APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 20, 2019 Decided March 6, 2020

No. 18-3056

UNITED STATES OF AMERICA,
APPELLEE

v.

STEVEN MASON, ALSO KNOWN AS SAM MASON,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cr-00195-2)

Gregory S. Smith, appointed by the court, argued the cause and filed the briefs for appellant.

Daniel J. Lenerz, Assistant U.S. Attorney, argued the cause for appellee. With him on the brief were *Jessie K. Liu*, U.S. Attorney, and *Elizabeth Trosman* and *John P. Mannarino*, Assistant U.S. Attorneys.

Before: ROGERS, GRIFFITH, and KATSAS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* GRIFFITH.

GRIFFITH, *Circuit Judge*: A jury convicted Steven Mason and a codefendant of conspiring to deal heroin and other drugs.

Mason was sentenced to five years' imprisonment, the statutory mandatory minimum. On appeal, Mason argues that the government violated its constitutional obligation under *Brady v. Maryland*, 373 U.S. 83 (1963), to disclose material helpful to his defense in a timely manner. Mason also objects to the district court's refusal to grant him a trial separate from that of his codefendant. And he says the district court should have found him eligible for a reduction of his sentence under section 5C1.2 of the Sentencing Guidelines. We reject each of Mason's arguments and affirm his conviction and sentence.

I

Because Mason's arguments are highly fact-bound, we describe discovery, the trial, and sentencing in some detail.

A

In 2016, a federal grand jury indicted Mason, Andrea Miller, Nicholas Jones, Frank Walker, and several others for their participation in a drug conspiracy. The government alleged that Jones and Walker led a conspiracy that imported drugs into the United States, then sold them to middlemen. According to the government, Mason was one of the middlemen and Miller received a shipment of drugs at her home.

Although most of the conspirators pleaded guilty, Mason and Miller did not. The government filed a new two-count indictment against them in October 2017. The first count charged Miller with conspiracy to import heroin and Xanax. The second charged Mason and Miller with conspiracy to distribute heroin, Xanax, and fentanyl. Mason sought to separate his trial from Miller's, but the district court denied his motion and set their joint trial to begin in January 2018.

Problems arose in December 2017, when the government made a series of disclosures that suggested that Nicholas Jones, who was likely to appear as a key government witness, might lie at the trial. In early March 2017, the government learned of a rumor that a member of the conspiracy had written a letter reporting that he planned to tell lies about Walker's role and that Walker had a copy of the letter. The government suspected that Jones wrote the letter but he denied that he was the author when asked during a March 10 interview. In May, the government asked Jones about the letter again, this time with the aid of a polygraph. Although he denied authorship, the polygraph suggested he was lying.

In a June interview, the previously uncooperative Walker gave the government the handwritten letter, which described its author's plan to "go down there and lie on everybody." According to Walker, Robert Bethea, a fellow inmate whose nickname was "Jazz," told Walker in February that Jones had written the letter. Jazz gave the letter to Walker later that month.

Neither counsel for Mason nor Miller knew any of this until disclosed by the government on the eve of trial in December 2017. Displeased by this late disclosure, they moved for dismissal of the indictment, arguing that the government had violated its *Brady* obligation to timely disclose material helpful to them. Defense counsel also set out to find Jazz, whose testimony might link Jones to the letter undermining his credibility. They soon discovered, however, that Jazz had died of a drug overdose in April 2017, shortly after his release from jail.

Jazz's death limited the letter's value to the defense. So, too did the "conclusive" determination of the government's

handwriting expert that Jones did not write the letter, the district court's ruling that defense counsel could not refer to Jones's failed polygraph, and Walker's refusal to testify, invoking the protection of the Fifth Amendment.

The district court denied the *Brady* motion on the ground that Mason and Miller suffered no prejudice from the belated disclosure. The government "didn't have an opportunity to review the letter until June 2017, at which point Jazz had already died," the court found. "So the defense would not have had an ability to interview Jazz had the government disclosed this information in June when they should have." Tr. of Pretrial Hr'g (Jan. 29, 2018) at 31:22-32:1, J.A. 248-49. To allow the defense additional time to prepare, the court continued the trial for more than a month.

