

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED STATES

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KASHEEN SAMUELS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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*On Petition for Writ of Certiorari from the  
United States Court of Appeals for the  
Second Circuit*

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PETITION FOR WRIT OF CERTIORARI

APPENDIX

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# **APPENDIX 1**

# MANDATE

22-1011-cr

*United States v. Samuels*

1:18-cr-00306-ER-1

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## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

### SUMMARY ORDER

*Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.*

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 17<sup>th</sup> day of January, two thousand twenty-four.

PRESENT: Guido Calabresi,  
Steven J. Menashi,  
Myrna Pérez,  
*Circuit Judges.*

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UNITED STATES OF AMERICA,

*Appellee,*

v.

No. 22-1011

KASHEEN SAMUELS, AKA Kash, AKA JR,

*Defendant-Appellant.*

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MANDATE ISSUED ON 03/13/2024

*For Appellee:*

CHRISTOPHER D. BRUMWELL, Assistant United States Attorney (Mary E. Bracewell and Stephen J. Ritchin, Assistant United States Attorneys, *on the brief*), for Damian Williams, United States Attorney for the Southern District of New York, New York, NY.

*For Defendant-Appellant:*

JAMES B. SEFLOWITZ (Jason E. Foy, *on the brief*), Foy & Seplowitz LLC, Hackensack, NJ.

Appeal from a judgment of the United States District Court for the Southern District of New York (Ramos, J.).

Upon due consideration, it is hereby **ORDERED, ADJUDGED, and DECREED** that the judgment of the district court is **AFFIRMED**.

Kasheen Samuels appeals his conviction for armed robbery and drug trafficking on several grounds. For the reasons that follow, we affirm. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

## I

Samuels first contends that Counts One through Three of the indictment—which related to the robbery of Robert Bishun in April 2016—should not have been joined with Counts Four through Six, which related to the robbery of Justin Garcia in June 2017, or with Count Seven, which concerned a narcotics conspiracy. “We review the propriety of joinder *de novo*.” *United States v. Shellef*, 507 F.3d 82, 96 (2d Cir. 2007). Under Rule 8(a), “[t]he indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—

whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.” Fed. R. Crim. P. 8(a). “Rule 8(a) is not limited to crimes of the ‘same’ character but also covers those of ‘similar’ character, which means ‘nearly corresponding; resembling in many respects; somewhat alike; having a general likeness.’” *United States v. Werner*, 620 F.2d 922, 926 (2d Cir. 1980) (alteration omitted) (quoting *Webster’s New International Dictionary* (2d ed.)); see also *United States v. Rivera*, 546 F.3d 245, 253 (2d Cir. 2008) (“Counts that have a sufficient logical connection to each other can be tried together, as can those where the same evidence may be used to prove each count.”) (internal quotation marks and citation omitted).

The government makes strong arguments that the requirements of Rule 8(a) were met because of similarities between the offenses and overlap of evidence and witnesses. However, we need not decide whether joinder was proper because it was harmless. The evidence of related offenses would have been admissible in each case in any event.

Samuels argues that the district court should have granted his motion for a severance. We have explained that “[a] district court’s decision to deny severance is ‘virtually unreviewable’ and will be overturned only if a defendant can demonstrate prejudice ‘so severe that his conviction constituted a miscarriage of justice and that the denial of his motion constituted an abuse of discretion.’” *United States v. Fazio*, 770 F.3d 160, 165-66 (2d Cir. 2014) (quoting *United States v. Stewart*, 433 F.3d 273, 314-15 (2d Cir. 2006)).

Samuels cannot make that showing. He suggests that “the jury was unable to evaluate each alleged crime independently.” Appellant’s Br. 13. But the district court instructed the jury to consider each charge separately, and the fact that Samuels was acquitted on two counts suggests that the jury followed that instruction. See *Herring v. Meachum*, 11 F.3d 374, 378 (2d Cir. 1993) (“Based on the instructions, the jury seems to have carefully evaluated the evidence on each count

separately; it convicted petitioner on two of the counts, but acquitted him on the other two.”).

Given the lack of lack of prejudice, we affirm.

## II

Samuels next argues that the district court improperly admitted “highly prejudicial” evidence of “significant instances of prior uncharged crimes, prior incarceration and irrelevant gang affiliation.” Appellant’s Br. 13. “We review a decision on admission of evidence for abuse of discretion, which we will only find if the district court acted arbitrarily and irrationally. If the district court abused its discretion, we apply harmless error analysis.” *United States v. Greer*, 631 F.3d 608, 614 (2d Cir. 2011) (internal quotation marks and citations omitted).

