No. 22-5672

IN THE

SUPREME COURT OF THE UNITED STATES

LUAN NGUYEN — PETITIONER
(Your Name)

VS.

~~UNITED STATES OF AMERICA~~ RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☑ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES District Court
for the Eastern District of TEXAS

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☑ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

Luan Nguyen
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, LUAN NGUYEN, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$ ∅	$ ∅	$ ∅	$ ∅
Self-employment	$ ∅	$ ∅	$ ∅	$ ∅
Income from real property (such as rental income)	$ ∅	$ ∅	$ ∅	$ ∅
Interest and dividends	$ ∅	$ ∅	$ ∅	$ ∅
Gifts	$ ∅	$ ∅	$ ∅	$ ∅
Alimony	$ ∅	$ ∅	$ ∅	$ ∅
Child Support	$ ∅	$ ∅	$ ∅	$ ∅
Retirement (such as social security, pensions, annuities, insurance)	$ ∅	$ ∅	$ ∅	$ ∅
Disability (such as social security, insurance payments)	$ ∅	$ ∅	$ ∅	$ ∅
Unemployment payments	$ ∅	$ ∅	$ ∅	$ ∅
Public-assistance (such as welfare)	$ ∅	$ ∅	$ ∅	$ ∅
Other (specify): _____	$ ∅	$ ∅	$ ∅	$ ∅
Total monthly income:	$ ∅	$ ∅	$ ∅	$ ∅

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ ~~0~~
N/A	N/A	N/A	$ 0
N/A	N/A	N/A	$ 0

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ 0
N/A	N/A	N/A	$ 0
N/A	N/A	N/A	$ 0

4. How much cash do you and your spouse have? $ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	$ 0	$ 0
N/A	$ 0	$ 0
N/A	$ 0	$ 0

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value N/A

☐ Motor Vehicle #2
Year, make & model N/A
Value N/A

☐ Other assets
Description N/A
Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	$ ∅	$ ∅
N/A	$ ∅	$ ∅
N/A	$ ∅	$ ∅

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ ∅	$ ∅
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ ∅	$ ∅
Home maintenance (repairs and upkeep)	$ ∅	$ ∅
Food	$ ∅	$ ∅
Clothing	$ ∅	$ ∅
Laundry and dry-cleaning	$ ∅	$ ∅
Medical and dental expenses	$ ∅	$ ∅

	You	Your spouse
Transportation (not including motor vehicle payments)	$ ∅	$ ∅
Recreation, entertainment, newspapers, magazines, etc.	$ ∅	$ ∅
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ ∅	$ ∅
Life	$ ∅	$ ∅
Health	$ ∅	$ ∅
Motor Vehicle	$ ∅	$ ∅
Other: _____	$ ∅	$ ∅
Taxes (not deducted from wages or included in mortgage payments)		
(specify): N/A	$ ∅	$ ∅
Installment payments		
Motor Vehicle	$ ∅	$ ∅
Credit card(s)	$ ∅	$ ∅
Department store(s)	$ ∅	$ ∅
Other: _____	$ ∅	$ ∅
Alimony, maintenance, and support paid to others	$ ∅	$ ∅
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ ∅	$ ∅
Other (specify): _____	$ ∅	$ ∅
Total monthly expenses:	$ ∅	$ ∅

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

N/A

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? ϕ

If yes, state the attorney's name, address, and telephone number:

PRO SE

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? ϕ

If yes, state the person's name, address, and telephone number:

PRO SE

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Petitioner been incarcerated since 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: NOV 20, 2022

Juan Nguyen
(Signature)

Inmate Statement

PRINT

Inmate Reg #: 07875078
Inmate Name: NGUYEN, LUAN
Report Date: 09/13/2022
Report Time: 1:29:36 PM

