

APPENDIX

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FILED: September 24, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4782
(1:16-cr-00351-CCB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRIUS DARRELL DAVIS, a/k/a Meatman

Defendant - Appellant

ORDER

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

Entered at the direction of the panel: Judge Diaz, Judge Floyd, and Judge Richardson.

For the Court

/s/ Patricia S. Connor, Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 17-4782

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DEMETRIUS DARRELL DAVIS, a/k/a Meatman,

Defendant – Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Catherine C. Blake, District Judge. (1:16-cr-00351-CCB-1)

Argued: May 9, 2019

Decided: August 2, 2019

Before DIAZ, FLOYD, and RICHARDSON, Circuit Judges.

Affirmed by unpublished opinion. Judge Diaz wrote the opinion, in which Judge Richardson joined. Judge Floyd wrote an opinion concurring in the judgment.

ARGUED: Erek Lawrence Barron, WHITEFORD, TAYLOR & PRESTON, LLP, Bethesda, Maryland, for Appellant. Derek Edward Hines, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee. **ON BRIEF:** Michael Lawlor, BRENNAN, MCKENNA & LAWLOR, CHTD., Greenbelt, Maryland, for Appellant. Robert K. Hur, United States Attorney, Jason D. Medinger, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

DIAZ, Circuit Judge:

Demetrius Davis was convicted on a drug conspiracy charge and sentenced to ten years in prison. He filed two suppression motions before trial, one alleging an illegal wiretap of his phone and the other alleging an illegal search of a vehicle. The district court denied both motions, and Davis now appeals. We affirm the judgment.

I.

A.

Davis's prosecution arose from a joint federal-state investigation of a cocaine trafficking ring on Maryland's Eastern Shore. The investigation originally focused on Tarron Fletcher, Tyandre Johnson, and several of their associates. For several years, law enforcement agents used traditional investigative methods against those suspected traffickers, including controlled buys with confidential sources, pen registers, GPS trackers, pole cameras, trash pulls, and package searches at the Post Office. By 2016, they had gathered enough evidence to indict the known conspirators on drug charges. But the agents sought more evidence to take down "the organization as a whole." J.A. 74.

In pursuit of that goal, they applied for a wiretap of Johnson and Fletcher's phones. In their application, the agents explained why traditional investigative techniques would not reveal the cocaine supplier. In their estimation, confidential sources or undercover officers couldn't get close to sources of supply; visual surveillance, GPS tracking, trash pulls, search warrants, and similar methods had failed to reveal anyone higher in the operation; and no one with knowledge of the conspiracy was likely to testify under oath.

A federal magistrate judge agreed and approved the wiretap application under Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

When the wiretap was approved, agents were not aware of Davis or his role in the conspiracy. But through the wiretap, they captured several phone and text conversations involving Davis. In two calls on the same day, Davis and Fletcher used what appear to be coded terms (e.g., “that girl Crystal”) to discuss—as the agents interpreted it—the quality of certain kilograms of cocaine. In later text messages, Davis and Fletcher continued that discussion and arranged a meeting in which Davis would supply Fletcher with drugs. Using that information, agents followed Davis as he drove to a meeting with Fletcher.

In another call, Johnson complained to Davis about receiving drugs at inopportune times and being forced to repay debts early. Soon after, Johnson sent a text message to Davis reading, “I’m gonna give your money cuz but don’t come around me with drugs no more man . . . u bad business.” J.A. 153. The agents also used pen registers and toll analysis to generate a list of calls between members of the conspiracy.

Suspecting that Davis was supplying cocaine to Fletcher and Johnson, agents sought a Title III wiretap order for Davis’s cellphone. In the affidavit supporting their wiretap application, the agents admitted that (for the most part) they had not tried traditional investigative techniques against Davis. But they detailed why such techniques would likely fail if tried.