B

The seven-day jury trial against Mason and Miller began on February 26, 2018. The government presented its case against Miller first, with testimony that showed Miller had allowed Jones to ship drugs to her home. Before the government began its case against Mason, the court received the following note from Juror #1:

> Your Honor, would it be possible for the government to ask Mr. Jones, one, why did he or Mr. Walker choose Mr. Mason's house for drug delivery? And two, did he or Mr. Walker have a personal relationship with Mr. Mason or was this address picked at random?

Tr. of Jury Trial (Mar. 2, 2018) at 795:3-10, J.A. 874. The court acknowledged that the note was "concerning," as the government had never suggested that Mason's house was used for drug delivery. "[I]t seems to me that at least one juror is

confused and thinks that Mr. Mason lives at [Miller's address]. I don't know how." *Id.* at 794:12, 795:11-13, J.A. 873-74. The court instructed the jury that its "question may be resolved through the remainder of the evidence." If not, the court said, the jury should send another note "at the close of the evidence." *Id.* at 802:12-14, J.A. 881.

Shortly after the court's instruction, the government asked Jones whether he knew Mason's address. Jones answered no. *Id.* at 807:18-808:1, J.A. 886-87. Mason renewed his motion for severance, this time citing the juror note as evidence of prejudice, but the court denied the motion. No juror ever sent a follow-up note on the subject.

The government then presented its case against Mason, including testimony by Jones and wiretapped phone calls in which Mason and his coconspirators discussed dealing drugs. Concerned that Jones would deny authorship and that the government would bolster that denial with the testimony of its handwriting expert, defense counsel never used the letter at trial. The jury found Mason and Miller guilty of all charges other than those related to fentanyl, on which the court had granted a judgment of acquittal.

C

Before sentencing, Mason sought to qualify for the Sentencing Guidelines' "safety valve," which would allow him to avoid a five-year mandatory minimum sentence if he fully debriefed the government on his "offense of conviction and all relevant conduct." U.S.S.G. § 5C1.2 cmt. n.3. During the debriefing interview, Mason was asked about his associates in the drug trade. Mason refused to answer, saying he didn't want to "put someone else in the line of fire."

At sentencing, the government cited Mason's refusal to name his drug suppliers or customers as reason to find him ineligible for the safety valve. The district court agreed and sentenced Mason to five years' imprisonment.

This timely appeal of his conviction and sentence followed. The district court had jurisdiction under 18 U.S.C. § 3231, and we have jurisdiction under 28 U.S.C. § 1291.

II

A

Mason argues that the government's belated disclosure of what it knew about the handwritten letter violated his constitutional rights under *Brady v. Maryland*. He asks that we vacate his conviction and direct the district court to dismiss the indictment or remand for a new trial. Because the relevant facts are uncontested, our review of Mason's *Brady* claim is de novo. *See United States v. Sitzmann*, 893 F.3d 811, 821 (D.C. Cir. 2018) (per curiam).

A *Brady* violation has three parts. "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999).

Information about the letter was favorable to Mason because it tended to impeach Jones, a government witness against him. The government suppressed its knowledge of the letter by postponing disclosure for months, until trial was imminent. *See United States v. Pasha*, 797 F.3d 1122, 1133 (D.C. Cir. 2015). At oral argument, the government declined to

"defend[] the timeliness" of its disclosure and conceded that it had "made a misjudgment as to the amount of time that the Defense needed" to use the information disclosed. Tr. of Oral Arg. at 25:12, 33:25-34:1. We agree. The government's delay was "inexcusable." *Pasha*, 797 F.3d at 1133.

But even a grossly belated disclosure does not violate *Brady* unless the defendant suffers prejudice from the delay. Prejudice exists only if there is "a reasonable probability that . . . the result of the proceeding would have been different" had the disclosure occurred earlier. *Strickler*, 527 U.S. at 280 (quoting *United States v. Bagley*, 473 U.S. 667, 682 (1985)). A "'probability' reaches the level of 'reasonable' when it is high enough to 'undermine confidence in the verdict.'" *United States v. Johnson*, 592 F.3d 164, 170 (D.C. Cir. 2010) (quoting *Kyles v. Whitley*, 514 U.S. 419, 435 (1995)). "The defendant bears the burden of showing a reasonable probability of a different outcome." *United States v. Johnson*, 519 F.3d 478, 488 (D.C. Cir. 2008).

Mason asserts three forms of prejudice from the belated disclosure. First, he says, "earlier production of the letter would have kept defense counsel from being hamstrung by the time constraints that later arose in the waning weeks before trial." Mason Br. 35. That argument fails, because a continuance of reasonable length negates any prejudice arising from time constraints alone. *See, e.g.*, *United States v. Halloran*, 821 F.3d 321, 341-42 (2d Cir. 2016). The district court granted Mason such a continuance.

