

FILED: April 25, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6128
(3:11-cr-00212-REP-2)
(3:16-cv-00789-REP)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

WILLIAM LANGLEY, JR.

Defendant - Appellant

O R D E R

The judgment entered on July 26, 2021, shall be vacated and reentered.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

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J U D G M E N T

In accordance with the decision of this court, a certificate of appealability is denied and the appeal is dismissed.

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

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Appendix 7/27

No. 20-6128

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM LANGLEY, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:11-cr-00212-REP-2; 3:16-cv-00789-REP)

Submitted: July 15, 2021

Decided: July 26, 2021

Before WILKINSON and MOTZ, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Jeremy C. Kamiens, Federal Public Defender, Frances H. Pratt, Assistant Federal Public Defender, Alexandria, Virginia, Laura Jill Koenig, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Richmond, Virginia, for Appellant. Richard Daniel Cooke, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William Langley, Jr., seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. *See Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

We have independently reviewed the record and conclude that Langley has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED

FILED: April 12, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-6128
(3:11-cr-00212-REP-2; 3:16-cv-00789-REP)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

WILLIAM LANGLEY, JR.,

Defendant - Appellant.

ORDER

William Langley, Jr., has filed a pro se motion to reopen this case and remand the matter to the district court, and he also seeks the appointment of new counsel. Counsel has filed an unopposed motion to recall this court's mandate. Upon review, we grant counsel's motion to recall the mandate and grant Langley's request for appointment of new counsel. We deny as moot Langley's pro se motion to the extent it seeks reopening and remand.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Appendix "B"

UNITED STATES OF AMERICA,

v.

Criminal No. 3:11CR212

WILLIAM LANGLEY, JR.,

Petitioner.

MEMORANDUM OPINION

William Langley, Jr., a federal inmate proceeding with counsel, filed this 28 U.S.C. § 2255 Motion ("§ 2255 Motion," ECF No. 141) arguing that his convictions and sentences are invalid under Johnson v. United States, 135 S. Ct. 2551 (2015). By Memorandum Opinion and Order entered on September 25, 2019, the Court granted the § 2255 motion and directed the parties to file their position on sentencing within fourteen (14) days of the date of entry thereof. (ECF Nos. 172, 173.) That same day, the Government filed a MOTION TO RECONSIDER, and although the Government fails to identify the procedural vehicle that would allow reconsideration, the Court construed the motion as one filed pursuant to Federal Rule of Civil Procedure 59(e). ("Rule 59(e) Motion," ECF No. 174.)

By Memorandum Order entered on October 11, 2019, the Court directed Langley to file a response to the Rule 59(e) Motion. Langley has complied with that directive and filed a RESPONSE IN

OPPOSITION TO MOTION TO RECONSIDER ("Response," ECF No. 178). The Government has filed a REPLY FOR UNITED STATES' MOTION TO RECONSIDER ("Reply," ECF No. 180).

I. WHICH RULE OF PROCEDURE APPLIES?

Previously, the Court construed the MOTION TO RECONSIDER filed by the Government as one brought pursuant to Federal Rule of Civil Procedure 59(e). In its Response, the Government points out that because no final judgment has been entered in this action, Rule 59(e) may not be the appropriate standard for reconsideration.¹ The Court need not expend time deciding under

¹ If a motion seeks reconsideration of an order before the entry of final judgment, the motion is governed by Rule 54(b). That rule provides:

[A]ny order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Fed. R. Civ. P. 54(b). A district court retains the discretion to reconsider or modify a grant of a partially dispositive motion at any time prior to the entry of final judgment. See Am. Canoe Ass'n v. Murphy Farms, Inc., 326 F.3d 505, 514-15 (4th Cir. 2003) (citing Fayetteville Investors v. Commercial Builders, Inc., 936 F.2d 1462, 1469 (4th Cir. 1991); Fed. R. Civ. P. 54(b)). Nevertheless, a court must exercise its discretion to consider such motions sparingly in order to avoid an unending motions practice. See Potter v. Potter, 199 F.R.D. 550, 553 (D. Md. 2001). Under Rule 54(b), a motion for reconsideration generally should be limited to instances such as the following:

[T]he Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension [or]

which federal rule this motion falls, because even under the higher standard of Rule 59(e), the Court's grant of relief in the September 25, 2019 Memorandum Opinion and Order was a clear error of law.

