

APPENDIX

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UNPUBLISHEDUNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4069

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

TROY ALLEN LUCAS, a/k/a Troy Madron,

Defendant – Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Roger W. Titus, Senior District Judge. (1:16-cr-00284-RWT-1)

Argued: May 18, 2020

Decided: December 4, 2020

Before THACKER and RICHARDSON, Circuit Judges, and Kenneth D. BELL, United
States District Judge for the Western District of North Carolina, sitting by designation.

Affirmed by unpublished opinion. Judge Richardson wrote the opinion, in which Judge
Thacker and Judge Bell joined.

ARGUED: Mary Elizabeth Davis, DAVIS & DAVIS, Washington, D.C., for Appellant.
Sandra Wilkinson, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore,
Maryland, for Appellee. **ON BRIEF:** Christopher M. Davis, DAVIS & DAVIS,
Washington, D.C., for Appellant. Robert Hur, United States Attorney, Martin J. Clarke,
Assistant United States Attorney, Jake Goodman, Student Law Clerk, OFFICE OF THE
UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

RICHARDSON, Circuit Judge:

In 2008, Baltimore City Police wrongfully pinned the murder of Rob Long on Demetrius Smith. And a local jury convicted him based on the testimony of two witnesses. He served four years of a life sentence before federal investigators uncovered evidence that led to his release. That federal investigation revealed that Long’s demise resulted from a remarkable scheme to stop Long’s cooperation in an investigation of Jose Morales for theft. Just days after learning from his lawyer that Long was cooperating in the theft investigation, Morales hired Troy Lucas to kill Long. Federal authorities convicted Morales of murder in 2013, and with Morales’ cooperation, federal efforts turned to Lucas. Lucas was then convicted by a federal jury for his involvement in the murder-for-hire plot.

Lucas appeals, claiming the district court erred in excluding the testimony of a deceased witness who had testified at Smith’s trial. He also argues that murder-for-hire is not a crime of violence under the force clause of 18 U.S.C. § 924(c). We affirm.

I. Background

On a March 2008 morning, Rob Long was shot twice in the head near Traci Atkins Park in Baltimore, Maryland. He died from gunshots that came from no “more than two feet away.” J.A. 997. Although Long was seen alone with Lucas fifteen minutes before the murder, the authorities charged Smith for Long’s murder.

In 2010, a jury in Baltimore City convicted Smith based largely on the testimony of two alleged eyewitnesses: Michelle Vicker and Mark Bartlett. Bartlett, now deceased, testified that he saw Smith shoot Long while standing at the corner across from the park. Bartlett claimed that around 7:30am he saw Smith “reach[] in his jacket and pull[] out a

handgun and aim[] it at Mr. Long’s head.” J.A. 78. While video evidence from a pole camera at the scene contradicted Bartlett’s testimony that he saw the murder, Smith’s counsel failed to address this evidence on Bartlett’s cross-examination. Instead, Smith’s counsel agreed to a stipulation that the video’s stated time was inaccurate. Smith was convicted and sentenced to life in prison.

Five months after Long’s murder, law enforcement caught Morales in Texas with six kilograms of cocaine, which led a federal jury to convict him of drug trafficking. Once incarcerated on those charges, Morales provided information to prison officials about Long’s murder. This information led to a federal investigation that revealed that Morales and Lucas—not Smith—had murdered Long.

Long, it turns out, had agreed to cooperate with law enforcement just before he was murdered. He cooperated against his longtime employer, Morales, in a state theft case. Using the information Long provided, law enforcement obtained a search warrant for Morales’ home, where they located stolen goods. Morales then contacted his attorney, Stanley Needleman, “irritated” and “very upset” about the search warrant. J.A. 138. In that discussion, Morales speculated that Long must have been the informant. Morales demanded that Needleman find out if Long was cooperating with law enforcement. Based on the Assistant State’s Attorney’s refusal to provide any information about the informant, Needleman began to suspect that Long was the informant. He confirmed that suspicion through Long’s own attorney, Alex Leikus, who gave away his client. Needleman relayed this information to Morales, who became “enraged.” J.A. 139. Long was murdered two days later.

