

APPENDIX A

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UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 20-4458

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY LOWERY, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Wilmington. James C. Dever III, District Judge. (7:18-cr-00120-D-1)

Submitted: November 17, 2021

Decided: January 7, 2022

Before THACKER and HARRIS, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

G. Alan DuBois, Federal Public Defender, Jaclyn L. Tarlton, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Raleigh, North Carolina, for Appellant. G. Norman Acker, III, Acting United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, Joshua L. Rogers, Assistant United States Attorneys, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Larry Lowery, Jr., appeals his sentence of 180 months' imprisonment and 3 years' supervised release imposed following his guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). On appeal, Lowery asserts that the district court erred in applying a sentencing enhancement under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), as his prior North Carolina convictions for breaking or entering and breaking or entering a place of worship do not qualify as predicate violent felonies under the ACCA. Lowery also argues that the district court committed several errors when imposing his discretionary conditions of supervised release. Although we uphold Lowery's ACCA enhancement, we find reversible error in Lowery's supervised release conditions, and we vacate and remand for resentencing.

We review de novo whether a prior conviction qualifies as an ACCA violent felony. *United States v. Cornette*, 932 F.3d 204, 207 (4th Cir. 2019). In *United States v. Mungro*, 754 F.3d 267 (4th Cir. 2014), we "conclude[d] that N.C. Gen. Stat. § 14-54(a), as interpreted by the North Carolina Supreme Court, sweeps no more broadly than the generic elements of burglary" and "therefore qualifies as an ACCA predicate offense under 18 U.S.C. § 924(e)(2)(B)(ii)." *Id.* at 272. Lowery relies in part on several intervening Supreme Court cases, including *Mathis v. United States*, 136 S. Ct. 2243 (2016), and *United States v. Stitt*, 139 S. Ct. 399 (2018), to argue that North Carolina breaking and entering is, in fact, categorically broader than generic burglary. However, we recently reaffirmed our prior holding in *Mungro*, notwithstanding *Mathis* and *Stitt*. *United States v. Dodge*, 963 F.3d 379, 383–85 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1445 (2021).

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“[O]ne panel [of this court] cannot overrule a decision issued by another panel.” *United States v. Williams*, 808 F.3d 253, 261 (4th Cir. 2015) (internal quotation marks omitted). Because *Mungro* and *Dodge* foreclose Lowery’s challenges to his ACCA enhancement, we find no reversible error in his term of imprisonment.

Turning to Lowery’s supervised release conditions, the Government concedes, and Lowery agrees, that the discretionary conditions of supervised release orally announced by the district court are inconsistent with those listed in the written judgment, in violation of *United States v. Rogers*, 961 F.3d 291 (4th Cir. 2020). Although “the [G]overnment’s concession of error is not binding on this court,” *United States v. Hairston*, 522 F.3d 336, 340 (4th Cir. 2008), the parties’ assertion of *Rogers* error finds support in the record. And, as we recently clarified, the remedy for a *Rogers* error “is to vacate the sentence” in its entirety “and remand for the district court to resentence” the defendant. *United States v. Singletary*, 984 F.3d 341, 346 (4th Cir. 2021). Because vacatur and remand is warranted on this basis, we need not reach Lowery’s remaining challenges to his supervised release conditions. *See id.*

Accordingly, we vacate the district court’s judgment and remand for resentencing consistent with this opinion. 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.

VACATED AND REMANDED

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA

v.

LARRY LOWERY, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: 7:18-CR-120-1-D

USM Number: 66068-056

David E. Wicclair

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1s of Superseding Indictment

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:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e)(1)	Possession of a Firearm by a Felon	2/13/2018	1s

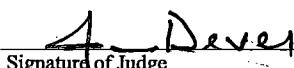
The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/20/2020
Date of Imposition of Judgment


Signature of Judge

James C. Dever III, United States District Judge
Name and Title of Judge

8/20/2020
Date

DEFENDANT: LARRY LOWERY, JR.
CASE NUMBER: 7:18-CR-120-1-D

IMPRISONMENT

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

Count 1s: 192 months

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

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that he serve his term in FCI Bennettsville, South 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 _____ a.m. p.m. on _____

as notified by the United States Marshal.

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

before 2 p.m. on _____

as notified by the United States Marshal.

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: LARRY LOWERY, JR.
CASE NUMBER: 7:18-CR-120-1-D

SUPERVISED RELEASE

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

Count 1s: 3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a 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.

APPENDIX B

DEFENDANT: LARRY LOWERY, JR.
CASE NUMBER: 7:18-CR-120-1-D

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: LARRY LOWERY, JR.

CASE NUMBER: 7:18-CR-120-1-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

The defendant shall not incur new credit charges or open additional lines of credit without approval of the probation office.

The defendant shall provide the probation office with access to any requested financial information.

The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.

The defendant shall consent to a warrantless search by a United States probation officer or, at the request of the probation officer, any other law enforcement officer, of the defendant's person and premises, including any vehicle, to determine compliance with the conditions of this judgment.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

DEFENDANT: LARRY LOWERY, JR.

CASE NUMBER: 7:18-CR-120-1-D

CRIMINAL MONETARY PENALTIES

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

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

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>
TOTALS	\$ _____ 0.00	\$ _____ 0.00	

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:

* 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: LARRY LOWERY, JR.
CASE NUMBER: 7:18-CR-120-1-D

SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ _____ due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

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

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

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

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

F Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of \$100.00 shall be due in full immediately.

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

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

Joint and Several

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

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

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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

AUGUST 20, 2020
SENTENCING HEARING
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Government:

JOHN KOESTERS, ASSISTANT U.S. ATTORNEY
U.S. Attorney's Office
150 Fayetteville Street, Suite 2100
Raleigh, North Carolina 27601

On Behalf of the Defendant:

DAVID WICCLAIR, FEDERAL PUBLIC DEFENDER
Federal Public Defender's Office
150 Fayetteville Street, Suite 450
Raleigh, North Carolina 27601

AMY M. CONDON, CRR, RPR, CSR
Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

1 (Thursday, August 20, 2020, commencing at 9:19 a.m.)

2 P R O C E E D I N G S

3 THE COURT: We'll next take up the sentencing of
4 Larry Lowery.

5 (Pause in the proceeding.)

6 THE COURT: Is the defense ready?

7 MR. WICCLAIR: Yes, Your Honor. Thank you.

8 THE COURT: Good morning, Mr. Koesters. Is the
9 Government ready?

10 MR. KOESTERS: Yes, Your Honor.

11 THE COURT: At this time I'd ask that Mr. Lowery be
12 sworn or affirmed.

13 (The defendant, Larry Lowery, Jr., was duly sworn.)

14 THE COURT: Mr. Lowery, do you understand that
15 having been sworn, that your answers to my questions are
16 subject to the penalty of perjury; and if you were to lie to
17 me, you could be prosecuted for perjury or for making a false
18 statement, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Have you taken any kind of medicine or
21 any other substance in the last 48 hours that would affect
22 your ability to hear and understand this proceeding?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Do you know why you're here today?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Wicclair, do you have any reason to
2 doubt Mr. Lower's competence to go forward today?

3 MR. WICCLAIR: No, Your Honor.

4 THE COURT: Does the Government have any reason to
5 doubt Mr. Lower's competence to go forward today?

6 MR. KOESTERS: No, Your Honor.

7 THE COURT: Based on Mr. Lowery's answers to my
8 questions, my observations of him, and the answers from
9 counsel, I find that he is competent.

10 Mr. Lowery, you're here today having entered a plea
11 of guilty to the charge of possession of a firearm by a felon.

12 The sentencing guidelines are no longer mandatory;
13 they're advisory.

14 Nevertheless, I'm still to take into account the
15 now-advisory guidelines. I do this by initially making
16 findings of fact and calculating an advisory guideline range.
17 I'll then consider any motion that might be made that might
18 move the range either up or down. I'll then consider all
19 arguments that Mr. Wicclair makes on your behalf, any
20 statement you'd like to make about your sentence, and the
21 arguments that Mr. Koesters makes about your sentence on
22 behalf of the United States.

