NO. _____

In The Supreme Court of the United States

DEMETRICE REGUS DEVINE and BRANDON JOWAN MANGUM,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Eugene E. Lester III
Counsel of Record
LESTER LAW
400 Bellemeade Street, Suite 702
Greensboro, North Carolina 27401
(336) 333-6382
elester@sharplesslaw.com

Counsel for Petitioner Devine

Rudolph A. Ashton, III
DUNN PITTMAN SKINNER & CUSHMAN, PLLC
3230 Country Club Road
Drawer 1389
New Bern, North Carolina 28563
(252) 633-3800
rashton@dunnpittman.com

Counsel for Petitioner Mangum

Dated: October 31, 2022

THE LEX GROUP[DC] ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

QUESTIONS PRESENTED

1. Should this Court adopt the predominant modified Blockburger approach and find the maximum consecutive sentences imposed on the Petitioners on all counts violated double jeopardy, and are the Petitioners entitled to new sentencing hearings?

2. Should this Court find that the availability of sentencing enhancements does not warrant maximum consecutive sentences imposed on the Petitioners on all counts, and were the sentences imposed substantively unreasonable under the totality of the facts and circumstances of this case?

PARTIES TO THE PROCEEDING BELOW

Petitioners are Demetrice Regus Devine and Brandon Jowan Mangum, who were the Appellants below. Respondent is the United States of America, which was the Appellee below.

STATEMENT OF RELATED CASES

By order dated June 23, 2020, the Fourth Circuit Court of Appeals consolidated the appeals of U.S. v. Demetrice Regus Devine (COA 20-4280) and U.S. v. Brandon Jowan Mangum (20-4327)

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PETITION FOR WRIT OF CERTIORARI

Petitioners Demetrice Regus Devine and Brandon Jowan Mangum, respectfully pray this Court that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Fourth Circuit, issued on July 7, 2022, affirming their convictions and life sentences.

OPINION BELOW

The order of the United States Court of Appeals for the Fourth Circuit for which review is sought is United States v. Demetrice Regus Devine, No. 20-4280, and United States v. Brandon Jowan Mangum, No. 20-4327 (4th Cir., July 7, 2022). The opinion is published. The opinion of the United States Court of Appeals for the Fourth Circuit is reproduced in the Appendix to this petition at 1a. The judgment is at 29a. The mandate is reproduced at 33a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Fourth Circuit were issued on July 7, 2022, and the petition for rehearing en banc was denied on August 2, 2022. (31a). Therefore, the jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

On July 7, 2022, the Fourth Circuit issued its consolidated published decision in United States v. Demetrice Devine and United States v. Brandon Mangum. There, the Court affirmed four consecutive life sentences plus 240 months

consecutive for Demetrice Devine, and three consecutive life sentences plus 240 months consecutive for Brandon Mangum.

Devine's four consecutive life sentences arose from convictions for conspiracy to commit racketeering under 18 U.S.C. §§ 1962(d), 1963(a) (RICO), murder in aid of racketeering under 18 U.S.C. § 1959(a)(1) (VICAR), murder with a firearm under 18 U.S.C. § 924(j) and drug conspiracy under 21 U.S.C. § 841(b)(1)(A). Devine's judgment is reproduced as 33a. Mangum's three consecutive life sentences were the result of convictions under RICO, VICAR, and § 924(j). Mangum's judgment is reproduced as 41a. The applicable statutes are reproduced at 50a-54a.

The Petitioners contend that the interrelatedness of the charges resulted in the sentences being multiplicitous and in violation of the double jeopardy clause of the Fifth Amendment of the United States Constitution. They further contend that certain sentences are enhancements, not substantive, and that Congress did not intend to provide separate punishments for the same act. Petitioners also suggest that any ambiguity as to what Congress intended should be resolved in the Petitioners' favor according to the rule of lenity. Finally, Petitioners contend that the maximum consecutive sentences imposed were substantively unreasonable and greater than necessary under the totality of the facts and circumstances.

STATEMENT OF THE CASE

Procedural History

On September 11, 2019, Demetrice Devine and Brandon Mangum (hereinafter individually "Devine" and "Mangum" or collectively, "Petitioners"), were indicted in a seven-count third superseding indictment in the Eastern District of North Carolina. Both Petitioners were charged in Count One with Conspiracy to Participate in Racketeering in violation of 18 U.S.C. § 1962(d) and 18 U.S.C. § 1963(a); Count Two charged Mangum with Aiding and Abetting Murder in Aid of Racketeering in violation of 18 U.S.C. § 1959(a)(1) and 18 U.S.C. § 2; Count Three charged Mangum with Aiding and Abetting Murder with Firearm During and in Relation to Crime of Violence in violation of 18 U.S.C. § 924(j) and 18 U.S.C. § 2; Count Four charged Devine with Aiding and Abetting Murder in Aid of Racketeering in violation of 18 U.S.C. § 1959(a)(1) and 18 U.S.C. § 2; Count Five charged Devine with Aiding and Abetting Murder with Firearm During and in Relation to Crime of Violence in violation of 18 U.S.C. § 924(j) and 18 U.S.C. § 2; Count Six charged both Petitioners with Conspiracy to Distribute and Possess with the Intent to Distribute Controlled Substances in violation of 21 U.S.C. § 846 (Appendix L); and Count Seven charged Devine with Conspiracy to Commit Witness Tampering in violation of 18 U.S.C. § 1512(k).

The Petitioners pleaded not guilty and proceeded to trial by jury from October 15, 2019, through October 24, 2019, the Honorable James C. Dever, III,

District Court Judge Presiding. On October 24, 2019, the jury returned guilty verdicts against both Petitioners on all charges.

On April 22, 2020, Judge Dever conducted a sentencing hearing for Demetrice Devine. He sentenced Devine to four consecutive life sentences in the Bureau of Prisons for Counts One, Four, Five, and Six, to be followed by a term of five concurrent years supervised release, and with 240 months in the Bureau of Prisons for Count Seven, consecutive to all other counts, followed by three years supervised release, concurrent to all other terms. (App. E). A timely notice of appeal was filed by Devine on April 29, 2020.

On June 5, 2020, Judge Dever conducted a sentencing hearing for Brandon Mangum. He sentenced Mangum to three consecutive life sentences in the Bureau of Prisons for Counts One, Two, and Three, to be followed by a term of five concurrent years supervised release, and with 240 months in the Bureau of Prisons for Count Six, consecutive to all counts, followed by three years supervised release, concurrent to all other terms. (App. F). A timely notice of appeal was filed by Mangum on June 19, 2020.

In a published opinion filed on July 27, 2022, the Fourth Circuit Court of Appeals affirmed. Petitioners' petition for rehearing en banc was denied on August 2, 2022.

Statement of Facts

This is a gang, racketeering, drug, murder case in Raleigh, North Carolina. There are two controlling events which resulted in the disputed maximum

consecutive sentences imposed. The November 21, 2008, death of Adarius Fowler resulted in three of Devine's four consecutive life sentences. (Count 1 RICO, Count 4 VICAR, and Count 5 § 924(j)). The May 25, 2009, death of Rodriguez Burrell resulted in three consecutive life sentences for Mangum. (Count 1 RICO, Count 2 VICAR, and Count 3 § 924(j)). Mangum also received a 240 month consecutive sentence for his Count 6 drug conspiracy conviction, and Devine also received a fourth consecutive life sentence for his Count 6 drug conspiracy conviction and a 240 month consecutive sentence for his Count 7 witness tampering conviction.

Demetrice Devine is 40 years old and has been detained in state and federal custody on related charges since May 26, 2009. Brandon Mangum is 34 years old and has been detained in state and federal custody on related charges since April 26, 2016. Devine was the leader of a gang known at various times as Black Mob Gangstas (BMG) or Donald Gee Family (DGF), and Mangum was a gang member. Gang members mostly met near the 500 block of Haywood Street in Raleigh.

On November 21, 2008, Adarius Fowler was killed outside a convenience store in Raleigh. The Government's evidence tended to show that Fowler's death was gang related. After Fowler's death, gang members injured "P.B." in retaliation for speaking about the circumstances of Fowler's death.