In the agents’ understanding, existing confidential sources had no access to Davis and, given his role in the conspiracy and the rural area where he lived, it wouldn’t be feasible to get a confidential source or undercover officer near him. Several factors would

have made visual surveillance ineffective: cars or officers would stand out in a rural area, Davis used several different cars, and the conspirators had employed countersurveillance tactics to avoid being followed. The agents didn't have enough information to know where Davis kept his suspected supply, so search warrants would have been ineffective. Interviews and subpoenas were unlikely to get anyone with knowledge of the conspiracy to testify (much less to testify honestly). Trash searches and pole cameras would be impractical at Davis's remote house. Pen registers, toll analysis, and mail covers¹ were unlikely to generate useful information. And neither the original wiretap nor a financial investigation of the conspirators was bearing further fruit.

A federal magistrate judge authorized the wiretap on Davis's phone, finding that there was probable cause that he was involved in the drug conspiracy and that a wiretap was necessary because other methods were unlikely to succeed. Using information from that wiretap and from GPS tracking of Davis's Mercedes, agents observed what they believed to be Davis supplying drugs to his coconspirators.² They also took aerial and ground-based photos and video of Davis's property. With this new evidence, they obtained federal search warrants for Davis's house and for his Mercedes.

¹ Federal investigators may ask the Post Office to generate a "mail cover," which is a compiled list of the names and addresses on all USPS mail sent to a particular address. See 39 C.F.R. § 233.3.

² The agents had state court authorization to place a GPS tracker on the Mercedes before they applied for a wiretap order. But they didn't place the tracker on the car until after the wiretap was approved.

A team of agents executed the search warrants early one morning. Several agents entered Davis's house, separating Davis and his girlfriend for questioning. Davis orally acknowledged that he had been advised of his *Miranda* rights, and he responded to questions without invoking his rights. A detective asked Davis about a white box truck parked in his driveway, which investigators had seen on the premises before. Davis denied ownership (or even knowledge) of the truck. But after questioning Davis, the detective found the truck's keys in Davis's house.

While some agents searched the house, a K9 officer walked a drug-sniffing dog around the back of Davis's property and the vehicles parked there. After the detective found the keys, he asked the K9 officer to bring the dog to the truck parked in the driveway. The dog alerted to the smell of narcotics, and the agents opened the truck. Inside, they found a small quantity of cocaine and \$625 in cash.

B.

A federal grand jury indicted Davis, Johnson, and Fletcher on one count of conspiracy to distribute and possess with intent to distribute 500 or more grams of cocaine. *See* 21 U.S.C. §§ 841(a)(1), 846. Johnson and Fletcher pleaded guilty. Davis pleaded not guilty and filed two suppression motions. The first motion alleged that the wiretap of Davis's phone lacked probable cause and that none of the wiretaps obtained by the agents were necessary. The second motion alleged that the search of the truck on Davis's property violated the Fourth Amendment. The district court denied both suppression motions.

First, the district court addressed the wiretaps of Johnson and Fletcher's phones. It held that those wiretaps were necessary because they were the only way to identify the

conspirators' source of supply. Then, the district court addressed the wiretap of Davis's phone. It held that there was probable cause for the wiretap and that it was necessary because other investigative methods would have been ineffective. Last, the district court addressed the search of the truck, concluding that there was no Fourth Amendment violation because Davis had no reasonable expectation of privacy in the truck after denying that he had any interest in it. As an alternative to that holding, the district court held that the warrant and the automobile exception to the warrant requirement each independently justified the search.

A jury convicted Davis of conspiracy. The district court sentenced him to ten years in prison followed by five years of supervised release. This appeal followed.

II.

Davis's first ground for appeal concerns his motion to suppress conversations captured via the Title III wiretaps. Title III allows the government to ask a federal district court for a wiretap order during investigations of certain crimes. 18 U.S.C. § 2516(1). To approve the order, the district court must make several findings. *Id.* § 2518(3). Three of the required findings are at issue in this appeal, findings that: (1) there is probable cause that the target individual has committed or will commit a crime enumerated in Title III; (2) there is probable cause that the wiretap will intercept communications about that crime; and (3) normal investigative procedures have failed, would be too dangerous, or reasonably appear unlikely to succeed. *Id.* § 2518(3)(a)–(c). The government must supply an affidavit with evidence sufficient to support these findings. *Id.* § 2518(1).