23 I'll then determine your sentence and I'll announce
24 it here in court today. That'll be the process we'll follow.

25 Mr. Wicclair, did you receive a copy of the

1 presentence report?

2 MR. WICCLAIR: Yes, Your Honor.

3 THE COURT: Mr. Lowery, did you speak with Mr.
4 Wicclair about the presentence report?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: At this time the Court directs that the
7 presentence report be placed in the record under seal.

8 In accordance with Rule 32 of the Federal Rules of
9 Criminal Procedure, the Court accepts as accurate the
10 presentence report, except as to matters in dispute as set
11 forth in the addendum.

12 I have reviewed the entire report, including the
13 addendum. The addendum does contain objections. Principally,
14 one -- well, the factual objections don't affect the advisory
15 guideline range.

16 Do you want to be heard on those?

17 MR. WICCLAIR: No, Your Honor.

18 THE COURT: Okay. So I'll overrule those based on
19 what's in the PSR.

20 And then really what amounts to a preservation
21 objection, it would seem to me, in light of the decision of
22 United States v. Dodge.

23 MR. WICCLAIR: That's correct, Your Honor. Just in
24 an abundance of caution.

25 THE COURT: So that objection is noted and

1 overruled.

2 The Fourth Circuit, again, in United States v.
3 Dodge, 963 F.3d 379, 385 (4th Cir. 2020) continued to apply;
4 United States v. Mungro, 754 F.3d 267 (4th Cir. 2014) and
5 cited I think all the unpublished cases in between *Mungro* and
6 *Dodge*, but that objection is noted and overruled.

7 So no other objections, correct, Mr. Wicclair?

8 MR. WICCLAIR: That's correct, Your Honor.

9 THE COURT: No objections from the United States?

10 MR. KOESTERS: No, Your Honor.

11 THE COURT: Okay. So for purposes of *Booker* and its
12 progeny, the total offense level is 30, the criminal history
13 category is VI, the advisory guideline range is 180 to 210
14 months.

15 The 180 at the bottom of that range is due to the
16 mandatory minimum associated with the count of conviction in
17 light of Mr. Lowery's status as an armed career criminal.

18 Does the Government object to that advisory
19 guideline range?

20 MR. KOESTERS: No, Your Honor.

21 THE COURT: Does the defense object to that advisory
22 guideline range?

23 MR. WICCLAIR: No, Your Honor.

24 THE COURT: I'll hear first from Mr. Wicclair, then
25 I'll hear from Mr. Lowery, then I'll hear from Mr. Koesters.

1 MR. WICCLAIR: Thank you, Your Honor.

2 As much as I would like to here today request a
3 sentence less than 180 months, obviously given his designation
4 as an armed career offender, I'm constrained to request the
5 180 months despite my belief that a lesser sentence would
6 comply with the 3553(a) factors.

7 If I can go through those factors, Your Honor.

8 First, the nature and circumstances of the offense: While
9 possession of a firearms is obviously a serious crime, it's
10 important to note, Your Honor, that unlike many that come
11 before you Mr. Lowery didn't threaten anyone with a firearm or
12 otherwise use it. He didn't attempt to throw the firearms
13 during his arrest. Instead he, in fact, alerted officers to
14 the fact he had them on his person. Thus protecting not only
15 himself but also the officers.

16 You know, but for his breaking and entering history,
17 which obviously you see from his PSR is extensive that makes
18 him an armed career offender, this would have been otherwise
19 your run-of-the-mill gun case with guidelines of 51 to 63
20 months.

21 Moving to the history and characteristics of
22 Mr. Lowery: By all accounts, Mr. Lowery has and continues to
23 have a loving and supporting family in Pembroke. He
24 unfortunately lost his mother, Pamela, about a year ago while
25 he was in custody at New Hanover County Detention Center on

1 this case; and, you know, I can tell not being there had a
2 profound impact on him. His mother hadn't been well for quite
3 some time, she had dementia. And it was a matter of time
4 before she would pass, but I could tell obviously not being
5 there for the ceremony, it affected Larry.

6 I was fortunately able to speak with his sister,
7 Crystal, who he is very close with. Crystal was able to send
8 me a program from the funeral which I gave to Larry which I
9 know meant a lot to him. And Crystal was also able to video
10 the ceremony as well and we'll be able to show him the video
11 at the appropriate time.

12 But what I take from this is that unlike a lot of
13 the defendants particularly like Larry who have, you know,
14 just decades of long drug addictions, decades long drug
15 addictions that led to being in and out of jails, in and out
16 of drinking and drug treatment programs, a lot of the clients
17 that I represent who have been addicts for that long have
18 really kind of pushed away, you know, their family and those
19 close to them.

20 I think it's notable that his family has not
21 pushed -- he has not pushed them away. They are still there
22 for him. They've been for him during the pendency of this
23 case and by all accounts they'll be there for him if he should
24 be released from custody. His sister said that he has a place
25 to stay with her there, which, again, is notable because I

1 know a lot of family members that I've spoken with who have
2 dealt with drug addicts say he has no place to stay with me or
3 she has no place to stay with me. They burn too many bridges.

4 So I do think that's notable and for that reason we
5 would be recommending a placement at FCI Bennettsville because
6 it is the institution that is closest to his home of Pembroke.

7 Your Honor, I do think that this fact, the fact that
8 he does have family still in his corner and the fact that he
9 is in communication with his sister, I mean, this above all
10 else gives him a chance to finally remain sober upon his
11 release.

12 In talking about his drug issues, I mean, Larry,
13 he's not in denial, it would be hard to be in denial about a
14 drug issue when you're dealing with the record he has and the
15 number of times he's been in treatment, but he's not in denial
16 about his drug issues and he wants to get the most help he can
17 get.

18 You see from his prior record, the most time he's
19 spent in jail has been like 25 months. And what that meant is
20 obviously not really addressing the root of the problem, and
21 he needs to address the root of that problem. He wants to get
22 into RDAP. It's not going to get him a year off the sentence
23 given the firearms, it's not. But he wants to make the most
24 of the time that he's going to have. He's going to have 15
25 years at least and he wants to make use of that to make sure

1 that he can -- if he comes out, he'll be able to actually
2 remain sober for the remainder of his life.

3 Your Honor, there's no reason to think he won't be
4 successful in the program, as he's been successful in shorter
5 programs, the 90-day programs. And he's actually taken
6 advantage -- and I have an exhibit that I would submit to the
7 court at the end of my presentation that I would collectively
8 marked at Defense Exhibit 1. He's completed numerous
9 certificates while at Edgecombe Jail, which is actually pretty
10 unusual that they have the number of programs that they do
11 which is kudos to Edgecombe, but also to Mr. Lowery who, you
12 know, is staring at 15 years regardless and has completed
13 reading, you know, courses, he's completed courses in auto
14 mechanics to give him a shot of being able to have a
15 profession when he gets out of custody. He's already taken
16 the steps towards getting a GED, which is the first thing he
17 wants to do and he would ask you to recommend that he get a
18 GED as part of his sentence.

19 So, again, there's no reason to believe that Larry
20 will not take full advantage of what's out there at the BOP.

21 The need for the sentence to reflect the seriousness
22 of the offense and provide deterrence and protect the public,
23 as I said, Your Honor, the longest sentence that he's
24 previously served is 25 months. Meaning that regardless of
25 what sentence he receives today, it's going to be at least

1 seven times the length of -- you know, of the prior longest
2 sentence.