"[R]econsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted) (internal quotation marks omitted). The United States Court of Appeals for the Fourth Circuit recognizes three grounds for relief under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993) (citing Weyerhaeuser Corp. v.

a controlling or significant change in the law or facts since the submission of the issue to the Court [has occurred]. Such problems rarely arise and the motion to reconsider should be equally rare.

Above the Belt, Inc. v. Mel Bohannon Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983); accord United States v. Smithfield Foods, Inc., 969 F. Supp. 975, 977 (E.D. Va. 1997). The Fourth Circuit has indicated that reconsideration is also appropriate where "a subsequent trial produces substantially different evidence" or "the prior decision was clearly erroneous and would work manifest injustice." Am. Canoe Ass'n, 326 F.3d at 515 (quoting Sejman v. Warner-Lambert Co., 845 F.2d 66, 69 (4th Cir. 1988)). The courts do not entertain motions to reconsider which ask the Court to, "rethink what the Court had already thought through--rightly or wrongly." Above the Belt, Inc., 99 F.R.D. at 101.

Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991); Atkins v. Marathon LeTourneau Co., 130 F.R.D. 625, 626 (S.D. Miss. 1990)).

II. ANALYSIS

The Government argues that the Court should reconsider its September 25, 2019 Memorandum Opinion and Order "to correct clear errors of law and fact." (Rule 59(e) Mot. 1.) As explained below, upon review of the Rule 59(e) Motion, and the Second Superseding Indictment, it appears that the Court erred when it determined that Count Two was predicated on the conspiracy to commit Hobbs Act robbery charged in Count One.

A grand jury returned a three-count Second Superseding Indictment charging Langley with conspiracy to commit robbery affecting commerce, in violation of 18 U.S.C. § 1951(a) ("conspiracy to commit Hobbs Act robbery"), (Count One); use and discharge firearm during a crime of violence causing death of another, to wit: "Overt Act 3 of the Conspiracy alleged in Count One,"² in violation of 18 U.S.C. § 924(c)(1)(A), 924(j), and 2 (Count Two); and possessing a firearm in furtherance of a crime of

² The Second Superseding Indictment specified Overt Act 3 as follows: "On or about May 4, 2005, LANGLEY, WHITE, and conspirator A.J. robbed the Uppy's Exxon convenience store, located at 5024 Brook Road in Richmond, Virginia, and stole United States currency that was in the business's custody and possession. In connection with that robbery, WHITE shot and killed Uppy's Exxon employee R.R." (Sec. Superseding Indictment 4, ECF no. 39.)

violence as alleged in Count One, in violation of 18 U.S.C. § 924(c) and 2 (Count Three): (Sec. Superseding Indictment 1-7.)

On March 2, 2012, Langley pled guilty to Counts One and Two and the Government agreed to dismiss Count Three. (Plea Agreement ¶¶ 1, 12 ECF No. 50.) On July 3, 2012, the Court sentenced Langley to 240 months of imprisonment on Count One and life imprisonment on Count Two, to run concurrently. (J. 2, ECF No. 87.)

In his § 2255 Motion, Langley argued that that his conviction under 18 U.S.C. § 924(c) in Count Two must be vacated because of the Supreme Court's decision in Johnson v. United States, 135 S. Ct. 2551 (2015). In agreeing with Langley, and granting relief, the Court explained:

As discussed, according to the explicit ruling of Simms, the conspiracy to commit Hobbs Act robbery charged in Count One cannot serve as valid predicate crime of violence for the § 924(c) charge in Count Two. Thus, Count Two must be vacated.