Based on the federal investigation, Morales was convicted and sentenced to life in prison for Long's murder. *See United States v. Morales*, 585 F. App'x 176 (4th Cir. 2014). And state prosecutors requested that Smith's conviction—which was still on appeal—be vacated. Smith's conviction was finally expunged in March 2016, six years after he had been wrongfully convicted.

That left Lucas, whom Morales had hired to kill Long. In 2018, a federal jury convicted Lucas based on Morales' testimony¹ and corroboration from witnesses, a street-security camera, phone records, and statements Lucas had made to law enforcement. Lucas was convicted on all three counts charged in the indictment: conspiring to commit murder-for-hire resulting in death, using an interstate-commerce facility in the commission of murder-for-hire conspiracy resulting in death, and using a firearm during a crime of violence resulting in death. The district court sentenced Lucas to life in prison. Lucas now appeals the exclusion of testimony from a deceased witness and the conclusion that murder-for-hire is a crime of violence under the force clause of 18 U.S.C. § 924(c).

¹ Morales testified that his original idea was for Lucas "to shoot [Long] up with some cocaine and make it look like he [overdosed]." J.A. 414–15. But if that plan failed, Lucas explained that he could use the "small chrome pistol" he had shown to Morales just days before the murder to kill Long instead. J.A. 415. Seeing the gun was sufficient confirmation for Morales to pay Lucas \$2,000 of the total \$4,000 they had agreed upon for Lucas to carry out the murder. *See* J.A. 416. Morales paid Lucas the remaining balance upon receiving a call from Lucas the morning of March 24, 2008, confirming that "[the murder] was finished, it was done." J.A. 432. When he collected the cash from Morales, Lucas told him that "[h]e shot [Long] in the back of the head, and [Long] spun around, and then he shot him in the front." J.A. 439.

II. Discussion

A. Exclusion of hearsay testimony

During his trial, Lucas sought to introduce the transcript of Bartlett's testimony from Smith's trial. In the trial that led to Smith's wrongful conviction, Bartlett had testified that he saw Smith shoot Long. The district court refused to admit Bartlett's testimony under the residual exception to the rule against hearsay, Rule 807. Lucas challenges this ruling. We review for an abuse of discretion. *See United States v. Shaw*, 69 F.3d 1249, 1254–55 (4th Cir. 1995).²

The hallmark of Federal Rule of Evidence 807 is that the hearsay statement sought to be admitted is trustworthy. Though the rule was meaningfully amended in 2019, the Rule in effect at the time of Lucas' trial permitted the admission of hearsay that was not otherwise admissible if:

- (1) the statement has equivalent circumstantial guarantees of trustworthiness;
- (2) it is offered as evidence of a material fact;
- (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and
- (4) admitting it will best serve the purposes of these rules and the interests of justice.

² Lucas also argued below that the prior testimony should be admissible under Rule 804(b)(1), which permits former testimony when the declarant is unavailable under specific circumstances. But Lucas has waived that argument on appeal, as he did not raise it in his opening brief. *IGEN Intern., Inc. v. Roche Diagnostics GmbH*, 335 F.3d 303, 308 (4th Cir. 2003).

Fed. R. Evid. 807 (2017).³

Interpreting this version of Rule 807, we have held that a court should not rely on “other evidence offered” at trial—rather than the circumstances of the hearsay statement itself—when evaluating whether the statement contains sufficient guarantees of trustworthiness. *Shaw*, 69 F.3d at 1253 n.5.⁴ Instead, a court should consider the “totality of the circumstances that surround the making of the statement,” in determining whether the statement has a “ring of reliability about it.” *United States v. Clarke*, 2 F.3d 81, 84–85 (4th Cir. 1993) (citing *Idaho v. Wright*, 497 U.S. 805, 822 (1990)). “This trustworthiness requirement [] serves as a surrogate for the declarant’s in-court cross-examination.” *Shaw*, 69 F.3d at 1253 (citing *Wright*, 497 U.S. at 820).

