No. _____

IN THE

Supreme Court of the United States

MARTIN HUNT
XAVIER GREENE,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4231

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Plaintiff – Appellee,

v.

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Defendant – Appellant.

No. 21-4300

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DESHAUN RICHARDSON, a/k/a Day Day,

Defendant – Appellant.

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Defendant – Appellant.

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

GEOVANNI DOUGLAS, a/k/a Geo, a/k/a Twin,

Defendant – Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Mark S. Davis, Chief District Judge. (4:17-cr-00052-MSD-RJK-1; 4:17-cr-00052-MSD-RJK-6; 4:17-cr-00052-MSD-RJK-8; 4:17-cr-00052-MSD-RJK-5; 4:17-cr-00052-MSD-RJK-10; 4:17-cr-00052-MSD-RJK-7; 4:17-cr-00052-MSD-RJK-9)

Argued: January 23, 2024 Decided: April 16, 2024

Before HEYTENS and BENJAMIN, Circuit Judges, and MOTZ, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Motz wrote the opinion, in which Judge Heytens and Judge Benjamin joined.

ARGUED: Rhonda Elizabeth Quagliana, MICHIEHAMLETT, PLLC, Charlottesville, Virginia; Kimberly Harvey Albro, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Columbia, South Carolina; Jenny R. Thoma, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Clarksburg, West Virginia, for Appellants. Brian James Samuels, OFFICE OF THE UNITED STATES ATTORNEY, Newport News, Virginia, for Appellee. **ON BRIEF:** Lawrence H. Woodward, Jr., RULOFF, SWAIN, HADDAD, MORECOCK, TALBERT & WOODWARD, P.C., Virginia Beach, Virginia, for Appellant Martin L. Hunt. Gerald T. Zerkin, Richmond, Virginia, for Appellant Xavier Greene. Brendan S. Leary, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Wheeling, West Virginia, for Appellant Ryan Taybron. Jamison P. Rasberry, RASBERRY LAW, P.C., Virginia Beach, Virginia, for Appellant Raymond Palmer. Nicholas R. Hobbs, SCHEMPF & WARE, PLLC, Yorktown, Virginia, for Appellant Eric Nixon. Daymen W. X. Robinson, LAW OFFICE OF DAYMEN W. X. ROBINSON, PC, Norfolk, Virginia, for Appellant Geovanni Douglas. Jessica D. Aber, United States Attorney, Richmond, Virginia, Daniel J. Honold, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellee.

DIANA GRIBBON MOTZ, Senior Circuit Judge:

This appeal arises from the prosecution of the "36th Street Bang Squad" (the "Bang Squad"), a gang that committed a string of murders, attempted murders, and assaults in 2015 and 2017. The United States charged seven of the gang's members — Martin Hunt, Deshaun Richardson, Eric Nixon, Xavier Greene, Raymond Palmer, Ryan Taybron, and Geovanni Douglas (collectively, "Defendants") — with racketeering conspiracy, murder, attempted murder, and related crimes. Following a five-week trial, the jury returned guilty verdicts on nearly every count. Defendants now appeal, raising a host of issues, including but not limited to challenges to (1) the classification of their racketeering offenses as crimes of violence; (2) the denial of their motions to exclude testimony of three forensic experts; and (3) the denial of their motions for judgment of acquittal and for a mistrial. After careful review of a voluminous record, we find no reversible error, and so affirm.

I.

In 2019, a grand jury returned the operative 35-count second superseding indictment against Hunt, Richardson, Nixon, Greene, Palmer, Taybron, and Douglas. This indictment alleged a single count of conspiracy to commit racketeering, in violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); multiple murders and attempted murders in violation of the Violent Crimes in Aid of Racketeering Act ("VICAR"); seventeen corresponding firearm offenses, 18 U.S.C. § 924; and other crimes including witness intimidation, narcotics distribution, and false statements.

During the five-week jury trial that followed, the Government marshaled a mountain of evidence to support these charges, including physical evidence, social media records, and surveillance footage. The Government also produced the testimony of three forensic experts connecting the defendants' firearms to the scenes of multiple assaults, murders, and attempted murders. And the Government offered the testimony of more than 50 fact witnesses, including six cooperating Bang Squad members: Jarrell Atkins, Jamaree Green, Corey Sweetenburg, Eric Edmunds, Akeem Robinson, and Shaquone Ford. This evidence painted a vivid portrait of multiple gang-related murders, shootings, and other violent crimes committed by the Bang Squad in 2015 and 2017.

A.

Count 1 charged all seven defendants with conspiracy to commit racketeering, in violation of 18 U.S.C. § 1962(d). This count alleged that the defendants participated in the 36th Street Bang Squad, a criminal enterprise, and agreed to support this enterprise through a pattern of racketeering offenses — including murder, robbery, witness intimidation, and drug distribution. The jury convicted all seven defendants on this count.

The 36th Street Bang Squad operated in Newport News and Hampton, Virginia. The Bang Squad saw itself as a "brotherhood," with violence as its currency and its creed. Its members committed robberies, murders, and shootings to establish themselves in the gang. They traded in guns and cars, and shared the fruits of their crimes. They were expected to "put in work," and earned reputation in the gang by committing violent acts. And they used violence to protect their territory, exert their influence, and retaliate against

their foes. In a practice known as "op shopping" (opposition shopping), members of the Bang Squad would hunt members of rival gangs, and shoot them on sight.

Taybron led the gang and planned its operations. The Bang Squad worked out of the Marshall Courts and Seven Oaks apartments in Newport News, and Taybron's home in Hampton. The Bang Squad warred with five rival street gangs — the Walker Village Murder Gang, the Newsome Park Gang, the 44th Street Gang, the 9th Street Gang, and the Chestnut Gang. And the Bang Squad used social media to enflame conflicts with its rivals. Its members used Facebook to coordinate activities, stake territorial claims, and taunt their adversaries, often by disseminating posts and music videos boasting about violent, retaliatory acts. These actions escalated tensions among the gangs, and often sparked violent conflict.

B.

The Government offered evidence that the Bang Squad committed multiple crimes in the spring of 2015. On March 8, 2015, Bang Squad members Xavier Greene and Steven Harris went hunting for "ops." At the corner of Ivy Street and 9th Street, in Newport News, they shot and killed 18-year-old Dwayne Parker, a member of the rival Newsome Park Gang. Greene and Harris fled the scene, and engaged in a "shootout" with members of the 9th Street Gang, who were leaving a house party. Greene and Harris took shelter in the home of Jarrell Atkins, another Bang Squad member, and posted a video of Parker's dead body on social media. The jury convicted Greene of VICAR murder (Count 2), and a related firearm charge (Count 3), for his role in this offense.

Only one week later, on March 15, 2015, Martin Hunt and Lionel Harris went "op shopping," and shot at a member of the Walker Village Murder Gang on Wickham Avenue. Philip Drew and Arthur Jones, both minors, were struck in the crossfire. Jones sustained gunshot wounds to the head and the back; Drew was shot in the ankle, the forearm, the buttock, and the mouth. Both survived, and were treated at the Riverside Regional Medical Center. The jury convicted Hunt of two counts of VICAR attempted murder (Counts 30, 32), and two corresponding firearm charges (Counts 31, 33), for his role in these crimes.

The Walker Village Murder Gang swiftly retaliated. On April 6, 2015, Walker Village member Domingo Davis shot at Hunt and Harris. That same day, four Bang Squad members left the Marshall Courts apartment complex to search for Davis. The Bang Squad members spotted Davis leaving a party on 25th Street and opened fire, killing both Davis and 13-year-old Jada Richardson. The Government charged Richardson, Greene, and Hunt with two counts of VICAR murder (Counts 6, 8), and two associated firearm crimes (Counts 7, 9) for this double murder. The jury convicted Greene and Hunt of all four counts, but acquitted Richardson of these offenses.

That same night, Dwayne Dozier, of the Newsome Park Gang, shot up the residence of Jamaree Green, a Bang Squad member, while his family was inside. Green asked Hunt to help him retaliate, but Hunt urged him to wait, as police activity was "too hot" following the Jada/Richardson double murder. About a week later, when Bang Squad members stated on social media that they had spotted Dozier, Taybron told them to "pop" him; two hours later, Richardson asked why they had not. Then, on April 27, Green, Palmer, Atkins, and Sweetenburg drove to Dozier's home late at night, and fired multiple rounds into the house

while Dozier's mother was inside. For his role in this shooting, the jury convicted Palmer of one count of VICAR attempted assault with a deadly weapon (Count 10), and a related firearm charge (Count 11).

C.

The summer of 2015 saw more violent, gang-related criminal activity. On June 3, 2015, Newsome Park gangster Jeremiah Smith murdered Bang Squad member Kevonne Turner in his front yard, sparking another chain of retaliatory shootings. A member of the Bang Squad saw the shooting, pursued Smith, and shot at him near an H&H convenience store. The Government charged Geovanni Douglas with one count of VICAR attempted murder (Count 34) and a corresponding firearm charge (Count 35) for this offense, but the jury acquitted him of both counts.

After Smith's escape, the Bang Squad embarked on a protracted effort to locate him. On June 5, 2015, Taybron's girlfriend, Yamasha Jones, spotted Smith at his high school, Bridgeport Academy. Taybron mobilized two cars full of Bang Squad members to kill Smith — including Martin Hunt and several other unnamed gang members. An extended pursuit followed. The Bang Squad drove to the school, and followed Smith's school bus to the Derby Run Apartments. As Bang Squad members combed the apartments to search for Smith, they ran into two Walker Village gangsters outside a nearby Sonic restaurant, and opened fire from their vehicle. The jury convicted Hunt of VICAR attempted murder and conspiracy to commit murder (Count 12), and a corresponding firearm charge (Count 13), for these crimes.

On August 1, 2015, several Newsome Park members "jumped" two Bang Squad members inside a Solo Mart at 4710 Madison Avenue, in Newport News. Kierra Mitchell, a friend of the gang members, called for backup. Xavier Greene, who was staying across the street, gave his firearm to Geovanni Douglas, who ran to the Solo Mart and fired at the assailants. Jasmine Person, who was shopping for cigarettes inside, was caught in the crossfire. She was struck in the neck and the finger, and rushed by ambulance to the Riverside Regional Medical Center. The Government charged Greene and Douglas with VICAR attempted murder (Count 14), and a corresponding firearm charge (Count 15), for this offense. The jury convicted both defendants of the attempted murder, but convicted only Douglas of the firearm charge.

This chain of violence continued throughout the rest of 2015. Later in August, Greene led a burglary of Southern Police Equipment, a gun shop near Richmond, to "arm his brothers." In September, Taybron learned that his girlfriend, Yamasha Jones, was interacting with rival gang members, so he ordered a nighttime shooting of her house. Sweetenburg and Ford pled guilty to this shooting. And in November, a rival gang killed Steven Harris in retaliation for his role in the string of shootings the previous summer.

D.

Two additional clashes occurred in early 2017. On January 2, 2017, Ford picked up Taybron and Nixon to drive them to Taybron's house. As the trio passed through the Chestnut Gang's territory, they spotted some Chestnut Gang members standing outside a convenience store. Taybron ordered Ford to pull over, and they confronted the Chestnut gangsters, ultimately sparking a shootout. The Government charged Taybron and Nixon

with VICAR attempted murder (Count 21) and a related firearm count (Count 22), for this offense. At trial, Taybron and Nixon requested and received a self-defense instruction, but the jury nonetheless convicted them of both crimes.

One month later, on February 9, 2017, Nixon instructed Shaquone Mercer to buy him a gun from a pawn shop. Two weeks after that, Nixon caught Darrell Pittman, of the Newsome Park gang, leaving Aqueduct Apartments, and shot him in the head. Nixon boasted about this shooting to other Bang Squad members, and posted on Facebook that Pittman was "on the ground flopping like a fish." Pittman survived, was hospitalized, and identified Nixon as the shooter. Two days later, officers arrested Nixon and Jamaree Green in a hotel room. For his actions, the jury convicted Nixon of VICAR attempted murder (Count 23), a corresponding firearm charge (Count 24), and one count of making false statements during a firearm purchase (Count 25).

II.

The jury deliberated for several days, and then, as detailed above, returned guilty verdicts against all seven defendants, on most of the counts alleged in the indictment.[1] Defendants filed motions for judgment of acquittal, which the district court denied in a

[1] In addition to the acquittals discussed above, certain counts were not submitted to the jury. Before trial, the Government dismissed Counts 16–19, alleging another shooting, and Count 20, alleging witness tampering in relation to that shooting. Moreover, before submitting its case, the prosecution dismissed Count 28, and dismissed Richardson from Counts 25–27, alleging narcotics activities.

series of lengthy orders. They also filed motions for a new trial, which the court denied in a consolidated order.

The district court sentenced Martin Hunt to three consecutive life sentences and 120 months' imprisonment; Deshaun Richardson to 204 months' imprisonment; Eric Nixon to 360 months' imprisonment; Xavier Greene to four consecutive life sentences; Ryan Taybron to 360 months' imprisonment; Raymond Palmer to 180 months' imprisonment; and Giovanni Douglas to 228 months' imprisonment. The defendants timely appealed. We now turn to the numerous issues raised on appeal.

III.

First, Defendants Hunt, Nixon, Greene, Palmer, Taybron, and Douglas challenge their convictions under 18 U.S.C. § 924(c), arguing that their predicate convictions under Violent Crimes in Aid of Racketeering Act ("VICAR"), 18 U.S.C. § 1959, do not constitute crimes of violence, as defined in § 924(c)(3). We consider de novo a contention that an offense does not constitute a crime of violence. *United States v. McNeal*, 818 F.3d 141, 151 (4th Cir. 2016).

The VICAR statute addresses "the particular danger posed by those who are willing to commit violent crimes in order to bolster their positions within racketeering enterprises." *United States v. Keene*, 955 F.3d 391, 394 (4th Cir. 2020) (cleaned up). Under VICAR, it is a crime to commit one of several enumerated offenses to gain entrance into, or to "maintain or increase [one's] position in," a racketeering enterprise. *Id.* (cleaned up); *see also* 18 U.S.C. § 1959(a). Here, the Government charged each murder, attempted murder,

conspiracy to commit murder, and attempted assault as a VICAR offense, because the Bang Squad committed each crime as part of its organized efforts to exert its influence, protect its territory, and retaliate against its rivals.

Defendants contend that neither VICAR attempted murder based on Virginia attempted murder, nor VICAR attempted assault with a dangerous weapon based on Virginia unlawful wounding, constitute valid predicates for their § 924(c) convictions. They rely on the Supreme Court's recent decision in *Taylor v. United States*, 596 U.S. 845 (2022), to so argue. In considering their arguments, we first examine how the Supreme Court's opinion in *Taylor* affects our analysis of attempt offenses under § 924(c). We then turn to the application of that analysis to Defendants' VICAR offenses.[2]

A.

"Pursuant to 18 U.S.C. § 924(c)(1)(A), it is a crime to use, carry, or possess a firearm 'during and in relation to any crime of violence.'" *United States v. Simmons*, 11 F.4th 239, 253 (4th Cir. 2021). We employ the categorical approach to evaluate whether an offense is a crime of violence under this provision. *United States v. Mathis*, 932 F.3d 242, 264 (4th Cir. 2019). To constitute a crime of violence, a predicate offense must have as an element "the use, attempted use, or threatened use of physical force." *United States v. Simms*, 914 F.3d 229, 233 (4th Cir. 2019) (en banc); 18 U.S.C. § 924(a)(3)(A). We "consider only the

[2] A VICAR offense is a crime of violence if either the state law predicate or the generic federal offense is a crime of violence. *United States v. Thomas*, 87 F.4th 267, 274–75 (4th Cir. 2023); *United States v. Manley*, 52 F.4th 143, 147 (4th Cir. 2022). Because we hold that both Virginia predicate offenses constitute crimes of violence under § 924(c)'s force clause, we need not evaluate the generic federal offenses.

crime as defined, not the particular facts of the case," and our analysis "begins and ends with the offense's elements." *Simms*, 914 F.3d at 233. The term "physical force" requires "violent force — that is, force capable of causing physical pain or injury to another person." *Johnson v. United States*, 559 U.S. 133, 140 (2010) (cleaned up). And to constitute a crime of violence, the offense must require a mens rea more culpable than recklessness. *See United States v. Jackson*, 32 F.4th 278, 283 (4th Cir. 2022).

Because § 924(c) reaches crimes that require the "attempted use" of violent physical force, prior to *Taylor*, most circuits held that any attempt to commit a crime of violence is invariably a crime of violence. *See, e.g.*, *United States v. Walker*, 990 F.3d 316, 328 (3d Cir. 2021); *United States v. Smith*, 957 F.3d 590, 595 (5th Cir. 2020); *United States v. Ingram*, 947 F.3d 1021, 1026 (7th Cir. 2020); *United States v. Dominguez*, 954 F.3d 1251, 1261 (9th Cir. 2020); *United States v. St. Hubert*, 909 F.3d 335, 351 (11th Cir. 2018). But, in the opinion underlying *Taylor*, we departed from that consensus, reasoning that certain crimes of violence "can be accomplished merely through the threatened use of force," and that "an attempt to *threaten* force does not constitute an attempt to *use* force." *United States v. Taylor*, 979 F.3d 203, 209 (4th Cir. 2020), *aff'd*, 596 U.S. 845 (2022). Our decision in *Taylor* created a split with our sister circuits, and the Supreme Court promptly took up the case.

In *Taylor*, the Supreme Court addressed whether attempted Hobbs Act robbery is a crime of violence under § 924(c). 596 U.S. at 850. The completed offense of Hobbs Act robbery requires an unlawful taking of property "by means of actual or threatened force." *Id.* (quoting 18 U.S.C. § 1951(a)). Because a completed Hobbs Act robbery is a crime of

violence, the Government argued that an attempt to commit this offense must be a crime of violence as well. *Id.* at 853. The Supreme Court rejected that approach, just as we had — holding that the attempt must itself involve actual, attempted, or threatened force. *Id.* The Court explained that because Hobbs Act robbery can be completed with "actual *or* threatened force," an attempt to commit that offense by conveying a threat might not involve "attempted force." *Id.* at 852. By way of example, the Court discussed a would-be robber who researched a store, bought equipment, drafted a threatening note, and was arrested as he stepped into the building. *Id.* at 851–52. That hypothetical defendant did not use force, attempt to use force, or threaten anyone. *Id.* at 852. Instead, he attempted to convey a threat of physical force — sufficient for attempted Hobbs Act robbery, but not for § 924(c). *Id.*

The thrust of *Taylor* is that an attempt offense qualifies as a crime of violence only if the completed offense invariably requires the use of physical force. As we explained in the decision underlying *Taylor*:

> [W]here a crime of violence may be committed without the use or attempted use of physical force, an attempt to commit that crime falls outside the purview of the force clause. But where a crime of violence requires the use of physical force — as is usually the case — the categorical approach produces the opposite outcome: because the substantive crime of violence invariably involves the use of force, the corresponding attempt to commit that crime necessarily involves the attempted use of force.

979 F.3d at 208. That explanation remains accurate following the Supreme Court's holding in *Taylor*. An attempt offense is not a crime of violence merely because the completed offense is itself a crime of violence. But if a crime cannot be completed without the use of

physical force, any attempt to commit that crime necessarily requires the attempted use of physical force.

Defendants urge a broader reading of *Taylor*, under which an attempt crime cannot be a crime of violence if it may be completed through a nonviolent step towards the offense. They argue that a defendant "who intended to try to use force but never got the chance," such as where "their intended target was unavailable," has not attempted to use force at all. Repl. Br. 19. As we understand it, this argument would have us hold that § 924(c) defines the *attempted* use of force as the *unsuccessful* use of force. Under this reading, an attempt offense would only qualify as a crime of violence if it categorically requires an act that sets force in motion — such as pointing a gun and pulling the trigger. That construction is far more restrictive than the proper understanding of a criminal attempt, and would reduce the "attempted use" clause to a near nullity.

To start, this construction would read all attempt crimes out of § 924(c). At common law, an attempt consists of (1) a specific intent to commit the completed offense; and (2) a substantial step toward the offense that is strongly corroborative of the intent to commit it. *United States v. Resendiz-Ponce*, 549 U.S. 102, 106–07 (2007); *accord United States v. Haas*, 986 F.3d 467, 478 (4th Cir. 2021). But while a "substantial step" must be "more than mere preparation," *United States v. Engle*, 676 F.3d 405, 423 (4th Cir. 2012) (cleaned up), it "need not be the last possible act" before the completion of the offense, *United States v. Pratt*, 351 F.3d 131, 136 (4th Cir. 2003). And many probative but nonviolent acts, such as lying in wait, luring a victim, or gathering materials near the target area, can be a substantial step corroborative of the defendant's criminal intent. *Id.* at 135–

36 (quoting Model Penal Code § 5.01(2)). Thus, if the phrase "attempted use of force" refers only to acts such as discharging a firearm, smashing a window, or swinging a knife, most — maybe all — attempt offenses would not be crimes of violence. That cannot be what Congress intended.

Equally telling, remarkably few offenses have an element akin to the "unsuccessful use" of physical force. *See United States v. States*, 72 F.4th 778, 786 (7th Cir. 2023) (reasoning that a construction of § 924(c) that excludes attempt crimes "would describe an empty set of offenses"). Section 924(c) requires a federal conviction as a predicate,[3] and "[f]ederal statutes seldom include attempted conduct as an element of a completed crime." *Id.* While an isolated number of offenses have as an element the "attempt[] to cause bodily injury," they are the exception, not the rule. *See id.* at 786–87 (citing 18 U.S.C. § 249(a)(1); 10 U.S.C. § 928(a)). Against this backdrop, it is inconceivable that § 924(c) defines "attempted use . . . of physical force" in a way that "excludes the mine run of attempts to commit offenses that require the use of force," and "refers only to completed offenses that have attempted force as an element." *Id.* at 787; *see Abramski v. United States*, 573 U.S. 169, 179 (2014) (instructing courts to examine "context, structure, history, and purpose," as well as "common sense," to interpret statutory language (cleaned up)).

Accordingly, we reject Defendants' construction of *Taylor*, which would exclude virtually all attempt offenses from the "attempted use . . . of physical force" under § 924(c).

[3] This case is no exception. We reach the state-law predicates at issue in this appeal only by "look[ing] through" VICAR, which incorporates the charged state-law offense as an element. *See Thomas*, 87 F.4th at 274–75.

Instead, we read *Taylor* to provide that an attempt is a crime of violence if the completed offense invariably requires the use of physical force. We now apply this construction to the Defendants' VICAR attempt offenses.

B.

The jury convicted Defendants Hunt, Greene, Taybron, Nixon, and Douglas on nine § 924(c) counts arising from the Bang Squad's shootings of rival gang members and innocent bystanders. Six of these counts alleged discharge of a firearm in furtherance of a VICAR attempted murder (Counts 13, 15, 22, 24, 31, 33).[4] And each corresponding VICAR count was predicated on attempted first-degree murder in violation of Virginia law (Counts 12, 14, 21, 23, 30, 32). Citing *Taylor*, Defendants now argue that attempted murder is not a crime of violence under § 924(c). Because first-degree murder under Virginia law categorically requires physical force, their arguments fail.

Every circuit to consider whether attempted murder is a crime of violence following *Taylor* has held that this offense categorically requires the attempted use of physical force. *See, e.g.*, *United States v. Pastore*, 83 F.4th 113, 120 (2d Cir. 2023); *States*, 72 F.4th at 787–91; *Dorsey v. United States*, 76 F.4th 1277, 1284 (9th Cir. 2023); *Alvarado-Linares v. United States*, 44 F.4th 1334, 1346–48 (11th Cir. 2022). In *Pastore*, the Second Circuit reasoned that while Hobbs Act robbery may be committed by way of "threatened force," completed murder requires "the actual use of force." 83 F.4th at 121 (cleaned up).

[4] The remaining three (Counts 3, 7, 9) alleged the use of a firearm resulting in death. The jury convicted Hunt and Greene of these crimes, and they do not appeal those convictions.

"Accordingly, a conviction for attempted murder categorically means that the defendant took a substantial step toward the use of physical force — and not just a substantial step toward the *threatened* use of physical force." *Id.* (cleaned up). And because "attempted murder requires both an intent to use physical force and a substantial step towards the use of physical force, it satisfies the 'attempted use . . . of physical force' element under section 924(c), and thereby qualifies as a crime of violence." *Id.* (cleaned up).

We agree. As discussed above, an attempt offense qualifies as a crime of violence if the completed offense categorically requires the use of physical force, and a *mens rea* more culpable than recklessness. "A conviction for first-degree murder under Virginia law requires the 'willful, deliberate, and premeditated' killing of another," and always involves "the use of force capable of causing physical pain to another person." *Mathis*, 932 F.3d at 265 (quoting Va. Code § 18.2-32); *accord In re Irby*, 858 F.3d 231, 238 (4th Cir. 2017). And in Virginia, a criminal attempt consists of: (1) a specific intent to commit the crime; and (2) "an overt act done towards its commission, but falling short of the execution of the ultimate design." *Commonwealth v. Herring*, 758 S.E.2d 225, 235 (Va. 2014). Because attempted murder requires the specific intent to kill, *Secret v. Commonwealth*, 819 S.E.2d 234, 248 (Va. 2018), and because it is impossible to commit intentional murder without the use of violent, physical force, *Mathis*, 932 F.3d at 265, attempted first-degree murder categorically involves the "attempted use . . . of physical force," 18 U.S.C. § 924(c)(3)(A). We therefore hold that the crime of attempted first-degree murder under Virginia law qualifies as a crime of violence for purposes of § 924(c). *See also United States v. Lassiter*, ___ F.4th ___, No. 22-4147 (4th Cir. 2024) (reaching same conclusion).

Two counterarguments merit attention. First, Defendants argue that attempted murder under Virginia law may be committed by an act as "slight" as knocking on the door to a person's home with the intention of killing him if he opened it. Hunt Br. 12–13, 58. *See Simmons*, 11 F.4th at 273–74 (quoting *Rogers v. Commonwealth*, 683 S.E.2d 311, 316 (Va. 2009)). Again, this argument wrongly urges us to read "attempted use . . . of physical force" much more narrowly than the proper understanding of a criminal attempt.[5] Nothing in the text of § 924(c)(3)(A) hints at such a strained reading. *States*, 72 F.4th at 786–87. And Defendants' example is not a "slight" act. A defendant who knocks on a victim's door with a gun in hand, and every intention to shoot, comes quite close to a completed murder. If he fails to kill the victim, he has "attempted" to use force in every reasonable sense — regardless of whether he fails because he shoots and misses, because his gun malfunctions, or because his target does not open the door.

Second, Defendants argue that Virginia first-degree murder may be committed by malicious omission, *Vaughan v. Commonwealth*, 376 S.E.2d 801, 806 (Va. 1989), and that crimes that can be completed by malicious omissions do not constitute crimes of violence. But we have held that "the knowing or intentional causation of bodily injury *necessarily*

[5] While Virginia law refers to an "overt act," and federal law requires a "substantial step," the two are similar in kind. "[A]n overt act is any 'act apparently adopted to produce the result intended' so long as that act is not 'mere preparation.'" *Herring*, 758 S.E.2d at 235–36 (quoting *Martin v. Commonwealth*, 81 S.E.2d 574, 576 (Va. 1954)). Like its federal counterpart, it need not be "the 'last proximate act to the consummation of the crime in contemplation.'" *Id.* at 235 (quoting *Glover v. Commonwealth*, 10 S.E. 420, 421 (Va. 1889)). *Cf. Pratt*, 351 F.3d at 136 (holding that a "substantial step" for federal attempted murder "need not be the last possible act" before the completion of the offense). Thus, Defendants' construction of *Taylor* would read Virginia attempts and federal attempts alike out of the force clause entirely.

involves the use of physical force."[6] *United States v. Rumley*, 952 F.3d 538, 549 (4th Cir. 2020) (quoting *United States v. Castleman*, 572 U.S. 157, 169 (2014)). That is particularly so when "'death results' from the defendant's conduct." *United States v. Roof*, 10 F.4th 314, 401 (4th Cir. 2021). Because a defendant who commits an intentional murder inflicts "the greatest physical injury imaginable — death," *Jackson*, 32 F.4th at 287, we have already held that "first-degree murder under Virginia law" invariably requires the use of physical force, and "qualifies categorically as a crime of violence under the force clause," *Mathis*, 932 F.3d at 265; *accord Irby*, 858 F.3d at 237 ("Common sense dictates that murder is categorically a crime of violence under the force clause.").

C.

The Government charged Palmer with a § 924(c) violation for the Dwayne Dozier home shooting (Count 11). That charge relies on Count 10, VICAR attempted assault with a deadly weapon, which in turn rests on Virginia attempted unlawful wounding. Palmer, too, relies on *Taylor* to argue that his state-law predicate offense is not a crime of violence. His argument fails as well — we have previously held that Virginia unlawful wounding requires the use of physical force. *See Manley*, 52 F.4th at 148 ("Not only does the Virginia

[6] Defendants argue that the holding in *Rumley* conflicts with two prior decisions holding that child abuse under Maryland law is not a crime of violence because it can be completed by omission. *See United States v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013); *United States v. Gomez*, 690 F.3d 194, 201 (4th Cir. 2012). But *Gomez* held that "neither" affirmative acts nor omissions under Maryland's child abuse statute required physical force, 690 F.3d at 201, and *Cabrera-Umanzor* held that the same law was not a categorical match for the Guidelines definition of a "forcible sex offense" because it could be premised on a failure to prevent sexual abuse by a third party, 728 F.3d at 352 (citing U.S.S.G. § 2L1.2). Neither case is on point here, where we address the implications of an attempt to commit murder.

statute require the causation of bodily injury, it also requires that the person causing the injury have acted with the specific intent to cause severe and permanent injury." (cleaned up)). It follows that any attempt to commit this offense categorically requires the attempted use of physical force, and qualifies as a crime of violence under § 924(c).

IV.

Defendants next contest the denial of two pretrial motions: (1) their joint motion to exclude three forensic experts; and (2) Douglas's last-minute motion to reappoint counsel. We review both decisions for an abuse of discretion. *Simmons*, 11 F.4th at 261 (motion to exclude); *United States v. Perez*, 661 F.3d 189, 191 (4th Cir. 2011) (motion to substitute counsel). A district court abuses its discretion if (1) it applies the incorrect law; (2) it rests its decision on a clearly erroneous factual premise; or (3) we are left with the "definite and firm conviction" that it "committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Simmons*, 11 F.4th at 261 (quoting *Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999)).

A.

Federal Rule of Evidence 702 "imposes a special gatekeeping obligation on the trial judge to ensure that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Sardis v. Overhead Door Corp.*, 10 F.4th 268, 281 (4th Cir. 2021) (cleaned up); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999); *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 597 (1993). Expert testimony is relevant if it has "a valid scientific connection to the pertinent inquiry," and it is reliable only if it is "based

on scientific, technical, or other specialized knowledge" rather than raw "belief or speculation." *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 959, 962 (4th Cir. 2020) (quoting *Nease v. Ford Motor Co.*, 848 F.3d 219, 229 (4th Cir. 2017)).

In performing this gatekeeping function, the district court must focus on the expert's "principles and methodology, not on the conclusions that they generate." *In re Lipitor Mktg., Sales Prac. & Prods. Liab. Litig.*, 892 F.3d 624, 631 (4th Cir. 2018) (cleaned up). The district court may consider a wide range of *Daubert* factors to evaluate an expert's methodology, including its error rate; the standards governing its operation; whether it can be tested; whether it is "subject to peer review"; and whether it is generally accepted in the relevant scientific or expert community. *United States v. Mallory*, 988 F.3d 730, 741 (4th Cir. 2021); *see Daubert*, 509 U.S. at 593–94. But these considerations are nonexclusive, and the court has "broad latitude" to account for "any factors bearing on validity that the court finds to be useful," *E.E.O.C. v. Freeman*, 778 F.3d 463, 466 (4th Cir. 2015) (cleaned up), depending on "the nature of the issue, the expert's particular expertise, and the subject of his or her testimony," *McKiver*, 980 F.3d at 959 (cleaned up).

The Government relied on the testimony of three ballistics experts, Arnold Esposito, Julianna Red Leaf, and Alison Milam, to connect firearms shared by members of the Bang Squad to the scenes of each violent incident alleged in the indictment. As it must, the Government gave Defendants notice of these experts one month before trial. In response, Defendants filed a motion to exclude the testimony of all three experts, arguing that the field of "toolmark identification" — a forensic analysis technique that evaluates whether a particular gun fired a particular bullet — is categorically unreliable. The district court

denied this motion, observing that it had rejected identical arguments by the same attorneys in a recent case, and concluding that the Defendants' concerns spoke to weight, rather than admissibility.

