

APPENDIX A

FILED: October 4, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4705
(2:17-cr-00116-RAJ-RJK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LEROY L. PERDUE, a/k/a Dink, a/k/a Big Heat, a/k/a Big Cuz

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-4705

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEROY L. PERDUE, a/k/a Dink, a/k/a Big Heat, a/k/a Big Cuz,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (2:17-cr-00116-RAJ-RJK-1)

Submitted: October 1, 2019

Decided: October 4, 2019

Before GREGORY, Chief Judge, MOTZ, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Alan H. Yamamoto, Alexandria, Virginia, for Appellant. G. Zachary Terwilliger, United States Attorney, Daniel T. Young, Assistant United States Attorney, Aidan Taft Grano, Assistant United States Attorney, Alexandria, Virginia, John F. Butler, Assistant United States Attorney, Andrew Bosse, Assistant United States Attorney, William B. Jackson, Assistant United States Attorney, Norfolk, Virginia, Kevin Hudson, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

After a jury trial, Leroy L. Perdue was convicted of conspiracy to manufacture, distribute, and possess one kilogram or more of heroin in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), 846 (2012), interstate travel in aid of racketeering in violation of 18 U.S.C. § 1952(a)(3)(A) (2012), and possession with intent to distribute 100 grams or more of heroin in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). We affirm.

Insofar as Perdue argues that a juror who was stricken for cause was on the jury, we note that the transcript had a typographical error that was corrected to show that the juror at issue did not sit on the jury. Regarding Perdue's challenge to the district court's denial of his motion to recuse, we conclude that the district court did not abuse its discretion in denying the motion. *United States v. Whorley*, 550 F.3d 326, 339 (4th Cir. 2008) (stating standard of review).

Perdue argues that the district court erred by increasing his offense level four levels for his role in the offense. *See U.S. Sentencing Guidelines Manual* § 3B1.1 (2016). Because Perdue did not raise this issue at sentencing, review is for plain error. *United States v. Cohen*, 888 F.3d 667, 678 (4th Cir. 2018). "To prevail on plain error review, an appellant must show (1) that the district court erred, (2) that the error was plain, and (3) that the error affected his substantial rights." *Id.* at 685. If these requirements are satisfied, "we possess discretion on whether to recognize the error, but we should not do so unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks omitted). We have reviewed the record,

including the presentence report, and conclude that there was no error, much less plain error.

Lastly, Perdue argues that the district court failed to comply with the requirements of 21 U.S.C. § 851(b) (2012) by not asking Perdue before sentencing if he affirmed or denied the convictions listed in the 21 U.S.C. § 851(a)(1) (2012) notice. Because Perdue did not raise this issue in the district court, review is for plain error. *United States v. Ellis*, 326 F.3d 593, 598 (4th Cir. 2003). While the district court did not ask Perdue if he affirmed or denied the convictions, we conclude that Perdue failed to show that this error affected the outcome of the proceedings. *Id.* at 599.

Accordingly, we affirm the convictions and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

FILED

SEP 20 2018

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Norfolk Division

UNITED STATES OF AMERICA

v.

LEROY L. PERDUE
a/k/a "Dink"
"Big Heat"
"Big Cuz"
Defendant.

Case Number: 2:17CR00116-001

USM Number: 70981-019

Defendant's Attorney: Jon Babineau, Esquire
Government's Attorney: John Butler, SAUSA

Andrew Bosse, AUSA
William Jackson, AUSA

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1, 3, and 4 of the superseding indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following counts involving the indicated offenses:

<u>Title and Section</u>	<u>Nature of Offense</u>	<u>Offense Class</u>	<u>Offense Ended</u>	<u>Count</u>
T. 21 U.S.C. § 846, 841(a)(1) and 841(b)(1)(A)	Conspiracy to Manufacture, Distribute and Possess with Intent to Manufacture and Distribute One Kilogram or More of a Mixture or Substance Containing Heroin	Felony	August 2017	1
T. 18 U.S.C. § 1952(a)(3)(A)	Interstate Travel in Aid of Racketeering	Felony	June 21, 2017	3
T. 21 U.S.C. § 841(a)(1) and (b)(1)(B)	Possession with Intent to Distribute 100 Grams or More of a Mixture or Substance Containing Heroin	Felony	June 22, 2017	4

As pronounced on September 19, 2018, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this 20th day of September, 2018.


Raymond A. Jackson
United States District Judge

Case Number: 2:17CR00116-001
Defendant's Name: PERDUE, LEROY L.