On May 25, 2009, Rodriguez Burrell was killed on his father's porch on Haywood Street. The Government's evidence tended to show that Burrell's death was also gang related. Burrell was known to sell drugs from the porch of his father's Haywood Street home but refused to pay rent or dues for dealing on the gang's turf.

The Government's evidence further showed that Devine's cousin, Dontaous Devine (deceased), instructed Mangum and others about the killing of Burrell. The evidence further tended to show that Mangum walked by the porch on Haywood Street and asked if they had marijuana, and then continued without stopping. Approximately ten minutes later one Demetrius Toney approached the porch asking to purchase marijuana. Immediately after stepping onto the porch, Toney pulled out a 9mm handgun and shot Burrell in the head. Toney fled without stealing cash or marijuana.

A number of gang members opted to plead guilty, cooperate with the Government, and testify against Devine and Mangum at trial.

After adopting a Government version of the facts in this case, the Fourth Circuit affirmed the district court in all respects. The panel concluded that Congress intended to allow consecutive sentences for violations of the applicable statutes herein regardless of the circumstances. The opinion treated these issues strictly as double jeopardy arguments and rejected Petitioners' contentions that under the facts and circumstances of this case the punishments should have been considered to be enhancements.

REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD ADOPT THE PREDOMINANT MODIFIED BLOCKBURGER APPROACH AND FIND THAT THE MAXIMUM CONSECUTIVE SENTENCES IMPOSED ON THE PETITIONERS ON ALL COUNTS VIOLATED DOUBLE JEOPARDY, AND THAT THE AVAILABILITY OF SENTENCING ENHANCEMENTS DOES NOT WARRANT MAXIMUM CONSECUTIVE SENTENCES, AND THE SENTENCES WERE SUBSTANTIVELY UNREASONABLE.

Petitioners understand that the question under the double jeopardy clause whether punishments are "multiple" is essentially one of legislative intent. Ohio v. Johnson, 467 U.S. 493, 498-499, 104 S. Ct. 2536, 2540-2541, 81 L. Ed. 2d 425 (1984). It is also acknowledged that this is a tragic case resulting from drugs, guns, and gang violence that should be significantly punished. However, the question herein turns on whether multiple punishments can or should be imposed for one specific act, event, or occasion. Under the facts herein, the death of Adarius Fowler resulted in three consecutive life sentences for Devine, and the death of Rodriguez Burrell resulted in three consecutive life sentences for Mangum.

The Fourth Circuit failed to acknowledge Defendants' citation of United States v. Gardner, 417 F. Supp. 2d 703 (D. Maryland 2006), where it was held on a motion to dismiss that Congress did not intend to prescribe two punishments for the same murder conspiracy under both RICO and VICAR statutes. Gardner based its decision on the Supreme Court case of Braverman v. United States, 317 U.S. 49, 63 S. Ct. 99, 87 L. Ed. 2d 23 (1942), which involved convictions upon several counts of an indictment, each charging conspiracy to violate a different provision of the Internal Revenue laws. Gardner also cited the Fourth Circuit's decision in United

States v. Goodine, 400 F.3d 202, 207 (4th Cir. 2005), which noted that the "signal danger" of a multiplicitous indictment is that a defendant might thereby receive multiple punishments for the same crime, citing United States v. Colton, 231 F.3d 890, 910 (4th Cir. 2000).

The VICAR penalty for a violent crime in aid of racketeering under 18 U.S.C. § 1959(a)(1) is death or life imprisonment for murder in the aid of racketeering. Petitioners contended that the § 924(j) convictions were enhancements to the § 924(c) penalties which addressed the use of firearms during crimes of violence. The first line of § 924(c)(1)(A) states that it applies "except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law." (App. J-1). Petitioners argued that since VICAR promulgated a mandatory minimum life sentence, this fit the exception, and therefore § 924(j) was not applicable. The Fourth Circuit failed to address this contention but based its decision on its determination that the RICO conspiracy, VICAR murder, and firearms murder had some different elements.

In bypassing this issue, the Fourth Circuit noted, "Our sister circuits have been repeatedly faced with a dizzying variety of double jeopardy challenges to various combinations of RICO-related offenses." (pp. 19-20 opinion). Petitioners respectfully contend that certiorari should be allowed so that this Court can resolve some of the "dizzying variety of double jeopardy challenges" to the many combinations of RICO-related offenses.

Petitioners also contend that this telegraphs that the intent of Congress is not as clear as the Fourth Circuit suggests. Petitioners urge that whether Congress intended for consecutive sentences to be imposed under the facts herein and whether the RICO, VICAR, and § 924(j) convictions should be enhancements is unclear. Therefore, it should be explored whether the rule of lenity should be applied. When ambiguity exists in a criminal statute, such ambiguity should be resolved in favor of lenity. United States v. Dunford, 148 F.3d 385, 390 (4th Cir. 1998), citing Bell v. United States, 349 U.S. 81, 83, 75 S. Ct. 620, 622, 99 L. Ed. 905 (1955); United States v. Hilton, 701 F.3d 959, 968-969 (4th Cir. 2012), citing Barber v. Thomas, 560 U.S. 474, 488, 130 S. Ct. 2499, 2508, 177 L. Ed. 2d 1 (2010).

Petitioners urge that the Fourth Circuit decision herein is of exceptional importance because it affects all defendants who are charged with or may be charged with violations of RICO, VICAR, and § 924(j) arising out of the same incident or occasion.

This Court should adopt a modified approach to the familiar test established in Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932), when analyzing double jeopardy concerns to avoid the danger that a defendant might receive multiple punishments for the same crime. As previously noted, please see United States v. Goodine, 400 F.3d 202, 207 (4th Cir. 2005), which stated that the "signal danger" in convictions for multiplicitous offenses is multiple punishments for the same crime, citing United States v. Colton, 231 F.3d 890, 910 (4th Cir. 2000). Under the traditional Blockburger analysis, a court only reviews the

statutory elements of the offense. If the elements are facially different, then it is assumed that Congress intended to authorize multiple convictions and punishments.

The traditional Blockburger test is incomplete and has been widely overtaken by a modified approach first set forth by the U.S. Supreme Court in Whalen v. United States, 445 U.S. 684, 100 S. Ct. 1432, 63 L. Ed. 2d 715 (1980). This flexible approach requires courts to look beyond the words of statutes and consider facts presented at trial when determining Congress' intent. The district court in United States v. Gardner, 417 F. Supp. 2d 703, 710 (2006), described the modified test and discussed how the U.S. Supreme Court has not only employed it, but so too have the Second, Sixth, Eighth and Ninth Circuits, as well as various district courts.

The district court in Gardner explained that under the modified approach the court must look beyond the text of the statute and "look to the legal theory of the case or the elements of the specific criminal cause of action for which the defendant was convicted," *Id*, citing Pandelli v. United States, 635 F.3d 533, 538 (6th Cir. 1980). In other words, the court must look at the specific allegations set forth at trial to determine if a defendant will essentially be punished more than once for the same conduct.

The Fourth Circuit error in failing to use this test resulted in Petitioners being punished more than once for essentially the same offense. Gardner held that certain allegations separately charging a RICO and VICAR conspiracy violate the double jeopardy clause. Petitioners argued to the panel that the holding in Gardner

ought to control the outcome in their case, allowing imposition of a single life sentence for their RICO and VICAR conspiracy convictions, only. The panel opinion did not use the test described by Gardner, nor did it distinguish its holding.

While Gardner addressed a pretrial motion to dismiss, Devine and Mangum contend that the analysis by the district court in Gardner is correct. By dismissing several counts, the "signal danger," described in Goodine and Colton, that a defendant may receive multiple punishments, was avoided. It also avoided the Braverman type cumulative sentence where there were multiple alleged conspiracies involving the Internal Revenue laws. Braverman v. United States, 317 U.S. 49, 54, 63 S. Ct. 99, 102, 87 L. Ed. 2d 23 (1942) (a single agreement is the prohibited conduct and for such a violation only a single penalty can be imposed despite conviction on multiple counts).

Petitioners ask this Court for guidance in resolving the degree of latitude allowed when comparing elements of charges on double jeopardy grounds and to look to the facts of conviction. Devine and Mangum contend that under this modified approach, they should only be subject to two life sentences in Devine's case, and one life sentence in Mangum's case, to avoid any violation of double jeopardy based on multiplicitous punishments.[1] The Fowler incident on November 21, 2008, and the Burrell incident on May 25, 2009, are each only aiding and abetting one act on one occasion, and therefore each should support only one life sentence.