Defendants renew their broad challenge on appeal, arguing that the entire field of forensic toolmark analysis fails to satisfy *Daubert*. They also urge us not to rely on the historic practice of admitting this evidence — arguing that, while toolmark analysis has been allowed for decades, growing scientific skepticism of this field warrants deeper scrutiny by the courts.

We recognize that the historic practice of admitting forensic evidence does not eliminate a trial court's responsibility to perform its gatekeeping function in a given case.[7] After all, "[s]erious deficiencies have been found in the forensic evidence used in criminal trials." *Melendez Diaz v. Massachusetts*, 557 U.S. 305, 319 (2009). Testimony by forensic experts must be scrutinized under Rule 702 and *Daubert*, particularly if modern science has called the expert's principles and methods into question. *See id.* at 319–20. But the decision whether to permit forensic evidence in a given case, and whether to limit its use, remains firmly within the district court's "broad discretion." *Belville v. Ford Motor Co.*, 919 F.3d 224, 233 (4th Cir. 2019) (quoting *Oglesby v. Gen. Motors Corp.*, 190 F.3d 244, 250 (4th Cir. 1999)); *see generally General Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997).

[7] The district court cited its conclusions in a previous case to address Defendants' arguments on this issue. This might present a problem in another case. But as the district court observed, the previous case was argued by the same attorneys, who made identical arguments. In these circumstances, the district court did not abuse its discretion by relying on the prior decision.

Our role is to decide whether the district court abused that discretion, "not to determine the admissibility or inadmissibility of [firearm toolmark examination] for all cases." *United States v. Hunt*, 63 F.4th 1229, 1244 (10th Cir. 2023) (alteration in original) (quoting *United States v. Baines*, 573 F.3d 979, 989 (10th Cir. 2009)).

In exercising its discretion, the court may address concerns with expert testimony through less dramatic remedies than exclusion. Because *Daubert* analysis "is not intended to serve as a replacement for the adversary system, . . . the rejection of expert testimony is the exception rather than the rule." *United States v. Smith*, 919 F.3d 825, 835 (4th Cir. 2019) (cleaned up). Thus, even "shaky but admissible evidence" should be addressed through "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof," not through "wholesale exclusion by the trial judge." *In re Lipitor*, 892 F.3d at 631 (cleaned up). That is equally true of forensic evidence. As the Supreme Court reasoned in *Melendez-Diaz*, while forensic sciences have faced increased scrutiny, "there is little reason to believe that confrontation will be useless in testing analysts' honesty, proficiency, and methodology — the features that are commonly the focus in the cross-examination of experts." 557 U.S. at 321.

The district court did not abuse its discretion in finding that Defendants' concerns with the reliability of forensic toolmark analysis could be addressed through confrontation, rather than exclusion. In the proceedings below, Defendants argued that toolmark analysis relies on subjective, ill-defined standards; that it may produce erroneous matches between guns from similar production batches; and that these uncertainties are vulnerable to bias. The district court addressed these concerns by instructing the Government not to overstate

the accuracy of its experts' conclusions,[8] and by advising Defendants to impeach them before the jury. And Defendants did exactly that, questioning each expert on the accuracy, reliability, and subjectivity of their methods. Because confrontation is the preferred vehicle for litigating these concerns, we cannot say that the district court abused its discretion by permitting Defendants to challenge these experts at trial, rather than keeping this evidence from the jury.

Defendants also argue that the court abused its discretion by denying their motion without holding a *Daubert* hearing. We disagree. "A trial court has 'considerable leeway in deciding in a particular case *how* to go about determining whether particular expert testimony is reliable.'" *McKiver*, 980 F.3d at 961 (quoting *Kumho Tire*, 526 U.S. at 152). As the district court noted, Defendants argued solely that forensic toolmark evidence is *categorically* inadmissible, and did not present any fact-specific challenge to the forensic experts who testified in this case. Because "the district court had sufficient information" to address Defendants' categorical argument, "the district court here was entitled to rely on the parties' materials without requiring further submissions or a *Daubert* hearing." *Id.*

[8] Defendants note that Juliana Red Leaf testified on cross that she has a "zero" error rate, and has never made an "incorrect identification or elimination." But because Defendants did not object to this testimony, we review it only for plain error. *See United States v. Zayyad*, 741 F.3d 452, 459 (4th Cir. 2014). Given the mountain of corroborating evidence and the passing nature of this assertion, we conclude that Red Leaf's remark had no effect on Defendants' substantial rights. *See Greer v. United States*, 593 U.S. 503, 507–08 (2021).

B.

In addition to Defendants' challenge to the denial of their motion *in limine*, Douglas challenges the denial of his motion to reappoint counsel. "[T]he Sixth Amendment protects a defendant's 'right to counsel at all critical stages of the criminal process.'" *United States v. Cohen*, 888 F.3d 667, 681 (4th Cir. 2018) (quoting *Marshall v. Rodgers*, 569 U.S. 58, 62 (2013)). That safeguard includes a concomitant right "to voluntarily and intelligently elect to proceed without counsel." *Id.* (citing *Faretta v. California*, 442 U.S. 806, 807 (1975)). But once a defendant has foregone representation, "the right to counsel is no longer unqualified." *Id.* (cleaned up). Should a *pro se* defendant reassert his right to counsel, the court may consider (1) "the defendant's motive in seeking to rescind his pro se status"; (2) "the timeliness of [the] renewed request for counsel;" and (3) the balance of the defendant's interests and "the countervailing public interest in proceeding on schedule." *Id.* (cleaned up).[9]

Douglas had a contentious relationship with his court-appointed attorney, Harry Harmon, Jr., and before trial, Douglas repeatedly changed his mind as to whether Harmon could represent him.[10] Throughout proceedings, he accused Harmon of collaborating with

[9] Douglas relies on *United States v. Gallop*, 838 F.2d 105 (4th Cir. 1998), for the proposition that the district court should have considered: (1) the timeliness of the motion; (2) the adequacy of the court's inquiry into the conflict between the defendant and his attorney; and (3) the extent of the breakdown in communication. *Id.* at 107. But the *Gallop* factors contemplate situations where a represented defendant seeks to replace his court-appointed attorney due to a collapse of the attorney-client relationship. Those factors do not apply when a *pro se* defendant seeks to reassert his right to counsel.

[10] Harmon was not the first attorney with whom Douglas had a difficult relationship. The court appointed Anthony M. Gantous to represent Douglas at his initial appearance in (Continued)

the prosecution, withholding discovery, and refusing to file meritorious motions. He twice asked to proceed pro se, before withdrawing these requests and informing the court that he was satisfied with Harmon's representation. But one month before trial, he filed a third motion to proceed *pro se*, and the district court granted that motion in part — appointing Harmon as standby counsel, subject to the following limitations:

> Mr. Harmon is not to give advice to Defendant concerning the significance of any of the evidence, is not to give advice regarding legal strategy, and should not perform any research on behalf of Defendant. Should defendant wish for his stand-by counsel to take a larger role in his defense, Defendant may submit a motion requesting to have Mr. Harmon re-appointed and agreeing to relinquish his *pro se* status. But Defendant cannot have it both ways, nor can Defendant utilize his election to proceed *pro se* as a means to delay trial regardless of whether he proceeds to trial *pro se* or submits a request asking that Mr. Harmon be re-appointed.

On October 20, 2019, following three days of jury selection and on the Saturday before opening statements, Douglas moved to relinquish his *pro se* status and reappoint Harmon, asserting that he had reviewed discovery and reevaluated his options. The district court denied this motion, observing that it had been filed on the eve of trial, and that it would place Harmon in an "untenable position."

In so ruling, the court did not abuse its discretion. We have recognized that judges have wide latitude to deny a late-breaking motion for substitution of counsel. *See United States v. McQueen*, 445 F.3d 757, 761 (4th Cir. 2006); *United States v. Corporan-Cuevas*, 35 F.3d 953, 956 (4th Cir. 1994) ("[A] motion . . . on the first day of trial . . . would clearly be untimely under all but the most exigent circumstances"). Such last-minute motions

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May 2018. In October 2018, Douglas filed a motion to substitute counsel, and the court granted this motion, appointing Harmon in Gantous' stead.

place considerable strain on the ability of court and counsel to prepare for trial, and seriously undermine the public's "interest in proceeding on schedule." *Cohen*, 888 F.3d at 681 (cleaned up). As we explained in *United States v. West*:

> A criminal defendant has a constitutional right to defend himself; and with rights come responsibilities. If at the last minute he gets cold feet and wants a lawyer to defend him he runs the risk that the judge will hold him to his original decision in order to avoid [a] disruption of the court's schedule [by] a continuance granted on the very day that trial is scheduled to begin[.]

877 F.2d 281, 286 (4th Cir. 1981) (quoting *United States v. Solina*, 733 F.2d 1208, 1211–12 (7th Cir. 1984)). Here, the trial court did not abuse its discretion in denying Douglas's motion, filed as it was on the eve of opening statements. Indeed, when the court allowed Douglas to proceed *pro se*, it warned him about such last-minute requests precisely because of the potential for delays.[11]

Douglas argues that Harmon was prepared to step in, and that the court's refusal of his request defeats the purpose of appointing standby counsel. But a *pro se* defendant has no Sixth Amendment right to standby counsel or hybrid representation, and district courts have broad discretion to decide how much assistance, if any, standby counsel may provide. *United States v. Beckton*, 740 F.3d 303, 307 (4th Cir. 2014); *see also McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984) ("A defendant does not have a constitutional right to choreograph

[11] Although the court cited hardship to Harmon, the substance of the district court's discussion focused on the last-minute nature of this motion. The court cited *United States v. Corporan-Cuevas*, 35 F.3d 953 (4th Cir. 1994), as authority for its denial of the motion, discussing the effects that a motion filed "on the first day of trial" would have on "the countervailing state interest in proceeding with prosecutions on an orderly and expeditious basis." *Id.* at 956. Those effects are obvious. Bringing counsel up to speed, and allocating time to prepare, would create a high possibility for delay.

special appearances by counsel."). Once Douglas relinquished his right to counsel, that right was no longer absolute, and the court had discretion to decide what level of assistance Harmon could provide in his capacity as standby counsel. The court did not abuse that discretion by declining to expand Harmon's role at the eleventh hour.[12]

V.

Next, Defendants Nixon, Taybron, Richardson, and Palmer appeal the denial of their motions for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure, arguing that the Government failed to offer sufficient evidence to support their convictions. "We review the denial of a motion for judgment of acquittal de novo." *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018).

On a defendant's motion, a court "must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). A defendant challenging the sufficiency of the evidence bears a "heavy burden" to overturn his conviction. *United States v. Clarke*, 842 F.3d 288, 297 (4th Cir. 2016). That is because all reasonable inferences are drawn in favor of the prosecution, *United States v. Hicks*, 64 F.4th 546, 550 (4th Cir. 2023), with the presumption that the jury resolved all evidentiary conflicts in the Government's favor, *United States v. Burfoot*, 899 F.3d 326, 334 (4th Cir.

[12] We also note that Douglas was not left entirely without assistance during the trial. Throughout proceedings, counsel for Douglas's co-defendants filed motions on behalf of all seven defendants, often addressing the most pressing issues in the case. *See, e.g.*, *James v. Harrison*, 389 F.3d 450, 456 (4th Cir. 2004) (discussing situation in which "counsel for co-defendants were present and generally protected the defendant's interests" (citing *United States v. Jackson*, 207 F.3d 953 (2000))).

2018). Thus, we will not disturb the verdict if, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Millender*, 970 F.3d 523, 528 (4th Cir. 2020) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

A.

Eric Nixon and Ryan Taybron contend they were entitled to a judgment of acquittal on charges of attempted murder and § 924(c) counts arising from two shootings that took place in early 2017. As discussed above, "there are two essential elements to an attempted murder prosecution under Virginia law: (1) a 'specific intent to kill the victim'; and (2) some overt act in furtherance of that intent." *Simmons*, 11 F.4th at 271 (quoting *Herring*, 758 S.E.2d at 235). Nixon challenges the denial of his individual motion by arguing that the Government offered insufficient evidence for a jury to find he shot Darrell Pittman. Taybron and Nixon contest the denial of their joint motion by arguing that the Government produced insufficient evidence of their intent to kill during a shootout with the Chestnut Gang. Both arguments fail.

1.

We begin with Eric Nixon's individual argument. Counts 23 and 24 charged Nixon with attempting to murder Darrell Pittman, of the Newsome Park Gang, on February 26, 2017. Early that day, a member of the Bang Squad shot Pittman in the head while he was leaving the Aqueduct apartments in Newport News, Virginia. Pittman survived, and was transported to a hospital, where he informed police officers that he'd been shot by "Nix from 3-6" regarding an "old beef." Acting on this information, officers arrested Nixon and

Green at a Day's Inn in Hampton, Virginia, with a Glock 23 handgun in their possession. That firearm matched eleven shell casings retrieved from the scene of the shooting, and Shaquone Mercer testified she had purchased the handgun for Nixon three weeks earlier, at his instructions.

At trial, the defense called Pittman, who denied saying that Nixon had shot him and identified two other individuals as the shooters. But ballistics evidence connected Nixon to the shooting, and four witnesses testified that he was responsible. Newport News police officer Eric Nunez confirmed that Pittman had identified Nixon while he was in the hospital on the day of the shooting. In addition, Ford, Green, and Sweetenburg all testified that Nixon told them he shot Pittman — Nixon told Ford that "he caught [Pittman] coming out of Aqueduct"; told Sweetenburg that he'd shot Pittman in the head; and told Green that Pittman "flopp[ed] like a fish." This evidence, viewed in the Government's favor, is more than enough for a jury to find that Nixon shot Pittman.

Nixon argues that Pittman was the sole eyewitness to the shooting, and that it would be irrational for the jury to convict Nixon following Pittman's testimony. Of course, "[a] jury is entitled to make only reasonable inferences from the evidence," *United States v. Samad*, 754 F.2d 1091, 1097 (4th Cir. 1984) (cleaned up), but "it is the jury's province to weigh the credibility of the witnesses, and to resolve any conflicts in the evidence." *United States v. Dinkins*, 691 F.3d 358, 387 (4th Cir. 2012). Moreover, on appeal, we "assume that the jury resolved any conflicting evidence in the prosecution's favor." *United States v. Robinson*, 55 F.4th 390 (4th Cir. 2022) (cleaned up). The jury was not required to accept Pittman's recantation — or to discount the volume of evidence that Nixon was the shooter.

The testimony by Nunez, Mercer, Ford, Green, and Sweetenburg, and the forensic evidence connecting Nixon's firearm to the crime scene, gave the jury ample reason to credit Pittman's statements on the day of the shooting over his conflicting trial testimony.

2.

Nixon and Taybron's joint argument fares no better. Count 21 charged these two defendants with attempted murder in relation to the January 2, 2017, shootout with several members of the rival Chestnut Gang. The Government relied largely on Ford's testimony to establish a narrative of the encounter. According to Ford, while he was driving Taybron and Nixon through Chestnut Gang territory, Taybron spotted Chestnut Gang members outside a convenience store, and instructed Ford to pull over. They parked around a corner, and the defendants told Ford to give Taybron his gun. Taybron and Nixon approached on foot, and began "jawing" at the rival gang members for about five minutes. Ford grew concerned that Taybron and Nixon were "taking too long to shoot," so he got out of the vehicle to retrieve his firearm. As Ford approached, one of the Chestnut gangsters fired a shot, and Taybron and Nixon returned fire, emptying the clips in their guns before retreating to the car.

Taybron and Nixon argue that Ford's testimony is insufficient to show they intended to kill anyone during this incident. They argue that the shootout was a chance encounter, and that it does not resemble the Bang Squad's systematic hunts for rival gang members. They also insist it would be irrational to infer that they intended to shoot, because they approached outnumbered, spoke to their rivals for five minutes, and fired only when fired upon. But the weight of the evidence is committed to the jury. *See, e.g.*, *United States v.*

Wysinger, 64 F.4th 207, 211 (4th Cir. 2023); *United States v. Dennis*, 19 F.4th 656, 670 (4th Cir. 2021). Our responsibility is only to determine whether there is enough evidence to sustain the jury's verdict — not to substitute our judgment for that of the factfinder, and decide for ourselves whether the jury got it right. *See, e.g.*, *Savage*, 885 F.3d at 219 (explaining that we will uphold a jury verdict so long as it is supported by "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt" (cleaned up)).

Ford's testimony provided abundant evidence for a jury to conclude that Taybron and Nixon wanted to kill the members of the Chestnut Gang, even if the shootout initially began as a chance encounter. The record contained ample evidence that the Bang Squad regularly provoked its rivals by taunting them and venturing into their territory. Although Ford's narrative suggests that Taybron and Nixon did not set out to go "op shopping" — to hunt opposing gang members — the jury could reasonably have concluded that Taybron and Nixon made the decision to kill their adversaries when they spotted them during the drive. And while the tactics employed by Taybron and Nixon could suggest that they intended merely to confront their rivals, not to kill them, the jury did not need to draw that inference. *See Wysinger*, 64 F.4th at 211 ("[I]f the evidence supports different, reasonable interpretations, the jury decides which interpretation to believe." (quoting *United States v. Beidler*, 110 F.3d 1064, 1067 (4th Cir. 1997))).

B.

Deshaun Richardson and Raymond Palmer challenge their convictions on Count 1, charging them with conspiracy to commit racketeering, in violation of 18 U.S.C. § 1962(d). To prove a RICO conspiracy, the Government must show: (1) "that an enterprise affecting interstate commerce existed"; (2) "that each defendant knowingly and intentionally agreed" to conduct or participate in its affairs; and (3) "that each defendant knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two racketeering acts." *Mathis*, 932 F.3d at 258 (cleaned up). Richardson and Palmer contend that the Government offered insufficient evidence for the jury to find that they agreed to the commission of at least two racketeering acts. Their arguments fail.

1.

We begin with Deshaun Richardson. In addition to the RICO conspiracy at issue in Count 1, the Government charged Richardson with four counts arising from the April 6, 2015, murders of Domingo Davis and Jada Richardson (Counts 6–9). Forensic expert Juliana Red Leaf opined that a handgun Richardson carried on the day of the double murders matched bullets and shell casings recovered from the crime scene. In addition, four cooperating Bang Squad members testified at trial, and tied Richardson to the murders: Corey Sweetenburg testified that Richardson, Hunt, Green, and Harris left the Marshall Courts apartments before the murders to hunt for Davis; Racquille Jackson recounted that the quartet convened at his mother's house to lie low, and told him about the shootings; and Jarrell Atkins and Jamaree Green each claimed that Richardson was one of the gunmen.

Finally, one hour after the murders, Richardson sent Hunt a message urging him to delete social media posts that referred to "busting" his "opp[s]."

On this evidence, the jury convicted Richardson on Count 1, the RICO conspiracy. But it acquitted Richardson on Counts 6 through 9, which charged him with the double murders. Richardson maintains that the Government presented an "all-or-nothing" theory of the case — either he was the fourth shooter, or he was not involved. Because the jury rejected that theory, and made a finding that he did not aid or abet the killings, Richardson contends that there is insufficient evidence of his involvement in the conspiracy to sustain a conviction on Count 1.

This argument boils down to the notion that a conviction on the RICO conspiracy charge is incompatible with an acquittal on the predicate murder counts. But "[a] defendant cannot challenge his conviction merely because it is inconsistent with a jury's verdict of acquittal on another count." *United States v. Legins*, 34 F.4th 304, 316 (4th Cir. 2022) (cleaned up); *United States v. Louthian*, 756 F.3d 295, 305 (4th Cir. 2014); *Wiggins v. Boyette*, 635 F.3d 116, 127 (4th Cir. 2011). After all, "an inconsistent verdict can result from mistake, compromise, or lenity, and a jury could just as likely err in acquitting as convicting." *Legins*, 34 F.4th at 316 (cleaned up). Because a court cannot divine the jury's intentions, "a reviewing court's assessment of the reason for the inconsistency would be based either on pure speculation, or would require inquiries into the jury's deliberations." *Id.* at 316 (cleaned up). Courts rarely tread such treacherous waters.

Accordingly, the mere fact that Richardson was acquitted on the counts arising from the Davis/Richardson murders does not undermine his conviction of the RICO conspiracy.

See United States v. Tinsley, 800 F.2d 448, 450–52 (4th Cir. 1986) (holding that an acquittal on one of two charged racketeering acts did not invalidate convictions for substantive racketeering, and for racketeering conspiracy); *see also United States v. Tisdale*, 980 F.3d 1089, 1096 (6th Cir. 2020). Innumerable factors may have led to this split decision. The jury may have found that Richardson agreed to the murders, but played no role in carrying them out. It may have discounted Sweetenburg's claim that Richardson was one of the four who left Marshall Courts that morning. Or it may have found the forensic evidence too uncertain to reach a conviction beyond a reasonable doubt. Whatever the reason may be, we will not "reverse engineer the jury's thought processes," and speculate as to why the jury reached the outcome it did. *See Campbell v. Boston Sci. Corp.*, 882 F.3d 70, 75 (4th Cir. 2018).

Richardson also argues that the Government offered no evidence that he committed any racketeering acts himself. This argument is a nonstarter. We have recognized that "a defendant can conspire to violate RICO . . . without 'himself commit[ing] or agree[ing] to commit the two or more' acts of racketeering activity." *United States v. Mouzone*, 687 F.3d 207, 218 (4th Cir. 2012) (quoting *Salinas v. United States*, 522 U.S. 52, 62 (1997)).[13] It is enough that the defendant "adopt the goal of furthering or facilitating the criminal

[13] As our sister circuits have noted, the RICO conspiracy statute is designed to reach "an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense." *See, e.g.*, *United States v. Randall*, 661 F.3d 1291, 1297 (10th Cir. 2011) (quoting *Salinas*, 522 U.S. at 65). If the Government was required to prove that a defendant committed specific racketeering acts to obtain a conviction for a RICO conspiracy, "Section 1962(d) would . . . become a nullity," as it would require the same proof as a substantive RICO offense. *See United States v. Glecier*, 923 F.2d 496, 501 (7th Cir. 1991).

endeavor," *Simmons*, 11 F.4th at 255 (quoting *Salinas*, 522 U.S. at 65), by agreeing "that a member of the enterprise would perform at least two racketeering acts," *United States v. Pinson*, 860 F.3d 152, 161 (4th Cir. 2017).

There was ample evidence for the jury to find Richardson agreed to the commission of multiple murders and attempted murders, even if he did not personally commit them. As discussed above, Atkins, Green, Sweetenburg, and Jackson testified as to Richardson's participation in discussions about the double murders. Moreover, Richardson's social media activity, including his admonition to Hunt to delete his status one hour after the murders, and his message in a group chat asking other gang members why they didn't "pop Dwayne [Dozier]," permits an inference of broad involvement in the Bang Squad's efforts to hunt and kill its rivals. Accordingly, "the jury's verdict is not necessarily inconsistent." *Legins*, 34 F.4th at 316. Even if Richardson did not commit any of these shootings himself, the jury could reasonably find he participated in the conversations around these offenses, and agreed that they would be carried out.[14]

2.

The Government produced no direct evidence that Palmer agreed to the commission of two racketeering acts. But the prosecution offered circumstantial evidence that he did so. *See United States v. Tillmon*, 954 F.3d 628, 640 (4th Cir. 2019) ("Due to the clandestine nature of a conspiracy, the offense is often proved by circumstantial evidence and the

[14] Moreover, the Government presented evidence at trial connecting Richardson to various robberies and drug offenses. While the Government dismissed Richardson from the related counts before the prosecution submitted its case, the underlying evidence may still be relied on to support a RICO conspiracy conviction. *See Tinsley*, 800 F.2d at 450.

context in which circumstantial evidence is adduced."). Witnesses testified that Palmer sold marijuana in the Bang Squad's territory, retrieved a firearm to protect Jarrell Atkins from an investigation, and took part in the midnight shooting of Dwayne Dozier's home. In sum, Palmer protected the Bang Squad, sold drugs in the gang's territory, and retaliated against its foes.

Palmer argues that the Dozier shooting cannot be a valid predicate, as it was charged only as an armed assault rather than an attempted murder, and that his marijuana sales have no connection to the gang. We are not persuaded. Because a racketeering conspiracy is not contingent on specific predicates, the Government's decision to charge the Dozier home shooting as an armed assault is irrelevant. *See United States v. Barronette*, 46 F.4th 177, 207 (4th Cir. 2022) (holding that the Government need not charge specific predicates); *Tinsley*, 800 F.2d at 450 (holding that a jury may convict on a RICO conspiracy charge while acquitting on predicate acts). And because Palmer was a member of the Bang Squad, and the Government offered testimony that the Bang Squad confronted, fought, or shot others who sold drugs in its territory, the jury could infer that Palmer's drug sales were gang activity, or that they were carried out with its approval. *See United States v. Marino*, 277 F.3d 11, 27 (1st Cir. 2002) ("A sufficient nexus or relationship exists between the racketeering acts and the enterprise if the defendant was able to commit the predicate acts by means of . . . his association with the enterprise.").

Moreover, the Government need not identify the specific racketeering acts that the defendant agreed would be committed. *United States v. Cornell,* 780 F.3d 616, 625 (4th Cir. 2015). "[T]he object of a RICO conspiracy is 'to engage in racketeering,' not to

commit each predicate racketeering act." *United States v. Gutierrez*, 963 F.3d 320, 343 (4th Cir. 2020) (quoting *United States v. Garcia*, 754 F.3d 460, 482 (7th Cir. 2014)). Thus, the Government need only prove that the defendant "agree[d] to pursue the same criminal objective as that of the enterprise," *Mathis*, 932 F.3d at 260, by establishing "the types of racketeering acts that members of the conspiracy agreed to commit," *Cornell,* 780 F.3d at 625. The evidence against Palmer is clear on that count. Even if the foregoing incidents are not valid racketeering predicates, they are circumstantial evidence that Palmer assented to the Bang Squad's essential racketeering conduct: murder. Palmer's participation in one retaliatory shooting, and his retrieval of a firearm following another, constitutes evidence that he knew the gang used murder to exert its influence and protect its territory, and that he agreed to advance its violent objectives.

VI.

Because the Chestnut Gang members fired first in the shootout on January 2, 2017, Taybron and Nixon sought a jury instruction on self-defense, and the court provided one. But while the defendants requested a *justifiable* self-defense instruction, the court instead instructed the jury only on a theory of *excusable* self-defense. We review the district court's refusal to give a jury instruction for abuse of discretion. *United States v. Hassler*, 992 F.3d 243, 246 (4th Cir. 2021). Given that the undisputed facts preclude a theory of justifiable self-defense, we affirm.

"Virginia law recognizes two forms of self-defense to criminal acts of violence: self-defense without fault ('justifiable self-defense') and self-defense with fault ('excusable

self-defense')." *Bell v. Commonwealth*, 788 S.E.2d 272, 275 (Va. 2016); *Osman v. Osman*, 737 S.E.2d 876, 880 (Va. 2013); *Yarborough v. Commonwealth*, 234 S.E.2d 286, 289 (Va. 1993). An act of self-defense is *justifiable* if the defendant acted "without any fault on his part in provoking or bringing on the difficulty." *Osman*, 737 S.E.2d at 880 (cleaned up). Self-defense is merely *excusable* if the defendant bore "some fault" in bringing about the encounter. *Id.* The practical impact of these theories lies in the duty to retreat: A defendant who is at fault in the encounter must retreat "as far as possible" and "announce[] his desire for peace" before using force in his defense, while a defendant without fault need not do so. *Bell*, 788 S.E.2d at 276 (cleaned up). Because Taybron and Nixon returned fire before retreating to Ford's car, they argue that the district court's decision to instruct the jury only on excusable self-defense, and not justifiable self-defense, prejudiced their case.

But the Supreme Court of Virginia has clearly held that where "a defendant is even slightly at fault, the killing is not justifiable homicide." *Avent v. Commonwealth*, 688 S.E.2d 244, 259 (Va. 2010) (quoting *Perricillia v. Commonwealth*, 326 S.E.2d 679, 685 (Va. 1985)). In *Avent*, the victim attacked the defendant first — knocking him to the ground and choking him — but broke off the encounter and retreated upstairs. *Id.* at 249, 259. Concerned that the victim was retrieving a firearm, the defendant followed him, carrying a shotgun. *Id.* Upstairs, the victim assaulted the defendant with a wooden board, and the defendant shot him, knocked him over, and bludgeoned him, causing his death. *Id.* The defendant was convicted of murder, and the Supreme Court of Virginia affirmed. *Id.* While the victim was the aggressor in the fatal encounter, the court held that the defendant

"was not entitled to a justifiable homicide jury instruction due to his fault in bringing on the difficulty by pursuing [the victim] upstairs." *Id.* at 259.

Avent indicates that any degree of fault on the part of the defendant, even the act of following the victim after a heated altercation, precludes a claim of justifiable self-defense. *Smith v. Commonwealth*, 435 S.E.2d 414, 416 (Va. 1993) ("Any form of conduct by the accused from which the fact finder may reasonably infer that the accused contributed to the affray constitutes fault." (cleaned up)).[15] Taybron and Nixon did much more than that: They armed themselves, confronted a rival gang in hostile territory, and kicked off a five-minute shouting match that ended in gunfire. On these facts, it would be impossible for a jury to conclude that Taybron and Nixon are not at least "slightly at fault" in the encounter. *Avent*, 688 S.E.2d at 259.

Citing *Jones v. Commonwealth*, Taybron and Nixon argue that words alone cannot establish provocation. *See* 833 S.E.2d 918, 930 (Va. Ct. App. 2019). But this rule pertains to the provocation element of *manslaughter* — not to the question of whether a defendant bears no fault in causing a confrontation, as required for a claim of justifiable self-defense. To reduce a homicide to manslaughter, the defendant must show that he killed "in the heat of passion and [upon] reasonable provocation," referring to a state of rage or fear "which renders a person deaf to the voice of reason." *Washington v. Commonwealth*, 878 S.E.2d

[15] In certain cases, it may be necessary for the trial court to issue both instructions, reserving the question of fault for the factfinder. *See, e.g.*, *Bell*, 788 S.E.2d at 276 (holding that the trial court erred in issuing only an excusable self-defense instruction, and not a justifiable self-defense instruction, where witnesses testified that the victim approached the defendant, pulled out a gun, and made a hostile remark). But because the critical facts are undisputed here, the district court was not required to do so.

430, 436 (Va. Ct. App. 2022) (cleaned up). That concept has no relation to whether the defendant bears "any fault" in contributing to a fatal encounter, an inquiry that resembles causation. *See Osman*, 737 S.E.2d at 880; *Smith*, 435 S.E.2d at 416. While "[w]ords alone are never sufficient reasonable provocation" to reduce a homicide to manslaughter, *Jones*, 833 S.E.2d at 926, words can certainly contribute to the lethal escalation of an encounter. *Cf. Washington*, 878 S.E.2d at 435 (affirming denial of justifiable self-defense instruction where appellant approached the victim, started a heated verbal exchange, and shot the victim at its climax).[16]

VII.

Richardson argues that the court erroneously enhanced his sentence under Count 1 based on the murders of Domingo Davis and Jada Richardson. "On a challenge to a district court's application of the Guidelines, we review questions of law de novo and findings of fact for clear error." *United States v. Allen*, 909 F.3d 671, 677 (4th Cir. 2018) (cleaned up). A factual finding is clearly erroneous if, upon reviewing the entire record, we are "left with

[16] Defendants further cite *Jordan v. Commonwealth* for the proposition that "insults and threats" are never a "provocative act." 252 S.E.2d 323, 325 (Va. 1979). This argument misstates Jordan's holding. In Virginia, a defendant cannot claim self-defense unless the victim engaged in "some overt act indicative of imminent danger." *Commonwealth v. Cary*, 623 S.E.2d 906, 912 (Va. 2006) (cleaned up). In *Jordan*, the Supreme Court of Virginia held that a victim's "words and threats" could not constitute such an "overt act . . . that would justify a plea of self-defense." 252 S.E.2d at 325. While a defendant cannot claim self-defense based solely on a *victim's* threatening words, that principle is irrelevant in determining whether the *defendant* bears some fault in contributing to a dangerous encounter.

the definite and firm conviction that a mistake has been committed." *United States v. Barnett*, 48 F.4th 216, 220 (4th Cir. 2022) (cleaned up).