IMPRISONMENT

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

This term of imprisonment consists of a term of LIFE on Count 1; a term of SIXTY (60) MONTHS on Count 3; and a term of ONE HUNDRED EIGHTY (180) MONTHS on Count 4, all to be served concurrently.

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

RETURN

I have executed this judgment as follows: _____

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 2:17CR00116-001
Defendant's Name: PERDUE, LEROY L.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **TEN (10) YEARS**.

This term consists of a term of **TEN (10) YEARS** on Count 1; a term of **THREE (3) YEARS** on Count 3; and a term of **EIGHT (8) YEARS** on Count 4, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

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

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

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

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

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

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

Case Number: 2:17CR00116-001
Defendant's Name: PERDUE, LEROY L.

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

- 1) The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter, as directed by the probation officer.
- 2) If the defendant tests positive for the use of illegal drugs, he shall participate in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with partial costs to be paid by the defendant, all as directed by the probation officer.
- 3) The defendant shall participate in a program approved by the United States Probation Office for mental health treatment. The cost of this program is to be paid by the defendant as directed by the probation officer.
- 4) The defendant shall waive all rights of confidentiality regarding substance abuse/mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.
- 5) The defendant shall provide the probation officer access to any requested financial information.
- 6) The defendant shall pay for the support of his minor children in the amount ordered by any social service agency or court of competent jurisdiction, and shall register with the Department of Child Support Enforcement in any state in which he resides.

Case Number: 2:17CR00116-001
Defendant's Name: PERDUE, LEROY L.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

<u>Count</u>	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
1	\$100.00	\$0.00	\$0.00
3	\$100.00	\$0.00	\$0.00
4	\$100.00	\$0.00	\$0.00
TOTALS:	\$300.00	\$0.00	\$0.00

FINES

No fines have been imposed in this case.

FORFEITURE

The Court entered a Preliminary Order of Forfeiture on August 28, 2018.

Case Number: 2:17CR00116-001
Defendant's Name: PERDUE, LEROY L.

SCHEDEULE OF PAYMENTS

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

The special assessment is due and payable immediately.

Any balance remaining unpaid on the special assessment at the inception of supervision, shall be paid by the defendant in installments of not less than \$50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

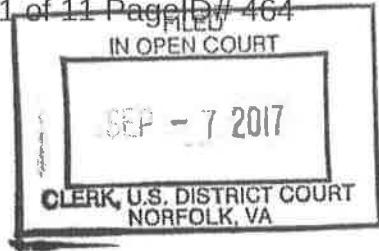
Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made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

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

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

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

APPENDIX C



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 2:17cr116
)	
v.	)	21 U.S.C. § 846
	)	Conspiracy to Manufacture, Distribute, and
LEROY L. PERDUE, a/k/a "Dink," a/k/a "Big Heat," a/k/a "Big Cuz,"	)	Possess with Intent to Manufacture and
(Counts 1, 3, 4)	)	Distribute Heroin
	)	(Count 1)
RHADU J. SCHOOLFIELD, a/k/a "Big Face Dolla,"	)	18 U.S.C. §§ 922(g)(1) and 924(a)(2)
(Counts 1-5)	)	Felon in Possession of a Firearm and
	)	Ammunition
TYWON MCKELVY, (Count 1)	)	(Count 2)
	)	18 U.S.C. § 1952(a)(3)(A)
DARION D. PERDUE, a/k/a "Son Son,"	)	Interstate Travel in Aid of Racketeering
(Counts 1, 6)	)	(Count 3)
)	
and	)	18 U.S.C. §§ 922(g)(1) and 924(a)(2)
CHRISTINA N. JAMES, (Counts 1, 3, 4)	)	Felon in Possession of Ammunition
	)	(Count 5)
Defendants.	)	18 U.S.C. § 922(g)(3)
	)	Unlawful User of a Controlled Substance in
	)	Possession of Firearms and Ammunition
	)	(Count 6)
	)	18 U.S.C. § 924(d), 21 U.S.C. § 853,
	)	28 U.S.C. § 2461
	)	Criminal Forfeiture
)	

SUPERSEDING INDICTMENT

September 2017 TERM – at Norfolk

THE GRAND JURY CHARGES THAT:

COUNT ONE

(Conspiracy to Manufacture, Distribute, and Possess with Intent to Manufacture and Distribute Heroin)

