

No. 21-

IN THE
Supreme Court of the United States

MARVIN LEWIS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

APPENDIX VOLUME

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APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

January 25, 2022

Lyle W. Cayce
Clerk

No. 20-50135
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARVIN LEWIS,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:16-CR-214-1

Before OWEN, *Chief Judge*, and SMITH and ELROD, *Circuit Judges*.

PER CURIAM:*

Marvin Lewis appeals the sentences imposed in this case on remand following our decision in *United States v. Lewis*, 907 F.3d 891 (5th Cir. 2018). On remand, the district court resentenced Lewis within the guidelines range to a total of 384 months of imprisonment, including statutory minimum

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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consecutive terms of 60 months and 84 months that were required for his two 18 U.S.C. § 924(c) convictions. Lewis was also convicted of one count of conspiracy to interfere with commerce by threats or violence, a violation of the Hobbs Act; eleven counts of money laundering; one count of money transactions in property derived from specific unlawful activity; seven counts under the Hobbs Act for interference with commerce by threats or violence; and one count of possession of a firearm by a felon.

Lewis first challenges the district court's application of the five-level enhancement under U.S.S.G. § 2B3.1(b)(2)(C) to two robberies. The enhancement applies if a firearm is brandished during a robbery. With respect to the robbery in Strongsville, Ohio, the district court did not clearly err in determining that it was reasonably foreseeable to Lewis that a firearm would be brandished. *See United States v. Jordan*, 945 F.3d 245, 263-64 (5th Cir. 2019), *cert. denied*, 140 S. Ct. 2698 (2020), and *cert. denied*, 141 S. Ct. 606 (2020). Although Lewis did not commit the Strongsville robbery himself, the evidence sufficiently connected him to the robbery and the unknown person who brandished the firearm while committing the robbery. The evidence showed that Lewis entered the jewelry store about two weeks before the robbery and discussed the availability of high-priced diamonds with the manager. The unknown person later stole diamonds from the same case of large diamonds where Lewis spoke to the manager. Lewis also stayed at a hotel near the store, and he later possessed diamonds that were consistent with ones taken in the robbery. He also had personal knowledge that brandishing a firearm was one way to commit a robbery because he earlier provided a different accomplice with a firearm and that accomplice brandished the firearm during two other robberies.

Lewis also challenges the application of the § 2B3.1(b)(2)(C) enhancement to the robbery of Wright Pawn and Jewelry Company. Contrary to Lewis's argument that the Government failed to rebut the

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presentence report's (PSR) determination that the enhancement was inapplicable, the Government raised this court's vacatur of the § 924(c) conviction in Count 23 as the basis for overturning the PSR's determination. *See Lewis*, 907 F.3d at 893, 895. Additionally, the district court did not abuse its discretion in allowing the Government's objection even though the district court earlier declared an end to argument on PSR objections. *See* FED. R. CRIM. P. 32(i)(1)(D); *United States v. Angeles-Mendoza*, 407 F.3d 742, 749 (5th Cir. 2005). The district court sought to calculate the guidelines correctly, and Lewis was not prejudiced by the timing of the objection because the record shows that he understood the Government's position at least a week before the resentencing hearing resumed and the objection was considered. The Government also did not waive the issue, as the Government did not intentionally relinquish or abandon the objection. *See United States v. Rico*, 864 F.3d 381, 383-84 (5th Cir. 2017).

Lewis does not brief any argument challenging the district court's determination that the enhancement became applicable to the Wright Pawn robbery after the § 924(c) conviction in Count 23 was vacated. He has therefore waived a challenge to the merits of that decision. *See United States v. Scroggins*, 599 F.3d 433, 446-47 (5th Cir. 2010).

In his final argument, Lewis challenges the substantive reasonableness of his sentences. Because he was sentenced within his properly calculated guidelines range, a presumption of reasonableness applies. *See United States v. Stephens*, 717 F.3d 440, 447 (5th Cir. 2013). When sentencing Lewis, the district court indicated that it had considered all the proposed guidelines calculations, arguments about the sentence, and sentencing factors under 18 U.S.C. § 3553(a). The district court also stated that Lewis's crimes were "extremely serious"; his conduct "placed a large number of people in danger"; it was "lucky that no one was injured"; and Lewis was the organizer

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of the numerous robberies, carefully planning them and obtaining people to commit them for him.