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[1] The Petitioners are not contesting their consecutive drug conviction sentences in this petition.

Petitioners further contend that when the statutes at issue are examined, the life sentences are more in the nature of enhancements than separate punishments. The sentence for RICO under § 1963(a) is 20 years, and only life imprisonment if based upon a racketeering activity for which the maximum penalty includes life imprisonment. The VICAR penalty for a violent crime in aid of racketeering under § 1959(a)(1) is death or life imprisonment for murder in the aid of racketeering. And 18 U.S.C. § 924(j) provides that a person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall, if the killing is a murder, be punished by death or by imprisonment for any term of years or for life. Basically, this penalty enhances the § 924(c) penalty, which addresses the use of a firearm during a crime of violence.

Based upon the fact that the Count 1 RICO penalty is life imprisonment because the racketeering activity included a life sentence for murder, and the VICAR penalties in Counts Two and Four for murder in aid of racketeering are life imprisonment, any penalty under § 924(j) should not be applicable because a greater minimum sentence is provided in both of the former statutes.

It should also be noted that once a sentence has been enhanced to life, there is no further punishment required. This result is also suggested by the sentencing guidelines. The guidelines typically group similar offenses and apply the highest punishment available for the grouped offenses. U.S.S.G. § 3D1.1. According to the guidelines commentary, some offenses charged in multiple-count indictments "are so closely intertwined with other offenses that conviction for them ordinarily would

not warrant increasing the guideline range." *Id.* To the extent the separate statutes here seek to increase the punishment for similar or the same offense conduct, then the greatest punishment is life, which is the only sentence that needs to be imposed.

The Fourth Circuit opinion failed to address the propriety of the district court's stacking of all maximum punishments. Where "legally distinct, but realistically indistinct, offense[s]" of conviction are eligible for punishment, the court should not impose additional punishment. *Id.* All of the convicted offenses in the indictment are found within the RICO conspiracy and constitute realistically indistinct offenses. The stacking of punishments for indistinct multiple offenses creates an arbitrary relationship between Devine's and Mangum's culpability and their punishment.

To the extent that these statutes are ambiguous, the rule of lenity requires the court to resolve issues in favor of a defendant. The panel opinion called the variety of double jeopardy challenges in this area "dizzying" and noted such challenges arise "repeatedly." (pp. 19-20 opinion). Copious litigation in this area suggests that the statutes are less than clear. As Justice Gorsuch recently noted in his concurring opinion in Wooden v. United States, 142 S. Ct. 1063, 1080, 212 L. Ed. 2d 187 (2022), concerning the Armed Career Criminal Act, a court test may only offer an unnecessary "judicial gloss on the statute's terms…" The solution to statutory interpretation, urged by Justice Gorsuch, is the rule of lenity. "Under that rule, any reasonable doubt about the application of a penal law must be resolved in favor of liberty. *Id*. at 1081.

Similarly here, any questions about Congress' intent with respect to multiple punishments for the same offense ought to be informed by the well-established rule that "penal laws should be construed strictly." *Id.* at 1082. Devine and Mangum ask this Court to consider in their case "[i]f the law inflicting punishment does not speak 'plainly' to the defendant's conduct, liberty must prevail." *Id.* at 1083. Finally, Justice Gorsuch equates lenity to the vagueness doctrine. *Id.* at 1086. Any doubt that § 924(j) or VICAR provide for enhanced rather than multiple punishment under these facts must be resolved in favor of defendants, and in particular the Petitioners.

It is also respectfully contended that the reasoning in the majority opinion in the Wooden case is applicable to the case at bar. In Wooden the defendant's sentence was enhanced under ACCA based upon his earlier guilty plea to ten counts of burglary arising from entering ten units of a single storage facility in the course of a single evening. The Supreme Court held that the defendant's prior convictions for burglary were not offenses on "different occasions" within the meaning of ACCA, and thus, they counted as only one prior conviction. The opinion addressed the occasions clause under 18 U.S.C. § 924(e)(1) where the offender has three previous convictions for specified felonies on "occasions different from one another." (App. J-3). 142 S. Ct. at 1068. This Court held that ACCA should not be construed to reach multiple felony convictions arising out of a single criminal episode. 142 S. Ct. at 1072. It concluded that Wooden's ten burglary convictions were for offenses

committed on a single occasion, and therefore only counted once under ACCA. 142 S.Ct. at 1074.

Petitioners Devine and Mangum respectfully contend that they each received three consecutive life sentences for aiding and abetting one death. Whether it is termed to be an act, event, incident, occasion, or episode, there was only one death of Adarius Fowler on November 21, 2008, and one death of Rodriguez Burrell on May 25, 2009. Therefore, multiple consecutive life sentences should not have been imposed.

CONCLUSION

For the foregoing reasons, Petitioners Demetrice Regus Devine and Brandon Jowan Mangum, respectfully request that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fourth Circuit affirming their convictions and consecutive life sentences.

This the 31st day of October, 2022.

Respectfully submitted,

/s/ Eugene E. Lester III
EUGENE E. LESTER III
Panel Attorney for Petitioner Devine
N.C. State Bar No. 23255
400 Bellemeade Street, Suite 702
Greensboro, North Carolina 27401
Telephone: (336) 522-6853
Email: elester@lesterlawgroup.com

/s/ Rudolph A. Ashton, III
RUDOLPH A. ASHTON, III
Panel Attorney for Petitioner Mangum
N.C. State Bar No. 0125
Post Office Drawer 1389
New Bern, North Carolina 28563-1389
Telephone: (252) 633-3800
Email: RAshton@dunnpittman.com

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4280

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DEMETRICE R. DEVINE, a/k/a Respect,

Defendant – Appellant.

No. 20-4327

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

BRANDON JOWAN MANGUM, a/k/a B-Easy,

Defendant – Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:16-cr-00012-D-1; 5:16-cr-00012-D-6)

Argued: May 5, 2022 Decided: July 7, 2022

Before WILKINSON and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Agee and Senior Judge Floyd joined.

ARGUED: Rudolph Alexander Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN, PLLC, New Bern, North Carolina; Eugene Ernest Lester, III, SHARPLESS MCCLEARN LESTER DUFFY, PA, Greensboro, North Carolina, for Appellants. Kristine L. Fritz, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** G. Norman Acker, III, Acting United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

WILKINSON, Circuit Judge:

Demetrice Devine and Brandon Mangum led a violent street gang known as the Black Mob Gangstas. During the Gangstas' reign of terror over the Haywood Street neighborhood of Raleigh, North Carolina, the gang murdered 16-year-old Adarius Fowler and 18-year-old Rodriguez Burrell. Devine and Mangum were convicted of various offenses including murder in aid of racketeering, and each received multiple consecutive life sentences. On appeal, the defendants raise numerous claims. For the reasons that follow, we affirm the judgment of the district court.

I.

A.

Demetrice Devine (known by the street name "Respect") formed the Black Mob Gangstas in the early 2000s as a semi-autonomous set of the "United Blood Nation," a larger gang with tentacles stretching throughout the east coast. J.A. 167, 1932. The violent pursuit of "Power Money Respect"—words permanently inscribed on Devine's neck through a tattoo—defined the Gangstas. J.A. 1932. Violence was endemic from the moment of initiation, which often required a savage baptism into gang life during which existing members attacked aspiring members while chanting "31 seconds to be born Blood." J.A. 1945. Other initiates bypassed this ritualized violence by "putting in work," i.e., by earning membership through the infliction of violence on the gang's enemies. J.A. 396.

To instill fear and maintain power, the gang adopted military-style ranks such as lieutenant and captain. Mangum joined the Gangstas in the mid-2000s and eventually rose

to the rank of three-star general. The gang's hierarchical structure was reinforced by strict rules which the Gangstas enforced to avoid accountability for their crimes and to cement their dominance over the neighborhood. The gang's most important rules were a prohibition on "snitching" to law enforcement and a requirement that members follow orders from gang superiors to carry out acts of violence and criminality. J.A. 393, 890–92. Those who disobeyed faced beatings or death.