Current Institution: Oakdale FCC
Housing Unit: OAK-P-B
Living Quarters: P07-419L

Alpha Code	Date/Time	Reference#	Payment#	Receipt#	Transaction Type	Transaction Amount	Encumbrance Amount	Ending Balance
OAX	8/29/2022 1:28:22 PM	103			Sales	($24.65)		$21.41
OAX	8/22/2022 8:39:42 AM	101			Sales	($29.25)		$46.06
OAX	8/12/2022 2:35:04 PM	TL082022			Pre-Release Transaction		$25.00	--------
OAX	8/8/2022 8:00:55 AM	53			Sales	($59.75)		$75.31
OAX	8/7/2022 6:06:49 AM	33322219			Western Union	$100.00		$135.06
OAX	8/7/2022 6:06:49 AM	33322219			Pre-Release Transaction		($25.00)	--------
OAX	8/6/2022 5:10:10 PM	TL082022			Pre-Release Transaction		$25.00	--------
OAX	8/1/2022 7:43:30 AM	56			Sales	($78.20)		$35.06
OAX	7/31/2022 3:06:36 PM	33322212			Western Union	$100.00		$113.26
OAX	7/31/2022 3:06:36 PM	33322212			Pre-Release Transaction		($25.00)	--------
OAX	7/19/2022 10:19:11 AM	137			Sales	($74.05)		$13.26
OAX	7/15/2022 5:55:25 PM	TL072022			Pre-Release Transaction		$25.00	--------
OAX	7/12/2022 9:42:19 AM	91			Sales	($77.50)		$87.31
OAX	7/12/2022 6:08:18 AM	33322193			Western Union	$100.00		$164.81
OAX	7/12/2022 6:08:18 AM	33322193			Pre-Release Transaction		($25.00)	--------
OAX	7/6/2022 9:00:51 AM	66			Sales	($72.35)		$64.81
OAX	7/5/2022 6:48:21 PM	TL072022			Pre-Release Transaction		$50.00	--------
OAX	7/5/2022 11:03:54 AM	TL072022			Pre-Release Transaction		($25.00)	--------
OAX	7/5/2022 6:08:39 AM	33322186			Western Union	$100.00		$137.16
OAX	7/5/2022 6:08:39 AM	33322186			Pre-Release Transaction		($25.00)	--------
OAX	6/23/2022 9:38:35 AM	89			Sales	($75.80)		$37.16
OAX	6/22/2022 8:23:49 AM	TL062022			Pre-Release Transaction		$22.50	--------
OAX	6/22/2022 6:08:17 AM	33322173			Western Union	$90.00		$112.96
OAX	6/22/2022 6:08:17 AM	33322173			Pre-Release Transaction		($22.50)	--------
OAX	6/16/2022 11:59:12 AM	TL0616			TRUL Withdrawal	($10.00)		$22.96
OAX	6/15/2022 7:42:15 AM	6			Sales	($93.55)		$32.96
OAX	6/15/2022 6:14:11 AM	TL062022			Pre-Release Transaction		$25.00	--------
OAX	6/14/2022 8:06:47 PM	33322165			Western Union	$100.00		$126.51
OAX	6/14/2022 8:06:47 PM	33322165			Pre-Release Transaction		($25.00)	--------
OAX	6/12/2022 9:07:22 PM	TL062022			Pre-Release Transaction		$25.00	--------
OAX	6/8/2022 8:46:08 AM	46			Sales	($20.10)		$26.51
OAX	5/31/2022 1:48:08 PM	260			Sales	($21.70)		$46.61
OAX	5/28/2022 11:36:58 AM	TL0528			TRUL Withdrawal	($10.00)		$68.31
OAX	5/23/2022 7:16:39 AM	21			Sales	($21.70)		$78.31
OAX	5/22/2022 8:06:59 PM	33322142			Western Union	$100.00		$100.01
OAX	5/22/2022 8:06:59 PM	33322142			Pre-Release Transaction		($25.00)	--------
OAX	5/19/2022 10:43:52 AM	TL0519			TRUL Withdrawal	($10.00)		$0.01
OAX	5/18/2022 1:54:50 PM	TL0518			TRUL Withdrawal	$0.35		$10.01
OAX	5/16/2022 10:01:28 AM	114			Sales	($20.15)		$9.66
OAX	5/14/2022 1:03:04 PM	TL052022			Pre-Release Transaction		$25.00	--------
OAX	5/9/2022 6:32:58 AM	9			Sales	($25.25)		$29.81
OAX	5/7/2022 5:20:20 PM	TL0507			TRUL Withdrawal	($5.00)		$55.06
OAX	5/2/2022 11:28:56 AM	138			Sales	($20.85)		$60.06
OAX	4/30/2022 12:57:03	TL0430			TRUL Withdrawal	($5.00)		$80.91

OAX	4/2[illegible]2022 6:48:18 PM	2	Sales	($14.30)		$85.91
OAX	4/25/2022 4:07:18 AM	33322115	Western Union	$100.00		$100.21
OAX	4/25/2022 4:07:18 PM	33322115	Pre-Release Transaction		($25.00)	--------
OAX	4/19/2022 8:56:55 AM	91	Sales	($17.45)		$0.21
OAX	4/12/2022 8:41:06 AM	58	Sales	($24.00)		$17.66
OAX	4/7/2022 12:16:53 PM	TL042022	Pre-Release Transaction		$25.00	--------

1 2

Total Transactions: 84

Totals: **$21.20** **$0.00**

Current Balances

Alpha Code	Available Balance	Pre-Release Balance	Debt Encumbrance	SPO Encumbrance	Other Encumbrance	Outstanding Instruments	Administrative Holds	Account Balance
OAX	$21.41	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$21.41
Totals:	**$21.41**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$0.00**	**$21.41**

Other Balances

National 6 Months Deposits	National 6 Months Withdrawals	Natioanl 6 Months Avg Daily Balance	Local Max Balance - Prev 30 Days	Average Balance - Prev 30 Days	Commissary Restriction Start Date	Commissary Restriction End Date
$990.00	$968.70	$45.90	$75.31	$40.37	N/A	N/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	§	

ORDER

Movant Luan Van Nguyen, a prisoner confined in the Bureau of Prisons, proceeding *pro se*, filed the above-styled motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The motion was denied and dismissed.

Movant has filed a notice of appeal and a motion to proceed *in forma pauperis* on appeal. After due consideration, the court is of the opinion that movant meets the indigent status requirements of 28 U.S.C. § 1915. It is therefore

ORDERED that movant's motion to proceed *in forma pauperis* on appeal is **GRANTED.**

SIGNED this the 21st day of December, 2018.

KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE

NO. 22-5672

IN THE

SUPREME COURT OF THE UNITED STATES

LUAN NGUYEN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRITE OF CERTIORARI

TO THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

PETITION FOR REHEARING

LUAN NGUYEN
PRO SE
#07875-078
FCI OAKDALE I
P.O. Box 5000
Oakdale LA 71463

QUESTION PRESENTED.

1. Whether Nguyen was denied his Sixth Amendment Right to an impartial jury where there is a real possibility that the Davis error had substantial and injurious effect or influence in determining the jury's verdict as to his 924(c) conviction?

2. Whether Nguyen was denied assistance of Counsel when his Counsel failed to review the evidence obtained by law enforcement, turned over to him by the prosecution and in turn, failed to present at trial, a copy of the certificate of origin for a vehicle, which establishes the vehicle was never transported, shipped or received in interstate or foreign commerce, thus the third elements of carjacking is lacking?

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ARGUMENT AND AUTHORITIES

I. WHETHER NGUYEN WAS DENIED HIS SIXTH AMENDMENT RIGHT TO AN IMPARTIAL JURY WHERE THERE IS A REAL POSSIBILITY THAT THE DAVIS ERROR HAD SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT AS TO HIS §924(c) CONVICTION.

Nguyen contends below that jurists of reason would find it debatable as to whether he was denied his Sixth Amendment right to an impartial jury because the jury may have based his §924(c) conviction on the now-invalid carjacking conspiracy offense. And as a result, his unconstitutional §924(c) conviction should be vacated because the Davis error (i.e, erroneously instructing the jury that conspiracy to commit carjacking is a crime of violence) had substantial and injurious effect or influence in determining the jury's verdict as to Count Three.