Under Rule 404(b), “[e]vidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Fed. R. Evid. 404(b)(1). However, “[t]he Second Circuit’s ‘inclusionary rule’ allows the admission of such evidence ‘for any purpose other than to show a defendant’s criminal propensity, as long as the evidence is relevant and satisfies the probative-prejudice balancing test of Rule 403 of the Federal Rules of Evidence.’” *Greer*, 631 F.3d at 614 (quoting *United States v. Inserra*, 34 F.3d 83, 89 (2d Cir. 1994)). Moreover, Rule 404(b) has been read to exclude from its scope “evidence of uncharged criminal activity ... if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial.” *United States v. Carboni*, 204 F.3d 39, 44 (2d Cir. 2000) (quoting *United States v. Gonzalez*, 110 F.3d 936, 942 (2d Cir. 1997)).

Even if the district court did not expressly conduct the probative-prejudice balancing, we may do so on appeal. We conclude that the district court correctly admitted evidence of the three uncharged robberies because that evidence served “to inform the jury of the background of the conspiracy charged, to complete the

story of the crimes charged, and to help explain to the jury how the illegal relationship between participants in the crime developed.” *United States v. Pitre*, 960 F.2d 1112, 1119 (2d Cir. 1992); *see also United States v. Rosa*, 11 F.3d 315, 334 (2d Cir. 1993) (“We have held repeatedly that it is within the court’s discretion to admit evidence of prior acts to inform the jury of the background of the conspiracy charged, in order to help explain how the illegal relationship between participants in the crime developed, or to explain the mutual trust that existed between coconspirators.”). Here, the three uncharged robberies involved overlapping personnel with the two charged robberies, and some occurred in close temporal proximity to the charged robberies.

Samuels also challenges the admission of evidence regarding his gang membership. But “courts routinely admit evidence of gang membership ... where the evidence is relevant for a proper purpose.” *United States v. Williams*, 930 F.3d 44, 63 (2d Cir. 2019). In this case, evidence of Samuels’s membership in the Sex Money Murder gang was relevant background information that helped the jury understand Mingo’s testimony regarding two of the uncharged robberies; it was Samuels’s gang membership that gave him the opportunity to commit these two robberies. If evidence of the uncharged robberies was properly admitted, and it was, then evidence of Samuels’s gang membership was also properly admitted. In any event, knowing about Samuels’s gang membership could not have meaningfully prejudiced the jury because Samuels’s gang membership “did not involve conduct any more sensational or disturbing than the crimes with which [Samuels was] charged.” *United States v. Lyle*, 919 F.3d 716, 737 (2d Cir. 2019) (quoting *Pitre*, 960 F.2d at 1120).

We cannot conclude that the challenged evidentiary rulings were “arbitrary and irrational” so as to amount to an abuse of discretion. *United States v. Pipola*, 83 F.3d 556, 566 (2d Cir. 1996).



### III

Samuels also argues that the jury instructions regarding felony murder were defective. For purposes of 18 U.S.C. § 924(j), “Murder is the unlawful killing of a human being with malice aforethought.” 18 U.S.C. § 1111(a); *see also* 18 U.S.C. § 2(a) (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.”). Samuels takes issue with the instruction that “[t]he government is not required to prove that the defendant, or the person that he aided and abetted, had any premeditated design or intent to kill the victim” and that the government needed only show that the death “occurred as a consequence of and while the defendant, or someone he aided and abetted, was knowingly and willfully committing the crime of robbery.” Tr. 1427.

The jury instruction was a straightforward application of the felony murder rule. “One way the government can demonstrate malice aforethought is by showing that the killing was committed in the commission of a robbery; under the traditional common law felony murder rule, the malice of the robbery satisfies murder’s malice requirement.” *United States v. Thomas*, 34 F.3d 44, 48 (2d Cir. 1994); *see also United States v. Rivera*, 679 F. App’x 51, 55 (2d Cir. 2017) (“[T]he malice of the [underlying] robbery satisfies murder’s malice requirement.”) (quoting *Thomas*, 34 F.3d at 48). That is, the government need not prove separately that the defendant had any particular *mens rea* as to the killing itself.

Contrary to Samuels’s suggestion, nothing in the Supreme Court’s decision in *Rosemond v. United States*, 572 U.S. 65 (2014), requires a different result. As we recognized in *Rivera*, *Rosemond* “did not enhance the knowledge required of an aider and abettor of § 924(j).” *Rivera*, 679 F. App’x at 55 (quoting *United States v. Garcia-Ortiz*, 792 F.3d 184, 190 (1st Cir. 2015)).

