

United States Court of Appeals
for the Fifth Circuit

No. 21-40280

United States Court of Appeals
Fifth Circuit

FILED

April 22, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUAN VAN NGUYEN,

Defendant—Appellant.

Application for a Certificate of Appealability from the
United States District Court for the Eastern District of Texas
USDC No. 1:15-CV-367
USDC No. 1:10-CR-116-3

ORDER:

IT IS ORDERED that Appellant's motion for a certificate of appealability is DENIED.



KURT D. ENGELHARDT
United States Circuit Judge

B

United States Court of Appeals
for the Fifth Circuit

No. 21-40280

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUAN VAN NGUYEN,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:15-CV-367

ON MOTION FOR RECONSIDERATION
AND REHEARING EN BANC

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

The motion for reconsideration is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

LUAN VAN NGUYEN

§

VS.

§

CIVIL ACTION NO. 1:15cv367

UNITED STATES OF AMERICA

§

OPINION AND ORDER

Movant Luan Van Nguyen, an inmate at the Federal Correctional Institution in Oakdale, Louisiana, proceeding *pro se*, brought the above-styled motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Magistrate Judge recommended the action be denied and dismissed. After careful *de novo* review of the objections in relation to the pleadings and applicable law, movant's objections were overruled and the Report and Recommendation of the Magistrate Judge was adopted. Accordingly, the action was dismissed on September 26, 2018.

Movant filed a motion for clarification and/or motion to alter or amend the final judgment pursuant to Rule 59(e) (docket entry no. 35). Movant requests clarification regarding one of his grounds submitted in his amended motion to vacate regarding whether the Government presented sufficient evidence to show his Toyota had traveled in interstate commerce in order to prove an actual nexus of a federal crime. This opinion and order considers such motion.

ANALYSIS

FED. R. CIV. P. 59 provides in pertinent part the following:

(a)(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues - and to any party - as follows:

- (A) after a jury trial, for any of reason for which a new trial has heretofore been granted in an action at law in federal court; or
- (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(e) Motion to Alter or Amend Judgment. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Rule 60(b), FED. R. CIV. P., provides in pertinent part:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud ..., misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Movant contends the court failed to recognize and address his amended motion and reply brief. Movant, however, is incorrect. The court reviewed and considered all claims presented in the pleadings properly before the court.

In the Memorandum Order Overruling Movant's Objections and Adopting the Report and Recommendation, the court reviewed and addressed movant's objections and possible different interpretations of his grounds for review, and the court denied all grounds presented in the live pleading in this motion to vacate, set aside or correct sentence.

On direct appeal from movant's criminal conviction, the Court of Appeals for the Fifth Circuit found the following:

We must affirm a conviction if, after viewing the evidence and all reasonable inferences in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

To prove Nguyen's guilt on Count One conspiracy to commit carjacking, the United States was required to prove beyond a reasonable doubt that: (1) two or more individuals made an agreement to commit the crime of carjacking; (2) the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and (3) at least one of the conspirators committed an overt act in furtherance of the conspiracy. See 18 U.S.C. § 371. Count Two, carjacking, required the United States to prove that: (1) the defendant intentionally took a motor vehicle from a person; (2) the motor vehicle had been transported in interstate commerce; (3) the defendant did so by force; (4) the defendant intended to cause death or serious bodily harm; and (5) the defendant possessed such intent when he took the victim's vehicle. See 18 U.S.C. §§ 2, 2119. Nguyen [did] not challenge the sufficiency of the evidence as to the elements of aiding and abetting or conspiracy or as to the [] first three elements of the crime of carjacking. Instead, Nguyen's contentions implicate only the *mens rea* for the crime of carjacking. Nguyen argues that the United States failed to prove that the conspirators intended to cause serious bodily injury or death at the moment the car was taken.

United States v. Nguyen, 566 F. App'x 322, 326-27 (5th Cir. 2014).

