APPENDIX

APPENDIX

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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 19-1127, 19-1491, 19-1523, 19-1897

[Filed January 21, 2021]

United States of America	)
	)
Plaintiff - Appellee	)
	)
v.	)
	)
Alston Campbell, Jr., Alston Campbell, Sr., Willie Carter, and William Marcellus Campbell	)
	)
Defendants - Appellants	)

Appeal from United States District Court
for the Northern District of Iowa - Waterloo

Submitted: September 24, 2020
Filed: January 21, 2021

Before LOKEN, SHEPHERD, and ERICKSON, Circuit Judges.

SHEPHERD, Circuit Judge.

After a multi-year investigation featuring confidential informants, controlled buys, wiretaps, and surveillance, a grand jury indicted William Marcellus Campbell (William), Alston Campbell, Jr. (Junior), Willie Junior Carter (Carter), Alston Campbell, Sr. (Senior), "A.M.", "J.P.", and "D.S." on various drug trafficking charges. The government moved to sever J.P.'s and Carter's trials for a separate joint trial to precede that of the remaining co-defendants, and the district court granted that motion. The grand jury then returned a superseding indictment. A.M., J.P., and D.S. entered guilty pleas, and a jury convicted the four remaining defendants (William, Junior, Carter, and Senior). William, Junior, Carter, and Senior now appeal. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.[1]

I.

In 2016, a task force began investigating illegal drug trafficking activities within Eastern Iowa. Specifically, the task force began investigating the Campbell family organization after confidential sources provided information that the organization was trafficking narcotics throughout the Waterloo, Iowa area. The Assistant United States Attorney (AUSA) for the Northern District of Iowa submitted a wiretap application for the surveillance of target cell phones

[1] The Honorable Linda R. Reade, United States District Court for the Northern District of Iowa, adopting in part the reports and recommendations of the Honorable C.J. Williams, United States Magistrate Judge for the Northern District of Iowa.

belonging to William. The wiretap application was supported by an affidavit containing sworn testimony from an investigator with the City of Cedar Rapids Drug Enforcement Task Force, Officer Bryan Furman. Officer Furman stated that the wiretap would intercept communications between William, Junior, Senior, A.M., J.P., and "others yet unknown." R. Doc. 127-1, at 18. Officer Furman identified William as a "retail level" crack cocaine distributor within a distribution operation led by Junior. R. Doc. 127-1, at 26. Officer Furman testified that intercepted communications from the target cell phones would likely identify the leadership of the distribution network and the location(s) of narcotics and provide evidence concerning the target offenses; drug supply; transporters; financiers; manufacturers; distributors; and customers. In his affidavit, Officer Furman further testified that because the affidavit served the "limited purpose of securing authorization for the interception of wire and electronic communications," he included only those facts that he believed were "necessary to establish the foundation for an order authorizing" that interception. R. Doc. 127-1, at 21-22. Officer Furman also testified that "[n]ormal investigative procedures have been tried and have failed, appear unlikely to succeed if tried, or are too dangerous to employ." R. Doc. 127-1, at 19.

In the wiretap application, Officer Furman testified that investigators had previously engaged two members of the organization as cooperators, and those cooperators participated in controlled narcotics purchases. However, these cooperators continued participating in uncontrolled criminal activity, and investigators quit engaging with them to protect the

investigation's secrecy. In addition to relying on cooperators, investigators had employed surveillance, cell site location tracing, pen registers, trash searches, and search warrants. Although these investigative techniques provided some helpful information—revealing the identity of retail-level distributors and the patterns of individuals' movements and resulting in the seizure of small amounts of narcotics—investigators were still unable to uncover information such as supply sources, organizational hierarchy, and major inventory locations. In the application, Officer Furman also discussed investigative techniques that the task force had not employed but that would likely prove unfruitful or too dangerous: financial investigations using subpoenas and search warrants; undercover agents; field interviews; or grand-jury subpoenas of persons associated with the organization. The district court issued a wiretap order authorizing surveillance of the cell phones on October 24, 2016.

On July 10, 2017, a grand jury indicted William, Junior, Carter, Senior, A.M., J.P., and D.S. on various drug-trafficking charges. William and Junior each filed a motion to suppress the government's wiretap evidence. In their motions, William and Junior both argued that the government, in its Title III application, did not provide the magistrate judge with a "full and complete" statement of facts. R. Doc. 117, at 2; R. Doc. 115, at 2. Instead, they argued, Officer Furman provided only those facts that he found pertinent to the district court's evaluation of necessity rather than allowing the court to make an independent finding of necessity from all available facts. Junior separately

argued that the government failed to properly minimize intercepted communications.

On January 22, 2018, the magistrate judge issued a report and recommendation, recommending that the district court deny Junior's and William's motions to suppress as to the issue of necessity. Junior then filed a supplemental brief addressing alleged minimization violations, which the government opposed. On January 30, 2018, the magistrate judge issued a second report and recommendation, recommending that the district court deny Junior's motion asserting minimization violations. The district court adopted the magistrate judge's report and recommendations in part.[2]

On February 22, 2018, a grand jury issued a superseding indictment. This indictment included fourteen total counts, but only six of those counts charged Appellants. In Count 1, the grand jury charged all defendants with conspiracy to distribute cocaine and cocaine base. In Counts 3 and 4, the grand jury charged Senior (Count 3) and William (Count 4) each with distribution of cocaine base. In Count 12, it charged William with distribution of cocaine. In Count 13, the grand jury charged Carter with possession with intent to distribute cocaine base. Finally, in Count 14, the

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[2] In his first report and recommendation, the magistrate judge opined that, even if the application did not establish necessity, the Leon good-faith exception, United States v. Leon, 468 U.S. 897 (1984), would save the fruits of the Title III order from suppression. However, because the district court was "satisfied" that the necessity requirement had been met, the court did not decide whether Leon would apply and therefore did not adopt that portion of the magistrate judge's report and recommendation.

grand jury charged Junior with possession with intent to distribute cocaine. Ultimately, a jury convicted: Junior of Counts 1 and 14; Senior of Counts 1 and 3; William of Counts 1, 4, and 12; and Carter of Counts 1 and 13.

II.

A. William's Appeal

A jury convicted William of conspiracy to distribute cocaine and cocaine base (Count 1), distribution of cocaine base (Count 4), and distribution of cocaine (Count 12). On appeal, William alleges that the district court erred by: (1) denying his motion to suppress the wiretap evidence; (2) limiting cross-examination; (3) denying his request for a multiple conspiracies jury instruction; and (4) applying witness intimidation and aggravated role enhancements.

1.

William first argues that the district court erred by denying his motion to suppress the wiretap evidence. "We review the denial of a motion to suppress de novo but review underlying factual determinations for clear error, giving due weight to the inferences of the district court and law enforcement officials." United States v. Milliner, 765 F.3d 836, 839 (8th Cir. 2014) (quoting United States v. Thompson, 690 F.3d 977, 984 (8th Cir. 2012)).

"Title III of the Omnibus Crime Control and Safe Streets Act of 1968 [(codified as amended at 18 U.S.C. §§ 2510-23) (Title III)] prescribes the procedure for securing judicial authority to intercept wire

communications in the investigation of specified serious offenses." United States v. Giordano, 416 U.S. 505, 507 (1974). Each wiretap application must include a "full and complete statement of the facts and circumstances relied upon by the applicant, to justify his belief that an order should be issued . . . ." 18 U.S.C. § 2518(1)(b). Similarly, applicants must include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." Id. § 2518(1)(c). Before authorizing a wiretap, a judge must determine, based on the facts submitted by the applicant, that a wiretap is necessary. Id. § 2518(3). Suppression of wiretap evidence is appropriate where any one of Title III's statutory requirements is unsatisfied. Giordano, 416 U.S. at 527.

Here, William argues that the government failed to establish necessity. He maintains that investigators chose to target his phones—rather than those of other retail-level dealers in the organization—because of his familial relationship with Senior and Junior, and by not disclosing this motivation to the district court, Officer Furman did not provide the district court with a "full and complete statement of the facts and circumstances." 18 U.S.C. § 2518(1)(c). Further, William asserts that by omitting this information, Officer Furman evaluated necessity using the facts that *he* found pertinent (rather than providing the district court with all available facts), improperly stripping the court of its fact-finding function. We disagree.

A district court's finding of necessity is a finding of fact, which we review for clear error. United States v. Jackson, 345 F.3d 638, 644 (8th Cir. 2003). As a reviewing court, we must "accord broad discretion" to the district court's authorization of a wiretap. United States v. Garcia, 785 F.2d 214, 221-22 (8th Cir. 1986). Wiretaps should be authorized only when necessary, but in drafting an affidavit in support of a wiretap application, investigators "need not explain away all possible alternative techniques." Id. at 223. "If law enforcement officers are able to establish that conventional investigatory techniques have not been successful in exposing the full extent of the conspiracy and the identity of each coconspirator, the necessity requirement is satisfied." United States v. Turner, 781 F.3d 374, 382 (8th Cir. 2015) (citation omitted).

Here, Officer Furman's affidavit was exhaustive. He detailed each technique that investigators had tried and explained why those techniques had failed to achieve the investigation's goals. Similarly, he discussed outstanding investigative methods and explained why those methods either would be unhelpful or inordinately dangerous. Officer Furman's failure to expressly state that the application was motivated, in part, by William's familial relationship with Senior and Junior does not invalidate the district court's finding of necessity. Further, any potential advantage to be garnered from William's familial relationships was apparent from the extensive facts Officer Furman offered. Finally, Officer Furman dedicated much of his affidavit to explaining why "conventional investigatory techniques" had not been successful, and why other, unattempted techniques

would not be successful, in exposing the full extent of the conspiracy. Id. We find that the district court did not clearly err in finding that the wiretaps were necessary and ultimately did not err in denying William's motion to suppress the wiretap evidence. [3]

2.

William next claims that the district court erred by limiting his cross-examination of the government's cooperating witnesses at trial. When reviewing a district court's limitations on cross-examination, we apply an abuse of discretion standard; we will reverse only if a clear abuse of discretion occurred and if that error prejudiced the defendant. United States v. Wright, 866 F.3d 899, 905 (8th Cir. 2017). "If the record establishes a violation of the rights secured by the Confrontation Clause of the Sixth Amendment, we must determine whether the error was harmless in the context of the trial as a whole." Id. (citation omitted).

The Sixth Amendment's Confrontation Clause affords criminal defendants the right to be "confronted with the witnesses against him." U.S. Const. amend. VI. At the heart of the Clause is a defendant's opportunity to cross-examine. Delaware Van Arsdall, 475 U.S. 673, 678 (1986); see also United States v. Wright, 866 F.3d 899, 906 (8th Cir. 2017) ("The primary purpose of this right is to guarantee the opportunity for effective cross-examination, particularly with respect to a witness's potential bias."

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[3] Because we find that the necessity requirement was met, we need not reach the government's argument that the Leon good faith exception applies.

(citation omitted)). Yet, this right is not without limit. "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." Van Arsdall, 475 U.S. at 679. "A limitation on cross-examination does not violate the Sixth Amendment unless the defendant shows that a reasonable jury might have received a significantly different impression of the witness's credibility had defense counsel been permitted to pursue his proposed line of cross-examination." United States v. Dunn, 723 F.3d 919, 934 (8th Cir. 2013) (citation omitted).

Here, the district court allowed defense counsel to cross-examine the government's cooperating witnesses about looming mandatory minimum or "substantial" sentences they faced, the possibility of receiving an increased sentence based on prior criminal history, and their hopes of earning a reduced sentence through their cooperation. However, the court did not allow cross-examination that would reveal the precise amount of incarceration, in years, that any witness was facing.

Although this Court has recognized the sanctity of a defendant's ability to expose witness bias, see, e.g., United States v. Walley, 567 F.3d 354, 358 (8th Cir. 2009), here William has not shown that the district court abused its discretion. Our analysis in Walley is instructive. Id. at 358-60. There, we found no error where the district court prevented defense counsel from

asking about the witness's potential five-year minimum sentence but instead allowed questioning about the witness's potential "significant sentence." Id. Important to our analysis was the fact that while the cooperating witness *hoped* for a reduction in his sentence, the government had not yet granted him leniency in exchange for his cooperation. Id. Because this leniency had not yet been granted, the degree of leniency—and, more significantly, the consideration granted to the witness for his cooperation—was unascertainable at the time of cross-examination.

William cites cases like United States v. Caldwell, 88 F.3d 522 (8th Cir. 1996)—and Junior, as discussed below, cites United States v. Roan Eagle, 867 F.2d 436 (8th Cir. 1989)—in which we found that a district court's limitation on cross-examination *was* an abuse of discretion. However, in Caldwell and Roan Eagle, we found that the district court had erred by forbidding cross-examination concerning potential minimum and maximum sentences because the government had *already* extended leniency to the cooperating witnesses. "Our decisions in Roan Eagle and Caldwell, therefore, emphasized that the accused should have been able to contrast the original punishment faced by the witness with the more lenient punishment contemplated by the plea agreement—not merely that the original punishment alone was evidence of bias." Walley, 567 F.3d at 360. Roan Eagle and Caldwell are distinguishable from cases like Walley—and from William's case. Stated simply, where a cooperating witness simply hopes that his cooperation will manifest into some undefined degree of leniency, a district court does not abuse its discretion by limiting

cross-examination to generalized phraseology like "significant sentence." Walley, 567 F.3d at 358-60.

At trial, the government revealed that it had cooperating witnesses and that four of those witnesses had plea agreements. William has provided "no offer of proof that [the witnesses] expected that a particular benefit would flow from [their] cooperation." Id. at 360. Instead, the record shows only that the witnesses "hoped through [their] assistance to reduce by an undefined degree the sentence that [they] otherwise faced." Id. Therefore, because William's requested line of questioning would have shown only that the cooperating witnesses hoped to reduce their sentences by an undefined degree through their cooperation, the district court did not abuse its discretion in limiting cross-examination to, among other things, the potential "substantial sentences" they faced. Because we find no error, we do not reach the prejudice inquiry.

William also contends that the district court erred by prohibiting his introduction of the government witnesses' plea agreements. However, whether to admit a cooperator's written plea agreement into evidence is "an issue committed to the district court's discretion." United States v. Morris, 327 F.3d 760, 762 (8th Cir. 2003). Here, as in Morris, the jury was aware of the plea agreements' existence, that the witnesses faced "substantial sentences," and that those witnesses hoped to receive a reduction in those sentences through their cooperation. Therefore, the district court did not abuse its discretion in limiting William's cross-examination of the government's cooperating witnesses.

3.

Prior to trial, William, Junior, and Senior jointly requested that the district court give a multiple conspiracies jury instruction. The district court, finding that such instruction was not supported by the evidence, denied their request. Post-conviction, William moved for a new trial and argued that the evidence supported a multiple conspiracies instruction because it revealed a second, separate conspiracy between Junior and N.S.

"A defendant is entitled to an instruction explaining his defense theory if the request is timely, the proffered instruction is supported by the evidence, and the instruction correctly states the law." United States v. Faulkner, 636 F.3d 1009, 1020 (8th Cir. 2011) (citation omitted). "[A]lthough district courts exercise wide discretion in formulating jury instructions, when the refusal of a proffered instruction simultaneously denies a legal defense, the correct standard of review is de novo." United States v. Bruguier, 735 F.3d 754, 757 (8th Cir. 2013) (en banc) (alteration in original) (emphasis omitted) (quoting United States v. Young, 613 F.3d 735, 744 (8th Cir. 2010)).

William (and Junior and Senior) moved for a multiple conspiracies instruction that mirrored Eighth Circuit Model Criminal Jury Instruction 5.06B. The proffered instruction read:

> The indictment charges that the defendants were members of one single conspiracy to commit the crime of Conspiracy to Distribute Cocaine and Cocaine Base.

The government must convince you beyond a reasonable doubt that each defendant was a member of the conspiracy to commit the crime of (insert name of crime), as charged in the indictment. If the government fails to prove this as to a defendant, then you must [find] that defendant not guilty of the conspiracy charge, even if you [find] that he was a member of some other conspiracy. Proof that a defendant was a member of some other conspiracy is not enough to convict.

But proof that a defendant was a member of some other conspiracy would not prevent you from returning a guilty verdict, if the government also proved that he was a member of the conspiracy to commit the crime of Conspiracy to Distribute Cocaine and Cocaine Base, as charged in the indictment.

[A single conspiracy may exist even if all the members did not know each other, or never met together, or did not know what roles all the other members played. And a single conspiracy may exist even if different members joined at different times, or the membership of the group changed. Similarly, just because there were different subgroups operating in different places, or many different criminal acts committed over a long period of time, does not necessarily mean that there was more than one conspiracy. These are factors you may consider in determining whether more than one conspiracy existed.]

R. Doc. 249, at 48-49 (bracketed paragraph in original). This proffered instruction was timely offered and correctly states the law. Therefore, the only issue we must decide is whether this instruction was supported by the evidence. We find that it was not.

"Whether a given case involves single or multiple conspiracies depends on 'whether there was "one overall agreement" to perform various functions to achieve the objectives of the conspiracy.'" United States v. Radtke, 415 F.3d 826, 838 (8th Cir. 2005) (quoting United States v. Massa, 740 F.2d 629, 636 (8th Cir. 1984)).

> To determine whether multiple conspiracies exist when a single large conspiracy has been charged by the government, this Court considers the totality of the circumstances, "including the nature of the activities involved, the location where the alleged events of the conspiracy took place, the identity of the conspirators involved, and the time frame in which the acts occurred."

United States v. McCarthy, 97 F.3d 1562, 1571 (8th Cir. 1996) (citation omitted). "A single conspiracy may be found when the defendants share a common overall goal and the same method is used to achieve that goal, even if the actors are not always the same." United States v. Gilbert, 721 F.3d 1000, 1005 (8th Cir. 2013) (quoting United States v. Bascope-Zurita, 68 F.3d 1057, 1061 (8th Cir. 1995)). Additionally, "[t]he fact 'that a number of separate transactions may have been involved . . . does not establish the existence of a number of separate conspiracies.'" United States v. Spector, 793 F.2d 932, 935 (8th Cir. 1986) (second

alteration in original) (quoting United States v. Brewer, 630 F.2d 795, 799 (10th Cir. 1980)).

At trial, an agent involved in the investigation testified for the government. That agent explained that he wiretapped N.S.'s phone and discovered that Junior was N.S.'s supplier. N.S. also testified for the government. During his testimony, N.S. explained that he would buy cocaine from William when he was unable to reach Junior. Although William alleges that this indicates the existence of a separate conspiracy between Junior and N.S., we disagree. Junior's distributions to N.S. occurred in the same location—Waterloo, Iowa—during the same time period as the distributions for which William is charged. In fact, N.S.'s testimony establishes that Junior and William were interchangeable: N.S. could get the same product from William as he could from Junior when Junior was unavailable. And although William's identity as Junior's brother is not dispositive to our analysis, his familial relationship to Junior—a co-defendant in this case—is something we may consider. McCarthy, 97 F.3d at 1571. Because the location and time of the transactions between N.S. and Junior—as well as the identity of the persons involved and the product being sold—support the government's theory of a single conspiracy, we find that the district court did not err in denying a multiple conspiracies instruction.

4.

Finally, William challenges the district court's application of witness intimidation and aggravated role enhancements to his United States Sentencing

Guidelines offense level. He also challenges the substantive reasonableness of his sentence.

First, William argues that the evidence did not support an aggravating role enhancement because he was a low-level, occasional drug dealer. "We review de novo the district court's construction and application of the Sentencing Guidelines, and we review for clear error its factual findings regarding enhancements." United States v. Wintermute, 443 F.3d 993, 1004 (8th Cir. 2006). The Guidelines allow for a four-level sentence enhancement "[i]f the defendant was an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive . . . ." USSG § 3B1.1(a).

> To distinguish an organizer or leader from a manager or supervisor, the court may consider: (1) the exercise of decision[-]making authority, (2) the nature of participation in the commission of the offense, (3) the recruitment of accomplices, (4) the claimed right to a larger share of the fruits of the crime, (5) the degree of participation in planning or organizing the offense, (6) the nature and scope of the illegal activity, and (7) the degree of control and authority exercised over others.

United States v. Gaye, 902 F.3d 780, 790 (8th Cir. 2018).

William's Presentence Investigation Report (PSR) noted that officers intercepted a phone call in which William discussed not only who worked for him, but also how much he paid those that worked for him.

William objected, stating, "[William] notes that he does not recall the intercepted phone calls being played during the jury trial and that his discussions regarding paying workers may have been in regards to the employees who were paid for their work at his [construction] business . . . ." R. Doc. 429, at 7. William again objected to this at his sentencing hearing, stating, "[W]e disagree with the witness intimidation, the two levels there, and with the four levels for aggravating role." R. Doc. 539, at 2. At this time, the court recognized William's objection, stating, "The defense objects to the witness intimidation and role in the offense. Both of those enhancements are the government's burden by a preponderance of the evidence." R. Doc. 539, at 2.

Where a defendant objects to facts included in his PSR, the court has an obligation to make a factual finding on the disputed issue. United States v. Camacho, 348 F.3d 696, 700 (8th Cir. 2003). "In making its finding, the district court is bound to do so on the basis of the evidence and not the presentence report because the presentence report is not evidence and not a legally sufficient basis for making findings on contested issues of fact." Id. (quoting United States v. Stapleton, 268 F.3d 597, 598 (8th Cir. 2001)). "We recognize that the Sentencing Guidelines do not mandate a full evidentiary hearing when a defendant disputes a PSR's factual representation. But some investigation and verification of the disputed statements in the PSR is required." Stapleton, 268 F.3d at 598 (citation omitted). Further, the court may make "its findings with respect to the disputed [facts] based

on the evidence at trial." United States v. Theimer, 557 F.3d 576, 578 (8th Cir. 2009).

At William's sentencing hearing, an officer with the Waterloo Police Department testified that Carter "had been middling crack cocaine for William Campbell a little over a year and up to four times a month and anywhere from one to four ounces each trip." R. Doc. 539, at 6. The government also called Officer Furman as a witness. Officer Furman testified that the organizational structure of the Campbell family business, ascertained via wiretapped communications, consisted of Junior and Senior "at the top" with William operating as a retail distributor to others. R. Doc. 539, at 4. Officer Furman also testified that, through wiretapped calls, investigators learned that individuals would call William to find crack cocaine.

One audio recording (a government exhibit played at William's sentencing hearing) depicted an unidentified individual calling William "looking for work." R. Doc. 539, at 4. Although this could support William's claim that he was simply a leader within a legitimate construction business, the government presented evidence disputing this claim. Government counsel asked Officer Furman, "[A]s part of this investigation, have you seen any evidence indicating that [William] was operating a construction business?" to which Officer Furman replied, "No." R. Doc. 539, at 4. Government counsel specifically asked Officer Furman whether, during surveillance, the investigators saw William "meeting with others that looked like they were doing construction work" or "with either a vehicle or construction related items" to which Officer Furman

replied, "No." R. Doc. 539, at 4. On cross-examination, defense counsel asked Officer Furman, "So when [William] talks about people working for him and talks about jobs, is that in reference to his business?" R. Doc. 539, at 5. Counsel clarified, stating, "His rehabilitation business that worked on houses and so forth." R. Doc. 539, at 5. Officer Furman responded, "We didn't see any evidence of that while we were doing the investigation." R. Doc. 539, at 5.

At trial, the government introduced as exhibits intercepted text messages between William and a supply source in Chicago, Illinois, in which William negotiated the purchase price for a pound of cocaine. Officer Furman also testified to these messages' content. Intercepted phone conversations showed that William was the supply source for Carter and others. Further, the government introduced wiretapped calls in which William used coded language to discuss "cuts" of profits between him, Junior, and Senior. This trial evidence demonstrates that William had decision-making authority in the narcotics' distribution and purchase price and that he claimed a right to a "cut" of the profits to be shared between him, his brother, and his father. It is also apparent (through William's discussions with the Chicago supplier, specifically) that he facilitated the transport of out-of-state narcotics to the Waterloo area for distribution. He then directed that distribution by employing other members of the organization—like Carter—to distribute the narcotics on his behalf. After carefully considering this evidence, we find that the district court did not clearly err in finding that William served as an organizer or leader of the organization. Gaye, 902 F.3d at 790.

Next, William argues the district court's two-level witness intimidation enhancement was unsupported by the evidence. USSG § 2D1.1(b)(16) provides, in part, "If the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved . . . witness intimidation . . . increase by 2 levels." As discussed above, William *did* receive an adjustment under § 3B1.1 and was therefore eligible for an enhancement under § 2D1.1(b)(16).

At trial, A.M. (a government witness) testified that William threatened him for wearing a wire. When cross-examined about this threat, A.M. was unable to recall the exact date of the threat but testified that it occurred sometime in 2018. William argues that A.M.'s testimony was not credible, but any assessment of a witness's credibility is within the "province of the trial court" and, on appeal, that credibility finding is "virtually unreviewable." United States v. Heath, 58 F.3d 1271, 1275 (8th Cir. 1995). The district court heard A.M.'s testimony and found it to be credible, and we do not disturb that finding. And, because the district court found that William had intimidated a witness, it did not err by applying a two-level enhancement under § 2D1.1(b)(16).

Finally, William asserts that his sentence is substantively unreasonable because the district court did not properly consider the sentencing factors under 18 U.S.C. § 3553(a). Specifically, referring to the sentence imposed on Junior and Senior, William claims the district court did not properly consider § 3553(a)(6), which requires courts to consider "the need to avoid unwarranted sentence disparities among defendants

with similar records who have been found guilty of similar conduct."

"This [C]ourt reviews the substantive reasonableness of a sentence for abuse of discretion." United States v. Funke, 846 F.3d 998, 1000 (8th Cir. 2017). A district court abuses its discretion where it "fails to consider a relevant factor that should have received significant weight"; "gives significant weight to an improper or irrelevant factor"; or "considers only the appropriate factors but in weighing them commits a clear error of judgment." Id. (quoting United States v. Farmer, 647 F.3d 1175, 1179 (8th Cir. 2011)).

While William received a four-level enhancement, Junior and Senior received a three-level enhancement and no enhancement, respectively, for their roles in the criminal activity. However, "[t]he statutory direction to avoid unwarranted disparities among defendants, 18 U.S.C. § 3553(a)(6), refers to national disparities, not differences among co-conspirators." United States v. Pierre, 870 F.3d 845, 850 (8th Cir. 2017).

Further, any broader claim of substantive unreasonableness William presents also must fail. "Where, as here, a sentence imposed is within the advisory guideline range, we typically accord it a presumption of reasonableness." United States v. Scales, 735 F.3d 1048, 1052 (8th Cir. 2013) (quoting United States v. Deegan, 605 F.3d 625, 634 (8th Cir. 2010)). "[I]t will be the unusual case when [this Court] reverse[s] a district court sentence—whether within, above, or below the applicable Guidelines range—as substantively unreasonable." United States v. Feemster, 572 F.3d 455, 464 (8th Cir. 2009) (en banc).