Devine frequently led gang meetings at local parks and residences where gang oaths were recited, information was shared, criminal activity was planned, and brutal discipline was enforced. During a video-recorded 2009 discipline session, a wayward Gangsta could be heard pleading for mercy as Devine punched him in the face and screamed at him to "shut the fuck up" and "do your fucking job." J.A. 1946.

Gang members were required to pay weekly dues which were used to facilitate gang activities (such as purchasing drugs and guns or helping arrested members). Nonmembers who dealt drugs on Haywood Street were also forced to pay the gang "rent." J.A. 584. Gangstas raised the money needed to pay their dues through drug dealing on Haywood Street or by engaging in other crimes. Mangum, for example, advanced from selling small quantities of marijuana on the street to selling distribution quantities to fellow Gangstas, which they then resold in the neighborhood. He also managed prostitutes, organized scams, and directed lower-level gang members to engage in robberies he planned.

1.

The tragic events that led to the murder of Adarius Fowler began when Devine received a call informing him that one of his girlfriends had been robbed. Enraged by this

show of disrespect, Devine handed a loaded gun to two gang hitters and ordered them to "put in work," which in gang lingo meant to kill the perpetrator. J.A. 1257.

After approaching a store where they believed the robber might be located, the hitters opened fire on Fowler, a 16-year-old boy whom they mistook for Devine's target. Fowler bled out at the scene. Recognizing that his killers had mistakenly shot an innocent party, Devine stopped by a memorial being held for Fowler the next day, expressed condolences to Fowler's father, and placed a red gang bandana on the memorial.

When a gang member later expressed suspicion about Gangstas involvement in the Fowler murder, Devine ordered his death as well. Devine's hitter shot the target repeatedly but failed to kill him. In a perverse coincidence, the target was taken to a hospital where another of Devine's girlfriends was seeking treatment for her son. After learning of her presence, Devine called her to order her to go into the target's room and blow "air in his tube to [stop] his heart," but she demurred. J.A. 797.

2.

While Devine's wounded pride led to the murder of Adarius Fowler, greed motivated the execution of Rodriguez Burrell. Burrell was a member of the rival 9-Trey gang who sold drugs from the porch of his father's Haywood Street home. Despite repeated demands to pay rent for dealing on Gangstas turf, Burrell refused to pay. Under the law of the street, the penalty for refusal was death.

On the evening of May 25, 2009, several Gangstas convened at a Haywood Street bus stop to plan Burrell's death. The meeting was led by Dontaous Devine—Demetrice Devine's cousin and second-in-command. Dontaous instructed Mangum and a Gangsta

named Demetrius Toney—who was already armed with a 9mm pistol—to personally carry out the killing, with other members assigned to act as lookouts and getaway drivers.

While the Gangstas plotted, Rodriguez Burrell was sitting on his Haywood Street porch with his father, Rodney Burrell, and a friend. At trial, Rodney Burrell and the friend each testified that a light-skinned black male with dreadlocks—matching Mangum's description—walked by and asked if they had marijuana. Mangum then continued down the street without stopping to complete his feigned purchase. Approximately 10 minutes after Mangum scouted the porch, a shorter man dressed all in black—matching Toney's description—approached under the same ruse of purchasing marijuana. Immediately after stepping onto the porch, Toney pulled out the 9mm and repeatedly shot Rodriguez Burrell in the head. Toney fled without stopping even to steal cash or marijuana. Rodney Burrell called EMS and tried to staunch the blood pouring out of his 18-year-old son to no avail.

Mangum, Toney, and Dontaous were indicted for the murder in North Carolina state court. The charges were eventually dropped, leading Mangum to think he had gotten away with murder. He had not.

B.

Devine, Mangum, and numerous other Gangstas were eventually indicted in the Eastern District of North Carolina.[1] Most gang members opted to plead guilty, cooperate with the government, and testify against Devine and Mangum at trial.

[1] Dontaous Devine was also indicted but committed suicide before trial. Toney pleaded guilty to RICO conspiracy based on the Burrell murder and received the statutory maximum sentence. *Toney v. United States*, 2021 WL 5828036 (E.D.N.C. Dec. 8, 2021).

As relevant to this appeal, both defendants were charged with conspiracy to participate in racketeering activity in violation of 18 U.S.C. § 1962(d) (RICO conspiracy) and conspiracy to distribute cocaine and marijuana in violation of 21 U.S.C. § 846 (drug conspiracy). Devine was charged for the murder of Adarius Fowler while Mangum was charged for the murder of Rodriguez Burrell. Each was charged both with aiding and abetting murder with a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §§ 2 and 924(j) (firearms murder) and with murder in aid of racketeering in violation of 18 U.S.C. §§ 2 and 1959(a)(1) (VICAR murder).

Trial began on October 15, 2019, and after two weeks of testimony from nearly a dozen cooperating Gangstas members, the jury returned guilty verdicts on all counts.

1.

The district court held Devine's sentencing hearing on April 22, 2020. The court adopted the presentence report which provided a Criminal History Category of V and an offense level of 54. The Guidelines top out at 43, so Devine's offense level was reduced to the level 43 maximum, leading to a Guidelines range of life imprisonment.

Because Devine's conviction for the VICAR murder of Adarius Fowler carried a mandatory life sentence, *see* 18 U.S.C. § 1959(a)(1), defense counsel focused on conditions of confinement, asking the court to recommend placement near Devine's family, the ability to make calls to family members, and inclusion in the general population.

Devine refused to accept responsibility, denying any involvement in the murders to the victims' families and interrupting the government's sentencing argument to yell that the judge should "[g]o ahead and give me life, man." J.A. 1800.

While Devine was charged only for the Fowler murder, the court found by a preponderance that he had ordered the Burrell murder as well. J.A. 1811. The government read a victim statement from Burrell's sister in which she shared that Burrell was "the heart of my family, the baby of my family, the glue to my family," that because of Devine's actions he "never had a chance to smell his daughter" who "loves her daddy so much," and that Devine "tore a hole in our hearts that will never be filled." J.A. 1797–98.

The district court acknowledged that the Guidelines were merely advisory and explained why the 18 U.S.C. § 3553(a) factors supported the chosen sentence. The district court focused on the "absolutely chilling" nature and circumstances of Devine's offenses, the impact of the crimes on the "people of Raleigh," Devine's "terrible" history and "[a]bsolutely horrific" criminal record, the importance of deterring others by sending the message that "if you join a gang, it's not going to end well," and the need to maximally incapacitate Devine. J.A. 1808–18. The district court therefore imposed the maximum sentence on each count, leading to four consecutive life sentences plus 240 months.

2.

Mangum's sentencing hearing was held on June 5, 2020. Before addressing Mangum's sentence, the court rejected Mangum's motion for acquittal, explaining that a "tsunami" of trial evidence demonstrated that Mangum "was the man who approached the porch. And he is responsible for murdering Rodriguez Burrell." J.A. 1837–40. The court then adopted the presentence report, which provided a Criminal History Category of VI

and an offense level of 43—the maximum category and level possible—leading to a Guidelines range of life.

Cognizant of the mandatory VICAR murder life sentence, *see* 18 U.S.C. § 1959(a)(1), defense counsel requested a downward variance such that the sentences on the other counts would run concurrently, rather than consecutively. Mangum echoed this request for leniency but refused to accept responsibility for his crimes or even to express regret about the victims' deaths.

The government presented three victim impact statements, including that of Burrell's 12-year-old daughter born shortly before his murder. She recounted a day "where the school was having a daddy-daughter dance. All the other little girls in their class had their daddies there with them and she was incredibly sad that her dad could not be there." J.A. 1846. Burrell's mother also shared that "what hurts her the most is knowing that her granddaughters don't really know who their father is" and "have lots of questions about what happened to their father . . . she's not able to answer." *Id.*

The district court again acknowledged the advisory nature of the Guidelines and the requirement to impose a sentence no greater than necessary to meet the § 3553(a) factors. The court rejected Mangum's request for a downward variance based on the "horrifying" nature and circumstances of the offense, Mangum's history "of unabated violence," the need to incapacitate him for life, and the importance of deterring others from carrying out violence in service of gangs. J.A. 1852–64. The court therefore imposed three consecutive life sentences plus 240 months.

Devine and Mangum timely appealed, raising numerous assignments of error.

II.