A. CONSPIRACY TO COMMIT CARJACKING IS NOT A CRIME OF VIOLENCE POST-DAVIS.

Section 924(c) prohibits the possession or used of a firearm "during and in relation to any crime of violence or drug trafficking crime." §924(c)(1)(A). As originally enacted, the statute defines a "crime of violence" as "an offense that is a felony" and;

(A) has an element the use, attempted use, or threatened use of physical force against the person or property of another or;

(B) that by its nature, involves a substantial right that physical force against the person or property of another may be used in the course of committing the offense. Id. §924(c)(3).

In Davis the Supreme Court struck down as unconstitutionally vague 924(c)(3)(B), commonly known as the "residual clause." 193 S.Ct. at 2323-24. Thus, a conviction under §924(c) can now only be substained if the predicate offense qualifies as a "crime of violence" as defined in §924(c)(3)(A), commonly known as the "element clause" or the "force clause." United States v. Smith, 957 F.3d 590, 593 (5th Cir. 2020).

Because "conspiracy to commit an offense is merely an agreement to commit an offense." United States v. Gore, 636 F.3d 728, 731 (5th Cir. 2011). Therefore, here, the conspiracy offense does not necessarily require proof that a defendant used, attempted to use, or threatened to use force. Accordingly, conspiracy to commit carjacking does not qualify as a crime violence under §924(c)(3)(A).

B. JURISTS OF REASON COULD AGREE THAT NGUYEN WAS DENIED HIS SIXTH AMENDMENT RIGHT TO AN IMPARTIAL JURY WHERE THE JURY MAY HAVE RELIED ON AN INVALID PREDICATE OFFENSE.

The Sixth Amendment promises that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury to the State and District which in the crime shall have been committed, which district shall have been previously ascertained by law. U.S. Const. Amend. VI.

If the term "trial by an impartial jury" carried any meaning at all, surely included a requirement as long and widely accepted as unanimity. See Ramos v. Louisiana, 140 S.Ct. 1390, 1396 (2020).

In the instant case, it is undisputed that the indictment and the jury's instruction erroneously instructed that conspiracy to commit carjacking is a "crime of violence[2]." (See Supra at 7). In relevant part, the district court instructions provided that, "For you to find [Nguyen] guilty of [Possession of a firearm in futherance of a crime of violence], you must be convince that the government has proven each of the following beyond a reasonable doubt: First, that the defendant committed at least one of the crime alleged in count One or Count Two of the Indictment, **both of which I now instruct you are crimes of violence.."** (emphasis in bold added). USCA 5 at 1137.

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2 Although at the time the district court delivered the instruction Davis was not law, the Court now may apply the Davis ruling in the instant proceeding to correct the constitutional error. United States v. Reece, 938 F.3d 630, 635 (5th Cir. 2019)(holding that the rule announced in Davis retroactively).

Here, an error occurred because the jury was instructed on alternative theories of liability for Count Three where at least one of the two predicate offenses is constitutionally invalid after Davis (Id). Thus, the lack of special instructions also runs afoul of the long-established right to jury unanimity enshrined in the Sixth Amendment. Ramos, 140 S.Ct at 1391 (concluding that the term "trial by an impartial jury" carries with some meaning about the context and requirement of a jury trial. Once such requirement is that a jury must reach an unanimous verdict in order to convict). That is, the district court's improper, and general instructions, run violated the unanimity requirement because it is unclear which predicate offense the jurors relied on to convict Nguyen on Count Three.

Therefore, there is doubt as to whether the jury relied on the valid or invalid predicate offense to convict him on Count Three. Critically, the possibility that at least one juror based his or her verdict on an invalid predicate offense is sufficient to contravene the unanimity requirement and to undermine the fairness of Nguyen's trial guaranteed by the Sixth Amendment. See Griffin v. United States, 502 U.S 46, 53 (1991)("[W]here a provision of the Constitution forbids conviction on a particular ground, the Constitutional guarantee is violated by a general verdict that may have rested on that ground.") (emphasis added).[3]

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[3] See e.g, United States v. Savories, 430 F.3d 376, 377-80 (6th Cir. 2005) (finding that the district court's jury instructions were improper because the jury might have found defendant guilty on an "offense" -possession of a firearm during and in relation to a drug trafficking crime- that is not criminalized by §924(c)... "Which is a plain-error that" cast substantial doubt on whether the defendant was unanimously convicted of an offense criminialized by §924(c)").

C. JURISTS OF REASON COULD AGREE THAT THE DAVIS ERROR HAD SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT AS TO COUNT THREE.

1. THERE WAS AN ERROR

Accordingly, based on the jury instructions, the record shows that the district court erred in clearly instructing the jury to specifically identify conspiracy to commit carjacking as a crime of violence to sustain a conviction for the §924(c) offense. Thus, instructing the jury of such was error. Because an error occurred, Nguyen will demonstrate below that the Davis error was not harmless.

2. THE DAVIS ERROR WAS NOT HARMLESS

Without any mention as to whether it was reviewing Nguyen's Davis claim under harmless-error standard,[4] the district court concluded that, [Nguyen's] indictment for Section 924(c) gun charge references both carjacking and conspiracy to commit carjacking. Additionally, the verdict of the jury shows [he] was convicted of both the conspiracy to commit carjacking and actual carjacking in addition to the Section 924(c) gun charge.

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[4] On collateral review, the harmless-error standard mandates that "relief is proper only if the... court has grave doubt about whether a trial error of federal law and substantial and injurious effect or influence in determining the jury's verdict. There must be more than a reasonable possibility that the error was harmless." Davis v. Ayala, 576 U.S 257, 267-68 (internal quotation marks and citations omitted); Brencht v. Abrahamson, 507 U.S 619, 638 (1993); See also United States v. Chavez, 193 F.3d 375, 379 (5th Cir. 1999)(applying Brecht's harmless-error standard in a §2255 proceeding). Furthermore, under the harmless-error review, "reversal is warranted ONLY when petitioner suffered 'actual prejudice' from the error." Brecht, 507 U.S at 637.