Further, "[t]he district court has wide latitude to weigh the § 3553(a) factors in each case and assign some factors greater weight than others in determining an appropriate sentence," United States v. Bridges, 569 F.3d 374, 379 (8th Cir. 2009), and a defendant's disagreement with the district court's balancing of relevant considerations does not show that the court abused its discretion, United States v. Ruiz-Salazar, 785 F.3d 1270, 1273 (8th Cir. 2015).

The district court sentenced William to 360 months, and his advisory guideline range was 360 months to life imprisonment. Because the district court imposed the minimum possible sentence within William's advisory guideline range, we presume that the sentence was substantively reasonable. Scales, 735 F.3d at William presents no evidence to overcome this presumption. The court noted William's criminal history; his status as a recidivist or career offender; his threat to a co-defendant and witness; and his status as a leader, organizer, and recruiter for the organization. It opined that the mitigating factors were "far outweighed" by the aggravating factors. R. Doc. 555, at 8. It engaged in a thorough discussion of William's history and characteristics and noted his mental health issues, substance abuse issues, financial stressors, and regular gambling habits. Finally, the court—twice—*expressly* recognized the § 3553(a) factors and their application, stating first, "The Court finds no basis for a downward variance and no basis for a downward departure. I have analyzed the case using the 3553(a) factors of Title 18." R. Doc. 555, at 8. Then, later, "The 3553(a) factors of Title 18 were analyzed by this Court, remembering, of course, that I was the trial judge and

I had the benefit of additional evidence at the sentencing hearing back in March." R. Doc. 555, at 8-9. Therefore, the district court did not abuse its discretion in applying the § 3553(a) factors or in imposing the within-guidelines sentence.

B. Junior's Appeal

A jury convicted Junior of conspiracy to distribute cocaine and cocaine base (Count 1) and possession with intent to distribute cocaine (Count 14). Junior asserts four claims on appeal: (1) that the district court erred in denying his motion to suppress the wiretap evidence; (2) that the district court erred by granting the government's motion to sever; (3) that the evidence was insufficient to sustain his convictions; and (4) that the district court erred by limiting cross-examination.

1.

Junior first argues that the district court erred in denying his motion to suppress the wiretap evidence because the government did not properly minimize irrelevant communications. The issue of whether the government properly minimized intercepted communications "is one of fact, and we review the district court's determination under the clearly erroneous standard." United States v. O'Connell, 841 F.2d 1408, 1417 (8th Cir. 1988).

Investigators must conduct surveillance "in such a way as to minimize the interception of communications not otherwise subject to interception." 18 U.S.C. § 2518(5). Under this statute, investigators must properly minimize communications which do not "concern the offense under investigation." United

States v. Macklin, 902 F.2d 1320, 1328 (8th Cir. 1990). "This provision is nothing more than a command to limit surveillance as much as possible." United States v. Daly, 535 F.2d 434, 441 (8th Cir. 1976).

When determining whether the government complied with 18 U.S.C. § 2518(5)'s minimization mandate, we ask whether its conduct was reasonable by applying an objective reasonableness standard. Id. Our inquiry looks to several factors, including the criminal activity's scope, the investigating agents' reasonable expectations of the communications' content, the authorizing judge's continuing judicial supervision, the communications' length and origin, and whether the speakers relied on coded or ambiguous language. Macklin, 902 F.2d at 1328; see also Daly, 535 F.2d at 441-42.[4] In Scott v. United States, 436 U.S. 128, 139-40 (1978), the Supreme Court emphasized the flexibility of this inquiry:

> Because of the necessarily ad hoc nature of any determination of reasonableness, there can be no inflexible rule of law which will decide every case. The statute does not forbid the interception of all nonrelevant conversations, but rather instructs the agents to conduct the surveillance in such a manner as to "minimize" the interception of such conversations. Whether the agents have in fact conducted the wiretap in

[4] In Daly, we explained that although these factors are instructive, "[w]e do not imply that a trial or reviewing court should not consider other factors in cases presenting different circumstances." 535 F.2d at 441.

> such a manner will depend on the facts and circumstances of each case.

Here, the district court included in its wiretap order instructions to investigators to minimize the number of communications intercepted that did not relate to the investigation. Officer Furman testified that, to comply with the court's minimization instructions, the AUSA created a team of investigators responsible for minimization. This minimization team was responsible for monitoring the voice and text communications from the target cell phones, and no investigator could participate as a member of this team until receiving these instructions. This team intercepted phone calls in real time and determined their relevance; it ceased listening to and recording irrelevant calls. When the team believed a call *might* be relevant, it would forward that call to the drug task force which would then listen and independently determine its relevance. If a drug task force investigator deemed the call irrelevant, the investigator would stop listening to the call and instead intermittently spot check the call to determine whether the call had become relevant. The minimization team also employed procedures specific to their interception of text communications: if the team found that an intercepted text message was irrelevant to the investigation, it did not forward that message to drug task force investigators.

After reviewing this record, we agree with the district court that the government properly complied with 18 U.S.C. § 2518(5)'s minimization mandate. The surveilled criminal activity was expansive, stretching from April 2015 to March 2017, involving multiple

individuals and numerous drug transactions. Drug task force agents were not privy to irrelevant communications except for those that they spot-checked. In Daly, this Court found that investigators substantially complied with § 2518 where their only exposure to irrelevant communications was through spot-checking. 535 F.2d at 441-42 ("We recognize that monitoring agents are not gifted with prescience. . . . Because even innocent conversations often times turn to criminal matters, spot-checking of such conversations is permissible especially in a case such as this involving a broad scope of criminal activity and a sophisticated criminal element." (citation omitted)). Additionally, the district court was apprised of the investigation and its minimization: The government asked for an extension of the court's wiretap order four times and each time presented evidence of the communications that they had intercepted. These minimization techniques were objectively reasonable, and because of this, the district court did not err in denying Junior's motion to suppress.

2.

Junior next argues that the district court erred by granting the government's motion to sever the trial of co-defendants J.P. and Carter from that of Junior and the other defendants because it did so only one month prior to the scheduled trial date and because the government did not show that actual prejudice, sufficient to outweigh the strong preference for a joint trial, would occur absent severance. Rule 14 of the Federal Rules of Criminal Procedure permits severance

of defendants' trials where the moving party would be prejudiced by a joint trial. "The general rule is that persons charged in a conspiracy should be tried together, particularly where proof of the charges against the defendants is based upon the same evidence and acts." United States v. Lee, 743 F.2d 1240, 1248 (8th Cir. 1984). However, "[a] motion to sever rests within a district court's sound discretion, and we will not reverse that decision absent a showing of clear prejudice indicating an abuse of discretion." United States v. Garcia, 785 F.2d 214, 220 (8th Cir. 1986).

The government argued that it would incur prejudice if J.P. and Carter were tried with the other defendants. J.P.'s and Carter's statements implicated Junior, Senior, and William, and because Junior, Senior, and William would not have been able to cross-examine J.P. and Carter—their co-defendants—the statements could not have been admitted in full. Further, the government argued, the statements could not have been redacted in a way that would have comported with the standard set out in Bruton v. United States, 391 U.S. 123 (1968). Because the statements were important in proving that a conspiracy existed, the government argued, severance was necessary.

In Bruton, the Supreme Court demarcated the proper function of limiting instructions in joint trials, explaining that even "clear" instructions are not "adequate substitute[s]" for a defendant's right to cross-examination. Id. at 137. The Eighth Circuit later explained:

> [A] defendant's constitutional rights are violated when the court admits the out-of-court statements of a codefendant, which, "despite redaction, obviously refer directly to someone, often obviously the defendant, and which involve inferences that a jury ordinarily could make immediately, even were the confession the very first item introduced at trial."

United States v. Gayekpar, 678 F.3d 629, 636-37 (8th Cir. 2012) (quoting Gray v. Maryland, 523 U.S. 185, 196 (1998)); see also United States v. Long, 900 F.2d 1270, 1280 (8th Cir. 1990) ("We [have] distinguished cases where presentation of the redacted statement draws the jury's attention to the fact that a name was omitted and invites the jury to fill in the blank, and cases where the redacted statement does not invite speculation.").

J.P. and Carter both gave detailed statements to Waterloo police. After Carter was arrested, he stated that he did not sell drugs but acted as a middleman, delivering cocaine from a distributor (who he then identified as "T.R.") to retail-level dealers. R. Doc. 191, at 3. However, in a later proffer interview, Carter identified William as his distributor. In his interview, Carter characterized the Campbell family as a major source of cocaine in the Waterloo area and stated that Senior had provided him with "a lot" of cocaine. R. Doc. 191, at 3. After J.P. was arrested, he made post-Miranda[5] statements to Waterloo police, admitting his involvement in a drugtrafficking organization and

[5] Miranda v. Arizona, 384 U.S. 436 (1966).

naming some of his suppliers and customers. R. Doc. 191, at 3. He then worked as a cooperator for the government and made several controlled payments to Junior to pay off his drug debts. In a proffer interview, J.P. named Junior, Senior, and William as members of the organization, stated that he had first discussed joining the organization with Junior, and described purchasing large amounts of cocaine from Junior on several occasions (which he then distributed for retail sale). R. Doc. 191, at 4.

The district court was tasked with deciding whether the government could redact J.P.'s and Carter's statements in a way that would not "invite[] the jury to fill in the blank" or "invite speculation." Long, 900 F.2d at 1280. The court found that the statements "[could not] be sufficiently redacted to comply with the dictates of Bruton without substantially compromising their evidentiary value." R. Doc. 191, at 5. We agree. J.P.'s and Carter's statements were crucial to the government's case because those statements were strong evidence of the men's involvement in the larger conspiracy. Even when redacted, Carter's description of a family prominent in the Waterloo drug trade and J.P.'s description of his supplier and the controlled payments he made to that supplier would "invite[] the jury to fill in the blank" in violation of Bruton. Long, 900 F.2d at 1280. As the district court explained: "The statements would inevitably 'le[ad] the jury straight to' the other Defendants. The government would be forced to omit them entirely to avoid running afoul of Bruton. The inability to use the statements, however, would be a substantial blow to the government's case, creating severe prejudice." R. Doc. 191, at 5-6 (alteration in

original) (citation omitted). The government met its burden of establishing that it would suffer prejudice if the severance was not granted. Therefore, we affirm the district court's severance of J.P. and Carter from Junior and the other defendants for trial.

3.

Junior also contends that there was insufficient evidence to sustain his convictions for conspiracy to distribute cocaine and cocaine base and possession with intent to distribute cocaine. At the conclusion of trial, Junior moved for judgment of acquittal or in the alternative, a new trial. We therefore "review the sufficiency of the evidence to sustain [this] conviction de novo, viewing the evidence in the light most favorable to the jury's verdict and reversing only [where] no reasonable jury could have found the defendant guilty beyond a reasonable doubt." United States v. Ramos, 852 F.3d 747, 753 (8th Cir. 2017) (citation omitted). After reviewing the record, we find that there was sufficient evidence to sustain Junior's convictions.

On appeal, Junior argues that the government failed to present evidence that he was knowingly involved in a conspiracy to distribute cocaine and cocaine base. "To establish that a defendant conspired to distribute drugs, the government must show that there was an agreement to distribute drugs, that the defendant knew of the conspiracy, and that the defendant intentionally joined the conspiracy." United States v. Davis, 826 F.3d 1078, 1081 (8th Cir. 2016). "The government [does] not need to show a formal agreement; showing a tacit agreement by

understanding proven wholly by circumstantial evidence or by inferences from the parties' actions is sufficient." United States v. Casas, 999 F.2d 1225, 1229 (8th Cir. 1993) (quoting United States v. Searing, 984 F.2d 960, 964 (8th Cir. 1993)). Merely showing the defendants' knowledge of the conspiracy is insufficient, however; instead, the government must establish "knowing involvement and cooperation." Id.

Three different cooperators, who later testified at trial, arranged to purchase cocaine from Junior. J.P. made four controlled cash payments to Junior, which were each captured on an audio recording device and later played at trial, and at trial, J.P. testified that these payments were reimbursements for narcotics that Junior had advanced to J.P. for retail sale. N.S. testified that he purchased cocaine and cocaine base from Junior on multiple occasions. Finally, A.M. testified that he observed Junior delivering a kilogram of cocaine to another retail dealer. When testifying about the government's wiretap of Junior's phone, Officer Furman stated that Junior spoke in coded language—frequently used by narcotics traffickers—when speaking to co-defendants William and Senior. Additionally, this wiretap revealed Junior's conversations with a narcotics supplier in Texas. In these intercepted communications, Junior discussed sending $63,000 to the Texas supplier for cocaine. Junior then met with an associate assigned to transport money to Texas. Officers stopped this associate and, after searching her car, seized $19,600 in cash. Investigators later intercepted communications between Junior and the Texas supplier in which they discussed the loss of this seized cash. Finally, after

executing several search warrants on Junior's residence and Junior's storage unit, officers recovered firearms; ammunition; equipment to convert cocaine into cocaine base with cocaine residue on it; materials for packaging cocaine for retail sale and chemicals commonly used as cocaine cutting agents; and a coffee can with a false bottom containing approximately 37 grams of cocaine base, four grams of powder cocaine, and cutting agents.

We have explained that a jury's determination of witness credibility should not be disturbed absent a showing that the testimony was implausible on its face. See Ramos, 852 F.3d at 753 ("[A]ccomplice testimony need not be corroborated to support a conviction. Unless the testimony is implausible on its face . . . we defer to the jury's determination of whether an accomplice is credible." (citation omitted)); see also United States v. Mallett, 751 F.3d 907, 916 (8th Cir. 2014) ("'[W]e do not consider attacks on witnesses' credibility when we are evaluating an appeal based upon the sufficiency of evidence.' And '[w]e have repeatedly upheld jury verdicts based solely on the testimony of co-conspirators and cooperating witnesses, noting that it is within the province of the jury to make credibility assessments and resolve conflicting testimony.'" (second alteration in the original) (citations omitted)). Junior presents no evidence that the cooperators' testimony was implausible on its face, and we therefore defer to the jury's determination of credibility.

As to Junior's possession conviction, he claims that the government failed to produce sufficient evidence of

his knowledge of the controlled substance to support a theory of constructive possession. Specifically, Junior asserts that the government failed to present evidence that he knew of the coffee can (with a false bottom containing approximately 37 grams of cocaine base, 4 grams of powder cocaine, and cutting agents) or that he used the storage unit from which officers seized the can.

Constructive possession exists where a person has knowledge of the presence of contraband and control over that contraband. United States v. Wright, 739 F.3d 1160, 1168 (8th Cir. 2014). "Evidence showing a person has 'dominion over the premises in which the contraband is concealed' establishes constructive possession." Id. (quoting United States v. Ojeda, 23 F.3d 1473, 1475 (8th Cir. 1994)). At trial, the government presented evidence that Junior had rented the storage unit, that officers found mail addressed to Junior inside the unit, and that officers found a receipt for the unit in Junior's residence. Further, one of Junior's own witnesses testified that she gave Junior the coffee can. Finally, the cutting agents found in the can's false bottom were the same kind of cutting agents recovered from the search of Junior's residence. In light of this evidence, we cannot say that no reasonable jury could find Junior guilty under a theory of constructive possession. Ramos, 852 F.3d at 753. Therefore, after reviewing the government's evidence presented, we conclude that Junior's convictions are supported by sufficient evidence.

4.

Finally, Junior claims that the district court erred by limiting crossexamination of the government's cooperating witnesses. For the reasons discussed above, see supra Section II.A.2, we find that the district court did not err.

C. Carter's Appeal

A jury convicted Carter of conspiracy to distribute cocaine and cocaine base (Count 1) and possession with intent to distribute cocaine base (Count 13). Carter presents three claims on appeal: (1) the district court erred by denying his request for a buyer-seller instruction; (2) there was insufficient evidence to sustain his convictions; and (3) his sentence is substantively unreasonable.

1.

First, Carter claims that the district court erred by denying his request for a buyer-seller jury instruction because, contrary to the government's theory, only a buyer-seller relationship existed between him and the Campbell family. As explained above, see supra Section II.A.3, we apply a de novo standard where the district court's refusal of a proffered jury instruction simultaneously denies a legal defense. Bruguier, 735 F.3d at 757. After reviewing de novo the government's evidence, we find that the district court did not err in denying Carter's request for a buyer-seller instruction.

This Court recently emphasized that a buyer-seller instruction is only appropriate in limited circumstances. See United States v. Harris, 966 F.3d

755, 761 (8th Cir. 2020) ("But we have emphasized that such buyer-seller cases involve only evidence of a single transient sales agreement and small amounts of drugs consistent with personal use." (quoting United States v. Shelledy, 961 F.3d 1014, 1019 (8th Cir. 2020)). Where there is evidence that a defendant engaged in multiple sales of large quantities of narcotics, a buyer-seller instruction is inappropriate. Id.; see also United States v. Conway, 754 F.3d 580, 592 (8th Cir. 2014) ("Where the conspiracy involves large quantities of drugs and significant interaction between dealers and users over an extended period of time, the instruction is inappropriate.").

In January 2017, law enforcement conducted a traffic stop of Carter after he left William's residence. During that stop, officers seized 12.94 grams of crack cocaine; a government witness testified at trial that this amount of cocaine is not consistent with a drug-user but rather, a drug-trafficker "just by the sheer volume of it." R. Doc. 549, at 107-108. Further, at Carter's trial, the government presented a cooperating witness who testified that he first bought crack cocaine from Carter in 2015 or 2016 and continued buying from him until Carter's 2017 traffic stop and arrest. The witness explained that he purchased crack cocaine from Carter almost every day—sometimes twice a day. That witness further testified that Carter acted as a middleman: Carter obtained cocaine from William, which he then sold to the witness. The government also presented an investigator who testified that a search of Carter's residence uncovered items consistent with drug trafficking: a scale and a large number of baggies. Most telling, perhaps, is the multitude of phone

conversations and text messages exchanged between Carter and William and introduced by the government at trial: in them, the two men discussed the availability of cocaine; disruptions in the narcotics supply chain; a third, unidentified person who owed Carter money; and William offering Carter a decreased price because of his bulk cocaine purchase. Further, these exhibits revealed that Carter had his own customers.

This evidence does not support a buyer-seller instruction. Instead, the evidence portrays multiple drug sales spanning an extended period of time and involving multiple transactions of drug amounts much larger than those required for personal use. Harris, 966 F.3d at 761; Conway, 754 F.3d at 592. Carter maintains that the 93 text messages and 92 phone calls exchanged between him and the Campbells and intercepted via wiretap were not indicative of his involvement in the conspiracy, but rather, were indicative of his familial relationship to the Campbell family: one of Carter's children is married to one of the Campbell children. However, the phone calls and text messages introduced do not support this claim because, in each, the two men discuss narcotics sales. However, even if we assume that Carter is correct, a buyer-seller instruction would still be inappropriate in light of the other evidence presented at trial. Therefore, we find that the district court did not err in denying a buyer-seller instruction.

2.

Carter next alleges that there was insufficient evidence to support his convictions for conspiracy to distribute cocaine and cocaine base and possession with

intent to distribute cocaine base. Because Carter did not move for acquittal at the close of the government's case, at the close of all evidence, or after the jury's verdict, "we reverse only if the district court, in not *sua sponte* granting judgment of acquittal, committed plain error." United States v. Calhoun, 721 F.3d 596, 600 (8th Cir. 2013). Plain error only exists where the district court's error affected the defendant's substantial rights and "seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings." Id.

Carter cannot meet that high standard here. The government "must [only] show that there was an agreement to distribute drugs, that the defendant knew of the conspiracy, and that the defendant intentionally joined the conspiracy." Davis, 826 F.3d at 1081. As we explained supra Section II.B.3, the government need not show a formal agreement to sustain a conspiracy conviction. Casas, 999 F.2d at 1229. Carter argues that the evidence was insufficient to support a conspiracy conviction because only a buyer-seller relationship existed between him and the Campbells. However, as we discussed above, see supra Section II.C.1, the evidence supports the finding that his relationship with the Campbells exceeded that of a buyer-seller, and therefore, this argument fails.

Further, Carter argues that the government's evidence was insufficient to support his conviction for possession with intent to distribute cocaine base. To convict a defendant of possession with intent to distribute a controlled substance, the government must prove beyond a reasonable doubt that the defendant

"both knowingly possessed and intended to distribute the drugs." United States v. Morales, 813 F.3d 1058, 1065 (8th Cir. 2016) (citation omitted). When explaining why the evidence was insufficient to support his conviction for possession with intent to distribute cocaine base, Carter simply argues that evidence presented at trial on Count 13 is "inextricably intertwined" with the evidence for Count 1. Again, because his relationship with the Campbells was much more extensive than that of a buyer-seller, this argument fails. We conclude that the evidence was sufficient to support Carter's conviction.

3.

Finally, Carter argues that his sentence is substantively unreasonable. Specifically, Carter argues that the district court erred in denying his motion for a downward variance and that the court failed to adequately consider mitigating factors. As explained above, see supra Section II.A.4, we review substantive reasonableness under an abuse of discretion standard. Funke, 846 F.3d at 1000.

The district court sentenced Carter to a within-guidelines sentence of 360 months. Because this sentence is within the advisory guideline range, we presume it to be reasonable. Scales, 735 F.3d at 1052. Carter alleges the district court did not adequately consider mitigating factors and, as a result, incorrectly denied Carter's motion for a downward variance. However, the district court specifically explained that a downward variance was inappropriate because the "aggravating factors far outweigh[ed] the mitigating factors." R. Doc. 565, at 12. The district court looked at

Carter's "many" state court drug convictions and noted that he is a "recidivist drug dealer." R. Doc. 565, at 12. Carter suggests that the court did not consider his battle with substance abuse issues, but the court noted its "hope" that Carter would request assistance with his "serious substance abuse history." R. Doc. 565, at 13. As we have previously explained, "[s]imply because the district court weighed relevant factors . . . more heavily than [the defendant] would prefer does not mean the district court abused its discretion." Farmer, 647 F.3d at 1179. The district court exercised its wide latitude, Goodson, 569 F.3d at 379, and found that 360 months was appropriate after "considering each and every factor under 18 United States Code Section 3553(a)," R. Doc. 565, at 13. We conclude that the district court did not abuse its discretion in sentencing Carter.

D. Senior's Appeal

A jury convicted Senior of conspiracy to distribute cocaine and cocaine base (Count 1) and distribution of cocaine base (Count 3). Senior asks this Court to consider three contentions on appeal. First, he contends the district court erred in denying his requests for a multiple conspiracies and a buyer-seller instruction. Second, he argues there was insufficient evidence to support his convictions. Finally, Senior claims the district court erred in denying his motion for a new trial.

1.

First, Senior argues the district court erred in denying his requests for a multiple conspiracies jury

instruction and for a buyer-seller jury instruction. Because above, see supra Sections II.A.3 and II.C.1, we discussed the applicable law in great detail, we do not engage in that analysis again, here. Rather, we look only to the facts unique to Senior's trial, applying de novo review. Bruguier, 735 F.3d at 757.

Like William, Senior argues that N.S.'s testimony evidences a separate conspiracy between N.S. and Junior. Again, we disagree. At trial, the government presented robust evidence indicating that Senior was a member of the same conspiracy as N.S. and Junior. A cooperator for the Waterloo police, using a cooperating witness and $200 of preserialized bills, purchased cocaine base from Senior while wearing a recording device. At trial, that cooperator identified Senior as the supplier who sold cocaine base to him during the controlled buy. A different cooperator testified that he had observed Senior and Junior delivering a kilogram of cocaine to another member of the organization. Further, wiretap evidence revealed that Senior was aware that he was under investigation; during intercepted communications between Junior and Senior, the two men referred to the "task" and its surveillance of Junior. The nature of Senior's activities—i.e., the sale of cocaine and cocaine base—are identical to that of the other co-conspirators charged. Like N.S., Junior, William, and Carter, Senior operated within the Waterloo area. Further, he frequently communicated—*in coded language*—with the other conspirators. Because the nature of his activities, the location in which he operated, and the identity of the persons involved are virtually identical

to that in Junior's case, the evidence supports the government's single-conspiracy theory.

Senior also claims that he and N.S. did not know one another. Even if this is true, it does not defeat the government's single conspiracy theory. "Furthermore, '[a] conspirator . . . need not know all of theconspirators orbe aware of all the details of the conspiracy, so long as the evidence is sufficient to show knowing contribution to the furtherance of the conspiracy.'" United States v. Johnson, 719 F.3d 660, 666 (8th Cir. 2013) (alterations in original) (citation omitted); see also United States v. Benford, 360 F.3d 913, 914 (8th Cir. 2004) ("A single conspiracy may exist even if the participants and their activities change over time, and *even if many participants are unaware of, or uninvolved in, some of the transactions*." (emphasis added)). Therefore, we affirm the district court's denial of Senior's request for a multiple conspiracies instruction. Additionally, because the evidence evinces Senior's role—one involving multiple transactions and a large quantity of narcotics sold—a buyer-seller instruction was also inappropriate, and the district court did not err in denying the proffered instruction. Harris, 966 F.3d at 761.

2.

Senior next argues that the evidence presented at trial was insufficient to support his convictions for conspiracy to distribute cocaine and cocaine base and distribution of cocaine base. Senior moved for acquittal after the close of the government's evidence—and renewed that motion at the close of Junior's evidence—

but the district court denied it. We therefore conduct de novo review. Ramos, 852 F.3d at 753.

We have previously discussed the government's burden to sustain a conspiracy conviction, supra Section II.B.3, and we do not reiterate that here. To sustain a conviction for the distribution of a controlled substance, the government must prove beyond a reasonable doubt that the defendant "intentionally transferred cocaine base to another person" and that, at the time of the transfer, the defendant knew he was dealing a controlled substance. See, e.g., United States v. Thompson, 686 F.3d 575, 582 (8th Cir. 2012).

Senior claims that because the controlled buy, previously discussed supra Section II.D.1, was not observed, videoed, or photographed, and because the preserialized money was never recovered, it cannot support his convictions. We disagree. Although officers observed the wrong car during the controlled buy, the cooperator wore an audio recording device, an officer testified at trial that the voice on the recording was that of Senior, and the cooperator who participated in the buy also identified Senior (at trial) as the supplier during that buy.

