No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

ERNEST CHAMBLISS,
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

Whether a defendant who has been charged with possessing a firearm as a convicted felon is entitled to an entrapment instruction when the evidence demonstrates that someone other than the defendant has delivered the weapon to a confidential informant.

LIST OF PROCEEDINGS

1. *United States v. Ernest Chambliss*, Case No. 8:15-cr-00476, United States District Court for the Middle District of Florida; judgment entered April 13, 2017;

2. *Ernest Chambliss v. United States*, Case No. 17-11809; United States Court of Appeals for the Eleventh Circuit; judgment entered April 19, 2019;

3. *Ernest Chambliss v. United States*, Case No. _____ ; United States Supreme Court; _____

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ernest Chambliss, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's initial opinion was unpublished and was issued on February 27, 2019. Chambliss filed a petition for panel rehearing on March 20, 2019. The Eleventh Circuit denied rehearing in an order issued on April 11, 2019.

JURISDICTION

The Eleventh Circuit denied rehearing on April 11, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The United States District Court for the Middle District of Florida had original jurisdiction of this federal criminal case pursuant to 18 U.S.C. §3231.

RELEVANT STATUTORY PROVISIONS

Section 922(g)(1) of Title 18 provides:

> **(g)** It shall be unlawful for any person—
>
> **(1)** who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ….
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT OF THE CASE

1. On November 19, 2015, the Grand Jury indicted Chambliss for allegedly possessing in interstate commerce "a firearm, to wit: a Hi-Point model C9, 9mm pistol," after he had been convicted of five crimes "punishable by imprisonment for a term exceeding one year…." See Indictment, Doc. 1, pages 1 – 2.

2. The Indictment alleged that Chambliss possessed the firearm on "or about April 16, 2015, in Sarasota County, in the Middle District of Florida…." The Indictment also identified five previous State law offenses which Chambliss had been convicted of committing before April 16, 2015. See Indictment, Doc. 1,

pages 1 – 2.

3. The Indictment alleged that Chambliss's possession of the firearm was in "violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1)." See Indictment, Doc. 1, page 2. Section 922(g)(1) prohibits a felon from possessing a firearm in and affecting interstate commerce, and §924(e) imposes a minimum mandatory prison sentence of fifteen years upon any person who violates §922(g)(1) after three previous convictions for violent felonies or serious drug offenses committed on occasions different from one another.

4. Chambliss was arrested on January 12, 2016 and pleaded not guilty. On March 11, 2016, Chambliss and the Government signed a plea agreement whereby Chambliss would plead guilty to the Indictment's single count of violating §922(g)(1). See Doc. 27.

5. Chambliss, however, changed his mind about pleading guilty. See Doc. 41, minutes of proceedings on April 22, 2016. New counsel was appointed to represent Chambliss, and the case proceeded to a jury trial from November 28 to December 2, 2016. The Honorable Elizabeth Kovachevich presided.

6. At the close of the Government's case, Chambliss moved for judgment of acquittal pursuant to Fed. R. Crim. Pro 29. The District Court denied the motion. See Transcript of December 1, 2016, Doc. 168, pages 33 to 34. Chambliss

renewed his Rule 29 motion at the conclusion of all the evidence. The District Court again denied the motion. See Doc. 168, page 70.

7. Chambliss also requested an entrapment charge in compliance with Eleventh Circuit Pattern Criminal Jury Instruction 13.1. The Government opposed the entrapment charge, and the District Court denied Chambliss's request. See Doc. 168, pages 71 through 75.

8. On December 2, the jury found Chambliss guilty of the felon in possession charge. See Transcript of December 2, Doc. 169, pages 4 through 8; Verdict Form, Doc. 130.

9. On December 16, 2016, Chambliss filed a Motion for New Trial. See Doc. 138. Chambliss asserted three grounds for a new trial ---- first, that the District Court erred in denying Chambliss's request for a jury instruction on entrapment; second, that the District Court erred in denying Chambliss's motion in limine to exclude evidence of his involvement in drug transactions; and third, that the Government's failure to provide timely disclosure of a confidential informant's suitability assessment impeded Chambliss's pretrial preparation and denied him a fair trial.