We begin with Mangum's challenge to the sufficiency of the evidence supporting each count of conviction.[2] A defendant advancing such a challenge "faces a heavy burden." *United States v. Foster*, 507 F.3d 233, 245 (4th Cir. 2007). We must view the "evidence in the light most favorable to the government and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Lowe*, 65 F.3d 1137, 1142 (4th Cir. 1995). And we may not reweigh witness credibility, which is the "sole province of the jury." *Id.* Mangum's sufficiency arguments, which as the district court aptly noted "parrot[] the closing argument" that the jury rejected, come nowhere close to meeting his heavy burden. J.A. 1836.

A.

Mangum first challenges his conviction for aiding and abetting the murder of Rodriguez Burrell with a firearm during and in relation to a crime of violence under 18 U.S.C. §§ 2 and 924(j). Mangum claims that he simply was not involved in the murder and attacks the motives of the witnesses who described his participation. But credibility determinations belong exclusively to the jury, and the evidence of his involvement in the Burrell murder was extensive, so we reject his challenge.

Multiple Gangstas witnesses described the pre-shooting planning meeting during which Dontaous Devine ordered Mangum and Toney to carry out the Burrell murder. Rodney Burrell—Rodriguez's father—and a friend present during the killing each

[2] Devine does not contest the sufficiency of the evidence against him.

confirmed that a man matching Mangum's description scouted out the porch 10 minutes before Burrell was shot and that a man matching Toney's description carried out the shooting. Immediately after the shooting, Mangum and Toney returned the murder weapon to Dontaous. Toney was missing a shoe, which was found by police in a field near Burrell's house. In a subsequent police interview, Toney admitted ownership of the missing shoe but claimed that it had been stolen from him before the shooting.

Soon after the killing, Mangum was promoted within the gang. And when Mangum and Toney learned that a gang member might be feeding information on the murder to the police, they threated to shoot up his grandmother's house. Finally, Mangum admitted to another Gangsta that he helped carry out the murder and that Toney's missing shoe was "the only thing that can . . . mess him up." S.A. 2019.

In an attempt to outrun this "tsunami" of evidence, J.A. 1837, Mangum raises only two points. First, he argues that the testimony of the Gangstas witnesses should be disregarded because it was offered in a self-serving attempt to reduce their sentences through cooperation with the government. But the jury considered and rejected that argument, and we are prohibited from reweighing witness credibility on appeal. *Lowe*, 65 F.3d at 1142.

Next, Mangum points out that Rodney Burrell and the other witness to the murder could not specifically identify Mangum as the person who scouted the porch immediately prior to the murder. But both witnesses provided descriptions of the scout that matched Mangum's appearance. Mangum contends that witnesses of a highly traumatic event cannot be certain of the identity of an individual they saw for only a brief period during the

dark of night. But that contention only raises a jury question, and Mangum makes no claim he was prevented from challenging the identification before the jurors.

For the above reasons, therefore, Mangum cannot sustain his sufficiency challenge.

B.

Mangum also challenges his conviction for aiding and abetting the murder of Burrell in aid of racketeering in violation of 18 U.S.C. §§ 2 and 1959(a)(1). He first retreads the ground above, claiming he did not participate in the killing. We have already rejected that contention. Mangum next claims that even if he did participate in the murder, the government failed to demonstrate that his "purpose in so doing was to maintain or increase his position in" the Gangstas, as required for a VICAR murder conviction. *United States v. Zelaya*, 908 F.3d 920, 926–27 (4th Cir. 2018); *see also United States v. Fiel*, 35 F.3d 997, 1004 (4th Cir. 1994) (holding that the purpose element is satisfied if the jury could infer the murder was committed in furtherance of the enterprise or expected "by reason of his membership").

We can quickly reject this argument. Mangum offers no explanation other than service to the Gangstas to explain the Burrell execution. Dontaous Devine—the gang's second-in-command—personally ordered Mangum to carry out the killing. Gang rules required subordinates to "put in work" when ordered by higher-ranking members and prohibited "backing out when G-work needs to be done." J.A. 890–92. Failing to follow Dontaous' order to execute Burrell thus posed a direct threat to Mangum's position within the gang. Moreover, Dontaous subsequently invoked the murder when threatening another recalcitrant dealer, making clear that the murder was explicitly carried out to terrorize any

who dealt on Gangstas turf without paying rent for the privilege. And soon after the killing, Mangum was promoted to three-star general, which a fellow Gangsta confirmed could only have been based on his participation in the Burrell execution. The evidence leaves no doubt that Mangum carried out the Burrell murder to maintain or increase his position within the Gangstas and was therefore guilty of VICAR murder.

C.

Mangum next challenges his conviction for conspiracy to distribute cocaine and marijuana in violation of 21 U.S.C. § 846. He admits to the purchase and sale of marijuana, but claims the evidence was insufficient to support a conspiracy conviction.

A drug conspiracy may be established based on a "tacit or mutual understanding," which can be "inferred from circumstantial evidence." *United States v. Kellam*, 568 F.3d 125, 139 (4th Cir. 2009). Such evidence includes "continuing relationships and repeated transactions," "coupled with substantial quantities of drugs." *United States v. Reid*, 523 F.3d 310, 317 (4th Cir. 2008). Thus, demonstration of a "loosely-knit association of members linked only by their mutual interest in sustaining the overall [drug-dealing] enterprise" is sufficient to establish a drug conspiracy. *United States v. Banks*, 10 F.3d 1044, 1054 (4th Cir. 1993).

The Gangstas were far more than "loosely-knit" and the protection of their Haywood Street territory to maximize revenue from the sale of illegal drugs was their *raison d'être*. Nearly a dozen cooperating Gangstas testified at trial, and each described the gang's drug trafficking activities. Trial testimony emphasized the steps the gang took to defend its territory, including hiding guns around Haywood Street, fighting off the rival 9-

Trey gang, and murdering Rodriguez Burrell as punishment for dealing on Gangstas territory without paying rent. Gang witnesses also emphasized the critical role drug sales played in funding the gang and meeting each member's required gang dues.

Mangum was personally and actively involved in the gang's dealing. Multiple Gangstas witnesses observed Mangum conducting drug sales and spoke to his reputation as a dealer of marijuana and cocaine. And a law enforcement witness recounted a 2013 traffic stop in which Mangum willingly handed over a mason jar containing a large amount of marijuana, which Mangum admitted belonged to him.

The trial evidence painted a vivid picture of Mangum's participation in the Burrell murder to secure Gangstas drug territory. The evidence also described his rise from purchasing drugs from other gang members to selling distribution quantities to lower-level Gangstas who had taken over his previous street-level position in the enterprise. Viewed in the light most favorable to the government, the evidence was more than sufficient to establish that Mangum conspired with his fellow gang members to distribute marijuana and cocaine.

D.

Finally, Mangum challenges his conviction for conspiracy to participate in a pattern of racketeering in violation of 18 U.S.C. § 1962(d). To prove a RICO conspiracy, the government must demonstrate that "each defendant knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two racketeering acts." *United States v. Simmons*, 11 F.4th 239, 258 (4th Cir. 2021). The racketeering acts underlying Mangum's conviction were drug trafficking and the Burrell murder. 18 U.S.C.

§ 1961(1). Mangum's arguments that he did not agree to the commission of these racketeering acts mirror his rejected claims to innocence of the underlying charges. And as we explained above, the evidence of his involvement in drug trafficking and murder in furtherance of the Gangstas was clear, so his RICO conspiracy conviction must stand.

III.

Mangum next contends that the district court abused its discretion by refusing to sever his trial from Devine's. Evidence admissible only against Devine, Mangum argues, was improperly considered by the jury when weighing his guilt, resulting in an impermissible evidentiary "spillover."

We have long adhered to the "principle that defendants indicted together should be tried together," *United States v. Cannady*, 924 F.3d 94, 102 (4th Cir. 2019), a presumption which applies with even more force in conspiracy cases, *United States v. Lawson*, 677 F.3d 629, 639 (4th Cir. 2012). And Mangum does not claim that he was impermissibly "indicted together" with Devine. Because joint trial with all its efficiencies is highly favored, establishing that a district court abused its discretion in denying a motion to sever requires a demonstration that joint trial deprived the defendant of a fair trial and resulted in a "miscarriage of justice." *United States v. Shealey*, 641 F.3d 627, 631 (4th Cir. 2011). Mangum has not come close to demonstrating such a deprivation. First, most of the purported spillover evidence was admissible against Mangum to prove the existence of a RICO enterprise. And second, the district court's use of limiting instructions cured any remaining risk of prejudice.

