IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
July 2, 2020
Lyle W. Cayce
Clerk

No. 19-30394

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

KADEEM BURDEN; TIMMY SCOTT, also known as Timothy Scott,

Defendants–Appellants.

Appeals from the United States District Court
for the Middle District of Louisiana

Before SMITH, HIGGINSON, and ENGELHARDT, Circuit Judges.

JERRY E. SMITH, Circuit Judge:

Kadeem Burden and Timmy Scott appeal their convictions and sentences for unlawfully possessing firearms as felons. We affirm.

I.

Police officer Jesse Barcelona was driving his patrol car when he approached an intersection. Facing in the perpendicular direction were an SUV and a Mercedes. As Barcelona passed through the intersection, two or three

black males in white t-shirts and blue jean shorts exited the SUV, approached the Mercedes, and began repeatedly discharging firearms into it. When Barcelona turned his car around to return to the scene, the SUV sped away, leaving the shooters running after it with Barcelona in pursuit (the occupants of the Mercedes, providentially it would seem, were uninjured).

The shooters turned to look at Barcelona's approaching car. Barcelona "could tell that one [of them] was still armed with what appeared to be an AK-47 rifle." Further, "they appeared to have something [black] covering their face[s]." They then ran into the local residential block, around which Barcelona (and other officers) secured a perimeter while awaiting the arrival of a canine unit.

Shortly thereafter, an officer at the perimeter spotted two black males, "fully clothed," "come out . . . from behind a residence and then run back in." "Under a minute" later, two black men "came back out . . , not clothed . . . [and were] [s]weating pretty profusely." With hands raised, the two men shouted "[w]e just got robbed, we just got robbed." The officers "[took] them into custody[and] place[d] them in the back of" a police car, awaiting further instruction.

Inside the perimeter and assisted by a dog tracker, officers (including Barcelona) recovered various items. By one side of a house they found "a black plastic Halloween-style mask on the ground," and underneath the other side they found another such mask and two firearms.[1] Before completing their search, the unit discovered two cellular phones on the ground and "a pair of blue jean shorts and a pair of white Nike shoes" nearby.

[1] The firearms were later identified as a Smith & Wesson 9mm pistol and a Century Arms 7.62x39mm rifle pistol.

Upon returning to the perimeter, Barcelona went to the police car, where he "observed Mr. Kadeem Burden [ ] wearing only black or dark-colored underwear and some socks, and Mr. Scott was only wearing . . . [b]lue jean-style shorts." Based on their general physical appearance, Barcelona "firmly believe[d] that those were the two individuals [he] observed shooting the firearms," though he had not seen the shooters' faces uncovered.

DNA and forensic examination linked Burden to one of the weapons and Scott to both phones and one of the masks. Further examination established that the nineteen bullets came from one or both of the firearms discovered at the scene.

II.

Burden and Scott were charged in an indictment alleging solely that they, "having each individually been convicted of a crime punishable by imprisonment for a term exceeding one year, a felony, knowingly did possess firearms . . . [that] had previously been shipped and transported in interstate commerce" in violation of 18 U.S.C. § 922(g)(1). The indictment did not allege that they knew of their felon status at the time of their possession, though both stipulated at trial that they were in fact felons at the time of their arrest.

Days after his federal arrest, Burden admitted to the Louisiana Parole Board that he had violated the conditions of his state parole by possessing a firearm. That prompted Scott to file a severance motion, which the district court denied. Notwithstanding that denial, the court instructed the jury that it was not to consider Burden's admission as evidence against Scott.

At trial, evidence was presented establishing that the defendants, upon surrendering to the officers, had claimed that they had just been robbed of their clothing (presumably by the shooters). That jury failed to reach a verdict.

Before the second trial, the district court ordered that the parties obtain its prior approval before "mention[ing] or elicit[ing] any testimony" regarding the supposed robbery. No party objected; neither did any party proceed to seek such approval. The second jury thus heard nothing about the defendants' robbery-related statements. After receiving the court's instructions outlining the elements of the crime—including that "[t]he government must prove that the defendant knew that he possessed a firearm, but not that the defendant knew that he was a qualifying felon"—the second jury found both men guilty.

The final presentence reports ("PSRs") recommended finding that the defendants "used and possessed" the firearms "in connection with attempted first degree murder." Neither defendant objected to his PSR, whose findings the district court therefore adopted.

III.

The appeal presents four broad issues: (1) the denial of Scott's motion for severance, (2) errors relating to the defendants' knowledge (or lack thereof) that they were felons at the time of the incident, (3) the district court's limitation on evidence or testimony regarding the defendants' robbery claims, and (4) the cross-reference to attempted first-degree murder at sentencing.

A.

A criminal defendant enjoys "the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. "Ordinarily, a witness whose testimony is introduced at a joint trial is not considered to be a witness 'against' a defendant if the jury is instructed to consider that testimony only against a codefendant." *Richardson v. Marsh*, 481 U.S. 200, 206 (1987). There is, however, "a narrow exception to this principle: . . . [W]hen the facially incriminating confession of a nontestifying codefendant is introduced at [a] joint trial," it

is not enough for "the jury [to be] instructed to consider the confession only against the codefendant." *Id.* at 207. *See also Bruton v. United States*, 391 U.S. 123, 135–36 (1968).

Otherwise, "even if prejudice is shown . . . [Rule 14] leaves the tailoring of the relief to be granted, if any, to the district court's sound discretion." *Zafiro v. United States*, 506 U.S. 534, 538–39 (1993). "[A] district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Id.* at 539. "When the risk of prejudice is high, a district court is more likely to determine that separate trials are necessary, but . . . less drastic measures, such as limiting instructions, often will suffice to cure any risk of prejudice." *Id.* And generally speaking, "juries are presumed to follow [such] instructions." *Id.* at 540.