³ The 2019 amendment to Rule 807 requires judging a statement’s trustworthiness based on the totality of the circumstances, including corroborating evidence:

- (1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and
- (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

See Fed. R. Evid. 807 (2019).

⁴ In *Shaw*, this discussion stemmed from our analysis of whether the prosecution’s introduction of hearsay testimony violated the Confrontation Clause. *Shaw*, 69 F.3d at 1253. But the inquiry into trustworthiness under Rule 807 “aligns with the inquiry demanded by the Confrontation Clause,” *United States v. Clarke*, 2 F.3d 81, 84 (4th Cir. 1993) (citing *Idaho v. Wright*, 497 U.S. 805, 822 (1990)), so we may rely on *Shaw* here.

In *Shaw*, Shaw’s co-defendant was convicted based, in part, on the prior testimony of two witnesses who died before Shaw’s trial. *Id.* at 1251. We affirmed the district court’s decision to admit transcripts of the witnesses’ prior testimony at Shaw’s trial. We considered whether the statements were “made under circumstances that guaranteed their trustworthiness such that cross-examination would have been of marginal utility in testing their accuracy.” *Id.* at 1253. Emphasizing that both witnesses had been robustly cross-examined and their inconsistencies vetted during their prior testimony, we found that added cross-examination at Shaw’s trial would have been of only “marginal utility.” *Id.* at 1254–55; *see also United States v. Bumpass*, 60 F.3d 1099, 1102 (4th Cir. 1995) (sufficient guarantees of trustworthiness for a statement offered under Federal Rule of Evidence 804(b)(3) are established when “cross examination would add little to test the hearsay’s reliability”). The marginal utility of further cross-examination coupled with the witnesses’ disincentive to lie at the first trial led us to find the statements to be sufficiently trustworthy. *Shaw*, 69 F.3d at 1254.

Unlike *Shaw*, the district court here found that Bartlett’s testimony in Smith’s trial was given under circumstances that lacked the type of cross-examination and vetting that would guarantee the testimony’s trustworthiness. J.A. 217. The district court found that the quality of Smith’s counsel’s cross-examination fell short of the representation required to guarantee the trustworthiness of Bartlett’s testimony. As a result of defense counsel’s poor performance, cross-examination of Bartlett in Lucas’ trial would have been “vastly different and more extensive” had Bartlett been able to testify in person. J.A. 217; *see also* J.A. 218 (“[T]here would have been a vastly different and far more searching and far-

reaching cross-examination than took place in the proceedings in [the Smith case].”). We agree.

Lucas argues that the district court erred by considering inconsistencies and contradictory evidence to evaluate the trustworthiness of Bartlett’s prior testimony. But we find that the district court’s analysis, focusing on the failure of Smith’s counsel to conduct an effective cross-examination with the available information, focused correctly on the “circumstances of the deceased witnesses’ statements” and not on “other corroborating evidence in the record.” *Shaw*, 69 F.3d at 1253 n.5. In *Shaw*, we considered in our trustworthiness analysis the “vigorous” questioning the witnesses endured on cross-examination and that the defendant’s counsel “took full advantage of his opportunity to cross-examine” the later-deceased witnesses. *Id.* at 1254. The district court here similarly considered whether Smith’s counsel effectively cross-examined Bartlett and reasonably concluded he did not. The contradicting evidence did not determine that Bartlett’s testimony was untrustworthy. Instead, the district court’s holding relied on Smith’s counsel’s *failure to address* the contradicting evidence during Bartlett’s cross examination. While contradicting evidence may not be directly relied on to show untrustworthiness, counsel’s failure to address such evidence is an appropriate consideration. *Id.* at 1253 n.5, 1254.

