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

KURT ZAMOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

- I. WHETHER THE ELEVENTH CIRCUIT FAILED TO PROPERLY APPLY TITLE 18 U.S.C. SECTION 922(e) IN DETERMINING WHETHER THE EVIDENCE WAS SUFFICIENT TO ESTABLISH GUILT?
- II. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS FAILED TO PROPERLY APPLY RULE 16, FED.R.CRIM.P. BY ALLOWING IMPROPER EXPERT TESTIMONY AFTER THE GOVERNMENT FAILED TO PROVIDE ADEQUATE NOTICE?
- III. WHETHER SENTENCING ERROR WARRANTS REVIEW?

INTERESTED PARTIES

Counsel for the Petitioner, Kurt Zamor, certifies that the following persons and entities have or may have an interest in the outcome of this case:

1. Pannayotta Augustin-Birch, Assistant Federal Public Defender;
2. Peter Birch, Assistant Federal Public Defender;
3. Honorable Dave Lee Brannon, U.S. Magistrate Judge;
4. Wilfredo Ferrer, United States Attorney;
5. Honorable Daniel T.K. Hurley, United States District Judge;
6. Ian Goldstein, Esq., Defense Counsel;
7. Honorable James M. Hopkins, U.S. Magistrate Judge;
8. Lothrop Morris, Assistant U.S. Attorney;
9. Richard L. Rosenbaum, Esq., Appellant Counsel – Zamor;
10. Emily Smachetti, Assistant U.S. Attorney;
11. Kurt Zamor, Defendant.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Kurt Zamor, respectfully petitions the Supreme Court of the United States for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Eleventh Circuit rendered and entered in Case No: 16-16731 in that court on August 9, 2018, in *Kurt Zamor v. United States*, which

affirmed the Judgment and Commitment of the United States District Court for the Southern District of Florida. The Judgment was issued as Mandate on November 16, 2018. (A-3).

OPINION BELOW

A copy of the Opinion of the United States Court of Appeals for the Eleventh Circuit, which affirmed the Judgment and Commitment of the United States District Court for the Southern District of Florida, is contained in Appendix (A-1). The Opinion was unpublished, but is reported at 746 Fed. Appx. 960 (11th Cir. 2018). Also included in the Appendix is the Order Denying Motion for Rehearing (A-2), the Judgment imposing sentence (A-3); and the Superseding Indictment (A-4).

STATEMENT OF JURISDICTION

The Opinion of the United States Court of Appeals for the Eleventh Circuit was entered on August 9, 2018 (A-1). A timely Motion for Rehearing was filed and denied on May 8, 2018. (A-2). An Application to Extend the time to file the instant Petition was filed. The Application was granted by Justice Thomas and the time extended to file until April 7, 2019. April 7, 2019, fell on a Sunday, thus this Petition is timely filed on April 8, 2019, pursuant to Sup. Ct. R. 13.1.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), Sup. Ct.

R. 10.1 and Part III of the Rules of the Supreme Court of the United States. The district court had jurisdiction because Petitioner was charged and convicted of violating federal criminal laws. The Court of Appeals had jurisdiction pursuant to 28 U.S.C. Sections 1291 and 1292 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions and sentences of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner relies upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

1) Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; not shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; not shall private property be taken for public use without just compensation

2) Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the assistance of counsel for his defense.

- 3) Rule 52(b), Fed.R.Crim.P.; and
- 4) Other case law specified herein.

STATEMENT OF THE CASE

Kurt Zamor was convicted of shipping firearms without notice to the carrier in violation of Title 18 U.S.C. Sections 922(e) and 924(a)(1)(D) and attempting to illegally export firearms to Haiti in violation of Title 18 U.S.C. Section 564(a).

A. Course of Proceedings and Disposition in the Court Below

On May 27, 2015, a Criminal Complaint was filed alleging that from April 24, 2014 to June 23, 2014, Kurt Zamor violated Title 18 U.S.C. Sections 922(e) and 554(a) by unlawfully exporting firearms and attempting to export firearms and ammunition bound for Haiti. The Government specifically alleged that Kurt Zamor:

"knowingly and willfully causing the delivery of firearms and ammunition to a common carrier, Monarch Shipping Lines¹, for shipment in foreign commerce to a person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without written notice to the carrier that firearms and ammunition were being shipped, in violation of Title 18 U.S.C. Section 922(e) and knowingly and fraudulently attempted to export

¹ From the outset, the Government's theory of prosecution was that Monarch Shipping Lines was the common carrier in this case.

and send firearms and ammunition from the United States, contrary to law, in violation of Title 18 U.S.C. Section 554."

(DE 3-1-8) [Emphasis added]

Agent Anderson Sullivan of the United States Department of Homeland Security (hereinafter referred to as "HSI"), the lead case agent, filed an Affidavit in Support of the Criminal Complaint stating that based upon his investigation, on June 23, 2014, U.S. Customs officers examined a 40-foot container at the Port of Palm Beach which was being exported to St. Marc, Haiti, by Jean Zamor (YOB: 1951) via Monarch Shipping Lines (hereinafter referred to as "Monarch").

According to the agent, Jean Zamor, the Petitioner's father is a U.S. Citizen and native of Haiti and was the listed shipper of the container. Contained in the export documents was the sales invoice for the 40-foot container indicating that the container had been sold to Jean Zamor's son, Kurt Zamor, and a receipt showing that Kurt Zamor paid to have the container delivered to Atlantic Storage. The content list indicated that the container contained, *inter alia*, various household furniture, appliances, tires, an ice maker, a walk-in freezer, a Toyota 4Runner, and miscellaneous household items.

The agent set forth in the Affidavit that Marie Denise Gilles was listed as the consignee. According to ATF records, Ms. Gilles was not "a licensed firearm importer, manufacturer, dealer or collector in the United States."

A physical inspection was conducted of the container by law enforcement. Inside the container Customs agents located a black tool bag which contained an ammunition can. Inside the can was one (1) Glock magazine and 561 rounds of assorted ammunition. The officers also located a black backpack wrapped in clear plastic wrap inside the ice maker. Inside the backpack were three (3) holsters, a soft sided gun case, one (1) trigger lock, several pistol lower receivers, pistol magazines and two (2) Sig Sauer receiver frames: a 9 mm and a .45 caliber. The officers also discovered a Cobra 9 mm handgun and other firearms and a conversion kit. (DE 3-3-4). Inside another toolbox other parts of broken-down firearms were found.

According to Agent Sullivan, members of the Bureau of Alcohol, Tobacco, Firearms and Explosives (hereinafter referred to as "ATF") informed him that Kurt Zamor lawfully purchased firearms from federally licensed firearms dealers. ATF and HSI agents interviewed Kurt Zamor at the Port and he confirmed that he was the owner of the container and that he and his father, Jean Zamor, were shipping the container to Haiti. He also advised that the container was loaded at a storage unit in Jacksonville, FL and then shipped to the Port to later be exported to Haiti. According to the agent, Kurt Zamor admitted that he was the owner of the firearms and ammunition seized from the container. However, Kurt Zamor explained that

he didn't know the guns and ammunition had been moved from the storage bay to the container, as he had specifically instructed those items not be moved from storage and be set aside.

Kurt Zamor was arrested on May 27, 2015.

On June 18, 2015, a two Count Indictment, together with forfeiture allegations were filed charging Kurt Zamor was charged with:

Count I - Knowingly and willfully deliver[ed] and cause[ed] to be delivered to any common and contract carrier for transportation shipment in interstate and foreign commerce to a person other than a licensed firearm importer, licensed manufacturer, licensed dealer, and licensed collector, a package or other container in which there was a firearm without having providing written notice to such carrier that such firearm was being transported and shipped in violation of Title 18 U.S.C. Sections 922(e) and 924(a)(1)(D)".

Count II - Kurt Zamor was charged with "fraudulently and knowingly attempt to export and send from the United States to a place outside thereof, that is, Haiti, any merchandise, article, and object that is, firearms and ammunition, and did conceal and facilitate the transportation and concealment of such merchandise, article and object prior to exportation knowing the same to be intended for exportation contrary to any law and regulation of the United States that is Title 18 U.S.C. Sections 922(e) and 924(a)(1)(D) as set forth in Count I of the Indictment in violation of Title 18 U.S.C. Section 554(a).

In short, the Indictment alleged that the Defendant attempted to unlawfully export firearms and ammunition bound for Haiti. (DE 19-1-6). The Defendant was arraigned and a not guilty plea was entered on his behalf.

On September 24, 2015, a Superseding Indictment was returned adding additional weapons and ammunition to the forfeiture Count². (DE 41-1-5). A not guilty plea was again entered on the Defendant's behalf. (DE 48).

Trial was conducted from February 22, 2016 through February 24, 2016. Kurt Zamor exercised his rights under the 5th Amendment to the U.S. Constitution and chose not to testify. Defense counsel moved for acquittal at the close of the Government's case and renewed his Motion for Judgment of Acquittal pursuant to Rule 29, Fed.R.Crim.P. at the conclusion of all of the evidence. The Court denied the motions.

