APPENDIX (A)

FILED: June 15, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4438
(4:18-cr-00027-DJN-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHRISTOPHER ROBERTSON

Defendant - Appellant

O R D E R

The court denies the motion for extension of time without prejudice to refiling the motion accompanied by the petition for rehearing within 30 days of this order.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

FILED: May 23, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4438
(4:18-cr-00027-DJN-LRL-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CHRISTOPHER ROBERTSON

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

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4438

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

CHRISTOPHER ROBERTSON,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. David J. Novak, District Judge. (4:18-cr-00027-DJN-LRL-1)

Argued: March 10, 2023 Decided: May 23, 2023

Before AGEE and RICHARDSON, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by published opinion. Judge Agee wrote the opinion in which Judge Richardson and Judge Keenan joined.

ARGUED: Fernando Groene, FERNANDO GROENE, PC, Williamsburg, Virginia, for Appellant. Jacqueline Romy Bechara, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee. **ON BRIEF:** Jessica D. Aber, United States Attorney, Richmond, Virginia, Eric M. Hurt, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee.

AGEE, Circuit Judge:

After committing or attempting to commit thirteen robberies, Christopher Robertson was indicted on twenty-two counts of robbery-related activity and one count of being a felon in possession of a firearm. Before a jury could return a verdict in Robertson's original trial, it was deemed a mistrial.

Before a retrial, at Robertson's request, the district court severed Robertson's charges into two trials—one for the felon in possession of a firearm charge and another for the robbery-related charges. After both trials resulted in guilty verdicts on all counts, Robertson filed motions for a judgment of acquittal in each case, arguing that there was insufficient evidence to support his convictions. The district court denied the motions. Robertson appeals, contesting the district court's decisions on both motions for acquittal, the district court's enforcement of a stipulation in the retrial, and the district court's use of certain jointly proposed jury instructions, and alleging a speedy trial violation. For the reasons discussed below, we affirm.

I.

In 2013 and 2014, Robertson orchestrated thirteen robberies throughout eastern Virginia. He and three coconspirators robbed gas stations, restaurants, grocery stores, and other similar businesses in Chesapeake, Fredericksburg, Newport News, Spotsylvania, and Yorktown.

As part of an investigation into the robberies and pursuant to a state court order, Newport News local law enforcement obtained cell site location information from Verizon cell towers that placed Robertson near the location of each robbery at the time it occurred.

After unsuccessfully attempting to arrest Robertson, law enforcement obtained a warrant to search for him in the residence of Keosha Hodge, the mother of one of his children. At 6:00 AM on May 20, 2016, law enforcement executed the warrant and searched Hodge's residence, in which they found a 9-millimeter Taurus handgun lying on the floor underneath some clothing in the main bedroom and Robertson's prescription card in the bedroom closet. Law enforcement also located a motorcycle helmet in the residence and observed Robertson's motorcycle parked outside of it. The officers then found Robertson hiding in the attic and arrested and searched him. In the course of the search, the officers found a 9-millimeter bullet in Robertson's right front pants pocket, which had the "same, identical markings" as the bullets found in the firearm on the floor of the main bedroom. J.A. 205.

Robertson was subsequently charged with fourteen counts of a combination of conspiracy to commit, actually committing, and attempting to commit Hobbs Act robbery; eight counts of using a firearm during a crime of violence; and one count of being a felon in possession of a firearm.

Prior to Robertson's first trial, Robertson and the Government entered into multiple stipulations, one of which provided that his robberies and attempted robberies "affected commerce." J.A. 32. Before a verdict was reached, the district court declared a mistrial on February 15, 2019, for reasons unrelated to this appeal.

Thereafter, a superseding indictment was filed bringing the same twenty-three charges against Robertson and adding a coconspirator. Robertson moved to sever his claims, asking for separate trials on the felon-in-possession charge and the robbery-related charges. The district court granted the motion and scheduled a trial on the felon-in-possession charge for March 3, 2020.

Robertson then proceeded to trial on the felon-in-possession charge, stipulating that he was a felon and was aware of his felon status. The Government presented evidence of the search of Hodge's house and the seizure of the firearm found near Robertson's possessions. They also presented evidence regarding the bullet found in Robertson's pocket, which was identical to the bullets found in the firearm. Additionally, the Government demonstrated that the firearm was purchased by Robertson's on-again-off-again girlfriend and the mother of his second child, Aquilla Jones. The jury found Robertson guilty.

After trial, Robertson moved for a judgment of acquittal, arguing that there was insufficient evidence that he possessed the firearm because no fingerprints were obtained from the firearm, no testing was done on the bullet found in his pocket, and certain items in the bedroom where the firearm was found clearly belonged to Hodge. The district court denied the motion and explained that the Government provided sufficient evidence connecting Robertson to the bedroom and noted that he was found hiding in the house with a matching bullet in his pocket. This "mosaic of circumstantial evidence" was sufficient for a reasonable juror to conclude beyond a reasonable doubt that Robertson constructively possessed the firearm. J.A. 275 (footnote omitted).

Thereafter, the district court asked the parties to submit their speedy trial positions on an August 2020 trial date for the remaining counts. Robertson never asserted a speedy trial violation but advised the district court that he "wished to be tried as soon as possible." J.A. 237. The district court found that the "ends of justice" were served by setting a trial date beyond the seventy-day window normally required by the Speedy Trial Act because the case was complex and counsel needed time to prepare. J.A. 247–48. However, before the parties could agree on a date, the district court closed due to COVID, but shortly thereafter the trial was scheduled for December 4, 2020.

The district court entered an order which excluded the period from July 7, 2020 to December 3, 2020 from the speedy trial calculation due to COVID's effect on the court's operations. Robertson filed a position statement, agreeing that the court's order was "well reasoned and sound" and "properly justifie[d] the exclusion" of time for speedy trial purposes. J.A. 290. He did "not object to this particular time exclusion" but restated "his desire to be tried as soon as possible" and refused to waive his right to a speedy trial. J.A. 290. The district court extended its jury trial suspension twice more. Ultimately, the district court set a trial date of March 1, 2021.

Before the trial, the Government moved to enforce several stipulations which the parties had entered into prior to Robertson's first trial. Although he did not challenge the enforcement of some of the stipulations, Robertson did object to the enforcement of the prior stipulation that stated that the alleged robberies affected interstate commerce. The district court nonetheless accepted the stipulation, reasoning that Robertson had "not

demonstrated manifest injustice resulting from the enforcement of the stipulation, nor that he inadvertently entered into the stipulation." J.A. 307.

On March 1, 2021, Robertson was tried by a jury and the evidence included testimony from his three coconspirators—Michael Ellison, Ezekiel Keaton, and Jones. Each testified that they participated in the robberies at Robertson's direction, J.A. 322–23, 361, 484–85, 521–22, and stated that Robertson selected the locations to rob and accompanied them to the locations during every robbery. They further explained that Robertson did not enter the businesses because he believed the security cameras could identify him through retinal scans. Instead, Robertson kept lookout and advised Ellison and Keaton when it was clear to enter each business.

The coconspirators revealed that the first group of robberies was committed by just Ellison and Robertson between September 24, 2013 and October 13, 2013. Ellison testified regarding every robbery that occurred and stated that Robertson aided him with each one. The second set of robberies involved Robertson, Ellison, Jones, and Keaton, and occurred throughout December 2014. The coconspirators testified as to Robertson's involvement in each of those robberies as well.

After the parties rested their cases, Robertson and the Government proposed joint jury instructions, which the district court accepted and provided to the jury. The jury then convicted Robertson on all counts. Thereafter, Robertson moved for an acquittal, arguing that there was insufficient evidence that his coconspirators succeeded in retrieving anything of value during certain robberies. The district court denied Robertson's motion, laying out the evidence that demonstrated that the coconspirators took money from each robbery and

concluding that a rational juror accepting that testimony could find that they completed the robberies. *United States v. Robertson*, No. 4:18cr27 (DJN), 2021 WL 3575834, at *1–3, *7–8 (E.D. Va. Aug. 12, 2021).

Additionally, Robertson argued that the jury instructions contained a prejudicial error. The district court rejected this argument, reasoning that Robertson "forfeited his challenge to the[] instructions under the invited error doctrine" as he jointly proposed the instructions. *Id.* at *8. Moreover, the district court concluded that Robertson, who had not objected to the jury instructions before the jury retired to deliberate, failed to demonstrate plain error. *Id.* at *9.

Robertson timely appealed, bringing four challenges to the district court's decisions. First, Robertson argues that the district court abused its discretion by enforcing a stipulation in the retrial which the parties entered into before the first trial. Second, he posits that there was insufficient evidence supporting his convictions. Third, Robertson contests the district court's use of a jointly proposed jury instruction. Finally, he contends that the district court violated his right to a speedy trial.[1] We take each argument in turn.[2]

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[1] Robertson also argues that the district court erred by denying two motions to suppress that he brought before his retrial. But Robertson failed to develop those arguments or provide any support for them in his opening brief. As such, they have been waived. *See Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (cleaned up)).

[2] The Court has jurisdiction under 28 U.S.C. § 1291.

II.

Robertson initially asserts that the district court erred by enforcing in the retrial a stipulation that the parties entered into before his first trial. We disagree.

