APPENDIX

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APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4369

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

KENNETH WENDELL RAVENELL,

Defendant – Appellant.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Liam O'Grady, Senior District Judge
(1:19-cr-00449-LO-1)

Argued: January 11, 2023 Decided: April 25, 2023

Before GREGORY, Chief Judge, and
WILKINSON and HEYTENS, Circuit Judges.

Affirmed by published opinion. Judge Wilkinson announced the judgment of the court and wrote an opinion, in which Judge Heytens joined as to Parts I, II, IV, V, and VI. Judge Heytens wrote an opinion, in which Chief Judge Gregory joined. Chief Judge Gregory wrote a dissenting opinion.

ARGUED: David M. Zornow, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, New York, New York, for Appellant. Leo Joseph Wise, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee. **ON BRIEF**: Peter H. White, SCHULTE ROTH & ZABEL LLP, Washington, D.C., for Appellant. Philip Selden, Acting United States Attorney, Baltimore, Maryland, Zachary H. Ray, Assistant United States Attorney, Alexandria, Virginia, Derek E. Hines, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Philadelphia, Pennsylvania, for Appellee.

WILKINSON, Circuit Judge:

After a jury trial, Kenneth Ravenell was convicted of one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). He now appeals, arguing that the district court made four errors warranting reversal. First, the district court erred in failing to instruct the jury on the applicable statute of limitations. Second, the court erred in failing to instruct the jury on the definition of "monetary transaction" in 18 U.S.C. § 1957. Third, the court erred by instructing the jury on conscious avoidance. And fourth, the conviction must be vacated under *Yates v. United States*, 354 U.S. 298 (1957), because there is no way to determine whether he was convicted on a legally valid theory. We disagree with these contentions. For the reasons that follow, we affirm the district court.

I.

A federal grand jury charged Ravenell with one count of Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy in violation of 18 U.S.C. § 1962(d), one count of money laundering conspiracy in violation of 18 U.S.C. § 1956(h), one count of narcotics conspiracy in violation of 21 U.S.C. § 846, one count of conspiracy to commit offenses against the United States in violation of 18 U.S.C. § 371, one count of obstruction of an official proceeding in violation of 18 U.S.C. § 1512(c)(2), and two counts of falsification of records in violation of 18 U.S.C. § 1519.

A.

Relevant to this appeal, the money laundering charge alleged that between 2009 and 2017, Ravenell was knowingly and intentionally involved in a single conspiracy to commit any one of three species of money laundering: (1) money laundering to promote an unlawful activity, specifically narcotics sales, as described in 18 U.S.C. § l956(a)(l)(A)(i) (promotional money laundering); (2) money laundering to conceal the source of funds from narcotics sales, as described in 18 U.S.C. § 1956(a)(l)(B)(i) (concealment money laundering); or (3) engaging in monetary transactions of $10,000 or more using the proceeds of unlawful activity, in this case narcotics sales, as described in 18 U.S.C. § 1957 (transactional money laundering). The government put forth evidence at trial attempting to show that Ravenell, a criminal defense attorney, used his position as a partner at his law firm, Murphy, Falcon, Murphy, Ravenell & Koch (MFM), to launder money in tandem with the illegal drug activities of his clients.

The government presented evidence of Ravenell's involvement in a single money laundering conspiracy relating to two drug organizations—one led by Richard Byrd and the other led by Leonaldo Harris. The majority of the evidence at trial focused on Byrd's marijuana distribution organization. Byrd was the head of a drug trafficking organization that bought thousands of pounds of marijuana in Arizona and California from growers in Mexico, shipped it across the country to the East Coast, and sold it wholesale to other drug distributors. This criminal enterprise

generated millions of dollars in proceeds. Byrd had known Ravenell since the 1990s and was previously one of Ravenell's clients before Ravenell joined MFM. Byrd was arrested and pled guilty to money laundering and drug charges.

According to Byrd and his associates, Ravenell gave Byrd's drug ring valuable advice. Ravenell told them how to evade law enforcement detection, how to launder drug proceeds through businesses and real estate investments, and how to then mix drug profits with the money generated from these other ventures to conceal their illicit source. Ravenell advised Byrd to run cash-focused businesses, such as a concert promotion business known as LOC Marketing, which served as a front for the money laundering. On Ravenell's advice, Byrd used drug proceeds to put on concerts and then charge people in cash at the door. This allowed Byrd to mix drug cash with cash generated at the event, helping conceal and promote Byrd's narcotics venture. Byrd and others testified that Byrd's drug ring provided Ravenell with stacks of cash in payment for his services in evading law enforcement.

Byrd also testified that Ravenell used his law firm to launder Byrd's money directly. Prior to February 2011, at which point Byrd was arrested in Arizona in a reverse-sting operation for attempting to buy hundreds of pounds of marijuana from federal agents, he was not a formal client of Ravenell's firm. Following Byrd's arrest, however, Byrd began sending money to Ravenell's firm via third parties like LOC Marketing. Byrd testified that all the money sent came from drug proceeds, businesses funded with drug proceeds, or drug money mixed with legitimate business revenue.

Byrd and others testified that Ravenell knew of the source of these funds.

The record showed that MFM's bank accounts accepted $1.8 million of drug funds and co-mingled drug funds from entities and individuals associated with Byrd. Evidence presented in the form of bank account information and ledgers also showed that Ravenell directed around $1.1 million of these funds to various projects and third parties to benefit Byrd. Ravenell then kept around $600,000 for legal fees, in addition to the alleged cash payments.

The government presented other evidence of money laundering conspiracy involving Ravenell's representation of Leonaldo Harris. Like Byrd, Harris shipped large quantities of marijuana from California to Maryland for distribution and sale, but Harris was not connected to Byrd's drug trafficking operations. Ravenell began representing Harris after Harris was arrested in April 2013 for federal narcotics offenses. According to Harris, Ravenell received more than $350,000 in drug proceeds via an associate of Harris, Avarietta Bailey. The ledger associated with Harris's case at MFM, however, only showed $187,000 credited to his case. Harris testified that Bailey gathered money owed to the Harris drug ring for its marijuana sales, then provided those illicit proceeds to Ravenell as payment for Harris's criminal defense. Bailey testified that the money paid to Ravenell came from the drug proceeds she collected, and that she explained to Ravenell exactly where the money was coming from and the method by which she was collecting it.

Ravenell's defense, on the other hand, told a different story, arguing that he had no knowledge about either drug organization. During cross-examination of

the government's witnesses, Ravenell argued that Byrd continuously lied to Ravenell about LOC Marketing to make Ravenell believe that it was a legitimate and profitable business. Moreover, Ravenell asserted that LOC Marketing was actually putting on well-attended and high-profile concerts, which further undermined Ravenell's guilty knowledge as it seemed to him to be a legitimate business.

Ravenell also argued that Byrd and those close to him all had something to gain by testifying against Ravenell: shorter sentences for them or their loved ones. According to Ravenell, this was reason enough to doubt their credibility. Ravenell also presented character testimony showing that he was an upstanding defense attorney, in stark contrast to the government's cooperators.

Finally, Ravenell sought to highlight the dearth of evidence as to the alleged cash payments made by the Byrd organization to Ravenell. Throughout trial, Ravenell pointed out that the evidence of cash payments relied solely on testimony. There was no physical evidence of such payments despite testimony that they numbered in the millions.

As to Harris, Ravenell argued that there was no evidence he knew that the money received from Bailey was drug money. Moreover, he highlighted the discrepancy between Harris testifying that he gave Ravenell over $350,000 in drug proceeds and Bailey testifying that she paid Ravenell between $175,000 and $200,000.

Following a three-week jury trial, Ravenell was convicted of money laundering conspiracy under § 1956(h) and acquitted on all other charges.

B.

Because Ravenell takes exception to various jury instructions during trial, we must explain the facts underlying the operative issues on appeal.

1.

After the government rested, Ravenell moved for a judgment of acquittal pursuant to Federal Rules of Criminal Procedure 29(a), arguing, *inter alia*, that the government had not proven that the money laundering conspiracy lasted into the applicable statute of limitations period. Per a pre-indictment tolling agreement, any conspiracy must have existed past July 2, 2014, to comply with the five-year statute of limitations period set forth in 18 U.S.C. § 3282(a). The district court denied the motion for acquittal, noting that the government had alleged and shown evidence of acts associated with the conspiracy past July 2, 2014, and that there was no evidence of withdrawal from the conspiracy on Ravenell's behalf.

After the defense presented evidence, Ravenell renewed his Rule 29 motion, again arguing that the government had not proven any overt acts past July 2, 2014. The court again denied the motion, finding that there was no evidence of Ravenell's withdrawal from the conspiracy and thus the "the conspiracy continued" past July 2, 2014. J.A. 2768.

Ravenell again renewed this issue in connection with the jury instructions. Ravenell's counsel submitted two proposed jury instructions on the statute of

limitations issue. The first was requested on December 21, 2021. It read:

> There is a limit on how much time the government has to obtain an indictment. For you to find the defendant guilty of conspiracy as to **Counts Two** and Three only, the government must prove beyond a reasonable doubt that at least **one overt act** in furtherance of the conspiracy was committed after July 2, 2014.

J.A. 3730 (emphasis in original). The district court declined to include this instruction, reasoning that no overt act was required. The next day, Ravenell offered a revised statute of limitations instruction. It read:

> There is a limit on how much time the government has to obtain an indictment. For you to find the defendant guilty of conspiracy as to Count Two, the government must prove by a *preponderance of the evidence* that the alleged conspiracy continued after July 2, 2014.

Suppl. App'x 2 (emphasis added). The district court declined to give the jury instruction, noting that it raised several "issues like withdrawal." J.A. 2880. The court reasoned that statute of limitations issues had not "been properly framed for the jury" and would thus "clearly confuse the jury," but they could "be dealt with as a matter of law . . . post-verdict, if necessary." *Id.* The court thus gave no jury instruction regarding the statute of limitations.

2.

During the jury instruction conference, the government proposed a "conscious avoidance," or willful blindness, instruction, which read in relevant part:

> Only with respect to Count Two [the money laundering conspiracy], in determining whether the defendant acted knowingly, you may consider whether the defendant deliberately closed his eyes to what would otherwise have been obvious to him. If you find beyond a reasonable doubt that the defendant acted with (or that the defendant's ignorance was solely and entirely the result of) a conscious purpose to avoid learning the truth (e.g., that the statement was false), then this element may be satisfied. However, guilty knowledge may not be established by demonstrating that the defendant was merely negligent, foolish, or mistaken.

J.A. 3374. Ravenell timely objected to this instruction, arguing that the only evidence in this case was that of "knowing and intentional conduct," where Ravenell "knew he was accepting drug proceeds." J.A. 2776. The district court declined to accept Ravenell's argument and proceeded to give the government's requested instruction.

3.

Under the conspiracy to commit money laundering charge, the parties agreed on a set of proposed jury instructions which set out the required elements of the 18 U.S.C. § 1956(h) conspiracy. The jury was

instructed that a conviction for money laundering conspiracy required proving beyond a reasonable doubt (1) "an agreement between two or more persons to commit money laundering;" (2) "that the defendant knew that the money laundering proceeds had been derived from an illegal activity;" and (3) "that the defendant knowingly and voluntarily became part of the conspiracy." J.A. 3414.

Additionally, because Ravenell was charged with conspiracy to commit any of three species of money laundering found in 18 U.S.C. § 1956 and § 1957, the district court gave three additional jointly agreed upon instructions on the elements of promotional money laundering under 18 U.S.C. § 1956(a)(1)(A), concealment money laundering under 18 U.S.C. § 1956(a)(1)(B), and transactional money laundering under 18 U.S.C. § 1957. Importantly, on the instructions for the third conspiratorial object under § 1957, the parties agreed that the first element for this conspiratorial object was that "the defendant engaged (or attempted to engage) in a monetary transaction in or affecting interstate commerce." J.A. 3422. The jury instructions did not define the term "monetary transaction." However, Ravenell failed to timely object to this omission from the mutually agreed-upon jury charge.

Ravenell now appeals his conviction for money laundering conspiracy, raising four objections which he argues warrant reversal. Chief among these errors, Ravenell asserts, is that the district court erred by denying his request for a jury instruction on the statute of limitations. Ravenell also argues that the district court plainly erred in failing to instruct the jury on the definition of "monetary transaction" in 18

U.S.C. § 1957. Ravenell further claims that the district court erred in providing the government's proposed conscious avoidance instruction. Ravenell last insists that because there is no way to determine whether he was convicted on a legally valid theory, his conviction must be reversed under *Yates v. United States*, 354 U.S. 298 (1957). We shall address the issues in turn.

II.

Ravenell's chief argument is that the district court erred in not instructing the jury on the statute of limitations. Per the pre-indictment tolling agreement, the five-year statute of limitations period applicable to the 18 U.S.C. § 1956(h) money laundering charge ran back to July 2, 2014. According to Ravenell, any conspiracy involving Harris or Byrd terminated prior to that date. Ravenell claims that Byrd's last payment to Ravenell's law firm was in January of 2014, and Byrd was arrested in April 2014, after which Byrd testified that he ceased his illegal activity. Ravenell also asserts that Harris's last payment to Ravenell's law firm was likewise in April 2014. Therefore, he contends, it was error for the district court not to instruct the jury on the statute of limitations, as the government had not proven that the alleged conspiracy continued past July 2, 2014, into the limitations period.

We review a district court's rulings on jury instructions for abuse of discretion. *United States v. Bolden*, 325 F.3d 471, 486 (4th Cir. 2003). While a district court must instruct the jury on all elements of a crime, *see United States v. Muse*, 83 F.3d 672, 679 (4th

Cir. 1996), the Supreme Court has held that "[c]omission of the crime *within the statute-of-limitations period* is not an element of [a] conspiracy offense," *Smith v. United States*, 568 U.S. 106, 112 (2013). It is instead an affirmative defense that a defendant must raise at trial. *Id.* The "party challenging the jury instructions faces a heavy burden, for we accord the district court much discretion to fashion the charge." *Noel v. Artson*, 641 F.3d 580, 586 (4th Cir. 2011) (internal quotations omitted). Given the district judge's "superior position . . . to evaluate evidence and formulate the jury instruction," we "normally defer to a district court's decision." *United States v. Gray*, 47 F.3d 1359, 1368 (4th Cir. 1995).

A.

We find no reversible error in the district court's decision not to give a statute of limitations instruction from the jury. As an initial matter, neither of Ravenell's proffered jury instructions on the statute of limitations were legally correct. We have previously held that a district court commits reversible error in declining to provide a proffered jury instruction only when "the instruction (1) was correct; (2) was not substantially covered by the court's charge to the jury; and (3) dealt with some point in the trial so important, that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense." *United States v. Hassan*, 742 F.3d 104, 129 (4th Cir. 2014) (internal quotations omitted). On the record before us, Ravenell falters at step one.

Ravenell's first statute of limitations instruction would have asked the jury to find that the government

had proven "beyond a reasonable doubt that at least **one overt act** in furtherance of the conspiracy was committed after July 2, 2014." J.A. 3730. The Supreme Court, however, has clearly held that "conviction for conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), does not require proof of an overt act in furtherance of the conspiracy." *Whitfield v. United States*, 543 U.S. 209, 219 (2005); *see also United States v. Green*, 599 F.3d 360, 372 (4th Cir. 2010). Had the district court given Ravenell's proposed instruction on the statute of limitations, it would have committed legal error.

Ravenell's second statute of limitations instruction was similarly erroneous. Ravenell asked the district court to instruct the jury that it had to find the conspiracy continued during the limitations period by a "preponderance of the evidence." Supp'l App'x 2. This instruction is legally incorrect on its own terms. If Ravenell were correct that the statute of limitations is an element of a § 1956(h) conspiracy—which we note it is not, *see Green*, 599 F.3d at 371—then the government would need to prove the continuation of the conspiracy beyond a reasonable doubt, not by a preponderance of the evidence, *see Smith*, 568 U.S. at 110. Ravenell even admits that the suggested burden of proof was error. *See* Appellant Br. at 9-10; Reply Br. at 3. The proffered jury instruction was thus legally deficient. Had the district court instructed the jury using Ravenell's preponderance of the evidence standard, it again would have committed legal error, rendering its decision potentially reversible by this court. *See United States v. Lindberg*, 39 F.4th 151, 162-63 (4th Cir. 2022).

Judges are never obligated to give legally improper instructions. When a party's "proposed instruction [is] incorrect," the district court does not "reversibly err in refusing to provide it." *United States v. Hill*, 927 F.3d 188, 210 (4th Cir. 2019). The district court properly declined to give the erroneous instructions tendered here.

B.

Despite acknowledging his own failure to furnish legally correct jury instructions, Ravenell still argues that the district court erred in refusing to provide any statute of limitations instruction after he requested one. According to Ravenell, "[w]hen a conspiracy charge relies on acts outside of the limitations period and there is a legitimate question whether it continued into the limitations period, the jury must be instructed to determine whether the prosecution was timely." Appellant Br. at 18. We disagree. Such a rule once again misunderstands the difference between an overt act conspiracy and a non-overt act conspiracy.

1.

Money laundering conspiracy under 18 U.S.C. § 1956(h) is a non-overt act conspiracy. *Whitfield*, 543 U.S. at 219; *Bolden*, 325 F.3d at 491. This means that "§ 1956(h) conspiracy offenses require nothing more than an agreement to launder money," and thus "it follows that the agreement is necessarily the 'conduct' making up the offense." *United States v. Ojedokun*, 16 F.4th 1091, 1105 (4th Cir. 2021). In other words, non-overt act conspiracies "do[] not make the doing of any

act other than the act of conspiring a condition of liability." *United States v. Shabani*, 513 U.S. 10, 13-14 (1994) (internal quotations omitted).

A non-overt act conspiracy is presumed to continue "as long as its purposes have neither been abandoned nor accomplished, and no affirmative showing has been made that it has terminated." *United States v. Seher*, 562 F.3d 1344, 1364 (11th Cir. 2009) (internal quotations omitted). The "dispositive consideration" for a statute of limitations defense in a non-overt act conspiracy "is whether [Ravenell] withdrew from the conspiracy or the conspiracy ended outside the five-year limitations period." *United States v. Wilkins*, 354 Fed. App'x 748, 756 n.10 (4th Cir. 2009). Therefore, while overt act conspiracies require a showing "that at least one overt act in furtherance of the conspiratorial agreement was performed" within the applicable statute of limitations period, *Grunewald v. United States*, 353 U.S. 391, 396-97 (1957), non-overt act conspiracies are presumed to continue absent evidence to the contrary.

In terms of the statute of limitations for a non-overt act conspiracy, the burden shifts. The government must allege and prove an agreement to enter into a conspiracy, but a conspiracy continues unless a defendant can show affirmative withdrawal or termination. We have previously held that once a conspiracy is established, "it is presumed to continue unless or until the defendant shows that it was terminated or he withdrew from it." *United States v. Walker*, 796 F.2d 43, 49 (4th Cir. 1986). A "mere cessation of activity in furtherance of the conspiracy is insufficient." *Id*. Rather the "defendant must show affirmative acts inconsistent with the object of the

conspiracy and communicated in a manner reasonably calculated to reach his co-conspirators." *Id*. This places the burden on the defendant to show that a non-overt act conspiracy ended prior to the statute of limitations, rather than placing the burden on the government to show that the same conspiracy continued. *See Smith*, 568 U.S. at 110.

Any other requirement would contravene the nature of a non-overt act conspiracy. If a defendant need not prove withdrawal or termination to assert a statute of limitations defense, then a burden would be on the government to produce evidence that the conspiracy did not end. Such a requirement would essentially shift the burden to the government to show an overt act demonstrating the conspiracy's continuation. This would eviscerate the line between non-overt act and overt act conspiracies, as both would require the government to show an overt act, contradicting the text Congress enacted. *Whitfield*, 543 U.S. at 214 ("Because the text of § 1956(h) does not expressly make the commission of an overt act an element of the conspiracy offense, the Government need not prove an overt act to obtain a conviction.").

In this case, Ravenell offered no affirmative evidence showing that the conspiracy was terminated or that he affirmatively withdrew from the conspiracy prior to the operative July 2, 2014, limitations date. Rather than making that required showing, he simply insists that since the last payments received from Byrd and Harris were in January and April 2014 respectively, and that Byrd was arrested in April 2014, then the "central purpose" of the money laundering conspiracy was accomplished. Appellant Br. at 24. But a "mere cessation of activity in furtherance of the

conspiracy is insufficient" to establish that the conspiracy ended. *Walker*, 796 F.2d at 49. Instead of highlighting the ways in which the conspiracy affirmatively ended, Ravenell attempts to flip the burden back to the government to show continuation via overt acts. That is not what the law requires.

2.

Ravenell relies on our decision in *United States v. Head*, 641 F.2d 174 (4th Cir. 1981), to argue that his conviction for money laundering conspiracy "relied heavily on *conduct* that occurred outside the limitations period," which "necessitate[ed] an instruction" on the statute of limitations. Appellant Br. at 19 (emphasis added). *Head*, however, is inapplicable. The appellants in that case were charged under the general criminal conspiracy statute, 18 U.S.C. § 371, which requires proof of an overt act. *Head*, 641 F.2d at 176. We held that the district court erred in not providing a statute of limitations instruction when requested as "the indictment rested in large part on *acts* occurring without the limitations period." *Id.* at 177 (emphasis added). Where a mere agreement is the relevant conduct, however, the temporal nature of certain overt acts has much less bearing on a conspiracy's continuation into the statute of limitations without evidence of termination or withdrawal.

Indeed, *Head* "did not conclude" that a jury instruction on the statute of limitations "was necessary in every case or that the statute of limitations had become an essential element of conspiracy." *United States v. Matzkin*, 14 F.3d 1014, 1018 (4th Cir. 1994). Instead, it announced a "general rule" that "the

prosecution must prove an overt act in furtherance of the conspiracy committed within the limitations period" for the general criminal conspiracy statute. *Id.* at 1017. In short, it said nothing about non-overt act conspiracies. Simply because some conspiratorial acts in Ravenell's case occurred before the July 2, 2014 limitations date did not mean that the district judge was required to provide a statute of limitations instruction. Declining to give one was therefore not an abuse of the substantial discretion we afford district judges in fashioning jury instructions.

C.

If this were not enough, the government did in fact present evidence of conduct undertaken in furtherance of the money laundering conspiracy past July 2, 2014, even though it was not needed for a non-overt act conspiracy. Though not required, "proof of overt acts can be useful for . . . showing that a conspiracy . . . continued into a period within the statute of limitations." *Green*, 599 F.3d at 372. Ravenell was charged with participation in a single money laundering conspiracy involving both Harris and Byrd. The record is full of evidence that the money laundering conspiracy relating to both men did not terminate before the applicable statute of limitations deadline.

