IN THE

SUPREME COURT OF THE UNITED STATES

JOHN CAMPBELL

Defendant-Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

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The petitioner, JOHN CAMPBELL, who is incarcerated in a federal correctional facility, asks leave to file the attached Petition for a Writ of Certiorari to The Supreme Court of the United States of America without prepayment of costs and to proceed in forma pauperis, pursuant to Rule 39 of this Court.

The Petitioner was previously granted leave to proceed in forma pauperis in the Court of Appeal for the Fourth Circuit. By order of the Court of Appeals dated July 18, 2019, the undersigned was appointed as counsel for the petitioner pursuant to the Criminal Justice Act, 18 USC § 3006A, which is why no affidavit from the petitioner is attached, pursuant to Supreme Court Rule 39(1).

Dated: May 25, 2021

/s/ Mark Diamond
Attorney for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN CAMPBELL

Defendant-Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

May 25, 2021

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QUESTIONS PRESENTED FOR REVIEW

1. Did the district court incorrectly decline to charge the jury on a key element of armed bank robbery?

2. Did the district court err in denying suppression of physical evidence?

3. Did the district court err in failing to dismiss the charge of possession of a firearm during a bank robbery?

4. Did the district court improperly enhance Mr. Campbell's sentence?

5. Did the district court err in refusing to sever counts?

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The United States Court of Appeals for the Fourth Circuit affirmed judgment in *United States of America. John Campbell et al*, 2021 WL 1235797 (4th Cir. Va.). (App. 1-13)

JURISDICTION

The final Order of the Court of Appeals, Fourth Circuit, was issued on April 2, 2021. Mr. Campbell's Petition for Panel and En Banc Rehearing was denied on May 4, 2021. (App. 14-15) This petition was filed within 90 days thereof.

Jurisdiction in the trial court was based on 18 USC § 3231, since the appellant was charged with offenses against the laws of the United States of America. The jurisdiction of this Court is invoked under Supreme Court Rule 10.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment, which forbids unreasonable search and seizure, as well as the Fifth Amendment, which assures that no one shall be deprived of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

By affirming his conviction, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory

power. In addition, the Fourth Circuit's ruling contradicts rulings on the same issues rendered by the Supreme Court.

BACKGROUND OF THE CASE

Mr. Campbell and his cousin, Alhakka Campbell, were tried in the United States District Court for the Eastern District of Virginia under index number 3:18CR124. Mr. Campbell was indicted for armed bank robbery by two masked men, during which no one was physically injured. Following jury trial, Mr. Campbell was convicted of one count each of armed bank robbery [18 USC § 2113(d)]; brandishing a firearm during a crime of violence [18 USC § 924(c)]; and possession of a firearm by a felon [18 USC § 922(g)]. On April 22, 2019, he was sentenced to 96 months in prison for bank robbery, 56 concurrent months for felon in possession of a firearm, and 60 consecutive months for brandishing a firearm during a crime of violence.

Judgment was affirmed by the Court of Appeals for the Fourth Circuit on April 2, 2021. A petition for rehearing was denied on May 4, 2021.

REASONS FOR GRANTING THE WRIT

The Fourth Circuit has so far departed from the accepted and usual course of judicial proceedings under the Fourth and Fifth Amendments as to call for an exercise of this Court's supervisory power including under *Franks v. Delaware*, 438

U.S. 154 (1978) and *Illinois v. Gates*, 462 U.S. 213 (1983) involving search and seizure; *Rosemond v. United States*, 572 U.S. 65 (2014) involving the standard of proof and adequate jury instructions for a charge of aiding and abetting; *United States v. Davis*, 139 S. Ct. 2319 (2019) involving crimes of violence; and *Beckles v. United States*, 137 S.Ct. 886 (2017) involving above-Guidelines sentencing.

Argument 1: The District Court Incorrectly Declined To Charge The Jury On A Key Element Of Armed Bank Robbery.