### IV

Samuels additionally contends that the jury instructions constructively amended Count Six. “A constructive amendment occurs when the charge upon

which the defendant is tried differs significantly from the charge upon which the grand jury voted.” *United States v. Dove*, 884 F.3d 138, 146 (2d Cir. 2018). Such an amendment “occurs either where (1) an additional element, sufficient for conviction, is added, or (2) an element essential to the crime charged is altered.” *Id.* (citation omitted). A constructive amendment violates the requirement of the Fifth Amendment that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. amend. V; see *Stirone v. United States*, 361 U.S. 212, 215-16 (1960) (“[A]fter an indictment has been returned its charges may not be broadened through amendment except by the grand jury itself.”). “We review de novo the question of whether an indictment was constructively amended.” *United States v. Daugerdas*, 837 F.3d 212, 225 (2d Cir. 2016).

Count Six’s aiding-and-abetting charge regarding the murder of Torres stated that Samuels “did aid and abet the same, to wit, SAMUELS provided firearms for the gunpoint robbery of Victim-2 at the Motel, and in the course of that robbery one of the robbers shot and killed Torres.” App’x 40. At trial, however, the jury was instructed that it could consider other means of aiding and abetting, not just whether Samuels provided firearms. According to Samuels, this amounted to a constructive amendment because it “broadened the core of criminality in a manner that rendered it impossible for Mr. Samuels to be fairly informed of the charge against which he was defending.” Appellant’s Br. 34.

We have said that “an impermissible alteration of the charge must affect an essential element of the offense,” and “we have consistently permitted significant flexibility in proof, provided that the defendant was given notice of the core of criminality to be proven at trial.” *United States v. Patino*, 962 F.2d 263, 266 (2d Cir. 1992) (internal quotation marks omitted). “The core of criminality of an offense involves the essence of a crime, in general terms; the particulars of how a defendant effected the crime falls outside that purview.” *United States v. Korchevsky*, 5 F.4th 279, 293 (2d Cir. 2021) (quoting *United States v. D’Amelio*, 683

F.3d 412, 418 (2d Cir. 2012)). Moreover, the jury is free to consider “additional examples of the same conduct constituting the charged scheme.” *Id.* at 293.

Pursuant to these standards, we previously rejected a defendant’s constructive amendment claim that “his conviction rests on facts outside the ‘to wit’ clause of [an economic espionage] count, which alleges only his unauthorized copying, printing, and removal of ... confidential computer code” but not “continued unauthorized possession.” *United States v. Agrawal*, 726 F.3d 235, 259-61 (2d Cir. 2013). In doing so, we explained that the difference in specific means did not alter the core of criminality: “the theft of trade secrets.” *Id.* at 260.

Here, Samuels’s provision of firearms was merely one part of “a single course of conduct” in which Samuels encouraged and facilitated the Garcia robbery. *D’Amelio*, 683 F.3d at 424. Samuels substantially assisted in the planning of the Garcia robbery and told Mingo and Martinez to return to his apartment “with the money, jewelry, and the weapons” afterward. Tr. 308. The provision of firearms did not involve the “essence” of the offense but only “the particulars of how [Samuels] effected the crime.” *Korchevsky*, 5 F.4th at 293. For that reason, the jury instructions did not effect a constructive amendment.

\* \* \*

We have considered Samuels’s remaining arguments, which we conclude are without merit. For the foregoing reasons, we affirm the judgment of the district court.

FOR THE COURT:

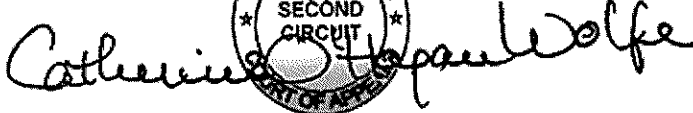
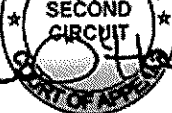
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Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

# **APPENDIX 2**

# 18 U.S.C. § 924 - U.S. Code - Unannotated Title 18. Crimes and Criminal Procedure § 924.

## Penalties

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**(a)(1)** Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929, whoever--

**(A)** knowingly makes any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

**(B)** knowingly violates subsection (a)(4), (f), (k), or (q) of section 922;

**(C)** knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

**(D)** willfully violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both.

**(2)** Whoever knowingly violates subsection (a)(6), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

**(3)** Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly--

**(A)** makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, or

**(B)** violates subsection (m) of section 922,

shall be fined under this title, imprisoned not more than one year, or both.

**(4)** Whoever violates section 922(q) shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.

**(5)** Whoever knowingly violates subsection (s) or (t) of section 922 shall be fined under this title, imprisoned for not more than 1 year, or both.

