Neutral
As of: October 7, 2019 8:53 PM Z

United States v. Glenn

United States Court of Appeals for the Fifth Circuit

July 26, 2019, Filed

No. 18-30741

Reporter
931 F.3d 424 *; 2019 U.S. App. LEXIS 22338 **

UNITED STATES OF AMERICA, Plaintiff - Appellee v. WALTER GLENN, Defendant - Appellant

Prior History: [1]** Appeal from the United States District Court for the Middle District of Louisiana.

United States v. Glenn, 2016 U.S. Dist. LEXIS 3536 (M.D. La., Jan. 12, 2016)

Disposition: AFFIRMED.

Core Terms

district court, trip, conspiracy, sentencing, reasonable suspicion, amount of loss, travel, drive, permission, motion to suppress, obstruction, license, checks, leadership role, rental vehicle, clear error, rental car, enhancement, suppress, traffic, argues

Case Summary

Overview

HOLDINGS: [1]-The district court did not err in denying defendant's motion to suppress evidence seized from the rental car pursuant to U.S. Const. amend. IV because the officer had reasonable suspicion to extend the traffic stop based on, inter alia, use of a rental vehicle with a tinted license-plate cover and the implausibility of the occupants' purported itinerary. Further, a preponderance of evidence demonstrated defendant's consent to the search; [2]-Defendant was properly sentenced under the U.S. Sentencing Guidelines Manual §§ 2B1.1, 3B1.1, and 3C1.1 because the amount of loss calculation included amounts from the larger conspiracy to which defendant was plausibly linked, sufficient evidence supported a leadership role enhancement, and the obstruction of justice enhancement was supported by defendant's untruthful statements about his pretrial travel.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions to Suppress

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Motions to Suppress

HN1[] **Clearly Erroneous Review, Motions to Suppress**

On appeal of the denial of a motion to suppress, the Fifth Circuit Court reviews the district court's fact findings for clear error and its legal conclusions de novo. The appellate court will view the evidence in the light most favorable to the government as the prevailing party.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions to Suppress

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & Voluntariness

HN2[] **Search & Seizure, Scope of Protection**

EXHIBIT
1

The appellate court will review fact-findings as to the voluntariness of consent to search for clear error. If consent followed a violation of the *Fourth Amendment*, that consent must also be an independent act of free will.

Criminal Law & Procedure > ... > Warrantless Searches > Stop & Frisk > Reasonable Suspicion

HN3 **Stop & Frisk, Reasonable Suspicion**

An officer can extend a stop only as long as is reasonably necessary to effectuate the purpose of the stop. Thus, an officer has the time needed to issue a traffic citation, examine the driver's license, insurance, and registration, and ascertain if there are outstanding warrants. An officer's inquiries must be limited to the time in which the tasks tied to the traffic infraction are — or reasonably should have been — completed. Extending the stop beyond what is needed for the initially relevant tasks is proper if an officer develops reasonable suspicion of another crime during that time, allowing the officer to prolong the suspect's detention until he has dispelled that newly-formed suspicion. A reasonable suspicion is one that has a particularized and objective basis for suspecting the person stopped of criminal activity; it is more than an inchoate and unparticularized suspicion or hunch. Of principal relevance in the totality of circumstances that an officer is to consider will be the events which occurred leading up to the search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion.

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & Voluntariness

Evidence > Burdens of Proof > Preponderance of Evidence

HN4 **Consent to Search, Sufficiency & Voluntariness**

The Government must prove the defendant voluntarily consented to the search by a preponderance of the evidence. The court will use the following test to determine voluntariness:(1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found.

Criminal Law & Procedure > ... > Appeals > Standards of Review > Clear Error Review

Evidence > Burdens of Proof > Preponderance of Evidence

Criminal Law & Procedure > ... > Appeals > Standards of Review > De Novo Review

Criminal Law & Procedure > Sentencing > Sentencing Guidelines

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Findings

HN5 **Standards of Review, Clear Error Review**

The appellate court will review the district court's factual findings for clear error and its interpretation or application of the U.S. Sentencing Guidelines Manual de novo. Loss amount and the enhancements are factual findings. The district court's findings require a preponderance of the evidence. Under clear error review, the appellate court will affirm if the findings are plausible in light of the record as a whole.

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Factors

HN6 **Imposition of Sentence, Factors**

The sentencing court looks to the greater of the actual or intended loss and all criminal acts that were part of the same course of conduct or common scheme or plan as the offense of conviction, including acts beyond the specific offenses of conviction. *U.S. Sentencing Guidelines Manual § 1B1.3(a)(2)* (2013). The loss amount also accounts for the reasonably foreseeable acts of others within the scope of and in furtherance of

the joint criminal activity. *§ 1B1.3(a)(1)(B)*. Further, the sentencing court need only make a reasonable estimate of the loss. *U.S. Sentencing Guidelines Manual § 2B1.1*.

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Aggravating Role

Evidence > Inferences & Presumptions > Inferences

***HN7*[↓] Adjustments & Enhancements, Aggravating Role**

U.S. Sentencing Guidelines Manual § 3B1.1(a) increases the offense level by four if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. The sentencing court looks to the exercise of decision-making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. *Section 3B1.1*. The district court is permitted to draw inferences from the evidence.

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Factors

Criminal Law & Procedure > ... > Obstruction of Administration of Justice > Perjury > Penalties

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Obstruction of Justice

***HN8*[↓] Imposition of Sentence, Factors**

U.S. Sentencing Guidelines Manual § 3C1.1 increases an offense level by two if the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice. This includes providing materially false information to a judge or magistrate judge.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellee: Mary Patricia Jones, Assistant U.S. Attorney, Jessica Marie Podewils Thornhill, Assistant U.S. Attorney, U.S. Attorney's Office, Baton Rouge, LA.

For WALTER GLENN, Defendant - Appellant: Ian F. Hipwell, Esq., Attorney, Manasseh, Gill, Knipe & Belanger, P.L.C., Baton Rouge, LA.

Judges: Before BARKSDALE, SOUTHWICK, and HAYNES, Circuit Judges.

Opinion by: LESLIE H. SOUTHWICK

Opinion

[*427] LESLIE H. SOUTHWICK, Circuit Judge:

A jury found Walter Glenn guilty of conspiracy, access device fraud, and identity theft for his role in a fraudulent check-cashing scheme. The district court denied two motions to suppress evidence taken from a rental car that Glenn was driving. Glenn contends the district court erred by admitting the evidence. He also challenges his sentence. We AFFIRM.

FACTUAL AND PROCEDURAL BACKGROUND

In September 2014, Walter Glenn, Larry Walker and Thomas James were in a rental car, traveling through Louisiana on Interstate 10. Glenn was driving. Sergeant Donald Dawsey of the West Baton Rouge Parish Sheriff's office stopped them for what he believed was a traffic violation. Dawsey **[**2]** walked to the vehicle and had Glenn give him his driver's license and insurance verification. Dawsey immediately noticed a set of screwdrivers in the door of the vehicle. The officer then had Glenn get out and go to the rear of the car. There, Dawsey pointed to the license plate, which was obscured with a tinted plastic cover and said the cover was the violation that caused the stop. Dawsey, who had two decades of experience with the sheriff's office at the time, later explained at a hearing that motorists often use such license plate covers to evade identification by traffic cameras. Glenn stated the cover was affixed to the license plate at the time of the rental and repeatedly offered to remove it.

At the back of the car, Glenn explained that Walker had rented the vehicle. After questioning Glenn, Dawsey spoke with Walker and got the rental agreement, then returned to Glenn at the rear of the car for further questioning. Dawsey then told Glenn to stay behind the rental car while Dawsey returned to his cruiser to verify some of the information he had just received. By this point, about six and half minutes had passed since

Glenn drove the vehicle onto the shoulder of the interstate **[**3]** and stopped.

When Dawsey returned to his cruiser, he did not in fact input the information; instead he called for assistance. Several minutes later, Dawsey returned to question Glenn further, eventually asking if he could search the car. Glenn responded, "Yeah. You can search it." Dawsey told Walker that Glenn had consented to a search, to which Walker replied, "he said you can search it, search it." Walker and James stepped to the rear of the car, and Dawsey and other officers searched the car. They found, among other things, over 100 blank ID cards, dozens of blank checks, holographic overlays, a printer, envelopes with names and social security numbers, computer equipment, and $95,000.

The subsequent investigation revealed that Glenn, Walker, and James were involved in a multi-state counterfeit check scheme and had been in Texas to cash counterfeit checks. The Government charged them with conspiracy to make and pass counterfeit checks, produce fraudulent IDs, and use unauthorized access devices (*i.e.*, social security numbers). It also charged them with access device fraud and aggravated identity theft.

In 2016, all three filed suppression motions challenging the legality of the stop **[**4]** and the search of the entire vehicle. The district court denied Glenn's and James' motions and partially denied Walker's, holding: the stop was lawful; the officer had reasonable suspicion for extending the stop; and, Glenn and James lacked standing to challenge the search of the vehicle. In partially granting Walker's motion, the **[*428]** court ruled his consent to the search was not voluntary. The Government appealed. We affirmed the district court's partial grant of Walker's motion to suppress, and the Government dismissed his charges. *See* United States v. Walker, 706 F. App'x 152, 154-56 (5th Cir. 2017).

James and Glenn's cases were held in abeyance during the pendency of the interlocutory appeal concerning Walker. Following our opinion in *Walker*, Glenn and James filed a second joint suppression motion primarily regarding their personal items found in bags and luggage within the car. The district court again refused to suppress any evidence as to Glenn, concluding Glenn gave valid consent to the search. The court granted James' motion to suppress items found in his personal bag, and James later pled guilty to all counts. Only Glenn went to trial where the jury found him guilty of all charges. The district court sentenced him to 120 months in prison.

On **[**5]** appeal, Glenn challenges the district court's denials of his motions to suppress and several sentencing decisions.

DISCUSSION

I. Suppression issues

HN1[↑] "On appeal of the denial of a motion to suppress, this court reviews the district court's fact findings for clear error and its legal conclusions *de novo*." United States v. Rounds, 749 F.3d 326, 337 (5th Cir. 2014). We view "the evidence in the light most favorable to the government as the prevailing party." Id. at 338.

As he did in district court, on appeal Glenn contends all the evidence seized from the rental vehicle should have been suppressed.[1] He does not renew as an independent argument his specific challenge to the search of his personal bag in the trunk. Three envelopes of cash were found in that bag. His primary appellate argument is that Dawsey improperly obtained his consent to search. HN2[↑] We review fact-findings as to the voluntariness of consent to search for clear error. *See* United States v. Shabazz, 993 F.2d 431, 438 (5th Cir. 1993). If consent followed a violation of the Fourth Amendment, that consent must also be "an independent act of free will." United States v. Jenson, 462 F.3d 399, 406 (5th Cir. 2006). Glenn argues this additional requirement applies here because Dawsey detained him for an unreasonable time on the side of I-10.

A. Standing to challenge the search of the car

Whether Glenn has standing to challenge the **[**6]** search of the entire car is unclear. At the time the district court denied Glenn's motions to suppress, Fifth Circuit precedent provided that a driver of a rental vehicle who was not authorized under the rental agreement did not

[1] In Walker's appeal, we held that Louisiana law does not prohibit tinted covers on license plates. *See* Walker, 706 F. App'x at 154 n.1. Relatedly, Glenn argues in his reply brief that Dawsey violated the Fourth Amendment because the stop never should have occurred. He did not present this argument in his opening brief, however, and thereby waived it. *See* United States v. Scroggins, 599 F.3d 433, 447 n.8 (5th Cir. 2010).

have a reasonable expectation of privacy in the vehicle; such a driver thus lacked standing to contest its search. See United States v. Riazco, 91 F.3d 752, 754 (5th Cir. 1996). Glenn contends we should hold he has standing under the recent Supreme Court opinion in Byrd v. United States, 138 S. Ct. 1518, 1524, 200 L. Ed. 2d 805 (2018). Because we consider the issue a close one, and an absence of standing is not a jurisdictional defect in this context, id. at 1530, we decline to analyze the issue **[*429]** today in light of our resolution of the merits of Glenn's Fourth Amendment claim.

B. Reasonable suspicion to extend the stop

HN3[↑] An officer can extend a stop only "as long as is reasonably necessary to effectuate the purpose of the stop." United States v. Villafranco-Elizondo, 897 F.3d 635, 641 (5th Cir. 2018) (citation omitted). Thus, an officer has the time needed to issue a traffic citation, examine the driver's license, insurance, and registration, and ascertain if there are outstanding warrants. Rodriguez v. United States, 135 S. Ct. 1609, 1614-15, 191 L. Ed. 2d 492 (2015). An officer's inquiries must be limited to the time in which the "tasks tied to the traffic infraction are — or reasonably should have been — completed." Id. at 1614.

Extending the stop beyond what is needed **[**7]** for the initially relevant tasks is proper if "an officer develops reasonable suspicion of another crime" during that time, allowing the officer to "prolong the suspect's detention until he has dispelled that newly-formed suspicion." Villafranco-Elizondo, 897 F.3d at 642. A reasonable suspicion is one that has "a particularized and objective basis for suspecting the person stopped of criminal activity;" it is "more than an inchoate and unparticularized suspicion or hunch." United States v. Chavez, 281 F.3d 479, 485 (5th Cir. 2002) (citations and quotation marks omitted). Of principal relevance in the totality of circumstances that an officer is to consider "will be the events which occurred leading up to the . . . search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion." Ornelas v. United States, 517 U.S. 690, 696, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996).

The Government concedes that the initial purposes of the traffic stop were complete when Dawsey went to his cruiser to request assistance from other officers. The Government identifies numerous facts to support that, before that point, Dawsey gained reasonable suspicion that Glenn and his co-defendants were involved in criminal activity: (1) they were in a rental vehicle, and such vehicles are often **[**8]** used for drug-trafficking; (2) they were driving on I-10, which is known for drug-trafficking; (3) the rental vehicle had a tinted license-plate cover, which Dawsey had never seen in his 20 years as a police officer; (4) Dawsey immediately noticed a set of screwdrivers in the door of the vehicle, which could have been used to affix the license-plate cover; (5) Glenn was very anxious to remove the license-plate cover; (6) Glenn and Walker both mispronounced Beaumont, where they had allegedly been staying with family for the weekend; (7) their purported itinerary was "implausible" in Dawsey's opinion; (8) Glenn and Walker provided inconsistent information regarding Walker's residence and mode of transportation to Connecticut; and (9) the interior of the vehicle looked "lived in," which, in Dawsey's view, was inconsistent with Glenn's story of staying with family for the weekend.

The district court did not state that all of these circumstances were relevant, but it did conclude that reasonable suspicion arose for extending the stop because these individuals were traveling in a rental vehicle on a known drug-trafficking corridor having a tinted cover over the license-plate with screwdrivers **[**9]** likely used to affix the cover. There was no error when, after considering the totality of the circumstances, the district court held that Dawsey **[*430]** had reasonable suspicion of illegal activity to extend the stop.

C. Glenn's consent to search

HN4[↑] The Government must prove Glenn voluntarily consented to the search by a preponderance of the evidence. Rounds, 749 F.3d at 338. We use the following test to determine voluntariness:

> (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found.

Jenson, 462 F.3d at 406 (citation omitted). The district court found that some factors favored Glenn, but that there were no coercive police procedures, Glenn was cooperative, and Glenn appeared to be intelligent and

well-educated. The District Court concluded that Glenn had voluntarily consented.

We find no clear error in this finding and thus no error in admitting the evidence from the search of the car.

II. Sentencing

At sentencing, the district court determined **[**10]** Glenn was responsible for an intended loss amount of over $2 million and applied a 16-level increase to his offense level. The district court also applied enhancements for a leadership role and obstruction of justice. Glenn argues these increases were erroneous. In examining these claims of error, *HN5*[↑] we review the district court's factual findings for clear error and its interpretation or application of the Guidelines *de novo*. *See United States v. Scott, 654 F.3d 552, 555 (5th Cir. 2011)*.

The loss amount and the two enhancements are factual findings. *See United States v. Simpson, 741 F.3d 539, 556 (5th Cir. 2014)* (loss amount); *United States v. Gomez, 905 F.3d 347, 351 (5th Cir. 2018)* (leadership role); *United States v. Infante, 404 F.3d 376, 393 (5th Cir. 2005)* (obstruction of justice). The district court's findings require a preponderance of the evidence. *Simpson, 741 F.3d at 556*. Under clear error review, we will affirm if the findings are "plausible in light of the record as a whole." *Id. at 556-57*.

A. Loss calculation

The Guidelines instructed the district court to increase Glenn's offense level in relation to the amount of loss involved. *See U.S.S.G. § 2B1.1*. The district court attributed losses to Glenn in excess of $2 million, which triggered a 16-level increase. *Id. § 2B1.1(b)(1)(I)*. Glenn argues the loss amount should only be in the $95,000-$150,000 range, which triggers an 8-level increase. *Id. § 2B1.1(b)(1)(E)*.

HN6[↑] The sentencing court looks to the greater of the actual or intended loss and **[**11]** "all criminal acts that were 'part of the same course of conduct or common scheme or plan as the offense of conviction,' including acts beyond the specific offenses of conviction." *United States v. Dickerson, 909 F.3d 118, 128 (5th Cir. 2018)* (quoting *U.S.S.G. § 1B1.3(a)(2)* (2013)). The loss amount also accounts for the "reasonably foreseeable" acts of others "within the scope of" and "in furtherance of" the joint criminal activity. *§ 1B1.3(a)(1)(B)*; *see also United States v. Mauskar, 557 F.3d 219, 233 (5th Cir. 2009)*. Further, the sentencing court "need only make a reasonable estimate of the loss." *U.S.S.G. § 2B1.1 cmt.3(C)*.

The investigation after Glenn's arrest revealed that the "Texas trip" was part of a larger conspiracy of check-cashing fraud at Walmart stores. The fraud investigations **[*431]** department of Walmart's check processor reviewed its records and determined 524 counterfeit check cashing attempts in 2014 and 309 in 2015 at Walmarts across 20 states were related. The total amount cashed or attempted to have been cashed in these transactions was over $2 million. Glenn's argument is that only the losses associated with the Texas trip should be attributed to him. He does not argue the 833 transactions are improperly linked to the conspiracy of which he admits being a part. Instead, he argues there are insufficient facts supporting his involvement before **[**12]** and after the Texas trip.

Found in the rental car was a thumb drive that contained Social Security and bank account numbers related to the 2014 check-cashing attempts. Additionally, the thumb drive contained multiple fake IDs with James's photo and a guide to fake IDs. The district court noted "there has been nothing presented to tie that flash drive . . . to anyone other than" Glenn given he had personal documents also stored on the device. Although not cited by the district court in its loss amount determination, the plausible finding that Glenn filled a leadership role — discussed below — suggests he was a central part of the conspiracy and not simply a limited participant in the Texas trip. Further, Glenn does not have to be directly involved with all the activities of the conspiracy. The district court only needs to make a "reasonable estimate" of the actual and intended loss associated with all reasonably foreseeable conduct within the conspiracy, including the acts of Glenn's associates. It was plausible for the district court to link Glenn with loss amounts of the Walmart fraud across 2014 and 2015.

B. Leadership role enhancement

HN7[↑] *Sentencing Guidelines Section 3B1.1(a)* increases the offense level by four "[i]f the **[**13]** defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." The sentencing court looks to

> the exercise of decision-making authority, the nature of participation in the commission of the

> offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

Id. § 3B1.1 cmt. n.4. The district court is permitted to draw inferences from the evidence. *United States v. Murray*, 648 F.3d 251, 257 (5th Cir. 2011).

The district court considered (1) Glenn's lack of interaction with third parties, such as when members of the conspiracy rented a car and cashed checks, which indicated he "acted in the traditional role of an organizer . . . because he did not want . . . to be depicted on any video surveillance systems;" (2) Glenn's claim to the money found in the rental car, which suggested he controlled the finances; (3) a statement James gave that Glenn took the largest share of proceeds in the Texas trip offenses and was the "orchestrator" of the conspiracy; and (4) the fact that raw data **[**14]** used to accomplish fraud was stored on the thumb drive and a laptop that were personally connected only to Glenn.

Lastly, the district court considered two participants in other instances of fraud related to the conspiracy who, when added to Glenn, Walker, and James, supported finding an involvement of at least five people. One of these individuals was captured on Walmart security cameras sometimes accompanying James during attempts to cash fraudulent checks. The other person was with James and Walker when they **[*432]** were pulled over in Massachusetts in January 2014. She had a fake ID in the name of Dominique Maddox, and the state trooper discovered in the car rented by Walker a check made payable to Dominque Maddox by a Liberty Tax Service. Around this same time in Massachusetts, there were fraudulent attempts to cash Liberty Tax Service checks at Walmarts, and these instances were later linked to data on Glenn's thumb drive.

This evidence is sufficient to make the inference Glenn exercised such a leadership role plausible and not clearly erroneous.

C. Obstruction of justice enhancement

HN8[↑] Sentencing Guidelines Section 3C1.1 increases an offense level by two if "the defendant willfully obstructed or impeded, or attempted to obstruct **[**15]** or impede, the administration of justice." This includes "providing materially false information to a judge or magistrate judge." *Id.* cmt n.4(F). Glenn was released from detention before trial and told he needed permission from Pretrial Services to travel outside of the Middle District of Louisiana. Glenn traveled to Florida twice as well as to Los Angeles and Las Vegas without such permission. The Government then sought a revocation of his release.

Glenn stated at the revocation hearing that he had not requested permission to take either Florida trip. It is unclear, though, whether he actually did request permission to take the first trip as he seemed confused at the hearing. He also stated he did not know of the need to report the second Florida trip and that he forgot the need to report travel to Los Angeles and Las Vegas. The magistrate judge did not accept that Glenn was unaware of his need to get permission to travel, a finding based in part on the fact Glenn at least once contacted the pretrial services office seeking an explanation of his travel obligations.

Despite some possible confusion, it is clear Glenn did not request permission for the second Florida trip nor the Los Angeles **[**16]** and Las Vegas trip. It is also clear that, regarding the second Florida trip, Glenn said "I didn't know at the time that I had to report it," and regarding the Los Angeles and Las Vegas trip, he stated he "forgot [the] requirement" to report it. The magistrate judge at the bail hearing found these to be untruthful statements and that Glenn had demonstrated he knew of the need to request permission to travel. It was not error for the district court to apply the obstruction enhancement.

AFFIRMED.

End of Document

LexisNexis®

User Name: James Knipe III
Date and Time: Monday, October 7, 2019 3:53:00 PM CDT
Job Number: 99400164

Document (1)

1. *United States v. Glenn, 931 F.3d 424*
Client/Matter: -None-
Search Terms: 931 F.3d 424
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	-None-

United States v. Glenn

United States District Court for the Middle District of Louisiana

September 2, 2016, Decided; September 2, 2016, Filed

CRIMINAL ACTION NO.: 15-00138-BAJ-RLB

Reporter
204 F. Supp. 3d 893 *; 2016 U.S. Dist. LEXIS 119321 **; 2016 WL 4581412

UNITED STATES OF AMERICA VERSUS WALTER GLENN, ET AL.

Subsequent History: Affirmed by *United States v. Walker, 706 Fed. Appx. 152, 2017 U.S. App. LEXIS 16140 (5th Cir. La., Aug. 23, 2017)*

Prior History: *United States v. Glenn, 2016 U.S. Dist. LEXIS 3536 (M.D. La., Jan. 12, 2016)*

Core Terms

license plate, reasonable suspicion, traffic stop, probable cause, driver, travel, rental car, tinted, criminal activity, passenger, Video, police cruiser, drove, inconsistency, screwdriver, contraband, minutes, traffic, seized, drive, search and seizure, rental agreement, rights, consent to search, circumstances, suspicion, factors, rental, motion to suppress, driver's license

Counsel: **[**1]** For Walter Glenn, Defendant: Ian Francis Hipwell, LEAD ATTORNEY, Manasseh Gill Knipe Belanger, Baton Rouge, LA; James S. Holt, LEAD ATTORNEY, Holt Law Firm, Baton Rouge, LA.

For Larry Walker, Defendant: David Rozas, LEAD ATTORNEY, Rozas Law Firm, Baton Rouge, LA; James S. Holt, LEAD ATTORNEY, Holt Law Firm, Baton Rouge, LA.

For Thomas James, Defendant: James S. Holt, LEAD ATTORNEY, Holt Law Firm, Baton Rouge, LA; Marci Blaize, LEAD ATTORNEY, Blaize Law Firm, LLC, Baton Rouge, LA.

For USA, Plaintiff: Jessica Marie Podewils Thornhill, LEAD ATTORNEY, United States Attorney's Office, Middle District of Louisiana, Baton Rouge, LA; James Patrick Thompson, United States Attorney's Office - BR, Middle District of Louisiana, Baton Rouge, LA.

Judges: BRIAN A. JACKSON, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion by: BRIAN A. JACKSON

Opinion

[*896] RULING AND ORDER[1]

Before the Court are motions to suppress filed by Walter Glenn, Larry Walker and Thomas James (collectively, "Defendants"). **[**2]** (Docs. 103, 104, 106[2]). Defendants seek to suppress the evidence seized during a traffic stop on September 2, 2014. (*Id.*). The United States of America ("Government") filed a combined memorandum in opposition. (Doc. 114). On July 7, 2016, the Court held an evidentiary hearing on the motions, and permitted the simultaneous filing of post-hearing briefs. (*See* Docs. 125, 126).

I. BACKGROUND

At approximately 9:30 p.m. on Tuesday, September 2, 2014, Sergeant Donald Dawsey ("Sgt. Dawsey") of the West Baton Rouge Parish Sheriff's Office was positioned in his marked police cruiser between the 147 and 148 mile posts on Interstate 10 ("I-10") in Baton Rouge, Louisiana. (Doc. 124, Hr'g Tr. 17:6-10, 65:4-9). Sgt. Dawsey's police cruiser was position perpendicular to I-10 going eastbound. (*Id.*). An officer with twenty years of law enforcement experience, Sgt. Dawsey was assigned to the narcotics criminal patrol unit. (*Id.* at

[1] The subject of this Ruling and Order only pertains to the lawfulness of the traffic stop and the subsequent search of the vehicle. In addition to addressing the propriety of the consent to search, the Court will consider other possible grounds for a lawful search.

[2] James filed a motion to adopt the motions filed by his codefendants. *See* Doc. 106.

EXHIBIT 2

13:8-13, 14:13-16).

Defendants were traveling eastbound on I-10 in a silver Chrysler 300 when Sgt. Dawsey pulled the vehicle over onto the side of the interstate after observing a tinted license plate **[**3]** cover affixed to the vehicle in violation of Louisiana Revised Statute § 32:53. (*Id.* at 17:11-12). At the hearing on the motions *sub judice*, Sgt. Dawsey testified that after stopping the vehicle, he approached the vehicle's passenger side and saw a set of screwdrivers in the driver's door console.[3] (*Id.* at 24:3-7). Glenn, the driver, gave Sgt. Dawsey his driver's license and insurance verification. Sgt. Dawsey asked Glenn to exit the vehicle and step to the rear. (Gov. Ex. 1, Video of Traffic Stop). Glenn complied. While at the rear of the vehicle and in front of Sgt. Dawsey's police cruiser, Glenn notified Sgt. Dawsey that the vehicle was a rental car that had been rented by Walker, who was seated in the backseat. Glenn also claimed that the license plate cover was attached to the vehicle at the time of the rental. (*Id.*). Sgt. Dawsey informed Glenn that the tinted license plate cover was illegal and that he "can't believe a rental came like that." (Gov. Ex. 2 at p. 1). Glenn offered to remove the license plate cover, and Sgt. Dawsey told him that removal was optional. (*See id.* at p. 2).

Following that initial exchange, Sgt. Dawsey asked Glenn about **[**4]** their travel history. (Gov. Ex. 1, Video of Traffic Stop). Glenn told Sgt. Dawsey that they were returning from a Labor Day family cookout in Beaumont, Texas, which he mispronounced as "Bewmont." (*Id.*). Glenn stated **[*897]** that the drive was approximately twenty-three to twenty-four hours from Connecticut to Texas. He told Sgt. Dawsey that the trip began on Friday, August 29, 2014, and that the car was due back to the rental agency in Connecticut on Friday, September 5, 2014. (*Id.*). Glenn also explained that Walker is his cousin and that they live in Connecticut. He also reported that James is his uncle and that he lives in South Carolina.[4] (*Id.*).

Sgt. Dawsey then told Glenn to remain behind the vehicle while he retrieved the rental agreement from Walker, who was still in the backseat. (*Id.*). Sgt. Dawsey returned to the passenger side of the vehicle and asked Walker for the rental agreement. The officer explained to Walker that the tinted license plate cover was illegal and that he had never seen a rental car with a tinted license plate cover. (*Id.*). Walker told Sgt. Dawsey that he rented the vehicle a week prior **[**5]** and that the vehicle was due back on Friday, September 5, 2014. (*Id.*).

Sgt. Dawsey asked Walker about their travel history and where the vehicle was picked up. (*Id.*). Walker explained that they had been in Beaumont, which he also mispronounced as "Bewmont," for a family visit and that they stopped in Houston. (*Id.*). Walker told Sgt. Dawsey that he rented the vehicle in Connecticut, but he lives in Orlando, Florida. (*Id.*). He explained that he flew to Connecticut for a visit "a couple of weeks ago," and that they then decided to drive to Texas to visit family members. (*Id.*).

After approximately five minutes into the stop, Sgt. Dawsey was in possession of the rental agreement, insurance verification, and Glenn's driver's license. (Doc. 124, Hr'g Tr. 131:3-11). Sgt. Dawsey returned to the rear of the vehicle to further question Glenn about where Walker was from and how Walker travelled to Connecticut. (Gov. Ex. 1, Video of Traffic Stop). Glenn clarified that Walker was born in Connecticut, but is from Florida, and that he drove from Florida to Connecticut. (*Id.*). When asked about the car he drove to Connecticut, Walker stated "he has a Range Rover." (Gov. Ex. 2 at p. 5).

Sgt. Dawsey told **[**6]** Glenn that he was going to "run all the stuff and make sure everything is straight," and that Glenn should remain standing at the rear of the vehicle and in front of his police cruiser. (Gov. Ex. 1, Video of Traffic Stop). Glenn remained as instructed while Sgt. Dawsey was in the police cruiser for an additional five minutes. (*Id.*). While in the police cruiser, Sgt. Dawsey did not "run all the stuff" as he had claimed to Glenn, but called for backup officers to assist in a search of the vehicle. (Doc. 124, Hr'g Tr. 36:21-37:5).

Ten minutes after initiating the stop, Sgt. Dawsey exited the police cruiser and told Glenn that he was still running their information. (Gov. Ex. 1, Video of Traffic Stop). Sgt. Dawsey asked Glenn additional questions about who drove the vehicle from Beaumont, who drove from Houston, and who drove from Connecticut. (*Id.*). Sgt. Dawsey also inquired about the specific day they attended the family cookout and when they drove to Houston. (*Id.*). Glenn told the officer that he and Walker both drove to Beaumont, that Walker later drove from Houston to Beaumont, and that he drove from

[3] Sgt. Dawsey testified that he cannot remember if there was one or two screwdrivers.

[4] Neither the Government nor Defendants dispute the accuracy of this information.

Beaumont to Baton Rouge. Glenn also explained that they drove to Houston earlier that **[**7]** day and that the cookout was on Labor Day. In response, Sgt. Dawsey stated "we've gotta big problem people going this way from Houston with you know something like a hundred pounds of [m]arijuana, couple kilos of [c]ocaine, large amounts of U.S. [c]urrency." **[*898]** (Gov. Ex. 2 at p. 7). Glenn responded by saying that they did not have "any of that," and that none of them had criminal drug histories. (*Id.*).

Twelve minutes after initiating the stop—while still in possession of the rental agreement, insurance verification, and Glenn's driver's license—Sgt. Dawsey stated: "Alright. Can I search that car?" (*Id.*). Glenn stated: "Yeah, you can search that car." (Gov. Ex. 1, Video of Traffic Stop). Thereafter, a second officer joined Sgt. Dawsey. Sgt. Dawsey explained to the second officer that the driver said they could search the vehicle but they needed to check with Walker. (*Id.*).

Fourteen minutes after initiating the stop, Walker was ordered out of the vehicle by Sgt. Dawsey, who stated "I asked the driver if I could search the car, and he said yeah." (Gov. Ex. 2 at p. 8). Walker responded, "he said you can search it, search it." (*Id.*).

Shortly thereafter, the two officers were joined by a third officer. All three officers searched **[**8]** the vehicle for approximately twenty minutes before arresting Glenn, Walker, and James. (Gov. Ex. 1, Video of Traffic Stop). During the search, the officers found (1) a screwdriver; (2) a front license plate and bolts;[5] (3) "newly purchased items";[6] (4) 114 blank ID cards; (5) 49 blank check sheets; (6) 45 holographic overlays; (7) power inverter; (8) printer; (9) scissors; (10) tape; (11) an iron; (12) $95,000 cash; (13) seven white envelopes with names and social security numbers written on them; and (14) multiple computer devices. (*See* Doc. 114 at pp. 5-6; Doc. 124, Hr'g Tr. 44:4-18; Gov. Ex. 9).

Defendants were subsequently indicted on October 1, 2015, for unauthorized access devices fraud, in violation of *18 U.S.C. § 1029(a)(3)*. (Doc. 1). On October 29, **[**9]** 2015, the Government obtained a Superseding Indictment against all Defendants, which added two new counts of conspiracy, in violation of *18 U.S.C. § 371*, and aggravated identity theft, in violation of *18 U.S.C. § 1028A*. (Doc. 13 at p. 5). In the subject motions, Glenn and James contest the justification for the initial stop, all three Defendants contest the duration of the stop, and Walker contests the search of the vehicle.[7]

II. DISCUSSION

The *Fourth Amendment* protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *U.S. Const. amend. IV*. The "exclusionary rule" is a judicially created remedy adopted to effectuate the protections of the *Fourth Amendment*. *United States v. Calandra, 414 U.S. 338, 347-48, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974)*. "Under this rule, evidence obtained in violation of the *Fourth Amendment* cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *Id. at 347* (citation omitted). The prohibition equally applies to **[**10]** the fruits of the illegally seized evidence. *Id.*

[*899] Of course, the *Fourth Amendment's* protection against searches and seizures is not absolute. The United States Supreme Court has consistently emphasized that "what the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures." *Terry v. Ohio, 392 U.S. 1, 9, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)* (quotation marks omitted) (quoting *Elkins v. United States, 364 U.S. 206, 222, 80 S. Ct. 1437, 4 L. Ed. 2d 1669 (1960)*). As such, "[t]he touchstone of the *Fourth Amendment* is reasonableness." *Florida v. Jimeno, 500 U.S. 248, 250, 111 S. Ct. 1801, 114 L. Ed. 2d 297 (1991)* (citing *Katz v. United States, 389 U.S. 347, 360, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)*).

It is well established that "searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the *Fourth*

[5] No further description of the license plate was provided by the Government.

[6] In the Government's opposition to the motions to suppress, the Government did not describe the "newly purchased items." However, at the hearing, Sgt. Dawsey testified that Glenn informed him that they traveled to Houston and purchased video games from Game Stop. Doc. 124, Hr'g Tr. 134:11-135:18). The Court can only assume that the video games constitute the "newly purchased items."

[7] In Walker's motion and during the hearing, he did not raise as an issue the justification for the initial stop. *See* Docs. 103, 124. Additionally, the Defendants conceded in their post-hearing brief that Glenn did not have the authority to challenge the search and that consent "rises or falls with . . . Walker." *See* Doc. 126 at pp. 4-5.

Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant, 556 U.S. 332, 338, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009)* (quotation marks omitted) (quoting *Katz, 389 U.S. at 357*). Generally, "[t]he proponent of a motion to suppress has the burden of proving, by a preponderance of evidence, that the evidence in question was obtained in violation of his *Fourth Amendment* rights." *United States v. Kelley, 981 F.2d 1464, 1467 (5th Cir. 1993)* (quoting *United States v. Smith, 978 F.2d 171, 176 (5th Cir. 1992)*). However, in cases where a search is not conducted pursuant to a warrant, the Government bears the burden of proving that the search was valid. *United States v. Waldrop, 404 F.3d 365, 368 (5th Cir. 2005)* (citing *United States v. Castro, 166 F.3d 728, 733 n.6 (5th Cir. 1999)*). Here, Defendants argue that they were subjected to an unlawful seizure and search in violation of the *Fourth Amendment*.

A. LEGALITY OF THE SEIZURE

"The stopping of a vehicle and detention of its occupants **[**11]** constitutes a 'seizure' under the *Fourth Amendment*." *United States v. Brigham, 382 F.3d 500, 506 (5th Cir. 2004)*. To analyze the legality of a traffic stop, courts utilize the two-step standard articulated by the Supreme Court in *Terry v. Ohio*. *United States v. Pack, 612 F.3d 341, 350 (5th Cir. 2010)* (citing *Brigham, 382 F.3d at 506*). Under the first step, courts determine "whether the officer's action was justified at its inception." *United States v. Jenson, 462 F.3d 399, 403 (5th Cir. 2006)*. Under the second step, courts evaluate "whether the officer's subsequent actions were reasonably related in scope to the circumstances that justified the stop." *Brigham, 382 F.3d at 506*.

1. Justification of the Traffic Stop at its Inception

"For a traffic stop to be justified at its inception, an officer must have an objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle." *United States v. Lopez-Moreno, 420 F.3d 420, 430 (5th Cir. 2005)* (citing *United States v. Breeland, 53 F.3d 100, 102 (5th Cir. 1995)*). When assessing reasonable suspicion, "the court considers the totality of the circumstances—the whole picture." *United States v. Chavez, 281 F.3d 479, 485 (5th Cir. 2002)* (internal quotation marks omitted) (quoting *United States v. Sokolow, 490 U.S. 1, 7-8, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989)*).