As previously asserted in the Memorandum Order Adopting the Report, movant has failed to show cause, prejudice or a miscarriage of justice for failing to bring on direct appeal his specific claim of insufficiency of the evidence now asserted. Thus, the claim is procedurally barred on collateral review. See *United States v. Shaid*, 937 F.2d 228, 232 (5th Cir. 1991). Additionally, in the alternative, as set forth in the Report previously adopted in this case, the Government presented sufficient evidence the vehicle had traveled in interstate commerce. Further, movant has failed to satisfy his burden of establishing either the deficient performance

of counsel or that he was prejudiced as a result of counsel's actions. *See Strickland v. Washington*, 466 U.S. 668, 689-92, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Accordingly, movant's claim of ineffective assistance of counsel is without merit.

Finally, movant has filed a second and third amended motion to vacate. In his amended motions to vacate, movant asserts his Section 924(c) conviction is no longer valid in light of the recent Supreme Court ruling in *United States v. Davis*, ___ U.S. ___, 139 S. Ct. 2319, 204 L.Ed.2d 757 (2019), because it is no longer a crime of violence and because his Section 924(c) conviction was based on the conspiracy to commit carjacking. However, movant's indictment for the Section 924(c) gun charge references both carjacking and the conspiracy to commit carjacking. Additionally, the verdict of the jury shows movant was convicted of both the offense of conspiracy to commit carjacking (Count One) and the actual offense of carjacking (Count Two) in addition to the Section 924 gun charge (Count Three). *See United States v. Nguyen*, Criminal Action No. 1:10cv116 (E.D. Tex. 2012) (Docket Entry No. 148). "Carjacking remains a crime of violence post-*Davis*, as it has as an element the use, attempted use, or threatened use of physical force." *In re Fields*, 831 F. App'x 710, 711 (5th Cir. 2020). Accordingly, movant's claims are without merit.

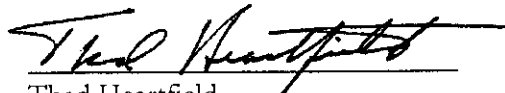
ORDER

The court conducted a careful *de novo* review of all of the pleadings in this action including, but not limited to, all grounds raised by movant, the motion for clarification and for relief from judgment, movant's amended motions, as well as the objections in relation to the pleadings and applicable law. As set forth above, movant has been provided clarification of the

court's orders as requested. However, after such *de novo* review, the court finds no meritorious ground for relief from the judgment. It is therefore,

ORDERED that movant's motion for relief from judgment is **DENIED**. All motions by either party not previously ruled on are hereby **DENIED**. The Clerk of Court is **DIRECTED** to close the above-styled action.

SIGNED this the 29 day of March, 2021.


Thad Heartfield
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

LUAN VAN NGUYEN

§

VS.

§

CIVIL ACTION NO. 1:15cv367

UNITED STATES OF AMERICA

§

MEMORANDUM ORDER OVERRULING MOVANT'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Luan Van Nguyen, a federal prisoner, proceeding *pro se*, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the motion be denied and dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Movant filed objections to the magistrate judge's Report and Recommendation.

The court conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After thorough review and consideration of all of movant's grounds for relief presented in this motion to vacate and his objections, the court finds movant's grounds fail to state a claim warranting relief. Accordingly, the court concludes movant's objections should be overruled.

First, movant argues that the government presented insufficient evidence the vehicle involved in the carjacking in this case traveled in interstate or foreign commerce. However, movant did not challenge this element of the offense on direct appeal. *See United States v. Nguyen*, 566 F. App'x 322, 326-27 (5th Cir. 2014). If a defendant alleges a fundamental constitutional error, he may not raise the issue for the first time in a § 2255 motion without showing both "cause" for his procedural default and "actual prejudice" resulting from the error. *United States v. Shaid*, 937 F.2d 228, 232

(5th Cir. 1991). The only exception to the cause-and-prejudice test is when the failure to grant relief would result in a “manifest miscarriage of justice,” i.e., in the “extraordinary case ... in which a constitutional violation has probably resulted in the conviction of one who is actually innocent.” *Id.* at 232. Here, movant has failed to show cause, prejudice or a fundamental miscarriage of justice. Accordingly, movant is procedurally barred from bringing this claim.