The district court properly considered that Bartlett’s testimony was given before a judge and under oath rather than in an informal setting. But given “the totality of the circumstances,” the district court determined that the testimony did not possess a sufficient guarantee of trustworthiness. Without the assurance that Bartlett was properly cross-

examined and vetted in the prior trial leading to an inference of untrustworthiness, we are placed in precisely the position the hearsay rules are designed to guard against. Thus, we find no basis for concluding that the district court's determination was an abuse of discretion.⁵

B. Section 924(c) crime of violence

Lucas' § 924(c) conviction was predicated on two offenses: conspiracy to use interstate commerce facilities to commit murder for hire resulting in death under 18 U.S.C. § 1958(a)⁶ and use of interstate commerce facilities in the commission of murder for hire resulting in death, also under 18 U.S.C. § 1958(a). Lucas argues that neither of these predicate offenses qualify as "crime[s] of violence" under § 924(c)'s force clause.⁷ We disagree.

⁵ Finding no abuse of discretion, we need not wade into the government's alternative arguments about Rule 403 and harmless error. *Cf. United States v. Castner*, 50 F.3d 1267, 1272 (4th Cir. 1995).

⁶ "Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any *facility of interstate or foreign commerce*, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, *anything of pecuniary value*, or who *conspires* to do so, shall be fined under this title or imprisoned for not more than ten years, or both; and if personal injury results, shall be fined under this title or imprisoned for not more than twenty years, or both; and if *death results*, shall be punished by death or life imprisonment, or shall be fined not more than \$250,000, or both." 18 U.S.C. § 1958(a) (emphasis added).

⁷ Both parties agree that after the Supreme Court's decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), neither predicate qualifies as a crime of violence under the residual clause of § 924(c).

We determine de novo whether an offense qualifies as a crime of violence. *United States v. Evans*, 848 F.3d 242, 245 (4th Cir. 2017). To qualify as a “crime of violence” under § 924(c)’s force clause, the charged offense must have as an element the use, attempted use, or threatened use of “physical force.” § 924(c)(3)(A). “Physical force” means “*violent* force”—that is, “strong physical force” that is “capable of causing physical pain or injury to another person.” *Johnson v. United States*, 559 U.S. 133, 140 (2010) (emphasis in original).

We first consider the method under which we conduct this inquiry. The Supreme Court adopted the categorical approach as one method of determining whether an offense qualifies as a “crime of violence.” *Sessions v. Dimaya*, 138 S. Ct. 1204, 1211 (2018). In applying the categorical approach, we “look only to the statutory definitions – *i.e.*, the elements – of a defendant’s [offense] and not to the particular facts underlying [the offense]” to determine whether the offense qualifies as a crime of violence. *Descamps v. United States*, 570 U.S. 254, 261 (2013) (cleaned up); *United States v. Royal*, 731 F.3d 333, 341–42 (4th Cir. 2013). However, this process is frustrated when the statute the defendant is charged under is divisible. This is so because a divisible statute “lists ‘potential offense elements in the alternative,’ and thus includes ‘multiple, alternative versions of the crime,’” *United States v. Bryant*, 949 F.3d 168, 173 (4th Cir. 2020) (quoting *Descamps*, 570 U.S. at 260) (emphasis omitted), “render[ing] opaque which element played a part in the defendant’s conviction,” *Descamps*, 570 U.S. at 260. When a statute is divisible, we apply the modified categorical approach, which permits us to “examine a limited set of documents, such as ‘the indictment, jury instructions, or plea agreement and

colloquy,” to remedy the opaqueness and determine “‘which of the statute’s alternative elements formed the basis of the defendant’s prior conviction.’” *Bryant*, 949 F.3d at 173 (first quoting *Mathis v. United States*, 136 S. Ct. 2243, 2249 (2016); then quoting *Descamps*, 570 U.S. at 262). Once we determine the precise offense of conviction, we apply the above-mentioned traditional categorical approach to determine whether that offense qualifies as a crime of violence under § 924(c)’s force clause. *Id.*

Section § 1958(a) is a divisible statute: one version of the offense requires the government to prove as an element of the crime that “death result[ed]” from its commission and carries a punishment of death or life imprisonment, while the other version does not include a death-resulting element and provides a maximum sentence of twenty years. *See* § 1958(a); *see also Mathis*, 136 S. Ct. at 2256 (“If statutory alternatives carry different punishments, then under *Apprendi* they must be elements.”); *United States v. Tsarnaev*, 968 F.3d 24, 104–05 (1st Cir. 2020) (finding a statute “divisible into two branches: one in which there is no ‘death results’ element (and the penalty is up to life in prison), and one in which there is a ‘death results’ element (and the penalty can be death)”). Counts 1 and 2 of the indictment charged Lucas with the “death results” offense. *See* J.A. 13 (“which offense resulted in the death of Robert Long”); J.A. 14 (same). So we consider the crime-of-violence question as it pertains to the “death results” offense under § 1958(a).