Sgt. Dawsey claims that he initiated the traffic stop because a tinted license plate cover was affixed to the vehicle in violation of Louisiana law. (Gov. Ex. 9). According to *Louisiana Revised Statute § 32:53(A)(3)*, "[e]very permanent registration license plate shall at all times be . . . in a place and position to be clearly visible, **[*900]** and shall **[**12]** be maintained free from foreign materials and in a condition to be clearly legible." *La. Stat. § 32:53(A)(3)*. Defendants contend that *§ 32:53* does not prohibit a tinted license plate cover, but only requires that the information on the license plate be clearly legible and free of foreign materials. (Doc. 126 at p. 1). Defendants aver that Sgt. Dawsey should not have completed the stop once he pulled directly behind the vehicle and could easily read the information on the license plate. (*Id.* at p. 2).

Sgt. Dawsey testified that he could not see the information on the license plate when his police cruiser was parked on the I-10 median. (Doc. 124, Hr'g Tr. 138:1-4). After he pulled behind the vehicle, however, the headlights of his police cruiser illuminated the license plate and he was able to read the lettering on the plate and the issuing state. (*Id.* at 139:1-8). Nevertheless, the fact that Sgt. Dawsey was eventually able to read the license plate with the illumination of his headlights does not invalidate the officer's stated reason for the stop. *See United States v. Bates, No. CRIM.A. 12-118, 2013 U.S. Dist. LEXIS 28844, 2013 WL 796064, at *4-5 (E.D. La. Mar. 4, 2013)* (finding that the traffic stop for an obscured license plate was justified despite the fact that the officer was eventually **[**13]** able to read the license plate). When Sgt. Dawsey was unable to read the license plate while parked on the I-10 median, he had reasonable suspicion that a traffic violation occurred and thus was justified in making the stop.

2. Duration of the Traffic Stop

A traffic stop that is justified at its inception can violate the *Fourth Amendment* if it is prolonged beyond the time reasonably required to complete the mission of the stop. *Illinois v. Caballes, 543 U.S. 405, 407, 125 S. Ct. 834, 160 L. Ed. 2d 842 (2005)*. The authority for the stop "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. United States, U.S. , 135 S. Ct. 1609, 1614, 191 L. Ed. 2d 492 (2015)* (citing *United States v. Sharpe, 470 U.S. 675, 686, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985)*).

The "mission" of a traffic stop is "to address the traffic violation that warranted the stop and attend to related safety concerns." *Id.* (internal citations omitted). To effectuate the mission, an officer may check the driver's license, check for outstanding warrants against the driver, and inspect the vehicle's registration and proof of insurance. *Id. at 1615*. The officer may also ask about the purpose and itinerary of the driver's trip. *United States v. Pena-Gonzalez, 618 F. App'x 195, 198 (5th Cir. 2015)* (quoting *United States v. Fishel, 467 F.3d 855, 857 (5th Cir. 2006)*). "These 'matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure,'" so long as the duration of the stop is not extended beyond **[**14]** when the tasks tied to the traffic infraction should have reasonably been completed. *Id.* (quoting *Arizona v. Johnson, 555 U.S. 323, 333, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009)* (internal citation omitted)).

A stop may be prolonged, however, if reasonable suspicion of additional criminal activity emerges while an officer is completing the mission of the stop. *United States v. Spears, 636 F. App'x 893, 901 (5th Cir. 2016)*. "If the officer develops reasonable suspicion of additional criminal activity, . . . he may further detain [the] occupants [of the vehicle] for a reasonable time while appropriately attempting to dispel this reasonable suspicion." *Id.* (alterations in original) (quoting *United States v. Andres, 703 F.3d 828, 833 (5th Cir. 2013)*).

Here, Sgt. Dawsey testified that in the first five minute of the stop, he had everything he needed to issue a traffic citation and complete the stop. (Doc. 124, Hr'g Tr. **[*901]** 131:5-15). He also testified that he had the driver's license, insurance verification, and rental agreement. (*Id.*). In his Investigation Report, Sgt. Dawsey claimed that he went to his police cruiser to run the information he collected. (Gov. Ex. 9). Yet, at the hearing, he admitted that he did not run any of the information because he was calling for backup officers to assist in conducting a search of the vehicle. (Doc. 124, Hr'g Tr. 36:21-37:5). It is clear from Sgt. Dawsey's **[**15]** testimony that after he retrieved the rental agreement from Walker, the encounter evolved from a traffic stop to an on-scene investigation into other possible crimes. *Rodriguez, 135 S. Ct. at 1616*.

After the period of time when the traffic stop should have reasonably concluded, Defendants' detention was prolonged for an additional ten minutes before Sgt. Dawsey sought consent from Walker to search the vehicle.[8] The lawfulness of the seizure of Defendants during this time period is dependent on whether reasonable suspicion of criminal activity arose during the first five minutes of the stop, *Spears, 636 F. App'x at 901-02*, thus justifying the prolonged stop.

The Fifth Circuit has provided the following instructions when analyzing reasonable suspicion:

> Reasonable suspicion exists when the detaining officer can point to specific and articulable facts that, when taken together with rational inferences from those facts, reasonably warrant the . . . seizure. Although an officer's reliance on a mere hunch is insufficient to justify a stop, the likelihood of criminal activity need not rise to the level required for probable cause, and it falls considerably short of satisfying **[**16]** a preponderance of the evidence standard. The reasonable suspicion analysis is necessarily fact-specific, and factors which by themselves may appear innocent, may in the aggregate rise to the level of reasonable suspicion. We must pay heed to the Supreme Court's admonition not to treat each factor in isolation, and instead must consider the totality of the circumstances and the collective knowledge and experience of the officer. Under the collective knowledge doctrine, reasonable suspicion can vest through the collective knowledge of the officers involved in the search and seizure operation.

Id. at 898 (internal citations and quotation marks omitted).

The Government asserts that eleven facts arose to create reasonable suspicion: (1) inconsistent statements regarding Walker's residency; (2) inconsistent statements regarding how Walker travelled from Florida to Connecticut; (3) mispronunciation of the city of Beaumont; (4) the circuitous travel itinerary; (5) Glenn's nervous behavior; (6) Glenn's willingness to remove the license plate cover; (7) the screwdriver in the driver's door console; (8) the rental vehicle; (9) the fact that the rental vehicle had a tinted license plate cover; (10) Defendants **[**17]** were traveling on a drug corridor; and (11) the interior of the vehicle "was a mess." (Doc. 125 at p. 3).

Many of the facts offered by the Government do not

[8] *See infra* Part B for the Court's discussion of the constitutionality of the search.

amount to reasonable suspicion, standing alone or in combination with other facts. For instance, it was not improbable for Defendants to mispronounce "Beaumont" under these circumstances. The fact that a motorist mispronounces the name of a city in which he is not a resident, but merely a visitor, is not a fact that supports a reasonable suspicion finding; and the Government has offered no case law upon which this fact has been deemed probative of possible criminal activity.

In addition, it was not suspicious for the interior of the vehicle to be "a mess" after **[*902]** a twenty-three to twenty-four hour drive spanning several states, and the Government has offered no case law upon which clutter and untidiness, under these circumstances, are probative of possible criminal activity.

It was also not improbable for Defendants to drive from Connecticut to Texas for an extended weekend trip. Sgt. Dawsey testified that he thought it was suspicious for Defendants to drive, rather than fly, from Connecticut to Texas. (Doc. 124, Hr'g Tr. 35:20-24). **[**18]** Considering the cost of airline travel, it may have been a prudent fiscal decision for the three Defendants to drive rather than purchase three airline tickets. *See* United States v. Madrigal, 626 F. App'x 448, 451 (5th Cir. 2015) (finding it not unusual for a person of modest means to drive from Mexico to Houston and back in a day).

Regarding the inconsistent statements, the evidence reveals that throughout the entire encounter, there was only one minor inconsistency between the statements given by Glenn and Walker. Spears, 636 F. App'x at 902 ("[M]inor, insignificant, illusory, or reconcilable inconsistencies in a defendant's story are not probative of criminal activity."). The Government identifies two inconsistencies: statements regarding Walker's residency and the method by which Walker travelled from Florida to Connecticut. The Court finds, however, that the statements regarding Walker's residency do not amount to an inconsistency. When Sgt. Dawsey approached Glenn after speaking to Walker, Glenn immediately clarified that Walker was born in Connecticut and now lives in Florida. Thus, the statements offered by Walker and Glenn on this matter were consistent. Nonetheless, Walker and Glenn gave inconsistent statements regarding Walker's mode of transportation from Florida to **[**19]** Connecticut, but the Court concludes that this was a minor and insignificant inconsistency.[9] *See* United States v. Macias, 658 F.3d 509, 521 (5th Cir. 2011) ("Even if Macias and Zillioux's answers are considered inconsistent, inconsistent stories between a driver and passenger do not necessarily constitute articulable facts of reasonable suspicion.").

Walker and Glenn's account of their travel itinerary was entirely consistent. **[**20]** Both men identified Connecticut as their origin and Beaumont, Texas as their destination. Both men explained that the purpose of their travel was to visit family members in Beaumont, Texas, and that the rental car was due back to the rental agency on Friday, September 5, 2014. Although Glenn wrongly stated that Walker drove to Connecticut from Florida, this inconsistency is insignificant and completely attenuated from their Connecticut to Texas travel itinerary. It was entirely reasonable for Glenn—someone who did not accompany Walker during his travel from Florida to Connecticut—to not know the precise mode of transportation Walker used to travel to Connecticut. *See* United [*903] States v. Estrada, 459 F.3d 627, 629 (5th Cir. 2006) (finding it was a minor inconsistency and reasonable for the owner of the vehicle to say he owned the vehicle for one month and for his brother to say he owned if for three months); *see also* Pack, 612 F.3d 341, 359-60 (reaffirming that the inconsistency in *Estrada* was reasonable).

Furthermore, the Court is not convinced by the evidence from the video of the encounter that Glenn demonstrated nervous behavior. Sgt. Dawsey testified that Glenn was nervous because he couldn't stop moving. (Doc. 124, Hr'g Tr. 142:4-7, 26:15-17). To the contrary, the **[**21]** video depicts Glenn consistently making eye contact with Sgt. Dawsey and only

---

[9] Whether an inconsistent statement can support reasonable suspicion depends on the degree of inconsistency. In Pack, 612 F.3d 341, the Fifth Circuit found it was reasonable suspicion when the driver said she and the passenger were visiting her ill aunt in Houston, but the passenger said they were coming from Dallas and that he did not know the driver had family in Texas. In United States v. Vazquez, 253 F. App'x 365 (5th Cir. 2007), the Fifth Circuit found it was reasonable suspicion when the passenger said the purpose of the trip to Loredo was to drop his step-daughter off, and the driver said no one came with them to Loredo and the purpose of the trip was to see his father. However, in United States v. Santiago, 310 F.3d 336 (5th Cir. 2002), the Fifth Circuit found it was not reasonable suspicion when the driver identified the passenger as his wife, but later identified her as his ex-wife and another individual, the owner of the car, as his wife.

gesturing with his hands when he spoke.[10] *Cf.* Pena-Gonzalez, 618 F. App'x at 196 (finding nervousness where carotid artery visibly pulsed, faced twitched, and breathing was labored); Brigham, 382 F.3d at 508 (finding nervousness where defendants avoided eye contact and answered questions indirectly).

The Court also concludes that it was not suspicious for Glenn to express a willingness to remove the license plate cover after Sgt. Dawsey informed him that it was illegal. Indeed, it was reasonable for Glenn to want to rectify the error when notified by a law enforcement officer that a feature of the car was unlawful.

Nonetheless, other facts support a finding of reasonable suspicion. Courts have recognized that rental cars often serve as a common mode of transportation for drug trafficking. United States v. Piaget, 915 F.2d 138, 140 (5th Cir. 1990); Johnson v. Eggebrecht, No. 9:14-CV-144, 2015 U.S. Dist. LEXIS 174757, 2015 WL 9703791, at *7 (E.D. Tex. Dec. 28, 2015), *report and recommendation adopted*, No. 9:14-CV-144, 2016 U.S. Dist. LEXIS 4604, 2016 WL 165091 (E.D. Tex. Jan. 14, 2016). And the fact that Defendants' rental car had a tinted license plate cover and a screwdriver in the door console **[**22]** further supported the presence of reasonable suspicion. Sgt. Dawsey testified that he was surprised to see a tinted license plate cover on a rental car because, based on his experience, tinted license plate covers are used to evade law enforcement by eluding traffic cameras and covering up the vehicle's state of origin. (Doc. 124, Hr'g Tr. 27:12-23). He also testified that the screwdriver in the rental car raised his suspicion because it may have been used to install the license plate cover. (*Id.* at 150:22-151:1). Additionally, Defendants were traveling on a known drug corridor, a fact that also supports a finding of reasonable suspicion. United States v. Powell, 137 F. App'x 701, 706 (5th Cir. 2005) (per curiam). The Court concludes that each of these unique facts, considered in their totality, created reasonable suspicion for Sgt. Dawsey to prolong the traffic stop to dispel his suspicion.

B. LEGALITY OF THE SEARCH[11]

1. Consent to Search

A warrantless search is unconstitutional unless it meets one of a limited number of exceptions. United States v. Zavala, 459 F. App'x 429, 433 (5th Cir. 2012) (citing United States v. Jenkins, 46 F.3d 447, 451 (5th Cir. 1995)). "One **[**23]** exception is a search conducted pursuant to voluntary consent." *Id.* Consent to search is valid only if it is given freely and voluntarily. United States v. Shabazz, 993 F.2d 431, 438 (5th Cir. 1993) (quoting Kelley, 981 F.2d at 1470). Of course, the Government **[*904]** bears the burden to show by a preponderance of the evidence that consent was voluntary. *Id.*

Courts analyze the voluntariness of consent by examining six factors: "(1) the voluntariness of the defendant's custodial status, (2) whether the police engaged in coercive conduct, (3) the extent and degree of the defendant's cooperation with the police, (4) the defendant's knowledge of his right to refuse consent, (5) the defendant's level of intelligence and education, and (6) the belief of the defendant that a search will not reveal incriminating evidence." Zavala, 459 F. App'x at 433 (citing Jenkins, 46 F.3d at 451). No single factor is dispositive of consent. *Id.* In most cases, "some of [the] factors will not be seriously implicated, and only one or a subset of the factors will truly be at issue and drive the ultimate conclusion." *Id.*

After considering each of the six factors, the Court finds that Walker's consent was not voluntary, but the product of an involuntary custodial status and coercive police tactics. The first factor, voluntariness of custodial status, **[**24]** militates against the Government. Although Walker was not handcuffed or restrained, Sgt. Dawsey testified at the hearing that Walker was not free to leave at any time after he was instructed to exit the vehicle for the search. (Doc. 124, Hr'g Tr. 152:18-23). Moreover, Sgt. Dawsey's actions clearly indicated that Walker was not free to leave. Sgt. Dawsey did not issue a traffic citation, and throughout the encounter, Sgt. Dawsey retained possession of the rental agreement, insurance verification, and Glenn's driver's license—all of which resulted in a de facto detention. Thus, under these circumstances, Walker's custodial status was not voluntary. *See* Shabazz, 993 F.2d at 438 (affirming the district court's finding that the defendants were not free to leave because the officer was checking the driver's license or vehicle tag).

---

[10] A careful review of the video demonstrates that Glenn also gestured with hands while he spoke on his cell phone while waiting for Sgt. Dawsey to return from his police cruiser.

[11] The Court's analysis is confined to the lawfulness of the search of the vehicle. The lawfulness of the search of each Defendants' personal effects in the vehicle was not an issue raised by the parties.

The second factor, coercive police conduct, also militates against the Government. Sgt. Dawsey conceded that at no time did he explicitly ask Walker for consent. (Doc. 124, Hr'g Tr. at 117:22-25; 119:3-20). A review of Sgt. Dawsey's exchange with Walker reveals that Sgt. Dawsey only *informed* Walker that Glenn, an unauthorized driver, gave consent. At no time did Sgt. Dawsey ask or request **[**25]** consent from Walker. Sgt. Dawsey—an officer with twenty years of experience and a trainer in his department—knew that Glenn was not authorized to give consent. In fact, Sgt. Dawsey told the other officer that he needed consent from Walker to search the vehicle. Yet, Sgt. Dawsey did not explicitly seek consent from Walker, the only person authorized to give consent.[12]

Sgt. Dawsey never informed Walker that, as the sole authorized driver of the rental car, only he could lawfully provide consent or refuse to give consent to search the vehicle. Rather, Sgt. Dawsey used a deceptive **[**26]** tactic to elicit a response from Walker that the Government is now attempting to feebly hitch onto the *Fourth Amendment* as valid consent. *See United States v. Robertson, 16 F. Supp. 3d 740, 748 [*905] (M.D. La. 2014), aff'd, 614 F. App'x 748 (5th Cir. 2015)* (per curiam) (finding that an officer's use of the phrase "before you go" to obtain consent to search a vehicle after the traffic stop concluded was a coercive tactic). Accordingly, the Court finds that Walker's purported "consent" was the product of a coercive police tactic.

The third factor, cooperation with the officers, militates in favor of the Government. The evidence demonstrates that Walker was cooperative throughout the encounter with Sgt. Dawsey. (Doc. 124, Hr'g Tr. 42:20-22).

The fourth factor, knowledge of the right to refuse consent, militates against the Government. When an officer retains possession of a defendant's personal effects, as was the case here, the Fifth Circuit has "found it important that the officer expressly inform the suspect of his right to refuse consent." *Zavala, 459 F. App'x at 434*. As previously noted, Sgt. Dawsey admitted that he did not inform Walker of his right to refuse consent, even though he retained possession of the rental agreement, insurance verification, and Glenn's driver's license. (*See id.* at 152:24-153:13).

The fifth factor, level **[**27]** of intelligence and education, marginally militates in favor of the Government. Sgt. Dawsey testified that Walker "spoke well" and that he had no doubt he understood their conversation. (Doc. 124, Hr'g Tr. at 153:14-20).

The final factor, a defendant's belief that the search would reveal incriminating evidence, is neutral. There is nothing in the record that supports a finding either way.

After weighing each of the factors, the Court finds that Walker did not voluntarily consent to the warrantless search of the vehicle. The degree of Walker's cooperation and intelligence are outweighed by the involuntary nature of his custodial status, the use of coercive police tactics coupled with the fact that he was not informed of his right to refuse consent. These factors weigh heavily against the voluntariness of his purported consent. Accordingly, the Court must conclude that the search of the vehicle was not the result of valid consent.

Having found that Walker's purported consent was not voluntary, the Court now explores whether Sgt. Dawsey had probable cause to conduct the search.

2. Probable Cause to Search

In the absence of valid consent, probable cause is required to lawfully search a vehicle. **[**28]** Neither the Government nor Defendants addressed whether the facts of this case created probable cause to search the vehicle. The Government has relied solely upon consent to justify the search. In fact, the Government ignored Sgt. Dawsey's testimony regarding his belief that he could verbalize probable cause for the search. (Doc. 124, Hr'g Tr. 116:15-16). Despite the parties' failure to address Sgt. Dawsey's pronouncement of probable cause, the Court is inclined to conduct a probable cause analysis to determine whether—irrespective of the invalid consent—the search was permissible under the *Fourth Amendment*.

It is well settled that under the "automobile exception," officers may conduct a warrantless search "[i]f a car is readily mobile and probable cause exists to believe it

---

[12] *See United States v. Jaras, 86 F.3d 383 (5th Cir. 1996)*, where a police officer received consent to search a vehicle from the driver, but then proceeded to search the luggage of the passenger, which was contained in the trunk of the vehicle. The officer never asked the passenger for consent to search his luggage and the passenger was not in the officer's presence when the driver gave consent. The district court found that the passenger's failure to object to the search of the luggage was "implied consent." The Fifth Circuit reversed the district court's decision and noted that consent cannot be implied when the officer did not expressly or impliedly ask for consent.

contains contraband." Maryland v. Dyson, 527 U.S. 465, 466-67, 119 S. Ct. 2013, 144 L. Ed. 2d 442 (1999) (quoting Pennsylvania v. Labron, 518 U.S. 938, 940, 116 S. Ct. 2485, 135 L. Ed. 2d 1031 (1996)); see Carroll v. United States, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543, T.D. 3686 (1925). Probable cause to search a vehicle exists "when trustworthy facts and circumstances within the officer's personal knowledge would cause a reasonably prudent man to believe that the vehicle contains contraband." United States v. Banuelos-Romero, 597 F.3d 763, 767 (5th Cir. 2010) (quoting United States v. Edwards, 577 F.2d 883, 895 [*906] (5th Cir. 1978) (en banc) (per curiam)). "Proof of probable cause requires less evidence than . . . proof beyond a reasonable doubt—but more than 'bare suspicion.'" Banuelos-Romero, 597 F.3d at 768 (quoting United States v. Raborn, 872 F.2d 589, 593 (5th Cir. 1989)). Similar to reasonable **[**29]** suspicion, "[p]robable cause is determined by examining the totality of the circumstances." United States v. Ortiz, 781 F.3d 221, 229 (5th Cir. 2015) (quoting United States v. Fields, 456 F.3d 519, 523 (5th Cir. 2006)).

Probable cause is a more demanding standard than reasonable suspicion. Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990). Although the evidence in this case may support mere suspicion of possible additional criminal activity, it does not meet the higher standard of probable cause. Of the eleven facts offered by the Government to support the assertion of reasonable suspicion, the Court has concluded that only three facts—a screwdriver in the door console, a rental car with a tinted license plate cover, and traveling on a drug corridor—supported a finding of reasonable suspicion.[13] These three facts, however, do not rise to the level of probable cause.

The probable cause inquiry before the Court is not whether there was probable cause to believe that criminal activity existed such as to effectuate an arrest, but whether there was probable cause that contraband or evidence of criminal activity was in the vehicle to justify the search. United States v. Henderson, 241 F.3d 638, 648 (9th Cir. 2000) (distinguishing between probable cause to arrest and probable cause to search). Probable cause to search a vehicle for contraband has been found where the smell of marijuana emanates from the **[**30]** vehicle, United States v. McSween, 53 F.3d 684, 686-87 (5th Cir. 1995), or where contraband is in the vehicle in plain view, Williams v. United States, 404 F.2d 493, 494 (5th Cir. 1968). It has also been found when an officer discovers a secret compartment on a vehicle, Banuelos-Romero, 597 F.3d at 768, or when a suspect admits to engaging in drug activity in the vehicle, United States v. Payne, 376 F. App'x 464, 465 (5th Cir. 2010) (per curiam). No such facts are present here.

In contrast, the facts here are nothing more than general suspicions. A tinted license plate cover affixed to a rental car may be suspicious of criminal activity, but it is not probable cause of the vehicle containing contraband. Indeed, Sgt. Dawsey testified that license plate covers are used to evade law enforcement by eluding traffic cameras and covering up the vehicle's state of origin; he did not testify that he believed the tinted license plate cover was indicative of the vehicle containing contraband. (Doc. 124, Hr'g Tr. 27:20-23). Moreover, the presence of a screwdriver in the driver's door console only supported Sgt. Dawsey's suspicion that it may have been used for the installation of the license plate cover. (*Id.* at 150:22-151:1). There is no evidence before the Court to support a probable cause finding that the screwdriver may have been used to engage in additional criminal activity, such as concealing contraband **[**31]** in a secret compartment or that the installation of the license plate cover was in any way suggestive of the presence of contraband.

Finally, driving a rental car on a known drug corridor is also not indicative of probable cause. These facts are more akin to Defendants fitting a drug courier profile than amounting to probable cause. Banuelos-Romero, 597 F.3d at 768 (acknowledging that "merely fitting a drug courier profile will not suffice to raise probable cause"). Thousands of people lawfully travel in rental cars on I-10 every **[*907]** day. It would be absurd for the Court to conclude that this amounts to probable cause, as such a finding would upset the fundamental Fourth Amendment protections enshrined in our Constitution and erode privacy expectations for thousands of travelers.

The Fourth Amendment recognizes "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. "The word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." Coolidge v. New Hampshire, 403 U.S. 443, 461, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971) (Stewart, J.). The protections of the Fourth Amendment do not dissipate in the middle of the night on the side of an interstate

[13] *See supra* Part A(2).

highway. Courts are required "to uphold the guarantees of the *Bill of Rights*" and to ensure that "[t]he Constitution protects all individuals, **[**32]** even the unworthy, from governmental invasion of their protected rights." *United States v. Causey, 834 F.2d 1179, 1189-90 (5th Cir. 1987)* (en banc) (Rubin, J., dissenting). In the most basic terms, the *Fourth Amendment's* "prohibition of unreasonable searches and seizures means . . . that, without proper consent, the government may neither seize nor search private property unless there is probable cause for the action." *United States v. Williams, 617 F.2d 1063, 1095 (5th Cir. 1980)* (en banc) (Rubin, J., concurring).

Sgt. Dawsey's search was conducted without proper consent and without probable cause. As a result, the search violated Walker's *Fourth Amendment* right to be secure from an unreasonable search and an improper governmental invasion. Walker is entitled to the suppression of all evidence seized, and the fruits of the illegally seized evidence.

Defendants Glenn and James, however, did not enjoy a possessory interest in the rental car and their *Fourth Amendment* rights were not violated by the search. *See United States v. Aubry, 55 F. App'x 717, 2002 WL 31933254 (5th Cir. 2002)* (unpublished) ("Because Aubry was merely a passenger and not the owner, the renter, or an authorized driver of the rental vehicle, he did not have standing to challenge the subsequent search of the vehicle."). *Fourth Amendment* rights are personal and the judicially created exclusionary rule is equally personal. *Plumhoff v. Rickard, 134 S. Ct. 2012, 2022, 188 L. Ed. 2d 1056 (2014)* ("Our cases make it clear that '*Fourth Amendment* rights are personal **[**33]** rights which . . . may not be vicariously asserted'"); *Alderman v. United States, 394 U.S. 165, 172-73, 89 S. Ct. 961, 22 L. Ed. 2d 176 (1969)* ("The exclusionary rule . . . excludes from a criminal trial any evidence seized from the defendant in violation of *his Fourth Amendment* rights." (emphasis added)). Thus, Glenn and James are not entitled to the suppression of the evidence seized during the search.

III. CONCLUSION

Based on the foregoing,

IT IS ORDERED that Larry Walker's **Motion to Suppress (Doc. 103)** is **DENIED IN PART and GRANTED IN PART**. The motion is **DENIED** as to the legality of the stop, and **GRANTED** as to the invalid consent of the search of the vehicle. In accordance with the reasons assigned, all evidence illegally seized, and the fruits of said evidence, shall be **SUPPRESSED** as to Larry Walker.

IT IS FURTHER ORDERED that Walter Glenn's **Motion to Suppress (Doc. 104)** and Thomas James' **Motion to Suppress (Doc. 106)**[14] are **DENIED**. For the **[*908]** reasons assigned, the Court finds that Glenn and James were not unlawfully seized and that they have no standing to challenge the search.

Baton Rouge, Louisiana, this 2nd day of September, 2016.

/s/ Brian A. Jackson

BRIAN A. JACKSON, CHIEF JUDGE

UNITED STATES DISTRICT COURT [34]**

MIDDLE DISTRICT OF LOUISIANA

End of Document

[14] James filed a motion to adopt the motions filed by his codefendants. *See* Doc. 106.

LexisNexis

User Name: James Knipe III
Date and Time: Monday, October 7, 2019 3:53:00 PM CDT
Job Number: 99400264

Document (1)

1. *United States v. Glenn, 204 F. Supp. 3d 893*
Client/Matter: -None-
Search Terms: 204 F. supp.3d 893
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	-None-

Neutral
As of: October 7, 2019 8:56 PM Z

United States v. Walker

United States Court of Appeals for the Fifth Circuit

August 23, 2017, Filed

No. 16-31045

Reporter
706 Fed. Appx. 152 *; 2017 U.S. App. LEXIS 16140 **; 2017 WL 3635529

UNITED STATES OF AMERICA, Plaintiff - Appellant v. LARRY WALKER, Defendant - Appellee

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Subsequent History: Motion denied by, As moot, Motion denied by, Without prejudice, Motion granted by *United States v. Glenn, 2017 U.S. Dist. LEXIS 187450 (M.D. La., Nov. 13, 2017)*

Motion denied by, Motion granted by *United States v. Glenn, 2017 U.S. Dist. LEXIS 201341 (M.D. La., Dec. 6, 2017)*

Motion granted by, Motion denied by *United States v. James, 2018 U.S. Dist. LEXIS 103296 (M.D. La., June 18, 2018)*

Prior History: **[**1]** Appeal from the United States District Court for the Middle District of Louisiana. USDC No. 3:15-CR-138.

United States v. Glenn, 204 F. Supp. 3d 893, 2016 U.S. Dist. LEXIS 119321 (M.D. La., Sept. 2, 2016)

Core Terms

district court, passenger, suppress, driver, consent to search, right to refuse, asserts, driver's license, rental agreement, license plate, circumstances, cooperation, questioning, coercive, factors, rental, rented

Case Summary

Overview

HOLDINGS: [1]-On a motion to suppress evidence, the district court did not err in concluding that defendant's consent to search his rental vehicle was the product of an involuntary custodial status and coercive police tactics. The district court considered six non-exclusive relevant factors in determining whether consent was voluntarily given and provided an exception to the *Fourth Amendment's* warrant and probable-cause requirements. Nothing on the police video or in the record contradicted the district court's factual findings on consent; [2]-There was no probable cause for the search.

Outcome
Partial grant of motion to suppress evidence was affirmed.

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Exclusionary Rule

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Conclusions of Law

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions to Suppress

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Motions to Suppress

HN1[] **Search & Seizure, Exclusionary Rule**

In reviewing a district court's grant of a motion to

EXHIBIT 3

suppress evidence obtained in violation of the *Fourth Amendment*, the United States Court of Appeals for the Fifth Circuit reviews the district court's factual findings for clear error and its legal conclusions de novo. Voluntariness of consent is a factual inquiry which is reviewed for clear error. Where a court has based its denial on live testimony, the clearly erroneous standard is particularly strong because the judge had the opportunity to observe the demeanor of the witnesses. The Fifth Circuit views the evidence introduced at a suppression hearing in the light most favorable to the prevailing party.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & Voluntariness

Evidence > Burdens of Proof > Allocation

Evidence > Burdens of Proof > Preponderance of Evidence

HN2 **Search & Seizure, Scope of Protection**

Consent provides an exception to the *Fourth Amendment's* warrant and probable-cause requirements. But, to rely on consent, the government must prove by a preponderance of the evidence that the consent was given freely and voluntarily. Voluntariness is determined by the totality of the circumstances and includes a consideration of the following non-exclusive relevant factors:(1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse to consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > ... > Warrantless Searches > Consent to Search > Sufficiency & Voluntariness

HN3 **Search & Seizure, Scope of Protection**

In the context of a motion to suppress, in cases involving ambiguous statements of consent or where the officer retains possession of a defendant's personal effects, the failure to inform the defendant of his right to refuse consent properly militates against the government.

Counsel: For UNITED STATES OF AMERICA, Plaintiff - Appellant: Jessica Marie Podewils Thornhill, Assistant U.S. Attorney, Mary Patricia Jones, Assistant U.S. Attorney, U.S. Attorney's Office, Middle District of Louisiana, Baton Rouge, LA.

For LARRY WALKER, Defendant - Appellee: David J. Rozas, Rozas - Rozas Law Firm, L.L.C., Baton Rouge, LA; Tillman J. Breckenridge, Bailey Glasser, L.L.P., Washington, DC.

Judges: Before JOLLY, SMITH, and GRAVES, Circuit Judges.

Opinion by: JAMES E. GRAVES, JR.

Opinion

[*154] JAMES E. GRAVES, JR., Circuit Judge:*

The government appeals the district court's partial grant of a motion to suppress evidence as the fruit of an illegal search of a vehicle on the basis that the consent to search was invalid. Because we conclude that the district court did not clearly err in finding, after an evidentiary hearing, that Larry Walker's consent to search was not voluntary, the partial grant of the motion to suppress evidence is AFFIRMED.

FACTS AND PROCEDURAL HISTORY

On September 2, 2014, Sergeant Donald Dawsey, who was assigned to the narcotics criminal patrol unit, was patrolling Interstate 10 in Baton Rouge. Dawsey **[**2]** was parked in the median around 10 p.m. when he observed a silver Chrysler 300 pass his location traveling eastbound with a tinted plexiglass license plate

* Pursuant to *5TH CIR. R. 47.5*, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in *5TH CIR. R. 47.5.4*.

cover that he apparently mistakenly believed was in violation of Louisiana Revised Statute § 32:53.[1] Dawsey stopped the vehicle and, as he approached the passenger's side, he said he noticed one or two screwdrivers in the driver's door console.

The three occupants of the car were Larry Walker, the backseat passenger, Walter Glenn, the driver, and Thomas James, the front passenger. Glenn provided his driver's license and proof of insurance, and Dawsey asked him to step to the rear of the car so he could show him why he stopped them. Dawsey pointed out the license plate cover. Glenn informed Dawsey that Walker had rented the car and that the license plate cover was attached to the car when it was rented. Glenn also offered to remove the cover, to which Dawsey replied, "that's gonna be up to you." Upon Dawsey's inquiry into the trio's travel history, Glenn said the men were returning from a Labor Day family cookout in Beaumont,[2] Texas, after driving from Connecticut to Texas the prior week. Glenn said that Walker is his cousin and they both lived in Connecticut, while **[**3]** James is his uncle and lived in South Carolina but was planning to meet up with his wife in New Jersey. He also said the car was due back to the rental agency on September 5, 2014.

Dawsey then returned to the passenger side of the vehicle and asked Walker for the rental agreement. Walker also told Dawsey that he rented the vehicle the prior week in Connecticut and that it was due back on September 5, 2014. Walker said that he had moved to Orlando, but had flown back to Connecticut a few weeks earlier for a visit before the group decided to drive to Beaumont, Texas to visit family members. He said they had also stopped in **[*155]** Houston. The rental paperwork verified that Walker currently lived in Orlando and that the car was rented in Connecticut on August 22, 2014.

Dawsey returned to the rear of the vehicle and resumed questioning Glenn about where Walker was from and how he traveled to Connecticut. Glenn said Walker was from Connecticut, but had moved to Florida, and that he had driven from Florida to Connecticut. Dawsey asked Glenn what kind of car Walker had and Glenn said he had a Range Rover. Glenn did not say Walker drove a Range Rover to Connecticut. Dawsey then told Glenn to remain **[**4]** where he was and said he was going to "run all the stuff and make sure everything is straight." Instead of running any of the information, Dawsey returned to his police cruiser and called for backup officers to assist in a search of the vehicle.

About twelve minutes after initiating the stop, Dawsey exited his cruiser, told Glenn he was still running the information and asked additional questions about the men's trip and the specific day of the family cookout. Glenn said that he and Walker both drove on the trip to Beaumont, that they went to Houston to do some shopping earlier that day — referencing visible shopping bags in the vehicle, then returned to Beaumont and that he drove from Beaumont to Baton Rouge. He also reiterated that the cookout was on Labor Day. Dawsey responded that "we've gotta big problem people going this way from Houston with you know something like a hundred pounds of marijuana, a couple kilos of cocaine, large amounts of U.S. currency." Glenn replied that the men did not have any of that and also did not have drug histories.

While still in possession of the rental agreement, insurance verification and Glenn's driver's license, Dawsey asked Glenn for permission **[**5]** to search the car. Glenn consented, but Dawsey told a second officer who had arrived on the scene that they needed to check with Walker, the "registered owner." Dawsey then questioned the front passenger, James, about which items in the car belonged to him and instructed him to exit the vehicle. James was then frisked.

About fifteen minutes after initiating the stop, Dawsey ordered Walker out of the car, saying, "I asked the driver if I could search the car, and he said yeah." Walker replied, "[h]e said...he said you can search it, search it." Dawsey then started questioning Walker about which items in the car belonged to him and had him move to the back of the car.

During the search, officers did not find any drugs, but instead found: (1) a screwdriver; (2) a front license plate and bolts; (3) "newly purchased items"; (4) 114 blank ID cards; (5) 49 blank check sheets; (6) 45 holographic overlays; (7) power inverter; (8) printer; (9) scissors; (10) tape; (11) an iron; (12) $95,000 cash; (13) seven white envelopes with names and social security numbers written on them; and (14) multiple computer devices. When Dawsey suggested the men were making credit cards, Glenn responded that he was not **[**6]** making credit cards and said his wife owned a beauty salon. Glenn also said the money belonged to

---

[1] Louisiana Revised Statute § 32:53 does not make it illegal to have a tinted license plate cover.

[2] The defendants pronounced it "Bewmont" or "Boomont."

him and that he buys houses. Additionally, Walker was self-employed in the real estate business.

Walker, Glenn and James were arrested and subsequently indicted for unauthorized access device fraud in violation of 18 U.S.C. §§ 1029(a)(3) and 2; aggravated identity theft in violation of 18 U.S.C. § 1028A; and conspiracy in violation of 18 U.S.C. §§ 371 and 2, 18 U.S.C. § 514(a)(1) and (2), 18 U.S.C. § 1028(a)(1), and 18 U.S.C. § 1029(a)(2). The defendants filed motions to suppress, with Glenn and James contesting the justification for the **[*156]** initial stop, all three contesting the duration of the stop, and Walker contesting the search of the vehicle.

After a hearing and post-hearing briefing, the district court denied Walker's motion as to the legality of the stop, but granted the motion on the basis that the vehicle search was in violation of the Fourth Amendment because Walker did not give voluntary consent to search. Thus, the court suppressed all evidence illegally seized. The district court denied Glenn's motion and James' motion, finding that they were not unlawfully seized and had no standing to challenge the search. The government subsequently appealed.

STANDARD OF REVIEW

HN1[↑] In reviewing a district court's grant of a motion to suppress **[**7]** evidence obtained in violation of the Fourth Amendment, this court reviews the district court's factual findings for clear error and its legal conclusions de novo. United States v. Gonzalez, 328 F.3d 755, 758 (5th Cir. 2003). Voluntariness of consent is a factual inquiry which is reviewed for clear error. United States v. Rounds, 749 F.3d 326, 338 (5th Cir. 2014). "Where a court has based its denial on live testimony, 'the clearly erroneous standard is particularly strong because the judge had the opportunity to observe the demeanor of the witnesses.'" *Id.* (quoting United States v. Santiago, 410 F.3d 193, 197 (5th Cir.2005)). We view the evidence introduced at a suppression hearing in the light most favorable to the prevailing party. United States v. Orozco, 191 F.3d 578, 581 (5th Cir.1999).