The Court discussed the charges out of the presence of the jury, and noted that Kurt Zamor was charged in Count I under Section 922(e) with failure to give notice. Count II charged attempted illegal exportation. The Government noted that it had charged the actual violation as "the notice." Thus, the Court agreed it would instruct the jury that "the Defendant cannot be found guilty of Count II if the jury were to find him not guilty of Count I."

Guilty verdicts were returned as to both Counts as charged. Kurt Zamor was adjudged guilty and remanded into custody. (DE 113-96).

² The Government later advised the Court and defense that the subject forfeiture items had been administratively forfeited.

Prior to sentencing, Kurt Zamor's Assistant Public Defenders were permitted to withdraw from the case. CJA Counsel was appointed for sentencing purposes. Prior to sentencing, a Motion to File Belated Motion for Judgment of Acquittal pursuant to Rule 29, and Request for Hearing was filed on Kurt Zamor's behalf. Specifically, counsel argued that Counts I and II of the Superseding Indictment both required that the Government prove beyond a reasonable doubt that the Defendant violated the underlying offenses, Title 18 U.S.C. Section 922(e) and that the Government's proof of guilt was insufficient.

Kurt Zamor argued that the Government failed to introduce sufficient evidence to establish elements 1, 3, and 4 of Section 922(e) offense. He asserted that: 1) the Government failed to prove that the individual to whom the firearms were allegedly being shipped was not an authorized, licensed importer, manufacturer, dealer or collector of firearms in Haiti; 2) that the Government failed to establish that the container was in possession of a common carrier; and 3) that the Government failed to establish any willful, fraudulent intent with regards to the firearms. The Court entered an Order denying Kurt Zamor's Motion for Leave to File a Belated Motion for Judgment of Acquittal.

Sentencing was conducted on October 5, 2016. Kurt Zamor was sentenced to 60 months as to each Count, to be served concurrently. (A-3).

Neither defense counsel nor the Government lodged objections to the facts as contained in the PSR. (DE 139-4). Defense counsel also lodged no legal objections to the Guidelines as calculated. (DE 139-5).

Kurt Zamor timely filed a Notice of Appeal. On Appeal Kurt Zamor challenged the admission of expert testimony from one of the Government witnesses, the sufficiency of the evidence and his sentence.

On August 9, 2018, a panel of the 11th Circuit Court of Appeals issued an unpublished Opinion affirming the Judgment, Convictions and Sentences. The Opinion was unpublished, but is reported at 746 Fed. Appx. 960 (11th Cir. 2018).

Kurt Zamor remains incarcerated at FCI Jesup in Jesup, GA.

STATEMENT OF THE FACTS

As set forth by the Eleventh Circuit:

In April 2014, a gun store filed a multiple-sale report with the federal government stating that Defendant had recently purchased two guns within a five-day period. An agent with Homeland Security Investigations, part of the Department of Homeland Security, forwarded that report to Customs and Border Protection (CBP). CBP identified a container ready to be shipped from the Port of Palm Beach to Haiti that was listed in the name of Defendant's father, Jean Zamor. After investigating further, CBP discovered that Defendant had purchased the container and decided to search it.

Searching through the 40-foot container, CBP agents found an SUV, mattresses, furniture, tires, and a variety of other items. Towards the nose of the container (the end farthest from the doors) the agents found a tool bag, a toolbox, and a backpack, each containing guns or ammunition. The tool bag contained a can full of ammunition of different calibers that had been mixed together. The tool box was covered in plastic wrap and contained a variety of tools and, underneath those tools, the lower parts of disassembled guns (e.g., the stock and grip) that had been zip-tied together. The backpack, which was also wrapped in plastic, was found inside an icemaker. The backpack contained the upper parts of disassembled guns (e.g., the spring and the barrel) that had been zip-tied together and matched the lower parts found in the toolbox. By the end, agents had found seven disassembled guns, one intact gun, and 561 rounds of ammunition. Further research showed that, of the eight guns found, seven belonged to Defendant. No guns or ammunition were listed on the contents list for the container.

Defendant, a former Jacksonville police officer, was living in Haiti at the time working for the United Nations. Agents told Defendant that there was a problem with his container, and he returned to the United States in August 2014 to resolve it. Upon being confronted about the guns and ammunition, Defendant claimed that they had been kept in a storage locker he owned along with other items he intended to ship to Haiti, but that the guns and ammunition were not meant to be shipped. He asserted that his pregnant girlfriend was supposed to have picked up the guns and ammunition and that he had hired movers to load the storage locker into the container but that he was not present when the container was being loaded. Defendant also admitted that he never followed

up with his girlfriend to make sure she had picked up the guns and ammunition. *Id.* at 962.

On August 4, 2014, Kurt Zamor learned that the workers hadn't left the packages with the broken-down guns and ammunition behind as he thought. Marie Mathurin did not pick up the packages. The guns had been placed in the container that had not yet been shipped. After explaining what happened to the agents, Kurt Zamor went back to Haiti and continued to work. In May, 2015, he returned to Florida and was arrested and charged with unlawfully shipping guns to Haiti.

The defense argued that real question at bar was “ . . . did Kurt Zamor know that those packages that contained the gun parts were on the container?” Defense counsel informed the jury that at the end of the case the jury would know how Kurt Zamor did not know the guns were shipped, and why he did not know. The defense asserted Kurt Zamor was not guilty.

The Government sought to prove Kurt Zamor put the firearms and ammunition into the hands of a common carrier or contract carrier by introducing evidence that (1) Kurt Zamor purchased the firearms; (2) the firearms were placed by workers onto a container at a storage bay; (3) a transport company moved the container the Port of Palm Beach; and (4) the container was placed with Monarch and Teeters Agency.

Jean Zamor, the Defendant's father, testified via a Creole court interpreter. (DE 111-63). Via Jean Zamor, the Government moved Exhibit # 104 into evidence, without objection. Exhibit # 104, dated May 20, 2014, had Jean Zamor's son, Kurt's, phone number listed. It contained Jean Zamor's signature. Mr. Zamor testified that it was his son's container and that he was not the one who filled out the shipper's information or the consignee information. He saw from the document that the container was being shipped to Marie Denise Gilles, his son's friend, but her date of birth, social security number and other identifying information were not included on the form, see Exhibit 142.

Tina Anderson, an agent with ATF and supervisor of Legal Instruments Examiners testified that she made inquiries concerning Jean Zamor and Kurt Zamor. She concluded that neither had a federal firearms license. However, Kurt Zamor had a permit to carry a concealed firearm.

Kristine Teeters, the Manager at the receiving office of Monarch and Teeters Agency, testified that Monarch and Teeters are shipping businesses, exporting to Haiti. She testified that she receives cargo, does Customs paperwork, and prepares load lists. Via Ms. Teeters, the Government introduced several key exhibits, including Exhibit 100, the Dock Receipt, that indicated the person who delivered the cargo and the consignee, which is the receiver in Haiti. She also testified as to

Exhibit # 102, the Bill of Sale for the container and Exhibit # 103, the photo identification of Jean Zamor. Exhibit 104 was the Contents List with the shipper's information. Exhibit # 105 was a Letter of Intent which is required to be submitted to Customs for every vehicle shipped.

On cross examination, Ms. Teeters admitted that Jean Zamor signed the shipment information and provided her with the Contents List in May, 2014. (DE 111-190-191). She only had direct contact with Jean Zamor; she never met Kurt Zamor. (DE 111-191).

Finally, Agent Sullivan testified that he never attempted to contact or investigate Ms. Gilles to ascertain her status and whether she was properly licensed to receive firearms in Haiti³.

Over defense objection, (see, e.g. DE 112-202) Det. Stephen Barborini, a detective with the Palm Beach Sheriff's Office, testified as an expert witness for the Government. (DE 112-180). Prior to working for PBSO, the detective was an ATF agent and supervisor for 25 years. (DE 112-182). Over defense objection, the Court declared the detective an expert in firearms pricing. (DE 112-193). He was permitted to testify as to the price of a Glock firearm in the United States and in Haiti. (DE 112-195). He was also permitted to testify concerning the price of

³ In light of the lack of identifying information taken by the agent and others in law enforcement, Ms. Gilles licensure status was not known.

ammunition which sells in the States for \$15-\$20 for a full metal jacket and \$100 in Haiti. He was likewise declared an expert in the general identification of firearms. (DE 112-204). He was permitted to give his opinion on the registry of weapons once they are in Haiti.