Applying Brecth's harmless-error standard and taking into account (1) Count Three of the indictment does not charge aiding and abetting as one of the predicate crimes of violence being used to support the § 924(c) conviction, (2) Count Two charged Nguyen with aiding and abetting a carjacking offense--not actual carjacking, (3) the jury was instructed that it could find him guilty of Count Two if it found that he aided and abetted a carjacking,[5] and (4) the government's opening statement emphasized that co-defendant Chaney had already removed the victim's car keys and took his vehicle prior to Nguyen driving up to the residence (thereby placing Ngyuen outside the essential elements of § 2119). Therefore, it is a real possibility that the jury's general verdict as to Count Two rested solely on the charged offense of aiding and abetting a carjacking, not the substantive violation of § 2119. United States v. Odom, 736 F.2d 150, 151 (5th Cir 1984)(holding that defendant's conviction for aiding and abetting was pursuant to 18 U.S.C. § 2 not the substantive violation of § 1027).

Because there is a real possibility that the jury's general verdict as to Count Two rested solely on the offense of aiding and abetting a carjacking. And the fact, Count Three nor the jury instructions specifically allege that aiding and abetting a carjacking is one of the predicate crimes of violence being used to support the § 924(c) conviction. Thus, it is unlikely the jury would have relied on the actual carjacking offense to support the § 924(c) conviction, when it was not instructed to do so. For these reasons, the jury may have relied on the conspiracy to commit carjacking offense to support the § 924(c) conviction in this case and therefore, the error was not harmless given "that [the] possibility of reliance on the erroneous instructions is the 'substantial and injurous effect' to which Brecth refers."[6]

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[5] It is presumed that jurors follow the instructions given. Francis v. Franklin, 471 U.S. 307, 326 n.9 (1985).

[6] Hedpeth v. Pulido, 555 U.S. 57, 68 (2008)(Stevens, J., dissenting).

Additionally, while it is true that the jury verdict shows that Nguyen was found guilty of both Counts, One and Two, however, in the context of a general verdict, "an error with regard to one independent basis for the jury's verdict cannot be rendered harmless solely because the the availability of another indpendent basis," where it is impossible to say which basis the jury's verdict rest.[7]

Accordingly, jurists of reasons could agree that the Davis error had substantial and jurious effect or influence in determining the jury's verdict as to Count Three. And as a result, his unconstitutional §924(c) conviction should be vacated.[8] Because Nguyen was sentenced to 10-years on Count Three to run consecutively to the remaining counts, thus, he has suffered "actual prejudice." United States v. Garcia-Quintanilla, 574 F.3d 295, 304 (5th Cir. 2009)("[W]e often ask whether the error increased the term of a sentence, such that there is a reasonable possibility of a lower setence on remand.")

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7 See e.g, Parker v. Sec'y for Dep't of Corr., 331 F.3d 764, 778-79 (11th Cir. 2003); See also Chapman v. California, 386 U.S. 18, 48-52 (1967)(Affirming that in case involving alternative theories, the reviewing court must determine whether the error "had substantial and injurious effect or influence in determining the jury's verdict" and not whether the court was "absolutely certain' that the jury relied on a valid ground).

8 O'Neal, 513 U.S at 436; United States v. McCall, 2019 U.S. Dist. LEXIS 165744, 2019 WL 4675762, at *6-7 (E.D. Va. Sept. 25, 2019)(Vacating §924(c) conviction in light of Davis because the jury was instructed that it could find defendant guilty on either a conspiracy offense or an assault with a dangerous weapon offense); United States v. Berry, U.S. Dist. LEXIS 20380, 2020 WL 91563, *3 (W.D. Va. Feb 6, 2020) (Vacating the defendant's Section 924(c) conviction where "there is no means of establishing whether the conviction was attempt" -which could qualify as a crime of violence- "as opposed to conspiracy which does not qualify as a crime of violence under Simms.")

Furthermore, the Court in Perry faced the same situation as in Nguyen, Davis claim. See United States v. Perry, No. 17-30610 (5th Cir. 2022). This Court compare, United States v. Jones, 935 F.3d 266, 273-74(5th Cir. 2019)(Herein after "JonesII") with United States v. Vasquez, 672 F.ed Appx 56, 61 (2nd Cir. 2019) (Summary order). At trial in this case, over defense objection, the district court instructed the jury that defendant could be found guilty only that the prosecution had proved beyond reasonable doubt that the defendants had used or carried a firearm in relation to a crime of violence charge in Count 1 (Rico Conspiracy), and Count 2 (drug trafficking). The Court opinion in McClaren forcloses the possibility that Count 1 could be considered a crime of violence, 13 F.4th at 412-14. The Court thus confront the same situation as that in "Jones II" one in which "the jury could have convicted on the 924(c) counts by relying on either the invalid crime of violence predicate or alternative drug trafficking's predicate." Applying Jones II and relying on the government relinquishment of it harmless-error argument, the Court vacated and remand almost all of the conviction of 924(c) offenses. Concluding that it was plain error for the district court to permit the jury to convict base on "Rico Conspiracy" as a crime of violence predicate see Id at 274. The Court does so because "[a] reasonable probability remain that the jury relied upon Rico Conduct Seperate from the drug conspiracy..."

Here, Nguyen's facing the same situation. Nguyen gung charge 924(c) predicates reference to Count 1 (Conspiracy to Commit Carjacking) and Count 2 (Carjacking). In Reece forecloses the possibility that Nguyen Count 1 could be considered a crime of violence. See United States v. Reece, 938 F.3d 630, 635 (5th Cir. 2019). The jury can not convicted Nguyen on count 2 without first convicting Nguyen on Count 1, and also, the prosecution at the closing argument instructed the jury to convict Nguyen on aiding and abetting a conspiracy. Therefore, the jury more likely convicted nguyen 924(c) count on now invalid predicate post Davis.