Davis contends that the government lacked probable cause to wiretap his phone and that neither the original wiretap of Johnson and Fletcher nor the subsequent wiretap of Davis was necessary. As we explain, however, we hold that the district court did not err by denying this suppression motion.³

A.

Though Davis primarily challenges the wiretap of his phone, he also appears to contest the necessity of wiretapping Johnson and Fletcher's phones.⁴ As he argued in the district court, Davis appears to contend on appeal that those wiretaps weren't necessary because agents had already uncovered substantial evidence against Johnson and Fletcher by traditional means. The district court concluded that the wiretaps were necessary, however, because traditional methods had failed to reveal Johnson and Fletcher's source of supply.

We review a district court's determination of necessity under Title III for abuse of discretion. *United States v. Wilson*, 484 F.3d 267, 280 (4th Cir. 2007). Though the

³ As an alternative ground for affirming, the government contends that suppression is unwarranted because agents relied on the wiretap orders in good faith. Because we hold that the orders satisfy Title III's requirements, we don't address whether the good faith exception applies to statutory suppression under Title III.

⁴ A criminal defendant must be an "aggrieved person" to move to suppress under Title III, 18 U.S.C. § 2518(10)(a), defined as "a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed," *id.* § 2510(11). Davis says he is an aggrieved person because his communications were intercepted during the wiretap of Johnson and Fletcher. The government does not dispute that characterization, so we will assume it to be true for purposes of this appeal.

government must provide specific facts—not boilerplate—showing necessity, we owe “considerable deference” to the district court’s determination. *United States v. Oriakhi*, 57 F.3d 1290, 1298 (4th Cir. 1995) (quoting *United States v. Smith*, 31 F.3d 1294, 1298 (4th Cir. 1994)). It is appropriate to consider necessity “in a practical and commonsense fashion that does not hamper unduly the investigative powers of law enforcement agents.” *Wilson*, 484 F.3d at 281 (quoting *Smith*, 31 F.3d at 1297). The government’s burden to prove necessity therefore “is not great.” *Id.* at 281 (quoting *Smith*, 31 F.3d at 1297).

It is true that even before the wiretaps, agents likely had enough evidence to support charges against Johnson and Fletcher. But the agents’ goal was to find Johnson and Fletcher’s supplier and to uncover the full trafficking conspiracy. In their affidavit, the agents sufficiently demonstrated that the methods they had tried—confidential sources, trash pulls, visual surveillance, package searches, etc.—didn’t reveal Johnson and Fletcher’s source of supply.

In many other cases, we have affirmed wiretaps intended to reveal the higher levels of a conspiracy when ordinary investigative methods could not reach them. *See, e.g., United States v. Galloway*, 749 F.3d 238, 242–43 (4th Cir. 2014); *Smith*, 31 F.3d at 1297–98; *United States v. Leavis*, 853 F.2d 215, 222 (4th Cir. 1988); *United States v. Clerkley*, 556 F.2d 709, 714–15 (4th Cir. 1977). As in those precedents, the wiretap order was appropriate in this case because the government demonstrated that ordinary methods had failed or would likely fail to reveal the source of Johnson and Fletcher’s supply.

B.

We turn next to Davis's challenge to the wiretap of his own phone. Davis gives two reasons for why the district court erred. First, he says that the wiretap application did not sufficiently allege probable cause. Second, he says that the application did not sufficiently allege that a wiretap was necessary. We disagree with Davis on both issues.

1.

The probable cause standard for a Title III wiretap order is the same as the probable cause standard for a warrant. *United States v. Talbert*, 706 F.2d 464, 467 (4th Cir. 1983). Probable cause for a wiretap order thus exists when the facts warrant a person "of reasonable caution to believe that an offense has been or is being committed." *Berger v. New York*, 388 U.S. 41, 55 (1967). On appeal, we afford "[g]reat deference" to the magistrate judge's assessment of the facts and ask only "whether the magistrate had a substantial basis for his conclusion that probable cause existed." *United States v. Williams*, 974 F.2d 480, 481 (4th Cir. 1992).