REASONS FOR GRANTING THE WRIT

A Writ of Certiorari should issue in this to review the federal constitutional questions raised herein. Pursuant to Rule 10, S.Ct.R., compelling reasons support certiorari review at bar. Because of the following issues:

- I. **THE ELEVENTH CIRCUIT FAILED TO PROPERLY APPLY TITLE 18 U.S.C. SECTION 922(e) IN DETERMINING WHETHER THE EVIDENCE WAS SUFFICIENT TO ESTABLISH GUILT**
- II. **THE ELEVENTH CIRCUIT COURT OF APPEALS FAILED TO PROPERLY APPLY RULE 16, FED.R.CRIM.P. BY ALLOWING IMPROPER EXPERT TESTIMONY AFTER THE GOVERNMENT FAILED TO PROVIDE ADEQUATE NOTICE**
- III. **SENTENCING ERROR WARRANTS REVIEW**

Certiorari should be granted in this case.

- I. **THE ELEVENTH CIRCUIT FAILED TO PROPERLY APPLY TITLE 18 U.S.C. SECTION 922(e) IN DETERMINING THE EVIDENCE WAS SUFFICIENT TO ESTABLISH GUILT**

The Eleventh Circuit Court of Appeals' Opinion affirming Kurt Zamor's convictions and sentence should be reviewed by this Court. The instant case involves an unreasonable interpretation of the requirements to establish a

conviction for knowingly exporting firearms to an unlicensed individual under Title 18 U.S.C. Section 922(e). The Prosecution in this case was deemed to have established guilt despite failing to satisfy key elements of the law.

Below, the District Court reversibly erred in refusing to dismiss the charges lodged against Kurt Zamor in Count I of the Superseding Indictment. The 11th Circuit erred in its review of the issue on direct appeal.

The Indictment at bar as to Count I alleged that Kurt Zamor:

Knowingly and willfully deliver[ed] and cause[ed] to be delivered to any common and contract carrier for transportation shipment in interstate and foreign commerce to a person other than a licensed firearm importer, licensed manufacturer, licensed dealer, and licensed collector, a package or other container in which there was a firearm without having providing written notice to such carrier that such firearm was being transported and shipped in violation of Title 18 U.S.C. Sections 922(e) and 924(a)(1)(D).

Accordingly, the jury was instructed that in order to establish the offense charged in Count I, the Government was required to establish, beyond a reasonable doubt, the following four elements: (1) that Kurt Zamor knowingly and willfully delivered or caused to be delivered a package or other container containing any firearms and/or ammunition to a common or contract carrier; (2) the package or container was intended for transportation in foreign commerce; (3) the package or container was intended for transportation to persons other than licensed importers, licensed manufacturers, licensed dealers; or licensed collections; and (4) that the

defendant did not provide written notice to the carrier, the shipping company, that the firearms or ammunition were transported or shipped.

Here, Kurt Zamor maintains that the Government failed to establish that he knowingly and willfully delivered or caused to be delivered a package or other container containing any firearms and/or ammunition to a common or contract carrier as set forth in element 1. While the container itself was ultimately intended for transportation in foreign commerce, the guns and ammunition were not. Kurt Zamor further contended on appeal that the Government failed to establish elements 3 and 4 in that they failed to introduce evidence that the container was not intended for transportation to a licensed importer (element 3) and that the Defendant did not provide written notice to the carrier that the firearms or ammunition were transported or shipped because he did not know they were shipped, and even if they had been, Kurt Zamor did not know that they had been loaded onto the shipping container (element 4).

The Eleventh Circuit analyzed Kurt Zamor's insufficiency argument "only for plain error." *Id.* at 965. Kurt Zamor maintains that his objections were preserved, particularly in light of his belated Motion for Judgment of Acquittal after he discharged the Federal Public Defender's Office after trial.

Kurt Zamor urges this Court to apply *de novo* review of each of the insufficiency of the evidence issues. However, assuming arguendo this Court determines the appropriate standard of review is plain error, Kurt Zamor should prevail nonetheless.

In *United States v. Fries*, 725 F.3d 1286, 1292 (11th Cir. 2013), the 11th Circuit held that:

To prove that a defendant violated § 922(a)(5), the government must offer evidence of four essential elements: (1) the defendant was not a licensed firearms importer, manufacturer, dealer, or collector; (2) the defendant transferred, sold, traded, gave, transported, or delivered a firearm to another person; (3) the person to whom the defendant transferred the firearm was not a licensed importer, manufacturer, dealer, or collector; and (4) the defendant knew or had reasonable cause to believe that the person to whom the firearm was transferred did not reside in the defendant's state of residence.

Because of the Government's failure to prove the requisite elements of the offense, this Honorable Court should grant review of this matter and reverse the decision of the 11th Circuit and remand this matter with instructions to discharge the Petitioner.

Kurt Zamor maintains that the District Court reversibly erred by denying his Motion for Judgment of Acquittal at the close of the Government's case and the close of the evidence. (DE 112-217; 113-3-4). Further, after trial when new

defense counsel was appointed, the Court erred by refusing to allow Kurt Zamor to file a Belated Motion for Judgment of Acquittal.

The Defendant argued that the undisputed testimony at trial was that the firearms in question were being shipped to an individual by the name of Marie Gilles in Haiti. The jury was instructed that they could only convict the Defendant if the Government proved, *inter alia*, that “the package or container was intended for transportation to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors.” The defense contended that there was no evidence or testimony introduced to demonstrate that Ms. Gilles was not a licensed importer, licensed manufacturer, licensed dealer, or licensed collector of firearms in Haiti. The defense contended that the fact that Ms. Gilles was not licensed in the United States was of no import; the Government never proved that she was not licensed in Haiti.

1) The Government Failed to Establish the Common Carrier

In order to properly interpret and apply the statutes with regards to specific terms used therein, one must refer to the Code of Federal Regulations.

Title 19 CFR 112.1 defines a freight forwarder as:

A freight forwarder is one who engages in the business of dispatching shipments on behalf of other persons, for a consideration, in foreign commerce or domestic commerce between the United States, its

territories, or possessions, and foreign countries and of handling the formalities incident to such shipments, it is authorized to operate as such by any agency of the United States. [Emphasis added]

Title 19 CFR 748.12 defines a common carrier as:

A common carrier is a carrier owning or operating a railroad, steamship, or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him.

The Supreme Court has held that " A bill of lading records that a carrier has received goods from the party that wishes to ship them, states the term of carriage and serves as evidence of the contract for carriage" *Norfolk S. Ry. Co. v. James N. Kirby, Pty. Ltd.*, 543 U.S 14,18-19,125 S. CT. 385,160 L ED. 2D 283 (2004). At bar, there was no Bill of Lading executed or introduced into evidence and the container was never in possession and control of a common or contract carrier.

Here, Kurt Zamor maintains that the Government failed to establish a knowing and willful delivery of firearms and ammunition to a common carrier. The Appellant pointed the Eleventh Circuit to Government Exhibits 104, 105, 142 in support of his claim. He asserted the Government's exhibits were insufficient to prove that a delivery of the container was made to a common carrier. Exhibit 104 displayed the company name Monarch Shipping Lines (U.S. General Agents Teeters Agency) and the content list. The Government introduced the evidence to establish Kurt Zamor's delivery to a common carrier, but the document reads in

part, “[B]y signing this document, you authorize Monarch to act as a forwarding agent for you for export control and customs’ purposes⁴. ” (Gov.’s Exhibit 104). [Emphasis added]. Next, the Government introduced Exhibit 105, which was a Letter of Intent generated by “Teeters Agency and Stevedoring, Inc.” In said Exhibit, Teeters set forth that the shipping company was Monarch Shipping Co. Ltd. Yet, Monarch’s document set forth they were only acting as a forwarding agent.

Kurt Zamor maintains that each document introduced by the Government, when viewed singularly or collectively, was insufficient to establish delivery to a common or contract carrier as required under the statute because two separate companies were listed; one a freight forwarding company and the other a shipping company. There is no evidence of delivery to Monarch Shipping Co. Ltd. as a common carrier on this record. The Eleventh Circuit addressed this issue, holding,

First, Defendant contends that the Government failed to prove element 1: that Defendant knowingly delivered the container carrying guns to a common or contract carrier. Because the contents list for the container describes Monarch—the company Defendant used to ship the container—as a “forwarding agent,” Defendant argues that, Monarch was not acting as a common or contract carrier. “Common carrier” and “contract carrier” are not

⁴ The Government’s theory all along was that Monarch Shipping Lines was the common carrier in this case.

defined in § 922, so Defendant relies on 19 C.F.R. § 112.1, which defines "freight forwarder" separately from common and contract carrier—demonstrating, according to Defendant, that a forwarding agent is not a common or contract carrier. Specifically, 112.1 defines a "freight forwarder" as "one who engages in the business of dispatching shipments on behalf of other persons . . . in foreign or domestic commerce . . . and is authorized to operate as such by any agency of the United States." That regulation also defines a "common carrier" as a "carrier owning or operating a . . . transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him," and a "contract carrier" as a carrier that does the same but only "for a specific person or group of persons" as authorized by the federal government. *Id.*

Because Defendant did not raise this particular issue before the district court, we review only for plain error. See *Baston*, 818 F.3d at 664.