3 The 180 months is going to see him in custody for
4 the remainder of his forties and much of his fifties. And,
5 you know, in this day and age, even a sentence of 180 months
6 may mean he never gets out of prison. But if he is released,
7 the U.S. Sentencing Commission's statistics shows the
8 likelihood of recidivism is much less than it would be if he
9 were released today given the fact that he will be at least in
10 his mid to late fifties when released.

11 Again, all of this to say, you know, it is our
12 contention that more than 180 months is unnecessary, as 180
13 months will clearly deter and protect the public.

14 Your Honor, lastly, the 180 months will provide more
15 than enough time for Larry to take full advantage of the
16 educational and vocational training that the BOP offers.

17 We're asking that you recommend his GED. We're
18 asking that you recommend getting his, you know, getting and
19 completing RDAP, and we're asking that you recommend
20 completing vocational training, specifically in HVAC and
21 electricity.

22 Thank you, Your Honor.

23 THE COURT: At this time I'll hear from Mr. Lowery,
24 if you'd like to make a statement, sir.

25 THE DEFENDANT: Yes, sir.

1 Your Honor, I just want to say, I mean, I did what I
2 did. I'm sorry for doing it. I mean, I have no excuse to
3 have possession of two guns. I didn't know I was going to be
4 facing up to 15 years for having a gun. I mean, Your Honor,
5 like I said, I'm 43. I'm just tired of it.

6 THE COURT: Thank you, Mr. Lowery.

7 At this time I'll hear from Mr. Koesters on behalf
8 of the United States.

9 MR. KOESTERS: Your Honor, the defendant is an armed
10 career criminal. "Career" is probably the best word to
11 describe Mr. Lowery's history and experience with the criminal
12 justice system.

13 At the age of 43, he has nine felony breaking and
14 entering convictions, nine of them. Through the circumstances
15 that led to these firearms, he would have had his tenth and
16 eleventh, double digits.

17 Because of that illustrious career, Your Honor. The
18 Government believes 210 months, the top of the guideline range
19 is appropriate for him. We believe it satisfies the 3553(a)
20 factors.

21 When you look at the nature and circumstances, this
22 keeps being described as just he was just possessing a gun,
23 but it wasn't just that. At the age of 41, he broke into two
24 businesses. He stole the firearm that they found on him from
25 the -- another one, he just destroyed arcade machines at the

1 age of 41. If he's a 19 year old but he's going a little
2 crazy, that's one thing, but he's a 41 year old. He's been
3 doing this his entire life.

4 And then when they find him, he's casual about it.
5 Why? Because he's known the system for so long. These are my
6 firearms. He absolutely admitted to it, but then he says,
7 Those are my firearms but I'm not signing shit. No respect
8 whatsoever in these circumstances.

9 Why? We just have to look back at his history. As
10 I said, nine breaking and enterings. At the age of 37, he's
11 breaking into middle schools. He's breaking into churches.

12 Now, a breaking and entering has been described by
13 some as saying that it's not really a violent offense. It
14 shouldn't be considered for the armed career criminal, but
15 that's such a narrow, ignorant way of looking at breaking and
16 enterings. If you ever walked into your business or your home
17 and seen your stuff, your privacy, everything you put into it
18 scattered across, if your safety isn't shaken at that point,
19 then something is off; or if you're in that home or you're in
20 that business and you have no idea what the individual who is
21 coming to take your stuff is going to do, potentially bringing
22 violence upon you or maybe you bring violence upon them.
23 That's why the courts recognize breaking and entering is
24 violent.

25 These circumstances, Your Honor, came out of that.

1 He's here today and he's facing this type of sentence because
2 of those situations.

3 Your Honor, when we also look at the other 3553(a)
4 factors we think adequate deterrence. The defense said it
5 best. He has spent several years in jail, smaller sentences
6 but still more than two years at some points and it hasn't
7 stopped him.

8 210 months will stop him. As defense said, the
9 Sentencing Commission factors will provide that. We also
10 thinks he need -- the public needs to be protected from him.
11 It's clear he needs to stop. It doesn't matter whether it's a
12 school where little children go or churches where people go to
13 worship. It doesn't matter to him. He's willing to break
14 into it for whatever he needs.

15 And lastly, Your Honor, he needs to learn respect so
16 he's not just cussing at the officers saying he's not going to
17 sign shit; so he's not just seeing a business as something he
18 can take from but instead recognizing that there's value,
19 people have put their lives into those businesses.

20 Thank you.

21 THE COURT: Thank you.

22 Anything else, Mr. Wicclair?

23 MR. WICCLAIR: No, Your Honor. Thank you.

24 (Pause in the proceeding.)

25 THE COURT: All right, Mr. Lowery.

1 The Court recognizes its obligation to impose a
2 sentence sufficient but not greater than necessary to comply
3 with the purposes set forth in the statute.

4 I have considered all arguments that Mr. Wicclair
5 has made on your behalf. I have considered your statement,
6 sir. I have considered the position of the United States. I
7 have considered the advisory guideline range.

8 Among other things, I'm to consider the nature and
9 circumstances of the offense and the history and
10 characteristics of the defendant, the need for the sentence
11 imposed to reflect the seriousness of the offense, to promote
12 respect for the law, and to provide just punishment; the need
13 for the sentence imposed to deter others who might choose to
14 engage in the criminal behavior that brings you here; the need
15 for the sentence imposed to protect the public from further
16 crime by you; the need for the sentence imposed to provide you
17 with needed educational or vocational training, medical care,
18 or other correctional treatment in the most effective manner.

19 The statute lists numerous other factors. I've
20 considered all those factors, although I won't mention each
21 one individually.

22 As for the nature and circumstances of the offense,
23 you did possess firearms after having been convicted as a
24 felon as described in the PSR. You had this interaction with
25 the Robeson County Sheriff's Office who was attempting to

1 locate you on an unrelated breaking and entering. They
2 spotted your vehicle and initiated a traffic stop. You exited
3 and began running down the road. You were apprehended. You
4 told the officers you were in possession of firearms. You had
5 a loaded .380-caliber pistol and .357-caliber revolver. Both
6 firearms were stolen. So it is a serious offense.

7 I mean, I take Mr. Wicclair's point that you didn't
8 fire them; you didn't toss them when you were running. You
9 did tell the officers you had them, but they were stolen and
10 you shouldn't have had them. It's a serious offense.

11 You're 43 years old. You have haven't gotten your
12 GED yet. You have a very lengthy criminal history.
13 Certainly, there is the nine felony B and Es in paragraphs 23,
14 24, 27, 28, 29, 31, 38, 40, and 41 are what drives you being
15 an armed career criminal and it certainly doesn't reflect well
16 on you.

17 Mr. Koesters makes a fair point about anybody who
18 has ever had their home broken into or business or church or
19 school or anything like that, it is a very dangerous situation
20 and a person feels violated. I'm sure you wouldn't want
21 anyone to do that to your mother's home or sister's home, and
22 it's just not good conduct.

23 I've taken into account the issues associated with
24 your family support. You are fortunate. It's a testament to
25 them, a testament to your sister that she still cares about

1 you. She's still willing to take you into her home, because
2 Mr. Wicclair is right, there's a lot of folks when they get to
3 your stage of all the wrongs that you've committed, a lot of
4 family members, they don't have anything to do with them
5 anymore because they have just been burned too many times to
6 continue to make themselves available to have that happen
7 again. So you're fortunate, although I look at it more as a
8 testament to them than to you.

9 I've taken into account the arguments associated
10 with recidivism statistics. You do defy them somewhat given
11 your age now. It's fair for Mr. Koesters to have pointed out,
12 you know, obviously some of these B and Es were when you were
13 younger, but you're in your forties and you're still doing
14 this. It's insane.

15 You do have some work history. You're intelligent.
16 You know how to make an honest living. I'll make all the
17 recommendations Mr. Wicclair had made associated with your
18 wanting drug treatment. And certainly, you need to get those
19 issues under control or your life will never change.