We review evidentiary rulings for abuse of discretion, which the Court "will not find unless the decision was arbitrary and irrational." *United States v. Blake*, 571 F.3d 331, 346 (4th Cir. 2009) (cleaned up). Generally, "stipulations of attorneys made during a trial may not be disregarded or set aside at will." *Marshall v. Emersons Ltd.*, 593 F.2d 565, 569 (4th Cir. 1979) (citation omitted). As a result, we have recognized only two exceptions that require setting aside a stipulation: (1) "when it becomes apparent that [the stipulation] may inflict a manifest injustice upon one of the contracting parties," and (2) "when a stipulation is entered into under a mistake of law." *Id.* at 568 (citation omitted). Neither exception applies here.

However, we have not previously considered the question now before us—whether a stipulation made before a previous trial can be binding in a later trial. Having reviewed the parties' arguments on this issue, we join our sister circuits that have unanimously concluded that a district court may enforce in a later trial a stipulation entered into in an earlier trial.[3] *See Waldorf v. Shuta*, 142 F.3d 601, 616–20 (3d Cir. 1998) (rejecting a challenge to the district court's acceptance of a stipulation in a later trial entered into before

[3] Notably, the Eleventh Circuit concluded that the district court did not abuse its "broad discretion" by choosing not to enforce a stipulation entered into during a prior trial because stipulations "need not be rigidly and pointlessly adhered to at trial." *Hunt v. Marchetti*, 824 F.2d 916, 918 (11th Cir. 1987) (cleaned up). It did not, however, state that a district court *could not* enforce an earlier-made stipulation in a later trial.

a previous trial); *United States v. Marino*, 617 F.2d 76, 82 (5th Cir. 1980) (same); *United States v. Wingate*, 128 F.3d 1157, 1160–61 (7th Cir. 1997) (same); *United States v. Burkhead*, 646 F.2d 1283, 1285 (8th Cir. 1981) (same); *Bail Bonds by Marvin Nelson, Inc. v. Comm'r*, 820 F.2d 1543, 1547–48 (9th Cir. 1987) (same); *United States v. Boothman*, 654 F.2d 700, 703 (10th Cir. 1981) (same); *United States v. Kanu*, 695 F.3d 74, 78–82 (D.C. Cir. 2012) (same); *see also Am. Honda Motor Co. v. Richard Lundgren, Inc.*, 314 F.3d 17, 21–22 (1st Cir. 2002) (rejecting a challenge to the district court's acceptance of a stipulation entered into in a previous lawsuit); *Calcutt v. Fed. Deposit Ins. Corp.*, 37 F.4th 293, 322 (6th Cir. 2022) (concluding that the ALJ did not abuse his discretion by admitting stipulations from prior proceedings).

In analyzing this issue, our sister circuits posit that the most important factor to consider is "the parties' intention to limit or not limit a stipulation to only one proceeding." *Kanu*, 695 F.3d at 78 (citation omitted); *see also Waldorf*, 142 F.3d at 617 ("[T]he parties' intention to limit or not limit a stipulation to only one proceeding is the overriding factor."). So, "a stipulation does not continue to bind the parties if they expressly limited it to the first proceeding or if the parties intended the stipulation to apply only at the first trial." *Kanu*, 695 F.3d at 79 (citation omitted). But where the stipulation was "an open-ended concession of liability without limitation to the ensuing trial," there is no reason to relieve a party from an earlier-made stipulation in a later proceeding. *Id.* (cleaned up).

Applying those sound principles here, nothing in the stipulation's language limited its applicability to the first trial. *See* J.A. 32 (stating that the parties "agree that the robbery or attempted robbery of the listed businesses affected commerce on the date of the robbery

or attempted robbery" and listing the relevant businesses). The parties entered into an open-ended stipulation in which they both agreed that Robertson's alleged robberies affected commerce. That Robertson later regretted entering into the stipulation is not sufficient to relieve him of its continuing effect. *See Waldorf*, 142 F.3d at 616 ("Generally, a stipulation entered into prior to a trial remains binding during subsequent proceedings between the parties."). Accordingly, the district court's acceptance of the stipulation in the retrial was not an abuse of discretion.

III.

Robertson next argues that the district court erred by denying his motions for a judgment of acquittal because there was insufficient evidence to support his convictions. Again, we disagree.

When considering a sufficiency-of-the-evidence challenge to a jury's guilty verdict, the court must sustain the verdict "if there is substantial evidence, taking the view most favorable to the Government, to support it." *United States v. Stockton*, 349 F.3d 755, 761 (4th Cir. 2003) (citation omitted). Substantial evidence is "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996) (en banc). We review the district court's sufficiency conclusion de novo but can reverse a conviction "only where no reasonable juror 'could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Dennis*, 19 F.4th 656, 666 (4th Cir. 2021) (citation omitted).

To establish the crime of being a felon in possession of a firearm, the Government must prove: (1) the defendant was previously convicted of a felony, (2) the defendant knew he was a felon, (3) the defendant knowingly possessed the firearm, and (4) the possession was in or affecting commerce. 18 U.S.C. § 922(g)(1); *Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019). For the third element, constructive possession of the firearm is sufficient, meaning a person can be considered to have possessed the firearm if "he exercised, or had the power to exercise, dominion and control over the firearm." *United States v. Wilson*, 484 F.3d 267, 282 (4th Cir. 2007) (cleaned up). This can be established "through direct or circumstantial evidence." *United States v. Smith*, 21 F.4th 122, 140 (4th Cir. 2021).

There was sufficient evidence supporting Robertson's conviction for being a felon in possession of a firearm. As indicated, Robertson stipulated that he was previously convicted of a felony and knew of his status as a felon. And Robertson does not argue that the firearm possession did not affect commerce. As to the possession element, the relevant firearm was purchased by Robertson's on-again-off-again girlfriend, Jones. It was found in the home of another one of his girlfriends and the mother of his child—the house in which Robertson was hiding at 6:00 AM—in a room where Robertson kept other belongings. Further, police recovered a bullet from Robertson's pocket with identical markings as the bullets found in the firearm. This is sufficient evidence for a reasonable juror to conclude beyond a reasonable doubt that Robertson constructively possessed the firearm. *See United States v. Jones*, 945 F.2d 747, 749–50 (4th Cir. 1991) (concluding that there was "ample evidence" of constructive possession where "police found the gun in [the

defendant's] bedroom and ammunition for the gun in his pocket"); *United States v. Jones*, 204 F.3d 541, 543–44 (4th Cir. 2000) ("Given that the cocaine . . . was found behind a dresser drawer in the bedroom from which the officer saw Jones exit and in which authorities discovered Jones' personal papers, we cannot say that the district court, sitting as trier of fact, erred in finding that Jones possessed the cocaine."); *United States v. Griffin*, 175 F. App'x 627, 630 (4th Cir. 2006) (per curiam) (determining that the defendant's "early morning presence in the bedroom where th[e] items were found" along with his personal papers in the bedroom provided sufficient evidence to support a conviction for constructive possession of the items). And, contrary to Robertson's argument, this is true despite the fact that the evidence is circumstantial because the Government can prove constructive possession "through direct or circumstantial evidence." *Smith*, 21 F.4th at 140.

Similarly, there was sufficient evidence to support Robertson's convictions for Hobbs Act robbery, which requires the Government to show: "(1) that the defendant coerced the victim to part with property; (2) that the coercion occurred through the wrongful use of actual or threatened force, violence or fear. . . ; and (3) that the coercion occurred in such a way as to adversely affect interstate commerce." *United States v. Reed*, 780 F.3d 260, 271 (4th Cir. 2015) (cleaned up). A defendant can also be convicted of aiding and abetting Hobbs Act robbery. *United States v. Ali*, 991 F.3d 561, 574 (4th Cir. 2021).

Robertson argues that there was insufficient evidence that he participated in the robberies. Notably, he concedes that his coconspirators' testimony constituted evidence that he participated in the robberies because it "is well settled in this circuit that the uncorroborated testimony of an accomplice may be sufficient to sustain a conviction."

United States v. Baker, 985 F.2d 1248, 1255 (4th Cir. 1993). Nonetheless, Robertson contends that his coconspirators' testimony should have been disregarded because they were not credible. For example, Robertson posits that Ellison "barely had any recollection" of the robberies and his testimony was vague. Opening Br. 22. He also states that all the evidence that he participated in the 2014 robberies came from coconspirators who had equivocated or lied in earlier proceedings.

These arguments all must fail because "[t]he jury, not the reviewing court, weighs the credibility of the evidence and resolves any conflicts in the evidence presented. And, in conducting such a review, [the Court] is obliged to view the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the prosecution." *United States v. Palacios*, 677 F.3d 234, 250 (4th Cir. 2012) (citation omitted). As the district court thoroughly explained, Robertson's coconspirators—particularly Ellison—described each of the robberies and summarized Robertson's role in them. Accepting that testimony as true, as the Court must in reviewing a motion for judgment of acquittal, a reasonable juror could find Robertson guilty of the robberies beyond a reasonable doubt. As such, Robertson's challenges to the sufficiency of the evidence are without merit.[4]

[4] Moreover, below, Robertson's only sufficiency-of-the-evidence argument was that there was insufficient evidence that "money or another thing of value was taken by Ellison and his accomplices in the alleged robberies charged in Counts 2, 4, 5, 12, 13 and 15." J.A. 817. He did not challenge the evidence of his involvement in the robberies. Therefore, we can only correct the district court's error if it was particularly egregious, which we do not find here. *See United States v. Hardy*, 999 F.3d 250, 253–54 (4th Cir. 2021) ("When a defendant fails to raise an argument in the district court, [the Court] may correct only particularly egregious errors." (cleaned up)).