II. WHETHER NGUYEN WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS TRIAL COUNSEL FAILED TO REVIEW THE EVIDENCE OBTAINED BY LAW ENFORCEMENT, TURNED OVER TO HIM BY THE PROSECUTION AND FAILED TO PRESENT AT TRIAL, A COPY OF THE CERTIFICATE OF ORIGIN FOR A VEHICLE, WHICH ESTABLISHES THE VEHICLE WAS NEVER TRANSPORTED, SHIPPED OR RECEIVED IN INTERSTATE OR FOREIGN COMMERCE.

Nguyen argues below that he was denied his Sixth Amendment right to effective assistance of counsel, when trial counsel failed to review the prosecution's evidence and failed to introduce at trial, a copy of the Certificate of Origin for a Vehicle, which establishes that the Vehicle was never transported, shipped or received in interstate or foreign commerce. Based on these reasons the jury would have found him not guilty of Carjacking (Count Two) because the Third element of Section 2119 could not have been met.

A. APPLICABLE LAW

The Supreme Court set out the governing principles of ineffective assistance of counsel claims in Strickland v. Washington, 466 U.S. 668 (1984). To succeed on a charged ineffective assistance of counsel, a petitioner must satisfy both prongs of Strickland's two part test by demonstrating that (1) counsel's performance was deficient and (2) counsel deficient performance cause actual prejudice to the petitioner's defense. Id. at 687. To show deficient performance "the defendant must show that counsel's representation fell below an objective standard of reasonableness." Reed v. Stephens, 739 F.3d 753, 773 (5th Cir. 2014) (quoting Strickland, 466 US at 688).

To prevail on the type of ineffective assistance claim Nguyen has made, he must show that his attorney failed to investigate or "introduce [the] evidence," that the failure to amounted to deficient performance by his attorney, and that he was prejudiced by the failure. Johnson v. Cockrell, 306 F.3d 249, 252 (5th Cir. 2002)(citing Strickland, 466 US at 687).

To demonstrate prejudice, Nguyen "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 at 694.

Moreover, a federal habeas petitioner asserting ineffective assistance premised on a failure to present evidence at trial must (1) identify the evidence in question with specificity, (2) establish the evidence in question possessed exculpatory, mitigating or impeachment value, and (3) establish the evidence was either (a) directly admissible at his trial, (b) capable of serving a part of the predicate for the admission of other materials, evidence, or (c) beneficial to impeach the trial testimony of prosecution witness. Anderson v. Collins, 18 F.3d 1208, 1221 (5th Cir. 1994).

B. FAILURE TO REVIEW THE PROSECUTION EVIDENCE AND IN TURN, TO PRESENT AN EXCULPATORY EVIDENCE AT TRIAL CONSTITUTED DEFICIENT PERFORMANCE.

In present case, Nguyen argues that trial counsel's performance fell below an objective standard of reasonableness, when he failed to review the evidence obtained by law enforcement turned over to him by the prosecutor, and in turn, to present at trial a copy of Certificate of Origin for a Vehicle which calls into question whether the vehicle was transported, shipped or received in interstate or foreign commerce or completely manufactured in Japan. See (Exhibit E - a copy of Certificate of origin for a vehicle).

The Certificate of Origin is significantly exculpatory. It contradicts the testimony of Julius Thomas Johnson, the prosecution's main and only witness who testified that the vehicle in question was manufactured in Japan. See USCA5 at 457-58 (Yes, Sir. Scion Vehicles are manufactured in Japan; and they shipped to California and than place on railcar from California to Houston, Texas and than trucked from Houston to our dealership).(2) The Certificate of Origin would strongly support a finding that it was certified that the vehicle was originally from the company, "Gulf State Toyota Inc." located in Houston, Texas, then, transferred to Philmott Mottors, located in Nederland, Texas, the place of Mr. Julius Thomas Johnson's employment. ("It is further certified that this was the first transfer of such new vehicle in ordinary trade and commerce.") See Exhibit A (3) Had the Certificate of Origin been introduced, it would have provided an alternative theory that the vehicle in question was never transported, shipped or received in interstate or foreign commerce. In otherwords, the first of the vehicle ordinary trade and commerce was from "Gulf State Toyota Inc." Houston Texas, to Philmotts dealership, Nederland Texas. i.e., not transported, shipped, or received in interstate or foreign commerce or manufactured in Japan.

Port Athur police department subpenaed the Records from Texas DMV. The Certificate of Origin turned over to Nguyen's counsel, who either did not look at it, or forgot he had them, until the jury had retired to deliberate. Even then, it seems he did not review them closely enough to grasp it's exculpatory value.

Trial counsel's failure to review the evidence obtained by law enforcement, turned over to him by the prosecution, and in turn, to introduce the Certificate of Origin at trial was deficient peformance. "[Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 US at 691. Counsel's investigation "should always include efforts to secure information in the possession of the prosecution and law enforcement authorities." Bompilla v. Beard, 545 U.S 374, 387, 125 S. Ct. 2456, 162 L. ed. 2d 360 (2005)(quoting ABA Standards for Criminal Justice 4.4.1 (2d e.d 1984 Supp.)). Inherent in "secur[ing]" that evidence is the obligation to review it-that is, to "make some effort to learn the information in the possession of [those] authorities." Id. at 386 N.6 (emphasis added).

No conceivable strategic judgment could explain counsel's failure to review the records. The government evaded to respond to Nguyen's amended 2255 motion to vacate, set aside or correct sentence. (Ground 4). Counsel's failure to review the exculpatory Certificate of Origin was thus the result of neither "reasonable investigations" nor "a reasonable decision that ma[de] particular investigations unnecessary." Strickland, 466 US at 691; See Rompilla, 545 US at 387. "The record..underscores the unresonableness of counsel's conduct by suggesting that [his] failure to investigate throughly result from inattention, not reasoned strategic judgment." Wiggins v. Smith, 539 US 510, 526, 123 S. Ct 2527, 156 L. Ed 2d 471 (2003).