We look first to the conspiracy charged in Count 1. A conspiracy does not generally qualify as a crime of violence because it requires “only that the defendant agreed with another to commit actions that, if realized, would violate the [substantive crime of violence]. Such an agreement does not invariably require the actual, attempted, or

threatened use of physical force.” *United States v. Simms*, 914 F.3d 229, 233–34 (4th Cir. 2019) (en banc). But where the actor’s conviction “require[d] knowing conduct that cause[d] bodily injury to another, [it] categorically involve[d] the ‘use’ of ‘violent force.’” *United States v. Allred*, 942 F.3d 641, 655 (4th Cir. 2019). Our precedent is clear that “a crime requiring the ‘intentional causation’ of injury requires the use of physical force.” *United States v. Battle*, 927 F.3d 160, 166 (4th Cir. 2019) (quoting *United States v. Castleman*, 572 U.S. 157, 170 (2014)); see also *Castleman*, 572 U.S. at 170 (“It is impossible to cause bodily injury without applying force in the common-law sense.”); *In re Irby*, 858 F.3d 231, 236 (4th Cir. 2017); *Tsarnaev*, 968 F.3d at 104–05. By requiring that death result from the defendant’s conspiracy when the defendant has the “intent that a murder be committed,” the charged conspiracy offense under § 1958(a) requires the “use of physical force,” § 924(c)(1)(A), and thus is a crime of violence. See *Tsarnaev*, 968 F.3d at 104-05.

Our outcome on the predicate offense charged in Count 2—the substantive crime of using interstate commerce facilities in the commission of murder-for-hire—is dictated by the same analysis.⁸ As a result, we hold that either of Lucas’ § 1958(a) convictions properly qualified as predicate crimes of violence to sustain Lucas’ § 924(c) conviction.⁹

⁸ And our conclusion on this count is bolstered by *United States v. Luskin*, 926 F.2d 372, 379 (4th Cir. 1991). In that case, we held that the offense contained within the former version of 18 U.S.C. § 1958 was a crime of violence under both the force and residual clauses of § 924(c). *Id.* at 379 n.3.

⁹ Lucas also argues that the evidence failed to support the jury’s guilty verdict because Morales did not adequately identify Lucas at trial and there was no evidence that (Continued)

* * *

The district court did not abuse its discretion in preventing the introduction of essentially unchallenged testimony from a trial that led to a wrongful conviction. Nor did the district court err in finding that Lucas' § 1958(a) offenses qualify as crimes of violence under 924(c). Accordingly, the judgment of the district court is

AFFIRMED.

Lucas used an interstate-commerce facility to facilitate Long's murder. Reviewing these claims de novo but viewing the evidence and making reasonable inferences in the light most favorable to the government, we find more than sufficient evidence to support the verdict. *See* J.A. 392 (Morales identifying Lucas in the courtroom); J.A. 431–34 (Morales' testimony about making phone calls during the commission of the offense); J.A. 1052, 1056, 1058–62 (phone records showing calls).

FILED: December 4, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4069
(1:16-cr-00284-RWT-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TROY ALLEN LUCAS, a/k/a Troy Madron

Defendant - Appellant

J U D G M E N T

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

FILED: January 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-4069
(1:16-cr-00284-RWT-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

TROY ALLEN LUCAS, a/k/a Troy Madron

Defendant - Appellant

O R D E R

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

Entered at the direction of the panel: Judge Thacker, Judge Richardson, and Judge Bell.

For the Court

/s/ Patricia S. Connor, Clerk

United States District Court

District of Maryland

UNITED STATES OF AMERICA

v.