The court calculated Richardson's base offense level by applying U.S.S.G. § 2E1.1, which governs racketeering convictions. That provision sets the offense level at the greater of 19 or the base offense level of the predicate racketeering activity — in this case, murder. U.S.S.G. § 2E1.1(a). The district court relied on the latter, raising Richardson's base offense level to 43, the maximum permitted by the United States Sentencing Guidelines, after applying a cross-reference to U.S.S.G. § 2A1.1(a), which governs first degree murder. *See* U.S.S.G. § 2A1.1 cmt. 1 (permitting this cross-reference "in cases in which the offense level . . . is calculated using the underlying crime (e.g., murder in aid of racketeering)"). Coupled with Richardson's criminal history category of V, this calculation yielded a guidelines range of 240 months' imprisonment. Acknowledging Richardson's lack of personal involvement in the Bang Squad shootings, the court sentenced him to 204 months, 36 months below the guidelines range.

Richardson maintains that the cross-reference to U.S.S.G. § 2A1.1 was clear error, because the jury acquitted him of the Domingo Davis and Jada Richardson murders. As an initial matter, it is firmly established that "a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge[s], so long as that conduct has been proven by a preponderance of the evidence." *United States v. Medley*, 34 F.4th 326, 335 (4th Cir. 2022) (quoting *United States v. Watts*, 519 U.S. 148, 157 (1997)). After all, because the Sentencing Guidelines are advisory, the sentencing judge "could disregard the Guidelines and apply the same sentence," provided he does not

exceed the statutory maximum applicable to the offense of conviction. *Id.* at 336 (quoting *United States v. Grubbs*, 585 F.3d 793, 799 (4th Cir. 2009)).

But in any event, the district court did not find that Richardson committed the double murders. At sentencing, the Government argued he was liable for the Davis/Richardson murders on a theory of personal liability. *See* U.S.S.G. § 1B1.3(a)(1)(A) (instructing sentencing court to consider "all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant"). But the district court instead found Richardson was responsible for the murders on a theory of *conspirator* liability, focusing on his conversations with the shooters before and after the murders. *See* U.S.S.G. § 1B1.3(a)(1)(B) (directing court to consider foreseeable acts of co-conspirators committed within the scope of a conspiracy, and in furtherance of that conspiracy). That finding is not erroneous, much less clearly so. The Government charged the Davis and Richardson murders as VICAR murders precisely because they were carried out as part of the Bang Squad's systematic efforts to hunt and kill its rivals, and fell within the scope of its racketeering conspiracy.

Richardson further argues that the jury's special verdict precludes a sentencing finding based on conspirator liability. We have referenced a "non-contradiction principle which prohibits the district court from finding facts by a preponderance of the evidence that contravene the jury's finding beyond a reasonable doubt." *United States v. Mitchell*, 493 F. App'x 440, 441–42 (4th Cir. 2012) (citing *United States v. Curry*, 461 F.3d 452, 460–61 (4th Cir. 2006)). Assuming without deciding that this principle remains good

law,[17] it is not implicated here. On the verdict form for Count 1, the jury found Richardson had not "committed, or aided, abetted, counseled, commanded, induced or procured" the Domingo Davis and Jada Richardson murders. JA 6725–27. This language tracks with U.S.S.G. § 1B1.3(a)(1)(A), and contemplates only personal or accomplice liability. It does not conflict with the sentencing court's findings pursuant to U.S.S.G. § 1B1.3(a)(1)(B), which relied exclusively on conspirator liability.

VIII.

Finally, Defendants collectively argue that the district court abused its discretion by denying their motion for a mistrial, which they filed in response to a witness's comments about an uncharged murder. We review a district court's decision on a motion for mistrial for abuse of discretion, and we reverse only in "the most extraordinary of circumstances." *United States v. Recio*, 884 F.3d 230, 239 (4th Cir. 2018) (cleaned up). Circumstances are far from extraordinary here.

In our system of justice, "the law does not allow consideration of other crimes as evidence of a defendant's criminal disposition." *United States v. Foutz*, 540 F.2d 733, 736

[17] *Mitchell* is unpublished, and this issue has divided our sister circuits. *Compare United States v. Pimentel-Lopez*, 859 F.3d 1134, 1142 (9th Cir. 2016) (vacating sentence where judge's findings contradicted jury's special verdict), *with United States v. Webb*, 545 F.3d 673, 677 (8th Cir. 2008); *United States v. Magallanez*, 408 F.3d 672, 685 (10th Cir. 2005); *United States v. Smith*, 308 F.3d 726, 745–46 (7th Cir. 2002) (permitting such contradiction).

(4th Cir. 1976); *see also* Fed. R. Evid. 404(b).[18] But that does not mean that any reference to an uncharged offense, no matter how brief and attenuated it may be, compels a mistrial. Before granting a mistrial, "the district court should consider whether there are less drastic alternatives to a mistrial that will eliminate any prejudice." *United States v. Hayden*, 85 F.3d 153, 157 (4th Cir. 1996). And because "we generally follow the presumption that the jury obeyed the limiting instructions of the district court," *United States v. Williams*, 461 F.3d 441, 451 (4th Cir. 2006) (cleaned up), "no prejudice exists if the jury could make individual guilt determinations by following the court's cautionary instructions," *United States v. Hart*, 91 F.4th 732, 745 (4th Cir. 2024) (cleaned up).

Accordingly, we have affirmed the denial of mistrial motions based on a witness's improper reference to an uncharged offense where the reference was brief, and the court promptly instructed the jury to disregard it. *E.g.*, *United States v. Collins*, 372 F.3d 629, 634 (4th Cir. 2004); *United States v. Vogt*, 910 F.2d 1184, 1192–93 (4th Cir. 1990); *United States v. Morrow*, 731 F.2d 233, 235 n.4 (4th Cir. 1984). Most recently, in *United States v. Zelaya*, a witness testified that the defendant "told her that she would cry for her son like she cried for 'Hugo,'" and that "Hugo was 'the guy [defendants] had killed before.'" 908 F.3d 920, 929–30 (4th Cir. 2018). Because the defendants were not charged with the Hugo murder, defense counsel promptly moved for a mistrial. *Id.* The court denied this motion,

[18] Of course, exceptions exist for reliable evidence introduced for reasons other than character, provided it is necessary to prove the context or elements of the charged offense. *See United States v. Byers*, 649 F.3d 197, 206 (4th Cir. 2011). But because the Government did not invoke these exceptions below, we do not address them here. *See* Fed. R. Evid. 404(b)(3) (requiring prosecution to provide notice of his intent to introduce such evidence).

and we affirmed, observing that the Government asked the witness nothing further about the Hugo murder; that the Hugo murder was not referenced again at trial; and that the court instructed the jury to disregard any uncharged offense. *Id.*

Such is the case here. On the thirteenth day of trial, during the Government's direct examination of Corey Sweetenburg, the prosecutor asked Sweetenburg why he had elected to cooperate with the investigation. Sweetenburg explained that he had decided to come forward when Nixon and Taybron were "locked up for the Ralph murder." Defendants immediately objected and requested a mistrial. After a bench colloquy and a brief recess, the court denied the mistrial motion, but sustained the objection, struck the objectionable testimony, and issued an extensive curative instruction:

> Now, there's one other matter that I wanted to address with you, and it is this: Just before, just before our lunch break, you heard the current witness, Corey Sweetenburg, who is sitting there on the stand, refer to the Ralph murder. I instruct you and I direct you that that testimony was improper, and you are to completely disregard that statement. Put it out of your mind.
>
> First, I remind you that none of the defendants in this case are charged with the Ralph murder.
>
> Second, there are no allegations in the charges before this court at all about any Ralph murder, and anything having to do with any so-called Ralph murder has absolutely nothing to do with the charges in this case. Therefore, I am ordering that testimony be stricken, and you are to totally disregard it in your consideration of the evidence in this case as to all the defendants, and you are to totally disregard it in your deliberations as to all the defendants. It shall not be discussed in any way during deliberations and shall not be part of your individual or collective decision-making process.

Thereafter, the court dissuaded the Government from introducing exhibits that referenced the Ralph murder, including rap videos and a Facebook post. Throughout the remaining three weeks of trial, not a single witness made any additional reference to the Ralph murder.

In providing this thorough and careful instruction, the district court did not abuse its discretion. Quite like the comment at issue in *Zelaya*, Sweetenburg's reference to "the Ralph Murder" was brief, ambiguous, and not repeated. The prosecution did not intentionally elicit this comment. Nor did it reference or allude to the Ralph murder at any point throughout the remainder of the proceedings. And there is no question that the jury, if it followed the court's extensive instruction, could make its own determination as to each defendant's guilt or innocence of the crimes charged. Accordingly, the court did not abuse its discretion by declining to order a mistrial — to cast aside an exhaustive, five-week proceeding — in response to Sweetenburg's stray remark.

IX.

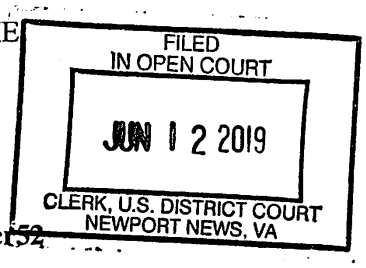
For the foregoing reasons, the judgment of the district court is in all respects

AFFIRMED

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Newport News Division



UNITED STATES OF AMERICA	)	**CRIMINAL NO. 4:17cr52**
	)	
v.	)	
	)	
MARTIN L. HUNT,	)	**18 U.S.C. § 1962(d)**
a/k/a "O.G. Martin,"	)	**Racketeering Conspiracy**
(Counts 1, 4-9, 12, 13, 30-33)	)	**(Count 1)**
	)	
XAVIER GREENE,	)	**18 U.S.C. §§ 1959(a)(1) and 2**
a/k/a "BJ,"	)	**Murder in Aid of Racketeering Activity**
(Counts 1-3,6-9, 14, 15)	)	**(Counts 2, 6, 8)**
	)	
DESHAUN RICHARDSON,	)	**18 U.S.C. §§ 924(c)(1) and (j) and 2**
a/k/a "Day Day,"	)	**Use of a Firearm Resulting in Death**
(Counts 1, 6-9, 25, 28)	)	**(Counts 3, 7, 9)**
	)	
RYAN TAYBRON,	)	**18 U.S.C. §§ 1959(a)(5) and 2**
a/k/a "22" and "Ryan Savage,"	)	**Attempted Murder in Aid of Racketeering**
(Counts 1, 16-19, 21, 22, 25-28)	)	**Activity**
	)	**(Counts 4, 14, 16, 18, 21, 23, 30, 32, 34)**
ERIC NIXON,	)	
a/k/a "Young Nix" and "Lil Nix,"	)	**18 U.S.C. §§ 924(c)(1)(A) and 2**
(Counts 1, 16-19, 21-24, 29)	)	**Possession and Discharge of a Firearm**
	)	**in Furtherance of a Crime of Violence**
GEOVANNI DOUGLAS,	)	**(Counts 5, 11, 13, 15, 17, 19, 22, 24, 31**
a/k/a "Geo" and "Twin,"	)	**33, 35)**
(Counts 1, 14, 15, 34, 35)	)	
	)	**18 U.S.C. §§ 1959(a)(5) and 2**
RAYMOND PALMER,	)	**Attempt and Conspiracy to Commit**
a/k/a "Ray Dog,"	)	**Murder in Aid of Racketeering Activity**
(Counts 1, 10, 11)	)	**(Count 12)**
	)	
ANTHONY ACKLIN,	)	**18 U.S.C. §§ 1959(a)(6) and 2**
a/k/a "Von,"	)	**Attempted Assault with a Dangerous**
(Counts 25 – 27)	)	**Weapon in Aid of Racketeering Activity**
	)	**(Count 10)**
	)	
	)	**18 U.S.C. §§ 1512(b)(1) and 2**
	)	**Tampering with Witness**
	)	**(Count 20)**

MELISSA TAYBRON,	)	**21 U.S.C. § 846**
(Counts 20, 26)	)	**Conspiracy to Distribute and Possess with**
	)	**Intent to Distribute Marijuana and Cocaine**
SADE TAYBRON,	)	**Base**
(Count 20)	)	**(Count 25)**
	)	
and	)	**21 U.S.C. § 856(a)(1)**
	)	**Maintaining Drug Involved Premise**
PHYLISS TAYBRON,	)	**(Count 26)**
(Count 20)	)	
	)	**18 U.S.C. § 924(c)(1)(A)**
Defendants	)	**Possession of Firearm in Furtherance of**
	)	**Drug Trafficking**
	)	**(Counts 27, 28)**
	)	
	)	**18 U.S.C. §§ 922(a)(6) and 2**
	)	**False Statement During Firearm Purchase**
	)	**(Count 29)**
	)	
	)	**18 U.S.C. §§ 924(d), 981(a)(1)(C),**
	)	**1963(a), 21 U.S.C. § 853**
	)	**Criminal Forfeiture**

SECOND SUPERSEDING INDICTMENT

June 2019 Term - at Newport News, Virginia

THE GRAND JURY CHARGES THAT:

COUNT ONE
(Racketeering Conspiracy)

The Enterprise

1. The defendants, MARTIN L. HUNT, a/k/a "O.G. Martin," DESHAUN RICHARDSON, a/k/a "Day Day," XAVIER GREENE, a/k/a, "BJ," RAYMOND PALMER, a/k/a "Ray Dog," RYAN TAYBRON, a/k/a "22" and "Ryan Savage," ERIC NIXON, a/k/a "Young Nix" and "Lil' Nix," and GEOVANNI DOUGLAS, a/k/a "Geo" and "Twin," and others known and unknown to the Grand Jury, were members and associates of a neighborhood gang that was known alternatively as "36th Street Bang Squad," "36," "Three-Six," and "800" (hereinafter "36th Street

Bang Squad.") This was a criminal organization whose members and associates, including the Blick'Em Boys, another local street gang, engaged in acts of violence including murder, threats of murder, attempted murder, robbery, witness intimidation, and narcotics distribution. 36th Street Bang Squad operated principally in a geographic area in the southern portion of Newport News, Virginia from Wickham to Madison Avenues, between 35th and 36th Street. Its territory also covered the area around 28th Street and Roanoke Avenue in the same general location as its principal location. Finally, the organization claimed 35th Street as it extended into Hampton, Virginia, changing to Shell Road.

2. Members of the 36th Street Bang Squad signified their membership in various ways. Members bore tattoos such as "36," or "800." 36th Street Bang Squad members displayed distinctive hand signs. When entering a business or gathering of people, 36th Street Bang Squad members and associates would yell slogans such as "36," "800," "800 Block," "Bang Squad," and others.

3. 36th Street Bang Squad and its associates clashed with other gangs including Walker Village Murder Gang (hereinafter WVMG). 36th Street Bang Squad and its associates engaged in acts of retaliation, intimidation, and violence toward rival gangs. Some members of 36th Street Bang Squad claimed to be aligned with the "Bloods" gang.

4. 36th Street Bang Squad, including its leaders, members and associates, constituted an "Enterprise" as defined by Title 18, United States Code, Section 1961(4) (hereinafter "the Enterprise"), that is, a group of individuals associated in fact that was engaged in, and the activities of which affected, interstate and foreign commerce. The Enterprise constituted an on-going

organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the Enterprise.

Purposes and Objectives of the Enterprise

5. The purposes of the Enterprise included the following:

a. Enriching, preserving, expanding, and protecting the power, territory, and prestige of the Enterprise through the use of intimidation, violence, and threats of violence to include murder, attempted murder, assault, robbery, and narcotics distribution;

b. Promoting and enhancing the Enterprise and its members' and associates' activities;

c. Sharing and disseminating information about the Enterprise's plans and activities among members and associates of the Enterprise;

d. Keeping potential rival drug dealers and gang members in fear of the Enterprise and in fear of its members and associates through threatened and actual violence;

e. Confronting and retaliating against rival gangs through the use of intimidation, violence, threats of violence, and assaults;

f. Protecting the Enterprise and its members from detection, apprehension, and prosecution by using witness intimidation to obstruct law enforcement=s investigation of members of the Enterprise;

g. Financially supporting members of the Enterprise through the trafficking of marijuana, cocaine, and cocaine base, and through robberies;

h. Obtaining firearms for use by members of the Enterprise to facilitate the commission of crimes by other members and associates of the Enterprise; and

i. Using intimidation, violence, and threats of violence against known and

suspected rival gang members, rival drug dealers, and various individuals.

Means and Methods of the Enterprise

6. The means and methods used by the defendants and their associates included, but were not limited to, the following:

a. Using intimidation, violence, and threats of violence to preserve and protect the Enterprise's territory, criminal activities, prestige, reputation, and position in the community;

b. Communicating with other members and associates in person, by telephone, and using social media, to plan, discuss, and coordinate criminal activities, and to receive support, encouragement and assistance for such activities;

c. Promoting a climate of fear through intimidation, violence, and threats of violence to further their criminal activities, which included conspiracy to commit murder, murder, attempted murder, assault, robbery, and narcotics trafficking activities;

d. Using intimidation, violence, and threats of violence against known and suspected rival gang members and various individuals;

e. Protecting the Enterprise and its members from detection, apprehension, and prosecution by law enforcement officers by using threats of violence to dissuade potential witnesses from notifying or cooperating with authorities;

f. Confronting and retaliating against rival gangs through the use of intimidation, violence, threats of violence, and assaults;

g. Robbing individuals to obtain cash, cell phones, firearms, and drugs for resale and to fund the Enterprise's activities;

h. Providing resources (such as transportation, firearms and financial support) to facilitate the commission of crimes by other members and associates of the Enterprise;

i. Protecting the territory of the Enterprise in order to allow the Enterprise's members to earn money through the trafficking and sale of marijuana, prescription pills, cocaine, firearms, and stolen property within its territory;

j. Sharing among the Enterprise supplies of, and storage locations for, firearms on Greenbrier Avenue, Hampton, Virginia; and

k. Claiming and marking the territory of the Enterprise and proclaiming the members' association with the Enterprise by use of graffiti, slogans, tattoos related to the Enterprise, and boasting about the existence, exploits, and violent acts of the Enterprise in rap songs, rap videos, and on social media websites.

The Racketeering Conspiracy

7. From in or about January, 2015, the exact date being unknown to the Grand Jury, until on or about July 4, 2017, in the Eastern District of Virginia and elsewhere, MARTIN L. HUNT, a/k/a "O.G. Martin," DESHAUN RICHARDSON, a/k/a "Day Day," XAVIER GREENE, a/k/a, "BJ," RAYMOND PALMER, a/k/a "Ray Dog," RYAN TAYBRON, a/k/a "22" and "Ryan Savage," ERIC NIXON, a/k/a "Young Nix" and "Lil' Nix," and GEOVANNI DOUGLAS, a/k/a "Geo" and "Twin," the defendants herein, Corey R. Sweetenburg and others known and unknown to the Grand Jury, being persons employed by and associated with 36th Street Bang Squad as described in Paragraphs One through Six of this Count, did knowingly and intentionally combine, conspire, confederate and agree with each other, and with other persons known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1962(c), namely to conduct and participate, directly and indirectly, in the conduct of the affairs of the 36th Street Bang Squad Enterprise, which was engaged in and the activities of which affected interstate and foreign commerce, through a pattern of racketeering activity, as that term is defined by Title 18, United

States Code, Section 1961(1) and (5), which consisted of multiple acts involving:

a. Murder, chargeable under Va. Code Ann. §§ 18.2-32, 18.2-26, and 18.2-22, and the common law of Virginia;

b. Robbery, chargeable under Va. Code Ann. §§ 18.2-58, 18.2-26, and 18.2-22, and the common law of Virginia;

multiple acts indictable under:

c. 18 U.S.C § 1512 (Tampering with Witnesses);

and multiple offenses involving:

d. Dealing in controlled substances, in violation of 21 U.S.C §§ 846, 841(a)(1) and 856.

8. It was further part of the conspiracy that each defendant knowingly agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the Enterprise's affairs.

Overt Acts

9. In furtherance of the conspiracy and to achieve the object and purposes of the conspiracy, the defendants and others known and unknown committed overt acts in the Eastern District of Virginia and elsewhere, including but not limited to the following:

a. On or about March 8, 2015, Xavier Greene and unindicted co-conspirator Steven Harris conspired and agreed to use firearms to shoot and kill Dwayne Parker because he was an associate of a rival gang.

b. On or about March 8, 2015, Greene and Harris shot and killed Dwayne Parker.

c. On or about March 8, 2015, following the murder of Parker, Harris and Greene fled to the residence of another member of 36th Street Bang Squad in Newport News, Virginia.

d. On or about March 8, 2015, following the murder of Parker, Greene made threats to an individual known to the Grand Jury related to providing authorities information about the Parker murder.

e. On or about March 15, 2015, in Newport News, in the area of 2130 Wickham Drive, Martin L. Hunt and others discharged a firearm at rival gang member T.W., striking A.J., and P.D.

f. At various times during the spring of 2015, the exact dates being unknown to the Grand Jury, but no later than April 6, 2015, at the location of 735 36th Street, Newport News, Virginia, Greene, Steven Harris and others met and discussed gang activities.

g. On or about April 6, 2015, in Newport News, Virginia, Martin L. Hunt and Harris discharged a firearm at members and associates of the Walker Village Murder gang.

h. On or about April 6, 2015, Hunt, Sweetenburg, Greene, Deshaun Richardson, Harris and others unknown to the Grand Jury, conspired and agreed to use firearms to shoot and kill Domingo Davis and others who were rival gang members.

i. On or about April 6, 2015, Hunt, Greene, Richardson, and Harris shot and killed Domingo Davis and Jada Richardson.

j. On or about April 6, 2015, Hunt, Greene, Richardson and Harris ran to Hunt's mother's residence, carrying firearms.

k. On or about April 6, 2015, Hunt, Greene, Richardson and Harris discussed the murders at Hunt's mother's residence.

l. On or about April 6, 2015, Hunt provided R.J. with the 9mm Bryco pistol he discharged in the murders of Domingo Davis and Jada Richardson.

m. On or about April 6, 2015, R.J. disposed of the 9mm Bryco firearm to prevent

Hunt from being connected to the murders.

n. On or about April 27, 2015, in Newport News, Virginia, Sweetenburg, Raymond Palmer, J.G., J.A. and S.F. conspired and agreed to use firearms to shoot at the residence of D.D., a rival gang member suspected of previously shooting at J.G.'s residence.

o. On or about April 27, 2015, in Newport News, Virginia, Sweetenburg, Palmer, J.G., J.A. and S.F. drove to the 1100 block of 42nd Street and located D.D.'s residence.

p. On or about April 27, 2015, in Newport News, Virginia, Sweetenburg, Palmer, and J.G., each carrying firearms, walked to D.D.'s residence and discharged the firearms, striking the residence multiple times.

q. At various times during 2015, the exact dates being unknown to the Grand Jury, in Newport News, Virginia, at Marshall Courts, Palmer possessed with intent to distribute and distributed quantities of high-grade exotic marijuana.

r. On or about June 3, 2015, in Newport News, Geovanni Douglas chased J.S., a member of rival gang 44-Newsome Park, and discharged a firearm at J.S, in retaliation for J.S. murdering 36th Street Bang Squad member Kevonne Turner.

s. On or about June 5, 2015, Ryan Taybron, Hunt, Sweetenburg, J.G., E.E., Q.D., R.J., and R.T. conspired and agreed to use firearms to shoot and kill J.S., a rival gang member, in retaliation for the murder of 36th Street Bang Squad member Kevonne Turner, which occurred on June 3, 2015.

t. On or about June 5, 2015, Ryan Taybron called S.F. and R.J. to get rides for R.T. to Bridgeport Academy in Hampton, Virginia.

u. On or about June 5, 2015, S.F. drove his white sedan with R.T., J.G., Sweetenburg, and Hunt to Bridgeport Academy.

v. On or about June 5, 2015, E.E., Q.D., and R.J. drove to Bridgeport Academy to meet with S.F., J.G., R.T., Hunt, and Sweetenburg.

w. On or about June 5, 2015, R.T. ordered S.F. to find J.S. at Bridgeport Academy.

x. On or about June 5, 2015, S.F. identified the Hampton City Public School bus on which J.S. was riding for Hunt, Sweetenburg, R.T., J.G., E.E., R.J., and Q.D.

y. On or about June 5, 2015, Sweetenburg, Hunt, J.G., S.F., Q.D., R.J., E.E. and R.T. followed J.S.'s bus from Bridgeport Academy to the Derby Run Apartment complex on Floyd Thompson Drive, Hampton, Virginia.

z. On or about June 5, 2015, while carrying firearms, Hunt, Sweetenburg, J.G., E.E., R.T., and R.J. walked through the Derby Run Apartments looking for J.S. to kill him.

aa. On or about June 5, 2015, R.J. and E.E., while with R.T. and Q.D., discharged firearms at rival gang members outside the Derby Run Apartments.

bb. On or about June 5, 2015, Palmer, Hunt and S.F. took J.A. to downtown Newport News, Virginia to deliver a firearm to another 36th Street Bang Squad member.

cc. On or about July 21, 2015, in Newport News, Virginia, Greene possessed a .45 caliber Taurus firearm.

dd. On or about August 1, 2015, in Newport News, Virginia, Greene possessed a firearm.

ee. On or about August 1, 2015, in Newport News, Virginia, after Greene learned that two members of the 36th Street Bang Squad were in a fight at a Solo Mart, located at 4710 Marshall Avenue, Newport News, Virginia, Greene provided Geovanni Douglas with a firearm.

ff. On or about August 1, 2015, in Newport News, Virginia, Douglas went to the Solo Mart and discharged Greene's firearm at rival gang members.

gg. On or about August 4, 2015, members of 36th Street Bang Squad, including Douglas, discussed shooting Greene because he failed to fully support certain gang activities.

hh. On or about August 4, 2015, members of the 36th Street Bang Squad, including Douglas, banged on the door of an individual known to the Grand Jury in an attempt to take a firearm possessed by Greene or kill him.

ii. On or about August 7, 2015, Greene and others burglarized Southern Police Equipment, a federally licensed firearm dealer located in Chesterfield, Virginia, to obtain firearms for the 36th Street Bang Squad.

jj. On or about August 7, 2015, Greene, and four other associates traveled from Chesterfield, Virginia to Newport News, Virginia, carrying 31 stolen firearms.

kk. On or about August 7, 2015, in Newport News, Virginia, Greene telephonically contacted members of the 36th Street Bang Squad in order to distribute the stolen firearms to arm fellow 36th Street Bang Squad members.

ll. On or about August 7, 2015, Greene and another individual drove to Ryan Taybron' s residence at 404 Greenbrier and delivered a number of firearms to Taybron.

mm. On or about August 10, 2015, in Hampton, Virginia, Ryan Taybron possessed five stolen firearms from the Southern Police Equipment burglary.

nn. On or about August 10, 2015, in Newport News, Virginia, at the Economy Suites motel, Greene possessed the Taurus .45 caliber pistol used in the Solo Mart shooting that occurred on August 1, 2015.

oo. On or about September 1, 2015, in Hampton, Virginia, Ryan Taybron directed Sweetenburg and S.F. to shoot a residence in the 600 block of Live Oak Lane, Newport News,

Virginia, because Taybron's girlfriend was involved with a rival gang member.

pp. On or about September 1, 2015, in Hampton, Virginia, Ryan Taybron gave S.F. a pistol grip shotgun to discharge at the residence in the 600 block of Live Oak Lane, Newport News, Virginia.

qq. On or about September 1, 2015, in Newport News, Virginia, Sweetenburg and S.F. possessed, carried and discharged firearms at the residence in the 600 block of Live Oak Lane, Newport News, Virginia, upon the direction of Ryan Taybron.

rr. On or about September 8, 2015, in Newport News, Virginia, at the 700 Block of 35th Street, Geovanni Douglas did possess with intent to sell approximately 7 baggies of cocaine base while armed with a firearm.

ss. On or about October 15, 2015, in the Eastern District of Virginia, Eric Nixon and an individual communicated using Facebook about doing bodily harm to D.C.

tt. On or about November 6, 2015, in Newport News, Virginia, Ryan Taybron and Nixon discharged firearms at D.C., wounding him in the abdomen.

uu. On or about November 6, 2015, in Hampton, Virginia, Ryan Taybron and Nixon discharged firearms at D.C.

vv. On or about November 8, 2015, in Hampton, Virginia, Sade Taybron did threaten D.C. to prevent his communicating information related to the commission of the shooting conducted by Ryan Taybron and Eric Nixon.

ww. On or about November 8, 2015, but no later than November 23, 2015, in Newport News, Virginia, a 36th Street Bang Squad member relayed threats to D.C.

xx. On or about November 23, 2015, in Hampton, Virginia, Melissa Taybron, Sade Taybron, and Phyllis Taybron did threaten physical force and violence against D.C.

yy. On or about November 25, 2015, in Newport News, Virginia Melissa Taybron and Sade Taybron drove D.C. to a judicial proceeding in Newport News, in order to ensure he recanted his testimony against Ryan Taybron.

zz. On or about November 26, 2015, in Hampton, Virginia, following a shooting at 404 Greenbrier, Melissa Taybron ordered Ryan Taybron, and others, known and unknown to the Grand Jury, to find shooters to retaliate against those who shot at the residence.

aaa. At various times from in or about 2015 through in or about May 2017, in Hampton, Virginia, Ryan Taybron possessed with intent to distribute quantities of exotic marijuana and crack cocaine.

bbb. At various times during June through July 2017, in the area of 34th Street in Newport News, Virginia Ryan Taybron and Deshaun Richardson possessed with intent to distribute and distributed quantities of exotic marijuana.

ccc. On or about January 2, 2017, in Newport News, Virginia, Ryan Taybron, Eric Nixon, and S.F. conspired and agreed to use firearms to shoot at an associate of a rival gang.

ddd. On or about January 2, 2017, in Newport News, Virginia, Ryan Taybron and Nixon possessed and discharged firearms at an associate of a rival gang.

eee. On or about February 9, 2017, in Hampton, Virginia, Nixon obtained a Glock .40 caliber firearm from a straw purchaser whom he caused to purchase it.

fff. On or about February 15, 2017, in Newport News, Virginia, in Marshall Courts, Raymond Palmer retrieved a firearm that had been abandoned by another 36th Street Bang Squad member during the member's flight from police.

ggg. On or about February 26, 2017, in Newport News, Virginia, at an apartment complex on Aqueduct Drive, Nixon attempted to murder D.P. with a Glock .40 caliber firearm.

hhh. On or about February 28, 2017, in Hampton, Virginia, at the Days Inn Hotel, Nixon possessed the Glock .40 caliber firearm used in the D.P. shooting.

iii. At various times, the exact dates being unknown to the Grand Jury, beginning in or about June 2017, and continuing through on or about July 2017, in Newport News, Virginia, Ryan Taybron and Deshaun Richardson distributed quantities of exotic marijuana and cocaine base, commonly called "crack," for profit, while possessing firearms.

Special Sentencing Factors

jjj. On or about March 8, 2015, XAVIER GREENE, a/k/a "BJ," the defendant herein, aided and abetted by others known and unknown, did commit the willful, deliberate and premeditated killing of Dwayne Parker, a/k/a "D.Wade," in violation of Va. Code Ann. §§ 18.2-32 and 18.2-18.

kkk. On or about April 6, 2015, MARTIN L. HUNT, a/k/a "O.G. Martin," XAVIER GREENE, a/k/a "BJ," and DESHAUN RICHARDSON, a/k/a "Day Day," the defendants herein, aided and abetted by one another and others known and unknown, did commit the willful, deliberate and premeditated killing of Domingo Davis, a/k/a "Mingo," in violation of Va. Code Ann. §§ 18.2-32 and 18.2-18.

lll. On or about April 6, 2015, MARTIN L. HUNT, a/k/a "O.G. Martin," XAVIER GREENE, a/k/a "BJ," and DESHAUN RICHARDSON, a/k/a "Day Day," the defendants herein, aided and abetted by one another and others known and unknown, did commit the willful, deliberate and premeditated killing of Jada Richardson, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-18.

(All in violation of Title 18, United States Code, Section 1962(d).)

COUNT TWO
(Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 6 of Count One of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. At all times relevant to this Second Superseding Indictment, 36th Street Bang Squad, including its leaders, members and associates, constituted an "enterprise," as defined in Title 18, United States Code, Section 1959(b)(2), that is, a group of individuals associated in fact, which was engaged in, and the activities of which affected, interstate and foreign commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

3. At all times relevant to this Second Superseding Indictment, 36th Street Bang Squad, the above-described enterprise, through its members and associates, engaged in racketeering activity, as defined in Title 18, United States Code, Sections 1959(b)(1) and 1961(1), that is actsinvolving

a. Murder, chargeable under Va. Code Ann. §§ 18.2-32, 18.2-26, and 18.2-22, and the common law of Virginia;

b. Robbery, chargeable under Va. Code Ann. §§ 18.2-58, 18.2-26, and 18.2-22, and the common law of Virginia;

acts indictable under:

c. 18 U.S.C § 1512 (Tampering with Witnesses);

and offenses involving:

d. Dealing in controlled substances, in violation of 21 U.S.C §§ 846, 841(a)(1) and 856.