Senior also challenges the credibility of the government's witnesses. For example, he challenges Officer Furman's credibility and asserts Officer Furman's interpretation of Senior, Junior, and William's coded language is "speculative." However, as we discussed supra Section II.B.3, we do not consider attacks on witness credibility when evaluating the sufficiency of the evidence, and the jury's credibility determinations of cooperating witnesses will not be

disturbed absent evidence that the testimony was implausible on its face. Mallett, 751 F.3d at 916; Ramos, 852 F.3d at 753. Senior presents no evidence indicating that the cooperator's testimony was implausible on its face, and therefore, we leave the jury's credibility determination undisturbed. Further, the abundance of evidence against Senior, which we outlined in our discussion of the district court's denial of Senior's requested multiple conspiracies instruction, is also relevant here. See supra Section II.D.1. After reviewing the record, we find that the government presented sufficient evidence to support Senior's conspiracy and distribution convictions.

3.

Finally, Senior argues that the district court erred in denying his motion for a new trial. "We review the denial of a motion for a new trial for an abuse of discretion." Southland Metals, Inc. v. Am. Castings, LLC, 800 F.3d 452, 461 (8th Cir. 2015). In light of our finding that there was sufficient evidence to sustain Senior's convictions, supra Section II.D.2, we similarly find that the district court did not abuse its discretion in denying Senior's motion for a new trial.

III.

For the above-stated reasons, we affirm the district court in full.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

17-CR-2045

JURY TRIAL PROCEEDINGS

VOLUME I

[Filed: June 4, 2019]
[Trial Held: April 20-25, 2018]

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
VS.	)
	)
ALSTON RAY CAMPBELL, JR.,	)
ALSTON RAY CAMPBELL, SR.,	)
and WILLIAM MARCELLUS CAMPBELL,	)
	)
Defendant.	)
	)

JURY TRIAL PROCEEDINGS,

HELD BEFORE THE HON. LINDA R. READE,

on the 20th day of April, 2018, at 111 Seventh Avenue S.E., Cedar Rapids, Iowa, commencing at 8:28 a.m.,

and reported by Patrice A. Murray, Certified Shorthand Reporter, using machine shorthand.

Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
111 Seventh Avenue S.E., Box 4
Cedar Rapids, Iowa 52401-2101
(319) 286-2338

APPEARANCES:

ATTORNEY EMILY K. NYDLE AND RICHARD L. MURPHY, US Attorney's Office, 111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401, appeared on behalf of the United States.

ATTORNEYS ALFRED E. WILLETT AND DILLON JOHNATHAN BESSER, of the firm of Elderkin & Pirnie, 316 Second Street S.E., Suite 124, Cedar Rapids, Iowa 52401, appeared on behalf of Alston Ray Campbell, Jr.

ATTORNEY BRIAN D. JOHNSON, of the firm of Jacobsen, Johnson & Wiezorek, 425 Second Street S.E., Suite 803, Cedar Rapids, Iowa 52401, appeared on behalf of Alston Ray Campbell, Sr.

ATTORNEY CLEMENS ERDAHL, of the firm of Nidey, Peterson, Erdahl & Tindal, 425 Second Street S.E., Suite 1000, Cedar Rapids, Iowa 52401, appeared on behalf of William Marcellus Campbell.

INDEX

EXHIBITS

(The following proceedings were held in open court.)

* * * * *

THE COURT: We are outside the presence of the jury in the case of United States of America versus Campbell, et al., Case 17-2045, outside the presence of the jury.

MS. NYDLE: Your Honor, as I mentioned earlier this morning, there have been some discussion with regard to proposed defense exhibits. We have cooperating witnesses. Out of those, four have cooperation agreements. Earlier, in the form of defense exhibit notification, we were informed that defense intends to admit those, and at this point I believe that's fully admit them. They contain a large amount of information that's concerning. Certainly the fact that the defendants have -- or the codefendants and testifying witnesses have cooperation agreements is a proper area for impeachment, but the admission of those documents is not proper. There's also a lot of issues, including 403-related issues, confusing things in there about guideline calculations, there's penalty sections, it draws a concern that then -- jury nullification becomes an issue both with regards to drug quantity as well as a conviction in general. And so because we have a cooperating witness scheduled for this afternoon and we weren't able to work things out, we thought it would be best to draw it to the Court's attention now outside the presence of the jury.

THE COURT: Is the first witness a cooperator?

MS. NYDLE: No, Your Honor. Kelly Meggers will be testifying first, but the second one is scheduled to be a

cooperating witness. And since I assumed we would -- Ms. Meggers' testimony will not take us to the end of the day, I anticipate the cooperating witness will testify before the end of the day.

THE COURT: Which of the defendants intended to offer those? Was that you Mr. Willett?

MR. WILLETT: Your Honor, if it please the Court, I was going to offer Defendant's Exhibit C, which has been supplied to the Court earlier. It's the plea agreement for Samuel Landfair. Now, Your Honor, I'll be very candid, I'm not sure Mr. Landfair is going to say much, if anything, about my client. This is really more -- a larger issue for Mr. Erdahl in his defense of Mr. William Campbell. The discussions that I had with Ms. Nydle, which I think were basically e-mail discussions and maybe one telephone conversation, was that -- her concern about the paragraph talking about a polygraph examination, and I've been informed -- that's Paragraph 9 of the plea agreement, Your Honor. I've been informed that Mr. Landfair did not take a polygraph, so if the Court wishes that to be redacted, that I'm open-minded to. I just didn't know the Court's philosophy on that from the Court during our -- during my conversations with Ms. Nydle. The rest of the plea agreement, Your Honor, I think contains paragraphs that would involve classic cross-examination to dispute the credibility of Mr. Landfair; the fact that he has a mandatory minimum sentence, the fact that he's cooperating, the fact that based upon his prior criminal record he would be a career offender and what that sentence would potentially look like. I believe it's present in this plea agreement, Your Honor, that Mr.

Landfair had one 851 notice applied to him, which of course raises another sentencing discussion with Mr. Landfair. And then, of course, we have the basic calculations.

Now, I haven't even gotten to what I think is the most interesting question about Mr. Landfair's plea agreement. I don't see any paragraph in his plea agreement for a factual basis. And unless something has changed drastically very recently that I'm unaware of, this is the first time in my career I have ever seen a plea agreement without a factual basis, so --

THE COURT: So what?

MR. WILLETT: Well, maybe that's just curiosity.

THE COURT: I think that's curiosity, because there's no requirement in the law that they have that.

MR. WILLETT: And I can set that aside. But all I was going to do, Your Honor, is I was going to lay the proper foundation with Mr. Landfair that this is his plea agreement, that this is his signature, that these are his initials next to each paragraph indicating that he's read them, that he's approved them, that they're correct, for lack of a better word, and then I was going to get out of the way and let Mr. Erdahl dive into the areas that at least Mr. Erdahl and I believe would be classic areas of cross-examination.

Now, having been told by Ms. Nydle that Mr. Landfair never took a polygraph exam, after entering this exhibit, if you want Paragraph 9 redacted, we have no objection, Your Honor. We have no objection, because we're not trying to mislead the jury. The other

paragraphs that Ms. Nydle's concerned about we're not in agreement upon, and I don't think it opens this Pandora's box of concerns that Ms. Nydle raised. Now, I don't know if Mr. Erdahl wants to add to anything I'm saying, since I said he's got a bigger issue in this particular witness than I do, but that's the basis of where we're at, Judge.

THE COURT: Mr. Erdahl.

MR. ERDAHL: Well, I join with Mr. Willett and with his arguments, that Exhibit C, which is set forth as -- and is -- as an exhibit for Alston Campbell, Jr., is very important to Mr. William Campbell's case. But I guess I understand that there was a prior plea, and that's part of the unusual nature of this and why there's no factual basis here, because he had already pled, so that is unusual. I don't think that affects anything because what we're really talking about is that it's a cooperation plea, that there's a mandatory minimum, that he's a career offender, what his potential sentence is, the 851 notice not being given -- is -- is in the agreement or you could read that in, but that wasn't something I was going to dwell on. As far as any concerns about the public, I mean, I think we can admit this -- we can admit this under seal, and then it would go to the jury but it would not be accessible to the public.

MR. WILLETT: The only thing, if I might add one thing, Your Honor.

THE COURT: Uh-huh.

MR. WILLETT: Obviously, the Court's already instructed this jury on Instruction Number 7, and so

the Court has already apprised this jury about plea agreements with the government, and the Court's already apprised this jury that these people may hope to receive a reduced sentence.

THE COURT: I don't think that's really the issue. I don't think there's any question that you can ask a cooperating witness all the questions you want about their plea agreement, their agreement with the government, but it's quite another thing to put this document in that has all kinds of other legalese and provisions in it. So I think it's fair game to talk about the sentence they're facing, if they were career offenders, and the fact that they're looking for a particular -- or they're looking for a reduction. But I'm not going to let the document in because there's all kinds of other stuff in here that isn't relevant, and that will lead to confusion of the jurors. So you can certainly talk about it but the document, I think, is not going to be admitted.

MR. WILLETT: Your Honor, so there's no confusion to the jury, could we just make a record now that it would be, on behalf of Alston Campbell, Jr., it would be the defense's intent to offer this plea agreement and the Court, of course, is saying it's not going to come in, and we would like to note our objection for the record? Would that be --

THE COURT: That's fine. And I'm excluding it under 401 and 403 of the Federal Rules of Evidence. Again, I am not limiting you into [sic] getting into the subjects that may be in this plea agreement, but the agreement itself won't come in.

MR. WILLETT: May I ask one other thing, Your Honor, just for purposes of knowing how to handle the witness.

THE COURT: Yeah.

MR. WILLETT: Say, for example, Mr. Landfair doesn't remember something. Can his memory be refreshed by showing him the exhibit?

THE COURT: Sure.

MR. WILLETT: Thank you, Your Honor.

Mr. Erdahl.

MR. ERDAHL: I would just take exception to the ruling and make that part of the record.

THE COURT: Okay. And keep in mind, I'm not trying to limit your cross-examination. It's just the document itself.

MR. ERDAHL: I completely understand, Your Honor.

THE COURT: All right. And besides that, it would be cumulative, so there's another problem.

Mr. Murphy, did you have --

MR. MURPHY: Yeah, just one other thought, Your Honor. I would ask the Court to direct that the examination be conducted in such a way that it doesn't -- it's not used in some way to try to compare those defendants and the penalties they're facing to the penalties that these individuals are facing; this is what I'm talking about. The Court -- as the Court knows, as

the Court instructs the jury, punishment is not for them. The Court typically does not allow any evidence of what the penalties are. And to the extent they are saying you're facing a 5-year mandatory minimum because you've got 28 grams of crack or whatever it is, that is then extrapolated -- or can be extrapolated by the jury to determine what the penalty is that applies in this case, I think is inappropriate. I think -- and so I would object to anything along those lines, and I would suggest that really, to the extent that anything is admissible, it's really not for impeachment. There's nothing here based on impeachment. It goes to bias. The fact of bias goes to the fact that they are facing an extended period of imprisonment, period. And as to what that period of imprisonment is, whether it's a 5-year mandatory minimum or whether it's a 10 or if an 851 notice was filed, it might have been a 20, or it might have been this or that, which are legal issues, I would respectfully ask the Court direct that we don't need to get into that; that the question simply is whether or not the person is facing an extended period of imprisonment and they're trying to get a benefit from that. And beyond that, everything else is irrelevant, whether it's a 20-year period of imprisonment or it's a 10-year period of imprisonment. The bottom line is, they're trying -- from the defendant's standpoint, they're trying to curry favor with the government in hopes of getting a motion that will allow them to get a reduced sentence, and that's it.

THE COURT: Well, because I think that we would get into potential issues that the jury is not to decide and that is punishment, that is not admissible, because it's the judge alone who makes that decision based on

the law as the Court understands it. I will let you question the witnesses who have agreements as to whether they're facing a substantial amount of time. I'm not going to let you get into the code sections and the amount of the dope and the 851 notices, because jurors don't have that kind of legal background to introduce those. But you certainly can bring out the fact that they're facing a substantial amount of time.

MR. WILLETT: May I ask one clarifying question, Your Honor?

THE COURT: Yes.

MR. WILLETT: Thank you. And I understand at this point where the Court is coming from, I am making the assumption that Mr. Erdahl and I would be able to ask them if they were facing a mandatory minimum sentence --

THE COURT: Uh-huh.

MR. WILLETT: -- or their understanding of what the time they are facing right now might be.

THE COURT: Certainly that they are facing a mandatory minimum is, in my opinion, admissible, but we do not need to get into the exact amount of time that they're facing --

MR. WILLETT: Okay. So --

THE COURT: -- under 401 and 403.

MR. WILLETT: And obviously, I would ask the Court to note my objection to the Court's ruling.

THE COURT: Certainly.

MR. WILLETT: And the one other example I'm going to give because I think it will come up, I believe there are individuals who will present themselves to you in this trial who are career offenders, and that is harkening back to the question I just asked you. Would Mr. Erdahl be able to discuss, for example: *Well, currently you are looking at this range of time because, based upon your prior criminal record, you currently have this label*?

THE COURT: I don't want you to get into the exact amount of time that anybody is facing; however, it would certainly be fair game to say or ask the defendant if that defendant is facing an increased amount of time in prison because of their prior criminal history.

MR. WILLETT: Okay.

THE COURT: But I don't want to get into the specifics of it.

MR. WILLETT: I understand the Court's guidance. But a mandatory minimum sentence, that's fair game.

THE COURT: Yes.

MR. WILLETT: Thank you, Judge.

THE COURT: All right. Taken care of?

(No response.)

THE COURT: All right. Anybody else?

MR. ERDAHL: So the way to deal with it is without getting into specific number of months.

THE COURT: Right.

MR. ERDAHL: And you are facing an increased sentence because you're a career offender or --

THE COURT: Or words to that effect.

MR. ERDAHL: -- without getting into any numbers or the nature of the charge.

THE COURT: Right. And for the jury's benefit, career offender might not have meaning, so you may want to say "because of your extensive criminal history" or something that this jury will understand without having an education in federal criminal law.

MR. MURPHY: Well, Your Honor, and again, to avoid the confusion to the jury, I would ask that the question be directed towards "You're facing an enhanced penalty because of your prior conviction for X and Z," which is what career offender is, as opposed to having them speculate as to what does career offender mean, if it means you have 47 convictions or whatever. It's a very specific term that we understand, and it's on account of specific prior convictions.

THE COURT: I think that's the way to handle it.

MR. ERDAHL: I'm sorry, I thought that's what Mr. Murphy was trying to avoid, because then you're talking about drug offenses and you're talking about -- I thought the more general approach of just saying "because of your past record," you're doing that would give -- would tip the jury off less to, you know, what sentences these gentlemen may be facing.

MR. MURPHY: If you want to tip them off less, I'm all for that.

MR. ERDAHL: Okay, it's up to the judge but that's what I understood, and I wanted to be real specific that the judge was schooling me on was not to give away that these were drug charges and so forth; and when we start talking about specific prior offenses, then we're --

MR. MURPHY: I think --

MR. ERDAHL: -- then we're telling the jury how these gentlemen would be sentenced, it seems to me.

THE COURT: Well, I don't know if any of these defendants face career offender. I don't know enough about them.

MR. MURPHY: Then might I suggest just say "On account of your prior criminal record"?

MR. ERDAHL: Yeah.

THE COURT: Yeah, "extensive criminal record."

MR. WILLETT: Your Honor, if it please the Court, I think the only person you may see today who would qualify would be Mr. Landfair. And my understanding is, he may very well qualify as a career offender.

THE COURT: All right. I don't know.

MR. MURPHY: But the jury doesn't know what that is either.

THE COURT: No, and I don't know anything about him at this stage. Okay. Ready for the jury.

(Whereupon, the jury entered the courtroom.)

THE COURT: Members of the jury, we're ready to continue in the United States of America versus Campbell, et al. This is Case 17-2045. Thank you for your patience. We ran a little long on the break because I wanted to take up some things with the lawyers. They were ready and -- ready to go, but I needed to talk to them. So thanks for your patience.

All right. We're now ready to continue with the trial. And we're ready for any evidence that the government would like to offer.

MS. NYDLE: At this time, Your Honor, the government would call Kelly Meggers.

THE COURT: Good afternoon. Will you please come forward and take the oath.

KELLY MEGGERS,

called as a witness, being first duly sworn or affirmed, was examined and testified as follows:

THE CLERK: You may take the witness stand.

DIRECT EXAMINATION

BY MS. NYDLE:

Q. Would you please state your name and spell it for the record, please.

A. Sure. My name is Kelly Meggers, M-E-G-G-E-R-S.

Q. And where are you currently employed?

* * * *

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Q. Okay. Does that -- does that timeframe sound appropriate to you, that it was sometime last month?

A. It was somewhere around there.

Q. Okay, okay. Have you had -- have you ever had any problem or conflict with the Campbell family?

A. No.

Q. Okay, okay.

MR. WILLETT: Judge, thank you.

THE COURT: Mr. Johnson, anything?

MR. JOHNSON: No questions, Your Honor.

THE COURT: Mr. Erdahl?

MR. ERDAHL: Yes, thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ERDAHL:

Q. Good afternoon, Mr. Landfair.

A. How you doing?

Q. So you said you never got any from Alston Senior, correct?

A. No.

Q. Never got any from Alston Junior?

A. No.

Q. And you never got any from William Campbell either, right?

A. No.

Q. And did you tell Ms. Nydle and the officer on April 13th that Mr. William Campbell was a user of cocaine?

A. That's the only thing I know him to do. I never seen him sell drugs.

Q. And you -- in your plea, it indicates that you are facing a mandatory minimum 10 years, correct?

A. Correct.

THE COURT: All right. You can ask the next question.

Q. Do you have a --

MR. ERDAHL: May we approach, Your Honor?

THE COURT: Yes.

(The following was held at a sidebar.)

THE COURT: All right. We are at sidebar. And let me see if the defendants have their headsets.

(Defendants indicated.)

THE COURT: All right. The problem is, we talked on the record, you're not to bring up any specifics about time.

MR. ERDAHL: Oh.

THE COURT: Yeah. You can say --

MR. ERDAHL: Okay. I just -- I was going -- and the next thing I was going to do is ask enhanced penalty and try to say it the right way and I thought I could talk about the mandatory minimum, but I can't --

THE COURT: Yeah, you can say mandatory minimum, but not any specifics.

MR. ERDAHL: Okay, okay. I just wanted to make sure. I realized I probably made some kind of mistake. I didn't want to make another one, Your Honor.

THE COURT: Okay, all right.

MR. WILLETT: Your Honor, I just want to note my continuing objection, because I guess I was confused. I thought we could articulate the amount of time of the mandatory minimum sentence. What we weren't supposed to do was the guideline calculations, advisory ranges, and getting into the guts of the plea agreement, so --

THE COURT: No.

MR. BESSER: Substantial and mandatories --

THE COURT: Substantial and mandatory --

MR. WILLETT: Okay, okay.

THE COURT: -- but we don't want to get into the number of years, the amount of dope, that sort of thing.

MR. WILLETT: Okay. Just so the record is clear, Your Honor, on behalf of Mr. Campbell, Jr., I'm just going to note my continuing objection.

THE COURT: All right. And again, you can get in on cross the fact that he's facing a mandatory, that he's facing a substantial amount of time, but under 401, 403, I'm limiting you on how deep we get into that.

MR. MURPHY: Just so I'm clear on the objection, you are objecting to the question asked by Mr. Erdahl? Because she didn't ask the question.

MR. WILLETT: No. What I am objecting to, but I guess I was confused, I thought Mr. Erdahl could articulate the question of a mandatory minimum sentence of a term of years, and now I understand that he can ask about a mandatory minimum but he cannot articulate a term of years.

MR. MURPHY: So you're objecting for him?

MR. WILLETT: I am objecting on behalf --

THE COURT: He's just trying to clarify.

MR. ERDAHL: To the judge's ruling, he's taking exception to the ruling --

MR. MURPHY: Okay.

THE COURT: Okay, thank you.

MR. JOHNSON: Your Honor, I'm sorry, just one last clarification.

THE COURT: Okay.

MR. JOHNSON: Because we're all talking in shorthand, because we all know what mandatory minimum means, we can say mandatory minimum

sentence of imprisonment or anything along those lines, correct?

THE COURT: Uh-huh, sure.

MR. JOHNSON: Okay, i just wanted to make sure.

MR. WILLETT: Thank you, Your Honor.

(The following was held in open court.)

THE COURT: All right. We're ready to proceed, Mr. Erdahl.

MR. ERDAHL: Yes, thank you, Your Honor.

Q. Mr. Landfair, you were facing an enhanced number of years because of your extensive criminal record; is that correct?

A. Yes.

Q. Okay. And will you be able -- is there a possibility of your getting a reduction in the number of years you were facing if a motion is made by the government on your behalf?

A. It's possible.

Q. You'd like that to happen, wouldn't you?

A. Yes.

Q. Yeah. And is it possible for there to be a reduction below a mandatory minimum if the right motion is made by the government?

A. Yes.

Q. Do you have a cousin named Billy Olive?

A. Yes.

Q. And do you know whether he worked for Mr. Will Campbell?

A. I can't say for sure.

Q. Okay. Are you aware of Mr. Campbell's business or properties?

A. He told me something about it.

Q. Do you know whether your cousin worked when he was on work release at one point? Was he -- did he get a job when he was on work release?

A. He was working somewhere.

Q. Okay. But you don't know where?

A. (Indicated negatively.)

THE COURT: Did you answer yes or no?

A. Yes, he was working somewhere.

Q. Okay. And do you know Mr. William Campbell's cousin Anthony Cole?

A. Yes.

Q. Okay. And how do you know him?

A. He shot me and my cousin.

Q. So you had a dispute with him some time ago?

A. Yes.

Q. Okay. Do you have any grudge against the Campbell family because of that?

A. No, I don't even have a grudge against him for it.

MR. ERDAHL: No further questions, Your Honor.

THE COURT: All right. Any redirect?

* * * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

17-CR-2045

JURY TRIAL PROCEEDINGS

VOLUME II

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
VS.	)
	)
ALSTON RAY CAMPBELL, JR.,	)
ALSTON RAY CAMPBELL, SR.,	)
and WILLIAM MARCELLUS CAMPBELL,	)
	)
Defendant.	)
	)

JURY TRIAL PROCEEDINGS,
HELD BEFORE THE HON. LINDA R. READE,

on the 23rd day of April, 2018, at 111 Seventh Avenue S.E., Cedar Rapids, Iowa, commencing at 8:33 a.m., and reported by Patrice A. Murray, Certified Shorthand Reporter, using machine shorthand.

Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
111 Seventh Avenue S.E., Box 4

Cedar Rapids, Iowa 52401-2101
(319) 286-2338

APPEARANCES:

ATTORNEY EMILY K. NYDLE AND RICHARD L. MURPHY, US Attorney's Office, 111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401, appeared on behalf of the United States.

ATTORNEYS ALFRED E. WILLETT AND DILLON JOHNATHAN BESSER, of the firm of Elderkin & Pirnie, 316 Second Street S.E., Suite 124, Cedar Rapids, Iowa 52401, appeared on behalf of Alston Ray Campbell, Jr.

ATTORNEY BRIAN D. JOHNSON, of the firm of Jacobsen, Johnson & Wiezorek, 425 Second Street S.E., Suite 803, Cedar Rapids, Iowa 52401, appeared on behalf of Alston Ray Campbell, Sr.

ATTORNEY CLEMENS ERDAHL, of the firm of Nidey, Peterson, Erdahl & Tindal, 425 Second Street S.E., Suite 1000, Cedar Rapids, Iowa 52401, appeared on behalf of William Marcellus Campbell.

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Q. Which was where -- or meaning to meet up with law enforcement officers afterwards?

A. Yes.

Q. And what would you do when you met up with them?

A. Talk with them.

Q. And would you tell them what had occurred?

A. Yes.

Q. And would you return their equipment?

A. Yes.

Q. And were you then searched?

A. Yes.

Q. And was your car searched?

A. Yes.

Q. Now, when you received substances from Alston Campbell Junior, was it always in the form of cocaine?

A. Yes.

Q. Were you aware of the quantities that he was receiving of cocaine?

A. I didn't know directly or --

Q. Did you believe he was receiving in excess of a kilo at a time?

A. I could assume that, but I never got that or --

Q. Would -- you mentioned that the three of them would come to your bar. At times did you have discussions with William Campbell where he indicated he had to go to work?

A. Go to work, yes.

Q. And did he mean a legitimate job or did he mean something else?

A. No, he didn't have a legitimate job.

Q. What was he doing?

A. Working -- sometimes he did work with his father, but in his car, probably just out hustling.

Q. "Out hustling" meaning selling cocaine or cocaine base?

A. Yes.

Q. Did he ever show you any cocaine?

A. No.

Q. Approximately how much cocaine did you receive between January and the time that you were arrested or until the search warrants occurred at your bar and house?

A. 13 ounces.

Q. And that was all from Alston Campbell Junior?

A. Yes.

Q. Did you ever see Alston Campbell, Sr., with any cocaine?

A. No.

Q. Did you hear the three of them discuss the sale of either cocaine or cocaine base?

A. I never heard the three of them discussing nothing or nothing of that.

Q. Did you have any discussions with either William Campbell or Alston Campbell Junior about their sales?

A. Just what I had.

Q. What about Alston Campbell, Sr.?

A. No, never talked to him about it.

Q. Did Alston Campbell, Sr., frequently come to your bar for the purposes of making change?

A. Junior did.

Q. Junior, pardon me. Explain this -- explain that.

A. I would probably ask for change or he would take some -- just small bills and change them in for larger bills because I needed ones or fives during the weekend.

Q. Do you know why he had a large amount of small bills?

A. Probably I could assume.

Q. Well, I don't want you to assume. Do you know why he had a lot of small bills?

A. Probably doing what he was doing.

Q. Which is what?

A. From selling drugs.

Q. Do you know whether he was working with his father and brother?

A. I didn't know directly, no.

Q. How frequently would he come to make change with you?

* * * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

17-CR-2045

JURY TRIAL PROCEEDINGS

VOLUME III

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
VS.	)
	)
ALSTON RAY CAMPBELL, JR.,	)
ALSTON RAY CAMPBELL, SR.,	)
and WILLIAM MARCELLUS CAMPBELL,	)
	)
Defendant.	)
	)

JURY TRIAL PROCEEDINGS,
HELD BEFORE THE HON. LINDA R. READE,

on the 24th day of April, 2018, at 111 Seventh Avenue S.E., Cedar Rapids, Iowa, commencing at 8:29 a.m., and reported by Patrice A. Murray, Certified Shorthand Reporter, using machine shorthand.

Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
111 Seventh Avenue S.E., Box 4

Cedar Rapids, Iowa 52401-2101
(319) 286-2338

APPEARANCES:

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EXHIBITS

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agreements obviously are not going to come in. There are some other exhibits, and is there any objection to them? It looks like A, B, C, and D I've already covered. E we've already covered, E and E1. And then we've got F, G, H, I, J, K. I'm not sure if those are admissible or what the purpose of the offer is.