The district court denied severance. We review that denial for abuse of discretion. *See id.* at 541. That review is "exceedingly deferential," requiring that "[t]he appellant [ ] show that (1) the joint trial prejudiced him to such an extent that the district court could not provide adequate protection; and (2) the prejudice outweighed the government's interest in economy of judicial administration." *United States v. Xie*, 942 F.3d 228, 240–41 (5th Cir. 2019) (quotation marks omitted).

Scott, for his part, recognizes the herculean nature of his task. He "acknowledges the challenge he faces with the Supreme Court['s] holding [in *Marsh*, 481 U.S. at 211, that] 'the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when . . . the confession is redacted to eliminate not only the defendant's name, but any reference to his or her existence.'" Such redaction did occur, Scott concedes: "Burden's statement did not mention Scott, and other

evidence was [indeed] needed to show the linkage to [Scott]."

Scott would have us nevertheless hold that the district court abused its discretion. Although Burden's redacted statement made no mention of Scott, "the effort needed to" link the statement to Scott "was slight, and the prejudice was great, since the whole focus of the Government's case was that only two shooters were involved, and the only two shooters were the defendants on trial." And the jury instruction not to consider Burden's statement as evidence against Scott "was equivalent to asking the jurors not to look at the proverbial pink elephant, inevitably the other defendant before them."[2]

That contention is without merit. "The key analytic factor in [*Marsh*] is that the statement did not clearly refer to the defendant and could only be linked through additional evidentiary material." *United States v. Powell*, 732 F.3d 361, 376–77 (5th Cir. 2013). Scott claims that Burden's statement should be distinguished because other evidence too easily allowed him to be linked to the statement, but "the source of the linking factors . . . [is not] significant. Rather, [*Marsh*] focuses on whether the statement facially implicates the defendant—or at least acknowledges the existence of another person. Here, [Burden's] statement[] do[es] not." *Id*. at 377.

Scott's true qualm is not with Burden's statement but with the mountain of other evidence against him. As Scott himself notes, "eyewitness and scientific evidence point[ed] to the two defendants on trial." Specifically, Barcelona testified to a belief that Scott and Burden were the shooters he witnessed; DNA evidence linked Scott to one of the masks and Burden to one of the firearms; and Scott and Burden were found together, first fully clothed, then partially

[2] By "not to look at the proverbial pink elephant," we assume that Scott is referring to a popular exercise in which one is challenged not to imagine a pink elephant, the point being that an instruction not to think of something all but ensures that the person will think of it.

naked less than a minute later. Any potential ease in linking Burden's statement to Scott arose not from the mere fact that they were tried together but because other evidence independently and overwhelmingly implicated Scott. That kind of linkage is not unduly prejudicial. *See United States v. Chapman*, 851 F.3d 363, 379 (5th Cir. 2017).

By stating that the limiting instruction was "equivalent to asking the jurors not to look at the proverbial pink elephant," Scott implicitly attacks the very legitimacy of limiting instructions. It might be, as Scott suggests, that instructing a jury not to consider certain testimony in fact highlights that testimony and, perversely, increases the odds that the jury should consider it. But we assume that juries can and do sort through complex issues.[3] In any case, "juries are presumed to follow their instructions." *Zafiro*, 506 U.S. at 540.[4] Scott has not overcome that presumption; the district court did not abuse its discretion.

B.

After the convictions but before this appeal, the Supreme Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (2019). It "held that the *mens rea* requirement in 18 U.S.C. § 924(a)(2)—'knowingly'—applies to both the 'conduct' and 'status' elements in § 922(g)." *United States v. Huntsberry*, 956 F.3d 270, 281 (5th Cir. 2020). "That is, the Government 'must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status [here, being a felon] when he possessed it.'" *Id.* (quoting *Rehaif*,

[3] *See Marsh*, 481 U.S. at 206 ("[It is an] almost invariable assumption of the law that jurors follow their instructions, which we have applied in many varying contexts.") (citation omitted).

[4] *See also Chapman*, 851 F.3d at 379 ("The defendant must [ ] show that the district court's instructions to the jury did not adequately protect him from any prejudice resulting from the joint trial." (ellipsis omitted)).

139 S. Ct. at 2194).

Both the government and the district court operated on the pre-*Rehaif* assumption that a conviction for firearms possession under 18 U.S.C. § 922(g)(1) need not require proof that the defendants knew they were convicted felons. Hence, (1) the indictment did not allege that they possessed such knowledge; (2) the government did not present any relevant evidence thereto; and (3) the court explicitly instructed that "[t]he government . . . [need] not [prove] that the defendant knew that he was a qualifying felon."

As it happens, the defendants also assumed that a conviction would not require a showing that they knew they were convicted felons. They did not object to the indictment's failure to allege subjective knowledge of their felon status; they did not suggest in their Rule 29 motion that the government's case should be dismissed for lack of proof suggesting subjective knowledge of the felonies; and they did not object to the relevant portion of the instructions. The defendants concede that their argument—at least regarding the indictment and instructions—is unpreserved and that, accordingly, the proper standard of review is plain error.[5]

It is unclear from their briefing whether the defendants' plain-error concession applies to their sufficiency-of-the-evidence claim. The government appears to accept that *de novo* review applies, and indeed this court has recently opined that "[w]e review the sufficiency of the evidence de novo . . . [if the defendant] made general objections to the sufficiency of the evidence." *United States v. Staggers*, No. 18-31213, 2020 U.S. App. LEXIS 18085, at *14,

[5] Some circuits have held that *Rehaif* error is structural and therefore reversible even absent prejudice. *See, e.g.*, *United States v. Gary*, 954 F.3d 194, 203 (4th Cir. 2020). This circuit, however, has "held the opposite—that defendants must show that any error under *Rehaif* actually prejudiced the outcome." *United States v. Lavalais*, 960 F.3d 180, 184 (5th Cir. 2020).