IV.

Robertson also argues that the district court abused its discretion by utilizing certain jury instructions that he and the Government jointly proposed to the court. But we "fail to see how the trial court abused its discretion based on [an] allegedly prejudicial instruction when [Robertson] asked for it and thus invited the error." *United States v. Simmons*, 11 F.4th 239, 263 (4th Cir. 2021); *see also United States v. Mathis*, 932 F.3d 242, 257 (4th Cir. 2019) (declining to address an argument about an improper jury instruction where the defendants "invited the claimed error"); *United States v. Herrera*, 23 F.3d 74, 75 (4th Cir. 1994) ("[A] court can not be asked by counsel to take a step in a case and later be convicted of error, because it has complied with such request." (citation omitted)). Thus, regardless of the merit of Robertson's claim, we decline to vacate Robertson's convictions on this ground. *See Simmons*, 11 F.4th at 262 ("In the ordinary case, Defendants might have a colorable argument that this instruction conflicts with our precedent . . . . But Defendants, along with the Government, jointly proposed this instruction to the trial court.").

V.

Robertson finally argues that the district court violated his speedy trial rights by holding his retrial more than seventy days after his mistrial. Indeed, the Speedy Trial Act requires that, in the event of a mistrial, a defendant be brought to trial within seventy days of "the date the action occasioning the retrial becomes final." 18 U.S.C. § 3161(e). Although there are certain periods of delay that are excluded from computing the time within which trial must begin, *see id.* § 3161(h), if more than seventy nonexcludable days

pass without bringing the defendant to trial, the district court "shall" dismiss the indictment "on motion of the defendant." *Id.* § 3162(a)(2). However, failure to move for dismissal prior to trial "shall constitute a waiver of the right to dismissal." *Id.* And plain-error review is unavailable for violations not timely asserted before trial begins. *United States v. Mosteller*, 741 F.3d 503, 507 (4th Cir. 2014).

Although Robertson stated multiple times that he wished to be tried as soon as possible, he never moved for a dismissal prior to trial based on a speedy trial violation. In fact, even when prompted, Robertson never objected to the district court's trial schedule. Accordingly, Robertson waived his right to assert a speedy trial violation and we need not consider his argument further.

VI.

For the foregoing reasons, we affirm Robertson's convictions.

AFFIRMED

APPENDIX (B)

JURY INSTRUCTION

42

The Nature of the Offense Charged—Interference with Commerce by Robbery—Counts Two through Thirteen and Sixteen

Counts Two through Thirteen, and Count Sixteen, of the Amended indictment charge that on the dates set forth in the Amended indictment, in the Eastern District of Virginia, defendant CHRISTOPHER ROBERTON, did knowingly and unlawfully attempt to obstruct, delay and affect commerce as that term is defined in Title 18, United States Code, Section 1951(b)(3), and the movement of articles and commodities in such commerce, by knowingly and willfully committing robbery, as that term is defined by Title 18, United States Code, Section 1951(b)(1), in that defendant ROBERTSON did unlawfully take and obtain property, consisting of United States currency, from the persons of, and in the presence of, employees of the businesses set forth in the Amended indictment, against the employees will by means of actual and threatened force, violence and fear of injury, immediate and future to their person and property in their custody and possession, that is, defendant ROBERTSON, as set forth in counts two through thirteen, and sixteen, demanded money from the cash register belonging to the businesses set forth in the Amended indictment, and, as set forth in counts fourteen, fifteen, seventeen, nineteen and twenty through twenty-two, the defendant used, carried, and brandished a firearm.

In violation of Title 18, United States Code, Sections 1951(a) and 2.

JURY INSTRUCTION

41

Success of Conspiracy Immaterial

The government is not required to prove that the parties to or members of the alleged agreement or conspiracy were successful in achieving any or all of the objects of the agreement or conspiracy.

JURY INSTRUCTION

43

The Statute Defining the Offense Charged—Interference with Commerce by Robbery—Counts Two through Thirteen and Sixteen

Section 1951(a) of Title 18 of the United States Code provides, in part, that:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery. . .or attempts. . .so to do, or commits or threatens physical violence to any person . . .in furtherance of a plan or purpose to do anything in violation of this section. . .
>
> Shall be guilty of an offense against the United States.

JURY INSTRUCTION

44

The Essential Elements of the Offense Charged— Interference with Commerce by Robbery—Counts Two through Thirteen and Sixteen

In order to sustain its burden of proof for the crime of interfere with commerce by robbery, as charged in Counts Two through Thirteen and Sixteen, of the Amended indictment, the government must prove the following three essential elements beyond a reasonable doubt:

One: Defendant CHRISTOPHER ROBERTSON, attempted to induce the victims, to part with the property described in Counts 2-13 and 16, of the Amended indictment, namely United States currency;

Two: the defendant, CHRISTOPHER ROBERTSON, did so knowingly and deliberately by robbery; and

Three: In so acting, interstate commerce, or an item moving in interstate commerce was delayed, obstructed or affected in any way or degree.

Only a minimal effect, however small, on interstate commerce is necessary to satisfy the third element and the effect on commerce need only be probable or potential not actual.

JURY INSTRUCTION

48

Unlawful Taking by Force, Violence or Fear

The second element the government must prove beyond a reasonable doubt is that the defendant unlawfully took or attempted to take property against the victim's will, by actual or threatened force, violence, or fear of injury, whether immediately or in the future.

In considering whether the defendant used, or threatened to use force, violence or fear, you should give those words their common and ordinary meaning, and understand them as you normally would. A threat may be made verbally or by a physical gesture. Whether a statement or physical gesture by the defendant actually was a threat depends upon the surrounding facts.

JURY INSTRUCTION

47

"Property"—Defined

The term "property" as used in these instructions means money, controlled substances, or anything of value.

JURY INSTRUCTION

34

The Statute Defining the Offense Charged—Count One

Section 1951(a) of title 18 of the United States Code provides, in part, that:

. . . whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery . . . or attempts . . . so to do, or commits or threatens physical violence to any person . . . in furtherance of a plan or purpose to do anything in violation of this section shall. . .

be guilty of an offense against the United States.

CONSPIRE NOT INCLUDED

JURY INSTRUCTION

35

The Essential Elements of the Offense Charged—Conspiracy to Interfere with Commerce by Robbery—Count One

In order to sustain its burden of proof for the crime of conspiracy to obstruct, delay or affect interstate commerce by robbery, as charged in Count One of the Amended indictment, the government must prove the following two essential elements beyond a reasonable doubt:

One: the conspiracy, agreement or understanding to commit interference with commerce by robbery as described in Count One of the Amended indictment, was formed, reached, or entered into by two or more persons;

Two: at some time during the existence or life of the conspiracy, agreement, or understanding, the defendant knew the purpose(s) of the agreement; and with knowledge of the purpose(s) of the conspiracy, agreement, or understanding, the defendant deliberately joined the conspiracy, agreement or understanding.

JURY INSTRUCTION

46

"Robbery"—Defined

The term "robbery" means the unlawful taking or obtaining of personal property of another against his will by threatening or actually using force, violence, or fear of injury, immediately or in the future, to person or property.

committed or is about to be committed is not sufficient conduct for the jury to find that a defendant aided and abetted the commission of that crime.

The government must prove that a defendant knowingly and deliberately associated himself with the crime in some way as a participant—someone who wanted the crime to be committed—not as a mere spectator.

JURY INSTRUCTION

49

Fear of Injury

As I have just instructed you, you must determine whether the defendant knowingly and unlawfully threatened to use, force, violence, or fear, to unlawfully obtain the property. Fear exists if a victim experiences anxiety, concern, or worry over expected personal harm. The existence of fear must be determined by the facts existing at the time of the defendant's actions.

Your decision whether the defendant used or threatened fear of injury involves a decision about the victim's state of mind at the time of the defendant's actions. It is obviously impossible to ascertain or prove directly a person's subjective feeling. You cannot look into a person's mind to see what his state of mind is or was. But a careful consideration of the circumstances and evidence should enable you to decide whether fear would reasonably have been the victim's state of mind.

Looking at the situation and the actions of people involved may help you determine what their state of mind was. You can consider this kind of evidence—which is called "circumstantial evidence"—in deciding whether property was obtained by the defendant through the use or threat of fear.

You may also consider the relationship between the defendant and the victim in deciding whether the element of fear exists. However, a friendly relationship between the parties does not mean that you cannot find that fear exists.

JURY INSTRUCTION

50

"Commerce"—Defined

The term "commerce" means commerce within the District of Columbia, or any territory or possession of the United States; all commerce between any point in a state, territory, possession, or the District of Columbia and any point outside thereof; all commerce between points within the same state through any place outside such state; and all other commerce over which the United States has jurisdiction.