MR. WILLETT: Your Honor, F and G would come in through Attorney Max Kirk, as well as -- H would come in through a different witness, H and I, J and K. But those would come in through defense witnesses.

THE COURT: All right. Is there any dispute on the admissibility of those that we might be able to handle this morning?

MS. NYDLE: Your Honor, essentially it comes down to relevance, and I think until we know what defense's theory is, it's tough for us to comment with regard to that.

THE COURT: Okay. All right. And, let's see, Mr. Erdahl, are you still planning to offer Exhibit A, which is, it looks like, a Linn County document?

MR. ERDAHL: I don't know until --

THE COURT: Okay.

MR. ERDAHL: The prosecution, Ms. Nydle, knows what that exhibit is about, and I don't know whether that -- she's going to get into that issue or not. But we do have an agreement that I don't have to have the caretaker, the custodian of the document.

THE COURT: All right. There's no question of the legitimacy of the document, authenticity?

MS. NYDLE: Yeah, Your Honor, at this point we're not concerned about that. It's just, as Mr. Erdahl mentioned, whether it becomes relevant based on testimony of a witness today.

THE COURT: All right. Very fine. Well, then let's talk in general about the case and when you want to argue it.

I'm sorry, Mr. Erdahl, I didn't mean to ignore you.

MR. ERDAHL: No. I'm very concerned, as you know, about the schedule and Your Honor, but I do want to make a little bit more of a record on a legal matter.

THE COURT: Okay.

MR. ERDAHL: And this is dealing -- I want to revisit the plea agreements and just clarify the Court's ruling, because as the Court knows, we had two rulings at sidebar and then we had some discussion in the meantime. I ran afoul of the Court by accident on the mandatory minimum, mentioning the 10 years. I had not gotten that I couldn't talk about that. I must say that in this case, to some extent, the 10 years seemed like small potatoes to me. I wasn't trying to put it out there to make a point --

THE COURT: Understood.

MR. ERDAHL: -- given that the penalties faced by a couple of these defendants are quite a bit higher, but I'm trying to avoid any more of that. Yesterday I had

an internal debate, because I want -- I was thinking of refreshing the recollection of the witness who was on the stand, and in the agreement, it says "mandatory minimum 10 years," so I thought, well, I can underline the mandatory minimum part, cross out the 10 years, but, of course, then I'm refreshing his recollection with a document. Then I get to Paragraph 23 and see that there is a place where it talks about getting a motion to go below the mandatory minimum and doesn't talk about the 10 years, but I was trying to avoid his inadvertently mentioning a number.

And so just to clarify all of this, it's my understanding, with the mandatory minimum and with the potential sentence under the guidelines, that the most important thing the Court is trying to avoid is mentioning a number or, if it were to be life, mentioning life, and that would go to Mr. Murphy's point that because the punishment -- the crimes are similar, that it might tip off the jury to the punishment faced by these -- some of these individuals. Am I pretty much correct on the Court's ruling on that?

THE COURT: Yes, sir.

MR. ERDAHL: Okay. So -- and the Eighth Circuit decisions in this support the Court. I just want to make that clear before I go into my discussion.

THE COURT: Uh-huh.

MR. ERDAHL: We're facing, as I understand it, a situation in which this issue is potentially going to the Supreme Court because of a split in the circuits. As I understand the briefing, the -- the government is arguing that there is no split in the circuits and Mr.

Wright's attorney is arguing that there is. So the case against us --

THE COURT: And this is a case that talks about what can be impeachment material in a plea agreement; is that it?

MR. ERDAHL: Yeah. And I'm just going -- I think there's a short segment I can read that just focuses, but let me get the case to the Court so you have it right off the top. *United States v. Wright*, spelled W-R-I-G-H-T, 866 F.3d 899, 906-07, Eighth Circuit, 2017. And what they say is, "Here, the Court limited cross-examination pertaining to Anderson's potential life sentence because it was concerned that the jury would realize that Wright also faced a life sentence if convicted. This concern was well-founded, as Wright's counsel explained to the jury why Anderson would have faced a life sentence--he had a prior felony drug-dealing conviction and was charged with conspiracy, the same situation that Wright faced."

And so the Court goes on to say "We have previously held that a federal jury can be informed but not" -- "a federal jury about a defendant's punishment would only introduce improper and confusing considerations before it." And so the point goes on, and there's discussion in the briefs, is that the danger that the Eighth Circuit sees, and I believe it's what Mr. Murphy was arguing, is that the jury might try to nullify or otherwise be influenced because of knowing the -- thinking it knows the penalty that the defendants before it are facing, because of the impeachment mentioning specifically -- and here, the *Wright* case is about mandatory life, so it's very focused.

On the other hand, there are two cases that do say that the confrontation right -- and again, I want to make it clear that that's what we are talking about here. I think when you have the sidebars, it's hard to get it articulated.

THE COURT: Sure.

MR. ERDAHL: I'm sure that counsel and the Court knew we were talking about the confrontation clause. But that the confrontation clause allows an accused -- the information about the witness' sentencing exposure would alert the court to the maximum sentence that the accused could face if convicted. Courts have generally -- well, let me go to what the -- courts have generally, I'm sorry, Your Honor, overruled the prosecution's objections on grounds of prejudice and have allowed the accused to impeach the witness with evidence of his sentencing exposure. That is from another circuit. I want to make clear; I'm not saying that the Eighth Circuit has said this at all. And that would be *United States v. Larson*, 495 F.3d 1094, 1105, Ninth Circuit 2007; *United States v. Chandler*, 326 F.3d 210, 223, Third Circuit 2003.

Again, this is the type of thing that we usually try to brief and discuss more thoroughly. We're doing a lot of heavy lifting in terms of trying the case, but I wanted to make clear that we are saying that we should be able to at least get into the nature of the penalties.

Now, the Court said yesterday in terms of the -- in terms of career offender, that we could use some language to say he was facing a much higher sentence

because of that, and I think that's the type of language that the Eighth Circuit is approving, questions about decades more. I think in the *Wright* case, he wasn't allowed to say mandatory life but he was allowed to say decades more.

So but I want to say that, on behalf of William Campbell, that I believe we should be able to get into the actual number, that is, the guideline range, that a defendant understands -- a witness understands he may be facing in order to explain to the jury or have the jury be able to discern the extent of the benefit more specifically and without euphemistic discussion. Short of that, you know, we can discuss things here or there.

I understand then -- so I want to continue to take exception to the judge's rulings. I join with Mr. Willett on they should be admitted as exhibits, but even if they're not admitted as exhibits, that we'd be able to articulate through cross-examination of the witness the actual range of penalty the witness understands he may be facing. I don't think we're dealing with mandatory life here, so we're not quite at the threshold level of *Wright*.

But again, it's a little bit difficult stance to explain to the Court at this time, but it seems to me that I need to preserve this for my client's sake because the *Wright* case might get decided contrary to the Eighth Circuit, at which point I think we have a potential problem here, and it's all based on William Campbell and perhaps the other defendants' right to confront and to do that in a way that they have an informed jury; and that the right of confrontation would trump the more remote or existential concern of a jury nullification

based on knowledge that is not being argued to the jury.

And again, in all of these cases, there is discussion that we do -- as we say very often, and there are many cases cited for it in the cases that I've given to the Court -- have a right to expect that the jury will follow the instructions. And so if they were not allowed to, you know, look at that punishment, they're not allowed to look at punishment, and the jury should honor that, despite hearing or perhaps being able to glean the level of punishment faced by these defendants.

THE COURT: All right. Thank you. Let me just ask in general, because I don't either know the answer or I don't remember. Of the cooperating witnesses, is there anybody who's actually been sentenced so that the guidelines have been computed?

MS. NYDLE: No one has been sentenced, Your Honor. We're in the process of working through the PSR process with them.

THE COURT: All right.

MS. NYDLE: And for the Court's knowledge, Mr. Landfair, who I believe will be a career offender, testified. Mr. Martin then faces a 20-year mandatory minimum. Mr. Phillips faces a 10-year mandatory minimum, and I believe Mr. Spates is in a similar situation, with a 10-year mandatory minimum. So -- but I believe that Mr. Landfair was our only career offender.

THE COURT: All right. And there's certainly nothing wrong with talking about, which I believe you

did, the fact that he's facing a longer sentence because of his criminal history or I gave you the permission to talk about that. What about the Campbells? I don't know what their -- how they would compute out or what the statutory punishment would be for them.

MS. NYDLE: Your Honor, at this point, assuming that they're all -- they were all convicted under the (b)(1)(A), so the most severe penalty, Alston Campbell, Jr., had no qualifying prior offense so he did not receive an 851 notice. He's, therefore, facing a 10-year mandatory minimum. As noted in our exhibit, Alston Campbell, Sr., does have a single 851, and he, therefore, faces a 20-year mandatory minimum. My calculations of the guidelines put him approximately at that. William Campbell, on the other hand, we have calculated as a career offender. As the Court may recall in the stipulations, it laid out three offenses, but out of those offenses, all of them indicated they were not first offenses. My calculations, based on that, put William Campbell at the career offender, and the jury would have been given notice that he has multiple drug crimes. And similarly, they would be -- have been given notice that Alston Campbell, Sr., has a prior drug crime and, therefore, if we're looking at how can they extrapolate, it certainly -- there is some concern with, if we are talking about priors causing greater sentences, that they would be aware of that then.

THE COURT: Uh-huh. So what is the government's position with regard to this *Wright* case and older cases within the circuits that are not binding on this Court?

MR. MURPHY: Your Honor, I think -- we believe the *Wright* case was --

THE COURT: *Wrightly* decided?

MR. MURPHY: Well, I wasn't going to say that. Correctly decided. Tempted to say that, but -- the Court knows me too well. So, no, we believe that's correctly decided. And in this case, I mean, again, I think you need to look at what is the purpose that this evidence is being offered for. Presumably, it's offered to show bias.

THE COURT: Uh-huh.

MR. MURPHY: That's it. I mean, there's really no impeachment purpose that I'm aware of, so it's really to show bias. So what the Court has allowed is for these people to be questioned about facing substantial sentences based upon their criminal histories, all of that. I mean, that effectively does that. And under 401 and 403, I mean, the Court really has to do a balancing act, and I think that's what the Court has attempted to do, as I understand it, in its rulings, by allowing the inquiry.

Mr. Willett yesterday asked one of the witnesses if he wasn't facing a mandatory minimum sentence. I mean, I don't know really how it significantly advances the ball by specifying the number of years. Mr. Erdahl says that it was necessary to show the extent of the benefit. I don't understand that, because the extent of the benefit -- I mean, if they're facing life, what's the extent of the benefit? We don't know what the extent of the benefit is that's coming off of that.

I mean, potentially, there's, yeah, from life down to zero, I mean, potentially, that's a bigger range than from 10 years down to -- down to zero. Potentially,

that's a bigger number. But the extent of the benefit can't be determined by the mandatory sentence. That can only be determined by what the judge decides to do in the event that a motion is made. And it's based upon the quality and the extent of the assistance, if you will. So I don't know that putting a number, defining the number, as to the maximum that they are facing --

THE COURT: Adds anything.

MR. MURPHY: -- advances the extent of the benefit. And as the Court has I think noted in its question, we don't even know what the guidelines are going to be on these defendants. These are points that are going to be litigated, as to drug quantity and so forth, at least to a certain extent. I mean, certainly, there are some mandatory minimums that apply, but, you know, then to go into guidelines issues, which, again, are beyond the comprehension, I would submit, based upon the testimony that's already come in, beyond the comprehension of the witnesses, you know, whose liberty is at issue -- I mean, they've -- I think it's fair to say, I mean, the Court can judge, certainly, but in their testimony, they -- you know, all they know is that they're here hoping to get a lower sentence.

They don't know what it is or even necessarily how it works. One of them said, yes, he understands there's a motion process. The other one didn't seem to really even be aware of that, which, in my experience, is not unusual. Defendants who are cooperating are hoping to get, you know, a reduced sentence, but beyond that, they don't quite know how it works or exactly what to expect. And certainly, we would have to venture into then some type of an explanation to the jury,

theoretically, as to what does something like this merit, what does the US Attorney's Office typically grant if somebody does testimony cooperation, if they do on-the-street cooperation, if they do other things like that; and certainly we're not going to get into that.

But those are factors that go into the extent of the benefit, if you will, in terms of what we are willing to recommend and then how do we assess -- or do we assess that they are telling the truth, do we assess that they are minimizing, do we assess that they are lying? And all of those things are deliberative processes as far as our side goes and really invade the province of the jury in terms of their assessment as to whether or not somebody is telling the truth.

So the real essence of the issue here is are they doing this for some reason, which they have admitted they are; they are doing it hoping to get a lower sentence. And as to the degradation of that -- the degree of that and how that's all calculated, I submit that goes well beyond anything that would be reasonable to present here. It would be confusing to the jury and it's not known. It's factors that are even beyond determination right now, so it would be misleading to try to cross-examine and suggest one thing when nobody knows what the end of that calculation looks like. And we can't know.

And just as one other aside, this is somewhat of a tangential issue, but I would also just want to put on the record that every cooperator that's coming in here is coming in in an orange jumpsuit and they're coming in with chains around their wrists and chains around their legs, and we'd ask the Court to note that. But just

in terms of the -- sort of the prejudice, if you will, to the government, I mean, these people aren't allowed to put on street clothes or, you know, to put on their suit and come in here and that thing, so there's already, you know, this added, I would suggest, bias, if you will, or added factor that goes against how the jury might perceive these witnesses, and that's slightly different than the bias that we are talking about.

But nonetheless, I think that's something that the Court needs to consider in its calculous here, that are these defendants having a fair opportunity to confront these witnesses? I think that's a factor that goes into confrontation, that they've got somebody who is not just here saying, "Yeah, I'm in jail," but they're sitting 10 feet from the jury box, in chains, with a marshal sitting next to them, and that starts, you know, with them in the hole, beyond really, I mean, even what an in-custody defendant certainly would be allowed to do. I mean, we wouldn't allow that for an in-custody defendant, to be sitting here in an orange suit and chains, because there is a perception or there is a bias, that we want to guard against the jury having that negative impression, and that's already starting when these witnesses, these in-custody witnesses, take the stand.

So I think when the Court balances all of this, some of the issues are slightly different, some of the concerns are slightly different, but in trying to -- the bottom line is, trying to assess whether or not the defendants are properly able to confront the witnesses against them and whether or not both parties are receiving a fair

trial. And I think on balance, what the Court has suggested here strikes a fair and proper balance.

THE COURT: All right. Well, the Court appreciates the effort that Mr. Erdahl made to bring these matters to the Court's attention. Again, I think this case is slightly different than some that we face where the cooperators are -- have not been sentenced, so we don't know where they're going to end up. As I understand it from the government, none of them are facing mandatory life. At most, 20 to life or 10 to -- 10 to 40 -- no, it's 5 to 40, and 10 to -- anyway, no mandatory life. It's fair game, get into the priors.

It's fair game to get into the fact that they are facing mandatory minimums, below which the Court couldn't go even if it wanted to, without a government motion. It's great to go into the 5K process and -- all of those things are fair game. But we're not going to get into specific numbers under 401, 403 of the Rules of Evidence. And we're not going to get into drug quantities because that, of course, doesn't have bearing either, because -- well, that just doesn't have any relevance at all at this stage of the process for any of them, since the Court hasn't made any findings on quantities for any of them.

MR. MURPHY: Your Honor, and I assume that when the Court says not getting into drug quantities, it's still fair game for them to question the witnesses about quantities that they were involved in, but just -- if I understand --

THE COURT: I mean in terms of sentencing.

MR. MURPHY: In terms of sentencing what the adjustment might be or how that impacts --

THE COURT: Yeah, exactly. I'm sorry if I said something that was confusing.

Mr. Willett?

MR. WILLETT: Your Honor, the Court's already clarified its ruling. I just want to make a very brief additional record on behalf of my client Mr. Campbell, Jr. Mr. Erdahl raised really today I think for the first time the confrontation clause issue that the Court has now considered. In addition to the previous sidebars that were made in regards to these plea agreements that I made on behalf of Mr. Campbell, I would join in Mr. Erdahl's concern about a confrontation clause issue as it pertains to Mr. Campbell, Jr., today. Thank you, Judge.

THE COURT: All right. Mr. Johnson?

MR. JOHNSON: Your Honor, I would also join Mr. Erdahl's motion. One of the primary concerns I had specifically about one of the witnesses today, the individual who has a 20-year mandatory, during trial prep, at one point, he disclosed he thought he was only going to do a year in prison and also mentioned something of a 75 percent reduction in his sentence. My concern is wanting to show the -- frankly, I think he's probably being overly optimistic, but my concern is, again, going somewhat to bias and showing the lengths in which these people think this cooperation is going to benefit them. If not a specific number of years, does the Court consider something along the lines of a

statement of a 75 percent off of his sentence motion -- is that on the table for us to question?

THE COURT: Well, the problem with that is it's ridiculous at this stage for him to harbor that view.

MS. NYDLE: Your Honor, to add a little bit of information with regard to this --

THE COURT: Who -- which witness are we talking about?

MR. JOHNSON: It's Alex Martin, Your Honor.

THE COURT: Okay.

MS. NYDLE: Mr. Martin, in a previous prep session, provided that information. His counsel was not available at that prep situation. We ended up ending it. He has had the opportunity to talk to counsel. We've met since then with defense counsel present to clarify that, one, no decisions had been made by the government and they will be made down the road with regard to percentages. That ultimately, whatever we recommend, the Court would be the one to make the ultimate determination, but it was made clear that a 75 percent motion would be an extreme outlier. He is facing, as noted previously, a little bit ago, that he has a 20-year mandatory minimum, so he was also told the idea that you will only do a year is extremely unlikely. Obviously, because we can't make anyone promises, we couldn't indicate that the Court would absolutely not take him down to a year, but we were able to say that's not typically what happens. And my understanding is, his understanding is that no promises have been made and he doesn't know the percentage at this point.

THE COURT: Well, I think that in terms of that, you can -- depending on what he says on direct, you could go in that direction. I don't know what he's going to say --

MR. JOHNSON: Absolutely.

THE COURT: -- when you ask him or when the government asks him "Have there been any promises made?" I don't know what he's going to say. I don't even think I've ever had him in court. He must not be my case.

MS. NYDLE: Your Honor, he ultimately is, but he hasn't been before Your Honor, I believe.

THE COURT: Okay.

MS. NYDLE: He ended up pleading, I believe, before Judge Williams, and so because we haven't gotten to sentencing, you haven't seen him.

THE COURT: All right. I appreciate that. I don't know what he's going to say, Mr. Johnson.

MR. MURPHY: Your Honor, to be clear, again, I recognize, you know, the right to confrontation. And in my view -- obviously, it's up to the Court, but, you know, I think certainly it's fair to question him. If he thinks he's going to get a number of years knocked off and get it knocked down to no time in jail or, you know, as low as 1 year, the big thing is, you know, just the jumping off point, if you will. And I think, again, in all fairness to both sides here, that can be achieved through proper cross-examination without referencing the exact statutory penalties. Thank you. That's it.

THE COURT: All right.

MR. ERDAHL: Your Honor, if I may just respond to a couple of points.

THE COURT: Sure.

MR. ERDAHL: I agree that this is a bias question, but it comes within the rubric of impeachment. It may not be prior recollection --

THE COURT: It's impeachment by bias.

MR. ERDAHL: By bias, right.

THE COURT: Yeah, sure.

MR. ERDAHL: And few circumstances are likely to cause bias as much as the offer of leniency, and courts have recognized that. I did want to say that, in reference to the *Chandler* case, that in *Chandler* they allowed impeachment to explore the maximum potential sentence if the government did not grant leniency, the difference between the worst case scenario and then the negotiated disposition to show the defendant's desperation to help the government. So that is what I think we are talking about.

As far as confrontation, I believed we were objecting on the basis of confrontation and the Sixth Amendment on the last few times, but when you are at sidebar, you don't articulate all these things. We were definitely talking about cross-examination before, but I did, for the record, want to amplify that today. I would not concede that the issue wasn't raised by talking about cross-examination, because that obviously falls under the right to confrontation and the Sixth Amendment.

THE COURT: And I think that's implicit.

MR. ERDAHL: Yeah, I thought the Court agreed with me, but I didn't want to say you nodded your head when I said it.

THE COURT: Yeah, no, yeah, I think you're right.

MR. ERDAHL: Thank you, Judge.

THE COURT: I think you are right on confrontation clause is implicated.

All right. It's 4 minutes after 9:00. Are we ready to go?

I would just note, if you are -- if defense counsel is talking to the gallery, yesterday, we had a couple people who came in here and were taking a nap, and this is not a nap room, and so I didn't want to embarrass anybody, but today I may. It's appropriate for people to be here. We want them here. But they can't visit and they can't come in here and take their naps. So hopefully -- I don't see any of those people in the courtroom at the current time, but we may have to remind people this isn't a nap room.

Okay. Are we ready for -- yes, Mr. Willett?

MR. WILLETT: Could we have 5 minutes to stretch, Your Honor?

THE COURT: 5 minutes max.

MR. WILLETT: Thank you.

(Whereupon, a brief recess was taken.)

(Whereupon, the jury entered the courtroom.)

THE COURT: Good morning, members of the jury. We're ready to continue in the case of United States of America versus Campbell, Campbell, and Campbell, Case 17-2045. I'm sorry we're a little late getting started this morning. I had some matters I wanted to take up with the lawyers. Everybody was here ready to go, but I think I talked too long. So that's why we're starting a

* * * *

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A. Yeah.

Q. Now, other than the -- that purchase that you made for law enforcement, were you also getting cocaine or cocaine base separately from William Campbell?

A. Yeah.

Q. When did you start doing that?

A. Oh, shit.

Q. Was it after you got in trouble with law enforcement?

A. Yeah.

Q. Okay. Approximately how much did you get from him?

A. Ounce or 2.

Q. An ounce or 2 total?

A. Yeah.

Q. And was that in crack cocaine or cocaine powder?

A. Crack.

Q. You and I spoke at the same time. Go ahead.

A. Crack.

Q. Now, you and the Campbells also did a decent amount of gambling, correct?

A. Yeah.

Q. You said you would go basically daily to be involved with these dice games?

A. Yeah.

Q. At some point after a gambling loss, did you ask William Campbell for some cocaine so -- or crack cocaine so you could make up some of that debt?

A. Yeah.

Q. Was he willing to do that?

A. No.

Q. Did Alston Campbell, Sr., agree to give you any crack cocaine?

A. Yeah.

Q. How much did he give you?

A. At that time, he fronted me an ounce and I had to pay him 1,500.

Q. And how long did it take you to pay that 1,500 back?

A. A couple days.

Q. How many more times did you get cocaine or crack cocaine from Alston Campbell, Sr.?

A. I just kept getting it from him.

Q. Okay. Well, how often would you get it?

A. I think every 2 weeks, something like that.

Q. Every 2 weeks. And for about how long? Would you have gotten more than 10 ounces from him?

A. Yeah.

Q. Okay. And out of that -- would you have gotten more than 15 ounces?

A. I think so, yeah.

Q. Okay. Would you have gotten more than 20 ounces?

A. Probably so.

Q. Do you think it's many more than 20 ounces?

A. I don't know. I don't know.

Q. Well, I don't want you to guess, but what's your best estimate of how much specifically cocaine in powder form you would have received from Alston Campbell, Sr.?

A. When I was getting it, it was already cooked up.

Q. Okay, it's already cooked up. So how many -- approximately, what's your best estimate of how much you would have received from Alston Campbell, Sr.?

A. Probably like 15 to 20, 15, somewhere in there.

Q. 15 ounces of crack?

A. Yeah.

Q. At some point did you consider -- or did you switch to powder cocaine so you could do the same thing you were doing before and -- stretching your profit?

A. Yeah.

Q. Okay. So how much powder cocaine do you think you got?

A. About 15; about 15 ounces, somewhere in there.

Q. 15 more ounces or --

A. No, all together.

Q. 15 total?

A. Yeah, yeah.

Q. Okay. So -- now, did you ever personally receive any cocaine or crack cocaine from Alston Campbell, Jr., or, as you knew him, Ace?

A. Ace, no, no.

Q. Did you ever talk to Ace about dealing or selling cocaine?

A. No.

Q. Did you talk to Senior about other people that he was supplying?

A. I don't remember. I don't know.

Q. Now, we talked a little about gambling at different points. Would these be large scale gambling events? And by that, I mean basically was there a lot of money on the table?

A. Yeah.

Q. What's the largest amount of money you ever saw on the table?

A. About 10,000 or more.

Q. 10,000 total or 10,000 by one person?

A. Probably more than that, yeah.

Q. You said probably more than that. So how much total do you think was on the table in a single pot?

A. About 10, yeah, about 10,000.

Q. Now, sir, after you got in trouble with law enforcement, you agreed to work with them with the hopes of reducing the charges you were facing or hoping to

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

17-CR-2045

JURY TRIAL PROCEEDINGS

VOLUME IV

UNITED STATES OF AMERICA,	)
	)
Plaintiff,	)
	)
VS.	)
	)
ALSTON RAY CAMPBELL, JR.,	)
ALSTON RAY CAMPBELL, SR.,	)
and WILLIAM MARCELLUS CAMPBELL,	)
	)
Defendant.	)
	)

JURY TRIAL PROCEEDINGS,
HELD BEFORE THE HON. LINDA R. READE,

on the 25th day of April, 2018, at 111 Seventh Avenue S.E., Cedar Rapids, Iowa, commencing at 8:31 a.m., and reported by Patrice A. Murray, Certified Shorthand Reporter, using machine shorthand.

Patrice A. Murray, CSR, RPR, RMR, FCRR
United States District Court
111 Seventh Avenue S.E., Box 4

Cedar Rapids, Iowa 52401-2101
(319) 286-2338

APPEARANCES:

ATTORNEY EMILY K. NYDLE AND RICHARD L. MURPHY, US Attorney's Office, 111 Seventh Avenue S.E., Box 1, Cedar Rapids, Iowa 52401, appeared on behalf of the United States.

ATTORNEYS ALFRED E. WILLETT AND DILLON JOHNATHAN BESSER, of the firm of Elderkin & Pirnie, 316 Second Street S.E., Suite 124, Cedar Rapids, Iowa 52401, appeared on behalf of Alston Ray Campbell, Jr.

ATTORNEY BRIAN D. JOHNSON, of the firm of Jacobsen, Johnson & Wiezorek, 425 Second Street S.E., Suite 803, Cedar Rapids, Iowa 52401, appeared on behalf of Alston Ray Campbell, Sr.

ATTORNEY CLEMENS ERDAHL, of the firm of Nidey, Peterson, Erdahl & Tindal, 425 Second Street S.E., Suite 1000, Cedar Rapids, Iowa 52401, appeared on behalf of William Marcellus Campbell.