The accuracy of Defendant's contention is neither obvious nor clear. Neither the contents list nor the definitions in 19 C.F.R. § 112.1 (assuming they are even relevant to 18 U.S.C. § 922(e)) establishes that Monarch was not a common or contract carrier. The contents list states that Monarch is only acting as a forwarding agent "for export control and customs purposes"—not that Monarch is, categorically, a freight forwarder to the exclusion of being a common or contract carrier. Even if it did, our precedent dictates that "[w]hether a transportation agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does." *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 648 (5th Cir. 1967) (quoting *United States v. California*, 297 U.S. 175, 181, 56 S. Ct. 421, 80 L. Ed.

567 (1936)). And the Government presented sufficient evidence at trial for the jury to conclude that, under any definition, Monarch was acting as a common or contract carrier. Monarch's employee, Kristine Teeters, testified that Monarch "contract[s] with people to . . . ship things to other countries." Thus, we find no error, plain or otherwise.

Id.

In *United States v. Joseph*, 571 F.Appx. 784 (11th Cir. 2014) [2014 U.S. App. LEXIS 12956] Joseph proceeded to trial on the issue of whether a common carrier was involved. Importantly⁵, the same case agent from *Joseph*, Agent Anderson Sullivan, was the case agent at bar. In *Joseph*, the Court held that "Joseph admitted knowingly causing his three Glock 17s to be placed on the truck that he was shipping to his cousins in Haiti and that his cousins were not licensed importers, manufacturers, dealers or collectors." The Eleventh Circuit found the fact that the cousins were not licensed to be dispositive and upheld the convictions. The Eleventh Circuit in *Joseph* knew that as charged, the import license need only be from the foreign country because of Joseph's admission to that. In *Joseph*, it was revealed that Joseph made all his statements to Agent Sullivan during a post-Miranda interview. Joseph's statements and the Eleventh Circuit's Opinion on element 3 reflect that Title 15 CFR 748.12 reading of the import license's

⁵ The importance of Agent Sullivan's testimony in *Joseph* highlights the Agent's knowledge of the licensing requirements for exporting firearms and the deficiencies in this case.

regulation controls. Here, certiorari is warranted to review the proof established of a common carrier.

2) The Government Failed to Establish that Kurt Zamor Knowingly Delivered the Guns and Ammunition

Kurt Zamor maintains that the Government presented insufficient evidence to prove that he "knowingly . . . deliver or cause to be delivered" the guns and ammunition in the container because he was unaware that such items had been placed in the container. See 18 U.S.C. § 922(e).

The Eleventh Circuit stated:

This argument was properly presented to the district court, so we apply *de novo* review. Nevertheless, the Government presented sufficient evidence that a reasonable factfinder could conclude beyond a reasonable doubt that Defendant knew the guns and ammunition were in the container to be delivered to Monarch. Defendant's father testified that, although he put his name on the shipping paperwork, Defendant was the one who wanted the container shipped to Haiti, that Defendant and Defendant's friend filled out the shipping paperwork, that Defendant owned the container, and that Defendant was the one who paid to have it shipped. Defendant admitted to investigators that the guns in the container were his. Customs officer Clayton Kimball testified that, when he and his team searched the container, they found guns and ammunition stored in three separate locations: a tool bag, a toolbox, and a backpack. Most of the guns had been taken apart, and the guns in the toolbox had been concealed under the tools. The gun parts were separated into upper (e.g., the spring

and barrel) and lower parts (e.g., the stock and grip), with the upper parts kept in the tool box and the lower parts stored in the backpack. Officer Kimball further testified that the ammunition was loose, so different calibers had been mixed together. Officer Kimball also observed that the guns and ammunition had been stored in such a way that made them harder to detect with x-ray technology, as they appeared to be loose pieces of metal instead of guns. Defendant stated that he was familiar with that technology in his interview with federal officers. Finally, Barborini testified that the guns were significantly more valuable in Haiti than in the United States.

Defendant asserted at trial that he was unaware that the guns and ammunition had been placed into the container because he was not present when the container was being loaded and he understood that his girlfriend was to have removed the guns and ammunition prior to the loading of the container. But Zharellis Holmes testified that she was at Defendant's storage locker when it was being loaded into the container, and she observed that Defendant was also present, that Defendant was "directing" those who were helping move items into it, and that the locker was empty once the container had been loaded. Witness testimony also established that Defendant's girlfriend was around five-months pregnant at the time and that the toolbox alone weighed over 80 pounds.

Viewing these facts in the light most favorable to the Government, a reasonable factfinder could conclude beyond a reasonable doubt that Defendant knowingly and willfully placed the guns in the container to be shipped to Haiti. The Government presented evidence from which the jury could conclude that Defendant was involved in every aspect of attempting to ship the guns to Haiti—from buying the guns and the container to completing the paperwork and loading the guns and ammunition into the container—and that he had a motive to do so.

Quite to the contrary, the issue of criminal knowledge and intent was lacking at bar. While the Government cases sinister inferences based upon the evidence at trial, the same is not proof of criminal knowledge or intent. As the Government's *prima facie* case was lacking in this respect, review is appropriate.

3) The Government Never Established that Marie Gilles Was Not a Licensed Importer, Manufacturer, Dealer or Collector in Haiti

The evidence at bar was insufficient to prove the licensing status of Marie Denise Gilles, the recipient of the container in Haiti. At trial and on appeal, the Government claims the recipient's licensing status is of no moment. Kurt Zamor disagrees.

At trial, the Government introduced the testimony of Tina Anderson and Exhibit 142 to prove that there was no import license. Tina Anderson testified that she has legal custody of the records of ATF for the 50 states of the United States and its territories pertaining to firearms licenses within such territories to engage in business as a firearm or ammunition importer, manufacturer, dealer, or collector. Ms. Anderson testified that she conducted a check on Marie Gilles referred to in Exhibit 104⁶, as opposed to Agent Sullivan who never investigated Ms. Gilles. Ms. Anderson stated that she conducted a search concerning the licensing for Marie Gilles and there were no records found for application or issuance of a

⁶ Exhibit 104 lacked sufficient identifiers to establish date of birth, social security number, etc.

firearm license in the United States during the requisite time period. However, the Appellant maintains this evidence was irrelevant because Haiti is not a state or territory of the United States, therefore any licensing information about Haiti was solely within the jurisdiction of the Haitian Government. It was not incumbent on Kurt Zamor to prove that Ms. Gilles was a licensed firearms importer in Haiti – it was up to the Government to prove she was not.

Under Title 15 CFR 748.12, any import license or Letter of Authorization is to be issued by the importing country, in this case, the information could only come from the Government of Haiti. Ms. Anderson is an employee of ATF, and not an employee of the Haitian government.

4) The Government Failed to Establish All of the Request Elements to Establish a Section 922(e) Offense

Element 4 of the offense required the Government to establish, beyond a reasonable doubt, that Kurt Zamor did not provide written notice to the carrier that the firearms or ammunition was to be shipped. In that Kurt Zamor established that he lacked knowledge and intent, his conviction cannot stand.

II. THE ELEVENTH CIRCUIT COURT OF APPEALS FAILED TO PROPERLY APPLY RULE 16, FED.R.CRIM.P. BY ALLOWING IMPROPER EXPERT TESTIMONY AND FAILING TO PROVIDE ADEQUATE NOTICE

At trial, before Agent Barborini was permitted to testify concerning his “expert” opinion concerning the value of firearms and ammunition in the United States and Haiti, defense counsel objected pursuant to Rule 16(a)(1)(g), Fed.R.Crim.P. First, the defense argued that the Government’s Notice was untimely, insufficient, and failed to comply with Rule 16(a)(1)(g), Fed.R.Crim.P. The expert’s report was given to the defense in the midst of trial. (DE 112-55). Second, the Notice was conclusory and did not actually put the defense on notice of the proposed expert testimony. *United States v. Frazier*, 387 F.3d 1244 (11th Cir. 2004). Finally, the agent lacked any actual, recent knowledge of the price of firearms and ammunition in Haiti. Indeed, he relied upon a hearsay statement a decade earlier in opining on the firearm prices in Haiti. The Court’s allowance of the improper testimony constituted an abuse of discretion requiring a new trial.

Further, the defense argued that the expert testimony that Kurt Zamor was trafficking in firearms was extremely prejudicial. The objection to the testimony was partially sustained by the trial court. The defense was allowed to have a continuing objection to the expert testimony. (DE 112-162-163). Given the basis

of the agent's stale knowledge concerning the price of firearms and ammunition in Haiti, reversible error required a new trial.

III. SENTENCING ERROR WARRANTS REVIEW

As set forth by the 11th Circuit Court of Appeals:

Finally, Defendant contends that the district court erred when it sentenced him to 60 months imprisonment—a sentence below the recommended guidelines range of 63 to 78 months. First, Defendant argues that the appropriate guideline for Count II (violation of 18 U.S.C. § 554(a)) was U.S.S.G. § 2M5.2(a)(2), which set a base offense level of 14, and that the district court erred in following § 2M5.2(a)(1), which set a higher base offense level of 26.