10. The Government responded to the Motion for New Trial on January 10, 2017. See Doc. 141. On March 16, 2017, the District Court entered its Order

denying Chambliss's Motion for New Trial on all three issues. See Doc. 146.

11. On April 13, 2017, the District Court sentenced Chambliss to a prison term of 262 months. In doing so, the District Court rejected Chambliss's objections to classification as an Armed Career Criminal and application of a four-level enhancement for possession of a firearm in connection with another felony offense under §2K2.1(b)(6)(B).

12. The evidence at Chambliss's trial demonstrated that as of April, 2015, a confidential informant ("CI") named Randy Hammond had performed CI services on numerous occasions and had received at least $10,500 from law enforcement officers in Sarasota County for his CI work. See testimony of Randy Hammond, Transcript of November 30, Doc. 167, pages 141-142, 145.

13. Hammond had known Chambliss for about two years as of April, 2015. In fact, Hammond met with Chambliss almost every day to buy drugs. See Hammond testimony, Doc. 167, page 142.

14. A "couple" of days before April 16, 2015, Hammond was told that Chambliss had a nine-millimeter handgun for sale. Hammond received this information from Nate Davis, an associate of both Hammond and Chambliss. See Hammond testimony, Doc. 167, page 144. Nate Davis did not testify at trial.

15. Hammond relayed this information to Scott Huber, a Sarasota County

law enforcement officer who served as Hammond's CI handler. Officer Huber, in turn, passed this information to Konstantinos Bolos, an agent of the Federal Bureau of Alcohol, Tobacco and Firearms ("ATF").

16. On April 16, 2015, law enforcement officers hatched a plan whereby Hammond was given money to buy drugs and a firearm from Chambliss. Hammond rode his bicycle to Chambliss's home in Sarasota County.

17. Another associate of Chambliss was Stuart Rucker. Rucker testified that he lived a short distance from Chambliss and visited Chambliss several times each day. See Rucker testimony, Doc. 167, pages 70-71.

18. According to Rucker, Chambliss frequently stored his tools and other belongings at Rucker's house. Rucker testified that Chambliss was collecting some tools from Rucker's house on April 15, 2015, when he showed Rucker a handgun which he, Chambliss, had put in a camouflage hat and placed among other articles stored at Rucker's. See Rucker testimony, Doc. 167, pages 72, 74-78.

19. Rucker claimed that he did not know about the firearm until Chambliss showed it to him on April 15. Rucker testified that he received a telephone call from Chambliss on the evening of April 16, 2015, and was told to bring the firearm to Chambliss. See Rucker testimony, Doc. 167, page 79.

20. However, Rucker testified that he did not understand what Chambliss was saying over the phone. Rucker, therefore, rode his motorcycle to Chambliss's home but did not bring the gun with him. See Rucker testimony, Doc. 167, page 79-80.

21. Rucker testified that when he arrived at Chambliss's house, he spoke to Chambliss and was told to retrieve the gun. Rucker then returned to his house, gathered up the gun and hat, placed these items in a cooler, and this time drove his truck to Chambliss's home. Rucker claimed that he gave the cooler to Chambliss and departed. See Rucker testimony, Doc. 167, pages 80-83.

22. Hammond, meanwhile, testified that when he arrived at Chambliss's house on the evening of April 16, he gave $220.00 to Chambliss. According to Hammond, $150.00 was for the gun and $70.00 was for dilaudids. See Hammond testimony, transcript of November 30, Doc. 167, pages 154-155.

23. Hammond testified that Chambliss told Hammond to take the cooler, which at the time was on a chair at the kitchen table. Hammond did so and rode his bicycle to the waiting law enforcement officers. See Hammond testimony, Doc. 167, page 158.