Beginning on a date unknown, but no later than in or about 2007, and continuing thereafter until in or about August 2017, within the Eastern District of Virginia and elsewhere, the following defendants:

LEROY L. PERDUE, a/k/a "Dink," a/k/a "Big Heat," a/k/a "Big Cuz"
(hereinafter LEROY PERDUE)
RHADU J. SCHOOLFIELD, a/k/a "Big Face Dolla"
(hereinafter RHADU SCHOOLFIELD)
TYWON MCKELVY
DARION D. PERDUE, a/k/a "Son Son"
(hereinafter DARION PERDUE)
CHRISTINA N. JAMES

did unlawfully, knowingly, and intentionally combine, conspire, confederate, and agree with each other and with other persons, both known and unknown to the grand jury, to commit one or more of the following offenses:

To unlawfully, knowingly and intentionally manufacture, distribute, and possess with intent to manufacture and distribute, a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1).

The quantity of controlled substances involved in the conspiracy is:

- a) With respect to defendants LEROY PERDUE, RHADU SCHOOLFIELD, TYWON MCKELVY, and DARION PERDUE, the amount of heroin involved in the conspiracy attributable to them, as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is one kilogram or more of a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A)(i); and
- b) With respect to defendant CHRISTINA N. JAMES, the amount of heroin involved in the conspiracy attributable to her, as a result of her own conduct,

and the conduct of other conspirators reasonably foreseeable to her, is 100 grams or more of a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(i).

Ways, Manner, and Means of the Conspiracy

1. It was part of the conspiracy for LEROY PERDUE to lead a heroin Drug Trafficking Organization (the "PERDUE DTO") in Hampton Roads.
2. It was part of the conspiracy for TYWON MCKELVY, among other suppliers, to supply heroin to LEROY PERDUE.
3. It was part of the conspiracy for TYWON MCKELVY to use CHRISTINA JAMES to supply heroin to LEROY PERDUE and members of the PERDUE DTO while MCKELVY was incarcerated.
4. It was part of the conspiracy for LEROY PERDUE to serve as the source of supply for heroin to RHADU SCHOOLFIELD, Kevin Lawrence, Jamars Cooper, Eddie Tyson, Abraham Atkins, and Dominic Mosley.
5. It was part of the conspiracy for LEROY PERDUE to work with relatives he trusted, including DARION PERDUE, RHADU SCHOOLFIELD, Eddie Tyson, Abraham Atkins, and Dominic Mosley, as a means to avoid detection by law enforcement.
6. It was part of the conspiracy for members of the PERDUE DTO to use rented cars, trucks, and motel rooms, as a means to avoid detection by law enforcement.
7. It was part of the conspiracy for members of the PERDUE DTO to use mobile phones to coordinate the distribution of narcotics. It was also part of the conspiracy for members of the PERDUE DTO to change mobile phone numbers regularly to avoid detection by law enforcement.
8. It was part of the conspiracy for members of the PERDUE DTO to maintain and

use various motel rooms and residences for the purpose of manufacturing and distributing heroin.

9. It was part of the conspiracy for LEROY PERDUE to "front" heroin to lower-level members of his DTO without taking payment immediately. This method of supplying on consignment allowed his sub-dealers to sell the heroin and then pay PERDUE later with a portion of the proceeds.

10. It was part of the conspiracy for LEROY PERDUE to traffic wholesale amounts of heroin from Atlanta, Georgia, and New York, New York, to the Hampton Roads area.

11. It was part of the conspiracy for RHADU SCHOOLFIELD to travel with LEROY PERDUE to Atlanta, Georgia, to assist him in trafficking wholesale amounts of heroin back to the Hampton Roads area.

12. It was part of the conspiracy for RHADU SCHOOLFIELD to travel to New York on behalf of LEROY PERDUE to obtain wholesale amounts of heroin for the PERDUE DTO.

13. It was part of the conspiracy for LEROY PERDUE, Kevin Lawrence, and RHADU SCHOOLFIELD to supply other heroin suppliers with wholesale quantities of heroin.

14. It was part of the conspiracy for DARION PERDUE to deliver wholesale quantities of heroin to other dealers on behalf of his father LEROY PERDUE.

15. It was part of the conspiracy for Abraham Atkins to serve as the source of supply of heroin for Victoria Waller and Nicholas Godwin.

16. It was part of the conspiracy for Dominic Mosley to serve as a source of supply of heroin for Edward Muckle.

17. It was part of the conspiracy for Eddie Tyson, Abraham Atkins, Victoria Waller, Nicholas Godwin, Dominic Mosley, and Edward Muckle to sell retail quantities of heroin.