DISCUSSION

The government asserts that the district court clearly erred in finding that Walker's consent was not voluntary under the totality of the circumstances.

HN2[↑] Consent provides an exception to the Fourth Amendment's warrant and probable-cause requirements. Rounds, 749 F.3d at 338; *see also* Schneckloth v. Bustamonte, 412 U.S. 218, 219, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973). But, to rely on consent, the government must prove by a preponderance of the evidence that the consent was given freely and voluntarily. United States v. Tompkins, 130 F.3d 117, 121 (5th Cir. 1997). Voluntariness is determined by the totality of the circumstances and includes a consideration of the following non-exclusive relevant factors:

> (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the **[**8]** extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse to consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no incriminating evidence will be found.

United States v. Olivier-Becerril, 861 F.2d 424, 426 (5th Cir. 1988). The district court concluded that Walker's consent was the product of an involuntary custodial status and coercive police tactics.

Specifically, the government asserts that all six relevant factors favor a finding of voluntariness. We disagree.

(1) The voluntariness of the defendant's custodial status

The government asserts that, although Walker was stopped and detained, he was unrestrained on a public road and that this factor should carry little weight.

Although Walker was not handcuffed, Dawsey's actions clearly indicated that Walker was not free to leave. Dawsey also testified to the fact that Walker was not free to leave at any time after he was ordered to exit the vehicle. Additionally, Dawsey had possession of Walker's rental **[*157]** agreement, insurance verification and Glenn's driver's license throughout the stop. A panel of this court has said in an unpublished opinion that the failure to return a rental agreement after the issuance **[**9]** of a warning citation where there was no indication that the defendant asked for its return was, by itself, not sufficient to invalidate consent. *United States v. Bessolo, 269 F. App'x 413, 419-20 (5th Cir. 2008).* In a subsequent case, this court further acknowledged that a reasonable person might not feel free to leave in a similar situation until he had received the "promised warning and his driver's license had been

returned." United States v. Cavitt, 550 F.3d 430, 439 (5th Cir. 2008). "Furthermore, we have previously concluded that an officer's retention of identification documents suggests coercion." *Id.*

Thus, under the circumstances here, it was not clearly erroneous for the district court to weigh this factor against the government.

(2) The presence of coercive police procedures

The government asserts that there was no basis for the district court to find that Walker was subjected to coercive tactics.

In United States v. Jaras, 86 F.3d 383, 389-90 (5th Cir. 1996), this court concluded that the district court erred in denying a motion to suppress evidence where an officer received consent to search a vehicle from the driver, but then proceeded to search the luggage of a passenger. The officer never asked the passenger for consent to search his luggage, which was contained in the trunk of the vehicle, but merely informed him that the driver had consented to a **[**10]** search of the car. *Id.* This court concluded that the search was not justified on the basis of the driver's consent. Further, this court found that the passenger had not given implied consent by failing to object when the officer informed him that the driver consented or when he responded to questions about the suitcases, saying in relevant part: "Jaras's consent to a search of the suitcases cannot be inferred from Jaras's silence and failure to object because the police officer did not expressly or implicitly request Jaras's consent prior to the search." Id. at 390. *Jaras* is not inapposite, as the government claims.

Here, Dawsey conceded that he never asked Walker for consent to search. Instead, Dawsey merely informed Walker that Glenn gave consent. Also, Dawsey acknowledged that he knew Glenn was not authorized to give consent. The record does not establish that Walker would have been able to hear Dawsey ask Glenn for permission to search or tell the other officer that they also needed to check with Walker. But the record does establish that Dawsey clearly knew Walker rented the car and that he was the only person authorized to provide consent. It was unreasonable for Dawsey to rely on any consent **[**11]** from Glenn to search the car. Dawsey never informed Walker that only he could lawfully provide consent or refuse to give consent to search the vehicle, but he did inform Walker that he already had Glenn's consent. Moreover, the fact that Walker did not object does not establish consent. *See id.*; *see also* Bumper v. North Carolina, 391 U.S. 543, 548-49, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968) (the burden of proving consent "cannot be discharged by showing no more than acquiescence to a claim of lawful authority.").

Thus, it was not clearly erroneous for the district court to find that the officer's statement of Glenn's consent, rather than asking Walker for consent, also militates against the government.

[*158] *(3) The extent and level of the defendant's cooperation with the police*

The government asserts that the district court correctly found that Walker's cooperation with Dawsey favors voluntariness. Indeed, Dawsey testified that the occupants did not seem nervous and were cooperative.

(4) The defendant's awareness of his right to refuse to consent

The government asserts that the district court ignored Walker's criminal history in concluding that Walker was not aware of his right to refuse consent.

Dawsey admitted that he never informed Walker of his right to refuse consent and that **[**12]** he retained possession of Walker's rental agreement, Glenn's driver's license, and the insurance verification throughout the encounter. The government's assertion that the officers discussed the need for Walker's consent within earshot of Walker is not established by the record. Regardless of whether the officers discussed it outside the rental car or in Dawsey's patrol car, Walker was still in the backseat of the rental car stopped along a major, public interstate with heavy traffic noise. The backdoor was closed. Nothing on the dash cam video[3] of the stop contradicts the district court's findings. *See* United States v. Wallen, 388 F.3d 161, 164 (5th Cir. 2004) ("Findings that are in plain contradiction of the videotape evidence constitute clear error.").

We have said that, ***HN3***[↑] in cases involving

[3] The government introduced a transcript of the video. The audiovisual recording may be accessed via the following internet link: http://www.ca5.uscourts.gov/opinions/unpub/16/16-31045.mp4

ambiguous statements of consent or where the officer retains possession of a defendant's personal effects, the failure to inform the defendant of his right to refuse consent properly militates against the government. *See United States v. Shabazz, 993 F.2d 431, 438 (5th Cir. 1993)*; *see also United States v. Zavala, 459 F.App'x 429, 434 (5th Cir. 2012)*. Further, the government fails to establish that any prior, unrelated criminal history somehow provided Walker with the knowledge that only he, as the authorized driver and renter, could provide consent for the search of the **[**13]** car or refuse consent where the officer had already removed and frisked two occupants, conveyed that he had Glenn's consent, and retained possession of the occupants' personal effects.

Accordingly, it was not clearly erroneous for the district court to find that the failure to inform Walker of his right to refuse consent militates against the government.

(5) The defendant's education and intelligence

The government asserts that the district court erred in finding that this factor weighed only marginally in favor of voluntariness.

Dawsey testified that his report said thirteen years of education which indicated that Walker had conveyed that he had at least briefly attended college. Dawsey also specifically said that he did not make any assessment of Walker's level of intelligence, but added that he "spoke well and our conversation was well."

Based on the record, the district court did not clearly err in finding that this factor marginally militates in favor of the government.

(6) The defendant's belief that no incriminating evidence will be found

The government concedes that Walker may not have been aware that incriminating evidence would be found in his rental car. Further, the government **[**14]** agrees that, **[*159]** because there is little evidence in the record from which to draw a conclusion, the district court properly found that this factor was of neutral weight in the voluntariness balance.

CONCLUSION

After weighing each of these factors, the district court found that Walker did not voluntarily consent to the warrantless search of the vehicle, saying, "[t]he degree of Walker's cooperation and intelligence are outweighed by the involuntary nature of his custodial status, the use of coercive police tactics coupled with the fact that he was not informed of his right to refuse consent. These factors weigh heavily against the voluntariness of his purported consent."

After concluding that Walker's purported consent was not voluntary, the district court conducted a probable cause inquiry, despite the failure of the parties to raise Dawsey's pronouncement[4] of probable cause, and determined that there was not probable cause.

The district court heard live testimony, did a thorough analysis considering all factors and concluded that the government did not prove by a preponderance of the evidence that the consent was given freely and voluntarily under the totality of the circumstances. Nothing on **[**15]** the video or in the record contradicts the district court's factual findings on consent.

For the reasons stated herein and stated by the district court in its Ruling and Order, we conclude that the district court did not clearly err in finding that Walker's consent was not voluntary. Thus, the district court's partial grant of the motion to suppress is AFFIRMED.[5]

End of Document

[4] Dawsey testified that he believed he could verbalize probable cause for the search.

[5] Walker raises an alternative issue of whether there was reasonable suspicion for an officer to transform a traffic stop into an on-scene drug investigation. Based on our conclusion that the district court did not err, we do not find it necessary to determine whether that issue is properly raised or to address it.

LexisNexis®

User Name: James Knipe III
Date and Time: Monday, October 7, 2019 3:56:00 PM CDT
Job Number: 99400689

Document (1)

1. *United States v. Walker, 706 Fed. Appx. 152*
Client/Matter: -None-
Search Terms: 706 Fed. appx. 152
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
Cases	-None-

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA CRIMINAL ACTION

VERSUS

WALTER GLENN, ET AL. NO.: 15-00138-BAJ-RLB

RULING AND ORDER

Before the Court is the **Joint Supplemental Motion to Suppress Evidence (Doc. 171)** filed by Defendants Walter Glenn and Thomas James. The Government filed an opposition. (Doc. 77). Defendants challenge the search of their personal effects, including bags and luggage found during a search of a car. For the following reasons, the **Joint Supplemental Motion to Suppress is GRANTED IN PART and DENIED IN PART.**

I. FACTS[1]

At approximately 9:30 p.m. on Tuesday, September 2, 2014, Sergeant Donald Dawsey of the West Baton Rouge Parish Sheriff's Office stopped a Chrysler 300 on I-10 after observing a tinted license plate cover affixed to the car. (Doc. 124 at 17:11–12). Dawsey testified that after stopping the car, he approached the passenger side and saw a set of screwdrivers in the driver's door console. *Id.* at 24:3–7. Glenn, the driver, gave Sgt. Dawsey his driver's license and insurance verification. *Id.* at 29:4–

[1] A more detailed recitation of the facts is set forth in the Court's previous order. *United States v. Glenn*, 204 F. Supp. 3d 893 (M.D. La. 2016). Only the facts pertinent to the Joint Supplemental Motion to Suppress are set forth here. Nearly all of these facts are taken from the Court's prior order and the evidence introduced at the first suppression hearing.

EXHIBIT 4

5. Sgt. Dawsey asked Glenn to exit the car and step to the back of the car. (Gov. Ex. 1, Video of Traffic Stop).[2] While at the back of the car and in front of Sgt. Dawsey's police cruiser, Glenn informed Sgt. Dawsey that the car was a rental car that had been rented by Walker, who was seated in the backseat. *Id.*

Following that initial exchange, Sgt. Dawsey questioned Glenn about his travel. *Id.* Sgt. Dawsey then told Glenn to remain behind the car while he retrieved the rental agreement from Walker, who was still in the backseat. *Id.* Sgt. Dawsey returned to the passenger side of the car and asked Walker for the rental agreement. Approximately five minutes into the stop, Sgt. Dawsey was in possession of the rental agreement, insurance verification, and Glenn's driver's license. (Doc. 124 at 131:3–11). Sgt. Dawsey returned to the back of the car to further question Glenn about where Walker was from and how Walker travelled to Connecticut. (Gov. Ex. 1, Video of Traffic Stop).

Sgt. Dawsey told Glenn that he was going to "run all the stuff and make sure everything is straight," and that Glenn should remain standing at the rear of the car and in front of his police cruiser. (Gov. Ex. 1, Video of Traffic Stop). Glenn remained as instructed while Sgt. Dawsey was in the police cruiser for an additional five minutes. *Id.* While in the police cruiser, Sgt. Dawsey did not "run all the stuff" as he had claimed to Glenn, but called for backup officers to assist in a search of the car. (Doc. 124 at 36:21–37:5).

[2] The dashcam video footage is available at http://www.ca5.uscourts.gov/opinions/unpub/16/16-31045.mp4

Ten minutes after initiating the stop, Sgt. Dawsey exited the police cruiser and told Glenn that he was still running their information. (Gov. Ex. 1, Video of Traffic Stop). Sgt. Dawsey asked Glenn additional questions. *Id.* Twelve minutes after initiating the stop—while still in possession of the rental agreement, insurance verification, and Glenn's driver's license—Sgt. Dawsey asked: "Alright. Can I search that car?" (Gov. Ex. 2 at p. 7). Glenn responded: "Yeah. You can search it." *Id.* Sgt. Dawsey asked again: "I can search it?" and Glenn responded: "Yeah [y]eah." *Id.* Thereafter, Sgt. James Woody joined Sgt. Dawsey. *Id.* Sgt. Dawsey explained to Sgt. Woody that Glenn, the driver, said they could search the car but they needed to check with Walker. *Id.*

Sgt. Dawsey then asked James what belonged to him in the car. *Id.* at p. 6–7. James told Sgt. Dawsey that he had a black clothes bag that also had his medicine in it. *Id.* James also indicated that he had a second bag in the car, but James never described it further. *Id.* The portion of the dashcam video in which James seemingly describes it is inaudible. *Id.* Fourteen minutes after initiating the stop, Sgt. Dawsey ordered Walker out of the car and said: "I asked the driver if I could search the car, and he said yeah." *Id.* at p. 8. Walker responded, "he said you can search it, search it." *Id.*

Shortly thereafter, the two officers were joined by Sgt. Chris Green. (Gov. Ex. 1, Video of Traffic Stop). Thirty-three minutes after initiating the stop, Sgt. Green began searching the trunk of the car. (Doc. 180 at 46:10–24). During his search, Sgt. Green testified that he found a bag in the left rear part of the trunk. *Id.* at 50:20–23.

Sgt. Green did not recall the color of the bag, or whether there were any other markings on the bag. *Id.* at 50:20–51:7. Sgt. Green testified that he found clothes and three sealed white envelopes containing money in this bag. *Id.* at 54:7. He also testified that Glenn claimed the money. *Id.* at 51:10–52:4. Specifically, Sgt. Green testified that Sgt. Dawsey told him that Glenn said the money belonged to him. *Id.* at 51:10–52:4.

During the search, the officers found (1) a screwdriver; (2) a front license plate and bolts; (3) "newly purchased items"[3]; (4) 114 blank ID cards; (5) 49 blank check sheets; (6) 45 holographic overlays; (7) power inverter; (8) printer; (9) scissors; (10) tape; (11) an iron; (12) $95,000 cash; (13) seven white envelopes with names and social security numbers written on them; and (14) multiple computer devices. (*See* Doc. 114 at p. 5–6; Doc. 124 at 44:4–18; Gov. Ex. 9).

II. PROCEDURAL HISTORY

Larry Walker, Thomas James, and Walter Glenn were indicted on October 1, 2015, for unauthorized access devices fraud, in violation of 18 U.S.C. § 1029(a)(3). (Doc. 1). On October 29, 2015, the Government filed a Superseding Indictment, which added two new counts of conspiracy, in violation of 18 U.S.C. § 371, and aggravated identity theft, in violation of 18 U.S.C. § 1028A. (Doc. 13).

In June of 2016, Glenn, Walker, and James filed motions to suppress. (Docs. 103, 104, 106). After an evidentiary hearing, the Court concluded that the initial stop

[3] In the Government's opposition to the motions to suppress, the Government did not describe the "newly purchased items." However, at the hearing, Sgt. Dawsey testified that Glenn informed him that they traveled to Houston and purchased video games from Game Stop. (Doc. 124 at 134:11–135:18). The Court can only assume that the video games constitute the "newly purchased items."

was lawful because Sgt. Dawsey observed a tinted license plate cover on the car. *Glenn*, 204 F. Supp. at 903. The Court also found that Sgt. Dawsey had reasonable suspicion to prolong the traffic stop because: (1) rental cars often serve as a mode of transportation for drug trafficking; (2) based on Sgt. Dawsey's experience, tinted license plate covers are used to evade law enforcement; (3) the screwdriver in the rental car may have been used to install the license plate cover; and (4) Defendants were travelling through a known drug corridor. *Id.* at 902. Glenn, Walker, and James did not challenge the lawfulness of the search of their personal effects in the car, nor did the Court address the issue in its suppression ruling. *Id.* at 903 n.11. The Court found that Walker's consent was not voluntary, and the officers did not have probable cause to search the car. *Id.* at 902.

Regarding James and Glenn, the Court concluded that they did not have standing to challenge the search of the car because they were not the owner, renter, or authorized driver of the rental car. *Id.* at 907. The Court therefore suppressed all tangible evidence found in the car, but only as to Walker. *Id.* The United States Court of Appeals for the Fifth Circuit affirmed. *United States v. Walker*, No. 16-31045, 2017 WL 3635529, at *4 (5th Cir. Aug. 23, 2017). The Fifth Circuit issued its mandate on September 10, 2017. (Doc. 162). The Government has now dismissed the charges against Walker. (Doc. 160).

The Court then held a status conference on September 20, 2017, during which time Glenn and James indicated that they wanted to file a supplemental motion to suppress their personal effects, an issue neither party raised in their initial motions

to suppress. (Doc. 164). They then filed a Joint Supplemental Motion to Suppress seeking to exclude, as evidence at trial, certain personal effects including bags and luggage found in the car. (Doc. 171). The Court held a hearing on the motion on October 26, 2017. (Doc. 178). At the hearing it became apparent that the Government had recently interviewed two officers who searched the car, and the Court thus continued the hearing for one week to ensure that the Defense was satisfied that the Government had fulfilled its discovery obligations. *Id.* at 15:16–22, 48:12–24. Thereafter, on November 2, 2017, the Court held an evidentiary hearing during which time Sgt. Chris Green testified. (Doc. 180).

III. DISCUSSION

A. Whether the Court Should Reopen the Suppression Hearing.

The Government argues that the Court should not reopen the suppression hearing because no new facts or law have come to light since the Court's first suppression ruling. (Doc. 177 at p. 2–4). District court have "wide discretion in determining when to reopen an evidentiary hearing[.]" *United States v. Mercadel*, 75 F. Appx. 983, 2003 WL 21766541, *6 (5th Cir. 2003). The Fifth Circuit has not articulated a precise standard for reopening a suppression hearing. *United States v. Lopez*, 284 F. App'x 156, 159 (5th Cir. 2008) (per curiam) (holding that the district court did not abuse its discretion "regardless of the precise standard to be applied"). In *Mercadel*, however, the Fifth Circuit held that a district court does not abuse its discretion in refusing to reopen a suppression hearing for the purposes of accepting new evidence that would not have created a genuine factual dispute on an outcome

determinative fact. *Mercadel*, 2003 WL 21766541 at *5–6. Unlike *Mercadel*, if Thomas and James present new evidence about which bags belonged to them, such evidence would be properly considered. New evidence about whether they asserted a possessory interest in bags found in the car impacts whether they have standing to challenge the search of those bags. *See infra* at III(B). If they have standing, they are permitted to challenge the search of the bags on constitutional grounds. *Id.*

The Court also finds that reopening the suppression hearing serves the purposes of judicial economy. If the Court denies Defendants request to reopen the suppression hearing, it seems likely that Defendants would argue that their attorneys were ineffective because they did not challenge the search of their personal effects at the first suppression hearing. The Court expresses no opinion on whether failing to make this argument qualifies as ineffective assistance of counsel. However, the Court finds that it is more efficient to reopen the suppression hearing, and rule on Defendants arguments now, rather than to have James and Glenn possibly raise the issue on appeal or as a collateral attack in the event they are convicted.

B. Whether Defendants Have Standing to Challenge the Search of Their Personal Effects.

In order to claim the Fourth Amendment's protection, a defendant must have "a legitimate expectation of privacy in the invaded place." *United States v. Hernandez*, 647 F.3d 216, 219 (5th Cir. 2011) (internal quotation marks and citation omitted). "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." *Rakas v. Illinois*, 439 U.S. 128, 130 n. 1 (1978) (citations omitted). A defendant's

standing "depends on 1) whether the defendant is able to establish an actual, subjective expectation of privacy with respect to the place being searched or items being seized, and 2) whether that expectation of privacy is one which society would recognize as [objectively] reasonable." *United States v. Kye Soo Lee*, 898 F.2d 1034, 1037–38 (5th Cir. 1990) (citation omitted). "Standing does not require an ownership interest in the invaded area[.]" *Hernandez*, 647 F.3d at 219.

A passenger in a car, like James, lacks standing to challenge the search of the car. *See United States v. Riazco*, 91 F.3d 752, 754 (5th Cir. 1996). Likewise, the driver of a rental car, like Glenn, who is not listed as an authorized driver on the rental agreement, lacks standing to challenge the search of the car. *See United States v. Boruff*, 909 F.2d 111, 117 (5th Cir. 1990). If, however, a passenger or unauthorized driver of a rental car, has a possessory interest in a closed container like a bag or a suitcase in a car, he has standing to challenge the search of that item. *See United States v. Iraheta*, 764 F.3d 455, 462 (5th Cir. 2014).

For example, in *Iraheta*, officers obtained consent from the driver to search the car, while two passengers remained inside the car and did not hear the driver give consent. *Id. at* 458. Officers then searched the trunk of the car and found a duffel bag containing a shrink wrapped package suspected of containing cocaine and methamphetamine. *Id.* Officers did not attempt to obtain consent from the passengers to search the bags; neither did the passengers object to the search of the bags. *Id.* The Court held that the passengers had standing to challenge the search of the bag located in the trunk even though the driver consented to the search of the

car because neither passenger "denied ownership of the bag prior to its search[.]" *Id.* at 462.

Likewise, in *Jaras*, the officer obtained consent from the driver to search the car, and the passenger did not hear the driver give consent. *United States v. Jaras*, 86 F.3d 383, 385 (5th Cir. 1996). The officer then searched the trunk and found a garment bag and two suitcases. *Id.* The driver told the officer that the garment bag belonged to him and that the suitcases belonged to the passenger. *Id.* The officer asked the passenger what was inside the suitcases, and the passenger said he did not know. *Id.* The officer then found a large quantity of marijuana in the suitcases. *Id.* The Court held that the passenger had standing to challenge the search of the suitcase. *Id.* at 389; *see also United States v. Buchner*, 7 F.3d 1149, 1154 (5th Cir. 1993) (holding that defendant had standing to challenge the search of a shoulder bag that he testified belonged to him).

1. Defendant James

James argues that he has standing to challenge the search of his personal effects found during the search of the car. (Doc. 171-1). James told Sgt. Dawsey that two bags in the car belonged to him. (Gov. Ex. 1, Video of Traffic Stop at 14:22–14:55; Gov. Ex. 2 at p. 7–8). He told Sgt. Dawsey that he had a black bag containing his clothes and medicine in the car, while the identity of the second bag is unclear from the record. *Id.* Neither Sgt. Dawsey nor Sgt. Green testified about the identity of this second bag, and James did not testify at either of the suppression hearings. The dashcam footage also does not provide any details about this second bag. At the point

in the dashcam footage when James seemingly describes this second bag, it appears that one of the officers speaks over him, and therefore this portion of the video is inaudible. *Id.*

The Government also informed the Court that it does not intend to introduce any evidence obtained from the black bag containing clothes and medicine, which James identified because it did not contain any contraband. (Doc. 180 at 28:21–29:8). Nonetheless, in the event the Government attempts to introduce the black bag, all tangible evidence obtained from the bag is suppressed. James claimed an ownership interest in the bag, which means that he has standing to challenge the search of the bag, and he did not consent to the search of the bag. Therefore, the black bag containing clothes and medicine is suppressed.[4]

As to the second unidentified bag, James has not met his burden to establish standing to challenge the search of this bag. It is well-established that "a defendant bears the burden of establishing standing to challenge a search under the Fourth Amendment[.]" *United States v. Pierce*, 959 F.2d 1297, 1303 (5th Cir. 1992). At this point, it is not at all apparent what the Court would be suppressing, if it suppressed the second bag. The Government proffers that there were several bags found in the car. (Doc. 180 at 30:22–31:3). However, James did not describe the bag and no other evidence in the record helps establish the identity of this second bag. Therefore, the

[4] The Court recognizes that the Fifth Circuit has held that passengers have standing to challenge the search of a bag as long as they do not "den[y] ownership of the bag prior to its search[.]" *Iraheta*, 764 F.3d at 462. By claiming ownership in the black bag and an unidentified bag, James by implication denied ownership of any other bag found in the car and lacks standing to challenge the search of any other bag.

Court concludes that James has not met his burden to establish standing to challenge the search of the second unidentified bag.[5] In any event, this may be a moot issue because the Government informed the Court that it has not identified any of the bags it maintained in evidence as belonging to James. (Doc. 180 at 30:13–31:15).

2. Defendant Glenn

Glenn also requests that the Court suppress his personal effects found during the search of the car. (Doc. 171-1 at p. 1). At the second suppression hearing, Sgt. Green testified that Glenn claimed that three envelopes of money found in a bag in the trunk belonged to him. (Doc. 180 at 51:10–52:4.). Therefore, Glenn has standing to challenge the search of this bag.

Glenn, however, consented to the search of the car, but he argues that consent was not voluntary. (Doc. 171-1 at p. 9–11). Voluntariness is determined by the totality of the circumstances and includes a consideration of the following factors: (1) the voluntariness of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with the police; (4) the defendant's awareness of his right to refuse to consent; (5) the defendant's education and intelligence; and (6) the defendant's belief that no

[5] None of the testimony at the second suppression hearing impacts the Court's decision to suppress James' black bag. Therefore, the Court will also construe James' motion to reopen as a motion for reconsideration of the Court's first suppression ruling. *United States v. Palmer*, 122 F.3d 215, 221 (5th Cir. 1997) ("district courts hearing criminal cases may revisit pretrial issues, such as suppression motions, upon which they have previously ruled.").

incriminating evidence will be found. *United States v. Olivier-Becerril*, 861 F.2d 424, 426 (5th Cir. 1988).[6]

The first factor, the voluntariness of the defendant's custodial status, weighs against the Government. Where officers stop a car, and retain identification documents, like a driver's license at the time consent is obtained, it suggests that any consent is not voluntary. *See Walker*, 2017 WL 3635529 at *3; *United States v. Cavitt*, 550 F.3d 430, 439 (5th Cir. 2008); *United States v. Bessolo*, 269 F. App'x 413, 419 (5th Cir. 2008). Indeed, here the Fifth Circuit held that it was not clearly erroneous for the Court to conclude that because Sgt. Dawsey "had possession of Walker's rental agreement, insurance verification and Glenn's driver's license throughout the stop" that this factor weighed against the Government. *Walker*, 2017 WL 3635529, at *3. And like Walker, who did not feel free to leave, no reasonable person in Glenn's position would have felt free to leave because Sgt. Dawsey retained Mr. Glenn's driver's license at the time he consented to a search of the car. Thus, under these circumstances, Mr. Glenn's custodial status was not voluntary.

The second factor, the presence of coercive police procedures, weighs in favor of the Government. Where a traffic stop is lawfully prolonged, it is not coercive for police to obtain consent while retaining identification documents. *See United States v. Brown*, 567 F. App'x 272, 280 (5th Cir. 2014); *United States v. Cavitt*, 550 F.3d 430, 439 (5th Cir. 2008). In *Brown*, the Fifth Circuit noted that the traffic stop at issue

[6] Courts must also consider whether consent was an independent act of free will free from the taint of an illegal detention. *United States v. Jenson*, 462 F.3d 399, 406 (5th Cir. 2006). Here, the Court already ruled that Sgt. Dawsey had reasonable suspicion to prolong the traffic stop, and therefore any consent was not tainted by illegal detention. *Glenn*, 204 F. Supp. 3d at 902.

had been lawfully prolonged, and therefore "the retention of [the defendants] license [was not] coercive under these circumstances." *Brown*, 567 F. App'x 272, 280 at n.5. Likewise, as the Court explained in its first suppression ruling, Sgt. Dawsey had lawfully prolonged the traffic stop. *Glenn*, 204 F. Supp. 3d at 903. Therefore, it was not coercive for Sgt. Dawsey to obtain consent from Glenn while retaining his license, the insurance agreement, and rental agreement. Additionally, Sgt. Dawsey asked Glenn for permission to search the car twice, which further indicates that consent was not obtained coercively. Sgt. Dawsey asked: "Alright. Can I search that car?" (Gov. Ex. 2 at p. 7). Glenn stated: "Yeah, you can search that car." *Id.* Sgt. Dawsey responded: "I can search it?" and Glenn said "Yeah." *Id.*

The third factor, the extent and level of the defendant's cooperation with the police weighs in favor of the Government. The video footage reflects that Glenn cooperated with Sgt. Dawsey throughout their interaction. (Gov. Ex. 1, Video Footage).

The fourth factor, the defendant's awareness of his right to refuse to consent weighs against the government. Where an "officer retains possession of a defendant's personal effects, the failure to inform the defendant of his right to refuse consent properly militates against the government." *Walker*, 2017 WL 3635529, at *3 (citing *United States v. Shabazz*, 993 F.2d 431, 438 (5th Cir. 1993); *United States v. Zavala*, 459 F. App'x 429, 434 (5th Cir. 2012). Here, although Sgt. Dawsey asked Glenn if he could search the car, he did not inform Glenn that he had the right to refuse consent. (Gov. Ex. 1, Video of Traffic Stop at 13:36–13:41). At the time that Glenn provided

consent, Sgt. Dawsey still had the rental agreement, insurance verification, and Glenn's driver's license. (Doc. 124 at 131:3–11). Therefore, the fourth factor weighs against the Government.

The fifth factor, level of intelligence and education, weighs in favor of the Government. The video reflects that Glenn understood his conversation with Sgt. Dawsey, and in no way did he appear confused about what was occurring.

The sixth factor, the defendant's belief that no incriminating evidence is neutral. There is nothing in the record that supports a finding either way.

On balance, the Court finds that Glenn's consent was voluntary. Although Sgt, Dawsey had Glenn's driver's license, the rental agreement, and the insurance information at the time Glenn consented, Sgt. Dawsey did not use coercive tactics to obtain consent. Glenn was also cooperative and understood what Sgt. Dawsey was asking. Therefore, although Glenn has standing to challenge the search of his bag where three envelopes of money were found, he voluntarily consented to the search of the car.[7] Therefore, Glenn's Supplemental Motion to Suppress is denied.

[7] For the first time at the Court's November 2, 2017 hearing, James and Glenn argue that all of the evidence found in the trunk should be suppressed because their personal belongings were found in the trunk. (Doc. 180 at p. 33–34). James and Glenn do not cite any authority to support this argument, and the Court is not aware of any. As the Court has previously noted, Passengers and unauthorized drivers of rental cars do not having standing to challenge the search of car unless they have a possessory interest in closed contains like bags or suitcase. Merely having one's personal belongings in a trunk does not give a passenger standing to challenge the search of the trunk.

IV. CONCLUSION

Accordingly,

IT IS ORDERED THAT the **Joint Supplemental Motion to Suppress Evidence (Doc. 171) is GRANTED IN PART and DENIED IN PART.** The Motion is **DENIED** as to Glenn and **GRANTED IN PART** as to James. All tangible evidence obtained from the blue bag with clothes and medicine is suppressed.

Baton Rouge, Louisiana, this 13th day of November, 2017.

BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

NO. 15-138-BAJ-RLB

WALTER GLENN (1)

MOTION TO SUPPRESS EVIDENCE AND STATEMENTS

NOW INTO COURT comes the defendant, through undersigned counsel, who moves to suppress the evidence seized during a traffic stop on September 2-3, 2014, and any statements he made to law enforcement agents thereafter for the following reasons:

1.

On the night of September 2-3. 2014, the defendant was driving an automobile which had been rented by his cousin, Larry Walker, who was a passenger. The defendant was stopped by a deputy sheriff of West Baton Rouge Sherriff's Office for having a license plate cover which allegedly obscured the relevant information.

2.

Pictures of the license plate, provided in discovery, and a review of the dashboard camera video show that the relevant data was visible and not obstructed by the license plate cover's black border.

3.

The sheriff's deputy learned from Mr. Glenn that the vehicle was en route from a family cookout in Texas. He proceeded to initiate a separate criminal investigation, without additional, articulable suspicion of illegal activity. He failed to determine whether outstanding warrants existed or to take further steps inspecting the automobile's registration and proof of insurance.

4.

The sheriff's deputy has said that he believed the conflicting accounts between Mr. Glenn and Mr. Walker about how Mr. Walker got to Connecticut, the origination point of the trip, were meant to "*cover trips that were hauling contraband.*" Such minor discrepancies do not form an objectively reasonable basis for the deputy to have come to such a conclusion.

5.

After approximately seven minutes, the sheriff's deputy returned to his car to "*run all the stuff to make sure everything is straight.*" No comment or commitment to issue a ticket or a warning had been made to either the driver or renter of the vehicle for the claimed infraction of a license plate cover. None ever was. Five additional minutes elapsed while the deputy, who had turned off his microphone recorder, sat inside his patrol car leaving the defendant standing on the roadside.

6.

Twelve minutes into the stop, while supposedly "still running" all their "stuff," the deputy reactivated his microphone recorder, exited his car, and approached Mr. Glenn. We have now been told the deputy sheriff took no action to further the reason for the traffic stop, but instead had determined to seek consent to search the vehicle and called for backup for officer safety, utilizing a presumably unrecorded internal radio frequency. It should be noted that from the time he had obtained them, the deputy had maintained custody of Mr. Glenn's driver's license and Mr. Walker's rental agreement, clearly evidencing that at no time could Mr. Glenn or Mr. Walker feel they were free to terminate the encounter and leave.

7.

The sheriff's deputy suddenly asked if everything in the car belonged to them, referencing the three defendants. He explained a "*big problem*" with people travelling *"this way"* from Houston with "*something like 100 pounds of marijuana, a couple kilos of cocaine, a large amount of US*

currency." Mr. Glenn responded with a general denial of possessing such contraband. The deputy then asked permission to search the car, knowing Glenn was not the renter of the vehicle, to which Glenn said yes.

8.

Again the deputy sheriff turned off his audio recorder, walked back to his vehicle, and returned this time with another officer. He reactivated his microphone, told the other officer that the driver gave consent for the search, but that they needed to check with the renter of the vehicle, Larry Walker.

9.

Approximately two more minutes had passed by the time Mr. Walker had been removed from the vehicle and had been frisked. The officers informed him that the driver of the car had been asked permission to search the car. The elapsed time from the initiation of the stop was now between 15 and 16 minutes.

10.

While the police report claims that Mr. Walker gave consent to the search, a review of the verbal exchange reveals at most that Mr. Walker acknowledges the officer telling him that Mr. Glenn had given consent. Such a short, casual exchange is NOT the kind of verbiage this Court should rely upon to determine whether the person with true authority to grant permission did, in fact, do so.

11.

Both passengers were ordered to the same vicinity where Glenn had been standing for the majority of the stop, in front of the sheriff deputy's vehicle. Early during the search comments can be heard about large amounts of cash being discovered in a wallet, a Georgia traffic ticket, and what appeared to be a lot of unspecified merchandise.

12.

Almost 30 minutes after the initiation of the stop, the deputy sheriff commented on finding screws from the front license plate in the rental vehicle and speculated on why it had been taken off. Approximately 33 minutes into the stop, the deputy advised Mr. Glenn of his rights while deceptively assuring him that he was not being arrested. He gave the same rights to the other two passengers a couple of minutes later. Again, he assured them that they were not under arrest, before shortly thereafter he and the other officers handcuffed them, about 35 minutes after the stop.

13.

Much later, and long after they had been arrested, the deputy called in the defendants' respective driver's licenses and state identification cards to his dispatch office, requesting all information be sent to his narcotics office.

14.

WHEREFORE, and after a hearing has been conducted on this matter, Walter Glenn moves to suppress the evidence seized on the evening of September 2-3, 2014. He was detained longer than necessary, after the reason for the stop had ended. He also moves to suppress any statements made to the deputy and other law enforcement agents, since any statement flowed from the unlawful detention that should be classified as "fruits of the poisonous tree," only made possible by the unconstitutional seizure. Any consent was not freely given and was not an independent act of free will. Suppression of evidence is justified under such facts.

Respectfully Submitted:

MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C.

s/ Ian F. Hipwell
IAN F. HIPWELL
Louisiana Bar No. 06947
Attorney for Defendant
8075 Jefferson Hwy.
Baton Rouge, LA 70809
(225) 383-9703 (Telephone)
(225) 383-9704 (Facsimile)

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

NO. 15-138-BAJ-RLB

WALTER GLENN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing MOTION TO SUPPRESS EVIDENCE AND STATEMENTS and accompanying MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE AND STATEMENTS with the Clerk of Court by using the CM/ECF which will send a notice of electronic filing to opposing counsel in the United States Attorney's Office.

Baton Rouge, Louisiana this 10th day of June, 2016.

s/ Ian F. Hipwell
IAN F. HIPWELL

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL ACTION

VERSUS

NO. 15-138-BAJ-RLB

WALTER GLENN (1)

MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE AND STATEMENTS

MAY IT PLEASE THE COURT:

1. **Facts**

On the night of September 2, 2014, the defendant was driving an automobile which had been rented by his cousin, Larry Walker, who was a passenger. Thomas James, another relative, was also in the car. After following the rental vehicle for several minutes, Sgt. Donald Dawsey, a deputy sheriff in a West Baton Rouge Parish Sheriff's Office patrol car, initiated the car's flashing lights. Defendant Glenn promptly and safely pulled over onto the side of the interstate. Sgt. Dawsey's dashboard camera recorded the stop.

Sgt. Dawsey activated what appears to be a microphone attached to his uniform, approached the passenger side of the car, leaned in through the open window, and having been handed the defendant's driver's license, ordered: "*Walter, step to the rear and I am going to show you why I stopped you.*" At the rear of the vehicle, Sgt. Dawsey reviewed what apparently was a proof of insurance document also produced by defendant Glenn and complained that the car had a license plate cover which allegedly obscured the relevant information. However, a picture of the license plate, recently provided in discovery, and a careful review of the dashboard camera video, shows relevant data, including a series of numbers and what turns out to be the issuing state, to be visible and not obstructed by the cover's black border.