24. According to Hammond, the gun and camouflage hat were still in the cooler. The cooler and its contents, the alleged dilaudids, and the recording device

which Hammond had used, were handed over to the law enforcement officers. See oHammond testimony, Doc. 167, page 158.

25. Hammond acknowledged at trial that he never saw Chambliss open the cooler or handle the gun. Hammond testified that he was outside of Chambliss's house when Chambliss told him that the gun was inside the cooler. Chambliss, according to Hammond, told Hammond to get the cooler from the chair at the kitchen table. See Hammond testimony, Doc. 167, pages 194 – 196.

26. Following the District Court's denial of Chambliss's Motion for New Trial and imposition of 262 month sentence, Chambliss appealed to the Eleventh Circuit.

27. Following the submission of briefs and the presentation of oral argument, the Eleventh Circuit affirmed the District Court on all issues. In rejecting Chambliss's challenge to the refusal of an entrapment instruction, the Eleventh Circuit stated, "Chambliss's argument that the district court erred when it denied his request to give the jury an entrapment instruction is similarly without merit. As this Court recently clarified in *United States v. Dixon*, 901 F.3d 1322 (11th Cir. 2018), we review *de novo* a district court's decision not to instruct the jury on entrapment. *Id.*, at 1346-47. 'Whether a defendant is entitled to an entrapment instruction depends on whether there is sufficient evidence from which

a reasonable jury could find entrapment.' *Id*. at 1347 (quotation marks and emphasis omitted).

"To receive an entrapment instruction, Chambliss had to put forth some evidence ---- 'more than a scintilla ---- that the government both induced the crime and that Chambliss was not predisposed to commit the crime. *United States v. Ryan*, 289 F.3d 1339, 1343 (11th Cir. 2002) (per curiam) (quotation marks omitted). Chambliss argues that he met this burden because there was no evidence suggesting that he was 'in the business of selling firearms.' This argument misapprehends the nature of Chambliss's conviction. Even if the government, through Hammond, induced Chambliss to sell the firearm, Chambliss was convicted for possessing the firearm ---- not selling it. *See Dixon*, 901 F.3d at 1347. Chambliss has offered no evidence to show that the government induced him to possess the gun in the first place. In addition, Hammond testified that he only approached his handler after he caught wind that Chambliss was looking to sell a gun he presumably already owned. This strongly suggests that Chambliss's possession of the gun predated any governmental involvement in the case, so he could not have been induced. As a result, the district court did not err when it denied Chambliss's request for an entrapment instruction." See Appendix A, pages 8 – 9.

REASONS FOR GRANTING THE WRIT

The Petition should be granted so that the Supreme Court can decide whether an entrapment defense is available to a defendant who is charged with possessing a firearm as a convicted felon but did not have physical possession of the firearm when it was sold to a Government informant.

The Supreme Court "has consistently adhered to the view, first enunciated in *Sorrells v. United States*, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932), that a valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct. See, *Sherman v. United States*, 356 U.S. 369, 376-378, 78 S.Ct. 819, 822-823, 2 L.Ed.2d 848 (1958); *United States v. Russell*, 411 U.S. 423, 435-436, 93 S.Ct. 1637, 1644-1645, 36 L.Ed.2d 366 (1973); *Hampton v. United States*, 425 U.S. 484, 489, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1976). Predisposition, 'the principal element in the defense of entrapment,' *Russell*, 411 U.S., at 433, 93 S.Ct. at 1643, focuses upon whether the defendant was an 'unwary innocent' or, instead, an 'unwary criminal' who readily availed himself of the opportunity to perpetrate the crime. *Sherman*, *supra*, 356 U.S., at 372, 78 S.Ct., at 820; *Russell*, *supra*, 411 U.S., at 436, 93 S.Ct., at 1645. <u>The question of entrapment is generally one for the jury, rather than for the court</u>. *Sherman*, *supra*, 356 U.S., at 377, 78 S.Ct. at 823." See *Mathews v. United States*, 485 U.S. 58, 62-63, 108 S.Ct. 883, 886, 99 L.Ed.2d

54 (2016). (underscoring added).