It was alleged at trial that two masked men aided and abetted each other by displaying a firearm during a bank robbery. A single weapon was imputed to both defendants. In *Rosemond v. United States*, 572 U.S. 65 (2014) this Court held that when a defendant is charged with aiding and abetting in a crime involving a firearm, (a) there must be proof beyond a reasonable doubt that he had "advance knowledge" that his accomplice would possess the firearm during the crime in order to convict him of using a firearm during a crime of violence, and (b) the court must instruct the jury that this is so. Almost all of the Circuits, including the Fourth, honor this precedent. [e.g., *United States v. Moore*, 2021 WL 387478 (4th Cir. 2021); *United States v. Fernandez-Jorge*, 894 F.3d 36 (1st Cir. 2018); *United States v. Prado*, 815 F.3d 93 (2d Cir. 2016); Solomon v. Warden Lewisburg, 764 F. App'x 140, 142 (3d Cir. 2019); *United States v. Cooper*, 979 F.3d 1084 (5th Cir. 2020); *United States v. Henry*, 797 F.3d 371 (6th Cir. 2015); *Farmer v. United*

States, 867 F.3d 837 (7th Cir. 2017); *United States v. Daniel*, 887 F.3d 350 (8th Cir. 2018); *United States v. Goldtooth*, 754 F.3d 763 (9th Cir. 2014); *United States v. Davis*, 750 F.3d 1186 (10th Cir. 2014); *United States v. Lanie*r, 778 F. App'x 672 (11th Cir. 2019)]

Mr. Campbell asked for just such a charge and the district court refused to give it. (USDC 34 p. 26) By doing so, the district court allowed the jury to convict him of aiding and abetting without his having advance knowledge that his co-defendant would have a firearm during the incident. There was no evidence that Mr. Campbell, who was not alleged to have been the man who displayed the single gun imputed to both defendants, knew that Alhakka possessed a firearm. The error was not harmless because a properly instructed jury could reasonably have held that a single weapon was used in this robbery (only one weapon was charged) and Mr. Campbell lacked advance knowledge that his accomplice was armed.

In denying relief on this issue, the Fourth Circuit held only the following: "After reviewing the record and relevant authorities, we conclude that the court properly instructed the jury and did not abuse its discretion in declining to give appellants' proposed instruction." It did not cite the authorities or explain why those authorities exempt application of the Supreme Court precedent established in *Rosemond*.

Argument 2: Mr. Campbell's Right Against Unreasonable Search and Seizure Was Violated.

Mr. Campbell moved to suppress evidence obtained as a result of improperly issued search warrants of his home at 5507 Willis Lane. He argued that (1) the warrant affidavit failed to set forth particular facts that showed the existence of probable cause for the search and contained intentionally misleading information, in violation of *Franks v. Delaware*, 438 U.S. 154 (1978) and (2) the affidavit failed to show that the affiant's information was reliable, in violation of *Illinois v. Gates*, 462 U.S. 213 (1983). The district court denied relief or a hearing and admitted evidence obtained as a result of the warrant over ongoing objections.

Specifically, Mr. Campbell argued that the detective's affidavit alleged that GPS trackers inside the bag that contained stolen money were tracked from the bank to 5507 Willis Lane, which was his home, and remained there, indicating that is where the stolen money was located. But evidence showed that the trackers moved between second, third, and fourth locations at 5505, 5506, and 5508 Willis Lane. In other words, the trackers showed the money was at three locations other than Campbell's home. In disregard of this uncontested fact, the detective misled the magistrate into issuing a warrant for Campbell's home by representing that is the only location in which the money was located after the robbery.

There was a second problem with the affidavit. The affiant stated that a second detective told him that the GPS trackers never moved from 5507 Lane. But

at trial, the second detective testified that he made no such statement to the affiant detective. This shed further doubt on the accuracy and reliability of the affidavit. Had the magistrate received accurate information about the location of the trackers and knew that the affidavit was misleading, it cannot be said beyond reason that he would not have issued the warrant, in which case the money, clothing, and firearm attributed to Mr. Campbell would not have been seized and used to convict him.