We agree with the district court that the magistrate judge had a substantial basis for concluding that there was probable cause to support the wiretap of Davis's phone. The calls and texts intercepted through the wiretaps of Fletcher and Johnson's phones strongly suggested that Davis was involved in drug trafficking. For example, the agents captured calls between Fletcher and Davis in which the men used a fairly transparent code word—"crystal"—to discuss concerns about the quality of cocaine in their possession. The conversations suggested that Davis supplied cocaine to Fletcher, and in one call, Davis appeared to reiterate trafficking-related conversations he'd had with other people. After that, text messages between Davis and Fletcher appeared to describe (in coded language)

an arrangement in which Davis would supply narcotics to Fletcher. In another call, Johnson complained that Davis was requiring Johnson to receive drugs without notice and asking for repayment of drug debts at inopportune moments. And in a subsequent text, Johnson told Davis that he would repay his debts but didn't want to receive any further supplies of drugs. These conversations would lead a reasonable person to believe that Davis was participating in the drug crimes under investigation, which suffices to establish probable cause to wiretap his phone.

Davis urges us not to rely on the agents' understanding of the coded terms. But the agents' interpretation of the coded terms—which ties the wiretapped conversations to cocaine trafficking—was reasonable. The coded language was fairly transparent, after all. *See, e.g.,* J.A. 141 (“She’s just straight like Crystal. She ain’t really got too much smell to her at all. . . . I picked one up and put it on my tongue . . . she took a while just to you know, to numb it.”). And we agree that the wiretapped conversations suggest that Davis was involved in drug trafficking.

2.

Davis also challenges the district court’s conclusion that the wiretap of his phone was necessary. The government concedes that it didn’t perform a traditional investigation of Davis before seeking a wiretap for his phone. So, the question is whether the government proved that normal investigative methods reasonably appeared unlikely to succeed. As noted, our review of the necessity determination is deferential. *See Wilson*, 484 F.3d at 280; *Oriakhi*, 57 F.3d at 1298.

The government made a sufficient showing that ordinary methods would have been ineffective against Davis. Because of where Davis lived, and his suspected role as a supplier for the conspiracy, getting a confidential source or undercover officer near him would not have been feasible. Visual surveillance, cameras, and trash pulls would likely have been ineffective and risky because of the remote location of his house. Interviews and subpoenas were unlikely to yield honest testimony. And agents lacked enough information to use search warrants effectively.

Davis contends that because some ordinary investigative methods were successful against Johnson and Fletcher, who lived in the same area as Davis, they likely would have been successful against Davis too. True, ordinary methods had revealed small-scale drug dealing by Johnson and Fletcher. But they had not led agents to their source of supply, and the agents reasonably concluded that they would not have revealed anything useful about Davis, who appeared (based on the wiretapped conversations) to be the supplier. To the extent that other methods, such as visual surveillance or GPS tracking, were useful later in the investigation of Davis, it was only because of information obtained from the wiretap.⁵

⁵ Davis points to a case in which the Ninth Circuit held that the government failed to prove necessity when it applied for a wiretap order after only minimal investigation. *United States v. Gonzalez, Inc.*, 412 F.3d 1102, 1114–15 (9th Cir. 2005). But there, the Ninth Circuit reviewed whether the wiretap application complied with Title III de novo, *id.* at 1111, and it considered several unused investigative methods to be promising, *id.* at 1114–15. We (on the other hand) apply a deferential standard of review to the question of necessity. And, unlike in *Gonzalez*, none of the unused investigative methods in this case appear to have been promising.

The government supported its need for a wiretap of Davis's phone with specific facts showing why other investigative methods reasonably appeared unlikely to succeed. As a result, the district court didn't abuse its discretion in finding that the wiretap was necessary.

III.