First, Ravenell remained Byrd's lawyer until October 10, 2014, more than three months beyond the July 2 cutoff. Byrd testified that he paid Ravenell with drug proceeds to both represent Byrd and launder the proceeds through his law firm. Evidence presented at trial showed that Ravenell's personal money laundering of Byrd's drug proceeds began when Byrd became

a client of Ravenell's law firm. Ravenell accepted about $1.8 million in drug proceeds, directed around $1.1 million out of the firm to various projects and third parties to benefit Byrd, and kept the remaining money for legal fees. As the money laundering conspiracy was part and parcel of Ravenell's representation of Byrd, the fact that the attorney-client relationship continued into the limitations period undercuts any assertion that the conspiracy ended before then.

Second, money credited to Byrd's drug ring remained at Ravenell's law firm past July 2, 2014. The drug proceeds provided to Ravenell and deposited into his law firm's escrow account were tracked on internal ledgers associated with Byrd. These ledgers were entered into evidence at trial, and they showed that as of August 28, 2014, there was a remaining balance of roughly $12,000 credited to Byrd. As the object of the conspiracy was to launder drug proceeds via Ravenell's law firm, the fact that these drug proceeds remained at the law firm is probative.

Third, jurors heard testimony regarding a proposed partnership between Byrd, Ravenell, and another distributor named Darnell Miller. In 2014, prior to Byrd's arrest in April, Byrd and Miller discussed connecting their marijuana drug networks with Ravenell acting as an intermediary between the two and collecting the profits from the operation. Byrd testified that after he was arrested on April 29, 2014, he gave Miller's number to Ravenell "so they could continue on the operation" without Byrd. J.A. 440. Miller and Ravenell met in May 2014, during which Ravenell offered to "wash" Miller's money in the same way that he did Byrd's. J.A. 1466, 1494-96. Miller

testified that he decided not to move forward with this partnership only when he found out that the FBI had raided Ravenell's law office, which did not happen until August 2014.

Fourth, the government presented uncontroverted evidence that Ravenell made a $750 payment on August 1, 2014, to Phoenix Towing Services on Byrd's behalf. As Ravenell concedes, this was directly related to his representation of Byrd, as it was to pay for the storage of Byrd's vehicles that were seized following an earlier arrest in Arizona in 2011. Evidence presented at trial shows continuous payments from Ravenell's law firm to Phoenix Towing both before and after the applicable limitations date.

Ravenell points to two pieces of evidence related to Byrd which he believes shows termination of the conspiracy: (1) the last payment from Byrd to the law firm was made on January 6, 2014, and (2) Byrd was arrested by federal authorities on April 29, 2014, after which, Byrd testified, he no longer engaged in drug trafficking activities. According to Ravenell, "[w]ith Byrd out of the conspiracy—whose central purpose was laundering money *for Byrd*—. . . the alleged conspiracy as it pertains to Byrd concluded outside the applicable limitations period." Appellant Br. at 25 (emphasis in original). "Arrest of some co-conspirators," however, "does not, as a matter of law, terminate a conspiracy." *United States v. Grubb*, 527 F.2d 1107, 1109 (4th Cir. 1975). And, moreover, "[a]cts in furtherance of a criminal conspiracy include exploits large and small, dealings that represent turning points in the conspiracy and those that merely enable it to continue its operations." *United States v. Smith*, 452 F.3d 323, 335 (4th Cir. 2006). Thus, the mere fact

that these acts happened before the statute of limitations period does not rebut the presumption, nor negate the evidence, of continuation.

Ravenell likewise claims that the portion of the conspiracy involving Harris ended on April 25, 2014, the date of the last payment from Harris to Ravenell's law firm. According to Ravenell, no "further payment was due or contemplated" after that time. Appellant Br. at 24. This is controverted, however, by testimony at trial as no evidence showed that the last payment ended the agreement to launder drug proceeds. Harris testified that Ravenell demanded more money from him to continue his representation and stated that he would continue with that representation should he receive the money. Ravenell then did not withdraw as Harris' counsel until November 17, 2014, well within the limitations period. Bailey further testified that her efforts to collect drug proceeds to pay Ravenell were ongoing. She also stated that she received a target letter in November 2014 from the United States Attorney's Office, after which she destroyed records about her collection of drug money and attempted to contact Ravenell.

All told, there was ample evidence that the conspiracy continued past the July 2, 2014 limitations date. Given that evidence, and the issues with Ravenell's theory on the statute of limitations, the district court did not abuse its discretion in withholding a statute of limitations instruction.

III.

As to Part III, Judge Heytens wrote the opinion, in which Chief Judge Gregory joined. For the

following reasons, I agree that plain error is the applicable standard, and that Ravenell has failed to satisfy its elements.

Ravenell next asserts that the district court erred by failing to instruct the jury on the definition of "monetary transaction" under 18 U.S.C. § 1957(f)(1). Because Ravenell "fail[ed] to preserve his objection, our review on direct appeal is for plain error." *United States v. Said*, 26 F.4th 653, 660 (4th Cir. 2022). To prevail under plain error review, Ravenell must show that "the court's jury instructions included an error that was clear and obvious, and that the error affected his substantial rights, meaning that it affected the outcome of the district court proceedings." *Id.* (internal quotations and alterations omitted). Even then, a court will "not correct the error unless it seriously affects the fairness, integrity or public reputation of judicial proceedings." *United States v. Ali*, 991 F.3d 561, 572 (4th Cir. 2021) (internal quotations omitted); *United States v. Olano*, 507 U.S. 725, 732 (1993).

18 U.S.C. § 1957(a) prohibits "knowingly engag[ing] or attempt[ing] to engage in a monetary transaction in criminally derived property of a value greater than $10,000" with funds that are "derived from specified unlawful activity." 18 U.S.C. § 1957(f)(1), in turn, defines "monetary transaction" as "the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution." The definition of monetary transaction, however, contains a safe harbor provision, which excepts "any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution." 18

U.S.C. § 1957(f)(1). Ravenell claims the district judge erred in failing to instruct the jury on the definition of "monetary transaction" in § 1957(f)(1) because his actions with Harris are protected by the safe harbor provision.

Ravenell's argument fails in multiple respects. First, Ravenell confuses a conspiracy with a substantive offense, mistakenly treating a substantive § 1957 violation as a necessary element to a § 1956(h) conspiracy conviction. *See Green*, 599 F.3d at 371. Second, Ravenell invokes § 1957's safe harbor in vain because the statute does not protect his actions in this case. *See Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 626 (1989); *United States v. Blair*, 661 F.3d 755, 771-72 (4th Cir. 2011). And third, even accepting *arguendo* there was an error, Ravenell cannot avail himself of an error that his counsel invited by agreeing to the jury instructions without the definition of "monetary transaction." *United States v. Lespier*, 725 F.3d 437, 450 (4th Cir. 2013). I consider each point in turn.

A.

First, Ravenell conflates the elements of a money laundering conspiracy under 18 U.S.C. § 1956(h) with the elements of a substantive 18 U.S.C. § 1957 offense.

The charged offense at issue here is not one of engaging in monetary transactions involving criminally derived property in violation of 18 U.S.C. § 1957. Rather, it is conspiracy to commit money laundering under 18 U.S.C. § 1956(h), which states that "[a]ny person who conspires to commit" money laundering

"shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy." 18 U.S.C. § 1956(h). For a conviction under § 1956(h), the government "must prove the following essential elements: (1) the existence of an agreement between two or more persons to commit one or more of the substantive money laundering offenses proscribed under 18 U.S.C § 1956(a) or § 1957; (2) that the defendant knew that the money laundering proceeds had been derived from an illegal activity; and (3) the defendant knowingly and voluntarily became part of the conspiracy." *Green*, 599 F.3d at 371.

The elements of a § 1956(h) violation do not require the government to prove a violation of § 1957. Indeed, the text of the statute contemplates "conspir[ing] to commit any offense defined in this section *or* section 1957." 18 U.S.C. § 1956(h) (emphasis added). This language indicates that an individual can be guilty of money laundering conspiracy by conspiring to commit one of the three forms of substantive money laundering detailed in § 1956 and § 1957: promotional money laundering under 18 U.S.C. § l956(a)(l)(A)(i), concealment money laundering under 18 U.S.C. § 1956(a)(l)(B)(i), *or* transactional money laundering under 18 U.S.C. § 1957. Because "liability under § 1956(h) can be established by showing a conspiracy to commit" any one of the object crimes listed in § 1956(a) and § 1957, the government need not include a § 1957 object in the first place. *United States v. Miller*, 41 F.4th 302, 314 (4th Cir. 2022).

The government charged Ravenell with conspiracy to commit promotional, concealment, and

transactional money laundering, and the judge instructed the jury on the elements of these three objects under 18 U.S.C. §§ l956(a)(l)(A)(i)-(B)(i), 1957. The jury only needed to find an *agreement* to commit one or more of these three substantive offenses to find Ravenell guilty of conspiracy to commit money laundering. *Green*, 599 F.3d at 371; *see also United States v. Tucker*, 376 F.3d 236, 238 (4th Cir. 2004) ("Proof of a conspiracy does not require proof that the object of the conspiracy was achieved or could have been achieved, only that the parties agreed to achieve it.").

It thus makes sense why this circuit has declined to read the text of § 1956(h) to require proof of the substantive offenses defined in § 1956 or § 1957 as an essential element of the conspiracy. *See, e.g., United States v. Singh*, 518 F.3d 236, 248 (4th Cir. 2008); *United States v. Alerre*, 430 F.3d 681, 693-94 (4th Cir. 2005). It therefore follows that because this court has never held that § 1957 is an element of money laundering conspiracy, then the definition of "monetary transaction" found in § 1957(f) is *a fortiori* not an essential element of a § 1956(h) money laundering conspiracy. Ravenell's view that the definition of "monetary transaction" under § 1957 is a necessary element of § 1956(h) thus conflates two different crimes. It attempts to sneak the elements of § 1957 into the elements of § 1956(h) listed in *Green*, 599 F.3d at 371.

This court has held that only three elements are "essential" to a money laundering conspiracy conviction under § 1956(h). A district court must instruct the jury on each of them. *Muse*, 83 F.3d at 679. The district court did so. It therefore did not err, much less clearly or obviously, by omitting the definition of "monetary transaction" in § 1957.

B.

Second, the Supreme Court and the Fourth Circuit have both made clear that Ravenell's actions fall outside the protections of 18 U.S.C. § 1957(f)(1)'s safe harbor.

1.

To reiterate, the statute's safe harbor provision excepts "any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution." 18 U.S.C. § 1957(f)(1). This circuit previously considered the full scope of § 1957(f)(1)'s safe harbor in *United States v. Blair*, 661 F.3d 755 (4th Cir. 2011). The *Blair* court emphasized the importance of the statute's text when mapping the contours of the safe harbor, underscoring that if "Congress wanted to create a broad exception," similar to the one Ravenell advances now, Congress "could have employed unqualified language exempting transactions 'for payment of counsel.'" *Blair*, 661 F.3d at 771. The fact that it did not reveals that "the scope of the safe harbor provision is shaped by the Supreme Court's ongoing interpretation of the Sixth Amendment." *Id.* "[A]nyone seeking to benefit from § 1957(f)," therefore, "must tie his conduct to the Sixth Amendment right to counsel." *Id.* If conduct falls outside the recognized ambit of the Sixth Amendment, then that conduct finds no sanctuary in § 1957(f)(1)'s safe harbor.

The Supreme Court's interpretation of the Sixth Amendment establishes that "'no one has a

constitutional right to use . . . criminally derived proceeds to retain a defense attorney.'" *Id.* at 773 (quoting *Caplin & Drysdale*, 491 U.S. at 626). In other words, a "defendant has no Sixth Amendment right to spend another person's money for services rendered by an attorney." *Caplin & Drysdale*, 491 U.S. at 626. The Court has underscored that "[w]hatever the full extent of the Sixth Amendment's protection of one's right to retain counsel of his choosing, that protection does not go beyond the individual's right to spend his own money to obtain the advice and assistance of counsel." *Id.* (internal quotations and alterations omitted).

This court has acknowledged such a general principle, explaining that "if the defendant owns the property, he is entitled to use it for his defense; if he does not own the property, he may not," *United States v. Marshall*, 872 F.3d 213, 220 (4th Cir. 2017), because "Sixth Amendment rights are at bottom *personal* to the accused," *Blair*, 661 F.3d at 772. This personal right could become attenuated by criminals acting through others to secure counsel: "Congress did not . . . intend for § 1957(f) to empower a drug lord to sprinkle money around to hire counsel for his underlings," for this would "undermine the attorney-client relationship." *Id.* Conversely, a drug lord may not rely on his underlings to gather drug money from the streets to pay an attorney on his behalf lest the court condone the same attenuation of the attorney-client relationship.

The upshot of the Supreme Court's Sixth Amendment doctrine here is that "a criminal defendant has no Sixth Amendment right to use illegally obtained funds to hire an attorney." *United States v. Farmer*,

274 F.3d 800, 802 (4th Cir. 2001). The Supreme Court has thus drawn a bright line between actions that implicate the Sixth Amendment's guarantee of counsel and actions that do not properly warrant Sixth Amendment protection. No lawyer has the "right" to accept illegally procured gains "in payment of a fee." *Caplin & Drysdale*, 491 U.S. at 626 (internal quotations omitted). The boundaries of § 1957(f)(1)'s safe harbor are correspondingly demarcated by this well-established doctrine.

2.

With these principles underlying § 1957(f)(1) in mind, the analysis of Ravenell's conduct is straightforward. I note at the outset that Ravenell never once argues that his monetary transactions with *both* Harris *and* Byrd are protected by the safe harbor. He asserts that his "exoneration on every other count related to Byrd" demonstrates that only his monetary transactions with Harris could be the basis for his conspiracy conviction, and the transactions with Harris are protected by § 1957(f)(1). Appellant Br. at 30.

This is too strong an inference to draw from the jury's verdict, for "the jury cannot be said to have necessarily rejected any facts when it returns a general verdict of not guilty." *United States v. Watts*, 519 U.S. 148, 155 (1997) (internal quotations omitted). Ravenell was not therefore exonerated on all conduct relating to Byrd, for an "acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt." *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984). Ravenell's

assertion that his conduct with Harris is protected by the safe harbor thus makes the fatal misstep of ignoring his conduct with Byrd.

Even assuming for the sake of argument, however, that only Ravenell's actions with Harris are at issue, the above principles demonstrate that he still cannot invoke the protections of § 1957(f)(1). Both Bailey and Harris testified that Bailey was collecting money from Harris's drug dealing enterprise to pay directly to Ravenell, and that Ravenell knew of the source of the money. This plain fact reveals two things: First, the payments did not come to Ravenell from some untainted channel. *See, e.g., Luis v. United States*, 578 U.S. 5, 12-13 (2016); *Marshall*, 872 F.3d at 219-20. They did not come from Harris to secure Ravenell as Harris' counsel. They came from an arrangement through which Bailey would collect drug money owed to Harris and deliver it to Ravenell. This third-party payment system thus attenuated the "personal" nature of the Sixth Amendment right. *Blair*, 661 F.3d at 772. Second, as both Harris and Bailey testified, all the money paid to Ravenell was the product of drug dealing profits. Accordingly, the money Harris used to pay Ravenell was not, by law, his to spend. *Id*. at 771-72.

No tenable argument can be made that Ravenell's actions brought him under the statute's safe harbor. The district court, therefore, did not plainly err by not instructing the jury about § 1957(f)(1)'s definition of "monetary transaction" and its corresponding safe harbor provision. Well-established Supreme Court doctrine and on-point precedent from this circuit compel the conclusion that Ravenell's actions do not warrant the safe harbor's protection.

C.

Finally, Ravenell invited any error of which he now complains by affirmatively agreeing to the final jury instructions. "In the context of plain error review, an error that was invited by the appellant cannot be viewed as one that affected the fairness, integrity, or public reputation of judicial proceedings." *Lespier*, 725 F.3d at 450 (internal quotations omitted). In other words, a "criminal defendant is often not entitled to reversal of his conviction where he invites the error he complains of on appeal." *United States v. Simmons*, 11 F.4th 239, 266 n.18 (4th Cir. 2021).

Ravenell and the government jointly submitted jury instructions that included the parties agreed upon elements of conspiracy to commit money laundering under § 1956(h). These instructions did not include a definition of "monetary transaction" or a reference to the safe harbor provision. In fact, the record shows that the defense suggested edits to the relevant instruction but did not make any remarks about needing a definition of "monetary transaction" or the safe harbor under § 1957. *United States v. Day*, 700 F.3d 713, 727 n.1 (4th Cir. 2012) (invited error analysis applies where a defendant and the government "jointly proffer[] . . . jury instruction[s] that [the defendant] now objects to on appeal"). Ravenell cannot now claim that it was reversible error to omit such instructions that his own attorneys never proffered to the district court.

In short, Ravenell's claim for instructional error falters for multiple reasons. First, the district court did not err, as it did not fail to instruct on an element

of what was a conspiracy offense. Moreover, the district court did not plainly err in failing to give a safe harbor instruction as to acts which were flatly precluded from its protection by Supreme Court and circuit precedent. Finally, the error of which Ravenell complains was not only subject to plain error analysis, but was also invited when the attorneys agreed upon the relevant instructions in the case.

IV.

Ravenell next argues that the district court erred in giving the government's proposed conscious avoidance instruction. He contends the government showed no evidence that he "consciously avoided knowing he was laundering drug proceeds." Appellant Br. at 42. We review a court's decision to offer such an instruction for abuse of discretion. *United States v. Vinson*, 852 F.3d 333, 357 (4th Cir. 2017).

As explained above, to prove conspiracy to commit money laundering under 18 U.S.C. § 1956(h), the government must prove "(1) the existence of an agreement between two or more persons to commit" substantive money laundering, "(2) that the defendant knew that the money laundering proceeds had been derived from an illegal activity; and (3) the defendant knowingly and voluntarily became part of the conspiracy." *Green*, 599 F.3d at 371. The knowledge element of the second prong can be satisfied in two ways: by evidence of "subjective knowledge that the proceeds were derived from an unlawful source," or "by evidence that [a defendant] made himself deliberately ignorant of that fact." *United States v. Farrell*,

921 F.3d 116, 145 (4th Cir. 2019) (internal quotations omitted).

Regarding the second method of proof, the government may "prove knowledge by establishing that the defendant deliberately shielded himself from clear evidence of critical facts that are strongly suggested by the circumstances." *Vinson*, 852 F.3d at 357 (internal quotations omitted). In other words, the government may prove that the defendant consciously avoided learning where the money came from, which is also referred to as "willful blindness." *United States v. Mancuso*, 42 F.3d 836, 846 (4th Cir. 1994). Where trial evidence "supports both actual knowledge on the part of the defendant and deliberate ignorance [*i.e.*, conscious avoidance], a willful blindness instruction is proper." *Vinson*, 852 F.3d at 357 (internal quotations omitted). Further, a "willful blindness instruction is appropriate when the defendant asserts a lack of guilty knowledge but the evidence supports an inference of deliberate ignorance." *United States v. Abbas*, 74 F.3d 506, 513 (4th Cir. 1996) (internal quotations omitted). The government here produced sufficient evidence of both Ravenell's actual knowledge and willful blindness to support such an instruction.

First, the record is replete with evidence of actual knowledge. To summarize: Harris and Byrd testified at trial that Ravenell knew he was receiving drug money. *See* J.A. 306-07 (Byrd testifying that Ravenell advised him to "set up a legitimate business" to disguise drug proceeds "in order to facilitate and move around without running into the law enforcement traps"); J.A. 544 (Byrd testifying that "Ravenell knew of everything and was involved with everything"); J.A. 2117 (Harris testifying that the "only money that Ms.

Bailey paid Mr. Ravenell was the money she received from the streets. So in my knowledge it's kind of understood that Mr. Ravenell knew it was drug money"); J.A. 2149-50 (Bailey testifying that she "was able to explain to [Ravenell] exactly . . . where the monies were coming from" and the nature of her collecting drug proceeds on Harris' behalf). MFM employees also testified that Ravenell maintained control over how money was moved in and out of the accounts associated with the Byrd ledgers. Moreover, according to Miller and mentioned above, Ravenell offered to launder Miller's money via the law firm just like he had for Byrd.

Second, the centerpiece of Ravenell's defense was that he lacked knowledge about his role in the money laundering conspiracy. For example, Ravenell asserted that Byrd and his associates duped Ravenell into taking drug proceeds by faking legitimate businesses. Further, Ravenell insisted that all he knew about LOC Marketing was that "there was this lucrative events business and that's what he was told he was paid out of." J.A. 3059. Therefore, because Ravenell's actual, subjective knowledge was contested at trial, the government also sought to put forth evidence of Ravenell's conscious avoidance. "Evidence supports an inference of [conscious avoidance] if it tends to show that (1) the defendant subjectively believes that there is a high probability that a fact exists and (2) the defendant took deliberate actions to avoid learning of that fact." *Miller*, 41 F.4th at 314 (internal quotations and alterations omitted). There is ample evidence in the record of Ravenell's conscious avoidance.

The so-called "Okullo transaction" is illustrative on this point. In August 2013, Byrd used offshore

accounts and a chain of contacts to funnel drug money through MFM to Jamila Lyn, the mother of Byrd's youngest child. Byrd sent around $90,000 to an attorney in Jamaica, who then wired it to a realtor in New York City, who then sent it to a Ugandan diplomat named Patrick Okullo, who wired the money to Ravenell via MFM. Ravenell then directed that money be taken out of MFM and sent to Lyn. The record shows that Ravenell and Okullo did not know each other nor did they have any prior interactions. Despite this, Ravenell knew to wire the money received to Lyn. This shows that Ravenell "intuitively" understood that Byrd was shifting drug proceeds through MFM, and that he needed to get those proceeds to third-parties for Byrd's benefit. *See Miller*, 41 F.4th at 314.

Other testimony further demonstrated that Ravenell at a minimum "took deliberate actions to avoid learning the specifics of the money-laundering scheme." *Id*. Byrd and Bailey both testified that Ravenell was strict about the source and form of the funds received. Byrd stated that Ravenell refused to accept funds going into the law firm from Byrd himself, instead directing money to be sent via approved third parties. Bailey testified that Ravenell instructed her at times not to give him cash from drug proceeds and instead to give him checks and money orders. Evidence of Ravenell's machinations to maintain plausible deniability support the inclusion of a conscious avoidance jury instruction. The classic trope of avoiding accountability by saying "I don't want to know where the money comes from" does not form the basis of a legally tenable defense.

Finally, any error in giving a willful blindness instruction is harmless "where there is sufficient

evidence in the record of actual knowledge on the defendant's part." *Farrell*, 921 F.3d at 146 (internal quotations omitted). Even assuming, therefore, that the district court erred in giving the conscious avoidance instruction as to the money laundering conspiracy charge, that error is harmless in light of the substantial evidence of actual knowledge on Ravenell's behalf. Accordingly, we affirm the district court's decision to give a conscious avoidance instruction.

V.