To prove a defendant guilty of RICO conspiracy, the government must demonstrate "that an enterprise affecting interstate commerce existed." *Simmons*, 11 F.4th at 258. The "hallmark concepts" that identify RICO enterprises are "continuity, unity, shared purpose and identifiable structure." *Fiel*, 35 F.3d at 1003. And while an enterprise need not have a "hierarchical structure or a chain of command," *Boyle v. United States*, 556 U.S. 938, 948 (2009), the presence of those characteristics "provides additional evidence of a functioning enterprise," *United States v. Mathis*, 932 F.3d 242, 259 (4th Cir. 2019).

The government properly introduced evidence to prove this "enterprise" element. Testimony on the "beat in" initiations, gang rules, gang meetings, gang discipline, collection of dues, acts of violence carried out at the direction of gang superiors, and gang promotion for "putting in work" all support the jury's conclusion that the Gangstas constituted a RICO enterprise. *See id.* (holding that gang meetings, gang rules, drug sales, and the commission of acts of violence to enrich the gang were probative of the existence of a RICO enterprise). Because the evidence was admissible against him, Mangum suffered no prejudice from its introduction at his joint trial with Devine.

Any remaining possibility of prejudice was cured by the district court's use of limiting instructions, which we have held are generally sufficient to address any spillover risk. *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012); *see also United States v. Mir*, 525 F.3d 351, 357–58 (4th Cir. 2008) (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993)). The district court repeatedly instructed the jury to consider each defendant and each charge separately and emphasized that merely engaging in similar conduct or associating with criminals does not constitute an agreement or make someone part of a

conspiracy. We therefore have no difficulty in concluding that the district court did not abuse its discretion in denying Mangum's motion to sever.

IV.

Devine and Mangum next challenge their convictions for drug conspiracy, firearms murder, and VICAR murder under the Double Jeopardy Clause of the Fifth Amendment. They claim that those convictions were for the "same offense" as RICO conspiracy.

The Double Jeopardy Clause provides that no "person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. While double jeopardy "protects against multiple punishments for the same offense," it does not "prohibit the legislature from punishing the same act or course of conduct under different statutes." *United States v. Ayala*, 601 F.3d 256, 264–65 (4th Cir. 2010).

Because "the power to define criminal offenses . . . resides wholly with the Congress," our only task "is to determine whether Congress intended to impose multiple punishments." *Id.* at 265. Here it is plain that Congress intended the above statutes to target distinct conduct and to constitute separate offenses. Put another way, it is clear that Congress intended in RICO to provide additional punishments for involvement in organized crime, and defendants' double jeopardy challenges must thus be rejected.

A.

Devine and Mangum claim that firearms murder, VICAR murder, and drug conspiracy are subsumed by RICO conspiracy, rendering them the same offense. Because Congress plainly intended separate punishments, we hold that firearms murder constitutes a separate offense from RICO conspiracy and reaffirm that VICAR murder and drug

conspiracy do as well. *See Ayala*, 601 F.3d at 265–66 (holding that VICAR murder conspiracy constitutes a separate offense from RICO conspiracy); *United States v. Love*, 767 F.2d 1052, 1062 (4th Cir. 1985) (holding that drug conspiracy constitutes a separate offense from RICO conspiracy).

A RICO conspiracy is generally understood to require: "(1) that an enterprise affecting interstate commerce existed; (2) that each defendant knowingly and intentionally agreed with another person to conduct or participate in the affairs of the enterprise and (3) that each defendant knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two racketeering [activities]." *Simmons*, 11 F.4th at 254.

It thus becomes clear that Congress intended firearms murder, VICAR murder, and drug conspiracy to constitute separate offenses from RICO conspiracy. Each offense obviously targets conduct that the other does not. RICO conspiracy requires an agreement to commit multiple racketeering acts, a requirement not shared by the other offenses. *See Simmons*, 11 F.4th at 258–59 (citing 18 U.S.C. § 1963(a)). By contrast, firearms and VICAR murder require a murder, while drug conspiracy requires an agreement to distribute drugs, requirements not present for RICO conspiracy. *See* 18 U.S.C. § 924(j)(1) (firearms murder); *id.* § 1959(a)(1) (VICAR murder); *Kellam*, 568 F.3d at 139 (drug conspiracy).

In concrete terms, a member of a gang engaged in kidnapping and sex-trafficking would be guilty of a RICO conspiracy without committing a firearms murder, a VICAR murder, or a drug conspiracy. In contrast, a solo bank robber who shot and killed a guard, a gang-initiate who had not yet been involved in a pattern of racketeering activity, or a pair of drug dealers unaffiliated with a larger organization could commit firearms murder,

VICAR murder, and drug conspiracy respectively without engaging in a RICO conspiracy. *See Ayala*, 601 F.3d at 265–66.

The available evidence of legislative intent confirms that Congress intended separate punishment for RICO conspiracy and these offenses. RICO's purpose is "to seek the eradication of organized crime in the United States . . . by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, 84 Stat. 922, 923 (1970). The RICO statute therefore cautions that "[n]othing in [it] shall supersede any provision of Federal . . . law imposing criminal penalties . . . in addition to those provided for [here]." *Id.* § 904(b), at 947. Congress also placed each offense in a separate Code section from RICO conspiracy and provided each offense with its own penalties. *See* 18 U.S.C. § 1963(a)-(m) (RICO penalties); *id.* § 924(j)(1) (firearms murder penalties); *id.* § 1959(a)(1) (VICAR murder penalties); 21 U.S.C. § 841 (drug conspiracy penalties). And each statute is directed at a separate but related evil: RICO conspiracy targets those engaged in organized crime generally, *Ayala*, 601 F.3d at 266, while firearms murder is aimed at combatting the scourge of gun violence, VICAR murder punishes those "willing to commit violent crimes in order to bolster their positions within [RICO enterprises]," *id.*, and drug conspiracy aims to specifically deter the trafficking of narcotics, *see United States v. White*, 116 F.3d 903, 932 (D.C. Cir. 1997).

Our sister circuits have been repeatedly faced with a dizzying variety of double jeopardy challenges to various combinations of RICO-related offenses. And time and time again these challenges have been rejected. Courts have rejected double jeopardy challenges for RICO and predicate drug offenses, RICO and other predicate offenses, and for RICO

and VICAR offenses. *See, e.g.*, *United States v. Sutton*, 700 F.2d 1078, 1081 (6th Cir. 1983) (RICO and drug offense); *United States v. Grayson*, 795 F.2d 278, 282–83 (3d Cir. 1986) (same); *White*, 116 F.3d at 930–32 (same); *United States v. Hicks*, 5 F.4th 270, 275 (2d Cir. 2021) (same); *United States v. Hampton*, 786 F.2d 977, 979–80 (10th Cir. 1986) (RICO and nondrug predicate); *United States v. Lequire*, 931 F.2d 1539, 1540 (11th Cir. 1991) (per curiam) (same); *United States v. Luong*, 393 F.3d 913, 914 (9th Cir. 2004) (same); *United States v. Garcia*, 754 F.3d 460, 474 (7th Cir. 2014) (same), *United States v. Merlino*, 310 F.3d 137, 141 (3d Cir. 2002) (RICO and VICAR offense); *United States v. Marino*, 277 F.3d 11, 39 (1st Cir. 2002) (same); *United States v. Basciano*, 599 F.3d 184, 198–99 (2d Cir. 2010) (same). The case law of other circuits thus confirms that Devine and Mangum's prosecution for RICO conspiracy did not bar their prosecution for firearms murder, VICAR murder, and drug conspiracy.

B.