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EXHIBITS

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A. July.

Q. July. So let's work from there. If you were arrested in July, what would have been the last time before that that you would have received crack cocaine from Alston Campbell, Jr.?

A. Like in December or January.

Q. December or January of 2000 and --

A. 17.

Q. '17? But you would have been in custody then, so 2016?

A. I mean 2016.

Q. Okay. So from roughly February of 2016 until December or January of the next year?

A. Yeah.

Q. So closer to a year then?

A. Yeah.

Q. So you said you were receiving quarter ounces. How frequently did you receive quarter ounces?

A. Every two days, every -- yeah.

Q. And was it always in crack form?

A. Yeah.

Q. Now, in addition to the substance that you were getting for yourself, were you also buying for other people or doing something called "middling"?

A. Yeah.

Q. Can you tell the jury what is "middling"?

A. I was buying for other people too.

Q. So other people would give you money, and then you would actually make the purchase?

A. Yeah.

Q. Did those people include an individual named Devonte Jenkins?

A. Yeah.

Q. And what controlled substance were you buying on behalf of Mr. Jenkins?

A. Half ounces and ounces.

Q. And was that sometimes in crack form?

A. Yeah.

Q. And was it also sometimes in powder cocaine form?

A. Yeah.

Q. How would you get ahold of Mr. Campbell, Jr.?

A. I'd text him.

Q. Do you recall off the top of your head what his phone number was?

A. No.

Q. Now, over the course of the little less than a year that you received controlled substance from Alston Campbell, Jr., how -- approximately how much crack cocaine do you think you received?

A. Probably like 20 ounces.

Q. And how much powder cocaine?

A. Probably like 5 ounces.

Q. When you -- when you were middling deals, what quantity would that have been that Mr. Jenkins would typically receive?

A. He would probably receive like an ounce.

Q. And how many ounces do you think he received over the course of the time that you were getting that from Alston Campbell, Jr.?

A. Like 20.

Q. So it would be 20 for you and then separately 20 for Mr. Jenkins?

A. Yeah.

Q. And do you recall what your phone number would have been during that time?

A. I had a couple of them. I can't remember them.

Q. Now, with regard to your phone, at some point one of your phone numbers was actually wiretapped, correct?

A. Yeah.

Q. And you found that out later?

A. Yeah.

Q. And is it your understanding that some of your conversations with Mr. Alston Campbell, Jr., were captured?

A. Yeah.

Q. If you would have sent a message that said that you wanted "a whole soft and a quarter hard," what would that have meant?

A. An ounce and a quarter of an ounce.

Q. So the "whole," that would be the ounce?

A. Yeah.

Q. So a whole ounce soft. What does soft mean?

A. Powder cocaine.

Q. And -- and "a quarter hard"?

A. Crack cocaine.

Q. What about the term "zip"? What would a "zip" be?

A. An ounce.

Q. What about the term "quake"?

A. It's a quarter.

Q. What about "a ball"?

A. It's an 8-ball.

Q. An 8-ball is how much? Is that an 8th of an ounce?

A. Yeah.

Q. If you sent a text message that said "Q and B," what would that mean?

A. Quarter and a ball.

Q. Did you know an Alston Campbell, Sr.?

A. No.

Q. Do you know a William Campbell?

A. Yeah.

APPENDIX C

UNITED STATES DISTRICT COURT

Northern District of Iowa

Case Number 0862 6:17CR02045-001

[Filed January 3, 2019]

UNITED STATES OF AMERICA	)
	)
v.	)
	)
ALSTON RAY CAMPBELL, JR.	)
	)

JUDGMENT IN A CRIMINAL CASE

USM Number: **17193-029**

Alfred E. Willett and Dillon Johnathan Besser
Defendant's Attorney

■ **ORIGINAL JUDGMENT**

□ **AMENDED JUDGMENT**

Date of Most Recent Judgment:

Reason for Amendment:

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. **1 and 14 of the Superseding Indictment filed on February 22, 2018**

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846	**Conspiracy to Distribute 5 Kilograms or More of Cocaine and 280 Grams or More of Cocaine Base**	**March 2017**	**1**
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(c)	**Possession With Intent to Distribute Cocaine**	**03/31/2017**	**14**

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.

Linda R. Reade
United States District Court Judge
Name and Title of Judge

s/ Linda R. Reade
Signature of Judge

January 3, 2019
Date of Imposition of Judgment

January 3, 2019
Date

PROBATION

☐ The defendant is hereby sentenced to probation for a term of:

IMPRISONMENT

■ The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **262 months. This term of imprisonment consists of a 262-month term i mposed on Count 1 and a 240-month term**

imposed on Count 14 of the Superseding Indictment, to be served concurrently.

■ The court makes the following recommendations to the Federal Bureau of Prisons: **It is recommended that the defendant be designated to a Bureau of Prisons facility as close to the defendant's family as possible, commensurate with the defendant's security and custody classification needs.**

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

□ The defendant must surrender to the United States Marshal for this district:

□ at _____ □ a.m. □ p.m. on _____.

□ as notified by the United States Marshal.

□ The defendant must surrender for service of sentence at the institution diesignated by the Federal Bureau of Prisons:

□ before 2 p m. on _____.

□ as notified by the United States Marshal.

□ as notified by the United States 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

SUPERVISED RELEASE

■ Upon release from imprisonment, the defendant will be on supervised release for a term of:
5 years. This term of supervised release consists of a 5-year term imposed on Count 1 and a 3-year term imposed on Count 14 of the Superseding Indictment, to be served concurrently.

MANDATORY CONDITIONS OF SUPERVISION

1) The defendant must not commit another federal, state, or local crime.

2) The defendant must not unlawfully possess a controlled substance.

3) The defendant must refrain from any unlawful use of a controlled substance.

   The defendant 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 the defendant poses a low risk of future controlled substance abuse. *(Check, if applicable.)*

4) ■ The defendant must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

5) □ The defendant 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 the defendant resides, works, and/or is a student, and/or was convicted of a qualifying offense. (Check, if applicable.)

6) □ The defendant must participate in an approved program for domestic violence. *(Check, if applicable.)*

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

STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervision, the defendant must comply with the following standard conditions of supervision. These conditions are imposed

because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1) The defendant must report to the probation office in the federal judicial district where the defendant is authorized to reside within 72 hours of the time the defendant was sentenced and/or released from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.

2) After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed. The defendant must also appear in court as required.

3) The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.

4) The defendant must answer truthfully the questions asked by the defendant's probation officer.

5) The defendant must live at a place approved by the probation officer. If the defendant plans to

change where the defendant lives or anything about the defendant's living arrangements (such as the people the defendant lives with), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6) The defendant must allow the probation officer to visit the defendant at any time at the defendant's home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that he or she observes in plain view.

7) The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, the defendant must try to find fulltime employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about the defendant's work (such as the defendant's position or the defendant's job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8) The defendant must not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9) If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.

10) The defendant 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 inj ury or death to another person such as nunchakus or tasers).

11) The defendant 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) As directed by the probation officer, the defendant must notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and must permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

13) The defendant must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS OF SUPERVISION

The defendant must comply with the following special conditions as ordered by the Court and implemented by the United States Probation Office:

1. **If not employed at a lawful type of employment as deemed appropriate by the United States Probation Office, the defendant must participate in employment workshops and report, as directed, to the United States Probation Office to provide verification of daily job search results or other employment related activities. In the event the defendant fails to secure employment, participate in the employment workshops, or provide verification of daily job search results, the defendant may be required to perform up to 20 hours of community service per week until employed.**

2. **The defendant must pay any fine, restitution, and/or special assessment imposed by this judgment.**

3. **For as long as the defendant owes any fine, restitution, and/or special assessment imposed by this judgment, the defendant must provide the United States Probation Office with access to any requested financial information.**

4. **For as long as the defendant owes any fine, restitution, and/or special assessment imposed by this judgment, the defendant must not incur new credit charges or open additional lines of credit without the approval of the United States Probation Office unless the defendant is in compliance with the installment payment schedule.**

5. **The defendant must submit the defendant's person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office, to a search conducted by a United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant must warn any other occupants that the premises may be subject to searches pursuant to this condition. The United States Probation Office may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.**

6. **The defendant must participate in an evaluation for anger management and/or domestic violence. The defendant must complete any recommended treatment**

program, and follow the rules and regulations of the treatment program.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them. Upon a finding of a violation of supervision, I understand the Court may: (1) revoke supervision; (2) extend the term of supervision; and/or (3) modify the condition of supervision.

_____	_____
Defendant	Date
_____	_____
United States Probation Officer/Designated Witness	Date

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment[1]	Fine
TOTALS	**$ 200**	**$ 0**	**$ 5,000**

Restitution
$ 0

[1] Justice for Victims Trafficking Act of 2015, 19 U.S.C. § 3014.

☐ 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**[2]
Restitution Ordered	**Priority or Percentage**
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.

---

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

§ 3612(f). All of the payment options on Sheet 6 may be subject to penalties or 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:

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 $ **200** 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:

If any of the defendant's court ordered financial obligations are still owed while the defendant is incarcerated, the defendant must make monthly payments in accordance with the Bureau of Prisons Financial Responsibility Program. The amount of the monthly payments will not exceed 50% of the funds available to the defendant through institution or non-institution (community) resources and will be at least $25 per quarter. If the defendant still owes any portion of the financial obligation(s) at the time of release from imprisonment, the defendant must pay it as a condition of supervision and the United States Probation Office will pursue collection of the amount due pursuant to a payment schedule approved by the Court.

The defendant must notify the United States Attorney for the Northern District of Iowa within 30 days of any change of the defendant's mailing or residence address that occurs while any portion of the financial obligation(s) remains unpaid.

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

The defendant will 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 must pay the cost of prosecution.

☐ The defendant must pay the following court cost(s):

■ The defendant must forfeit the defendant's interest in the following property to the United States:

As set forth in the Preliminary Order of Forfeiture filed on November 20, 2018, Document No. 446.

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.

APPENDIX D

[SEAL]

U. S. Department of Justice

United States Attorney
Northern District of Iowa

EXHIBIT OFFERED UNDER SEAL

[Dated: February 6, 2018]

111 Seventh Avenue, SE
Box 1
Cedar Rapids, IA 52401 - 2101

319-363-6333
319-363-1990 (fax)
319-286-9258 (tty)

February 6, 2018

Chad R. Frese
Kaplan & Frese, LLP
111 E Church Street
Marshalltown, IA 50158

Re: *United States v. Alexander Martin, 17-CR-2045*

Dear Mr. Frese:

This letter will serve as a FIRST memorandum of a proposed plea agreement between the United States Attorney's Office for the Northern District of Iowa and Alexander Martin, defendant. All references to the "United States" or "government" in this proposed plea

agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity. This plea offer will expire on February 16, 2018, unless otherwise extended by the government. **The government has made no prior plea offers in this case.**

CHARGES AND PENALTIES

1. AM Defendant will plead guilty to Count 1 of the Indictment filed on July 10, 2017. Count 1 charges Conspiracy to Distribute Cocaine Base, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A), and 846. Defendant also agrees to the entry of a judgment of forfeiture pursuant to the forfeiture allegation included in the Indictment. The United States has given notice of one prior felony drug conviction pursuant to 21 U.S.C. § 851.

2. AM Defendant understands that Count 1 of the Indictment is punishable by a mandatory minimum sentence of 20 years' imprisonment and the following maximum penalties: (1) not more than life imprisonment without the possibility of parole; (2) a fine of not more than $20,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 10 years.

3. AM Defendant understands restitution and a term of supervised release following incarceration may be imposed in addition to any other sentence. Defendant further acknowledges that, if defendant violates, at any time, any condition of supervised release, defendant could be returned to prison for the full term of supervised release and the Court is not

required to grant credit for any amount of time defendant may have successfully completed on supervised release. Defendant also understands the U.S. Sentencing Guidelines will provide advisory guidance to the Court in determining a sentence in this case.

4. AM At the time the guilty plea is entered, defendant will admit that defendant is guilty of the charge specified in Paragraph 1 of this agreement. After sentencing, the government will move for dismissal of any remaining counts. The U.S. Attorney's Office for this District will file no additional Title 21 narcotics-related criminal charges based solely upon information now in our possession. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

5. AM Defendant understands and agrees defendant has the absolute right to plead guilty before a United States District Court Judge. However, if convenient to the Court, defendant agrees to waive and give up this right and to plead guilty before a United States Magistrate Judge. Defendant understands defendant will not be found guilty unless the United States District Court Judge accepts the plea of guilty or adopts a recommendation of the Magistrate Judge to accept such plea. Defendant agrees to execute the attached consent to proceed before the United States Magistrate Judge.

6. AM Defendant understands and agrees that, consistent with the provisions of 18 U.S.C. § 3143, defendant may be detained pending sentencing. This is

regardless of whether a U.S. Magistrate Judge or U.S. District Court Judge presides at the guilty plea hearing and regardless of whether the guilty plea is immediately accepted or formal acceptance is deferred until a later date.

COOPERATION

7. AM Defendant agrees to fully and completely cooperate with the United States Attorney's Office and other law enforcement agencies in the investigation of criminal activity within the Northern District of Iowa and elsewhere.

8. AM Full and complete cooperation with the United States Attorney's Office and law enforcement agencies shall include, but is not limited to, the following, if feasible:

A. providing information to secure search warrants;

B. providing testimony before the federal grand jury and, if necessary, testimony before any Court as a witness in any prosecution growing out of this or any related investigation; in the event defendant is called upon to testify on behalf of the government in any trial, grand jury or other proceeding and is incarcerated at that time in any local, state or federal institution, defendant agrees to waive any and all claim for witness fees and/or expenses which might otherwise be due under any statute, regulation or other provision of law pertaining to such fees and/or expenses; if, at the time of the testimony, defendant is not incarcerated, defendant agrees

to waive witness fees and all local travel expenses;

C. providing any documents or other items in defendant's custody, possession, or under defendant's control that are relevant to this or any related investigation;

D. making defendant available for interview and debriefing sessions by government attorneys and law enforcement agents upon request;

E. recording conversations related to any investigation as requested; and

F. engaging in and conducting other activities as directed by the law enforcement agents in charge of the investigation.

9. AM Defendant will provide complete and truthful information to the government, law enforcement officers, the federal grand jury conducting this investigation, and any court. Defendant will answer all questions concerning this investigation and will not withhold any information. Defendant will neither attempt to protect any person or entity through false information or omission nor falsely implicate any person or entity. Defendant will at all times tell the truth and nothing but the truth during any interviews or as a witness regardless of who asks the questions – the prosecutors, defense attorneys, investigating agents, probation officers, or the judge. Since the United States insists upon defendant telling the truth and nothing but the truth during any court proceeding, grand jury proceeding, or government interview related to this case, failure to provide complete and truthful

information at any such time will constitute a breach of this agreement.

10. AM No testimony or other information provided by defendant pursuant to this plea agreement or pursuant to a proffer agreement to the United States Attorney's Office, federal or state law enforcement officers, employees of the government, the federal grand jury conducting this investigation, or to a court will be used against defendant for the purpose of bringing additional Title 21 criminal charges in the Northern District of Iowa, provided defendant does not violate or withdraw from the terms of this agreement. However, such testimony or other information may and will be used in the following circumstances:

A. derivatively or indirectly, including but not limited to the following: to impeach defendant's credibility; to cross-examine defense witnesses; to re-direct government witnesses; or to rebut any evidence or argument presented by defendant that is inconsistent with information provided by defendant pursuant to this agreement; to develop leads from the information provided, including for use in determining the applicable guideline range; and use for all other non-evidentiary purposes;

B. by the Court or Probation Office at any time, including at the time of defendant's guilty plea and sentencing in this matter, but shall not be used in determining the applicable guideline range in accordance with § 1B1.8, except the information may be used derivatively or indirectly, as provided in subparagraph A;

C. in any proceeding concerning a breach of this agreement;

D. at any time in any criminal prosecution against defendant if defendant fails to provide complete and truthful information as required by the terms of this agreement;

E. in a subsequent prosecution for crimes or acts that were not disclosed by defendant during an interview conducted pursuant to this agreement or any related proffer agreement;

F. in a subsequent prosecution for crimes or acts committed by defendant after the date defendant provided the testimony or information;

G. in a subsequent prosecution for perjury or giving a false statement;

H. in any asset forfeiture matter; and

I. in any civil proceeding.

The above restrictions on use of information and/or testimony in this agreement extend only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date. Defendant understands the obligation of the United States to provide all information in its file regarding defendant to the United States Probation Office and the Court.

11. AM The United States agrees the information provided by defendant to federal or state law

enforcement officers on August 24, 2017, shall not be used in determining the applicable guideline range in accordance with § 1B1.8. Such information may be used for any other purpose permitted by law, including derivatively or indirectly as provided in paragraph 10A. The above restriction on the use of the pre-proffer information provided extends only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date.

12. AM It is understood that, upon request by the government, defendant will voluntarily submit to a polygraph examination. If performance in any polygraph examination suggests a conscious intent to deceive, mislead, or lie and the totality of circumstances convinces the government defendant's statement is not complete and truthful, defendant will be so informed and any and all obligations imposed on the government by this agreement will be rendered null and void. This decision to nullify the agreement will be in the sole discretion of the United States Attorney's Office for the Northern District of Iowa.

13. AM Defendant shall not reveal or discuss the existence or conditions of this agreement or defendant's cooperation to any person other than defendant's attorney and law enforcement personnel involved in this investigation. Nor shall defendant or any agent of defendant disclose to any person, directly or indirectly, other than to defendant's attorney, without prior written authorization from the government, the true identity or occupation of any law enforcement personnel participating in this investigation in an

undercover capacity or otherwise. Nor shall defendant or any agent of defendant disclose to any person, without prior written approval of the government, the location of investigative offices, surveillance locations, or the nature of investigative techniques used by agents in this investigation. Nothing in this paragraph is intended to restrict or prohibit defendant from providing complete and truthful testimony in any court proceeding. Furthermore, this agreement does not prohibit defendant from speaking with an attorney for a party adverse to the government in any litigation concerning defendant's possible testimony in that litigation. While defendant is under no obligation to speak with such an attorney, defendant is free to do so if defendant chooses. That decision rests solely with defendant as it does with any witness.

14. AM Nothing in this agreement requires the government to accept any cooperation or assistance defendant may offer or propose. The decision whether and how to use any information and/or cooperation defendant provides (if at all) is in the exclusive discretion of the United States Attorney's Office.

STIPULATION OF FACTS

15. AM By initialing each of the following paragraphs, defendant stipulates to the following facts. Defendant agrees these facts are true and may be used to establish a factual basis for defendant's guilty plea, sentence, and any forfeiture. Defendant has been advised by defendant's attorney of defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Defendant waives these rights and agrees this stipulation may be used against

defendant at any time in any proceeding should defendant violate or refuse to follow through on this plea agreement, regardless of whether the plea agreement has been accepted by the Court. Defendant agrees that the stipulation below is a summary of the facts against defendant and does not constitute all of the facts the government would be able to prove at trial and may be able to prove to the Court in accordance with this agreement.

AM A. Beginning no later than April 2015, and continuing through about March 2017, two or more persons reached an agreement to distribute cocaine base ("crack cocaine"). Defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached, or at some later time while it was still in effect. At the time the defendant joined in the agreement or understanding, defendant knew that the purpose of the agreement or understanding was to distribute crack cocaine. The agreement or understanding included: Alston Campbell, Jr.; Alston Campbell, Sr.; William Campbell; defendant; J.P.; W.C.; Darius Shears; and others. The agreement or understanding involved the distribution of at least 280 grams of crack cocaine. In other words, the distribution of 280 grams of crack cocaine was a necessary or natural consequence of the conspiracy and was reasonably foreseeable to defendant. Acts

in furtherance of the agreement or understanding took place in Waterloo, Iowa, which is in the Northern District of Iowa.

AM B. During in 2016, law enforcement in Waterloo began investigating the distribution of crack cocaine by Alston Campbell, Jr. and his coconspirators. This investigation included the use of confidential informants and undercover agents to purchase crack cocaine from Alston Campbell, Jr. and his coconspirators. The investigation eventually included the use of wiretaps to intercept phone calls and text messages.

AM C. Defendant sold crack cocaine to a confidential informant on March 24, 2016 (.68 grams), April 8, 2016(.73 grams), April 26, 2016 (.35 grams), and October 6, 2016 (.21 grams). On each of these occasions, defendant intentionally transferred crack cocaine to another person and knew that the substance he transferred was crack cocaine.

AM D. On April 28, 2016, law enforcement executed a search warrant at defendant's residence on Quincy Street in Waterloo, Iowa. At defendant's residence, law enforcement located 57.24 grams of crack cocaine, $589, and a digital scale.

AM E. Law enforcement officers on scene interviewed defendant and he identified his source as J.P. Defendant said that he owed J.P. for the crack cocaine found at defendant's residence. Defendant said he had been going to J.P. for a year or two and was paying $1,400 to $1,600 an ounce. Defendant stated that J.P. was getting a kilo and half that morning. Defendant said that he had acquired crack cocaine 10-15 or more times.

AM F. On May 3, 2016 ($500), May 6, 2016 ($2,300), and May 20, 2016 ($1,400), defendant, while working as a confidential informant, made controlled payments to J.P.

AM G. J.P. sold cocaine (55.66 grams of salt of cocaine) to defendant, working as a confidential informant, on May 10, 2016. J.P. intentionally transferred cocaine to another person and knew that the substance he transferred was a controlled substance.

AM H. Defendant was previously convicted of Possession of Cocaine with Intent to Deliver, in case number FECR040558, in the Iowa District Court for Black Hawk County, on or about January 26, 1994.

SENTENCING PROVISIONS

16. AM Defendant understands and agrees to be sentenced based on facts to be found by the sentencing

judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Indictment; (2) proven to a jury; or (3) proven beyond a reasonable doubt. Defendant agrees the Court will determine the appropriate sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of defendant; (5) the need for the sentence to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands the Court will also consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy statements issued as part of the Guidelines. The Court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a review of such things as defendant's role in the offense, criminal history, acceptance or lack of acceptance of responsibility, and other considerations. The Court may also consider other information including any

information concerning the background, character, and conduct of defendant.

17. AM During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. Defendant understands the Court is not bound by the stipulations of the parties, nor is it bound by the sentencing range as determined pursuant to the sentencing guidelines. This plea agreement provides for no guarantee concerning the actual sentence to be imposed. Defendant further understands defendant will have no right to withdraw defendant's guilty plea if the sentence imposed is other than defendant hoped for or anticipated.

18. AM The parties stipulate and agree the United States Sentencing Guidelines should be applied, at least, as follows:

AM A. **Base Offense Level - Drug Trafficking (Chapter 2):** For Count 1, pursuant to USSG §2D1.1, the appropriate base offense level is at least 30 based upon defendant's involvement with at least 280 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance. The government is free to present evidence and arguments to support the

stipulation and, if warranted, a higher base offense level.

AM B. **Acceptance of Responsibility (Chapter 3 adjustment):** The United States agrees for purposes of USSG §3E1.1(b) that defendant timely notified authorities of defendant's intention to enter a guilty plea.

AM C. **Criminal History (Chapter 4):** No agreement has been reached regarding defendant's criminal history. The parties reserve the right to contest the Probation Office's determination of defendant's criminal history and criminal history category under Chapter Four of the sentencing guidelines. In addition, defendant understands that, if defendant's criminal history would result in a higher base offense level under any guideline, the government is free to seek such a base offense level.

AM D. No other agreements have been reached, and the parties are free to litigate any and all other applicable adjustments, departures, or cross-references under the United States Sentencing Guidelines, and any variances of any kind from the advisory guideline range, in any amount, in either direction.

AM E. Defendant, defendant's attorney, and the United States may make whatever

> comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information and controlling authority to the Probation Office and Court for use in preparing and litigating adjustments, enhancements, or departures scored in the presentence report, including offering statements made by defendant at any time.

19. AM The parties are free to contest or defend any ruling of the Court, unless otherwise limited by this agreement, on appeal or in any other post-conviction proceeding.

POTENTIAL FOR DEPARTURE OR CREDIT

20. AM The United States may, but shall not be required to, make a motion pursuant to §5K1.1 of the United States Sentencing Guidelines in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. No downward departure for "substantial assistance" may be made absent a government motion under §5K1.1.

21. AM The United States may, but shall not be required to, make a motion pursuant to 18 U.S.C. § 3553(e) allowing the Court to depart below the mandatory minimum sentence required by statute for any offense to which defendant has agreed to plead guilty in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. Defendant understands and agrees any motion for "substantial assistance" under USSG §5K1.1, as described above, is independent from a possible motion under this paragraph. The United States may make either, neither, or both motions with respect to each applicable count to which defendant has agreed to plead guilty. This decision shall be in the sole discretion of the United States Attorney's Office. No downward departure below a mandatory minimum may be made absent a government motion under 18 U.S.C. § 3553(e) separate from a motion under USSG §5K1.1.

22. AM It is understood and agreed no motion for downward departure based on defendant's cooperation shall be made, under any circumstances, unless defendant's cooperation is deemed "substantial" by the United States Attorney's Office and defendant has fully complied with all provisions of this plea agreement. The United States has made no promise, implied or otherwise, that a departure motion will be made or that defendant will be granted a departure for "substantial

assistance." Further, no promise has been made that a motion will be made for departure even if defendant complies with the terms of this agreement in all respects, but has not, in the assessment of the United States Attorney's Office, provided "substantial assistance."

23. AM The United States will consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the United States Attorney's Office, defendant has provided "substantial assistance" that would merit a government request for a downward departure under USSG §5K1.1 and/or 18 U.S.C. § 3553(e), and if so, what recommendation to make to the Court.

A. the government's evaluation of the significance and usefulness of any assistance rendered by defendant;

B. the truthfulness; completeness, and reliability of any information or testimony provided by defendant;

C. the nature and extent of defendant's assistance;

D. any injuries suffered or any danger or risk of injury to defendant or family members resulting from any assistance provided;

E. the timeliness of any assistance provided by defendant; and

F. Other benefits received by defendant in the plea agreement., including any decision by the

United States to forego multiple enhancements under 21 U.S.C. § 851 that would otherwise have required a life sentence, a decision that already provides a significant benefit to defendant.

24. AM Defendant understands and agrees the government has gathered extensive evidence in the course of its investigation, and further, no departure motion will be made on the basis of information or cooperation provided by defendant if such information or cooperaton is merely cumulative of information already in the possession of the United States.

25. AM It is understood and agreed that, if the United States makes a motion for departure based upon defendant's "substantial assistance," the Court will decide whether to grant the motion. If the Court grants the motion, it will be for the Court to decide, within the limits of the law and its discretion, how much of a reduction in sentence is warranted.