Last, Ravenell claims his conviction cannot stand because he may have been convicted under a legally infirm theory. Under *Yates v. United States*, 354 U.S. 298 (1957), "when a general verdict on a single criminal charge rests on alternative theories, one valid and the other invalid, the verdict must be set aside if it is impossible to tell which ground the jury selected." *United States v. Jefferson*, 674 F.3d 332, 361 (4th Cir. 2012) (internal quotations omitted).

A "*Yates* alternative-theory error is subject to ordinary harmlessness review, and the relevant appellate inquiry is whether the error was harmless beyond a reasonable doubt." *Id*. Where a *Yates* error may have occurred, "the reviewing court must attempt to ascertain what evidence the jury necessarily credited in order to convict the defendant under the instructions given," and if the "evidence is such that the jury must have convicted the defendant on the legally adequate ground in addition to or instead of the legally inadequate ground, the conviction may be affirmed." *Bereano v. United States*, 706 F.3d 568, 577-

78 (4th Cir. 2013) (quoting *United States v. Hastings*, 134 F.3d 235, 242 (4th Cir. 1998)).

We thus consider which theories the jury necessarily credited to find Ravenell guilty of conspiracy to commit money laundering. Ravenell advances two possible *Yates* errors. First, he believes he may have been convicted for conduct that was time-barred by the relevant statute of limitations. Second, he claims that he may have been convicted of conduct that is lawful under 18 U.S.C. § 1957. Both of these arguments fail, however. We have discussed at length each of Ravenell's theories earlier, and for the reasons detailed above, there is no reason to conclude that Ravenell's conviction rests on an invalid legal ground.

VI.

The criminal defense bar is a crucial component of our criminal justice system. Without capable defense attorneys, those accused of crime are left defenseless against the legal machinery that state and federal governments bring to bear against them. Lawyers "to prosecute are everywhere deemed essential to protect the public's interest in an orderly society," and defense counsel are likewise "necessities, not luxuries" in criminal courts. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

Our legal system only works, however, if society maintains its faith in the integrity and independence of those who champion the accused. If counsel is deemed complicit in criminal schemes and conspiracies, trust in the adversary process will diminish, and a vital safeguard of those sacred rights etched in our Constitution will be lost. This sad case of an attorney

using his special knowledge of our laws to criminal advantage is an isolated occurrence, so fortunately distant from the standards held high by those who undertake the public service of criminal defense. They deserve our gratitude, and may it always be so.

The judgment is affirmed.

AFFIRMED

HEYTENS, Circuit Judge:[1]

As Ravenell admits, he neither sought a jury instruction about 18 U.S.C. § 1957(f)'s safe harbor provision nor objected to the district court's failure to give one. For that reason, Ravenell's argument is at least forfeited (if not waived) and reviewed at most (if at all) for plain error. See *United States v. Olano*, 507 U.S. 725, 733-34 (1993). To obtain relief on a forfeited claim, Ravenell "must satisfy three threshold requirements": (1) there was "error"; (2) which was "plain"; and (3) "affect[ed] substantial rights." *Greer v. United States*, 141 S. Ct. 2090, 2096 (2021) (quotation marks omitted). We hold Ravenell cannot satisfy the second requirement—*i.e.*, that the alleged "legal error" is "clear or obvious, rather than subject to reasonable dispute." *Puckett v. United States*, 556 U.S. 129, 135 (2009).

Even had Ravenell been charged with violating 18 U.S.C. § 1957, it is not clear or obvious he would have had a plausible safe harbor defense. To be sure, some language in this Court's decision in *United States v. Blair*, 661 F.3d 755 (4th Cir. 2011), tends to support Ravenell's position. Although the defendant in that case was also a lawyer, the Court emphasized he was not being prosecuted for anything done while "serving in a representative capacity" and it disclaimed any suggestion that people who had acted as attorneys "should come in for sanction." *Id.* at 773. The Court also repeatedly referenced "Blair's conduct"—which included taking "nearly $10,000 for himself" despite not being licensed in the relevant jurisdiction—in

[1] Judge Heytens joins all but Part III of Judge Wilkinson's opinion. Chief Judge Gregory joins this opinion.

concluding his actions were "far beyond the scope of the Sixth Amendment." *Id*. at 772-73 & n.3.

But other language in *Blair* tilts sharply against Ravenell. This Court noted "Congress expressly tied the § 1957(f) exception to the Sixth Amendment," and it held "anyone seeking to benefit from § 1957(f) must tie his conduct to the Sixth Amendment right to counsel." 661 F.3d at 771. The Court emphasized "Sixth Amendment rights are at bottom personal *to the accused*," *id*. at 772 (emphasis altered), and that "'no one has a constitutional right to use . . . criminally derived proceeds to retain a defense attorney,'" *id*. at 773 (citing *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 626 (1989) (emphasis omitted)); accord *United States v. Farmer*, 274 F.3d 800, 802 (4th Cir. 2001) ("[A] criminal defendant has no Sixth Amendment right to use illegally obtained funds to hire an attorney."). And rather than dispute Blair's assertion that its interpretation risked "render[ing] § 1957(f)(1) a dead letter," the Court reasoned "Congress itself was well aware of that possibility when it drafted the exception." *Blair*, 661 F.3d at 772; see *id*. (explaining "[a]t the time of [Section 1957(f)(1)'s] enactment, there was considerable division within the courts over whether the Sixth Amendment encompassed the right to use drug proceeds to secure legal representation").

We think it is a hard call which side has the better argument under *Blair*. And that, by itself, defeats Ravenell's appeal on this point because "the burden of establishing each" requirement for plain error relief rests with "the defendant." *Greer*, 141 S. Ct. at 2097.[2]

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[2] Ravenell also relies heavily on the Eleventh Circuit's pre-*Blair* decision in *United States v. Velez*, 586 F.3d 875 (11th Cir. 2009). But that decision's approach seems—at best—hard to

What is more, unlike the defendant in *Blair*, Ravenell was not prosecuted under Section 1957. Rather, Ravenell was charged with violating 18 U.S.C. § 1956(h) by conspiring to commit three types of money laundering, only one of which was a Section 1957 offense. This Court has identified three—and only three—"essential elements" of a Section 1956(h) violation:

> (1) the existence of an agreement between two or more persons to commit one or more of the substantive money laundering offenses proscribed under 18 U.S.C § 1956(a) or § 1957;
>
> (2) that the defendant knew that the money laundering proceeds had been derived from an illegal activity; and
>
> (3) the defendant knowingly and voluntarily became part of the conspiracy.

United States v. Green, 599 F.3d 360, 371 (4th Cir. 2010). The Court also has rejected efforts to require proof of the substantive offenses to convict a defendant of conspiracy under Section 1956(h). See *United States v. Alerre*, 430 F.3d 681, 694 (4th Cir. 2005) ("[T]he prosecution was not required to prove that the defendants had committed promotion money laundering in order to convict them of conspiring to do so.").

Ravenell responds by citing an unpublished, out-of-circuit decision for the proposition that "[i]n a conspiracy case, the jury instructions must define the

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square with *Blair*'s, and Ravenell makes little effort to reconcile *Velez* with the rule that we "cannot overrule a decision issued by another panel." *McMellon v. United States*, 387 F.3d 329, 332 (4th Cir. 2004) (en banc).

elements . . . for the underlying offense that is the object of the conspiracy." Ravenell Br. 28 (quoting *United States v. Bairamis*, 522 Fed. Appx. 379, 379 (9th Cir. 2013) (per curiam)); see *id*. at 31 (again citing *Bairamis*). But Ravenell cites no authority from the Supreme Court or this one for that assertion, and, at any rate, *Bairamis* and the precedential opinions on which it relies both involved a different conspiracy statute, 21 U.S.C. § 846. See *Bairamis*, 522 Fed. Appx. at 379 (citing *United States v. McCaleb*, 552 F.3d 1053, 1058-59 (9th Cir. 2009), and *United States v. Ching Tang Lo*, 447 F.3d 1212, 1232 (9th Cir. 2006)). Ravenell's need to place so much weight on such a thin reed only clinches the point under the plain error standard. For this reason, too, Ravenell has failed to carry his burden of showing the district court committed "clear or obvious" error in not giving an instruction neither side requested. *Puckett*, 556 U.S. at 135.

GREGORY, Chief Judge, dissenting:

Codified at 18 U.S.C. § 3282, Congress enacted a five-year statute of limitations "for any offense, not capital," "[e]xcept as otherwise expressly provided by law." 18 U.S.C. § 3282(a). Pursuant to this statute of limitations, Kenneth Ravenell could be convicted of a conspiracy only if it continued beyond July 2, 2014. Yet the majority holds, with little to no limiting principles, that the district court was not required to instruct the jury on the relevant limitations period because Ravenell was charged and convicted of a non-overt act conspiracy. Worse yet, the majority grounds its affirmance of Ravenell's conviction in a supposed concern for "those accused of crime," all while undermining the rights of the very individual "accused of crime" in this case. *Ante* at 34.

I do not intend to debate my colleagues about the policy concerns that drive their opinion. The only question here is whether the district court properly instructed the jury. Because the answer to that question is no, I am compelled to dissent as to Part II of the majority's opinion and the judgment.

I.

A district court abuses its discretion by refusing to grant a requested jury instruction only where that "instruction (1) was correct; (2) was not substantially covered by the court's charge to the jury; and (3) dealt with some point in the trial so important, that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense." *United States v. Hill*, 927 F.3d 188, 209 (4th Cir. 2019)

(quoting *United States v. Patterson*, 150 F.3d 382, 388 (4th Cir. 1998)). The majority relies on numerous factual and legal errors to conclude that Ravenell's requested statute of limitations instruction does not meet certain aspects of this test. Properly assessing the law and the record in this case, I conclude that all three prongs of this test are satisfied and, in turn, that the district court abused its discretion by refusing to instruct the jury on the statute of limitations.[1] Moreover, because there is "no way of knowing whether [Ravenell] was convicted for an offense barred by limitations," I would vacate Ravenell's conviction and remand. *United States v. Head*, 641 F.2d 174, 179 (4th Cir. 1981).

A.

Ravenell requested the district court to instruct the jury that the Government had to prove "by a preponderance of the evidence that the alleged [money laundering] conspiracy continued after July 2, 2014." Suppl. App'x 2. According to the majority, because Ravenell misstated the burden of proof, this instruction was "legally deficient" and therefore incorrect. *Ante* at 13. I disagree with my colleagues' formalistic analysis.

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[1] To the extent a harmless error analysis is required, the error here would not be harmless for the same reasons that Ravenell satisfies part three of the abuse of discretion test. As this Court has noted, "it would be anomalous to conclude that a district court's failure to give a defendant's proposed instruction which substantially impaired his ability to present his defense can be harmless." *United States v. Lewis*, 53 F.3d 29, 35 (4th Cir. 1995).

As a preliminary matter, the majority's recitation of the facts omitted the crucial colloquy which followed Ravenell's proposed jury instruction. After Ravenell proffered the above statute of limitations instruction, the Government responded that there is no "authority for the proposition that this is actually something the jury finds by a preponderance of the evidence." J.A. 2879. Ravenell, in turn, offered to correct the burden of proof: "Fixing the preponderance, obviously that's very easy, that's easy to explain." J.A. 2880.[2] The district court nevertheless declined to give the instruction, not because it was incorrect, but because it raised "issues" and "qualifiers" that had not "been properly framed for the jury." *Id.*

Considering this exchange, I am not convinced that Ravenell's proffered instruction was, in fact, "legally deficient." Of course, as a general matter, a district court does not abuse its discretion by declining to provide an incorrect jury instruction. For example, this Court has held that a district court properly declined to instruct the jury that the Government had to prove that the defendant's "violence caused a relatively significant disruption to commerce," when controlling law made clear that "Congress may regulate interference with commerce, even if the effect of the interference on interstate commerce in an individual case is 'minimal.'" *Hill*, 927 F.3d at 209. This Court has also affirmed a district court's refusal to

[2] The Government asks us to interpret this statement as Ravenell offering to "explain" but not "correct" the preponderance standard. Response Br. 16. This interpretation strikes me as implausible; after the Government suggested that a *higher* burden of proof was appropriate, it defies logic that Ravenell would have insisted on a *lower* burden of proof.

instruct the jury that it needed to find the defendant was "actively involved in a drug trafficking act at the time of the murder," which would have "misstate[d] the law." *United States v. Hager*, 721 F.3d 167, 184 (4th Cir. 2013).

But in those cases, the defendant appealed the district court's refusal to provide the legally erroneous aspect of the jury instruction. By contrast, Ravenell does not appeal the district court's failure to instruct the jury on the "preponderance of the evidence" burden of proof. Rather, Ravenell appeals the district court's wholesale failure to instruct the jury about the existence of the statute of limitations, which nobody disputes is legally "correct." In other words, the heart of Ravenell's proffered jury instruction—the statute of limitations—was correct. The "preponderance of the evidence" language was a peripheral misstatement that, upon learning of the error, Ravenell immediately offered to fix. Tellingly, the majority does not cite to any cases where this Court has found that such a minor and transitory error prevents an entire jury instruction from being "correct" under the abuse of discretion test. To characterize Ravenell's proffered instruction as incorrect thus puts form over function in a manner that promotes injustice and is unsupported by precedent.

The Fourth Circuit adopted the requirement that the proposed jury instruction be "correct" from an Eleventh Circuit case, *United States v. Camejo*, 929 F.2d 610, 614 (11th Cir. 1991). *See United States v. Lewis*, 53 F.3d 29, 32 & n.7 (4th Cir. 1995). And the Eleventh Circuit, like the First, Fifth, and Sixth Circuits, has stated that the proposed instruction need only be "substantially correct" to support a finding of

reversible error. *United States v. Morales*, 978 F.2d 650, 652 (11th Cir. 1992); *see also United States v. Gabriele*, 63 F.3d 61, 68 (1st Cir. 1995); *United States v. Pursley*, 22 F.4th 586, 591 (5th Cir. 2022); *United States v. Henderson*, 626 F.3d 326, 342 (6th Cir. 2010).

Applying this standard, the Fifth Circuit held in an analogous case that a district court reversibly erred by failing to instruct the jury on the relevant statute of limitations. *Pursley*, 22 F.4th at 592-93. While the defendant's requested instruction had improperly "failed to account for any suspension of the statute of limitations," the *Pursley* court held that the instruction was nevertheless "substantially correct," in part because the defendant "offered to modify the instruction with a suspension" "at the charge conference." *Id.* at 592. So too, here. Ravenell offered to modify his proposed statute of limitations instruction to "[f]ix[] the preponderance" language, J.A. 2880, thereby proffering a "correct" instruction for purposes of the abuse of discretion inquiry.

B.

Next, the statute of limitations instruction was not "substantially covered by the court's charge to the jury." *Hill*, 927 F.3d at 209. The majority does not address this prong of the test, but the Government attempts to overcome this conclusion by arguing that the indictment alleged the conspiracy occurred within the statute of limitations period, and the district court instructed the jury that it "must find the facts alleged occurred substantially on the dates alleged in the indictment." Response Br. 31. The full context of the

district court's instruction belies the Government's argument. The district court instructed the jury that:

> it does not matter if the indictment charges that a specific act occurred on or about a certain date and the evidence indicates, in fact, it was on another date. The law only requires a substantial similarity between the dates alleged in the indictment and the date established by testimony or exhibits.

J.A. 2897. Simply put, this instruction—which gave the jury latitude to depart from the dates in the indictment—cannot be read as "substantially cover[ing]" the instruction that the jury could not convict Ravenell of a conspiracy that did not continue past July 2, 2014.

C.

Finally, the statute of limitations instruction was "so important, that [the] failure to give the requested instruction seriously impaired [Ravenell's] ability to conduct his defense." *Hill*, 927 F.3d at 209. While the majority does not directly address this standard, it appears to conclude that the statute of limitations instruction was not required in this case for two reasons: because Ravenell was charged with a non-overt act conspiracy, and because the trial evidence indicated that the money laundering conspiracy continued beyond July 2, 2014. Its reasoning on both scores suffers from fundamental flaws.

1.

It is true that Ravenell was charged with a non-overt act conspiracy that, once established, is "presumed to continue unless or until the defendant shows that it was terminated or he withdrew from it." *United States v. Walker*, 796 F.2d 43, 49 (4th Cir. 1986). In other words, "[s]ince no overt acts are required to sustain" Ravenell's money laundering conspiracy conviction, "the dispositive consideration for [Ravenell's] limitations claim is whether he withdrew from the conspiracy or the conspiracy ended outside the five-year limitations period." *United States v. Wilkins*, 354 F. App'x 748, 756 n.10 (4th Cir. 2009). Contrary to the majority's suggestion, however, this nuance does not render the statute of limitations for a non-overt act conspiracy a nullity. *See United States v. Portsmouth Paving Corp.*, 694 F.2d 312, 324 (4th Cir. 1982) (holding, in a non-overt act conspiracy case, that "the district court correctly instructed the jury simply that the offense charged 'requires the government to prove beyond a reasonable doubt that the conspiracy existed'" within the limitations period). Rather, statutes of limitations—which are "designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past," *Toussie v. United States*, 397 U.S. 112, 114-15 (1970)—should protect defendants charged with non-overt act and overt act conspiracies alike.

The majority's attempts to distinguish *Head*, 641 F.2d at 174, are thus unavailing. In that case, this Court reversed a defendant's conspiracy conviction because the district court declined to instruct the jury on the relevant statute of limitations. *Id*. at 177, 179. It is true that, in *Head*, the defendant was convicted of an overt act conspiracy. *See id*. at 177. But that difference only affects *how* continuation into the limitations period is proven (that is, whether the Government must prove an overt act in furtherance of the conspiracy occurred within the limitations period). Importantly, however, the *Head* Court's fundamental concern that, in the absence of a statute of limitations instruction, it "ha[d] no way of knowing whether [the defendant] was convicted for an offense barred by limitations," applies with equal force here. *Id*. at 179. Therefore, to the extent that the statute of limitations in a non-overt act conspiracy raises legal complexities not present in an overt act case, the district court should have instructed the jury on the statute of limitations *and* those additional complexities.

The district court appeared to recognize as much when it declined to instruct the jury on the statute of limitations; it concluded that "qualifiers as to the statute of limitations, as well as the burden of proof and issues like withdrawal," had not "been properly framed for the jury." J.A. 2880. With this statement, the district court correctly intimated that, had it instructed the jury on the statute of limitations, it also would have been proper to instruct the jury that, once established, the conspiracy is "presumed to continue unless or until [Ravenell] shows that it was terminated or he withdrew from it," *Walker*, 796 F.2d at 49, and on the ways in which Ravenell could show withdrawal or termination.

However, the district court's ultimate refusal to provide the statute of limitations instruction because the issues had not been framed for the jury was in error. Contrary to the Government's characterization, Ravenell did not introduce the statute of limitations issue at the eleventh hour. In fact, having agreed on July 2, 2019, to toll the statute of limitations until October 2, 2019, the parties (and, perhaps, the court) were long aware of the relevance of the statute of limitations in this case. Moreover, regardless of when the court learned of the statute of limitations, it could—and should—have framed the statute of limitations and the corresponding legal issues *when it instructed the jury*. "[T]he complexity of the issues involved [thus] d[id] not justify denying [Ravenell's] requested instruction." *Pursley*, 22 F.4th at 592.

2.

The district court's failure to so instruct the jury "seriously impaired [Ravenell's] ability to conduct his defense." *Hill*, 927 F.3d at 209. At trial, the Government's evidence of the money laundering conspiracy related primarily to Ravenell's conduct with respect to two individuals: Leonaldo Harris and Richard Byrd. Contrary to the majority's assertion, there is ample evidence in the record that would have allowed the jury to conclude that the alleged money laundering conspiracy as to both Harris and Byrd terminated prior to July 2, 2014.

To start, this Court has held that "[a] conspiracy ends when its central purpose has been accomplished." *United States v. United Med. & Surgical Supply Corp.*, 989 F.2d 1390, 1399 (4th Cir. 1993)

(internal quotation marks omitted). Had the district court instructed the jury on the statute of limitations, the jury could have been persuaded by the evidence indicating that the "central purpose" of Ravenell's alleged conspiracy with Harris—the payment of Harris's legal defense fees through illegally obtained money—was "accomplished" prior to July 2, 2014.

While Ravenell continued to represent Harris into the limitations period, there is significant evidence indicating that Harris completed the payment of his legal fees when his final payment was made to Ravenell's law firm ("MFM") on April 25, 2014. For example, Avarietta Bailey testified that Ravenell's fees were "somewhere around $175,000 to $200,000." J.A. 2149. Harris's case matter form at MFM similarly reflected that the firm charged Harris a "fixed fee" of $200,000. J.A. 1191-92; *see also* J.A. 1334 (former MFM accounting management employee testifying that Ravenell typically charged criminal clients a "fixed fee"). Moreover, evidence at trial showed that approximately $187,000 was credited to Harris's ledger at MFM, suggesting that Harris paid the entire fixed fee that he owed for his criminal representation prior to July 2, 2014, and, in turn, that the central purpose of the conspiracy between Ravenell and Harris had been accomplished by that date.

The jury could also have been persuaded by evidence showing that Ravenell's alleged conspiracy with Byrd terminated prior to July 2, 2014. While it is true as a general matter that the arrest of a co-conspirator "does not terminate the conspiracy as to fellow-conspirators remaining at large and continuing their illegal activities," this Court has also found that a conspiracy "ceased" when all of a defendant's co-

conspirators were arrested "because [the defendant] could not conspire with himself, and there was no other person with whom he could conspire." *United States v. Chase*, 372 F.2d 453, 459 (4th Cir. 1967); *see also United States v. Ammar*, 714 F.2d 238, 253-54 (3d Cir. 1983) ("[D]efendants [can] show that the conspiracy terminated . . . by demonstrating that its ends had been so frustrated or its means so impaired that its continuation was no longer plausible."). Because Byrd was the key player in the alleged conspiracy, it follows that his arrest in April 2014, his corresponding testimony that he did not engage in conduct relating to the drug organization after that point, and the April 2013 arrests of other members of the conspiracy, including Jerome Castle, Harold Byrd, and Josef Byrd, could have precluded Ravenell from continuing the conspiracy beyond July 2, 2014. The absence of payments into Byrd's escrow account at MFM after January 2014 and the cessation of non-court-required payments out of the escrow account after February 2014 would have further supported a jury finding that the conspiracy to launder Byrd's money ceased prior to the limitations period.[3]

It follows from this evidence that "for [Ravenell] to present his theory of defense, it was incumbent on the district court to instruct the jury that [Ravenell] could not be convicted of" a conspiracy that did not continue beyond July 2, 2014. *Lewis*, 53 F.3d at 35. If

[3] The Byrd escrow ledger shows that after February 26, 2014, the only payments made from the Byrd escrow account were to Phoenix Towing Services which, according to Ravenell, were made to comply with an Arizona Court of Appeals order precluding Byrd from removing vehicles from its jurisdiction during the pendency of the State's appeal in a separate case.

the district court had properly instructed the jury, Ravenell could have highlighted this evidence of the conspiracy's termination in his closing argument, which could have led to his acquittal. However, because the jurors were kept in the dark about this crucial limitation on Ravenell's prosecution, they were not informed of their duty to make factual determinations regarding the temporal evidence before them. Instead, the jurors were left to view the trial evidence through the exclusive lens of culpability which, in their eyes, was an inquiry unconstrained by the passage of time. The court's failure to instruct the jury on the statute of limitations thus "seriously impaired" Ravenell's defense. *Hill*, 927 F.3d at 209.