In denying relief on this issue, the Fourth Circuit held only the following: "After reviewing the record and relevant authorities, we conclude that the district court neither erred in denying appellants' motion to suppress, nor erred by doing so without first holding an evidentiary hearing." It did not provide a basis for its decision, leaving Mr. Campbell and this Court to guess at whether it failed to adequately consider the merits of his argument.

Argument 3: The Charge Of Possession Of A Firearm During A Bank Robbery Should Have Been Dismissed.

Mr. Campbell repeatedly moved to dismiss the charge of possessing a firearm during a crime of violence under 18 USC § 924(c) as void for vagueness because it is not categorically a violent offense. The district court denied relief, holding armed bank robbery is a violent offense under any conceivable circumstance and, "(T)his court does not believe that the categorical approach applies ...."

To sustain a conviction under 18 USC § 924(c) the prosecutor must prove that the defendant (1) used or carried a firearm, and (2) did so during and in relation to a crime of violence. (*United States v. Fuertes*, 805 F.3d 485, 498 (4th Cir. 2015) In its jury charge, the court defined "crime of violence" under both the force and residual clauses. This meant that the jury could have convicted Mr. Campbell under the residual clause of § 924(c) which this Court has held is unconstitutional. (*United States v. Davis*, 139 S. Ct. 2319, 2336 (2019); *United States v. Simms*, 914 F.3d 229, 236 (4th Cir. 2019)

The residual clause requires the court to imagine an idealized ordinary case of bank robbery and speculate whether "by its nature" there is "substantial risk" physical force will be used against the person or property of another, while providing no guidance on how to do so. The residual clause as written requires categorical review, not case-by-case review, and the court will not speculate on the legislature's requirement that there be categorical review or what it intended to constitute "substantial risk.". (ibid, *Davis* at 2331) For these reasons, the residual clause is unconstitutionally void for vagueness. (U.S. Const. Art. I, III; 5th and 14th Amends.) It fails to put the public on notice of what acts constitute a crime of violence as it is defined in the residual clause and requires the courts to do the job of the legislature.

Under the "categorical approach," "the court looks only to the fact of conviction and the statutory definition of the offense." "The court does not

consider the particular facts disclosed by the record of conviction." (*James v. United States*, 550 U.S. 192, 202 (2007) A categorical approach must be utilized when evaluating whether a crime is a crime of violence under both the force and residual clauses. (ibid, *Simms* at 233)

On appellate review, it was impossible to determine whether the jury convicted Mr. Campbell under the force clause or the void-for-vagueness residual clause. In denying relief on this issue, the Fourth Circuit held only the following: "(A)ppellant's argument is foreclosed by our decision in *United States v. McNeal*, 818 F.3d 141, 151 (4th Cir. 2016) (holding 18 USC § 2113(a),(d) is categorically a crime of violence under force clause of § 924(c)." While that is true, Mr. Campbell's argument on appeal was that the jury might have convicted him under the residual clause which, the Fourth Circuit and this Court have repeatedly held, is constitutionally prohibited. The Fourth Circuit did not address this argument at all.

Argument 5: The District Court Improperly Enhanced Mr. Campbell's Sentence Beyond the Guidelines Range.

Mr. Campbell objected to the calculation of his sentence in the presentence report. Based on the trial court's decision that he was subject to a total offense level of 22 and criminal history category III, his Guidelines range was 51 to 63 concurrent months in prison on counts 1 and 3 for armed bank robbery and possession of a firearm by a felon, plus 60 consecutive months on count 2 for use of a firearm during a crime of violence. His final Guidelines range for all three convictions, based on offense level 22 and criminal history III, was 111 to 123 months in prison. That was not enough for the prosecutor, who moved for an upward variance to 168 months in prison.