Mason next argues that an earlier disclosure of what the government knew about the letter might have provided defense counsel with promising leads. Perhaps, he says, defense counsel would have uncovered cellmates who overheard a conversation between Jazz and Jones about the letter had they

investigated the matter earlier in 2017. *See* Tr. of Oral Arg. at 40:7-8. Maybe Walker, had he been interviewed earlier, would have been willing to testify as to what Jazz told him about the letter, instead of pleading the Fifth. *See id.* at 6:12-7:17. Or defense counsel might "have subpoenaed . . . and monitored [Jazz] . . . so [that] he never died." *Id.* at 12:9-13.

Maybe so. But "mere speculation is not sufficient to sustain a *Brady* claim." *United States v. Horton*, 756 F.3d 569, 575 (8th Cir. 2014) (internal quotation marks and citations omitted). Hypothesizing that certain "information, had it been disclosed to the defense, might have led [defense] counsel to conduct additional discovery that might have led to some additional evidence that could have been utilized" is disfavored. *Wood v. Bartholomew*, 516 U.S. 1, 6 (1995) (per curiam) (describing such reasoning as "mere speculation, in violation of the standards" the Supreme Court has established for *Brady* claims). The argument that an earlier disclosure might have led Mason to uncover other promising leads is simply too speculative to undermine our confidence in the outcome of the trial.

Last, Mason argues that with an earlier disclosure he could have "found and interviewed" Jazz, Mason Br. 35, who might have provided statements that were "admissible as impeachment evidence," Reply Br. 8. We can assume, for the sake of argument, that the government should have disclosed its knowledge of the rumored letter in March 2017, before Jazz's death in April. Even so, Mason fails to show that the defense he presented at trial differed in any meaningful way from the defense he could have presented if he had interviewed Jazz. If Mason's defense would have been the same regardless, he cannot meet his burden of showing a "reasonable probability of a different outcome" at trial, *Johnson*, 519 F.3d at 488, and his *Brady* claim fails.

Mason's principal obstacle is the rule against hearsay. *See* Gov't Br. 29. Even assuming that an earlier disclosure would have led to an interview with Jazz, and that such an interview would have provided grounds to impeach Jones, Mason fails to show how the out-of-court statements of a deceased declarant would have helped him at trial. Such statements would have been obvious hearsay if offered for the truth of the matter asserted—that Jones had written the letter—and inadmissible at trial unless subject to an enumerated hearsay exception. *See* FED. R. EVID. 801, 802; *see also* 30B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 6728 (2018 ed.).

Mason says that any of three hearsay exceptions would have allowed the court to admit Jazz's hypothetical statements: the exception for dying declarations, the exception for statements against interest, and the residual exception. *See* Reply Br. 8. We disagree. The exception for dying declarations does not apply because Jazz's statements would have had nothing to do with the "cause or circumstances" of his death. FED. R. EVID. 804(b)(2). The exception for statements against interest is unavailing as well. Mason offers no argument why statements naming Jones as the letter's author would have been "so contrary to [Jazz's] proprietary or pecuniary interest or had so great a tendency . . . to expose [Jazz] to civil or criminal liability," *id.* 804(b)(3)(A), that they should qualify under that exception.

The residual exception fares no better. We apply this "extremely narrow" exception "sparingly," "only in the most exceptional circumstances," and only if the out-of-court statement is both "very important and very reliable." *United States v. Slatten*, 865 F.3d 767, 807 (D.C. Cir. 2017) (per curiam) (internal quotation marks and citations omitted). We can grant that a statement by Jazz impeaching Jones might have

been "very important" to Mason's defense, but it would have been of doubtful reliability. Mason argues that the requisite "indicia of reliability" would come from the statements of others that Jazz had told them Jones wrote the letter. Tr. of Oral Arg. at 12:16-24; 39:18-23. But we doubt that more hearsay from Jazz would provide the "sufficient guarantees of trustworthiness" the residual exception requires. FED. R. EVID. 807(a)(1). And in any event, the government could undermine any showing of reliability with the handwriting expert's "conclusive" determination that Jones didn't write the letter.[*]

Of course, defense counsel might have relied on Jazz's statements to question Jones during cross-examination. *See, e.g.*, *United States v. Whitmore*, 359 F.3d 609, 621-22 (D.C. Cir. 2004). But we doubt such a tack would have been effective here. Defense counsel could have cross-examined Jones using their knowledge of the letter, but they declined. Moreover, the use of additional statements from Jazz to impeach Jones was unlikely to have improved the cross much, as Jones could deny authorship all the same. And defense counsel feared the government would bolster that denial with its "conclusive" handwriting analysis. *See* Mason Br. 12, 36. Given the circumstances of this case, we see no "reasonable probability of a different outcome," *Johnson*, 519 F.3d at 488, from such an exchange.