Davis next argues that the search of the truck on his property violated his Fourth Amendment rights. The district court held (and we agree) that Davis's Fourth Amendment challenge fails because he lacked a reasonable expectation of privacy in the truck.⁶

A district court may only suppress evidence on the basis that a search was unconstitutional if the search "infringed an interest of the defendant which the Fourth Amendment was designed to protect." *Rakas v. Illinois*, 439 U.S. 128, 140 (1978). In this threshold inquiry (sometimes called Fourth Amendment standing), the defendant has the "burden of establishing that he had a reasonable expectation of privacy" in the area or object searched. *United States v. Stevenson*, 396 F.3d 538, 547 (4th Cir. 2005); see *Byrd v. United States*, 138 S. Ct. 1518, 1530 (2018) ("[A] person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search . . .").

⁶ Given our holding on this issue, we don't reach the government's alternative arguments that the warrant covered the truck, that the search fell within the automobile exception, or that the officers relied in good faith on the warrant or on judicial precedents.

If the defendant lacked (or abandoned) a reasonable expectation of privacy in the area or object searched, a motion to suppress evidence from that search fails as a matter of law. *See United States v. Williams*, 538 F.2d 549, 550–51 (4th Cir. 1976). We review the district court’s legal conclusions about expectations of privacy de novo and its factual findings for clear error. *Han*, 74 F.3d at 541, 544–45.

Under our precedent, a person abandons any reasonable expectation of privacy in certain property for Fourth Amendment purposes when his words or actions can reasonably be understood to disclaim any privacy interest in that property. *See United States v. Leshuk*, 65 F.3d 1105, 1111 (4th Cir. 1995) (“[A] person who voluntarily abandons property loses any reasonable expectation of privacy in the property and is consequently precluded from seeking to suppress evidence seized from the property.”). In *United States v. Han*, for example, we concluded that a defendant abandoned any privacy interest in a suitcase found next to him in his home by denying that the bag was his. 74 F.3d 537, 540, 544–45 (4th Cir. 1996). In a similar case, we determined that a defendant abandoned his privacy interest in a briefcase and a typewriter case found in his hotel room when he claimed that they “did not belong to him and that he had no idea to whom [they] belonged.” *Williams*, 538 F.2d at 550–51. We have reached the same conclusion in cases where defendants have disclaimed ownership of bags that otherwise appeared to belong to them.⁷

⁷ *See Leshuk*, 65 F.3d at 1110–11 (backpack and garbage bags found by defendant); *United States v. Clark*, 891 F.2d 501, 506 (4th Cir. 1989) (suitcase found at airport baggage claim which matched defendant’s baggage claim check); *United States v. Washington*, 677 F.2d 394, 395–96 (4th Cir. 1982) (suitcase in defendant’s possession at the airport); cf. *United States v. McNeil*, No. 92-5421, 1993 WL 347524, at *3 (4th Cir. Sept. 7, 1993)

In this case, Davis expressly disclaimed possession (or even knowledge) of the truck. J.A. 427 (“It’s not my white box truck. I don’t know anything about it.”). His words mirror the language we have found to constitute abandonment of a privacy interest in an object. *See, e.g., Han*, 74 F.3d at 540 (“Han responded that it was not his bag”); *Williams*, 538 F.2d at 550 (“Defendant informed the agents that [the typewriter case] did not belong to him and that he had no idea to whom it belonged.”); *Washington*, 677 F.2d at 395 (“It’s not my bag. I don’t care what you do”). While these precedents concerned bags, the same principle should apply to cars. Vehicles are chattel possessions like bags, and individuals generally don’t have greater privacy interests in vehicles than in other possessions.

Davis contends that this court uses a multifactor test to determine if a defendant had a reasonable expectation of privacy. In his view, relevant factors include the location of the truck, the fact that investigators had seen it on Davis’s property before, and the key found inside Davis’s house. As a general principle, we do employ a multifactor test. *See, e.g., United States v. Castellanos*, 716 F.3d 828, 833–34 (4th Cir. 2013); *United States v. Horowitz*, 806 F.2d 1222, 1225 (4th Cir. 1986). But we have not done so when a defendant disclaims any interest in an object. *See, e.g., Han*, 74 F.3d at 544–45; *Leshuk*, 65 F.3d at 1110–11; *Williams*, 538 F.2d at 550. Instead, we have found the disclaimer dispositive, even if agents have reason to know that the defendant does in fact own the property to be

(driver and passengers had no privacy interest in a motel key found in a search of the car they were in because they all said the key wasn’t theirs).

searched.⁸ *See Han*, 74 F.3d at 544–45. Because Davis disclaimed any interest in the box truck, the district court correctly denied his motion to suppress the drugs seized from the truck.