Our review for substantive reasonableness is “highly deferential, because the sentencing court is in a better position to find facts and judge their import under the § 3553(a) factors with respect to a particular defendant.” *United States v. Diaz Sanchez*, 714 F.3d 289, 295 (5th Cir. 2013) (quoting *United States v. Fraga*, 704 F.3d 432, 439 (5th Cir. 2013)). Giving due deference to the district court’s sentencing decision, we conclude that Lewis has not shown that the district court abused its discretion with respect to substantive reasonableness. *See Stephens*, 717 F.3d at 447; *Diaz Sanchez*, 714 F.3d at 295.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2020 FEB -7 PM 4:05

UNITED STATES OF AMERICA

v.

Case Number: 1:16-CR-00214-LY(1)
 USM Number: 68828-080

MARVIN LEWIS

Aliases: Beau Louis, Beaux Louis, Jefferson Beaux, Christopher Houston, Tom Jackson, Brian Ford, John Lewis Jr., Marvin Lewis, Jr., John Marvin Lewis Jr., Marvin Lewis, John Ford, John X. Ford, Mike Ford, Gay Gaylord Gayle, Albert Lewis, Brian Lewis, Brian X. Lewis, John Lewis, John Marvin Lewis, John Marin J. Lewis, Michael Thompson, "X", and "X-X"

Defendant.

AMENDED JUDGMENT IN A CRIMINAL CASE¹
(For Offenses Committed On or After November 1, 1987)

The defendant, MARVIN LEWIS, represented himself pro se and with stand-by counsel Russell Hunt, Jr. for resentencing.

The defendant was found guilty to Count 1ss, 4ss, 5ss, 6ss, 7ss, 8ss, 9ss, 10ss, 11ss, 12ss, 13ss, 14ss, 15ss, 16ss 17ss, 18ss, 19ss, 20ss, 21ss, 22ss, 25ss, 26ss, and 27ss of the Second Superseding Indictment on June 16, 2017 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1951	Conspiracy to Interfere with Commerce by Threat or Violence	01/15/2016	1ss
18 U.S.C. § 1956 (a)(1)(B)(i)	Money Laundering (Concealment)	08/04/2015	4ss
18 U.S.C. § 1956 (a)(1)(B)(i)	Money Laundering (Concealment)	11/29/2015	5ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	06/30/2015	6ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	11/24/2015	7ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	11/24/2015	8ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	11/24/2015	9ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	11/25/2015	10ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	11/27/2015	11ss

¹ The Amended Judgment is to reflect resentencing after remand from the Fifth Circuit Court of Appeals held on January 27, 2020 and February 7, 2020.

AO 245B (Rev. TXN 10/12) Judgment in a Criminal Case

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DEFENDANT: MARVIN LEWIS
CASE NUMBER: 1:16-CR-00214-LY(1)

18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	12/01/2015	12ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	12/02/2015	13ss
18 U.S.C. § 1956 (a)(1)(B)(ii)	Money Laundering (Structuring)	12/02/2015	14ss
18 U.S.C. § 1957	Money Transactions in Property Derived from Specific Unlawful Activity	09/25/2015	15ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	11/28/2014	16ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	11/28/2014	17ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	12/01/2014	18ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	11/05/2015	19ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	11/05/2015	20ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	11/05/2015	21ss
18 U.S.C. § 1951	Interference with Commerce by Threat or Violence	11/06/2015	22ss
18 U.S.C. § 924(c)	Possession, Use, and Carrying a Firearm During and in Relation to a Crime of Violence	11/05/2015	25ss
18 U.S.C. § 924(c)	Possession, Use, and Carrying a Firearm During and in Relation to a Crime of Violence	11/06/2015	26ss
18 U.S.C. § 922(g)	Felon in Possession of a Firearm	11/28/2014	27ss

As pronounced on January 27, 2020, the defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this 7th day of February, 2020.


LEE YEAKEL
United States District Judge

DEFENDANT: MARVIN LEWIS
CASE NUMBER: 1:16-CR-00214-LY(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of two hundred and forty (240) months as to counts 1ss, 4ss, 5ss, 6ss, 7ss, 8ss, 9ss, 10ss, 11ss, 12ss, 13ss, 14ss, 16ss, 17ss, 18ss, 19ss, 20ss, 21ss, and 22ss to all run concurrently; sixty (60) months as to count 25ss to be served consecutively to counts 1ss, 4ss through 22ss inclusive, and count 27ss; and eighty-four (84) months as to count 26ss to be served consecutively to counts 1ss, 4ss through 22ss inclusive, count 25ss and count 27ss; and one hundred and twenty (120) months as to counts 15ss and 27ss to be served concurrently with each other and with counts 1ss and counts 4ss through 22ss inclusive; **FOR A TOTAL TERM OF THREE HUNDRED AND EIGHTY-FOUR (384) MONTHS.**

The defendant shall remain in custody pending service of sentence.

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

To be given access to any General Education Diploma (GED) program available at the facility the defendant is designated to.