While the majority highlights circumstantial evidence that casts doubt on this theory of termination—such as Harris's conflicting testimony regarding Ravenell's legal fees and Ravenell's continued status as counsel of record for Byrd and Harris—that evidence, at best, creates a factual question regarding termination of the alleged conspiracy that should have been determined by the jury.[4] Indeed, as the Supreme

[4] My colleagues in the majority also overstate the persuasive value of this evidence. For example, they contend that a conspiracy between Ravenell and Darnell Miller existed because in May 2014, "Ravenell offered to 'wash' Miller's money in the same way he did Byrd's," and "Miller . . . decided not to move forward with this partnership only when he found out that the FBI had raided Ravenell's law office . . . [in] August 2014." *Ante* at 19. But in fact, Miller's trial testimony indicated that he and Ravenell never had an agreement to begin with; when the Government asked Miller how he responded to Ravenell's alleged offer to launder his money, Miller stated "I told him I'd get back to him," but never did. J.A. 1496-97.

Additionally, the majority relies on the fact that Bailey reached out to Ravenell after she received a target letter from

Court has explained, "[j]urors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law—whether, for example, the action in question . . . is time barred," but "jurors *are* well equipped to analyze the evidence." *Griffin v. United States*, 502 U.S. 46, 59 (1991). For that very reason, "issues of fact bearing on the application of a statute of limitations are submitted, as are other issues of fact, for determination by the jury." *Fowler v. Land Mgmt. Groupe, Inc.*, 978 F.2d 158, 162 (4th Cir. 1992).

II.

The majority culminates its decision by opining that the conviction of Kenneth Ravenell, a criminal defense attorney, stands to serve all criminal defendants' best interests by maintaining society's faith in the integrity of the criminal defense bar. One might imagine that we would more effectively protect the rights of the accused by ensuring that a jury is properly informed about the limitations on a defendant's punishable conduct. Nevertheless, while the majority's position might serve as fodder for a rich philosophical discussion, it is not an appropriate basis in which to ground the affirmance of a criminal conviction.

In enacting the applicable statute of limitations, Congress did not distinguish between defendants based on the reprehensibility of their alleged crime or

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the United States Attorney's Office in November 2014. However, the majority does not explain how this constitutes evidence of the money laundering conspiracy's continuation.

the strength of the Government's case against them. To the contrary, the statute of limitations applies to all "person[s]" being prosecuted for "any offense, not capital," "[e]xcept as otherwise expressly provided by law." 18 U.S.C. § 3282(a). The statute of limitations, therefore, protects all defendants, regardless of their potential culpability. *See United States v. Podde*, 105 F.3d 813, 819 (2d Cir. 1997). And because we must "follow the law as written by Congress," *Garcia v. Texas*, 564 U.S. 940, 942 (2011), we cannot overlook the district court's critical instructional error simply because Ravenell's alleged conduct may reflect poorly on the criminal defense bar.

To do so would risk not only judicial overreach, but the desecration of our Constitution's guarantees. In my view, "instruct[ing] the jury clearly regarding the law to be applied in the case," *Lewis*, 53 F.3d at 34, is a prerequisite to fulfilling the Sixth Amendment's promise of "trial[] by an impartial jury," U.S. Const. amend. VI. Indeed, without proper "instructions as to the law, the jury becomes mired in a factual morass, unable to draw the appropriate legal conclusions based on those facts." *Lewis*, 53 F.3d at 34. The district court's instructional error thus strikes at the heart of Ravenell's "fundamental constitutional right" to a jury trial. *Horner v. Nines*, 995 F.3d 185, 198 (4th Cir. 2021).

Accordingly, we must set aside any extrajudicial assumptions and conduct a rigorous review to ensure that Ravenell's conviction comports with the statutory and constitutional guardrails from which we all benefit. After conducting such a review in this case, I conclude that Ravenell's conviction does not. I would

therefore vacate his conviction and remand for a new trial.

APPENDIX B

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4369

(1:19-cr-00449-LO-1)

UNITED STATES OF AMERICA,
Plaintiff – Appellee,

v.

KENNETH WENDELL RAVENELL,
Defendant – Appellant.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
Amicus Supporting Rehearing Petition

O R D E R

A member of the court requested a poll on the petition for rehearing en banc.

Judge King, Judge Gregory, Judge Wynn, Judge Thacker, and Judge Benjamin voted to grant rehearing en banc.

Chief Judge Diaz, Judge Wilkinson, Judge Niemeyer, Judge Agee, Judge Harris, Judge Richardson, Judge Quattlebaum, Judge Rushing, and Judge Heytens voted to deny rehearing en banc. As the poll failed to garner a majority, the petition for rehearing en banc is hereby denied.

Judge Wilkinson wrote an opinion concurring in the denial of rehearing en banc.

Judge Gregory wrote an opinion dissenting from the denial of rehearing en banc, in which Judge King, Judge Wynn, and Judge Thacker joined.

For the Court

/s/ Patricia S. Connor, Clerk

WILKINSON, Circuit Judge, concurring in the denial of rehearing en banc:

With great respect to the fine dissenting panel opinion, rehearing en banc is not warranted in this case. The panel majority reached the right conclusion for the right reasons. See *United States v. Ravenell*, 66 F.4th 472 (4th Cir. 2023). Further, this is not an en banc case.

There has been no shortage of process here. The defendant in this case received a fair trial lasting three weeks, and the three members of the panel gave his appeal their conscientious attention as well. The process has been thorough and extensive.

The one point of difference between the majority and the dissent is heavily factual, and that difference does not justify convening the entire court en banc. Ravenell's main contention is that the district court erred in denying his request for a jury instruction on the five-year statute of limitations applicable to his 18 U.S.C. § 1956(h) money laundering charge. Per a pre-indictment tolling agreement, any conspiracy had to exist past July 2, 2014. Contrary to the petitioner's suggestion, the panel majority's opinion on this issue presents the application of settled propositions of circuit law, and we thus rightly decline to disturb it.

District courts deserve some discretion on whether to include particular jury instructions because instructions proceed from the evidence. Jury instructions typically come shortly before the case is submitted when district judges are in a much better position to assess the evidence before them than are we. The district court found no issue of triable fact that would justify the instruction, and the panel majority found no abuse of discretion in its ruling.

The district court thus did not err in not giving a statute of limitations instruction in relation to Ravenell's 18 U.S.C. § 1956(h) charge. Quite beyond the erroneous nature of Ravenell's proposed instructions, *see Ravenell*, 66 F.4th at 481-82, the nature of the alleged conspiracy bears importantly on the question here. This was a non-overt act conspiracy. *See Whitfield v. United States*, 543 U.S. 209, 219 (2005). A statute of limitations defense in a non-overt act conspiracy requires an affirmative showing of discontinuation or abandonment by the defendant. *See United States v. Walker*, 796 F.2d 43, 49 (4th Cir. 1986). There was no such showing here.

The facts are detailed in the panel opinion, but to summarize, Ravenell, a defense attorney, acted in concert with his law firm's clients in a years-long money laundering scheme involving drug proceeds. One such client was Richard Byrd, a major marijuana dealer. Evidence at trial showed that Ravenell advised Byrd how to launder drug proceeds through other business ventures, and later Ravenell personally laundered these proceeds through his law firm's trust accounts on Byrd's behalf. Another client was Leonaldo Harris. Ravenell accepted drug proceeds as part of Ravenell's representation of Harris.

From the evidence adduced at trial, it is clear that there was no showing of an abandonment on the part of the defendant of his membership in the conspiracy or affirmative showing of discontinuation before the relevant limitations period. Ravenell offered no affirmative evidence showing termination or withdrawal, and trial evidence shows just the opposite. The jury heard testimony, for example, that Ravenell demanded more drug proceeds to keep

representing Harris after Ravenell's law firm received a payment from Harris in April 2014. *See Ravenell*, 66 F.4th at 485; J.A. 2094-95.

And even further, if this was an overt act conspiracy, which it was not, there were overt acts taken within the statutory limitations period. Among other things, the jury heard evidence that (1) in August 2014, Ravenell made a payment to a towing company on behalf of and related to his representation of Byrd, *Ravenell*, 66 F.4th at 484; J.A. 1321, 3328-31; (2) drug proceeds credited to Byrd remained in Ravenell's firm's trust accounts past July 2014, *Ravenell*, 66 F.4th at 484; J.A. 3328-32; Supp'l App'x at 124-27; and (3) Ravenell did not withdraw as Byrd's or Harris' attorney until October and November 2014, respectively, *Ravenell*, 66 F.4th at 484-85; Supp'l App'x at 92, 129. These acts not only show further that Ravenell neither terminated the conspiracy nor withdrew from it, but they also show "[a]cts in furtherance of a criminal conspiracy" that "enable[d] it to continue its operations" during the applicable period. *See United States v. Smith*, 452 F.3d 323, 335 (4th Cir. 2006).

The dissenting opinion disputes these facts but cannot dispute the governing law. There is no reasonable argument that the district court erred in applying the appropriate law for non-overt act conspiracies. The opinions reveal only an argument about the facts of the case, as to which I believe the panel majority is quite correct, but which in all events does not make for the kind of dispute we need to sit en banc.

I do think it crucial that we give the accused a fair trial and appeal, which we emphatically did here. He had, and deserved, a wholly fair trial. To vary from

settled standards of review and settled principles of conspiracy law here would be unwarranted.

FRAP 35 has reserved the en banc process for questions of "exceptional importance." Fed. R. App. P. 35(a)(2). While every case is important, every case cannot, by definition, involve a question of "exceptional importance," which is what FRAP 35 requires. The opinions make clear that this fact-intensive dispute is simply not that kind of case. The jury reviewed the facts and understood that attorneys must not participate in and profit from a client's illicit drug deals. The lawyer is the champion of the accused in court, not a co-conspirator. To conclude otherwise would weaken the foundations of our adversary system and the confidence that jurors must necessarily possess in the independence of those who undertake the vindication of Sixth Amendment rights in our criminal justice system.

GREGORY, Circuit Judge, with whom Judge KING, Judge WYNN, and Judge THACKER join, dissenting from the denial of rehearing en banc:

A jury convicted Kenneth Ravenell of participating in a money laundering conspiracy, an offense subject to 18 U.S.C. § 3282(a)'s five-year statute of limitations. Despite Ravenell's requests, the district court refused to instruct the jury on the limitations period. The jury thus had no way of knowing that Congress set a temporal limit on Ravenell's criminal exposure and, in turn, could not determine whether that limit barred Ravenell's conviction.

Ravenell appealed, and a divided three-judge panel of this Court affirmed his conviction. Today, this Court denies Ravenell's petition for rehearing en banc, which the Federal Rules of Appellate Procedure authorize when "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a)(2). Because the district court's refusal to instruct the jury on the statute of limitations stifled the jury's ability to weigh Ravenell's guilt, and I am hard-pressed to think of a question of greater importance than the subjugation of an accused's constitutional right to a jury trial, I dissent.

I.

As explained in the panel opinion, this case involves the criminal prosecution of Kenneth Ravenell, a criminal defense attorney, and his ultimate conviction for money laundering conspiracy. *See United States v. Ravenell*, 66 F.4th 472 (4th Cir. 2023). Ravenell appealed his conviction on several grounds, including that the district court erred by refusing to

instruct the jury on the five-year statute of limitations governing the conspiracy. The limitations period had long been relevant to the case; before Ravenell was indicted in September 2019, Ravenell and the government agreed to toll the limitations period from July 2, 2019, until October 2, 2019. Based on that agreement, Ravenell could only be convicted of a conspiracy that continued beyond July 2, 2014.

During the charge conference, therefore, Ravenell requested a jury instruction on the statute of limitations. The district court declined Ravenell's request, precluding the jury from determining whether, based on the evidence it saw and heard, the conspiracy continued into the limitations period. Nor did the district court, in declining to give the instruction, grapple with whether the record evidence established a conspiracy within the bounds of the statute of limitations. Rather than determine whether the instruction was supported by the record, the court simply explained that it would not give the instruction because "the burden of proof" and "issues like withdrawal" had not "been properly framed for the jury." J.A. 2880.

The panel majority upheld the district court's decision, in part because money laundering conspiracy is a non-overt act conspiracy. In the majority's view, the instruction was unnecessary because, once the government proved that an agreement occurred, continuation into the limitations period was presumed unless Ravenell could show withdrawal from or termination of the conspiracy. *Ravenell*, 66 F.4th at 482-83. The majority also determined that Ravenell's proffered limitations instruction was legally deficient, *id.* at 481-82, and that there was evidence indicating that the conspiracy continued beyond July 2, 2014, *id.* at

483-85. This Court thus affirmed Ravenell's conviction, and Ravenell's petition for rehearing en banc followed.

II.

"The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time" to "protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time." *Toussie v. United States*, 397 U.S. 112, 114 (1970). In enacting the statute of limitations applicable here, 18 U.S.C. § 3282(a), Congress did not distinguish between defendants based on the reprehensibility of their alleged crime or the strength of the government's case against them. Rather, the statute of limitations applies to all "person[s]" being prosecuted "for any offense, not capital," "[e]xcept as otherwise expressly provided by law." 18 U.S.C. § 3282(a). In other words, the statute of limitations—like "[t]he procedural protections of the Constitution"—"protect[s] the guilty as well as the innocent." *Minnick v. Mississippi*, 498 U.S. 146, 166 (1990) (Scalia, J., dissenting).

Nobody disputes, therefore, that the five-year statute of limitations applies to the money laundering conspiracy charge against Ravenell. Yet by declining to instruct the jury on the limitations period, the district court overrode Congress's intent to set limits on criminal liability and took a pivotal determination out of the jury's hands. That is, because "[j]urors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to

law," such as whether "the action in question is . . . time barred," the jury could not divine the existence of the statute of limitations absent such an instruction. *Griffin v. United States*, 502 U.S. 46, 59 (1991). And as a result, the jury in Ravenell's case could not weigh (let alone understand) the temporal significance of the trial evidence.

Simply put, the jury's inability to make such a critical finding of fact bears on a "question of exceptional importance," Fed. R. App. P. 35(a)(2), warranting en banc review. By preventing jurors from considering the statute of limitations, the district court implicated nothing less than the Sixth Amendment's promise of a "trial[] by an impartial jury." U.S. Const. amend. VI. The Constitution establishes "trial by jury of criminal charges as a bedrock safeguard of the people's liberties," *Jackson v. Denno*, 378 U.S. 386, 405 (1964) (Black, J., dissenting in part and concurring in part), and an embodiment of the nation's "democratic ideals," *Thiel v. S. Pac. Co.*, 328 U.S. 217, 220 (1946). That promise, "fundamental to the American scheme of justice," *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968), entitles a defendant "to have the issue of criminal liability determined by a jury in the first instance," *McCormick v. United States*, 500 U.S. 257, 270 n.8 (1991).

Courts are entrusted with bringing the Sixth Amendment's guarantee to bear through their administration of criminal trials. The court's "instruct[ing] the jury clearly regarding the law to be applied in the case," *United States v. Lewis*, 53 F.3d 29, 34 (4th Cir. 1995), is, in my view, one prerequisite to fulfilling a defendant's jury trial right. Without proper "instructions as to the law, the jury becomes mired in a factual

morass, unable to draw the appropriate legal conclusions based on those facts," *id.*, and the Sixth Amendment's guarantee rings hollow. But, as the Supreme Court has recognized, "the promise of a jury trial surely meant *something*—otherwise, there would have been no reason to write it down." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1395 (2020). So, pursuant to their obligation to preserve that promise, courts must ensure that jurors are properly informed of the laws governing a defendant's criminal exposure. The district court's failure to do so in Ravenell's case, and the majority's affirmance of that decision, strikes at the heart of Ravenell's "fundamental constitutional right" to a jury trial. *Horner v. Nines*, 995 F.3d 185, 198 (4th Cir. 2021).

It is therefore unsurprising that the National Association of Criminal Defense Lawyers ("NACDL") submitted an amicus brief in support of Ravenell's petition for rehearing. As the NACDL put it: "As a result" of the panel majority's opinion, "future criminal defendants in this circuit may suffer the same fate as Mr. Ravenell: the denial of the constitutional right to have a jury decide if the government has proved beyond a reasonable doubt that the prosecution does not violate the statute of limitations." NACDL Br. 2. En banc rehearing is necessary "[t]o uphold the basic rights of the accused." *Id.* at 11.

The panel majority's opinion might obscure the high stakes of this case by focusing on the nature of the conspiracy of which Ravenell was convicted. To be sure, my colleagues are correct that Ravenell was convicted of a non-overt act conspiracy and, therefore, the government was not required to prove that an overt act occurred within the limitations period. As an

initial matter, however, their focus on this detail—and their efforts to distinguish this case from those where we have reversed a district court's failure to instruct on a statute of limitations in an overt act conspiracy, see *United States v. Head*, 641 F.2d 174, 179 (4th Cir. 1981)—demonstrates that the refusal to provide a limitations instruction in a non-overt act conspiracy presents a novel question meriting en banc consideration.

More fundamentally, though, this distinction does not nullify the statute of limitations for a non-overt act conspiracy. Rather, it bears only on how continuation into the limitations period is proven (here, Ravenell must demonstrate that he withdrew from the conspiracy, or the conspiracy terminated, before July 2, 2014). And, as I discussed in my dissent from the panel opinion affirming Ravenell's conviction, there are numerous facts in the record supporting Ravenell's argument that the conspiracy terminated outside of the limitations period. *See Ravenell*, 66 F.4th at 498-99 (Gregory, C.J., dissenting).

The panel majority disputes this by pointing to evidence of the conspiracy's continuation, such as Ravenell's status as counsel of record for his clients and alleged coconspirators, Richard Byrd and Leonaldo Harris, until October and November 2014, respectively. The conclusion that any instructional error would be harmless based largely on evidence of Ravenell's attorney-client relationships threatens to undermine one of the Sixth Amendment's other fundamental protections for criminal defendants: "the right to . . . have the Assistance of Counsel for his defence." U.S. Const. amend. VI. But even more, that the panel majority takes a different view of the record

only further proves that the factual question regarding termination was for the jury, not the Court, to decide. At bottom, this "fact-intensive dispute," in the words of today's concurring opinion, *ante* at 4, raises the precise evidentiary issues that "jurors are well equipped to analyze," *Griffin*, 502 U.S. at 59.

* * *

Recognizing "that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority," our Constitution's framers enshrined the right to a jury as an "inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." *Duncan*, 391 U.S. at 156. It would appear, then, that the concerns underlying the jury trial right are of heightened relevance in cases where, as here, the defendant is an attorney and his case triggers public scrutiny. Ravenell's right to have his guilt determined by a jury of his peers should have been jealously guarded. But instead, the district court undermined that right by taking a crucial determination regarding Ravenell's criminal exposure out of the jury's hands entirely.

"In this situation, rehearing en banc was vital to 'secure the individual from the arbitrary,'" and to preserve the jury's critical factfinding function in this and future cases. *United States v. Dix*, 69 F.4th 149, 154 (4th Cir. 2023) (King, J., dissenting from denial of rehearing en banc) (quoting *Bank of Columbia v. Okely*, 17 U.S. 235, 244 (1819)). By denying rehearing, the Court risks whittling away at a constitutional right

that has, since our nation's earliest days, played a foundational role in our pursuit of justice. Accordingly, I respectfully dissent.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4369
(1:19-cr-00449-LO-1)

UNITED STATES OF AMERICA,
Plaintiff – Appellee,

v.

KENNETH WENDELL RAVENELL,
Defendant – Appellant.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
Amicus Supporting Rehearing Petition

O R D E R

The court grants a stay of the mandate in this case pending the disposition of a petition for writ of certiorari in the Supreme Court. If the Supreme Court grants certiorari, the stay will remain in effect. If the Supreme Court denied certiorari, the stay will be dissolved.

Entered at the direction of Judge Wilkinson with the concurrence of Judge Gregory and Judge Heytens.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4369
(1:19-cr-00449-LO-1)

UNITED STATES OF AMERICA,
Plaintiff – Appellee,

v.

KENNETH WENDELL RAVENELL,
Defendant – Appellant.

NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
Amicus Supporting Rehearing Petition

O R D E R

Upon consideration of appellant's motion for bail pending appeal, the court grants bail and stays appellant's sentence pending issuance of the mandate in this case.

Entered at the direction of Judge Wilkinson, with the concurrence of Chief Judge Gregory and Judge Heytens.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX E

FILED: September 7, 2022

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-4369
(1:19-cr-00449-LO-1)

UNITED STATES OF AMERICA,
Plaintiff – Appellee,

v.

KENNETH WENDELL RAVENELL,
Defendant – Appellant.

O R D E R

The court denies appellant's petition for en banc reconsideration of this court's denial of his motion for bail and stay of sentence pending appeal.

A requested poll of the court failed to produce a majority of judges in regular active service and not disqualified who voted in favor of reconsideration en banc. Chief Judge Gregory, Judge Motz, Judge King,

Judge Wynn, and Judge Thacker voted to grant reconsideration en banc. Judge Wilkinson, Judge Niemeyer, Judge Agee, Judge Diaz, Judge Harris, Judge Richardson, Judge Quattlebaum, Judge Rushing, and Judge Heytens voted to deny reconsideration en banc.

Judge Wynn wrote a dissenting opinion, in which Judges Motz, King, and Thacker joined.

Entered at the direction of Judge Agee.

For the Court

/s/ Patricia S. Connor, Clerk

WYNN, Circuit Judge, with whom Judges MOTZ, KING and THACKER join, dissenting from the denial of rehearing en banc:

The Court today refuses to consider a trial judge's order denying the motion of Kenneth Ravenell—a prominent African American attorney in Baltimore—for bail or release pending appeal.[1] What puzzles me is that this same Court had no problem with granting the former Governor of Virginia, Robert McDonnell, the very same relief that Ravenell seeks even though there is no relevant factual difference between the two defendants' motions.

Like Governor McDonnell, the trial judge denied Ravenell bail. Like Governor McDonnell, Ravenell appealed to this Court for relief. Like Governor McDonnell, it is undisputed that Ravenell is not likely to flee or pose a danger to the safety of any other person or the community if released.[2] So, like Governor McDonnell, the only question here is whether Ravenell's appeal raises "a substantial question of law or fact likely to result in ... an order for a new trial." 18 U.S.C. § 3143(b)(1)(B). A "substantial question" is defined as "a close question that could be decided either way." *United States v. Steinhorn*, 927 F.2d 195, 196 (4th Cir. 1991) (per curiam).