Mr. Campbell objected that an upward variance was unjustified because neither defendant made physical contact with anyone during the robbery; no firearm was discharged; no physical injuries were inflicted; no one blocked the entrance; the incident took less than two minutes; only $5200 was taken; the robbers did not jump over the counter; arrests were made right after the robbery and without incident; and he had gone long periods without an arrest, during which he worked full time. His assertions were borne out by the evidence.

The district court agreed there was no physical violence in this case. It held, though, that a Guidelines sentence was inadequate and sentenced Mr. Campbell to

156 months in prison, which was 33 months, or 27 percent higher than the recommended maximum Guidelines sentence.

The Guidelines are the correct starting point and initial benchmark for a sentence. The sentencing court must make an individualized assessment based on the facts presented. If the sentencing judge decides on an outside-the-Guidelines sentence, he must consider the extent of the deviation and ensure that the sentencing factors are sufficiently compelling to support the degree of variation. The court must explain its sentence to allow for meaningful appellate review and promote fair sentencing. (*Beckles v. United States*, 137 S.Ct. 886 (2017)

In disregard of these requirements, the district court failed to address the nature and circumstances of the offense, Mr. Campbell's history and characteristics, and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. The evidence against him was weak. Not one of the eyewitnesses identified either of the Campbells as a perpetrator even though, as the prosecutor argued, the event was a major point in the lives of the witnesses. Although police were in hot pursuit of the robbers when they followed the tracking devices, no money or tracking devices were found inside Campbell's home or in his pickup.

In addition, law enforcement agents rushed to judgment by improperly failing to investigate the three locations at which the GPS trackers pinged before pinging at the defendants' location for evidence and for alternate suspects. In any

event, their failure to do so, combined with the lack of evidence of the crime at Mr. Campbell's home, raised sufficient doubt to have prevented the district court from imposing an upward sentencing variance. Finally, the fact that the defendants did not use physical force during the robbery, did not injure anyone, did not discharge a weapon, and did not tarry are factors the district court should have, but failed to take into consideration, according to the record. According to eyewitness Docteur, the incident lasted 30 to 40 seconds.

The district court failed to make a record determination of whether or not Mr. Campbell's sentence avoids unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. Since the upward variance was unjustified under the totality of the factors and the district court failed to adequately state its reasons for imposing it, the case should have been remanded for resentencing. (*United States v. Moulden*, 478 F.3d 652 (4th Cir. 2007)

In denying relief on this issue, the district court said only the following: "(A)fter reviewing the record, we conclude that John Campbell's sentence is procedurally reasonable…. Our review of the record also leads us to conclude that John Campbell's sentence in substantively reasonable." It did not cite any evidence to support of its conclusion.

Argument 6: The District Court Erred in Refusing to Sever Count 3 from Counts 1 and 2.

Mr. Campbell moved to be sever count 3 from counts 1 and 2. Count 3 charged felon in possession of a weapon. Counts 1 and 2 charged armed bank robbery and possession of a firearm during a crime of violence. He argued that until the prosecutor proved he was the person who committed counts 1 and 2, evidence of his prior convictions for robbery, possession of a weapon, and resisting arrest – necessary to convict him of count 3 – would be prejudicial beyond probative value because it would lead the jury to believe he had a predilection for criminality and convict him of counts 1 and 2 because of his record. The court denied severance in favor of giving a limiting instruction to the jury.

The problem is that the district court never gave the promised limiting instruction. Thus, it cannot be discounted beyond reason that Campbell's right to a fair trial was not abrogated by the court's refusal to sever the charges.

The Fourth Circuit has held that evidence of a prior conviction is not overly prejudicial to a defendant on trial for other offenses only where a limiting instruction is given. (*United States v. Cardwell*, 433 F.3d 378 (4th Cir. 2005) But the district court gave no such instruction in Mr. Campbell's case.