However, the Eleventh Circuit determined that based upon a failure to object at sentencing, Kurt Zamor's sentencing claim was reviewed under plain error, citing *United States v. Barrington*, 648 F.3d 1178, 1195 (11th Cir. 2011). The Court found no such error.

As to Kurt Zamor's second sentencing argument, the Appellant argued that the district court's sentence was substantively unreasonable because the application notes for § 2M5.2 indicate that a court should consider a downward departure where the conduct was not harmful to the foreign policy or security interests of the United States.

The 11th Circuit Court stated:

Yet the district court took into consideration the factors in 18 U.S.C. § 3553(a) and varied downward from the recommended guidelines range. We may only vacate a sentence 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 by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case," *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc) (internal quotation marks omitted), and we find no reason to conclude that the district court made such an error here.'

Although the District Judge did grant a three-month downward departure from the bottom of the established Guideline range, had the Court utilized a base offense level under Section 2M5.2(a)(2), U.S.S.G., the level would have started at Level 14 (15-21 months) a downward variance would have driven Kurt Zamor's sentence even lower. The sentence imposed, 60 months, far exceeds 15-21 months and constitutes clear error warranting review.

In *United States v. de Hernandez*, 389 Fed. Appx. 932 (11th Cir. 2010), the defendant argued that application of § 2M5.2(a)(1), which set her base offense level at 26, was improper because only ten firearms were recovered from the sofa and television and therefore her base offense level should have been 14. U.S.S.G. § 2M5.2(a)(1) (directing that the base offense level for exportation of arms,

munitions, or military equipment or services without required validated export license shall be 26). The Court declined to address this argument because Mejia withdrew this objection before the district court and conceded that § 2M5.2(a)(1) applied, thereby inviting any error. See *United States v. Masters*, 118 F.3d 1524, 1526 (11th Cir. 1997) (holding that where a defendant raises and then knowingly withdraws an objection to her sentence, the objection may be deemed waived and will not be reviewed on appeal).

Kurt Zamor contends that Section 2M5.2(a)(2) applies, which would reduce his offense level to a base offense level to 14 "if the offense involved only non-fully automatic small arms (rifles, handguns, or shotguns), and the number of weapons did not exceed ten." *de Hernandez*, 389 Fed. Appx. 932 at 935.

Kurt Zamor's actions did not threaten security or foreign policy of the United States, the volume of commerce involved was low, the extent of planning or sophistication was minimal. Accordingly, review should be granted and the sentence imposed should be reversed and this matter remanded for re-sentencing.

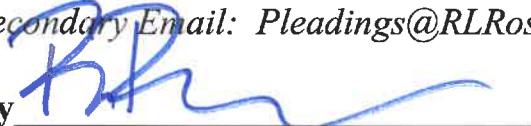
Certiorari review is warranted.

CONCLUSION

Based upon the Government's failure to establish proof of guilt beyond a reasonable doubt the evidence was insufficient and the convictions and sentences should be reversed with instructions to discharge Kurt Zamor forthwith. As to his other claims, a new trial and/or new sentencing proceedings should be conducted.

Respectfully submitted,

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April 8, 2019

A P E N D I X

APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-16731
Non-Argument Calendar

D.C. Docket No. 9:15-cr-80095-DTKH-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KURT ZAMOR,

Defendant - Appellant.

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

(August 9, 2018)

Before WILLIAM PRYOR, ANDERSON, and JULIE CARNES, Circuit Judges.

PER CURIAM:

A-1

In 2014, Defendant Kurt Zamor attempted to ship a container from Florida to Haiti containing firearms and ammunition without providing written notice to the shipping company. Before the container left the country, federal agents discovered its contents. Defendant was arrested and charged with violating 18 U.S.C. §§ 554(a), 922(e), and 924(a)(1)(D) by attempting to knowingly deliver a container carrying firearms and ammunition to a common or contract carrier for shipment to an unlicensed person without giving written notice to the carrier. After a trial, a jury found Defendant guilty and the district court sentenced him to 60 months in prison. On appeal, Defendant challenges the admission of expert testimony from one of the Government's witnesses, the sufficiency of the evidence, and his sentence. We conclude that the Government presented sufficient evidence to convict Defendant and that the district court did not err in its other rulings. Accordingly, we affirm.

I. BACKGROUND

A. Factual Background

In April 2014, a gun store filed a multiple-sale report with the federal government stating that Defendant had recently purchased two guns within a five-day period. An agent with Homeland Security Investigations, part of the Department of Homeland Security, forwarded that report to Customs and Border

Protection (CBP). CBP identified a container ready to be shipped from the Port of Palm Beach to Haiti that was listed in the name of Defendant's father, Jean Zamor. After investigating further, CBP discovered that Defendant had purchased the container and decided to search it.

Searching through the 40-foot container, CBP agents found an SUV, mattresses, furniture, tires, and a variety of other items. Towards the nose of the container (the end farthest from the doors) the agents found a tool bag, a toolbox, and a backpack, each containing guns or ammunition. The tool bag contained a can full of ammunition of different calibers that had been mixed together. The toolbox was covered in plastic wrap and contained a variety of tools and, underneath those tools, the lower parts of disassembled guns (e.g., the stock and grip) that had been zip-tied together. The backpack, which was also wrapped in plastic, was found inside an icemaker. The backpack contained the upper parts of disassembled guns (e.g., the spring and the barrel) that had been zip-tied together and matched the lower parts found in the toolbox. By the end, agents had found seven disassembled guns, one intact gun, and 561 rounds of ammunition. Further research showed that, of the eight guns found, seven belonged to Defendant. No guns or ammunition were listed on the contents list for the container.

Defendant, a former Jacksonville police officer, was living in Haiti at the time working for the United Nations. Agents told Defendant that there was a problem with his container, and he returned to the United States in August 2014 to resolve it. Upon being confronted about the guns and ammunition, Defendant claimed that they had been kept in a storage locker he owned along with other items he intended to ship to Haiti, but that the guns and ammunition were not meant to be shipped. He asserted that his pregnant girlfriend was supposed to have picked up the guns and ammunition and that he had hired movers to load the storage locker into the container but that he was not present when the container was being loaded. Defendant also admitted that he never followed up with his girlfriend to make sure she had picked up the guns and ammunition.

B. Procedural History

Defendant was arrested on May 27, 2015. Count I of the superseding indictment charged Defendant with violating 18 U.S.C. §§ 2, 922(e), and 924(a)(1)(D) by knowingly and willfully delivering or causing to be delivered a container with one or more firearms to a common or contract carrier for shipment in interstate and foreign commerce to a person not licensed as a firearm importer, manufacturer, dealer, or collector without providing written notice to the carrier. Count II charged violation of 18 U.S.C. §§ 2 and 554(a) for fraudulently and

knowingly attempting to export firearms and ammunition to Haiti in violation of § 922(e) and § 924(a)(1)(D). Defendant pled not guilty.

At trial, the Government presented testimony from a variety of witnesses. Federal agents testified about their investigation and search of Defendant's container. Defendant's father testified that Defendant owned the goods in the container, had arranged the shipping, and was the one who wanted the container shipped to Haiti; Defendant's father simply put his name on the paperwork. An eyewitness testified that Defendant was present while his storage locker was being loaded into the container and that the locker was empty when the movers finished. And a former Alcohol, Tobacco, Firearms and Explosives (ATF) agent testified that Defendant's guns and ammunition were worth significantly more in Haiti than in the United States. Although Defendant did not testify, the jury heard a recording of his initial interview with federal agents where he claimed to have been unaware that the guns and ammunition had been moved into the container.

After the Government presented its case in chief, Defendant moved for a judgment of acquittal on the basis that the Government had produced insufficient evidence. The district court denied the motion. Defendant did not present any witnesses in his defense, and, after resting, renewed his motion for a judgment of

acquittal. The court again denied the motion. The jury returned a verdict of guilty on both Counts I and II.

At sentencing, the Presentence Investigation Report (PSR) identified that U.S.S.G. § 2K2.1 applied to Count I and U.S.S.G. § 2M5.2 applied to Count II. Section 2M5.2(a)(1) set Defendant's base offense level at 26. The PSR concluded that the recommended guideline range was 63 to 78 months imprisonment. After considering both the PSR and the factors identified in 18 U.S.C. § 3553(a), the district court sentenced Defendant to 60 months for each count, with both sentences to be served concurrently.

Defendant filed a timely appeal challenging the district court's denial of his motion for judgment of acquittal, the admission of the Government's expert testimony, and his sentence.