If, for any reason, the Bureau of Prisons does not comply with any recommendation of this Court made in this Judgment and Sentence, the Bureau of Prisons shall immediately notify the Court and any reason therefore.

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: MARVIN LEWIS
CASE NUMBER: 1:16-CR-00214-LY(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release a term of three (3) years on count 1ss, 4ss, 5ss, 6ss, 7ss, 8ss, 9ss, 10ss, 11ss, 12ss, 13ss, 14ss, 15ss, 16ss, 17ss, 18ss, 19ss, 20ss, 21ss, 22ss, 25ss, 26ss, and 27ss to be served concurrently **FOR A TOTAL TERM OF THREE (3) YEARS.**

While on supervised release, the defendant shall not commit another federal, state, or local crime during the term of supervision, and shall comply with the mandatory and standard conditions adopted by the court on November 28, 2016.

DEFENDANT: MARVIN LEWIS
CASE NUMBER: 1:16-CR-00214-LY(1)

CONDITIONS OF SUPERVISION

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.
- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.

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- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

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CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 501 West Fifth Street, Suite 1100, Austin, TX 78701. The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

If the defendant is not now able to pay this indebtedness, the defendant shall cooperate fully with the office of the United States Attorney, the Bureau of Prisons and/or the United States Probation Office to make payment in full as soon as possible, including during any period of incarceration. Any unpaid balance at the commencement of a term of probation or supervised release shall be paid on a schedule of monthly installments to be established by the United States Probation office and approved by the Court.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$2,300.00	\$0.00	\$1,596,873.01

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$2,300.00. Payment of this sum shall begin immediately

FINE

The fine is waived because of the defendant's inability to pay.

RESTITUTION – JOINTLY AND SEVERALLY

The defendant shall pay restitution in the amount of \$1,596,873.01 through the Clerk, U.S. District Court, for distribution to the payees. Payment of this sum shall begin immediately. Of this amount, \$1,047,924.01 shall be paid jointly and severally with Brandon Grubbs, Docket No. 1:16-CR-214 (02) LY. The restitution shall be paid as follows:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Costco 23645 Katy Freeway Katy, Texas, 77449	\$ 45,479.90
Signet/Jared the Galleria of Jewelers c/o Mark Neapolitan 377 Ghent Road Akron, Ohio 44333	\$ 602,727.40
Allianz Global Corporate and Security Attn: Camilla Clark 33 W. Monroe Avenue, Suite 1200 Chicago, Illinois 60603	\$ 322,771.46
C. Kirk Root Designs 10000 Research Boulevard, Suite 126 Austin, Texas 78759	\$ 9,705.25

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Marc Robinson Jewelers 2901 S. Capitol of Texas Highway, Suite B02C Austin, Texas 78746	\$ 83,000.00
Exotic Diamonds 5757 Westheimer Road Houston, Texas 77057	\$ 313,909.00
Wright Pawn and Jewelry Company 6218 Westheimer Road Houston, Texas 77057	\$ 219,280.00

The Court directs the United States Probation Office to provide personal identifier information of victims by submitting a "reference list" under seal Pursuant to E-Government Act of 2002" to the District Clerk within ten (10) days after the criminal Judgment has been entered.

The Court finds that the defendant does not have the ability to pay interest and will *waive* the interest requirement in this case.

FORFEITURE

defendant is ordered to forfeit all right, title, and interest in the following items seized in connection with his arrest for the instant offense to the United States:

- \$17,526.28, more or less, in United States currency;
- Gold Panther Head Ring;
- 0.83 Carat Square Modified Cut Diamond;
- 0.81 Carat Radiant Cut Diamond;
- 0.89 Carat Cushion Cut Diamond;
- 1.01 Carat Cushion Cut Diamond;
- 1.00 Carat Oval Cut Diamond;
- 1.21 Carat Cushion Cut Diamond;
- 1.21 Carat Radiant Cut Diamond;
- 0.90 Carat Cushion Cut Diamond;
- 0.71 Carat Oval Cut Diamond;
- 0.78 Carat Cushion Cut Diamond;
- 0.83 Carat Modified Radiant Cut Diamond;
- 0.73 Carat Pear Cut Diamond;
- 0.70 Carat Emerald Cut Diamond;
- \$5,600, more or less, in United States currency;
- \$1,800, more or less, in United States currency;
- 2010 Porsche Panamera automobile, VIN: WP0AB2A78AL064194;
- 1971 Chevrolet Impala automobile, VIN: 164471C127459;
- Kel-Tec, CNC Industries, Inc., Model PF-9 pistol; and
- Any other firearm, accessory, or ammunition involved in or used in the criminal violation.