Upon learning from defendant Glenn that his cousin, Larry Walker, had rented the vehicle from National Car Rental in Connecticut, and that they were driving back from a family cookout in Texas over the Labor Day weekend, instead of then proceeding to issue a ticket or a warning for the perceived infraction of La R.S. 32:53, the officer proceeded to initiate a separate criminal investigation, without any additional, articulable suspicion of illegal activity.

Sgt. Dawsey ordered defendant Glenn to stay in place, behind the rental vehicle and in front of the police vehicle, and he returned to the passenger side of the rental. He leaned in, obtained the rental agreement, and began talking to Larry Walker, the lessee of the vehicle. He repeated his complaint that the license plate cover was in violation of Louisiana law, adding he had never seen one on a rental vehicle. Despite a subsequent claim that he received conflicting stories from Glenn and Walker about where they each lived and how Walker had gotten to Connecticut, such minor inconsistencies simply do not form an objectively reasonable basis for Sgt. Dawsey to conclude, as he later wrote in his report, that the stories were meant to "*cover trips that are hauling contraband.*"

Approximately seven minutes having elapsed from the stop, Sgt. Dawsey ordered defendant Glenn to stay in place behind the rental and in front of his vehicle while he returned to his car. He stated he was going to "*run all the stuff to make sure everything is straight.*" He turned off his microphone recorder. No comment or commitment to issue a ticket or a warning had been made to either the driver or renter of the vehicle for the claimed infraction of a license plate cover. None ever was. A period of approximately five additional minutes occurred while Sgt. Dawsey was in his car and defendant Glenn was left standing on the roadside. Until we were provided a Memorandum of an Interview of May 26, 2016, we did not know what Sgt. Dawsey did during that time. But now we know. Instead of calling his dispatch office to take further steps to determine whether any

outstanding warrants existed against the defendant and inspecting the automobile's registration and proof of insurance (checks the courts have said help insure the vehicle was being safely and responsibly operated on the road), Sgt. Dawsey made an unrecorded call for backup from his fellow WBRSO narcotics officers on their internal radio frequency, ostensibly for his own officer safety. In fact, having determined that he wanted to seek permission to search, he was furthering his new investigation of "hauling contraband" without objective, reasonable suspicion.

About twelve minutes after he had caused the stop, Sgt. Dawsey exited his car, turned his microphone recorder back on, and approached defendant Glenn again, stating he was "still running" all their "stuff." Of note, from the time he obtained them, Sgt. Dawsey maintained custody of Mr. Glenn's driver's license and Mr. Walker's rental agreement, clearly evidencing that at no time after he had obtained them could Mr. Glenn or Mr. Walker feel they were free to terminate the encounter and leave. Also of note, despite claims of concern for officer safety, Sgt. Dawsey appears to have conducted this second encounter with Mr. Glenn by himself.

Sgt. Dawsey made further inquiries about how long Glenn had been driving, who drove the car down to Texas, what day the cookout had happened, and about a side, shopping trip to Houston. He was clearly "fishing," and suddenly asked if everything in the car belonged to them. Mr. Glenn said yes. Sgt. Dawsey immediately commented on a "*big problem*" with people travelling "*this way*" from Houston with "*something like 100 pounds of marijuana, a couple of kilos of cocaine, a large amount of US currency.*" Upon receiving a general denial by Mr. Glenn of possessing any such contraband, and even having learned that Mr. Glenn was not the renter of the vehicle, Sgt. Dawsey asked permission to search the car, and Glenn said yes.

The deputy again turned his audio recorder off, walked back to his car, and returned this time

with another officer. He turned his audio recorder back on, and told the other officer that while the driver had given consent for the search, they needed to check with the other individual (Larry Walker). This exchange occurred as the officers were asking Thomas James to exit the vehicle, James was being frisked, and Sgt. Dawsey was asking James about any bags in the car which may belong to him.

By the time the officers got Mr. Walker out of the vehicle, frisked him, and told him they had asked the driver for permission to search the car, approximately two more minutes had passed, making the elapsed time from initiation of the stop to this point to be between 15 and 16 minutes. While the police report claims Mr. Walker also gave consent to search, a careful review of the verbal exchange shows, at most, that Mr. Walker acknowledges the officer telling him that Mr. Glenn had given consent. Such a short, casual exchange is NOT the kind of verbiage this Court should rely upon to determine whether the person with true authority to grant permission, did, in fact, do so. Both James and Walker were ordered back to the same vicinity where Glenn had been standing in front of the deputy's vehicle, and the search began. Early during the search comments can be heard about large amounts of cash being discovered in a wallet, a Georgia traffic ticket, and what appeared to be a lot unspecified merchandise.

About 29:30 minutes after the stop, Sgt. Dawsey commented on finding screws from the front license plate in the rental vehicle and speculated on why it had been taken off. About 33 minutes after the stop, Sgt. Dawsey walked back to Mr. Glenn and advised him of his rights, while deceptively assuring him he was not being arrested. A couple of minutes later he gave the same rights to the other two passengers. Again, he assured them they were not under arrest, immediately before he and other officers handcuffed them, about 35 minutes after the stop.

Long after the stop and long after the three defendants had been arrested, Sgt. Dawsey called in their respective driver's licenses and state identification cards to his dispatch office, requesting all information be sent to his narcotics office.

2. The Law and application to our case: the stop was not justified

Traffic stops, considered seizures for purposes of the Fourth Amendment, are treated under the jurisprudence stemming from Terry v. Ohio, 392 US 1, 19-20; 88 S.Ct. 1868, 1879 (1968). Was the stop justified in the first place? If so, were the officer's subsequent actions reasonably related in scope to the circumstances that justified the stop? United States v. Macias, 658 F.3d 509, 517 (5th Cir. 2011); United States v. Brigham, 382 F.3d 500, 506-07 (5th Cir. 2004) *en banc*; United States v. Fajardo-Guevara, 507 Fed.Appx. 365, 366 (MDL 2013) (CJ Jackson). Since the stop and detention constitutes a seizure of everyone in the vehicle, drivers and passengers with no ownership or leasehold interest in a vehicle do not have to show "standing" as originally articulated in Rakas v. Illinois, 439 U.S. 128 (1978). They can challenge evidence discovered as a result of an allegedly illegal traffic stop. Brendlin v. California, 551 U.S. 249, 127 S.Ct. 2400, 2403-07 (2007); United States v. Pack, 612 F.3d 341, 347-48 (5th Cir. 2010). The government bears the burden of proving: (1) whether the officer's action in stopping the vehicle was justified at its inception, and (2) whether the search or seizure was reasonably related in scope to the circumstances that justified the stop in the first place. United States v. Sanchez-Pena, 336 F.3d 431, 437 (5th Cir. 2003). See also United States v. Gomez, 623 F.3d 265, 269 (5th Cir. 2010).

Upon information and belief, the alleged infraction of an obscured license plate in our case was bogus and merely provided an excuse in the officer's mind to stop the vehicle. While true that ever since Whren v. United States, 517 U.S. 806, 811-813 (1996), pretextual traffic stops are

allowed, and the subjective motivation of the police may be irrelevant, in our case such an excuse for the stop should not even rise to the level of a constitutionally protected, pretextual reason. The license plate could be read, and the officer was simply intent on conducting a search of this vehicle.

3. **The Law and application to our case: the officer unreasonably prolonged the stop to convert it into an illegal, on scene investigation of another crime**

But even if this Court finds justification for the initial stop, the Supreme Court has held that "a seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." Illinois v. Caballes, 543 U.S. 405, 408-10, 125 S.Ct. 834, 837-38 (2005). Ten years after Caballes, in Rodriguez v. United States, 135 S.Ct. 1609, 1612 (2015), the Court held that a police stop, exceeding the time needed to handle the matter for which the stop was made, violates the Constitution's shield against unreasonable seizures. Converting a traffic stop into an unrelated criminal investigation without any reason to do so is the kind of conduct repudiated by the Court's decision. Citing earlier precedence, the Court held that the scope of detention in a traffic stop "**must be carefully tailored to its underlying justification**"; "**may last no longer than is necessary to effectuate th[at] purpose;**" and "**can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission of issuing a warning ticket.**" Rodriguez, page 1614. The Court then listed the kinds of inquiries which can ordinarily prolong a stop as typically involving checking the driver's license, determining if any outstanding warrants exist against the driver, and inspecting the vehicle's registration and proof of insurance, actions all approved to help insure officer safety and that vehicles are operated safely and responsibly. Rodriguez, page 1615.

In our case, and with reference to the language of the Supreme Court from Rodriguez, after commenting on the license plate, Sgt. Dawsey immediately, launched an "**on scene investigation into other crimes,**" which detoured from the mission of the traffic stop, and before he had completed any semblance of that mission. "**Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.**" Rodriguez, page 1616. Here, Sgt. Dawsey completely abandoned his reason for the stop. And the Government cannot "win" by arguing that expeditious completion of the traffic-related tasks should grant it "**bonus time to pursue an unrelated criminal investigation...**" because "**[T]he reasonableness of a seizure, [however], depends on what the police in fact do.**" "**If an officer can complete traffic-based inquiries expeditiously, then that is the amount of "time reasonably required to complete [the stop's] mission." Caballes, 543 U.S., at 407. As we said in Caballes and reiterate today, a traffic stop "prolonged beyond" that point is "unlawful." Ibid.** Rodriguez, page 1616, with citations to Illinois v. Caballes, 543 U.S. 405, 407; 125 S.Ct. 834 (2005). In our case, after complaining to Mr. Glenn about the license plate and during the time in which he should have been running appropriate background checks for outstanding warrants and inspecting the vehicle's registration and proof of insurance, virtually no other task to further the traffic stop was performed. No warning or ticket was ever issued. In fact, the "on scene investigation into other crimes" began virtually as soon as Sgt. Dawsey had initiated the stop.

According to the Supreme Court, the critical question is whether any additional time -- the dog sniff in Rodriguez; the start of the additional criminal investigation, unrelated to the traffic violation in our case-- prolonged the stop. In our case, it assuredly did so prolong the stop and was therefore in violation of the Fourth Amendment. A seizure justified only by a police-observed traffic

violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. Illinois v. Caballes, 543 U.S. at 407; 125 S.Ct. 834 (2005).

Even before Rodriguez, and stemming as far back as Terry v. Ohio, 392 US 1, 88 S.Ct. 1868 (1968), the police are entitled to a certain amount of leeway in their encounter with citizens, which, in turn, will allow them to be attuned to the possibility of criminal activity being afoot. During a traffic stop police have been allowed to examine driver's licenses and vehicle registrations, run computer checks as part of the investigation of circumstances which led to the stop, ask questions of drivers and passengers about the purpose and itinerary of the occupants' trip, and even ask questions unrelated to the stop, *so long as those unrelated questions did not extend the duration of the stop.* United States v. Pack, 612 F.3d 341, 350 (5th Cir. 2010); United States v. Brigham, supra, 382 F.3d at 508-09; United States v. Ervin, 469 Fed.Appx. 374, 378-79 (5th Cir. 2012); United States v. Shabazz, 993 F.2d 431, 436-37 (5th Cir. 1993); United States v. Smith, 2014 WL 3897667, *3-4 (MDLA 2014) (Judge Dick); United States v. Blas Martinez-Alvarez, 2012 WL 4863212, *3 (MDLA 2012) (Judge Brady). Nevertheless, our circuit has been clear, and the rationale comports with the new Rodriguez decision: although such questioning, unrelated to the purpose of the stop, can occur while waiting for driver's license or vehicle verification or computer checks, *they must not extend the duration of the stop* (emphasis added). United States v. Macias, 658 F.3d 509, 517-18 (5th Cir. 2011). An impermissible extension of time occurred in this case, because the officer had completely abandoned his justification for the stop. He had begun his new investigation with little more than a hunch that contraband might be contained in the car he had stopped because of little more than a different accounting of how one occupant had gotten to Connecticut.

To repeat: while the ability to conduct such routine inquiries has not changed, equally clear from Rodriguez is the premise that any continued seizure or detention beyond that time needed to complete the traffic investigation, must be accompanied by reasonable suspicion of other or continuing criminal activity. Such justification is defined as "a particularized and objective basis for suspecting wrongdoing, expressed through articulable facts supporting that suspicion." Pack, supra, 612 F.3d at 356, quoting from United States v. Arvisu, 534 U.S. 266, 273, 122 S.Ct. 744, 750, 151 L.Ed.2d 740 (2002); United States v. Fajardo-Guevara, supra, 507 Fed.Appx. at 366-67. After the stop, the brief exchange with Mr. Glenn behind the rental car, and even after the initial conversation with Mr. Walker, at that point the seizing deputy had no objectively reasonable and articulable suspicion that any other illegal activity had occurred or was about to occur. The conflicting stories from Glenn and Walker about where they each lived and how Walker had gotten to Connecticut were of such minor inconsistencies that they simply did not form an objectively reasonable basis for Sgt. Dawsey to believe other criminal activity was afoot. See United States v. Santiago, 310 F.3d 336, 342 (5th Cir. 2002) (inconsistent stories regarding itinerary and even nervousness by a driver were found factually insufficient to have justified continued detention in violation of the Fourth Amendment).

When Sgt. Dawsey commented to Mr. Glenn about the "big problems" he and law enforcement have with contraband on Interstate 10, he repeated a common tactic of police in such circumstances of desperately wanting to further a new investigation, by seeking permission to search. See United States v. Santiago, supra, 310 F.3d at 339; United States v. Robertson, 16 F.Supp.3d 740, 743 and 745 (MDLA 2014) (presided over by the Honorable Judge James J. Brady of this Court and ably defended by co-defendant Larry Walker's counsel, David J. Rozas). We know that the

jurisprudence allows consideration of travel on a "known drug corridor" to be but one of a number of factors to be considered in reasonable suspicion analysis. United States v. Pack, supra, 612 F.3d at 361. Nevertheless, we urge the Court to consider that the interstate system is far more a common mode of transporting law abiding people and non-contraband products, than a pipeline of illegality, with cars carrying drug dealers and their wares or other contraband. Accordingly, this particular factor should be sparingly applied when balanced against the rights of people to be free from being unlawfully seized, merely because the police have an unsupported hunch that a vehicle *might* contain contraband. At stake is the right of people to be free from being unlawfully seized, merely because the police have an unsupported hunch that a vehicle might contain contraband. And we make this constitutional argument, fully aware that the law does not recognize that Mr. Glenn had a reasonable expectation of privacy in any contraband ultimately found in the car. He did have a reasonable expectation in not being unlawfully detained, based merely upon a desire of an aggressive policeman to search the car he was driving. Alternatively, Mr. Glenn had no reason to expect to be detained beyond the arguable scope of a routine traffic stop in this case –warning him about a license plate cover or issuing him a ticket for such-- which had ended without any reasonable suspicion of wrongdoing, before the officers began a separate investigation. The deputy sheriff seized Mr. Glenn and the other passengers by prolonging their detention after the basis of the traffic stop was concluded and without observing any new, suspicious activity.

4. Consent was neither freely given, nor was it an independent act of free will

The excessive time of detention to trigger a Fourth Amendment violation can be very brief. In United States v. Jones, 234 F.3d 234, 241 (5th Cir. 2000), a continued detention for even three minutes after the reason for a traffic stop had ended violated the Fourth Amendment. Indeed, both in

Judge Brady's case, United States v. Robertson, supra, 16 F.Supp.3d at 743 and in United States v. Aguilera, 2014 WL 7404535, *5-*7, (NDTX, December 30, 2014), only about a ten second additional elapse of time after the completion of the initial purpose of the traffic stop and the defendant's consent to search was at issue. In our case we maintain below that because of the Fourth Amendment violation, any perceived consent (1) was not freely given and (2) was not an independent act of free will.

In contrast to the facts of our case, the district judge in the Aguilera case summarized a number of grounds of reasonable suspicion, all of which had been developed during the stop, and which justified that brief, ten second continued detention. Indeed the difference between the facts of Aguilera and our case are striking. In Aguilera the reasons developed during the stop included: (1) suspicious explanation by driver of the trip, (2) open view of laundry detergent in the vehicle as a possible masking agent for drug smells, (3) open view in the vehicle of a "drug shrine," (4) review of a suspicious rental agreement, (5) nervousness of the driver, (6) originating city was known to be a source of drugs, and (7) the denial of a previous arrest. Collectively, they justified that brief, ten second continued detention before permission to search was sought. Very few similar facts were observed before Sgt. Dawsey sought consent.

Any analysis of consent given after an unconstitutional detention requires a two-pronged inquiry of: (1) whether the consent was *freely given* and (2) whether the consent was an *independent act of free will.* United States v. Macias, 658 F.3d 509, 522-23 (5th Cir. 2011) and as earlier set forth in United State v. Shabazz, 993 F.2d 431, 438 (5th Cir. 1993) and re-affirmed in United States v. Jones, 234 F.3d 234 (5th Cir. 2000). Macias, Jones, and Shabazz instruct that six factors are to be considered in determining whether the consent was freely and voluntarily given: (1) the voluntariness

of the defendant's custodial status; (2) the presence of coercive police procedures; (3) the extent and level of the defendant's cooperation with police; (4) the defendant's awareness of his right to refuse consent; (5) the defendant's education and intelligence; and (6) the defendant's belief no incriminating evidence will be found. No single factor is determinative.

As to the second prong of consent, whether any consent was an independent act of free will, breaking any causal chain between the consent and the illegal detention, three factors control: (1) the temporal proximity of the illegal conduct and the consent; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the initial misconduct. Again, no single factor is determinative. While the defendant Macias had failed to preserve any claim to the six factors of the first prong, the evidence in that case was suppressed under the second prong because his consent was too closely connected to the unconstitutional detention to have been deemed an independent act of free will. Macias, supra, 658 F.3d at 523-24.

While we trust a hearing will enable us to develop the facts in greater detail, we submit the first two factors of the first prong, voluntariness of custodial status and coercive police tactics, inure in favor of the defendants. After he had obtained them, Sgt. Dawsey kept Mr. Glenn's driver's license and Mr. Walker's leasing papers, never returning them. Clearly the defendants were not free to terminate the encounter, as long as those documents remained in his possession. It is clear that in ordering Mr. Glenn to exit the vehicle and accompany him to its rear so he could tell him why he stopped him, Sgt. Dawsey adopted a commanding demeanor as opposed to one of a mere police-citizen encounter. A review of the encounter shows he became condescending in dealing with both Mr. Glenn and Mr. Walker when they apparently mispronounced "Beaumont." He was also prone to interrupt them, rapidly change subjects, and not allow the defendants to complete their sentences,

contributing to an overbearing presence, meant to intimidate. By the time Mr. Glenn gave consent he had been questioned by Sgt. Dawsey twice, left standing in front of the police vehicle about 14 minutes, and the officer still possessed his driver's license. It was not a voluntary custodial status and it was fraught with coercion.

As to the third factor, the extent and level of the defendants' cooperation, we submit the coercive tactics employed by Sgt. Dawsey also cause this factor to be favorable to the defendants. Regarding the fourth factor, the defendant's awareness of his right to refuse consent to search, we know that the failure of Sgt. Dawsey or any of the other officers to explicitly inform the defendants that they were free to refuse does not by itself invalidate consent. Ohio v. Robinette, 519 U.S. 33, 39-40, 117 S.Ct. 417 (1996). But when the Court reviews the sequence of events in purportedly securing consent from Mr. Glenn, the driver, while holding his license hostage, and then not correctly securing the same consent from Mr. Walker, the leaseholder of the vehicle, while holding his copy of the lease, the Court should find the defendants were essentially deprived of any awareness they could refuse to consent to the search. As to the fifth factor, the recorded encounter provides little information about the defendant's education and intelligence, although Mr. Glenn can be heard to offer explanations about the vehicle containing evidence of his land purchases and his wife's business, certainly indicating he was intelligent. Finally, as to the sixth factor, the defendant's belief about whether any incriminating evidence will be found, taking a page from Judge Brady's case, the fact that some of the incriminating evidence in the form of cash was eventually found secreted in bundles and in in the luggage, exhibits a likelihood that at least one of the defendants knew incriminating evidence was located in the vehicle, militating against voluntariness. United States v. Robertson, supra, 16 F.Supp.3d at 749.

In review, we submit the Court will find any consent by Mr. Glenn was involuntary due to his continuing custodial status, the continuous retention of his driver's license and the leasehold papers, the employment of a commanding, overbearing and coercive police presence negating voluntariness, from which Mr. Glenn could not feel he was free to terminate the encounter, and the probability that steps had been taken by at least one of the defendants to secrete incriminating evidence. All these factors negate consent to search having been freely and voluntarily given.

Regarding the second prong, whether any consent was an independent act of free will, we believe the first and second factors, temporal proximity and lack of intervening circumstances, control here. The illegal Fourth Amendment seizure was followed shortly thereafter by the officer seeking consent to search. No intervening circumstances occurred between the questioning of the defendant about his recent travels and Sgt. Dawsey's request for permission to search the car. At most, Sgt. Dawsey only waited for backup and then still encountered Mr. Glenn the second time by himself. As such, any consent to search did not truly result from an independent act of free will. Including the Robertson case, other post-Macias decisions of district courts in our circuit which resulted in the suppression of evidence in similar circumstances include United States v. Hernandez Preciado, 2011 WL 6372851, unreported, (WDTX 2011); United States v. Garcia, 976 F.Supp.2d 856, 868-69 (NDTX 2013); and the Middle District of Louisiana cases of United States v. Smith, 2014 WL 3897667, *3-4 (MDLA 2014) (Judge Dick); United States v. Robertson, 16 F.Supp.3d 740, 743 and 745 (MDLA 2014) (Judge Brady) and United States v. Blas Martinez-Alvarez, 2012 WL 4863212, *3 (MDLA 2012) (Judge Brady).

In Hernandez Preciado, despite the law officer's experience, under the totality of circumstances, as in our case, he did not have a particularized and objective basis for suspecting legal

wrongdoing. Indeed, even though the trooper in that case had "mere uneasy feelings," the sergeant in our case only had mild discrepancies in itinerary when he launched his independent investigation. In the Hernandez Preciado decision, regarding ultimate consent, although ruled voluntary under the first prong, the second prong causal link between the illegal detention and the consent was not broken, rendering the search nonconsensual. And in the Blas Martinez-Alvarez decision, Judge Brady found an unconstitutional delay when the officer decided to receive warrant and licensing checks via a slower dispatch procedure instead of a computer search. Of course, we now know that no such constitutionally protected records checks was even begun in our case until long after the defendants had been arrested.

In Garcia the defendant also focused on the second causation prong of the consent analysis, contending even if voluntarily given, the consent was invalid because the causal chain between the illegal stop and consent was not broken by any intervening events. As in our case, Garcia consented to a search, but because of the close proximity between the illegal stop and detention and the consent, the court found no intervening circumstances. Garcia, supra, 976 F.Supp.2d at 868-69. Virtually the same facts occur in our case. Consent was sought while a records check was ostensibly being conducted and the defendant was so told. Mr. Glenn was not told he could refuse to consent to the search. Consent from the lessee of the vehicle was not properly obtained. Accordingly, any consent to search was not an independent act of free will, but a product of the unlawful stop and its unlawful extension.

We also commend attention to United States v. Rivera, 2014 WL 5395792, *12 (DCVI 2014). That district court in the Virgin Islands listed a collection of Fifth Circuit cases holding subsequent consent not to be an independent act of free will, where a close temporal proximity

existed between the initial constitutional violation and the subsequent consent. Here, *both* temporal proximity of the illegal detention and request to search, *and* the absence of any possible intervening circumstance, render impossible a finding the consent was an independent act of free will.

In our case, other than the officer's general knowledge that the interstate is a common route for drug trafficking, which can be one of several factors which might support reasonable suspicion in a given case, Aguilera, supra, *5, citing United States v. Pack, 612 F.3d 341, 361(5th Cir. 2010), Sgt. Dawsey had no real objective suspicion of illegal activity and merely desired to search the car. The Aguilera court even dismissed the officer's expertise as suggesting little more than a license to detain, based upon an officer's hunch. Aguilera, supra, *5. He, just like Sgt. Dawsey, had no anonymous tip of wrongdoing having occurred, such as were the circumstances in United States v. Zamora, 661 F.3d 200, 207-08 (5th Cir. 2011) and United States v. Segura, 2014 WL 37636, *7 (WDTX 2014), cases in which suppression was denied, in part, because of such tips. Even if Sgt. Dawsey appears to have had a hunch or even a "weird vibe," neither has been held by the Fifth Circuit as enough to amount to reasonable suspicion. United States v. Jones, 234 F.3d 234, 241 (5th Cir. 2000); United States v. Coleman, 2012 WL 3112065, *6 (EDTX 2012).

5. Conclusion

Walter Glenn moves to suppress the evidence seized on the evening of September 2-3, 2014. He was detained longer than necessary, after the reason for the traffic stop had ended. He also moves to suppress any statements made to the deputy and other law enforcement agents, since any such statements flowed from the unlawful detention and should be classified as "fruits of the poisonous tree." Pretextual traffic stops may be allowed, and the subjective motivation of the police may be irrelevant. Whren v. United States, 517 U.S. 806, 811-813 (1996). But the officer really had

no justification for the traffic stop, since the license plate could be read, and he merely wanted to conduct a search of this vehicle. The officer quickly and improperly launched into his new investigation, without any real articulable suspicion of illegal activity, so clearly forbidden now by Rodriguez. Any consent was not freely given and was not an independent act of free will. Suppression of evidence is justified under such facts.

WHEREFORE, and after a hearing has been conducted on this matter, we respectfully urge the evidence seized from the defendant and the statements he made be suppressed.

Respectfully Submitted:

MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C.

s/ Ian F. Hipwell
IAN F. HIPWELL
Louisiana Bar No. 06947
Attorney for Defendant
8075 Jefferson Hwy.
Baton Rouge, LA 70809
(225) 383-9703 (Telephone)
(225) 383-9704 (Facsimile)

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA : CRIMINAL ACTION

VERSUS : NO. 15-CR-138-BAJ-RLB

WALTER GLENN : JUNE 13, 2018

==========

SENTENCING HEARING
BEFORE THE HONORABLE BRIAN A. JACKSON
UNITED STATES DISTRICT CHIEF JUDGE

A P P E A R A N C E S

FOR THE GOVERNMENT:

UNITED STATES ATTORNEY'S OFFICE
MIDDLE DISTRICT OF LOUISIANA
BY: PATRICIA JONES, ESQ.
777 FLORIDA STREET, SUITE 208
BATON ROUGE, LOUISIANA 70801

FOR DEFENDANT WALTER GLENN:

MANASSEH, GILL, KNIPE & BÉLANGER, P.L.C.
BY: IAN FRANCIS HIPWELL, ESQ.
8075 JEFFERSON HIGHWAY
BATON ROUGE, LOUISIANA 70809

REPORTED BY: NATALIE W. BREAUX, RPR, CRR
UNITED STATES COURTHOUSE
777 FLORIDA STREET
BATON ROUGE, LOUISIANA 70801
(225) 389-3565

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY USING COMPUTER-AIDED TRANSCRIPTION SOFTWARE

EXHIBIT 6

SENTENCING HEARING - JUNE 13, 2018 - USA V. WALTER GLENN - 15-CR-138-BAJ-RLB

THE COURT: GOOD MORNING, EVERYONE. BE SEATED.

PLEASE CALL THE CASE.

THE COURTROOM DEPUTY: CRIMINAL NO. 15-138-BAJ, UNITED STATES OF AMERICA VERSUS WALTER GLENN.

THE COURT: COUNSEL?

MS. JONES: GOOD MORNING, YOUR HONOR. PATRICIA JONES FOR THE UNITED STATES.

THE COURT: MS. JONES.

MR. HIPWELL: GOOD MORNING, JUDGE. IAN HIPWELL. I'M CJA APPOINTED FOR MR. GLENN WHO IS PRESENT IN COURT, AND WE'RE READY FOR SENTENCING.

THE COURT: AND GOOD MORNING. AND -- ALL RIGHT.

THIS MATTER IS BEFORE THE COURT FOR SENTENCING. IS THERE ANY REASON WHY SENTENCE SHOULD NOT BE IMPOSED AT THIS TIME? ANY REASON FROM THE GOVERNMENT?

MS. JONES: NO, YOUR HONOR.

THE COURT: AND FROM THE DEFENDANT?

MR. HIPWELL: NO, YOUR HONOR. WE ARE PREPARED.

THE COURT: THANK YOU.

NOW, A WRITTEN PRESENTENCE INVESTIGATION REPORT HAS BEEN PREPARED TO ASSIST ME IN SENTENCING YOU THIS MORNING, MR. GLENN. HAVE YOU RECEIVED A COPY OF THE REPORT, SIR?

THE DEFENDANT: YES, SIR.

THE COURT: DID YOU READ THE REPORT, WAS IT READ TO YOU, OR BOTH?

THE DEFENDANT: I READ IT MYSELF.

THE COURT: DID YOU HAVE AN OPPORTUNITY TO DISCUSS THE CONTENTS OF THAT REPORT WITH MR. HIPWELL AND/OR MR. BÉLANGER?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT. AS I'M SURE YOU KNOW, MR. GLENN, YOUR LAWYER, AS WELL AS THE UNITED STATES, HAVE FILED SEVERAL OBJECTIONS TO INFORMATION CONTAINED IN THE PRESENTENCE INVESTIGATION REPORT. AT THIS TIME I WILL TAKE UP THOSE OBJECTIONS, SO I WILL ASK YOU TO HAVE A SEAT AT COUNSEL TABLE AT THIS TIME.

LET ME JUST, BEFORE WE PROCEED, OFFER A PRELIMINARY STATEMENT THAT -- AND I MENTIONED THIS AT THE CLOSE OF THE TRIAL IN THIS CASE. BUT BOTH SIDES CONTINUE TO DO, I THINK, A SUPERB JOB IN THIS CASE. THERE WERE A LOT OF CONTESTED ISSUES, NOT JUST AT

TRIAL BUT ALSO AT THE SENTENCING PHASE HERE. AND LET ME COMMEND COUNSEL FOR BOTH THE UNITED STATES AND THE DEFENDANT FOR DOING SUCH A VERY THOROUGH JOB OF RAISING OBJECTIONS OR RESPONDING TO OBJECTIONS, SO I COMMEND BOTH OF YOU.

I UNDERSTAND, MR. HIPWELL, YOU'RE JUST MR. BÉLANGER'S LAW CLERK, AND SO MOST OF THE CREDIT GOES TO MR. BÉLANGER.

MR. HIPWELL: WELL, YOUR HONOR, MR. BÉLANGER, HIS LAST WORDS TO ME THIS MORNING WERE "GOOD LUCK." BUT -- AND I APPRECIATE THAT.

THE COURT: I'M KIDDING ABOUT THAT. BUT SERIOUSLY, YOU BOTH -- ALL THREE OF YOU, ACTUALLY, HAVE DONE A SUPERB JOB.

MS. JONES: THANK YOU, YOUR HONOR.

MR. HIPWELL: AND LET'S NOT FORGET MR. KEVIN SANCHEZ.

THE COURT: AND MR. SANCHEZ, WHO HOPEFULLY IS DOING WELL IN HIS NEW ASSIGNMENT.

MS. JONES: AS FAR AS I KNOW, YOUR HONOR. I'VE HEARD NOTHING FROM HIM SINCE HE JUST TOOK OFF.

THE COURT: THEY SAY NO NEWS IS GOOD NEWS, I GUESS.

MS. JONES: YES, SIR.

THE COURT: SO LET'S BEGIN WITH THE

OBJECTION RAISED BY THE UNITED STATES.

SO, MS. JONES, LET ME GIVE YOU AN OPPORTUNITY TO RAISE THE ISSUE. OF COURSE, THE RECORD REFLECTS THAT THE GOVERNMENT HAS RAISED OBJECTIONS TO INFORMATION CONTAINED IN PARAGRAPHS 10 THROUGH 24 AND PARAGRAPH 36, 41, 43, 46 AND 79 OF THE REPORT, ESSENTIALLY SUGGESTING THAT THE LOSS FIGURE IS OVER $2 MILLION AND THAT THE SCOPE OF THE CONSPIRACY, AT LEAST THE DEFENDANT'S ROLE, WOULD INCLUDE AN ORGANIZATION OF FIVE -- AT LEAST FIVE PERSONS.

SO LET ME GIVE YOU AN OPPORTUNITY TO BE HEARD ON THAT.

MS. JONES: YES, SIR, YOUR HONOR. AND OUR OBJECTION WAS SPECIFICALLY AS TO THE CONDUCT REGARDING THE MASSACHUSETTS STOP OF THOMAS JAMES AND LARRY WALKER ON JANUARY 30TH OF 2014. AND I'M SURE YOUR HONOR WILL RECALL WE PRESENTED EVIDENCE OF THAT AT THE DEFENDANT'S TRIAL, AND IT WAS ORIGINALLY NOT INCLUDED AS OFFENSE CONDUCT. WE BELIEVE IT SHOULD BE OFFENSE CONDUCT. IT WAS WITHIN THE SCOPE OF THE CONSPIRACY. IT APPEARS CLEARLY RELATED TO THE REST OF THE OFFENSE CONDUCT.

YOU'LL REMEMBER THAT WE HAD SPREADSHEETS OFFERED INTO EVIDENCE -- SOME FOR 2014, ONE FOR

2015 -- THAT WAL-MART DETERMINED WERE ALL RELATED CONDUCT AND THAT WE SUBMITTED WERE PART OF THE CONSPIRACY.

THE CHECK THAT WAS FOUND IN THE CAR WHEN MR. JAMES AND MR. WALKER WERE STOPPED MATCHES EXACTLY -- OTHER THAN, YOU KNOW, THE AMOUNT AND THE NAME IT WAS MADE TO AND THE DATE -- CHECKS THAT WERE CASHED AND ARE REFLECTED ON THE SPREADSHEET FOR 2014. DURING THE PERIOD FROM JANUARY THE TWENTY -- LET'S SEE -- JANUARY 24TH THROUGH FEBRUARY 6TH OF 2014, THERE WERE 48 LIBERTY TAX SERVICE CHECKS ON THE SPREADSHEET. AND THEN IT CONTINUED. THERE WERE MORE IN MARCH AND THERE WERE MORE IN APRIL, AND I BELIEVE THERE WERE SOME EVEN BEYOND. THE ONE IN THE CAR MATCHED THOSE OTHER ONES IN THIS CONSPIRACY. IT ALSO MATCHED ONE FOUND ON THE THUMB DRIVE THAT WAS ASSOCIATED WITH THE DEFENDANT BECAUSE OF HIS REAL ESTATE DOCUMENTS ON THERE.

AND YOU'LL ALSO RECALL, YOUR HONOR, THAT THE -- ALTHOUGH THE DEFENDANT'S ARGUMENT IS: "OH, WELL, THERE IS JUST REAL ESTATE DOCUMENTS ON HERE," THERE IS NOTHING ELSE FOUND ON THE THUMB DRIVE OTHER THAN EVIDENCE OF CRIMINAL ACTIVITY AND THE DEFENDANT'S REAL ESTATE DOCUMENTS. THERE IS NOTHING THAT ASSOCIATES INNOCENT ACTIVITY WITH EITHER OF THE

OTHER TWO DEFENDANTS THAT WOULD SUGGEST THAT THEY HAD POSSESSED OR USED THE THUMB DRIVE AND THE COMPUTER.

ANALYSIS OF THE COMPUTER ALSO SHOWS THAT DEFENDANT'S REAL ESTATE DOCUMENTS WERE CREATED ON THE THUMB DRIVE USING THE LAPTOP LESS THAN 15 MINUTES AFTER THE CHECK FORMAT THAT WAS USED IN TEXAS WAS OPENED AND MODIFIED. SO IT -- TO THE UNITED STATES, DEFENDANT IS CLEARLY CONNECTED TO THE LAPTOP AND THE THUMB DRIVE. THAT IS CONNECTED TO THE CHECK FOUND IN THE CAR OF THE MASSACHUSETTS STOP. AND SO THAT'S THE FACTUAL BASIS, YOUR HONOR, OF OUR OBJECTION.

THE COURT: AND THAT ACCOUNTS FOR THE INCLUSION OF STEPHANIE CARTEGENA IN THE CONSPIRACY.

MS. JONES: YES, SIR.

THE COURT: BUT YOU ALSO BELIEVE THAT THE POSSIBLE INVOLVEMENT OF AN UNIDENTIFIED MALE WOULD RAISE THIS TO A FIVE -- AT LEAST A FIVE-PERSON ORGANIZATION?

MS. JONES: YES, YOUR HONOR. AND THAT WAS NOT PART OF OUR OBJECTION, BECAUSE THE UNIDENTIFIED MALE WAS ALREADY INCLUDED AS A PARTICIPANT IN THE PRESENTENCE REPORT. WE DO SUBMIT THAT THAT'S ABSOLUTELY CORRECT.

THE COURT: TELL ME ABOUT WHY I SHOULD CONSIDER THE UNIDENTIFIED MALE TO BE A PART OF THE

CONSPIRACY HERE --

MS. JONES: YES, SIR.

THE COURT: -- SINCE, AGAIN, WE DON'T -- NO ONE HAS IDENTIFIED HIM. THERE IS SOME EVIDENCE ON THE VIDEO OF CERTAIN ACTIVITIES THAT HE IS -- THAT HE HAS UNDERTAKEN.

BUT AGAIN, WHY SHOULD I CONSIDER THAT PERSON'S CONDUCT TO BE A PART OF THE CONSPIRACY?

MS. JONES: THE SPREADSHEET FOR 2015, YOUR HONOR, WAS UNITED STATES EXHIBIT 6E AT TRIAL. AND THAT SPREADSHEET SHOWS ALL THE CHECKS -- THE COUNTERFEIT CHECKS THAT WAL-MART FOUND WERE CASHED OR ATTEMPTED TO BE CASHED AT WAL-MARTS IN THE 2015 TIME PERIOD. AND THERE WERE ABOUT A HUNDRED INSTANCES ON WHICH MR. JAMES WAS SEEN CASHING OR ATTEMPTING TO CASH THOSE CHECKS.