4. On or about March 8, 2015, in Newport News, Virginia, within the Eastern District of Virginia, XAVIER GREENE, a/k/a "BJ," the defendant herein, aided and abetted by others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally murder Dwayne Parker, a/k/a "D. Wade," in violation of Va. Code Ann. §§ 18.2-32 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT THREE
(Use of a Firearm Resulting in Death)

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 8, 2015, in Newport News Virginia, within the Eastern District of Virginia, XAVIER GREENE, a/k/a "BJ," the defendant herein, aided and abetted by others known and unknown, did unlawfully and knowingly use, carry, brandish, and discharge a firearm during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, that is Racketeering Conspiracy, in violation of Title 18, United States Code, Section 1962(d), as set forth in Count One of this Second Superseding Indictment, and Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(1), as set forth in Count Two of this Second Superseding Indictment, which are incorporated herein, and in the course of said offenses, caused the death of Dwayne Parker, a/k/a "D. Wade," through the use of a firearm, and the killing constituted murder, as defined in Title 18, United States Code, Section 1111(a), in that the defendant and others, known and unknown to the Grand Jury, with malice aforethought, did unlawfully kill Dwayne Parker, a/k/a "D. Wade," by shooting him.

(In violation of Title 18, United States Code, Sections 924(c)(1) and (j) and 2.)

COUNT FOUR
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about April 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, aided and abetted by others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to commit the murder of rival gang members associated with the Walker Village Murder Gang, in violation of Virginia Code Ann. §§ 18.2-32, 18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT FIVE

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about April 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, and unindicted co-conspirator Steven Harris, aided and abetted by one another and others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is: Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Court Four of this Second Superseding Indictment, which is re-alleged and incorporated herein.

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

COUNT SIX
(Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about April 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," XAVIER GREENE, a/k/a "BJ," and DESHAUN RICHARDSON, a/k/a "Day Day," the defendants herein, and Cory R. Sweetenburg, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally murder Domingo Davis, a/k/a "Mingo," in violation of Va. Code Ann. §§ 18.2-32 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT SEVEN
(Use of a Firearm Resulting in Death)

THE GRAND JURY FURTHER CHARGES THAT:

On or about April 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," XAVIER GREENE, a/k/a "BJ," and DESHAUN RICHARDSON, a/k/a "Day Day," the defendants herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown, did unlawfully and knowingly use, carry, brandish, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a Court of the United States, that is Racketeering Conspiracy, in violation of Title 18, United States Code, Section 1962(d), as set forth in Count One of this Second Superseding Indictment, and Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(1), as set forth in Count Six of this Second Superseding Indictment, which are incorporated herein, and in the course of said offenses, caused the death of Domingo Davis, a/k/a "Mingo," through the use of a firearm, and the killing constituted murder, as defined in Title 18 United States Code, Section 1111(a), in that the defendants, with malice aforethought, did unlawfully kill Domingo Davis, a/k/a "Mingo," by shooting him with a firearm.

(In violation of Title 18, United States Code, Sections 924(c)(1) and (j) and 2.)

COUNT EIGHT
(Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about April 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," XAVIER GREENE, a/k/a "BJ," and DESHAUN RICHARDSON, a/k/a "Day Day," the defendants herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally murder Jada Richardson, in violation of Va. Code Ann. §§ 18.2-32 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(1) and 2.)

COUNT NINE
(Use of a Firearm Resulting in Death)

THE GRAND JURY FURTHER CHARGES THAT:

On or about April 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," XAVIER GREENE, a/k/a "BJ," and DESHAUN RICHARDSON, a/k/a " Day Day," the defendants herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown, did unlawfully and knowingly use, carry, brandish, and discharge a firearm during and in relation to a crime of violence for which they may be prosecuted in a court of the United States, that is Racketeering Conspiracy, in violation of Title 18, United States Code, Section 1962(d), as set forth in Count One of this Second Superseding Indictment, and Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(1), as set forth in Count Eight of this Second Superseding Indictment, which are incorporated herein, and in the course of said offenses, caused the death of Jada Richardson, through the use of a firearm, and the killing constituted murder, as defined in Title 18, United States Code, Section 1111(a), in that the defendants, with malice aforethought, did unlawfully kill Jada Richardson, by shooting her with a firearm.

(In violation of Title 18, United States Code, Sections 924(c)(1) and (j) and 2.)

COUNT TEN

(Attempted Assault with a Dangerous Weapon in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about April 27, 2015, in Newport News, Virginia, within the Eastern District of Virginia, RAYMOND PALMER, a/k/a "Ray Dog," the defendant herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in the 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to assault with a dangerous weapon D.D., in violation of Va. Code Ann. §§ 18.2-51, 18.2- 26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(6) and 2.)

COUNT ELEVEN

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about April 27, 2015, in Newport News, Virginia, within the Eastern District of Virginia, RAYMOND PALMER, a/k/a "Ray Dog," the defendant herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, that is, Attempted Assault with a Dangerous Weapon in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(6), as set forth in Count Ten of this Second Superseding Indictment, which is re-alleged and incorporated herein.

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

COUNT TWELVE
(Attempt and Conspiracy to Commit Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about June 5, 2015, in Hampton, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did unlawfully and knowingly attempt to murder J.S., a/k/a "D'Rose," and combine, conspire, confederate, and agree with one another and others known and unknown to murder J.S., a/k/a "D'Rose," in violation of Va. Code Ann. §§ 18.2- 32, 18.2-26, 18.2-22 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

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

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 5, 2015, in Hampton, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, and Corey R. Sweetenburg, aided and abetted by one another and others known and unknown , did unlawfully and knowingly possess a firearm, namely a handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, that is, Attempt and Conspiracy to Commit Murder in Aid of Racketeering, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Twelve of this Second Superseding Indictment, which is re- alleged and incorporated herein.

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

COUNT FOURTEEN
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about August 1, 2015, in Newport News, Virginia, within the Eastern District of Virginia, XAVIER GREENE, a/k/a "BJ," and GEOVANNI DOUGLAS, a/k/a "Geo," and "Twin," the defendants herein, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to commit murder, in violation of Va. Code Ann. §§ 18.2-32, 18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT FIFTEEN

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 1, 2015, in Newport News, Virginia, within the Eastern District of Virginia, XAVIER GREENE, a/k/a "BJ," and GEOVANNI DOUGLAS, a/k/a "Geo," and "Twin," the defendants herein, aided and abetted by one another and others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Fourteen of this Second Superseding Indictment, which is re- alleged and incorporated herein.

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

COUNT SIXTEEN
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about November 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendants herein, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder D.C., in violation of Va. Code Ann. §§ 18.2-32, 18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT SEVENTEEN

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about November 6, 2015, in Newport News, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendants herein, aided and abetted by one another and others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Sixteen of this Second Superseding Indictment, which is re-alleged and incorporated herein.

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

COUNT EIGHTEEN
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about November 6, 2015, in Hampton, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendants herein, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder D.C., in violation of Va. Code Ann. §§ 18.2-32, 18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT NINETEEN

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about November 6, 2015, in Hampton, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendants herein, aided and abetted by one another and others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Eighteen of this Second Superseding Indictment, which is re- alleged and incorporated herein.

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

COUNT TWENTY
(Tampering with Witness)

THE GRAND JURY FURTHER CHARGES THAT:

On or about November 6, 2015, to on or about November 23, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MELISSA TAYBRON, SADE TAYBRON and PHYLISS TAYBRON, the defendants herein, aided and abetted by one another and others known and unknown, did knowingly intimidate, threaten, corruptly persuade, and engage in misleading conduct toward D.C. by threatening D.C. and his family, over the telephone and social media, and driving him to a legal proceeding, to influence, delay and prevent the testimony of D.C. and cause D.C. to recant D.C.'s original statement implicating RYAN TAYBRON and ERIC NIXON and to prevent his truthful testimony in a federal grand jury, relating to the commission of federal offenses, namely Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5) and Possession and Discharge of a Firearm in Furtherance of a Crime of Violence, in violation of Title 18, United States Code, Section 924(c).

(All in violation of Title 18, United States Code, Sections 1512(b)(1) and 2).

COUNT TWENTY-ONE
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about January 2, 2017, in Newport News, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendants herein, aided and abetted by one another and others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder A.M., in violation of Virginia Code Ann. §§ 18.2-32 ,18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2).

COUNT TWENTY-TWO
(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about January 2, 2017, in Newport News, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendants herein, aided and abetted by one another and others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which they may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of United States Code, Section 1959(a)(5), as set forth in Court Twenty-One of this Second Superseding Indictment, which is re- alleged and incorporated herein.

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

COUNT TWENTY-THREE
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about February 26, 2017, in Newport News, Virginia, within the Eastern District of Virginia, ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendant herein, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder D.P., in violation of Va. Code Ann. §§ 18.2-32 and 18.2-26.

(In violation of Title 18, United States Code, Section 1959(a)(5).)

COUNT TWENTY-FOUR
(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 26, 2017, in Newport News, Virginia, within the Eastern District of Virginia, ERIC NIXON, a/k/a "Young Nix" and "Lil Nix," the defendant herein, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Twenty-Three of this Second Superseding Indictment, which is re-alleged and incorporated herein.

(In violation of Title 18, United States Code, Section 924(c)(1)(A)).

COUNT TWENTY-FIVE
(Conspiracy to Distribute and Possess with Intent to Distribute Marijuana and Cocaine-Base)

THE GRAND JURY FURTHER CHARGES THAT:

At some point between in or about 2015, the exact date being unknown to the Grand Jury, to on or about the date of July 30, 2017, in the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," DESHAUN RICHARDSON, a/k/a "Day Day," ANTHONY ACKLIN, a/k/a "Von," and others, known and unknown to the Grand Jury, did unlawfully, knowingly and intentionally combine, conspire, confederate, and agree together with each other and others persons known and unknown to the Grand Jury to commit the following offenses against the United States:

a. To knowingly and intentionally distribute and possess with intent to distribute marijuana, a Schedule I controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(D); and

b. To knowingly and intentionally distribute and possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine-base, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1) and (b)(1)(C); and

c. To unlawfully and knowingly use a residence at 404 Greenbrier Drive, Hampton, Virginia, for the purpose of possessing with intent to distribute and distributing marijuana, a Schedule I controlled substance, and cocaine base, commonly called "crack," a Schedule II controlled substance, and using marijuana, in violation of Title 21, United States Code, Section 856(a)(1).

WAYS, MANNER AND MEANS OF THE CONSPIRACY

The primary purpose of the conspiracy was to make money through the possession and distribution of cocaine and marijuana in the cities of Hampton and Newport News, Virginia, within the Eastern District of Virginia. The ways, manner and means by which the defendants and co-conspirators carried out the purposes of the conspiracy include but are not limited to the following:

1. It was part of the conspiracy that defendant RYAN TAYBRON, a/k/a "22" and "Ryan Savage," DESHAUN RICHARDSON, a/k/a "Day Day," ANTHONY ACKLIN, a/k/a "Von," and unindicted co-conspirators would and did play different roles in the conspiracy, taking upon themselves different tasks and participating in the affairs of the conspiracy through various criminal acts. Some of the roles which the defendants and co-conspirators assumed and carried out included, among others, organizer, manager, distributor, packager, supplier, middleman, and facilitator.

(In violation of Title 21, United States Code, Section 846.)

COUNT TWENTY-SIX
(Maintaining Drug-Involved Premises)

THE GRAND JURY FURTHER CHARGES THAT:

At some point between in or about 2016, the exact date being unknown to the Grand Jury, to in or about May 2017, in Hampton, Virginia, within the Eastern District of Virginia, RYAN TAYBRON a/k/a "22" and "Ryan Savage," ANTHONY ACKLIN, a/k/a "Von," and MELISSA TAYBRON, the defendants herein, did unlawfully and knowingly use a residence at 404 Greenbrier Drive for the purpose of using, possessing with intent to distribute and distributing marijuana, a Schedule I controlled substance, and cocaine base, commonly called "crack," a Schedule II controlled substance.

(In violation of Title 21, United States Code, Section 856(a)(1).)

COUNT TWENTY-SEVEN
(Possession of Firearm in Furtherance of a Drug Trafficking Crime)

THE GRAND JURY FURTHER CHARGES THAT:

At some point between in or about 2016, the exact date being unknown to the grand jury, to in or about May, 2017, in Hampton, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and ANTHONY ACKLIN, a/k/a "Von," the defendants herein, did unlawfully and knowingly possess a firearm in furtherance of a drug trafficking crime for which they may be prosecuted in a court of the United States, namely: Conspiracy to Possess with Intent to Distribute and to Distribute Marijuana and Cocaine Base, commonly known as "crack" cocaine, in violation of Title 21, United States Code, Section 846, as set forth in Count Twenty-Five of this Second Superseding Indictment, which description of said drug trafficking crime is re-alleged and incorporated by reference as if set forth in full herein.

(In violation of Title 18, United States Code, Section 924(c)(1)(A).)

COUNT TWENTY-EIGHT
(Possession of Firearm in Furtherance of a Drug Trafficking Crime)

THE GRAND JURY FURTHER CHARGES THAT:

At some point from June 2017, to no later than July 2017, the exact dates being unknown to the Grand Jury, in Newport News, Virginia, within the Eastern District of Virginia, RYAN TAYBRON, a/k/a "22" and "Ryan Savage," and DESHAUN RICHARDSON, a/k/a "Day Day," the defendants herein, did unlawfully and knowingly possess a firearm in furtherance of a drug trafficking crime for which they may be prosecuted in a court of the United States, namely: Conspiracy to Possess with Intent to Distribute and to Distribute Marijuana and Cocaine Base, commonly known as "crack" cocaine, in violation of Title 21, United States Code, Section 846, as set forth in Count Twenty-Four of this Second Superseding Indictment, which description of said drug trafficking crime is re-alleged and incorporated by reference as if set forth in full herein.

(In violation of Title 18, United States Code, Section 924(c)(1)(A).)

COUNT TWENTY-NINE
(False Statement During Firearm Purchase)

THE GRAND JURY FURTHER CHARGES THAT:

On or about February 5, 2017, in Hampton, within the Eastern District of Virginia, ERIC NIXON, the defendant herein, aided and abetted by others known and unknown, in connection with the acquisition of a Glock 23 .40 caliber semi-automatic pistol from Superior Pawn and Gun, a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, knowingly made a false and fictitious statement and representation to such dealer, which statement was intended and likely to deceive such dealer as to a fact material to the lawfulness of such sale of said firearm to an individual under Chapter 44 of Title 18, in that the defendant caused another individual, S.M., to execute a Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives Form 4473, Firearms Transaction Record, to the effect that S.M. was the actual transferee/buyer of the firearm listed on the Form 4473, when, in truth and in fact, as the defendant and S.M. then knew, S.M. was not the actual transferee/buyer of the firearm.

(In violation of Title 18, United States Code, Sections 922(a)(6), 924(a)(2), and 2.)

COUNT THIRTY
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about March 15, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, aided and abetted by others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder A.J., in violation of Va. Code Ann. §§ 18.2-32, 18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT THIRTY-ONE

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 15, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, aided and abetted by others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Thirty of this Second Superseding Indictment, which is re-alleged and incorporated herein.

(In violation of Title 18, United States Code, Section 924(c)(1)(A) and 2).

COUNT THIRTY-TWO
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about March 15, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, aided and abetted by others known and unknown, aided and abetted by one another, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder P.D., in violation of Va. Code Ann. §§ 18.2-32, 18.2-26 and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT THIRTY-THREE

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 15, 2015, in Newport News, Virginia, within the Eastern District of Virginia, MARTIN L. HUNT, a/k/a "O.G. Martin," the defendant herein, aided and abetted by others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is, Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Count Thirty-Two of this Second Superseding Indictment, which is re-alleged and incorporated herein.

(In violation of Title 18, United States Code, Section 924(c)(1)(A) and 2).

COUNT THIRTY-FOUR
(Attempted Murder in Aid of Racketeering Activity)

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count Two of this Second Superseding Indictment are re-alleged and incorporated as if fully set out herein.

2. On or about June 3, 2015, in Newport News, Virginia, within the Eastern District of Virginia, GEOVANNI DOUGLAS, a/k/a "Geo" and "Twin," the defendant herein, aided and abetted by others known and unknown, for the purpose of gaining entrance to and maintaining and increasing position in 36th Street Bang Squad, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to commit the murder of rival gang member, J.S., associated with the Walker Village Murder Gang, in violation of Virginia Code Ann. §§ 18.2-32, 18.2-26, and 18.2-18.

(In violation of Title 18, United States Code, Sections 1959(a)(5) and 2.)

COUNT THIRTY-FIVE

(Possession and Discharge of a Firearm in Furtherance of a Crime of Violence)

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 3, 2015, in Newport News, Virginia, within the Eastern District of Virginia, GEOVANNI DOUGLAS, a/k/a "Geo" and "Twin," the defendant herein, aided and abetted by others known and unknown, did unlawfully and knowingly possess and discharge a firearm, namely a handgun, in furtherance of a crime of violence for which he may be prosecuted in a court of the United States, that is: Attempted Murder in Aid of Racketeering Activity, in violation of Title 18, United States Code, Section 1959(a)(5), as set forth in Court Thirty-Four of this Second Superseding Indictment, which is re-alleged and incorporated herein.

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

FORFEITURE AS TO COUNT ONE

THE GRAND JURY FURTHER FINDS PROBABLE CAUSE THAT:

1. The allegations contained in Count One of this Second Superseding Indictment are hereby re-alleged and incorporated by reference herein as though fully set forth for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 1963. Pursuant to Fed. R. Crim. P. 32.2, notice is hereby given to the defendants that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Section 1963, in the event of any defendant's conviction under Count One of this Indictment.

2. The defendants, MARTIN L. HUNT, a/k/a "O.G. Martin," DESHAUN RICHARDSON, a/k/a "Day Day," XAVIER GREENE, a/k/a, "BJ", RAYMOND PALMER, a/k/a "Ray Dog," RYAN TAYBRON, a/k/a "22" and "Ryan Savage," ERIC NIXON, a/k/a "Young Nix" and "Lil' Nix," and GEOVANNI DOUGLAS, a/k/a "Geo" and "Twin":

a. Have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1); and

b. Have interests in, securities of, claims against, and properties and contractual rights affording a source of influence over any enterprise established, operated, controlled, conducted, and participated in the conduct of in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(2); and

c. Have property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of Title 18, United States Code,

Section 1962, which property is subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(3).

3. If any property that is subject to forfeiture above, as a result of any act or omission of the defendant, (a) cannot be located upon the exercise of due diligence, (b) has been transferred to, sold to, or deposited with a third party, (c) has been placed beyond the jurisdiction of the Court, (d) has been substantially diminished in value, or (e) has been commingled with other property that cannot be divided without difficulty, it is the intention of the United States to seek forfeiture of any other property of the defendant, as subject to forfeiture under Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c).

(In accordance with Title 18, United States Code, Section 1963.)

CRIMINAL FORFEITURE

THE GRAND JURY FURTHER FINDS PROBABLE CAUSE THAT:

1. The defendants, if convicted of the any of the violations alleged in this Second Superseding Indictment, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any firearm or ammunition used in or involved in the violation.

2. The defendants, if convicted of the any of the violations alleged in Counts 20, and 25-26 of this Second Superseding Indictment, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of the violation.

3. The defendants, if convicted of the any of the violations alleged in Counts 25-26 of this Second Superseding Indictment, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation.

4. If any property that is subject to forfeiture above, as a result of any act or omission of the defendant, (a) cannot be located upon the exercise of due diligence, (b) has been transferred to, sold to, or deposited with a third party, (c) has been placed beyond the jurisdiction of the Court, (d) has been substantially diminished in value, or (e) has been commingled with other property that cannot be divided without difficulty, it is the intention of the United States to seek forfeiture of any other property of the defendant, as subject to forfeiture under Title 21, United States Code, Section 853(p).

5. The assets subject to forfeiture include, but are not limited to:

a. Real property and improvements located at 404 Greenbriar Drive, Hampton, Virginia.

(In accordance with Title 18, United States Code, Sections 924(d) and 981(a)(1)(C); Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)

Pursuant to the E-Government Act, the original of this page has been filed under seal in the Clerk's Office.

United States v. Martin L. Hunt, et al.
Criminal No. 4:17cr52

A TRUE BILL:

_____

FOREPERSON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA

v. **Criminal No. 4:17cr52**

MARTIN L. HUNT, et al.,

Defendants.

MEMORANDUM ORDER

This matter is before the Court on various pre-trial motions filed by Defendants Martin Hunt, Xavier Greene, Deshaun Richardson, Eric Nixon, Geovanni Douglas, Raymond Palmer, and Sade Taybron. Much of the relief requested in the pending motions was originally sought by a single Defendant, but subsequent to the filing of such motion, one or more of the remaining Defendants filed a "motion to adopt." The numerous requests to "adopt" motions filed by other Defendants named in the case are all **GRANTED as to adoption**. The relief requested in each motion filed by a single Defendant, as well as the relief requested by Defendants subsequently deemed to have adopted/joined in a previously filed motion, are addressed below.[1]

[1] The instant Order addresses the motions that the Government responded to in its consolidated brief in opposition, ECF No. 295, which is nearly one-hundred pages long. There are multiple additional motions pending in this case that will be addressed by separate order.

A. Motions to Dismiss § 924(c) Counts

Multiple Defendants have moved to dismiss criminal counts charging firearm crimes in violation of 18 U.S.C. § 924(c). Defendants correctly argue that: (1) the residual clause contained in 18 U.S.C. § 924(c)(3)(B) is unconstitutionally vague; and (2) this Court must apply a "categorical approach" to determine whether the "crime of violence" referenced in the disputed § 924(c) counts satisfies the "force clause" set forth in 18 U.S.C. § 924(c)(3)(A). United States v. Davis, 139 S. Ct. 2319 (2019).

Although Defendants propose the correct legal framework, for the reasons stated in the Government's consolidated brief in opposition, Defendants' arguments, seeking dismissal of several § 924(c) counts for failure to charge a "crime of violence" that satisfies the force clause, all lack merit. ECF No. 295, at 10-30. In short, Defendants' primary attack fails because both VICAR murder and VICAR attempted murder are "force clause" crimes of violence covered by § 924(c)(3)(A) regardless of whether the Court: (1) applies the "generic, federal definition" approach espoused by the Government; or (2) considers the elements of "VICAR murder, as cross-referenced to Virginia law," consistent with the approach recently followed both by the Fourth Circuit and the undersigned judge in a recent RICO/VICAR case. See United States v. Mathis, -- F.3d --, No. 16-4633, 2019 WL 3437626, at *15 (4th Cir. July 31, 2019) (applying a state-specific approach for a VICAR

murder count and concluding that "the crime of first-degree murder under Virginia law qualifies categorically as a crime of violence under the force clause"); United States v. Simmons, No. 2:16cr130, 2018 WL 6012368, at *2-3 (E.D. Va. Nov. 16, 2018) ("[An] analysis of Virginia law leads to the conclusion that VICAR murder, as cross-referenced to Virginia law, is itself a 'crime of violence' under § 924(c)(3)(A)," as is "VICAR attempted murder.").

As to Defendants' argument challenging whether VICAR assault with a dangerous weapon satisfies the force clause, the Government correctly argues that: (1) such issue is only relevant to Defendant Palmer as he is the only Defendant charged in Counts Ten (the assault count) and Eleven (the use of a firearm in furtherance of assault count); and (2) none of the Defendants' filings address the elements of the Virginia statute cross-referenced in Count Ten (Va. Code § 18.2-51), and a review of such statute reveals that it satisfies the § 924(c)(3)(A) force cause because it includes a "mens rea element, requiring the specific intent to kill or seriously injure the victim." United States v. James, 718 F. App'x 201, 204 (4th Cir. 2018); see United States v. Battle, 927 F.3d 160, 166 (4th Cir. 2019) (explaining that "the requisite mens rea is crucial in the force analysis," and that "a crime requiring the 'intentional causation' of injury requires the use of physical force") (citing United States v. Castleman, 572 U.S. 157, 170 (2014)).

As to the Defendants' final argument challenging the propriety of the RICO conspiracy count serving as the predicate crime of violence, Defendants appear correct that a RICO conspiracy is not a "force clause" crime of violence, and the Court anticipates that its jury instructions will reflect Defendants' position on this issue. See Simmons, 2018 WL 6012368, at *4; United States v. Simms, 914 F.3d 229, 233-34 (4th Cir. 2019) (finding that "conspiracy to commit Hobbs Act robbery does not categorically qualify as a crime of violence" under the § 924(c)(3)(A) force clause because "the Government must prove only that the defendant agreed with another to commit actions that, if realized, would violate the Hobbs Act," and such agreement "does not invariably require the actual, attempted, or threatened use of physical force") (emphasis added). However, because none of the § 924(c) counts charged in this case rely exclusively on such predicate conspiracy crime, there is no basis for dismissal of any pending § 924(c) count. For these reasons, the following motions are **DENIED**: ECF Nos. 248, 252, 262, 264, 274, 275.

B. Motions to Exclude Toolmark Evidence

Multiple Defendants have moved to exclude evidence regarding the forensic examination and findings of bullets and cartridge casings that were recovered from alleged crime scenes. This Court recently addressed this same issue, in detail, in United States v. Simmons, following a Daubert hearing that was conducted by the

Magistrate Judge in that case. After the hearing, the Magistrate Judge issued a report recommending that this Court "decline[] Defendants' invitation to depart from th[e] long-standing tradition favoring admissibility" of firearms and toolmark examination testimony. United States v. Simmons, No. 2:16cr130, 2018 WL 1882827, at *9 (E.D. Va. Jan. 12, 2018). After objections to such ruling were filed, this Court made the de novo finding that the challenged evidence was admissible, with limitations to be imposed at trial to ensure that the testifying expert did not overstate the degree of certainty appropriate in this field of forensic science. United States v. Simmons, No. 2:16cr130, 2018 WL 658693, at *2 (E.D. Va. Feb. 1, 2018).

Here, the Court has fully considered the same arguments advanced by Defendants, as well as the detailed opposition by the Government, the latter of which includes: (1) representations that Defendants have already been provided with certificates of analysis, background notes, and other ballistics discovery materials; (2) an analysis of the five Daubert factors, including information on prior testing of the field/science, error rates, peer review/publications of the science, standards in the field that were adhered to in this case, etc.; and (3) citations to case law universally concluding that expert testimony in this field is admissible. For the reasons stated in detail in the Government's brief, ECF No. 295, at 31-58, and for those recently explained by

this Court, Simmons, 2018 WL 658693, at *1-3; Simmons, 2018 WL 1882827, at *1-9, the Court finds that Defendants fail at this time to establish that the firearm and toolmark evidence should be excluded, or that a pre-trial Daubert hearing is warranted,[2] as their attack on this entire field of forensics at best illustrates: (1) a viable avenue to challenge the weight such evidence should be given by the factfinder; and (2) that consistent with the Government's representations and DOJ Guidance to federal prosecutors, care should be taken at trial to ensure that the Government's expert witnesses do not overstate their degree of certainty regarding source identification (i.e., purported "matches").

Counsel for the Defendants that filed a motion attacking this type of forensic evidence are encouraged to confer with counsel for the Government in an attempt to reach a stipulation in advance of trial as to the acceptable phrasing of the Government's expert's findings. If such stipulation cannot be reached, such issue can

[2] A Daubert hearing is unnecessary in this case because the thrust of Defendants' attack challenges the entire forensic discipline, as contrasted with a case-specific challenge asserting that the testimony/evidence to be offered in this case is somehow less scientifically reliable than the testimony offered in similar cases. The only substantive brief in support of exclusion submitted in this case was filed by the same counsel that participated in Simmons, and the arguments advanced in this case precisely track the arguments previously litigated in Simmons. If Defendants identify a viable case-specific challenge to the admissibility of the Government's evidence that could not have been identified at the time the instant motions were filed because Defendants lacked discovery materials that were subsequently provided, the Court will consider a request during trial for an expeditious and targeted inquiry into such matter outside the presence of the jury.

be resolved through a targeted supplemental motion in limine that presents each parties' proposal, as well as citations in support. For the reasons set forth above, the following motions are **DENIED**: ECF Nos. 250, 253, 263, 268, 271, 276.

C. Motions for Additional Peremptory Strikes

Three Defendants have moved the Court for additional peremptory challenges to exercise during jury selection. The Government asserts that the awarding of additional strikes is both premature and unwarranted. Based on the discretion provided to the Court by Federal Rule of Criminal Procedure 24(b), the Court anticipates granting such motion at a later date based on the nature of the charges, the anticipated evidence, and the number of Defendants that appear likely to proceed to a joint trial. However, the Court takes such matter under advisement at this time as it is premature to determine how many strikes to afford each Defendant, and/or the Government, until it is known with certainty how many Defendants will proceed to a joint trial. The following motions are therefore **TAKEN UNDER ADVISEMENT**: ECF Nos. 256, 272, 280.[3]

D. Motion for Use of Jury Questionnaire

Defendant Richardson has moved the Court to use a jury questionnaire to aid in selecting a trial jury. The Government

[3] The Court notes that all Defendants that proceed to trial will be given the same consideration on this issue, and no additional motions are necessary by the Defendants that have not raised such issue.

acknowledges the Court's broad discretion on this issue, Kasi v. Angelone, 300 F.3d 487, 509 (4th Cir. 2002), but opposes the use of a questionnaire, arguing that there is "no need" for a questionnaire. Having considered the arguments advanced by the parties, as well as the nature of the charges, the expected length of the trial, the fact that the death penalty is not being pursued, as well as other relevant factors, the Court, in its discretion, denies the motion requesting a written jury questionnaire, finding that the questioning performed by the Court through its live voir dire process will effectively ensure that an impartial jury is empaneled. See Robert E. Larsen, Navigating the Federal Trial § 5:40 (2019 ed.) (providing citations to case law from within, and outside, this Circuit, and noting: "The decision to use a written jury questionnaire rests in the sound discretion of the trial judge.").[4] Accordingly, Richardson's motion is **DENIED**. ECF No. 258.

E. Motions to Bar Symbols

Defendants Richardson and Douglas have moved the Court to issue a pre-trial Order banning victims' family members and friends from wearing in the Courtroom any symbols/tokens to either express support for a victim or to "denigrate the defendants." In

[4] Counsel for all parties will have the opportunity to propose questions to be asked by the Court to the panel of prospective jurors, and will also be permitted to ask follow-up questions to prospective jurors that are subjected to individual voir dire by the Court. Fed R. Crim. P. 24(a)(2).

response, the Government agrees that "no state action" should jeopardize the Defendants' right to a fair trial, and that the Government states that it will ensure that its trial witnesses do not wear "memorial clothing or buttons" while testifying. The Government, however, argues that the Court should not issue a premature blanket order restricting the conduct of members of the public.

Having considered the case law cited in the parties' briefs, the Court agrees with the Government that, based on the Government's representations regarding its planned efforts to avoid participating in any questionable behavior, and the absence of any evidence of the public's intent to engage in inappropriate conduct, there is no valid justification to issue a prospective "bright line prohibition" restricting the conduct of the public. In the Court's view, it should be an unremarkable fact that an immediate family member of a deceased victim is experiencing grief, and a minimalist display of grief not intended to draw attention to a trial spectator is unlikely to pose any threat to the fairness of judicial proceedings. Such conclusion assumes, of course, that there is not a coordinated effort to use the courtroom as a forum to visually promote a case-related viewpoint, and further assumes that no member of the public utilizes "memorial clothing" or a large button in a manner that is the equivalent of carrying a sign into the courtroom in an effort to convey a message to the jury or

any of the trial participants. Furthermore, it should go without saying that conduct that "denigrates the defendants," or seeks to suggest their guilt, is far more troubling then the expression of grief, and it will not be permitted in the courtroom.

Consistent with the Government's arguments, the Court denies the pending motions as grounded in conjecture, although Defendants retain the right to raise this issue at trial based on the actual behavior of members of the public, who will be ordered to modify their conduct should they behave inappropriately, to include any behavior that creates a substantial risk of interference with the Defendants' rights to a fair jury trial. While the motions are denied at this time, to the extent that the Government has advance notice that victims' family members, or any other persons, intend to use the courtroom as a forum to draw attention to a visual "message" related to the trial, particularly one that denigrates or suggests the guilt of any Defendant, it would be prudent for the Government to share the Court's written comments on this issue with such individuals prior to trial and to explain to them why all interested persons, including those who might subjectively believe that one or more of the Defendants standing trial are guilty, should be motivated to avoid any conduct that could undermine the integrity of the trial. While the undersigned judge could not have greater respect for the public's right to attend the trial and the protections afforded by the First Amendment, the

courtroom gallery is not the appropriate forum to express a viewpoint regarding the guilt of the Defendants standing trial, and the Court will take swift and appropriate action at trial should the need arise. The following motions are therefore **DENIED without prejudice**: ECF Nos. 260, 278.