We hold that Mason has failed to demonstrate prejudice from the government's belated disclosure and that his *Brady*

[*] In the alternative, Mason argues that even if the interview yielded no admissible evidence it might have revealed the identity of Jazz's "uncle," a "potential additional (living) witness to these matters" who was mentioned, but never named, in the handwritten letter. Reply Br. 8-9. Again, the possibility that additional information about an unknown person might have helped Mason's defense is simply too speculative to undermine our confidence in the verdict.

claim thus fails. That holding is consistent with our decision in *United States v. Pasha*, 797 F.3d 1122 (D.C. Cir. 2015), in which the government waited eight months to disclose that an eyewitness had made statements favorable to the defense. By the time defense counsel interviewed the eyewitness, he said his memory had faded; he was no longer useful to the defense. We held that one of the defendants, against whom the evidence was particularly weak, was prejudiced by the belated disclosure and thus had a valid *Brady* claim.

Pasha differs from Mason's case. For one, the defendant in *Pasha* demonstrated how an earlier interview with the eyewitness would have helped her. Had she taken "a sworn statement from [the eyewitness] when his memory was fresh," at trial the eyewitness might have read that statement into evidence as a recorded recollection. Reply Brief for Appellant Daaiyah Pasha at 20, *Pasha*, 797 F.3d 1122 (No. 13-3024), 2015 WL 831935; FED. R. EVID. 803(5). That option was unavailable to Mason because Jazz could not testify under any circumstances. Further, the government's case against the defendant who prevailed on her *Brady* claim in *Pasha* was not strong. *See* 797 F.3d at 1137 (describing the "weak evidence" that the defendant participated in the crime). Mason's incriminating wiretapped statements, through which the jury heard Mason himself make several thinly veiled references to dealing drugs, distinguish this case from *Pasha*. *See* Mason Br. 22 (acknowledging that these wiretaps were "obviously the Government's strongest evidence against" him).

B

Mason objects to the district court's denial of his motions for misjoinder and severance. The purpose of both motions is the same: to separate a defendant's trial from his codefendant's. Because severance, unlike misjoinder, can require a court to

consider events that occurred at trial, we review the denial of a severance motion for abuse of discretion and the denial of a misjoinder motion de novo. *See United States v. Bikundi*, 926 F.3d 761, 781 (D.C. Cir. 2019) (per curiam); *United States v. Bostick*, 791 F.3d 127, 145 (D.C. Cir. 2015).

1

In his pretrial motion for misjoinder, Mason argued that the indictment improperly joined his trial with that of his codefendant Andrea Miller. He and Miller "were merely two small spokes in a larger drug conspiracy," he says, who did not conspire "together" at all. Mason Br. 38.

We have a "broad policy favoring initial joinder." *United States v. Perry*, 731 F.2d 985, 991 (D.C. Cir. 1984). Under Federal Rule of Criminal Procedure 8(b), an indictment "may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." Our Rule 8 "[j]oinder analysis 'does *not* take into account the evidence presented at trial,' but rather 'focuses solely on the indictment and pre-trial submissions.'" *Bostick*, 791 F.3d at 145 (quoting *United States v. Gooch*, 665 F.3d 1318, 1334 (D.C. Cir. 2012)).

The indictment's allegation that Mason and Miller conspired to distribute drugs made joinder of their trials proper. "The mere allegation of a conspiracy presumptively satisfies Rule 8(b), since the allegation implies that the defendants named have engaged in the same series of acts or transactions constituting an offense." *United States v. Friedman*, 854 F.2d 535, 561 (2d Cir. 1988) (quoting *United States v. Castellano*, 610 F. Supp. 1359, 1396 (S.D.N.Y. 1985)). We have frequently held that participation in the same charged conspiracy justifies

joinder. *See, e.g.*, *United States v. McGill*, 815 F.3d 846, 905 (D.C. Cir. 2016); *United States v. Spriggs*, 102 F.3d 1245, 1255-56 (D.C. Cir. 1996).