ON MANY OF THOSE -- OF THE SURVEILLANCE -- FOR MANY OF THE CHECKS, THE SURVEILLANCE VIDEO SHOWED THAT MR. JAMES WAS ACCOMPANIED BY AN UNIDENTIFIED MALE WHO ALSO CASHED AND ATTEMPTED TO CASH THOSE SAME COUNTERFEIT CHECKS, SO HE WOULD CLEARLY BE A PART OF THE CONSPIRACY. HE IS CASHING THE CHECKS THAT ARE SHOWN TO BE PART OF THE CONSPIRACY ON THE SPREADSHEET.

THE COURT: SO -- I'M SORRY. GO AHEAD.

MS. JONES: YES, SIR.

THE COURT: GO AHEAD.

MS. JONES: AND I WAS GOING TO SAY THAT MR. GLENN IS ASSOCIATED WITH THAT ACTIVITY BECAUSE OF -- HE IS THE LEADER OF THE ORGANIZATION, APPARENTLY, AND THERE IS CLEAR EVIDENCE THAT THE 2015 IS ASSOCIATED WITH THE 2014. FOR ONE THING, YOUR HONOR, MR. JAMES' INVOLVEMENT SHOWS THAT; THAT THIS IS JUST A CONTINUATION OF THE SAME TYPE OF ACTIVITY.

THEN YOU HAVE THE ROUTING NUMBER THAT'S USED IN ALL OF 2015 IS THE SAME ROUTING NUMBER. THAT ROUTING NUMBER WAS ALSO USED IN THE 2014 ACTIVITY IN MARCH AND APRIL. SO IF YOU TAKE THE SPREADSHEET FOR 2015 AND COMPARE IT WITH THE -- I'M SORRY, IN FEBRUARY AND MARCH OF 2014. THERE ARE FOUR CHECKS IN FEBRUARY AND MARCH OF 2014 THAT USE THAT SAME ROUTING NUMBER.

ADDITIONALLY, YOUR HONOR, I TOLD MR. HIPWELL THIS MORNING THERE WAS ANOTHER FACT THAT I THOUGHT RELEVANT TO THIS ISSUE OF THE 2015 ACTIVITY. ON THE 2010 COMPUTER THAT WAS SEIZED FROM MR. GLENN'S HOME IN JULY OF 2010, THERE WERE COPIES OF CHECKS. AND ONE OF THE CHECKS WAS THIS UNITED STATES TREASURY CHECK, WHICH HAS THE VERY SAME ROUTING NUMBER THAT WAS USED IN 2014 AND THEN IN ALL OF 2015. AND, YOUR

HONOR, I WOULD MARK THIS AS UNITED STATES EXHIBIT SENTENCING 1 --

THE COURT: OKAY.

MS. JONES: -- AND OFFER IT AT THIS TIME. AND IT WAS PROVIDED -- A COPY WAS PROVIDED TO MR. HIPWELL THIS MORNING. AND --

MR. HIPWELL: SHE DID, YOUR HONOR. OBVIOUSLY FOR THE LIMITED PURPOSE OF SENTENCING, WE DO NOT OBJECT TO THAT.

THE COURT: VERY WELL. THANK YOU.

SO LET ME UNDERSTAND THIS. THAT THIS IS A CHECK THAT WAS FOUND ON THE DEFENDANT'S COMPUTER IN 2010?

MS. JONES: YES, SIR.

THE COURT: AND IT BEARS THE SAME ROUTING NUMBERS AS THE CHECKS THAT WERE FOUND ON DEFENDANT'S COMPUTER -- OR THE FLASH DRIVE ASSOCIATED WITH THE DEFENDANT -- THAT REVEALED CHECKS FROM 2014 AND 2015?

MS. JONES: YOUR HONOR, I'M NOT -- I DON'T KNOW THAT IT'S ON THE FLASH DRIVE. I DON'T EVEN THINK THAT IT IS.

IT WAS ON COUNTERFEIT CHECKS CASHED IN 2014 AND ON ALL OF THE COUNTERFEIT CHECKS CASHED IN 2015.

THE COURT: OKAY.

ALL RIGHT. WELL, WITHOUT OBJECTION, U.S.

EXHIBIT 1 WILL BE ADMITTED.

MS. JONES: AND, YOUR HONOR, I HAVE ONE MORE POINT ABOUT THE NUMBER OF PARTICIPANTS. AND YOU HAVE STEPHANIE CARTEGENA, MR. WALKER, MR. JAMES, MR. GLENN AND THE UNIDENTIFIED MALE.

THE UNITED STATES SECRET SERVICE REPORT THAT WAS ATTACHED TO THE DEFENDANT'S SENTENCING MEMORANDUM AS DEFENDANT'S EXHIBIT 1 INCLUDES A REFERENCE -- IT TALKS ABOUT THE INVESTIGATION IN MASSACHUSETTS THAT WAS BEGUN AS A RESULT OF THIS STOP. AND IT SPECIFICALLY MENTIONS THAT IN LOOKING AT THE WAL-MART SURVEILLANCE PHOTOS AND VIDEOS, THAT THERE WAS MORE THAN ONE FEMALE SEEN CASHING CHECKS. I DON'T KNOW IF ONE OF THOSE WAS STEPHANIE CARTEGENA, BUT IT APPEARS THAT THERE WAS ANOTHER INDIVIDUAL INVOLVED IN CASHING THOSE CHECKS, AND SO -- WHICH WOULD BRING THE PARTICIPANTS UP TO SIX. OR EVEN IF YOU WANT TO EXCLUDE THE UNIDENTIFIED MALE, YOU'VE GOT ANOTHER ONE IN THE EARLY PART OF 2014. SO I THINK IT'S ESTABLISHED THAT WE HAVE AT LEAST FIVE PARTICIPANTS IN THE CRIMINAL ACTIVITY FROM 2014 AND 2015.

THE COURT: SO HOW IS IT THAT -- HOW IS IT THAT YOU TIE THE DEFENDANT TO THAT PERSON? I MEAN, WHO'S TO SAY THAT THIS UNIDENTIFIED FEMALE DID NOT RECEIVE INSTRUCTIONS OR THE CHECKS FROM SOMEONE OTHER

THAN THE DEFENDANT, EITHER DIRECTLY OR INDIRECTLY?

MS. JONES: YOUR HONOR, THE DEFENDANT'S TIED TO THAT SAME ACTIVITY IN THE SAME WAY THAT HE'S TIED TO THE STOP IN MASSACHUSETTS, WHICH IS BY THE SPREADSHEETS, BY THE THUMB DRIVE, BY THE NATURE OF THE ACTIVITY. YOU HAVE -- IT WAS ALSO LIBERTY TAX SERVICE CHECKS THAT MATCHED THE THUMB DRIVE AND THAT MATCHED THE OTHERS ON THE SPREADSHEET. AND SO DEFENDANT IS CONNECTED -- IT'S CLEARLY PART OF THE SAME ACTIVITY. WHETHER DEFENDANT PERSONALLY GAVE THE CHECKS TO THESE FEMALES IS NOT OF CONCERN BECAUSE THOSE -- HE DOESN'T NEED TO LEAD AND ORGANIZE AND DIRECT EACH PERSON, EACH PARTICIPANT. HE ONLY NEEDS TO LEAD ONE OTHER PERSON.

AND AS LONG AS THEY ARE INVOLVED IN THE ACTIVITY -- AND IT'S CLEAR THAT IT WAS THE SAME ACTIVITY. IT'S THE VERY SAME KINDS OF CHECKS. AND THOSE CHECKS ARE FOUND ON THE THUMB DRIVE THAT IS CONNECTED TO THE DEFENDANT AND THE DEFENDANT ONLY.

THE COURT: SO LET'S TALK ABOUT ACTIVITY THAT OCCURRED OUTSIDE OF MASSACHUSETTS AND, IN FACT, HERE IN THIS DISTRICT; SPECIFICALLY ACTIVITIES THAT OCCURRED AFTER MR. GLENN AND HIS CO-DEFENDANTS WERE STOPPED.

THERE WAS THE ENVELOPES OF MONEY THAT WERE

FOUND IN ONE OF THE BAGS. CORRECT?

MS. JONES: YES, SIR.

THE COURT: AND AS I RECALL FROM THE EVIDENCE, MR. GLENN HIMSELF CLAIMED THAT PROPERTY. CORRECT?

MS. JONES: YES, SIR. HE CLAIMED THAT BAG. AND THERE WERE THREE OF THOSE ENVELOPES IN THE BAG, AND ALL OF THE ENVELOPES HAD PERSONALLY IDENTIFYING INFORMATION ON THEM AND CASH IN THEM.

THE COURT: SO LET'S TALK FOR A MOMENT NOW ABOUT THE METHODS USED VERY OFTEN IN THESE TYPES OF ACTIVITIES.

MY RECOLLECTION OF THE EVIDENCE AT TRIAL INDICATED THAT AT NO TIME DID THE DEFENDANT ACTUALLY ENTER WAL-MART AND TENDER ANY OF THESE CHECKS.

MS. JONES: WE HAVE NO KNOWLEDGE THAT HE DID THAT, YOUR HONOR. AND I WOULD SUSPECT THAT HE NEVER DID.

THE COURT: WHY DO YOU SAY THAT?

MS. JONES: BECAUSE IT APPEARS THAT MR. GLENN WAS ON THE TOP OF THIS ORGANIZATION. AND I MEAN, I KNOW YOUR HONOR WOULD BE FAMILIAR FROM OTHER TYPES OF CRIMINAL ORGANIZATION THAT THE GUY AT THE TOP IS NOT THE ONE THAT EITHER IS ON THE STREET SELLING THE DRUGS OR IS THE ONE GOING INTO WAL-MART

AND GETTING HIS FACE ON SURVEILLANCE OR GOING TO RENTAL COMPANIES AND PUTTING HIS -- HAVING HIS FACE BE THERE AT THE RENTAL COMPANY, PUTTING HIS NAME AND HIS IDENTIFICATION ON DOCUMENTS. THE GUY AT THE TOP TRIES TO SEPARATE HIMSELF AS MUCH AS POSSIBLE FROM THE ACTIVITIES THAT WILL GET HIM CAUGHT.

AND, YOUR HONOR, IT'S CONSISTENT IN THE INFORMATION WE PROVIDED ABOUT THE 2010 CRIMINAL ACTIVITY THAT WAS CONDUCTED BY THE DEFENDANT. HE DID JUST THAT. HE STAYED AT THE TOP. THERE WERE RECRUITERS BELOW HIM. THERE WERE CASHERS BELOW THE RECRUITERS. AND THE DEFENDANT EVEN TOLD MR. STEFAN HARRIS, WHO WAS ONE OF THE INDIVIDUALS HE WAS PROVIDING CHECKS TO -- AND THEY GOT CAUGHT IN DEFENDANT'S JAGUAR AND ARRESTED IN JULY OF 2010. MR. HARRIS SAID THAT HE HAD BEEN DOING THIS FOR YEARS FOR THE DEFENDANT, AND THE DEFENDANT TOLD HIM HE NEVER WANTED A CHECK CASHER TO SEE HIS FACE.

AND SO IT APPEARS THAT THAT'S HIS METHOD OF OPERATION, WHICH IS CONSISTENT WITH THE METHOD OF OPERATION OF SOMEBODY WHO'S ON THE TOP OF AN ORGANIZATION. SO I WOULD SUSPECT THE DEFENDANT NEVER DID.

THE COURT: OKAY. LET ME GIVE MR. HIPWELL AN OPPORTUNITY TO BE HEARD.

MS. JONES: YOUR HONOR, CAN I BRING UP ONE OTHER THING?

THE COURT: SURE.

MS. JONES: LAST WEEK, ON WEDNESDAY I FILED A MOTION FOR LEAVE TO FILE A RESPONSE TO MR. HIPWELL'S SENTENCING MEMO, AND I DON'T THINK I EVER GOT AN ORDER INDICATING THAT LEAVE WAS GRANTED AND THE SENTENCING MEMO WAS FILED. SO IF I COULD ASK THAT IF IT'S NOT -- IF IT HASN'T BEEN FILED, THAT --

THE COURT: WAS THAT ON THE 6TH?

MS. JONES: WHATEVER A WEEK AGO WAS.

THE COURT: I BELIEVE THAT'S THE 6TH. I KNOW MR. HIPWELL FILED HIS SENTENCING MEMORANDUM ON THE 30TH OF MAY. AND JUST SO THAT THE RECORD IS CLEAR, YOUR MOTION FOR LEAVE TO FILE THE RESPONSE, WHICH I BELIEVE YOU FILED ON THE 6TH OF JUNE, IS GRANTED.

MS. JONES: THANK YOU, YOUR HONOR.

THE COURT: OKAY. MR. HIPWELL, NOW THE GOVERNMENT'S OBJECTION NO. 1 IS ESSENTIALLY THE SAME AS YOUR OBJECTION NO. 4. WOULD YOU AGREE WITH THAT?

MR. HIPWELL: IF IT'S THE LOSS OBJECTION?

THE COURT: WELL, IT'S THE OBJECTION THAT -- LET'S SEE -- THAT YOU RAISED ABOUT THE DEFENDANT'S ROLE.

MR. HIPWELL: AND, YOUR HONOR, AS YOU'RE LOOKING AT THAT, IT'S ALWAYS HARD FOR ME TO SEPARATE AND SEGREGATE THE ORGANIZER/LEADER ENHANCEMENT OF, YOU KNOW, ROLE FROM LOSS. THOSE TWO THINGS WILL DRIVE MUCH OF WHAT THE COURT -- YOU KNOW, THE COURT'S ULTIMATE DETERMINATION, OF COURSE, ON THE GUIDELINES ARE TODAY.

BUT, YOUR HONOR, WE SUBMIT AND WE UNDERSTAND CLEARLY THE DISTINCTION BETWEEN TRIAL PROOF BEYOND A REASONABLE DOUBT AND PREPONDERANCE OF THE EVIDENCE. AND WE FULLY ENDORSE AND ACCEPT THAT. BUT WE DO BELIEVE IT'S WORTH STATING AND IT'S IMPORTANT TO STATE THAT THE TRIAL REALLY PROVED THAT MY CLIENT, WALTER GLENN, WAS A DRIVER. IT DID NOT PROVE THAT HE WAS A CHECK MAKER OR A LEADER. AND ACTUALLY, HE WAS A DRIVER FOR A RELATIVELY SHORT PERIOD OF TIME.

YOUR HONOR, FROM THE START OF THIS PROSECUTION IT'S BEEN OUR CONTENTION THAT THE UNITED STATES HAS TRIED TO SHOEHORN VARIOUS ROLES UPON MR. GLENN AND THE OTHERS INVOLVED IN THE CASE. IT'S VERY EASY TO VIEW, OF COURSE, THOMAS JAMES AS THE CHECK CASHER. AND LARRY WALKER IS OBVIOUSLY, AT LEAST FOR THE FIRST PART OF THE CASE, THE PERSON WHO RENTED THE CARS AND DROVE.

BUT THE COURT SHOULD KNOW THIS: THOMAS

JAMES DID NOT HAVE A DRIVER'S LICENSE. HE ONLY HAD -- AND THIS IS -- I DON'T THINK IT'S ACTUALLY IN THE PROOF AT TRIAL, BUT IT'S CERTAINLY IN THE DISCOVERY THAT THE UNITED STATES PROVIDED TO US. WHEN HE WAS ARRESTED, YOU KNOW, ON THE SIDE OF THE ROAD ON SEPTEMBER 2, 2014, HE HAD A SOUTH CAROLINA IDENTIFICATION CARD. SO FRANKLY, LARRY WALKER COULDN'T DO ALL OF THAT DRIVING. WALTER GLENN WAS A RELIEF DRIVER.

NOW, WHY AM I SAYING THIS? IT'S BECAUSE MY CLIENT IS CONCEDING TO THIS COURT HERE TODAY THAT HE DID PARTICIPATE IN THE TEXAS PART OF THE TRIP, BUT THAT'S ALL THAT WAS PROVEN, YOUR HONOR. TO MAKE HIM RESPONSIBLE FOR OVER $2 MILLION IN INTENDED LOSSES TO WAL-MART, LET ALONE TO CHARACTERIZE HIM AS AN ORGANIZER AND A LEADER, WE SUBMIT IS UNFAIR.

NOW, YOU MAY VIEW -- AND THE COURT IS ENTITLED TO VIEW MY CLIENT'S CONDUCT AS BEING REPREHENSIBLE IN WHAT HAPPENED WITH WAL-MART. BUT THE CREDIBLE EVIDENCE, YOUR HONOR, IS THAT HE SUCCUMBED TO THE TEMPTATION TO PARTICIPATE IN THE FRAUDULENT ACTIVITY OF SOME OF HIS OTHER FAMILY MEMBERS BUT THAT HE DID SO ONLY FOR THAT RELATIVELY SHORT PERIOD OF TIME.

YOUR HONOR, EVEN THOMAS JAMES IN THAT

SELF-SERVING JANUARY 2018 STATEMENT THAT SPECIAL AGENT BODDEN WAS ABLE TO OBTAIN FROM HIM, HE SAYS THAT UPON EXITING WAL-MART -- AND I EMPHASIZE -- HE IMMEDIATELY AND ALWAYS -- THOSE ARE THE WORDS IN THAT REPORT -- IMMEDIATELY AND ALWAYS GAVE THE MONEY TO GLENN. WELL, THEN THE START OF THE ALLEGED CONSPIRACY MUST BE THE EXCEPTION, BECAUSE YOUR HONOR KNOWS THAT WALTER GLENN WAS NOWHERE AROUND ON JANUARY 30, 2014, WHEN JAMES, LARRY WALKER AND STEPHANIE CARTEGENA WERE STOPPED BY THE MASSACHUSETTS HIGHWAY PATROL.

NOW, MS. JONES WRITES THAT I'M NOT OFFERING PROOF. BUT JUST AS SHE HAS DONE IN HER MEMO, WE PROVIDED THE COURT COPIES OF A SERIES OF POLICE REPORTS. AND IF WE KNOW NOTHING ELSE, IF WE KNOW NOTHING ELSE FROM THOSE REPORTS, WE KNOW THAT A LOT OF OTHER PEOPLE IN CONNECTICUT AND MASSACHUSETTS WERE APPARENTLY INVOLVED IN DEFRAUDING WAL-MART.

AND YES, WE DO OFFER POLICE REPORTS INDICATING THAT LARRY WALKER, HIS MOTHER AND HER HUSBAND, THOMAS JAMES, WERE DEFRAUDING WAL-MART LONG BEFORE THE CHARGED CONSPIRACY. AND YES, WE OFFER THAT THROUGH POLICE REPORTS, AND WE OFFER THE VERY REAL POSSIBILITY THAT THE MAKERS OF THE CHECKS WERE SOME COMBINATION OF LARRY WALKER OR DEVON BAKER OR

MAYBE EVEN EARLIER JOSEPH WALKER.

AND WE SUBMIT THAT THAT EVIDENCE CONTRADICTS THE PROBATION OFFICER'S ASSERTION IN THE ADDENDUM ON PAGE 9 THAT IT'S UNLIKELY THAT SOMEONE OTHER THAN THE THREE DEFENDANTS WAS PRODUCING THE CHECKS, AND IT CERTAINLY NEGATES, QUOTE, ALL AVAILABLE EVIDENCE POINTING TO WALTER GLENN AS THE MAKER OF THE CHECKS.

A LOT OF THE POLICE REPORTS THAT YOU WOULD RELY ON, YOUR HONOR, WE SUBMIT, NOT ONLY FROM 2010 BUT ALSO FROM 2014, ASK YOU ESSENTIALLY TO RELY UPON THE WORDS OF PLEA BARGAIN FOLKS. THERE IS MENTION OF PHOTO ARRAY IDENTIFICATIONS WHERE WE -- NONE OF US EVEN HAVE THE ARRAYS, AND STATEMENTS BY A NUMBER OF PEOPLE, YOUR HONOR, WHO ARE NOT SUBJECTED TO THE CRUCIBLE OF CROSS-EXAMINATION.

AND WE KNOW, YOUR HONOR, WE KNOW YOU CAN RELY UPON SUCH, BUT YOU DON'T HAVE TO. EVEN THE FIFTH CIRCUIT *SANCHEZ* DECISION THAT MS. JONES CITED IN HER MEMO IS PERMISSIVE. PRESENTENCE REPORT FINDINGS MAY BE RELIED UPON BY YOU. BUT, YOUR HONOR, WE SUBMIT THE QUALITY OF POLICE REPORTS MAY BE AS VARIED AS HUMAN FALLIBILITY.

AND OUR COMMENT IS: HOW CONVENIENT IT WOULD BE, YOUR HONOR, TO TIE UP ALL THE LOOSE ENDS, ALL THE UNFINISHED BUSINESS OF WAL-MART, THE JUSTICE

DEPARTMENT AND THE SECRET SERVICE, BY LAYING THIS TOTAL LOSS UPON WALTER GLENN. AND WE SUBMIT TO DO SO WOULD BE A DISSERVICE.

NOW, YOUR HONOR, WALTER GLENN EXERCISED HIS RIGHT TO GO TO TRIAL. HE MAY NOT WIN ON APPEAL, BUT THE ISSUE OF A DRIVER NOT AUTHORIZED CONTRACTUALLY ON A LEASE TO HAVE A FOURTH AMENDMENT EXPECTATION OF PRIVACY WAS AND HAS BEEN JOINED, AND IT HAS BEEN PRESERVED. SO ALL THAT'S LEFT IS SENTENCING BY YOU AND THE POWERFUL DISCRETION THAT YOU HAVE HERE.

AND IF YOU WISH, JUDGE, YOU CAN ENTER INTO A COLLOQUY WITH MR. GLENN WHEN HE GETS UP HERE. YOU'VE SEEN OTHER COURTS DO IT. SOMETIMES IT'S YOUR STYLE AND SOMETIMES IT'S NOT. BUT, FOR INSTANCE, I CAN'T ASK JIM HOLT, THE FORMER ATTORNEY WHOM YOUR HONOR FOUND COULD NOT REPRESENT ALL THREE DEFENDANTS, TO COME HERE AND TESTIFY. BUT IF YOU WERE TO ASK WALTER HILL IN A FEW -- FORGIVE ME -- WALTER GLENN IN A FEW MOMENTS, I'M CONFIDENT HE WILL TELL YOU THAT NOT ONLY DID HE NOT PARTICIPATE IN THE FRAUD UNTIL TEXAS, BUT ALSO THAT WHEN THEY WERE ALL ARRESTED IN SEPTEMBER 2014, IN THE PRESENCE OF THEIR COMBINED ATTORNEY AT THAT TIME, HE BEGGED LARRY WALKER AND THOMAS JAMES TO STOP, BUT THEY DIDN'T OBVIOUSLY.

AND SO WE SUBMIT THERE IS NO PROOF

CONNECTING WALTER GLENN BEFORE THE TEXAS TRIP, INCLUDING THE THUMB DRIVE. WE SUBMIT THAT WHATEVER -- AND EVEN WITH THIS ADDITIONAL CHECK THAT MS. JONES HAS GIVEN US, IT'S PROOF ONLY THAT HE USED THE ELECTRONICS FOR THAT ONE TIME TO MAKE THE REAL ESTATE DOWN PAYMENT. BUT THAT DOESN'T PROVE WHO, IN FACT, WAS MAKING THE CHECKS.

SO WE'RE LEFT THEN WITH THE ONLY POSSIBLE PROOF OF WALTER GLENN'S RESPONSIBILITY FOR THE APPROXIMATELY $1 MILLION IN INTENDED LOSSES AFTER SEPTEMBER 2014 AND INTO 2015 IS OF COURSE THE PURCHASE OF THE MERCEDES AND, AS MS. JONES POINTS OUT, THE $800 IN TIRES.

REMEMBER, OF COURSE, THE CHECK-MAKING EQUIPMENT, YOUR HONOR, IS ALL SEIZED FROM THAT RENTED CAR IN SEPTEMBER OF 2014. AND WE SAY THAT BECAUSE SOMEONE -- AND THERE IS NO PROOF IT'S MR. GLENN -- MUST HAVE COME UP WITH A MEANS TO CONTINUE THE FRAUD FOR ANOTHER ANTICIPATED OR INTENDED LOSS OF A MILLION DOLLARS. AND I THINK, INCIDENTALLY, THERE WAS -- THAT WHATEVER THE SCHEME PERFORMED, IF MEMORY SERVES ME CORRECTLY -- I THINK MS. JONES SENT ME AN E-MAIL A WEEK BEFORE TRIAL THAT THE TOTAL ACTUAL LOSSES IN 2015 WERE ONLY SOME $200,000. SO IT MUST HAVE BEEN A LOT -- THE INTENDED LOSSES WERE UP TO A MILLION

DOLLARS, BUT I THINK THAT THE ACTUAL SUCCESS WAS MUCH LESS THAN THAT.

AND I MUST CONCEDE, YOUR HONOR, MS. JONES CAUGHT ME ON ONE PARTICULAR POINT. I DID FORGET, YOUR HONOR, THE FRUITS OF THE TEXAS TRIP, EXCEPTING PERHAPS THE DOWN PAYMENT THAT MY CLIENT MADE TO PURCHASE THE SOUTH CAROLINA PROPERTY, WERE ALL SEIZED. SO THAT $95,000 WAS GONE AND NONE OF IT WAS AVAILABLE FOR THE MERCEDES. AND THAT'S ON ME. THAT'S MY MISTAKE.

BUT WALTER GLENN MAINTAINS THAT HE HAD OTHER RESOURCES: HE HAD THE HAIR SALON, HE HAD THE RENTAL PROPERTIES IN SOUTH CAROLINA, AND HE HAD THAT SOUL FOOD BUSINESS. AND IN ADDITION, HE FRANKLY HAD MONEY FROM OTHER GIRLFRIENDS WHO WERE LIVING WITH HIM.

SO THAT IN THE SPRING OF 2015, WITH NO CONNECTION OF CHECKS BEING CASHED AT WAL-MART, HE DID MAKE THAT PURCHASE WITH CASH BUNDLED AS IF FROM A BANK -- I THINK WAS THE TESTIMONY THAT WE ALL HEARD AT TRIAL -- AND HE PURCHASED THAT CAR.

AND, YOUR HONOR, IT'S VERY IMPORTANT THAT THE COURT KNOW THIS. HE WAS DRIVING BACK FROM A RESTAURANT CONVENTION IN ALABAMA WITH TWO OTHER GENTLEMEN. NEITHER OF THOSE TWO OTHER GENTLEMEN WERE CO-DEFENDANTS LARRY WALKER OR THOMAS JAMES.

AND WALTER GLENN MAY BE GUILTY OF NOT PAYING HIS FEDERAL INCOME TAXES, BUT THAT DOES NOT AND, WE SUBMIT, SHOULD NOT MAKE HIM RESPONSIBLE FOR THAT ADDITIONAL MILLION DOLLARS IN INTENDED LOSSES.

NOW THE LEADERSHIP ROLE, YOUR HONOR. I CITED *UNITED STATES VS. HAWKINS.* AND THAT'S, OF COURSE, AT 866 F.3D 344. AND AT PAGE 347 IT MENTIONS THE APPLICATION NOTES, THE APPLICATION NOTES FOR APPLYING LEADERSHIP. AND WE SUBMIT THERE IS NO EVIDENCE THAT WALTER GLENN EXERCISED DECISION-MAKING AUTHORITY. THIS IS PART OF WHAT THE GOVERNMENT HAS TRIED TO SHOEHORN IN THIS CASE, JUST BECAUSE THEY HAVE NO OTHER ROLE FOR HIM TO FILL. AND WE'RE OFFERING THE ROLE WAS FOUND; HE WAS THE DRIVER ON THAT NIGHT. BUT THERE IS NO CREDIBLE EVIDENCE THAT HE EXERCISED DECISION-MAKING AUTHORITY.

THE SECOND ONE IS THAT HE RECRUITED ACCOMPLICES. ALL THAT WE COULD KNOW HERE IS THAT THERE WERE OTHER PEOPLE. THERE WERE STEPHANIE CARTEGENA'S, THERE WERE OTHER UNIDENTIFIED MALES AFTER THEY WERE STOPPED IN SEPTEMBER OF 2014. THE THIRD ONE IS THE ONE THAT I'M GOING TO ADDRESS IN A FEW MOMENTS IN GREATER DETAIL.

BUT THE THIRD POINT IS: DID HE CLAIM THE RIGHT TO LARGER SHARES OF THE FRUIT OF THE CRIME.

AND OF COURSE I HAVE TO ADDRESS WHAT MR. THOMAS JAMES SAID ABOUT THAT AND WILL IN A MINUTE. AND THEN THE LAST ONE IS ANY DEGREE OF CONTROL THAT HE EXERCISED OVER OTHERS. THERE IS SIMPLY A PAUCITY OF EVIDENCE OF THAT. THERE IS NO EVIDENCE THAT HE EXERCISED CONTROL OVER THESE.

SO THAT BRINGS US BACK TO NO. 3; AND THAT OF COURSE DEPENDS ON THOMAS JAMES. LET'S START WITH WHAT MS. JONES SAYS IS THE SMART MONEY IN HER MEMO REGARDING HIS CREDIBILITY. I CANNOT OVEREMPHASIZE AND I WILL NOT GO INTO DETAIL, YOUR HONOR, THE UNCERTAINTY THAT WE WERE HEARING ABOUT THOMAS JAMES IN THE JOINT TRIAL -- REMEMBER, HE ONLY PLED GUILTY A FEW DAYS BEFORE TRIAL -- BEING ABLE TO OFFER EXCULPATORY TESTIMONY FOR OUR CLIENT IN A JOINT TRIAL, AND EVEN AFTER HE DECIDED TO PLEAD GUILTY.

NOW, MR. BÉLANGER AND I DID NOT ACTIVELY SEEK THIS INFORMATION. IT WAS THRUST UPON US, YOUR HONOR. BUT IT INCLUDED THE POSSIBILITY THAT THOMAS JAMES WOULD TESTIFY THAT HE HAD STOLEN THE COMPUTER AND OTHER DEVICE-MAKING EQUIPMENT FROM YET ANOTHER PERSON. AS ABSURD AS THAT MAY SOUND, YOUR HONOR, WE WERE FACED WITH THAT VERY REAL ISSUE. AND IT WAS ONLY JOINED IN THE MIDDLE OF TRIAL WHEN IT WAS DECIDED HE WAS NOT GOING TO TESTIFY.

BUT THEN OF COURSE AFTER THE TRIAL, THOMAS JAMES IS INTERVIEWED AND MS. JONES OFFERS PERSUASIVELY THAT IT WAS ONLY DONE TO FULFILL HIS OBLIGATION TO COOPERATE IN THE RECOVERY OF FORFEITABLE ASSETS. WELL, YOUR HONOR, PLEASE EXCUSE OUR DOUBTS, SINCE THAT VERY PLATFORM, THAT SINGLE-PAGE MEMORANDUM, DID PROVIDE INFORMATION UPON WHICH YOUR HONOR IS NOW ASKED AT LEAST TO BASE PART OF YOUR DECISION TO AWARD LEADERSHIP ROLE TO WALTER GLENN AS THE ORCHESTRATOR AND, PERHAPS FILLING OUT THAT ONE DESPERATE ATTEMPT UPON WHICH TO BASE LEADERSHIP NO. 3, A LARGER SHARE IN THE FRUITS OF THE CRIME.

WHEN YOU READ THE REPORT, YOUR HONOR, EVEN WHEN -- WHEN I THINK SPECIAL AGENT BODDEN IS SUMMARIZING WHAT HE'S HEARD, YOU ONLY GET A NOD, A NOD FROM THOMAS JAMES AS FOR WALTER GLENN TO BE THE ORCHESTRATOR. NOW, MY CLIENT REJECTS THEM. IF YOU WANT TO ENTER THE COLLOQUY WITH HIM, HE'LL TELL YOU THOMAS JAMES SAYING HE ONLY GOT ONE-FIFTH AT TIMES. HE SAYS ON THAT TEXAS TRIP THE TAKE WAS ONE-THIRD FOR EACH OF THEM.

NOW, SINCE THOMAS JAMES IS OBVIOUSLY THE CHECK MAKER, ONLY JOINED AFTER SEPTEMBER 2014 BY THE UNIDENTIFIED MALE, AND LARRY WALKER IS THE PERSON WHO

RENTED THE CARS, AT LEAST UP TO SEPTEMBER 2014 -- I DON'T THINK WE HAVE EVIDENCE OF HIM DOING THAT AFTERWARDS -- THEN THE ARGUMENT IS THAT WALTER GLENN MUST BE THE CHECK MAKER AND HE MUST BE THE LEADER. BUT IN THE LIGHT MOST FAVORABLE TO THE GOVERNMENT, THE USE BY WALTER GLENN OF THAT COMPUTER SYSTEM TO MAKE THAT PROPERTY DOWN PAYMENT DOES NOT MAKE HIM THE CHECK MAKER, YOUR HONOR, NOR THE LEADER.

AND IT'S EVEN ELEVATED FURTHER, SINCE ONLY WALTER GLENN CAN BE PROVEN TO HAVE THE THUMB -- TO HAVE USED THAT THUMB DRIVE AND THAT WAS TO DEAL WITH THAT SOUTH CAROLINA PROPERTY, YOU SHOULD DISCOUNT EVERYTHING THAT WE'VE SUBMITTED TO YOU ABOUT LARRY WALKER, HIS MOTHER WHO IS THOMAS JAMES' WIFE, AND JAMES AS CONNECTING THEM TO THE LARGER ROLE IN THE CONSPIRACY, AND EVEN THE POLICE REPORTS MENTIONING THIS OTHER PERSON DEVON BAKER AND PERHAPS EVEN JOSEPH WALKER AS CHECK MAKERS.

THE COURT: ANYTHING FURTHER?

MR. HIPWELL: A LITTLE BIT, YOUR HONOR. I'M ALMOST THROUGH.

YOU'RE NOT ONLY TO GO UP TWO OFFENSE LEVELS AS FIRST SUGGESTED IN THE INITIAL PSR BUT, NOW AS THE ADDENDUM SUGGESTS, FOUR LEVELS AND COUNTING STEPHANIE CARTEGENA FROM JANUARY 2014. MY CLIENT MAINTAINS HE

DOESN'T KNOW WHO STEPHANIE -- HE'S NEVER MET STEPHANIE CARTEGENA. AND THERE IS CERTAINLY NO PROOF THAT HE EVER MET THE OTHER UNIDENTIFIED MALE INVOLVED WITH THOMAS JAMES' CONTINUED DEFRAUDING OF WAL-MART THROUGH 2015 AND MAYBE INTO 2016. HE DOESN'T KNOW THESE PERSONS, YOUR HONOR, AND YET HE'S BEING TAGGED AS THEIR ORGANIZER, LEADER OR SUPERVISOR. WE SUBMIT THAT'S JUST GUIDELINES GONE WILD, YOUR HONOR. IT'S JUST NOT, NOT FAIR.

LET ME SEE, YOUR HONOR. I THINK I MAY BE APPROACHING THE END OF THIS PART OF THE ARGUMENT. I DON'T WANT TO BE DISLOYAL TO FELLOW DEFENSE COUNSEL. BUT I ASKED MS. BLAIZE AND WAS TOLD THAT THE CARROT OF COOPERATION WAS DANGLED BEFORE THOMAS JAMES DURING THAT INTERVIEW. I DON'T KNOW HOW SUBTLE THE OFFER MAY HAVE BEEN. AND SINCE THE EVENTS OF THAT INTERVIEW, WE NOW KNOW WE HAVE THIS ADDED COMPLICATION OF MR. JAMES, YOU KNOW, HAVING ESSENTIALLY BROKEN WITH MS. BLAIZE. AND WE'D JUST SUBMIT THAT THIS MAN IS NOT WORTHY OF BELIEF IN ADDING ANOTHER TWO OR THREE YEARS TO WALTER GLENN'S SENTENCE, YOUR HONOR. AND I THINK I'VE ADDRESSED BOTH LOSS AMOUNT AND LEADERSHIP ROLE THERE, YOUR HONOR.

THE COURT: I THINK YOU HAVE.

MR. HIPWELL: I'M LEFT WITH OBSTRUCTION OF JUSTICE. THANK YOU.

THE COURT: VERY GOOD.

REPORTER'S NOTE: (WHEREUPON, THERE WAS A BENCH CONFERENCE OFF THE RECORD.)

THE COURT: ALL RIGHT. MS. JONES, LET ME GIVE YOU, IF YOU WISH, AN OPPORTUNITY FOR A BRIEF RETORT.

MS. JONES: YES, SIR, YOUR HONOR.

LET ME TALK FIRST ABOUT THE IDEA OF WHETHER MR. GLENN WAS RESPONSIBLE FOR THE ENTIRETY OF THE ACTIVITY GOING FORWARD INTO 2015 AND LATE 2014 AFTER THE ARREST HERE IN THE MIDDLE DISTRICT, BECAUSE THERE ARE A COUPLE OF POINTS ON THAT.

IN THE FALL OF 2014 AFTER THE ARREST, THERE WAS CONTINUED ACTIVITY, AND THAT'S REFLECTED ON THE SPREADSHEET. ROUTING AND ACCOUNT NUMBERS FROM THE LAPTOP WERE USED IN THAT LATER ACTIVITY -- OR FROM THE THUMB DRIVE. SO APPARENTLY --

THE COURT: WHAT LATER ACTIVITY?

MS. JONES: THE ACTIVITY IN 2014.

THE COURT: OKAY.

MS. JONES: AFTER THE ARREST. SO AT THE ARREST THE THUMB DRIVE AND THE LAPTOP ARE SEIZED.

THE COURT: THE ARREST IN MASSACHUSETTS.

MS. JONES: NO, YOUR HONOR. I'M SORRY. THE ARREST IN THE MIDDLE DISTRICT IN SEPTEMBER OF 2014.

THE COURT: GOT IT.

MS. JONES: AND MR. GLENN'S POSITION IS AFTER THAT HE WAS OUT OF IT AND HE WASN'T INVOLVED ANYMORE. THE LAPTOP AND THE THUMB DRIVE WERE SEIZED AT THAT POINT. SOMEBODY MUST HAVE HAD INFORMATION STORED AS A BACK-UP SOMEWHERE, BECAUSE IN THE MONTHS THAT FOLLOWED, THE SAME ROUTING AND ACCOUNT NUMBERS WERE USED ON CHECKS IN THE FALL AFTER THAT.