The charges against him were complex and the evidence contradictory. Evidence of multiple cellphone conversations and text messages, video surveillance, and GPS tracking was introduced at trial. No identification was made

of him by any of the four eyewitnesses. For these reasons, it could be said on appellate review that but for evidence of his prior conviction, the jury would not have acquitted rather than convict Mr. Campbell. (U. S. Const. 5th, 6th Amends.) It was the weakness of the case against Campbell that required a limiting instruction or severance of the charges. He was afforded neither.

In denying relief, the Fourth Circuit held the following: "After reviewing the record and relevant authorities, we conclude that the district court both gave a proper limiting instruction and did not abuse its discretion in refusing to sever the § 922(g) charge against John Campbell." It did not cite any evidence in the record to support its conclusion.

CONCLUSION

For the foregoing reasons, Mr. Campbell respectfully asks the Court to issue a *writ of certiorari* to review the Court of Appeals for the Fourth Circuit's decision to affirm the judgment, and such further relief the Court deems proper.

Respectfully submitted,
/s/ Mark Diamond
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IN THE SUPREME COURT OF THE UNITED STATES

JOHN CAMPBELL
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PROOF OF SERVICE

Mark Diamond swears that on May 26, 2021, pursuant to Supreme Court Rules 29.3 and 29.4, I served the attached Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari on every person or his counsel who is required to be served by first-class mail through the U.S. Postal Service. The following were served:

(1) Hon. G. Zachary Terwilliger, Office of U.S. Attorney, 600 East Main Street, Richmond, VA 23219

(2) Mr. John Campbell, 92699-083, FCI Butner, Box 1500, Butner, NC 27509

(3) Hon. Elizabeth Prelogar, Solicitor General, Department of Justice, 950 Pennsylvania Ave. N.W., Washington, DC 20530

/s/ Mark Diamond
MARK DIAMOND

FILED: April 2, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4298 (L)
(3:18-cr-00124-HEH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ALHAKKA CAMPBELL

Defendant - Appellant

No. 19-4300
(3:18-cr-00124-HEH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOHN CAMPBELL

Defendant – Appellant

JUDGMENT

In accordance with the decision of this court, the judgments of the district court are 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

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4298

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALHAKKA CAMPBELL,

Defendant - Appellant.

No. 19-4300

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN CAMPBELL,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern District of Virginia, at Richmond. Henry E. Hudson, Senior District Judge. (3:18-cr-00124-HEH-1; 3:18-cr-00124-HEH-2)

Submitted: March 4, 2021 Decided: April 2, 2021

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

Affirmed by unpublished per curiam opinion.

Geremy C. Kamens, Federal Public Defender, Joseph S. Camden, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER; Mark Diamond, Richmond, Virginia, for Appellants. G. Zachary Terwilliger, United States Attorney, Alexandria, Virginia, Michael R. Gill, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Alhakka Campbell appeals his convictions for armed bank robbery, in violation of 18 U.S.C. §§ 2, 2113(a), (d); and brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(ii). John Campbell appeals his convictions for armed bank robbery, in violation of 18 U.S.C. §§ 2, 2113(a), (d); using and carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. §§ 2, 924(c)(1)(A)(i); and possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g), as well as his 156-month sentence. For the following reasons, we affirm the district court's judgments.

Appellants first argue that the district court abused its discretion by refusing to give a requested jury instruction regarding the aiding and abetting charges against them. "We review a district court's decision to give [or not give] a particular jury instruction for abuse of discretion" and "whether a jury instruction incorrectly stated the law de novo." *United States v. Miltier*, 882 F.3d 81, 89 (4th Cir. 2018). In assessing whether an instruction correctly stated the law, "[w]e must determine whether the instructions construed as a whole, and in light of the whole record, adequately informed the jury of the controlling legal principles without misleading or confusing the jury to the prejudice of the objecting party." *Id.* (internal quotation marks omitted). "Even if a jury was erroneously instructed, however, we will not set aside a resulting verdict unless the erroneous instruction seriously prejudiced the challenging party's case." *Id.* (internal quotation marks omitted) (emphasis omitted). Furthermore, declining to give a proposed instruction "is reversible error only if [the proposed instruction] (1) was correct, (2) was not substantially covered by the charge