II. STANDARD OF REVIEW

“We review a district court’s denial of a motion for judgment of acquittal *de novo.*” *United States v. Seher*, 562 F.3d 1344, 1364 (11th Cir. 2009). And when that motion is based on sufficiency of the evidence, “we review the sufficiency of the evidence *de novo*, drawing all reasonable inferences in the government’s favor.” *Id.* (internal quotation marks omitted). We must affirm if “a reasonable factfinder could find that the evidence established that the defendant was guilty

beyond a reasonable doubt.” *Id.* When a defendant fails to articulate to the district court the specific sufficiency-of-the-evidence claim raised on appeal, we review only for plain error. *United States v. Baston*, 818 F.3d 651, 664 (11th Cir. 2016); *United States v. Hunerlach*, 197 F.3d 1059, 1068 (11th Cir. 1999). To be reversible under plain-error review, the district court’s error must have affected Defendant’s substantial rights and “must be one that is obvious and is clear under current law.” *United States v. Madden*, 733 F.3d 1314, 1322 (11th Cir. 2013) (internal quotation marks omitted).

We review a district court’s ruling “regarding the admissibility of expert testimony and the reliability of an expert opinion” for abuse of discretion. *United States v. Frazier*, 387 F.3d 1244, 1258 (11th Cir. 2004) (en banc). We cannot reverse “unless the ruling is manifestly erroneous.” *Id.* (internal quotation marks omitted).

And “we review the reasonableness of a sentence for abuse of discretion using a two-step process.” *United States v. Cubero*, 754 F.3d 888, 892 (11th Cir. 2014) (internal quotation marks omitted). First, we determine whether the district court committed any “significant procedural error.” *Id.* Second, “we examine whether the sentence is substantively reasonable under the totality of the circumstances and in light of the [18 U.S.C.] § 3553(a) factors.” *Id.*

III. DISCUSSION

A. The Government's Expert Testimony

Defendant argues that the Government failed to comply with Federal Rule of Criminal Procedure 16 by providing inadequate notice of former ATF agent Stephen Barborini's expected testimony and that Barborini's testimony was otherwise inadmissible. Although the Government provided notice of Barborini's testimony before trial, Defendant asserts that the notice violated Rule 16 because it was untimely and inadequately explained what Barborini would testify to. "Violations of Rule 16 will result in a reversal of a conviction only if such a violation prejudices a defendant's substantial rights." *United States v. Chastain*, 198 F.3d 1338, 1348 (11th Cir. 1999) (internal quotation marks omitted). Thus, "actual prejudice must be shown." *Id.* Even assuming that the Government's notice was defective in some way, Defendant does not explain how the alleged defects prejudiced his defense. In fact, Defendant was given notice before trial that Barborini would be testifying about the value of firearms and ammunition in Haiti based on his experience as an ATF agent. Defendant was able to cross-examine Barborini and could have presented a rebuttal witness, had he chosen to do so. We conclude that Defendant has not shown actual prejudice from the allegedly defective notice. *See id.* (holding that there was no actual prejudice where a

defendant was able to interview a witness during trial and had the opportunity to find a rebuttal witness).

Defendant also contends that Barborini's testimony was not relevant and that Barborini was unqualified to testify to the value of the guns in Haiti because his knowledge was stale and based on hearsay. At trial, Barborini testified that he had been an agent with the ATF for over 25 years and that his knowledge regarding the value of firearms and ammunition in Haiti was based on post-arrest interviews he conducted with persons caught trafficking arms to Haiti. Although many of these interviews had occurred years earlier, Barborini testified that he had more recent conversations about the value of firearms and ammunition in 2014 and 2015 with a person who runs a security company in Haiti. Based on this knowledge and experience, Barborini testified that, in Haiti, Defendant's guns were worth double to quadruple the U.S. purchase price and the ammunition was worth more as well. The district court ruled both that Barborini had established a sufficient basis for his testimony and that it was relevant to showing Defendant's potential motive for shipping the guns and ammunition to Haiti.

As to Defendant's argument that Barborini's information should have been more recent, that concern goes to the weight of Barborini's testimony, not its admissibility. As to the latter, an expert may rely on information from others if

that is the type of evidence reasonably relied upon by experts in his particular field. *See United States v. Floyd*, 281 F.3d 1346, 1349 (11th Cir. 2002). Finally, the testimony as to the value of the guns and ammunition in Haiti was relevant as it showed a potential motive for Defendant to attempt to ship these items to Haiti. Thus, we cannot conclude that any of the district court's rulings on these issues were erroneous.

B. Sufficiency of the Evidence

Defendant argues that the Government presented insufficient evidence to convict him of violating 18 U.S.C. § 922(e).¹ To prove that Defendant violated § 922(e), the Government had to establish four elements: (1) that Defendant knowingly and willfully delivered or caused to be delivered a package or container containing firearms or ammunition to a common or contract carrier, (2) that the package or container was intended for transportation in foreign commerce, (3) that the package or container was intended to be transported to someone other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, and

¹ 18 U.S.C. § 922(e) states, in part:

It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped.

(4) that Defendant did not provide written notice to the carrier that firearms or ammunition were being transported or shipped. 18 U.S.C. § 922(e). Defendant argues on appeal that the Government provided insufficient evidence for elements 1, 3, and 4.²

First, Defendant contends that the Government failed to prove element 1: that Defendant knowingly delivered the container carrying guns to a common or contract carrier. Because the contents list for the container describes Monarch—the company Defendant used to ship the container—as a “forwarding agent,” Defendant argues that, Monarch was not acting as a common or contract carrier. “Common carrier” and “contract carrier” are not defined in § 922, so Defendant relies on 19 C.F.R. § 112.1, which defines “freight forwarder” separately from common and contract carrier—demonstrating, according to Defendant, that a forwarding agent is not a common or contract carrier. Specifically, § 112.1 defines a “freight forwarder” as “one who engages in the business of dispatching shipments on behalf of other persons . . . in foreign or domestic commerce . . . and is authorized to operate as such by any agency of the United States.” That regulation also defines a “common carrier” as a “carrier owning or operating a . . . transportation line or route which undertakes to transport goods or merchandise for

² Defendant concedes that the Government produced sufficient evidence for the second element.

all of the general public who choose to employ him,” and a “contract carrier” as a carrier that does the same but only “for a specific person or group of persons” as authorized by the federal government. *Id.*

Because Defendant did not raise this particular issue before the district court, we review only for plain error. *See Baston*, 818 F.3d at 664. “For a plain error to have occurred, the error must be one that is obvious and is clear under current law.” *United States v. Dortch*, 696 F.3d 1104, 1112 (11th Cir. 2012) (quoting *United States v. Carruth*, 528 F.3d 845, 846 n.1 (11th Cir. 2008)). “An error is not obvious and clear when ‘[n]o Supreme Court decision squarely supports’ the defendant’s argument, ‘other circuits . . . are split’ regarding the resolution of the defendant’s argument, and ‘we have never resolved the issue.’” *Id.* (alteration in original) (quoting *United States v. Humphrey*, 164 F.3d 585, 588 (11th Cir. 1999)).

The accuracy of Defendant’s contention is neither obvious nor clear. Neither the contents list nor the definitions in 19 C.F.R. § 112.1 (assuming they are even relevant to 18 U.S.C. § 922(e)) establishes that Monarch was not a common or contract carrier. The contents list states that Monarch is only acting as a forwarding agent “for export control and customs purposes”—not that Monarch is, categorically, a freight forwarder to the exclusion of being a common or contract carrier. Even if it did, our precedent dictates that “[w]hether a transportation

agency is a common carrier depends not upon its corporate character or declared purposes, but upon what it does.” *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 648 (5th Cir. 1967) (quoting *United States v. California*, 297 U.S. 175, 181 (1936)).³ And the Government presented sufficient evidence at trial for the jury to conclude that, under any definition, Monarch was acting as a common or contract carrier. Monarch’s employee, Kristine Teeters, testified that Monarch “contract[s] with people to . . . ship things to other countries.”⁴ Thus, we find no error, plain or otherwise.

Defendant also argues that the Government presented insufficient evidence to prove that he “knowingly . . . deliver or cause to be delivered” the guns and ammunition in the container because he was unaware that such items had been

³ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding all Fifth Circuit precedent prior to October 1, 1981.