TROY ALLEN LUCAS

AMENDED JUDGMENT IN A CRIMINAL CASE

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

Case Number: RWT-1-16-CR-00284-001

USM Number: N/A

Defendant's Attorney: Harry J Trainor & Christopher Davis

Assistant U.S. Attorney: Sandra Wilkinson & Martin Clarke

Date of Original Judgment: January 19, 2018

(or date of last amended judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand
- ☐ Reduction of Sentence for Changed Circumstances (Fed.R.Crim.P.35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed.R.Crim.P.35(a))
- ☐ Correction of Sentence for Clerical Mistake (Fed.R.Crim.P.36)
- ☐ Modification of Supervision Conditions (18 U.S.C. § 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant to:
- ☐ 28 U.S.C. § 2255;
- ☐ 18 U.S.C. § 3559(c)(7); or
- ☐ Modification of Restitution Order

☒ **Order of Court****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) 1, 2 and 3 of the Indictment after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 1958(a)	Murder-For-Hire Conspiracy	03/24/2008	1

The defendant is adjudged guilty of the offense(s) listed above and sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 as modified by United States v. Booker, 543 U.S. 220 (2005).

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

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

January 23, 2018

Date of Imposition of Judgment

Roger W. Titus

United States District Judge

Titus *1/23/18*

Date

Name of Court Reporter: Linda Marshall

FILED
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JAN 23 2018
AT GREENBELT
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

DEFENDANT: TROY ALLEN LUCAS**CASE NUMBER: RWT-1-16-CR-00284-001****ADDITIONAL COUNTS OF CONVICTION**

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 1958(a)	Use Of Interstate Commerce Facilities In The Commission Of Murder-For-Hire	03/24/2008	2
18 U.S.C. 924(c)(1)(A)	Use Of A Firearm During Crime Of Violence Resulting In Death	03/24/2008	3

DEFENDANT: TROY ALLEN LUCAS**CASE NUMBER: RWT-1-16-CR-00284-001****IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Life as to Count 1, Life as to Count 2 , 10 years as to Count 3 to run consecutively to Counts 1 & 2.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
1. That the defendant be designated to the FMC at Butner, North Carolina for service of his sentence.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ a.m./p.m. on _____.
 - ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender, at his/her own expense, to the institution designated by the Bureau of Prisons at the date and time specified in a written notice to be sent to the defendant by the United States Marshal. If the defendant does not receive such a written notice, defendant shall surrender to the United States Marshal:
- ☐ before 2 p.m. on _____.
 - ☐ _____

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____

DEPUTY U.S. MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years as to Count 1; 5 years as to Count 2; 5 years as to Count 3; terms to run concurrently with each other.

The defendant shall comply with all of the following conditions:

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

A. MANDATORY CONDITIONS

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

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

B. STANDARD CONDITIONS OF SUPERVISION

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

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

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

C. SUPERVISED RELEASE ADDITIONAL CONDITIONS

Drug Treatment

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

Substance Abuse Testing

☒ You must submit to substance abuse testing to determine if you have used a prohibited substance. You must pay the costs of the program as directed by the probation officer. You must not attempt to obstruct or tamper with the testing methods.

Mental Health Treatment

☒ You 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 your participation in the program (provider, location, modality, duration, intensity, etc.).

Special Assessment

☒ Pay special assessment of \$300.00.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 5B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 300.00	\$ Waived	\$ N/A
<input type="checkbox"/>	CVB Processing Fee \$30.00		

☐ The determination of restitution is deferred until _____

An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

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

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

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ _____	0	\$ _____
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

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

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

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

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

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

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SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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

- A ☒ **Special Assessment of \$300.00** to be paid in full immediately.
- B ☐ \$_____ immediately, balance due (in accordance with C, D, or E); or
- C ☐ Not later than _____; or
- D ☐ Installments to commence _____ day(s) after the date of this judgment.
- E ☐ In _____ (e.g. *equal weekly, monthly, quarterly*) installments of \$_____ over a period of _____ year(s) to commence when the defendant is placed on supervised release.

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

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

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

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

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

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

Special instructions regarding the payment of criminal monetary penalties:

☐ Joint and Several

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

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