Herein lies the rub. The issue of whether a substantial question is present is far more evident in Ravenell's case than it was in Governor McDonnell's

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[1] On appeal to this Court, a divided panel, inexplicably, declined to reverse the trial court's order. Ravenell now asks us to vacate that panel determination, consider his motion en banc, and reverse the trial court's order.

[2] Nor is there any contention that his appeal is brought "for the purpose of delay." 18 U.S.C. § 3143(b)(1)(B)

case. Ravenell points to an extraordinarily close question of whether the trial judge should have instructed the jury on the statute of limitations on the basis of significant evidence that the statute of limitations bars *all of the conduct* related to Ravenell's offense from criminal prosecution. And, as in Governor McDonnell's case, "'if decided in favor of the accused[,]' [this issue] is 'important enough' to warrant reversal or a new trial." Order Granting Release Pending Appeal at 2, *U.S. v. McDonnell*, No. 15-4019 (4th Cir. Jan. 26, 2015) (quoting *Steinhorn*, 927 F.2d at 196).

Try as one might, one can point to no discernible difference that justifies granting release pending appeal to Governor McDonnell and denying it to Ravenell. It is an inconsistency that my good colleagues decline to confront. That's not fair.

I dissent.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

United States of America, v. Kenneth W. Ravenell; *Defendant.*	)	Criminal Action No. 1:19-cr-449 Hon. Liam O'Grady

AMENDED ORDER

Before the Court is Defendant Kenneth Ravenell's Rule 33 Motion for a New Trial. Dkt. 542. The Government has responded in opposition, Dkt. 553. Based on the following analysis, the Motion for a New Trial, Dkt. 542, is **DENIED**.

I. BACKGROUND

After a three-week jury trial held in December 2021, Defendant Kenneth Ravenell was convicted of money laundering conspiracy. Dkt. 490. Ravenell now moves for a new trial pursuant to Federal Rule of Criminal Procedure 33. In the Motion, Ravenell makes four principal arguments: first, that the Court erred in failing to instruct the jury on applicable statute of limitations; second, that the Court erred in failing to instruct the jury on the "safe harbor"

provision of 18 U.S.C. § 1957; third, that the Court erred by instructing the jury on conscious avoidance; and fourth, that Ravenell's conviction must be vacated under *Yates v. United States*, 354 U.S. 298 (1957). The Court finds each of these arguments without merit.

II. LEGAL STANDARD

"Upon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33. The granting of a new trial is discretionary and requires a demonstration "that the fundamental fairness or integrity of the trial result is substantially in doubt." *United States v. Jennings*, 438 F. Supp. 2d 637, 642 (E.D. Va. 2006). Motions for a new trial "should be awarded sparingly, as a jury verdict is not to be overturned except in the rare circumstances when the evidence weighs heavily against it." *United States v. Gutierrez*, 936 F.3d 320, 339-40 (4th Cir. 2020). Because a district court's decision to grant a new trial is discretionary, it is reviewed on appeal for abuse of discretion. *United States v. Smith*, 451 F.3d 209, 217 (4th Cir. 2006).

III. DISCUSSION

Because the Court finds that it properly declined to give a legally incorrect statute of limitations instruction, that it properly instructed the jury on 18 U.S.C. § 1956(h), that it properly gave the conscious avoidance instruction, and that none of the objects of the conspiracy was legally infirm, the Court finds that the "interest of justice" does not require the granting of a new trial. *See* Fed. R. Crim. P. 33.

A. <u>The Court properly declined to give a legally incorrect statute of limitations instruction.</u>

Ravenell first argues that, at trial, the Government presented evidence of two distinct money laundering conspiracies - one involving drug proceeds received from his client Richard Byrd and another involving drug proceeds received from his client Leonaldo Harris. Dkt. 542-1 at 11. Ravenell notes that the last of Byrd's payments to Ravenell was made on January 6, 2014, to his law firm, Murphy Falcon Murphy Law Firm (the "Murphy Firm"), and the last potential transaction in furtherance of the alleged conspiracy using these funds was made on February 26, 2014. *See* Dkt. 542-1 at 11. He further notes that the last of Harris' payments to Ravenell was made on April 25, 2014. *Id.* Per a pre-indictment tolling agreement, the five-year statute of limitations period applicable to the Count II money laundering charge ran back to July 2, 2014. *See* Dkt. 553; Dkt. 553-1. Ravenell argues that "[m]oney laundering charges based on a conspiracy that concluded prior to July 2, 2014, therefore, are precluded under the applicable statute of limitations," Dkt. 542-1 at 12, and further argues that the Court therefore erred by failing to instruct the jury on the applicable statute of limitations.

The Court finds this argument unpersuasive. Contrary to Ravenell's argument, he was charged with – and tried on – a single money laundering conspiracy. *See* Dkt. 281 at 16-17 (Second Superseding Indictment). At trial, Ravenell never argued that there were multiple conspiracies nor proposed a multiple conspiracies instruction. The Court properly instructed the jury on the elements of the money

laundering conspiracy, and the evidence presented at trial showed that the money laundering conspiracy continued past July 2, 2014.

The first time Ravenell addressed the issue of the statute of limitations was during the third week of trial, on Monday, December 21, 2021, as it related to jury instructions. In a proposed instruction titled "Commission of Overt Acts," Ravenell asked the Court to instruct the jury that:

> There is a limit on how much time the government has to obtain an indictment. For you to find the defendant guilty of conspiracy as to Counts Two and Three only, the government must prove beyond a reasonable doubt that at least one overt act in furtherance of the conspiracy was committed after July 2, 2014.

See Dkt. 553; 553-2 (Ravenell's Proposed Jury Instructions). Ravenell raised this argument again later that day when he renewed his Rule 29 motion.

Contrary to Ravenell's assertions, there is no overt act requirement for money laundering conspiracy, the count on which Ravenell was convicted. There is therefore no requirement that an overt act occur within limitations. *Whitfield v. United States*, 543 U.S. 209, 219 (2005) ("[W]e hold that conviction for conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), does not require proof of an overt act in furtherance of the conspiracy."); *United States v. Green*, 599 F.3d 360, 372 (4th Cir. 2010). The case upon which Ravenell primarily relies, *United States v. Head*, 641 F.2d 174 (4th Cir. 1981) concerns the general conspiracy statute, 18 U.S.C. § 371, which has as one of its elements that the Government prove an overt act in furtherance of the conspiracy. The

money laundering conspiracy statute at issue here has no such requirement that the Government prove an overt act in furtherance of the conspiracy. Therefore, *Head* is inapposite. *See* Dkt. 553 at 18-19.

The Second Superseding Indictment did not allege any overt acts related to Count Two. *See* Dkt. 281 at 16-17. Nor did the Government present evidence of overt acts, either occurring within or outside of the limitations period, because the elements of money laundering conspiracy do not include the commission of overt acts in furtherance of the conspiracy.

The Fourth Circuit has held:

> To obtain a conviction for money laundering conspiracy under 18 U.S.C. § 1956(h), the Government must prove the following essential elements: (1) the existence of an agreement between two or more persons to commit one or more of the substantive money laundering offenses proscribed under 18 U.S.C. § 1956(a) or § 1957; (2) that the defendant knew that the money laundering proceeds had been derived from an illegal activity; and (3) the defendant knowingly and voluntarily became part of the conspiracy.

Green, 599 F.3d at 371; *United States v. Singh*, 518 F.3d 236, 248 (4th Cir. 2008).

The Court's instructions to the jury contained all of these elements. The Court instructed the jury as follows:

> In order to prove the defendant guilty of conspiracy to commit money laundering, the United States must prove three elements beyond a reasonable doubt. First, that there was

> an agreement between two or more persons to commit money laundering; second, that the defendant knew that the money laundering proceeds had been derived from illegal activity; and third, that the defendant knowingly and voluntarily became a part of the conspiracy. I'll give you further instructions on the type of money laundering activities that defendants have been charged with.

Trial Transcript Vol. XIII at 54:6-15. The Court subsequently gave additional instructions related to each element and related to the three objects of the money laundering conspiracy. The jury, by its verdict, found that the Government had established each of these three elements of money laundering conspiracy beyond a reasonable doubt.

Moreover, there is no evidence that Ravenell ever withdrew from the conspiracy. The Fourth Circuit has explained:

> Once a conspiracy is established, however, it is presumed to continue unless or until the defendant shows that it was terminated or he withdrew from it… A mere cessation of activity in furtherance of the conspiracy is insufficient… The defendant must show affirmative acts inconsistent with the object of the conspiracy and communicated in a manner reasonably calculated to reach his coconspirators. . . The burden of proving withdrawal rests on the defendant.

Green, 599 F.3d at 360, 369-70 (internal citations omitted).

In this case, the Government presented specific evidence that the money laundering conspiracy

continued past July 2, 2014. As explained above, Ravenell was charged in Count Two with membership in a single money laundering conspiracy, not two separate conspiracies. Nevertheless, the aspect of the money laundering conspiracy that related to Harris and Bailey did not, as Ravenell claims, terminate on April 25, 2014 – nor at any time prior to July 2, 2014. Indeed, there is no evidence that the last payment from Harris to Ravenell was intended to be the last payment; in fact, the jury heard testimony that, at that meeting, Ravenell demanded more money to keep representing Harris. *See* Dkt. 553 at 27-28; Trial Transcript Vol. IX at 185:20-22; 186:9-12; and 186:15. Moreover, Ravenell did not withdraw as Harris' counsel until November 13, 2014. Similarly, the aspect of the money laundering conspiracy that related to Byrd did not, as Ravenell claims, terminate on February 26, 2014 – nor at any time prior to July 2, 2014. Byrd testified that Ravenell did not withdraw as his attorney until after the Murphy Firm was searched in August 2014. The jury also heard evidence that Ravenell made a payment on August 1, 2014 to Phoenix Towing Services in the amount of $750 – which was related to his representation of Byrd. Further, the fact that the drug proceeds remained at the Murphy Firm, credited to Byrd, after July 2, 2014, is all evidence that the money laundering conspiracy continued after that date. Dkt. 553 at 30.

Based on the foregoing, the Court properly instructed the jury on the elements of the money laundering conspiracy, and the evidence presented at trial showed that this money laundering conspiracy continued past July 2, 2014. Therefore, Ravenell's motion for a new trial on this ground is denied.

B. The Court properly instructed the jury on 18 U.S.C. § 1956(h).

Ravenell next argues that "[t]he Court's jury instruction regarding 18 U.S.C. § 1957 was fatally deficient because it failed to instruct the jury on the definition of 'monetary transaction' as an element of § 1957, which includes a safe harbor exempting transactions made in the exercise of Sixth Amendment rights." Dkt. 542-1 at 23.

This argument fails as a matter of law. First, the Court is not required to instruct the jury on each definition of 18 U.S.C. § 1957 for a conspiracy to commit money laundering prosecution brought pursuant to 18 18 U.S.C. § 1956(h). Second, even if the elements of 18 U.S.C. § 1956(h) were the same as 18 U.S.C. 1957, which they are not, Section 1957's "safe harbor" provision would still not apply to Ravenell's conduct, and therefore would not constitute a reason for a new trial.

First, the Second Superseding Indictment makes clear that Ravenell was not charged with substantive money laundering under 18 U.S.C. § 1957. *See* Dkt. 281 at 16-17. Instead, he was charged and convicted under 18 U.S.C. § 1956(h), conspiracy to commit any one of three species of money laundering: (i) promotional money laundering, as described in 18 U.S.C. § 1956(a)(1)(A)(i); (ii) concealment money laundering, as described in 18 U.S.C. § 1956(a)(1)(B)(i); or (iii) structuring money laundering, as described in 18 U.S.C. § 1957. Proof of substantive money laundering under 18 U.S.C. § 1957 is not required to prove conspiracy to commit money laundering under 18 U.S.C. § 1956(h).

Again, as stated above, the Fourth Circuit has held:

> To obtain a conviction for money laundering conspiracy under 18 U.S.C. § 1956(h), the Government must prove the following essential elements: (1) *the existence of an agreement between two or more persons to commit one or more of the substantive money laundering offenses proscribed under 18 U.S.C. § 1956(a) or § 1957*; (2) that the defendant knew that the money laundering proceeds had been derived from an illegal activity; and (3) the defendant knowingly and voluntarily became part of the conspiracy.

Green, 599 F.3d at 371 (emphasis added). Commission of an underlying offense—be it promotional money laundering (18 U.S.C. § 1956(a)(1)(A)(i)), concealment money laundering (18 U.S.C. § 1956(a)(1)(B)(i)), or structuring money laundering (18 U.S.C. § 1957)—are not elements of a money laundering conspiracy. The district court is therefore not required to instruct the jury on the elements of each of the substantive offenses identified as objects of the conspiracy. *See Hagen v. United States*, No. 3:08-CR-93-WEB-2, 2014 WL 3895062, at *6 (W.D.N.C. Aug. 8, 2014) ("Notably, commission of an underlying offense that is one of the objects of the conspiracy is not an element of a money laundering conspiracy… Therefore, the district court is not required to instruct the jury on the elements of each of the substantive offenses identified as objects of such a conspiracy."); *see generally United States v. Anderson*, 611 F.2d 504, 511 (4th Cir. 1979) ("It is axiomatic that conspiracy to commit an offense and

commission of the offense are two separate and distinct crimes[.]")

Second, even if a Section 1957 safe harbor instruction were proper – which it is not – Ravenell's conduct fell outside of what the safe harbor provision was meant to protect. Section 1957(f)(1) defines the term "monetary transaction," and excludes "any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution."

In *United States v. Blair*, "Blair [made] the broad contention that any drug money that goes to the payment of counsel fees falls within the § 1957(f) Safe Harbor provision." *United States v. Blair*, 661 F.3d 755, 772 (4th Cir. 2011). The Fourth Circuit rejected this argument, finding that his "principle mistake" was that he ignored the language of Section 1957. In *Blair*, as here, the funds at issue were drug proceeds which, the Court noted, legally belonged to the United States. *Id*. Moreover, in *Blair*, as here, the money paid to the Defendant came from persons and entities other than criminal defendants whom the Defendant represented. The Fourth Circuit stated that "Sixth Amendment rights are at bottom personal to the accused." *Id*.

Here, the evidence presented to the jury was that Avarietta Bailey provided drug proceeds to Ravenell. Trial Transcript Vol. IV at 171:11-181:9 (Leonoldo Harris testimony). Specifically, Harris testified that, "All the monies paid by Ms. Bailey came from drug proceeds." *Id*. at 181:8-9. Further, none of those funds came from Leonaldo Harris, who was Ravenell's client. Avarietta Bailey was not in an attorney-client relationship with Ravenell, and therefore had no

Sixth Amendment rights that put Ravenell's receipt of the drug proceeds from her within the safe harbor. As in *Blair*, Ravenell was paid in drug proceeds and by a third party – and therefore his conduct would not fall within the Safe Harbor provision even if it were applicable.

In sum, the Court properly instructed the jury on 18 U.S.C. § 1956(h). The Court was not required to instruct the jury on each definition of 18 U.S.C. § 1957 for a conspiracy to commit money laundering prosecution brought pursuant to 18 U.S.C. § 1956(h); further, even if it were, Section 1957's Safe Harbor provision would still not apply to Ravenell's conduct. Therefore, Ravenell's motion for a new trial on this ground is denied.

C. The Court properly gave the conscious avoidance instruction.

Ravenell next argues that he is entitled to a new trial because "the Court improperly instructed the jury on conscious avoidance despite the lack of any evidence at trial supporting such an instruction, resulting in prejudicial error." Dkt. 542-1 at 33. The Court finds this argument unpersuasive.

The Fourth Circuit has held that "where the trial evidence supports both actual knowledge on the part of the defendant and deliberate ignorance, a willful blindness instruction is proper." *United States v. Vinson*, 852 F.3d 333, 357 (4th Cir. 2017) (internal citations omitted).

In this case, the evidence presented at trial established both actual knowledge and deliberate ignorance. For example, as the Government explains, Byrd testified that Byrd told Ravenell that Byrd was

giving Ravenell drug proceeds. But Byrd also testified that Ravenell would only accept funds in the form of wires, checks and credit card payments that came form third parties and not from Byrd. Trial Transcript Vol. III at 136:1-137:2. Similarly, Avarietta Bailey testified that she gave Ravenell cash from drug sales but that Ravenell also instructed her not to give him cash and instead to give him checks and money orders, which she did. Trial Transcript Vol. IX at 240:7-241:10. From these facts, the jury could infer that Ravenell consciously avoided or deliberately ignored learning the source of the funds he received, or at least some of the funds he received. *See* Dkt. 553 at 38-39.

Even if this Court erred in giving such an instruction, that decision would be subject to a harmless error review. *See United States v. Farrell*, 921 F.3d 116, 145 (4th Cir. 2019) ("Such an error [giving a willful blindness instruction] is harmless 'where there is sufficient evidence in the record of actual knowledge on the defendant's part.'") (internal citations omitted).

Therefore, the Court properly gave the conscious avoidance instruction. Ravenell's motion for a new trial on this ground is denied.

D. None of the objects of the conspiracy was legally infirm.

Ravenell next argues that his conviction under Count Two cannot survive because:

> Under *Yates v. United States*, 354 U.S. 298 (1957), a verdict upon a count alleging multiple theories of guilt (here, one involving Byrd's money and the other involving Harris's), one of which is legally infirm, cannot survive absent a finding of harmlessness beyond a

> reasonable doubt. The evidence here does not support such a finding and reversal is mandated.

Dkt. 542-1 at 37. Ravenell again argues that his receipt of Harris's money did not violate § 1957 and was time-barred. *Id.*

In *Yates*, the Supreme Court held that where one object of a two-object conspiracy was barred by the statute of limitations, the defendant's conviction should be reversed because the Court could not determine which of the two objects the jury based its verdict on. *Yates*, 354 U.S. at 312. Under *Yates*, "reversal is required when a case is submitted to a jury on two or more alternate theories, one of which is legally (as opposed to factually) inadequate, the jury returns a general verdict, and it is impossible to discern the basis on which the jury actually rested its verdict." *United States v. Ellyson*, 326 F.3d 522, 531 (4th Cir. 2003) (quoting *United States v. Hastings*, 134 F.3d 235, 242 (4th Cir. 1998)).

This case is clearly distinguishable from *Yates*. Again, for the reasons stated above, and contrary to Ravenell's argument, he was charged with – and tried on – a single money laundering conspiracy. *See* Dkt. 281 at 16-17 (Second Superseding Indictment). Here, payments of drug proceeds from third parties related to Byrd and from third parties related to Harris are not separate objects of the conspiracy nor separate legal theories of guilt. Rather, this is evidence of the existence of a single money laundering conspiracy. Again, the objects of the conspiracy are violations of (1) promotion money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i); (2) concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and

(3) engaging in monetary transaction in criminally derived property in excess of $10,000 in violation of 18 U.S.C. § 1957. None of these objects are barred by the statute of limitations.

As to Ravenell's argument that his receipt of Harris's money did not violate § 1957 and was time-barred, again, for the reasons discussed above, Ravenell's conduct was not covered by the Safe Harbor provision of 18 U.S.C. § 1957(f)(1) and was not time-barred by the statute of limitations.

For these reasons, none of the objects of the conspiracy was legally infirm, and Ravenell's motion for a new trial on this ground must be denied.

IV. CONCLUSION

Because the Court finds that it properly declined to give a legally incorrect statute of limitations instruction, that it properly instructed the jury on 18 U.S.C. § 1956(h), that it properly gave the conscious avoidance instruction, and that none of the objects of the conspiracy was legally infirm, the Court finds that the "interest of justice" does not require the granting of a new trial. *See* Fed. R. Crim. P. 33.

Therefore, Ravenell's Motion for a New Trial, Dkt. 542, is **DENIED**.

It is **SO ORDERED**

May 13, 2022
Alexandria, Virginia

Liam O'Grady
United States District Judge

APPENDIX G

LJW/MJM: USAO 2016R00493

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, **v.** **KENNETH W. RAVENELL**, **JOSHUA REINHARDT TREEM**, **and** **SEAN FRANCIS GORDON,** **Defendants**		**CRIMINAL NO. LO-19-0449** **(RICO Conspiracy, 18 U.S.C. § 1962(d); Money Laundering Conspiracy 18 U.S.C. § 1956(h); Narcotics Conspiracy, 21 U.S.C. § 846; Conspiracy to Commit Offenses Against the United States, 18 U.S.C. § 371; Obstructing an Official Proceeding, 18 U.S.C. § 1512(c)(2); Falsification of Record, 18 U.S.C. § 1519; Aiding and Abetting, 18 U.S.C. § 2; Forfeiture, 21 U.S.C. § 853, 18 U.S.C. § 982(a)(1), 18 U.S.C. § 1963, and 28 U.S.C. § 2461(c))**

SECOND SUPERSEDING INDICTMENT

COUNT ONE

(RICO Conspiracy)

The Grand Jury for the District of Maryland charges that at all times relevant to this Superseding Indictment:

THE DEFENDANT

1. The Defendant, **KENNETH WENDELL RAVENELL**, was a lawyer admitted to the Bar of Maryland in 1985.

THE ENTERPRISE

2. "The Law Firm" was a close corporation formed under the laws of the State of Maryland.

a. The Law Firm operated principally in Baltimore, Maryland.

b. The Law Firm constituted an "enterprise" as defined in Title 18, United States Code, Section 1961(4).

c. The Law Firm engaged in, and its activities affected, interstate and foreign commerce.

d. **RAVENELL** joined The Law Firm in or about 2007.

e. In August 2014, federal law enforcement executed a search warrant at The Law Firm.

f. In September 2014, **RAVENELL** separated from The Law Firm.

RELEVANT PERSONS AND ENTITIES

3. R.B., along with others, operated a multi-state illegal narcotics trafficking organization and was an associate of **RAVENELL** at all times relevant to this Superseding Indictment.

a. R.B. formally became a client of **RAVENELL** at The Law Firm in or about February 2011.

b. In April 2014, a federal grand jury sitting in Baltimore indicted R.B. and two others on a charge of conspiracy to distribute marijuana and cocaine.

c. **RAVENELL** ceased to represent R.B. in October 2014.

4. L.H. operated a multi-state narcotics trafficking organization and was an associate or client of **RAVENELL** at The Law Firm in 2013 and 2014.

a. In April 2013, L.H. was charged in a federal criminal complaint with conspiracy to distribute marijuana and arrested.

b. L.H. formally became a client of **RAVENELL** at The Law Firm in or about June 2013.

c. **RAVENELL** formally withdrew from his representation of L.H. on November 13, 2014.

d. A.B. was an associate of L.H.

5. S.G. was a private investigator hired by **RAVENELL** to work on both the R.B. and L.H. matters.

LAWFUL PURPOSES OF THE ENTERPRISE

6. The Law Firm was formed for the following legitimate and lawful purposes, among others: engaging in the practice of law, providing legal

services deemed proper and valid, and carrying on any lawful business in connection with the practice of law and the provision of legal services.