26. AM Defendant agrees and understands defendant shall not be permitted to withdraw defendant's plea of guilty as to any count or otherwise fail to comply with the terms of this agreement in the event defendant is not satisfied with the government's "substantial assistance" motion decision or the Court's sentence in the case.

FINANCIAL MATTERS

27. AM Defendant agrees to pay a special assessment of $100 as required by 18 U.S.C. § 3013. Defendant may pay the special assessment to the Clerk of Court using the enclosed payment coupon. Defendant or defendant's representative will send or

deliver the special assessment payment to the U.S. District Clerk of Court, 111 Seventh Avenue, SE, Box 12, Cedar Rapids, IA 52401. If defendant does not pay the Clerk of Court by credit card, payment must be in the form of a money order made out to the "U.S. District Clerk of Court." The special assessment must be paid before this signed agreement is returned to the U.S. Attorney's Office. If defendant fails to pay the special assessment prior to the sentencing, defendant stipulates that a downward adjustment for acceptance of responsibility under USSG §3E1.1 is not appropriate unless the Court finds defendant has no ability to pay prior to the sentencing.

FORFEITURE

28. AM Defendant agrees to forfeit and abandon any and all claim to items seized by law enforcement from defendant at the time of any arrest or search, including defendant's arrest and the search of defendant's residence on April 28, 2016. Defendant also waives any right to additional notice of the forfeiture and abandonment of such property. Defendant stipulates this plea agreement constitutes notice under Local Criminal Rule 57.3(c) regarding the disposal of any exhibits or evidence related to this matter. Defendant understands that, from this date forward, any local, state, or federal law enforcement agency may take custody of and use, dispose of, and transfer these items in any way the agency deems appropriate.

29. AM Defendant agrees to voluntarily disclose, forfeit, abandon, give up, and give away to the United States, or any law enforcement agency designated by the United States, prior to the date of sentencing

herein, any right, title and interest defendant may have in property subject to forfeiture under the United States Code, 21 U.S.C. §§ 853 and 881, and 18 U.S.C. §§ 924, 981 and 982, and any right, title and interest defendant may have in the following items:

A. all controlled substances that have been possessed in violation of federal law, all raw materials, products, and equipment of any kind that are or have been used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of federal law;

B. all property that is or has been used or intended for use as a container for the items referred to in subparagraph A;

C. all conveyances, including aircraft, vehicles, or vessels, that are or have been used, or are intended for use, to transport or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of items referred to in subparagraph A;

D. all monies, negotiable instruments, securities, or other things of value, furnished or intended to be furnished by any person in exchange for a controlled substance in violation of federal drug laws, and all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of federal drug laws;

E. all real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements used, or intended to be used, in any manner or part to commit or to facilitate the commission of any violation of a federal drug law that is a felony;

F. any and all firearms and ammunition in defendant's care, custody or control during the time period of defendant's illegal conduct; and

G. any other property deemed forfeitable under the provisions of 21 U.S.C. § 853 and/or § 881.

30. AM If any of the property described in the above paragraphs, as a result of any act or omission of defendant:

A. cannot be located upon the exercise of due diligence;

B. has been transferred or sold to, or deposited with, a third party;

C. has been placed beyond the jurisdiction of the Court;

D. has been substantially diminished in value; or

E. has been commingled with other property that cannot be divided without difficulty;

defendant shall, prior to sentencing, provide payment to the government by cashier's or certified check up to the value of such property. Alternatively, defendant shall consent to an order of forfeiture of any other property up to the value of any such property.

31. AM Defendant specifically agrees to forfeit any and all interest of the property specified in the indictment paragraphs a-f as the proceeds of drug activity and/or property that facilitated a drug crime. Defendant further stipulates and agrees pursuant to Rule 32.2(a) to the entry of a money judgment in an amount of not more than $25,0000 due and payable immediately. This $25,000 represents drug proceeds received from defendant's illegal activity. Upon completion of the attached financial statement, and, at the discretion of the United States, an examination of defendant's financial condition, defendant agrees the United States may set the amount of the monetary judgment in any amount of not more than $25,000 or may, in its discretion elect to waive imposition of a monetary judgment in this case.

32. AM Within two weeks of signing this agreement, defendant agrees to provide the United States Attorney's Office for the Northern District of Iowa with written documentation of defendant's ownership or right, title, or interest in the aforementioned property. In the event defendant is unable to provide documentation of defendant's right, title, or interest in such property within two weeks of signing this agreement, defendant shall relinquish custody of that property to the United States at that time, or at any subsequent time agreed to by the United States, upon demand of the government.

33. AM By this agreement defendant not only agrees to forfeit all interests in the property referred to in the above paragraphs, but agrees to take whatever steps are necessary to convey any and all of defendant's

right, title, and interest in such property to the United States. These steps include, but are not limited to, the surrender of title, the signing of a quit claim deed, the signing of a consent decree, the signing of abandonment papers, the signing of a stipulation of facts regarding the transfer and basis for the forfeiture, and the signing any other documents necessary to effectuate such transfers. Defendant further agrees to fully assist the government in the recovery and return to the United States of any assets or portions thereof as described above wherever located. Defendant further agrees to make a full and complete disclosure of all assets over which defendant exercises control and those held or controlled by a nominee. Defendant further agrees to be polygraphed on the issue of assets if it is deemed necessary by the United States before defendant's sentencing.

34. AM Defendant agrees not to waste, sell, dispose of, or otherwise diminish the value of any items or property referred to in the above paragraphs or allow others to do so. Defendant further agrees not to contest any forfeiture action: or proceeding brought on behalf of any government agency involved in this investigation-that seeks to forfeit property described in the above paragraphs.

35. AM Defendant agrees and understands that, should defendant fail to truthfully account for all of defendant's holdings, proceeds, assets, or income, whether derived from a legal source or not, for the period charged, defendant shall be deemed to have materially breached this agreement. The decision as to whether defendant has been complete, forthright, and

truthful in this regard shall be in the sole discretion of the United States Attorney's Office, taking into consideration the totality of the circumstances and the totality of the evidence developed in the course of the investigation.

GENERAL MATTERS

36. AM Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

37. AM If defendant violates **any** term or condition of this plea agreement, in **any** respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges

against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

38. AM Defendant waives all claims defendant may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution. Defendant also agrees any delay between the signing of this agreement and the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING

39. AM Defendant acknowledges defendant has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions. Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant understands that, by entering a plea of guilty, defendant will be giving up the right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in defendant's defense; to remain silent and refuse to be a witness by asserting defendant's privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a reasonable doubt. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states

defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability to fully understand the terms and conditions of this plea agreement.

40. AM Defendant acknowledges defendant is entering into this plea agreement and *is* pleading guilty freely and voluntarily because defendant is guilty and for no other reason. Defendant further acknowledges defendant is entering into this agreement without reliance upon any discussions between the government and defendant (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. Defendant further acknowledges defendant's understanding of the nature of each offense to which defendant is pleading guilty, including the penalties provided by law.

41. AM Defendant further understands defendant will be adjudicated guilty of each offense to which defendant will plead guilty and will thereby be deprived of certain rights, including, but not limited to, the right to vote, to hold public office, to serve on a jury, and to possess firearms and ammunition. Defendant understands the government reserves the right to notify any state or federal agency by whom defendant is licensed, or with whom defendant does business, of the fact of defendant's conviction.

VERIFICATION

42. AM This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed, with this signed letter to the U.S. Attorney's Office.

Please complete the enclosed Consent to Proceed Before the Magistrate Judge. This document is needed to allow the Magistrate Judge to receive defendant's guilty plea.

Finally, please remember to pay the special assessment as agreed above.

Thank you for your cooperation.

Sincerely,

PETER E. DEEGAN, JR.
United States Attorney

By: */ s / Emily K. Nydle*

Emily K. Nydle
Assistant United States Attorney

ENCLOSURES:
Financial Statement Form
Special Assessment Payment Coupon
Abandonment Declaration

Consent to Proceed Before Magistrate Judge

The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.

/s/ Alexander Martin 2/14/18
Alexander Martin Date
Defendant

/s/ Emily K. Nydle 2/15/18
Emily K. Nydle Date
Assistant United States Attorney

/s/ Chad R. Frese 2/14/18
Chad R. Frese Date
Attorney for Defendant

[SEAL]

U. S. Department of Justice

United States Attorney
Northern District of Iowa

EXHIBIT OFFERED UNDER SEAL

[Dated: November 21, 2017]

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111 Seventh Avenue, SE
Box 1
Cedar Rapids, IA 52401 - 2101

319-363-6333
319-363-1990 (fax)
319-286-9258 (tty)

November 21, 2017

John J. Bishop
222 3rd Avenue, SE
Cedar Rapids, IA 52401

Re: *United States v. Naiqondis Maurice Spates,* 17-CR-2043

Dear Mr. Bishop:

This letter will serve as a FIRST memorandum of a proposed plea agreement between the United States Attorney's Office for the Northern District of Iowa and Naiqondis Maurice Spates, defendant. All references to the "United States" or "government" in this proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity. This plea offer will expire on December 11, 2017, unless otherwise extended by the

government. The government has made no prior plea offers in this case.

CHARGES AND PENALTIES

1. NS Defendant will plead guilty to Count 1 and Count 11 of the Indictment filed on July 10, 2017. Count 1 charges conspiracy to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846. Count 11 charges distribution of cocaine base within 1000 feet of a protected location, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 860(a). Pursuant to 21 U.S.C. § 851, the indictment also contains notice of one prior felony drug conviction.

2. NS Defendant understands that Count 1 of the Indictment is punishable by a mandatory minimum sentence of 10 years' imprisonment and the following maximum penalties: (1) not more than life imprisonment without the possibility of parole; (2) a fine of not more than $8,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 8 years to life.

3. NS Defendant understands that Count 11 of the Indictment is punishable by a mandatory minimum sentence of 1 year imprisonment and the following maximum penalties: (1) not more than 60 years' imprisonment without the possibility of parole; (2) a fine of not more than $4,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 6 years to life imprisonment.

4. NS Defendant understands restitution and a term of supervised release following incarceration may

be imposed in addition to any other sentence. Defendant further acknowledges that, if defendant violates, at any time, any condition of supervised release, defendant could be returned to prison for the full term of supervised release and the Court is not required to grant credit for any amount of time defendant may have successfully completed on supervised release. Defendant also understands the U.S. Sentencing Guidelines will provide advisory guidance to the Court in determining a sentence in this case.

5. NS At the time the guilty plea is entered, defendant will admit that defendant is guilty of the charges specified in Paragraph 1 of this agreement. After sentencing, the govemment will move for dismissal of any remaining counts. The U.S. Attorney's Office for this District will file no additional Title 21 drug-related criminal charges based solely upon information now in our possession or information later provided by defendant under the conditions set forth in the "Cooperation" section below. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

6. NS Defendant understands and agrees defendant has the absolute right to plead guilty before a United States District Court Judge. However, if convenient to the Court, defendant agrees to waive and give up this right and to plead guilty before a United States Magistrate Judge. Defendant understands defendant will not be found guilty unless the United States District Court Judge accepts the plea of guilty or

adopts a recommendation of the Magistrate Judge to accept such plea. Defendant agrees to execute the attached consent to proceed before the United States Magistrate Judge.

COOPERATION

7. NS Defendant agrees to fully and completely cooperate with the United States Attorney's Office and other law enforcement agencies in the investigation of criminal activity within the Northern District of Iowa and elsewhere.

8. NS Full and complete cooperation with the United States Attorney's Office and law enforcement agencies shall include, but is not limited to, the following, if feasible:

A. providing information to secure search warrants;

B. providing testimony before the federal grand jury and, if necessary, testimony before any Court as a witness in any prosecution growing out of this or any related investigation; in the event defendant is called upon to testify on behalf of the government in any trial, grand jury or other proceeding and is incarcerated at that time in any local, state or federal institution, defendant agrees to waive any and all claim for witness fees and/or expenses which might otherwise be due under any statute, regulation or other provision of law pertaining to such fees and/or expenses; if, at the time of the testimony, defendant is not incarcerated, defendant agrees to waive witness fees and all local travel expenses;

C. providing any documents or other items in defendant's custody, possession, or under defendant's control that are relevant to this or any related investigation;

D. making defendant available for interview and debriefing sessions by government attorneys and law enforcement agents upon request;

E. recording conversations related to any investigation as requested; and

F. engaging in and conducting other activities as directed by the law enforcement agents in charge of the investigation.

9. NS Defendant will provide complete and truthful information to the government, law enforcement officers, the federal grand jury conducting this investigation, and any court. Defendant will answer all questions concerning this investigation and will not withhold any information. Defendant will neither attempt to protect any person or entity through false information or omission nor falsely implicate any person or entity. Defendant will at all times tell the truth and nothing but the truth during any interviews or as a witness regardless of who asks the questions – the prosecutors, defense attorneys, investigating agents, probation officers, or the judge. Since the United States insists upon defendant telling the truth and nothing but the truth during any court proceeding, grand jury proceeding, or government interview related to this case, failure to provide complete and truthful information at any such time will constitute a breach of this agreement.

10. NS No testimony or other information provided by defendant pursuant to this plea agreement or pursuant to a proffer agreement to the United States Attorney's Office, federal or state law enforcement officers, employees of the government, the federal grand jury conducting this investigation, or to a court will be used against defendant for the purpose of bringing additional Title 21 criminal charges in the Northern District of Iowa, provided defendant does not violate or withdraw from the terms of this agreement. However, such testimony or other information may and will be used in the following circumstances:

A. derivatively or indirectly, including but not limited to the following: to impeach defendant's credibility; to cross-examine defense witnesses; to re-direct government witnesses; or to rebut any evidence or argument presented by defendant that is inconsistent with information provided by defendant pursuant to this agreement; to develop leads from the information provided, including for use in determining the applicable guideline range; and use for all other non-evidentiary purposes;

B. by the Court or Probation Office at any time, including at the time of defendant's guilty plea and sentencing in this matter, but shall not be used in determining the applicable guideline range in accordance with §1B1.8, except the information may be used derivatively or indirectly, as provided in subparagraph A;

C. in any proceeding concerning a breach of this agreement;

D. at any time in any criminal prosecution against defendant if defendant fails to provide complete and truthful information as required by the terms of this agreement;

E. in a subsequent prosecution for crimes or acts that were not disclosed by defendant during an interview conducted pursuant to this agreement or any related proffer agreement;

F. in a subsequent prosecution for crimes or acts committed by defendant after the date defendant provided the testimony or information;

G. in a subsequent prosecution for perjury or giving a false statement;

H. in any asset forfeiture matter; and

I. in any civil proceeding.

The above restrictions on use of information and/or testimony in this agreement extend only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date. Defendant understands the obligation of the United States to provide all information in its file regarding defendant to the United States Probation Office and the Court.

11. NS The United States agrees the information provided by defendant to federal or state law enforcement officers on September 8, 2017, and October 25, 2017, shall not be used in determining the

applicable guideline range in accordance with §1B1.8. Such information may be used for any other purpose permitted by law, including derivatively or indirectly as provided in paragraph 10A. The above restriction on the use of the pre-proffer information provided extends only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date.

12. NS It is understood that, upon request by the government, defendant will voluntarily submit to a polygraph examination. If performance in any polygraph examination suggests a conscious intent to deceive, mislead, or lie and the totality of circumstances convinces the government defendant's statement is not complete and truthful, defendant will be so informed and any and all obligations imposed on the government by this agreement will be rendered null and void. This decision to nullify the agreement will be in the sole discretion of the United States Attorney's Office for the Northern District of Iowa.

13. NS Defendant shall not reveal or discuss the existence or conditions of this agreement or defendant's cooperation to any person other than defendant's attorney and law enforcement personnel involved in this investigation. Nor shall defendant or any agent of defendant disclose to any person, directly or indirectly, other than to defendant's attorney, without prior written authorization from the government, the true identity or occupation of any law enforcement personnel participating in this investigation in an undercover capacity or otherwise. Nor shall defendant

or any agent of defendant disclose to any person, without prior written approval of the government, the location of investigative offices, surveillance locations, or the nature of investigative techniques used by agents in this investigation. Nothing in this paragraph is intended to restrict or prohibit defendant from providing complete and truthful testimony in any court proceeding. Furthermore, this agreement does not prohibit defendant from speaking with an attorney for a party adverse to the government in any litigation concerning defendant's possible testimony in that litigation. While defendant is under no obligation to speak with such an attorney, defendant is free to do so if defendant chooses. That decision rests solely with defendant as it does with any witness.

14. NS Nothing in this agreement requires the government to accept any cooperation or assistance defendant may offer or propose. The decision whether and how to use any information and/or cooperation defendant provides (if at all) is in the exclusive discretion of the United States Attorney's Office.

STIPULATION OF FACTS

15. NS By initialing each of the following paragraphs, defendant stipulates to the following facts. Defendant agrees these facts are true and may be used to establish a factual basis for defendants guilty plea, sentence, and any forfeiture. Defendant has been advised by defendant's attorney of defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Defendant waives these rights and agrees this stipulation may be used against defendant at any time in any proceeding should

defendant violate or refuse to follow through on this plea agreement, regardless of whether the plea agreement has been accepted by the Court. Defendant agrees that the stipulation below is a summary of the facts against defendant and does not constitute all of the facts the government would be able to prove at trial and may be able to prove to the Court in accordance with this agreement.

NS A. On or about August 5, 2004, defendant was convicted of Delivery of Controlled Substance – Cocaine Base, in the Iowa District Court for Black Hawk County in case number FECR112698. This was a felony drug offense.

NS B. Beginning no later than January 2015, and continuing through about March 2017, two or more persons reached an agreement to distribute cocaine base ("crack cocaine"). Defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached, or at some later time while it was still in effect. At the time the defendant joined in the agreement or understanding, defendant knew that the purpose of the agreement or understanding was to distribute crack cocaine. The agreement or understanding included defendant, Devonte Jenkins, Gary Krueger, and others. The agreement or understanding involved the distribution of at least 28 grams of crack

cocaine. Acts in furtherance of the agreement or understanding took place in Waterloo, Iowa, which is in the Northern District of Iowa.

NS C. Beginning in early 2015, law enforcement in Waterloo began investigating the distribution of crack cocaine by defendant, Jenkins, Krueger, and others. This investigation included the use of confidential informants and undercover officers to purchase crack cocaine from defendant, Jenkins, and Kruger. The investigation eventually included the use of wiretaps to intercept phone calls and text messages.

NS D. Defendant sold crack cocaine to a confidential informant or an undercover officer on February 19, 2016 (.61 grams), September 27, 2016 (.61 grams), October 11, 2016 (.56 grams), and October 24, 2016 (.64 grams). On each of these occasions, defendant intentionally transferred crack cocaine to another person and knew that the substance he transferred was crack cocaine. The sale on February 19, 2016, as charged in Count 11 of the Indictment, took place within 1000 feet of East High School in Waterloo, Iowa. In total, defendant distributed at least 2.42 grams of crack cocaine during these controlled purchases.

NS E. From no later than January 2015 through about March 2017, B.P., a user of crack cocaine, regularly purchased crack cocaine from defendant. During this time period, B.P. purchased at least one gram of crack cocaine per week from defendant. During this time period, B.P. purchased at least 112 grams of crack cocaine from defendant.

NS F. From no later than October 2016 through about April 2017, T.R., a user of crack cocaine, regularly purchased crack cocaine from defendant. During this time period, T.R. purchased at least .5 grams of crack cocaine per week from defendant. During this time period, defendant purchased at least 12 grams of crack cocaine from defendant.

NS G. From December 13, 2016, through February 10, 2017, federal law enforcement officials intercepted communications over phones used by defendant and Jenkins. During this time period, defendant and Jenkins regularly used these phones to discuss crack cocaine transactions with one another. other crack cocaine distributors, and their customers. Krueger was intercepted speaking to both defendant and Jenkins regarding crack cocaine distribution.

SENTENCING PROVISIONS

16. NS Defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Indictment; (2) proven to a jury; or (3) proven beyond a reasonable doubt. Defendant agrees the Court will determine the appropriate sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of defendant; (5) the need for the sentence to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands the Court will also consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy statements issued as part of the Guidelines. The Court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a

review of such things as defendant's role in the offense, criminal history, acceptance or lack of acceptance of responsibility, and other considerations. The Court may also consider other information including any information concerning the background, character, and conduct of defendant.

17. NS During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. Defendant understands the Court is not bound by the stipulations of the parties, nor is it bound by the sentencing range as determined pursuant to the sentencing guidelines. This plea agreement provides for no guarantee concerning the actual sentence to be imposed. Defendant further understands defendant will have no right to withdraw defendant's guilty plea if the sentence imposed is other than defendant hoped for or anticipated.

18. NS The parties stipulate and agree the United States Sentencing Guidelines should be applied, at least, as follows:

NS H. **Base Offense Level - Drug Trafficking (Chapter 2):** For Count 1 and Count 11, pursuant to USSG §2D1.1, the appropriate base offense level is at least **26** based upon defendant's involvement with at least 112 grams of a mixture or substance containing a detectable amount

of cocaine base, a Schedule II controlled substance. The government is free to present evidence and arguments to support the stipulation and, if warranted, a higher base offense level.

NS I. **Drug Base Offense Level - Protected Location (Chapter 2):** For Count 1 and Count 11, pursuant to USSG §2D1.2(a), the appropriate base offense level is **one** plus the offense level from §2D1.1 applicable to the total quantity of controlled substances involved in the offense.

NS J. **Acceptance of Responsibility (Chapter 3 adjustment):** The United States agrees for purposes of USSG §3E1.1(b) that defendant timely notified authorities of defendant's intention to enter a guilty plea.

NS K. **Criminal History (Chapter 4):** No agreement has been reached regarding defendant's criminal history. The parties reserve the right to contest the Probation Office's determination of defendant's criminal history and criminal history category under Chapter Four of the sentencing guidelines. In addition, defendant understands that, if defendant's criminal history would result in a higher base offense level under any guideline, the government is free to seek such a base offense level.

NS L. No other agreements have been reached, and the parties are free to litigate any and all other applicable adjustments, departures, or cross-references under the United States Sentencing Guidelines, and any variances of any kind from the advisory guideline range, in any amount, in either direction.

19. NS Defendant, defendant's attorney, and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information and controlling authority to the Probation Office and Court for use in preparing and litigating adjustments, enhancements, or departures scored in the presentence report, including offering statements made by defendant at any time.

20. NS The parties are free to contest or defend any ruling of the Court, unless otherwise limited by this agreement, on appeal or in any other post-conviction proceeding.

CONDITIONS OF SUPERVISION

21. NS If probation or a term of supervised release is ordered, the parties are free to seek whatever conditions they deem appropriate.

POTENTIAL FOR DEPARTURE OR CREDIT

22. NS The United States may, but shall not be required to, make a motion pursuant to §5K1.1 of the United States Sentencing Guidelines in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. No downward departure for "substantial assistance" may be made absent a government motion under §5K1.1.

23. NS The United States may, but shall not be required to, make a motion pursuant to 18 U.S.C. § 3553(e) allowing the Court to depart below the mandatory minimum sentence required by statute for any offense to which defendant has agreed to plead guilty in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. Defendant understands and agrees any motion for "substantial assistance" under USSG §5K1.1, as described above, is independent from a possible motion under this paragraph. The United States may make either, neither, or both motions with respect to each applicable count to which defendant has

agreed to plead guilty. This decision shall be in the sole discretion of the United States Attorney's Office. No downward departure below a mandatory minimum may be made absent a government motion under 18 U.S.C. § 3553(e) separate from a motion under USSG §5K1.1.

24. NS It is understood and agreed no motion for downward departure based on defendant's cooperation shall be made. under any circumstances, unless defendant's cooperation is deemed "substantial" by the United States Attorney's Office and defendant has fully complied with all provisions of this plea agreement. The United States has made no promise, implied or otherwise, that a departure motion will be made or that defendant will be granted a departure for "substantial assistance." Further, no promise has been made that a motion will be made for departure even if defendant complies with the terms of this agreement in all respects, but has not, in the assessment of the United States Attorney's Office, provided "substantial assistance."

25. NS The United States will consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the United States Attorney's Office, defendant has provided "substantial assistance" that would merit a government request for a downward departure under USSG §5K1.1 and/or 18 U.S.C. § 3553(e), and if so, what recommendation to make to the Court.

A. the government's evaluation of the significance and usefulness of any assistance rendered by defendant;

B the truthfulness, completeness, and reliability of any information or testimony provided by defendant;

C. the nature and extent of defendant's assistance;

D. any injuries suffered or any danger or risk of injury to defendant or family members resulting from any assistance provided;

E. the timeliness of any assistance provided by defendant; and

F. Other benefits received by defendant in the plea agreement.

26. NS Defendant understands and agrees the government has gathered extensive evidence in the course of its investigation, and further, no departure motion will be made on the basis of information or cooperation provided by defendant if such information or cooperation is merely cumulative of information already in the possession of the United States.

27. NS It is understood and agreed that, if the United States makes a motion for departure based upon defendant's "substantial assistance," the Court will decide whether to grant the motion. If the Court grants the motion, it will be for the Court to decide, within the limits of the law and its discretion, how much of a reduction in sentence is warranted.

28. NS Defendant agrees and understands defendant shall not be permitted to withdraw defendant's plea of guilty as to any count or otherwise fail to comply with the terms of this agreement in the event defendant is not satisfied with the government's "substantial assistance" motion decision or the Court's sentence in the case.

FINANCIAL MATTERS

29. NS Defendant agrees to pay a special assessment of $100 per count, for a total of $200, as required by 18 U.S.C. § 3013. Defendant may pay the special assessment to the Clerk of Court using the enclosed payment coupon. Defendant or defendant's representative will send or deliver the special assessment payment to the U.S. District Clerk of Court, 111 Seventh Avenue, SE, Box 12, Cedar Rapids, IA 52401.

30. NS Defendant understands the Court may order defendant to pay restitution to all identifiable victims of the offense(s) to which defendant is pleading guilty. Defendant agrees to cooperate in the investigation of the amount of loss and the identification of victims.

31. NS Defendant agrees to fully and truthfully complete the enclosed financial statement form. Further, upon request, defendant agrees to provide the U.S. Attorney's Office with any information or documentation in defendant's possession or control regarding defendant's financial affairs and agrees to submit to a debtor's examination when requested. Defendant agrees to provide this information whenever requested until such time any judgment or claim

against defendant, including principal and interest, is satisfied in full. This information will be used to evaluate defendant's capacity to pay any claim or judgment against defendant.

