seat of the car Young was driving, and a second DNA expert opined that the DNA on one of those guns was 130 trillion times more likely to be Young's DNA than that of anyone else in the general population.

Second, the district court made good on its promise to mitigate any potential prejudice through its instructions to the jury. Responding directly to the concern that jurors might view the trial evidence cumulatively, rather than count-by-count, the court instructed the jury that "the charges set forth in each count in the Indictment constitute separate and distinct matters," and that the jury must "consider each count and evidence applicable to each count separately" and "state [its] findings as to each count separately." J.A. 740. And the court reiterated that "[t]he defendant may be found guilty or not guilty of any one or all of the offenses charged." *Id.* We have previously considered the effect of virtually identical jury instructions, and concluded that they substantially "mitigate the effect of any possible spillover of prejudicial evidence." *United States v. Mackins*, 315 F.3d 399, 415 (4th Cir. 2003) (citing *United States v. Lane*, 474 U.S. 438, 450 (1986)). We have no reason to doubt their efficacy in this case, especially given the jury's verdict, convicting Young on the three felon-in-possession charges but acquitting him on every

drug-related charge. *See id.* (noting that a split verdict "strongly indicates" that the jury has considered the evidence as to each count separately, rather than "allow[ing] the evidence as to the misjoined [counts] . . . to affect their verdicts on the other counts").

In short, we need not decide in this case whether the charges against Young were properly joined in a single indictment, or whether they should have been severed for trial. Even assuming that the charges were misjoined, reversal would be appropriate only if that error actually prejudiced Young at trial. And for the reasons described above, we conclude that there was no such prejudice here. On that ground, we hold that the district court did not reversibly err when it denied Young's motion to sever.

B.

We turn next to the district court's denial of Young's motion to suppress the evidence recovered from the April 2014, November 2014, and January 2015 searches. In reviewing a district court's decision to deny a motion to suppress, we "review[] conclusions of law de novo and underlying factual findings for clear error." *United States v. Clarke*, 842 F.3d 288, 293 (4th Cir. 2016) (quoting *United States v. Banks*, 482 F.3d 733, 738 (4th Cir. 2007)).

The district court concluded that there was no merit to Young's motion to suppress the evidence recovered from the April 2014 and November 2014 searches, and for the reasons given by the district court, we agree: In both cases, reasonable suspicion supported the initial traffic stops, and in both cases, probable cause to search the vehicles under the automobile exception emerged during the course of those valid stops. *See* J.A. 176–78. We disagree, however, that the January 2015 search can be justified under the

inventory search exception, the sole basis on which the government has sought admission of the guns uncovered in that search.

An inventory search is a well-recognized exception to the Fourth Amendment's warrant requirement. Under that exception, the police may conduct a search of property that has been lawfully seized and detained, like a car properly impounded and towed to a police station. Such searches are reasonable even in the absence of a warrant or probable cause, the Supreme Court has concluded, because they allow the police to "protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). But to protect against "general rummaging in order to discover incriminating evidence," *Florida v. Wells*, 495 U.S. 1, 4 (1990), the Supreme Court has insisted that inventory searches be conducted only pursuant to "standardized search procedures" that "curtail the discretion of the searching officer" and are "administered in good faith[,]" *Banks*, 482 F.3d at 739 (first citing *Wells*, 495 U.S. at 4; then quoting *Bertine*, 479 U.S. at 374).

In this case, the district court found, and Young does not dispute, that Deputy MacGregor and the other officers acted in good faith when they conducted the January 2015 search of the car that Young had exited. But that is not the end of the inquiry mandated by the Supreme Court. There remains the question of whether that search was conducted according to "'standardized criteria,' such as a uniform police department policy," *United States v. Matthews*, 591 F.3d 230, 235 (4th Cir. 2009) (quoting *Bertine*, 479 U.S. at 374 n.6), that "sufficiently limit[ed] [the] searching officer's discretion[,]"

id.; *see also Clarke*, 842 F.3d at 293 ("For the inventory search exception to apply, the search must have been [1] conducted according to standardized criteria . . . , and [2] performed in good faith." (internal quotation marks and alterations omitted) (quoting *Matthews*, 591 F.3d at 235)).

We recognize that the bar for proving the existence of the requisite standard policy is not a high one. The policy and criteria need not be in writing; "testimony regarding standard practices" will do. *Clarke*, 842 F.3d at 294 (quoting *Matthews*, 591 F.3d at 235). But whether through introduction of written police department rules and regulations or through police officer testimony, there must be "sufficient evidence" from which a court may assure itself that the searching officer's discretion was limited by standardized criteria governing the conduct and scope of inventory searches. *United States v. Bullette*, 854 F.3d 261, 266 (4th Cir. 2017).