Reversing the Seventh Circuit's contrary decision, the Supreme Court held in *Mathews* "that even if the defendant denies one or more elements of the crime, he is entitled to an entrapment instruction whenever there is sufficient evidence from which a reasonable jury could find entrapment." See *Mathews*, 485 U.S. at 62, 108 S.Ct. at 886.

"Where the Government has induced an individual to break the law and the defense of entrapment is at issue, as it was in this case, the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents. [citation omitted]." See *Jacobson v. United States*, 503 U.S. 540, 549, 112 S.Ct. 1535, 1540, 118 L.Ed.2d 174 (1991).

The foregoing statements demonstrate that the entrapment defense is an integral aspect of the criminal law and should not be withheld from a defendant who has been manipulated by government agents. For his part, Ernest Chambliss was not known for any involvement in the use or sale of firearms, and he did not even maintain physical custody of the .9 millimeter pistol that he was accused of possessing in the present case.

In fact, there was no evidence that Chambliss so much as glanced at the

weapon when it changed hands from Stuart Rucker to Randy Hammond, the Government's confidential informant, on April 16, 2015. Chambliss was never charged with possessing the firearm on April 15, 2015. A reasonable jury, having received a proper entrapment instruction, very easily could have found that the possession of the pistol bypassed Chambliss altogether and was exercised only by Rucker and Hammond.

The Petition for Writ of Certiorari should be granted and the case should be heard on the merits. To insure that the entrapment defense will not be diminished to the point where it is applied only grudgingly, the Eleventh Circuit's decision should be vacated and the case remanded to the District Court for a new trial.

CONCLUSION

For the foregoing reasons, Ernest Chambliss respectfully requests that his Petition for Writ of Certiorari be granted.

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-11809

D.C. Docket No. 8:15-cr-00476-EAK-JSS-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERNEST L. CHAMBLISS,

Defendant - Appellant.

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

(February 27, 2019)

Before ED CARNES, Chief Judge, MARTIN, and ROGERS,* Circuit Judges.

PER CURIAM:

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* Honorable John M. Rogers, United States Circuit Judge for the Sixth Circuit, sitting by designation.

Ernest Chambliss, a federal prisoner serving a 262-month sentence, appeals his conviction and sentence for possessing a firearm as a convicted felon, in violation of 18 U.S.C. § 922(g). Among other things, Chambliss here challenges the district court's decisions to deny his request for an entrapment instruction and to classify him as an armed career criminal under the Armed Career Criminal Act ("ACCA"). After careful consideration and with the benefit of oral argument, we affirm.

I.

One day in mid-April 2015, Chambliss and his friend, Stuart Rucker, were busy moving some of Chambliss's belongings out of Rucker's closet. Chambliss had recently reconciled with his girlfriend and was in the process of retrieving his things. As the two friends moved items out of the closet and into Chambliss's truck, Chambliss asked Rucker to grab a camouflage hat lying on one of the closet shelves but to "be careful" while doing so. Rucker did as he was asked and quickly discovered why Chambliss had warned him to be careful: nestled within the hat was a black handgun.

As a convicted felon himself, Rucker immediately told Chambliss that he didn't want anything to do with the gun, rewrapped the gun inside the hat, and tried to hand it back. Chambliss, however, refused to take the gun and instead asked Rucker to hold onto it until Chambliss could come by later to retrieve it. Rucker

repeated that he didn't want the gun in his house but reluctantly agreed to Chambliss's request and put the gun back in the closet.

Around the same time, a confidential informant named Randy Hammond caught wind from a mutual acquaintance of his and Chambliss's that Chambliss was looking to sell a gun. Hammond frequently bought drugs from Chambliss, so the two men were well-acquainted. Hammond flagged the potential gun sale to his handler, Detective Scott Huber, who notified Special Agent Konstantinos Balos. Detective Huber and Agent Balos hatched a plan for Hammond to purchase the handgun from Chambliss along with the usual drugs, so as not to arouse suspicion. Although the officers briefly considered using an undercover officer to complete the purchase, they decided to use Hammond because of his relationship with Chambliss. The officers paid Hammond $600 for his assistance.