that the district court actually gave to the jury, and (3) involved some point so important that the failure to give the instruction seriously impaired the defendant's defense." *United States v. Raza*, 876 F.3d 604, 614 (4th Cir. 2017) (internal quotation marks omitted). After reviewing the record and relevant authorities, we conclude that the court properly instructed the jury and did not abuse its discretion in declining to give Appellants' proposed instruction.

Next, Appellants argue that the district court erred by denying their motion to suppress the evidence obtained from the searches of John Campbell's house and truck without first holding an evidentiary hearing. "We assess de novo the legal determinations underlying a district court's suppression rulings, including the denial of a [*Franks v. Delaware*, 438 U.S. 154 (1978)] hearing, and we review the court's factual findings relating to such rulings for clear error." *United States v. White*, 850 F.3d 667, 672 (4th Cir. 2017) (internal quotation marks omitted). "An accused is generally not entitled to challenge the veracity of a facially valid search warrant affidavit" by way of a motion to suppress. *United States v. Allen*, 631 F.3d 164, 171 (4th Cir. 2011). However, under *Franks*, a defendant is entitled to suppression of evidence seized if, during an evidentiary hearing on the veracity of statements in the affidavit, "perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause." *Franks*, 438 U.S. at 156.

To be entitled to a *Franks* hearing, "a defendant must make a substantial preliminary showing that (1) law enforcement made a false statement [or omission]; (2) the false

statement [or omission] was made knowingly and intentionally, or with reckless disregard for the truth; and (3) the false statement [or omission] was necessary to the finding of probable cause." *United States v. Moody*, 931 F.3d 366, 370 (4th Cir. 2019) (internal quotation marks omitted), *cert. denied*, 140 S. Ct. 823 (2020). "[A]llegations of negligence or innocent mistake provide an insufficient basis for a hearing." *United States v. McKenzie-Gude*, 671 F.3d 452, 462 (4th Cir. 2011) (internal quotation marks omitted). Furthermore, "'[o]mitted information that is potentially relevant but not dispositive of the probable cause determination is not enough to warrant a *Franks* hearing.'" *Id.* (brackets omitted) (quoting *United States v. Colkley*, 899 F.2d 297, 301 (4th Cir. 1990)). After reviewing the record and relevant authorities, we conclude that the district court neither erred by denying Appellants' motion to suppress, nor erred by doing so without first holding an evidentiary hearing.

Third, Appellants argue that the court erred by finding that armed bank robbery was a crime of violence and accordingly refusing to dismiss the § 924(c) charges against them.* Appellants' argument is foreclosed by our decision in *United States v. McNeal*, 818 F.3d 141, 151 (4th Cir. 2016) (holding 18 U.S.C. § 2113(a), (d) is categorically a crime of violence under force clause of § 924(c)). Accordingly, we conclude that the district court did not err by refusing to dismiss the charges against Appellants.

* Because John Campbell did not pursue this argument below, his challenge to his § 924(c) conviction on these grounds is reviewed for plain error only. *See United States v. McClung*, 483 F.3d 273, 276 (4th Cir. 2007); Fed. R. Crim. P. 52(b).

Next, Alhakka Campbell argues that the district court erred by refusing to suppress the evidence obtained from the search of his phone. We review de novo a district court's legal conclusions made in denying a motion to suppress and its factual findings for clear error, *United States v. Kolsuz*, 890 F.3d 133, 141-42 (4th Cir. 2018), and review the sufficiency of a search warrant and its supporting affidavit de novo, *United States v. Oloyede*, 982 F.2d 133, 138 (4th Cir. 1992). "When, as here, a motion to suppress has been denied, we view the evidence in the light most favorable to the government." *United States v. McBride*, 676 F.3d 385, 391 (4th Cir. 2012).