JURY INSTRUCTION

12

Consider Each Count Separately

A separate crime is charged in each count of the Amended indictment. Each charge, and the evidence pertaining to it, should be considered separately by the jury. The fact that you may find the defendant guilty or not guilty as to one of the counts charged should not control your verdict as to any other count.

JURY INSTRUCTION

11

Verdict as to Defendant Only

You are here to determine whether the government has proven the guilt of the defendant for the charges in the Amended indictment beyond a reasonable doubt. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the defendant for the crimes charged in the Amended indictment, you should so find, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the defendant not guilty.

JURY INSTRUCTION

37

Responsibility for Substantive Offenses

A member of a conspiracy who commits another crime during the existence or life of a conspiracy and commits this other crime in order to further or somehow advance the goal(s) or objective(s) of the conspiracy may be considered by you to be acting as the agent of the other members of the conspiracy. The illegal actions of a conspirator in committing this other crime may be attributed to other individuals who are then members of the conspiracy. Under certain conditions, therefore, a defendant may be found guilty of this other crime even though he did not participate directly in the acts constituting that offense.

If you find that the government has proven the defendant guilty of conspiracy as charged in count one of the Amended indictment, beyond a reasonable doubt, you may also find the defendant guilty of the crimes alleged in counts two through eighteen, and twenty through twenty-two, of the Amended indictment, provided you find that the essential elements of those counts as defined in these instructions have been established beyond reasonable doubt and, provided further, that you also find beyond reasonable doubt, that

One: the substantive offenses described in counts two through eighteen, and twenty through twenty-two, of the Amended indictment were committed by a member of the conspiracy as detailed in count one of the Amended indictment;

Two: the substantive crimes were committed during the existence or life of and in furtherance of the goal(s) or objective(s) of the conspiracy detailed in count one of the Amended indictment; and

proven member of the conspiracy, may be considered by the jury as evidence against the defendant under consideration even though he was not present to hear the statement made or see the act done.

This is true because, as stated earlier, a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts and the statements of every other member made in pursuance of their unlawful scheme.

JURY INSTRUCTION

45

Aiding and Abetting

A person may violate the law even though he does not personally do each and every act constituting the offense if that person "aided and abetted" the commission of the offense.

Section 2(a) of Title 18 of the United States Code provides:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of the crimes charged in the Amended indictment, the government must prove beyond a reasonable doubt that the defendant:

One, knew that the crime charged was to be committed or was being committed,

Two, knowingly did some act for the purpose of aiding, commanding, or encouraging the commission of that crime, and

Three, acted with the intention of causing the crime charged to be committed.

Before a defendant may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that some person or persons committed each of the essential elements of the offense charged as detailed for you in these instructions.

Merely being present at the scene of the crime or merely knowing that a crime is being

COUNT	DATE	LOCATION
TWO	September 24, 2013	Gulf Gas Station, 2120 Plank Road, Fredericksburg, Virginia
THREE	October 1, 2013	Captain D's, 2626 Princess Anne Street, Fredericksburg, Virginia
FOUR	October 6, 2013	Big Lots, 4318 George Washington Highway, Yorktown, Virginia
FIVE	October 8, 2013	Fast Mart, 5166 Mudd Tavern Road, Spotsylvania, Virginia
SIX	October 13, 2013	Food Lion, 7100 Salem Fields Blvd, Spotsylvania, Virginia (Attempt)
SEVEN	December 4, 2014	Citgo Gas Station, 780 J. Clyde Morris Ave., Newport News, Virginia
EIGHT	December 6, 2014	Shell Gas Station, 600 Hampton Highway, Yorktown, Virginia
NINE	December 6, 2014	Hop and Shop, 12961 Jefferson Avenue, Newport News, Virginia
TEN	December 10, 2014	Smoke Shop, 3115 Western Branch Blvd., Chesapeake, Virginia (Attempt)
ELEVEN	December 11, 2014	Mini-Mart, Green Meadows Drive, Virginia Beach, Virginia
TWELVE	December 12, 2014	Gulf Gas Station, 2120 Plank Road, Fredericksburg, Virginia
THIRTEEN	December 13, 2014	Subway Restaurant, 9817 Jefferson Davis Hwy, Fredericksburg, Virginia
SIXTEEN	December 8, 2014	Shell Gas Station, 10732 Jefferson Avenue, Newport News, Virginia

JURY INSTRUCTION

55

"Crime of Violence"--Defined

The term "crime of violence" means an offense that is a felony and has as one of its essential elements the use, attempted use, or threatened use of physical force against the person or property of another, or an offense that by its very nature involves a substantial risk that such physical force may be used in committing the offense. The offenses alleged in counts one through thirteen and sixteen of the Amended indictment are crimes of violence.

COUNT	DATE	LOCATION	UNDERLYING ALLEGED OFFENSE
SEVENENTEEN	December 4, 2014	Citgo Gas Station, 780 J. Clyde Morris Ave., Newport News, Virginia	SEVEN
FOURTEEN	December 6, 2014	Shell Gas Station, 600 Hampton Highway, Yorktown, Virginia	EIGHT
EIGHTTEEN	December 6, 2014	Hop and Shop, 12961 Jefferson Avenue, Newport News, Virginia	NINE
TWENTY	December 11, 2014	Mini-Mart, Green Meadows Drive, Virginia Beach, Virginia	ELEVEN
TWENTY-ONE	December 12, 2014	Gulf Gas Station, 2120 Plank Road, Fredericksburg, Virginia	TWELVE
TWENTY-TWO	December 13, 2014	Subway Restaurant, 9817 Jefferson Davis Hwy, Fredericksburg, Virginia	THIRTEEN
FIFTEEN	December 8, 2014	Shell Gas Station, 10732 Jefferson Avenue, Newport News, Virginia	SIXTEEN

JURY INSTRUCTION

54

Elements of the Offense - Counts Fourteen, Fifteen, Seventeen, Eighteen, and Twenty through Twenty-Two

In order to sustain its burden of proof for the crime of using or carrying a firearm during and in relation to a crime of violence as charged in counts fourteen, fifteen, seventeen, eighteen, and twenty through twenty-two of the Amended indictment, the Government must prove the following essential elements beyond a reasonable doubt:

One: the defendant, CHRISTOPHER ROBERTSON, aided and abetted by others and along with other conspirators, knowingly used or carried a firearm as described in the Amended indictment;

Two: during and in relation to the commission of those crimes, the defendant, CHRISTOPHER ROBERTSON, knowingly used or carried a firearm, and

Three: the defendant's use or carrying of the firearm was during and in relation to the crimes of violence identified in counts Seven through Nine, Eleven through Thirteen, and Sixteen of the Amended indictment.

JURY INSTRUCTION

53

Statute Defining the Offense - Counts Fourteen, Fifteen, Seventeen, Eighteen, and Twenty through Twenty-Two

Section 924(c) of Title 18 of the United States Code provides, in pertinent part, that

> "whoever, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the united states, . . . uses or carries a firearm, . . . , shall....

be guilty of an offense against the united states.

JURY INSTRUCTION

52

Nature of the Offense – Counts Fourteen, Fifteen, Seventeen, Eighteen, and Twenty through Twenty-Two

Counts Fourteen, Fifteen, Seventeen, Eighteen, and Twenty through Twenty-Two, of the Amended indictment charge that on the dates set forth in the second superseding indictment, in the Eastern District of Virginia, CHRISTOPHER ROBERTSON, did unlawfully and knowingly use, carry and brandish a firearm, as an aider and abettor, during and in relation to crimes of violence for which he may be prosecuted in a court of the United States, to wit: interfere with commerce by robbery, as set forth in counts seven through nine, eleven through thirteen, and sixteen, of the Amended indictment.

JURY INSTRUCTION

51

Obstructs, Delays, or Affects Commerce—Defined

The term "obstructs, delays, or affects commerce" means any action which, in any manner or to any degree, interferes with, changes, or alters the movement or transportation or flow of goods, merchandise, money, or other property in commerce.

Count one of the Amended indictment alleges that the defendant took property consisting of United States currency, belonging to the businesses named in the Amended indictment from employees of the businesses set forth in the Amended indictment, against the employees will by means of actual and threatened force, violence, and fear of injury, immediate or future, to their persons and demanding money from the cash register belonging to the business.

At all times material to the charges, the businesses were commercial entities engaged in the provision of goods and services in interstate commerce and businesses which affect interstate commerce.

It is not necessary for the government to prove that the defendant actually intended to obstruct, delay, or affect commerce. The government must prove beyond a reasonable doubt, however, that the defendant deliberately performed an act, the ordinary and natural consequences of which would be to obstruct, delay, or affect commerce, and that commerce was, in fact, obstructed, delayed or affected.

