

# **APPENDIX**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Unpublished Opinion of The United States Court of Appeals for the Fourth Circuit Re: Affirming Criminal Judgment entered August 7, 2020 .....	1a
Judgment of The United States Court of Appeals for the Fourth Circuit entered August 7, 2020 .....	8a
Judgment in a Criminal Case of The United States District Court The Middle District of North Carolina entered May 1, 2019.....	9a

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 19-4324**

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

TERRILL BERNARD WEATHERSPOON,

Defendant – Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, Chief District Judge. (1:18-cr-00333-TDS-2)

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Argued: April 30, 2020

Decided: August 7, 2020

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Before GREGORY, Chief Judge, DIAZ, and THACKER, Circuit Judges.

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Affirmed by unpublished opinion. Chief Judge Gregory wrote the opinion, in which Judge Diaz and Judge Thacker joined.

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**ARGUED:** George Entwistle Crump, III, Rockingham, North Carolina, for Appellant. Kyle David Pousson, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee. **ON BRIEF:** Matthew G.T. Martin, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

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GREGORY, Chief Judge:

Terrill B. Weatherspoon was charged with possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). After the district court denied Weatherspoon’s motion to suppress the firearm and his statement made during police detention, Weatherspoon entered a conditional plea of guilty. Weatherspoon appeals the district court’s denial of the motion to suppress, arguing the officers lacked reasonable suspicion for his subsequent search. For reasons that follow, we affirm the district court’s judgment.

I.

A.

When reviewing the denial of a motion to suppress, we view the facts in the light most favorable to the Government, the prevailing party below. *United States v. Green*, 740 F.3d 275, 277 (4th Cir. 2014). The facts of this case involve events surrounding the execution of an arrest warrant for Joshua Espinoza.<sup>1</sup> Espinoza was a known gang member with a violent criminal history. Espinoza’s criminal history included “an arrest for assault with a deadly weapon with intent to kill, discharging a firearm into occupied property,” an arrest for robbery with a dangerous weapon, and several arrests for being a felon in possession of a firearm. J.A. 60. Additionally, Espinoza was a suspect in a jewelry store

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<sup>1</sup> The facts recounted here are taken from the district court’s findings of fact. J.A. 59-69.

robbery with accomplices, and was also believed to have been involved in a shootout at a gas station.<sup>2</sup>

The Federal Bureau of Investigation (“FBI”) tracked Espinoza to a Days Inn motel in Durham, North Carolina. On July 18, 2018, the FBI planned to arrest Espinoza on an outstanding warrant for driving while intoxicated. That morning, while surveilling the premises, law enforcement observed Espinoza exit his room on the second floor of the motel. Espinoza walked through the exterior walkway and down a stairwell towards the parking lot with two men, later identified as Nigel Hemby and Weatherspoon. The agents began to effect the arrest of Espinoza and yelled “police” and “stop.” J.A. 61. Although the agents were not in uniform, they had lettering displayed on their clothing that indicated “FBI,” “POLICE,” et cetera. J.A. 60.

When Espinoza saw the agents approaching, he threw the items in his hand to the ground and ran. The agents chased after Espinoza. As they ran past Hemby and Weatherspoon, one of the agents pushed Hemby to the ground and ordered both Hemby and Weatherspoon to sit on the ground and raise their hands. FBI Special Agent Maria Jocys stayed with Hemby and Weatherspoon with her gun drawn.

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<sup>2</sup> In its findings of fact, the district court stated that law enforcement knew “that Mr. Espinoza had recently been in a shootout.” J.A. 61. Weatherspoon challenges this finding of fact because Special Agent Jocys testified that law enforcement only believed Espinoza was a suspect in the gas station shootout. J.A. 24. We agree the district court’s factual finding was clear error. Accordingly, we adopt Weatherspoon’s factual assertion that Espinoza was only a suspect in the shootout. Although Weatherspoon did not challenge the district court’s statement that Espinoza was involved in the jewelry store robbery, Espinoza was also only a suspect in that robbery. J.A. 24. However, our resolution of this appeal does not turn on these facts.