IV.

For the reasons given, we affirm the district court’s judgment.

AFFIRMED

⁸ Davis also makes a brief argument that he didn’t disclaim ownership of the truck. As Davis would have it, the detective asked him about a white box truck in his driveway when, in Davis’s view of the facts, the truck was actually parked on the property of the neighboring lot. Thus, Davis says his refusal to admit ownership of a truck in his driveway didn’t extend to a truck that agents found on the adjoining parcel. The problem for Davis is that the district court found that the “white box truck was parked such that it was at least partly on the gravel driveway” of Davis’s property. J.A. 624. The court’s finding is not clearly wrong, so we will not disturb it. *See Leshuk*, 65 F.3d at 1111.

FLOYD, J., concurring in the judgment:

I agree that we must, in accordance with our precedent, affirm the district court's denial of Davis's motion to suppress. But with great respect for my good colleagues, I am not convinced that our precedent requires us to hold that a person categorically abandons her interest in her property when she disclaims ownership of the property prior to a search by law enforcement, such that no circumstances other than the person's verbal disclaimer are relevant to the abandonment analysis. While broad wording in some of our cases points in that direction, it seems to me that we have not subjected the question to a thorough analysis or made it an explicit holding. Nor, in my view, does the case at hand require us to do so: the parties have briefed the question only scantily, and even under a totality-of-the-circumstances approach, I believe we would affirm the district court's conclusion that Davis abandoned his truck before it was searched. That being said, I concur in the judgment.

United States District Court
District of Maryland

2017 DEC 14 PM 3: 37

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed on or After November 1, 1987)

v.

Case Number: CCB-1-16-CR-00351-001

DEMETRIUS DARRELL DAVIS

Defendant's Attorney: Michael D Montemarano, CJA
Assistant U.S. Attorney: Derek E. Hines, Jason
Medinger

THE DEFENDANT:

- ☐ pleaded guilty to count(s) ____
☐ pleaded nolo contendere to count(s) _____, which was accepted by the court.
☒ was found guilty on count(s) One (1) of the Indictment after a plea of not guilty.

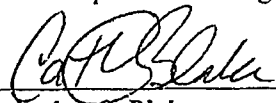
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21:846, 841(a)(1)	Conspiracy To Distribute and Possess With Intent To Distribute Cocaine	May 31, 2016	1

The defendant is adjudged guilty of the offenses listed above and sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by U.S. v. Booker, 543 U.S. 220 (2005).

- ☐ The defendant has been found not guilty on count(s) ____
☐ Counts ____ is/are dismissed on the motion of the United States.

IT IS FURTHER 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.

December 14, 2017
Date of Imposition of Judgment


Catherine C. Blake
United States District Judge

12/14/17
Date

Name of Court Reporter: Martin Giordano

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DEFENDANT: Demetrius Darrell Davis

CASE NUMBER: CCB-1-16-CR-00351-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 120 months.

☒ The court makes the following recommendations to the Bureau of Prisons: (1) that the defendant participate in any substance abuse program for which he may be eligible to include the Residential Drug Abuse Program; and (2) that the defendant be placed in a facility consistent with his security level that is as close as possible to the Eastern Shore of Maryland so he may be close to his family.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:

☐ before 2pm on _____.

A defendant who fails to report either to the designated institution or to the United States Marshal as directed shall be subject to the penalties of Title 18 U.S.C. §3146. If convicted of an offense while on release, the defendant shall be subject to the penalties set forth in 18 U.S.C. §3147. For violation of a condition of release, the defendant shall be subject to the sanctions set forth in Title 18 U.S.C. §3148. Any bond or property posted may be forfeited and judgment entered against the defendant and the surety in the full amount of the bond.