**(6)(A)(i)** A juvenile who violates section 922(x) shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

**(ii)** A juvenile is described in this clause if--

**(I)** the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

**(II)** the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

**(B)** A person other than a juvenile who knowingly violates section 922(x)--

(i) shall be fined under this title, imprisoned not more than 1 year, or both; and

(ii) if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

(7) Whoever knowingly violates section 931 shall be fined under this title, imprisoned not more than 3 years, or both.

(8) Whoever knowingly violates subsection (d) or (g) of section 922 shall be fined under this title, imprisoned for not more than 15 years, or both.

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime--

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

**(B)** If the firearm possessed by a person convicted of a violation of this subsection--

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

**(C)** In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall--

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

**(D)** Notwithstanding any other provision of law--

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.



**(2)** For purposes of this subsection, the term “drug trafficking crime” means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

**(3)** For purposes of this subsection the term “crime of violence” means an offense that is a felony and--

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

**(B)** that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

**(4)** For purposes of this subsection, the term “brandish” means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

**(5)** Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section--

**(A)** be sentenced to a term of imprisonment of not less than 15 years; and

**(B)** if death results from the use of such ammunition--

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

**(d)(1)** Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922, or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l), or knowing violation of section 924, 932, or 933, or willful violation of any other provision of this chapter or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter: *Provided*, That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

**(2)(A)** In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter, the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

**(B)** In any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

**(C)** Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

**(D)** The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

**(3)** The offenses referred to in paragraphs (1) and (2)(C) of this subsection are--

**(A)** any crime of violence, as that term is defined in section 924(c)(3) of this title;

**(B)** any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

**(C)** any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title, where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title;

**(D)** any offense described in section 922(d) of this title where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

(E) any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title;

(F) any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition; and

(G) any offense under section 932 or 933.

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection--

(A) the term "serious drug offense" means--

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that--

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

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.

(g) Whoever, with the intent to engage in conduct which--

(1) constitutes an offense listed in section 1961(1),

(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46,

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly receives or transfers a firearm or ammunition, or attempts or conspires to do so, knowing or having reasonable cause to believe that such firearm or ammunition will be used to commit a felony, a Federal crime of terrorism, or a drug trafficking crime (as such terms are defined in section 932(a)), or a crime under the Arms Export Control Act (22 U.S.C. 2751 et seq.), the Export Control

Reform Act of 2018 (50 U.S.C. 4801 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 et seq.), shall be fined under this title, imprisoned for not more than 15 years, or both.

**(i)(1)** A person who knowingly violates section 922(u) shall be fined under this title, imprisoned not more than 10 years, or both.

**(2)** Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

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

**(1)** if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

**(2)** if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

**(k)(1)** A person who smuggles or knowingly brings into the United States a firearm or ammunition, or attempts or conspires to do so, with intent to engage in or to promote conduct that--

**(A)** is punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46; or

**(B)** constitutes a felony, a Federal crime of terrorism, or a drug trafficking crime (as such terms are defined in section 932(a)),

shall be fined under this title, imprisoned for not more than 15 years, or both.

**(2)** A person who smuggles or knowingly takes out of the United States a firearm or ammunition, or attempts or conspires to do so, with intent to engage in or to promote conduct that--

**(A)** would be punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, if the conduct had occurred within the United States; or

**(B)** would constitute a felony or a Federal crime of terrorism (as such terms are defined in section 932(a)) for which the person may be prosecuted in a court of the United States, if the conduct had occurred within the United States,

shall be fined under this title, imprisoned for not more than 15 years, or both.

**(I)** A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

**(m)** A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

**(n)** A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

**(o)** A person who conspires to commit an offense under subsection (c) shall be imprisoned for not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

**(p) Penalties relating to secure gun storage or safety device.--**

**(1) In general.--**

**(A) Suspension or revocation of license; civil penalties.**--With respect to each violation of section 922(z)(1) by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing--

- (i) suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter that was used to conduct the firearms transfer; or
- (ii) subject the licensee to a civil penalty in an amount equal to not more than \$2,500.

**(B) Review.**--An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f).

**(2) Administrative remedies.**--The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary



# 18 U.S.C. § 1951 - U.S. Code - Unannotated

## Title 18. Crimes and Criminal Procedure § 1951.

### Interference with commerce by threats or violence

Current as of January 01, 2024 | Updated by [FindLaw Staff](#)

**(a)** Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

**(b)** As used in this section--

**(1)** The term “robbery” means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

**(2)** The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

**(3)** The term “commerce” means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place

outside such State; and all other commerce over which the United States has jurisdiction.