F. Motion to Preclude Evidence of Incarceration

Defendant Richardson has moved the Court to preclude testimony or other evidence revealing that he was incarcerated from June 2015 until February of 2016 serving a sentence for assault and battery on a law enforcement officer. The Government indicates in its response that it does not intend to introduce such evidence at trial, but may ultimately introduce evidence that, while Defendant Richardson was incarcerated on the instant charges, he made relevant statements to other inmates. Defendant Richardson asserts in his reply brief that he is unaware of the nature of these alleged statements or their relevance as the Government has not yet produced the contents of the purported jailhouse statements. He nevertheless expresses his likely objection to the admission of evidence revealing his more recent incarceration.

Based on the Government's representations, the pending motion is moot as the Government does not intend to introduce the disputed evidence. Should the Government seek to change its position based

on trial developments, the onus will be on the Government to take the matter up with the Court outside the presence of the jury.

To the extent that the Government has outlined its intent to introduce testimony that will reveal that Richardson was incarcerated on the current charges, at least for a time, counsel for Mr. Richardson and the Government are instructed to confer after the statements at issue have been produced by the Government, because only then can the relevance, probative value, and potential for unfair prejudice be properly evaluated. Should Richardson's counsel believe that such evidence is inadmissible after conferring with counsel for the Government, they should file a supplemental motion in limine outlining why such evidence should be excluded.

Richardson's motion is therefore **DENIED as moot**, ECF No. 265, although such denial is **without prejudice** to the parties' right to re-raise this issue at a later date.

G. Motions to Sever

Multiple Defendants have moved the Court to sever their cases for trial. For the reasons stated in the Government's consolidated brief in opposition, ECF No. 295, at 72-80, and for those set forth in this Court's recent analysis of this issue in United States v. Simmons, No. 2:16cr130, 2017 WL 6388956, at *3-8 (E.D. Va. Dec. 14, 2017), the Court finds that the severance motions filed by Defendant Richardson, Douglas, and Greene lack merit. The

remaining three motions to sever (ECF Nos. 290, 293, 320), two of which are not addressed in the Government's consolidated response, will be addressed at a later date by separate order.

In summary, these three Defendants are all properly joined under Rule 8 based on their alleged participation in the same RICO conspiracy, rendering a joint trial "highly favored" for the obvious reasons of efficiency and judicial economy. United States v. Dinkins, 691 F.3d 358, 368 (4th Cir. 2012) (citation and quotation marks omitted). Defendants fail to demonstrate that discretionary severance under Rule 14(a) is needed to avoid a "serious risk" that specific trial rights will be compromised and/or that the jury will be unable to make a reliable judgment of guilt or innocence. Id. (citation and quotation marks omitted).

All three Defendants are charged with at least two counts of VICAR murder or VICAR attempted murder involving gang-related shootings, and none of the Defendants have made a "strong showing of prejudice" grounded in their contention that they will be denied a fair trial based on the evidence to be presented against a co-defendant. United States v. Mir, 525 F.3d 351, 357 (4th Cir. 2008) (citation omitted). Notably, none of the three Defendants can be said to have "markedly different degrees of culpability." United States v. Dinkins, 691 F.3d 358, 368 (4th Cir. 2012) (citation omitted). To the contrary, even Defendant Douglas, who is not charged with murder, is not a minor participant charged only with

a non-violent offense tangentially related to the RICO enterprise, but rather, is charged with personally shooting at, and attempting to kill, rival gang members on two discrete occasions, with the absence of a murder charge the result of the fact that no victim was killed during the shootings allegedly committed by Douglas.

In addition to the above, because each discrete crime scene will involve event-specific trial testimony and event-specific forensic evidence, the jury appears more than capable of compartmentalizing the evidence, not only with respect to each event, but with respect to each defendant. Cf. United States v. Fuller, 498 F. App'x 330, 332 (4th Cir. 2012) (explaining that the defendant's "concerns about the relative culpability of himself and about the nature and quantity of the evidence against each respective defendant simply does not rise to the level of a miscarriage of justice"). Any risk of prejudice will not only be countered by limiting instructions at trial, but is also reduced in light of the fact that the majority of the RICO and VICAR evidence that will be admitted at the joint trial would likely be admissible if Richardson, Douglas, or Greene proceeded to a severed trial. Accordingly, the following motions are **DENIED**: ECF Nos. 267, 277, 282.

H. Motions for Early Discovery

Defendants Greene and Douglas have moved the Court to enter an order requiring the Government to provide early disclosure of

Jencks Act material and Brady/Giglio material, with Defendant Greene requesting "immediate production." Defendant Douglas separately argues that the Court should order the Government to retain (but not disclose at this time) interview-related written materials (including "rough notes") that may not qualify as Jencks material but could later prove to be material that must be produced under Brady/Giglio.

As to the request for early production of Jencks material, the Government correctly highlights that the controlling statute only requires the disclosure of witness statements after the witness testifies at trial, although if such course is followed, a complex criminal trial such as this one would encounter unworkable delays in light of the Defendants' right to a "reasonable opportunity to examine [Jencks material] and prepare for its use in the trial." United States v. Holmes, 722 F.2d 37, 40 (4th Cir. 1983). Here: (1) the agreed discovery orders entered in this case by Greene and Douglas require disclosure of Jencks material (and associated Giglio material for that witness) five business days prior to trial; and (2) while not required by law or agreement, the Government has committed to begin voluntarily providing such materials two months prior to the scheduled trial date.

Although the Court acknowledges the good faith nature of Defendants' request based on the complexities of this case, the

Court questions its authority to order immediate production of Jencks material, United States v. Lewis, 35 F.3d 148, 151 (4th Cir. 1994), and even if it has such authority, finds that Defendants fail to demonstrate that "immediate production" is necessary to ensure a fair trial. Rather, the Government has proposed a reasonable plan to begin voluntarily producing Jencks materials two months before trial, and to complete production no later than the date agreed upon in the discovery orders.[5]

As to Brady/Giglio material, the Government confirms that it is aware of, and is fully complying with, its Brady/Giglio obligations, and has already produced large amounts of discovery (some of which presumably qualifies as Brady/Giglio material). The Government further asserts that it will continue to comply with its obligations to provide such exculpatory and/or impeachment materials, and the Government is required by law to do so "in time for its effective use at trial." United States v. Smith Grading & Paving, Inc., 760 F.2d 527, 532 (4th Cir. 1985). Accordingly, Defendants' motions seeking "immediate" production of Jencks/Brady/Giglio material are **DENIED**. ECF Nos. 270, 281.

[5] The Government is reminded that the reason for setting a complex trial with vast amounts of discovery so many months after the Defendants are charged is to ensure that all counsel have adequate time to prepare for trial, and the Government should take seriously its responsibility, even if grounded only on its oral representations and/or general concepts of fairness, to produce the bulk of these witness-related materials in the very near future.

As to Defendant Douglas' related contention seeking an order compelling the Government's to "preserve" certain investigatory notes/materials that do not qualify as Jencks material, but could prove to be Brady/Giglio material depending on trial developments, the Court ordered additional briefing on such issue. After considering the Government's supplemental brief, the Court **DISMISSES as MOOT** and alternatively **DENIES** the request to compel Government action, agreeing with the Government's contention that, particularly in this Circuit, it does not have the obligation to preserve any and all "jottings" or "rough notes" created during the investigation. In dismissing/denying the motion, the Court relies on the Government's representations that: (1) as to written notes or other materials that are currently maintained in law enforcement files pursuant to agency practice, counsel for the Government will not ask any agency to stop retaining such materials; (2) the Government will both preserve and produce certain interview reports and memoranda prepared by agents even though they do not technically qualify as "Jencks" material; and (3) the Government "does not object" to the request that it preserve written materials associated with witness interviews to the extent they contain "exculpatory material evidence," and will comply with its Brady/Giglio obligations "no matter the format of the information." ECF No. 344, at 3-4, 6.

I. Motions to Compel Disclosure of Statements

Defendants Greene and Douglas have moved the Court to enter an order requiring the Government to disclose any statement/ confession by any co-defendant that: (1) the Government intends to offer at trial; and (2) arguably incriminates Defendant Greene or Douglas. Defendants contend that they are entitled to such disclosure at this time so that they can analyze the evidence and schedule a hearing addressing whether severance is necessary to avoid a violation of the Confrontation Clause. See Bruton v. United States, 391 U.S. 123 (1968).

In response, the Government acknowledges its obligations under Bruton and indicates that it does not intend to admit any unredacted co-defendant testimonial statements that could violate such rule. Furthermore, the Government represents that its anticipated evidence in this arena will be nontestimonial statements and co-conspirator statements not covered by Bruton. Finally, the Government acknowledges that Defendants should be afforded an opportunity to raise a Bruton challenge at a later time after additional discovery is provided.

Defendants' motion seeking early production of witness statements is therefore moot, and/or premature, as it is predicated on the Government's assumed intention to introduce statements that potentially violate Bruton, and the Government has represented that it has not identified any testimonial statements that it

intends to introduce that potentially violate such rule. The Court further highlights the Government's representation that it will begin producing the relevant witness materials two months prior to trial (a date that is occurring within the next two weeks), and that all relevant Jencks materials will be produced "well in advance of trial" such that Defendants will "be able to determine . . . whether they need to seek exclusion" of any witness statements as violative of Bruton. ECF No. 295, at 85. Accordingly, the pending motions are **DISMISSED as moot** and **DENIED as premature**, with such ruling being **without prejudice** to Defendants' rights to file a supplemental Bruton motion after receiving the relevant materials from the Government. ECF Nos. 273, 279.

J. Motion to Dismiss Indictment - Spelling Error

Defendant Geovanni Douglas has moved for dismissal of the charges in the superseding indictment on the basis that he was charged under an incorrectly spelled first name ("Giovanni," rather than the correct "Geovanni"). While it appears that the Government is correct that this Court has authority to correct such misnomer/typographical error, the grand jury subsequently returned a second superseding indictment using Douglas' correctly spelled first name "Geovanni," and the pending motion is therefore **DISMISSED as moot**. ECF No. 283. Moreover, even if the grand jury had not issued an updated and corrected second superseding

indictment, such minor spelling error (replacing an "i" for an "e") does not rise to the level necessary to justify dismissing the imperfect superseding indictment. Daughtery v. United States, No. 2:08cv295, 2009 WL 1874105, at *2 (S.D.W. Va. June 29, 2009) (citing United States v. Denny, 165 F.2d 668, 670 (7th Cir. 1947)).

K. Motion to Dismiss - Speedy Trial

Defendant Geovanni Douglas has moved for dismissal of the superseding indictment based on an alleged violation of the Speedy Trial Act. ECF No. 285. The Government responded to the merits of such motion in its consolidated brief in opposition; however, the grand jury subsequently returned a second superseding indictment against Defendant Douglas, which includes additional felony charges. At that time, the superseding indictment was dismissed, and Douglas' counsel has subsequently filed an updated motion seeking dismissal of the Second Superseding Indictment on Speedy Trial grounds, with the Government responding to such motions through a separate brief in opposition. Accordingly, the Speedy Trial motion filed at ECF No. 285 **is DISMISSED as moot,** and the Court will address the substance of Defendant Douglas' updated Speedy Trial arguments by a separate, but contemporaneous, order.

In summary, the Court has addressed herein the thirty pending motions ranging from ECF No. 248 to ECF No. 290. To the extent such matters are taken under advisement, and to the extent additional motions remain pending, such matters will either be

addressed by separate pre-trial order or will be addressed by the Court at trial.

The Clerk is **REQUESTED** to send a copy of this Memorandum Order to all counsel of record.

IT IS SO ORDERED.

/s/
Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
August 8, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO. 4:17CR52-1
)
MARTIN L. HUNT)

SPECIAL VERDICT FORM

PRELIMINARY INSTRUCTION: ***A FINDING OF "GUILTY" AS TO ANY OFFENSE, AND ANY SPECIAL FINDINGS OF "YES" OR "PROVED," AS WELL AS ANY SPECIAL FINDINGS REGARDING A SPECIFIC USE OF A FIREARM (POSSESSED OR DISCHARGED), OR SPECIAL FINDINGS ASSOCIATED WITH COUNTS 12 AND 13, MAY ONLY BE MADE BY THE JURY IF SUCH FINDING WAS PROVED BY THE GOVERNMENT BEYOND A REASONABLE DOUBT.***

We, the jury, unanimously find the defendant, **MARTIN L. HUNT**:

COUNT 1: With Respect to Count 1, Racketeering Conspiracy:

Guilty ✓ Not Guilty _____

If you find the Defendant guilty of the conspiracy charged in Count 1, you must make the following additional findings. If you find the Defendant not guilty of Count 1, proceed to the next count:

(1) We, the Jury, further unanimously find that the defendant **MARTIN L. HUNT**, as part of the racketeering conspiracy, committed, or aided, abetted, counseled, commanded, induced, or procured, the April 6, 2015, murder of Domingo Davis, in violation of Virginia law as defined by the jury instructions.

YES ✓ NO _____

(2) We, the Jury, further unanimously find that the defendant **MARTIN L. HUNT**, as part of the racketeering conspiracy, committed, or aided, abetted, counseled, commanded, induced, or procured, the April 6, 2015, murder of Jada Richardson, in violation of Virginia law as defined by the jury instructions.

YES ✓ NO _____

COUNT 4: With Respect to Count 4, Attempted Murder in Aid of Racketeering Activity (Walker Village gang members), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty_____ Not Guilty_✓_

COUNT 5: With Respect to Count 5, Possession and Discharge of a Firearm in Furtherance of a Crime of Violence as set forth in Count 4, or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty_____ Not Guilty_✓_

If your answer to Count 5 is "Guilty," mark all that apply in regard to the firearm:

In furtherance of a Crime of Violence the defendant:

_____ Possessed the firearm

_____ Discharged the firearm

COUNT 6: With Respect to Count 6, Murder in Aid of Racketeering Activity (Domingo Davis), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty_✓_ Not Guilty_____

COUNT 7: With Respect to Count 7, Use of a Firearm Resulting in Death (Domingo Davis), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty_✓_ Not Guilty_____

If your answer to Count 7 is "Guilty," you must answer the following.

During and in relation to which, if any, of the following crimes of violence did defendant **MARTIN L. HUNT** use—or aid, abet, counsel, command, induce, or procure the use of—the firearm resulting in death? Mark all that apply:

RICO Conspiracy, as charged in Count 1:

Proved _✓_ Not Proved_____

Murder in Aid of Racketeering Activity, as charged in Count 6:

Proved ✓ Not Proved_____

COUNT 8: With Respect to Count 8, Murder in Aid of Racketeering Activity (Jada Richardson), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

COUNT 9: With Respect to Count 9, Use of a Firearm Resulting in Death (Jada Richardson), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 9 is "Guilty," you must answer the following.

During and in relation to which, if any, of the following crimes of violence did defendant **MARTIN L. HUNT** use—or aid, abet, counsel, command, induce, or procure the use of—the firearm resulting in death? Mark all that apply:

RICO Conspiracy, as charged in Count 1:

Proved ✓ Not Proved_____

Murder in Aid of Racketeering Activity, as charged in Count 8:

Proved ✓ Not Proved_____

COUNT 12: With Respect to Count 12, Attempt and Conspiracy to Commit Murder in Aid of Racketeering Activity (J.S., A/K/A "D'Rose"), or aiding, abetting, counseling, commanding inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 12 is "Guilty," mark all that apply in regards to the defendant's conduct.

We find that the defendant:

✓ Attempted to Commit Murder in Aid of Racketeering Activity

✓ Conspired to Commit Murder in Aid of Racketeering Activity

COUNT 13: With Respect to Count 13, Possession of a Firearm in Furtherance of a Crime of Violence (J.S., A/K/A "D'Rose"), as set forth in Count 12, or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 13 is "Guilty," mark all that apply in regards to the Defendant's conduct.

We find that the Defendant's Possession of a Firearm, or aiding, abetting, counseling, commanding, inducing, or procuring the same, was in Furtherance of:

✓ Attempt to Commit Murder in Aid of Racketeering Activity

✓ Conspiracy to Commit Murder in Aid of Racketeering Activity

COUNT 30: With Respect to Count 30, Attempted Murder in Aid of Racketeering Activity (Authur Jones), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

COUNT 31: With Respect to Count 31, Possession and Discharge of a Firearm in Furtherance of a Crime of Violence (Authur Jones), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 31 is "guilty," mark all that apply in regard to the firearm.

In furtherance of a Crime of Violence the defendant:

✓ Possessed the firearm

✓ Discharged the firearm

COUNT 32: With Respect to Count 32, Attempted Murder in Aid of Racketeering Activity (Phillip Drew), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

COUNT 33: With Respect to Count 33, Possession and Discharge of a Firearm in Furtherance of a Crime of Violence (Phillip Drew), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 33 is "Guilty," mark all that apply in regard to the firearm.

In furtherance of a Crime of Violence the defendant:

✓ Possessed the firearm

✓ Discharged the firearm

UNITED STATES v. MARTIN L. HUNT

Criminal No. 4:17CR52

Pursuant to the E-Government Act, the original of this page has been filed under seal in the Clerk's Office.

12-9-2019
Date

Foreperson's Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO. 4:17CR52-5
)
XAVIER GREENE)

REDACTED COPY

SPECIAL VERDICT FORM

PRELIMINARY INSTRUCTION: ***A FINDING OF "GUILTY" AS TO ANY OFFENSE, AND ANY SPECIAL FINDINGS OF "YES" OR "PROVED," AS WELL AS ANY SPECIAL FINDINGS REGARDING A SPECIFIC USE OF A FIREARM (POSSESSED OR DISCHARGED), MAY ONLY BE MADE BY THE JURY IF SUCH FINDING WAS PROVED BY THE GOVERNMENT BEYOND A REASONABLE DOUBT.***

We, the jury, unanimously find the defendant, **XAVIER GREENE**:

COUNT 1: With Respect to Count 1, Racketeering Conspiracy:

Guilty ✓ Not Guilty _____

If you find the Defendant guilty of the conspiracy charged in Count 1, you must make the following additional findings. If you find the Defendant not guilty of Count 1, proceed to the next count:

(1) We, the Jury, further unanimously find that the defendant **XAVIER GREENE**, as part of the racketeering conspiracy, committed, or aided, abetted, counseled, commanded, induced, or procured, the March 8, 2015, murder of Dwayne Parker, in violation of Virginia law as defined by the jury instructions.

YES ✓ NO _____

(2) We, the Jury, further unanimously find that the defendant **XAVIER GREENE**, as part of the racketeering conspiracy, committed, or aided, abetted, counseled, commanded, induced, or procured, the April 6, 2015, murder of Domingo Davis, in violation of Virginia law as defined by the jury instructions.

YES ✓ NO _____

(3) We, the Jury, further unanimously find that the defendant **XAVIER GREENE**, as part of the racketeering conspiracy, committed, or aided, abetted, counseled, commanded, induced, or procured, the April 6, 2015, murder of Jada Richardson, in violation of Virginia law as defined by the jury instructions.

YES ✓ NO ____

COUNT 2: With Respect to Count 2, Murder in Aid of Racketeering Activity (Dwayne Parker), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty____

COUNT 3: With Respect to Count 3, Use of a Firearm Resulting in Death (Dwayne Parker), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty____

If your answer to Count 3 is "Guilty," you must answer the following.

During and in relation to which, if any, of the following crimes of violence did defendant **XAVIER GREENE** use—or aid, abet, counsel, command, induce, or procure the use of—the firearm resulting in death? Mark all that apply:

RICO Conspiracy, as charged in Count 1:

Proved ✓ Not Proved____

Murder in Aid of Racketeering Activity, as charged in Count 2:

Proved ✓ Not Proved____

COUNT 6: With Respect to Count 6, Murder in Aid of Racketeering Activity (Domingo Davis), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty____

COUNT 7: With Respect to Count 7, Use of a Firearm Resulting in Death (Domingo Davis), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 7 is "Guilty," you must answer the following.

During and in relation to which, if any, of the following crimes of violence did defendant **XAVIER GREENE** use—or aid, abet, counsel, command, induce, or procure the use of—the firearm resulting in death? Mark all that apply:

RICO Conspiracy, as charged in Count 1:

Proved ✓ Not Proved_____

Murder in Aid of Racketeering Activity, as charged in Count 6:

Proved ✓ Not Proved_____

COUNT 8: With Respect to Count 8, Murder in Aid of Racketeering Activity (Jada Richardson), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

COUNT 9: With Respect to Count 9, Use of a Firearm Resulting in Death (Jada Richardson), or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty_____

If your answer to Count 9 is "Guilty," you must answer the following.

During and in relation to which, if any, of the following crimes of violence did defendant **XAVIER GREENE** use—or aid, abet, counsel, command, induce, or procure the use of—the firearm resulting in death? Mark all that apply:

RICO Conspiracy, as charged in Count 1:

Proved ✓ Not Proved_____

Murder in Aid of Racketeering Activity, as charged in Count 8:

Proved ✓ Not Proved_____

COUNT 14: With Respect to Count 14, Attempted Murder in Aid of Racketeering Activity, or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty ✓ Not Guilty _____

COUNT 15: With Respect to Count 15, Possession and Discharge of a Firearm in Furtherance of a Crime of Violence, or aiding, abetting, counseling, commanding, inducing, or procuring the same:

Guilty _____ Not Guilty ✓

If your answer to Count 15 is "Guilty," mark all that apply in regard to the firearm:

In furtherance of a Crime of Violence the defendant:

_____ Possessed the firearm

_____ Discharged the firearm

UNITED STATES v. XAVIER GREENE

Criminal No. 4:17CR52

Pursuant to the E-Government Act, the original of this page has been filed under seal in the Clerk's Office.

12-10-2019
Date

Foreperson's Signature

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No.:
	)	4:17cr52
MARTIN HUNT,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS
(Sentencing)

Norfolk, Virginia
May 6, 2021

BEFORE: THE HONORABLE MARK S. DAVIS
United States District Judge

Appearances:

OFFICE OF THE UNITED STATES ATTORNEY
By: AMY E. CROSS
HOWARD J. ZLOTNICK
BRIAN JAMES SAMUELS
Counsel for the United States

RULOFF, SWAIN, HADDAD, MORECOCK, TALBERT & WOODWARD, P.C.
By: LAWRENCE H. WOODWARD, JR.
-- and --
BISCHOFF MARTINGAYLE, PC
By: EMILY MEYERS MUNN
Counsel for Martin Hunt

The Defendant appearing in person.

P R O C E E D I N G S

(Commenced at 10:12 a.m. as follows:)

COURTROOM DEPUTY CLERK: In Case No. 4:17cr52, United States of America v. Martin L. Hunt.

Ms. Cross, Mr. Samuels, is the government ready to proceed?

MS. CROSS: The government is ready. Good morning, Your Honor.

MR. SAMUELS: Good morning, Your Honor.

THE COURT: Good morning, Counsel.

COURTROOM DEPUTY CLERK: Mr. Woodward and Ms. Munn, is the defendant ready to proceed?

MR. WOODWARD: We're ready, Your Honor. Good morning.

THE COURT: Good morning, counsel.

Madam Clerk, would you also administer the oath?

(Defendant placed under oath.)

THE COURT: All right. Thank you.

All right. You all can have a seat.

So on December 10 of 2019, Mr. Hunt was found guilty by a jury of the following 11 counts of the second superseding indictment:

One count of racketeering conspiracy in violation of Title 18 of the United States Code, Section 1962(d); two counts

of murder in aid of racketeering activity in violation of Title 18 of the United States Code, Section 1959(a)(1);

One count of attempt and conspiracy to commit murder in aid of racketeering, in violation of Title 18 of the United States Code, Section 1959(a)(5);

Two counts of attempted murder in aid of racketeering, in violation of Title 18 of the United States Code, Section 1959(a)(5);

Two counts of using a firearm resulting in death, in violation of Title 18 United States Code, Section 924(c)(1) and (j).

And three counts of possession or discharge of a firearm in furtherance of a crime of violence, in violation of Title 18 of the United States Section 924(c)(1).

So that's what the Court has before it in terms of the presentence report that was also prepared in the case.

Now, in preparation for this sentencing hearing today, the Court has, of course, reviewed the presentence report that I'm holding up, and I've reviewed the position statements that were filed by each of the parties.

In addition, this morning I was provided with a letter written by Mr. Hunt dated June 10 of 2020. And so I've read all of that in preparation for today.

Mr. Woodward, with respect to this letter, has it been filed on the docket or do you want me to file it as a court-only

letter on our docket? How do you want me to address it?

MR. WOODWARD: Do you want me --

THE COURT: For this you can stay there.

MR. WOODWARD: Judge, I think I would like you to attach it as a court-only document and also attach it and have it go forward with his presentence report.

I would tell the Court, Mr. Hunt, as you can see, wrote that letter almost a year ago during one of the prior times we almost had this sentencing before it was continued for COVID, and I was only able to get it from him -- or only got it from him this morning, is why I just dropped it off, I think right about nine o'clock or so.

THE COURT: All right. Thank you.

MR. WOODWARD: I provided a copy to the United States Attorney and to Mr. Noll.

THE COURT: All right. Thank you, Mr. Woodward.

Then Madam Clerk, would you go ahead and make it a court-only document then on the docket? And also Officer Noll, we'll attach it to the presentence report as well without objection. All right.

I think the next thing we need to address with the government is whether there has been notification of victims in the case according to the Crime Victim Act.

MS. CROSS: Your Honor, yes. All of the victims have been notified of today's date as part of the Victim Notification

System. Unfortunately some of those victims have changed their numbers. But everything that we have attempted to do has given those victims an opportunity to be here and be heard.

THE COURT: All right. Thank you, Ms. Cross.

So let's move on to the presentence report itself. A couple things that I noted.

Of course we were originally going to be here last year for sentencing, and so the presentence report is dated September 3, 2020. So I will change that without objection to May 6th, 2021 on Page 1.

Then I believe that would make on Page 2, 24 now? 24 years old? So I'll change that without objection also to make sure that's accurately stated.

So Mr. Woodward, have you reviewed the presentence report with its addenda and did you have enough time to review it with Mr. Hunt?

MR. WOODWARD: Yes, Your Honor. I will tell the Court that, obviously the length of time, but Ms. Munn and I, both together and individually, numerous times preparing before we would get to the (inaudible).

COURT REPORTER: Mr. Woodward? Mr. Woodward? Would you turn your microphone on?

THE COURT: Yes, if you would --

MR. WOODWARD: Yes Your Honor, we've reviewed it, both myself and Ms. Munn, multiple times with Mr. Hunt in preparation

for the sentencing, the other dates and this date.

THE COURT: All right. Thank you.

Ms. Munn, you can sit and just speak right into that microphone while you're there so we can hear you.

MS. MUNN: Yes, sir. I agree. We both met with Mr. Hunt individually and together, and we believe he's prepared for the sentencing today.

THE COURT: I just wanted to give you the opportunity to respond.

There is one other issue in the presentence report that I noted, and the probation officer mentioned to me that you all -- there may have been some discussion about this at one point, and it has to do with the criminal history category and some of the points. So the defendant's position paper makes the observation that the conduct set forth in Paragraphs 104 and 105 of the presentence report was the same conduct used by the United States as evidence against Mr. Hunt. That's in their Document 696 at Page 1. While the Court will, of course, hear from the parties before it makes any formal ruling, upon review of the Court's 404(b) ruling in this case early on prior to trial, as well as the Court's notes from the trial, it appears that the two criminal history points attributed to Mr. Hunt in Paragraph 104 should not be attributed because that conduct should be deemed part of the instant offense under 4A1.2(a)(1) defining a prior sentence for the purpose of calculating a

defendant's criminal history under the guidelines as "Any sentence previously imposed upon adjudication of guilt for conduct not part of the instant offense."

And in the Court's pretrial order addressing various Rule 404(b) motions *in limine* that was issued on October 21, 2019 and is on the docket as No. 499, the Court held as follows.

"With respect to the May 8, 2015 police stop, based on the arguments and proffers made in the party's filings, Defendant Hunt's motion challenging the admissibility of the May 8, 2015 event which the government asserts involves gun possession and admissions linking the gun to gang activity is denied, as Hunt appears to challenge the reliability of the evidence purportedly establishing his firearm possession on such date and fails to undercut its admissibility as intrinsic."

So according to the Court's recollection, the witness for the government, Agent Quinones, testified during the second week of trial that he stopped Martin Hunt for trespassing in the Marshall Courts area and Hunt ultimately fled from him, and Officer Rosario, who was there to help, they chased after Mr. Hunt and caught him and ultimately found a concealed firearm on Mr. Hunt. Mr. Hunt was given his *Miranda* warnings and indicated that the firearm was "for protection from the Vill and Newsome Park boys," which Agent Quinones recognized as rival gangs in the South Precinct.

The Court, of course, is aware that any change reducing defendant's criminal history category will not change the sentence recommended by the guidelines or calculated by the guidelines; however, properly calculating the guidelines is always the Court's first step.

Here, because the entire basis for the admissibility of Mr. Hunt's arrest and firearm possession was the government's assertion that such evidence was intrinsic to the RICO conspiracy charged in this case, it would certainly appear to the Court that such offense would qualify as relevant conduct, although as I said, I will hear from counsel before I make a ruling on the issue.

So I'll just ask it this way: Is the government in agreement with the Court's view on this?

MS. CROSS: Yes, Your Honor.

THE COURT: All right. Is there any objection?

MR. WOODWARD: No, Your Honor.

THE COURT: Okay. So we will change the criminal history category from a II to a I, and I'll ask that the probation officer make sure that the presentence report accurately reflects that.

All right. Now, Mr. Woodward, you -- again, you can stay seated and just pull that microphone up to you and make sure it's on and speak right into it when you're there.

MR. WOODWARD: Thank you.

THE COURT: So I know that of course there is a general objection in the case because Mr. Hunt, of course, maintains his innocence in the matter, so I understand there's a general objection to the offense conduct that is in the presentence report. Other than the objections that you've filed, are there any other errors in the report that you need to bring to my attention?

MR. WOODWARD: No, Your Honor. I think that the -- our position as set forth in our paper that, you know, obviously we are contesting all of that, but there's no specific issues that I think I need to address unless the Court has some question about something. The only specific thing I raised in my position paper was what you just ruled on about the concealed weapon event.

THE COURT: Okay. And Ms. Munn, I take it you agree with that?

MS. MUNN: Yes, sir.

THE COURT: Now Mr. Hunt, you have a microphone that's right there also, and although, Counsel, I will have you all come up to the podium later, for the moment we're going to do this right from the table.

So Mr. Hunt, have you had a chance to review the presentence report that was prepared in the case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And did you have enough time

to review that report with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: And other than the objections that have been filed by your attorneys, did you see any other errors in the presentence report that you need to bring to my attention?

THE DEFENDANT: No, sir.

THE COURT: Do you believe that this presentence report fully covers your background?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Thank you, Mr. Hunt.

THE DEFENDANT: You're welcome.

THE COURT: As I mentioned, the defense has broadly objected to the offense conduct and the guideline calculation that's predicated on that conduct, and I am prepared to address that general objection, but I do want to give you the opportunity, Mr. Woodward, to -- or Ms. Munn -- to make any comments you have about that up at the podium if you want to. But if you wish to rely on your written objection, I'm prepared to address it.

MR. WOODWARD: Your Honor, we would want to just rely on our written objection. Obviously the case was tried to a jury, and there's no reason to reiterate the various arguments that were made to the jury. Their verdict is what the Court has to use in terms of today's proceeding, and we understand that.

THE COURT: All right. Thank you.

Ms. Munn, are you in agreement?

THE DEFENDANT: Yes, sir, that's correct.

THE COURT: All right. So let me go on then to address this objection.

Mr. Hunt has broadly challenged the offense conduct and the resulting guideline calculations, noting that he maintains his innocence and maintains all prior objections made at trial. The government, of course, bears the burden of proving by a preponderance of the evidence the facts that establish that a defendant was involved in specific conduct. However, once the government has provided evidence sufficient to justify inclusion of such conduct in the presentence report, a defendant's mere objection to the finding in the presentence report is not sufficient, as the defendant has an affirmative duty to make a showing that the information in the presentence report is unreliable, and articulate the reasons why the facts contained there are untrue or inaccurate. Without an affirmative showing that the information in the presentence report is inaccurate, the Court is free to adopt the findings in the presentence report without more specific inquiry or explanation.