UNLAWFUL PURPOSES OF THE DEFENDANT

7. The purposes of **RAVENELL** included violating the legitimate purposes of The Law Firm in order to enrich himself and Individual 1 through illegal conduct that was apart from any lawful legal services **RAVENELL** was providing to clients. **RAVENELL** and Individual 1 received monies, including the proceeds of narcotics trafficking, from individuals involved in the trafficking of narcotics and their associates in exchange for **RAVENELL** committing and promising to commit the following criminal acts:

a. Providing information and instructions to members of the conspiracy on how to evade law enforcement in order to continue narcotics trafficking that **RAVENELL** had learned through his work at The Law Firm;

b. Laundering money that had been generated from narcotics trafficking by members of the conspiracy through The Law Firm; and

c. Abusing his position as a member of the Bar of Maryland and The Law Firm to obstruct justice in order to protect members of the conspiracy.

THE CHARGE

8. Beginning at least by August 31, 2009, and continuing through in or about September 2014, in the District of Maryland and elsewhere, the defendant,

KENNETH WENDELL RAVENELL,

being a person employed by and associated with The Law Firm, an enterprise, which engaged in, and the activities of which affected, interstate and foreign commerce, together with co-conspirators R.B., J.B., J.C., D.W., L.H., J.B., H.B., Ra.B., D.M., M.L., A.B., D.L., N.S., A.G., K.R., S.G., and other persons known and unknown to the Grand Jury, did knowingly, intentionally, and unlawfully combine, conspire, confederate and agree to violate Section 1962(c) of Title 18, United States Code, that is, to conduct and participate, directly and indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity, consisting of multiple acts indictable under:

a. 18 U.S.C. § 1512 (relating to tampering with a witness, victim, or an informant);

b. 18 U.S.C. § 1956 (relating to the laundering of monetary instruments);

c. 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from specified unlawful activity);

and multiple offenses involving narcotics trafficking in violation of:

d. 21 U.S.C. § 841(a) (possession with intent to distribute and distribution of controlled dangerous substances); and

e. 21 U.S.C. § 846 (conspiracy to possess with intent to distribute and distribute controlled dangerous substances).

MEANS AND METHODS OF THE CONSPIRACY

Among the means and methods by which members of the conspiracy pursued their illegal purposes were the following:

Facilitating Drug Trafficking Activities

9. **RAVENELL** assisted and protected co-conspirators in their narcotics trafficking by providing information and instructions to co-conspirators that he obtained while employed by The Law Firm so that co-conspirators could evade law enforcement when they trafficked in narcotics.

10. **RAVENELL** served as an intermediary between arrested members of the conspiracy and members of the conspiracy who were not yet arrested in order to facilitate the unlawful activities of his co-conspirators, including conveying information from arrested members about monies owed on the street from narcotics sales and the collection and retention of other assets of the co-conspirators.

Money Laundering

11. **RAVENELL** received substantial cash payments derived from drug sales as compensation for laundering money and for protection he provided to his co-conspirators.

12. **RAVENELL** concealed these payments by routinely failing to create receipts or documentation of the payments he received.

13. **RAVENELL** instructed members of the conspiracy to create and become involved in businesses that could be used to launder money.

14. **RAVENELL** directed members of the conspiracy to use businesses and other entities and individuals to send the proceeds of narcotics transactions to The Law Firm, using wire transfers, checks, credit card payments, PayPal and other means. **RAVENELL** in turn used these funds to pay for the legal fees he charged, thus enriching himself, and to make various payments on R.B.'s behalf to third parties to promote the distribution of narcotics and conceal funds that were derived from narcotics proceeds

15. Between 2011 and 2014, The Law Firm documented receipt of a total of $1,908,375.91 in payments related to four separate R.B.-related matters, each having separate accounting files and ledgers at the firm. According to The Law Firm's records, none of the payments came directly from R.B. and all of the money that The Law Firm recorded it received came from third-party payors, including other individuals involved in the sale of narcotics and entities and individuals that were used by R.B. to launder money, and credit cards belonging to

associates of R.B. They were accounted for by The Law Firm as follows:

The Law Firm File Names	**Deposits**
[R.B.] Criminal Matter (712-001)	$1,236,766.34
[R.B.] Business Ventures Matter (712-003)	$300,409.57
[R.B.] Hotel Project Matter (712-004)	$170,600.00
[R.B.] Overtown Reborn Matter (712-006)	$200,600.00
Total	**$1,908,375.91**

a. **R.B. Criminal Matter**. According to The Law Firm's records, $1,236,766.34 was received by The Law Firm in multiple transactions over a number of years that was credited to R.B. "Criminal Matter." According to The Law Firm's records, the $1,236,766.34 was disbursed in the following manner:

i. Only $534,333 was retained by The Law Firm as legal fees;

ii. $464,786.70 went, in the form of checks and wires, to lawyers and law firms that would not accept drug proceeds from drug dealers, and for related services, to benefit R.B.;

iii. $215,100 went to other third parties, that were not labeled as lawyers and law firms, for the benefit of R.B.; and

iv. $17;000 was transferred to R.B. "Business Ventures."

b. **R.B. Business Ventures**. According to The Law Firm's records, $300,409.57 was credited to the R.B. "Business Ventures Matter" and the following amounts were disbursed:

i. Only $98,329.49 was retained by The Law Firm as legal fees; and

ii. $197,944 passed through The Law Firm bank accounts to other R.B.-related entities and business endeavors and to third parties for R.B.'s benefit.

c. **R.B. Hotel Matter**. According to The Law Firm's records, of the $170,600 that was entered in the R.B. "Hotel Matter," the entire sum was disbursed by The Law Firm for R.B.-related investments, and The Law Firm did not keep any funds as legal fees. In addition, $90,600 was transferred to the Overtown Reborn Matter account.

d. **Overtown Reborn Matter**. According to The Law Firm's records, of the $200,600 that was credited in the Overtown Reborn matter, the 200,000 passed through The Law Firm to entities controlled by or associated with R.B. The Law Firm did not keep any legal fees from these funds.

Obstructing Justice

16. **RAVENELL** abused his position as a member of the Bar of Maryland and as a lawyer with The Law Firm to protect co-conspirators and obstruct official proceedings, including, for example, by doing the following:

a. **RAVENELL** lied to members of law enforcement in order to protect members of the conspiracy.

b. **RAVENELL** obtained access to incarcerated individuals, whom he did not represent, and dispatched private investigators, including S.G., to interview incarcerated individuals and civilian witnesses, so that **RAVENELL** and others at his direction could attempt to improperly influence their testimony, attempt to cause them to execute false affidavits and witness statements which **RAVENELL** knew to be false, and attempt to cause witnesses to withhold testimony from official proceedings, namely, a federal grand jury investigation of R.B. and later criminal case against R.B. in the United States District Court for the District of Maryland.

c. This conduct was not the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

OVERT ACTS

In furtherance of the conspiracy, **RAVENELL** and other members of the conspiracy committed the following overt acts, among others, in the District of Maryland and elsewhere:

17. On August 31, 2009, J.C. gave N.S. a large sum of narcotics proceeds, in cash, in a suitcase to transport from BWI to California, through Salt Lake City, Utah. Law enforcement seized the suitcase at BWI and discovered $85,000 in cash inside of it. N.S.'s name was called over the intercom in the boarding area. N.S. left BWI in a panic and called a member of

the conspiracy who instructed her to call **RAVENELL**. N.S. then called and met with **RAVENELL** and told him that her luggage had been seized and had a large sum of cash in it. **RAVENELL** called the law enforcement officer who had seized N.S.'s luggage and lied to him about the circumstances surrounding the suitcase. Specifically, **RAVENELL** told the officer that he had no idea why N.S.'s luggage had been seized, that it was "just luggage" or words to that effect, and that N.S. had become ill at the airport and thought that she could send her luggage to California and have someone pick it up.

18. On February 2, 2011, based on **RAVENELL's** instructions, an account was opened for R.B. in the fictitious name of "Robert Smith" with an account number ending in 6606.

19. Also on February 11, 2011, a counter deposit in the amount of $8,000 was made in the "Robert Smith" account ending in account number 6606.

20. On February 23, 2011, **RAVENELL** deposited a check in the amount of $8,000 and made payable to "Kenneth Ravenel" [sic.] drawn on the "Robert Smith" account ending in account number 6606 into an account controlled by **RAVENELL** and not an account controlled by The Law Firm.

21. On or about September 12, 2011, during a meeting with R.B. in Arizona, **RAVENELL** conducted counter-surveillance in the parking lot of the restaurant where they were meeting. R.B. had just given **RAVENELL** several thousand dollars in narcotics proceeds, which was stored at the hotel where **RAVENELL** and R.B. were staying, and

RAVENELL did not want to lead law enforcement back to the hotel.

22. In late 2011, **RAVENELL** went to dinner at a restaurant with R.B., H.B. and J.C. After dinner, the four men went into the parking lot of the restaurant. J.C. took a Louis Vuitton shoe bag out of the trunk of the car that he and H.B. had driven to the restaurant. J.C. then gave the bag to **RAVENELL**. It contained $50,000 in cash from narcotics sales.

J.C. Met with RAVENELL on Multiple Occasions to Deliver Narcotics Proceeds

23. J.C. met with **RAVENELL** on numerous occasions to deliver narcotics proceeds, in cash, to him. J.C. did this before **RAVENELL** represented J.C. in any criminal matter. **RAVENELL** and J.C. communicated via text message in order to meet. For example,

a. On December 23, 2012, at 8:06 p.m., J.C. texted **RAVENELL**, "here," to indicate he was at a location where the two had arranged to meet so that J.C. could give **RAVENELL** narcotics proceeds. Three minutes later, **RAVENELL** texted J.C. in response, "Ok. 2 mins," indicating **RAVENELL** was two minutes away from their agreed upon location.

b. On January 23, 2013, at 8:32 p.m., J.C. texted **RAVENELL**, "Here," indicating J.C. had arrived at their agreed upon location. One minute later, **RAVENELL** texted J.C., "5 mins," indicating **RAVENELL** was five minutes away.

c. On February 17, 2013, at 5:29 p.m., **RAVENELL** texted J.C., "Are u at the bar yet?" which was a location where they had arranged to meet. One

minute later, J.C. texted **RAVENELL**, in response, "On my way."

d. On March 24, 2013, at 5:18 p.m., **RAVENELL** texted J.C., "R u there yet?" referring to a pre-arranged meeting location. Seven minutes later J.C. texted **RAVENELL**, in response, "No." Eleven minutes later, **RAVENELL** texted J.C., "Leaving Baltimore now."

RAVENELL Met with J.C. After J.C.'s Arrest to Obtain Information on Narcotics Proceeds

24. In April 2013, J.C. was arrested on federal narcotics charges. **RAVENELL** entered his appearance to represent J.C. In May or June of 2013, **RAVENELL** visited J.C. in jail. **RAVENELL** asked J.C. to provide him with information on money that was still "on the street" or words to that effect. J.C. understood that **RAVENELL** was asking for information on outstanding narcotics debts owed to R.B. J.C. wrote the names of all the narcotics dealers who still owed money to R.B. and the amounts they owed him, which totaled several hundred thousand dollars, in a notebook that **RAVENELL** had with him.

RAVENELL Laundered Cash from R.B. Through Individual 1's Restaurant

25. In March 2013, **RAVENELL** took R.B. to a restaurant owned by Individual 1 as part of an attempt to persuade R.B. to invest in Individual l's restaurant. This investment would be another way in which R.B. could funnel narcotics proceeds to

RAVENELL since **RAVENELL** provided financial support to Individual 1.

26. On April 8, 2013, **RAVENELL** emailed K.R. and stated, "[K.R.], please provide the attached to [R.B.] right away." Attached to the email was an investment/lease agreement/letter of intent for an investment of $150,000 in Individual 1's restaurant.

27. On May 20, 2013, R.B.'s sister, at R.B.'s direction, wrote a check to Individual 1 in the amount of $9,000. **RAVENELL** had previously told R.B. to provide the money to Individual 1, instead of **RAVENELL**.

28. R.B. ultimately declined to invest in the restaurant. **RAVENELL** told R.B. that **RAVENELL** would instead invest some of the cash that R.B. paid to **RAVENELL** in Individual l's restaurant.

29. On June 20, 2013, the agreement **RAVENELL** previously sent to R.B. was changed to make **RAVENELL** the party to the agreement, instead of R.B. The agreement reflected the fact that $19,000 had already been invested in the restaurant by **RAVENELL**. **RAVENELL** had provided that money, in cash, to Individual 1.

False Memorandum of Interview of J.G.

30. R.B. and his co-conspirators used J.G.'s company to ship large, wholesale quantities of marijuana from Arizona to various destinations on the East Coast for further distribution. In April 2013, law enforcement executed searches of co-conspirator's residences in Maryland. During these searches, investigators recovered black plastic shipping containers. These containers had been used to ship

100-pound quantities of marijuana from Arizona to Maryland as part of the narcotics distribution activities of J.C., J.B., H.B. and R.B.

31. **RAVENELL** and R.B. discussed that J.G. was a threat to R.B. because he could provide incriminating information about R.B. and other members of the conspiracy if he were called as a witness in a proceeding against R.B.

32. On May 3, 2013, a private investigator met with J.G. in Arizona at **RAVENELL's** direction. Prior to the arrival of **RAVENELL's** private investigator, and unbeknownst to him, J.G. was interviewed by law enforcement and was shown a photographic lineup. During the interview with law enforcement, J.G. identified R.B. and other co-conspirators and provided incriminating information about R.B. and his narcotics trafficking organization. **RAVENELL's** private investigator misled J.G. into believing that the investigator was another law enforcement officer. J.G. reiterated what he had previously told law enforcement about R.B., and told the private investigator that he had identified R.B. in a photo lineup that was previously shown to him by law enforcement.

33. A memorandum dated May 5. 2013, and addressed to "Kenneth Ravenell" was created that falsely documented the private investigator's interview of J.G. and was maintained by **RAVENELL** in his R.B.-related files at The Law Firm. The memorandum stated: "[J.G.] told [a detective] he could not identify [R.B.]. [A detective] then specifically pointed to a photo of a black male subject with a scar on his face in one of the photo arrays and asked if [J.G.] could identify this person. [J.G.] confirmed he

could not identify the individual who had a scar on his face in the photo lineup." The memorandum contained additional false information.

Attempts to Procure a False Witness Statement from D.W.

34. On August 5, 2013, **RAVENEL**L and S.G. traveled to a detention center where D.W. was being held. D.W. had trafficked narcotics and laundered money for R.B. and other members of the narcotics trafficking organization. D.W. had been federally charged with conspiracy to distribute and possess with intent to distribute marijuana, and his charges were pending in the District of Maryland. **RAVENELL** did not ask for permission from D.W.'s lawyer to meet with D.W. or to discuss issues related to D.W.'s pending federal case. **RAVENELL** and S.G. attempted to interview D.W. on August 5, 2013, but he declined to be interviewed.

35. On or about May 29, 2014, **RAVENELL** sent S.G. to visit D.W. at a prison facility near Houston, Texas. When he met with D.W., S.G. asked D.W. to make a false written statement that D.W. had not been involved in trafficking narcotics with R.B. D.W. refused to sign a false statement and told S.G. that he and **RAVENELL** should contact D.W.'s lawyer. S.G. then questioned whether D.W. was "snitching," and D.W. terminated the interview.

A.B. Gave RAVENELL Narcotics Proceeds to Represent L.H.

36. In 2014, A.B., L.H.'s girlfriend at the time, met with **RAVENELL** at a restaurant in Washington, D.C., where she gave **RAVENELL** $21,000 in narcotics proceeds, in cash, and the two had previously discussed the fact that cash provided by A.B. was narcotics proceeds.

37. A.B. subsequently gave **RAVENELL** narcotics proceeds, in cash, in the amounts of $15,000 and $10,000. **RAVENELL** did not provide receipts to A.B. for these payments. As a result, A.B. recorded the payments on the visor of her vehicle as "Rav — 21 15 10."

RAVENELL Attempted to Collect Narcotics Proceeds for R.B. in Atlanta

38. On July 11, 2014, **RAVENELL** booked a Southwest Airlines flight from Baltimore to Atlanta, Georgia, for July 12, 2014, with a return flight from Atlanta to Baltimore on the same day. The purpose of the trip was for **RAVENELL** to meet with A.G., to discuss narcotics proceeds that R.B. had previously given A.G.

39. On July 22, 2014, **RAVENELL** visited R.B. in jail and reported that the associate, with whom **RAVENELL** had spoken prior to his arrival in Atlanta, failed to show up at the Four Seasons Hotel, where **RAVENELL** had arranged to meet him.

18 U.S.C. § 1962(d)

COUNT TWO
(Conspiracy to Commit Money Laundering)

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 3, 9-15, 17-29 and 36-39 of Count One are hereby realleged and incorporated by reference herein as though fully set forth in this Count of the Superseding Indictment.

2. Beginning at least by August 31, 2009, and continuing through on or about August 15, 2017, in the District of Maryland and elsewhere, the defendant,

KENNETH WENDELL RAVENELL,

Did knowingly, intentionally, and unlawfully, combine, conspire, confederate, and agree with one or more persons known and unknown to the Grand Jury to:

a. knowingly conduct and attempt to conduct financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, the felonious distribution of controlled substances punishable under Title 21, United States Code, Chapter 13, with the intent to promote the carrying on of such specified unlawful activity, and while conducting and attempting to conduct such financial transactions knew the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i);

b. knowingly conduct and attempt to conduct financial transactions affecting interstate

and foreign commerce, which transactions involved the proceeds of specified unlawful activity, that is, the felonious distribution of controlled substances punishable under Title 21, United States Code, Chapter 13, knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of said specified unlawful activity, and while conducting and attempting to conduct such financial transactions knew the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i), and

c. knowingly engage, attempt to engage, and cause others to engage in monetary transactions, by, through, and to a financial institution, in and affecting interstate and foreign commerce, in criminally derived property that was of a value greater than $10,000, and was derived from specified unlawful activity, that is, the felonious distribution of controlled substances punishable under Title 21, United States Code, Chapter 13, in violation of 18 U.S.C. § 1957(a).

18 U.S.C. § 1956(h)

COUNT THREE
(Narcotics Conspiracy)

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 3 and 9-39 of Count One are hereby realleged and incorporated by reference herein as though fully set forth in this Count of the Superseding Indictment.

2. Beginning at least by August 31, 2009, and continuing through on or about August 15, 2017, in the District of Maryland and elsewhere, the defendant,

KENNETH WENDELL RAVENELL,

did knowingly, willfully and unlawfully combine, conspire, confederate and agree with one or more persons known and unknown to the Grand Jury, to knowingly and intentionally distribute and possess with intent to distribute one thousand (1000) kilograms or more of a mixture or substance containing a detectable amount of marijuana, a Schedule I controlled substance, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A)(vii).

21 U.S.C. § 846

COUNT FOUR

(Conspiracy to Commit Offenses Against the United States)

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 3-4 and 9-39 of Count One are hereby realleged and incorporated by reference herein as though fully set forth in this Count of the Superseding Indictment.

THE DEFENDANTS

2. Defendant **KENNETH WENDELL RAVENELL** was a lawyer admitted to the Bar of Maryland in 1985.

3. Defendant **JOSHUA REINHARDT TREEM** was a lawyer admitted to the Bar of Maryland in 1972.

4. **RAVENELL** and **TREEM** practiced law at the same law firm in the 1990s and early 2000s.

5. Defendant **SEAN FRANCIS GORDON** was a private investigator.

6. **RAVENELL** worked with **GORDON** as part of his association with R.B. and L.H. Later, **TREEM** and **RAVENELL** worked with **GORDON** pursuant to **TREEM's** representation of **RAVENELL**.

7. On or about January 21, 2016, **TREEM** began representing **RAVENELL** in connection with a federal criminal investigation conducted by the U.S. Department of Justice and an investigation by a federal grand jury sitting in Baltimore of **RAVENELL**. **GORDON** was also retained to work

with **TREEM** and **RAVENELL** in connection with that investigation. **TREEM** continued representing **RAVENELL** through on or about June 18, 2019.

OBJECT OF THE CONSPIRACY

8. It was the object of the conspiracy to create false records and documents with the intent to impede, obstruct or influence investigations within the jurisdiction of the U.S. Department of Justice and to obstruct, influence and impede official proceedings, including grand jury investigations and federal criminal cases in United States District Court in Baltimore, Maryland, in order to protect members of the conspiracy.

THE CHARGE

9. Beginning no later than May 5, 2013, and continuing through at least December 11, 2018, in the District of Maryland and elsewhere, the defendants,

KENNETH WENDELL RAVENELL,

JOSHUA REINHARDT TREEM, and

SEAN FRANCIS GORDON,

did unlawfully, voluntarily, intentionally and knowingly conspire, combine, confederate, and agree with each other, and others known and unknown to the Grand Jury, to commit offenses against the United States, that is, to:

a. knowingly conceal, cover up, falsify and make false entries in a record and document with the intent to impede, obstruct and influence the investigation and proper administration of a matter

within the jurisdiction of a department or agency of the United States and in contemplation of such a matter, namely criminal investigations conducted by the United States Department of Justice into R.B. and **RAVENELL,** and not to provide lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding, in violation of 18 U.S.C. § 1519; and

b. corruptly obstruct, influence, or impede any official proceeding, and attempt to do so, namely a federal grand jury investigation and criminal prosecution of R.B. and a federal grand jury investigation and a foreseeable criminal prosecution of **RAVENELL**, and not provide lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding, in violation of 18 U.S.C. § 1512(c)(2).

MEANS AND METHODS OF THE CONSPIRACY

Among the means and methods by which members of the conspiracy pursued their illegal purposes were the following:

10. **RAVENELL** obtained access to incarcerated individuals, whom he did not represent, and dispatched private investigators, including **GORDON**, to interview incarcerated individuals and civilian witnesses, so that **RAVENELL** and others at his direction could attempt to improperly influence their testimony, attempt to cause them to execute false affidavits and witness statements which **RAVENELL** knew to be false, and attempt to cause witnesses to withhold testimony from official proceedings, namely, a federal grand jury

investigation of R.B. and later criminal case against R.B. in the District of Maryland.

11. **TREEM** and **GORDON**, at **RAVENELL's** direction, met with R.B., who they knew was a potential witness in a federal criminal investigation by the U.S. Department of Justice and a federal grand jury sitting in Baltimore of **RAVENELL** and a foreseeable criminal prosecution of **RAVENELL** in the United States District Court for the District of Maryland, and presented R.B. with a document, prepared by **RAVENELL**, containing false statements exculpating **RAVENELL**. Despite the fact that R.B. told **TREEM** and **GORDON** that these statements were false, **TREEM** and **GORDON** urged R.B. to sign the document, which he did.