961 F.3d 745, ___ (5th Cir. June 9, 2020).[6] Because our disposition of the claim remains unaffected, we assume, *arguendo* only, that *de novo* review applies to the insufficiency claim.

1.

"Plain error requires that there was (1) error, (2) that is plain, and (3) that affects substantial rights." *United States v. Anderton*, 901 F.3d 278, 282 (5th Cir. 2018) (quotation marks omitted). If those conditions are met, this court "should exercise its discretion to correct the forfeited error if the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1905 (2018).

The defendants have identified errors meeting the first two prongs. "The district court's failure to instruct the jury concerning [the defendants'] knowledge of [their] felon status[es] was plainly erroneous," *Huntsberry*, 956 F.3d at 283, as was the government's "failure to inform [them] of the knowledge element as required in *Rehaif*," *Lavalais*, 960 F.3d at 187. Our analysis thus turns to the third prong—whether the identified errors affected the defendants' substantial rights.

Under that prong, the defendant[7] bears the burden to "demonstrate 'a reasonable probability that, but for [the error claimed], the result of the proceeding would have been different.'" *Id.* (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 82 (2004)). "The probability of a different result must be

---

[6] *But see Huntsberry*, 956 F.3d at 282 (applying plain-error review because "the objection targeted a different element of the charged crime: whether [the defendant] knowingly possessed the firearms, not whether he knew his felon status").

[7] The shifted burden is "one important difference" between harmless-error review of preserved errors and plain-error review of unpreserved errors: In the latter cases, such as this one, "[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice." *United States v. Olano*, 507 U.S. 725, 734 (1993).

sufficient to undermine confidence in the outcome of the proceedings." *Huntsberry*, 956 F.3d at 283. That standard, *i.e.*, "[d]emonstrating prejudice under *Rehaif*[,] will be difficult for most convicted felons for one simple reason: Convicted felons typically know they're convicted felons[,] [a]nd they know the Government would have little trouble proving that they knew." *Lavalais*, 960 F.3d at 184.

This case is a perfect illustration. Burden's arrest for felony possession "occurred only days [after he was] released on [his] first parole for simple robbery," and Scott had been paroled from a three-year suspended prison sentence for simple burglary only a few months earlier.[8] Moreover, both defendants stipulated at trial that they were felons. The notion that either was unaware, as of October 2017, that he had been convicted of a felony, or that the government would have been unable to prove it, is unrealistic.[9] Accordingly, the defendants cannot meet their burden to show that *Rehaif* error affected their substantial rights.

2.

In reviewing a sufficiency-of-the-evidence claim, we ask whether, based on the evidence presented at trial, any "reasonable jury 'could have found the essential elements of the crime beyond a reasonable doubt.'" *Staggers*, 2020 U.S. App. LEXIS 18085, at *19, 961 F.3d at ___ (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). That "familiar standard gives full play to the

[8] "[O]n plain error review, it is appropriate for us to judicially notice the facts of [the defendants'] prior felony conviction[s]." *Huntsberry*, 956 F.3d at 284. And even if we are limited to the facts presented to the jury at the third prong of the plain-error analysis, there is no doubt that, under the fourth prong, we can rely on the entire record before us. *See Staggers*, 2020 U.S. App. LEXIS 18085, at *17, 961 F.3d at ___.

[9] *See Huntsberry*, 956 F.3d at 286 ("Taken together with his stipulation, these facts lead us to conclude that [the defendant] could not have been ignorant of his status as a convicted felon at the time the firearms were found in his possession.").

responsibility of the [jury] fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. In any case, the question is not "whether [we] believe[] that the evidence at the trial established guilt beyond a reasonable doubt . . . but whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational [jury] could have" found such guilt established. *Id*.

The only evidence relating to whether the defendants knew that they were convicted felons at the time of their arrests was the stipulation at trial that they were in fact convicted felons. Although that stipulation alone does not necessarily place the question entirely beyond debate, "absent any evidence suggesting ignorance, a jury applying the beyond-a-reasonable-doubt standard *could* infer that [the] defendant[s] knew that [they were] convicted felon[s] from the mere existence of [their] felony conviction[s]." *Staggers*, 2020 U.S. App. LEXIS 18085, at *20, 961 F.3d at ___ (emphasis added). Therefore, regardless of the standard of review, the evidence was sufficient to support the conviction.

C.

When discovered by police, the defendants stated that they had just been robbed of their clothing. For the second trial, the district court ordered the attorneys to seek approval before mentioning or eliciting testimony concerning those statements. That requirement, defendants contend, inhibited their ability to present a "plausible defense" and constitutes plain error.