18. It was part of the conspiracy for Eddie Tyson, Abraham Atkins, Dominic Mosley,

and Edward Muckle to encapsulate user quantities of heroin into gel capsules for retail distribution.

19. It was part of the conspiracy for LEROY PERDUE, DARION PERDUE, RHADU SCHOOLFIELD, Kevin Lawrence, Abraham Atkins, Eddie Tyson, and Dominic Mosley to possess and use firearms during and relation to and in furtherance of their drug distribution.

20. It was part of the conspiracy for LEROY PERDUE to serve as a supplier of heroin for members of the 130/200 gang, which is a criminal street gang based in the Cradock neighborhood of Portsmouth, Virginia.

21. It was part of the conspiracy for at least one of the members of the PERDUE DTO to continue to distribute heroin after knowing that heroin dealt by the PERDUE DTO resulted in a fatal overdose.

22. It was part of the conspiracy for CHRISTINA JAMES to use a commercial money counter to organize the cash proceeds of the DTO.

(All in violation of Title 21, United States Code, Section 846.)

COUNT TWO

(Felon in Possession of a Firearm and Ammunition)

On or about February 20, 2017, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, RHADU SCHOOLFIELD, having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate commerce a firearm and ammunition, that is, a Hi-Point, Model JHP, .45 caliber handgun and four rounds of ammunition, said firearm and ammunition having been shipped and transported in interstate and foreign commerce.

(In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).)

COUNT THREE

(Interstate Travel in Aid of Racketeering)

On or about June 21, 2017, in Norfolk, Virginia, in the Eastern District of Virginia and elsewhere, the defendant, RHADU SCHOOLFIELD, aided and abetted by defendants LEROY PERDUE and CHRISTINA N. JAMES, traveled in interstate commerce from the Commonwealth of Virginia to the State of New York, with the intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, that is, Conspiracy to Distribute Heroin, Distribution of Heroin, and Possession with Intent to Distribute Heroin, all in violation of Title 21, United States Code, Sections 846, 841(a)(1), and 841(b)(1)(B), and thereafter performed and attempted to perform an act to promote, manage, establish and carry on, and to facilitate the promotion, management, establishment and carrying on of such unlawful activity.

(In violation of Title 18, United States Code, Sections 1952(a)(3)(A) and 2.)

COUNT FOUR

(Possession with Intent to Distribute Heroin)

On or about June 22, 2017, in Norfolk, Virginia, in the Eastern District of Virginia, the defendants, RHADU SCHOOLFIELD and LEROY PERDUE, aided and abetted by defendant CHRISTINA N. JAMES, did unlawfully, knowingly, and intentionally possess with intent to distribute one hundred (100) grams or more of a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance.

(In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B), and Title 18, United States Code, Section 2.)

COUNT FIVE

(Felon in Possession of Ammunition)

On or about June 22, 2017, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, RHADU SCHOOLFIELD, having been convicted of crimes punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate commerce one box of Winchester 5.56 rifle ammunition, said ammunition having been shipped and transported in interstate and foreign commerce.

(In violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).)

COUNT SIX

(Unlawful User of a Controlled Substance in Possession of Firearms and Ammunition)

On or about August 14, 2017, in Portsmouth, Virginia, in the Eastern District of Virginia, the defendant, DARION PERDUE, then an unlawful user of a controlled substance as defined in Title 21 United States Code, Section 802, did knowingly possess in and affecting interstate commerce a firearm and firearms, to wit, one .40 caliber Glock Model 23 firearm with ammunition, one .25 caliber Raven Arms Model MP-25 firearm and ammunition, and one multi-caliber Diamondback Model DB-15 firearm with three 30 round magazines, said firearms and ammunition having been shipped and transported in interstate and foreign commerce.

(In violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2).)

CRIMINAL FORFEITURE

THE GRAND JURY FURTHER ALLEGES AND FINDS PROBABLE CAUSE THAT:

1. The defendants, LEROY PERDUE, RHADU SCHOOLFIELD, TYWON MCKELVY, DARION PERDUE, and CHRISTINA JAMES, if convicted of any of the violations alleged in this Superseding Indictment, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any firearm or ammunition used in or involved in the violation.