The operation took place on April 16, 2015. In preparation, the officers outfitted Hammond with an audio video recording device, checked him for contraband, and handed him enough money to purchase the gun and two pills. Hammond then rode his bike over to Chambliss's house, where he paid Chambliss for the contraband. Shortly after that, Chambliss called Rucker and asked him to bring the gun over. The audio recording device captured Chambliss's side of the conversation in full:

> Hey, Hey, Hey, remember that, that little thing I put in your clothes? Bring that with you when you come. That thing you got. That black

> thing in your clothes. (inaudible) Yeah, the, the, the, the pea shooter. Remember? It's the black thing. Yeah, you was. Yeah. The gun man, the gun man, the gun. Yes, do it, bye.

Because Rucker had trouble remembering what Chambliss was talking about, he went to ask Chambliss in person. After clarifying that Chambliss wanted him to "bring the gun over," Rucker went back home, grabbed the camouflage hat with the gun inside, placed both items inside a cooler, and drove the cooler over to Chambliss's house. Chambliss then told Hammond to get the gun from the kitchen. Hammond opened the cooler in the kitchen, checked to make sure the gun was inside, and took everything back with him to Agent Balos and Detective Huber.

A second operation took place on April 22, 2015. This time, Hammond was tasked with purchasing ammunition from Chambliss, who agreed to help Hammond "get some" bullets for the gun. Half a year later, a federal grand jury indicted Chambliss on one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Officers also arrested and charged Rucker with the same crime for possessing Chambliss's gun.

Chambliss decided to go to trial and filed a motion in limine to exclude evidence of his drug dealing activities as inadmissible extrinsic evidence of a crime and as unfairly prejudicial evidence. The district court denied the motion, concluding that the evidence was "necessary to complete the [government's] story

of the crime," and advised Chambliss that he could request a limiting instruction if he wished to reduce the risk of prejudice. Chambliss never made that request.

Trial began on November 28, 2016 and lasted five days. Chambliss twice moved for a judgment of acquittal, which the district court denied. Chambliss also unsuccessfully requested an entrapment instruction. On December 2, the jury found Chambliss guilty of possessing a firearm as a convicted felon. A few days later, Chambliss filed a motion for a new trial, arguing that the district court erred when it denied his motion in limine and refused to give an entrapment instruction and that the government failed to timely disclose Hammond's suitability assessment as a confidential informant. The district court denied the motion.

At sentencing, the probation officer and government relied on four of Chambliss's prior state convictions to treat him as an armed career criminal under ACCA: (1) selling or delivering cocaine on November 6, 1997; (2) possessing cocaine with intent, manufacturing of a controlled substance, and selling or delivering cocaine on November 7, 1997; (3) selling or delivering cocaine on December 14, 1998;[1] and (4) resisting an officer with violence on December 11, 1998. Chambliss objected to being characterized as an armed career criminal, saying that the first and second convictions arose from one continuing drug offense

[1] Although the presentence investigation report states that Chambliss pled nolo contendre to possession of cocaine and sale or delivery of cocaine on September 28, 1998, the record reflects that the offense took place on December 14, 1998.

and therefore could not count as two separate offenses for purposes of sentencing under ACCA. He also argued that two of his convictions were only for the "sale and delivery" of cocaine as opposed to manufacture or distribution, which meant they did not qualify as serious drug offenses. Last, he contended that his conviction in Florida for resisting an officer with violence could not categorically qualify as a violent offense within the meaning of ACCA's elements clause.

The district court rejected Chambliss's arguments, ruled that Chambliss is an armed career criminal, and sentenced him to 262 months imprisonment. Chambliss timely appealed.

II.