APPENDIX (C)

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 4:18cr27
	)	
CHRISTOPHER ROBERTSON,	)	
	)	
Defendant.	)	

SPECIAL VERDICT FORM

We the jury, unanimously find the defendant, CHRISTOPHER ROBERTSON:

COUNT 1: With respect to Count 1, Conspiracy to Commit Robbery:

Guilty_____ Not Guilty_____

COUNT 2: With respect to Count 2, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 3: With respect to Count 3, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 4: With respect to Count 4, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 5: With respect to Count 5, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 6: With respect to Count 6, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 7: With respect to Count 7, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 8: With respect to Count 8, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 9: With respect to Count 9, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 10: With respect to Count 10, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 11: With respect to Count 11, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 12: With respect to Count 12, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 13: With respect to Count 13, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 14: With respect to Count 14, Use, Carry, and Brandish a Firearm During a Crime of Violence:

Guilty_____ Not Guilty_____

NOTE: If your answer to Count 14 is "Not Guilty," do not answer the following question; Simply proceed directly to Count 15. If your answer for Count 14 is "Guilty," please answer the following question for Count 14.

With respect to Count 14, mark all that apply in regard to the firearm.

During and in relation to the crime of violence the defendant:

_____ Carried the firearm

_____ Brandished the firearm

COUNT 15: With respect to Count 15, Use, Carry, and Brandish a Firearm during a Crime of Violence:

Guilty_____ Not Guilty_____

NOTE: If your answer to Count 15 is "Not Guilty," do not answer the following question; Simply proceed directly to Count 16. If your answer for Count 15 is "Guilty," please answer the following question for Count 15.

With respect to Count 15, mark all that apply in regard to the firearm.

During and in relation to the crime of violence the defendant:

_____ Carried the firearm

_____ Brandished the firearm

COUNT 16: With respect to Count 16, Interfere with Commerce by Robbery:

Guilty_____ Not Guilty_____

COUNT 17: With respect to Count 17, Use, Carry and Brandish a Firearm During a Crime of Violence:

Guilty_____ Not Guilty_____

NOTE: If your answer to Count 17 is "Not Guilty," do not answer the following question; Simply proceed directly to Count 18. If your answer for Count 17 is "Guilty," please answer the following question for Count 17.

With respect to Count 17, mark all that apply in regard to the firearm.

During and in relation to the crime of violence the defendant:

_____ Carried the firearm

_____ Brandished the firearm

COUNT 18: With respect to Count 18, Use, Carry and Brandish a Firearm During a Crime of Violence:

Guilty_____ Not Guilty_____

NOTE: If your answer to Count 18 is "Not Guilty," do not answer the following question; Simply proceed directly to Count 20. If your answer for Count 18 is "Guilty," please answer the following question for Count 18.

With respect to Count 18, mark all that apply in regard to the firearm.

During and in relation to the crime of violence the defendant:

_____ Carried the firearm

_____ Brandished the firearm

COUNT 20: With respect to Count 20, Use, Carry, and Brandish a Firearm:

Guilty_____ Not Guilty_____

NOTE: If your answer to Count 20 is "Not Guilty," do not answer the following question; Simply proceed directly to Count 21. If your answer for Count 20 is "Guilty," please answer the following question for Count 20.

With respect to Count 20, mark all that apply in regard to the firearm.

During and in relation to the crime of violence the defendant:

_____ Carried the firearm

_____ Brandished the firearm

COUNT 21: With respect to Count 21, Use, Carry and Brandish a Firearm:

Guilty_____ Not Guilty_____

NOTE: If your answer to Count 21 is "Not Guilty," do not answer the following question; Simply proceed directly to Count 22. If your answer for Count 21 is "Guilty," please answer the following question for Count 21.

With respect to Count 21, mark all that apply in regard to the firearm.

During and in relation to the crime of violence the defendant:

_____ Carried the firearm

_____ Brandished the firearm

APPENDIX (D)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA v. CHRISTOPHER ROBERTSON	Criminal Case No.: 4:18 CR 27

August 12, 2021

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE DAVID J. NOVAK
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

Peter G. Osyf, Esquire
OFFICE OF THE UNITED STATES ATTORNEY
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Counsel on behalf of the United States

Fernando Groene, Esquire
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Counsel on behalf of the Defendant

-P6-24-(-10-12)
"HE DID NOT TESTIFY."

TRACY J. STROH, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

(The proceeding commenced at 10:31 a.m.)

THE CLERK: Criminal matter 4:18 CR 27, the *United States of America v. Christopher Robertson*.

The defendant is represented by Fernando Groene. The government is represented by Peter Osyf.

Counsel, are we ready to proceed?

MR. OSYF: The United States is ready. Good morning, Your Honor.

MR. GROENE: Good morning, Judge. We're ready to proceed.

THE COURT: All right. We're going to proceed. You all are going to keep your masks on while you're over at counsel table. But when you come up to the lectern, or otherwise have to speak, I'm going to ask you to take your mask down just so the court reporter can hear you.

Let's start off, I denied, this morning, the motion for the new trial. I gather you've got a copy of the opinion already, Mr. Groene?

MR. GROENE: I got a copy of the opinion, Judge. I haven't had a chance to look at it. I just looked at the last sentence.

THE COURT: I'll give you the short story. You agreed to the jury instructions. You gave me the instructions. I gave what you told me -- what you wanted me to give. I asked you repeatedly, do you have any

objections to the jury instructions. You said no. Even after I gave the instructions, I asked you. You said no. You're stuck with it.

MR. GROENE: Well, I understand. I haven't read it. I will read it.

THE COURT: I just gave the --

MR. GROENE: I understand the short version. I just want to make sure that -- may I?

THE COURT: Why don't you go on up to the lectern.

MR. GROENE: Oh, yeah. Thank you.

Good morning, Judge. May it please the Court. I just want to make sure that the Court had considered my pleading from yesterday.

THE COURT: Which plea was that?

MR. GROENE: The reply to the government's position.

THE COURT: Yeah, I read it.

MR. GROENE: Oh, okay. Because it was six days and yesterday was the sixth day. That's all. I just want to make sure.

THE COURT: You didn't say anything new, though. If you had said anything new -- I mean, I was ready to --

MR. GROENE: I never say anything new, Judge. I try to say it many times, but it's -- it's new the first

time.

THE COURT: I know. But what I'm saying to you is that's my point. My point was your focus is on the jury instructions. But they were jointly submitted. I asked you repeatedly if you had any objections to it. You said no. You can't complain now after I gave you what wanted. So -- okay.

MR. GROENE: I understand.

THE COURT: So I denied it. All right.

MR. GROENE: I understand.

THE COURT: Let's get moving and grooving here. I just want to make sure that you saw that.

All right. So we're now here for sentencing. The probation officer calculated a Criminal History Category VI, an offense level of 32. However, the defense has made an objection as to the abduction enhancement, believing that the enhancement should have been two levels -- that was really applicable for a physical restraint -- as opposed to the four-point abduction enhancement.

I think that objection is well taken. I intend to grant it.

Did you want to say anything, Mr. Osyf? I don't think it's going to --

MR. OSYF: I would, Your Honor, if I may.

THE COURT: You do?

MR. OSYF: Yes.

THE COURT: All right. Have at it.

MR. OSYF: Your Honor, regarding the abduction enhancement, there are two cases I just want to make sure the Court has reviewed before making its ruling. And that's *United States v. Nale* --

THE COURT: Let me just -- hold on a second.

MR. OSYF: Excuse me?

THE COURT: Never doubt that I've reviewed something.

MR. OSYF: Okay.

THE COURT: Do you understand that?

MR. OSYF: I do.

THE COURT: If you write something, I read it. I'm ready to go. If you got something new to say, I'm all about it.

MR. OSYF: I don't believe Mr. Hurt cited these cases in the --

THE COURT: Okay. Then do you want to tell me why he didn't do his job, then?

MR. OSYF: I can't speak for that, Your Honor.

THE COURT: Go ahead.

MR. OSYF: I don't know, and he's in trial. But I'll be sure to ask him after the hearing.

THE COURT: All right.

MR. OSYF: But *United States v. Nale*, 101 F.3d 1000. It's a Fourth Circuit case from 1996. And *United States v. Osborne*, 514 F.3d 377, a subsequent Fourth Circuit case in 2008. Both published opinions.

United States v. Nale -- actually, let me start with *Osborne*, which cites *Nale*. And this is a quote from *Osborne*, "We have previously assessed the guidelines definition of abducted in only one published decision, our 1996 decision in *United States v. Nale*. We recognized in that case" --

THE COURT: Why don't you slow down. I think you're killing the court reporter.

MR. OSYF: Sorry. -- "as *Osborne* acknowledges here, that even a temporary abduction -- i.e., one with minimal movement of the victim or that lasts only a short duration -- can constitute an abduction for purposes of the sentencing guidelines." Again, quoting *Nale* at 1003.

THE COURT: *Osborne* also says, "The offender must force the victim to accompany him to a different location."

MR. OSYF: That is correct.

THE COURT: Directing a victim into the freezer is not accompanying them.

MR. OSYF: Understood, Your Honor.

THE COURT: I've looked at *Osborne*. It cuts against you. It doesn't cut in favor of you.

MR. OSYF: Okay. Point taken, Your Honor. Thank you.

THE COURT: Okay. All right. I'm granting -- did you want to say anything else? I'm going to rule in your favor. Mr. Groene?

MR. GROENE: No, Judge.

THE COURT: All right. I'm going to grant the objection. That leaves us with a Criminal History Category VI, an offense level of 30 for the Counts One through Thirteen and Sixteen. That's 168 to 210 months.

Now, I will say this. Just so you know on your arguments, I mean, obviously, the 924(c) counts are --

MR. GROENE: You're talking to me, Judge?