Here – in contrast to other cases in which we have approved inventory searches – the government did not provide a written departmental policy governing inventory searches. *Cf., e.g.*, *Clarke*, 842 F.3d at 294 (government provided both written department policy and standard inventory search form signed by officer to district court); *Matthews*, 591 F.3d at 233 (quoting detailed police department policy on inventory searches); *Banks*, 482 F.3d at 739 n.5 (same). Nor, critically, did Deputy MacGregor's testimony fill that gap. To be sure, MacGregor explained her reason for conducting an inventory search, testifying that the car was searched "[b]ecause it was being towed and

that way [the police] were not responsible for anything left in [the] vehicle." J.A. 148.[3] And that testimony, presumably, was the basis for the district court's finding that the search was conducted in good faith. But it does not describe nor even refer expressly to any Richland County Sheriff's Department policy, or to any standard procedures or criteria that the department requires officers to observe in carrying out inventory searches. And without that, we cannot assess whether the search in this case "conforms to our precedent" requiring such standardized criteria, *Bullette*, 854 F.3d at 266, and we cannot determine whether the searching officers' discretion was "sufficiently limit[ed]" by that criteria to bring it within the inventory search exception, *Matthews*, 591 F.3d at 235.

Accordingly, we conclude that the government failed to establish the existence of the standardized criteria required to apply the inventory search exception to the January 2015 search. The government has identified no other ground for admission of the two guns recovered from that search, which became the basis for Count 6's felon-in-

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[3] We note that a police officer's initial decision to tow and impound a vehicle – the necessary predicate for an inventory search – also must be governed by standardized criteria. *Bertine*, 479 U.S. at 375; *see also United States v. Cartrette*, 502 F. App'x 311, 315–16 (4th Cir. 2012) (while police are afforded "more discretion" in deciding whether to impound vehicles than in conducting inventory searches, that discretion must be "exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity" (quoting *Bertine*, 479 U.S. at 375)). That requirement was never discussed during the suppression hearing in this case. But because Young has not raised the issue on appeal, we do not consider it here, and consider only the associated inventory search of the vehicle. *See Suarez-Valenzuela v. Holder*, 714 F.3d 241, 248–49 (4th Cir. 2013) (describing rule that contentions not raised in opening brief on appeal are abandoned).

possession charge against Young. We therefore reverse the district court's denial of Young's suppression motion as it applies to the January 2015 search, vacate Young's conviction on Count 6 of the indictment, and remand for resentencing in light of this decision.

III.

For the foregoing reasons, we affirm Young's convictions on Counts 4 and 5 of the indictment. We reverse the district court's denial of Young's suppression motion as it applies to the January 2015 search, vacate Young's conviction on Count 6 of the indictment, and remand for resentencing in light of this decision.

AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, AND REMANDED

AO 245B (SCDC Rev.09/11) Judgment in a Criminal Case Sheet 1

UNITED STATES DISTRICT COURT
District of South Carolina

UNITED STATES OF AMERICA

vs.

MICHAEL KENNETH YOUNG, a/k/a "Mizzle"

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:15-51 (001 MBS)

USM Number: 28045-171

W. Michael Duncan
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _.
☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
■ was found guilty on count(s) 4-6 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:922(g)(1), 924(a)(2) & 924(e)	Please see Superseding Indictment	4/2/14	4
18:922(g)(1), 924(a)(2) & 924(e)	Please see Superseding Indictment	11/3/14	5
18:922(g)(1), 924(a)(2) & 924(e)	Please see Superseding Indictment	1/30/15	6

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

■ The defendant has been found not guilty on count(s) 1-3 of the Superseding Indictment.

■ Count(s) 1-5 of the Indictment ☐ is ■ are dismissed on the motion of the United States.

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

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

February 28, 2017
Date of Imposition of Judgment

S/ Margaret B. Seymour
Signature of Judge

Margaret B. Seymour, Senior United States District Judge
Name and Title of Judge
March 1, 2017
Date

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

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 thirty-five (235) months as to each count 4, 5 and 6, to run concurrently.

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

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

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐ a.m. ☐ p.m. on _____.
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____.
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years as to each count 4, 5 and 6, to run concurrently.