Chambliss raises four issues on appeal. First, he argues the government did not introduce sufficient evidence that he actually or constructively possessed the firearm sold. Second, he argues the district court erred when it denied his request to give the jury an entrapment instruction. Third, he argues the district court abused its discretion when it denied his motion for a new trial. Last, he argues the district court erred when it applied the ACCA enhancement for sentencing purposes. We address each argument in turn.

A.

We review de novo whether a verdict is supported by sufficient evidence, United States v. Brantley, 803 F.3d 1265, 1270 (11th Cir. 2015), "view[ing] the

evidence in the light most favorable to the Government and resolv[ing] all reasonable inferences and credibility evaluations in favor of the verdict." United States v. Isnadin, 742 F.3d 1278, 1303 (11th Cir. 2014). "Evidence is sufficient to support a conviction if a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt." Isnadin, 742 F.3d at 1303 (quotation marks omitted).

Here, a reasonable juror could have found beyond a reasonable doubt that Chambliss constructively possessed a gun. As the government points out in its brief, Chambliss was heard on tape ordering Rucker to bring the gun over so he could sell it to Hammond. That same recording also captured Chambliss urging Rucker to remember "that little thing [the gun] I put in your clothes." A reasonable juror could find from this that Chambliss was not only aware of the firearm's existence but also had the ability and intent to control it, which is enough to show constructive possession. See United States v. Perez, 661 F.3d 568, 576 (11th Cir. 2011) (per curiam); see also United States v. Gunn, 369 F.3d 1229, 1235 (11th Cir. 2004) (per curiam). Chambliss does not dispute that he was a convicted felon at the time of possession or that the gun traveled in interstate commerce. As a result, there was sufficient evidence to support his conviction under 18 U.S.C. § 922(g)(1).

B.

Chambliss's argument that the district court erred when it denied his request to give the jury an entrapment instruction is similarly without merit. As this Court recently clarified in United States v. Dixon, 901 F.3d 1322 (11th Cir. 2018), we review de novo a district court's decision not to instruct the jury on entrapment. Id. at 1346–47. "Whether a defendant is entitled to an entrapment instruction depends on whether there is sufficient evidence from which a reasonable jury could find entrapment." Id. at 1347 (quotation marks and emphasis omitted).

To receive an entrapment instruction, Chambliss had to put forth some evidence—"more than a scintilla"—that the government both induced the crime and that Chambliss was not predisposed to commit the crime. United States v. Ryan, 289 F.3d 1339, 1343 (11th Cir. 2002) (per curiam) (quotation marks omitted). Chambliss argues that he met this burden because there was no evidence suggesting that he was "in the business of selling firearms." This argument misapprehends the nature of Chambliss's conviction. Even if the government, through Hammond, induced Chambliss to sell the firearm, Chambliss was convicted for possessing the firearm—not selling it. See Dixon, 901 F.3d at 1347. Chambliss has offered no evidence to show that the government induced him to possess the gun in the first place. In addition, Hammond testified that he only approached his handler after he caught wind that Chambliss was looking to sell a

gun he presumably already owned. This strongly suggests that Chambliss's possession of the gun predated any governmental involvement in the case, so he could not have been induced. As a result, the district court did not err when it denied Chambliss's request for an entrapment instruction.

C.

Chambliss next argues the district court erred when it denied his motion for a new trial. We review a district court's denial of a motion for a new trial for abuse of discretion. United States v. Scrushy, 721 F.3d 1288, 1303 (11th Cir. 2013). Chambliss advances three grounds for error: first, the district court failed to give an entrapment instruction; second, the district court should have granted his motion in limine to exclude evidence of his drug dealing activities; and third, the government failed to disclose Hammond's suitability assessment as a confidential informant before trial, which hampered trial counsel's ability to impeach Hammond at trial. All fail to persuade.

As discussed in the previous section, the district court did not err in denying Chambliss's request for an entrapment instruction. The court therefore could not have abused its discretion in declining to grant his motion for a new trial on that basis. The other two arguments fare little better.