"[A] district judge has broad discretion in managing his docket, including trial procedure and the conduct of trial." *United States v. Gray*, 105 F.3d 956, 964 (5th Cir. 1997). "In reviewing a district judge's trial procedure and conduct of the trial, we ordinarily determine whether the cumulative effect of the

judge's actions amount to an abuse of discretion." *Id.* Even an abuse of discretion, however, would not itself be enough to reverse or vacate the verdict in this case: "[B]ecause appellants never objected to the court's actions during trial, our appellate review is confined to the plain error standard" described above. *Id.*

The defendants spill much ink explaining why, if they had attempted to introduce evidence or elicit testimony relating to the supposed robbery, it should have been properly admitted under an exception to hearsay. That line of reasoning, as the government correctly notes, entirely misses the point: The district court never prevented the defendants from presenting such evidence but only instituted a procedure for such presentation. The proper analysis therefore focuses not on whether the evidence was admissible but on whether the procedure to determine its admissibility was an abuse of discretion (which, in turn, constitutes plain error). *See id.*

The defendants cannot begin to demonstrate such abuse. The relevant order specified, solely, "that no party [should] mention or elicit any testimony about defendants' claims that they were the victims of an armed robbery on the night of the alleged incident without prior approval of the [district] Court." The defendants never sought such approval, so we can only speculate as to how the court might have ruled or to what further procedure, if any, would have been required beyond making the request itself. The court's "procedure[]"—*i.e.*, that a party submit a request for prior approval—was "adequate on [its] face, and without trying [it], [the defendants] can hardly complain that [it would] not [have] work[ed] in practice." *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 71 (2009).

The defendants would have us nevertheless proceed as though the district court's procedural order were effectively a substantive ruling in their

disfavor. They write that, "at the unrecorded status conference . . . , the judge was abundantly clear: he was not going to allow it. . . . We [therefore] deemed it would have been futile to have attempted to raise the issue." Whatever the value of form, "the real world situation facing counsel," they say, was that "[t]he Court had ruled."

It is not, however, "elevating form over function" (defendants' words) to note the distinction between a court's hypothetical, expected, or even likely ruling and an *actual* one. It might be that counsel's intuitions were correct and the court would have withheld its approval inevitably.[10] But absent even a cursory request, the defendants ask us to hold that the court abused its discretion by perhaps intimating that it would likely refuse counsel's request. We decline. The defendants (in their reply briefing) ultimately acknowledge the futility of their position, writing that "[i]f the defendants must suffer the consequences of counsel not preserving the ability to present such a defense by requesting a [Federal Rule of Evidence] 104(a) preliminary determination of admissibility during the trial, so be it." The district court did not err, much less plainly so.

D.

At sentencing, the district court adopted an uncontested PSR cross-referencing of the firearms possession with attempted first-degree murder. Defendants contend that the facts at trial do not establish that attempt, so the court plainly erred.

In finding that the defendants attempted first-degree murder, the district court necessarily found, as relevant here, that their actions were "willful,

[10] Even then, it would have been wise to make the futile attempt and preserve the objection.

deliberate, malicious, and premeditated." 18 U.S.C. § 1111(a). "Although . . . deliberation and premeditation . . . involve[s] a prior design to commit murder, no particular period of time is necessary for such deliberation and premeditation[,] . . . [just that] [t]here must be some appreciable time for reflection and consideration before execution of the act . . . ."[11]

Ordinarily, a "factual finding[] [is] reviewed for clear error." *United States v. Barfield*, 941 F.3d 757, 761 (5th Cir. 2019). "A factual finding is not clearly erroneous if it is plausible in light of the record as a whole." *Id.* "Th[is] Court will find clear error only if a review of all the evidence leaves [it] with the definite and firm conviction that a mistake has been committed." *Id.* at 761–62 (quotation marks omitted).

Because the defendants did not preserve the error, we would have the discretion to grant relief only if the clear error should constitute plain error. The Supreme Court has recently abrogated this circuit's "outlier [former] practice of refusing to review certain unpreserved factual arguments for plain error." *Davis v. United States*, 140 S. Ct. 1060, 1061 (2020) (abrogating *United States v. Lopez*, 923 F.2d 47, 50 (5th Cir. 1991) (per curiam)). Thus, this court is to consider the defendants' unpreserved challenge as it would any other. *See id.* at 1061–62.

The defendants claim that "no evidence was presented at trial, either direct or circumstantial, that could reasonably lead to a conclusion that the act was premeditated." They note that the evidence establishes merely that "[t]wo men exited the[ir] SUV and opened fire on the occupants of the Mercedes" that had stopped behind them while they themselves were at a stop sign. Because

[11] *United States v. Shaw*, 701 F.2d 367, 392–93 (5th Cir. 1983), *abrogated on other grounds as recognized in United States v. Gurrola*, 898 F.3d 524, 537 n.31 (5th Cir. 2018).

"[b]oth the driver and the passenger of the Mercedes denied any knowledge of who shot at them," defendants suggest, the record shows that "the shooting . . . was a spur of the moment crime of convenience, rather than any deliberate, considered murder plot." It would have been rather "convenient" indeed that the shooters possessed not only two fully loaded, high-powered[12] firearms but also two black plastic masks,[13] that they happened to be wearing when they decided, apparently unprovoked and on the "spur of the moment," to exit their vehicle and fire nineteen rounds into the victims' occupied Mercedes.[14]

Defendants have shown, at most, that the shooters might not have held a "deliberate, considered, murder plot" specifically to kill the persons who were occupying the Mercedes. In that sense, it might have been "convenient" that the Mercedes and its occupants happened to stop behind the shooters' vehicle. It might be true that the shooters cared not for the identity of the Mercedes's occupants; perhaps they would have opened fire on *anyone* unlucky enough to have found themselves behind the shooters' SUV. And, had no such person arrived, it is perfectly plausible that the shooters would not have attempted to kill anyone at all.

But all that is entirely irrelevant. "Perhaps the best that can be said of deliberation is that it requires a 'cool mind' that is capable of reflection, and of premeditation that it requires that the one with the 'cool mind' did, in fact,

---

[12] Barcelona testified that one of the shooters' weapons was "a very high caliber rifle" that would penetrate even his armored police car, let alone an ordinary automobile.