As counsel's incompetence in failing to locate the Certificate of Origin in the material disclosed by the prosecution is beyond reasonable dispute. Therefore, counsel's performance in failing to review the evidence obtained by law enforcement, turned over to him by the prosecution and in turn, to present this exculpatory evidence at trial fell below an objective standard of reasonableness as required under Strickland's first-prong test. See Richard v. Quaterman, 566 F.3d 553, 568 (5th Cir.. 2009)("[Counsel's] failure to bring this crucial exculpatory evidence was objectively unreasonable under prevailing professional norms and was not the product of "conscious and informed decision of trial tactics and strategy."); See also Moore v. Johnson, 194 F.3d 586, 611 (5th Cir. 1999) ("[Counsel] decision to exclude [exculpatory evidence], which produced no conceivable benefit to the defense and prejudice more by precluding reliance upon plausible alternative defense theory that was supported by other evidence in the record,

was professional unreasonble.")

C. BUT FOR COUNSEL'S DEFICIENT PERFORMANCE, THERE IS A REASONABLE PROBABILITY THAT THE JURY WOULD NOT HAVE FOUND NGUYEN GUILTY OF COUNT TWO.

In order to satisfy the prejudice prong of Strickland, where, as here, Nguyen ineffective assistance of counsel claims is premise and a failure to review the evidence obtained by law enforcement, turned over to him by the prosecution, and ~~in turn,~~ to introduce the Certificate of Origin at trial, he must (1) identify the evidence in question with specificity (2) establish the evidence in question possessed either "exculpatory " mitigating, or "impeachment value," and (3) establish the evidence was either (a) directly admissible at his trial, (b) capable of serving as part of the predicate for the admission of other, materials, evidence, or (c) "beneficial to impeach the trial testimony of prosecution witnessess." Anderson, 18 F.3d at 1221.

As relevant here, Nguyen asserts (1) the Certificate of Origin for a Vehicle calls into question whether the vehicle was manufactured in Japan or transported, shipped, or received in interstate or foreign commerce; (2) the evidence has impeachment value because it counters the sales manager's opinion that said vehicle was manufactured in Japan, and (3) under Federal Rule of Evidence 401 the Certificate of Origin for a Vehicle would have been admissible at trial, given its exculpatory and impeachment value. See e.g., United States v. Fonseca, 369 U.S App. D.C 257, 435 F.3d 369, 374-75 (D.C Cir. 2006)("Under Rule 401, evidence that contradicts a witness trial testimony even on a collateral subject, may be relevant "Because it would have undermine [his] credibility as a witness regarding facts of consequence"); United States v. Marino, 277 F.3d 11, 24 (1st Cir. 2002)("Nevertheless, extrinsic evidence to disprove a fact testified by a witness may be admissible if the trial judge deems that it satisfies the Rule 403 balancing test and it is not excluded by another rule.")

Given that "a jury in a federal criminal case cannot convict unless unanimously finds that the government has proved each element [of the offense]," See Richardson v. United States, 526 U.S 813, 817 (1999), and in this case, the Certificate of Origin for a Vehicle establishes that the vehicle was never transported, shipped, or received in interstate or foreign commerce, or manufactured in Japan. Thus, jurists of reason could agree that there is a "reasonable probability" that the jury would not have found Nguyen guilty of Count Two beyond a reasonble doubt. Therefore, he was denied his Sixth Amendment right to

effective assistance of counsel when trial counsel failed to review the evidence obtained by law enforcement turned over to him by the prosecutor, and in turn, to present the Certificate of Origin for a Vehicle at trial. Nor can counsel's failure to present this evidence be construed as trial court strategy.

Nguyen was prejudiced by his trial counsel's failure to review the material disclosed by the government and, in turn, to introduce the Certificate of Origin at trial. See Strickland, 466 US at 692. Had counsel located and introduced it at trial, the Certificate of Origin would have "alter[ed] the entire evidentiary picture" before the jury, id, at 696, resulting in "a reasonable probability that... at least one juror would have harbored a reasonable doubt" as to Nguyen's guilt. Buck v. Davis, 137 S. Ct. 759, 197 L. Ed 2d 1 (2017).

The Certificate of Origin would have shown that a key piece of the third element of Section 2119 was lacking. That is, the vehicle did not effect interstate or foreign commerce. Beyond discrediting Julius Thomas Johnson's testimony, this evidence would have provided an alternative theory that the first transfer of the vehicle in ordinary trade and commerce was from, "Gulf State Toyota Inc" in Houston, Texas to Nederland, Texas, not from Japan to the United States.

Notable, During trial the government only admitted portion of the Vehicle records. See Government Exhibit 28.

"[C]onsidering the totality of the evidence before the judge or jury," Strickland, 466 US at 696 and how the Certificate of Origin would have changed the evidentiary landscape before them, "there is a reasonable probability that the unpresented evidence would have altered at least one juror's assessment" of Nguyen's guilt.

In short, the Certificate of Origin would have removed the linchpin of the Government's case against Nguyen. The Government's case rested on Julius Thomas Johnson's testimony; the evidence that trial counsel failed to locate and introduce would have undone that testimony. Under these circumstances, no "fairminded jurist could fail to acknowledge at least a reasonable proability of a different outcome."

CERTIFICATE OF ORIGIN

MCO'S - Manufactures Certificate of Origin is the birth Certificate for the motor vehicle. Manufactures issue the MCO to their franchise dealer for which bought from their factory. The MCO is turned in at the first retail sales for a title. These also call MSO, Manufacture statement of origin (same). See Https//ftp.dot.states.tx.us/pub/txdot-info/library/bus/dealer/2009/section 01.pdf).

IMPORTED VEHICLE

There are 2 ways in which a vehicle may considered an imported foreign vehicle. (1) the vehicle was manufacture for used in other country; and (2) the vehicle was previously register on other counter.

Indicators that a vehicle is an imported foreign which could be any of the followings. (1) Foreign Registration; (2) Foreign Certificate of Origin; (3) Foreign Title; and (4) US custom entry document(2). See Https://www.mass.gove/info-details/imported-foreign-vehicles.