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

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

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

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

■ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

■ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

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

The defendant must comply with the standard conditions that have been adopted by this court as well as the following additional conditions:

1) The defendant shall submit to substance abuse testing to determine if he has used a prohibited substance. He must not attempt to obstruct or tamper with the testing methods. He shall contribute to the costs of such testing not to exceed an amount determined reasonable by the court-approved "U.S. Probation Office's Sliding Scale for Services" and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.
2) The defendant shall be evaluated for participation in a substance abuse treatment program and follow the rules and regulations of that program should it be found that participation is warranted. The probation officer will supervise participation in the program (provider, location, modality, duration, intensity, etc.) He shall contribute to the costs of such testing not to exceed an amount determined reasonable by the court-approved "U.S. Probation Office's Sliding Scale for Services" and shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.
3) The defendant shall be evaluated for participation in a cognitive behavioral program. Should a qualified counselor find that the defendant would benefit from such a program, he shall participate in the program as approved by the U.S. Probation Office. If able, he shall contribute to the costs of such treatment in an amount determined reasonable by the court at the time of the treatment and, in any event, shall cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	**$ 300.00**	**$**	**$**

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$_____	$_____	

☐ Restitution amount ordered pursuant to plea agreement **$**_____

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

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ The interest requirement for the ☐ fine ☐ restitution is modified as follows:

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

DEFENDANT: MICHAEL KENNETH YOUNG, a/k/a "Mizzle"
CASE NUMBER: 3:15-51

SCHEDULE OF PAYMENTS

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

A ■ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or

☐ in accordance with ☐ C, ☐ D, or ☐ E, or ☐ F below: or

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

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

D ☐ Payment in equal _____(weekly, monthly, quarterly) installments of $_____over a period of _____(e.g., months or years), to commence _____ *(30 or 60 days)* after release from imprisonment to a term of supervision; or

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

F ☐ Special instructions regarding the payment of criminal monetary penalties:

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

■ The defendant shall forfeit the defendant's interest in the following property to the United States:

As directed in the Preliminary Order of Forfeiture, filed 1/25/17 and the said order is incorporated herein as part of this judgment.

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

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

UNITED STATES OF AMERICA	)	CRIMINAL NO.: 3:15-CR-00051-MBS
	)	
v.	)	
	)	
MICHAEL KENNETH YOUNG a/k/a "Mizzle"	)	

PRELIMINARY ORDER OF FORFEITURE AS TO MICHAEL KENNTH YOUNG

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

1. On July 7, 2015, a multi- count Superseding Indictment was filed charging Young with drug trafficking, in violation of 21 U.S.C. § 841, and federal firearm offenses, in violation of 18 U.S.C. §§ 922(g)(1) and 924.

2. Pursuant to Fed. R. Crim. P. 32.2(a), the Indictment contained a notice of forfeiture providing that upon Young's conviction, certain properties enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States. As specified therein, such assets include, but are not limited to the following:

A. Firearm/Ammunition:

(1) SCCY, model CPX-2, 9mm semi-automatic pistol, Serial # 060305, and a 10 round magazine of 9mm ammunition.
Asset ID: 15-DEA-611003

(2) Smith and Wesson, model Bodyguard, .380 caliber handgun, serial # ECE4046, and 6 rounds of .380 caliber ammunition.
Asset ID: 14-DEA-610995

3. On September 21, 2016, a jury found Young guilty of three counts of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).

4. Based upon Defendant's conviction, the court has determined that the property described above is subject to forfeiture, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

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

Accordingly, it is hereby **ORDERED,**

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

A. Firearm/Ammunition:

(1) SCCY, model CPX-2, 9mm semi-automatic pistol, Serial # 060305, and a 10 round magazine of 9mm ammunition.
Asset ID: 15-DEA-611003

(2) Smith and Wesson, model Bodyguard, .380 caliber handgun, serial # ECE4046, and 6 rounds of .380 caliber ammunition.
Asset ID: 14-DEA-610995

2. Upon entry of the criminal judgment, this order becomes final as to Young, and shall be made a part of his sentence and included in the criminal judgment.

3. The United States shall publish notice of this Order and its intent to dispose of the property in such manner as the Attorney General may direct. The United States

may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the said property.

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

5. Any person, other than the named Defendant, asserting a legal interest in the subject property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the court for a hearing without a jury to adjudicate the validity of his alleged interest in the subject property and for an amendment of the order of forfeiture, pursuant to 21 U.S.C. § 853(n)(6) and Fed. R. Crim. P. 32.2(c).

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

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

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

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

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

IT IS SO ORDERED.

/s/ Margaret B. Seymour
MARGARET B. SEYMOUR
SENIOR UNITED STATES DISTRICT JUDGE

January 25, 2017
Columbia, South Carolina

FILED: November 20, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4124
(3:15-cr-00051-MBS-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MICHAEL KENNETH YOUNG, a/k/a Mizzle

Defendant - Appellant

O R D E R

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

Entered at the direction of the panel: Chief Judge Gregory, Judge Wynn, and Judge Harris.

For the Court

/s/ Patricia S. Connor, Clerk