[13] We note that the incident took place in October 2017, long before the current viral pandemic that might lend more plausibility to the notion that one in the shooters' position might have been wearing a mask coincidentally.

[14] *See Trottie v. Stephens*, 720 F.3d 231, 246, 250 (5th Cir. 2013) (stating that, although "Trottie argue[d] that . . . evidence [] would have undermined the jury's conclusion that he premeditated the murders," "the state presented evidence that Trottie [] wore a ski mask, which greatly undermines [that argument]").

reflect, at least for a short period of time before his act of [attempted] killing."[15] That "period of time 'does not [necessarily] require the lapse of days or hours[,] or even minutes.'"[16]

The record supports the finding that the shooters coolly reflected on their actions before taking them. As the defendants themselves note, there is no evidence that the shooters and the victims had ever previously interacted or known of the other's existence; in other words, nothing suggests the shooters were in a state of provocation that might have denied them the ability to reflect on their actions. Neither is there any evidence that the defendants are or were fundamentally incapable of such reflection. Even if there were no grand plot to murder specifically the persons occupying the Mercedes, there was ample opportunity to appreciate the situation while readying and wielding the guns, donning the masks, exiting the SUV, walking to the Mercedes, and opening fire repeatedly. That time was enough, and, again, that they "wore . . . mask[s] . . . greatly undermines" the notion that their actions were not premeditated. *Trottie*, 720 F.3d at 250.

The district court did not err.[17] The judgments of conviction and sentence are AFFIRMED.

---

[15] *United States v. Shaw*, 701 F.2d 367, 393 (5th Cir. 1983), *abrogated on other grounds as recognized in United States v. Gurrola*, 898 F.3d 524, 537 n.31 (5th Cir. 2018) (citing WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW 563 (1972)).

[16] *Id.* (quoting *Bostic v. United States*, 94 F.2d 636, 639 (D.C. Cir. 1937)).

[17] It follows that, absent error, there cannot be plain error.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

INDICTMENT FOR FELON IN POSSESSION OF FIREARMS,
AND NOTICE OF FORFEITURE

UNITED STATES OF AMERICA	:	CRIMINAL NO. 17-152-JJB-RLB
	:	
VERSUS	:	18 U.S.C. § 922(g)(1)
	:	18 U.S.C. § 2
TIMMY SCOTT,	:	18 U.S.C. § 924(d)(1)
also known as "Timothy Scott," and	:	28 U.S.C. § 2461(c)
KADEEM BURDEN	:	

THE GRAND JURY CHARGES:

COUNT ONE
(Felon in Possession of Firearms)

On or about October 2, 2017, in the Middle District of Louisiana, **TIMMY SCOTT,** also known as Timothy Scott, and **KADEEM BURDEN**, defendants herein, having each individually been convicted of a crime punishable by imprisonment for a term exceeding one year, a felony, knowingly did possess firearms, that is, a 7.62 caliber Century Arms semi-automatic rifle style pistol with serial #RAS47P003189, and a 9mm Smith and Wesson pistol with serial #PDY2946, which firearms had previously been shipped and transported in interstate commerce, and did aid and abet each other to do so.

The above is a violation of Title 18, United States Code, Sections 922(g)(1) and 2.

NOTICE OF FORFEITURE

Upon conviction of Count One of this Indictment, **TIMMY SCOTT,** also known as Timothy Scott, and **KADEEM BURDEN**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d)(1) and Title 28, United States Code, Section 2461(c), any

firearms involved or used in the commission of the offense, including, but not limited to, a 7.62 caliber Century Arms semi-automatic rifle style pistol with serial #RAS47P003189, and a 9mm Smith and Wesson pistol with serial #PDY2946, as described in this Indictment.

UNITED STATES OF AMERICA, by

COREY R. AMUNDSON
ACTING UNITED STATES ATTORNEY
MIDDLE DISTRICT OF LOUISIANA

ADAM PTASHKIN
ASSISTANT UNITED STATES ATTORNEY

RYAN REZAEI
ASSISTANT UNITED STATES ATTORNEY

A TRUE BILL

REDACTED
PER PRIVACY ACT

GRAND JURY FOREPERSON

11/29/17
DATE

let me know and I'll proceed accordingly.

(Whereupon the jury was read the Allen charge.)

THE COURT: I'm going to ask you to go back. Please take these comments into consideration and we'll await whatever further instructions or verdict that you have.

Thank you so much.

(Jury out at 3:44 p.m.)

THE COURT: I'll note there was no objection to the Allen charge.

So let's wait and see what happens and we'll proceed accordingly.

Thank you for your time.

(A recess was taken.)

AFTER THE RECESS

(Call to order of the court.)

(Jury in at 5:13 p.m.)

THE COURT: I have this note from y'all that says (as read): We have members of the jury that are not changing their minds. They say that there is nothing that can convince them otherwise.

So I assume you are deadlocked; is that right?

THE JUROR: Yes.

THE COURT: Hopelessly deadlocked; is that correct?

Are you the foreperson?