In determining whether information included in the presentence report is reliable, the Fourth Circuit Court of Appeals gives due regard to the opportunity of the district court to judge the credibility of the witnesses at trial.

Fourth Circuit unpublished precedent indicates that when there is a witness credibility issue as to drug weights or other sentencing factors, the Court should not rely on the jury's implicit decisions appearing to credit the testimony of a trial witness, but rather the Court should make its own credibility findings.

Here, based on the evidence in the presentence report which is supported by the trial record in the case, the Court is prepared to make a ruling; however, Mr. Woodward and Ms. Munn, I'm certainly aware that a defendant always has a right, if he wishes, to testify regarding any objections, and defense counsel, when faced with that issue, has to have a conversation with their client and make sure that the relevant risks and rewards have been discussed. And so I do want to at least give you the opportunity to make any comment that you want to on that.

MR. WOODWARD: Yes, Your Honor. Both Ms. Munn and I, myself again, as recently as this morning, have explained to Mr. Hunt that he could testify under oath and be subject to cross-examination if he were to desire. He's indicated to us consistently throughout this process that he does not desire to do that, and we've explained how that would weigh into any appeal that would be filed. I would represent to the Court that he's fully aware of his rights. He wants the Court to have his letter, but does not want to testify under oath and be subject

to cross-examination.

THE COURT: All right.

Mr. Hunt, has Mr. Woodward accurately stated that?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Thank you, Mr. Hunt.

So obviously the Court sat through the trial of this case. It was multiple weeks -- perhaps seven -- six or seven weeks in total, with some Fridays off, I think, and based on all the evidence in the presentence report -- which, again, is supported by the trial record, in my estimation -- I overrule the blanket objection to the presentence report offense conduct paragraphs.

Notably, as set forth in the Fourth Circuit's decision in United States v. Terry and subsequent Fourth Circuit cases, Mr. Hunt has not made a showing demonstrating that the information in the presentence report is unreliable or inaccurate. To the contrary, the Court's recollection of the trial evidence and its independent credibility determinations support the inclusion of the factual information that is set forth in the presentence report in this case.

Now, I believe that addresses all of the objections that have been made in the case. That being the case, the Court will adopt the factual statements contained in the presentence report as its findings of fact in this case with those few amendments that I just, that I already mentioned about the date,

age and the criminal history category.

Now, in this matter, because the government elected not to seek the death penalty, the statutory maximum punishment for each of the counts for which death may have otherwise been available is a term of life imprisonment. So let's review these ranges as provided by statute. The specific statutory range established by Congress and the president for the offenses of conviction are as follows:

Count 1, RICO conspiracy, a maximum of life imprisonment; Counts 6 and 8 VICAR murder, mandatory life imprisonment; Counts 7 and 9, firearm discharge resulting in death, 10 years to life; Count 12, VICAR attempt and conspiracy to commit murder, not more than 10 years; Count 13, firearm possession in furtherance, that's five years to life; Counts 30 and 32, VICAR attempted murder, that's not more than 10 years; and Counts 31 and 33, firearm discharge in furtherance, and that's 10 years to life.

Now, pursuant to statute, the sentences for Counts 13, 31 and 33, all 924(c) offenses involving possession or discharge of a firearm in furtherance of a crime of violence, must be served consecutively to each other and to the sentence imposed on the other counts.

Additionally, pursuant to the Fourth Circuit's interpretation of the interplay between 924(c) and 924(j) which is set forth in United States v. Bran, the sentences imposed on

the two 924(j) counts, which are Counts 7 and 9, must be served consecutively to each other and to the sentences imposed on all other counts.

Recognizing the defendant's preserved objections to the offense conduct and the presentence report upon which I've ruled, does everyone agree that I've accurately stated those statutory ranges and provisions? I'll ask, first, Ms. Cross.

MS. CROSS: The United States agrees, Your Honor.

THE COURT: All right. Mr. Woodward?

MR. WOODWARD: Yes, sir.

THE COURT: And Ms. Munn?

MS. MUNN: Yes, sir.

THE COURT: All right. Now moving on to supervised release. As for supervised release, the RICO conspiracy Count, the two VICAR murder counts and all of the 924(c) counts, including the two 924(j) offenses have a maximum of five years of supervised release. The remaining VICAR counts have a maximum of three years of supervised release.

Ms. Cross, have I accurately stated that?

MS. CROSS: Yes, Your Honor.

THE COURT: Mr. Woodward?

MR. WOODWARD: Yes, sir.

THE COURT: Ms. Munn?

MS. MUNN: Yes, sir.

THE COURT: All right. Then having reviewed the

statutory punishment in this matter, the Court moves on to the guidelines that have been calculated based on the advisory guidelines promulgated by the United States Sentencing Commission.

It appears that application of the advisory guidelines results in an offense level of 43 and a criminal history category of I, and the resulting advisory guideline range applicable to all counts, other than the three 924(c) counts, is life imprisonment.

Additionally, as we just discussed, the sentence imposed for the two 924(j) counts must be served consecutively to the sentence imposed on all other counts. As for the three 924(c) counts, the advisory guideline range is 10 years consecutive for the two discharge counts, those are Counts 31 and 33, and five years consecutive for the possession count, that's Count 13. Accordingly, in total, the advisory guideline range is life imprisonment plus two consecutive terms of life imprisonment plus 25 years consecutive.

Again, recognizing defendant's preserved objections to the offense conduct on which I've already ruled, based on the Court's ruling adopting the offense conduct in the presentence report, does the government agree that I've accurately stated that advisory guideline range?

MS. CROSS: Yes, Your Honor.

THE COURT: Mr. Woodward?

MR. WOODWARD: Yes, sir.

THE COURT: Ms. Munn?

MS. MUNN: Yes, sir.

THE COURT: All right. Thank you.

Now we move on to the issue of any evidence or other materials to be presented today. Does the government have any evidence or other materials it wishes to present?

MS. CROSS: Your Honor, we do have one family member who has asked to address the Court as to victim impact. Her name is Marie Lyttle. We also have a statement by Yvonne Lyttle, the mother of Domingo Davis, that she has asked to be read to the Court this morning.

THE COURT: Okay. Now, Ms. Cross, is it your preference to have Ms. Marie Lyttle come to the podium and speak from there?

MS. CROSS: Yes, Your Honor.

THE COURT: All right. And then with respect to the letter, is that something you're going to read?

MS. CROSS: Yes, Your Honor. I will approach the podium and read it into the record.

THE COURT: All right. So Ms. Lyttle, is she in the courtroom?

MS. CROSS: She is, Your Honor.

THE COURT: Ms. Lyttle, if you wish to make a statement, you're welcome to come to the podium and make the

statement right there. Yes, ma'am, right up here where this podium is in the middle. We'll be happy it hear from you. Thank you.

MS. MARIE LYTTLE: Domingo was my nephew, and he died that night by a bunch of clowns who was jealous. And at least I could see why after I came to court a couple of times. Domingo wasn't the perfect young man either, but he was ours, and everywhere he went, someone loved him. He didn't always go to school or have his moments where he get into trouble, but he was never around here killing people or shooting people or injuring people. He wore his heart on his sleeve for too many people who didn't deserve it, and lost it for all the wrong reasons.

I just wish that he could have spoke to my nephew that night and asked him to fight, instead of try to kill him. But you let your gun talk for you, and it backfired, you right up in here. So now you're dealing with a gang bigger than yours will ever be: The government. So now you can go and do what that gang says. And now you represent them like you did. I hope that every day you are thinking of all the things that you have done out here and the lives that you affected and get what you get in return 10-times fold, and when you're ready to take your last breath, I hope Jada and Domingo comes and takes you.

Thank you.

THE COURT: All right. Thank you, Ms. Lyttle.

All right. Ms. Cross?

MS. CROSS: Thank you, Your Honor.

THE COURT: You may step to the podium.

MS. CROSS: Your Honor, this was written by Yvonne Lyttle, that's L-y-t-t-l-e, and submitted to the United States yesterday.

THE COURT: Mr. Hunt, will you put your mask back on? Thank you.

All right. Go ahead.

MS. CROSS: Thank you, Judge.

"Good morning. I want to first thank everyone that helped our family get justice. We all really appreciate all of you guys' hard work and long hours. I know it was time you guys couldn't spend with your families, and from the bottom of my heart and our family, we are grateful.

"Martin, I want you to know that Domingo was loved by so many people. Domingo was our heart. He was smart, funny and loving with a big heart. To know my Domingo was to love him. He loved his family and his friends. Yes, my son had flaws. He wasn't perfect. But he was perfect for me. My whole heart, I miss my son so much. April 6th, 2015, when you chose to take part in killing my son, you didn't just kill my son, you also left us as a family devastated and heartbroken. Our lives haven't, and I'm sure will never be, the same. I want you to know the heartache and pain you have caused me. Since Domingo's death, it is a feeling of me losing my breath and never catching

it again. When I lost my son, a part of my heart died. The pain runs deep in my soul. I hate every last one of you animals that took part in killing my son. I will never in my life forgive you. I would rather burn in hell forever. I hope you suffer every day of your life and that it's a living hell every day for you in prison. I hope you never get out of prison."

That is Ms. Lyttle's statement, Judge.

THE COURT: All right. Ms. Cross, would you wipe down for me? Would you wipe down the podium for me?

MS. CROSS: Yes. Absolutely, Judge.

THE COURT: Thank you.

So those are the victim statements in the matter. The Court has it.

I take it there's no other evidence from the government?

MS. CROSS: No other evidence, Your Honor.

THE COURT: Mr. Woodward, do you have any evidence that you wish to present?

MR. WOODWARD: No, Your Honor, other than the Court considering my client's letter. He doesn't have any family here or any other evidence.

THE COURT: All right. Thank you.

Well, why don't we move on to argument then. Ms. Cross, will you be doing that?

MS. CROSS: I will, Your Honor.

THE COURT: All right. Happy to hear from you.

MS. CROSS: Thank you, Judge.

Judge, the United States understands that the sentencing here today, Mr. Hunt faces those mandatory terms of life imprisonment for his activities in the 36th Street Bang Squad. And although we know that his membership in the hybrid criminal street gang, it predated the activities we're going to talk about today. We know from the evidence at trial that Martin Hunt was a member of the 36th Street Bang Squad long before early 2015. But today we're going to look at a snapshot in time, specifically four months of 2015 that irrevocably changed the lives of four people and their families, all for the sake of a gang war, retaliating, one-upping, revenge to get respect, demanding that respect through the use of force, taunting, social media, and the attempt or the taking of each other's lives.

In just four months between March of 2015 and June of 2015, Martin Hunt not only had firearms, but he used or was prepared to use them. March of 2015, Raquille Jackson testified before Your Honor, that he gave his brother, his little brother, a gun to protect himself out in the street. He told you he didn't trust the members of the 36th Street Bang Squad. That firearm was a Bryco 9mm. Within days of Raquille Jackson giving Martin Hunt a gun, Martin Hunt used that gun. He used that gun on Wickham Avenue to shoot at persons he deemed enemies. His

ops. He left Arthur Jones and Phillip Drew laying in the streets of Newport News. Arthur Jones had a gunshot wound to his head and buttocks; Phillips Drew to his face, his buttocks and his ankle. While those two young men were taken off to the hospital with life-threatening injuries and remained in the hospital for over a month, with Arthur Jones battling a skull fracture and extensive injury to his brain and Phillip Drew having a fractured tibia and bowel injuries and severe endocranial bleeding, while still in the hospital undergoing multiple surgeries to save their life and quality of life, Martin Hunt didn't stop.

You see, Arthur Jones and Phillip Drew didn't leave a hospital before April 6th of 2015, and on April 6th of 2015, Martin Hunt, along with other members of the 36th Street Bang Squad, armed themselves yet again. They planned, conspired and then ambushed persons that they deemed their enemies, members of the Walker Village Murder Gang. And unfortunately, all that planning and searching, there was no hesitation when the group of four men, including Martin Hunt, walked across that house -- walked across from that house on 25th Street in Newport News with a group of people standing outside the house. Martin Hunt didn't hesitate to fire. Again, firing that Bryco 9mm that he had used on Arthur Jones and Phillip Drew. He made that decision because the gang had been disrespected. Allegedly Domingo Davis had come out and shot at one of their members, so

they were going to make it right in their eyes.

That shooting left Domingo Davis with a gunshot wound to his chest and Jada Richardson, 13 years old, attending a get-together at the house, with a gunshot wound to her head. Neither of them even survived for the paramedic to get there.

Martin Hunt fled. He fled and discussed what he had done with the other members of the 36th Street Bang Squad, and he actually gave that Bryco 9mm back to his brother who discarded it for him.

But that wasn't the end of Martin Hunt having guns. As the Court has spoken about this morning, a month later, in May, he's caught with yet another gun, a gun that he had gotten again from his brother, a Glock. He ran from police in Marshall Courts, the 36th Street Bang Squad territory, said he needed to protect himself from Newsome Park and The Vill.

The Court can recall the Facebook messages, the thousands of pages that were gone through. There wasn't remorse for this gang war in those pages. This was a way of life.

While those patients, while Domingo Davis's family and Jada Richardson's families were mourning the deaths of their son and daughter, Martin Hunt again assembles with the 36th Street Bang Squad, and this time arms himself and goes to a public high school to look for a gang rival to kill him. He sits in a car with a revolver that's loaded, and they wait. And Martin Hunt discusses that they're going to off Jeremiah Smith.

They couldn't get to him outside the school, so they followed a public school bus, two cars deep, with the intent of murdering Jeremiah Smith. But they got caught at a stop light. Shaquone Ford testified before Your Honor that they got caught at a stop light. And Martin Hunt was mad. He wanted Shaquone Ford to run that stop light. He even went so far as to pull that gun out that he had and to try to get out of the car to run across traffic to get to the bus. He was encouraged to stay in.

Because of that red light, Jeremiah Smith and other children from that bus were able to exit and get into the complex. Thankfully that night, because of a shots-fired call in a totally separate part of Newport News, Martin Hunt was found with that revolver, and he did go to prison in the state system for the next two years.

But what is interesting, Judge, is in each of these cases, it wasn't just the ops, it wasn't just the people that Martin Hunt felt disrespected 36 that was impacted by his decisions, by his pulling a gun, it was the community that surrounded these people. It was the neighbors whose houses were riddled with bullets. It was the restaurants down the street where evidence was found when there's a shootout outside of a Chinese restaurant.

The United States recognizes that the defendant will spend of right rest of his life in prison, and we understand that that can do absolutely nothing for these family members or

Arthur Jones or Phillip Drew, whose physical capabilities have been changed forever. But until there's a consequence for gang life, for this gang warfare that's so high that will prevent them from continuing to do it, until the promise of such a substantial penalty, we can't end the violence in our streets.

This case is a tragedy. This young man is 24 years old, and he will spend the rest of his life in prison for decisions he made coming off of what I'm sure defense counsel will tell you was a tragic youth, a youth without stability, without a male role model. But at some point, after seeing the carnage from each of his decisions, this defendant considered -- continued to arm himself, gun after gun after gun, and victimized the community around him. And no tragic childhood, nothing in it, can be enough to permit that.

Judge, we understand that this sentence today will not make the victims whole, but we hope that it can deter Mr. Hunt and it can deter others who may take part in these types of gangs and this type of gang warfare in our streets.

Thank you, sir.

THE COURT: Thank you, Ms. Cross. If you'll go ahead and wipe down? Appreciate it.

MS. CROSS: The new normal, Judge.

THE COURT: Yes, it is.

All right. Thank you, Ms. Cross.

Mr. Woodward?

MR. WOODWARD: Thank you, Judge.

May it please the Court, Counsel.

Your Honor, there's not a lot that can be said about Mr. Hunt's background. The Court doesn't have a lot of discretion here today. I've been doing this for a fairly long time, and Mr. Hunt's background, living in cars and being homeless from the time he was four or five years old and everything that's in his letter and in the presentence report, if it's not one -- if it's not the worst I've ever seen, it's one of the worst.

The offenses that he was convicted of that Ms. Cross just talked about occurred only weeks after he had turned 18 years old. Now, he's 24 as we sit here today, but when all of this happened, he was 18.

And the one thing that they said that I agree with, Your Honor, all of this is a tragedy. Tragedy for everybody that was hurt. It's a tragedy for Mr. Hunt. You know, the people that shot at Mr. Hunt didn't hit him, or Ms. Munn and I would probably have been representing them.

And it's interesting, we stand here and we have -- there's no way to really put it into words, the pain and anger of the families. I get it. The tragedy, how long this has been on. This case, like a lot of my cases, but this one particularly struck me sort of in a personal way because Domingo Davis's father was shot down in Newport News back in the late

'90s and I represented the man that killed his father. His father was a young man at the time. I don't know -- he was in his late teens, early 20s. And you fast-forward, at that point Domingo Davis, who was the victim in this case, had to be a very young child, maybe a few weeks, few months, I don't know exactly. But our system is a tool. It's an imperfect tool. The truth -- we deal with a legal concept, not a moral concept. As the Court saw, the interplay between all these gang members -- and the jury believed them to enough of a degree to convict Mr. Hunt, I get that. In our system, whatever 12 jurors agree on becomes the truth for us. Now, that's not a religious or a moral truth, that's a legal concept. But one thing I think we can all agree on is that the Court -- the laws give the Court essentially no discretion. And I hear Ms. Cross when she cries out that, you know, we need to have sentences that are so severe that will stop this. And I think, Your Honor, from having done this a long time -- not that I don't understand what Ms. Cross said -- but that's not -- that's a fool's errand. We've locked up more young men, particularly African-American young men, from these neighborhoods for life, and life, and life, and life, and not one thing changes. And that's the real tragedy, is that I, I don't like feeling helpless. I don't think anyone does. Most people who do this kind of work are Type-A personalities or take-charge people or like to be in control, and whenever I do this, it just feels helpless. Because what -- you know,

Mr. Hunt will live with this the rest of his life, these folks back there will live with it the rest of their lives, and the really sad part of it is, Your Honor, is that nothing, nothing will change.

And you know, if we ever found a way to really fix it, it would be great, but that's not the case. And you know, sometimes we stand before the Court and you have a defendant before you who did something or was convicted of something way less serious as this, and you can see some hope. You can say, well, this person will get a sentence and they'll go do this and they will learn something and they will get some education and they'll maybe come out the other end of the system something better. They'll affect some kind of positive change. And you know, these kinds of cases, there is no hope.

You know, I think since this happened I've probably either been appointed or retained on five or six more similar cases from the same area of Newport News. People in the streets shooting at each other, somebody misses, somebody comes back and somebody hits -- and so it really, it, it really, it really is a tragedy, Your Honor. And we're all helpless to fix it.

And I don't mean to be not advocating for my client, but the Court has no discretion in terms of the sentence. I mean, when you have a case like this, there's nothing you or me or anybody in this room can do for Mr. Hunt at this point. We'll continue his legal battle, but certainly there's nothing

anybody can do for any of the victims, whatever happens. And so we understand that, Your Honor, and I just wanted to make those comments.

I saw what the family members had to say. It's completely understandable that they would be angry. And you know, I can only hope for them at some point the stuff that was said about hatred and I would rather roast in hell than forgive you, I hope they can get past that. I won't be there to help them do it. But that would be a terrible -- but that's a prison of its own kind.

There's a John Prine song that has a line in it that says anger becomes its own prison. And I hope for those peoples' sake that they get past that and hope Mr. Hunt, whatever the future is for him, can find a way to do something productive.

Thank Your Honor.

THE COURT: Thank you, Mr. Woodward.

Ms. Munn, did you have anything further?

THE DEFENDANT: No thank you, Judge.

THE COURT: All right.

MR. WOODWARD: Do you want me to just wipe down or do you want me to --

THE COURT: I think we'll wipe down. We'll do what we need to do from the table now.

All right. Thank you, Counsel.

Mr. Hunt, you have written me this letter, which I, again, as I said earlier, I read that this morning, but you do have the right to make a statement. Don't have you, but if you want to, this is your last opportunity to do that before sentencing, and you're welcome to do it right there from your seat if you wish to do so. Do you wish to make any statement?

THE DEFENDANT: No, sir.

THE COURT: All right. Thank you, Mr. Hunt.

Mr. Woodward, is there any reason sentence should not be imposed at this time?

MR. WOODWARD: No, Your Honor.

THE COURT: All right. So before sentencing the defendant, I will review some of the statutory sentencing factors which are designed to ensure that the sentence imposed is sufficient but not greater than necessary to comply with the purposes of sentencing. I don't need to recite them all, but I've considered them all. And as counsel have stated here, there's little discretion for the Court in this matter to exercise, but I have considered all of the defendant's and the government's arguments with respect to the sentence the Court should impose in the case. And I, of course, sat through the trial, like all of you did.

The Court has considered the nature and circumstances of the offense which the government and the defense have just talked about, this period of time where these shootings took

place, where these decisions were made that resulted in the taking of life, of lives, and where lives were altered forever, both the lives of the victim's families and those victims that passed and those that remain with lifelong injuries.

The Court is also required to consider the defendant's history and circumstances. And Mr. Woodward has talked much about that, and they are reviewed, of course, in the presentence report in some detail and in the letter that was provided to the Court, and the Court has certainly reflected on those characteristics and those circumstances and the defendant's criminal history.

As Mr. Woodward points out, the defendant was newly 18 at the time of these events, and sadly the victims that lost their lives were younger than that. And it is a tragedy, and there is no one answer, I think, to explain it all. But the decisions were made, the acts were done, and in our system of justice punishment is forthcoming.

The Court is required to consider the need for the sentence to reflect the seriousness of the offense. And every time I have one of these cases and I think about the seriousness of the offense, I not only think about these victims and the lives that are forever changed, but having sat through that trial and heard the testimony about this neighborhood in Newport News where these things occurred, one can't help but reflect on the life in that neighborhood and what it must be like. And

that takes you to the next factor, promoting respect for the law in providing a just punishment and affording adequate deterrence.

I don't know the degree to which these sentences will deter people from becoming involved in gangs or deter them from engaging in this kind of deadly activity. I hope it certainly does. But as I said earlier, this is a complicated set of circumstances and decisions that bring us here today, and it's unfortunately something that I'm sure will continue for some time.

The Court has to consider a sentence that protects the public. As I said earlier, my mind often goes to what it must be like to be in that neighborhood where these things occurred, how challenging that must be.

The Court is required to provide defendant with any needed education or treatment also, to consider the kinds of sentences available and the sentencing range established, and the need to avoid unwarranted sentence disparities. I've considered all those things, of course. But the Court has little discretion in this case.

So having considered all the statutory sentencing factors and the guidelines, the Court is now prepared to impose sentence in this case. And you can remain there. Mr. Hunt, Mr. Woodward, you all can remain seated right there as the Court does so.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Martin L. Hunt, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of life plus two consecutive life terms, plus 300 months consecutive. The term consists of life on Count 1, Count 6 and Count 8, and 120 months on Count 12, Count 30 and Count 32; all such sentences on Counts 1, 6, 8, 12, 30 and 32 to be served concurrently.

In addition to such concurrent terms, the following terms are imposed to run consecutively to each other and to all other counts: A term of life on Count 7, life on Count 9, 60 months on Count 13, 120 months on Count 31, and 120 months on Count 33.

Mr. Hunt is remanded to the custody of the United States Marshal to serve these sentences.

If Mr. Hunt is released at some point, upon release from imprisonment, he shall be placed on supervised release for a term of five years. This term consists of five years concurrent on each of the following counts: Counts 1, 6, 7, 8, 9, 13, 31 and 33; and terms of three years concurrent on each of the follow counts: Counts 12, 30 and 32.

Moreover, if Mr. Hunt is released, within 72 hours of release from custody of the Bureau of Prisons, he shall report in person to the probation office in the district where he is released.

He shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of commencement on supervised release, and at least two periodic drug tests thereafter, as directed by the probation officer.

While on supervision, Mr. Hunt shall not commit another federal, state or local crime, and shall not unlawfully possess a controlled substance, and shall not possess a firearm or a destructive device.

Mr. Hunt shall comply with the standard conditions that have been adopted by this court and are incorporated in this judgment.

In addition, Mr. Hunt shall comply with the following conditions:

He shall obtain a GED diploma or a vocational skill during his period of supervision if not employed full-time. He shall participate in a program approved by the probation office for mental health treatment, the costs of the program to be paid by him to the extent he's capable as directed by the probation officer.

He shall waive all rights of confidentiality regarding mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.

The Court, of course, does this so that if the

defendant starts having difficulty in mental health treatment, that the probation officer can be made aware of it and come alongside him to try to be of assistance.

Furthermore, the defendant shall not have any contact with any known gang members without prior approval from the probation office, and that's obvious from the discussion we've had here about the gang activities resulting in these charges and convictions.

The Court has considered the amount of losses sustained by the victims as a result of this offense, the defendant's zero net worth and the lack of liquid assets, his lifestyle and financial needs as reflected in the presentence report, his earning potential, and the lack of dependents relying on his support. The Court finds the defendant is not capable of paying a fine, but is capable of making full restitution as mandated by statute.

Therefore, he shall pay a special assessment of $100 on Count 1, 100 on Count 6, 100 on Count 7, 100 on Count 8, 100 on Count 9, 100 on Count 12, 100 on Count 13 and Count 30 and Count 31 and Count 32 and Count 33, which I believe would be a total, Madam Clerk, of $1,100.

Restitution shall be paid on Count 6 in the amount of $5,395.10 to Y.L., there being no objection thereto.

The defendant is jointly and severally liable for restitution with the following co-defendants:

Corey Sweetenburg in Case No. 4:17cr52, Xavier Greene in 4:17cr52, and to the extent any restitution is ordered, Deshaun Richardson also in 4:17cr52.

No fine is imposed in the case.

The special assessment and restitution shall be due in full immediately. Any balance remaining unpaid on the special assessment and restitution at the beginning of supervision shall be paid by the defendant in installments of not less than fifty dollars a month until paid in full. Said payments shall commence 60 days after supervision begins, if the defendant is released. Any special assessment and restitution payments may be subject to penalties for default and delinquency. Nothing in the Court's order shall prohibit the collection of any judgment or fine by the United States.

Since this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the Clerk, U.S. District Court, except those made through the Bureau of Prisons Inmate Financial Responsibility Program.

The defendant shall notify the U.S. Attorney for this district within thirty days of any change of name, residence or mailing address until all fines -- or restitution, excuse me, and costs and special assessments imposed by the judgment are fully paid.

Now the Court would like to make some additional sentencing comments.

The sentence imposed today, of course, is a guideline sentence, but more importantly, it is the appropriate sentence after giving careful consideration to each of the 3553(a) factors, exercising the discretion that the Court is given under the statutes at issue. In practical terms, a term of imprisonment cannot really be in excess of life; however, the applicable firearm statutes call for consecutive sentences for each 924(c) offense and, in this Circuit, for each 924(j) offense.

In considering the proper sentence to impose on these consecutive firearm offenses, this Court considers the conduct underlying such offenses, including the shooting deaths of two victims, as well as principles of deterrence and just punishment.

While this Court has determined that, in the context of this case, the statutory mandatory minimum for each of the three 924(c) offenses is sufficient to comply with the purposes set forth in 3553(a), the Court finds that the two 924(j) offenses are vastly aggravated firearm offenses that are far more serious than a typical 924(c) offense, and therefore, on this record, regardless of any statutory minimums or the precise guideline recommendations, the 924(j) offenses require a far more serious sentence than the 10-year terms of imprisonment

imposed for the two 924(c) offenses involving discharging a firearm.

Such finding is consistent with Congress's decision to make 924(j) an aggravated offense with the maximum punishment of death; therefore, regardless of the minimum punishment provided by statute or recommended by the guidelines, the sentence of life for each 924(j) offense is appropriate in this case based on the nature of the gang-motivated murder of Domingo Davis and the collateral murder of Jada Richardson, the 13-year-old victim with no real connection to any gang-related disputes of which the Court is aware.

In considering the 3553(a) statutory sentencing factors, the Court has considered the entirety of Mr. Hunt's offense conduct, his personal background, and the sentences required on the other counts of conviction.

With those additional comments having taken place, the Court will now discuss Mr. Hunt's appellate rights.

Mr. Hunt, you have the right to appeal the jury's verdict, as well as the right to appeal your sentence if you believe that it was illegally or incorrectly imposed. If you wish to pursue an appeal, you must file a notice of appeal within 14 days from the entry of judgment. If you do not file the notice of appeal on time, you may lose your right to appeal. You have the right to be assisted by an attorney on appeal. One will be appointed for you by the Court if you cannot afford to

hire an attorney. You may be permitted to file the appeal without payment of the costs if you make a written request to do so. Also, if you make a request of the clerk's office, someone there will prepare and file the notice of appeal for you.

There is a consent order of forfeiture that has been provided to me with respect to a 9mm Glock pistol and related magazines and ammunition, the Glock Model 23 caliber .40 S&W pistol with related magazines and ammunition, and a Taurus caliber .45 pistol and related magazines and ammunition. That appears to have been signed by counsel for the government, counsel for the defendant and Mr. Hunt, and therefore I will affix my stamp to it.

The clerk has reminded me that we don't have a restitution order, if there was one. I'm not sure if you wanted there to be one. I've ordered it.

MR. WOODWARD: Your Honor, I'll be glad to sign one if it's prepared and presented to me, but I think the Court ordered it, it doesn't require one.

THE COURT: I don't think it does. I thought maybe -- Madam Clerk, did you think there was going to be one?

COURTROOM DEPUTY CLERK: Yes, sir.

THE COURT: Okay. I think the clerk may have been under the impression there was one coming. But if there's no need for that in you all's estimation, that's fine.

No need? All right.

Now the Court is going to make some recommendations in the case.

The Court recommends that the sentence be served as close to Tidewater, Virginia, Hampton Roads, however you wish to say it, as possible, as requested.

The Court also is going to recommend that Mr. Hunt be evaluated for mental health and emotional health treatment and that he receive any mental health treatment as needed.

Ms. Cross, the defendant was found guilty of 11 counts that were charged in the second superseding indictment, and while the original indictment and the superseding indictment are dismissed right now on the electronic case filing system, I do note they were clerk office dismissals, and so I would be happy to entertain a motion from the government to officially move to dismiss the indictments, these indictments on the record.

MS. CROSS: Judge, we so move to dismiss.

THE COURT: All right. So they are dismissed as already administratively indicated on the Court's Case Management Electronic Case Filing system.

All right. Ms. Cross, was there anything else that I need to address?

MS. CROSS: Nothing else for the government, Your Honor.

THE COURT: Mr. Woodward?

MR. WOODWARD: No, sir.

THE COURT: Okay. Ms. Munn?

THE DEFENDANT: No, sir.

THE COURT: All right. Well, I know some people are still with us and some people have left the courtroom, but I certainly do wish the families of the victims well.

I wish you well, Mr. Hunt. And it is a great understatement of the day to say that this was just an immense tragedy.

(Whereupon, proceedings concluded at 11:30 a.m.)

CERTIFICATION

I certify that the foregoing is a true, complete and correct transcript of the proceedings held in the above-entitled matter.

_____

Paul L. McManus, RMR, FCRR

_____

Date

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No.:
	)	4:17cr52
XAVIER GREENE,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS
(Sentencing)

Norfolk, Virginia
July 1, 2021

BEFORE: THE HONORABLE MARK S. DAVIS
United States District Judge

Appearances:

OFFICE OF THE UNITED STATES ATTORNEY
By: AMY E. CROSS
Counsel for the United States

LAW OFFICE OF AMY L. AUSTIN
By: AMY LEIGH AUSTIN
-- and --
DAVID MICHAEL GOOD, P.C.
By: DAVID MICHAEL GOOD
Counsel for Defendant Greene

The Defendant appearing in person.

P R O C E E D I N G S

(Commenced at 10:23 a.m. as follows:)

COURTROOM DEPUTY CLERK: In Case No.4:17cr52, the United States of America v. Xavier Greene.

Ms. Cross, is the government ready to proceed?

MS. CROSS: The government is ready. Good morning, Your Honor.

THE COURT: Good morning, Ms. Cross.

COURTROOM DEPUTY CLERK: Mr. Good and Ms. Austin, is the defendant ready to proceed?

MR. GOOD: Good morning, Your Honor. Defense is ready to proceed.

THE COURT: Good morning, Mr. Good.

MS. AUSTIN: Good morning, Your Honor.

THE COURT: Good morning Ms. Austin.

All right. Madam Clerk, let's go ahead and administer the oath to Mr. Greene.