12. **RAVENELL**, **TREEM** and **GORDON** prepared false documents, including an affidavit on behalf of **GORDON** that referenced, as an exhibit, the document containing false exculpatory statements that **TREEM** and **GORDON** had urged R.B. to sign, and a letter to a United States District Court Judge on behalf of **TREEM**, relating to their interview of R.B. These documents were fraudulently prepared to undermine and impeach R.B.'s credibility in the event he were called by the Government to testify in a criminal trial of **RAVENELL** and to provide false evidence of a prior consistent statement by **GORDON** or **TREEM** in the event either one were to be questioned as part of an investigation being conducted by the U.S. Department of Justice of **RAVENELL** or called to testify in an official proceeding, including before the grand jury investigating **RAVENELL** or a trial of **RAVENELL** if he were indicted by a federal grand jury.

OVERT ACTS

In furtherance of the conspiracy and to achieve its objects and purposes, members of the conspiracy committed the following overt acts, among others, in the District of Maryland and elsewhere:

13. In May 2013, **RAVENELL** caused the creation of a false witness interview report of J.G. to protect R.B. as described in paragraphs 30-33 of Count One.

14. On August 5, 2013, **RAVENELL** and **GORDON** traveled to a detention center where D.W. was being held to attempt to meet with D.W. as described in paragraph 34 of Count One.

15. On or about May 29, 2014, **RAVENELL** sent S.G. to visit D.W. at a prison facility near Houston, Texas, as described in paragraph 35 of Count One.

TREEM and GORDON's Interview of R.B. on September 9, 2017

16. On September 9, 2017, **TREEM** and **GORDON** traveled from Baltimore, Maryland, to Phoenix, Arizona, to meet with R.B. at the Towers Jail, where R.B. was being held on state criminal charges. At that time, **RAVENELL**, **TREEM** and **GORDON** knew that **RAVENELL** was under investigation by the U.S. Department of Justice and a federal grand jury sitting in Baltimore and could be charged with federal crimes.

17. **RAVENELL**, **TREEM** and **GORDON** knew R.B. had information about **RAVENELL's** conduct.

18. **RAVENELL, TREEM** and **GORDON** knew that R.B. could be a potential witness in the investigation of **RAVENELL** being conducted by the U.S. Department of Justice and the grand jury and in a federal criminal prosecution of **RAVENELL**. They also knew that **TREEM** and **GORDON** could also be potential witnesses in a trial of **RAVENELL** because they could testify about what happened during a meeting with R.B. if R.B. were to testify against **RAVENELL**.

19. Early in the meeting, **TR**EE**M** told R.B., "so not surprising to you [**RAVENELL**]'s given us a list of things we've got to ask you," to which R.B. responded, "Oh, absolutely." As he spoke to R.B., **TREEM** had in front of him a document that contained 53 statements which were, in effect, false denials about **RAVENELL's** involvement in criminal conduct. The document was titled "KWR's Combined Notes." Before visiting R.B., **RAVENELL** had prepared this list based on witness statements that had been turned over to R.B.'s lawyer, in R.B.'s criminal case, and that R.B.'s lawyer, in turn, provided to **RAVENELL** and **TREEM**. **RAVENELL** had written out the list long-hand and then **TREEM** caused it to be typed before he left for Arizona.

20. **TREEM** began questioning R.B. starting with the fourth numbered statement on the KWR's Combined Notes, which read, "He told me he was no longer involved in narcotics activities after his February 2011 arrest." R.B. and **TREEM** discussed the topic, at length. In response to **TREEM's** questions, R.B. said **RAVENELL** "want[ed] to make sure that what I was doing was on the up and up and the way I was paying my bills was on the up and up,"

and told **TREEM** that **RAVENELL** had "shown up" at an event that R.B. put on," to see how the money flowed and how people pay and how much cans of cash we was handling and was the shit really real."

21. **TREEM** then explained to R.B. what he, **TREEM**, thought was the focus of the investigation by the U.S. Department of Justice and the grand jury into **RAVENELL**:

> Okay. Because, you know, what's going on is they think that he, that he knew that you were paying him with tainted money, with narcotics money and -- number one. And number two, that you were -- that he was kind of acting as your -- as the house counsel for your organization. That he was -- you know, like in the "Godfather," he was the consigliere. I'm telling you that's their view. That's their view. I'm not making this up. And, you know, that you were running -- or, you know, that he was your bank, you know.
>
> So you were depositing all this money from whatever source it was, whether it was from the events that you were running or from the narcotics, you were putting that money into the trust account up there and then you were telling him where to send it and what to do with it. And to the extent that there was any legitimate money from the events, it doesn't clean the bad money, it's all comingled and it's all forfeitable, and **[RAVENELL]** knew it or should have known it.

22. R.B. then asked **TREEM** to explain what **TREEM** thought was the basis for the U.S. Department of Justice and grand jury investigation and **TREEM** offered the following:

> Based upon the fact that they think that LOC was just set up as a front to hide -- in fact to launder the narcotics money. That my -- and I don't know enough about it, but I think their theory is that whatever money was actually made through the LOC events that narcotics money was put into that kitty and so it would look as if were — LOC would -- the events were cleaning the narcotics money ... If you sold $100 worth of tickets, you know, you'd put $300 in because all -- because a lot of it was cash ... And so it would look as if you actually sold 300 tickets -- $300 worth of tickets and you only sold 1, but that money goes out and it came from the narcotics.

23. In response, R.B. said, "Okay. I see where you're going," to which **TREEM** said, "So that — I'm pretty sure that's what [the Government's] theory is."

24. **TREEM**, **GORDON** and R.B. then discussed at length how **RAVENELL** tracked R.B.'s business income and expenses and how money was wired to The Law Firm at R.B.'s direction.

25. **TREEM** then asked R.B. if R.B. was "deliberately trying to make sure," that **RAVENELL** did not know that money R.B. was giving **RAVENELL** was drug money, to which R.B. responded, "Yeah," and **TREEM** then asked, "did you do anything in particular that you can think of where

you just didn't tell him?" In response, R.B. said, "Actually let me back up ... I have let me go through a little bit — I should do it this way so I can--" to which **TREEM** said, "Yeah, go through what you got." In response to **TREEM's** invitation to "go through what you got," R.B. told **TREEM**, "I know what [**RAVENELL**] wants, that's no problem, man," and "He know who I am. he know what -- he -- we've known each other over two decades," and "All right. So I know this formula, that's not a problem, all right. You will leave here with the information that you came seeking."

26. **TREEM**, **GORDON** and R.B. then had a lengthy discussion about R.B.'s investment in the MGM Casino, which, according to R.B., was made through Attorney 1 and Attorney 2 at The Law Firm, and was managed by **RAVENELL** because R.B. had signed a power of attorney giving **RAVENELL** control over the investment. Early in the discussion about R.B.'s MGM Casino investment, R.B. told **TREEM**, "So what I'm telling you is that whatever **[RAVENELL**] needs that's fine, that's not a problem. Like we can go through this whole questioning and then we're going to do the song and dance, that's not a problem, all right, period," to which **TREEM** responded, "All right."

27. R.B. then expressed the view that **RAVENELL** could begin giving R.B. money from R.B.'s MGM Casino investment because, "Ain't nobody fucking investigating [**RAVENELL**] no more," to which **GORDON** responded, "We wouldn't be here if that was the case."

28. **GORDON** then asked R.B. to explain Attorney 1 and Attorney 2's role in the MGM Casino investment, which R.B. did.

29. **TREEM** then asked R.B. to explain R.B.'s investment in the MGM Casino, which R.B. did.

30. After doing so, R.B. asked **TREEM**, "None of this is going to be turned over to the government?" **TREEM** responded, "I don't mean to laugh, but yeah, none of this is going to be turned over. This is between you, me, and [**GORDON**] — you know, and that's where it's going to stay."

31. **TREEM** then told R.B., "given what I've already heard I suspect if you're willing I'm going to want to come back." R.B. responded, "That's fine man, I'm good."

32. R.B. then commented, "But for **[RAVENELL]** to send you here he absolutely has to have unequivocal trust in you," to which **TREEM** responded, "Well, I think he does and I trust him." **TREEM** then told R.B. a story about the very first criminal trial **RAVENELL** had, which was with **TREEM**. He also amended his earlier statement about where the information R.B. was sharing would go, telling R.B., "This isn't going anywhere except maybe, you know, I'm going to be talking to [**RAVENELL**] later so I'm going to talk to him about this." Concerned, R.B. asked, "Yeah, but on the phone?" **TREEM** responded, "No, no, ... I will not talk to him about this on the phone." **TREEM** then asked, "Not even on my cell phone?" to which R.B. responded "no," and **TREEM** agreed saying, "I got it, I got it. That's fine."

33. **TREEM** and **GORDON** and R.B. then had a discussion about **RAVENELL's** laptop computer,

which R.B. told them had R.B.'s "financial[s]" on it. After some discussion, R.B. said that the laptop computer should be thrown away or his financial information removed from it. **TR**EE**M** responded, "Well, I think the problem is it's under subpoena ... I have some questions but I will look at it ... Maybe there's a way to — well, I'll look at it. I'll see — we'll make sure it covers what we have."

34. R.B. then complained about being forced to take a plea offer in his criminal case. R.B. then told **TREEM**, "I just gave up. I just say fuck it. At least I know with this [**RAVENELL**] is protected and he knows what's coming at him and he know how to deal with it. And if **[RAVENELL**] is free my investment is good and that's the way I'm looking at it." **TREEM** then asked R.B., "So you need to know if your investment is good?" to which R.B. responded, "Yeah, I mean, I got a phone call from [Person A] that tells me my investment is good and that if I stood strong that a few million dollars was coming my way."

35. In response, **TREEM** asked, "and that call was from who?" to which R.B. responded, "[Person A]." **TREEM** then commented, "Oh, [Person A]. I know that's [Person A]. Okay. All right."

36. Later, R.B. told **TREEM** that in addition to his investment in the MGM Casino, R.B.'s escrow account at The Law Firm still had $9,000 in it and that R.B. was thinking of asking his lawyer to "draw up some paperwork and send to [The Law Firm] and demand my motherfucking money." **TREEM** told R.B. that **TREEM** "should stay out of that," but that **TREEM** would "make sure that [**RAVENELL]** (indiscernible)." R.B. then asked **TREEM**, "But, I mean, you can play in the back, though, and help me

out," to which **TREEM** responded, "Absolutely, I mean, yeah, for sure, I know that. Yeah, I will." **GORDON** asked R.B. how he "[got] that figure," to which R.B. responded that The Law Firm's attorney told R.B.'s lawyer. R.B. asked **TREEM** to "reach out" to The Law Firm's lawyer and **TREEM** told R.B., "I'll ask her. I will see her next week."

37. Eventually, the conversation returned to the KWR's Combined Notes. R.B. asked **TREEM**, "You want me to just read it man, and answer every question?" **TREEM** agreed to that approach telling R.B., "Absolutely, that's probably easier." R.B. proceeded to go through many but not all the items on the KWR's Combined Notes, reading a numbered statement and adopting it using, in almost all cases, a single word like "yes," "no," or "correct." On three occasions, **TREEM** asked follow-up questions to R.B.'s one word answers. Neither **TREEM** nor **GORDON** recorded which statements R.B. adopted.

38. After R.B. finished with the KWR's Combined Notes, the conversation returned to R.B.'s MGM Casino investment. R.B. asked **TREEM** if he could "bluff" Attorney 1 and Attorney 2 into paying R.B. what he was owed on the deal by threatening to go public with R.B.'s involvement in it. **TREEM** responded, "Okay. All right. But, yeah, no, except I don't want – the only people I want to know whom I want to know that I'm here today is you, [**GORDON**], me and **[RAVENELL]**."

39. **TREEM** then promised to do a number of things for R.B. to help him recoup his investment in the MGM Casino and any remaining money in his escrow account at The Law Firm:

> I don't know, but the first thing that comes to mind is -- and I'll talk to [**RAVENELL]** on Monday and we'll sit down and kind of go over this, but just what comes to mind immediately is that if there is a power of attorney out there in which you have given other people authority to do something on your behalf, you can revoke that, it's not irrevocable. And so then the power is yours and then it's -- at least you have control over what you want to do in terms of how to get your money back, you don't have to go through anyone else ... So that's kind of number one, because then if then -- if then there is someone else, another attorney that you want to get involved in this to go knock on [Attorney 1's] door and say, you know, that money that you're holding one, the escrow account, you know, that's a bar grievance issue. They have no right to that money, that's number one. But number two, where's his money?

40. **TREEM** continued, "But, you know -- but the other thing because, you want to get -- I mean, **[RAVENELL**] is holding that [power of] attorney for you, you don't want him to have it ... I mean, that's not good for you, that's not [good for] him ... So I'm going to talk to him. I'm going to talk to him about that and find out, you know, what — if there's a document out there I'd like to see it. He needs to get off of that."

41. **TREEM** next promised to reach out to a lawyer representing The Law Firm to try and enlist her in helping R.B.:

> But, you know, I'll see what I can do about talking to [Attorney for The Law Firm]. The problem is [Attorney for The Law Firm] works as counsel for the firm in this case but nothing else, you know. If the firm has got some deal on the side and this -- that's not unrelated to this particular piece of -- you know, this case involving you and the investigation of [**RAVENELL**] and whatever, that's the limit of her representation of this firm. My guess is, knowing her fairly well, she's going to say it ain't none of my business and [Attorney 1] and [Attorney 2] are fucking [R.B.] out of his money that's their problem and I'm not retained for that.

42. In response, R.B. asked **TREEM**, "So then how do I go about getting my money," and **TREEM** told him, "Then I think what you do is you find someone who is going to make it their problem," referring to a lawyer.

43. **TREEM** then promised to think about whether he knew "anybody who can maybe pick this up," referring to finding a lawyer for R.B.

44. R.B. asked **TREEM** and **GORDON**, "I mean how much motherfucking money does [Attorney 1] want to which **TREEM** responded, "He wants a lot," and **GORDON** stated, "Yeah, he wants it all," and **TREEM** then said "He wants it all. This stuff he got from [] isn't enough."

45. Later in the conversation, R.B. asked **GORDON** and **TREEM** whether **RAVENELL** had obtained an interest in the MGM Casino, to which **GORDON** replied, "I don't know," and **TREEM**

replied, "I don't think he's carrying any interests." R.B. responded, "So it's just [Attorney 1] and them?" to which **TREEM** replied, "I think so. I don't think he's got anything to do with them anymore."

46. **TREEM** then volunteered that he could go to the press to help R.B. recoup his MGM Casino investment. **TREEM** told R.B., "So you know, throwing [Attorney 1] in the briar patch—I can deal with that. That's [Attorney l's] money [now] you know, [but] I know people at the press, you know. I know the television people to call, I know the people I can go talk to, you know, I can spin it my way, I'm not worried about any of that."

47. R.B. asked in response, "So [Attorney 1] has just fucked me?" **TREEM** said, "you're just another fuckee. A fuckee in a long line of fuckees, you know, [Attorney 1] doesn't care."

48. Before they left, **TREEM** took back the KWR's Combined Notes from R.B. There were no check marks on it when he took it back and R.B. had not signed it.

49. During the course of the interview, **TREEM** took handwritten notes including that

a. R.B. knew that **RAVENELL** had a ledger on his computer, that **RAVENELL** was taking care of R.B.'s investments, and that **RAVENELL** maintained R.B.'s finances on his laptop.

b. "Feds do not have it," referring to the laptop computer, and also, "info delete."

c. "told [R.B.] not to have conversation with anyone else."

d. "KWR — record of all [R.B.'s] financial records on KWR's laptop."

TREEM and GORDON'S Interview of R.B. on September 10, 2017

50. On September 10, 2017, **TREEM** and **GORDON** returned to the Towers Jail at approximately 9:16 a.m., to continue meeting with R.B.

51. **TREEM** told R.B. that he "got a text from **[RAVENELL]** and we're going to meet tomorrow at 4."

52. At the outset of the meeting, R.B. asked if he could speak to **GORDON** privately. **TREEM** briefly left the room. R.B. asked **GORDON**, "I can talk freely in front of [**TREEM**] all the way?" **GORDON** responded, "Yeah. Yeah. You know, this is all privileged info." R.B. responded, "All right, cool. All right, he can come back in."

53. Thereafter, **TREEM** reentered the room.

54. **TREEM** began by handing R.B. the KWR's Combined Notes that they had gone over the previous day. Now, the document had hand-written check marks next to each of the numbered items including ones R.B. had not adopted.

55. **TREEM** then told R.B., "Okay. So we went over all this stuff yesterday, I'm not going to bother with that today. Can you sign this for me, just to show [**RAVENELL**] that you went over it?" R.B. did not, however, sign the document at this time. Instead, R.B. said to **TREEM** and **GORDON**, "There's a couple of things that I want to go through."

56. Before going any further, R.B. asked **TREEM**, "I want to make sure everything I discuss with you is

kept—" and understanding what R.B. meant without even letting him finish, **TREEM** said, "It is ... Yeah, I mean, it's easy — I mean, not easy on me, it's easy to do that, but I have to do that." **TREEM** told R.B., "This is my work product, this conversation ... The notes are my work product ... They are privileged. They're mine. No one is getting them. [**RAVENELL]**'s not getting this." In response, R.B. told **TREEM**, "That makes me a lot more comfortable."

57. **TREEM** then repeated what he said on the previous day about helping R.B. recover his MGM Casino investment and escrowed funds at The Law Firm.

> But having said that, just so you — we talked about this yesterday but I just want to make sure, I mean, I'm going to -- with your permission I'm going to tell [RAVENELL] what you're interested in, what you need and I'm prepared to talk to [R.B.'s then-Attorney] about that too, all right. But I'm [RAVENELL]'s lawyer, you know, and so my obligations in terms of representations are to him. I will -- I told you yesterday that I'll find out what I can about the investments and make sure -- ... Right, right, and the power of attorney and your escrowed money, I'll find out what I can about that. And I will either get that to you directly or probably through [R.B.'s then-Attorney] is probably the better way to do it.

58. R.B. then told **TREEM** and **GORDON** that R.B. would never cooperate with the Government. R.B. then told them that **RAVENELL** had a

"blueprint of my financials," that R.B. "can't get to those financials without [**RAVENELL**]" and that **RAVENELL** was "in a unique position as far as my money is concerned because without him I can't get my money from [Attorney 1] and them. So it's really -- he's in the power seat." **TREEM** responded, "Except that he's not in the power seat until this cloud disappears."

59. R.B. then told **TREEM** and **GORDON,**

> All right, so here's what I'm saying to you. And I want to go deep into this, okay, because I want you to clearly understand my position, all right?... My only position here is my money, that's it. [**RAVENELL**] can get anything he want from me that's not a problem. It's been that way since I've been incarcerated. I made sure [R.B.'s previous Attorney] — make sure [R.B.'s previous Attorney] took care of (indiscernible) situation, all of that shit, you know what I'm saying to you. So that's not a problem. My concern is my money.
>
> Now the information I gave you yesterday — is the information if called to testify I will testify to on the stand.

In response **TREEM** said, "I understand."

60. R.B. then told **TREEM**,

> Here's the real situation, alright. The real situation is this: [**RAVENELL**] knew my whole business operation, period, from A to Z, from nuts [to bolts]. [**RAVENELL**] knew that LOC was used to launder money. [**RAVENELL**] knew I was still

> involved in narcotics. I paid [**RAVENELL**] millions of dollars in cash. [**RAVENELL**] shared all that money between [Attorney 1 and Attorney 2], now [Attorney 1 and Attorney 2] is riding off in the sunset and he got a headache and nobody is making sure I get my money.
>
> [Attorney 1 and Attorney 2] is aware of this whole situation. [**RAVENELL**] don't make no move without them knowing as I've been told by him that they're partners and they need to know everything that's involved.

61. **TREEM** interrupted R.B. and asked him, "You mean partners now?" R.B. responded:

> Were. I'm talking about back when I was in their firm. I used to deliver book bags of cash to that office. [J.C.] delivered millions of dollars to **[RAVENELL]**. So what I'm saying is that I'm going to be the good soldier like I'm supposed to be, but I need [**RAVENELL]** to put his nuts on the line for me and make sure I get my fucking money. Like I've told you, I got two kids in college. I got one that's coming home that doesn't want to go to college. I'm not asking for no handout. I'm just asking for my money. How the fuck is [**RAVENELL**] going to let [Attorney 1] and them run off with every fucking thing and fuck him like that? That's like crazy to me that [**RAVENELL's**] allowing them to do that. It's one thing for me to take a dump because I am who I am and I am what I

> am, but how is he going to let them run off with everything.

62. R.B. then told **TREEM**, "Now [**RAVENELL**] keeps a chart of all my investments, all the players that's involved, the how's and the where's. He needs to make sure all of that vanish off his laptop." **TR**EE**M** responded

> Well, he can't do that. I can't have him I can't advise him to delete stuff off his laptop. I can't do that. I told you, [R.B.], yesterday there's a subpoena out for that stuff. I can't delete that and he can't either.

63. R.B. then told **TREEM** that R.B. had spoken to [Person A] and that "[Person A] related to me that my investments were safe, just chill, wait until the fog clear. And that [**RAVENELL]** was willing to throw me a few m's to stay the way I am. I mean, I was going to stay the way I am regardless, but you put it on the table I want it. My sole and only goal in this is to make sure my kids get their money." **TREEM** responded, "Okay. I want to make sure what you're telling me, you're telling me that [Person A] told you that [**RAVENELL**] is willing to throw you a few m's — to take care of your kids?" **TREEM** asked R.B. when he had spoken to Person A, and R.B. said it was approximately two years ago when they were both at the Supermax jail.

64. **TREEM** wrote down on his notepad, "KWR **[RAVENELL**] knows all about drug dealing, LOC and laundering. [R.B.] delivered millions in cash, so did [J.C.]." **TREEM** further wrote a note to himself, "JRT — different from yesterday." **TR**EE**M** underlined this notation four times.

65. **TREEM** also noted, "assuming its on laptop" referring to R.B.'s financial records and "wants [] with investments to vanish" and "JRT — won't happen, can't happen." **TREEM** noted what R.B. told him about [Person A] writing, "[Person A] says investment safe. KWR [**RAVENELL**] willing to throw him a few 'm's' to take care of 'kids'" and that R.B. had talked to Person A at Supermax approximately 2 years ago.

66. The conversation then returned to R.B.'s MGM Casino investment. **TREEM** subsequently had the following exchange with R.B.:

R.B.: So [Attorney 1 and Attorney 2] just want to run off in the sunset with our fucking money?

TREEM: Well, you're banking on—assuming that—I have no reason to doubt you, [R.B.], but you know if they know what—given what you say [Attorney 1 and Attorney 2] know, you know, they're going to let [**RAVENELL**] take the fall for them. Because what you're telling me, so I make sure I understand this, you're telling me that [**RAVENELL**] knew that you were using LOC to launder your narcotics money and that [Attorney 1 and Attorney 2] knew it too.

R.B.: Absolutely.

TREEM: And that, you know, cash—balances of cash were delivered to them at the firm.

R.B.: Absolutely.

TREEM: And there was really no question about, you know, where this was all coming from --

R.B.: Absolutely.

TREEM: -- at least commingled.

R.B.: Right.