THE FOREPERSON: Yes.
THE COURT: Is that correct?
THE FOREPERSON: It appears to be.
THE COURT: Because if you thought it would be helpful
05:14:03 to go back again, we can do that. I just don't know if that is
helpful based on what I'm hearing.
But I know you know this -- and I'm not suggesting you
do this, but you can bring back a unanimous verdict as to either
defendant, not guilty or guilty, as long as you can be unanimous
05:14:18 to either defendant. You-all know that, right?
THE JURORS: Yes, sir.
THE COURT: So is there any reason to continue to
deliberate or not?
THE JUROR: No.
05:14:27 THE JUROR: I doubt it.
THE COURT: Okay. Well, then, we will go ahead and
move forward with scheduling another trial date, I'm sure, and
see if anything changes the next time.
But I do want to thank you for your service. I
05:14:41 appreciate your service.
These courts are really not as much for the lawyers and
the judges and the courtroom personnel and security officers as
they are for the jury. I know that it's frustrating sometimes
when you can't reach a verdict, I understand that, and agree on
05:14:58 things. I get it.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	:	
	:	
versus	:	CRIMINAL NO. 17-152-LMA-RLB
	:	
KADEEM BURDEN	:	

JOINT STIPULATION OF FACT REGARDING PRIOR FELONY CONVICTION

The United States of America, through Lyman E. Thornton III and Fred Menner, Assistant United States Attorney's and the defendant, Kadeem Burden and Rodney Messina, counsel for the defendant, who do hereby agree and stipulate as follows:

Prior to October 2, 2017, the defendant, KADEEM BURDEN had previously been convicted of a crime punishable by imprisonment for a term exceeding one year, that is, a felony, as contemplated by Title 18, United States Code, Section 922(g)(1).

Agreed to on this 09 day of October, 2018

BRANDON J. FREMIN
UNITED STATES ATTORNEY

Kadeem Burden
KADEEM BURDEN
Defendant

LYMAN E. THORNTON III
FRED A. MENNER
ASSISTANT U.S. ATTORNEYS

RODNEY MESSINA
Counsel for Defendant

U.S. Exhibit
36

16:08:03 The indictment charges that on or about October 2nd,
16:08:06 2017, in the Middle District of Louisiana, Timmy Scott, also known
16:08:09 as Timothy Scott, and Kadeem Burden, having each individually been
16:08:13 convicted of a crime punishable by imprisonment for a term
16:08:15 exceeding one year, a felony, knowingly did possess firearms, that
16:08:19 is, a 7.62 caliber Century Arms semi-automatic rifle style pistol,
16:08:24 bearing Serial No. RAS47P003189, and a 9mm Smith & Wesson pistol,
16:08:31 bearing Serial No. 9DY2946, which firearms had previously been
16:08:35 shipped and transported in interstate commerce, in violation of
16:08:39 Title 18, U.S. Code, Section 922(g)(1).
16:08:52 Generally, Title 18, U.S. Code, Section 922(g)(1) makes
16:08:58 it a crime for a convicted felon to knowingly possess a firearm.
16:09:02 For you to find each defendant guilty of this crime, you
16:09:04 must be convinced the government has proved each of the following
16:09:07 beyond a reasonable doubt:
16:09:07 First, that each defendant knowingly possessed a firearm.
16:09:11 Second, that before each defendant possessed the firearm,
16:09:14 the defendant had been convicted in a court of a crime punishable
16:09:18 by imprisonment for a term in excess of one year; and
16:09:21 Third, that the firearm possessed by each defendant
16:09:24 traveled in interstate commerce; that is, at sometime before the
16:09:26 defendant possessed one of the firearms, it had been shipped or
16:09:29 transported from one state to another.
16:09:30 Willfulness is not an element of this offense. The
16:09:33 government must prove the defendant knew that he possessed a

16:09:36 1 firearm, but not that the defendant knew that he was a qualifying
16:09:39 2 felon or that the person had traveled -- excuse me, or that the
16:09:43 3 firearm had traveled in interstate commerce.
16:09:45 4 The government need not prove that the defendant knew
16:09:47 5 that his conduct was in violation of the law. Knowledge of a legal
16:09:50 6 obligation is not an element of an offense under 18, U.S.C.,
16:09:54 7 Section 922(g)(1).
16:09:56 8 Notwithstanding the fact that the indictment states the
16:09:58 9 defendants possessed two firearms, it is not necessary for the
16:10:00 10 government to prove that a defendant possessed both firearms. It
16:10:04 11 is only necessary that you unanimously find that the government
16:10:06 12 prove beyond a reasonable doubt that a defendant possessed one of
16:10:09 13 the firearms described in the indictment.
16:10:11 14 The term "firearm" means any weapon that will or is
16:10:13 15 designed to, or may readily be converted to, expel a projectile by
16:10:17 16 the action of an explosive. The term "firearm" also includes the
16:10:20 17 frame or receiver of any weapon.
16:10:22 18 The parties have stipulated that each of the defendants
16:10:25 19 has been convicted of a crime which is punishable by imprisonment
16:10:28 20 for a term exceeding one year. The parties have also stipulated
16:10:31 21 that at some time before each defendant allegedly possessed one of
16:10:34 22 the firearms, each of the firearms had been shipped or transported
16:10:36 23 from one state to another. Finally, the parties have stipulated
16:10:40 24 that both of the firearms described in the indictment are firearms
16:10:44 25 under the law. You are to accept the stipulated facts as being

P R O C E E D I N G S

(WEDNESDAY, FEBRUARY 27, 2019)

(MORNING SESSION)

09:57:11 (OPEN COURT.)

09:57:11 THE COURT: Good morning, everybody. How are y'all doing this morning?

09:57:13 All right. I understand that the jury has a verdict; is that correct?

09:57:18 THE JURY FOREPERSON: Yes, sir.

09:57:19 THE COURT: Would you please hand the verdict form to my courtroom deputy.

09:57:35 Mr. Burden, Mr. Scott, stand up, please. Let's read the verdicts.

09:57:42 THE DEPUTY CLERK: Criminal matter 2017-152, *United States of America v. Timmy Scott*.