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. The requirement of particularity "ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Maryland v. Garrison*, 480 U.S. 79, 84 (1987). "When it comes to particularity, we construe search warrants in a commonsense and realistic manner, avoiding a hypertechnical reading of their terms." *United States v. Blakeney*, 949 F.3d 851, 862 (4th Cir. 2020) (internal quotation marks omitted). A warrant is sufficiently particularized if it "describes the items to be seized with enough specificity that the executing officer is able to distinguish between those items which are to be seized and those that are not," and "constrain[s] the discretion of the executing officers and prevent[s] a general search." *Id.* at 862-63 (internal quotation marks omitted). After reviewing the record and relevant

authorities on this point, we conclude that the district court did not err by refusing to suppress the evidence obtained from the search of Alhakka's phone.

Relatedly, Alhakka argues that the district court erred by admitting evidence of Alhakka's internet browsing history obtained from his phone related to his searches for short-term loans. "We review a trial court's rulings on the admissibility of evidence for abuse of discretion." *United States v. Abdallah*, 911 F.3d 201, 219 (4th Cir. 2018) (internal quotation marks omitted). "A district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law." *United States v. Dillard*, 891 F.3d 151, 158 (4th Cir. 2018) (internal quotation marks omitted). Even if a district court abuses its discretion, we will not overturn a conviction due to an erroneous evidentiary ruling if the error is harmless—that is, if we can "say with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error." *United States v. Cole*, 631 F.3d 146, 155 (4th Cir. 2011) (internal quotation marks omitted). We have reviewed the record on this point and find that the district court did not abuse its discretion in admitting the evidence of Alhakka's browsing history under Fed. R. Evid. 403.

Alhakka also argues that the district court erred by refusing to dismiss the § 924(c) charge against him as a sanction for an alleged violation of the Government's obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), asserting that the court-ordered stipulation regarding a potential witness's testimony was insufficient to remedy the prejudice caused

by her absence at trial. "[T]o establish a *Brady* violation, the evidence at issue must have been (1) favorable to the defendant (either because it was exculpatory or impeaching), (2) material to the defense (that is, prejudice must have ensued), and (3) suppressed (that is, within the prosecution's possession but not disclosed to defendant)." *United States v. Young*, 916 F.3d 368, 383 (4th Cir. 2019). "No due process violation occurs as long as *Brady* material is disclosed to a defendant in time for its effective use at trial." *United States v. Smith Grading & Paving, Inc.*, 760 F.2d 527, 532 (4th Cir. 1985). After reviewing the record and relevant authorities on this point, we conclude that the district court did not err by refusing to dismiss the § 924(c) charge against Alhakka Campbell.

Next, John Campbell argues that his convictions were not supported by sufficient evidence. This court reviews de novo the sufficiency of the evidence supporting a conviction. *United States v. Wolf*, 860 F.3d 175, 194 (4th Cir. 2017). "A defendant challenging the sufficiency of the evidence faces a heavy burden." *United States v. Banker*, 876 F.3d 530, 540 (4th Cir. 2017) (internal quotation marks omitted). On such a challenge, the defendant's conviction "must be upheld if there is substantial evidence to support it." *United States v. Benson*, 957 F.3d 218, 237-38 (4th Cir. 2020). "Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Id.* at 238 (internal quotation marks omitted). "In evaluating the evidence, [we] must view the evidence in the light most favorable to the Government, drawing all reasonable inferences in its favor and assuming the jury resolved all contradictions in testimony in favor of the Government." *Id.* (brackets and internal quotation marks omitted). "Insufficient evidence may be found

only if no rational trier of fact could have agreed with the jury." *Id.* (internal quotation marks omitted). Our review of the record leads us to conclude that the convictions are supported by sufficient evidence.