THE COURT: No. I'm just saying to both of you.

MR. GROENE: Oh, okay.

THE COURT: I want to tell you before you argue, right?

That the 924(c) counts, you know, because they are consecutive here, are what's going to drive this bus, right? But I did want to speak about Count Twenty-three just for a second. Because Count Twenty-three was severed and tried before Judge Allen as a separate offense, right? And going back and looking at the record, that seems to me

to relate to the seizure of the firearm when he was arrested, hiding up in the attic. Am I right about that?

MR. OSYF: That's correct, Your Honor.

THE COURT: So my intention is to give a consecutive sentence on that count.

The reason it was severed is because it's separate from the others, right? And it is different than the robberies that were involved here. So I say that to you both so you know what you're looking at when you argue. All right.

So, Mr. Osyf, do you have any evidence you want to offer?

MR. OSYF: No evidence, Your Honor.

THE COURT: I understand you gave notice to all the victims. And none of them want to be heard; is that right?

MR. OSYF: That's correct, Your Honor.

THE COURT: All right. Mr. Groene, do you have any evidence you want to offer?

MR. GROENE: I don't have any evidence, Judge. If I may, I have a question.

THE COURT: Yeah. Go ahead.

MR. GROENE: So in light of what the Court just said, the severed count, the -- Count Twenty-three is a 922(g) count.

THE COURT: Right.

MR. GROENE: It's not a mandatory.

THE COURT: I know that.

MR. GROENE: Okay.

THE COURT: I'm explaining to you why, though. Here's what I'm looking at.

MR. GROENE: No. I understand. I just want to make sure that the Court -- I know the Court knows it, but I just want to make sure on the record that the Court knows that it's not a mandatory count. It's just a felon in possession count.

THE COURT: I understand that. Okay. Hear me out just for one second. Okay?

MR. GROENE: I will.

THE COURT: It seems to me that what I intend to do here for the substantive robbery counts is to run those concurrent, but the -- because the 924(c) counts on the robberies are all going to be consecutive, those are what's going to jack up the sentence for him. All right?

So to me, though, Count Twenty-three, whether it's consecutive or concurrent is really largely in my discretion under the guidelines.

And I'm explaining -- I believe I have a responsibility under the case law to explain why I intend to run that sentence consecutive. It's not mandatory like

the 924(c)s. It's discretionary.

I'm exercising my discretion because in my mind, the other -- all the other counts are robbery driven. This one is a separate criminal episode. At the time of his arrest, he had another firearm. And I believe, therefore, that it's appropriate to run that consecutive. In fact, that's the very reason he had a separate trial. You moved to -- I don't know if it was you or prior counsel.

MR. GROENE: We did.

THE COURT: All right. Moved to sever the count is because you said it was a separate episode, which would be prejudicial to him here, you know, on the robbery counts. That was granted. He had a trial. He was convicted. I believe he should get a consecutive sentence -- whatever that may be -- on that count because it's a different criminal episode.

And I wanted to explain that to you before we -- you argue so you understand the structure that I'm thinking about when you make your argument. Does that make sense?

MR. GROENE: It does.

THE COURT: Okay. All right.

All right. Now, Mr. Robertson, you'll recall, after you were convicted, I ordered that a presentence

report be prepared for you. Do you remember that?

THE DEFENDANT: Yes, I do.

THE COURT: And was the report brought to you and gone over with you by Mr. Groene?

THE DEFENDANT: Yes.

THE COURT: Now, other than the legal argument that I've just ruled in your favor on, did you have any other items that you believe to be in error?

THE DEFENDANT: No, sir.

THE COURT: All right. Thank you. You can have a seat.

So we're going to adopt the presentence report as --

MR. GROENE: Judge, may I interrupt you, if I may?

THE COURT: Go ahead.

MR. GROENE: He --

THE COURT: Mr. Robertson, you can have a seat.

MR. GROENE: There is nothing else in the PSR that really affects the guidelines or the sentence. There are a couple of other things that Mr. Robertson has brought up to my attention, and I have tried to verify those. Unfortunately, records are not available. They do not affect the guidelines. They do not affect the PSR. They only affect the classification that the BOP will

impose.

To some extent, the Court may -- may or may not have any power over -- over what it does, may not -- but whatever the Court does may carry some weight with the BOP with regards to the classification. And those -- I will just mention it because I want the record to be clear.

THE COURT: Well, I need to rule on them, then. Just tell me what the page and the paragraph.

MR. GROENE: Judge, it's paragraph 200, page 23, and paragraph 201 --

THE COURT: Hold on. Just one at a time. Hold on a second.

MR. GROENE: Yes, sir.

THE COURT: Page 23.

MR. GROENE: Paragraph 200.

THE COURT: All right. Just hold on one second.

MR. GROENE: And there is really nothing to do there, but Mr. Robertson wanted me to mention to the Court --

THE COURT: Okay. What do you want me to -- the brandish of a firearm?

MR. GROENE: That the BOP classifies that as a crime of violence. It's really not a crime of violence. So there's really nothing to do with that. Mr. Robertson just wanted me to mention that to the Court. However --

THE COURT: So there's no objection. You're just pontificating.

MR. GROENE: No objection. Correct.

THE COURT: All right.

MR. GROENE: Now, however, in paragraph 201, and this is at the top of page 25 for Your Honor.

THE COURT: Bottom of 24. It bleeds into 25 is what you're saying.

MR. GROENE: Yes, sir.

THE COURT: Okay. Go ahead.

MR. GROENE: So the last paragraph says that some show cause summons have been issued in 2007 and -- late 2007 and that charge Mr. Robertson with absconding from supervision.

Mr. Robertson claims that he never absconded and that the letters that were sent over to the general district court indicated that he had not completed his probation. I went to look for those records recently. They have been purged.

Because -- before -- because it says absconding here, now BOP will actually classify him, as they have before, with an absconder. So that's a two-level classification, which -- point enhancement, which actually -- with the BOP, not with the guidelines, which actually put him in a worse position.

So he just wanted me to raise that with the Court.

THE COURT: Well, it's not relevant for sentencing. I'm going to deny that -- your objection.

First of all, I need some evidence of that. But secondly, it's -- it's no impact on the sentence. I'm certainly not holding that against him in any way when looking at the sentencing. So I'm going to deny that objection.

MR. GROENE: Yes, sir.

THE COURT: Do you have anything else?

MR. GROENE: Other than that, there is nothing further, Judge.

THE COURT: All right. So we're going to proceed, then, with the Criminal History Category VI and the offense level 30.

All right. All right. Mr. Osyf, do you want to be heard?

MR. OSYF: Your Honor, I believe in light of the Court's rulings, that the government's request for 744 months still falls within the guideline range, on top of the consecutive 84 months, with a consecutive sentence for the 922(g). I don't think I'm mistaken in that. And that --

THE COURT: Well, you know you could -- you had

the ability, if you wanted to, to ask the 922 -- 924(c)s to be stacked. I mean, there's case law that suggests that the second and third convictions for the 924(c)s would be stacked. Instead of 70, I think it goes to 20. You didn't ask for that, though. You could have asked for that. You didn't.

MR. OSYF: We did not, Your Honor. And I don't think we can in light of *Jones*, if I'm not mistaken. I don't think we can do that.

THE COURT: Well, it doesn't matter. I'm not going to do it. So --

MR. OSYF: Your Honor, so the government feels that 744 months is sufficient but not greater than necessary. And I'm not going to belabor the point. The Court sat through a lengthy trial and is well familiar with the facts.

In light of the defendant's position paper, though, I would just like to point out a couple things; that Mr. Robertson is a smart, capable being. He has had every privilege in life, loving family, supportive family. He has virtually no issues other than some minor medical issues. No mental health issues. Some marijuana use throughout his life. But there's absolutely no reason for Mr. Robertson's behavior here.

Further, the defendant raises a point of a

discrepancy in the sentences here. Given the role that Mr. Robertson played here, he may not have been the one striking fear into the victims of the convenient stores himself by pointing firearms in their faces, but he did orchestrate this entire thing. He did manipulate other people to do that and, in so doing, destroyed the lives of Ms. Jones, Mr. Ellison and Mr. Keaton, irrevocably. They are felons and are facing significant time because of his conduct and his cowardly way, honestly, of going about it, by refraining from getting involved for fear of telling his cohorts that a retina scan would dime him out if he walked into these stores, which we heard from each one of them.

THE COURT: Let's talk about -- let's break down -- their request for a variance is based upon what they would say is a disparate sentence, right?

On Keaton, he's a juvenile, and he was recruited into that. I don't think he's at all -- while he may have been culpable in the robberies because he drew a gun on a number of them, because of his age, he's just in a different category.

Aquilla Jones, again, recruited for love, really manipulated there. I don't find her to be comparable either.

But Ellison is. I think Ellison is somebody you

have to look at to say why is it he's getting 196 months and you're asking for 744 here, I believe.

What was his criminal history category? Do you recall?

MR. OSYF: I don't recall, Your Honor.

THE COURT: All right.

MR. OSYF: I want to say perhaps III, but I'm not sure.

THE COURT: All right. Well, what else do you want to say about that point? Because that's the one that's really the comparable.