09:57:49 Interrogatory No. 1. Possession of a firearm by a convicted felon, Title 18, U.S. Code, Section 922(g)(1).

09:57:57 We, the jury, unanimously find the defendant Timmy Scott guilty.

09:58:02 Signed this day, February 27th, by the foreperson.

09:58:38 The *United States of America v. Kadeem Burden*. Interrogatory No. 1. Possession of a firearm by a convicted felon. Title 18, U.S. Code, Section 922(g)(1).

09:58:38 We, the jury, unanimously find the defendant Kadeem

Burden guilty.

Signed this day, February 27th, by the foreperson.

THE COURT: Gentlemen, have a seat. Ladies and gentlemen, I want to ask if those verdicts are, in fact, your verdicts. I am going to poll the jury.

Mr. Carroll, is that your verdict?

THE JUROR: Yes.

THE COURT: And, Ms. Burks, is that your verdict?

THE JUROR: Yes.

THE COURT: Ms. Fields, is that your verdict?

THE JUROR: Yes.

THE COURT: Mr. Childers, is that your verdict?

THE JUROR: Yes.

THE COURT: Mr. Blanchard, is that your verdict?

THE JUROR: Yes, it is.

THE COURT: Mr. Johnson, is that your verdict?

THE JUROR: Yes.

THE COURT: Ms. Armstead, is that your verdict?

THE JUROR: Yes.

THE COURT: Mr. Rodriguez, is that your verdict, sir?

THE JUROR: Yes.

THE COURT: Mr. Wascom, is that your verdict?

THE JUROR: Yes, sir.

THE COURT: Ms. Graffia, is that your verdict?

THE JUROR: Yes.

09:59:14 THE COURT: Ms. Leonard-Hughes, is that your verdict?

09:59:18 THE JUROR: Yes.

09:59:19 THE COURT: And finally, Mr. Brabham, is that your verdict?

09:59:21

09:59:22 THE JUROR: Yes.

09:59:22 THE COURT: Thank you. We will record it as the verdict of this court.

09:59:24

09:59:25 Ladies and gentlemen, again, you know, I am a federal judge in New Orleans, not here in Baton Rouge. I have to tell you, it has been an absolute joy to be down here in Baton Rouge in the Middle District of Louisiana to try this case. I say that because the lawyers have just been great in preparing this case, and a lot of preparation goes into these cases before you see it so things can move along in an appropriate way. There's a lot of work done on jury charges, on pretrial motions, and those sort of things. The lawyers have been absolutely wonderful, all of the lawyers in helping present the cases that they have. So I am very proud of that.

09:59:32

09:59:35

09:59:39

09:59:41

09:59:46

09:59:49

09:59:53

09:59:58

10:00:01

10:00:05

10:00:05 The clerk's office has been just wonderful; all of the personnel, the Marshal Service, the court security officers. It's been a real joy to try a case down here for a few days. I'm sorry it happened because Judge Brady died. You would have enjoyed Judge James Brady, he is probably one of the finest men and finest judges that I've ever met in my lifetime. So I really miss him, but I tried to help once he left us so I could help with the docket up

10:00:09

10:00:13

10:00:17

10:00:21

10:00:23

10:00:27

UNITED STATES DISTRICT COURT

Middle District of Louisiana

UNITED STATES OF AMERICA
v.
KADEEM BURDEN

JUDGMENT IN A CRIMINAL CASE

Case Number: 17-152-LMA-RLB

USM Number: 08837-095

J. Rodney Messina
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count

☐ pleaded nolo contendere to count(s) which was accepted by the court.

✓ was found guilty on count 1 of the Indictment on February 27, 2019. after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Count
18 U.S.C. § 922(g)(1)	Possession of a firearm by a convicted felon.	1

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 counts

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States as to this defendant.

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.

May 15, 2019
Date of Imposition of Judgment

Signature of Judge

Lance M. Africk, United States District Judge
Name and Title of Judge

May 15, 2019
Date

DEFENDANT: KADEEM BURDEN
CASE NUMBER: 17-152-LMA-RLB

IMPRISONMENT

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

120 months. The defendant's sentence shall run concurrently to any sentence that may be imposed in Docket No. 10-17-0591, of the 19th Judicial District Court, Baton Rouge, Louisiana.

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

Defendant be designated to a facility where he can receive substance abuse treatment, mental health treatment, and cognitive behavioral treatment, as well as educational and vocational services.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: KADEEM BURDEN
CASE NUMBER: 17-152-LMA-RLB

SUPERVISED RELEASE

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

3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a restitution. *(check if applicable)*
5. ✓ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et* directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: KADEEM BURDEN
CASE NUMBER: 17-152-LMA-RLB

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: KADEEM BURDEN
CASE NUMBER: 17-152-LMA-RLB

SPECIAL CONDITIONS OF SUPERVISION

The defendant must participate in a substance abuse assessment and/or treatment program. While participating in the program, the defendant must follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (provider, location, modality, duration, intensity, etc.). The defendant must pay the costs of the substance abuse assessment and/or treatment program, to the extent he/she is financially able to pay. The U.S. Probation Office must determine the defendant's ability to pay and any schedule for payment, subject to the Court's review upon request.

The defendant must not use or possess any controlled substances without a valid prescription. If the defendant has a valid prescription, he must disclose the prescription information to the probation officer and follow the instructions on the prescription.

The defendant must submit to substance abuse testing to determine if he has used a prohibited substance. The defendant must assist in the cost of the testing, as approved by the probation officer. The defendant must not attempt to obstruct or tamper with the testing methods.