20 I'll make the other recommendations that he asked
21 for so that you'll have an opportunity to improve yourself so
22 that when you do come home, you'll be able to live in a
23 law-abiding way.

24 I'm not going to give the very bottom and I'm not
25 going to give the very top. I think a sentence more than

1 simply the bottom is needed as a matter of incapacitation to
2 promote respect for the law and to provide just punishment
3 given the nine prior breaking and enterings, the fact that the
4 guns were -- one of them was a stolen gun. They were loaded.
5 And you've just had so many chances.

6 Having fully considered the entire record in the
7 case, it's the judgment of the Court that Larry Lowery, Jr. is
8 hereby committed to the custody of the Bureau of Prisons to be
9 imprisoned for 192 months.

10 Upon release you'll be placed on supervised release
11 for three years. This term of supervised release is imposed
12 in accordance with the standard conditions of the District as
13 well as the Judicial Conference of the United States.

14 In addition you'll comply with the following
15 additional conditions: You'll participate in a narcotic
16 addiction treatment program as directed by Probation, you'll
17 consent to a warrantless search, you'll cooperate in the
18 collection of DNA, you'll pay a special assessment of \$100.
19 I'm not going to impose a fine.

20 I have imposed this sentence having fully considered
21 all the 3553(a) factors. I do announce pursuant to *U.S. v.*
22 *Gomez-Jimenez*, 750 F.3d 370 (4th Cir. 2014) and *U.S. v.*
23 *Hargrove*, 701 F.3d 156 (4th Cir. 2012), that I'd impose the
24 same sentence as an alternative variant sentence if I have, in
25 any way, miscalculated the advisory guideline range.

1 I have in imposing this sentence considered all
2 frivolous and non-frivolous arguments made by each side in
3 advocating for a specific sentence. I've obviously given a
4 sentence different than the sentence advocated for by each
5 counsel. In doing so, I've carefully considered and rejected
6 their arguments. To the extent the sentence I announced is
7 different, I have balanced the 3553(a) factors differently
8 than they have, and I've articulated why I have done that.

9 In accordance with counsel's request, I recommend
10 FCI Bennettsville. I recommend intensive substance abuse
11 treatment. I recommend vocational/educational opportunities.

12 When you get to the BOP, you need to talk to your
13 case manager about getting your GED. You need to get your GED
14 to then be able to take those other classes you want to take
15 like HVAC. In addition, you earn more money in your job in
16 prison when you have a GED than if you don't. So the first
17 thing you need to do is to get in the GED classes.

18 And I've taken into account what Mr. Wicclair had
19 said about what you've done with your time, and that's good;
20 those certificates that you've earned when you've been waiting
21 for this. So it shows you can do the work and get your GED.
22 And if you really are tired of this, you'll have a chance to
23 improve yourself.

24 You can appeal your conviction if you believe that
25 your guilty plea was somehow unlawful or involuntary or if

1 there's some other fundamental defect in the proceeding that
2 was not waived by your guilty plea.

3 You also have a statutory right to appeal your
4 sentence under certain circumstances, particularly if you
5 think your sentence is contrary to law.

6 With few exceptions any Notice of Appeal must be
7 filed within 14 days of the judgment being entered on the
8 docket in your case.

9 If you're unable to pay the cost of an appeal, you
10 may apply for leave to appeal *in forma pauperis*.

11 If you so request, the Clerk of Court will prepare
12 and file a Notice of Appeal on your behalf.

13 Mr. Wicclair, I think I made all the recommendations
14 you asked for. Did you want me to recommend anything else?

15 MR. WICCLAIR: No, Your Honor. Thank you.

16 THE COURT: Anything else, Mr. Koesters?

17 MR. KOESTERS: No, Your Honor thank you.

18 THE COURT: I thank counsel for their work here
19 today. That'll conclude the matter of Mr. Lowery.

20 Good luck to you, sir.

21 We'll be in recess until 10:00 o'clock.

22 * * *

23 (The proceedings concluded at 9:45 a.m.)

24

25

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF OFFICIAL REPORTER

7 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
8 Court Reporter, in and for the United States District Court
9 for the Eastern District of North Carolina, do hereby certify
10 that pursuant to Section 753, Title 28, United States Code,
11 that the foregoing is a true and correct transcript of the
12 stenographically reported proceedings held in the
13 above-entitled matter and that the transcript page format is
14 in conformance with the regulations of the Judicial Conference
15 of the United States.

18 | Dated this 23rd day of October, 2020.

/s/ Amy M. Condon
Amy M. Condon, CRR, CSR, RPR
U.S. Official Court Reporter

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA)
5)
6 vs.) 7:18-cr-120-D-1
7)
8 LARRY LOWERY JR.)
9

10

11 TRANSCRIPT OF ARRAIGNMENT HEARING
12 January 30, 2020
13 In Raleigh, North Carolina
14 Before the Honorable Judge James E. Gates
15 Magistrate Judge

16

17 APPEARANCES OF COUNSEL:

18 For the Government:

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31

32 Court Reporter:

33 Suzanne G. Patterson, RPR
34 Contract Court Reporter
35 United States District Court
36 Raleigh, North Carolina
37 suzannepatterson75@gmail.com
38 Stenotype with computer-aided transcription

1 P R O C E E D I N G S

2 (Commencing at 2:13 p.m.)

3 THE COURT: Very well. The Court will now turn to
4 an explanation to the defendants of your rights to a jury
5 trial and the other rights relating thereto and the
6 consequences of pleading guilty. I'd ask each defendant to
7 pay close attention to what the Court is about to say. It
8 will be an important part of each of your cases and each of
9 you will be asked if you heard and understood the Court's
10 comments.

11 I now advise each defendant as follows: If you are
12 accused of a felony, and I believe all of you gentlemen are
13 charged with felony offenses, that is, crimes punishable by
14 a term of imprisonment exceeding one year, you have the
15 Constitutional Right to be charged by indictment by a grand
16 jury. Unless you waive indictment, you may not be tried in
17 a federal court for a felony.

18 To be indicted by a grand jury, the grand jury must
19 find that there is probable cause to believe that you
20 committed the charged crime. A grand jury consisted of 16
21 to 23 persons and at least 12 grand jurors must find that
22 there is probable cause to believe that you committed the
23 charged crime before you may be indicted.

24 Now, I believe all of you, as I've indicated, have
25 been charged with felony offenses, and you have been

1 charged, I believe all of you, by way of indictment.

2 And I'll note that in your case, Mr. Moore, you had
3 previously been charged by a criminal complaint but you are
4 now charged by way of indictment. I believe this is your
5 initial -- your first court appearance after that indictment
6 was returned against you. So we'll go over that indictment
7 very carefully with you.

8 But what that means is that all of your cases have
9 been presented to a grand jury and the grand jury has heard
10 your cases and returned an indictment against you.

11 Now, in addition to the right to be charged by
12 indictment, the Constitution and Laws of the United States
13 give you the right to plead not guilty and to have a jury
14 trial with respect to all charges against you. In that
15 regard, you should consider the following:

16 First, at a jury trial, you would be presumed
17 innocent. The Government would be required to prove your
18 guilt by competent evidence and beyond a reasonable doubt
19 before you could be found guilty. You would not have to
20 prove that you were innocent.

21 Second, at a trial, witnesses for the Government
22 would have to come to court and testify in your presence.
23 Your lawyer could cross-examine those witnesses, that is,
24 ask questions of them, object to evidence offered by the
25 Government, and offer evidence on your behalf.

1 Third, at a trial, you would have the right to use
2 the subpoena power of the Court to make witnesses come to
3 Court on your behalf, whether they wanted to come or not.
4 That is, you would have the right to have the Court issue
5 orders called "subpoenas" directing witnesses to come to
6 trial so that they could testify for you.