2. The defendants, LEROY PERDUE, RHADU SCHOOLFIELD, TYWON MCKELVY, DARION PERDUE, and CHRISTINA JAMES, if convicted of any of the violations alleged in counts 1, 3, and 4 of this Superseding Indictment, shall forfeit to the United States, as part of sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

3. The defendants, LEROY PERDUE, RHADU SCHOOLFIELD, TYWON MCKELVY, DARION PERDUE, and CHRISTINA JAMES, if convicted of any of the violations alleged in counts 1, 3, and 4 of this Superseding Indictment, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation.

4. If any property that is subject to forfeiture above, as a result of any act or omission of the defendants, (a) cannot be located upon the exercise of due diligence, (b) has been transferred to, sold to, or deposited with a third party, (c) has been placed beyond the jurisdiction of the Court, (d) has been substantially diminished in value, or (e) has been commingled with other property that cannot be divided without difficulty, it is the intention of the United States to

seek forfeiture of any other property of the defendants, as subject to forfeiture under Title 21, United States Code, Section 853(p).

5. The assets subject to forfeiture include, but are not limited to:
 - a. A 2008 Mercedes-Benz with VIN # WDDGF81X28F145563;
 - b. A 2006 Land Rover with VIN # SALSF25486A952545;
 - c. A 2008 Mercedes-Benz with VIN # WDBUF87X48B221844;
 - d. \$62,840 in U.S. currency seized on August 14, 2017, from an address on Clinton Avenue in Bronx, New York;
 - e. \$38,400 in U.S. currency seized on August 14, 2017, from an address on Overlook Parkway in Macon, Georgia;
 - f. A .45 caliber Hi-Point Model JHP firearm seized on February 20, 2017 in Portsmouth, Virginia;
 - g. A .40 caliber Glock Model 23 firearm with ammunition seized on August 14, 2017, from an address on Maple Avenue in Portsmouth, Virginia;
 - h. A .25 caliber Raven Arms Model MP-25 firearm and ammunition seized on August 14, 2017, from an address on Maple Avenue in Portsmouth, Virginia;
 - i. A multi-caliber Diamondback Model DB-15 firearm with three 30 round magazines seized on August 14, 2017, from an address on Maple Avenue in Portsmouth, Virginia;
 - j. A .357 Glock Model 32 firearm seized on August 14, 2017, from an address on Norway Spruce Court in Locust Grove, Georgia;
 - k. A 7.62x39mm Century Arms International Model AK Pistol seized on August 14, 2017, from an address on Highland Avenue in Portsmouth, Virginia;
 - l. A 9mm Beretta Model BU9 Nano Pistol seized on August 14, 2017, from an address on Highland Avenue in Portsmouth, Virginia; and
 - m. A .380 caliber Ruger Model LCP Firearm seized on August 14, 2017, from an address on Dale Drive in Portsmouth, Virginia;

(In accordance with Title 18, United States Code, Sections 924(d) and 981(a)(1)(C) by Title 28, United States Code, Section 2461, and Title 21, United States Code, Section 853.)

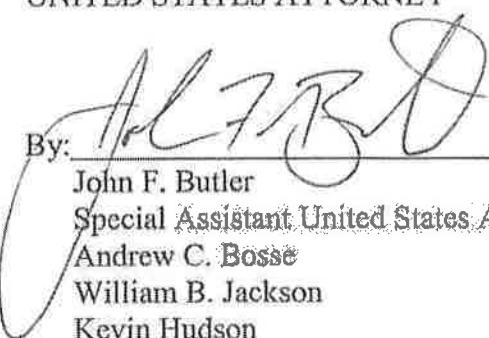
UNITED STATES V. LEROY PERDUE ET AL., 2:17CR116

A TRUE BILL:

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FOREPERSON

Dana J. Boente
UNITED STATES ATTORNEY

By: 

John F. Butler
Special Assistant United States Attorney
Andrew C. Bosse
William B. Jackson
Kevin Hudson
Assistant United States Attorneys
Attorneys for the United States
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101 West Main Street, Suite 8000
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andrew.bosse@usdoj.gov
william.jackson3@usdoj.gov
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APPENDIX D

Sec. 851 Proceedings to establish prior convictions

§851. Proceedings to establish prior convictions

(a) Information filed by United States Attorney

(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) Affirmation or denial of previous conviction

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c) Denial; written response; hearing

(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d) Imposition of sentence

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

(e) Statute of limitations

No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

(Pub. L. 91-513, title II, §411, Oct. 27, 1970, 84 Stat. 1269.)

Effective Date

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

§3B1.1 Aggravating Role

§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.
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).