We reject Mason's argument that the indictment falsely alleged that he and Miller conspired "together." The allegation that the two "did knowingly and willfully combine, conspire, confederate and agree together" and with others to distribute heroin and other drugs, Indictment (Oct. 17, 2017) at 2, J.A. 24, is nothing more than an allegation that Mason and Miller participated in the same conspiracy, which they did. We also reject Mason's argument that "the prosecution's own statements made at trial later plainly revealed" that Mason and Miller's "'acts and transactions' did not overlap at all." Mason Br. 39. "If the indictment establishes proper joinder under Rule 8(b), trial evidence cannot render joinder impermissible and is thus irrelevant to our inquiry." *United States v. Moore*, 651 F.3d 30, 69 (D.C. Cir. 2011) (per curiam), *aff'd sub nom. Smith v. United States*, 568 U.S. 106 (2013).

2

Under Federal Rule of Criminal Procedure 14(a), a district court may sever codefendants' trials if joinder "appears to prejudice a defendant." Mason says severance was required for two reasons: the "generalized prejudice" he faced from a joint trial with Miller and the "specific prejudice" that arose from the "confusion" demonstrated by the note from Juror #1. Mason Br. 40.

We disagree. We recognize that in some joint trials, the risk of prejudice to one coconspirator is so great that Rule 14(a) requires severance even where joinder was proper. For instance, severance may be appropriate when coconspirators are accused of "grossly disparate crimes," *United States v.*

Sampol, 636 F.2d 621, 645 (D.C. Cir. 1980) (per curiam), or when there is great "disproportion in the evidence," *United States v. Mardian*, 546 F.2d 973, 980 (D.C. Cir. 1976) (en banc).

This is not one of those cases. Mason and Miller were jointly charged with conspiracy to distribute drugs. Miller alone was charged with conspiracy to import drugs. Those are not grossly disparate crimes. *See Sampol*, 636 F.2d at 647 (requiring severance where defendant was accused of making false declarations and misprision of felony and codefendants were accused of "crimes of conspiracy to assassinate and murder"). Nor was there such disproportion in the evidence that severance was warranted. The government presented evidence of international drug trafficking during its case against Miller. But much of the same might have been introduced at a trial against Mason alone to prove he had conspired to distribute a significant quantity of heroin. *See McGill*, 815 F.3d at 947; *United States v. Law*, 528 F.3d 888, 906 (D.C. Cir. 2008).

Nor did the district court abuse its discretion in denying Mason's motion for severance after it received the juror note. Over the course of the trial, the district court and the government took appropriate steps to make sure that the confusion revealed in the note was addressed. The government presented its cases against Miller and Mason separately. After receiving the note, the district court issued an appropriate instruction and the government promptly elicited testimony to dispel the juror's confusion. At the close of the trial, the district court instructed the jury that it was required to consider the evidence separately against each defendant. *See* Tr. of Jury Trial (Mar. 6, 2018) at 1326:1-5, 1336:5-14, J.A. 1405, 1415. Those steps sufficed to dispel any confusion about the different roles of Mason and Miller in the conspiracy.

Mason argues that "there can be no assurance that the spillover prejudice that we clearly *know* Juror #1 harbored . . . was in fact later purged" and that "[n]othing whatsoever reveals that Juror #1 did not vote to convict based at least in part on this mistaken understanding of the evidence." Mason Br. 42. That may be true. But Mason misunderstands the scope of our review. We do not ask whether we are certain no juror voted to convict based on a mistaken understanding of the evidence, a fact neither we nor the district court could know. We ask only whether the district court abused its discretion in denying his motions for severance. It did not.

C

Last, Mason challenges the district court's finding that he is ineligible for the safety valve provision of the Sentencing Guidelines. Under that provision, certain defendants who "truthfully provide[] to the Government all information and evidence" they possess concerning their "offense of conviction and all relevant conduct" may be sentenced without regard to a mandatory minimum. U.S.S.G. § 5C1.2(a)(5) & cmt. n.3. At sentencing, the government objected to Mason's refusal to name his other drug suppliers and the customers who purchased drugs from him. Mason argues the government and the district court expected him to provide more information than the safety valve requires. Because the breadth of the safety valve is a legal, not factual, question, we review the district court's finding de novo. *See United States v. Vega*, 826 F.3d 514, 538 (D.C. Cir. 2016) (per curiam).