The Government argues that, "[b]ecause Count Two was expressly predicated on the substantive Hobbs Act robbery, which remains a valid predicate under the force clause, [United States v. Davis, 139 S. Ct. 2319, 2336 (2019)] and [United States v. Simms, 914 F.3d 229 (4th Cir. 2019)] provide no basis for relief." (Supp'l Mem. 1, ECF No. 165.) However, Langley was not charged with, nor convicted of, substantive Hobbs Act robbery. Presumably, the Government intends to argue that because Count One contained specific overt acts in furtherance of the conspiracy, Langley committed a substantive act of Hobbs Act robbery. See id. at 2, 4. The Government points to no authority that would support this position. The fact remains that Count Two was predicated on Count One which charged conspiracy to commit Hobbs Act robbery. Although the Government perhaps could have charged Langley with substantive Hobbs Act robbery for overt acts described in Count One, the fact remains that

they did not. Thus, the Government's argument is unavailing.

In light of Davis's invalidation of the Residual Clause and the Fourth Circuit's determination in Simms that conspiracy to commit Hobbs Act robbery is not a valid predicate violent felony under the Force Clause, Langley's conviction in Count Two and resulting life sentence is no longer valid. Accordingly, Langley's conviction on Count Two will be vacated.

(ECF No. 172, at 7-8.)

The Government contends that the Court erred in concluding that the § 924(j) conviction charged in Count Two was based on the conspiracy to commit Hobbs Act robbery charged in Count One. Instead, the Government argues that Count Two specifically identified an overt act of substantive Hobbs Act robbery.³ The Second Superseding Indictment charged Langley as follows with respect to Count Two:

1. The Grand Jury hereby incorporates the allegations set forth in paragraph 1 of the Introduction and Overt Act 3 of the Conspiracy alleged in Count One as if full set forth herein.

2. On or about May 5, 2005, in the Eastern District of Virginia and within the jurisdiction of this Court, the defendants STEPHEN WHITE, WILLIAM LANGLEY, JR., and conspirator A.J., aided and abetted one another, did knowingly and unlawfully use and carry a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, namely, Interference of Commerce by Violence, in violation of 18 U.S.C. § 1951(a), to wit: the May 4, 2005 robbery of employee R.R. at Uppy's Exxon Store,

³ The Government also notes that Count Three charged Langley with use and carry of the firearm during the commission of conspiracy to commit Hobbs Act robbery alleged in Count One and therefore the Court's reading of the Second Superseding Indictment would make the Second Superseding Indictment multiplicitous. (Rule 59(e) Mot. 3-4.)

5024 Brook Road, Richmond, Virginia, and in the course of said offense, caused the death of another person (R.R.) through use of a firearm, which killing was a murder as defined in Title 18, United States Code, Section 1111, in that STEPHEN WHITE, WILLIAM LANGLEY, JR., and conspirator A.J., with malice aforethought, did unlawfully kill R.R. by shooting him with a firearm.

(Sec. Super. Ind. 6 (emphasis added).) Thus, unlike a situation where the § 924 firearm charge only alleged that the firearm was used or carried during and in relation to conspiracy to commit Hobbs Act robbery, here, Count Two was predicated on a specific substantive Hobbs Act robbery offense. The specific robbery was of an Uppy's Exxon on May 4, 2005, and during that robbery Langley used and carried a firearm that resulted in a murder. As the Court has previously explained, Hobbs Act robbery remains a qualifying crime of violence under the Force Clause. United States v. Mathis, 932 F.3d 242, 266 (4th Cir. 2019) (citations omitted) (holding that "Hobbs Act robbery constitutes a crime of violence under the force clause of Section 924(c)"). Thus, the Court clearly erred when it determined that Count Two was predicated on a Hobbs Act conspiracy and was therefore invalid after Davis and Simms.

III. CONCLUSION

Accordingly, the Government's Rule 59(e) Motion (ECF No. 174) will be granted. The September 25, 2019 Memorandum Opinion and Order will be vacated. The July 3, 2012 Judgment remains intact.

Langley's § 2255 Motion will be denied (ECF No. 141) and the action will be dismissed. A certificate of appealability will be denied.