7 Fourth, at a trial, you would have the right to
8 testify if you chose to do so, but you would also have the
9 right not to testify, that is, the right to remain silent,
10 also known as the right against self-incrimination. This
11 right holds that nobody can require you to answer any
12 questions or make any statements about the charges facing
13 you. If you've already made a statement about the charges,
14 you do not need to say any more. If you start to make a
15 statement, you may stop at any time.

16 This right to remain silent can be waived and if
17 you do waive the right to remain silent, then anything you
18 say may be used against you. And if you chose at trial not
19 to testify, the Court would expressly tell the jury that no
20 inferences or suggestion of guilt would be drawn from your
21 decision not to testify.

22 Fifth, you have the right to be represented by
23 counsel at trial and at every other stage of the proceeding.
24 You may consult with an attorney before questioning may
25 occur at any proceeding. If unable to afford counsel, you

1 also have the right to have the Court appoint counsel to
2 represent you at trial and at every other stage of the
3 proceeding in this court. Whether you plead guilty or not
4 guilty, it will not affect whether you have a lawyer in this
5 court. If you want a lawyer to represent you in your case
6 here, you will have a lawyer. And you may have noted I've
7 used the terms, lawyer, attorney, and counsel, all of those
8 terms mean the same thing, of course, and refer to a
9 person's legal representative.

10 If you plead guilty, you will waive your right to a
11 jury trial and these other trial rights. Instead of a
12 trial, you will be judged guilty and you will be sentenced
13 on the basis of your guilty plea after the Court considers
14 the factors listed in Title 18 of the United States Code,
15 Section 3553(a), and considers the now advisory federal
16 sentencing guidelines.

17 If you have reached a plea agreement with the
18 Government, the Court is obligated to examine carefully any
19 such plea agreement to be sure that the agreement conforms
20 to the objectives of sentencing, including imposing a
21 sentence within the parameters of your statute of conviction
22 that is appropriate to the seriousness of your actual
23 offense behavior and your past criminal conduct. The Court
24 will evaluate such behavior and conduct only after it
25 receives a detailed presentence report from the probation

1 office.

2 If you have reached a plea agreement with the
3 Government, you should also realize that the Court is not a
4 party to that plea agreement, such agreements are negotiated
5 solely between you, your lawyer, and the lawyer for the
6 Government. You are advised that any stipulations contained
7 in your plea agreement are not binding on the Court.

8 Rather, the Court will make an independent determination as
9 to your sentence after applying all the sentencing factors
10 to your case and considering all arguments of counsel, your
11 statement, the advisory guideline range, and any departure
12 or variance motion.

13 Now, more specifically, standards for acceptance of
14 plea agreements include those stated in Rule 11 of the
15 Federal Rules of Criminal Procedure. It provides in part as
16 follows: In one type of a plea agreement, the Government
17 recommends to the Court or agrees not to oppose the
18 defendant's request to the Court that a particular sentence
19 or sentencing range is appropriate or that a particular
20 provision of the sentencing guidelines does or does not
21 apply. If a plea agreement is of this type, if the Court
22 accepts the agreement, the recommendation or request is not
23 binding on the Court. If the Court does not follow the
24 recommendation or request, the defendant has no right to
25 withdraw his guilty plea.

1 On the other hand, there may be plea agreements in
2 which the Government agrees not to bring or agrees to move
3 to dismiss other charges, or in which the Government agrees
4 that a specific sentence or sentencing range is the
5 appropriate disposition of the case or that a particular
6 provision of the sentencing guidelines does or does not
7 apply. If a plea agreement is of this type, if the Court
8 accepts the agreement, then the parties' agreed-upon terms
9 are binding on the Court and the agreed-upon disposition
10 will be included in the judgment unless the plea agreement
11 provides otherwise.

12 However, if the Court does not accept this type of
13 plea agreement where there is a binding, agreed-upon
14 disposition between the parties, then the defendant will be
15 given an opportunity to withdraw his plea.

16 If the defendant does not withdraw his plea,
17 however, the Court is not required to follow the plea
18 agreement and may dispose of the case less favorably than
19 the plea agreement has provided.

20 Now, a plea of guilty has the following additional
21 consequences:

22 First, you will have to waive your right not to
23 incriminate yourself because the Court will ask you
24 questions about what you did in order to be sure that you
25 are guilty as charged and you will have to admit your guilt.

1 Second, the Court may impose the same punishment as
2 if you had pleaded not guilty and had been convicted by a
3 jury.

4 Third, if you are on probation or parole in another
5 case, in this court or another court, a plea of guilty here,
6 your probation or parole in that other case may be revoked,
7 and you may be required to serve time in that other case in
8 addition to any sentence imposed upon you as a result of
9 your guilty plea here.

10 Fourth, in addition to any sentence imposed, your
11 plea of guilty to a felony may deprive you of valuable civil
12 rights, such as, the right to vote, the right to hold public
13 office, the right to serve on a jury, and the right to
14 possess any type of firearm.

15 Moreover, if you're not a citizen of the United
16 States and you are convicted of a felony, you may be removed
17 from the United States, denied citizenship, and denied
18 admission to the United States in the future.

19 Furthermore, if you are ordered imprisoned due to
20 your felony conviction, removal from the United States takes
21 place after imprisonment.

22 Additionally, as to all defendants, unless
23 otherwise advised, you will be assessed per felony count a
24 sum of not less than \$100, called a special assessment, and
25 any fine imposed will bear interest.

1 Fifth, in some cases obligations in addition to a
2 sentence of imprisonment or a fine may be imposed. For
3 example, you may be ordered to make restitution in the form
4 of money to the victims of your offenses or you may be
5 required to forfeit certain property to the Government, or
6 in the case of offenses involving fraud, you may be ordered
7 to provide notice of your conviction to the victims of your
8 offenses.

9 Additionally, in most cases, you will be given a
10 term of supervised release in addition to a term of
11 imprisonment. The term of supervised release follows
12 imprisonment and can range from one year up to life, based
13 upon the defendant's criminal history and the offense or
14 offenses of conviction. Such release is conditioned upon
15 your non-commission of another federal, state, or local
16 crime and such other conditions as may be appropriate. If
17 you violate the conditions of supervised release, you may be
18 subject to further imprisonment.

19 Now, cases in which guilty pleas are tendered and
20 accepted today are set for sentencing in Raleigh at the
21 May 18 term of court. Regardless of the advisory sentencing
22 guideline ultimately found to be appropriate to your case,
23 you may not withdraw a guilty plea tendered and accepted
24 today.

25 Between now and the sentencing date just announced,

1 the probation office will prepare a detailed, written
2 presentence report. It is important that the presentence
3 report be complete and accurate. The presentence report
4 will be an important tool to aid the Court in determining
5 your sentence. You and your lawyer may give information for
6 the presentence report. You and your lawyer will be
7 furnished a copy of the presentence report and you will have
8 an opportunity to timely comment upon it. Examine the
9 presentence report carefully, within 14 days after receiving
10 the presentence report, you and your lawyer must file with
11 the Court and serve on the probation officer objections in
12 writing to any information contained in or omitted from the
13 report. The Court will not consider any dispute which has
14 not been the subject of such written communication.

15 Furthermore, the Court will consider and resolve
16 only issues relevant to disputed sentencing factors
17 previously stated in writing and additionally brought to its
18 attention by you or your lawyer at the time of sentencing.

19 At sentencing, you should advise the Court orally
20 if you have any objections to any matter contained in or
21 omitted from the presentence report that your attorney has
22 failed to raise. Contentions not stated by you or your
23 lawyer will be deemed abandoned.

24 If you do not challenge the validity of any prior
25 conviction before imposition of your sentence, you'll be

1 barred from contesting those convictions at a later date.