The defendants also contend that double jeopardy prevents their conviction for both VICAR murder and firearms murder. But demonstrating that VICAR murder and firearms murder constitute separate offenses is altogether straightforward. VICAR murder requires proof that the defendant's general purpose in carrying out the murder was to maintain or increase his position in a RICO enterprise. *Zelaya*, 908 F.3d at 926–27 (citing 18 U.S.C. § 1959). Firearms murder contains no such requirement. *United States v. Bran*, 776 F.3d 276, 280 (4th Cir. 2015) (citing 18 U.S.C. § 924(j)). In contrast, firearms murder requires demonstrating that the defendant used a firearm to cause the victim's death, a requirement not shared by VICAR murder. *Id.* (citing 18 U.S.C. § 924(j)); *Zelaya*, 908 F.3d at 926–27

(citing 18 U.S.C. § 1959); *see also United States v. Ledbetter*, 929 F.3d 338, 365–66 (6th Cir. 2019) (rejecting double jeopardy challenge to conviction for both firearms and VICAR murder for the same killing).

Again, a concrete example may be helpful: The solo bank robber guilty of the firearms murder invoked above would not have committed VICAR murder because he was not involved in a RICO enterprise. On the other hand, an enforcer for a gang could commit a VICAR murder without committing a firearms murder by beating a rival gang member to death with a baseball bat on the capo's orders.

Devine and Mangum can point to no evidence of contrary legislative intent. We thus conclude that there is no double jeopardy bar to punishing a defendant for both a VICAR murder and a firearms murder when the offenses arise out of the same course of conduct.

V.

Lastly, we turn to the defendants' contention that their consecutive life sentences are substantively unreasonable. We review sentences in two steps. *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). We first ensure the district court committed no significant procedural error, and we then determine whether the sentence imposed was substantively reasonable. *Id.*

Significant procedural errors include improperly calculating the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence. *Id.* Devine and Mangum wisely concede the procedural reasonableness of their sentences, as the district court properly calculated their respective Guidelines ranges, did

not treat the ranges as mandatory, and extensively explained their sentences under the § 3553(a) factors in hearings stretching 29 and 34 transcript pages respectively. Instead, Devine and Mangum attack the substantive reasonableness of their sentences on two grounds.

A.

Devine and Mangum first contend that their consecutive life sentences are *per se* substantively unreasonable. They argue that because they were each convicted of charges involving only a single murder, subjecting them to consecutive rather than concurrent life sentences violated 18 U.S.C. § 3553(a)'s admonition that sentences be no "greater than necessary" to address the factors set forth in § 3553(a).

We reject the contention that defendants convicted of involvement in "only" a single murder may not receive consecutive life sentences. For one thing, we have repeatedly affirmed consecutive sentences in cases involving a single murder. *See Bran*, 776 F.3d at 278–82 (affirming consecutive life sentences on VICAR and firearms murder charges stemming from same gang-related murder); *United States v. Lespier*, 725 F.3d 437 (4th Cir. 2013) (affirming consecutive life sentences).

For another, the imposition of a consecutive punishment over and above a life sentence wasn't just permissible; it was legally required in this case. Mangum and Devine were each convicted of VICAR murder, which carries a mandatory sentence of life imprisonment. 18 U.S.C. § 1959(a)(1). They were also convicted of firearms murder which requires the imposition of a mandatory *consecutive* sentence in addition to the mandatory life sentence for their VICAR murder convictions. *Bran*, 776 F.3d at 282; *see also Abbott*

v. United States, 562 U.S. 8 (2010) (permitting consecutive sentences in addition to penalties for violating § 924).

B.

Devine and Mangum also claim that even if not categorically impermissible, their consecutive life sentences were not justified by the § 3553(a) factors. A sentence is substantively unreasonable only where under the totality of the circumstances, the "sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a)." *United States v. Mendoza-Mendoza*, 597 F.3d 212, 216 (4th Cir. 2010). And "any sentence that is within or below a properly calculated Guidelines range is presumptively reasonable." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

1.

The district court's extensive explanation of Devine's sentence makes clear that it is justified by the § 3553(a) factors. The court grounded the within-Guidelines sentence on three primary components: (1) the seriousness of Devine's conduct; (2) Devine's extensive criminal history and unremitting commitment to gang life; and (3) the need to deter other wannabe gangsters from following in Devine's footsteps. Devine comes nowhere close to undermining the presumption of substantive reasonableness.

The court first addressed the "absolutely chilling" "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), and the "seriousness of the offense," *id.* § 3553(a)(2)(A). J.A. 1811. The court emphasized the "overwhelming" evidence of Devine's "egregious criminal activity" and "the violence that has been the hallmark of his life." J.A. 1812–16.

The court also recounted witness testimony describing how the Gangstas transformed Haywood Street from a "nice street where people could sit on the porch and children could play on the street" to a "den of . . . violent criminal activity." J.A. 1812.

While Devine was charged only for the Fowler murder, the court found that he was also responsible for the Burrell murder, explaining it "couldn't have happened on that street without Mr. Devine's blessing and order." J.A. 1811. And it has long been accepted that district courts may consider uncharged conduct found by a preponderance of the evidence. *United States v. Mouzone*, 687 F.3d 207, 220 (4th Cir. 2012) (affirming enhanced RICO conspiracy sentence based on a finding by the district court that it was "more likely than not" that the defendant committed a related murder).

The court then turned to Devine's "terrible" "history and characteristics," 18 U.S.C. § 3553(a)(1), and walked through his "[a]bsolutely horrific" criminal record. J.A. 1813–14. The court also noted that unlike the typical gang defendant, Devine was raised in a stable, two-parent, middle-class household and was never subject to abuse, violence, or neglect. Despite all these advantages, he dropped out of school and turned to a life of crime.

Finally, the court focused on the need for incapacitation and deterrence. 18 U.S.C. § 3553(a)(2). The sentence needed to be sufficient to deter impressionable young men from joining gangs and to counter "this terrible lie that's told: Join a gang, it's like a family." J.A. 1815. But a gang is "nothing like a family," and the "reality is if you join a gang, it's not going to end well. You're either going to die on the street, you're going to die in prison." J.A. 1815.

After reviewing the district court's sentencing explanation, we readily conclude the sentence was substantively reasonable. Devine's criminal culpability was literally off the charts, requiring his Guidelines offense level of 54 to be reduced to the level 43 maximum. Throughout the case, he dripped with contempt for law enforcement, for the courts, and for his victims. When initially questioned after his arrest on federal charges, he mockingly claimed that the Gangstas were a "community organization set up to hand out Christmas presents." J.A. 1948. While incarcerated, he continued to lead the gang, to organize criminal activity, and to threaten and intimidate witnesses against him. And during his sentencing hearing, he refused to accept an iota of responsibility and baldly proclaimed to the families of his victims that "I had nothing at all to do with y'all's kids getting hurt" and that "I still I love y'all." J.A. 1796. We accordingly reject Devine's claim of substantive unreasonableness.

2.

Mangum's sentence is reasonable for much the same reasons as Devine's. While Mangum, unlike Devine, requested a downward variance such that his life sentences would run concurrently rather than consecutively, the district court thoroughly explained why the § 3553(a) factors did not warrant a downward variance.

The district court began the sentencing hearing by summarizing the evidence that Mangum was a high-ranking member of the Gangstas and that he carried out the execution of Rodriguez Burrell as punishment for Burrell's refusal to pay rent to the gang for the privilege of dealing on Gangstas turf. J.A. 1837–40.

The court focused first on the "horrifying" "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), and the "tremendous loss to the families." J.A. 1854–58. The court described Mangum's "chilling" role as the "first person to go by to make sure, confirmed that [Rodriguez Burrell] was on the porch before the shooter came behind you." J.A. 1855. Because of Mangum's killing of Burrell, "all that [Burrell's daughters] will ever get to see are photographs of their father." J.A. 1858. The court summarized Mangum's racketeering activities as part of the gang, including drug dealing, violent crimes, and fraud schemes, and emphasized that the gang "made [Haywood Street] a place where the law-abiding people didn't even feel they could go outside." J.A. 1857.

The court then turned to Mangum's "history and characteristics," 18 U.S.C. § 3553(a)(1), emphasizing that he joined the gang at a very young age and that his history "has been one of unabated violence." J.A. 1860. In describing Mangum's prodigious criminal history, the court emphasized that state sentences "didn't seem to slow you down. [They] seemed to embolden you." J.A. 1858–59. The court also noted that even while incarcerated on state charges, Mangum remained committed to the gang and attempted to "paint the correctional institution red," i.e., "to try and grow the gang" behind bars. J.A. 1860. When Mangum's state murder charges were dropped, he might have thought that he was "home free," but rather than taking that apparent leniency as an opportunity to reform, Mangum doubled down on violence and criminality. J.A. 1856. Based on this commitment to gang life, the court rejected Mangum's claim that he deserved leniency because he had "renounced life in the gang and turned over a new leaf." J.A. 1860.