THEN IN 2015 -- I KNOW I ALREADY MENTIONED THAT THERE WAS -- OH. NO, NOT IN 2015. IN VERY LATE 2014, IN -- ON NOVEMBER 7TH OF 2014, EVEN ONE OF THE SOCIAL SECURITY NUMBERS THAT WAS FROM THAT LAPTOP -- FROM THE THUMB DRIVE AND THE NAME ASSOCIATED WITH THAT WAS USED TO ATTEMPT TO CASH A COUNTERFEIT CHECK. AND THAT'S SHOWN ON UNITED STATES EXHIBIT 6E -- 6F, WHICH IS THE SPREADSHEET FOR 2014 WITH THE EXPLANATIONS ABOUT WHAT ASSOCIATES IT WITH OTHER CONDUCT. AND IT MATCHES UP WITH UNITED STATES EXHIBIT 10G.

AND I DON'T KNOW IF YOUR HONOR WILL RECALL FROM THE TESTIMONY OF THE EXPERT WHO LOOKED AT THE THUMB DRIVE, BUT THERE WAS A RECOVERED LIST OF NAMES AND SOCIAL SECURITY NUMBERS THAT WAS LIKE AN OLD

DELETED ONE THAT WAS NO LONGER BEING USED. THERE WAS ONE FROM THAT THAT WAS USED TO ATTEMPT TO CASH A CHECK IN NOVEMBER OF 2014, WHICH MEANS THAT THAT BACK-UP WAS SOMEWHERE AND SOMEBODY HAD ACCESS TO IT. THE ONLY PERSON WE KNOW WHO HAS ACCESS TO THAT KIND OF INFORMATION IS THE DEFENDANT.

THE COURT: LET ME ASK YOU THIS. IN THE COURSE OF THIS INVESTIGATION OR ANY OTHER INVESTIGATIONS BY THE UNITED STATES, HAVE THE SAME CHECKS, LIBERTY TAX SERVICE, SAME ROUTING NUMBERS COME UP IN ANY OTHER GOVERNMENT INVESTIGATIONS THAT YOU'RE AWARE OF?

MS. JONES: NOT THAT I'M AWARE OF, YOUR HONOR. I -- THAT'S NOT ANYTHING I'VE EVER, YOU KNOW, LOOKED INTO, YOU KNOW. BUT I AM NOT AWARE OF ANY LIBERTY TAX SERVICE CHECKS BEING USED.

NOW, OF COURSE LATER IN THE TRIP IN TEXAS IN 2014, IT WASN'T LIBERTY TAX SERVICE ANYMORE.

THE COURT: IN OTHER WORDS, MY POINT IS THAT -- I JUST WANT TO SATISFY MYSELF THAT THERE WAS NOTHING OUT THERE THAT WAS BEING USED PREVIOUS TO THIS INCIDENT BY ANY OTHER PERSONS THAT THE GOVERNMENT WAS AWARE OF THAT WOULD FORM THE BASIS OF A CRIMINAL INVESTIGATION BY THE SECRET SERVICE OR ANY GOVERNMENT AGENCY.

IT'S SORT OF LIKE, IN OTHER WORDS -- AND I HATE TO USE THIS ANALOGY. IT'S SORT OF LIKE CERTAIN TYPES OF, SAY, CHILD PORNOGRAPHY TYPE CASES; THAT ONE PERSON PUTS IT OUT THERE, IT SPREADS ALL OVER THE PLACE. IT DOESN'T NECESSARILY MEAN THAT THE PERSONS WHO DOWNLOAD IT ON THEIR COMPUTERS ARE THE ONES WHO CREATED IT OR SHARED IT. THEY MAY HAVE DOWNLOADED IT.

SO IN OTHER WORDS, MY QUESTION IS: IS IT POSSIBLE THAT MR. GLENN COULD HAVE RECEIVED THIS FROM SOME OTHER SOURCE, THAT HE DID NOT -- HE IS NOT RESPONSIBLE FOR CREATING THESE BAD CHECKS? I UNDERSTAND THAT THERE WERE SOME -- THERE WAS SOME DATA THAT WAS FOUND -- WAS IT FOUND -- I'M TALKING ABOUT THE FAKE -- WHAT IS IT? THE FAKE -- AT THE TRIAL I BELIEVE THERE WAS SOME EVIDENCE THAT HE DOWNLOADED OR OBTAINED SOME KIND OF A BOOK OR MANUAL ON HOW TO CREATE THESE FAKE CHECKS. AM I CORRECT ABOUT THAT?

MS. JONES: THAT MANUAL WAS ON THE THUMB DRIVE OR THE LAPTOP. I DON'T REMEMBER WHICH. THERE WAS A REAL FAKE ID GUIDE THAT WAS FOUND --

THE COURT: PRECISELY.

MS. JONES: -- ON ONE OF THEM, AND THERE WAS CHECK-MAKING SOFTWARE AS WELL. AND THEN THERE WERE

THE ID'S AND THE SIGNATURES --

THE COURT: SO THERE IS CLEARLY ENOUGH EVIDENCE TO SHOW THAT THE ABILITY TO PRODUCE, TO MAKE OR CREATE THOSE CHECKS WAS ON THAT DRIVE?

MS. JONES: YES, SIR, YOUR HONOR. THE ENTIRE THING WAS ON THE THUMB DRIVE AND THE LAPTOP. IF YOU HAD THOSE TWO THINGS, ALONG WITH PAPER AND ALL THE OTHER KINDS OF PHYSICAL THINGS YOU WOULD NEED, THEN YOU COULD MAKE THE ID'S AND THE CHECKS.

THE COURT: ALL RIGHT. AND FINALLY, I JUST WANT TO SATISFY MYSELF, BECAUSE ONE OF THE OTHER ISSUES HERE IS WHETHER THIS WAS A CONSPIRACY THAT INVOLVED FIVE OR MORE MEMBERS.

AS I UNDERSTAND THE CONDUCT OF THE UNIDENTIFIED MALE, THAT PERSON IS ALSO DEPICTED ON A SURVEILLANCE AT WAL-MART GOING IN, TENDERING A FALSE CHECK; IN FACT, A LIBERTY TAX SERVICE CHECK.

MS. JONES: THEY WEREN'T LIBERTY TAX SERVICE CHECKS AT THAT POINT, YOUR HONOR. THERE WERE A FEW DIFFERENT NAMES USED ON THEM AT THAT POINT.

THE COURT: HOW DO YOU ASSOCIATE THAT INDIVIDUAL'S CONDUCT WITH THIS DEFENDANT?

MS. JONES: OKAY. FIRST YOU HAVE THOMAS JAMES INVOLVED, WHO IS ONE OF HIS COCONSPIRATORS.

THE COURT: BECAUSE HE ACCOMPANIED THOMAS

JAMES. THERE IS SOME VIDEOS. RIGHT? YEAH.

MS. JONES: HE ACCOMPANIED THOMAS JAMES. WAL-MART ASSOCIATED THE CHECKS -- A BUNCH OF CHECKS FROM 2015 THAT THEY FOUND TO BE ASSOCIATED. AND THEY DID THAT BASED ON CHECK NUMBERS, ON GEOGRAPHIC LOCATIONS, ON ROUTING NUMBERS. THEY FOUND ALL OF THESE CHECKS HAD THE SAME ROUTING NUMBER, AND SO THAT WAS ONE REASON THAT ASSOCIATED THEM TOGETHER. THOMAS JAMES WAS ON MANY, MANY, MANY, MANY, IF NOT ALL, OF THEM FOUND TO BE CASHING THEM. THE UNIDENTIFIED MALE WAS FOUND TO BE CASHING THEM ON SOME AS WELL.

SO IN 2015 YOU HAVE ASSOCIATED CHECKS. WHAT WE'RE SAYING ASSOCIATES THE DEFENDANT IS A NUMBER OF THINGS, YOUR HONOR. IT'S CIRCUMSTANTIAL. WE DON'T HAVE THE DEFENDANT THERE. YOU HAVE THAT THE DEFENDANT HAS A HISTORY OF CHECK MAKING AND OF LEADING AN ORGANIZATION OF PEOPLE CASHING COUNTERFEIT CHECKS. THAT HISTORY WAS BACK IN 2010, AND IT'S THE SAME TYPE OF ACTIVITY GOING NOW. HE'S CAUGHT IN 2014 IN THE END OF IT WITH THOMAS JAMES, LARRY WALKER. THE VERY SAME CHECK CASHER IS DOING THE CHECK CASHING. IT WOULDN'T MAKE SENSE TO THINK THAT THOMAS JAMES COULD SUDDEN -- HE WOULD SUDDENLY KNOW HOW TO MAKE CHECKS AND -- OR THAT HE WOULD FIND SOMEBODY ELSE THAT COULD DO IT.

YOU ALSO HAVE THAT THAT ROUTING NUMBER FROM 2014 WAS ON THE LAPTOP FROM 2010, WAY BACK IN 2010 WHEN DEFENDANT WAS DOING THIS. SO THAT ASSOCIATES HIM AS WELL. YOU HAVE --

THE COURT: WELL -- GO AHEAD.

MS. JONES: YOU HAVE THAT IN LATE 2014 -- BEFORE YOU GET TO 2015, BUT IN LATE 2014 THERE ARE CHECKS ASSOCIATED TO THE SCHEME AFTER THE -- AFTER THEY HAD BEEN PICKED UP HERE IN THE MIDDLE DISTRICT, THE ACTIVITY CONTINUED IN 2014. DURING THAT TIME YOU HAVE ROUTING NUMBERS AND ACCOUNT NUMBERS FROM THE THUMB DRIVE, WHICH DEFENDANT IS ASSOCIATED WITH, STILL BEING USED. AND YOU ALSO EVEN HAVE A SOCIAL SECURITY NUMBER AND A NAME FROM ONE OF THE DOCUMENTS ON THE THUMB DRIVE BEING USED IN LATE 2014. SO THAT CONNECTS THE DEFENDANT TO CONTINUED ACTIVITY AFTER THE ARREST IN THE MIDDLE DISTRICT OF LOUISIANA.

THE COURT: OKAY. I'M PREPARED TO RULE AT THIS TIME. THANK YOU.

MS. JONES: THANK YOU, YOUR HONOR.

MR. HIPWELL: CAN I ADD ONE THING, YOUR HONOR, PLEASE? JUST ONE THING.

THE COURT: YES, VERY BRIEFLY.

MR. HIPWELL: VERY, VERY BRIEFLY. I BELIEVE THAT IT'S CLEAR THAT THE UNIDENTIFIED MALE THAT JOINS

WHATEVER HAPPENS WITH THOMAS JAMES, THAT EVENT OCCURS AFTER SEPTEMBER 2014 WHEN THEY'RE ARRESTED.

AND THE ONLY OTHER THING I CAN SAY IS, ONCE AGAIN, YOUR HONOR, CONNECTING THIS MATERIAL TO THE THUMB DRIVE IN NO WAY SAYS THAT MY CLIENT CONTINUED THAT ACTIVITY. YOU'VE GOT TWO OTHER PEOPLE OUT THERE. YOU'VE GOT THOMAS JAMES AND YOU'VE GOT LARRY WALKER.

THE COURT: AND I UNDERSTAND YOUR ARGUMENT.

MR. HIPWELL: ALL RIGHT, YOUR HONOR.

THE COURT: THE ISSUE FOR ME IS WHETHER THE EVIDENCE SUGGESTS THAT IT WAS REASONABLY FORESEEABLE THAT THIS CONDUCT WOULD THEN AND SOMEHOW, YOU KNOW, SORT OF MANIFEST ITSELF IN ATTEMPTS TO DEFRAUD OTHER PERSONS OR OTHER ENTITIES, WAL-MART, EVEN FOLLOWING HIS ARREST. I MEAN, WE SEE THAT ALL THE TIME OBVIOUSLY IN THESE TYPES OF CASES. AND I BELIEVE, MR. HIPWELL, THAT THAT'S WHAT WE HAVE HERE.

MR. HIPWELL: I WOULD ASK THE COURT, YOU KNOW, ULTIMATELY -- BECAUSE THERE ARE BATTLES THAT CAN BE LOST AND THEN THERE IS A WAR THAT WE WANT TO TRY TO WIN. AND ALL THAT WE ASK THE COURT TO DO WHEN IT CONSIDERS ALL OF THIS, THAT IT CONSIDERS IT IN A VERY MEASURED WAY, AWARE OF YOUR DISCRETION IN HOW TO WEIGH ALL THIS AND ADMITTED BY MS. JONES TO BE VERY

CIRCUMSTANTIAL EVIDENCE.

THE COURT: LET ME ASSURE YOU, MR. HIPWELL, THAT I HAVE DONE THAT. I KNOW MY PROBATION OFFICER HAS DONE THAT, AS I THINK REFLECTED IN THE PRESENTENCE INVESTIGATION REPORT AS WELL AS THE ADDENDUM THAT HAS BEEN PROVIDED. AND LET ME ASSURE YOU THAT I'VE SPENT A GREAT DEAL OF TIME ON THIS CASE GOING --

MR. HIPWELL: I KNOW, JUDGE.

THE COURT: -- REVIEWING ALL OF THE PLEADINGS THAT WERE FILED, REVIEWING EVIDENCE THAT WAS INTRODUCED AT TRIAL. AND I THINK I HAVE ENOUGH CERTAINLY TO RENDER A RULING ON THE GOVERNMENT'S FIRST OBJECTION AT THIS TIME.

MR. HIPWELL: THANK YOU, YOUR HONOR.

THE COURT: NOW, THE COURT WILL SUSTAIN THE GOVERNMENT'S OBJECTION, WHICH WILL ESSENTIALLY RESULT IN THE COURT OVERRULING THE DEFENDANT'S OBJECTION NO. 4. UNDER SECTION 3B1.1, IF A DEFENDANT IS A, QUOTE, ORGANIZER, LEADER, MANAGER OR SUPERVISOR IN ANY CRIMINAL ACTIVITY, CLOSE QUOTE, INVOLVING FIVE OR MORE PARTICIPANTS, THEN THE FOUR-LEVEL ENHANCEMENT MUST BE APPLIED.

UNITED STATES VS. HAWKINS, A CASE CITED BY THE DEFENDANT ITSELF, SUGGEST THAT, QUOTE, WHEN

DETERMINING WHETHER AN ENHANCEMENT APPLIES, A SENTENCING COURT SHOULD CONSIDER A NUMBER OF FACTORS SUCH AS THE EXPERTISE -- THE EXERCISE OF DECISION-MAKING AUTHORITY, THE RECRUITMENT OF ACCOMPLICES, AND TO CLAIM RIGHT TO A LARGER SHARE OF THE FRUITS OF THE CRIME AND THE DEGREE OF CONTROL AND AUTHORITY EXERCISED OVER OTHERS. AGAIN, THAT'S *UNITED STATES VS. HAWKINS,* WHICH I WILL NOT CITE, BUT IT'S SUFFICIENTLY CITED IN THE RECORD IN THIS CASE.

HERE THE EVIDENCE SUGGEST THAT -- OR INDICATES CERTAINLY TO MY SATISFACTION -- THAT GLENN WAS THE ACTUAL LEADER OF THIS CONSPIRACY FOR A NUMBER OF REASONS: ONE, THE EVIDENCE AT TRIAL SHOWED THAT, CONSISTENT WITH THIS -- THE CONDUCT OF A LEADER OF SUCH A CONSPIRACY, MR. GLENN NEVER RENTED CARS, HE NEVER ENTERED WAL-MART TO CASH CHECKS, BUT, IN FACT, THAT HE DIRECTED OTHERS INCLUDING MR. JAMES TO DO SO. AGAIN, THAT CLEARLY INDICATES TO THE COURT THAT MR. GLENN, THE DEFENDANT HERE, ACTED IN THE TRADITIONAL ROLE OF AN ORGANIZER OR LEADER OF SUCH A CONSPIRACY BECAUSE HE DID NOT WANT, OF COURSE, TO BE DEPICTED ON ANY VIDEO SURVEILLANCE SYSTEMS.

ALSO, THE EVIDENCE AT THE SUPPRESSION HEARING IN THIS CASE INDICATED THAT IT WAS MR. GLENN WHO CLAIMED THE THREE ENVELOPES OF MONEY THAT WERE

FOUND IN A BAG IN THE TRUNK OF THE RENTAL CAR. AGAIN, THAT TO THE COURT INDICATES THAT HE DID CONTROL THE FINANCES HERE, AT LEAST WITH RESPECT TO THOSE -- THAT SUM OF MONEY.

THIRD, THE COURT WILL NOT ENTIRELY DISCOUNT THE TESTIMONY OR, MORE SPECIFICALLY, THE STATEMENTS MADE TO THE CASE AGENT HERE BY MR. GLENN'S CO-DEFENDANT MR. JAMES THAT HE WAS THE ONE WHO ALWAYS GAVE THE CASH TO MR. GLENN WHO WOULD LATER DISBURSE THE CASH TO HIM AND MR. WALKER.

I UNDERSTAND THE DEFENDANT'S ARGUMENT THAT INDICATES THAT HE IMMEDIATELY AND ALWAYS GAVE CASH TO GLENN. AT LEAST WITH RESPECT TO THE MASSACHUSETTS INCIDENT, THERE IS NOTHING INDICATING THAT THE DEFENDANT WAS PRESENT AT THAT TIME, BUT WE SIMPLY DON'T HAVE ENOUGH EVIDENCE TO DETERMINE AT THIS POINT WHETHER HE WAS IN THE VICINITY OR -- SO I WON'T GIVE TOO MUCH WEIGHT TO THE TERM "IMMEDIATELY AND ALWAYS."

AGAIN, IN THE STATEMENT OFFERED BY MR. JAMES, I'M SATISFIED THAT THE STATEMENT INDICATING THAT HE WOULD -- THAT IS, MR. WALKER -- WOULD TYPICALLY RECEIVE ONE-FIFTH TO ONE-THIRD OF THE PROCEEDS IS SUFFICIENT. HE INDICATED THAT HE ANTICIPATED RECEIVING APPROXIMATELY $24,000 OUT OF $100,000 IN THE PROCEEDS. SO AGAIN, THAT STATEMENT

IS CONSISTENT WITH THAT OF SOMEONE WHO WAS NOT AN ORGANIZER BUT PERHAPS WORKING AT THE DIRECTION OF SOMEONE ELSE. MR. JAMES HIMSELF SPECIFICALLY IDENTIFIED THE DEFENDANT AS THE, QUOTE, ORCHESTRATOR OF THIS ACTIVITY.

NOW, I WILL ALSO FIND THAT THERE WERE, IN FACT, FIVE MEMBERS OF THE CONSPIRACY; THAT IS, MR. JAMES, MR. WALKER, MR. GLENN, MS. CARTEGENA AND THE FIFTH UNIDENTIFIED MALE. THE ACTIVITIES AND PATTERN OF CONDUCT OF THE UNIDENTIFIED MALE AND THE USE OF THE SAME TYPE OF INFORMATION TO DEFRAUD WAL-MART AND OTHER VICTIMS OF THIS CRIME IS CERTAINLY CONSISTENT WITH THE INFORMATION -- CONSISTENT WITH THE INFORMATION USED BY THE DEFENDANT AND HIS CO-DEFENDANTS HERE IN LOUISIANA. BUT ALSO, IT WAS INFORMATION THAT IS TIED TO THE THUMB DRIVE.

AND I WILL NOTE THAT THERE HAS BEEN NOTHING PRESENTED TO TIE THAT FLASH DRIVE OR COMPUTER TO ANYONE OTHER THAN THE DEFENDANT IN THIS CASE. THERE WAS NO INFORMATION THAT INDICATED THAT THERE WERE DOCUMENTS OR RECORDS ON THAT FLASH DRIVE THAT BELONGED TO MR. JAMES OR MR. WALKER OR WITH ANYONE ELSE. THE ONLY PERSON WHOSE DATA AND INFORMATION WAS CONTAINED ON THAT HARD DRIVE OR THE FLASH DRIVE WAS THE DEFENDANT'S. SO IT IS REASONABLE TO CONCLUDE

THAT IT WAS HIS THUMB DRIVE, AND THE INFORMATION ON THERE IS DIRECTLY ATTRIBUTABLE TO HIM.

I UNDERSTAND THE DEFENDANT'S ASSERTION THAT HE WAS MERELY A DRIVER HERE, THAT -- BUT I'M CONVINCED THAT HE WASN'T JUST A DRIVER FOR THE REASONS CITED, AND HE'S NOT COMPLETELY INNOCENT OF THIS. I AM SATISFIED THAT THE ACTIVITIES IN 2010 SHOW CLEARLY THAT THIS DEFENDANT WAS AWARE OF THIS TYPE OF FRAUDULENT ACTIVITY, IN ALL LIKELIHOOD PARTICIPATED ON MANY OCCASIONS WITH THIS TYPE OF ACTIVITY. AND ALTHOUGH THIS IS NOT ONE OF THOSE CASES WHERE WE HAVE THE BEST EVIDENCE THAT WE WOULD LIKE THAT -- VIDEOS OR CONFESSIONS AND THAT SORT OF THING, THAT'S NOT UNCOMMON IN CASES LIKE THIS. THE COURT MUST RELY ON CIRCUMSTANTIAL EVIDENCE WHEN TRYING TO DETERMINE THE ROLE OF DEFENDANTS LIKE MR. JAMES, AND SO -- EXCUSE ME, MR. GLENN.

AND I'M SATISFIED THAT THE TOTALITY OF THE CIRCUMSTANCES HERE, THE CIRCUMSTANTIAL EVIDENCE THAT HAS BEEN RECEIVED AND CONSIDERED BY THE COURT CLEARLY SHOW THAT HE WAS A LEADER OR AN ORGANIZER OF AN ORGANIZATION THAT INCLUDED AT LEAST FIVE PEOPLE. AND AGAIN, FOR THAT REASON THE GOVERNMENT'S OBJECTION NO. 1 IS SUSTAINED AND THE DEFENDANT'S OBJECTION NO. 4, WHICH OBJECTS TO THE DEFENDANT'S ROLE IN THIS

OFFENSE, IS OVERRULED.

NOW, WE HAVE OTHER MATTERS TO ATTEND TO HERE, BUT UNFORTUNATELY I'VE GOT LAWYERS WAITING FOR ME IN CONNECTION WITH A TRIAL I HAVE TO START NEXT WEEK. IT'S GOING TO TAKE ABOUT --

MR. HIPWELL: JUDGE, YOU'LL FORGIVE ME FOR JUST NOTING FOR THE RECORD.

THE COURT: I UNDERSTAND.

MR. HIPWELL: I HAVE TO NOTE MY OBJECTION.

THE COURT: YOU DON'T HAVE TO NOTE YOUR OBJECTION.

MR. HIPWELL: I THOUGHT I DID. THE FIFTH CIRCUIT HAS SOMETIMES SAID WE DON'T, AND SO --

THE COURT: WELL, YOUR OBJECTION -- WELL, LET'S PUT IT THIS WAY. YOUR OBJECTION IS NOTED ALREADY IN THE RECORD, BUT I UNDERSTAND YOUR POINT, MR. HIPWELL.

MR. HIPWELL: OBJECTING TO THE RULING. THANK YOU, YOUR HONOR.

THE COURT: SO WHAT WE'LL DO, WE'LL TAKE A VERY BRIEF TEN-MINUTE RECESS, AND I THINK WE CAN DISPOSE OF THESE ISSUES AND RESUME. I THINK WE HAVE JUST A FEW MORE ITEMS TO TAKE UP. OKAY?

MR. HIPWELL: THANK YOU, YOUR HONOR.

THE COURT: COURT IS IN RECESS.

(WHEREUPON, A RECESS WAS TAKEN.)

THE COURT: BE SEATED. MY APOLOGIES, FOLKS. IT TOOK A LITTLE LONGER THAN WE ANTICIPATED TO RESOLVE THE OTHER MATTER.

ALL RIGHT. WE'RE BACK ON THE RECORD IN THE CASE OF UNITED STATES VERSUS WALTER GLENN. AT THIS TIME THE COURT WILL TAKE UP THE DEFENDANT'S OBJECTION NO. 2. THE OBJECTION ADDRESSES INFORMATION CONTAINED IN PARAGRAPH 15 OF THE PRESENTENCE INVESTIGATION REPORT, MR. HIPWELL, AND YOU OBJECT TO THE INDICATION THERE THAT YOUR CLIENT USED A STOLEN SOCIAL SECURITY NUMBER TO CASH A COUNTERFEIT CHECK OR TO CAUSE A COUNTERFEIT CHECK TO BE -- IS THAT CORRECT?

MR. HIPWELL: THE OBJECTION NO. 2, I HOPED, YOUR HONOR, WAS A NONISSUE. I THINK THAT'S JUST THE MATTER -- THE PROBATION OFFICER AGREED THAT WAS JUST A PICTURE ASSOCIATED WITH THAT ONE CHECK BEING CASHED WAS THAT OF THOMAS JAMES AND IT WASN'T THE DEFENDANT. AND I THINK THAT -- I THINK WE -- I SEE MY ESTEEMED COLLEAGUE AND PROBATION OFFICER NODDING HIS HEAD VIGOROUSLY.

MS. JONES: YOUR HONOR --

THE COURT: YEAH, CORRECT. I THINK THAT'S RIGHT. BUT JUST SO THAT THE RECORD IS CLEAR -- DOES THE GOVERNMENT HAVE A POSITION ON THAT?

MS. JONES: YOUR HONOR, WE AGREE THAT MR. JAMES WAS THE PERSON WHO ACTUALLY CASHED THE CHECK AND IT WAS NOT THE DEFENDANT CASHING THE CHECK. SO WE AGREE WITH THE PROBATION OFFICE AND THE DEFENDANT.

MR. HIPWELL: THANK YOU.

THE COURT: SO THE OBJECTION IS SUSTAINED.

NEXT YOU OBJECTED TO -- YOUR OBJECTION NO. 3 IS AN OBJECTION TO INFORMATION IN PARAGRAPHS 38, 43, 46 AND 49 REGARDING THE SOPHISTICATED MEANS ENHANCEMENT IN THIS CASE.

LET ME GIVE YOU AN OPPORTUNITY, IF YOU WISH, TO ADDRESS THAT.

MR. HIPWELL: THE PROBATION OFFICER, YOUR HONOR, HAS GIVEN US A PARTIAL VICTORY, IN THAT BASICALLY HE AGREES THAT IT DOESN'T LOOK LIKE THE DEFENDANT LEFT THE JURISDICTION FOR THE PURPOSE OF EVADING LAW ENFORCEMENT. BUT IN CONSCIENCE I HAVE CONCEDED THAT SOPHISTICATED MEANS WERE USED IN THIS CONSPIRACY IN THE CASHING OF THE CHECKS. AND BECAUSE OF THAT, I BELIEVE THAT'S AN ISSUE THAT THE COURT CAN DEAL WITH VERY QUICKLY.

THE COURT: OKAY. WOULD THE UNITED STATES LIKE TO BE HEARD ON THAT ISSUE?

MS. JONES: YOUR HONOR, I THINK MR. HIPWELL

IS CONCEDING THE POINT THAT WE MAKE, WHICH IS THAT SOPHISTICATED MEANS WERE USED, THAT THE DEFENDANT INTENDED THOSE SOPHISTICATED MEANS TO BE USED, AND SO THE ENHANCEMENT SHOULD APPLY REGARDLESS OF RELOCATION OF THE SCHEME.

THE COURT: I THINK THAT'S RIGHT. THE OBJECTION IS OVERRULED. IT'S CLEAR UNDER SECTION 2B1.1 (B)(10)(A) THAT IF A -- AND I WON'T READ THAT STATUTE OR THAT PROVISION. BUT CLEARLY BASED UPON THE GUIDELINES DESCRIPTION OF THE TERM "SOPHISTICATED MEANS," IT CERTAINLY APPLIES IN THIS CASE. THE EVIDENCE AT THE TRIAL DEMONSTRATED THAT THE DEFENDANT USED CHECK-MAKING SOFTWARE, TEMPLATES, BANK CHECKS, IMAGES OF SIGNATURES AND HOLOGRAPHIC OVERLAYS TO CREATE FRAUDULENT CHECKS. THAT CLEARLY IS ACTIVITIES THAT THE COURT WOULD CHARACTERIZE AS A SOPHISTICATED MEANS. ACCORDINGLY, THE OBJECTION IS OVERRULED.

MR. HIPWELL: AND, YOUR HONOR, I ONLY STATE FOR THE RECORD, OF COURSE -- AND THIS IS LIKE A BROKEN RECORD -- WE ONLY SAY THAT WE ACKNOWLEDGE THAT THAT WAS USED IN THIS CONSPIRACY. WE ACKNOWLEDGE TO THE EXTENT THAT THE DEFENDANT PARTICIPATED IN THE FRUITS OF THIS, SO FORTH, BUT, YOU KNOW --

THE COURT: YOU'RE NOT CONCEDING THAT HE WAS THE ONE WHO --

MR. HIPWELL: EXACTLY, THAT DID THE MAKING.

THE COURT: -- ACTUALLY CREATED THE IMAGES AND CREATED ALL THE CHECKS. AND I UNDERSTAND THAT.

MR. HIPWELL: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. NEXT WE HAVE OBJECTION -- LET'S SEE -- NO. 5.

MR. HIPWELL: YES, YOUR HONOR. THAT'S THE OBSTRUCTION OF JUSTICE ONE, IS IT NOT?

THE COURT: YES. THIS IS THE OBJECTION TO INFORMATION CONTAINED IN PARAGRAPHS 30, 42, 43, 46 AND 79. LET ME GIVE YOU AN OPPORTUNITY TO BE HEARD.

MR. HIPWELL: THANK YOU, JUDGE. PROBATION OFFICER GATSIOS ENDORSED THREE OF THE FOUR OBJECTIONS THAT WE MADE IN THAT CASE. AND FOR THAT WE ARE VERY, VERY GRATEFUL, YOUR HONOR. OF COURSE WE KNOW THE COURT IS NOT BOUND BY THAT. BUT WE ASK THE COURT TO AGREE WITH THAT AND ALSO TO GRANT THE FINAL ONE, WHICH FRANKLY IS -- IF YOU LOOK AT PSR DOCUMENT NO. 248, PARAGRAPH 30, THAT'S THE FIRST BULLET POINT OF THOSE FOUR MATTERS, ALL OF WHICH ARE ALLEGED, OF COURSE, TO HAVE OCCURRED DURING THE -- DURING THE BOND REVOCATION HEARING BEFORE MAGISTRATE JUDGE BOURGEOIS IN THE SPRING OF 2017. AM I RIGHT ON 2017? WHATEVER IT WAS, YOUR HONOR, WHATEVER YEAR. I APOLOGIZE IF I'M OFF A YEAR.

THE BULLET POINT READS, ESSENTIALLY, THE TESTIMONY WAS THAT THE DEFENDANT MAY HAVE THOUGHT HE NEEDED PERMISSION TO TRAVEL OUTSIDE OF CONNECTICUT OR THE MIDDLE DISTRICT OF LOUISIANA, QUOTE, IN ORDER TO COMMIT A CRIME. WELL, YOUR HONOR, WE SUBMIT IT WAS A NONSENSICAL, NONMATERIAL, INACCURATE STATEMENT IMMEDIATELY, JUDGE, IMMEDIATELY CORRECTED BY THE PROSECUTOR ON CROSS-EXAMINATION. SHE SAID, "IF THE UNITED STATES PROBATION SAID THAT YOU CALLED TO REPORT THAT YOU WERE TRAVELING FROM CONNECTICUT TO FLORIDA," HIS ANSWER WAS: "I COULD BE MISTAKEN."

NOW, FRANKLY, YOUR HONOR, I THINK I CONTRIBUTED TO THE ISSUE. I WAS NOT EVEN REPRESENTING MR. GLENN IN THE FALL OF 2015 WHEN MAGISTRATE JUDGE BOURGEOIS RELEASED HIM ON BOND AND AUTHORIZED HIM TO GO TO FLORIDA TO TAKE CARE OF THAT LONG OUTSTANDING 16- OR 18-YEAR-OLD ABSCONDING ISSUE. SO IN ADDITION, YOUR HONOR, TO ADMITTING TO NOT BEING THE SHARPEST KNIFE IN THE DRAWER, I THINK THAT I WAS NOT AS WELL VERSED WITH THAT PART OF THIS CASE. OF COURSE WALTER GLENN HAD PERMISSION TO TRAVEL FROM CONNECTICUT TO FLORIDA.

BUT THE MARCH 2017 REVOCATION HEARING ESTABLISHED, YOUR HONOR, WAS THAT WALTER GLENN DID NOT HAVE PERMISSION SUBSEQUENTLY TO TRAVEL TO FLORIDA

AND THAT COMBINED LAS VEGAS AND LOS ANGELES TRIP. AT MY URGING, YOUR HONOR, IF YOU READ THAT HUNDRED-AND-SOME-ODD-PAGE PROCEEDINGS, WALTER GLENN CONFESSED TO THAT. AND HE WAS APPROPRIATELY ADDRESSED AND DRESSED DOWN BY THE MAGISTRATE JUDGE AND GIVEN ADDITIONAL RESTRICTIONS INCLUDING AN ANKLE BRACELET.

NOW, YOUR HONOR, WE JUST SUBMIT IT WOULD BE PARTICULARLY CRUEL TO NOW ADD ANOTHER YEAR OR SO -- AND YOU'VE HEARD MY ARGUMENT, THE FURTHER DOWN THE GUIDELINES GO -- AND OBVIOUSLY AT LEVELS THAT HE'S LOOKING AT NOW -- THE GREATER THESE ENHANCEMENTS BECOME. WE WERE AT -- I ACCEPT THE PROBATION OFFICER'S FINDING IN THAT PARTICULAR CASE OR CASES WHICH SAY, YES, A BOND HEARING CAN BE A MATERIAL PART OF THE TRIAL. BUT STILL, THIS PARTICULAR STATEMENT WAS JUST NOT MATERIAL TO WHAT WAS HAPPENING IN THE CASE. AND IT WAS A MISTAKE THAT I BELIEVE WE ALL -- I CERTAINLY CONTRIBUTED TO. AND IT'S JUST SIMPLY NOT NECESSARY TO PILE ON THOSE ADDITIONAL TWO OFFENSE LEVELS. WE WOULD REALLY APPRECIATE RELIEF IN THAT CASE, YOUR HONOR.

THE COURT: MS. JONES?

MS. JONES: YES, YOUR HONOR. I THINK THAT WHAT MR. HIPWELL IS ADDRESSING IS A LITTLE BIT OFF

THE POINT. THE POINT IS THAT THE DEFENDANT GOT ON THE STAND, AND WHEN HE -- AND HE DID ADMIT THAT HE HAD TRAVELED BOTH TO NEVADA AND CALIFORNIA AND TO MIAMI WITHOUT PERMISSION OF THE COURT. HE WAS ASKED: "WHY DIDN'T YOU GET PERMISSION?"

AND HE SAID, "I DIDN'T KNOW I HAD TO." THEN HE WAS -- THAT WAS WITH REGARD TO THE MIAMI TRIP.

THEN WITH REGARD TO CALIFORNIA AND NEVADA, HIS COUNSEL SAID, "WELL, SO DID YOU FORGET ABOUT YOUR REQUIREMENT AGAIN AS TO THAT?"

AND HE SAID, "YES, I FORGOT." SO HIS TESTIMONY WAS HE DID NOT KNOW THAT HE HAD TO GET PERMISSION BEFORE THOSE TRIPS.

JUDGE BOURGEOIS FOUND THAT THAT WAS NOT CREDIBLE. HE SAID, "I DON'T BUY THAT." HE SAID, "I THINK YOU VIOLATED MY CONDITION AND I THINK YOU KNEW THAT YOU HAD THAT CONDITION." THE MAGISTRATE POINTED OUT THAT THE DEFENDANT HAD BEEN ADVISED IN WRITING OF THAT CONDITION, THAT HE HAD BEEN TOLD IN OPEN COURT AT TWO DIFFERENT PROCEEDINGS THAT HE HAD THAT CONDITION, AND THAT HE HAD, IN FACT, ABIDED BY IT WHEN HE WENT TO FLORIDA ON A DIFFERENT OCCASION TO TAKE CARE OF HIS PROBATION WARRANT.

SO I THINK IT'S CLEAR ON THE RECORD THAT JUDGE BOURGEOIS FOUND THAT HE WAS NOT TRUTHFUL WHEN

HE SAID HE DIDN'T KNOW THAT HE HAD THAT CONDITION.

THE COURT: LET ME ASK YOU THIS, MS. JONES. I SEEM TO RECALL THAT THERE MAY HAVE BEEN A TIME WHEN HE DID, IN FACT, SEEK PERMISSION FROM HIS PRETRIAL SERVICES OFFICER. CORRECT?

MS. JONES: YES, YOUR HONOR. AND THAT'S THE LAST THING I MENTIONED, IS THAT JUDGE BOURGEOIS --

THE COURT: AND THAT WAS BE -- YES.

MS. JONES: THAT WAS BEFORE. WHEN HE WENT TO FLORIDA TO TAKE CARE OF HIS PROBATION VIOLATION WARRANT, HE DID, IN FACT, CONTACT PROBATION AND DISCUSS THE ARRANGEMENTS AND GET ALL OF THAT CLEARED. BUT THEN LATER WHEN HE MADE TWO ADDITIONAL TRIPS, HE DIDN'T GET THAT PERMISSION. AND SO THAT'S ONE OF THE REASONS WHY JUDGE BOURGEOIS SAID HE DID NOT BELIEVE THAT THE DEFENDANT DIDN'T KNOW HE WAS REQUIRED TO DO THAT.

AND OF COURSE THAT IS MATERIAL. WHEN THE JUDGE IS TRYING TO FIGURE OUT, DO I REVOKE THIS MAN'S BOND, YOU HAVE TO KNOW IF HE INTENTIONALLY VIOLATED HIS CONDITION OR IF HE DIDN'T. AND SO IT'S CLEARLY MATERIAL TO WHAT THE JUDGE HAD BEFORE HIM IN THE BOND REVOCATION HEARING.

THE COURT: OKAY. THANK YOU, MS. JONES.

THE COURT IS PREPARED AT THIS TIME TO RULE

ON DEFENDANT'S OBJECTION NO. 5.