2 In short, if you do not contest the facts set forth in the
3 presentence report, the Court may accept those facts,
4 including any prior convictions, as correct and may rely
5 upon them in determining your sentence.

6 Note that if there are -- were any victims of the
7 offenses for which you are sentenced, those victims would be
8 given the opportunity to be heard at the sentencing hearing.
9 Of course, the Government may be heard at that hearing as
10 well.

11 Now, you or your lawyer on your behalf may submit
12 written Miranda motions or other materials, such as
13 character letters, before the sentencing hearing. The
14 Government, of course, may do so as well. Either party must
15 submit any such material to the Court in Raleigh at least
16 seven days before your sentencing date.

17 Now, after you are sentenced, the Government is
18 limited in most instances to one year within which to move
19 for a reduction in your sentence pursuant to Rule 35(b), by
20 reason of assistance rendered by you to the Government. The
21 Government is not required to return to Court with a Rule
22 35(b) motion to seek a reduction and it is completely within
23 the Government's discretion whether to do so.

24 If the Government decides not to make a Rule 35(b)
25 motion on your behalf, you are entitled to relief from the

1 Court in only a very few exceptional circumstances. At
2 sentencing you should advise the Court whether the
3 Government has made any representations to you or your
4 attorney that your future cooperation may result in a Rule
5 35(b) motion.

6 If the Government does make a Rule 35(b) motion to
7 seek a reduction in your sentence by virtue of your
8 assistance, the making of such motion will not extend, toll,
9 or modify the one-year time for your filing a post-
10 conviction Section 2255 motion to vacate, set aside, or
11 correct your sentence.

12 Furthermore, the United States Attorney cannot
13 promise you that the Court will grant a Rule 35(b) motion,
14 nor can the United States Attorney promise you that law
15 enforcement officers either will accept or act upon your
16 offers of cooperation.

17 If you are convicted, whether by a jury or as a
18 result of a guilty plea, you can appeal such conviction if
19 you believe that your conviction was somehow unlawful or if
20 there is some other fundamental defect in the proceeding
21 that was not waived by your guilty plea. You also have a
22 statutory right to appeal your sentence under certain
23 circumstances, particularly if you think the sentence was
24 contrary to law.

25 However, you may agree to waive certain appeal

1 rights as to conviction and sentence in the plea agreement.
2 When we discuss your individual plea, we will go over any
3 such appeal waiver in your plea agreement. Such appeal
4 waivers generally are enforceable but if you believe the
5 waiver is unenforceable or inapplicable, you can present
6 that theory to the appellate court.

7 With a few exceptions, any notice of appeal must be
8 filed within 14 days of the judgment being entered in your
9 case. If you're unable to pay the cost of an appeal, you
10 may apply for leave for appeal in forma pauperis. If you so
11 request, the clerk of court will prepare and file a notice
12 of appeal on your behalf.

13 I'm now going to ask the defendants as well as
14 their counsel as a group certain questions. Please listen
15 carefully because these questions and your answers will
16 constitute part of the record of your plea. If you wish to
17 answer any question "yes", then please raise your hand and
18 address the Court orally. Counsel are requested to take
19 note of their client's responses.

20 Very well. As to all the defendants, gentlemen:

21 Have any of you taken any drugs, medicines, pills,
22 or drunk any alcoholic beverages in the past 24 hours?

23 Do any of you not understand what is happening here
24 today?

25 Is there any attorney representing a defendant who

1 has any doubt or questions about his client's competence to
2 plead?

3 Speaking again to all the defendants:

4 Are there any of you who has not received copy of
5 the indictment against you?

6 Sir, you have not yet?

7 THE DEFENDANT: You said that you were going to go
8 over it.

9 THE COURT: I will. We'll go over it. So you're
10 Mr. --

11 THE DEFENDANT: Moore.

12 THE COURT: Mr. Moore. Okay. Thank you, sir.

13 Have any of you not discussed your case with your
14 attorney?

15 Are any of you not completely and fully satisfied
16 with your attorney's legal services?

17 Do any of you need or wish to have the indictment
18 read to you for any reason?

19 And, Mr. Moore, I am going to read the indictment
20 to you, so you're covered on that.

21 But any of the other gentlemen, do you have any
22 need or wish to have the indictment read to you for any
23 reason?

24 Do any of you have any questions about your rights
25 to a jury trial or the other rights relating thereto or the

1 consequence of pleading guilty that I have just explained?

2 Very well. Other than the comment by Mr. Moore
3 regarding the indictment, no person raised his hand in
4 response to any of my questions.

5 Folks, I've just concluded explaining each
6 defendant's right to a jury trial, your other rights
7 relating thereto, and the consequences of pleading guilty.
8 And the Court will now consider each case on the calendar.

8 | And the Court will now consider each case on the calendar.

9 Let me just note for counsel, absent a conflict or
10 other scheduling issue of counsel, my intention would be to
11 go in order listed on the calendar. So we would begin with
12 Mr. Moore's case, then turn to Mr. Lowery's, and Mr.
13 Maynor's, and then conclude with Mr. James' case.

14 Okay. Very well. No counsel appears to seek a
15 change in that calendar, so we'll proceed with Mr. Moore's
16 case.

17 | * * *

18 (Commencing at 3:14 p.m.)
19 THE COURT: Let's turn now to the case of United
20 States versus Lanny Lowery. In its Case 7-18-cr-120, D-1

31 Madam Clerk, would you please swear the defendant.

THE CLERK: Yes, sir.

23 Would you put your left hand on the Bible and raise
24 your right. Thank you.

25 LARRY LOWERY, JR.

1 having been duly sworn, testified upon his oath as follows:

2 THE COURT: Mr. Lowery, sir, do you understand that
3 having been sworn, your answers to my questions are subject
4 to the penalties of perjury or making a false statement if
5 you do not answer truthfully?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Sir, do you understand that you have
8 the right to have the United States District Judge conduct
9 this proceeding?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And, sir, have you conferred with your
12 counsel about your right to proceed before a United States
13 District Judge?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Sir, recognizing your right to proceed
16 before a District Judge, do you expressly consent to proceed
17 before me as a United States Magistrate Judge?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Sir, I have before me a form entitled,
20 "Consent to Proceed before a United States Magistrate
21 Judge." Sir, did you sign this form after reviewing it with
22 your attorney, Mr. Wicclair?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand this form, sir?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Sir, this form states in part: "I
2 hereby waive my right to arraignment before a United States
3 District Judge and, therefore, consent to proceed before a
4 United States Magistrate Judge for purposes of arraignment
5 pursuant to Rule 10 of the Federal Rules of Criminal
6 Procedure, and entering a plea pursuant to Rule 11 of the
7 Federal Rules of Criminal Procedure."

8 Sir, do you understand that provision?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And do you agree to it?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Very well. I find that Mr. Lowery's
13 consent to Magistrate Judge jurisdiction over the
14 proceedings is knowingly and voluntarily provided. I will
15 accept it on behalf of the Court.

16 Mr. Lowery, I do need to ask you a brief series of
17 questions to confirm your competency in the eyes of the law
18 to plead today.

19 My first question, sir, is, how old are you?

20 THE DEFENDANT: I'm 42.

21 THE COURT: And how far did you go in school, sir?

22 THE DEFENDANT: Tenth.

23 THE COURT: Very well. Sir, are you currently or
24 have you recently been under the care of a physician,
25 psychologist, psychiatrist, or other healthcare provider?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you ever been hospitalized or
3 treated for any type of addiction?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Tell me about -- how recently was that,
6 by the way?

7 THE DEFENDANT: Years ago, sir.

8 THE COURT: Years ago. Nothing about that affects
9 your ability to understand what's happening here today or
10 your ability to make decisions today, right?