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 U.S. MARSHAL

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DEFENDANT: Demetrius Darrell Davis

CASE NUMBER: CCB-1-16-CR-00351-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years.

The defendant shall comply with all of the following conditions:

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.

A. MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance.
- 3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
- 4) ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
- 5) ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
- 6) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
- 7) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page

B. STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

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DEFENDANT: Demetrius Darrell Davis**CASE NUMBER: CCB-1-16-CR-00351-001**

- 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
- 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
- 13) You must follow the instructions of the probation officer related to the conditions of supervision.

C. SUPERVISED RELEASE ADDITIONAL CONDITIONS

The defendant must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training.

The defendant must submit to substance abuse testing to determine if he has used a prohibited substance. The defendant must not attempt to obstruct or tamper with the testing methods.

The defendant must participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

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DEFENDANT: Demetrius Darrell Davis

CASE NUMBER: CCB-1-16-CR-00351-001

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	WAIVED	\$.00
<input type="checkbox"/> CVB Processing Fee \$30.00			

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

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

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

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS \$ _____ \$ _____

☐ Restitution amount ordered pursuant to plea agreement _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows: _____

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

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DEFENDANT: Demetrius Darrell Davis

CASE NUMBER: CCB-1-16-CR-00351-001

SCHEDULE OF PAYMENTS

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.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A ☒ In full immediately; or
- B ☐ \$_____ immediately, balance due (in accordance with C, D, or E); or
- C ☐ Not later than _____; or
- D ☐ Installments to commence _____ day(s) after the date of this judgment.
- E ☐ In _____ (e.g. *equal weekly, monthly, quarterly*) installments of \$_____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

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

Unless the court expressly orders otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the Clerk of the Court.

☐ **NO RESTITUTION OR OTHER FINANCIAL PENALTY SHALL BE COLLECTED THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.**

If the entire amount of criminal monetary penalties is not paid prior to the commencement of supervision, the balance shall be paid:

- ☐ in equal monthly installments during the term of supervision; or
- ☐ on a nominal payment schedule of \$_____ per month during the term of supervision.

The U.S. probation officer may recommend a modification of the payment schedule depending on the defendant's financial circumstances.

Special instructions regarding the payment of criminal monetary penalties:

☐ Joint and Several

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

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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DEFENDANT: Demetrius Darrell Davis
CASE NUMBER: CCB-1-16-CR-00351-001
DISTRICT: DISTRICT OF MARYLAND

STATEMENT OF REASONS
(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A ☒ The court adopts the revised presentence investigation report without change.
- B ☐ The court adopts the presentence investigation report with the following changes: (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report)
- 1 ☐ Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court (briefly summarize the changes, including changes to base offense level, or specific offense characteristics):
- 2 ☐ Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):
- 3 ☐ Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations):
- 4 ☐ Additional Comments or Findings (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it):
- C ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Applicable Sentencing Guideline (if more than one guideline applies, list the guideline producing the highest offense level):

II COURT FINDINGS ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

- A ☒ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.
- B ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case (Specify):
- ☐ substantial assistance (18 U.S.C. § 3553(e))
- ☐ the statutory safety valve (18 U.S.C. § 3553(f))
- C ☐ No count of conviction carries a mandatory minimum sentence.

III COURT DETERMINATION OF GUIDELINE RANGE (BEFORE DEPARTURES OR VARIANCES):

Total Offense Level: 28
Criminal History Category: III
Guideline Range (after application of §§G1.1 and §G1.2): 97 to 121 months
Supervised Release Range: 4 to 5 years
Fine Range: \$25,000.00 to \$5,000,000.00

- ☒ Fine waived or below the guideline range because of inability to pay.