Although Chambliss frames the second ground for finding error as whether the district court erred when it denied his motion for a new trial, the core of his

argument is that the court erred in denying his motion in limine—a determination we also review for abuse of discretion. See United States v. Thompson, 25 F.3d 1558, 1563 (11th Cir. 1994). Here, it's clear the district court did not abuse its discretion in denying Chambliss's motion in limine request to exclude evidence of his drug dealing activities at trial.

As the district court correctly recognized, Chambliss's drug dealing activities were part and parcel of the transaction involving the gun and therefore did not qualify as inadmissible extrinsic evidence of a crime under Federal Rule of Evidence 404(b). See United States v. Nerey, 877 F.3d 956, 974 (11th Cir. 2017) (explaining Rule 404(b) does not apply to evidence that is "(1) part of the same transaction or series of transactions as the charged offense, (2) necessary to complete the story of the crime, or (3) inextricably intertwined with the evidence regarding the charged offense"). The evidence explained Hammond's preexisting relationship with Chambliss as well as the reason why the officers decided to rely on Hammond for the operation rather than an undercover officer. This is plainly intrinsic evidence that does not fall within the ambit of Rule 404(b). See United States v. McLean, 138 F.3d 1398, 1403–04 (11th Cir. 1998).

Neither was the probative value of the drug sales evidence substantially outweighed by the risk of unfair prejudice to Chambliss, such that the evidence should have been excluded under Federal Rule of Evidence 403. Not only did

Chambliss decline the district court's offer to give a limiting instruction on the drug evidence to reduce the risk of prejudice at trial, counsel for Chambliss explicitly mentioned Chambliss's drug-dealing activities during closing argument to argue Chambliss's innocence. Trial counsel argued to the jury that Rucker was the one who actually owned the gun and that he let Chambliss take the money because Rucker owed Chambliss money for drugs. Chambliss cannot on the one hand claim the evidence ran an unacceptably high risk of prejudicing him at trial, while at the same time relying on that same evidence as a central part of his theory for acquittal. See United States v. Sophie, 900 F.2d 1064, 1075 (7th Cir. 1990) (persuasive authority). Because the district court did not abuse its discretion when it denied his motion in limine, it did not err when it denied his motion for a new trial on the same grounds.

As for Chambliss's third argument—that the government did not timely disclose Hammond's suitability assessment in advance of trial—we discern no error in the district court's decision to deny him a motion for a new trial on that ground. To the extent this is a claim made pursuant to Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), it fails. "To establish a Brady violation, the defendant must show that (1) the government possessed favorable evidence to the defendant; (2) the defendant does not possess the evidence and could not obtain the evidence with any reasonable diligence; (3) the prosecution suppressed the

favorable evidence; and (4) had the evidence been disclosed to the defendant, there is a reasonable probability that the outcome would have been different." United States v. Vallejo, 297 F.3d 1154, 1164 (11th Cir. 2002).

Chambliss does not attempt to argue that the pre-trial disclosure of the suitability assessment might have impacted the outcome. To the contrary, he concedes that he was able to cross-examine Hammond based on the suitability assessment. Although the government did not furnish Chambliss with a copy of the suitability assessment before trial, the government did provide notice of much of the impeachment information in it through pre-trial communications with Chambliss's attorney. The district court therefore did not err when it denied Chambliss's motion for a new trial on this basis.

D.

Chambliss's final argument on appeal is that the district court erred when it classified him as an armed career criminal under ACCA. He contends that because two of his three state drug offenses "happened in the same 24-hour span and at the same location," they should have been counted as one offense for ACCA enhancement purposes. Alternatively, he argues that the Shepard[2] documents for

[2] Shepard v. United States, 544 U.S. 13, 125 S. Ct. 1254 (2005).

two of his drug convictions fail to show he was convicted of a qualifying drug offense under ACCA.[3]

We review de novo whether a defendant's prior conviction qualifies as a violent felony or serious drug offense under ACCA and whether a defendant's prior offenses occurred on separate occasions within the meaning of ACCA. See United States v. Proch, 637 F.3d 1262, 1265 (11th Cir. 2011); United States v. Canty, 570 F.3d 1251, 1254–55 (11th Cir. 2009). We conclude the district court correctly applied the ACCA enhancement to Chambliss.