The defendant must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise the defendant's participation in the program (provider, location, modality, duration, intensity, etc.). The defendant must pay the costs of mental health treatment program, to the extent he/she is financially able to pay. The U.S. Probation Office must determine the defendant's ability to pay and any schedule for payment, subject to the Court's review upon request.

The defendant must take all mental health medications that are prescribed by his treating physician. The defendant must pay the costs of the medication, to the extent he/she is financially able to pay. The U.S. Probation Office must determine the defendant's ability to pay and any schedule for payment, subject to the Court's review upon request.

The defendant must participate in a cognitive-behavioral treatment program and follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (provider, location, modality, duration, intensity, etc.). Such programs may include group sessions led by a counselor or participation in a program administered by the probation office. The defendant must pay the costs of the cognitive-behavioral treatment program, to the extent he is financially able to pay. The U.S. Probation Office must determine the defendant's ability to pay and any schedule for payment, subject to the Court's review upon request.

The defendant must participate in an educational services program and follow the rules and regulations of that program. Such programs may include high school equivalency preparation, English as a Second Language classes, and other classes designed to improve his/her proficiency in skills such as reading, writing, mathematics, or computer use. The defendant must pay the costs of the educational services program, to the extent he/she is financially able to pay. The U.S. Probation Office must determine the defendant's ability to pay and any schedule for payment, subject to the Court's review upon request.

The defendant must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training. The defendant must pay the costs of the vocational services program, to the extent he/she is financially able to pay. The U.S. Probation Office must determine the defendant's ability to pay and any schedule for payment, subject to the Court's review upon request.

If the judgment imposes a financial penalty, the defendant must pay the financial penalty in accordance with the Schedule of Payments sheet of the judgment. The defendant must also notify the court, through the probation officer, of any changes in economic circumstances that might affect the ability to pay this financial penalty.

The defendant must submit his person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(l)), 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 probation officer 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.

DEFENDANT: KADEEM BURDEN
CASE NUMBER: 17-152-LMA-RLB

CRIMINAL MONETARY PENALTIES

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

✓ The Court finds that the defendant is not able to pay a fine. Accordingly, no fine shall be imposed

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

✓ **The special assessment is due immediately.**

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

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

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

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

TOTALS	**$** _____	**$** _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

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

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

☐ the interest requirement is waived for ☐ fin ☐ restitution.

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

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: KADEEM BURDEN
CASE NUMBER: 17-152-LMA-RLB

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 $ _____ due immediately, balance due

☐ not later than _____ , or

☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

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

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

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

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

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

✓ The defendant shall forfeit the defendant's interest in the following property to the United States:

Pursuant to 18 U.S.C. § 924(d) (1) and 28 U.S.C. § 2461(c) the defendant shall forfeit to the United States, any firearms involved or used in the commission of the offense, including, but not limited to, a 7.62mm caliber Century Arms semi-automatic rifle style pistol with the serial number RAS47P003189 and a 9mm Smith and Wesson pistol with serial number PDY2946.

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.

14:09:58 reference samples, did you have any reason to believe that they had
14:10:01 been contaminated or mixed in any way?
14:10:04 A. No.
14:10:05 MR. THORNTON: Thank you, sir.
14:10:07 THE COURT: All right. Thank you, sir. All right. Does
14:10:11 the government have any additional witnesses?
14:10:14 MR. THORNTON: One second, your Honor. The United States
14:10:23 rests, your Honor.
14:10:24 THE COURT: All right. Mr. Scott.
14:10:27 MR. BELANGER: We would rest, your Honor.
14:10:30 THE COURT: Mr. Burden.
14:10:32 MR. MESSINA: Rest as well, your Honor.
14:10:34 THE COURT: All right. So what does all of that mean?
14:10:37 That means that the lawyers are ready for closing arguments.
14:10:41 Except --
14:10:42 MR. HIPWELL: Your Honor, may we have just a brief moment
14:10:44 with the Court?
14:10:44 THE COURT: Yes, sir.
14:11:49 (WHEREUPON, THE FOLLOWING BENCH CONFERENCE WAS HELD:)
14:11:49 MR. HIPWELL: Of course, your Honor, just to make the
14:11:49 Rule 29 motion. That's all, your Honor.
14:11:49 MR. MESSINA: Rule 29.
14:11:49 MR. HIPWELL: Make the motion.
14:11:49 MR. THORNTON: That was yours last time.
14:11:49 THE COURT: It's a Rule 29 motion, judgment of acquittal.

14:11:49 MR. MENNER: The United States objects obviously. Plenty of evidence, your Honor.

14:11:49 THE COURT: The motion is denied.

14:11:49 Look guys, I need to get you those jury charges so you can state on the record whether you object to them and stuff, so we're going to have to take a break here. Nothing we can do. I'll explain to them.

14:11:49 MR. HIPWELL: Thank you.

14:11:49 (OPEN COURT.)

14:11:49 THE COURT: All right. What that means is, again, we're ready for closing arguments. But the issue is that there are some legal matters I have to go over with the lawyers before they begin their closing arguments.

14:11:54 So the proceedings will go as follows: We're going to have to take a recess. Sorry about that. I know you just ate lunch but there's no choice. I don't know when the lawyers are going to end.

14:12:04 So we'll take a recess. I don't suspect it's going to be more than 15 minutes or so. Just take a recess. The lawyers will come back and do their closing arguments. The government has its first close, each of the defendants has an opportunity to make a closing argument, and then the government will have a brief right to make a rebuttal argument. Then I will charge you as to the applicable law in this case, take about 30 minutes or so, and then the case will be given to you for deliberation. That's how we're