Additionally, as movant concedes, the government presented evidence at trial that the vehicle taken was produced in Japan and received in Houston. The carjacking statute, 18 U.S.C. § 2119, “prohibits the taking of a motor vehicle that has been transported, shipped or received in interstate or foreign commerce.” *See United States v. Jones*, 854 F.3d 737, 739 (5th Cir. 2017). Therefore, the government presented sufficient evidence to satisfy the statute in this action.

Next, movant argues carjacking cannot be considered a crime of violence pursuant to the Supreme Court holding in *Johnson v. United States*, 135 S. Ct. 2551 (2015), in which the Court held that an increased sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii), violates due process. *Id.* at 463. However, *Johnson* has not been extended to Section 924(c)(3)(B), the section of the statute under which movant was charged. Further, “[c]arjacking is always and without exception a ‘crime of violence’ as that term is defined in 18 U.S.C. § 924(c)(3).” *United States v. Frye*, 489 F.3d 201, 208-09 (5th Cir. 2007); *see also United States v. Jones*, 642 F. App’x 304, 305 (5th Cir. 2016); *Metcalf v. United States*, 2017 WL 1281133 (N.D. Tex. 2017). Accordingly, movant’s claim is without merit.

Finally, movant claims he was denied the effective assistance of counsel. Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations necessary. *Strickland v. Washington*, 466 U.S. 668, 691 (1984). To establish counsel’s failure to investigate was deficient performance under the *Strickland* standard, however, a petitioner must do more than merely allege a failure to investigate, or speculate what the results of further investigation might have been. *Carter v. Johnson*, 131 F.3d 452, 464-65 (5th Cir. 1997). The petitioner must state with specificity what the investigation would have revealed and what

specific evidence would have been disclosed. *Id.* Further, in order to establish prejudice, the petitioner must state how the evidence would have altered the outcome of the trial. *Id.*

Movant's claims of ineffective assistance of counsel in this case, however, are conclusory, lack factual support and call for speculation. Thus, movant's claims are without merit. *See Carter*, 131 F.3d at 464 (speculative claims are insufficient to overcome the presumption of counsel's competency and the high burden of actual prejudice). Further, given the strong evidence against movant in this case, he has failed to show a reasonable probability that, but for counsel's alleged unprofessional errors, the result of the proceeding would have been different. Accordingly, movant has failed to show either deficient performance or prejudice related to counsel's representation. Therefore, movant's ineffective assistance of counsel claims are without merit.

For the reasons set forth above, as well as the reasons set forth in the Magistrate Judge's Report and Recommendation, movant's motion to vacate, set aside or correct sentence is without merit and should be denied. Additionally, movant's objections should be overruled.

Furthermore, movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability, like that for granting a certificate of probable cause to appeal under prior law, requires the movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). In making that substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the movant, and the severity of the penalty may be considered

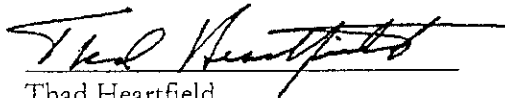
in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280-81 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by movant are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, movant has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability shall not be issued.

ORDER

Accordingly, movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this the 26 day of September, 2018.


Thad Heartfield
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

LUAN VAN NGUYEN

§

VS.

§

CIVIL ACTION NO. 1:15cv367

UNITED STATES OF AMERICA

§

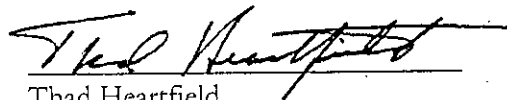
FINAL JUDGMENT

This action came on before the Court, Honorable Thad Heartfield, District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, it is

ORDERED and **ADJUDGED** that the above-styled motion to vacate, set aside or correct sentence is **DENIED** and **DISMISSED**.

All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this the 26 day of September, 2018.