John Campbell also challenges the reasonableness of his sentence. We review criminal sentences for reasonableness "under a deferential abuse-of-discretion standard." *United States v. Lynn*, 912 F.3d 212, 216 (4th Cir. 2019) (internal quotation marks omitted). In evaluating a sentencing court's calculation of the advisory Sentencing Guidelines range, we "review the district court's factual findings for clear error and legal conclusions de novo." *White*, 850 F.3d at 674.

We must first review the procedural reasonableness of a sentence before considering its substantive reasonableness. *See United States v. Provance*, 944 F.3d. 213, 218 (4th Cir. 2019). In determining procedural reasonableness, we look for "significant procedural error, such as . . . failing to consider the [18 U.S.C.] § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range." *Gall v. United States*, 552 U.S. 38, 51 (2007). "The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Rita v. United States*, 551 U.S. 338, 356 (2007). This standard requires the district court to "address or consider all non-frivolous reasons presented for imposing a different sentence and explain why he has rejected those arguments." *United States v. Ross*, 912 F.3d 740, 744 (4th Cir. 2019). Furthermore, "a perfunctory recitation of the defendant's arguments or the § 3553(a)

factors without application to the defendant being sentenced does not demonstrate reasoned decisionmaking or provide an adequate basis for appellate review." *United States v. Blue*, 877 F.3d 513, 518 (4th Cir. 2017) (internal quotation marks omitted). Rather, "the district court must provide some individualized assessment justifying the sentence imposed and rejection of arguments for a higher or lower sentence based on § 3553." *Ross*, 912 F.3d at 744 (internal quotation marks omitted). After reviewing the record, we conclude that John Campbell's sentence is procedurally reasonable.

Moving to substantive reasonableness, we examine "the totality of the circumstances" to determine if a sentence is substantively reasonable. *Gall*, 552 U.S. at 51. "Where, as here, the district court imposes a sentence outside of the Guidelines range, it must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Provance*, 944 F.3d at 217 (internal quotation marks omitted). "A major departure should be supported by a more significant justification than a minor one." *Id.* While "we may consider the extent of the deviation, we must give due deference to the district court's decision that the 18 U.S.C. § 3553(a) factors, on a whole, justify the extent of the variance." *Id.* (brackets and internal quotation marks omitted). Our review of the record also leads us to conclude that John Campbell's sentence is substantively reasonable.

Finally, John Campbell asserts that the district court erred both by declining to sever the § 922(g) charge against him and, after he stipulated to his status as a convicted felon, by failing to give a limiting instruction regarding the jury's consideration of his prior convictions. We review a district court's denial of a motion to sever for abuse of discretion.

United States v. Cannady, 924 F.3d 94, 102 (4th Cir. 2019). Severance of properly joined offenses is appropriate if the defendant establishes that he would be prejudiced by the joinder. *See* Fed. R. Crim. P. 14(a). However, defendant moving to sever counts in an indictment has the burden of demonstrating "a strong showing of prejudice," *United States v. Branch*, 537 F.3d 328, 341 (4th Cir. 2008) (internal quotation marks omitted), and "it is not enough to simply show that joinder makes for a more difficult defense," *United States v. Goldman*, 750 F.2d 1221, 1225 (4th Cir. 1984). Accordingly, "the district court's denial of a motion to sever should be left undisturbed, absent a showing of clear prejudice or abuse of discretion." *Branch*, 537 F.3d at 341 (internal quotation marks omitted). After reviewing the record and relevant authorities, we conclude that the district court both gave a proper limiting instruction and did not abuse its discretion in refusing the sever the § 922(g) charge against John Campbell.

Accordingly, we affirm the judgments of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: May 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4298 (L)
(3:18-cr-00124-HEH-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ALHAKKA CAMPBELL

Defendant - Appellant

No. 19-4300
(3:18-cr-00124-HEH-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOHN CAMPBELL

Defendant – Appellant

ORDER

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

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

For the Court

/s/ Patricia S. Connor, Clerk