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DEFENDANT: Demetrius Darrell Davis
CASE NUMBER: CCB-1-16-CR-00351-001
DISTRICT: DISTRICT OF MARYLAND

STATEMENT OF REASONS
(Not for Public Disclosure)

IV GUIDELINE SENTENCING DETERMINATION (Check all that apply)

- A ☒ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: (Use Section VIII if necessary)
- C ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. (Also complete Section V)
- D ☐ The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). (Also complete Section VI)

V DEPARTURES PURSUANT TO THE GUIDELINES MANUAL (If applicable)

- A The sentence imposed departs (Check only one):
☐ above the guideline range
☐ below the guideline range
- B Motion for departure before the court pursuant to (Check all that apply and specify reason(s) in sections C and D):
- 1 **Plea Agreement**
☐ binding plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion
- 2 **Motion Not Addressed in a Plea Agreement**
☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected
☐ joint motion by both parties
- 3 **Other**
☐ Other than a plea agreement or motion by the parties for departure

C Reasons for departure (Check all that apply):

- | | | |
|---|--|--|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| | | <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP) |
- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual (see "List of Departure Provisions" following the Index in the Guidelines Manual). (Please specify):

D ☐ State the basis for the departure. (Use Section VIII if necessary)

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DEFENDANT: Demetrius Darrell Davis
CASE NUMBER: CCB-1-16-CR-00351-001
DISTRICT: DISTRICT OF MARYLAND

STATEMENT OF REASONS
(Not for Public Disclosure)

VI COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A The sentence imposed is *(Check only one):*

- ☐ above the guideline range
☐ below the guideline range

B Motion for a variance before the court pursuant to *(Check all that apply and specify reason(s) in sections C and D):*

1 Plea Agreement

- ☐ binding plea agreement for a variance accepted by the court
☐ plea agreement for a variance, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense motion for a variance

2 Motion Not Addressed in a Plea Agreement

- ☐ government motion for a variance
☐ defense motion for a variance to which the government did not object
☐ defense motion for a variance to which the government objected
☐ joint motion by both parties

3 Other

- ☐ Other than a plea agreement or motion by the parties for a variance

C 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*

☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)

- | | | |
|---|--|--|
| <input type="checkbox"/> MensRea | <input type="checkbox"/> Extreme Conduct | <input type="checkbox"/> Dismissed/Uncharged Conduct |
| <input type="checkbox"/> Role in the Offense | <input type="checkbox"/> Victim Impact | |
| <input type="checkbox"/> General Aggravating or Mitigating Factors <i>(Specify)</i> _____ | | |

☐ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)

- | | |
|--|---|
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition |
| <input checked="" type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other <i>(Specify)</i> : _____ |
| <input type="checkbox"/> Issues with Criminal History <i>(Specify)</i> : _____ | |

☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

☐ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

☐ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))

☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))

☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

☐ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) *(Specify in section D)*

☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

☐ Acceptance of Responsibility

☐ Conduct Pre-trial/On Bond

☐ Cooperation Without Government Motion for Departure

☐ Early Plea Agreement

☐ Global Plea Agreement

☐ Time Served *(not counted in sentence)*

☐ Waiver of Indictment

☐ Waiver of Appeal

☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007). (Specify):* _____

☐ Other *(Specify)*: _____

D State the basis for a variance. *(Use Section VIII if necessary)*

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DEFENDANT: Demetrius Darrell Davis
CASE NUMBER: CCB-1-16-CR-00351-001
DISTRICT: DISTRICT OF MARYLAND

STATEMENT OF REASONS
(Not for Public Disclosure)

VII COURT DETERMINATIONS OF RESTITUTION

A ☒ Restitution not applicable.

B Total amount \$.00

C Restitution not ordered (Check only one):

- 1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
- 2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
- 3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
- 4 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
- 5 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
- 6 ☐ Restitution is not ordered for other reasons. (Explain)

D ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE (If applicable)

IX VICTIM INFORMATION (If applicable)

☐ Please see Victim Information attachment.

Defendant's Soc. Sec. No.: 220-78-7535
Defendant's Date of Birth: 01/22/1974
Defendant's Residence Address: IN CUSTODY
Defendant's Mailing Address: Same as above

December 14, 2017

Date of Imposition of Judgment

Signature of Judge

Catherine C. Blake, United States District Judge

Date Signed

12/14/17

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**Additional material
from this filing is
available in the
Clerk's Office.**