Thad Heartfield
United States District Judge

DS



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

VEHICLE TITLES AND REGISTRATION DIVISION • 8550 EASTEX FREEWAY • BEAUMONT, TX 77708

AUGUST 30, 2010

STATE OF TEXAS:
COUNTY OF JEFFERSON:

KNOW ALL MEN BY THESE PRESENTS:

I, WILLIAM SNEED, DO HEREBY CERTIFY THAT I AM A CUSTODIAN
OF RECORDS FOR THE TEXAS DEPARTMENT OF MOTOR VEHICLES AND
THAT THE INFORMATION SHOWN ON THE ATTACHED

X TITLE HISTORY, TITLE NO. 12300339054160933, PAGES 1 THROUGH 5.

IS, TO THE BEST OF MY KNOWLEDGE, A TRUE AND CORRECT COPY OF
RECORDS ON FILE WITH THIS DEPARTMENT.

CUSTODIAN OF RECORDS
TEXAS DEPARTMENT OF MOTOR VEHICLES

CERTIFICATE OF ORIGIN FOR A VEHICLE

TOYOTA

DATE	2006-10-27	INVOICE NO.	738456
VEHICLE IDENTIFICATION NO	UTKDE177170181995	YEAR	2007
BODY TYPE	3 DOOR LIFTBACK	MAKE	TOYOTA
HP (SAE)	161	NO CYLS	4
G.V.W.R.		SERIES OR MODEL	SCION TC
ENGINE NO.	2A72412151	SHIPPING WEIGHT	2970

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the invoice number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC
PHILPOTT MOTORS, LTD.
DBA PHILPOTT SCION
1400 U. S. HIGHWAY 69
NEEDERLAND, TEXAS
77827

It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.

CERTIFIED FOR ALL 50 STATE EMISSIONS

GULF STATES TOYOTA, INC.
BY: [Signature] Vice President-GST Planning
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)
HOUSTON, TEXAS

G003254466

CITY, STATE



Texas Department of Transportation
TITLE APPLICATION RECEIPT



1230 0319 0541 6093 J2

COUNTY: JEFFERSON

PLATE NO: 417SZM

DOCUMENT NO: 12300319054160933

TAC NAME: MIRIAM X. JOHNSON

DATE: 12/05/2006

TIME: 01:05PM

EMPLOYEE ID: MDCJMA1

EFFECTIVE DATE: 12/05/2006

EXPIRATION DATE: 11/2907

TRANSACTION ID: 12300319054160933

OWNER NAME AND ADDRESS

TIFFANY BUI

PORT ARTHUR, TX 77642

REGISTRATION CLASS: PASSENGER-LESS/ROL 6000
PLATE TYPE: PASSENGER PLT
STICKER TYPE: WS

VEHICLE IDENTIFICATION NO: JTK08177170181995 VEHICLE CLASSIFICATION: PASS
YR/MAKE: 2007/TOYT MODEL: SX4 BODY STYLE: CP UNIT NO:
EMPTY WT: 3200 CARRYING CAPACITY: 0 ORDER WT: 3200 TONNAGE: 5.00 TRAILER TYPE:
BODY VEHICLE IDENTIFICATION NO: TRAVEL TRAILER LNO/MOYN: 0
PREV OWNER NAME: PHILPOTT MOTORS LTD PHIL PREV CITY/STATE: PORT NECHES, TX

INVENTORY ITEM(S) YR
PASSENGER PLT
WINDSHIELD STICKER 2007

VEHICLE RECORD NOTATIONS
RELEASE OF PERSONAL INFO RESTRICTED
ACTUAL MILEAGE

FERS ASSESSED	
TITLE APPLICATION FEE	13.00
TERP FEE	20.00
SALES TAX FEE	1,150.15
WINDSHIELD STICKER	58.50
REG FEE-DPS	1.00
REFLECTORIZATION FEE	0.30
CNTY ROAD BRIDGE ADD-ON FEE	10.00
AUTOMATION FEE (LARGE CNTY)	1.00
TOTAL	1,254.05