⁴ Defendant also contends that the Government did not present sufficient evidence that he delivered the container to a common or contract carrier because the contents list refers to “Monarch Shipping Lines, Inc.” but the letter of intent for the shipment identifies “Monarch Shipping Co. Ltd” as the shipping company. In other words, Defendant argues that the presence of two different corporate entities precluded the jury from finding that one or the other was a common or a contract carrier. This claim was not presented to the district court so we review only for plain error. The Government need not have conclusively proven that only one of these two corporate entities was the common carrier. See *United States v. Starrett*, 55 F.3d 1525, 1541 (11th Cir. 1995) (“[T]he evidence need not be inconsistent with every reasonable hypothesis except guilt, and the jury is free to choose between or among the reasonable conclusions to be drawn from the evidence presented at trial.” (internal quotation marks omitted)). Instead, the Government merely needed to present enough evidence for a reasonable factfinder to conclude that either was, and the Government accomplished that.

placed in the container. *See* 18 U.S.C. § 922(e). Although Defendant labels his argument as pertaining to element 4 and its requirement that written notice be given to the common or contract carrier about the guns and ammunition, the substance of his argument goes to element 1.⁵

This argument was properly presented to the district court, so we apply *de novo* review. Nevertheless, the Government presented sufficient evidence that a reasonable factfinder could conclude beyond a reasonable doubt that Defendant knew the guns and ammunition were in the container to be delivered to Monarch. Defendant's father testified that, although he put his name on the shipping paperwork, Defendant was the one who wanted the container shipped to Haiti, that Defendant and Defendant's friend filled out the shipping paperwork, that Defendant owned the container, and that Defendant was the one who paid to have it shipped. Defendant admitted to investigators that the guns in the container were his. Customs officer Clayton Kimball testified that, when he and his team searched the container, they found guns and ammunition stored in three separate locations: a tool bag, a toolbox, and a backpack. Most of the guns had been taken apart, and

⁵ To the extent Defendant does raise the issue that the Government presented insufficient evidence that he failed to provide written notice to Monarch, that issue is abandoned because Defendant failed to develop it. *See United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003) (holding that a claim was abandoned where the defendant's brief contained only "passing references" to the claim).

the guns in the toolbox had been concealed under the tools. The gun parts were separated into upper (e.g., the spring and barrel) and lower parts (e.g., the stock and grip), with the upper parts kept in the tool box and the lower parts stored in the backpack. Officer Kimball further testified that the ammunition was loose, so different calibers had been mixed together. Officer Kimball also observed that the guns and ammunition had been stored in such a way that made them harder to detect with x-ray technology, as they appeared to be loose pieces of metal instead of guns. Defendant stated that he was familiar with that technology in his interview with federal officers. Finally, Barborini testified that the guns were significantly more valuable in Haiti than in the United States.

Defendant asserted at trial that he was unaware that the guns and ammunition had been placed into the container because he was not present when the container was being loaded and he understood that his girlfriend was to have removed the guns and ammunition prior to the loading of the container. But Zharellis Holmes testified that she was at Defendant's storage locker when it was being loaded into the container, and she observed that Defendant was also present, that Defendant was "directing" those who were helping move items into it, and that the locker was empty once the container had been loaded. Witness testimony also

established that Defendant's girlfriend was around five-months pregnant at the time and that the toolbox alone weighed over 80 pounds.

Viewing these facts in the light most favorable to the Government, a reasonable factfinder could conclude beyond a reasonable doubt that Defendant knowingly and willfully placed the guns in the container to be shipped to Haiti. The Government presented evidence from which the jury could conclude that Defendant was involved in every aspect of attempting to ship the guns to Haiti—from buying the guns and the container to completing the paperwork and loading the guns and ammunition into the container—and that he had a motive to do so.

Finally, Defendant argues that the Government presented insufficient evidence for the jury to conclude under element 3 that Marie Gilles—the woman Defendant attempted to ship the container to—was not licensed as an importer, manufacturer, dealer, or collector. Defendant contends that the Government had to prove that she was not licensed in Haiti and that the Government failed to present any evidence on this issue. Because Defendant raised this issue in the district court in an untimely motion for a judgment of acquittal after trial, we review only for plain error. *United States v. Sperrazza*, 804 F.3d 1113, 1119 (11th Cir. 2015) (“If the motion was untimely, then the argument is forfeit, and we must review its

denial by the district court only for plain error, not *de novo*."); *United States v. Martinez*, 83 F.3d 371, 376 n.5 (11th Cir. 1996) (same).

Defendant asserts that the "license[]" referred to in 18 U.S.C. § 922(e) is a Firearms Convention Import Certificate defined in 15 C.F.R. § 748.12 and issued by the government of Haiti. But Defendant cites no case, statute, or other authority to support this. Thus, there can be no plain error as to this issue. In fact, current law indicates that the license mentioned in § 922(e) is a federal firearms license. *See* 18 U.S.C. § 921(a)(9)–(11), (13) (defining "licensed importer," "licensed manufacturer," "licensed dealer," and "licensed collector" to mean persons "licensed under the provisions of this chapter"); *id.* § 923(a)–(b) (requiring any persons importing, manufacturing, dealing, or collecting firearms to obtain a license from the Attorney General); *see also United States v. Focia*, 869 F.3d 1269, 1279 (11th Cir. 2017) (affirming conviction under 18 U.S.C. § 922(a)(5)⁶ because a reasonable jury could have found that the defendant sold a firearm to a person who "did not have a federal firearms license at the time of the purchase"); *United States v. Fries*, 725 F.3d 1286, 1292–93 (11th Cir. 2013) ("The plain language of § 922(a)(5) clearly requires the government to prove, as an essential element of the

⁶ In language similar to 18 U.S.C. § 922(e), § 922(a)(5) makes it unlawful for any person to transfer a firearm to an out-of-state resident "other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector."

offense, that neither the defendant nor the nonresident to whom the defendant allegedly transferred the weapon possessed a[] [federal firearms license] at the time of the transfer.”). And the Government presented evidence from Tina Anderson, who handles federal licensing as part of her job for the ATF, that Ms. Gilles was not federally licensed as an importer, manufacturer, dealer, or collector. Because it is not “obvious and . . . clear under current law” that the Government had to prove that Ms. Gilles lacked a Firearms Convention Import Certificate from Haiti and the Government presented evidence showing Ms. Gilles lacked a federal firearms license, we find no plain error. *See Madden*, 733 F.3d at 1322 (internal quotation marks omitted).

Altogether, we conclude that the Government presented sufficient evidence for a reasonable factfinder to conclude beyond a reasonable doubt that Defendant violated 18 U.S.C. § 922(e) for Count I. Because the Government presented sufficient evidence to convict Defendant of Count I, there was also sufficient evidence for the jury to convict on Count II for willfully violating § 922(e).

C. Sentencing

Finally, Defendant contends that the district court erred when it sentenced him to 60 months imprisonment—a sentence below the recommended guidelines range of 63 to 78 months. First, Defendant argues that the appropriate guideline

for Count II (violation of 18 U.S.C. § 554(a)) was U.S.S.G. § 2M5.2(a)(2), which set a base offense level of 14, and that the district court erred in following § 2M5.2(a)(1), which set a higher base offense level of 26.⁷ Defendant, however, did not raise any objection to the district court applying § 2M5.2(a)(1) at sentencing, so we review only for plain error. *United States v. Barrington*, 648 F.3d 1178, 1195 (11th Cir. 2011). And we find no such error. Section 2M5.2(a)(2) does not apply because Defendant attempted to ship more than two non-fully automatic small arms and more than 500 rounds of ammunition.

Second, Defendant argues that the district court's sentence was substantively unreasonable because the application notes for § 2M5.2 indicate that a court should consider a downward departure where the conduct was not harmful to the foreign policy or security interests of the United States. Yet the district court took into consideration the factors in 18 U.S.C. § 3553(a) and varied downward from the recommended guidelines range. We may only vacate a sentence 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 by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case," *United*

⁷ U.S.S.G. § 2M5.2(a)(2) is an exception to § 2M5.2(a)(1) that lowers the base level to 14 "if the offense involved only (A) non-fully automatic small arms (rifles, handguns, or shotguns), and the number of weapons did not exceed two, (B) ammunition for non-fully automatic small arms, and the number of rounds did not exceed 500, or (C) both."

States v. Irey, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc) (internal quotation marks omitted), and we find no reason to conclude that the district court made such an error here.

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

For rules and forms visit
www.ca11.uscourts.gov

August 09, 2018

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 16-16731-FF
Case Style: USA v. Kurt Zamor
District Court Docket No: 9:15-cr-80095-DTKH-1

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 Janet K. Mohler, FF at (404) 335-6178.

Sincerely,

DAVID J. SMITH, Clerk of Court

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

OPIN-1 Ntc of Issuance of Opinion

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 16-16731-FF

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KURT ZAMOR,

Defendant - Appellant.

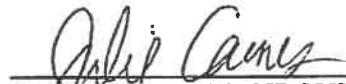
Appeal from the United States District Court
for the Southern District of Florida

BEFORE: WILLIAM PRYOR, ANDERSON, and JULIE CARNES, Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE
ORD-41

A-2

UNITED STATES DISTRICT COURT

**Southern District of Florida
Fort Lauderdale Division**

UNITED STATES OF AMERICA

v.

KURT ZAMOR

JUDGMENT IN A CRIMINAL CASE

Case Number: 9:15-CR-80095-001
USM Number: 07914-104

Counsel For Defendant: Ian Goldstein
Counsel For The United States: Lothrop Morris
Court Reporter: Pauline Stipes

The defendant was found guilty on count(s) one and two of the Indictment of the indictment.