As part of his blanket refusal to "put someone else in the line of fire," Mason refused to name the persons to whom he sold the drugs he obtained from Jones and Walker. According to the government, those customers would have been "significant mid-level dealers, purchasing 20 to 50 grams of

heroin, worth thousands of dollars, at a time." Gov't Br. 61. Their names constituted "information" concerning "the offense of conviction and all relevant conduct" that Mason was obligated to provide. *See United States v. Wrenn*, 66 F.3d 1, 3 (1st Cir. 1995) (affirming a finding of safety valve ineligibility for a drug-dealing defendant who refused to name his customers). Refusing to disclose the names of his customers disqualified Mason from taking advantage of the safety valve.

III

For the foregoing reasons, we affirm Mason's conviction and sentence.

So ordered.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-3056 **September Term, 2019**

FILED ON: MARCH 6, 2020

UNITED STATES OF AMERICA,
APPELLEE

v.

STEVEN MASON, ALSO KNOWN AS SAM MASON,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cr-00195-2)

Before: ROGERS, GRIFFITH, and KATSAS, *Circuit Judges*

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the District Court's judgment of conviction and the sentence appealed from in this cause be affirmed, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: March 6, 2020

Opinion for the court filed by Circuit Judge Griffith.

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA
v.
STEVEN MASON
also known as
SAM MASON

JUDGMENT IN A CRIMINAL CASE

Case Number: 17-195-2 (TSC)

USM Number: 26392-037

John Carney
Defendant's Attorney

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) after a plea of not guilty. Count 2 of the Indictment filed on October 17, 2017

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846	Conspiracy to Distribute and Possess with Intent to Distribute One Hundred Grams or More of Heroin and a Quantity of Fentanyl and Alprazolam.	6/30/2016	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

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

8/14/2018
Date of Imposition of Judgment

Signature of Judge

Tanya S. Chutkan U.S. District Judge
Name and Title of Judge

8/16/2018
Date

AO 245B (Rev 02/18) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: STEVEN MASON also known as SAM MASON
CASE NUMBER: 17-195-2 (TSC)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

SIXTY (60) MONTHS ON COUNT 2, WITH CREDIT FOR TIME SERVED.

☑ The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be incarcerated at FMC Petersburg or another Bureau of Prisons' facility close to the District of Columbia metropolitan area. If this is not possible, that the defendant be placed in a facility on the east coast, as close to the District of Columbia as possible.

☑ 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 for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

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

AO 245B (Rev 02/18) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: STEVEN MASON also known as SAM MASON
CASE NUMBER: 17-195-2 (TSC)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

FORTY-EIGHT (48) MONTHS ON COUNT 2.

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 (34 U.S.C. § 20901, *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.

DEFENDANT: STEVEN MASON also known as SAM MASON
CASE NUMBER: 17-195-2 (TSC)

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.
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.

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 _____

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 3B — Supervised Release

DEFENDANT: STEVEN MASON also known as SAM MASON
CASE NUMBER: 17-195-2 (TSC)

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall notify the Clerk of Court for the U.S. District Court for the District of Columbia within thirty (30) days of any change of address until such time as the financial obligation is paid in full.

2. 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.

3. The defendant must complete 100 hours of community service within 12 months. The probation officer will supervise the participation in the program by approving the program. The defendant must provide written verification of completed hours to the probation officer.

4. Pursuant to Rule 32.2(a) of the Fed. Rules of Crim Proc., the defendant, will forfeit a forfeiture money judgment in the amount of $8,000.00.

The probation office shall release the presentence investigation report to all appropriate agencies in order to execute the sentence of the Court. Treatment agencies shall return the presentence report to the probation office upon the defendant's completion or termination from treatment.

DEFENDANT: STEVEN MASON also known as SAM MASON
CASE NUMBER: 17-195-2 (TSC)

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 100.00	$	$	$

☐ 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.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ 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:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** 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.

DEFENDANT: STEVEN MASON also known as SAM MASON
CASE NUMBER: 17-195-2 (TSC)

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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.

☐ 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:
Pursuant to Rule 32.2(a) of the Fed. Rules of Crim Proc., the defendant, will forfeit a forfeiture money judgment in the amount of $8,000.00.

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) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.