ODOMETER READING: 12 BRAND: A
OWNERSHIP EVIDENCE: MANUFACTURER'S CERT. OF ORIGIN
1ST LIEN

SALES TAX CATEGORY: SALES/USE

Sales Tax Date: 11/27/2006	
Sales Price	18,404.00
Less Trade In Allowance	0.00
Taxable Amount	18,404.00
Sales Tax Paid	1,150.25
Less Other State Tax Paid	0.00
Tax Penalty	0.00
TOTAL TAX PAID	1,150.25

Batch No: 0031905401 Batch Count: 14

2ND LIEN

1ND LIEN

417SZM



11 07

JEFFERSON

70181995

VOID
DO NOT USE/
NO USE

ORIGINAL
VTR-500-RTS (REV. 3/2001) 04/11/07

E3

APPLICATION FOR TEXAS CERTIFICATE OF TITLE
 SHADED AREAS ARE TO BE COMPLETED BY THE SELLER
 TYPE OR PRINT NEATLY IN INK

605014 70181995

TAX OFFICE USE ONLY
 Date: DEC 8 5 2006 County: JEFFERSON
 Transaction Number: 2300337054160933

1. Vehicle Identification Number: JTKDE177170181995 2. Year: 2007 3. Make: SCION 4. Body Style: CP

5. Model: TC 6. Odometer Reading: 12 7. Engine Weight: 2200 8. Carrying Capacity (lbs.): 9. Tonnage:

10. Trailer Type: ☐ Same ☐ Different 11/752M 12. Vehicle Unit No.:

14. Applicant's/Owner's Name(s): TIFFANY BUI

Address:
 City, State, Zip Code: PT ARTHUR TX 77642

14a. Registrant's Name: Jefferson
 Address:
 City, State, Zip Code:

14b. Vehicle Physical Location: Philpott Motors Ltd Philpott Motors
 City, State, Zip Code:

13. Applicant's/Additional Applicant's Social Security Number (See "below" or Federal Tax ID Number):

☐ Statement of Fact for Non-Disclosure, VTR-171, Attached.

15. Previous Owner's Name: P.O. Box 876
 Address: Port Neches, TX 77651-0876

15a. DMV - Dealer Use Only: P25131

16. 1st Lien Date: 1st Lienholder Name: NIA
 Address:
 City, State, Zip Code:

17. FOR CORRECTED TITLE: ☐ Change in Vehicle Description ☐ VIN ☐ No Change in Ownership ☐ Add Lien ☐ Remove Lien ☐ Odometer Brand ☐ Odometer Reading

18. ODOMETER DISCLOSURE - FEDERAL AND STATE LAW REQUIRES THAT YOU STATE THE MILEAGE UPON TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

1. Philpott Motors Ltd (SELLER/AGENT) states that the odometer now reads 12 (no tenths).

THE MILEAGE IS: ☒ A - Actual Mileage ☐ N - Not Actual Mileage WARNING - ODOMETER DISCREPANCY ☐ Y - Mileage Exceeds Mechanical Limit

** IF NO SELLER/AGENT, TITLE APPLICANT SHOULD CHECK ONE OF THE 3 BOXES ABOVE UNLESS NUMBER 8 INDICATES "EXEMPT."

MOTOR VEHICLE TAX STATEMENT

19. CHECK ONLY IF APPLICABLE
☐ I hold Motor Vehicle Retailer's (Retail) Permit No. and will satisfy the minimum tax liability (V.A.T.S., Tax Code, §152.048 (c)).
☐ I am a Dealer or Lessor and qualify to take the Full Market Value Deduction (V.A.T.S., Tax Code, §152.052 (c)).