Special Agent Jocys told Weatherspoon and Hemby to keep their hands up, pointing her firearm at them while she waited for backup. She was the only agent with them at the time, as the other officers were chasing Espinoza. Special Agent Jocys noticed that Weatherspoon began to move slightly to his left and asked whether either of the men had a gun. Weatherspoon responded, "I do." J.A. 62. Special Agent Jocys pointed her weapon and told Weatherspoon that if he moved, she would kill him. At this point, Espinoza had not been captured. Espinoza had fled toward the back of the motel, across the courtyard, past another hotel, and into the woods.

When another officer arrived to assist Special Agent Jocys, they placed Weatherspoon and Hemby in handcuffs, and conducted a patdown of Weatherspoon. The officers found a .40 caliber handgun on his left hip concealed under his shirt.

B.

A grand jury returned an indictment charging Weatherspoon with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Weatherspoon moved to suppress his statement admitting that he had a firearm. He also moved to suppress the weapon that was discovered during the patdown search that followed, arguing that he had been unconstitutionally seized and searched. After an evidentiary hearing, the district court denied the motion.

Weatherspoon subsequently entered a conditional guilty plea, reserving his right to appeal the denial of the motion to suppress. He was sentenced to ninety-four months imprisonment to be followed by three years of supervised release. This appeal followed.



## II.

We review the district court’s factual findings for clear error and its legal conclusions de novo. *Green*, 740 F.3d at 277.

The Fourth Amendment protects “against unreasonable searches and seizures.” U.S. Const. amend. IV. “The Fourth Amendment does not proscribe all contact between the police and citizens but is designed ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” *I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976)).

As a preliminary matter, at oral argument, Weatherspoon conceded that his brief detention was proper. Oral Argument 6:44-6:50 (“The Defense agrees that the officers had the right to detain Weatherspoon . . .”); Oral Argument 8:52-9:09 (“The police had the right to briefly detain, very briefly detain Weatherspoon and Hemby while they began the arrest of Espinoza . . .”). Because Weatherspoon now concedes that he was lawfully detained, we need not decide whether there was “reasonable and articulable suspicion” for the detention. *Reid v. Georgia*, 448 U.S. 438, 440 (1980); *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Therefore, the only issue before this Court is whether the resulting patdown search was unlawful.<sup>3</sup>

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<sup>3</sup> The district court found that Weatherspoon did not raise any Fifth Amendment or *Miranda* arguments in his briefing related to the officer’s question to Weatherspoon. J.A. 68. Nor does he in this appeal.

To proceed from a stop to a frisk, or patdown for weapons, the officer must reasonably suspect that the person “may be armed and presently dangerous.” *Terry*, 392 U.S. at 30; *United States v. Mayo*, 361 F.3d 802, 805 (4th Cir. 2004). We look to the “totality of the circumstances—the whole picture.” *United States v. Cortez*, 449 U.S. 411, 417 (1981). “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Terry*, 392 U.S. at 27. The Supreme Court has explained that “[t]he purpose of [a patdown for weapons] is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.” *Adams v. Williams*, 407 U.S. 143, 146 (1972); *see also United States v. Taylor*, 857 F.2d 210, 213 (4th Cir. 1988) (“Investigating officers may take such steps as are reasonably necessary to maintain the status quo and protect their safety during an investigative stop.”).

Here, the totality of the circumstances supports the conclusion that Weatherspoon’s search was objectively reasonable under the principles established by *Terry*. As stated previously, Weatherspoon conceded that his detention was lawful. Special Agent Jocys was left alone with Weatherspoon and Hemby while the other agents chased Espinoza, a known violent gang member that was suspected of crimes involving other individuals. Special Agent Jocys had her weapon drawn on them and told them to keep their hands up. At this point, Espinoza had not been captured. When Special Agent Jocys noticed that Weatherspoon made a furtive movement to his left, she asked whether either of the two men had a gun. Weatherspoon responded, “I do.” J.A. 62. Weatherspoon’s furtive



movement—after Special Agent Jocys, who was alone, commanded the two detainees to keep their hands up—made it objectively reasonable for Special Agent Jocys to ask whether Weatherspoon had a gun. After Weatherspoon admitted to having a weapon, it was unquestionably reasonable for the officers to pat down Weatherspoon for their safety.