The Clerk is directed to send a copy of this Memorandum Opinion to Langley and counsel of record.

It is so ORDERED.

Date: November 26, 2019
Richmond, Virginia

/s/ REP
Robert E. Payne
Senior United States District Judge

⑤

Appendix 11

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 3:11CR212-02 REP
)	
WILLIAM LANGLEY, JR.)	

PLEA AGREEMENT

Neil H. MacBride, United States Attorney for the Eastern District of Virginia; Michael Gill, Assistant United States Attorney, Michael A. Jagels, Special Assistant United States Attorney; the defendant, WILLIAM LANGLEY, JR.; and the defendant's counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to plead guilty to Counts One and Two of the Second Superseding Indictment.

Count One charges the defendant with Conspiracy to Commit Robbery Affecting Commerce, in violation of Title 18, United States Code, Section 1951(a). The maximum penalty for this offense is twenty years of imprisonment, a fine of up to \$250,000, mandatory restitution, and three years of supervised release.

Count Two charges the defendant with Use and Discharge of a Firearm in Commission of a Crime of Violence Causing the Death of Another and Aiding and Abetting the offense, in violation of Title 18, United States Code, Sections 924(~~EX-104~~), 924(j)(1), and 2. The maximum

penalty for this offense is life imprisonment, a fine of up to \$250,000, mandatory restitution, and five years of supervised release.

The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Detention Pending Sentencing

The defendant understands that this case is governed by Title 18, United States Code, Sections 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are statutory justifications why such person's detention would not be appropriate.

3. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

4. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;

c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and

d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

5. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with 18 U.S.C. § 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in 18 U.S.C. § 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence.

Further, in accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States will recommend to the Court that:

1. Following the Cross Reference at USSG § 2B3.1(c)(1), the applicable guideline section for the charges contained in Counts One and Two of the Second Superseding Indictment is USSG § 2A1.1 (First Degree Murder), which provides a base offense level of 43.
2. The defendant should receive a 2-level enhancement under USSG § 3B1.1(c) for being an organizer, leader, manager or supervisor in the criminal activity.
3. The defendant timely notified the authorities of his intention to plead guilty in this matter, entitling him to a 3-level reduction for acceptance of responsibility under USSG § 3E1.1. This recommendation will remain in effect provided the defendant does not do anything inconsistent with full acceptance of responsibility prior to sentencing.

The defendant agrees with these recommendations. The defendant understands that these agreements are merely recommendations and are not binding on the sentencing judge.

6. Waiver of Appeal, FOIA and Privacy Act Rights

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a

representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

7. Waiver of DNA Testing

The defendant also understands that Title 18, United States Code, Section 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.

8. Restitution

Pursuant to 18 U.S.C. §3663A(a)(3) the defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses. Pursuant 18 U.S.C. § 3663A(c)(2), the defendant agrees that an offense listed in § 3663A(c)(1) gave rise to this plea agreement and as such, victims of the conduct described in the indictment, statement of facts or any related or similar conduct shall be entitled to restitution.

9. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

10. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Sections 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

11. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the Second Superseding Indictment or statement of facts, except that the United States may prosecute the defendant for any crime of violence or conspiracy to commit, or aiding and abetting, a crime of violence not charged in the Second Superseding Indictment as an offense. In such a prosecution the United States may allege and prove conduct described in the Second Superseding Indictment or statement of facts. "Crime of violence" has the meaning set forth in 18 U.S.C. Section 16.

12. Dismissal of Other Counts

As a condition of the execution of this agreement and the Court's acceptance of the defendant's plea of guilty, the United States will move to dismiss the Indictment, Superseding Indictment and remaining counts in the Second Superseding Indictment and against this defendant at sentencing.

13. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, at the request of the United States, the defendant will voluntarily submit to polygraph examinations, and that the United States will choose the polygraph examiner and specify the procedures for the examinations.

- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

14. Use of Information Provided by the Defendant Under This Agreement

The United States will not use any truthful information provided pursuant to this agreement in any criminal prosecution against the defendant in the Eastern District of Virginia, except in any prosecution for a crime of violence or conspiracy to commit, or aiding and abetting, a crime of violence (as defined in 18 U.S.C. section 16). Pursuant to U.S.S.G. section 1B1.8, no truthful information that the defendant provides under this agreement will be used in determining the applicable guideline range, except as provided in section 1B1.8(b). Nothing in this plea agreement, however, restricts the Court's or Probation Officer's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant knowingly provide false, untruthful, or perjurious information or testimony, or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or

judicial. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

15. Prosecution in Other Jurisdictions

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

16. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

17. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

18. The Defendant's Obligations Regarding Assets Subject to Forfeiture

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past year, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the United States to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to undergo any polygraph examination the United States may choose to administer concerning such assets and to provide and/or consent to the release of the defendant's tax returns for the previous five years. Defendant agrees to forfeit to the United States all of the defendant's interests in any asset of a value of more than \$1000 that, within the last year, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

19. Forfeiture Agreement

The defendant agrees to forfeit all interest in any asset related to the charge to which the defendant is pleading guilty, that the defendant owns or over which the defendant exercises control, directly or indirectly.

The defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

20. Waiver of Further Review of Forfeiture

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to forfeiture as proceeds of or property used in illegal conduct.

21. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any

additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;

b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice; that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph

does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

22. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Neil H. MacBride
United States Attorney

By: _____
Michael A. Jagels
Special Assistant United States Attorney

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending Second Superseding Indictment. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 2/24/12

Walter J. Taylor
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending Second Superseding Indictment. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 2/24/12

Jeffrey J. Ement
Counsel for the Defendant

Date: 2/24/12

John J. Ement
Counsel for the Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA

v.

WILLIAM LANGLEY, JR.

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Criminal No. 3:11CR212-02 REP

STATEMENT OF FACTS

The United States and the defendant agree that the factual allegations contained in this Statement of Facts and in Counts One and Two of the pending Second Superseding Indictment are true and correct, and that the United States could have proven them beyond a reasonable doubt.

1. Beginning on or before July 16, 2004, and continuing through on or about August 4, 2007, in the Eastern District of Virginia and elsewhere, and within the jurisdiction of this court, defendants WILLIAM LANGLEY, JR., Stephen White, and Vance Hamm did knowingly and unlawfully conspire with each other and others, known and unknown to the Grand Jury, to obstruct, delay and affect commerce and the movement of any article or commodity in commerce, by knowingly and willfully conspiring to rob various businesses engaged in interstate commerce, in violation of Title 18, United States Code, Section 1951(a).

2. On or about May 4, 2005, in the Eastern District of Virginia and within the jurisdiction of this Court, the defendants, WILLIAM LANGLEY, JR., Stephen White and conspirator A.J., aided and abetted by one another, did knowingly and unlawfully use and carry a firearm during and in relation to a crime of violence for which they may be prosecuted in a court

of the United States, namely, Interference of Commerce by Violence, in violation of 18 U.S.C. § 1951(a), to wit: the May 4, 2005 robbery of employee R.R. at Uppy's Exxon Store, 5024 Brook Road, Richmond, Virginia, and in the course of said offense, caused the death of another person (R.R.) through the use of a firearm, which killing was a murder as defined in Title 18, United States Code, Section 1111, in that WILLIAM LANGLEY, JR., Stephen White and conspirator A.J., with malice aforethought, did unlawfully kill R.R. by shooting him with a firearm, in violation of Title 18, United States Code, Sections 924(j)(1) and 2.

3. On or about July 16, 2004, LANGLEY and conspirator A. J. robbed the DMS Hair Salon, located at 517 N. Fairview Road, Rocky Mount, North Carolina by brandishing a firearm at store employees and stole United States currency that was in the business's custody and possession.

4. On or about April 17, 2005, LANGLEY, WHITE, and conspirator A.J. robbed the BP Fast Mart, located at 2600 East Main Street, Richmond, Virginia, by brandishing a firearm and stole United States currency that was in the business's custody and possession.