20. DESCRIPTION OF VEHICLE TRADED IN (if any): Year: Make: Vehicle Identification Number: 20a. ADDITIONAL TRADE-IN (if any): N

21. SALES AND USE TAX COMPUTATION

(a) Sales Price (\$ N/A) (excludes have been deducted)	\$ <u>18404.00</u>	<input type="checkbox"/> \$10 New Resident Tax - (Previous State)	<u></u>
(b) Less Trade-In Amount, Describe in Item 20 Above	\$ <u>N/A</u>	<input type="checkbox"/> \$5 Even Trade Tax	<u></u>
(c) For Dealers/Lessor/Rental ONLY - Fair Market Value Deduction, Describe in Item 20 Above	\$ <u>N/A</u>	<input type="checkbox"/> \$10 Gift Tax	<u></u>
(d) Taxable Amount (Item a, minus Item b, Item c)	\$ <u>18404.00</u>	<input type="checkbox"/> \$65 Retail Salvage Fee	<u></u>
(e) 6.25% Tax on Taxable Amount (Multiply Item d by .0625)	\$ <u>1150.25</u>	<input type="checkbox"/> 2.5% Emissions Fee (Diesel Vehicles 1908 and Older > 14,000 lbs)	<u></u>
(f) Less Tax Payment Penalty <input type="checkbox"/> 5% or <input type="checkbox"/> 10%	\$ <u>N/A</u>	<input type="checkbox"/> 1% Emissions Fee (Diesel Vehicles 1997 and Newer > 14,000 lbs)	<u></u>
(g) Tax Paid to (STATE)	\$ <u>N/A</u>	<input type="checkbox"/> Exemption claimed under the Motor Vehicle Sales and Use Tax Law because	<u></u>
(h) AMOUNT OF TAX AND PENALTY DUE (Item e, plus Item f, minus Item g)	\$ <u>1150.25</u>	<input checked="" type="checkbox"/> \$128 or \$32 APPLICATION FEE FOR CERTIFICATE OF TITLE (Contact your County Tax Assessor-Collector for the correct fee)	<u></u>

I HEREBY CERTIFY THAT ALL STATEMENTS IN THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

22. Philpott Motors, Ltd SELLER, DONOR, OR TRADER
 Signature: PRINTED NAME (same as signature): PHILPOTT MOTORS, LTD Date: 11/27/2006

Tiffany Bui BUYER, ADDITIONAL BUYER, OR TRADER
 Signature: PRINTED NAME (same as signature): TIFFANY BUI Date: 11/27/2006

RIGHTS OF SURVIVORSHIP OWNERSHIP AGREEMENT (MARRIED PERSONS)
 WE, THE PERSONS WHOSE SIGNATURES APPEAR HEREIN, HEREBY AGREE THAT THE OWNERSHIP OF THE VEHICLE DESCRIBED ON THIS APPLICATION FOR TITLE SHALL FROM THIS DAY FORWARD BE HELD JOINTLY, AND IN THE EVENT OF DEATH OF EITHER OF THE PERSONS NAMED IN THE AGREEMENT, THE OWNERSHIP OF THE VEHICLE SHALL VEST IN THE SURVIVOR. NON-MARRIED PERSONS ARE REQUIRED TO EXECUTE A RIGHTS OF SURVIVORSHIP OWNERSHIP AGREEMENT FOR A MOTOR VEHICLE, FORM VTR-122.

SIGNATURE _____ DATE _____
 SIGNATURE _____ DATE _____

WARNING: Transportation Code, §501.158, provides that falsifying information on this transfer document is a third-degree felony offense punishable by not more than ten (10) years in prison or not more than one (1) year in a community correctional facility. In addition, imprisonment, a fine of up to \$10,000 may also be imposed.

* NOTE: Transportation Code, §501.0234, requires that the applicant's social security number be provided when applying for a certificate of title. If the applicant does not have a social security number, Form VTR-171, Statement of Fact for Non-Disclosure of a Social Security Number, must accompany this application. This information is requested for owner identification purposes.