MR. OSYF: I do agree with the Court that he is the most comparable of the three. However, I still think there are significant differences there.

Mr. Ellison, though not a minor, was young. Clearly very impressionable. The Court saw Mr. Ellison's demeanor throughout the process, juxtapose with Mr. Robertson's demeanor, which is very stoic. It shows no contrition whatsoever.

THE COURT: By the way, Ellison had a Criminal History Category V.

MR. OSYF: Okay. I'm sorry, Your Honor. I misspoke.

THE COURT: And his guideline range was 140 to 175 months. Plus the firearm counts, right?

But at the same time, he also cooperated too. He testified. So --

MR. OSYF: That's correct, Your Honor.

THE COURT: He was sentenced by Judge Davis.

Have you filed a motion to reduce his sentence?

MR. OSYF: I don't believe it's been filed yet, but it is forthcoming.

THE COURT: Do you intend to do that?

MR. OSYF: I'm sorry?

THE COURT: Do you intend to do that?

MR. OSYF: I believe so, yes.

THE COURT: So he's going to get less than the 196. So -- go ahead.

MR. OSYF: And, again, to that point, Your Honor, he did cooperate. He -- I believe the single, most important aspect of criminal law is whether somebody is -- accepts responsibility for their actions. Mr. Ellison did that. He testified more than once for fear of his life.

We had, in a -- the previous -- which I think I can mention that now outside of a jury, the previous trial, there was two defendants that were cooperating that changed their testimony for fear of Mr. Robertson, for that psychological hold he still had on them.

Mr. Ellison struggled with both trials to

testify. He was young. He was impressionable. Testimony came out about how Mr. Robertson manipulated him in prison. Mr. Ellison tried to remove himself by going down to Georgia in between, in that break between the two separate groups of robberies, and Mr. Robertson recruited him back, pulled him back in and very much manipulated Mr. Ellison. Mr. Ellison is slow, for lack of better words. He has developmental issues that were brought out and I believe at sentencing as well. Part of the mitigating factors there. So I do agree that Mr. Ellison is far more of a comparator than Ms. Jones or Mr. Keaton, but there is still no discrepancy with such a sentencing gap here.

Mr. Robertson very much masterminded this whole thing, destroyed the lives of not just the -- again, the victims in the 13 stores but also these 3 people, to include Ms. Jones as the mother of one of Mr. Robertson's children. The impact that he had had on these lives and these victims is -- is exponential, whereas Mr. Ellison pretty much only harmed himself and, again, was accepting of responsibility for that. Came forward multiple times, cooperated, and has been contrite. There's no -- no vision of contrition from Mr. Robertson.

And, again, the government understands it's well within his right to assert his innocence and pursue his

freedom through the criminal justice system, but again and again pushed and pushed and pushed and asserts that he has nothing to do with this when he clearly did. And a fact finder made reasonable inferences and determined that he was culpable for these crimes.

And we think that 744 months is sufficient but not greater than necessary to account for these and hopefully deter Mr. Robertson, because clearly sentences in the past have not deterred him. His behavior has only escalated despite the fact, again, all the things that he has in life going for him. He made a conscious choice to do -- to act in this manner. That's all, Your Honor.

THE COURT: All right. Mr. Groene.

MR. GROENE: Yes, sir, Judge. Judge, I'm not going to make a closing argument. You heard the evidence, and you've read everything, and I'm sure you read the transcript.

I disagree with Mr. Osyf. Mr. Ellison participated willingly in this. He wasn't due by anybody. In fact, he said from that stand several times that he himself planned several robberies. His memory was terrible. So several robberies, I don't know whether it's two, three or a whole bunch of them. He clearly planned and executed the one over by his grandparents' house over there at the Big Lots.

You heard the testimony of -- you heard the testimony of the retired deputy sheriff -- I forgot his name -- from York County, who came and confronted Mr. Robertson when he was sitting behind Andrea's Restaurant, or whatever, and Ellison had gone over to -- I almost said Ellenson. But Ellison had gone over to, I guess, rob the store. It's now a Speedway, but it used to be a Hess, or something like that, off George Washington Parkway.

Ellison came back on his own, without any coaching or coaxing or prompting from Mr. Robertson. He had the presence of mind and the guilty and devious intent to hide, according to him, the gun, the backpack, the gloves, the mask under some sort of trash can, or whatever it was, a waste dumpster and come back and lied to the officer.

So the notion that but for Mr. Robertson Ellison would have never broken the law, I just -- I think it flies in the face of what Mr. Ellison said.

Now, Mr. Ellison also --

THE COURT: It also ignores his Criminal History Category V.

MR. GROENE: It does.

THE COURT: Right.

MR. GROENE: And I think some of the testimony

that was somewhat presented was that he had issues. You know, he had issues. He had threatened his family as well. So bottom line is he did cooperate.

I do think -- I do think -- I'm not sure how the guidelines -- whether the guidelines ever addressed manipulation. I guess organizing perhaps is manipulating. But I was present when Judge Allen sentenced Ms. Jones and the statement that Judge Allen made to Ms. Jones.

I would submit to the Court that under the law, principle, aiding and abetting, conspiracy, you know, the getaway driver is just as guilty as the guy who goes in the bank. The getaway driver, although guilty of the offense, might not be as guilty as the guy who goes into the bank and shoots the clerk.

Nobody, thank God, got shot here. But it's undeniable that it was because -- because he's dumb? I don't know. Because he's impressionable? I don't know. Because he's young? I don't know. Because he's gullible? I don't know. Or because he just has the excitement, adrenaline rush of a gangster? I don't know.

But it was Ellison who went into each one of those stores, and whether it was with a BB gun or with a real gun, of course, if you're on the other side of that barrel, you don't care. You're scared out of your life. But it was Mr. Ellison who went out there and put that gun

in front of these people.

I understand he cooperated. I understand he has very little recollection about what happened. Mr. Osyf says that he had remorse and contrition. I don't know. I can't get inside of his brain or his heart. But from what I saw, he was doing what he needed to do.

And as the Court knows from this job and your previous jobs, not everybody who pleads guilty and testifies -- they're playing the game. Maybe they are remorseful. Maybe they are contrite, but they're doing what they need to do. And they're doing what they need to do so that their sentence, perhaps, can get reduced.

I'm not saying -- what I'm saying, I guess, is -- inartfully, is that everybody who takes the stand and testifies is not necessarily contrite.

So, you know, I guess I'm going to have to get a calculator the way my last cases are going because the numbers are so high and I have to divide it by 12. But the question is this. Is a 60- -- the government is asking for 62 years. I guess it could go up given the Court's indication that the 922(g) count is going to be run separately.

The question is --

THE COURT: That doesn't mean -- no. Hold on a second. That doesn't mean it's going to go higher than

the government's number.

MR. GROENE: No. I understand.

THE COURT: What I'm saying -- I wanted to be honest with both of you, in terms of the structure, about what's going on so you could make an appropriate argument. That doesn't mean the final number is higher.

MR. GROENE: I understand, Judge.

And I will start with the final number. The question is what sentence -- and I -- Mr. Robertson, he intends to appeal, as you know. He is not -- he didn't testify. He's not going to argue anything about the guidelines other than that issue.

But the question is this. As the case is going to end up, for whatever reason, with people getting sentences reduced -- I guess -- I guess maybe Keaton will not get a sentence reduction, but the Court treated him fairly kindly, I would say, respectfully.

THE COURT: I factored in his cooperation.

But what I really -- well, first of all, his charge was different too. As I recall --

MR. GROENE: His charge was for lying about what he had done when he was a juvenile.

THE COURT: Right, because he had been prosecuted as a juvenile for the robberies in the state system.

MR. GROENE: And he got, like, six and a half years to serve, or something like that.

THE COURT: But his age is such a --

MR. GROENE: I understand.

THE COURT: To me, it's an outlier.

And I watched Ms. Jones' testimony. It was clear that this was motivated by love, which I think sadly, she still feels for the defendant. You could tell -- that was a pretty tough witness for you, Ms. Jones.

MR. GROENE: They all were, Judge.

THE COURT: Right. But your motion for a variance, to me, hinges on Ellison. And I think you're making some good points there. But I'm not sentencing Ellison today, right? In fact, I'm not the judge who's going to sentence him. It's going to be Judge Davis. I don't understand how this works down there. You got three judges --

MR. GROENE: And you're not the one who's going to cut his sentence either. You're not the one who's going to be, you know, reading the government's Rule 35 to determine what the government's recommended reduction is.

THE COURT: Right.

MR. GROENE: So what I'm -- lastly, I don't want to say any more because I can say it many times and I say

it wrong every time. The question is this: What is the sentence that is sufficient but not greater than necessary given everything that you know about this case?

THE COURT: Right.

MR. GROENE: And I submit that 62 years is too high. I think -- I would say 42 years is too high, but we're stuck with 42 years. So as close to 42 years as possible. Thank you.

THE COURT: Okay.

All right, Mr. Robertson. Do you want to come up to the lectern?

Mr. Robertson, this is your opportunity to say anything you want before I impose sentence. If you intend to say something, I'm going to ask you to take your mask down. If you don't want to say anything, that's your option. But this is your opportunity to say anything you want to me before I impose sentence.