11 THE DEFENDANT: No, sir.

12 THE COURT: Okay. Thank you. Sir, have you taken
13 any drugs, medicine, or pills, or drunk any alcoholic
14 beverages in the past 24 hours?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you understand what is happening
17 here today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Very well. Mr. Wicclair, do you
20 believe that Mr. Lowery is competent to plead today?

21 MR. WICCLAIR: Yes, Your Honor.

22 THE COURT: Mr. Averitt, is the Government aware of
23 any grounds upon which to question Mr. Lowery's competence?

24 MR. AVERITT: No, Your Honor.

25 THE COURT: Very well. Let the record reflect that

1 based on prior questions to the defendant and his counsel,
2 the Court's observation of defendant, and the answers from
3 counsel and defendant, the Court finds that the defendant is
4 competent to plead.

5 And I'm assuming that Mr. Lowery is a U.S. citizen;
6 is that correct, Mr. Wicclair?

7 MR. WICCLAIR: Yes, Your Honor.

8 THE COURT: Very good, sir.

9 Okay. Mr. Lowery, I'm now going to inform you of
10 the nature of the charges against you and advise you of the
11 maximum penalty and any mandatory minimum penalty applicable
12 to this charge. And then since you have indicated an
13 intention to plead guilty, the Court will ask you some
14 additional questions, sir, to make sure that your guilty
15 plea derives from your own free will and there's a factual
16 basis, and to determine whether the Court, in its
17 discretion, should accept your guilty plea.

18 Sir, you're charged in a single count indictment,
19 it's entitled "Superseding Indictment," what that means is
20 that an indictment had previously been entered against you
21 and this indictment takes the place of it. So the current
22 charge against you is as follows: On or about February 13
23 of 2018, in this District, you, knowing that you had
24 previously been convicted of a crime punishable by
25 imprisonment for a term exceeding one year, knowingly

1 possessed a firearm. And the firearm was in and affecting
2 commerce, in violation of Title 18, United States Code,
3 Sections 922(g)(1) and 924.

4 Sir, do you understand that charge against you in
5 the superseding indictment?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And I'll just note that the charge that
8 was in the initial indictment in this case also charged you
9 with felon in possession of a firearm on that same -- on or
10 about that same date, but it did not include the express
11 allegation that, at the time you possessed the firearm, you
12 knew that you had previously been convicted of a crime
13 punishable by imprisonment for a term exceeding one year.

14 Do you understand that, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Very well. Let me turn now to the
17 maximum penalties that you face with respect to this sole
18 charge in the superseding indictment. If you're found not
19 to be an armed career criminal, then the maximum penalties
20 are as follows: No more than 10 years of imprisonment, a
21 fine not to exceed \$250,000 or both fine and imprisonment,
22 not more than three years of supervised release, not more
23 than two years of imprisonment upon revocation of supervised
24 release, \$100 special assessment, restitution, if
25 applicable, and forfeiture. And as described in the

1 indictment, the forfeiture would be forfeiture of any and
2 all firearms or ammunition involved in and or used in
3 knowing commission of this alleged offense.

4 If any of the forfeitable property could not be
5 obtained as a result of any act or omission on your part,
6 then the Government would seek substitute property up to the
7 value of the forfeitable property.

8 Sir, do you understand those maximum penalties if
9 you were found not to be an armed career criminal?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, if you were found to be an armed
12 career criminal, there would be enhanced penalties, and
13 these would be as follows: You would face a maximum term of
14 imprisonment of not less than 15 years, but no more than
15 life. So that would be a minimum term of imprisonment of
16 15 years, the imprisonment could last up to life. A fine
17 not to exceed \$250,000 or both fine and imprisonment, not
18 more than five years of supervised release, not more than
19 five years of imprisonment upon revocation of supervised
20 release, a \$100 special assessment, restitution, if
21 applicable, and forfeiture as previously described.

22 Sir, do you understand those maximum penalties if
23 you were found to be an armed career criminal?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Sir, do you understand that if the

1 Court accepts your guilty plea, you will not be placed on
2 parole because such parole has been abolished in the Federal
3 Court System?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand, sir, that if you
6 violate the conditions of supervised release, you could be
7 given additional time in the prison?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand all the possible
10 consequences of pleading guilty that I discussed here today?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, sir, you were in the courtroom
13 today and heard and understood when I explained your rights
14 to a jury trial and your other trial rights under the
15 Constitution and Laws of the United States with regard to
16 the charges pending against you; is that correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: If you plead guilty, sir, and the Court
19 accepts the guilty plea, you'll waive or give up those trial
20 rights. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Sir, have you discussed with your lawyer
23 the charge in the indictment, that is, the sole charge in
24 the indictment to which you intend to plead guilty?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And, again, you understand that charge,
2 sir?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, in order for you to be found
5 guilty of the sole charge in this indictment, again,
6 entitled, "Superseding Indictment," the Government would
7 have to prove at trial by competent evidence and beyond a
8 reasonable doubt that you, in fact, did what the grand jury
9 charged you with doing. Do you understand that, sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Mr. Lowery, sir, are you completely and
12 fully satisfied with your lawyer's legal services?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And have you spoken with your lawyer
15 specifically about sentencing?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: The Court advises you then that in
18 determining your sentence, the Court must calculate the
19 applicable advisory guideline range, consider that range,
20 consider possible departures or variances under the
21 guidelines and consider other sentencing factors under Title
22 18 of the United States Code, Section 3553.

23 Do you understand that, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: The Court also advises you that any

1 calculation by your attorney of your anticipated sentence is
2 only an estimate, that the estimate is not binding on the
3 Court and that the Court will determine your actual sentence
4 on the day of your hearing.

5 Do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: The Court further advises you that any
8 estimate by your lawyer or anyone else as to whether the
9 Court will grant or deny a departure or variance motion or
10 as to what the advisory guideline range is, is not binding
11 on the Court.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Has anybody threatened you or anyone
15 else or forced you in any way to plead guilty?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Let me just confirm on the record, you
18 have not entered into a plea agreement with the Government;
19 is that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Very well. Mr. Wicclair, did the
22 Government make any formal plea offers and, if so, were
23 those offers relayed to the defendant?

24 MR. WICCLAIR: Yes. There was one plea agreement,
25 it was conveyed and it was rejected.

1 THE COURT: Okay. Very well. And is that
2 consistent with your understanding, Mr. Averitt?

3 MR. AVERITT: I have no reason to doubt that, Your
4 Honor.

5 MR. WICCLAIR: I would note that there is a pending
6 Fourth Circuit case, U.S. v. Frank Dodge, that's pending and
7 I filed a motion to continue arraignment pending the
8 decision in that matter. That motion was denied and that's
9 why we're moving forward with arraignment. I state that
10 only to put forward the fact that that did have an impact on
11 plea negotiations and the discussions regarding the plea
12 agreement. I just wanted to make that clear for the record,
13 but there was a plea agreement and it was conveyed and
14 rejected.