5. On or about April 18, 2005, LANGLEY, WHITE, and conspirator A.J. robbed the EZ Income Tax, located at 1806 Creighton Road, Richmond, Virginia, by brandishing a firearm at a store employee and stole United States currency that was in the business's custody and possession.

6. On May 4, 2005, LANGLEY, Stephen White and conspirator A.J. robbed the Uppy's Exxon service station located at 5024 Brook Road, Richmond, Virginia. During the robbery, the store clerk, R. R., was shot in the left side of his neck by Stephen White, which ultimately led to his death. Shortly after the shooting, Henrico County Police and Richmond City

Police officers responded to the service station, where they located the victim lying (deceased) behind the store counter in a pool of blood. Police reviewed the store video, which revealed two men entering the store together. One man, later identified as A.J., went to the rear of the store and grabbed two cases of Ice House beer. The other man, later identified as Stephen White, went directly to the store counter, where he displayed a firearm at the victim. White then grabbed the phone out of the victim's hand and hung up the telephone. The victim was then seen taking money out of the cash register, which he then handed to White. White then shot the victim and both he and JENKINS are seen running out of the store together. The victim can be seen pushing an alarm before collapsing to the floor, where he then died. LANGLEY planned the robbery.

7. On or about June 26, 2005, LANGLEY and conspirator A.J. robbed the Comfort Inn, located at 3200 West Broad Street, Richmond, Virginia, by brandishing a firearm at a hotel employee and stole United States currency that was in the business's custody and possession.

8. On or about June 5, 2007, LANGLEY and another person unknown to the Grand Jury, robbed the Autozone, located at 201 N. Grace Street, Rocky Mount, North Carolina, by brandishing a firearm at a store employee and stole United States currency that was in the business's custody and possession.

9. On or about July 8, 2007, LANGLEY, HAMM, and another person unknown to the Grand Jury, robbed the Kangaroo Gas Station Store #3077, 235 N. Fairview Road, Rocky Mount, North Carolina, by brandishing a firearm at a store employee and stole United States currency that was in the business's custody and possession.

10. On or about July 21, 2007, LANGLEY, HAMM, and another person unknown to the Grand Jury, attempted to rob the Griffin's Food Store, located at 1530 Benvenue Road, Rocky Mount, North Carolina, by brandishing a firearm at a store employee and attempting to steal United States currency that was in the business's custody and possession.

11. On or about August 4, 2007, LANGLEY, HAMM, conspirator A.J., and another person unknown to the Grand Jury, robbed the Pizza Inn, located at 1499 Hunter Hill Road, Rocky Mount, North Carolina, by brandishing a firearm at store employees and stole United States currency that was in the business's custody and possession.

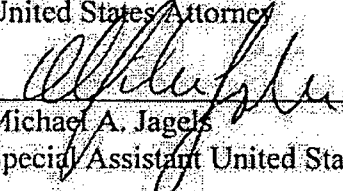
12. At all relevant times, in each of the robberies above, the businesses were engaged in interstate commerce, in an industry that affects interstate commerce.

13. LANGLEY agreed with one or more persons to undertake conduct that would violate the laws of the United States relating to robbery by interference of commerce and knowingly and voluntarily became a member of the conspiracy.

Respectfully submitted,

NEIL H. MACBRIDE
United States Attorney

By:


Michael A. Jagels
Special Assistant United States Attorney

I have consulted with my attorney regarding this Statement of Facts. I knowingly and voluntarily agree that each of the above-recited facts is true and correct and that had this matter gone to trial the United States could have proven each one beyond a reasonable doubt.

3/2/12
Date

William Langley, Jr.
WILLIAM LANGLEY, JR.

I am counsel for defendant, WILLIAM LANGLEY, JR. I have carefully reviewed this Statement of Facts with him and, to my knowledge, his decision to agree to this Statement of Facts is an informed and voluntary decision.

3/2/12
Date

[Signature]
Counsel for Defendant

3/2/12
Date

[Signature]
Counsel for Defendant

**Additional material
from this filing is
available in the
Clerk's Office.**