In sum, Weatherspoon conceded that his initial detention was proper. Given the totality of the circumstances, we find it was objectively reasonable for the officers to pat down Weatherspoon. Therefore, the district court correctly denied Weatherspoon's motion to suppress.

### III.

For the foregoing reasons, we affirm the judgment of the district court.

*AFFIRMED*

FILED: August 7, 2020

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

No. 19-4324  
(1:18-cr-00333-TDS-2)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TERRILL BERNARD WEATHERSPOON

Defendant - Appellant

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J U D G M E N T

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

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

/s/ PATRICIA S. CONNOR, CLERK

# United States District Court Middle District of North Carolina

UNITED STATES OF AMERICA

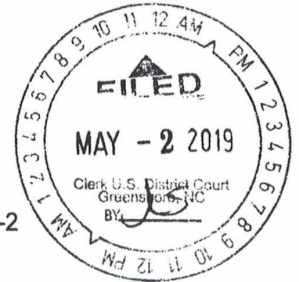
**JUDGMENT IN A CRIMINAL CASE**

v.

TERRILL BERNARD WEATHERSPOON

Case Number: 1:18-CR-00333-2

USM Number: 34557-057



George Entwistle Crump, III

Defendant's Attorney

**THE DEFENDANT:**

- ☒ pleaded guilty to count 2.  
☐ pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.  
☐ was found guilty on count(s) \_\_\_\_\_ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	July 18, 2018	2

The defendant is sentenced as provided in pages 2 through 8 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 shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the economic circumstances.

April 17, 2019

Date of Imposition of Judgment

Signature of Judge

Thomas D. Schroeder, United States District Judge

Name &amp; Title of Judge

Date

May 1, 2019

DEFENDANT: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **94 months.**

☒ The court makes the following recommendations to the Bureau of Prisons: that the defendant be evaluated for and permitted to participate in the most intensive substance abuse treatment program provided by the Bureau of Prisons. It is further recommended that the defendant be designated to a facility as close as possible to his home in North Carolina.

☒ 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 \_\_\_\_\_ am/pm 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 pm on \_\_\_\_\_ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

BY

\_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **three (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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
4. ☐ You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which 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: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### 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. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
9. 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).
10. 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.
11. 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.
12. 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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_



DEFENDANT: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall abide by the mandatory and standard conditions of supervised release.

The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall provide any requested financial information to the probation officer.

The defendant shall not associate with or be in the company of any Crips gang member/security threat group member. The defendant shall not frequent any locations where gangs/security threat groups congregate or meet. The defendant shall not wear, display, use, or possess any clothing or accessories which have any gang or security threat group significance.

The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

DEFENDANT: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$100.00		\$ .00	\$ .00

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

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

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

☐ Restitution amount ordered pursuant to plea agreement \$

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

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

☐ the interest requirement is waived pursuant to 18 U.S.C. Section 3612(f)(3) for the ☐ fine ☐ restitution.

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

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

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

DEFENDANT: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### SCHEDULE OF PAYMENTS

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

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g. weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties: **To the extent the defendant cannot immediately comply, the Court recommends the defendant participate in the Inmate Financial Responsibility Program.**

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 to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

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

☐ Joint and Several

Defendant and Co-Defendant Names, 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:

**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.**

DEFENDANT: TERRILL BERNARD WEATHERSPOON  
CASE NUMBER: 1:18-CR-00333-2

### DISPOSITION OF EVIDENCE

☒ That at the expiration of time for appeal, the firearm seized from the defendant shall be destroyed or returned to its lawful and rightful owner, if one can be determined.