(Defendant placed under oath.)

THE COURT: All right. So let's review some of the history that brings us here.

On December 10, 2019, Mr. Greene was found guilty by a jury of the following eight counts of the second superseding indictment:

One count of racketeering conspiracy, in violation of Title 18 of the U.S. Code, Section 1962(d); three counts of murder in eight of racketeering activity, in violation of Title 18 of the United States Code, Section 1959(a)(1); three counts of using a firearm resulting in death, in violation of Title 18 of the U.S. Code, Section 924(c)(1) and j;

And one count of attempted murder in aid of racketeering, in violation of Title 18 of the United States code, Section 1959(a)(5).

Mr. Greene was acquitted by the jury as to one other count, Count 15, which is a 924(c) firearm possession or discharge count associated with the Solo Mart shooting.

The Court has reviewed the presentence report that was prepared in this case on March 9 of 2020, along with the addenda that were prepared on April 10, 2020, July 23rd, 2020, July 28th, 2020, May 7, 2021, and June 16, 2021. And so I have done that, and as you can see I'm holding up the presentence report.

The one thing that I noticed on the cover, I just changed the sentencing date to July 1 right there and wrote that in to be clear about it. We were to be here a few weeks ago originally, and of course a water pipe broke in the attic of the courthouse and 50,000 gallons of water poured into the courthouse, and the court was closed for the whole week. So we did not go forward that day.

So we have reviewed the presentence report, and I need to ask you all a few questions about that. So Mr. Good, have you reviewed the presentence report with the addenda and had enough time to review it with Mr. Greene?

MR. GOOD: Yes, I have, Your Honor.

THE COURT: And Ms. Austin, have you also?

MS. AUSTIN: Yes, Your Honor.

THE COURT: All right. Other than the objections that you all have filed, are there any other errors in the presentence report that you need to bring to my attention?

MR. GOOD: No, Your Honor.

THE COURT: All right. And Mr. Greene, have you reviewed the presentence report with the addenda?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And I may be asking you more questions, so if you will pull that microphone over close to you, Mr. Greene, and then make sure that button is pushed so it's on? All right. Thank you.

So you said that you have reviewed the report with the addenda. Did you have enough time to review that report with your attorneys?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And other than the objections that they have filed, did you see any other errors in the presentence report that you need to bring to my attention?

THE DEFENDANT: No, sir.

THE COURT: All right. Obviously no presentence report can be a 500-page biography of somebody, but do you believe that this presentence report fully covers your background?

THE DEFENDANT: Yes, sir.

THE COURT: All right. You hesitate a bit. If there's anything else that you think should be in there, please make sure you let your attorneys know.

THE DEFENDANT: Yes, sir.

THE COURT: All right. So, disputed issues. There is an objection, of course, that has been filed by Mr. Greene by his attorneys as to all of the offense conduct in the presentence report based upon the fact that Mr. Greene pled not guilty but was found guilty by the jury and he maintains his innocence, as I understand it, and therefore is objecting to all of the paragraphs that contain offense conduct in the presentence report. And the resulting guideline calculation flowing from that offense conduct is also the subject of the objection. And that, as I say, is predicated on the fact that Mr. Greene pled not guilty and maintained his innocence throughout the trial, and has acknowledged that he previously pled guilty to the burglary of the Southern Police Equipment company in the Richmond area.

So I should say that, in addition to the presentence

report, so you all know that I have it and I have reviewed it, I have received and read the position of the United States with respect to sentencing factors, that's Document 797 filed on June 7, 2021, and also the defendant's position with respect to sentencing factors, Document 798 on our Case Management Electronic Case Filing system. And so those have been read and considered along with the presentence report in this case.

So with respect to this broad objection that covers all of the offense conduct and the guidelines that flow from the offense conduct listed in the presentence report, the Court will review the standard that applies to that general objection first and then see if you all want to make any additional comments.

So, challenging all offense conduct in the presentence report and all resulting guideline calculations, the Court is aware, of course, that the government bears the burden of proving by a preponderance of the evidence the facts that establish that a defendant was involved in specific conduct, but the case law holds that once the government has provided evidence sufficient to justify inclusion of that conduct in the presentence report, the defendant's mere objection to the finding in the presentence report is not sufficient, as the defendant has an affirmative duty to make a showing that the information in the presentence report is unreliable and articulate the reasons why the facts contained there are untrue or inaccurate. Without an affirmative showing that the

information in the presentence report is inaccurate, the Court is free to adopt the findings of the presentence report without more specific inquiry or explanation.

In determining whether information included in the presentence report is reliable, our Court of Appeals gives due regard to the opportunity of the district court judge to judge the credibility of the witnesses at trial, and Fourth Circuit precedent indicates that when there is a witness credibility issue as to drug weights or other sentencing factors, for example, the Court should not rely on the jury's implicit decisions appearing to credit the testimony of trial witnesses, but, rather, the Court should make its own credibility findings.

Here, based on the evidence in the presentence report, which is supported by the trial record, the Court overrules the defendant's objection -- or I should say the Court is inclined to do that to the presentence report offense conduct paragraphs, but before I do that, I did want to make sure that, Mr. Good and Ms. Austin, you have talked with your client about whether he wants to offer any testimony here. Obviously here is different than trial, but he still has the right, if he wants to, to testify here, and I need to make sure that's been discussed.

MR. GOOD: Yes, Your Honor. In consultation with Mr. Greene --

THE COURT: You can sit down and speak right into the microphone.

MR. GOOD: Oh, I'm sorry, Your Honor.

THE COURT: That's fine. If you'll pull that microphone over to you and make sure it's on.

MR. GOOD: Your Honor, in consultation with Mr. Greene, that has been explained to him, and Mr. Greene, it is our understanding, does not wish to testify today or offer any evidence at sentencing.

THE COURT: All right. Mr. Greene, did you have a chance to talk with your attorneys about that issue?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And did you decide whether you wanted to testify today or not?

THE DEFENDANT: I would not like to testify today, sir.

THE COURT: All right. Thank you, sir.

So based on the evidence that the Court heard at trial and as reflected in the presentence report, the Court overrules the blanket objection to the presentence report's offense conduct paragraphs, as there has not been a showing demonstrating that the information in that presentence report is unreliable or inaccurate, and the Court's recollection of the trial evidence and its independent credibility determinations support the inclusion of the factual information that is in those offense paragraphs of the presentence report.

START now -- and I did not ask you, Mr. Good, whether

you want to address -- or Ms. Austin -- address that issue any further, but I'm -- you know, I'm -- that's my view of it. But if you want to make any further comments, you're welcome to and I'll withhold ruling.

MR. GOOD: Your Honor, counsel and I have discussed this, as well as Mr. Greene, and we do not wish to put forth anything further with regard to that issue.

THE COURT: All right. You rest on your having gone to trial, pled not guilty and put the government to the test and the jury's determination, and then you can decide how you address that on appeal?

MR. GOOD: That is correct, Your Honor. While we do not, of course, agree with the jury's verdict, we respect it and we intend to appeal in this matter.

THE COURT: All right. Thank you, Mr. Good.

MR. GOOD: Yes, sir.

THE COURT: So that having been addressed, the Court will adopt the factual statements that are contained in the presentence report as its findings of fact in this case.

We move on to discuss the statutory ranges for the counts of conviction as established by Congress and the President and then discuss the guidelines as promulgated by the United States Sentencing Commission.

So first, because the government elected in this case not to seek the death penalty, the statutory maximum punishment

for each of the counts for which death may have otherwise been available is a term of life imprisonment. The specific statutory ranges for the offenses of conviction are as follows:

For Count 1, the RICO conspiracy count, a maximum of life imprisonment; for Counts 2, 6 and 8, the VICAR murder counts, mandatory life imprisonment; for Counts 3, 7 and 9, the firearm discharge resulting in death counts, 10 years to life; and for count 14, the VICAR attempted murder count, not more than 10 years. So those are the specific statutory ranges for the offenses of conviction.

Pursuant to the Fourth Circuit Court of Appeals interpretation of the interplay between Section 924(c) and Section 924(j), which is set forth in the United States v. Bran, 776 F.3d 276, the sentences imposed on the three 924(j) counts, those are Counts 3, 7 and 9, must be served consecutively to each other and to the sentences imposed on all other counts.

Recognizing Mr. Greene's preserved objections to all of the offense conduct in the presentence report, does everyone agree that I've accurately stated the sentencing, statutory sentencing ranges? First, Ms. Cross?

MS. CROSS: Yes, Your Honor.

THE COURT: Mr. Good and Ms. Austin?

MR. GOOD: Yes, Your Honor.

THE COURT: Ms. Austin?

MS. AUSTIN: Yes, Your Honor.

THE COURT: All right. Now as for supervised release, the RICO conspiracy count, the three VICAR murders counts and the three 924(j) counts have a maximum of five of supervised release. The VICAR attempted murder count has a maximum of three years of supervised release.

Ms. Cross, do you agree that I've accurately stated those?

MS. CROSS: I do, Your Honor.

THE COURT: And do you, Mr. Good?

MR. GOOD: I do, Your Honor.

THE COURT: And do you, Ms. Austin?

MS. AUSTIN: Yes. Yes, Your Honor.

THE COURT: All right. So those are the statutory ranges that Congress and the President have established for these counts of conviction.

Operating within the statutory ranges, of course, are the guidelines, the United States Sentencing Guidelines promulgated by the United States Sentencing Commission. It appears that application of the advisory guidelines results in an offense level of 43 and a criminal history category of III, and the resulting advisory guideline range is life imprisonment, with such guideline range applicable to all counts of conviction with the exception of Count 14, which has a restricted guideline range of 10 years. As we just discussed, the sentence imposed

on each of the three 924(j) counts must be served consecutively to the sentence imposed on all other counts, even if sometimes that seems counter-intuitive when you're talking about life sentences.

Accordingly, in total, the advisory guideline range is life imprisonment plus three consecutive terms of life imprisonment.

Recognizing Mr. Greene's preserved objections to the offense conduct, based on the Court's ruling adopting the offense conduct in the presentence report, Ms. Cross, do you agree that I have accurately stated the guideline sentencing ranges?

MS. CROSS: Yes, Your Honor.

THE COURT: Mr. Good, do you?

MR. GOOD: Yes, Your Honor.

THE COURT: All right. Ms. Austin, do you?

MS. AUSTIN: Yes, Your Honor.

THE COURT: All right. Now we move on to any additional evidence or materials that counsel may wish to present, and then after that, your argument in the case.

So first, Ms. Cross, do you have any additional evidence or materials you wish to present?

MS. CROSS: No additional evidence, Your Honor, and the demonstrative materials have already been provided -- for argument have already been provided to counsel and the Court.

THE COURT: And you'll just reference them in your closing argument?

MS. CROSS: Correct, Your Honor.

THE COURT: All right. Mr. Good, do you have any additional evidence or materials that you want to present?

MR. GOOD: We do not, Your Honor, we would just have brief argument.

THE COURT: All right. Ms. Austin, you concur?

MS. AUSTIN: I concur, Your Honor.

THE COURT: All right. Then we turn to the closing argument first of the government. Ms. Cross, happy to hear from you, and you can go to the podium.

MS. CROSS: Judge, just as a matter of -- for the record, we are here today for the sentencing on the three murders for Dwayne Parker, Jada Richardson and Domingo Davis, and the Court has asked in previous cases and we want to make sure it's on the record today, the victims' families have been notified of today's date of their ability to appear here and to address the Court with regard to sentencing. Not only had they received notice of the prior date, but after the closure because of the flooding, they received yet another notice to make sure they knew about today's date. And I also had them called in the last two days to remind then. So the victims' families have been notified of today's date.

THE COURT: Thank you, Ms. Cross.

MS. CROSS: Judge, so much of our sentencings when we come before the Court become tied up into who is sitting before the Court at the time of the sentencing, and that's the defendant, Xavier Greene. And the government understands that the 3553(a) factors do look in depth at a defendant and what he needs and how he should be punished in a meaningful way, but one that is not harsh or overreaching and serves the purposes for his crimes.

But I think sometimes, Judge, in trying to reach that goal, we lose sight of the people who can't speak for themselves, and so today I think it's important to remember the people who have come before you, the witnesses who appeared and testified against Xavier Greene; the persons who were in relationships with Mr. Greene, Endyia Washington; the people who lived and were with Mr. Greene, Deshawn Shields, Kierra Mitchell he will, the people who were around him who testified in this case. But also, Your Honor, the people who can't speak. Dwayne Parker, who was killed at 9th and Ivy on March 8th of 2015, and the Court has the photograph that was admitted at trial.

THE COURT: So can I interrupt you for a second --

MS. CROSS: Yes.

THE COURT: -- Ms. Cross?

It just caught my eye. We have, I think, at least two fairly small children in the courtroom. I don't know what's going to be said exactly, I don't know whether you plan to put

anything up on these screens, but I want us to be mindful that these children are in the courtroom, and if you think you're going to say anything...

MS. CROSS: Judge, I will not be graphic nor will I be showing those photos. I have printed them so the Court can refer to them and counsel can refer to them at table.

THE COURT: Thank you. I'm sure the parents appreciate knowing that also.

MS. CROSS: Absolutely, Your Honor.

THE COURT: Go ahead.

MS. CROSS: Your Honor, but if we look back at March 8th of 2015 -- and I know the Court recalls the testimony from the individuals -- and even the statements that Mr. Greene made after this shooting where Dwayne Parker was murdered, and you know, we think of these individuals in sanitized pictures that are on the timeline that the government has presented to the Court, but really, Judge, how Mr. Parker left the world is what is shown in what was admitted as Government Exhibit A-4b. Judge, it is that type of picture that doesn't leave the mind. It's that type of carnage that, yes, I think you'll hear from defense counsel that this defendant grew up seeing; that this defendant may have also been the target of. But Judge, he walked away from this scene, and not even a month later, he and Steven Harris who had joined him in the Parker murder, Mr. Sweetenburg, who testified and was sentenced before Your Honor,

Mr. Richardson and Mr. Hunt, who's already been sentenced, conspired to go op shopping. And they talked about Domingo Davis, who was a rival gang member from the Walker Village Murder Gang, and they planned to go look for him. And Judge, they went out to 25th Street in Newport News, and Mr. Greene was armed with a firearm, and we know from the forensics evidence that at least four people shot. And we know that those shots killed Domingo Davis, who was 17 years old. And we know that it also killed an unintended victim, but a victim nonetheless, of 13-year-old Jada Richardson. And Judge, we showed these pictures briefly at trial because they were traumatic. We didn't put them on the screen for long, as not to inflame the jury. But I do think how these victims were left, at 13 and 17, barely beginning their lives.

You know, Government's Exhibit C-4b of Jada, Government Exhibit C-5b of Domingo, I think we can all talk in the theoretical sense, and maybe in the subjective and factual sense, that growing up in these areas -- and I think I've even heard the Court say it, you can't imagine what it's like to grow up in these areas for the people who are just trying to conduct their daily lives, and even for the people who are engaged -- that they are so hopeless that they are engaged, that this is their family, a family of violence. But less than a month later, to be able to draw your gun and fire into people, the Court heard the evidence, it wasn't just Jada and Domingo Davis

out front. There were multiple people sitting outside. These two individuals, these two juveniles were the two that got hit.

What was also heard at trial was that inside that house, inside 25th Street, the grandmother of one of the witnesses was in the house holding a baby. We know that the next-door neighbor's house went through it. The evidence showed the bullets struck the house next door. The victims, while these murders were of Jada Richardson and Domingo Davis, this violence spread throughout these neighborhoods.

And what is so tragic, Your Honor, is that Mr. Greene lost one of his very best friends, someone he considered family, Kevonne Turner, just months after this, in retaliation for the deaths of Domingo and Jada. He lost Kevonne Turner. And I'll say his name: Monster. And this sent, based on the presentence investigation report, based on the statement of facts of counsel, this sent Mr. Greene into a tailspin. He lost a person who was closer than a brother to him, but it didn't change his activity in the gang. It didn't make him walk away from this type of carnage. Instead, in his grief, you see what was admitted previously in Government's Exhibit E-64 on Page 202, in talking to Steven Harris, who had been there for those two murders, that he was about to turn up, "I don't care" that's IDC "if I got locked or popped, at least 15 of these -- and he -- "Ns -- are going to go before me. NBS." No bullshit.

That was on 6/25, a mere three weeks after Kevonne

Turner was murdered.

Steven Harris tells him, "But you just gotta be smart about it." And what does Xavier Greene say? "I can't. I'm hurt too deep." Steven Harris says "Yeah, me too, but I'm not dumb either." And Steven Harris says "I love you, like, man, I only F with you all that I love. Everybody else, victims."

That's the mentality at that time, unfortunately, after knowing he was involved in the death of three very young people, people his age, losing someone so important to him, his mentality isn't I've got to walk away from this life before I'm killed, it was "everybody else is victims, and if I'm going, I'm taking 'em with me."

So when the gang called, as they did, on August 1st of 2015, he did. He went with them. With his gun. And for some reason, Judge, the trial evidence showed and the jury clearly believed that Xavier Greene froze and that Geovanni Douglas took his firearm and fired it at a store in downtown Newport News, eight shots, harming a bystander who was outside trying to get back in the store. There is absolutely no concern for the life, for the ability to walk in their own streets where they live.

You heard testimony that because Mr. Greene froze on that occasion, he felt like he had to prove himself to the gang. You heard that his best friends, people that Mr. Greene has said were close personal friends to him, including Geovanni Douglas, you heard evidence that they came to that house, they came to

where Xavier Greene and Endyia Washington stayed and banged on the door and demanded that because if Xavier Greene wouldn't use the gun, they would come in and get it, and they would use force. Because he hadn't fulfilled what he needed to do for the gang. So how was he going to show them he was still good? By going up to a federally licensed firearm dealer outside of Richmond and bringing back -- breaking in and bringing back over 30 firearms.

And Judge, we've submitted in the pile of exhibits to consider for today what was marked and admitted at trial as Government Exhibit L-14, and that was the list of the firearms that were taken from Southern Police Equipment. Judge, 30 firearms. And these were firearms that -- some of these were assault rifles, handguns. And the purpose not just by the government's evidence but by the defendant's own sworn declaration that was made after trial, they were planning to give them away. They were going to sell them, but they gave them away.

Judge, the evidence is they gave them to -- he brought them back to arm his brothers. This family. And you can see the family. You can see the family in Government's Exhibit E-67, the photographs from Corey Sweetenburg's FaceBook showing Xavier Greene in picture after picture with a gun on his hip, throwing down gang signs, representing his gang, being proud of their reputation.

On Page 11 of E-67, I think you've heard it before, Judge, the mentality of this gang, "We all for each other stand strong and tall." And in that photograph you can see Mr. Greene, Corey Sweetenburg, Martin Hunt, Raymond Palmer, all of these individuals together throwing their gang signs and representing one another.

It is interesting, Judge, that not only did Mr. Greene arm some of his brothers, including from the trial testimony Geovanni Douglas, but he also took guns to Ryan Taybron's house. And Judge, the photographs that were admitted at trial that were found during a search warrant at that home and next door when people ran out of the Taybron house, L-10a and L-10b, these firearms, at least four of the handguns and the assault rifle all were firearms that were identified as being stolen from Southern Police Equipment only hours, 48 hours before they were found at Ryan Taybron's house.

The defendant did come in after he was charged with the theft of those firearms and he did accept responsibility and he was sentenced to 120 months. The government submits that it's interesting that even during his time in the BOP, pursuant to the presentence investigation report, he has still had issues with authority and not obeying the directions given to him there, not following the instructions.

Now, we do submit, he got his GED while he was there. Judge, that's a step in the right direction. But has four years

in the BOP changed this defendant? I think the Court can look at his prior criminal history. If you look at his criminal history -- and I'm not talking about names of the actual offenses, I'm talking about the facts that went with those. The defendant was convicted of threatening school personnel and disorderly conduct. Part of those facts, Your Honor, was that he slapped a school official and then said "Imma get you, bitch." That's from Paragraph 100 of the PSR.

Shortly thereafter he was found guilty of obstruction, but if you look further into the facts of that, he was found with five blades, five knives, that had five- to eight-inch blades in his back pocket.

He was also found guilty during the time of the conspiracy of trespassing in Marshall Courts, the 36th Street Bang Squad territory.

Further interesting, Judge, and I know that there's a certain variance argument that's going to be made about this defendant coming from this area and not having adequate supervision and having to survive, but this defendant through the Court was given the opportunity to gain control over his addiction, to treat his mental health. He was sentenced to Intensive Day Supervision to address some of these issues in the schools. He failed to appear 18 times and was dismissed from the program. He was given the opportunity to go through drug treatment. He failed to comply. This defendant wanted to live

on his own terms. And he did. And unfortunately when he did, he embraced this life of violence.

Judge, the defense counsel has pointed out and the government would highlight the reasons for the Court's sentence, and three of the four aren't about the defendant. Protecting the public, deterrence, highlighting the nature and seriousness of the crime and to protect the public from this defendant. Yes, we want to consider Mr. Greene's educational, vocational, medical and correctional needs. But more importantly, in cases like this, Judge, we have to protect the public from this type of behavior. While defendant's prior criminal history before he was arrested with the theft of the firearms may look insignificant on paper, what you saw was an escalation; that no longer was it just about carrying the knives or threatening someone, it was about taking action on them, and about giving up hope. And when you have given up hope, life doesn't matter. Yours or anyone else's. And unfortunately, Judge, those four years in the BOP didn't make the defendant embrace authority or change how he acted towards persons over him. And he showed you that during the trial. We saw that in how he reacted to the Marshals and telling the Marshal, You wouldn't last a minute on the streets, but then telling the Marshals -- or at least repeating it several times where the Marshals could hear, that that Marshal could catch a hot one. He could be shot. Because even though he had been in the BOP for four years, the mentality

hadn't changed.

Judge, I know counsel will argue that a life sentence plus 30 years is more than sufficient to address the issues, the crimes that Mr. Greene has been convicted of. The government submits that would be a disparity. Martin Hunt was convicted of the deaths of just Jada and Domingo, and he received a life sentence, mandatory, on both of those murders, with life sentences on the discharge of the firearms resulting in death. This defendant should receive no less. His story is no less or more compelling than what you saw Martin Hunt go through in the gang with the violence and the poverty and the instability. At some point in time, these young men, while it is troubling how they got to this point, they had a decision to make. And there were lots of points in time when Mr. Greene could have made the decision not to do these things. Instead, he embraced the life and furthered the gang's mission, which is the gang above all else.

Because of that, Judge, we are asking that you order the defendant -- or sentence the defendant to serve the life in prison on the murders and the RICO conspiracy and that you order that he be sentenced to a consecutive life term on each of the firearm charges resulting in death.

We are also asking that you sentence him to 10 years on Count 14, which was the attempted murder outside of the Solo Mart.

Judge, in keeping with this, we have no objection to the defendant being housed locally to be with his young child, who I don't believe he's met since he's been in custody, or at least been able to have a relationship with.

Judge, we are asking that restitution consistent with prior restitution orders for Domingo Davis's funeral costs be ordered by this Court joint and severally.

And that would be our requests of the Court. Thank you, Your Honor.

THE COURT: All right. Thank you, Ms. Cross.

Who will be making the closing argument? Ms. Austin?

MS. AUSTIN: No, Mr. Good is, Your Honor. If I could have one moment with him?

(Defense counsel conferred.)

(Counsel and defendant conferred.)

MR. GOOD: May it please the Court.

Your Honor, we, if it pleases the Court, are going to, for the most part, stand on the defense position paper with the exception of brief argument.

Again, Your Honor, Mr. Greene, of course, and counsel do not agree with the jury's verdicts in this case, but we respect them. There will be an appeal noted. We disagree with the jury's verdict all except for the acquittal on Count 15, of course.

Your Honor, before I get started with some remarks, I

would just like to comment on a couple of thing of counsel's argument.

It's our understanding in the presentence report that Mr. Greene was alleged to have threatened to slap someone, I believe, as opposed to slapping them. And we of course would dispute that Mr. Greene, his record at BOP is terrible; indeed, it's our understanding that Mr. Greene completed quite a few programs while at BOP and the vast majority of his time there certainly followed the rules.

Your Honor, furthermore, counsel, if I understood her argument correctly, or part of her argument, I believe it covered some offense conduct for which Mr. Greene was acquitted with regard to the shooting at the Solo Mart, if I understood counsel correctly. And as counsel correctly pointed out, Your Honor, Mr. Greene did indeed plead guilty and accept responsibility with regard to the offense conduct concerning the Southern Police Equipment burglary as stated in the presentence report and the defense position paper.

Your Honor, just to summarize, as we are certainly aware that the Court has read very thoroughly the defense motion paper, I would, if it pleases the Court, like to go through some of the defense argument.

Your Honor, Mr. Greene was subjected to extreme violence at a very young age. His uncle was shot and killed while he was holding Xavier in his arms. Mr. Greene was stabbed

himself when he was 14 years of age. He witnessed numerous acts of violence, including shootings. Mr. Greene's father, his role model, went to prison when Mr. Greene was about five years of age. Mr. Greene was born prematurely at 27 weeks. His mother went into great detail with the probation officer with regard to the myriad problems that Mr. Greene suffered as an infant and further in his childhood, to include a diagnosis of ADHD, Attention Deficit Hyperactivity Disorder, and PTSD, post-traumatic stress disorder, as the Court knows, both as a young child. Mr. Greene was further diagnosed with adjustment disorder, again ADHD, enuresis in reaction to witnessing extreme violence at the age of five or six years old. Over time, Your Honor, Mr. Greene's diagnoses varied. They included psychotic disorder, again, post-traumatic stress disorder, bipolar disorder. He was prescribed numerous medications detailed in the presentence report and the defense position paper. He was diagnosed with Asperger's disorder and anxiety disorder later. He has had suicidal thoughts during his lifetime, and indeed, had auditory and visual hallucinations during his childhood.

Your Honor, Mr. Greene is currently prescribed a number of medications, medications for anxiety, a medication generally prescribed to treat psychiatric disorders, medication prescribed for depression, panic attacks, anxiety, PTSD or compulsive disorders.

Mr. Greene has suffered, Your Honor, from substance

abuse issues beginning when he was a teenager with marijuana and MDMA use, extreme alcohol use and extreme marijuana use at the time of his arrest and prior.

Of no surprise to anyone, Your Honor, given Mr. Greene's tragic childhood, he was unable to finish high school. Indeed, he withdrew from school when he was in just the 9th grade. At that time, as the presentence report notes, Your Honor, he had failed every single one of his classes in high school when he withdrew in the 9th grade. Much to his credit, Your Honor, Mr. Greene did earn his GED in December, 2017.

Your Honor, in short, Mr. Greene has had a life replete with violence, indeed extreme violence, trauma, myriad mental health issues, substance abuse issues, and family dysfunction. As his father was sentenced to prison, his mother -- and I'm not here to excoriate his mother here of course, but she -- I don't know if she's come into the courtroom since I've been in -- but just by virtue of moving, with all of Mr. Greene's myriad issues, being moved from one place to the other numerous times, while his father was in prison, while he has these myriad mental health disorders and has experienced all of this trauma and violence.

Your Honor, as stated in the defense position paper, the area of Newport News and Hampton that Mr. Greene lived in and was around during his childhood would virtually rival that of a Third World country. It's controlled by criminal street

gangs where residents have to associate with the gang just for protection or survival. I'm not acknowledging in any way Mr. Green was in a gang, by the way, but that's the nature of the neighborhood, of the area.

Your Honor, the defense would respectfully ask, we respectfully ask that the Court impose the statutory mandatory minimum in this case for all the aforementioned reasons and all the other reasons stated in the defense position paper and ask that the Court impose a sentence of life plus 30 years, not more than five years of supervised release, no fine, and an $800 special assessment, Your Honor. We respectfully submit that that sentence would be sufficient but not greater than necessary to comply with the statutory directives as set forth in 18 United States Code, Section 3553(a).

Your Honor, the sentence would consist, of course, of a sentence of life on each of Counts 1, 2, 6 and 8, as they are statutorily required, and all such sentences on Counts 1, 2, 6 and 8 be served concurrently. And we respectfully ask in addition to such concurrent terms that the statutory minimum term of 10 years on each of Counts 3, 7 and 9 be served consecutively as they are required to be, as the Court has already addressed this morning. And of course we ask that there be no sentence imposed as to Count 14.

Your Honor, we do ask the Court respectfully to request that the Bureau of Prisons house Mr. Greene in a

facility as close to Hampton Roads as possible. And of course I'm sure BOP would do this without us asking, but we do ask the Court to recommend that Mr. Greene be evaluated for mental and emotional health treatment and that he may receive any and all necessary or recommended treatment.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Good.

All right, Counsel. Thank you for your arguments.

Mr. Greene -- go ahead.

MR. GOOD: I'm sorry, Your Honor. Thank you.

(Counsel and defendant conferred.)

THE COURT: All right. Mr. Greene, you have the right to make a statement. You don't have to, it's up to you, but this is your last opportunity to do that before sentencing. Do you wish to make any statement?

THE DEFENDANT: No, Your Honor.

THE COURT: You're welcome to consult with Mr. Good before deciding if you want. You're shaking your head no, so I'm taking that as a no.

MR. GOOD: Yes, Your Honor. And we have discussed that. Mr. Greene does not want to make a statement.

THE COURT: I have to ask him to make a statement before sentencing, so that's why I'm asking you now, in addition to asking you if you wanted to testify earlier.

So is there any reason that sentence should not be

imposed at this time, Mr. Good?

MR. GOOD: No, Your Honor.

THE COURT: Ms. Austin?

MS. AUSTIN: No, Your Honor.

THE COURT: All right. Before sentencing, I will review the statutory sentencing factors that are designed to ensure the sentence imposed is sufficient but not greater than necessary to comply with the purposes of sentencing. I don't have to recite all the factors, but I have considered them all.

The Court notes that it's considered all of the defendant's and the government's arguments with respect to the sentence the Court should impose in the case. As I normally do, I will use the presentence report as a template to review these factors.

So on the front page of the presentence report it reflects that the defendant, Mr. Greene, has been detained since August 10, 2015, and that was on Case No. 4:15cr76, and he's been detained in federal custody on this indictment since May 17, 2018.

And I guess he is about -- he's 26 years old now.

Moving on, the presentence report reviews all of the defendants that were involved in this matter and then the offense conduct. Paragraph 21 through 26 reviews generally the activities of the 36th Street Bang Squad and Mr. Greene's involvement in that enterprise, as well as the general purposes

of the enterprise in Paragraph 25, and the means and methods that were used by members of the enterprise in Paragraph 26.

Then Paragraph 27 goes on to discuss the murder of Dwayne Parker reflected in Exhibit A-4b that the government has presented, and that involved, on March 8, 2015, Mr. Greene and Mr. Harris seeing Mr. Parker on Ivy Avenue shaking hands, and then when Mr. Parker began walking away, shooting Mr. Parker in the back of the head. Mr. Greene and another individual indicates began that shooting. Officers and medics arrived but Mr. Parker passed at the scene.

Then in Paragraph 28th, the murder of, as it references there, D.D. and J.R., Domingo Davis and Jada Richardson as we know now, they're referenced here as they are referenced in the indictment, early on April 6th, 2015, Mr. Hunt and Mr. Harris were on a moped looking for rival gang members. They located Domingo Davis in the area of Walker Village and shot at him. He was not injured. Later that same day, Sweetenburg, Richardson, Greene, Hunt and Harris were looking for Domingo Davis to retaliate against him and other members of the Walker Village Murder Gang. That evening, Sweetenburg, Harris, Hunt, Richardson and Greene were armed, having taken a Glock firearm belonging to T.S., and went looking for Domingo Davis to shoot and kill him. Sweetenburg joined in and agreed with their plan, but did not go to the crime scene. He eventually went to the residence of T.S. At approximately

10 p.m., Harris, Hunt, Richardson and Greene went to a residence in the 800 Block of 25th Street, a known hangout for members of the Walker Village Murder Gang. They were trying to retaliate for a gang-involved shooting they believed to have been done earlier in the day by Domingo Davis. When 36th Street Bang Squad members observed Domingo Davis walking in the front yard, they drew firearms and began shooting, striking Davis in the chest. They also struck Jada Richardson in the head. Both Domingo Davis and Jada Richardson died on the scene from their injuries.

After the shooting, Mr. Greene, Harris, Richardson, Hunt ran to Hunt's mother's residence where they discussed the murders. Later that same night, members of the Walker Village Murder Gang shot at Greene's residence in retaliation for the deaths of Domingo Davis and Jada Richardson.