15 THE COURT: Okay. Very well. Mr. Lowery, sir, do
16 you understand that under some circumstances, you or the
17 Government may have a right to appeal any sentence that the
18 Court imposes?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Sir, has anybody made any promise that
21 induced you, that is, made you decide to plead guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: With regard to sentencing, sir, do you
24 understand that if you plead guilty and the Court accepts
25 the guilty plea, the Court would have the authority to

1 sentence you to the statutory maximum sentence permitted by
2 law on each count to which you plead guilty?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that if the Court
5 imposed such a maximum sentence, you would then -- you would
6 not then, you would not then be entitled to withdraw your
7 guilty plea?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Sir, has anybody made any promise to
10 you as to what your sentence will be?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Sir, do you understand that the charge
13 against you in the superseding indictment is for a felony
14 offense?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you understand the maximum
17 penalty authorized by law for that offense?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand that pleading guilty
20 to this felony offense may deprive you of valuable civil
21 rights?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you further understand, sir, that if
24 the Court accepts your plea of guilty, you will not later be
25 able to withdraw your guilty plea?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Sir, do you understand that right now
3 as you stand before the Court, you still have the right to
4 plead not guilty to the offense charged against you and to
5 persist in that plea?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you also understand that if you
8 plead not guilty, you would then have the right to a trial
9 by jury and all the other trial rights that I previously
10 explained?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you further understand that if you
13 enter a plea of guilty and the Court accepts that plea,
14 there will be no trial and you will have waived or given up
15 your right to trial, as well as the other trial rights that
16 I've explained?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Sir, do you need any more time to think
19 about your plea or to discuss your case with your lawyer?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Sir, have you answered all of my
22 questions here today truthfully?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Very well, sir. With respect to the
25 sole count of the superseding indictment, which charges that

1 on or about February 13 of 2018, in this District, you, sir,
2 knowing that you had previously been convicted of a crime
3 punishable by imprisonment for a term exceeding one year,
4 knowingly possessed a firearm and that the firearm was in
5 and affecting commerce, how do you plead, sir?

6 THE DEFENDANT: Guilty, Your Honor.

7 THE COURT: And did you, in fact, commit the
8 offense charged in the sole count of the superseding
9 indictment?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Then you are, in fact, guilty as
12 charged of that offense?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Very well, sir. You may be seated.

15 Mr. Averitt, if I could now call upon you, sir, to
16 make a presentation of the facts that the Government would
17 be prepared to prove at trial so that the Court may
18 determine whether there exists an independent factual basis
19 for the defendant's guilty plea, sir.

20 MR. AVERITT: Yes, Your Honor. If this matter were
21 to go to trial, the facts would show that on February 13,
22 2018, detectives in Robeson County Sheriff's Office received
23 information that Mr. Lowery, who had outstanding arrest
24 warrants, was traveling in a vehicle operated by Marquis
25 Page in the Roberson County, North Carolina, area.

1 Law enforcement observed Mr. Page driving a blue
2 Chevy Tahoe, the detectives conducted a traffic stop in the
3 Rowland, North Carolina area of the Eastern District of
4 North Carolina. Both Mr. Page and Mr. Lowery attempted to
5 run from the vehicle but were taken into custody. In
6 Mr. Lowery's right coat pocket, officers seized two loaded
7 firearms, a Bersa pistol, a Taurus revolver, which were
8 later found to be stolen. Mr. Page indicated that
9 Mr. Lowery did, in fact, possess two loaded firearms, and
10 prior to being taken into custody or being read his Miranda
11 Rights, Mr. Lowery made a spontaneous statement that both
12 guns were his.

13 Following the arrest, ATF has performed a nexus on
14 the firearms and both firearms were determined to be
15 manufactured outside the State of North Carolina, such they
16 would have traveled within interstate commerce to get here.

17 And, in addition, Mr. Lowery was of the category of
18 people who knowingly or knew that he had been convicted of a
19 crime carrying a punishment of more than one year, he had
20 previously served two years in prison, active time, for a
21 breaking and entering conviction. So he was a convicted
22 person that had knowledge that he, in fact, been convicted
23 of a crime of more than one-year imprisonment.

24 That's what the facts would show, Your Honor.

25 THE COURT: Very well. Thank you, sir.

1 Very well. If you could rise again, please,
2 Mr. Lowery.

3 Sir, based upon the Government's summary and your
4 acknowledgement that you, in fact, are guilty as charged of
5 the sole count in the superseding indictment, and because
6 you know your right to a trial and what the maximum possible
7 punishment is, and because you're voluntarily pleading
8 guilty, I will accept your guilty plea to the sole count of
9 the superseding indictment and enter a judgment of guilty on
10 your plea.

11 Let the record reflect that the Court is satisfied
12 and finds as fact that the plea was freely and voluntarily
13 entered by the defendant, at the time it was entered the
14 defendant was fully competent and had a full and complete
15 understanding of the nature of the charges and the maximum
16 penalties provided by law. The plea is supported by an
17 independent basis in fact containing each essential element
18 of the offense. The defendant's plea is accepted, and he is
19 guilty of the sole count in the superseding indictment.

20 This matter is set for sentencing at the May 18
21 term of Court here in Raleigh. Mr. Wicclair, if you could
22 stop by probation before you leave the courthouse today to
23 arrange for Mr. Lowery's interview as soon as possible for
24 purposes of that presentence report, which we've talked
25 about before, Mr. Lowery. The interview is part of the

1 preparation of that report by the probation office that
2 would, of course, assist the Court in sentencing.

3 Mr. Wicclair will be with you -- your counsel can
4 be with you during that interview and you and your counsel
5 have the opportunity to review that report and then submit
6 timely objections before the sentencing hearing. Of course,
7 at that hearing, again, you and your counsel can address the
8 Court as, of course, can the Government.

9 Now, Mr. Lowery is currently being detained. Any
10 motion for a change in his custody status?

11 MR. WICCLAIR: No, Your Honor.

12 THE COURT: Very well.

13 Mr. Averitt, sir, anything further at this time on
14 behalf of the Government?

15 MR. AVERITT: No, Your Honor.

16 THE COURT: Very well.

17 Mr. Wicclair, sir, anything further at this time on
18 behalf of Mr. Lowery?

19 MR. WICCLAIR: No, Your Honor.

20 THE COURT: Okay. Very well. Thank you, sir.

21 I remand Mr. Lowery into the custody of the United
22 States Marshal.

23 (The foregoing proceeding concluded at 3:32 p.m.)

24

25

1 CERTIFICATE OF REPORTER

2 NORTH CAROLINA - HARNETT COUNTY:

3 I, Suzanne G. Patterson, RPR, contract court
4 reporter for the United States District Court for the
5 Eastern District of North Carolina, do hereby certify that
6 pursuant to Section 753, Title 28, United States Code, that
7 the foregoing is a true and accurate transcript of my
8 stenographically reported proceedings held in the
9 above-entitled matter and that the transcript page format is
10 in conformance with the regulations of the Judicial
11 Conference of the United States.

12 Dated this 26th day of October, 2020.

13 /s/ Suzanne G. Patterson
14 Suzanne G. Patterson, RPR
15 Contract Court Reporter
United States District Court
Eastern District of NC

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APPENDIX E

63a

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:18-CR-00120-D-1

FILED IN OPEN COURT
ON 11-27-19 BG
Peter A. Moore, Jr., Clerk
US District Court
Eastern District of NC

UNITED STATES OF AMERICA)
) SUPERSEDING
 v.) INDICTMENT
)
 LARRY LOWERY, JR.)

The Grand Jury charges that:

On or about February 13, 2018, in the Eastern District of North Carolina, LARRY LOWERY, JR., the defendant herein, knowing he had previously been convicted of a crime punishable by imprisonment for a term exceeding one (1) year, knowingly possessed a firearm, and the firearm was in and affecting commerce, in violation of Title 18, United States Code, Sections 922(g)(1) and 924.

(Remainder of page intentionally left blank.)

APPENDIX E

64a

FORFEITURE NOTICE

The defendant is hereby given notice that all of the defendant's interest in all property specified herein is subject to forfeiture.

Upon conviction of the offense set forth in Count One, the defendant shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924(d), as made applicable by Title 28, United States Code, Section 2461(c), any and all firearms or ammunition involved in or used in a knowing commission of the said offense.

If any of the above-described forfeitable property, as a result of any act or omission of the defendant –

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty,

(Remainder of page intentionally left blank.)

APPENDIX E
65a

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

A TRUE BILL:

REDACTED VERSION

Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.

11-26-19

DATE

ROBERT J. HIGDON, JR.
United States Attorney



BY: J.D. KOESTERS
Assistant United States Attorney