The Vehicle involced in Nguyen carjacking did not met the the requirement as an imported vehicle description. And the Birth Certificate for the vehicle issued by Gulf States Toyota Inc. located in Houston TX. Thus, this vehicle was not produced or manufactured in Japan, and its did not travel in interstates or foreign commerce priror to the incident. The essential element of carjacking is lacking.

MOTOR VEHICLE

The Eight Circuit Court opinion states that, the term "Motor Vehicle" used in Section 2119 carjacking means "a complete assembled auto motive vehicle" and existed in fact only when all the necessary parts had put together to create the vehicle. Congress specially acknowlege a distinction between a motor vehicle and motor vehicle part in these statues.

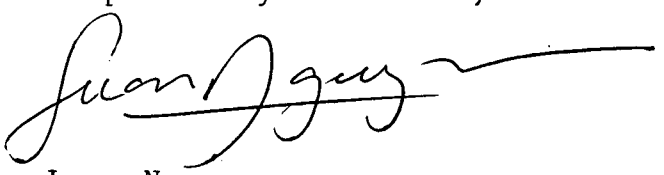
The Court also concluded that congress chose to limit the carjacing statutes to circumstances where fully assembled "motor vehicle" has been transported, in interstate or foreign commerce rather than circumstances where the motor vehicle or the motor vehicle parts prior to assembly move of inter states commerce. United States v. Johnson, 56 F.3d 947 (8th Cir. 1995).

CONCLUSION

Wherefore now, Nguyen prays this Honorable Court granting him this Petition for Rehearing and to correct miscarage of Justice.

Executed on Dec 19, 2022

Respectfully Submitted,



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NO. 22-5672

IN THE

Supreme Court of the United States

Luan Nguyen Petitioner

v

United States of America

Petition Appendix

Exhibit:

A. United State v. Nguyen US Court of Appeal Rehearing

B. United States v. Nguyen US Court of Appeal COA

C. United state v. Nguyen 1:15 cv 367 (E.D. TX MAR 29 2021)

D. United states v. Nguyen 1:15cv367 (E.D. TX. SEP. 26 2018)

E. Certificate origin for a vehicle

F. Verdict of the Jury

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

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
April 22, 2022
Lyle W. Cayce
Clerk

No. 21-40280

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

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:

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(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

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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

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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

CS

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

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(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

D3

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

D4

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

E1

CERTIFICATE OF ORIGIN FOR A VEHICLE

TOYOTA

DATE
2006-10-27

INVOICE NO.
738456

VEHICLE IDENTIFICATION NO
JTKDE177170181995

YEAR
2007

MAKE
TOYOTA

BODY TYPE
3 DOOR LIFTBACK

SHIPPING WEIGHT
2970

H.P. (S.A.E.)
161

G.V.W.R.

NO CYLS
4

SERIES OR MODEL
SCION tC

ENGINE NO.
2AZ2412151

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
NEDERLAND, TEXAS 77627

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: _____ Vice President-GST Planning
(SIGNATURE OF AUTHORIZED REPRESENTATIVE) (AGENT)

G003254466

HOUSTON, TEXAS
CITY - STATE

E2

Texas Department of Transportation
TITLE APPLICATION RECEIPT

[redacted]

1230 0339 0541 6093 32

COUNTY: JEFFERSON

TAC NAME: MIRIAM K. JOHNSON
DATE: 12/05/2006 EFFECTIVE DATE: 12/05/2006
TIME: 04:05PM EXPIRATION DATE: 11/2007
EMPLOYEE ID: MDCJMA1 TRANSACTION ID: 123003390541609313

PLATE NO: 417SZM
DOCUMENT NO: 123003390541609313

OWNER NAME AND ADDRESS
TIFFANY BUI
[redacted]
PORT ARTHUR, TX 77642

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

VEHICLE IDENTIFICATION NO: JTKDE177170181995 VEHICLE CLASSIFICATION: PASS
YR/MAKE: 2007/TOYT MODEL: SXC BODY STYLE: CP UNIT NO:
EMPTY WT: 3200 CARRYING CAPACITY: 0 GROSS WT: 3200 TONNAGE: 0.00 TRAILER TYPE:
BODY VEHICLE IDENTIFICATION NO: TRAVEL TRLR LNG/WDTH: 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

FEES ASSESSED

TITLE APPLICATION FEE	33.00
TERP FEE	20.00
SALES TAX FEE	1,150.25
WINDSHIELD STICKER	58.50
REG FUK-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
Sale 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

2ND LIEN

3RD LIEN

Batch No: 003390540l Batch Count: 14

417SZM [redacted]

11 07

JEFFERSON 70181995

VOID
DO NOT USE/
NO USE

ORIGINAL
VTR-500-RTS (REV. 3/2001)-DHT157490

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

Miriam K. Johnson, Ass't Coll.

Date DEC 0-5 2006 County Jefferson

Transaction Number 120032705416001933

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

5 Model	6 Odometer Reading	7 Empty Weight	8 Carrying Capacity (lbs.)	9 Tonnage
TC	12 [NOT]	3200		

This space for VTR Use Only

10 Trailer Type ☐ Semi ☐ Full | 11 Unladen | 12 Vehicle Unit No. | 13. Applicant's/Additional Applicant's Social Security Numbers (See * below) or Federal Tax ID Number

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

Address [redacted]

City, State, Zip Code PT ARTHUR TX 77642 County Name Jefferson

14a. Registrant's Name (Renewal Notice Recipient)

Address

City, State, Zip Code County Name

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

14b. Vehicle Physical Location

City, State, Zip Code Philpott Motors Ltd Philpott Toyot

15 Previous Owner's Name P.O. Box 876

Address

City, State, Zip Code Port Neches, TX 77651-087[illegible]

15a. DDH – Dealer Use Only P35131

THIS MOTOR VEHICLE IS SUBJECT TO THE FOLLOWING FIRST LIEN

16 1st Lien Date | 1st Lienholder's Name | Address N/A | City, State, Zip Code

16a. Additional Lien(s)? ☐ YES (If additional liens are to be recorded, attach Form VTR-267.)