Moving on to Paragraph 33. On July 21, 2015, Washington had a friend's mother purchase a .45 Taurus firearm for her. Washington wanted the firearm for protection. Washington was dating Greene at the time and gave the firearm to Greene. The firearm was later used on August 1st, 2015, to shoot at rival gang members.

Paragraph 34. On August 1, 2015, Douglas, Greene, Shields, Walker, Washington and another individual were at an apartment near the Solo Mart on Marshall Avenue. A female, K.M., called the apartment, and Greene answered the phone. K.M.

also, a 36th Street Bang Squad member, was screaming and asking Green to come to the Solo Mart as she and J.J., a male gang member, were being jumped. After the call, Greene grabbed the .45 caliber firearm purchased on July 21st, and Douglas and Shields followed him to the Solo Mart. As they were running towards the business, Greene gave Douglas the firearm. Douglas then kneeled down in the middle of the street and began shooting at rival gang members who were inside the store. During the shooting, J.P. was grazed by a bullet on her finger and neck, and J.P. was transported to a hospital and stitches were used there.

Paragraph 35. On August 4, 2015, Shields, Douglas, and other gang members were at a residence and were discussing Greene. They wanted to confront Mr. Greene and take his firearm from him because they believed he did not fully support gang activities, as he would not shoot at the Solo Mart on August 1st. They discussed shooting Greene if he did not give up his firearm. Douglas and other gang members were armed and went to the residence of Washington and Greene. Greene spoke with the gang members through a window, but police were called an everyone left before they arrived.

A few days later, on August 7, 2015, Mr. Greene Shields, Walker and Washington planned to burglarize a pawn shop to steal items which they could sell. They drove to Richmond. Due to heavy police presence, the group abandoned the first

target location and drove to Chesterfield County. They drove to the Captain D's restaurant located next to Southern Police Equipment, a federally licensed firearms dealer operating on Midlothian Turnpike. At approximately 3:30 a.m., Greene and Shields got out of the vehicle and ran to the back of the gun store. They attempted to disable any security measures at the business by removing the power box from the rear of the location. The men then used a stack of pallets to climb onto the roof the first-story unit. Once on the roof, the men kicked in a second-story air conditioning unit and dropped into the gun store showroom.

Although a portion of the business had no power because the power box had been removed, the video surveillance system remained functional. Surveillance footage captured Greene and Shields entering the building at about 4 a.m. They grabbed as many firearms as they could. The handguns were loaded into a black overnight bag which the men had brought with them to the location. 31 firearms were taken by Greene and Shields. They left the business and drove back to Newport News and the residence of Ryan Taybron. They delivered at least five firearms to Taybron. Immediately thereafter, Greene began contacting members of the Bang Squad. Several members of the gang arrived at the house and Greene gave them the stolen firearms.

On August 10, 2015, law enforcement officers located

Mr. Greene and other individuals at the Economy Inn & Suites in Newport News. Inside the hotel room, officers recovered five loaded firearms. Four of the five firearms were stolen from Southern Police Equipment. One of the firearms recovered from Greene was used in the Solo Mart shooting on August 1. Another five firearms stolen from the Southern Police Equipment were recovered from the residence of Ryan Taybron.

Moving on to Paragraph 40. In the morning of October 22, 2019, during the trial of this matter, the U.S. Marshal was attempting to line up the defendants in proper order to get them in the courtroom when Mr. Greene became loud and hesitant to line up. He advised "You all hide all you all's badges but you wouldn't last a minute" -- excuse me. "You all hide behind all you all's badges, but you wouldn't last a minute on the streets." The Marshal told Greene several times to get in line, then another Marshal overheard Greene say several times that the Marshal "could catch a hot one."

Paragraph 44 reflects that restitution has been requested with respect to the funeral expenses of Domingo Davis in the amount of $5,395.10.

It's also noted in Paragraph 46 that Mr. Greene submitted a declaration to the Court on April 27, 2020, in an attempt to diminish the role of his co-defendant, Geovanni Douglas in the shooting that took place on August 1, 2015. The defendant attempted to obstruct justice in the prosecution of

Mr. Douglas by claiming that Mr. Greene was the shooter in that incident. Witnesses, of course, testified at trial that Douglas was the shooter after Greene gave Douglas his firearm.

So that's the nature and circumstances of the offense.

The Court has also required to consider the defendant's history and characteristics, including his criminal history. The next section of the presentence report reflects that history.

We have Paragraph 100, the adjudication of, in 2012, oral threaten school personnel, findings withheld on that matter, and supervised probation was imposed. Subsequently it was dismissed. There was a disorderly conduct, evidence sufficient, finding upheld, ultimately found guilty of disorderly conduct and given 12 months and 11 months suspended for two years. A show cause was later issued in that matter and the revocation of the 11 months of previously imposed time and re-suspended 10 months. That was the sentence. And this was referenced in the argument and so I won't go into details of that incident at Heritage High School.

Then at age 17 we have obstruct justice, and defendant was given 12 months suspended for two years, and then there was a show cause that was revoked, 12 months of previously suspended time was reimposed and 11 months were resuspended. That involved brandishing of a firearm at a McDonald's restaurant. Police received a description of the suspect, stopped the

individual a short time later, and then somebody at the restaurant positively identified the person the officer stopped, and after the arrest a search revealed five large fixed-blade knives in a book bag ranging from five to eight inches long, and the individual was later identified as Mr. Greene, though he refused to provide identification to the officers.

We have at age 18 underage alcohol.

Age 20, trespassing passing after being forbidden.

Age 21 we have the theft of firearms that we mentioned earlier on which a sentence of 120 months was imposed.

Court is also required to consider defendant's history and characteristics. Paragraph 125 reviews the fact that Mr. Greene was born in Newport News to his parents. He and his three siblings were raised by his parents in Newport News. When he was about five, his father was arrested and convicted of drug-related offenses. He was incarcerated until about 2009.

Defendant reported his mother raised him alone until she met and married Ahmad Mardis. The defendant had a good relationship with his stepfather. He was in the U.S. Navy. The defendant's mother and Mr. Mardis separated when the defendant was about 13. His mother advised she moved to New York at the time with defendant's siblings; however, the defendant wanted to stay in Virginia, and he stayed with his grandmother for about a year, but there were difficulties in raising him and she brought him to New York to live with his mother, and his mother

explained that the defendant was born at 27 weeks and was diagnosed with ADHD and PTSD when he was an infant. He always had problems with being hyperactive and unable to focus on daily activities, she said.

The defendant stayed in New York for a couple years before moving to Fayetteville, North Carolina with his mother and siblings. After a short period of time, he moved back to Newport News with his mother. By this time, his father had been released from jail. He notes he was always provided with more than the basic necessities and that there was no physical or mental abuse in the family.

Defendant reported that his uncle Tonoi was shot and killed when the defendant was three or four years old, and at the time of that shooting the defendant was in his uncle's arms when his uncle was shot multiple times in the back and died.

The defendant's father resides in Hampton and he's employed, and his mother resides in Newport News, and there's a discussion here of the siblings also.

Paragraph 127 notes that the defendant resided with various family members, including his grandmother and aunt, until June of 2015. He provided support, and he later moved out in June of 2015 to live with Endyia Washington, his girlfriend.

The defendant has a son who was born after his arrest.

Defendant reports his overall general health is good. No history of serious illness, and he's not taking any

prescribed medications other than what's noted for his emotional health. He's allergic to shellfish and has been prescribed melatonin for sleep.

From a mental health standpoint, according to the Hampton Newport News Community Services Board psychiatric evaluation that was conducted in 2011, the defendant was diagnosed with ADHD when he was three. In 2000, the defendant was diagnosed with adjustment disorder, ADHD and enuresis in reaction to witnessing violence. It was noted that over time his diagnosis varied, including PTSD. He was prescribed Metadate and Zyprexa, and also noted that he burned down a church when he was eight years on old and has played with fire since them.

The defendant noted that he was stabbed when he was 14 and witnessed violence, including shootings in 2000. The evaluation also reported that the defendant's mother and maternal grandmother have a history of bipolar disorder.

Another assessment was conducted in 2011 which diagnosed defendant with Asperger's disorder and anxiety disorder, NOS. There's no indication that Mr. Greene received any treatment after August 29, 2012 from the Hampton Newport News Community Services Board. According to his Pretrial Services report from 2016, he had had prior suicidal thoughts, but not currently, and he had had hallucinations involving his cousin speaking to him after his cousin had passed.

While incarcerated in the Bureau of Prisons, the psychological staff did not express any mental health concerns for the defendant. According to records at the Western Tidewater Regional Jail, he's prescribed Buspirone for anxiety, Divalproex, which is prescribed to treat psychiatric disorders, and Sertraline, generally prescribed for depression anxiety attacks, PTSD or compulsive disorders.

From a substance abuse and treatment standpoint, Mr. Greene used marijuana as a teenager and used it weekly around 2010 and stopped using it in 2011. He also reports using MDMA once before the instant offense. He drank alcohol daily, according to his Pretrial Services report in 2016. He drank alcohol daily to the point of intoxication after his cousin's death in 2015 until his arrest a couple months later. He also reported using marijuana daily at the time of his arrest. He denies ever participating in any substance abuse treatment program, and there's no documented evidence to suggest otherwise until he was incarcerated.

Educationally, Mr. Greene last attended Heritage High School. He was withdrawn from school in 2011 for behavioral reasons while he was in the ninth grade. He earned his GED in December of 2017, according to records from the Bureau of Prisons. The defendant has not held a job, according to Paragraph 137.

The Court is, of course, required to consider the need

for the sentence to reflect the seriousness of the offense. One need do no more than look at the photographs, the exhibits that have been submitted, to understand the seriousness of this offense. And the government commented eloquently about the impact of this kind of behavior on a community. And you know, you only need look at the picture of the innocent bystander with the injuries to understand the kind of injuries that can occur when this kind of serious behavior takes place in a neighborhood, even for those innocent bystanders.

The Court is required to consider a sentence that promotes respect for the law and provides a just punishment; one that affords adequate deterrence, and one that protects the public. And as sad as the facts are here about the background of Mr. Greene and the things that he has faced in his relatively young life, the need to protect the public is paramount in the Court's mind in looking at these kind of facts to be considered, of course along with all of these other statutory sentencing factors. But it just stands out on these facts.

The Court is required to consider a sentence that avoids unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar offenses. And the government has made an argument with respect to that, particularly with reference to Mr. Hunt.

And the Court is of course required to consider the sentencing range under the guidelines, and in doing so, the

Court, when considering the appropriate sentence and arriving at a sentence that is sufficient but not greater than necessary to accomplish all the purposes of sentencing, the Court has taken into consideration all of the non-frivolous arguments for a downward variance that have been made, the premature birth, the struggle with hyperactivity and other disorders associated with witnessing a murder when he was a young child, the violence that he encountered in the neighborhood that was inflicted upon him, and his anxiety disorders, his mental health, other mental health issues, the fact that his father was in prison from the time he was five until 15, and his substance abuse issues, and that he grew up in a very challenging environment where criminal street gangs controlled the area, and the other information that I have recounted here from the presentence report. Because the Court of Appeals requires that I consider all the non-frivolous arguments for a downward variance before imposing sentence, Mr. Good, Ms. Austin, have I, in your estimation, considered and/or addressed all the non-frivolous arguments for a downward variance?

MR. GOOD: Yes, sir, I believe the Court has summarized the defense's non-frivolous arguments for a downward variance, yes, sir.

THE COURT: All right. Ms. Austin?

MS. AUSTIN: Yes, Your Honor.

THE COURT: All right. Mr. Greene, do you want to say

anything to your attorney? All right.

So after carefully considering the advisory guideline range and all the statutory sentencing factors, the Court is now prepared to impose sentence. In imposing sentence, I am mindful of the sentences previously imposed on other defendants in this case, and I've considered that along with all the other evidence that's been presented here.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Xavier Greene, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of life plus three life terms consecutive. The term consists of life on Count 1, Count 2, Count 6 and Count 8, and 120 months on Count 14, all to be served concurrently. Mr. Greene shall also be sentenced to a term of life on Count 3, life on Count 7, and life on Count 9, all to be served consecutive to each other and all other counts. The sentence shall be served concurrently to his previous federal sentence under Criminal Docket No. 4:15cr76.

Mr. Greene is remanded to the custody of the United States Marshal to serve this sentence.

Upon release from imprisonment, Mr. Greene shall be placed on supervised release for a term of five years. This term consists of five years on Count 1, five years on Count 2, five years on Count 3, and five years on Count 6, five years on Count 7, five years on Count 8, five years on Count 9, and three

years on Count 14, all to be served concurrently.

Also, within 72 hours of any release from custody of the Bureau of Prisons, Mr. Greene shall report in person to the probation office in the district where he is released.

He shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of beginning supervised release, and at least two periodic drug tests thereafter as directed by the probation officer.

While on any supervision, Mr. Greene shall not commit another federal, state or local crime, and shall not unlawfully possess a controlled substance, and shall not possess a firearm or a destructive device.

Mr. Greene shall comply with the standard conditions that have been adopted by this court for those placed on supervised release. In addition, the following conditions will apply:

The defendant shall earn a vocational skill during any period of supervision if not employed full-time. He shall pay for the support of his child in the amount ordered by a social service agency or court of competent jurisdiction, and shall register with the Department of Child Support Enforcement in any state where he resides.

He shall, if he tests positive for a controlled substance, participate in a program approved by the probation office for substance abuse treatment, which could include

residential treatment and testing to determine whether he's reverted to the use of drugs or alcohol, with partial costs to be paid by him to the extent he's capable, as directed by the probation officer, and he shall participate in a program approved by the probation office for mental health treatment, the costs of that program to be paid by him to the extent he's capable, as directed by the probation officer.

Mr. Greene shall waive all rights of confidentiality regarding substance abuse treatment and mental health treatment in order to allow the release of information to the U.S. probation office and authorize communication between the probation officer and the treatment provider.

Moreover, the defendant shall not have any contact with any known gang members during his period of supervision without prior approval from the probation officer.

And of course there's no appeal waiver here, so that is the reason that I'm imposing the special conditions even though we have life sentences.

The waiver of the confidentiality that I've imposed is to provide accountability and ensure that the defendant is actively participating in any therapy, so that if there's mental health treatment or substance abuse treatment and lack of full cooperation, that that can be told to the probation officer so the probation officer can assist. And that would be necessary, of course, if he was released from his prison term due to

anything that occurs on appeal in this matter or for any other reason, if the law changes or other actions are taken.

And also the special conditions are imposed here noting with respect to the ban on contact with gang members, and that's to ensure that the defendant does not revert to activities that put him and the public at risk for these, as we've talked about at length here today.

So the sentence imposed here today also includes a special assessment. I'm not going to impose any fine. Defendant's not capable of paying it. It makes no sense to do that. But for the special assessment, there will be $100 on each count for a total of $800.

Restitution shall be paid on Count 6 in the amount of $5,395.10 to Y.L. Defendant is jointly and severally liable for restitution with co-defendants Martin Hunt, Corey Sweetenburg and Deshaun Richardson.

Special assessment and restitution shall be paid in full -- excuse me, due in full immediately. Any balance remaining unpaid on them at the beginning of supervision shall be paid in installments of $50 a month until paid in full, said payments to commence 60 days after supervision begins.

Any special assessment and restitution payments may be subject to penalties for default and delinquency.

Nothing my order shall prohibit the collection of any judgment or fine by the United States. And since the Court's

judgment imposes imprisonment, payment of penalties is due during the period of imprisonment to the extent the defendant comes into money while there, and all criminal monetary penalty payments are to be made to the clerk of this court except those made through the Bureau of Prisons.

The defendant shall notify the U.S. Attorney for this district within 30 days of any change of name, residence or mailing address until all fines -- excuse me, until all restitution costs and special assessments imposed by the judgment in this case are fully paid.

The sentence imposed today, I do also note, is a guideline sentence, but more importantly, it's the appropriate sentence after giving careful consideration to each of the statutory sentencing factors. In practical terms, a sentence of imprisonment cannot really be in excess of life; however, the applicable firearm statutes call for consecutive sentences for each of the 924(j) offenses. In considering the proper sentence to impose on these consecutive firearm offenses, the Court considers the conduct underlying the offenses, including the deaths of three victims, as well as principles of deterrence and just punishment. In the context of this case, the Court finds that the three 924(j) offenses are vastly aggravated firearm offenses that are far more serious than a typical 924(c) offense, and on this record, regardless of any statutory minimums or the precise guideline recommendation, the 924(j)

offenses require far greater punishment than a 10-year mandatory minimum or a 924(c) offense involving simply discharging a firearm. The finding is consistent with Congress's decision to make 924(j) an aggravated offense with the maximum punishment of death; therefore, regardless of the minimum punishment provided by statute or recommended by the guidelines, the sentence of life for each of the 924(j) offenses seems appropriate and is appropriate in this case based on the senseless nature of the gang-motivated murder of Dwayne Parker and Domingo Davis and the murder of Jada Richardson, a 13-year-old victim with no real connection to any gang-related disputes of which the Court is aware, at least.

In considering these 3553(a) statutory sentencing factors, the Court has considered the entirety of Mr. Greene's offense conduct, his personal background and the sentences required on the other counts of conviction. And so I say that to address the reasons the Court acted as it did with respect to the various arguments and the sentences that were imposed.

With that, I will move on to the appellate rights.

Mr. Greene, you have the right to appeal the jury's verdict as well as the right to appeal your sentence if you believe that it was illegally or incorrectly imposed. If you wish to pursue an appeal, you must file a notice of appeal within 14 days from the entry of judgment. If you do not file the notice of appeal on time, you may lose your right to appeal.

You have the right to be assisted by an attorney on appeal. One will be appointed for you by the Court if you cannot afford to hire an attorney. You may be permitted to file the appeal without payment of the costs if you make a written request to do so. Also, if you make a request of the clerk's office, someone there will prepare and file the notice of appeal for you.

I've made a restitution -- there's no order, right?

MS. CROSS: That's correct, Your Honor.

THE COURT: Okay. There's no forfeiture?

MS. CROSS: No, Your Honor.

THE COURT: All right. So I'm going to recommend that Mr. Greene be housed as close to Hampton Roads, Virginia as possible so that he can have contact with his family and child. And I'm going to also recommend, in light of the information in the presentence report, that Mr. Greene be evaluated for mental health and emotional health, and he receive any treatment that is recommended for him.

Now, Mr. Greene was found guilty of eight counts charged in the second superseding indictment. While the other -- or I should say while the superseding indictment is being shown as dismissed on the Electronic Case Filing System, it appears that it was a clerk's office dismissal, and therefore it would appear to be appropriate to reiterate here and do that here and to dismiss the prior indictment on the record in the case.

MS. CROSS: We would so move, Your Honor.

THE COURT: All right. So that is granted. And so the superseding indictment as to Mr. Greene, that is dismissed.

Ms. Cross, have I addressed everything?

MS. CROSS: Yes, Your Honor.

THE COURT: Mr. Good, have I addressed everything?

MR. GOOD: Yes, Your Honor.

THE COURT: Ms. Austin, have I?

MS. CROSS: Yes, Your Honor.

THE COURT: Mr. Greene, I wish you well.

(Whereupon, proceedings concluded at 11:55 a.m.)

- - -

CERTIFICATION

I certify that the foregoing is a true, complete and correct transcript of the proceedings held in the above-entitled matter.

_____

Paul L. McManus, RMR, FCRR

_____

Date

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Newport News Division

UNITED STATES OF AMERICA

v.

MARTIN L. HUNT,
"O.G. Martin"
Defendant.

Case Number: 4:17cr52-001

USM Number: 91095-083
Defendant's Attorney: Lawrence Woodward, Jr.
Emily Munn

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty by a jury on Counts 1, 6, 7, 8, 9, 12, 13, 30, 31, 32 and 33 after a plea of not guilty on the Second Superseding Indictment. Additionally, the defendant was found not guilty on Counts 4 and 5 of the Second Superseding Indictment, and is discharged as to such counts.

Accordingly, the defendant is adjudged guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC Section 1962(d)	Racketeering Conspiracy	Felony	July 4, 2017	1
T. 18, USC Section 1959(a)(1) and 2	Murder in Aid of Racketeering Activity	Felony	April 6, 2015	6, 8
T. 18, USC Section 924(c)(1) and (j) and 2	Use of a Firearm Resulting in Death	Felony	April 6, 2015	7, 9
T. 18, USC Section 1959(a)(5) and 2	Attempt and Conspiracy to Commit Murder in Aid of Racketeering Activity	Felony	June 5, 2015	12
T. 18, USC Section 924(c)(1)(A) and 2	Possession of a Firearm in Furtherance of a Crime of Violence	Felony	June 5, 2015	13
T. 18, USC Section 1959(a)(5) and 2	Attempted Murder in Aid of Racketeering Activity	Felony	March 15, 2015	30, 32
T. USC Section 924(c)(1)(A) and 2	Discharge of a Firearm in Furtherance of a Crime of Violence	Felony	March 15, 2015	31, 33

As pronounced on May 6, 2021, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Case Number: **4:17cr52-001**
Defendant's Name: **HUNT, MARTIN L.**

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

Signed this 7th day of May, 2021.

/s/ MSD
Mark S. Davis
Chief Judge

Case Number: 4:17cr52-001
Defendant's Name: HUNT, MARTIN L.

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **LIFE, PLUS TWO CONSECUTIVE LIFE TERMS, PLUS THREE HUNDRED (300) MONTHS, CONSECUTIVE.**

The term consists of terms of LIFE on each of Counts 1, 6, and 8, and ONE HUNDRED-TWENTY (120) months on each of Counts 12, 30, and 32, all such sentences on Counts 1, 6, 8, 12, 30, and 32, to be served concurrently.

In addition to such concurrent terms, the following terms were imposed to run consecutively to each other and to all other counts: a term of LIFE on Count 7, LIFE on Count 9, SIXTY (60) months on Count 13, ONE HUNDRED-TWENTY (120) months on Count 31, and ONE HUNDRED-TWENTY (120) months on Count 33.

The Court makes the following recommendations to the Bureau of Prisons:

1) The defendant shall be incarcerated in a facility as close as possible to Hampton Roads, Virginia.
2) The defendant shall be evaluated for mental/emotional health treatment and shall receive any treatment necessary.

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

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: 4:17cr52-001
Defendant's Name: HUNT, MARTIN L.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS.** This term consists of a term of FIVE (5) YEARS on Counts 1, 6, 7, 8, 9, 13, 31, and 33, and a term of THREE (3) YEARS on Counts 12, 30, and 32, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: 4:17cr52-001
Defendant's Name: HUNT, MARTIN L.

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall obtain a G.E.D. or a vocational skill during his supervision if not employed full-time.

2) The defendant shall participate in a program approved by the United States Probation Office for mental health treatment. The cost of this program is to be paid by the defendant as directed by the Probation Officer.

3) The defendant shall waive all rights of confidentiality regarding mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.

4) The defendant shall not have any contact with any known gang members without prior approval from the Probation Officer.

Case Number: 4:17cr52-001
Defendant's Name: HUNT, MARTIN L.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

Count	Assessment	Fine	Restitution
1	$100.00	$0.00	$0.00
6	$100.00	$0.00	$5,395.10
7	$100.00	$0.00	$0.00
8	$100.00	$0.00	$0.00
9	$100.00	$0.00	$0.00
12	$100.00	$0.00	$0.00
13	$100.00	$0.00	$0.00
30	$100.00	$0.00	$0.00
31	$100.00	$0.00	$0.00
32	$100.00	$0.00	$0.00
33	$100.00	$0.00	$0.00
TOTALS:	**$1,100.00**	**$0.00**	**$5,395.10**

FINES

No fines have been imposed in this case.

RESTITUTION

Restitution shall be paid on Count 6 in the amount of $5,395.10 to Y.L.

The defendant is jointly and severally liable for restitution with the following co-defendants: Corey Sweetenburg (4:17cr00052-004), Xavier Greene (4:17cr00052-005) and Deshaun Richardson (dkt. #4:17cr00052-006) to the extent that restitution is ordered.

FORFEITURE

SEE CONSENT ORDER OF FORFEITURE ENTERED AND FILED ON MAY 6, 2021.

Case Number: 4:17cr52-001
Defendant's Name: HUNT, MARTIN L.

SCHEDULE OF PAYMENTS

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

The special assessment shall be due in full immediately.

Any balance remaining unpaid on the special assessment and restitution at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

Any special assessment and restitution may be subject to penalties for default and delinquency.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

Since this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including the special assessment, shall be due during the period of imprisonment. All criminal monetary penalty payments, including the special assessment, are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

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

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

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Newport News Division

UNITED STATES OF AMERICA

v.

Case Number: 4:17cr52-005

XAVIER GREENE,
a/k/a "BJ"
Defendant.

USM Number: 86164-083
Defendant's Attorney: Amy Austin
David Good

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty by a jury on Counts 1, 2, 3, 6, 7, 8, 9 and 14 after a plea of not guilty to the Second Superseding Indictment. The defendant was found not guilty on Count 15 of the Second Superseding Indictment, and is discharged as to such count.

Accordingly, the defendant is adjudged guilty of the following counts involving the indicated offenses.

Title and Section	Nature of Offense	Offense Class	Offense Ended	Count
T. 18, USC Section 1962(d)	Racketeering Conspiracy	Felony	July 4, 2017	1
T. 18, USC Section 1959(a)(1) and 2	Murder in Aid of Racketeering Activity	Felony	April 6, 2015	2,6,8
T. 18, USC Section 924(c)(1) and (j) and 2	Use of a Firearm Resulting in Death	Felony	April 6, 2015	3,7,9
T. 18, USC Section 1959(a)(5) and 2	Attempted Murder in Aid of Racketeering Activity	Felony	August 1, 2015	14

As pronounced on July 1, 2021, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Signed this 2nd day July, 2021.

/s/
Mark S. Davis
Chief Judge

Case Number: **4:17cr52-005**
Defendant's Name: **GREENE, XAVIER**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **LIFE PLUS THREE (3) LIFE TERMS, CONSECUTIVE**. This term of imprisonment consists of a term of LIFE on Count 1, Count 2, Count 6 and Count 8 and ONE HUNDRED TWENTY (120) MONTHS on Count 14, all to be served concurrently. Defendant shall also be sentenced to a term of LIFE on Count 3, LIFE on Count 7, and LIFE on Count 9, all to be served consecutive to each other and to all other counts. This sentence shall be served concurrently with Defendant's previous federal sentence under Dkt. #4:15cr76-001.

The Court makes the following recommendations to the Bureau of Prisons:

1) The defendant shall be incarcerated in a facility as close as possible to Hampton Roads, Virginia.
2) The defendant shall be evaluated for mental/emotional health treatment, and he shall receive any treatment that is recommended for him.

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

RETURN

I have executed this judgment as follows: _____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Case Number: **4:17cr52-005**
Defendant's Name: **GREENE, XAVIER**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS**. This term consists of a term of FIVE (5) YEARS on Count 1, FIVE (5) YEARS on Count 2, FIVE (5) YEARS on Count 3, FIVE (5) YEARS on Count 6, FIVE (5) YEARS on Count 7, FIVE (5) YEARS on Count 8, FIVE (5) YEARS on Count 9, and THREE (3) YEARS on Count 14, all to run concurrently.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court set forth below:

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance or any paraphernalia related to such substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer for a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Case Number: **4:17cr52-005**
Defendant's Name: **GREENE, XAVIER**

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release pursuant to this Judgment, the defendant shall also comply with the following additional special conditions:

1) The defendant shall learn a vocational skill during his period of supervision if not employed full-time.

2) The defendant shall pay for the support of his minor child in the amount ordered by any social service agency or court of competent jurisdiction, and shall register with the Department of Child Support Enforcement in any state in which he resides.

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

4) The defendant shall participate in a program approved by the United States Probation Office for mental health treatment. The cost of this program is to be paid by the defendant as directed by the Probation Officer.

5) The defendant shall waive all rights of confidentiality regarding substance abuse/mental health treatment in order to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider.

6) The defendant shall not have any contact with any known gang members without prior approval of the probation officer.

Case Number: **4:17cr52-005**
Defendant's Name: **GREENE, XAVIER**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	Count	Assessment	Fine	Restitution
	1	$100.00	$0.00	$0.00
	2	$100.00	$0.00	$0.00
	3	$100.00	$0.00	$0.00
	6	$100.00	$0.00	$5,395.10
	7	$100.00	$0.00	$0.00
	8	$100.00	$0.00	$0.00
	9	$100.00	$0.00	$0.00
	14	$100.00	$0.00	$0.00
TOTALS:		**$800.00**	**$0.00**	**$5,395.10**

FINES

No fines have been imposed in this case.

RESTITUTION

Restitution shall be paid on Count 6 in the amount of $5,395.10 to Y.L.

The defendant is jointly and severally liable for restitution with the following co-defendants: Martin L. Hunt, docket no. 4:17cr52-001, Corey Sweetenburg, docket no. 4:17cr52-004, and Deshaun Richardson, docket no. 4:17cr52-006.

Case Number: **4:17cr52-005**
Defendant's Name: **GREENE, XAVIER**

SCHEDULE OF PAYMENTS

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

The special assessment and restitution shall be due in full immediately.

Any balance remaining unpaid on the special assessment and restitution at the inception of supervision, shall be paid by the defendant in installments of not less than $50.00 per month, until paid in full. Said payments shall commence 60 days after defendant's supervision begins.

Any special assessment and restitution payments may be subject to penalties for default and delinquency.

Nothing in the court's order shall prohibit the collection of any judgment, fine, or special assessment by the United States.

Since this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including the special assessment, shall be due during the period of imprisonment. All criminal monetary penalty payments, including the special assessment, are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

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

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

FILED: May 17, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-4300
(4:17-cr-00052-MSD-RJK-6)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DESHAUN RICHARDSON, a/k/a Day Day

Defendant - Appellant

O R D E R

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

For the Court

/s/ Nwamaka Anowi, Clerk

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Virginia
Title 18.2. Crimes and Offenses Generally (Refs & Annos)
Chapter 3. Inchoate Offenses (Refs & Annos)
Article 2. Attempts (Refs & Annos)

VA Code Ann. § 18.2-26

§ 18.2-26. Attempts to commit felonies other than Class 1 felony offenses; how punished

Effective: July 1, 2021
Currentness

Except as provided in § 18.2-25, every person who attempts to commit an offense that is a felony shall be punished as follows:

(1) If the felony attempted is punishable by a maximum punishment of life imprisonment or a term of years in excess of twenty years, an attempt thereat shall be punishable as a Class 4 felony.

(2) If the felony attempted is punishable by a maximum punishment of twenty years' imprisonment, an attempt thereat shall be punishable as a Class 5 felony.

(3) If the felony attempted is punishable by a maximum punishment of less than twenty years' imprisonment, an attempt thereat shall be punishable as a Class 6 felony.

Credits
Acts 1975, c. 14; Acts 1975, c. 15; Acts 1994, c. 639. Amended by Acts 2021, Sp. S. I, c. 344, eff. July 1, 2021; Acts 2021, Sp. S. I, c. 345, eff. July 1, 2021.

Notes of Decisions (97)

VA Code Ann. § 18.2-26, VA ST § 18.2-26
The statutes and Constitution are current through the 2024 Regular Session and 2024 Special Session I cc. 1 and 2.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of Virginia
Title 18.2. Crimes and Offenses Generally (Refs & Annos)
Chapter 4. Crimes Against the Person (Refs & Annos)
Article 1. Homicide (Refs & Annos)

VA Code Ann. § 18.2-32

§ 18.2-32. First and second degree murder defined; punishment

Effective: July 1, 2021
Currentness

Murder, other than aggravated murder, by poison, lying in wait, imprisonment, starving, or by any willful, deliberate, and premeditated killing, or in the commission of, or attempt to commit, arson, rape, forcible sodomy, inanimate or animate object sexual penetration, robbery, burglary or abduction, except as provided in § 18.2-31, is murder of the first degree, punishable as a Class 2 felony.

All murder other than aggravated murder and murder in the first degree is murder of the second degree and is punishable by confinement in a state correctional facility for not less than five nor more than forty years.

Credits
Acts 1975, c. 14; Acts 1975, c. 15; Acts 1976, c. 503; Acts 1977, c. 478; Acts 1977, c. 492; Acts 1981, c. 397; Acts 1993, c. 463; Acts 1993, c. 490; Acts 1998, c. 281. Amended by Acts 2021, Sp. S. I, c. 344, eff. July 1, 2021; Acts 2021, Sp. S. I, c. 345, eff. July 1, 2021.

Notes of Decisions (2217)

VA Code Ann. § 18.2-32, VA ST § 18.2-32
The statutes and Constitution are current through the 2024 Regular Session and 2024 Special Session I cc. 1 and 2.

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