THE DEFENDANT: I have nothing to say, Your Honor.

THE COURT: All right. Thank you.

All right. You can put your mask back up.

All right. Well, as we -- no, you've got to say there.

THE DEFENDANT: Sorry about that.

THE COURT: So anyhow -- so we are here now, as

I said, for the sentencing. I've sustained the defense objection. So we're working with a Criminal History Category VI, an offense level of 30. For the robbery counts, it's 168 to 210 months. Of course, it's a seven-year consecutive sentence on each of the 924(c)s. And as I said, I believe it's appropriate that the Count Twenty-three, which is a 922(g) count, that that be consecutive. Whatever the amount is is driven by the 3553(a) factors, but just because it's a separate criminal episode as demonstrated by the fact that he had separate trials. So then I'm obligated to impose, as Mr. Groene said, a sentence that is sufficient but not greater than necessary under the factors set forth in Section 3553(a).

We begin with number (1), the nature and circumstances of the offense and the history and characteristics of the defendant. We have 13 different robberies that were involved, or attempted robberies, of which, thank God, nobody was shot. It certainly could have happened. But this was serious violence. It was repeated. It was part of repeated criminal episodes. And to me, the defendant was the mastermind.

I'm denying the request for a variance even though, as to Mr. Ellison I think was a willing participant in this. I think he's the only comparable for the reasons that we spoke of. A sentence of 196 months.

That's not what I would have given, but I'm not the person that sentenced him.

But it was clear that this defendant was the mastermind of this, and he has rejected, at all opportunities, any efforts to accept responsibility in this. And as noted, Mr. Ellison cooperated, quite in contrary to the defendant.

You look at the history and characteristics of the defendant. He's 36 years of age. His record is simply atrocious. For a person of his age to have the record that he has is -- speaks to nothing but recidivism. At age 18, he had brandishing a firearm. At age 21, carrying a concealed weapon. 2008, a burglary, grand larceny. He had supervision revoked. He had another -- I think two violations on that sentence, which, again, shows that supervision does not work for him, only incarceration does.

2008, trespassing and larceny. 2010, receiving stolen property, and 2017, felon in possession, for which Judge Davis gave him 30 months. He was never released from custody, as I understand it, for that. But what it shows is a lifetime of criminal activity and sadly, a number of those with firearms, which speak to the danger that he is to the community.

And he did this despite having what appears to

be a good family. He comes from -- as he notes, he was born to loving and hardworking parents. Parents have been married for 43 years. And there's just no excuse, no excuse whatsoever for his lifetime of criminality here.

I've considered all of his individual factors, including his physical ailments. I find them to be inconsequential to -- when weighed against the danger that he represents to the community. His heavy marijuana use, Mr. Groene says, has an impact here. But, of course, that's conduct that he chose. I'd be glad to recommend that he receive the RDAP treatment when he's in BOP custody, if that's what you want.

Is that right, Mr. Groene?

MR. GROENE: Yes, sir.

THE COURT: All right. But the key fact here is his criminal record and the seriousness of the offense.

If we go, then, to factor number (2), the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, (B), to afford adequate deterrence to criminal conduct, and (C), to protect the public from future crimes of the defendant. It is that (C) factor which I think drives the sentence here such that he warrants the sentence that I think the government has requested.

(D), to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner. Again, we'll give him the RDAP program, but I think that's about it because his lifetime of criminal activity shows that what he needs is jail.

(3) and (4), types of sentences available. It has to be imprisonment because of the 924(c) counts. I'm not going to belabor that.

(5), any pertinent policy statements. None are really addressed here. None that I can really think of.

(6), though, is -- I think it's a key point, though, the need to avoid unwarranted sentencing disparities amongst defendants with similar records who have been found guilty of similar conduct. Again, I've already addressed that, I believe. But just so the record is clear, Mr. Keaton was a juvenile recruited by the defendant, again, manipulated by him. Aquilla Jones, again, manipulated by the defendant, using love as the vehicle, I suspect, for that.

But Ellison is the one because he was a willing participant. There's no question about that. He was a Criminal History Category V. This defendant is Criminal History Category VI. But I do believe that the defendant was the mastermind. The evidence showed that, number one.

Number two, Mr. Ellison did accept responsibility, did cooperate, and I think that's a significant difference, as well as the criminal conduct. So I'm denying the variance, as I said, for that reason.

So pursuant to Section 3553(a) and having considered the guidelines advisory, it is the judgment of the Court that the defendant, Christopher Robertson, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 744 months, which is 62 years, as the government has requested. The term, however, is different than as requested by the government.

The term consists of 210 months on each of Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen and Sixteen, the attempted robbery counts. Those are all to be served concurrently. A term of 84 months on each of Counts Fourteen, Fifteen, Eighteen, Twenty, Twenty-one and Twenty-two are all to be served consecutive to each other and to all other counts.

And then lastly, a term of 30 months will be served consecutively as to Count Twenty-three. That will be consecutive to all other counts. That should total up, under my math, to 744 months.

The defendant is remanded to the custody of the

United States Marshal to begin service of his sentence. I will recommend to the Bureau of Prisons that the defendant receive the RDAP drug treatment if he is eligible for that while in custody.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of five years. This term consists of three years on each of Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Sixteen and Twenty-three, and a term of five years on each of Counts Fourteen, Fifteen, Eighteen, Twenty, Twenty-one and Twenty-two, all to run concurrently.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district in which he is released. While on supervision, the defendant shall not commit another federal, state or local crime. He shall not unlawfully possess a controlled substance and shall not possess a firearm or destructive device.

The defendant shaly comply with the standard conditions that have been adopted by this Court as set forth in the presentence report, to which there's been no objection, and they are hereby incorporated into this judgment.

The defendant shall also comply with the

following special conditions: He shall apply all monies received from income tax refunds, lottery winnings, inheritances, judgments, settlements and any anticipated or unexpected financial gains to the outstanding court ordered financial obligation, or in a lesser amount to be determined by the Court, by recommendation of the probation officer.

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

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

The defendant shall participate in a program approved by the United States Probation Office for substance abuse, which program may include residential treatment and testing to determine whether the defendant has reverted to the use of drugs or alcohol, with costs to be paid by the defendant, all as directed by the probation officer.

I have considered the amount of loss sustained by the victims as a result of this offense, the defendant's net worth, liquid assets, the defendant's lifestyle and financial needs as reflected in the presentence report, his earning potential and others

relying upon him for support. I find he's not capable of paying a fine. Therefore, no fine will be imposed.

Now, there is a restitution -- do we have a consent order of restitution?

MR. OSYF: No, I don't believe so, Your Honor.

THE COURT: Are you challenging the restitution amount of $10,540.20?

MR. GROENE: We are not, Judge. We would just like to address how that gets paid later on.

THE COURT: All right. Well, we'll deal with that in a second.

I'm going to order that restitution be made in the total amount of $10,540.20.

Government, you are to tender a proposed consent order of forfeiture to us, which I'll follow.

The defendant is jointly and severally liable for the restitution, along with his co-conspirators. Aquilla Jones, who was prosecuted in case 4:18 CR 27, and Michael Ellison, prosecuted in 4 CR 40.

Also, I'm obligated to impose a $100 special assessment on each of the counts, for a total of $2100. That is due and payable immediately. If not paid immediately upon release, he shall make payments as to that amount, as well as the restitution, of not less than $100 per month, or 25 percent of his net monthly income,

whichever is greater, until paid in full, beginning 60 days after he begins his term of supervision.

Did you want to say something else, Mr. Groene?

MR. GROENE: I do, Judge, with the Court's indulgence.

Judge, Mr. Ellison --

THE COURT: Do you want to take your mask off?

MR. GROENE: Thank you.

THE COURT: Mr. Robertson?

MR. GROENE: Mr. Robertson has requested if the Court would order that the amount of -- the joint and several amount of restitution that is his obligation, that he could actually pay that from -- if he works at the UniCourt at the rate of $10 a month.

THE COURT: As opposed to?

MR. GROENE: As opposed to the Bureau of Prisons' financial responsibility unit going into his account and pulling out money. I guess that's how it works.

THE COURT: Okay. That request is denied. All the money he makes should go to the victims that he robbed.

So -- all right. Anything else from the government?

MR. OSYF: No, Your Honor.

THE COURT: Anything else, Mr. Groene?

MR. GROENE: Oh, Judge, we would ask that the Court consider recommending a location close to North Carolina. We know that the Bureau of Prisons is going to do that, but given his medical condition, somewhere close to Butner, North Carolina.

THE COURT: That's fine. I'll grant that request. Okay. Anything else?

MR. GROENE: No, he denied it.

That's it, Judge.

THE COURT: All right. Mr. Robertson, you have 14 days from today's date to appeal the sentence. If you want to appeal, it must be in writing. Mr. Groene will do it for you. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. I wish you well with the service of your sentence. Good luck to you.

MR. GROENE: Oh, Judge. I'm sorry. Mr. Robertson -- I guess I got it wrong -- that if the Court can actually recommend that he be considered for working at UniCourt in the Federal Bureau of Prisons.

THE COURT: I'm going to defer that to the Bureau of Prisons. I'm not going to weigh in one way or the other.

MR. GROENE: Yes, sir.