17. FOR CORRECTED TITLE, CHECK REASON(S) ☐ Change in Vehicle Description ☐ VIN ☐ Year ☐ Make ☐ Body Style ☐ Other ☐ 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.

I, Philpott Motors Ltd Philpott Toyota (Full Name of Seller/Agent), state that the odometer now reads 12 (no tenths).

THE MILEAGE SHOWN IS ☐ A – Actual Mileage ☐ N – Not Actual Mileage WARNING – ODOMETER DISCREPANCY ☐ X – Mileage Exceeds Mechanical Limits

** 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 (Rental) Permit No _____ and will collect the minimum tax liability (V.A.T.S., Tax Code, §152.046 [c]).

☐ I am a Dealer or Lessor and qualify to take the Fair Market Value Deduction (V.A.T.S., Tax Code, §152.002 [c]).

20. DESCRIPTION OF VEHICLE TRADED IN (If any)	Year	Make	Vehicle Identification Number	20a ADDITIONAL TRADE – INST (Y/N)
				N

21. SALES AND USE TAX COMPUTATION

(a) Sales Price ($ N/A rebate has been deducted)	$ 18404.00	☐ $90 New Resident Tax – (Previous State)
(b) Less Trade – In Amount, Describe in Item 20 Above	$ N/A	☐ $5 Even Trade Tax
(c) For Dealers/Lessors/Rental ONLY – Fair Market Value Deduction, Describe in Item 20 Above	$ N/A	☐ $10 Gift Tax
(d) Taxable Amount (Item a. minus Item b./Item c.)	$ 18404.00	☐ $65 Rebuilt Salvage Fee
(e) 6.25% Tax on Taxable Amount (Multiply Item d by .0625)	$ 1150.25	☐ 2.5% Emissions Fee (Diesel Vehicles 1998 and Older > 14,000 lbs)
(f) Late Tax Payment Penalty ☐ 5% or ☐ 10%	$ N/A	☐ 1% Emissions Fee (Diesel Vehicles 1997 and Newer > 14,000 lbs)
(g) Tax Paid to _____ (STATE)	$ N/A	☐ Exemption claimed under the Motor Vehicle Sales and Use Tax Law because
(h) AMOUNT OF TAX AND PENALTY DUE (Item e plus Item f, minus Item g.)	$ 1150.25	XX $28 or $33 APPLICATION FEE FOR CERTIFICATE OF TITLE (Contact your County Tax Assessor-Collector for the correct fee.)

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

22. [signature] PHILPOTT MOTORS, LTD 11/27/2006

Signature of SELLER, DONOR, OR TRADER — PRINTED NAME (Same as signature) — Date

X [signature] TIFFANY BUI 11/27/2006

Signature of PURCHASER, DONEE, OR TRADER — PRINTED NAME (Same as signature) — Date

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, §501.155, provides that falsifying information on title transfer documents 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 to imprisonment, a fine of up to $10,000 may also be imposed.

* NOTE: Transportation Code, §501.0235, 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.

Form 130-U (Rev. 1/2004)

E4

Each undersigned seller 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 security interests other than those disclosed herein and warrant title to the vehicle.

*FOR VALUE RECEIVED I TRANSFER THE VEHICLE DESCRIBED ON THE FACE OF THIS CERTIFICATE TO

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 1

NAME OF PURCHASER(S) Tiffant Bu

ADDRESS [redacted] Plattville JX 7[illegible]

I certify to the best of my knowledge that the odometer reading is 12 No Tenths

DEALER Philpod Motors P35131 BY Kaochet

NAME OF DEALERSHIP — DEALER'S LICENSE NUMBER

State of JX

County of Jeff

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before me 27 day of Nov 06

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 Tenths

DEALER ______ BY ______

NAME OF DEALERSHIP — DEALER'S LICENSE NUMBER

State of ______

County of ______

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before me ______ day of ______ 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 Tenths

DEALER ______ BY ______

NAME OF DEALERSHIP — DEALER'S LICENSE NUMBER

State of ______

County of ______

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before me ______ day of ______ 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 Tenths

DEALER ______ BY ______

NAME OF DEALERSHIP — DEALER'S LICENSE NUMBER

State of ______

County of ______

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before me ______ day of ______ 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/or 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 Tenths ☐ 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) ______

Printed Name(s) of Seller(s) ______ Dealer's No ______

Signature(s) of Purchaser(s) ______

Printed Name(s) of Purchaser(s) ______

Address of Purchaser(s) ______

Date of Statement ______ Date of Sale ______

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before me this ______ day of ______ Notary Public

State of ______

County of ______

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

LIENHOLDER

1st Lien in favor of NAVI-HENDERSO

whose address is ______

2nd lien in favor of ______

whose address is ______

G003254466

ES

TIFFANY BUI

CUSTOMER'S NAME

70181995

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 (transferor's name, Print)

state that the odometer now reads 12 (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 knowlege 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	MODEL	BODY TYPE
SCION	TC	CP
VEHICLE IDENTIFICATION NUMBER		YEAR
JTKDE177170181995		2007

X _____
TRANSFEROR'S SIGNATURE

PHILPOTT MOTORS, LTD
PRINTED NAME

1400 US HIGHWAY 69
TRANSFEROR'S ADDRESS (STREET)

NEDERLAND, TX 77627
CITY STATE ZIP CODE

11/27/2006
DATE OF STATEMENT

X _____
TRANSFEREE'S SIGNATURE

TIFFANY BUI
PRINTED NAME

[redacted]

PT ARTHUR, TX 77642
CITY STATE ZIP CODE

E6

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

UNITED STATES OF AMERICA	§	
	§	
v.	§	
	§	CRIMINAL ACTION NO. 1:10-CR-116-TH-3
LUAN VAN NGUYEN	§	
	§	
	§	

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)

F1

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

F2