ACCA imposes a fifteen-year mandatory minimum sentence on people convicted under 18 U.S.C. § 922(g)(1) if they have "three previous convictions by any court . . . for a violent felony or a serious drug offense, or both, committed on occasions different from one another." 18 U.S.C. § 924(e)(1). The government, however, relied on four convictions to trigger the ACCA enhancement: (1) selling or delivering cocaine on November 6, 1997; (2) possessing cocaine with intent, manufacturing of a controlled substance, and selling or delivering cocaine on November 7, 1997; (3) selling or delivering cocaine on December 14, 1998; and (4) resisting an officer with violence on December 11, 1998. Chambliss cannot

[3] Chambliss additionally argues that his conviction for resisting an officer with violence under Fla. Stat. § 843.01 does not categorically constitute a violent felony. Because it is clear the district court correctly counted and relied on his three state drug offenses to apply the ACCA enhancement, we need not address this argument.

prevail on appeal unless he shows the district court erroneously relied on two of these convictions to support the ACCA enhancement. This he cannot do.

To begin, Chambliss's convictions for selling cocaine on November 6 and November 7 were properly counted as two offenses because they "arose out of . . . separate and distinct criminal episode[s]." United States v. Sneed, 600 F.3d 1326, 1329 (11th Cir. 2010) (quotation marks omitted). As this Court has said, "[t]wo offenses are distinct if some temporal break occurs between them." Id. at 1330. Here, the offenses were committed on different days, and the Shepard documents reflect that Chambliss engaged in different behavior on each occasion. On November 6, Chambliss unlawfully sold or delivered cocaine. The next day, he also manufactured and possessed it. The district court therefore did not err when it chose to count Chambliss's November 6 and November 7 offenses separately under ACCA.

It is likewise clear that Chambliss's November 6, 1997 and December 14, 1998 drug offenses count as serious drug offenses within the meaning of ACCA. The Shepard documents reveal that Chambliss was convicted of the "sale or delivery of cocaine" on both occasions in violation of Fla. Stat. § 893.13(1)(a). Both convictions were second degree felonies, which means Chambliss was convicted under Fla. Stat. § 893.13(1)(a)(1). Sale of cocaine with intent to distribute under Fla. Stat. § 893.13(1)(a)(1) qualifies as a serious drug offense

under ACCA. United States v. Smith, 775 F.3d 1262, 1264–65, 1268 (11th Cir. 2014). The district court therefore did not err when it counted both offenses before applying the ACCA enhancement.

Because Chambliss's three serious drug offenses are enough to qualify him as an armed career criminal under ACCA, see 18 U.S.C. § 924(e)(1), the district court did not err in applying the enhancement and sentencing him accordingly.

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
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February 27, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-11809-AA
Case Style: USA v. Ernest Chambliss
District Court Docket No: 8:15-cr-00476-EAK-JSS-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 T. L. Searcy, AA at (404) 335-6180.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna Clark
Phone #: 404-335-6161

OPIN-1 Ntc of Issuance of Opinion

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11809-AA

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERNEST L. CHAMBLISS,

Defendant - Appellant.

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

BEFORE: ED CARNES, Chief Judge, MARTIN, and ROGERS, *Circuit Judges.

PER CURIAM:

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

ENTERED FOR THE COURT:

Jack D. Martin

UNITED STATES CIRCUIT JUDGE

*Honorable John M. Rogers, United States Circuit Judge for the Sixth Circuit, sitting by designation.

ORD-41

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
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April 11, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 17-11809-AA
Case Style: USA v. Ernest Chambliss
District Court Docket No: 8:15-cr-00476-EAK-JSS-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: T. L. Searcy, AA/bmc
Phone #: (404) 335-6180

REHG-1 Ltr Order Petition Rehearing