TREEM: And so I'm giving you credit for that being accurate and truthful. If that's so, I mean [Attorney 1 and Attorney 2] aren't on the receiving end of anything yet so they're very happy to let [**RAVENELL**] take the fall.

R.B.: Motherfuckers.

TREEM: Because for them to be in trouble, [**RAVENELL's**] got to be in trouble. And so he's the one who is on — whose neck is out there. And to the extent that [Attorney 1 and Attorney 2] have some exposure right now they're very happy to have [**RAVENELL**] be the target because either way they win. If [**RAVENELL**] is charged and is convicted, you know, then the question is at that point, you know, how long does all that take and maybe the statute of limitations has run on everything. And if—you know if—otherwise, you know, you're the only out maybe at that point is

> [**RAVENELL**] makes some deal which sends him (indiscernible) they are and [Attorney 1 and Attorney 2] have all the defenses that they need, look at this he's trying to roll over to save his ass. So—but, you know, if what you're telling me is—which today is somewhat different than what you said yesterday.

67. Referencing the KWR's Combined Notes, which R.B. still had not signed, R.B. told **TREEM**, "I mean, this—I'm ready—this is for the [witness] stand, okay." **TREEM** responded,

> Well, okay. But, you know, I can't, I can't—I don't know where this is all going ... And I don't know whether, you know, assuming **[RAVENELL**] is charged, I have no idea sitting here today what I'm going to need or who I'm going to need to defend to put on the witness stand to defend [**RAVENELL**].

68. **TREEM** next told R.B.,

> All right. I can't put you on the witness stand if you're going to lie, and if I know you're going to lie I can't do that, because that get me in a lot of trouble if that comes out.

69. **TREEM** then told R.B. that he thought they should stop the interview and that **TREEM** "need[ed] to go kind of sit in my office and close the door and kind of play all this out," because "I got to think about this." **TREEM** continued:

> But, you know, I wrote down what you said and I take you at your word that at no point will you become [the Government's] bitch, I got that and that's fine. But how -- what your value to me is in terms of my representation of **[RAVENELL]** I got to think about that. And I don't want to do anything that's going to screw up what you want to do in terms of trying to get the money that's owed to you back in your pocket for the benefit of your kids. I understand that's your goal and I get that. And, you know, if that doesn't conflict with anything I got to do for my client I'm happy to -- regardless, I'm happy to do what I told you I would do, all right. I will see what I can do about finding out where -- what exists out there and I will let [R.B.'s then-Attorney] know all that. But in terms of what we said here yesterday and today I'm not telling him anything.

70. **TREEM** took notes on this portion of the conversation. **TREEM** wrote "[R.B.] wants to go after [The Law Firm] [] atty?" **TREEM** also noted, "JRT → said to stop" and that, "saying [] different from yesterday." **TREEM** further wrote in his notes "[R.B.] prepared to testify about [what] he [**RAVENELL**] needs [him] to." **TREEM** wrote, "can't call [R.B.] if you are going to lie." **TREEM** also noted, "[Attorney 1] and [Attorney 2] walking away — knows what KWR [**RAVENE**LL] doing with [R.B.]." **TREEM** then wrote, "no they don't" and "KWR [**RAVENELL**] being

used by them" and "can't do anything until investigation is over."

71. **TREEM** then repeated that **TREEM** was not going to tell R.B.'s lawyer about what they had talked about because doing so would not "help" **RAVENELL**.

72. **TREEM** again told R.B. that he would help R.B. find a lawyer to recoup his investment from Attorney 1 and Attorney 2. In his handwritten notes, **TREEM** recorded, "atty to go after [Attorney 1] & [Attorney 2] independent of KWR" and "that if KWR is person who knows then he can't do anything [] until after his investigation is over."

73. As the interview concluded, R.B. asked **TREEM**, "Can I have a conversation with [**GORDON**] real quick?" **TREEM** said, "Yeah, of course you can have a conversation with [**GORDON**]. Can you do me a favor?" R.B. responded, "Yes, sir."

74. Before he left the room **TREEM** asked, "Can you sign that for me that you saw it?" **TREEM** pointed at the KWR's Combined Notes, which R.B. still had not signed. **TREEM** then left the room.

75. R.B. said to **GORDON**, "I should never have had that conversation with [**TREEM**]." **GORDON** said, **"[TREEM]** wasn't going to put you on the stand anyway. It's more – you know. the situation is this isn't—I'll go back—this isn't a situation of like calling you as a witness." R.B. responded, "Okay."

76. **GORDON** said, "This is a situation of—," and R.B. said, "covering his bases?" **GORDON** said, "Talk to everyone, find out what their status is, you know. Just like you sent me to Houston to talk to people, this is kind of the same version." **GORDON's** statement about "Houston" was in reference to **GORDON** going

to meet with D.W. in an attempt to obtain a false witness statement from him, which R.B., **GORDON**, and **RAVENELL** knew to be false. R.B. said, "Okay."

77. **GORDON** said, "Not like they're going to put — they can't put you on [the witness stand] anyway, attorney/client privilege and all this other shit, okay. So it's not that kind of situation, okay."

78. R.B. said, "I'm like, yo, I'm willing to testify to all of this" as R.B. picked up and pointed at the KWR's Combined Notes. **GORDON** responded, "I know." R.B. asked, "so he just want me to sign saying I seen it?" **GORDON** responded, "Yeah, you saw it." R.B. signed the front page of the two-sided document and later signed the second page of the document.

79. R.B. then asked **GORDON**, "How the fuck do I get my money? Listen, tell **[RAVENELL]** to go get some of that motherfucking money that he got buried and give me my fucking money and get me out of the way." **GORDON** responded, "I can on Tuesday."

80. **TREEM** reentered the room and said to R.B., "Good to see you, man. Take care of yourself." R.B. said, "Any help you can give me I would really appreciate it." **TREEM** said, "Yeah, I hear you. Alright." **TREEM** picked up the KWR's Combined Notes from the table. **TREEM** said, "Maybe there may be a way I can kind of finesse this." Before leaving with **GORDON** and the document, **TREEM** told R.B., "We'll be back in touch ... you take care of yourself." **TREEM** then gave R.B. a "high-five." The meeting concluded.

False GORDON Affidavit

81. On September 11, 2017, **TREEM** had a conference call with **RAVENELL**. On that same day, **TREEM** drafted an affidavit for **GORDON** regarding "K. **RAVENELL's** Combined Notes."

82. On September 13, 2017, **TREEM** and **RAVENELL** had a conference call regarding the affidavit for **GORDON**.

83. On September 14, 2017, **GORDON** arrived at **TREEM's** law firm at approximately 10:10 a.m. to execute the affidavit. The affidavit contained nine numbered paragraphs. The first five (5) paragraphs asserted the following;

> I, Sean Gordon, hereby declare and affirm under penalties of perjury:
>
> 1. I am over the age of eighteen (18) and am competent to testify to the facts and matters contained in this Affidavit, and do so with personal knowledge.
> 2. On September 9, 2017, I accompanied Joshua R. Treem, attorney for Kenneth W. Ravenell, to interview [R.B.] at Towers Jail in Phoenix, Arizona on September 9, 2017 and September 10, 2017.
> 3. It was my understanding that [R.B.] had previously consented to the meeting and had directed his attorney, [R.B.'s Attorney 2], to advise Joshua R. Treem.
> 4. At some point prior to the interview, Mr. Treem had received a document

entitled "KWR's Combined Notes" which were hand written notes of Mr. Ravenell which for clarity and understanding had been typed by Mr. Treem's assistant.

5. On September 9, 2017, we met with [R.B.] at Towers Jail beginning at 10:30 a.m. local time. During the course of the interview, [R.B.] was given the document attached as Exhibit 1 to review.

84. In paragraph number six (6) **TREEM** wrote and **GORDON** affirmed the following false statement:

6. [R.B.] read each of the entries, numbered 1-53, out loud and acknowledged the truthfulness and accuracy of each one separately and individually.

In truth and fact, R.B. did not read "each of the entries, numbered 1-53, out loud" and "acknowledge[] the truthfulness and accuracy of each one separately and individually." R.B. never read or acknowledged the truthfulness of the following entries:

23. He did not pay me to report law enforcement activities to him. He simply paid me to represent him.

24. I did not bring him a list of people who owed him drug money from Castle

25. He never asked me to get a list of people who owed him drug money from Castle.

> 26. He knew that I would never agree to get a list of people who owed him drug money from Castle or anyone else.

85. In paragraph number seven (7), **TREEM** wrote and **GORDON** affirmed the following false statement:

> 7. At no time did [R.B.] express any hesitancy, disapproval, or disagreement with the statements or make any changes.

In truth and fact, R.B. did express "hesitancy, disapproval [and] disagreement" with the statements contained in the KWR's Combined Notes. As described in detail in paragraphs 59-80 of this Count.

86. In paragraph eight (8), **TREEM** wrote and **GORDON** affirmed the following false statement:

> 8. The [check] markings on the Exhibit were made by Mr. Treem subsequent to [R.B.] acknowledging the accuracy of the entries, to record that [R.B.] had read all the entries. All of the other handwriting was made by Mr. Treem prior to [R.B.] reading and acknowledging the accuracy of entries 1 through 53.

In truth and fact, R.B. acknowledged the accuracy of only some of the entries on the first day of the interview as described in paragraphs 37 and 84 of this Count but denied their accuracy on the second day of the interview as described in detail in paragraphs 59-80 of this Count.

87. In paragraph nine (9), **TREEM** wrote and **GORDON** affirmed the following false statement:

> 9. We met with [R.B.] again on September 10, 2017. During our visit we asked him to review Exhibit 1 and, if he had no changes to make, to sign and date the statement, which he did in my presence.

In truth and fact, neither **TREEM** nor **GORDON** asked R.B. "to review Exhibit 1," which was the KWR's Combined Notes, and, "if he had no changes to make, to sign and date the statement." Further, R.B. told both **TREEM** and **GORDON** that the statements in the KWR's Combined Notes were untrue during an extended conversation that occurred before R.B. signed the document, as described in detail in paragraphs 59-80 of this Count.

88. On September 14, 2017, **GORDON** signed the false affidavit, which was thereafter maintained in **TREEM's** files at the law firm where **TREEM** was a partner at that time.

False Letter to a U.S. District Court Judge

89. On January 18, 2018, **TREEM** began drafting a letter to the United States District Court Judge who presided over R.B.'s criminal case in the United States District Court for the District of Maryland (the "U.S. District Judge"). The U.S. District Judge to whom the letter was addressed was actively presiding over related cases involving R.B.'s co-conspirators. **TREEM** drafted the letter for 1.5 hours on January 18, 2018. That same day, **TREEM** and **GORDON** exchanged emails and **TREEM** and **RAVENELL** communicated by phone.

90. On January 19, 2018, **RAVENELL** met with **TREEM**.

91. On January 29, 2018, **TREEM** and **RAVENELL** communicated by phone.

92. On January 30, 2018, **TREEM** further edited the letter to the U.S. District Judge.

93. On February 6, 2018, an employee of T**REEM's** firm had a - conference" with T**REEM** "re letter to Judge [];" and then that employee "revise[d] letter based off latest edits."

94. On February 7, 2018, an employee of **TREEM's** firm had a "Conference" with T**REEM** "re letter to to [sic.] Judge H" and then "[made] revisions to letter."

95. On February 8, 2018, an employee of **TREEM's** firm had a "Conference" with T**REEM** "re letter to Judge []; and then made "edits to letter" and then had a "telephone call to S. Gordon."

96. On February 8, 2018, **TREEM** further edited the false letter for one hour and had a telephone call with **RAVENELL**.

97. On February 8, 2018, at 2:38 p.m., **TREEM** called R.B.'s then-Attorney and left a voicemail. In the voicemail, **TREEM** stated that he was aware R.B. had entered a guilty plea to state charges and wanted to know "what the circumstances were or weren't."

98. On February 9, 2018, **TREEM** caused to be emailed an ex parte letter dated February 8, 2018, to the U.S. District Judge that included false and misleading representations. **TREEM** chose to send the letter on his own initiative, and it was not in response to any order of the Court.

99. In the first paragraph of the letter, **TREEM** wrote, "For approximately the past 18 months I have been representing [**RAVENELL**], who has been under investigation by the United States Attorney's Office ("USAO") ... I am writing in that capacity and as an officer to this Court, to bring to your attention recent actions by [R.B.] that I believe constitute criminal conduct."

100. In the last paragraph of the letter, **TREEM** wrote, "I have no knowledge whether R.B. is currently or may become a government witness[.]" **TREEM** also stated, "[**RAVENELL**] believes a record needs to be made of these events regardless of the consequences, should he be charged and should [R.B.] appear as a government witness. As his counsel I concur."

101. In the fourth paragraph of the letter, in reference to the meeting **TREEM** and **GORDON** had with R.B. on September 9, 2017, **TREEM** made the following false statement:

> We presented [R.B.] with a document we had prepared with a number of statements, and asked [R.B.] to review and to acknowledge the accuracy or inaccuracy of each. He indicated he wanted to consider the request overnight.

In truth and fact, [R.B.] did not ask to review the document overnight, as **TREEM** knew from the notes he took during the first day of the interview. **TREEM** started to question R.B. about the statements in the KWR's Combined Notes approximately 10 minutes into their meeting and **TREEM**, **GORDON** and R.B. proceeded to have a lengthy discussion about the KWR's Combined Notes. As summarized above, in truth and fact:

a. **TREEM** asked R.B. if, after R.B.'s arrest in 2011, **RAVENELL** knew that R.B. was still selling narcotics;

b. R.B. told **TREEM** and **GORDON** that **RAVENELL** attended events R.B. sponsored;

c. **TREEM** told R.B. that the Government's theory of prosecution of **RAVENELL** was that **RAVENELL** knew R.B. was paying him with narcotics money and using LOC Marketing to launder narcotics money;

d. R.B. told **TREEM** that R.B. knew that **RAVENELL** wanted R.B. to adopt the exculpatory statements contained in the KWR's Combined-Notes and that R.B. was willing to do that;

e. Ultimately, R.B. read out loud many but not all of the 53 items on the KWR's Combined Notes and adopted some of them, almost always, with a single word like "correct" or "yes or "no";

f. As R.B. was reading through the items, **TREEM** stopped him to ask follow-up questions on at least three occasions.

106. In the fifth paragraph, **TREEM** then falsely stated:

> The following day when we returned to continue our visit, [R.B.] stated that the statements were accurate. He acknowledged the accuracy of the individual statements and signed the document.

In truth and fact, on the second day of the interview, R.B. did not state that "the statements were accurate" and did not "acknowledge the accuracy of the statements."

a. As quoted above, R.B. told **TREEM** and **GORDON** that **RAVENELL** knew R.B. was selling narcotics and paying **RAVENELL** with narcotics proceeds.

b. As summarized above, **TREEM's** own handwritten notes from the interview reflect that **TREEM** recognized what R.B. was saying on the second day of the interview contradicted what he had said on the first day.

c. **TREEM** himself acknowledged that R.B. would he "lying" if **TREEM** called him as a witness in a trial of **RAVENELL** and asked him to make the statements contained in the KWR's Combined Notes.

107. In that same paragraph, **TREEM** also falsely stated,

> [R.B.] then began to complain about not having access to money that he claimed was owed to him that he wanted for his family. [R.B.] asserted that some was being held by [Attorney 1 and Attorney 2], and some was an interest in a business venture. He wanted **[RAVENE**LL] to get the money for him. At that point, concerned that these statements sounded
>
> extortionate, we reminded [R.B.] that we represented **[RAVENELL]** and if he had any complaints about money he believed he was owed, he would need to raise those with his counsel, not us. We ended the meeting and returned to Baltimore later that day.

In truth and fact, **TREEM** and **GORDON** discussed R.B.'s investment in the MGM Casino at length on the first day of the interview. Far from treating R.B.'s statements about the investment and the remaining money in his escrow account as extortionate, **TREEM** and **GORDON** actively engaged in a discussion about these topics with R.B., including, but not limited to, the following:

a. **TREEM** asked R.B. to outline the specifics of his investment;

b. **TREEM** promised to ask The Law Firm's lawyer about money left in R.B.'s escrow account at The Law Firm when **TREEM** saw her the following week;

c. **TREEM** questioned R.B. at length about a power of attorney R.B. said he signed giving **RAVENELL** control over R.B.'s investments and told R.B. he was going to help R.B. revoke or change the power of attorney to remove **RAVENELL** from it;

d. **TREEM** promised to think about potential lawyers that R.B. could hire to sue The Law Firm; and

e. **TREEM** promised to go to journalists he knew in an effort to embarrass Attorney 1 and Attorney 2.

108. Approximately ten months later, on December 11, 2018, **TREEM** called the attorney of record for R.B. at that time and left a voicemail. In the voicemail. **TREEM** said he was looking to find R.B. because "[**TREEM**] wanted to try to reach out to [R.B.]." **TREEM** further stated he was calling to ask for the attorney's permission to meet with R.B. These attempts to meet with R.B. further indicate that

TREEM did not believe R.B. was trying to extort **RAVENELL**.

18 U.S.C. § 371

COUNT FIVE
(Obstructing an Official Proceeding)

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 9-39 of Count One and Paragraphs 4, 6 and 10-108 of Count Four are hereby realleged and incorporated by reference herein as though fully set forth in this Count of the Superseding Indictment.

2. Beginning no later than September 9, 2017, and continuing through at least December 11, 2018, in the District of Maryland and elsewhere, the defendants,

KENNETH WENDELL RAVENELL,
JOSHUA REINHARDT TREEM, and
SEAN FRANCIS GORDON,

did corruptly attempt to obstruct and impede a federal grand jury investigation of **RAVENELL**, an official proceeding, and a foreseeable criminal prosecution of **RAVENELL** in the United States District Court for the District of Maryland, and not provide lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding, by creating false and fictitious records of **TREEM's** and **GORDON's** meeting with, R.B. These documents, a set of false exculpatory statements titled "KWR's Combined Notes," which **TREEM** and **GORDON** encouraged R.B. to sign, a false affidavit dated September 14, 2017, signed by **GORDON**, and a letter to a United States District Court Judge in the District of Maryland dated February 8, 2018, signed by **TREEM**, were all fraudulently prepared to be used

to undermine and impeach R.B.'s credibility if he were to be called in an official proceeding to give testimony against **RAVENELL**, and to provide false evidence of a prior consistent statement by **GORDON** and **TREEM** in the event either one of them were to be called to testify in an official proceeding.

18 U.S.C. § 1512(c)(2)

18 U.S.C. § (2)

COUNT SIX
(Falsification of Record)

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 16 through 88 of Count Four are hereby realleged and incorporated by reference herein as though fully set forth in this Count of the Superseding Indictment.

2. Beginning no later than September 9, 2017, and continuing through at least September 14, 2017, in the District of Maryland and elsewhere, the defendants,

KENNETH WENDELL RAVENELL,
JOSHUA REINHARDT TREEM, and
SEAN FRANCIS GORDON,

did knowingly conceal, cover up, falsify and make false entries in an affidavit signed by **GORDON** on September 14, 2017, a record and document, with the intent to impede, obstruct and influence the investigation and proper administration of a federal criminal investigation of **RAVENELL**, a matter that the defendants knew was within the jurisdiction of the United States Department of Justice, a department and agency of the United States, and in contemplation of a federal criminal prosecution of **RAVENELL**, a matter the defendants knew was within the jurisdiction of the United States Department of Justice, a department and agency of the United States, and this conduct was not the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

18 U.S.C. § 1519
18 U.S.C. § 2

COUNT SEVEN
(Falsification of Record)

The Grand Jury for the District of Maryland further charges that:

1. Paragraphs 16-80 and 89-108 of Count Four are hereby realleged and incorporated by reference herein as though fully set forth in this Count of the Superseding Indictment.

2. Between at the latest September 9, 2017, and continuing through at least February 8, 2018, in the District of Maryland and elsewhere, the defendants,

KENNETH WENDELL RAVENELL, and
JOSHUA REINHARDT TREEM

did knowingly conceal, cover up, falsify and make false entries in a letter to a United States District Court Judge dated February 8, 2018, and signed by **TREEM**, a record and document, with the intent to impede, obstruct and influence the investigation and proper administration of a federal criminal investigation of **RAVENELL**, a matter that the defendants knew was within the jurisdiction of the United States Department of Justice, a department and agency of the United States, and in contemplation of a federal criminal prosecution of **RAVENELL**, a matter the defendants knew was within the jurisdiction of the United States Department of Justice, a department and agency of the United States, and this conduct was not the providing of lawful, bona fide, legal representation services in connection with or anticipation of an official proceeding.

18 U.S.C. § 1519

18 U.S.C. § 2

FORFEITURE ALLEGATION

The Grand Jury for the District of Maryland further finds that:

1. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given to the Defendant that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Sections 982 and 1963, Title 21, United States Code, Section 853, and Title 28, United States Code, Section 2461(c) in the event of the Defendant's convictions under Counts One through Three of this Second Superseding Indictment.

RICO Forfeiture

2. Pursuant to Title 18, United States Code, Section 1963(a), upon conviction of the offense alleged in Count One, the Defendant,

KENNETH WENDELL RAVENELL,

shall forfeit to the United States of America, (i) any interest the Defendant acquired or maintained as a result of the commission of the offense alleged in Count One of the Second Superseding Indictment; (ii) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which the Defendant has established, operated, controlled, conducted, or participated in the conduct of, in committing the offense alleged in Count Six of the Superseding Indictment; and (iii) any property, constituting or derived from, any proceeds which the Defendant obtained, directly or indirectly, from the racketeering activity alleged in Count Six of this Superseding Indictment.

Money Laundering Forfeiture

3. Pursuant to Title 18, United States Code, Section 982(0(1), upon conviction of the offense alleged in Count Two, the Defendant,

KENNETH WENDELL RAVENELL,

shall forfeit to the United States of America, any property real or personal, involved in such offense, or any property traceable to such property.

Narcotics Forfeiture

4. Pursuant to Title 21, United States Code, Section 853(a), upon conviction of an offense in violation of the Controlled Substances Act, as alleged in Count Three, the Defendant,

KENNETH WENDELL RAVENELL,

Shall forfeit to the United States of America:

a. any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of such violation; and

b. any property used, or intended to be used, in any manner or part, to commit, or facilitate the commission of, such violation.

Substitute Assets

8. Pursuant to Title 18, United States Code, Section 1963(m) and Title 21, United States Code, Section 853(p), if any of the property described above as being subject to forfeiture, as a result of any act or omission by the Defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been comingled with other property which cannot be subdivided without difficulty,

it is the intent of the United States to seek forfeiture of any other property of the Defendant up to the value of the property charged with forfeiture in the paragraphs above.

21 U.S.C. § 853

18 U.S.C. § 982(a)(1)

18 U.S.C. § 1963

28 U.S.C. § 2461(c)

Jonathan Lenzner /FJW
Jonathan Lenzner
Acting United States Attorney

A TRUE BILL:

SIGNATURE REDACTED

Foreperson

Date: 07/22/2021