**(c)** This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

## **USCS Const. Amend. 5, Part 1 of 13**

Current through the ratification of the 27th Amendment on May 7, 1992.

***United States Code Service > Amendments > Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.***

### **Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code Service  
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## **USCS Const. Amend. 6, Part 1 of 17**

Current through the ratification of the 27th Amendment on May 7, 1992.

***United States Code Service > Amendments > Amendment 6 Rights of the accused.***

### **Amendment 6 Rights of the accused.**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Code Service  
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# **APPENDIX 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
: UNITED STATES OF AMERICA : INDICTMENT  
: :  
- v. - : S2 18 Cr. 306 (ER)  
: :  
KASHEEN SAMUELS, :  
a/k/a "Kash," :  
a/k/a "JR," :  
: Defendant. :  
: :  
-----X

COUNT ONE  
(2016 Robbery Conspiracy)

The Grand Jury charges:

1. In or about April 2016, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, together with others known and unknown, knowingly did conspire to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and would and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), to wit, SAMUELS agreed with others to rob an individual ("Victim-1") at an autobody shop ("the Shop") located in the Bronx, New York.

(Title 18, United States Code, Section 1951.)

COUNT TWO  
(2016 Attempted Robbery)

The Grand Jury further charges:

2. In or about April 2016, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, knowingly did attempt to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and would and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and did aid and abet the same, to wit, SAMUELS attempted to rob Victim-1 at the Shop.

(Title 18, United States Code, Sections 1951 and 2.)

COUNT THREE  
(Possession of a Firearm in Furtherance of a Crime of Violence)

The Grand Jury further charges:

3. In or about April 2016, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the attempted robbery charged in Count Two of this Indictment, knowingly used and carried firearms, and, in furtherance of such crime, did possess firearms, and did aid and abet the use, carrying, and possession of firearms.

(Title 18, United States Code,  
Sections 924(c)(1)(A)(i) and 2.)

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COUNT FOUR  
(2017 Robbery Conspiracy)

The Grand Jury further charges:

4. In or about June 2017, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, together with others known and unknown, knowingly did conspire to commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and would and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), to wit, SAMUELS agreed with others to rob an individual ("Victim-2") in the Bronx, New York, and Middlesex County, New Jersey, who was engaged in credit card fraud.

(Title 18, United States Code, Section 1951.)

COUNT FIVE  
(2017 Robbery)

The Grand Jury further charges:

5. On or about June 21, 2017, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, knowingly did commit robbery, as that term is defined in Title 18, United States Code, Section 1951(b)(1), and would and did thereby obstruct, delay, and affect commerce and the movement of articles and commodities in commerce and the movement of articles and



commodities in commerce, as that term is defined in Title 18, United States Code, Section 1951(b)(3), and did aid and abet the same, to wit, SAMUELS provided firearms for a gunpoint robbery at a motel in Middlesex County, New Jersey (the "Motel"), of Victim-2.

(Title 18, United States Code, Sections 1951 and 2.)

COUNT SIX  
(Murder)

The Grand Jury further charges:

6. On or about June 21, 2017, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, willfully and knowingly, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, namely, the robbery charged in Count Five of this Indictment, did use and carry a firearm, and, in furtherance of such crime, did possess a firearm, and in the course of that crime did cause the death of a person through the use of a firearm, which killing is murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same, to wit, SAMUELS provided firearms for the gunpoint robbery of Victim-2 at the Motel, and in the course of that robbery one of the robbers shot and killed Torres.

(Title 18, United States Code, Sections 924(j)(1) and 2.)

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COUNT SEVEN  
(Narcotics Conspiracy)

The Grand Jury further charges:


7. From at least in or about 2015 up to and including in or about 2018, in the Southern District of New York and elsewhere, KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, and others known and unknown, intentionally and knowingly did combine conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

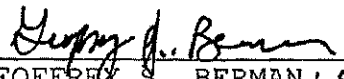
8. It was a part and an object of the conspiracy that KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, and others known and unknown, would and did distribute and possess with intent to distribute controlled substances, in violation of Title 21, United States Code, Section 841(a)(1).

9. The controlled substances that KASHEEN SAMUELS, a/k/a "Kash," a/k/a "JR," the defendant, conspired to distribute and possess with intent to distribute were (i) 1 kilogram and more of mixtures and substances containing a detectable amount of heroin, and (ii) 280 grams and more of mixtures and substances containing a detectable amount of cocaine base, in a form commonly known as "crack cocaine," in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Section 846.)

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FOREPERSON

  
GEOFFREY S. BERMAN *USP*  
United States Attorney