FORFEITURE

32. NS Defendant agrees to forfeit and abandon any and all claim to items seized by law enforcement from defendant at the time of any arrest or search, including defendant's arrest and the search of defendant's arrest on July 18, 2017. Defendant also waives-fmy right to additional notice of the forfeiture and abandonment of such property. Defendant stipulates this plea agreement constitutes notice under Local Criminal Rule 57.3(c) regarding the disposal of any exhibits or evidence related to this matter. Defendant understands that, from this date forward, any local, state, or federal law enforcement agency may take custody of and use, dispose of, and transfer these items in any way the agency deems appropriate.

33. NS Defendant agrees to voluntarily disclose, forfeit, abandon, give up, and give away to the United States, or any law enforcement agency designated by the United States, prior to the date of sentencing herein, any right, title and interest defendant may have in property subject to forfeiture under the United States Code, including 21 U.S.C. §§ 853 and 881, and 18 U.S.C. §§ 924, 981 and 982, and any right, title and interest defendant may have in the following items:

A. all controlled substances that have been possessed in violation of federal law, all raw materials, products, and equipment of any kind

that are or have been used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of federal law;

B. all property that is or has been used or intended for use as a container for the items referred to in subparagraph A;

C. all conveyances, including aircraft, vehicles, or vessels, that are or have been used, or are intended for use, to transport or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of items referred to in subparagraph A;

D. all monies, negotiable instruments, securities, or other things of value, furnished or intended to be fu1 ·nished by any person in exchange for a controlled substance in violation of federal drug laws, and all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of federal drug laws;

E. all real property, including any light, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements used, or intended to be used, in any manner or part to commit or to facilitate the commission of any violation of a federal drug law that is a felony;

F. any and all firearms and ammunition in defendant's care, custody or control during the time pe1iod of defendant's illegal conduct; and

G. any other property deemed forfeitable under the provisions of 21 U.S.C. § 853 and/or § 881.

34. NS If any of the property described in the above paragraphs, as a result of any act or omission of defendant:

A. cannot be located upon the exercise of due diligence;

B. has been transferred or sold to, or deposited with, a third party;

C. has been placed beyond the jurisdiction of the Court;

D. has been substantially diminished in value; or

E. has been commingled with other property that cannot be divided without difficulty;

defendant shall, prior to sentencing, provide payment to the government by cashier's or certified check up to the value of such property. Alternatively, defendant shall consent to an order of forfeiture of any other property up to the value of any such property.

35. NS Within two weeks of signing this agreement, defendant agrees to provide the United States Attorney's Office for the Northern District of Iowa with written documentation of defendant's ownership or right, title, or interest in the aforementioned property. In the event defendant is unable to provide documentation of defendant's right, title, or interest in such property within two weeks of signing this agreement, defendant shall relinquish custody of that property to the United States at that time, or at any

subsequent time agreed to by the United States, upon demand of the government.

36. NS By this agreement defendant not only agrees to forfeit all interests in the property referred to in the above paragraphs, but agrees to take whatever steps are necessary to convey any and all of defendant's right, title, and interest in such property to the United States. These steps include, but are not limited to, the surrender of title, the signing of a quit claim deed, the signing of a consent decree, the signing of abandonment papers, the signing of a stipulation of facts regarding the transfer and basis for the forfeiture, and the signing any other documents necessary to effectuate such transfers. Defendant further agrees to fully assist the government in the recovery and return to the United States of any assets or portions thereof as described above wherever located. Defendant further agrees to make a full and complete disclosure of all assets over which defendant exercises control and those held or controlled by a nominee. Defendant further agrees to be polygraphed on the issue of assets if it is deemed necessary by the United States before defendant's sentencing.

37. NS Defendant agrees not to waste, sell, dispose of, or otherwise diminish the value of any items or property referred to in the above paragraphs or allow others to do so. Defendant further agrees not to contest any forfeiture action or proceeding brought on behalf of any government agency involved in this investigation that seeks to forfeit property described in the above paragraphs.

38. NS Defendant agrees and understands that, should defendant fail to truthfully account for all of defendant's holdings, proceeds, assets, or income, whether derived from a legal source or not, for the period charged, defendant shall be deemed to have materially breached this agreement. The decision as to whether defendant has been complete, forthright, and truthful in this regard shall be in the sole discretion of the United States Attorney's Office, taking into consideration the totality of the circumstances and the totality of the evidence developed in the course of the investigation.

GENERAL MATTERS

39. NS Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

40. NS If defendant violates **any** term or condition of this plea agreement, in **any** respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has

provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

41. NS Defendant waives all claims defendant may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution. Defendant also agrees any delay between the signing of this agreement and the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

42. NS Any dismissal of counts or agreement to forego filing charges is conditional upon final resolution of this matter. If this agreement is revoked or defendant's conviction is ultimately overturned, the United States retains the right to reinstate previously dismissed counts and to file charges that were not filed because of this agreement. Dismissed counts may be reinstated and uncharged offenses may be filed if: (1) the plea agreement is revoked, or (2) defendant successfully challenges defendant's conviction through a final order in any appeal, cross-appeal, habeas corpus action, or other post-conviction relief matter. A final

order is an order not subject to further review or an order that no party challenges. The United States may reinstate any dismissed counts or file any uncharged offenses within 90 days of the filing date of the final order. Defendant waives all constitutional and statutory speedy trial rights defendant may have. Defendant also waives all statute of limitations or other objections or defenses defendant may have related to the timing or timeliness of the filing or prosecution of charges referred to in this paragraph.

ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING

43. NS Defendant acknowledges defendant has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions. Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant understands that, by entering a plea of guilty, defendant will be giving up the right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in defendant's defense; to remain silent and refuse to be a witness by asserting defendant's privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a reasonable doubt. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability

to fully understand the terms and conditions of this plea agreement.

44. NS Defendant acknowledges defendant is entering into this plea agreement and is pleading guilty freely and voluntarily because defendant is guilty and for no other reason. Defendant further acknowledges defendant is entering into this agreement without reliance upon any discussions between the government and defendant (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. Defendant further acknowledges defendant's understanding of the nature of each offense to which defendant is pleading guilty, including the penalties provided by law.

45. NS Defendant further understands defendant will be adjudicated guilty of each offense to which defendant will plead guilty and will thereby be deprived of certain rights, including, but not limited to, the right to vote, to hold public office, to serve on a jury, and to possess firearms and ammunition. Defendant understands the government reserves the right to notify any state or federal agency by whom defendant is licensed, or with whom defendant does business, of the fact of defendant's conviction.

VERIFICATION

46. NS This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by the United States or its agents. No additional agreement

may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed with this signed letter to the U.S. Attorney's Office.

Please complete the enclosed Consent to Proceed Before the Magistrate Judge. This document is needed to allow the Magistrate Judge to receive defendant's guilty plea. Finally, please remember to pay the special assessment as agreed above.

Sincerely,

PETER E. DEEGAN, JR.
United States Attorney

By: / s / *Ravi T. Narayan*

RAVI T. NARAYAN
EMILY K. NYDLE
Assistant United States Attorneys

ENCLOSURES:
Financial Statement Form
Special Assessment Payment Coupon
Consent to Proceed Before Magistrate Judge

The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.

/s/ Naiqondis Spates 11-28-17
NAIQONDIS MAURICE SPATES Date
Defendant

/s/ Ravi Narayan 12/4/17
RAVI T. NARAYAN Date
EMILY K. NYDLE
Assistant United States Attorneys

/s/ John Bishop 11-28-17
JOHN J. BISHOP Date
Attorney for Defendant

[SEAL]

U. S. Department of Justice

United States Attorney
Northern District of Iowa

EXHIBIT OFFERED UNDER SEAL

[Dated: March 21, 2018]

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111 Seventh Avenue, SE
Box 1
Cedar Rapids, IA 52401 - 2101

319-363-6333
319-363-1990 (fax)
319-286-9258 (tty)

March 21, 2018

Pamela Wingert
1212 18th St.
Spirit Lake, Iowa 51360

Re: *United States v. Samuel Lavar Landfair,* Case No. 17-CR-02047

Dear Ms. Wingert:

This letter will serve as a memorandum of a proposed cooperation agreement between the United States Attorney's Office for the Northern District of Iowa and Samuel Lavar Landfair, defendant. All references to the "United States" or "government" in this proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity.

CHARGES AND PENALTIES

1. SL On December 15, 2017, defendant pled guilty to Counts 1-6 of the Indictment filed on July 10, 2017. In Count 1 of the Indictment, defendant is charged with conspiracy to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 846. Counts 2-5, defendant is charged with distribution of cocaine base, in violation of in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(C). In Count 6, defendant is possession with intent to distribute cocaine base near a protected location, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 860(a). The parties did not have a plea agreement. The United States included a notice of one prior felony drug conviction in the indictment pursuant to 21 U.S.C. § 851.

2. SL Defendant understands that Count 1 of the Indictment is punishable by a mandatory minimum sentence of 10 years' imprisonment and the following maximum penalties: (1) not more than life imprisonment without the possibility of parole; (2) a fine of not more than $8,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 8 years to life.

3. SL Defendant understands that Counts 2-5 of the Indictment are each punishable by the following maximum. penalties: (1) not more than 30 years' imprisonment without the possibility of parole; (2) a fine of not more than $2,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 6 years to life

4. SL Defendant understands that Count 6 of the Indictment is punishable by a mandatory minimum sentence of 1 year imprisonment and the following maximum penalties: (1) not more than 60 years' imprisonment without the possibility of parole; (2) a fine of not more than $4,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 6 years to life imprisonment.

COOPERATION

5. SL Defendant agrees to fully and completely cooperate with the United States Attorney's Office and other law enforcement agencies in the investigation of criminal activity within the Northern District of Iowa and elsewhere.

6. SL Full and complete cooperation with the United States Attorney's Office and law enforcement agencies shall include, but is not limited to, the following, if feasible:

A. providing information to secure search warrants;

B. providing testimony before the federal grand jury and, if necessary, testimony before any Court as a witness in any prosecution growing out of this or any related investigation; in the event defendant is called upon to testify on behalf of the government in any trial, grand jury or other proceeding and is incarcerated at that time in any local, state or federal institution, defendant agrees to waive any and all claim for witness fees and/or expenses which might otherwise be due under any statute, regulation

or other provision of law pertaining to such fees and/or expenses; if, at the time of the testimony, defendant is not incarcerated, defendant agrees to waive witness fees and all local travel expenses;

C. providing any documents or other items in defendant's custody, possession, or under defendant's control that are relevant to this or any related investigation;

D. making defendant available for interview and debriefing sessions by government attorneys and law enforcement agents upon request;

E. recording conversations related to any investigation as requested; and

F. engaging in and conducting other activities as directed by the law enforcement agents in charge of the investigation.

7. SL Defendant will provide complete and truthful information to the government, law enforcement officers, the federal grand jury conducting this investigation, and any court. Defendant will answer all questions concerning this investigation and will not withhold any information. Defendant will neither attempt to protect any person or entity through false information or omission nor falsely implicate any person or entity. Defendant will at all times tell the truth and nothing but the truth during any interviews or as a witness regardless of who asks the questions – the prosecutors, defense attorneys, investigating agents, probation officers, or the judge. Since the United States insists upon defendant telling the truth

and nothing but the truth during any court proceeding, grand jury proceeding, or government interview related to this case, failure to provide complete and truthful information at any such time will constitute a breach of this agreement.

8. SL No testimony or other information provided by defendant pursuant to this plea agreement or pursuant to a proffer agreement to the United States Attorney's Office, federal or state law enforcement officers, employees of the government, the federal grand jury conducting this investigation, or to a court will be used against defendant for the purpose of bringing additional Title 18 or Title 21 drug related criminal charges in the Northern District of Iowa, provided defendant does not violate or withdraw from the terms of this agreement. However, such testimony or other information may and will be used in the following circumstances:

A. derivatively or indirectly, including but not limited to the following: to impeach defendant's credibility; to cross-examine defense witnesses; to re-direct government witnesses; or to rebut any evidence or argument presented by defendant that is inconsistent with information provided by defendant pursuant to this agreement; to develop leads from the information provided, including for use in determining the applicable guideline range; and use for all other non-evidentiary purposes;

B. by the Court or Probation Office at any time, including at the time of defendant's guilty plea and sentencing in this matter; but shall not be

used in determining the applicable guideline range in accordance with §1B1.8, except the information may be used derivatively or indirectly, as provided in subparagraph A:,

C. in any proceeding concerning a breach of this agreement;

D. at any time in any criminal prosecution against defendant if defendant fails to provide complete and truthful information as required by the terms of this agreement;

E. in a subsequent prosecution for crimes or acts that were not disclosed by defendant during an interview conducted pursuant to this agreement or any related proffer agreement;

F. in a subsequent prosecution for crimes or acts committed by defendant after the date defendant provided the testimony or information;

G. in a subsequent prosecution for perjury or giving a false statement;

H. in any asset forfeiture matter; and

I. in any civil proceeding.

The above restrictions on use of information and/or testimony in this agreement extend only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date. Defendant understands the obligation of the United States to provide all information in its file

regarding defendant to the United States Probation Office and the Court.

9. SL It is understood that, upon request by the government, defendant will voluntarily submit to a polygraph examination. If performance in any polygraph examination suggests a conscious intent to deceive, mislead, or lie and the totality of circumstances convinces the government defendant's statement is not complete and truthful, defendant will be so informed and any and all obligations imposed on the government by this agreement will be rendered null and void. This decision to nullify the agreement will be in the sole discretion of the United States Attorney's Office for the Northern District of Iowa.

10. SL Defendant shall not reveal or discuss the existence or conditions of this agreement or defendant's cooperation to any person other than defendant's attorney and law enforcement personnel involved in this investigation. Nor shall defendant or any agent of defendant disclose to any person, directly or indirectly, other than to defendant's attorney, without prior written authorization from the government, the true identity or occupation of any law enforcement personnel participating in this investigation in an undercover capacity or otherwise. Nor shall defendant or any agent of defendant disclose to any person, without prior written approval of the government, the location of investigative offices, surveillance locations, or the nature of investigative techniques used by agents in this investigation. Nothing in this paragraph is intended to restrict or prohibit defendant from providing complete and truthful testimony in any court

proceeding. Furthermore, this agreement does not prohibit defendant from speaking with an attorney for a party adverse to the government in any litigation concerning defendant's possible testimony in that litigation. While defendant is under no obligation to speak with such an attorney, defendant is free to do so if defendant chooses. That decision rests solely with defendant as it does with any witness.

11. SL Nothing in this agreement requires the government to accept any cooperation or assistance defendant may offer or propose. The decision whether and how to use any information and/or cooperation defendant provides (if at all) is in the exclusive discretion of the United States Attorney's Office.

POTENTIAL FOR DEPARTURE OR CREDIT

12. SL The United States may, but shall not be required to, make a motion pursuant to §5K1.1 of the United States Sentencing Guidelines in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. No downward departure for "substantial assistance" may be made absent a government motion under §5K1.1.

13. SL The United States may, but shall not be required to, make a motion pursuant to 18 U.S.C. § 3553(e) allowing the Court to depart below the

mandatory minimum sentence required by statute for any offense to which defendant has agreed to plead guilty in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. Defendant understands and agrees any motion for "substantial assistance" under USSG §5K1.1, as described above, is independent from a possible motion under this paragraph. The United States may make either, neither, or both motions with respect to each applicable count to which defendant has agreed to plead guilty. This decision shall be in the sole discretion of the United States Attorney's Office. No downward departure below a mandatory minimum may be made absent a government motion under 18 U.S.C. § 3553(e) separate from a motion under USSG §5K1.1.

14. SL It is understood and agreed no motion for downward departure based on defendant's cooperation shall be made, under any circumstances, unless defendant's cooperation is deemed "substantial" by the United States Attorney's Office and defendant has fully complied with all provisions of this plea agreement. The United States has made no promise, implied or otherwise, that a departure motion will be made or that defendant will be granted a departure for "substantial assistance." Further, no promise has been made that a motion will be made for departure even if defendant complies with the terms of this agreement in all

respects, but has not, in the assessment of the United States Attorney's Office, provided "substantial assistance."

15. SL The United States will consider the totality of the circumstances, including but not limited to the following factors, in determining whether, in the assessment of the United States Attorney's Office, defendant has provided "substantial assistance" that would merit a government request for a downward departure under USSG §5K1.1 and/or 18 U.S.C. § 3553(e), and if so, what recommendation to make to the Court.

A. the government's evaluation of the significance and usefulness of any assistance rendered by defendant;

B. the truthfulness, completeness, and reliability of any information or testimony provided by defendant;

C. the nature and extent of defendant's assistance;

D. any injuries suffered or any danger or risk of injury to defendant or family members resulting from any assistance provided;

E. the timeliness of any assistance provided by defendant; and

F. Other benefits received by defendant in the plea agreement.

16. SL Defendant understands and agrees the government has gathered extensive evidence in the course of its investigation, and further, no departure

motion will be made on the basis of information or cooperation provided by defendant if such information or cooperation is merely cumulative of information already in the possession of the United States.

17. SL It is understood and agreed that, if the United States makes a motion for departure based upon defendant's "substantial assistance," the Court will decide whether to grant the motion. If the Court grants the motion, it will be for the Court to decide, within the limits of the law and its discretion, how much of a reduction in sentence is warranted.

18. SL Defendant agrees and understands defendant shall not be permitted to withdraw defendant's plea of guilty as to any count or otherwise fail to comply with the terms of this agreement in the event defendant is not satisfied with the government's "substantial assistance" motion decision or the Court's sentence in the case.

SENTENCING PROVISIONS

19. SL Defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Indictment; (2) proven to a jury; or (3) proven beyond a reasonable doubt. Defendant agrees the Court will determine the appropriate sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote

respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of defendant; (5) the need for the sentence to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands the Court will also consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy statements issued as part of the Guidelines. The Court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a review of such things as defendant's role in the offense, criminal history, acceptance or lack of acceptance of responsibility, and other considerations. The Court may also consider other information including any information concerning the background, character, and conduct of defendant.

20. SL During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. Defendant

understands the Court is not bound by the stipulations of the parties, nor is it bound by the sentencing range as determined pursuant to the sentencing guidelines. This plea agreement provides for no guarantee concerning the actual sentence to be imposed. Defendant further understands defendant will have no right to withdraw defendant's guilty plea if the sentence imposed is other than defendant hoped for or anticipated.

21. SL The parties stipulate and agree the United States Sentencing Guidelines should be applied, at least, as follows:

SL **A. Base Offense Level - Drug Trafficking (Chapter 2):** For Counts 1-6, pursuant to USSG §2D1.1, the appropriate base offense level is at least 24 based upon defendant's involvement with at based upon defendant's involvement with at least 28 grams of a mixture or substance containing a detectable amount of cocaine base. The government is free to present evidence and arguments to support the stipulation and, if warranted, a higher base offense level. For Count 6, pursuant to USSG §2D1.2(a), the appropriate base offense level is **one** plus the offense level from §2D1.1 applicable to the total quantity of controlled substances involved in the offense.

SL **B. Acceptance of Responsibility (Chapter 3 adjustment):** The United States agrees for purposes of USSG §3E1.1(b) that defendant timely notified authorities of defendant's intention to enter a guilty plea.

SL **C. Offense Level (Chapter 4):** As to Counts 1-6, pursuant to the Career Offender Guideline, USSG §4B1.1(a), defendant is a career offender and defendant's criminal history category is VI, based upon defendant's criminal history (which includes two prior felony convictions for crimes of violence or controlled substance offenses). Defendant's offense level will be either level 37 (level applicable under USSG §4B1.1(b)) or the offense level that is otherwise applicable, whichever is greater.

SL **D.** No other agreements have been reached, and the parties are free to litigate any and all other applicable adjustments, departures, or cross-references under the United States Sentencing Guidelines,

GENERAL MATTERS

22. SL Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

23. SL If defendant violates **any** term or condition of this cooperation agreement, in **any** respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea

and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING

24. SL Defendant acknowledges defendant has read each of the provisions of this entire agreement with the assistance of counsel and understands its provisions. Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability to fully

understand the terms and conditions of this plea agreement.

25. SL Defendant acknowledges defendant is entering into this agreement freely and voluntarily. Defendant further acknowledges defendant is entering into this agreement without reliance upon any discussions between the government and defendant (other than those specifically described in this agreement), without promise of benefit of any kind (other than any matters contained in this agreement), and without threats, force, intimidation, or coercion of any kind.

VERIFICATION

26. SL This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this cooperation agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement.

Sincerely,

PETER E. DEEGAN, JR
United States Attorney

By, ***s/ Emily K. Nydle***

Emily K. Nydle
Assistant United States Attorney

/s/ Samuel Landfair 3/22/18
Samuel Lavar Landfair Date
Defendant

/s/ Emily K. Nydle 3/_/18 [illigible]
Emily K. Nydle Date
Assistant United States
Attorney

/s/ Pamela Wingert 3/22/18
Pamela A. Wingert Date
Attorney for Defendant

[SEAL]

U. S. Department of Justice

United States Attorney
Northern District of Iowa

EXHIBIT OFFERED UNDER SEAL

[Dated: March 15, 2018]

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111 Seventh Avenue, SE
Box 1
Cedar Rapids, IA 52401 - 2101

319-363-6333
319-363-1990 (fax)
319-286-9258 (tty)

March 15, 2018

Michael K. Lahammer
Lahammer Law Firm
425 2nd Street SE, Suite 1010
Cedar Rapids, IA 52401

Re: *United States v. John Dwayne Phillips, 17-CR-2045*

Dear Mr. Lahammer:

This letter will serve as a memorandum of a SECOND proposed plea agreement between the United States Attorney's Office for the Northern District of Iowa and John Dwayne Phillips, defendant. All references to the "United States" or "government" in this proposed plea agreement refer to the United States Attorney's Office for the Northern District of Iowa and to no other governmental entity. This plea offer will expire at 9:00 a.m. on March 16, 2018, unless the

deadline is otherwise extended in writing by the government. **The government made one prior plea offer dated February 6, 2018. That offer was rejected by defendant.**

CHARGES AND PENALTIES

1. JP Defendant will plead guilty to Count 1 of the Superseding Indictment filed on February 22, 2018. Count 1 charges Conspiracy to Distribute Cocaine and Cocaine Base, in violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A), and 846. Defendant also agrees to the entry of a judgment of forfeiture pursuant to the drug forfeiture allegation included in the Superseding Indictment, except that the drug proceeds amount to be forfeited pursuant to subparagraph (g) of the Superseding Indictment shall be as set forth in the forfeiture section below.

2. JP Solely for purposes of defendant's plea to Count 1 of the Superseding Indictment, the United States will move to withdraw its Notice of Prior Felony Drug Convictions from the Superseding Indictment, as they relate to defendant (following Count 14 of the Superseding Indictment), and will not seek to enhance the mandatory minimum sentence on Count 1 pursuant to 21 U.S.C. § 851 on account of defendant's prior felony drug convictions.

3. JP Defendant understands that because Count 1 involved 280 grams or more of a mixture or substance containing cocaine base ('crack cocaine"), pursuant to 21 U.S.C. § 841(a)(1)(b), Count 1 of the Superseding Indictment is punishable by a mandatory minimum sentence of 10 years' imprisonment and the following

maximum penalties: (1) not more than life imprisonment without the possibility of parole; (2) a fine of not more than $10,000,000; (3) a mandatory special assessment of $100; and (4) a term of supervised release of at least 5 years.

4. JP Defendant understands restitution and a term of supervised release following incarceration may be imposed in addition to any other sentence. Defendant further acknowledges that, if defendant violates, at any time, any condition of supervised release, defendant could be returned to prison for the full term of supervised release and the Court is not required to grant credit for any amount of time defendant may have successfully completed on supervised release. Defendant also understands the U.S. Sentencing Guidelines will provide advisory guidance to the Court in determining a sentence in this case.

5. JP At the time the guilty plea is entered, defendant will admit that defendant is guilty of the charge specified in Paragraph 1 of this agreement. The U.S. Attorney's Office for this District will file no additional Title 21 narcotics-related criminal charges based solely upon information now in our possession. If this office becomes aware of evidence of additional crimes warranting criminal prosecution, all information in our possession could be used in such a prosecution.

6. JP Defendant understands and agrees defendant has the absolute right to plead guilty before a United States District Court Judge. However, if convenient to the Court, defendant agrees to waive and give up this right and to plead guilty before a United States

Magistrate Judge. Defendant understands defendant will not be found guilty unless the United States District Court Judge accepts the plea of guilty or adopts a recommendation of the Magistrate Judge to accept such plea. Defendant agrees to execute the attached consent to proceed before the United States Magistrate Judge.

7. JP Defendant understands and agrees that, consistent with the provisions of 18 U.S.C. § 3143, defendant may be detained pending sentencing. This is regardless of whether a U.S. Magistrate Judge or U.S. District Court Judge presides at the guilty plea hearing and regardless of whether the guilty plea is immediately accepted or formal acceptance is deferred until a later date.

COOPERATION

8. JP Defendant agrees to fully and completely cooperate with the United States Attorney's Office and other law enforcement agencies in the investigation of criminal activity within the Northern District of Iowa and elsewhere.

9. JP Full and complete cooperation with the United States Attorney's Office and law enforcement agencies shall include, but is not limited to, the following, if feasible:

A. providing information to secure search warrants;

B. providing testimony before the federal grand jury and, if necessary, testimony before any Court as a witness in any prosecution growing out of this or any related investigation; in the

event defendant is called upon to testify on behalf of the government in any trial, grand jury or other proceeding and is incarcerated at that time in any local, state or federal institution, defendant agrees to waive any and all claim for witness fees and/or expenses which might otherwise be due under any statute, regulation or other provision of law pertaining to such fees and/or expenses; if, at the time of the testimony, defendant is not incarcerated, defendant agrees to waive witness fees and all local travel expenses;

C. providing any documents or other items in defendant's custody, possession, or under defendant's control that are relevant to this or any related investigation;

D. making defendant available for interview and debriefing sessions by government attorneys and law enforcement agents upon request;

E. recording conversations related to any investigation as requested; and

F. engaging in and conducting other activities as directed by the law enforcement agents in charge of the investigation.

10. JP Defendant will provide complete and truthful information to the government, law enforcement officers, the federal grand jury conducting this investigation, and any court. Defendant will answer all questions concerning this investigation and will not withhold any information. Defendant will neither attempt to protect any person or entity through false

information or omission nor falsely implicate any person or entity. Defendant will at all times tell the truth and nothing but the truth during any interviews or as a witness regardless of who asks the questions – the prosecutors, defense attorneys, investigating agents, probation officers, or the judge. Since the United States insists upon defendant telling the truth and nothing but the truth during any court proceeding, grand jury proceeding, or government interview related to this case, failure to provide complete and truthful information at any such time will constitute a breach of this agreement.