Each undersigned hereby certifies to the best of his knowledge, information and belief under penalty of law that the vehicle is new and has not been registered in this or any state at the time of delivery and the vehicle is not subject to any county or state sales tax and is exempt from use to the extent of the value received for the vehicle described on the face of this certificate to

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 1

NAME OF PURCHASER(S) Tyler Bui
ADDRESS PLA... ..
I certify to the best of my knowledge that the odometer reading is 12 No Tenth

DEALER Philod Motors DEALER'S LICENSE NUMBER 35131 BY Kachet
State of TX Jeff Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this 27 day of June 2016. Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 2

NAME OF PURCHASER(S) _____
ADDRESS _____
I certify to the best of my knowledge that the odometer reading is _____ No Tenth

DEALER _____ NAME OF DEALERSHIP _____ DEALER'S LICENSE NUMBER _____ BY _____
State of _____ Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____, 2016. Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 3

NAME OF PURCHASER(S) _____
ADDRESS _____
I certify to the best of my knowledge that the odometer reading is _____ No Tenth

DEALER _____ NAME OF DEALERSHIP _____ DEALER'S LICENSE NUMBER _____ BY _____
State of _____ Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____, 2016. Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 4

NAME OF PURCHASER(S) _____
ADDRESS _____
I certify to the best of my knowledge that the odometer reading is _____ No Tenth

DEALER _____ NAME OF DEALERSHIP _____ DEALER'S LICENSE NUMBER _____ BY _____
State of _____ Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____, 2016. Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

ODOMETER DISCLOSURE FOR RETAIL SALE

Federal law requires you to state the odometer mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and imprisonment.
I certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked. Odometer Reading _____ No Tenth ☐ The mileage stated is in excess of its mechanical limits. ☐ The odometer reading is not the actual mileage. **WARNING ODOMETER DISCREPANCY**

Signature(s) of Seller(s) _____ Date of Statement _____ Date of Sale _____
Printed Name(s) of Seller(s) _____ Dealer's No _____ Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____, 2016. Notary Public

Signature(s) of Purchaser(s) _____
Printed Name(s) of Purchaser(s) _____
Address of Purchaser(s) _____ State of _____ County of _____

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

LIENHOLDER

1st lien in favor of AMERICAN FIDELITY
where address is _____
2nd lien in favor of _____
where address is _____

G003254466

TIFFANY BUI

70181995

CUSTOMER'S NAME

STOCK NO.

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, PHILPOTT MOTORS, LTD

12

(transferor's name, Print)

state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

- ☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.
☐ (2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING - ODOMETER DISCREPANCY.

MAKE SECTION	MODEL TC	BODY TYPE CP
VEHICLE IDENTIFICATION NUMBER STR00177770181995		YEAR 2007

X
TRANSFEROR'S SIGNATURE
PHILPOTT MOTORS, LTD

PMT 1400 US HIGHWAY 69

TRANSFEROR'S ADDRESS (STREET)
NEEDLAND, TXCITY
11/27/2006

STATE

77627

ZIP CODE

DATE OF STATEMENT

X
TRANSFEREE'S SIGNATURE
TIFFANY BUI

PRINTED NAME
TIFFANY BUI

TR

TRANSFEREE'S ADDRESS (STREET)
11 ARTHUR, TX 77642

CITY

STATE

ZIP CODE

E6



FILED

M. Aug. 2 2012
DAVID J. MALAND, CLERK
U.S. DISTRICT COURT

By _____
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA

v.

LUAN VAN NGUYEN

§
§
§
§
§
§
§

CRIMINAL ACTION NO. 1:10-CR-116-TH-3

VERDICT OF THE JURY

1. As to COUNT ONE of the Indictment charging CONSPIRACY TO COMMIT CARJACKING, we the jury find the defendant:

(Not Guilty)

Guilty - 12
(Guilty)

2. As to COUNT TWO of the Indictment charging CARJACKING, we the jury find the defendant:

(Not Guilty)

Guilty - 12
(Guilty)

3. As to COUNT THREE of the Indictment charging POSSESSION OF A FIREARM IN FURTHERANCE OF A CRIME OF VIOLENCE, we the jury find the defendant:

(Not Guilty)

Guilty - 12
(Guilty)

4. If you found the defendant guilty as to COUNT THREE of the Indictment, do you find beyond a reasonable doubt that the firearm was a short-barreled shotgun?

(No)

Yes - 12
(Yes)

John Joseph Sanchez
Jury Foreperson

8-2-2012
Date