The defendant is adjudicated guilty of these offenses:

TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
18:922(e) and 924(a)(1)(D)	Knowingly and willfully caused the delivery of firearms and ammunition to a common carrier for shipment in foreign commerce to a person other than a license importer, manufacturer, dealer, or collector, without written notice to the carrier that firearms	05/27/2015	1
18:554(a)	Knowingly and fraudulently attempt to export and send firearms and ammunition from the United States	05/27/2015	2

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

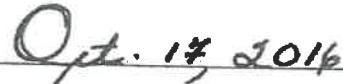
All remaining counts are dismissed on the motion of the government.

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

Date of Imposition of Sentence: 10/5/2016


Daniel T. K. Hurley
United States Senior District Judge

Date:


Oct. 17, 2016

A-3

DEFENDANT: KURT ZAMOR
CASE NUMBER: 9:15-CR-80095-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 60 months, which consists of 60 months as to count one and 60 months as to count two to run concurrently.

The court makes the following recommendations to the Bureau of Prisons: that the defendant be incarcerated in a facility as close to Jacksonville as possible.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: KURT ZAMOR
CASE NUMBER: 9:15-CR-80095-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years supervised release, which consists of 3 years as to count one and 3 years as to count two 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 defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

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

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: KURT ZAMOR
CASE NUMBER: 9:15-CR-80095-001

SPECIAL CONDITIONS OF SUPERVISION

Employment Requirement - The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earnings Statements, and other documentation requested by the U.S. Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

The defendant may not leave the State of Florida without permission.

DEFENDANT: KURT ZAMOR
CASE NUMBER: 9:15-CR-80095-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$0.00	\$0.00

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

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>

* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: KURT ZAMOR
CASE NUMBER: 9:15-CR-80095-001

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 \$200.00 due immediately.

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

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

CASE NUMBER	TOTAL AMOUNT	JOINT AND SEVERAL AMOUNT
DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)		

The Government shall file a preliminary order of forfeiture within 3 days.

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

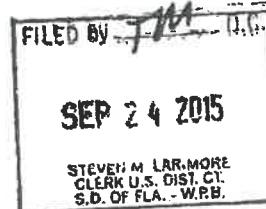
Case No.: 15-80095-Cr.-HURLEY/HOPKINS(s)
18 U.S.C. § 922(e)
18 U.S.C. § 924(a)(1)(D)
18 U.S.C. § 554(a)

UNITED STATES OF AMERICA,

vs.

KURT ZAMOR,

Defendant.



SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT 1

From on or about April 23, 2014, through on or about June 23, 2014, in Palm Beach County, in the Southern District of Florida, the defendant,

KURT ZAMOR,

did knowingly and willfully deliver and cause to be delivered to any common and contract carrier for transportation and shipment in interstate and foreign commerce to a person other than a licensed firearm importer, licensed manufacturer, licensed dealer, and licensed collector, a package and other container in which there was one or more firearms, without having provided written notice to such carrier that such firearm was being transported and shipped; in violation of Title 18, United States Code, Sections 922(e) and 924(a)(1)(D) and 2.

A-4

COUNT 2

From on or about April 23, 2014, through on or about June 23, 2014, in Palm Beach County, in the Southern District of Florida, the defendant,

KURT ZAMOR,

did fraudulently and knowingly attempt to export and send from the United States to a place outside thereof, that is, Haiti, any merchandise, article, and object, that is, firearms and ammunition, and did conceal and facilitate the transportation and concealment of such merchandise, article and object prior to exportation, knowing the same to be intended for exportation, contrary to any law and regulation of the United States, that is, Title 18, United States Code, Sections 922(e) and 924(a)(1)(D), as set forth in Count 1 of this Indictment, in violation of Title 18, United States Code, Sections 554(a) and 2.

CRIMINAL FORFEITURE

Upon conviction of the violation alleged in Counts 1 or 2 in this Indictment, the defendant, **KURT ZAMOR**, shall forfeit to the United States any firearm or ammunition involved in, used, or intended to be used, in said violation, including, but not limited to the following:

- a. Taurus model 709 Slim, 9mm pistol, S/N TEY71890
- b. Smith and Wesson model SW9VE, 9mm pistol, S/N HEN9434
- c. SCCY model CPX-1, 9mm pistol, S/N 077211
- d. Taurus model PT145 Millennium, .45 caliber pistol, S/N NUJ00630
- e. Sig Sauer model P250, .380 caliber pistol, S/N EAK152625
- f. Glock model 42, .380 caliber pistol, S/N AATH820
- g. Cobra, model CB9, 9mm derringer pistol, S/N CT124299

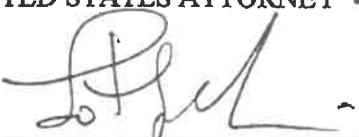
- h. Sig Sauer, model P250, 9mm upper receiver
- i. Sig Sauer, model P250, .45 cal upper receiver
- j. Sig Sauer, model P250, 9mm lower receiver frame with magazine
- k. Sig Sauer, model P250, .45 cal lower receiver frame with magazine
- l. Smith & Wesson model SD40VE caliber pistol S/N PDD1750
- m. 561 rounds of assorted 9mm, .380, .40 and .45 caliber ammunition
- n. Eight (8) assorted pistol magazines

Pursuant to Title 28, United States Code, Section 2461, Title 18, United States Code, Section 924(d), and the procedures outlined in Title 21, United States Code, Section 853.

A TRUE BILL

FOREPERSON


WIFREDO A. FERRE
UNITED STATES ATTORNEY


LOTHROP MORRIS
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

vs.

KURT ZAMOR,

Defendant.

CASE NO. 15-80095-CR-HURLEY/HOPKINS(s)

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division: (Select One)

Miami Key West /
FTL WPB X FTP

New Defendant(s)
Number of New Defendants
Total number of counts

YES

NO

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) Yes
List language and/or dialect Creole

4. This case will take 5-6 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty
II	6 to 10 days	<u> </u>	Minor
III	11 to 20 days	<u> </u>	Misdem.
IV	21 to 60 days	<u> </u>	Felony
V	61 days and over	<u> </u>	<u>X</u>

6. Has this case been previously filed in this District Court? (Yes or No) Yes

If yes:

Judge: Hurley Case No. 15-80095

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

If yes: Magistrate Case No.

Related Miscellaneous numbers:

Defendant(s) in federal custody as of

Defendant(s) in state custody as of

Rule 20 from the

District of

(Yes or No) Yes

15-8270-JMH

N/A

N/A

Is this a potential death penalty case? (Yes or No) Yes X No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No



LOTHROP MORRIS
ASSISTANT UNITED STATES ATTORNEY
Florida Bar/Court No. 0095044

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: KURT ZAMOR,

Case No: 15-80095-CR-HURLEY/HOPKINS(s)

Count #: 1

Knowingly and willfully delivered and caused to be delivered for shipment in interstate and foreign commerce, a package containing one or more firearms

Title 18, U.S.C. Sections 922(e) and 924(a)(1)(D)

* Max.Penalty: 5 Years' Imprisonment; 3 Years' Supervised Release; \$250,000 Fine; \$100 Special Assessment

Count #: 2

Fraudulently and knowingly attempted to export and send from the United States to a place outside thereof, firearms and ammunition

Title 18, U.S.C. Sections 554(a)

* Max.Penalty: 10 Years' Imprisonment; 3 Years' Supervised Release; \$250,000 Fine; \$100 Special Assessment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

NO: _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

KURT ZAMOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CERTIFICATE OF SERVICE

I certify that on this 8th day of April, 2019, in accordance with Supreme Court Rule 29, copies of the (1) Petition for Writ of Certiorari, (2) Motion for Leave to Proceed *In Forma Pauperis*, (3) Certificate of Service, and (4) Declaration Verifying Timely Filing, were served by U.S. mail upon the United States Attorney for the Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132-2111, and upon the Solicitor General, Room

5614, Department of Justice, 10th Street & Constitution Avenue, N.W.,
Washington, D.C. 20530.

Respectfully submitted,

LAW OFFICES OF RICHARD ROSENBAUM
Primary Email: Richard@RLRosenbaum.com
Secondary Email: Pleadings@RLRosenbaum.com

By 
RICHARD L. ROSENBAUM, ESQ.
315 SE 7th Street
Suite 300
Ft. Lauderdale, FL 33301
Telephone: 954-522-7007
Facsimile: 954-522-7003
Florida Bar No: 394688

Ft. Lauderdale, Florida
April 8, 2019

NO: _____

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

KURT ZAMOR,

Petitioner,
v.
UNITED STATES OF AMERICA,

Respondent.

DECLARATION VERIFYING TIMELY FILING

Petitioner, Kurt Zamor, through undersigned counsel and pursuant to Sup. Ct. R. 29.2 and 28 U.S.C. § 1746, declares that the **Petition for Writ of Certiorari** filed in the above-styled matter was placed in the U.S. mail in a

prepaid first-class envelope, addressed to the Clerk of the Supreme Court of the United States, on the 8th day of April, 2019.

Respectfully submitted,

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April 8, 2019