11. JP No testimony or other information provided by defendant pursuant to this plea agreement or pursuant to a proffer agreement to the United States Attorney's Office, federal or state law enforcement officers, employees of the government, the federal grand jury conducting this investigation, or to a court will be used against defendant for the purpose of bringing additional Title 21 criminal charges in the Northern District of Iowa, provided defendant does not violate or withdraw from the terms of this agreement. However, such testimony or other information may and will be used in the following circumstances:

A. derivatively or indirectly, including but not limited to the following: to impeach defendant's credibility; to cross-examine defense witnesses; to re-direct government witnesses; or to rebut any evidence or argument presented by defendant that is inconsistent with information provided by defendant pursuant to this agreement; to develop leads from the

information provided, including for use in determining the applicable guideline range; and use for all other non-evidentiary purposes;

B. by the Court or Probation Office at any time, including at the time of defendant's guilty plea and sentencing in this matter, but shall not be used in determining the applicable guideline range in accordance with USSG §1B1.8, except the information may be used derivatively or indirectly, as provided in subparagraph A;

C. in any proceeding concerning a breach of this agreement;

D. at any time in any criminal prosecution against defendant if defendant fails to provide complete and truthful information as required by the terms of this agreement;

E. in a subsequent prosecution for crimes or acts that were not disclosed by defendant during an interview conducted pursuant to this agreement or any related proffer agreement;

F. in a subsequent prosecution for crimes or acts committed by defendant after the date defendant provided the testimony or information;

G. in a subsequent prosecution for perjury or giving a false statement;

H. in any asset forfeiture matter; and

I. in any civil proceeding.

The above restrictions on use of information and/or testimony in this agreement extend only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date. Defendant understands the obligation of the United States to provide all information in its file regarding defendant to the United States Probation Office and the Court.

12. JP The United States agrees the information provided by defendant to federal or state law enforcement officers on October 11, 2017, shall not be used in determining the applicable guideline range in accordance with USSG §1B1.8. Such information may be used for any other purpose permitted by law, including derivatively or indirectly as provided above. The above restriction on the use of the pre-proffer information provided extends only to acts committed by defendant on or before the date shown at the top of this agreement and does not apply to any prosecution for acts committed by defendant after that date.

13. JP It is understood that, upon request by the government, defendant will voluntarily submit to a polygraph examination. If performance in any polygraph examination suggests a conscious intent to deceive, mislead, or lie and the totality of circumstances convinces the government defendant's statement is not complete and truthful, defendant will be so informed and any and all obligations imposed on the government by this agreement will be rendered null and void. This decision to nullify the agreement

will be in the sole discretion of the United States Attorney's Office for the Northern District of Iowa.

14. JP Defendant shall not reveal or discuss the existence or conditions of this agreement or defendant's cooperation to any person other than defendant's attorney and law enforcement personnel involved in this investigation. Nor shall defendant or any agent of defendant disclose to any person, directly or indirectly, other than to defendant's attorney, without prior written authorization from the government, the true identity or occupation of any law enforcement personnel participating in this investigation in an undercover capacity or otherwise. Nor shall defendant or any agent of defendant disclose to any person, without prior written approval of the government, the location of investigative offices, surveillance locations, or the nature of investigative techniques used by agents in this investigation. Nothing in this paragraph is intended to restrict or prohibit defendant from providing complete and truthful testimony in any court proceeding. Furthermore, this agreement does not prohibit defendant from speaking with an attorney for a party adverse to the government in any litigation concerning defendant's possible testimony in that litigation. While defendant is under no obligation to speak with such an attorney, defendant is free to do so if defendant chooses. That decision rests solely with defendant as it does with any witness.

15. JP Nothing in this agreement requires the government to accept any cooperation or assistance defendant may offer or propose. The decision whether and how to use any information and/or cooperation

defendant provides (if at all) is in the exclusive discretion of the United States Attorney's Office.

STIPULATION OF FACTS

16. JP By initialing each of the following paragraphs, defendant stipulates to the following facts. Defendant agrees these facts are true and may be used to establish a factual basis for defendant's guilty plea, sentence, and any forfeiture. Defendant has been advised by defendant's attorney of defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410. Defendant waives these rights and agrees this stipulation may be used against defendant at any time in any proceeding should defendant violate or refuse to follow through on this plea agreement, regardless of whether the plea agreement has been accepted by the Court. Defendant agrees that the stipulation below is a summary of the facts against defendant and does not constitute all of the facts the government would be able to prove at trial and may be able to prove to the Court in accordance with this agreement.

JP A. Beginning no later than April 2015, and continuing through about March 2017, two or more persons reached an agreement to distribute cocaine base ("crack cocaine"). Defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached, or at some later time while it was still in effect. At the time the defendant joined in the agreement or understanding, defendant knew that the purpose of the agreement or

understanding was to distribute cocaine and crack cocaine. The agreement or understanding included: Alston Campbell, Jr.; Alston Campbell, Sr.; William Campbell; A.M.; defendant, W.C., Darius Shears; and others. The agreement or understanding involved the distribution of at least 280 grams of crack cocaine. In other words, the distribution of 280 grams of crack cocaine was a necessary or natural consequence of the conspiracy and was reasonably foreseeable to defendant. Acts in furtherance of the agreement or understanding took place in Waterloo, Iowa, which is in the Northern District of Iowa.

JP B. During in 2016, law enforcement in Waterloo began investigating the distribution of crack cocaine by Alston Campbell, Jr. and his coconspirators. This investigation included the use of confidential informants and undercover agents to purchase crack cocaine from Alston Campbell, Jr. and his coconspirators. The investigation eventually included the use of wiretaps to intercept phone calls and text messages.

JP C. A.M. sold crack cocaine to a confidential informant on March 24, 2016 (.68 grams), April 8, 2016(.73 grams), April 26, 2016 (.35 grams), and October 6, 2016 (.21 grams). On each of these occasions, A.M. intentionally transferred crack cocaine to another person

and knew that the substance he transferred was crack cocaine.

JP D. On April 28, 2016, law enforcement executed a search warrant at A.M.'s residence on Quincy Street in Waterloo, Iowa. At A.M.'s residence, law enforcement located 57.24 grams of crack cocaine, $589, and a digital scale.

JP E. Law enforcement officers on scene interviewed A.M. and he identified his source as defendant. A.M. said that he owed defendant for the crack cocaine found at A.M.'s residence. A.M. said he had been going to defendant for a year or two and was paying $1,400 to $1,600 an ounce. A.M. stated that defendant was getting to receive a kilo and half that morning. A.M. said that he had acquired crack cocaine 10-15 or more times from defendant. Defendant acknowledges he sold cocaine to A.M. but denies he sold A.M. crack cocaine and denies he was to receive a large quantity of cocaine on April 28, 2016.

JP F. On May 3, 2016 ($500), May 6, 2016 ($2,300), and May 20, 2016 ($1,400), A.M., while working as a confidential informant, made controlled payments to defendant for money owed to defendant for drugs previously provided to A.M. for distribution by A.M..

JP G. Defendant sold cocaine (55.66 grams of salt of cocaine) to A.M., working as a confidential

informant, on May 10, 2016. Defendant intentionally transferred cocaine to another person and knew that the substance he transferred was a controlled substance.

JP H. On May 16, 2016, law enforcement officers conducted three search warrants at locations associated with defondant. At a residence on Kern Street, defendant began cooperating with law enforcement and named his source at Alston Campbell Jr. and said Campbell Jr. had a kilogram level supplier of cocaine. During the search of the residence, law enforcement officers recovered 86.41 grams of cocaine, 21.78 grams of a white powdery substance containing no controlled substance, 9 grams of marijuana, U.S. currency, business notes, and pre-serialized cash from previous transactions. At the New World Lounge located on Riehl Street, in Waterloo, law enforcement recovered $7,400.

JP I. On May 20, 2016 ($1,400), June 8, 2016 ($1,400), June 30, 2016 ($2,000), and July 27, 2016 ($2,000), defendant, working as a confidential informant, made a controlled payment to Alston Campbell, Jr. for money owed to Campbell, Jr., for cocaine previously provided to defendant by Campbell, Jr..

JP J. Between about May 30, 2016 and November 27, 2016, defendant and Alston Campbell, Jr., communicated by phone with each other at least 90 times.

JP K. On March 31, 2017, law enforcement officers conducted search warrants at multiple locations including; William Campbell's residence on Kern where law enforcement recovered powder cocaine residue, a firearm, $3,064 in cash, a 2006 Lexus, and a 2004 Mercedes Benz; Alston Campbell, Jr.'s residence where law enforcement recovered a gram of cocaine residue, 77.57 grams of lidocaine and caffeine, drug cookware, 6 handguns, and ammunition; a storage unit used by Alston Campbell, Jr. on Logan Avenue in Waterloo where 58 grams of cocaine and 3 grams of crack cocaine were found, and a residence belonging to W.C. where officers found a paraphernalia and a digital scale. All of these items represented proceeds or were used to facilitate the drug conspiracy.

JP L Although the following convictions will not be used to enhance the statutory penalty for Count 1, defendant agrees he was previously convicted of: Delivery of a Controlled Substance, in case number FECR047150, in the Iowa District Court for Black Hawk County, on or about April 20, 1995; Delivery of a Controlled Substance, Second Offender, in case number FECR076232, in the Iowa District Court for Black Hawk County, on or about March 12, 1999; and Possession of Marijuana, Second Offense, in case number OWCR189967, in the Iowa District Court for

Black Hawk County, on or about August 2, 2013.

SENTENCING PROVISIONS

17. JP Defendant understands and agrees to be sentenced based on facts to be found by the sentencing judge by a preponderance of the evidence and agrees facts essential to the punishment need not be (1) charged in the Indictment; (2) proven to a jury; or (3) proven beyond a reasonable doubt. Defendant agrees the Court will determine the appropriate sentence after considering a variety of factors, including: (1) the nature and circumstances of the offense and the history and characteristics of defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence to afford adequate deterrence to criminal conduct; (4) the need for the sentence to protect the public from further crimes of defendant; (5) the need for the sentence to provide defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (6) the need to avoid unwarranted sentencing disparities among defendants with similar criminal records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. Defendant understands the Court will also consider the kinds of sentence and the sentencing range established by the United States Sentencing Guidelines for the applicable category of offense(s) committed by defendant and will consider any pertinent policy

statements issued as part of the Guidelines. The Court will consider relevant adjustments under the United States Sentencing Guidelines, which will include a review of such things as defendant's role in the offense, criminal history, acceptance or lack of acceptance of responsibility, and other considerations. The Court may also consider other information including any information concerning the background, character, and conduct of defendant.

18. JP During plea negotiations the parties may have discussed how various factors could impact the Court's sentencing decision and the determination of the advisory sentencing guidelines range. The parties agree, however, that discussions did not result in any express or implied promise or guarantee concerning the actual sentence to be imposed by the Court. Defendant understands the Court is not bound by the stipulations of the parties, nor is it bound by the sentencing range as determined pursuant to the sentencing guidelines. This plea agreement provides for no guarantee concerning the actual sentence to be imposed. Defendant further understands defendant will have no right to withdraw defendant's guilty plea if the sentence imposed is other than defendant hoped for or anticipated.

19 . JP The parties stipulate and agree the United States Sentencing Guidelines should be applied, at least, as follows:

JP A. **For Count 1, pursuant to USSG §.2D1.1,** the appropriate base offense level is at least 30 based upon defendant's involvement with at least 280 grams of a mixture or substance

containing a detectable amount of cocaine base, a Schedule II controlled substance. The government is free to present evidence and arguments to support the stipulation and, if warranted, a higher base offense level and defendant understands the United States asserts based on information currently known that offense level is likely at least a level 34 based on defendant's involvement with at least 2.8 kilograms of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance.

JP B. **Acceptance of Responsibility (Chapter 3 adjustment):** The defendant agrees for purposes of USSG §3E1.1(b) that defendant id not timely notified authorities of defendant's intention to enter a guilty plea and understands the government will not be filing a motion for the third level of acceptance.

JP C. **Criminal History (Chapter 4):** No agreement has been reached regarding defendant's criminal history. The parties reserve the right to contest the Probation Office's determination of defendant's criminal history and criminal history category under Chapter Four of the sentencing guidelines. In addition, defendant understands that, if defendant's criminal history would result in a higher base offense

level under any guideline, the government is free to seek such a base offense level.

JP D. No other agreements have been reached, and the parties are free to litigate any and all other applicable adjustments, departures, or cross-references under the United States Sentencing Guidelines, and any variances of any kind from the advisory guideline range, in any amount, in either direction.

20. JP Defendant, defendant's attorney, and the United States may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, so long as the offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information and controlling authority to the Probation Office and Court for use in preparing and litigating adjustments, enhancements, or departures scored in the presentence report, including offering statements made by defendant at any time.

21. JP The parties are free to contest or defend any ruling of the Court, unless otherwise limited by this agreement, on appeal or in any other postconviction proceeding.

POTENTIAL FOR DEPARTURE OR CREDIT

22. JP The United States may, but shall not be required to, make a motion pursuant to §5K1.1 of the United States Sentencing Guidelines in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United

States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. No downward departure for "substantial assistance" may be made absent a government motion under §5K1.1.

23. JP The United States may, but shall not be required to, make a motion pursuant to 18 U.S.C. § 3553(e) allowing the Court to depart below the mandatory minimum sentence required by statute for any offense to which defendant has agreed to plead guilty in the event defendant provides "substantial assistance." This decision shall be in the sole discretion of the United States Attorney's Office and will be made independently with respect to each applicable count to which defendant has agreed to plead guilty. The government may make this motion as to any, all, or none of the counts to which defendant has agreed to plead guilty. Defendant understands and agrees any motion for "substantial assistance" under USSG §5K1.1, as described above, is independent from a possible motion under this paragraph. The United States may make either, neither, or both motions with respect to each applicable count to which defendant has agreed to plead guilty. This decision shall be in the sole discretion of the United States Attorney's Office. No downward departure below a mandatory minimum may be made absent a government motion under 18 U.S.C. § 3553(e) separate from a motion under USSG §5K1.1.

24. JP It is understood and agreed no motion for downward departure based on defendant's cooperation shall be made, under any circumstances, unless defendant's cooperation is deemed "substantial" by the United States Attorney's Office and defendant has fully complied with all provisions of this plea agreement. The United States has made no promise, implied or otherwise, that a departure motion will be made or that defendant will be granted a departure for "substantial assistance." Further, no promise has been made that a motion will be made for departure even if defendant complies with the terms of this agreement in all respects, but has not, in the assessment of the United States Attorney's Office, provided "substantial assistance."

25. JP The United States will consider the totality of the circumstances, including hut not limited to the following factors, in determining whether, in the assessment of the United States Attorney's Office, defendant has provided "substantial assistance" that would merit a government request for a downward departure under USSG §5K1.1 and/or 18 U.S.C. § 3553(e), and if so, what recommendation to make to the Court:

A. the government's evaluation of the significance and usefulness of any assistance rendered by defendant;

B. the truthfulness, completeness, and reliability of any information or testimony provided by defendant;

C. the nature and extent of defendant's assistance;

D. any injuries suffered or any danger or risk of injury to defendant or family members resulting from any assistance provided;

E. the timeliness of any assistance provided by defendant; and

F. Other benefits received by defendant in the plea agreement. including any decision by the United States to forego multiple enhancements under 21 U.S.C. § 851 that would otherwise have required a life sentence, a decision that already provides a significant benefit to defendant.

26. JP Defendant understands and agrees the government has gathered extensive evidence in the course of its investigation, and further, no departure motion will be made on the basis of information or cooperation provided by defendant if such information or cooperation is merely cumulative of information already in the possession of the United States.

27. JP It is understood and agreed that, if the United States makes a motion for departure based upon defendant's "substantial assistance," the Court will decide whether to grant the motion. If the Court grants the motion, it will be for the Court to decide, within the limits of the law and its discretion, how much of a reduction in sentence is warranted.

28. JP Defendant agrees and understands defendant shall not be permitted to withdraw defendant's plea of guilty as to any count or otherwise fail to comply with the terms of this agreement in the event defendant is not satisfied with the government's

"substantial assistance" motion decision or the Court's sentence in the case.

FINANCIAL MATTERS

29. JP Defendant agrees to pay a special assessment of $100 as required by 18 U.S.C. § 3013. Defendant may pay the special assessment to the Clerk of Court using the enclosed payment coupon. Defendant or defendant's representative will send or deliver the special assessment payment to the U.S. District Clerk of Court, 111 Seventh Avenue, SE, Box 12, Cedar Rapids, IA 52401. If defendant does not pay the Clerk of Court by credit card, payment must be in the form of a money order made out to the "U.S. District Clerk of Court." The special assessment must be paid before this signed agreement is returned to the U.S. Attorney's Office. If defendant fails to pay the special assessment prior to the sentencing, defendant stipulates that a downward adjustment for acceptance of responsibility under USSG §3E1.1 is not appropriate unless the Court finds defendant has no ability to pay 'prior to the sentencing.

FORFEITURE

30. JP Defendant agrees to forfeit and abandon any and all claim to items or cash seized by law enforcement from defendant at the time of any arrest or search, including defendant's arrest and the search of defendant's residence and business on May 16, 2016, or in any of the vehicles or currency alleged in the drug forfeiture allegation of the Superseding Indictment (except that the "drug proceeds" amount shall be as set out below, and not the amount alleged in subparagraph

(g) in the Superseding Indictment). Defendant also waives any right to additional notice of the forfeiture and abandonment of any such money or property. Defendant stipulates this plea agreement constitutes notice under Local Criminal Rule 57.3(c) regarding the disposal of any exhibits or evidence related to this matter. Defendant understands that, from this date forward, any local, state, or federal law enforcement agency may take custody of and use, dispose of, and transfer these items in any way the agency deems appropriate.

31. JP Defendant agrees to voluntarily disclose, forfeit, abandon, give up, and give away to the United States, or any law enforcement agency designated by the United States, prior to the date of sentencing herein, any right, title and interest defendant may have in property subject to forfeiture under the United States Code, including 21 U.S.C. §§ 853 and 881, and 18 U.S.C. §§ 924, 981 and 982, and any right, title and interest defendant may have in the following items:

A. all controlled substances that have been possessed in violation of federal law, all raw materials, products, and equipment of any kind that are or have been used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of federal law;

B. all property that is or has been used or intended for use as a container for the items referred to in subparagraph A;

C. all conveyances, including aircraft, vehicles, or vessels, that are or have been used, or are intended for use, to transport or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of items referred to in subparagraph A;

D. all monies, negotiable instruments, securities, or other things of value, furnished or intended to be furnished by any person in exchange for a controlled substance in violation of federal drug laws, and all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used or intended to be used to facilitate any violation of federal drug laws;

E. all real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements used, or intended to be used, in any manner or part to commit or to facilitate the commission of any violation of a federal drug law that is a felony;

F. any and all firearms and ammunition in defendant's care, custody or control during the time period of defendant's illegal conduct; and

G. any other property deemed forfeitable under the provisions of 21 U.S.C. § 853 and/or § 881.

32. JP Defendant specifically agrees to forfeit any and all interest in the property specified in the Superseding Indictment drug forfeiture allegation, subparagraphs (a)-(f), as the proceeds of drug activity and/or property that facilitated a drug crime.

Defendant further stipulates and agrees pursuant to Rule 32.2(a) to the entry of a forfeiture money judgment in an amount of up to $25,000, in lieu of the amount alleged in Superseding Indictment subparagraph (g), which sum shall be ordered due and payable immediately. This $25,000 represents drug proceeds received from defendant's illegal activity. Upon completion of the attached financial statement, and, in the sole discretion of the United States, following an examination of defendant's financial condition, defendant agrees the United States may set the amount of the forfeiture monetary judgment to be paid by defendant, in lieu of the amount alleged in the Superseding Indictment subparagraph (g), in any amount no to exceed $25,000, or may, in its sole discretion elect to waive imposition of a forfeiture monetary judgment in this case.

33. JP If any of the property described in the above paragraphs, as a result of any act or omission of defendant:

A. cannot be located upon the exercise of due diligence;

B. has been transferred or sold to, or deposited with, a third party;

C. has been placed beyond the jurisdiction of the Court;

D. has been substantially diminished in value; or

E. has been commingled with other property that cannot be divided without difficulty;

defendant shall, prior to sentencing, provide payment to the government by cashier's or certified check up to the value of such property. Alternatively, defendant shall consent to an order of forfeiture of any other property up to the value of any such property.

34. JP Within two weeks of signing this agreement, defendant agrees to provide the United States Attorney's Office for the Northern District of Iowa with written documentation of defendant's ownership or right, title, or interest in the aforementioned property. In the event defendant is unable to provide documentation of defendant's right, title, or interest in such property within two weeks of signing this agreement, defendant shall relinquish custody of that property to the United States at that time, or at any subsequent time agreed to by the United States, upon demand of the government.

35. JP By this agreement defendant not only agrees to forfeit all interests in the property referred to in the above paragraphs, but agrees to take whatever steps are necessary to convey any and all of defendant's right, title, and interest in such property to the United States. These steps include, but are not limited to, the surrender of title, the signing ofa quit claim deed, the signing of a consent decree, the signing of abandonment papers, the signing of a stipulation of facts regarding the transfer and basis for the forfeiture, and the signing any other documents necessary to effectuate such transfers. Defendant further agrees to fully assist the government in the recovery and return to the United States of any assets or portions thereof as described above wherever located. Defendant further

agrees to make a full and complete disclosure of all assets over which defendant exercises control and those held or controlled by a nominee. Defendant further agrees to be polygraphed on the issue of assets if it is deemed necessary by the United States before defendant's sentencing.

36. JP Defendant agrees not to waste, sell, dispose of, or otherwise diminish the value of any items or property referred to in the above paragraphs or allow others to do so. Defendant further agrees not to contest any forfeiture action or proceeding brought on behalf of any government agency involved in this investigation that seeks to forfeit property described in the above paragraphs.

37. JP Defendant agrees and understands that, should defendant fail to truthfully account for all of defendant's holdings, proceeds, assets, or income, whether derived from a legal source or not, for the period charged, defendant shall be deemed to have materially breached this agreement. The decision as to whether defendant has been complete, forthright, and truthful in this regard shall be in the sole discretion of the United States Attorney's Office, taking into consideration the totality of the circumstances and the totality of the evidence developed in the course of the investigation.

GENERAL MATTERS

38. JP Defendant shall not violate any local, state, or federal law during the pendency of this agreement. Any law violation, with the exception of speeding or parking violations, committed by defendant will

constitute a breach of this agreement and may result in the revocation of the entire agreement or any of its terms. Defendant or defendant's attorney shall notify this office within 48 hours if defendant is questioned, charged, or arrested for any law violation.

39. JP If defendant violates **any** term or condition of this plea agreement, in **any** respect, the entire agreement will be deemed to have been breached and may be rendered null and void by the United States. Defendant understands, however, the government may elect to proceed with the guilty plea and sentencing. These decisions shall be in the sole discretion of the United States. If defendant does breach this agreement, defendant faces the following consequences: (1) all testimony and other information defendant has provided at any time (including any stipulations in this agreement) to attorneys, employees, or law enforcement officers of the government, to the Court, or to the federal grand jury may and will be used against defendant in any prosecution or proceeding; (2) the United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against defendant and to use any information obtained directly or indirectly from defendant in those additional prosecutions; and (3) the United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

40. JP Defendant waives all claims defendant may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment to the Constitution. Defendant also agrees any delay between the signing of this agreement and

the final disposition of this case constitutes excludable time under 18 U.S.C. § 3161 et seq. (the Speedy Trial Act) and related provisions.

ACKNOWLEDGMENT OF DEFENDANT'S UNDERSTANDING

41. JP Defendant acknowledges defendant has read each of the provisions of this entire plea agreement with the assistance of counsel and understands its provisions, Defendant has discussed the case and defendant's constitutional and other rights with defendant's attorney. Defendant understands that, by entering a plea of guilty, defendant will be giving up the right to plead not guilty; to trial by jury; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in defendant's defense; to remain silent and refuse to be a witness by asserting defendant's privilege against self-incrimination; and to be presumed innocent until proven guilty beyond a reasonable doubt. Defendant agrees defendant's attorney has represented defendant in a competent manner and has no complaints about that lawyer's representation. Defendant states defendant is not now on or under the influence of, any drug, medication, liquor, or other substance, whether prescribed by a physician or not, that would impair defendant's ability to fully understand the terms and conditions of this plea agreement.

42. JP Defendant acknowledges defendant is entering into this plea agreement and is pleading guilty freely and voluntarily because defendant is guilty and for no other reason. Defendant further acknowledges defendant is entering into this agreement without

reliance upon any discussions between the government and defendant (other than those specifically described in this plea agreement), without promise of benefit of any kind (other than any matters contained in this plea agreement), and without threats, force, intimidation, or coercion of any kind. Defendant further acknowledges defendant's understanding of the nature of each offense to which defendant is pleading guilty, including the penalties provided by law.

43. JP Defendant further understands defendant will be adjudicated guilty of each offense to which defendant will plead guilty and will thereby be deprived of certain rights, including, but not limited to, the right to vote, to hold public office, to serve on a jury, and to possess firearms and ammunition. Defendant understands the government reserves the right to notify any state or federal agency by whom defendant is licensed, or with whom defendant does business, of the fact of defendant's conviction.

VERIFICATION

44. JP This letter constitutes the entire agreement between the parties. No other promises of any kind, express or implied, have been made to defendant by the United States or its agents. No additional agreement may be entered into unless in writing and signed by all parties. The agreement will not be deemed to be valid unless and until all signatures appear where indicated below.

If this agreement is acceptable, please have your client indicate acceptance by placing initials on the line preceding each of the above paragraphs and by signing

below where indicated. By initialing each paragraph and signing below, defendant acknowledges defendant has read, fully understands, and agrees to each paragraph of this agreement. Please return all enclosures, completed and signed, with this signed letter to the U.S. Attorney's Office.

Please complete the enclosed Consent to Proceed Before the Magistrate Judge. This document is needed to allow the Magistrate Judge to receive defendant's guilty plea.

Finally, please remember to pay the special assessment as agreed above.

Thank you for your cooperation.

Sincerely,

PETER E. DEEGAN, JR.
United States Attorney

By: */s/ Emily K. Nydle*

Emily K. Nydle
Assistant United States Attorney

ENCLOSURES:
Financial Statement Form

The undersigned defendant, with advice of counsel, accepts the terms of this plea agreement. The undersigned Assistant United States Attorney accepts the terms of the executed plea agreement.

/s/ John Phillips 3/15/18
John Dwayne Phillips Date
Defendant

/s/ Emily K Nydle 3/16/18
Emily K. Nydle Date
Assistant United States Attorney

/s/ Michael K. Lahammer 3/15/18
Michael K. Lahammer Date
Attorney for Defendant