The court also concluded that a downward variance would not provide for sufficient deterrence, 18 U.S.C. § 3553(a)(2)(B), and would not appropriately send the message to those "thinking about whether to join a gang, whether to put in work for a gang, whether to murder a child for a gang." J.A. 1861. Finally, the court found that the only sufficient form of incapacitation, 18 U.S.C. § 3553(a)(2)(C), was incarceration in a "maximum security penitentiary . . . until the day you die." J.A. 1861.

The district court did not err in refusing to vary downward based on these facts and we decline to overrule this reasonable exercise of sentencing discretion.

VI.

The essence of defendants' complaint throughout this case is that the prosecution has overcharged them and that Congress has over legislated in this field. For us to reach such a conclusion, however, would raise serious separation-of-powers questions, and neither the Supreme Court nor the legislative branch has provided us with the kind of firm authority we would need to adopt the defendants' view.

Such a conclusion would also overlook the full magnitude of what happened here. Demetrice Devine and Brandon Mangum led a gang that sought to dominate the Haywood Street neighborhood and to impose its violent will on the people who dwelled there. Those who were not direct victims were left in fear and apprehension that they would soon become one. Devine's desire for "respect" at all costs led to the murder of Adarius Fowler, while the Gangstas' insatiable desire for "money" led to the execution of Rodriguez Burrell. This collective malevolence, the sentencing court reasoned, led to a neighborhood where so many deserved so much better and where respect for the old and opportunities

for the young existed no longer. As our opinion makes clear, Congress has manifested a resolute intention to target the different facets of the most serious violence and criminality. We have above all adhered scrupulously to law here and to the proposition that law affords legitimate room for society to address its most menacing and pressing problems. For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.

FILED: July 7, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4280 (L)
(5:16-cr-00012-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRICE R. DEVINE, a/k/a Respect

Defendant - Appellant

No. 20-4327
(5:16-cr-00012-D-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BRANDON JOWAN MANGUM, a/k/a B-Easy

Defendant – Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: August 2, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4280 (L)
(5:16-cr-00012-D-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DEMETRICE R. DEVINE, a/k/a Respect

Defendant - Appellant

No. 20-4327
(5:16-cr-00012-D-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

BRANDON JOWAN MANGUM, a/k/a B-Easy

Defendant - Appellant

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

AO 245B (Rev. 09/17) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
v.
DEMETRICE REGUS DEVINE

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:16-CR-12-1-D

USM Number: 62053-056

Mark E. Edwards
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. 1sss, 4sss, 5sss, 6sss and 7sss of the Third Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1962(d), 18 U.S.C. § 1963(a)	Conspiracy to Participate in a Pattern of Racketeering	1/20/2017	1sss
18 U.S.C. § 1959(a)(1) and 18 U.S.C. § 2	Murder in Aid of Racketeering and Aiding and Abetting	1/20/2017	4sss

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☑ Count(s) Original indictment, superseding indictment & second superseding ind. ☑ is ☐ are dismissed on the motion of the United States.

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

4/22/2020
Date of Imposition of Judgment

Signature of Judge

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

4/22/2020
Date

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 924(j) and 18 U.S.C. § 2	Murder With a Firearm During and In Relation to Crime of Violence and Aiding and Abetting	1/20/2017	5sss
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A) and 21 U.S.C. § 841(a)(1)	Conspiracy to Distribute and Possess With Intent to Distribute 280 Grams or More of Cocaine Base (Crack), 500 Grams or More of Cocaine and a Quantity of Marijuana	1/20/2017	6sss
18 U.S.C. § 1512(k), 18 U.S.C. § 1512(b)	Conspiracy to Commit Witness Tampering	1/20/2017	7sss

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

IMPRISONMENT

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

Counts 1sss, 4sss, 5sss and 6sss: Life per count, to run consecutively
Count 7sss: 240 months, to run consecutively to all other counts
Total term: Four (4) consecutive life sentences + 240 months

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

The court recommends that the defendant serve his entire term of incarceration at the United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado. The court recommends that he be housed separately from all co-defendants, to include: Timothy A. Devine, Demetrius Deshaun Toney, Brandon Jowan Mangum, Jamario Keon Jones, Cleveland McNair, and Christopher Darnell Evans.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

SUPERVISED RELEASE

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

Counts 1sss, 4sss, 5sss and 6sss: 5 years per count and a term of 3 years on count 7sss, all such terms shall run concurrently - (Total term: 5 years)

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

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

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

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

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

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

The defendant shall support his dependent(s).

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 500.00	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DEMETRICE REGUS DEVINE
CASE NUMBER: 5:16-CR-12-1-D

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

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

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

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of $500.00 shall be due in full immediately.

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

AO 245B (Rev. 09/17) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of North Carolina

UNITED STATES OF AMERICA
v.
BRANDON JOWAN MANGUM

JUDGMENT IN A CRIMINAL CASE

Case Number: 5:16-CR-12-6-D

USM Number: 63234-056

Joseph Houchin/Christian Dysart/Geoffrey Willis
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☑ was found guilty on count(s) 1ss, 2ss, 3ss and 6ss of the Third Superseding Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1962(d), 18 U.S.C. § 1963(a)	Conspiracy to Participate in a Pattern of Racketeering	1/20/2017	1ss

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☑ Count(s) Superseding and Second Superseding Indictment ☑ is ☐ are dismissed on the motion of the United States.

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

6/5/2020
Date of Imposition of Judgment

Dever
Signature of Judge

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

6/5/2020
Date

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1959(a)(1), 18 U.S.C. § 2	Murder in Aid of Racketeering and Aiding and Abetting	1/20/2017	2ss
18 U.S.C. § 924(j), 18 U.S.C. § 2	Murder With a Firearm During and in Relation to a Crime of Violence and Aiding and Abetting	1/20/2017	3ss
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(C), 21 U.S.C. § 841(a)(1)	Conspiracy to Distribute and Possess With Intent to Distribute a Quantity of Cocaine and a Quantity of Marijuana	1/20/2017	6ss

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

IMPRISONMENT

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

Counts 1ss, 2ss and 3ss: Life per count, to run consecutively
Count 6ss: 240 months, to run consecutively to all other counts
Total term: Three (3) consecutive life sentences + 240 months
The court orders that the defendant provide support for all dependents while incarcerated.

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

See page 4

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

ADDITIONAL IMPRISONMENT TERMS

The court recommends that the defendant receive intensive substance abuse treatment and vocational and educational training opportunities. The court recommends that the defendant receive a mental health assessment and mental health treatment while incarcerated. The court recommends that he serve his term in a maximum security federal facility. The court recommends that he be housed separately from all co-defendants during his entire period of incarceration, to include: Demetrice R. Devine, Timothy A. Devine, Demetrius Deshaun Toney, Jamario Kean Jones, Cleveland McNair, and Christopher Darnell Evans.

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

SUPERVISED RELEASE

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

Counts 1ss, 2ss and 3ss: 5 years per count and a term of 3 years on count 6ss, all such terms shall run concurrently - (Total term: 5 years)

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

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

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

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

The defendant shall participate in a program of mental health treatment, as directed by the probation office.

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

The defendant shall participate in such vocational training program as may be directed by the probation office.

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

The defendant shall support his dependent(s).

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 400.00	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: BRANDON JOWAN MANGUM
CASE NUMBER: 5:16-CR-12-6-D

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

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

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

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The special assessment in the amount of $400.00 shall be due in full immediately.

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

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

☐ Joint and Several

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

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

18 U.S.C. § 1962(d)

(d)
It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1963(a)

(a)
Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law—

18 U.S.C. § 1959(a)(1)

(a)
Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

(1)
for murder, by death or life imprisonment, or a fine under this title, or both; and for kidnapping, by imprisonment for any term of years or for life, or a fine under this title, or both;

18 U.S.C. § 924(j)

(j)
A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

21 U.S.C. § 841(b)(1)(A)

(b)Penalties
Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:
(1)
(A)In the case of a violation of subsection (a) of this section involving—