SECTION 3C1.1 OF THE U.S. SENTENCING GUIDELINES CLEARLY CONTEMPLATES AN ENHANCEMENT FOR, QUOTE, PROVIDING MATERIALLY FALSE INFORMATION TO A JUDGE OR MAGISTRATE JUDGE. THE RECORD IS ALSO CLEAR THAT THE TESTIMONY OF THE DEFENDANT AT THE REVOCATION HEARING FRANKLY WAS CHARACTERIZED BY THE MAGISTRATE JUDGE AS FALSE AND NOT CREDIBLE. THE MAGISTRATE JUDGE SPECIFICALLY SAID, QUOTE, I DON'T BUY THE IDEA THAT YOU DIDN'T KNOW THAT YOU NEEDED PERMISSION TO TRAVEL, CLOSE QUOTE.

NOW, IT'S -- AS I APPRECIATE THE DEFENDANT'S FIRST CLAIM AT THAT HEARING IS THAT HE BELIEVED THAT HE WAS REQUIRED TO OBTAIN THE PERMISSION OF THE PROBATION OFFICER TO TRAVEL TO COMMIT A CRIME. HOW NONSENSICAL IS THAT? THAT'S COMPLETELY NONSENSICAL. UNDER WHAT CIRCUMSTANCES WOULD A PROBATION OFFICER GIVE ANYBODY AN OPPORTUNITY -- PERMISSION TO COMMIT A CRIME? I MEAN, SO IT JUST DOESN'T MAKE ANY SENSE, AND SO I FIND MYSELF IN AGREEMENT WITH THE MAGISTRATE JUDGE THAT THE DEFENDANT WAS UNTRUTHFUL. ACCORDINGLY, THE ENHANCEMENT UNDER THE 3C1.1 WILL APPLY HERE AND THE OBJECTION IS OVERRULED.

LET'S MOVE ON NOW TO OBJECTION NUMBER -- DEFENDANT'S OBJECTION NO. 6. THAT, MR. HIPWELL, IS

AN OBJECTION TO PARAGRAPHS 49, 54 AND 79 OF THE PRESENTENCE INVESTIGATION REPORT; SPECIFICALLY THE ASSERTION THAT THERE WAS IMPROPER ASSIGNMENT OR CONSIDERATION OF CERTAIN CRIMINAL HISTORY POINTS. I THINK THE PROBATION OFFICER HAS ADDRESSED THAT. I DON'T THINK I NEED TO HEAR ANY ARGUMENT ON THAT. THE PROBATION OFFICER AGREED WITH YOU, SO THAT'S NOT BEEN COUNTED IN THIS FINAL CALCULATION.

ANYTHING FURTHER ON THAT, MR. HIPWELL?

MR. HIPWELL: NO, YOUR HONOR. THANK YOU. AND AGAIN, BEATING THE DEAD HORSE, WE ARE TRAGICALLY UPSET THAT WE HAVE LOST THE OBSTRUCTION OF JUSTICE MATTER, YOUR HONOR. FOR ALL THAT THE COURT HAS SAID FOR NO. 5 THERE, WE SUBMIT IT WAS A MISTAKE AND THAT I CONTRIBUTED TO IT. BUT I UNDERSTAND THE COURT HAS RULED. JUST WE RESPECTFULLY NOTE OUR OBJECTION. THANK YOU, JUDGE.

THE COURT: OKAY. NOW, YOUR OBJECTION -- THE DEFENDANT'S OBJECTION; THAT IS, NUMBER --

MR. HIPWELL: 7?

THE COURT: THAT WAS -- NO. 6 ACTUALLY IS NEXT. AND THAT'S AN OBJECTION TO INFORMATION CONTAINED IN PARAGRAPHS 49, 54 AND 79 OF THE PRESENTENCE INVESTIGATION REPORT IN WHICH YOU CLAIM THAT THE 1999 CONVICTION FOR AUTHORIZED POSSESSION OF

IDENTIFICATION CARDS SHOULD NOT BE CALCULATED IN THE CRIMINAL HISTORY POINTS. CLEARLY THE PROBATION OFFICER AGREED WITH YOU ON THAT FOR THE REASONS CITED, AND SO THE COURT WILL SUSTAIN THE OBJECTION.

MR. HIPWELL: THANK YOU, YOUR HONOR.

THE COURT: NEXT, OBJECTION NO. 7; THAT IS, DEFENDANT'S OBJECTION NO. 7 PERTAINS TO INFORMATION IN THOSE SAME PARAGRAPHS, 49, 54 AND 79, AGAIN REGARDING THE ADDITION OF TWO CRIMINAL HISTORY POINTS.

AGAIN, AS REFLECTED IN THE REPORT, THE PROBATION OFFICER AGREES WITH YOUR OBJECTIONS FOR THE REASONS STATED, WHICH THE COURT WILL ADOPT, AND SO YOUR OBJECTION IS SUSTAINED.

MR. HIPWELL: THANK YOU, YOUR HONOR.

THE COURT: THE ONLY THING LEFT, GENTLEMEN, WITH RESPECT TO THE GUIDELINES IS THE ISSUE OF LOSS. AND LET ME -- AND REALLY, THAT WAS -- THE COURT HAS NOT YET ADDRESSED THAT ISSUE. THAT IS THE -- INCLUDED IN YOUR OBJECTION NO. 1 HERE.

SO LET ME GIVE YOU AN OPPORTUNITY TO BE HEARD ON THAT, MR. HIPWELL.

MR. HIPWELL: YOUR HONOR, I WOULD BE SUMMARIZING MUCH OF WHAT I SAID IN TAKING THE COURT'S TIME FOR THE FIRST ONE, SO I WON'T -- WHICH I ARGUED

ALONG WITH ROLLING OFFENSE. I'D JUST ASK THE COURT TO PLEASE KEEP IN CONSIDERATION WHEN YOU GIVE THE ULTIMATE SENTENCE AND WHEN YOU'RE ABOUT TO ADOPT THE GUIDELINES -- AND IF YOU DO INDEED FIND IT AT $2 MILLION -- THAT -- TWO MILLION PLUS -- THAT IN POINT OF FACT THERE IS A LOT OF DIFFERENT QUALITY OF EVIDENCE. AND I ASK THE COURT TO TAKE THAT INTO CONSIDERATION ULTIMATELY IN THE SENTENCE. BUT OTHERWISE I SUBMIT IT ON THE ARGUMENT THAT I'VE ALREADY MADE, YOUR HONOR. THANK YOU.

THE COURT: THANK YOU.

MS. JONES, ANYTHING?

MS. JONES: YOUR HONOR, WE WOULD -- I WOULD SUBMIT IT ON MY PRIOR ARGUMENT AS WELL. I THINK WE WENT OVER ALL OF THE REASONS WHY THE DEFENDANT WAS RESPONSIBLE FOR THE CONDUCT THROUGHOUT 2014 BEGINNING BEFORE THE STOP IN MASSACHUSETTS AND EXTENDING ALL THE WAY THROUGH 2015 AND THAT IT WAS AT THE VERY LEAST REASONABLY FORESEEABLE TO HIM.

THE COURT: THANK YOU.

MS. JONES: THANK YOU.

THE COURT: THE COURT WILL OVERRULE THE DEFENDANT'S OBJECTION ON -- NO. 1 ON THE LOSS AMOUNT. DEFENDANT ARGUES THAT THE LOSS AMOUNT SHOULD BE CONFINED TO THE APPROXIMATELY $111 THAT FORM THE

BASIS OF THE COURT -- THE, QUOTE, TEXAS FRAUD OR THE TEXAS -- THE FRAUD COMMITTED ON THE SO-CALLED TEXAS TRIP. HOWEVER, THE COURT HAS RECEIVED CREDIBLE EVIDENCE FROM THE WAL-MART FRAUD INVESTIGATOR WHO HAS LINKED A VARIETY OF SOURCES, DATA AND INFORMATION, INCLUDING VIDEO SURVEILLANCE AND CHECK ROUTING NUMBERS TO INFORMATION FOUND ON THE LAPTOP AND THUMB DRIVE ATTRIBUTABLE TO THE DEFENDANT IN THIS CASE.

THE ANALYSIS BY WAL-MART INCLUDED 402 FRAUDULENT CHECKS THAT WERE ACTUALLY CASHED WHICH TOTALED $949,587.87; 431 CHECKS THAT WERE PRESENTED TO WAL-MART BUT WERE NOT CASHED TOTALING $1,067,929.55, AND THE ONE CHECK FOUND OR USED IN MARYLAND -- AND THAT WAS THE SUBJECT OF THE JANUARY 31, 2014 STOP -- THAT TOTALED $2,950. AND SO I'M SATISFIED THAT BASED UPON THE EVIDENCE IN THE CASE, SOME OF WHICH MAY BE PROPERLY CHARACTERIZED AS CIRCUMSTANTIAL, OTHERS DIRECT EVIDENCE -- I'M SATISFIED THAT UNDER THE POLICY OF THE GUIDELINES, THE LOSS AMOUNT ATTRIBUTABLE TO THE DEFENDANT UNDER THE GUIDELINES IN THIS CASE IS $2,020,467.42.

AND AGAIN, IT WAS -- BASED UPON THE DEFENDANT'S CONDUCT, I FIND THAT IT WAS REASONABLY FORESEEABLE THAT THE CHECKS WOULD BE USED IN THIS MANNER AND USED IN AN ATTEMPT TO DEFRAUD WAL-MART.

AND SO AGAIN, THE DEFENDANT'S OBJECTION NO. 1, TO THE EXTENT IT PERTAINS TO THE ACTUAL LOSS AMOUNT THAT MUST BE CONSIDERED AT SENTENCING, IS OVERRULED.

I THINK THAT DISPOSES OF ALL OF THE OBJECTIONS. IS THAT CORRECT?

MS. JONES: YES, YOUR HONOR.

AND, YOUR HONOR, THIS MAY NOT BE NECESSARY, BUT I WANTED TO CONFIRM THAT THE ATTACHMENTS TO MY RESPONSE TO THE DEFENDANT'S SENTENCING MEMORANDUM WOULD BE CONSIDERED EVIDENCE FOR PURPOSES OF SENTENCING. AND I DIDN'T KNOW IF I NEEDED TO INTRODUCE THOSE OR IF THE COURT CONSIDERS THAT AS EVIDENCE.

THE COURT: I CONSIDER THAT TO BE ATTACHMENTS TO YOUR MOTION. I THINK WE HAVE THAT. DO WE HAVE THOSE? I DON'T THINK I HAVE THOSE. HAVE THOSE ALREADY BEEN SUBMITTED?

MS. JONES: THEY WERE ATTACHED WITH THE --

THE COURT: OKAY. SO THOSE ARE ALREADY IN THE RECORD.

MS. JONES: -- THE MOTION.

THE COURT: WERE ATTACHMENTS TO YOUR MOTION. THAT'S FINE.

MS. JONES: YES, SIR, YOUR HONOR.

MR. HIPWELL: FORGIVE ME, MS. JONES.

MINE ARE AS WELL, ARE THEY NOT, YOUR HONOR?

THE COURT: YES. I HAVE COPIES OF YOURS AS WELL.

ALL RIGHT. MR. GLENN, YOU MAY RETURN TO THE PODIUM.

THE COURT WILL ADOPT THE -- BOTH THE UNDISPUTED FACTUAL STATEMENTS CONTAINED IN THE PRESENTENCE INVESTIGATION REPORT AS WELL AS THE RULINGS AND IN CONSIDERATION AS -- IN ADDITION TO THAT, IN CONSIDERATION OF THE COURT'S RULINGS, I FIND THAT THE GUIDELINES IN THIS CASE CALL FOR THE FOLLOWING: THE DEFENDANT'S TOTAL OFFENSE LEVEL IS 34, THE DEFENDANT'S CRIMINAL HISTORY CATEGORY IS I. THE DEFENDANT IS SUBJECT TO A TERM OF IMPRISONMENT OF 51 TO 180 MONTHS ON COUNTS ONE AND TWO AND A MANDATORY CONSECUTIVE TERM OF 24 MONTHS ON COUNT THREE.

THE DEFENDANT IS NOT ELIGIBLE FOR PROBATION. A FINE IN THE SUM OF $35,000 TO $350,000 MAY BE IMPOSED. RESTITUTION IN THE SUM OF $949,587.87 MUST BE IMPOSED. AND THE DEFENDANT IS REQUIRED TO PAY THE $300 SPECIAL ASSESSMENT REPRESENTING $100 FOR EACH OF THE THREE COUNTS OF THE INDICTMENT TO WHICH HE HAS BEEN CONVICTED.

AND AGAIN, FOR PURPOSES OF CLARIFICATION,

THE TERM OF IMPRISONMENT UNDER THE GUIDELINES HERE WOULD BE 151 MONTHS TO 180 MONTHS. I MAY HAVE MISSPOKEN EARLIER.

NOW, MR. GLENN, LET ME ASSURE YOU THAT I HAVE READ THE SENTENCING MEMORANDUM, WHICH IS VERY, VERY DETAILED AND INDEED VERY PERSUASIVE THAT HAS BEEN FILED ON YOUR BEHALF BY MR. HIPWELL AND MR. BÉLANGER. I'VE ALSO RECEIVED AND READ SEVERAL LETTERS THAT HAVE BEEN SUPPLIED ON YOUR BEHALF. I HAVE READ LETTERS FROM MR. MARCUS WILLIS. I HAVE ONE FROM YOUR -- MR. CARLOS LAWSON AND THEN I HAVE ONE FROM YOUR MOTHER, MRS. JOSEPHINE GLENN. LET ME ASSURE YOU THAT I'VE READ THOSE LETTERS AND WILL CONSIDER THE INFORMATION CONTAINED IN THOSE LETTERS WHEN IMPOSING SENTENCE IN YOUR CASE.

BUT LET ME GIVE YOU AN OPPORTUNITY AT THIS TIME, SIR, TO TELL ME ANYTHING THAT YOU THINK IS IMPORTANT FOR ME TO KNOW OR TO CONSIDER WHEN IMPOSING SENTENCE.

THE DEFENDANT: DO YOU -- AM I FREE TO SPEAK?

THE COURT: YES.

THE DEFENDANT: WILL YOU HOLD ANYTHING AGAINST ME IF I JUST SPEAK?

THE COURT: I VERY MAY WELL. IT DEPENDS.

IF YOU SPEAK TO ME IN A DISRESPECTFUL WAY AND A DISRESPECTFUL TONE OR IF YOU TELL ME ANYTHING THAT I BELIEVE TO BE PATENTLY UNTRUE, I'M GOING TO CALL A TIME-OUT AND ASK YOU TO SPEAK TO YOUR LAWYER SO THAT HE CAN COUNSEL YOU. BUT OTHERWISE YOU'RE FREE TO TELL ME ANYTHING YOU'D LIKE FOR ME TO KNOW.

THE DEFENDANT: I'M SORRY. NO, I JUST WANTED TO TELL MY MOM THAT I LOVED HER.

THE COURT: SURE. ABSOLUTELY.

THE DEFENDANT: MOM, I LOVE YOU. THANK YOU FOR BEING HERE FOR ME, YOU KNOW. DON'T WORRY, MOM, AND THANK YOU FOR BEING HERE.

AND ALSO I WANTED TO SAY THANK YOU TO MR. HIPWELL FOR DOING EVERYTHING HE COULD TO DEFEND ME.

I KNOW THAT I'M GOING TO BE SENTENCED. I ACCEPT EVERYTHING THAT YOU SAID TO ME TODAY. I TOTALLY ACCEPT EVERYTHING THAT'S HAPPENING. BUT I WANT YOU TO KNOW THAT I KNOW THAT I'M GOING TO BE PUNISHED OR THIS IS GOING TO BE CONSIDERED A PUNISHMENT. BUT I WANT YOU TO KNOW THAT I DON'T CONSIDER THIS A PUNISHMENT. I TRULY CONSIDER IT'S GOING TO BE AN EXPERIENCE.

WHEN I GET TO WHEREVER I'M GOING, IF OFFERED, I'M GOING TO BE SEARCHING TO LEARN ANOTHER LANGUAGE. IF VOCATIONAL CLASSES ARE PROVIDED, I'M

GOING TO TAKE THOSE VOCATIONAL CLASSES SO THAT WHEN I DO GET OUT I'LL BE ABLE TO UTILIZE WHATEVER I LEARNED IN THOSE VOCATIONAL CLASSES. IF IT'S A TRADE, IF IT'S A SECONDARY LANGUAGE, I'LL BE ABLE TO UTILIZE THAT ALSO. SO I THANK YOU FOR ALLOWING ME TO SPEAK HERE TODAY. I TOTALLY ADMIT MY GUILT. WHATEVER YOU SAID HERE TODAY, IT'S -- I ADMIT TO EVERYTHING THAT HAPPENED AND -- I DON'T KNOW WHAT ELSE I CAN SAY. BUT THANK YOU SO MUCH FOR ALLOWING ME TO SPEAK AND TO SAY MY THANKS TO MR. HIPWELL AND THE FACT THAT I LOVE MY MOM. THANK YOU SO MUCH.

THE COURT: THANK YOU, MR. GLENN.

MR. HIPWELL?

MR. HIPWELL: YOUR HONOR, BRIEFLY.

AS YOU KNOW, I ADDRESSED IT IN THE LAST SECTION OF MY SENTENCING MEMO. BUT WALTER GLENN HAS A LOT OF FAULTS, YOUR HONOR. THEY HAVE BEEN POINTED OUT THROUGH THESE WHOLE PROCEEDINGS. BUT HE IS A REDEEMABLE PERSON. WE'VE SEEN -- YOU SEE THAT PICTURE OF HIM OPENING THAT HAIR SALON BACK IN 2013. WE KNOW THAT HE -- THAT HE CAN DEAL WITH REAL ESTATE AND HAS DONE SO IN THE PAST. HE'S EXPRESSED TO YOU HERE A DESIRE TO PERHAPS LEARN A SECONDARY LANGUAGE. HE'S TOLD ME THE TRADE HE MIGHT BE INVOLVED WITH WOULD BE ANY KIND OF WELDING OR PIPEFITTING OR TO

THAT EFFECT THAT HE WOULD LIKE TO LEARN WHILE HE IS INCARCERATED.

WE -- AND I THINK PART OF HIS FEAR IS, YOU KNOW, HE HAS MAINTAINED HIS CONNECTION TO THE TEXAS TRIP, AND YOUR HONOR HAS RULED THAT HE'S RESPONSIBLE FOR OTHERWISE. THAT IS A MATTER OF RECORD, AND WE JUST HAVE -- ARE LIVING WITH IT. AND I THINK HE'S TRYING TO TELL YOU THAT THAT IS WHAT HE ACCEPTS.

THERE WILL BE AN APPEAL ON THIS MATTER, YOUR HONOR, FOR WHATEVER IT WILL GO. AND WE DO HAVE THAT *BYRD* DECISION TO CONSIDER. BUT I WANT AND DO ASK THE COURT TO CONSIDER SOME MERCY. WE HAVE LOST EVERY GUIDELINE PLACE HERE, EVERY GUIDELINE OBJECTION. I DO BELIEVE THAT THAT IS A BIT OVERSTATING THE OFFENSE HERE.

THE COURT IS NOT ALLOWED TO ENGAGE IN RULE 11 PLEA BARGAINING, BUT THERE WAS TALK BEFORE THIS TRIAL THAT, FRANKLY WITHOUT GOING IN ANY GREATER DETAIL, WOULD HAVE INVOLVED LESS THAN HALF OF WHAT THE GUIDELINE EXPOSURE IS NOW. HAVING SAID THAT, THE QUESTION I BELIEVE -- AND I'M NOT BEING DISRESPECTFUL ABOUT THIS, YOUR HONOR. BUT I BELIEVE THE COURT NEEDS TO CONSIDER, FOR HAVING EXERCISED HIS RIGHT TO GO TO TRIAL, HOW MUCH MORE THAT SHOULD HE BE PUNISHED. IS IT INDEED DOUBLE OR EVEN MORE FOR

HAVING GONE TO TRIAL. AND WE ARE BEGGING THE COURT NOT TO DO THAT. WE'RE ASKING THE COURT FOR SOME MERCIFUL CONSIDERATION FOR A SLIGHT VARIANCE BELOW THE GUIDELINE EXPOSURE. ON THE BASIS OF THAT, I WILL TENDER, YOUR HONOR.

THE COURT: THANK YOU, MR. HIPWELL. AND TO BE CLEAR, LET ME JUST TELL YOU -- YOU KNOW THIS. YOU'VE HANDLED A NUMBER OF CASES IN MY COURT. BUT FOR THE BENEFIT OF MR. GLENN, LET ME JUST ASSURE YOU, MR. GLENN, I WILL IMPOSE NO HARSHER SENTENCE IN THIS CASE SIMPLY BECAUSE YOU HAVE EXERCISED YOUR RIGHT TO GO TO TRIAL. IT'S A RIGHT THAT IS -- YOU KNOW, OUR FOUNDING FATHERS PROVIDED TO ALL CITIZENS WHO ARE ACCUSED OF A CRIME. AND IT WOULD BE COMPLETELY IMPROPER, DARE I SAY UNCONSTITUTIONAL EVEN PERHAPS, FOR THE COURT TO IMPOSE A HIGHER SENTENCE JUST BECAUSE A CITIZEN EXERCISES A FUNDAMENTAL RIGHT. SO LET ME ASSURE YOU THAT THAT WILL NOT PLAY ANY ROLE, WILL NOT HAVE A BEARING ON MY DECISION.

MR. HIPWELL: THANK YOU, YOUR HONOR.

THE COURT: MS. JONES, ANYTHING FROM THE GOVERNMENT?

MS. JONES: YOUR HONOR, I CAN DO IT FROM HERE. WE WOULD JUST ASK THE COURT TO IMPOSE A GUIDELINE SENTENCE. I THINK THAT'S APPROPRIATE IN

THIS CASE. YOUR HONOR SAT THROUGH THE WHOLE TRIAL. YOU KNOW THE EXTENSIVENESS OF THE CRIMINAL ACTIVITY AND THE DEFENDANT'S PAST HISTORY DOING THIS VERY SAME KIND OF ACTIVITY. AND WE THINK THAT THE GUIDELINE SENTENCE IS APPROPRIATE.

THE COURT: THANK YOU. THANK YOU, MS. JONES.

YOU MAY RETURN TO THE PODIUM, MR. GLENN.

NOW, MR. GLENN, LET ME TELL YOU THAT THIS IS TRULY DESPICABLE CONDUCT. AND IT SUGGESTS TO ME, SIR, BASED UPON WHAT I LEARNED ABOUT THIS CONDUCT AND ABOUT YOU AT THE TRIAL, AS WELL AS THE PRESENTENCE INVESTIGATION REPORT, THAT THIS IS NOT THE FIRST TIME YOU'VE DONE SOMETHING LIKE THIS. OBVIOUSLY YOU HAD A PRIOR ARREST WHICH THE COURT IS NOT CONSIDERING HERE. BUT THE POINT IS, SIR, THAT I'M SURE YOU NOW WISH YOU WOULD HAVE WALKED AWAY FROM THIS THING WHEN YOU HAD THE OPPORTUNITY SEVERAL YEARS AGO, RELATIVELY UNSCATHED, AND STARTED ANEW.

YOU OBVIOUSLY ARE A SMART MAN. YOU'VE HAD THE ABILITY TO START A BUSINESS OR PARTICIPATE IN THE OWNERSHIP OF A BUSINESS, TO PURCHASE AND RUN RENTAL PROPERTIES AND THE LIKE. YOU DIDN'T HAVE TO DO ANYTHING LIKE THIS. YOU ABSOLUTELY DIDN'T HAVE ANY BUSINESS GETTING AROUND ANYTHING LIKE THIS. YOU HAVE

FAMILY MEMBERS WHO HAVE BEEN GAMING THE SYSTEM, GAMING VICTIMS WITH THIS CONDUCT.

AND EVEN IF I ACCEPT AS TRUE YOUR ASSERTIONS ABOUT YOUR ROLE, AT LEAST AS DESCRIBED THROUGH YOUR LAWYER, YOU HAD NO BUSINESS BEING IN THAT CAR. IF IT IS TRUE, IN FACT, THAT YOU TRIED TO PERSUADE YOUR RELATIVES NOT TO ENGAGE IN THIS CONDUCT, YOU'RE SMART ENOUGH TO KNOW AND YOU HAVE A HISTORY WITH THIS KIND OF THING. YOU'VE BEEN ARRESTED BEFORE. YOU KNOW FULL WELL TO JUST GET AWAY FROM THESE PEOPLE.

THE DEFENDANT: ABSOLUTELY.

THE COURT: YOU DIDN'T DO THAT. THAT'S A MINIMUM THAT THE EVIDENCE SHOWS. BUT BEYOND THAT, I AM CONVINCED THAT YOU HAD A SIGNIFICANT ROLE IN THIS ACTIVITY. I DON'T WANT YOU TO ADMIT OR DENY IT AT THIS POINT. I'M SIMPLY TELLING YOU THE BASIS ON WHICH I MAKE MY DECISION TODAY. BUT AGAIN, I'M ABSOLUTELY CONVINCED THAT YOU PLAYED A VERY SIGNIFICANT ROLE AND THAT YOU WERE A LEADER AND ORGANIZER OF THIS AND THAT YOU FACILITATED CONDUCT NOT ONLY IN TEXAS BUT ELSEWHERE, INCLUDING MASSACHUSETTS.

YOU KNOW, I SEE THIS ALL THE TIME. I SEE YOUNG MEN, SOMETIMES YOUNG WOMEN, SOMETIMES NOT SO YOUNG MEN AND YOUNG WOMEN -- BUT WHO THINK THEY'RE SO

SMART THEY CAN JUST GAME THE SYSTEM AND COMMIT THESE TYPES OF FRAUDS AND COMPLETELY GO UNDETECTED. AND IT NEVER HAPPENS. THEY ALWAYS GET CAUGHT. FRANKLY, YOU WERE CAUGHT BACK IN 2010. THAT'S WHAT CONFOUNDS ME. YOU WEREN'T CONVICTED, BUT YOU WERE CAUGHT. AND YET YOU TRIED IT AGAIN. YOU ROLLED THE DICE, AND THIS TIME IT DIDN'T COME OUT IN YOUR FAVOR.

SO IT BECOMES MY UNPLEASANT DUTY AT THIS TIME TO GO ON AND IMPOSE A VERY LENGTHY -- WHAT I CONSIDER TO BE A VERY LENGTHY PRISON SENTENCE IN YOUR CASE. I WILL SAY, HOWEVER, THAT THERE ARE SUFFICIENT EQUITIES IN THIS CASE THAT YOUR LAWYER HAS, FOR INSTANCE, URGED THAT THE GUIDELINES OVERSTATE THE CONDUCT HERE. AND FRANKLY I AGREE WITH MR. HIPWELL. 14 AND A HALF YEARS IS WHAT THE GUIDELINES WOULD OTHERWISE REQUIRE ME TO IMPOSE IN YOUR CASE, AS A MINIMUM OF 14 AND A HALF YEARS.

HOWEVER, I BELIEVE THAT GIVEN THE NATURE OF THIS CASE -- AND IT WAS -- LET ME TELL YOU. THIS WAS PRETTY MASSIVE. I NONETHELESS BELIEVE THAT THE GUIDELINES DO OVERSTATE YOUR CONDUCT.

I WILL ALSO FIND AS MITIGATION TO -- FOR A VARIANCE SENTENCE THAT YOU HAVE HAD A HISTORY OF NONVIOLENCE. THIS IS NOT A VIOLENT OFFENSE THAT YOU'VE BEEN CONVICTED OF. YOU REPORTED A HISTORY OF

SUBSTANCE ABUSE WHICH HAD NEVER BEEN -- FOR WHICH YOU'VE NEVER BEEN TREATED. NOW, SOME OF THAT IS YOUR RESPONSIBILITY AS WELL, AND WE'RE GOING TO IMPOSE SOME CONDITIONS THAT ARE GOING TO TRY TO HELP YOU WITH THE DRUG TREATMENT AND THE DRUG ADDICTION THAT YOU'VE SUFFERED ALL THESE YEARS. AND THERE WERE ALSO INDICATIONS THAT YOU REPORTED ABUSE AS A CHILD BY YOUR BROTHER, ALL OF WHICH THE COURT WILL CITE AS THE REASONS FOR THE IMPOSITION OF A VARIANCE SENTENCE IN THIS CASE.

SO AGAIN, MR. GLENN, BECAUSE I'M GOING TO VARY FROM THE GUIDELINES IN YOUR CASE, I DON'T WANT YOU IN ANY WAY TO BELIEVE THAT I DON'T BELIEVE THIS CONDUCT TO BE SERIOUS. I DON'T WANT YOU TO BELIEVE THAT I THINK THAT WHAT YOU DID DID NOT HARM A LOT OF PEOPLE. YES, WAL-MART WAS THE VICTIM HERE. BUT AT THE SAME TIME, WAL-MART LIKE ANY OTHER ENTITY OR CITIZEN IS ENTITLED TO DO WHAT THEY DO WITHOUT BEING VICTIMIZED BY PEOPLE LIKE YOU. VERY OFTEN PEOPLE THINK THESE ARE VICTIMLESS CRIMES. THEY'RE REALLY NOT VICTIMLESS CRIMES. NONETHELESS, THE COURT WILL IMPOSE THE VARIANCE SENTENCE IN YOUR CASE.

AFTER HAVING CONSIDERED THE UNITED STATES SENTENCING GUIDELINES AND THE SENTENCING FACTORS ENUMERATED IN 18 U.S.C. § 3553(A), IT IS THE JUDGMENT

OF THE COURT THAT THE DEFENDANT, WALTER GLENN, IS HEREBY COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE IN PRISON FOR A TERM OF 60 MONTHS ON COUNT ONE, 96 MONTHS ON COUNT TWO TO RUN CONCURRENTLY, AND 24 MONTHS ON COUNT THREE TO RUN CONSECUTIVE TO THE IMPOSITION OF THE TERM ON COUNTS ONE AND TWO, FOR A TOTAL OF 120 MONTHS.

THE DEFENDANT'S SENTENCE SHALL RUN CONCURRENTLY TO ANY SENTENCE THAT MAY BE IMPOSED IN DOCKET NO. 150293 OF THE EIGHTEENTH JUDICIAL DISTRICT COURT IN PORT ALLEN, LOUISIANA. IT IS RECOMMENDED TO THE BUREAU OF PRISONS THAT THE DEFENDANT BE DESIGNATED TO A FACILITY CAPABLE OF PROVIDING MENTAL HEALTH TREATMENT, SUBSTANCE ABUSE TREATMENT AND VOCATIONAL TRAINING.

UPON HIS RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL BE PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS ON COUNTS ONE AND TWO AND ONE YEAR ON COUNT THREE, ALL TO RUN CONCURRENTLY, FOR A TOTAL TERM OF SUPERVISED RELEASE OF THREE YEARS. WITHIN 72 HOURS OF HIS RELEASE FROM THE CUSTODY OF THE BUREAU OF PRISONS, THE DEFENDANT SHALL REPORT IN PERSON TO THE PROBATION OFFICER -- THE PROBATION OFFICE IN THE DISTRICT IN WHICH HE IS RELEASED.

WHILE ON SUPERVISED RELEASE, THE DEFENDANT

SHALL COMPLY WITH THE 13 STANDARD CONDITIONS OF SUPERVISION AS WELL AS THE FOLLOWING MANDATORY OR SPECIAL CONDITIONS: NOS. 14, 15, 16, 17, 24, 27, 32, 33, 42, 43, 44, 60, 78, 79 AND 80 ADOPTED BY THIS COURT IN DETAIL IN GENERAL ORDER NO. 2017:03.

IN SUMMARY, THE DEFENDANT MUST NOT COMMIT ANOTHER FEDERAL, STATE OR LOCAL CRIME. HE SHALL NOT UNLAWFULLY POSSESS A CONTROLLED SUBSTANCE. HE SHALL REFRAIN FROM THE UNLAWFUL USE OF A CONTROLLED SUBSTANCE AND MUST SUBMIT TO DRUG URINALYSIS AS REQUIRED BY LAW. THE DEFENDANT MUST COOPERATE IN THE DNA COLLECTION PROCESS AND MUST PARTICIPATE IN SUBSTANCE ABUSE TREATMENT. HE SHALL SUBMIT TO SUBSTANCE ABUSE TESTING AND NOT TAMPER WITH THE TESTING PROTOCOLS.

THE DEFENDANT MUST SUBMIT TO -- OR PARTICIPATE IN MENTAL HEALTH TREATMENT AND TAKE ANY MEDICATIONS PRESCRIBED TO HIM AS DIRECTED. HE SHALL PROVIDE ACCESS AND AUTHORIZATION FOR THE RELEASE OF FINANCIAL INFORMATION WHENEVER REQUIRED BY THE PROBATION OFFICER OR ANY TREATMENT PROVIDERS. HE SHALL NOT INCUR ANY NEW CREDIT CHARGES OR OPEN ANY ADDITIONAL LINES OF CREDIT WITHOUT THE PERMISSION OF HIS PROBATION OFFICER, AND HE MUST SUBMIT TO A SEARCH AND POSSIBLE SEIZURE OF ANY CONTRABAND WHENEVER A

SEARCH IS CONDUCTED BY THE PROBATION OFFICER.

THE DEFENDANT MUST ALSO SUBMIT HIS COMPUTER AND OTHER DEVICES OR MEDIA TO A SEARCH BY THE PROBATION OFFICER AND MUST WARN OTHERS ABOUT THE FACT THAT THE DEVICES MAY BE SUBJECT TO PERIODIC SEARCHES. HE SHALL ALLOW FOR THE INSTALLATION OF COMPUTER MONITORING SOFTWARE ON ANY COMPUTERS THAT HE USES AND, AGAIN, WARN OTHERS OF THE INSTALLATION OF SUCH SOFTWARE.

HE SHALL PROVIDE TO THE PROBATION OFFICER THE ACCURATE COMPUTER INFORMATION INCLUDING PASSWORDS AND USER NAMES AND MUST PARTICIPATE IN THE COMPUTER RESTRICTION AND MONITORING PROGRAM. THE DEFENDANT MUST ALSO PAY FOR THE COST OF ANY TREATMENT PROVIDED, TO THE EXTENT HE IS FINANCIALLY ABLE TO DO SO. THE U.S. PROBATION SERVICE WILL DETERMINE THE DEFENDANT'S ABILITY TO PAY AND WILL FIX A SCHEDULE WHICH WILL BE REVIEWED AND APPROVED BY THE COURT.

NOW, THE COURT FINDS THE DEFENDANT DOES NOT HAVE THE ABILITY TO PAY A FINE; THEREFORE, THE FINE IS WAIVED IN THIS CASE. HOWEVER, THE DEFENDANT SHALL PAY TO THE UNITED STATES A SPECIAL ASSESSMENT OF $300 REPRESENTING $100 FOR EACH OF THE THREE COUNTS OF WHICH HE'S BEEN FOUND GUILTY. THE DEFENDANT SHALL PAY RESTITUTION IN THE SUM OF $949,587.87 TO

WAL-MART. THIS CASE INVOLVES AT LEAST ONE OTHER DEFENDANT WHO MAY BE HELD JOINTLY OR SEVERALLY LIABLE FOR THE PAYMENT OF ALL OR PART OF THE RESTITUTION DUE, AND THE COURT MAY ORDER PAYMENT IN THE -- SUCH PAYMENT IN THE FUTURE.

THE SPECIAL ASSESSMENT IMPOSED IN THIS CASE SHALL BE DUE IMMEDIATELY. HOWEVER, THE RESTITUTION BALANCE SHALL NOT BE DUE IMMEDIATELY. HOWEVER, AFTER THE COURT FIXES A SCHEDULE AND APPROVES IT AND IT BECOMES APPLICABLE, ANY NONPAYMENT WILL BE CONSIDERED A VIOLATION OF SUPERVISED RELEASE. HOWEVER, NONPAYMENT SHALL NOT BE A VIOLATION AS LONG AS THE DEFENDANT MAKES THE REQUIRED MONTHLY PAYMENTS.

UPON HIS RELEASE FROM INCARCERATION, ANY UNPAID BALANCE SHALL BE PAID AT A MONTHLY RATE, AGAIN TO BE DETERMINED BY THE COURT, AND THOSE PAYMENTS SHALL BEGIN WITHIN 60 DAYS AFTER HIS RELEASE FROM IMPRISONMENT. THE COURT FURTHER DETERMINES THAT THE DEFENDANT DOES NOT HAVE THE ABILITY TO PAY INTEREST, AND SO THE DEFENDANT WILL BE RELIEVED OF THE REQUIREMENT TO PAY INTEREST ON THE RESTITUTION. AGAIN, THAT REQUIREMENT WILL BE WAIVED.

MR. HIPWELL: THANK YOU, JUDGE.

THE COURT: NOW, PURSUANT TO 18 U.S.C. § 982(A)(2)(B), THE DEFENDANT SHALL FORFEIT ANY

PROPERTY CONSTITUTING OR DERIVED FROM THE PROCEEDS OBTAINED, EITHER DIRECTLY OR INDIRECTLY, FROM HIS CRIMINAL ACTIVITY SPECIFICALLY AS A RESULT OF THE VIOLATION OF 18 U.S.C. § 371 AND 18 U.S.C. § 1029 INCLUDING, BUT NOT LIMITED TO, APPROXIMATELY $95,019 AND, PURSUANT TO 18 U.S.C.S § 1029(C)(1)(C), ANY PERSONAL PROPERTY USED OR INTENDED TO BE USED TO COMMIT THIS OFFENSE, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING ITEMS: A TOSHIBA LAPTOP, MODEL S55T, BEARING SERIAL NO. 6E091049C; AN ACER LAPTOP COMPUTER, MODEL ASPIRE ONE, BEARING SERIAL NO. NUSH6AA00124102C6A7600; A SANDISK 16-GIGABYTE HARD DRIVE; AN HP LAPTOP, MODEL 71004, BEARING SERIAL NO. VNS35025494; A SAMSUNG LAPTOP, MODEL XE303C12-A01US, BEARING SERIAL NO. 0UG99FCF307885F; A TOSHIBA HARD DRIVE, MODEL V73600-C, BEARING SERIAL NO. 441YSNV1STT1; A SAMSUNG GALAXY TABLET, MODEL NO. SM-T800, BEARING SERIAL NO. RF2F60PKFZB; A WINDOWS SURFACE TABLET, MODEL RT32, BEARING SERIAL NO. 03051241652; AN APPLE IPAD TABLET, MODEL A1432, BEARING SERIAL NO. F4KXCGB8F197; AN EPSON STYLUS COMPUTER R280, MODEL B412A, BEARING SERIAL NO. 577 -- EXCUSE ME -- K77K159262.

AND IT IS FURTHER ORDERED THAT THE FORFEITURE MONEY JUDGMENT IN THE SUM OF $284,856.29

IS ORDERED FORFEITED AGAINST THE DEFENDANT AND IN FAVOR OF THE UNITED STATES.

I WILL ORDER THAT THE PRESENTENCE INVESTIGATION REPORT PREPARED IN THIS CASE BE MADE A PART OF THE RECORD UNDER SEAL.

NOW, MR. GLENN, IT IS MY DUTY TO INFORM YOU, SIR, THAT YOU HAVE 14 DAYS TO APPEAL YOUR CONVICTION AND YOUR SENTENCE IN THIS CASE. SHOULD YOU WISH TO APPEAL IT, YOUR FAILURE TO FILE THE NOTICE OF APPEAL WITHIN THE 14 DAYS WILL ESSENTIALLY SERVE AS A COMPLETE WAIVER TO YOUR ABILITY TO APPEAL YOUR CONVICTION AND YOUR SENTENCE.

DO YOU UNDERSTAND THAT, SIR?

THE DEFENDANT: YES, SIR.

MR. HIPWELL: AND, YOUR HONOR, IN CONNECTION WITH THAT, ANTICIPATING THAT WE WOULD BE APPEALING, I DON'T DO THIS VERY OFTEN, BUT I'VE ASKED MY CLIENT IF HE COULD JUST READ THE -- HE DOES HAVE A NOTICE THAT HE'D LIKE TO MAKE RIGHT NOW ABOUT THE APPEAL, IF THAT'S OKAY. IT'S VERY BRIEF.

THE COURT: GO RIGHT AHEAD.

THE DEFENDANT: IN ACCORDANCE WITH RULE 32(J), FEDERAL RULES OF CRIMINAL PROCEDURE, I REQUEST THE CLERK OF COURT TO PREPARE AND FILE A NOTICE OF APPEAL OF MY CONVICTION AND SENTENCE. I ALSO SEEK

PERMISSION TO HAVE COURT-APPOINTED COUNSEL ASSIST ME IN MY APPEAL.

THE COURT: VERY WELL. WE WILL DO THAT. IN FACT, THAT WAS THE NEXT THING I WAS GOING TO TELL YOU, IS THAT YOU WOULD HAVE THE -- SHOULD YOU WISH TO APPEAL YOUR CONVICTION AND YOUR SENTENCE, MR. GLENN, AND YOU CANNOT AFFORD TO HIRE A LAWYER TO ASSIST YOU IN DOING SO, THAT I WILL CONSIDER APPOINTING COUNSEL TO REPRESENT YOU. YOU'VE BEEN REPRESENTED THROUGHOUT THESE PROCEEDINGS BY APPOINTED COUNSEL. THERE HAS BEEN A PRIOR DETERMINATION BY THE MAGISTRATE JUDGE THAT YOU ARE INDIGENT, SO THE COURT WILL APPOINT COUNSEL TO REPRESENT YOU FOR PURPOSES OF THE APPEAL.

THE COURT WILL ALSO -- IF YOU CANNOT AFFORD TO PURCHASE A COPY OF THE TRANSCRIPTS OF THESE PROCEEDINGS, I WILL ALSO ORDER THAT A COPY BE PROVIDED TO YOU AT GOVERNMENT COST.

DO YOU UNDERSTAND THAT, MR. GLENN?

THE DEFENDANT: YES, SIR.

THE COURT: ALL RIGHT. ARE THERE ANY OTHER MATTERS TO TAKE UP AT THIS TIME? ANYTHING FROM THE UNITED STATES?

MS. JONES: NO, YOUR HONOR. THANK YOU.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. HIPWELL: THREE BRIEF MATTERS, YOUR

HONOR. WOULD THE COURT RECOMMEND, PLEASE, DESIGNATING A BUREAU OF PRISONS FACILITY AS CLOSE TO THE DEFENDANT'S HOME AND HIS MOTHER'S HOME IN CONNECTICUT AS POSSIBLE? WE KNOW IT'S ONLY A RECOMMENDATION.

THE COURT: YES, EXACTLY. I'M HAPPY, MR. GLENN, TO MAKE THE RECOMMENDATION. BUT AS I'M SURE MR. HIPWELL HAS EXPLAINED TO YOU, THE B.O.P., THE BUREAU OF PRISONS, IS NOT OBLIGATED TO PLACE YOU THERE EVEN IF I RECOMMEND IT. I CANNOT ORDER THEM TO DO SO, BUT I WILL CERTAINLY -- I'M HAPPY TO RECOMMEND THAT THEY CONSIDER PLACING YOU IN A FACILITY NEAR YOUR HOME.

MR. HIPWELL: THE SECOND MATTER, YOUR HONOR -- THESE ARE VERY BRIEF. HIS MOTHER OF COURSE IS HERE. SHE TRAVELED DOWN FROM CONNECTICUT.

THE COURT: WELCOME, MA'AM.

MR. HIPWELL: THE MARSHALS WHO WERE KIND ENOUGH TO INDICATE THAT THERE IS A POSSIBILITY AND ONLY A POSSIBILITY THAT I COULD VISIT WITH -- IN THE HOLDING CELL DOWNSTAIRS WITH AT LEAST ONE PERSON, PERHAPS HIS MOTHER, JUST TO SPEAK THROUGH THE MESH BEFORE SHE GOES HOME. I WANT TO TELL THE COURT THAT.

BUT BEFORE THAT, YOUR HONOR, BEFORE THAT, THE VERY LAST ISSUE IS: MAY I HAVE A BRIEF MEETING

IN CHAMBERS WITH YOU AFTERWARDS? I'VE TOLD MS. JONES IT ONLY CONCERNS A CJA MATTER AND IT WILL BE VERY BRIEF WITH YOU, YOUR HONOR. I PROMISE.

THE COURT: SURE. WHY DON'T YOU ALL --

MR. HIPWELL: AND SHE WAIVES IT.

THE COURT: OKAY. THAT'S FINE. I'LL BE HAPPY TO --

MR. HIPWELL: IT'S JUST A BUDGET MATTER.

THE COURT: -- TO VISIT WITH YOU.

MR. HIPWELL: THANK YOU, JUDGE.

THE COURT: ANYTHING FURTHER?

MR. HIPWELL: NOTHING ON THIS.

THE COURT: LET ME JUST ONCE AGAIN -- MS. JONES, YOU CAME INTO THIS CASE LATE IN THE GAME. YOU WERE NOT THE ORIGINAL ASSISTANT U.S. ATTORNEY ASSIGNED TO THE CASE. BUT AGAIN, YOU DID A SUPERB JOB AND --

MS. JONES: THANK YOU, YOUR HONOR.

THE COURT: -- THANK YOU FOR YOUR MANNER IN WHICH YOU'VE HANDLED THE CASE.

AND, MR. HIPWELL, IF YOU WOULD CONVEY TO MR. BÉLANGER THAT I'M -- I THINK BOTH OF YOU DID A SUPERB JOB. I KNOW MY RULINGS DIDN'T GO YOUR WAY. BUT THIS IS ONE OF THOSE TOUGH CALLS WHERE, AS YOU KNOW, MY RULINGS ARE BASED ON THE EVIDENCE. AND

DESPITE THE VERY ELOQUENT AND PERSUASIVE ARGUMENTS OF COUNSEL, NOT ONLY HERE IN COURT BUT ALSO IN THE PLEADINGS, IT COULD HAVE GONE ANOTHER WAY. BUT AGAIN, THE COURT'S RULINGS WERE BASED UPON THE EVIDENCE IN THE CASE. SO I JUST WANTED TO MAKE SURE YOU UNDERSTOOD THAT.

MR. HIPWELL: WE APPRECIATE WHAT THE COURT HAS DONE, YOUR HONOR. AND IT'S ALWAYS -- I HATE TO SAY A PLEASURE BECAUSE IT'S VERY HARD TO GO UP AGAINST MY ESTEEMED COLLEAGUE OF THE NUMBER OF YEARS, MS. JONES. BUT OF COURSE, SHE DID TRY A VERY, VERY HARD AND TOUGH CASE AGAINST US, AS DID ASSISTANT UNITED STATES ATTORNEY SANCHEZ, KEVIN SANCHEZ. AND WE APPRECIATE THE KIND WORDS OF THE COURT.

THE COURT: I THINK THAT'S RIGHT. SO THANK YOU.

MR. GLENN, GOOD LUCK TO YOU, SIR.

THE DEFENDANT: THANK YOU, SIR.

THE COURT: OKAY. THERE BEING NO FURTHER BUSINESS FOR THE COURT, COURT IS ADJOURNED.

(WHEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED NUMBERED MATTER.

S:/NATALIE W. BREAUX

NATALIE W. BREAUX, RPR, CRR

OFFICIAL COURT REPORTER

PART B — BASIC ECONOMIC OFFENSES

1. THEFT, EMBEZZLEMENT, RECEIPT OF STOLEN PROPERTY, PROPERTY DESTRUCTION, AND OFFENSES INVOLVING FRAUD OR DECEIT

Introductory Commentary

These sections address basic forms of property offenses: theft, embezzlement, fraud, forgery, counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States), insider trading, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Chapter Two, Part K (Offenses Involving Public Safety)). These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 303); November 1, 2001 (amendment 617).

§2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

(a) Base Offense Level:

(1) **7**, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or

(2) **6**, otherwise.

(b) Specific Offense Characteristics

(1) If the loss exceeded $6,500, increase the offense level as follows:

	Loss (Apply the Greatest)	Increase in Level
(A)	$6,500 or less	no increase
(B)	More than $6,500	add **2**
(C)	More than $15,000	add **4**
(D)	More than $40,000	add **6**
(E)	More than $95,000	add **8**
(F)	More than $150,000	add **10**
(G)	More than $250,000	add **12**
(H)	More than $550,000	add **14**
(I)	More than $1,500,000	add **16**

EXHIBIT 7

(J) More than $3,500,000	add 18
(K) More than $9,500,000	add 20
(L) More than $25,000,000	add 22
(M) More than $65,000,000	add 24
(N) More than $150,000,000	add 26
(O) More than $250,000,000	add 28
(P) More than $550,000,000	add 30

(2) (Apply the greatest) If the offense—

(A) (i) involved 10 or more victims; (ii) was committed through mass-marketing; or (iii) resulted in substantial financial hardship to one or more victims, increase by 2 levels;

(B) resulted in substantial financial hardship to five or more victims, increase by 4 levels; or

(C) resulted in substantial financial hardship to 25 or more victims, increase by 6 levels.

(3) If the offense involved a theft from the person of another, increase by 2 levels.

(4) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.

(5) If the offense involved theft of, damage to, destruction of, or trafficking in, property from a national cemetery or veterans' memorial, increase by 2 levels.

(6) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1037; and (B) the offense involved obtaining electronic mail addresses through improper means, increase by 2 levels.

(7) If (A) the defendant was convicted of a Federal health care offense involving a Government health care program; and (B) the loss under subsection (b)(1) to the Government health care program was (i) more than $1,000,000, increase by 2 levels; (ii) more than $7,000,000, increase by 3 levels; or (iii) more than $20,000,000, increase by 4 levels.

(8) (Apply the greater) If—

(A) the offense involved conduct described in 18 U.S.C. § 670, increase by 2 levels; or

(B) the offense involved conduct described in 18 U.S.C. § 670, and the defendant was employed by, or was an agent of, an organization in the supply chain for the pre-retail medical product, increase by 4 levels.

(9) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(10) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(11) If the offense involved (A) the possession or use of any (i) device-making equipment, or (ii) authentication feature; (B) the production or trafficking of any (i) unauthorized access device or counterfeit access device, or (ii) authentication feature; or (C)(i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification, or (ii) the possession of 5 or more means of identification that unlawfully were produced from, or obtained by the use of, another means of identification, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(12) If the offense involved conduct described in 18 U.S.C. § 1040, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(13) If the defendant was convicted under 42 U.S.C. § 408(a), § 1011(a), or § 1383a(a) and the statutory maximum term of ten years' imprisonment applies, increase by 4 levels. If the resulting offense level is less than 12, increase to level 12.

(14) (Apply the greater) If the offense involved misappropriation of a trade secret and the defendant knew or intended—

(A) that the trade secret would be transported or transmitted out of the United States, increase by 2 levels; or

(B) that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 4 levels.

If subparagraph (B) applies and the resulting offense level is less than level 14, increase to level 14.

(15) If the offense involved an organized scheme to steal or to receive stolen (A) vehicles or vehicle parts; or (B) goods or chattels that are part of a cargo shipment, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(16) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(17) (Apply the greater) If—

(A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels; or

(B) the offense (i) substantially jeopardized the safety and soundness of a financial institution; or (ii) substantially endangered the solvency or financial security of an organization that, at any time during the offense, (I) was a publicly traded company; or (II) had 1,000 or more employees, increase by 4 levels.

(C) The cumulative adjustments from application of both subsections (b)(2) and (b)(17)(B) shall not exceed 8 levels, except as provided in subdivision (D).

(D) If the resulting offense level determined under subdivision (A) or (B) is less than level 24, increase to level 24.

(18) If (A) the defendant was convicted of an offense under 18 U.S.C. § 1030, and the offense involved an intent to obtain personal information, or (B) the offense involved the unauthorized public dissemination of personal information, increase by 2 levels.

(19) (A) (Apply the greatest) If the defendant was convicted of an offense under:

(i) 18 U.S.C. § 1030, and the offense involved a computer system used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security, increase by **2** levels.

(ii) 18 U.S.C. § 1030(a)(5)(A), increase by **4** levels.

(iii) 18 U.S.C. § 1030, and the offense caused a substantial disruption of a critical infrastructure, increase by **6** levels.

(B) If subdivision (A)(iii) applies, and the offense level is less than level **24**, increase to level **24**.

(20) If the offense involved—

(A) a violation of securities law and, at the time of the offense, the defendant was (i) an officer or a director of a publicly traded company; (ii) a registered broker or dealer, or a person associated with a broker or dealer; or (iii) an investment adviser, or a person associated with an investment adviser; or

(B) a violation of commodities law and, at the time of the offense, the defendant was (i) an officer or a director of a futures commission merchant or an introducing broker; (ii) a commodities trading advisor; or (iii) a commodity pool operator,

increase by **4** levels.

(c) Cross References

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of any such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy), §2D2.1 (Unlawful Possession; Attempt or Conspiracy), §2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate.

(2) If the offense involved arson, or property damage by use of explosives, apply §2K1.4 (Arson; Property Damage by Use of Explosives), if the resulting offense level is greater than that determined above.

(3) If (A) neither subdivision (1) nor (2) of this subsection applies; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (*e.g.*, 18 U.S.C. § 1001, § 1341, § 1342, or § 1343); and (C) the conduct set forth in the count of conviction establishes an offense specifically covered by another guideline in Chapter Two (Offense Conduct), apply that other guideline.

(4) If the offense involved a cultural heritage resource or a paleontological resource, apply §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b-6, 1644, 6821; 18 U.S.C. §§ 38, 225, 285–289, 471–473, 500, 510, 553(a)(1), 641, 656, 657, 659, 662, 664, 1001–1008, 1010–1014, 1016–1022, 1025, 1026, 1028, 1029, 1030(a)(4)–(5), 1031, 1037, 1040, 1341–1344, 1348, 1350, 1361, 1363, 1369, 1702, 1703 (if vandalism or malicious mischief, including destruction of mail, is involved), 1708, 1831, 1832, 1992(a)(1), (a)(5), 2113(b), 2282A, 2282B, 2291, 2312–2317, 2332b(a)(1), 2701; 19 U.S.C. § 2401f; 29 U.S.C. § 501(c); 42 U.S.C. § 1011; 49 U.S.C. §§ 14915, 30170, 46317(a), 60123(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

"***Cultural heritage resource***" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

"***Equity securities***" has the meaning given that term in section 3(a)(11) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(11)).

"***Federal health care offense***" has the meaning given that term in 18 U.S.C. § 24.

"***Financial institution***" includes any institution described in 18 U.S.C. § 20, § 656, § 657, § 1005, § 1006, § 1007, or § 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical, or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission;

futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. "Union or employee pension fund" and "any health, medical, or hospital insurance association," primarily include large pension funds that serve many persons (*e.g.*, pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (*e.g.*, medical or hospitalization insurance) to large numbers of persons.

"***Firearm***" and "***destructive device***" have the meaning given those terms in the Commentary to §1B1.1 (Application Instructions).

"***Foreign instrumentality***" and "***foreign agent***" have the meaning given those terms in 18 U.S.C. § 1839(1) and (2), respectively.

"***Government health care program***" means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by federal or state government. Examples of such programs are the Medicare program, the Medicaid program, and the CHIP program.

"***Means of identification***" has the meaning given that term in 18 U.S.C. § 1028(d)(7), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual, other than the defendant or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct).

"***National cemetery***" means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

"***Paleontological resource***" has the meaning given that term in Application Note 1 of the Commentary to §2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

"***Personal information***" means sensitive or private information involving an identifiable individual (including such information in the possession of a third party), including (A) medical records; (B) wills; (C) diaries; (D) private correspondence, including e-mail; (E) financial records; (F) photographs of a sensitive or private nature; or (G) similar information.

"***Pre-retail medical product***" has the meaning given that term in 18 U.S.C. § 670(e).

"***Publicly traded company***" means an issuer (A) with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l); or (B) that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(d)). "Issuer" has the meaning given that term in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. § 78c).

"***Supply chain***" has the meaning given that term in 18 U.S.C. § 670(e).

"***Theft from the person of another***" means theft, without the use of force, of property that was being held by another person or was within arms' reach. Examples include pick-pocketing and non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

"***Trade secret***" has the meaning given that term in 18 U.S.C. § 1839(3).

"***Veterans' memorial***" means any structure, plaque, statue, or other monument described in 18 U.S.C. § 1369(a).

"***Victim***" means (A) any person who sustained any part of the actual loss determined under subsection (b)(1); or (B) any individual who sustained bodily injury as a result of the offense. "Person" includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies.

2. **Application of Subsection (a)(1).**—

(A) **"Referenced to this Guideline".**—For purposes of subsection (a)(1), an offense is "***referenced to this guideline***" if (i) this guideline is the applicable Chapter Two guideline specifically referenced in Appendix A (Statutory Index) for the offense of conviction, as determined under the provisions of §1B1.2 (Applicable Guidelines); or (ii) in the case of a conviction for conspiracy, solicitation, or attempt to which §2X1.1 (Attempt, Solicitation, or Conspiracy) applies, this guideline is the appropriate guideline for the offense the defendant was convicted of conspiring, soliciting, or attempting to commit.

(B) **Definition of "Statutory Maximum Term of Imprisonment".**—For purposes of this guideline, "***statutory maximum term of imprisonment***" means the maximum term of imprisonment authorized for the offense of conviction, including any increase in that maximum term under a statutory enhancement provision.

(C) **Base Offense Level Determination for Cases Involving Multiple Counts.**—In a case involving multiple counts sentenced under this guideline, the applicable base offense level is determined by the count of conviction that provides the highest statutory maximum term of imprisonment.

3. **Loss Under Subsection (b)(1).**—This application note applies to the determination of loss under subsection (b)(1).

(A) **General Rule.**—Subject to the exclusions in subdivision (D), loss is the greater of actual loss or intended loss.

(i) **Actual Loss.**—"***Actual loss***" means the reasonably foreseeable pecuniary harm that resulted from the offense.

(ii) **Intended Loss.**—"***Intended loss***" (I) means the pecuniary harm that the defendant purposely sought to inflict; and (II) includes intended pecuniary harm that would have been impossible or unlikely to occur (*e.g.*, as in a government sting operation, or an insurance fraud in which the claim exceeded the insured value).

(iii) **Pecuniary Harm.**—"***Pecuniary harm***" means harm that is monetary or that otherwise is readily measurable in money. Accordingly, pecuniary harm does not include emotional distress, harm to reputation, or other non-economic harm.

(iv) **Reasonably Foreseeable Pecuniary Harm.**—For purposes of this guideline, "***reasonably foreseeable pecuniary harm***" means pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense.

(v) **Rules of Construction in Certain Cases.**—In the cases described in subdivisions (I) through (III), reasonably foreseeable pecuniary harm shall be considered to include the pecuniary harm specified for those cases as follows:

(I) **Product Substitution Cases.**—In the case of a product substitution offense, the reasonably foreseeable pecuniary harm includes the reasonably foreseeable costs of making substitute transactions and handling or disposing of the product delivered, or of retrofitting the product so that it can be used for its intended purpose, and the reasonably foreseeable costs of rectifying the actual or potential disruption to the victim's business operations caused by the product substitution.

(II) **Procurement Fraud Cases.**—In the case of a procurement fraud, such as a fraud affecting a defense contract award, reasonably foreseeable pecuniary harm includes the reasonably foreseeable administrative costs to the government and other participants of repeating or correcting the procurement action affected, plus any increased costs to procure the product or service involved that was reasonably foreseeable.

(III) **Offenses Under 18 U.S.C. § 1030.**—In the case of an offense under 18 U.S.C. § 1030, actual loss includes the following pecuniary harm, regardless of whether such pecuniary harm was reasonably foreseeable: any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other damages incurred because of interruption of service.

(B) **Gain.**—The court shall use the gain that resulted from the offense as an alternative measure of loss only if there is a loss but it reasonably cannot be determined.

(C) **Estimation of Loss.**—The court need only make a reasonable estimate of the loss. The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence. For this reason, the court's loss determination is entitled to appropriate deference. *See* 18 U.S.C. § 3742(e) and (f).

The estimate of the loss shall be based on available information, taking into account, as appropriate and practicable under the circumstances, factors such as the following:

(i) The fair market value of the property unlawfully taken, copied, or destroyed; or, if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing that property.

(ii) In the case of proprietary information (*e.g.*, trade secrets), the cost of developing that information or the reduction in the value of that information that resulted from the offense.

(iii) The cost of repairs to damaged property.

(iv) The approximate number of victims multiplied by the average loss to each victim.

(v) The reduction that resulted from the offense in the value of equity securities or other corporate assets.

(vi) More general factors, such as the scope and duration of the offense and revenues generated by similar operations.

(D) **Exclusions from Loss.**—Loss shall not include the following:

(i) Interest of any kind, finance charges, late fees, penalties, amounts based on an agreed-upon return or rate of return, or other similar costs.

(ii) Costs to the government of, and costs incurred by victims primarily to aid the government in, the prosecution and criminal investigation of an offense.

(E) **Credits Against Loss.**—Loss shall be reduced by the following:

(i) The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected. The time of detection of the offense is the earlier of (I) the time the offense was discovered by a victim or government agency; or (II) the time the defendant knew or reasonably should have known that the offense was detected or about to be detected by a victim or government agency.

(ii) In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.

(iii) Notwithstanding clause (ii), in the case of a fraud involving a mortgage loan, if the collateral has not been disposed of by the time of sentencing, use the fair market value of the collateral as of the date on which the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.

In such a case, there shall be a rebuttable presumption that the most recent tax assessment value of the collateral is a reasonable estimate of the fair market value. In determining whether the most recent tax assessment value is a reasonable estimate of the fair market value, the court may consider, among other factors, the recency of the tax assessment and the extent to which the jurisdiction's tax assessment practices reflect factors not relevant to fair market value.

(F) **Special Rules.**—Notwithstanding subdivision (A), the following special rules shall be used to assist in determining loss in the cases indicated:

(i) **Stolen or Counterfeit Credit Cards and Access Devices; Purloined Numbers and Codes.**—In a case involving any counterfeit access device or unauthorized access device, loss includes any unauthorized charges made with the counterfeit access device or unauthorized access device and shall be not less than $500 per access device. However, if the unauthorized access device is a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (including an electronic serial number/mobile identification number (ESN/MIN) pair), and that means was only possessed, and not used, during the commission of the offense, loss shall be not less than $100 per unused means. For purposes of this subdivision, "***counterfeit access device***" and "***unauthorized access device***" have the meaning given those terms in Application Note 10(A).

(ii) **Government Benefits.**—In a case involving government benefits (*e.g.*, grants, loans, entitlement program payments), loss shall be considered to be not less than the value

of the benefits obtained by unintended recipients or diverted to unintended uses, as the case may be. For example, if the defendant was the intended recipient of food stamps having a value of $100 but fraudulently received food stamps having a value of $150, loss is $50.

(iii) **Davis–Bacon Act Violations.**—In a case involving a Davis–Bacon Act violation (*i.e.*, a violation of 40 U.S.C. § 3142, criminally prosecuted under 18 U.S.C. § 1001), the value of the benefits shall be considered to be not less than the difference between the legally required wages and actual wages paid.

(iv) **Ponzi and Other Fraudulent Investment Schemes.**—In a case involving a fraudulent investment scheme, such as a Ponzi scheme, loss shall not be reduced by the money or the value of the property transferred to any individual investor in the scheme in excess of that investor's principal investment (*i.e.*, the gain to an individual investor in the scheme shall not be used to offset the loss to another individual investor in the scheme).

(v) **Certain Other Unlawful Misrepresentation Schemes.**—In a case involving a scheme in which (I) services were fraudulently rendered to the victim by persons falsely posing as licensed professionals; (II) goods were falsely represented as approved by a governmental regulatory agency; or (III) goods for which regulatory approval by a government agency was required but not obtained, or was obtained by fraud, loss shall include the amount paid for the property, services or goods transferred, rendered, or misrepresented, with no credit provided for the value of those items or services.

(vi) **Value of Controlled Substances.**—In a case involving controlled substances, loss is the estimated street value of the controlled substances.

(vii) **Value of Cultural Heritage Resources or Paleontological Resources.**—In a case involving a cultural heritage resource or paleontological resource, loss attributable to that resource shall be determined in accordance with the rules for determining the "value of the resource" set forth in Application Note 2 of the Commentary to §2B1.5.

(viii) **Federal Health Care Offenses Involving Government Health Care Programs.**—In a case in which the defendant is convicted of a Federal health care offense involving a Government health care program, the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss, *i.e.*, is evidence sufficient to establish the amount of the intended loss, if not rebutted.

(ix) **Fraudulent Inflation or Deflation in Value of Securities or Commodities.**—In a case involving the fraudulent inflation or deflation in the value of a publicly traded security or commodity, the court in determining loss may use any method that is appropriate and practicable under the circumstances. One such method the court may consider is a method under which the actual loss attributable to the change in value of the security or commodity is the amount determined by—

(I) calculating the difference between the average price of the security or commodity during the period that the fraud occurred and the average price of the security or commodity during the 90-day period after the fraud was disclosed to the market, and

PART B — ROLE IN THE OFFENSE

Introductory Commentary

This Part provides adjustments to the offense level based upon the role the defendant played in committing the offense. The determination of a defendant's role in the offense is to be made on the basis of all conduct within the scope of §1B1.3 (Relevant Conduct), *i.e.*, all conduct included under §1B1.3(a)(1)–(4), and not solely on the basis of elements and acts cited in the count of conviction.

When an offense is committed by more than one participant, §3B1.1 or §3B1.2 (or neither) may apply. Section 3B1.3 may apply to offenses committed by any number of participants.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1990 (amendment 345); November 1, 1992 (amendment 456).

§3B1.1. Aggravating Role

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by **4** levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by **3** levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by **2** levels.

Commentary

Application Notes:

1. A "***participant***" is a person who is criminally responsible for the commission of the offense, but need not have been convicted. A person who is not criminally responsible for the commission of the offense (*e.g.*, an undercover law enforcement officer) is not a participant.

2. To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.

3. In assessing whether an organization is "otherwise extensive," all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.

EXHIBIT

4. In distinguishing a leadership and organizational role from one of mere management or supervision, titles such as "kingpin" or "boss" are not controlling. Factors the court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy. This adjustment does not apply to a defendant who merely suggests committing the offense.

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (*i.e.*, the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission's intent is that this adjustment should increase with both the size of the organization and the degree of the defendant's responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of §3B1.1(c).

Historical Note	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 414); November 1, 1993 (amendment 500).

§3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

(a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.

(b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

In cases falling between (a) and (b), decrease by 3 levels.

Commentary

Application Notes:

1. **Definition.**—For purposes of this guideline, "***participant***" has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role).

2. **Requirement of Multiple Participants.**—This guideline is not applicable unless more than one participant was involved in the offense. *See* the Introductory Commentary to this Part (Role

PART C — OBSTRUCTION AND RELATED ADJUSTMENTS

Historical Note	Effective November 1, 1987. Amended effective November 1, 2006 (amendment 684).

§3C1.1. Obstructing or Impeding the Administration of Justice

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by **2** levels.

Commentary

Application Notes:

1. **In General.**—This adjustment applies if the defendant's obstructive conduct (A) occurred with respect to the investigation, prosecution, or sentencing of the defendant's instant offense of conviction, and (B) related to (i) the defendant's offense of conviction and any relevant conduct; or (ii) an otherwise closely related case, such as that of a co-defendant.

   Obstructive conduct that occurred prior to the start of the investigation of the instant offense of conviction may be covered by this guideline if the conduct was purposefully calculated, and likely, to thwart the investigation or prosecution of the offense of conviction.

2. **Limitations on Applicability of Adjustment.**—This provision is not intended to punish a defendant for the exercise of a constitutional right. A defendant's denial of guilt (other than a denial of guilt under oath that constitutes perjury), refusal to admit guilt or provide information to a probation officer, or refusal to enter a plea of guilty is not a basis for application of this provision. In applying this provision in respect to alleged false testimony or statements by the defendant, the court should be cognizant that inaccurate testimony or statements sometimes may result from confusion, mistake, or faulty memory and, thus, not all inaccurate testimony or statements necessarily reflect a willful attempt to obstruct justice.

3. **Covered Conduct Generally.**—Obstructive conduct can vary widely in nature, degree of planning, and seriousness. Application Note 4 sets forth examples of the types of conduct to which this adjustment is intended to apply. Application Note 5 sets forth examples of less serious forms of conduct to which this enhancement is not intended to apply, but that ordinarily can appropriately be sanctioned by the determination of the particular sentence within the otherwise applicable guideline range. Although the conduct to which this adjustment applies is not subject to precise definition, comparison of the examples set forth in Application Notes 4 and 5 should assist the court in determining whether application of this adjustment is warranted in a particular case.

4. **Examples of Covered Conduct.**—The following is a non-exhaustive list of examples of the types of conduct to which this adjustment applies:

   (A) threatening, intimidating, or otherwise unlawfully influencing a co-defendant, witness, or juror, directly or indirectly, or attempting to do so;

EXHIBIT 9

(B) committing, suborning, or attempting to suborn perjury, including during the course of a civil proceeding if such perjury pertains to conduct that forms the basis of the offense of conviction;

(C) producing or attempting to produce a false, altered, or counterfeit document or record during an official investigation or judicial proceeding;

(D) destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to an official investigation or judicial proceeding (*e.g.*, shredding a document or destroying ledgers upon learning that an official investigation has commenced or is about to commence), or attempting to do so; however, if such conduct occurred contemporaneously with arrest (*e.g.*, attempting to swallow or throw away a controlled substance), it shall not, standing alone, be sufficient to warrant an adjustment for obstruction unless it resulted in a material hindrance to the official investigation or prosecution of the instant offense or the sentencing of the offender;

(E) escaping or attempting to escape from custody before trial or sentencing; or willfully failing to appear, as ordered, for a judicial proceeding;

(F) providing materially false information to a judge or magistrate judge;

(G) providing a materially false statement to a law enforcement officer that significantly obstructed or impeded the official investigation or prosecution of the instant offense;

(H) providing materially false information to a probation officer in respect to a presentence or other investigation for the court;

(I) other conduct prohibited by obstruction of justice provisions under Title 18, United States Code (*e.g.*, 18 U.S.C. §§ 1510, 1511);

(J) failing to comply with a restraining order or injunction issued pursuant to 21 U.S.C. § 853(e) or with an order to repatriate property issued pursuant to 21 U.S.C. § 853(p);

(K) threatening the victim of the offense in an attempt to prevent the victim from reporting the conduct constituting the offense of conviction.

This adjustment also applies to any other obstructive conduct in respect to the official investigation, prosecution, or sentencing of the instant offense where there is a separate count of conviction for such conduct.

5. **Examples of Conduct Ordinarily Not Covered.**—Some types of conduct ordinarily do not warrant application of this adjustment but may warrant a greater sentence within the otherwise applicable guideline range or affect the determination of whether other guideline adjustments apply (*e.g.*, §3E1.1 (Acceptance of Responsibility)). However, if the defendant is convicted of a separate count for such conduct, this adjustment will apply and increase the offense level for the underlying offense (*i.e.*, the offense with respect to which the obstructive conduct occurred). *See* Application Note 8, below.

The following is a non-exhaustive list of examples of the types of conduct to which this application note applies:

(A) providing a false name or identification document at arrest, except where such conduct actually resulted in a significant hindrance to the investigation or prosecution of the instant offense;

(B) making false statements, not under oath, to law enforcement officers, unless Application Note 4(G) above applies;

(C) providing incomplete or misleading information, not amounting to a material falsehood, in respect to a presentence investigation;

(D) avoiding or fleeing from arrest (*see, however*, §3C1.2 (Reckless Endangerment During Flight));

(E) lying to a probation or pretrial services officer about defendant's drug use while on pre-trial release, although such conduct may be a factor in determining whether to reduce the defendant's sentence under §3E1.1 (Acceptance of Responsibility).

6. **"Material" Evidence Defined.**—"*Material*" evidence, fact, statement, or information, as used in this section, means evidence, fact, statement, or information that, if believed, would tend to influence or affect the issue under determination.

7. **Inapplicability of Adjustment in Certain Circumstances.**—If the defendant is convicted of an offense covered by §2J1.1 (Contempt), §2J1.2 (Obstruction of Justice), §2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), §2J1.5 (Failure to Appear by Material Witness), §2J1.6 (Failure to Appear by Defendant), §2J1.9 (Payment to Witness), §2X3.1 (Accessory After the Fact), or §2X4.1 (Misprision of Felony), this adjustment is not to be applied to the offense level for that offense except if a significant further obstruction occurred during the investigation, prosecution, or sentencing of the obstruction offense itself (*e.g.*, if the defendant threatened a witness during the course of the prosecution for the obstruction offense).

   Similarly, if the defendant receives an enhancement under §2D1.1(b)(16)(D), do not apply this adjustment.

8. **Grouping Under §3D1.2(c).**—If the defendant is convicted both of an obstruction offense (*e.g.*, 18 U.S.C. § 3146 (Penalty for failure to appear); 18 U.S.C. § 1621 (Perjury generally)) and an underlying offense (the offense with respect to which the obstructive conduct occurred), the count for the obstruction offense will be grouped with the count for the underlying offense under subsection (c) of §3D1.2 (Groups of Closely Related Counts). The offense level for that group of closely related counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.

9. **Accountability for §1B1.3(a)(1)(A) Conduct.**—Under this section, the defendant is accountable for the defendant's own conduct and for conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

Historical Note	Effective November 1, 1987. Amended effective November 1, 1989 (amendments 251 and 252); November 1, 1990 (amendment 347); November 1, 1991 (amendment 415); November 1, 1992 (amendment 457); November 1, 1993 (amendment 496); November 1, 1997 (amendment 566); November 1, 1998 (amendments 579, 581, and 582); November 1, 2002 (amendment 637); November 1, 2004 (amendment 674); November 1, 2006 (amendment 693); November 1, 2010 (amendments 746, 747, and 748); November 1, 2011 (amendments 750 and 758); November 1, 2014 (amendment 783); November 1, 2018 (amendment 807).

§3C1.2. Reckless Endangerment During Flight

If the defendant recklessly created a substantial risk of death or serious bodily injury to another person in the course of fleeing from a law enforcement officer, increase by 2 levels.

Commentary

Application Notes:

1. Do not apply this enhancement where the offense guideline in Chapter Two, or another adjustment in Chapter Three, results in an equivalent or greater increase in offense level solely on the basis of the same conduct.

2. "***Reckless***" is defined in the Commentary to §2A1.4 (Involuntary Manslaughter). For the purposes of this guideline, "reckless" means that the conduct was at least reckless and includes any higher level of culpability. However, where a higher degree of culpability was involved, an upward departure above the 2-level increase provided in this section may be warranted.

3. "***During flight***" is to be construed broadly and includes preparation for flight. Therefore, this adjustment also is applicable where the conduct occurs in the course of resisting arrest.

4. "***Another person***" includes any person, except a participant in the offense who willingly participated in the flight.

5. Under this section, the defendant is accountable for the defendant's own conduct and for conduct that the defendant aided or abetted, counseled, commanded, induced, procured, or willfully caused.

6. If death or bodily injury results or the conduct posed a substantial risk of death or bodily injury to more than one person, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).

Historical Note	Effective November 1, 1990 (amendment 347). Amended effective November 1, 1991 (amendment 416); November 1, 1992 (amendment 457); November 1, 2010 (amendment 747).

§3C1.3. Commission of Offense While on Release

If a statutory sentencing enhancement under 18 U.S.C. § 3147 applies, increase the offense level by 3 levels.

Commentary

Application Note:

1. Under 18 U.S.C. § 3147, a sentence of imprisonment must be imposed in addition to the sentence for the underlying offense, and the sentence of imprisonment imposed under 18 U.S.C. § 3147 must run consecutively to any other sentence of imprisonment. Therefore, the court, in order to comply with the statute, should divide the sentence on the judgment form between the sentence attributable to the underlying offense and the sentence attributable to the enhancement. The court will have to ensure that the "total punishment" (*i.e.*, the sentence for the offense committed