No. ____-____

IN THE

Supreme Court of the United States

DAVION BROWN, AKA KOKAINE, AKA KOKAINE REDD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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January 29, 2025

QUESTIONS PRESENTED

Whether the Second Circuit erred in denying Petitioner a *Franks*[1] hearing when confronted with evidence of government representatives lying to four successive Magistrates in order to search petitioner's cellphone.

Whether this Court should grant, vacate and remand (GVR) to require the Second Circuit reconsider its denial of a *Franks* hearing pursuant to 21 U.S.C. §2106 [2]

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[1] *Franks v. Delaware*, 438 U.S. 154,169 (1978). (" allowing an evidentiary hearing, after a suitable preliminary offer of material falsity, would not diminsih the importance and solemnity of the warrant-issuing process.")

[2] *Grzegorczyk v. United States*, 142 S.Ct.2580 (2022) ("Neither the Federal Government nor federal courts are immune from making mistakes) Justice Sotomayor dissent. See also *Lawrence v. Chater,* 516 U.S. 163, 168 (1996) ("This practice has some virtues. In an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the 'potential for unequal treatment' that is inherent in our inability to grant plenary review of all pending cases raising similar issues."

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CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the U.S. Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, an no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place go be searched, and the person or things to be seized.

JURISDICTION

The Second Circuit Court of Appeals entered judgement on November 25, 2024. This Court has jurisdiction under 28 U.S.C. §1254 (1).

SUMMARY ORDER BELOW

On November 25, 2024, the Second Circuit affirmed the district court's denial of petitioner's motion suppress in a Summary Order reported in *United States v. Brown*, 2024 U.S. App. LEXIS 29898. A1[3]. On January 3, 2025, the Second Circuit denied his Petition for rehearing or rehearing *en banc.* A16. The District Court Decision denying the motion to suppress is reproduced at A120.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Davion Brown, an inmate currently incarcerated at FCI at Otisville, N.Y. respectfully petitions this Court for a writ of certiorari to review the Summary

[3] "A" refers to pages of the Appendix

Order of the U.S Court of Appeals for the Second Circuit, dated November 25, 2024, which affirmed the district court's denial of petitioner's motion to suppress evidence extracted from his cellphone pursuant to a search warrant.

STATEMENT OF THE CASE

Petitioner was the target of a Joint Task Force investigation seeking evidence of his involvement in gang-war shooting episodes on Long Island. At all relevant times the Task Force knew that the petitioner lived in the home in which he was born, at 31 Walnut Road, Amityville, N.Y. The Task Force knowledge was based upon, among other things, petitioner's arrest and prosecution record and the T-Mobile cellphone records of family members who guaranteed payment for petitioner's cellphone usage. A49.

On April 13, 2023, the petitioner was indicted with four counts of gang related crimes. A28-29. Instead of attempting to arrest petitioner pursuant to a warrant (A41), the Task Force Officers proceeded to the USAO to seek a search warrant for CSLI .[4] In the first two applications, the Task Force Officers swore under oath that -- without CSLI -- the Task Force could not locate petitioner. A 51-53, 61-62.

[4] Cellphone Site Location Information (CSLI), maintained by T-Mobile, identifies the location of cell phones through transmission towers.

Three weeks later, the Task Force agents arrested the petitioner while he was home, alone, on the afternoon of May 4, 2023. Task Force Officer Michael Fernandez seized the petitioner's cell phone. A 70. At arraignment the next day, the AUSA represented to a third Magistrate that petitioner had "evaded capture until his arrest yesterday in Amityville, New York." A97.

In the fourth and final application leading to search petitioner's cellphone, Officer Fernandez likewise swore that petitioner had "evaded capture until his May 4, 2023, arrest," despite knowing that more than 880 CSLI transmissions had confirmed that petitioner remained in the Amityville area. A61,74. Significantly, the Officer relied upon FACEBOOK exchanges rather cellphone exchanges to carry out the crimes charged.A73-74.

Before the Second Circuit, petitioner's counsel urged the Court to enforce the exclusionary rule based upon the persistent falsehoods fostered upon the Magistrates.[5] The Second Circuit flatly rejected the argument and expressly refused to "*resolve this dispute or ask the District Court to do so*" (emphasis supplied) reasoning that "Brown effectively concedes that the agents would have lawfully and

[5] Archive Oral Argument: US v Herbert, 11/15/24, Dkt.No.24-362, File 30 at 13:50 to end. At: https://ww3.ca2.uscourts.gov/decisions/isysquery/033a58df-6ee1-4b65-994c-f8c6051f8567/104/doc/24-362.mp3

inevitably arrested him and seized his phones even without the challenged warrants." A5.

In a petition for rehearing, counsel challenged the alleged "concession" and pointed out that Officer Fernandez, in addition to repeating the falsehoods previously made by his fellow Task Force Officers, admitted that he relied on FACEBOOK exchanges. This admission confirmed petitioner's contention that there never was evidence to indicate that the petitioner had used his cellphone to commit the crimes charged. A11-12. On January 3, 2025, the Second Circuit denied the petition for rehearing --without comment. A16.

REASONS FOR GRANTING PETITION

Lying to Magistrates about material facts must be condemned at all costs to protect against searches of cellphones in violation of the Fourth Amendment. This Court has emphasized that more than 326 million use cellphones as an integral part of everyday life by people and their privacy must be assiduously guarded by Magistrates:

> a cellphone – almost a "feature of human anatomy"…. tracks nearly exactly the movements of its owner. While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time.

United States v. Carpenter, 585 U.S.at 301, 311 (2018). To deliberately refuse to resolve whether the Magstratwes were defrauded would encourage rather than

deter violations of the Fourth Amendment mandate that "an no Warrants shall issue, but upon probable cause, supported by Oath or affirmation."

Here the Second Circuit was confronted with compelling evidence that four Magistrates were subjected to repeated falsehoods which undermined their ability to assess the merits of the warrant applications. By the time the fourth application had been filed, the Magistrate could only conclude that the petitioner had been attempting to evade his arrest since the return of the indictment when, in truth and in fact, the Task Force Officers knew the opposite was true. It is self-evident that these falsehoods were intended to divert the Magistrates attention by covering up the fact that there was no evidence to support probable cause for issuance of the search warrant.

The AUSA's representation to the third Magistrate that petitioner had "evaded capture until his arrest yesterday in Amityville, New York" only served to perpetuate the Task Force's pernicious strategy.

Given these irrefutable facts, there was no practical, legal or justifiable reason for the Second Circuit to *refuse to resolve* these well-founded allegations. As stated in *Franks v. Delaware,* supra, at 171:

> There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to

> be false; and they should be accompanied by a statement of supporting reasons.

At a *Franks* hearing the Task Force Officers should be compelled to explain their sworn representations in the face of compelling evidence to the contrary and explain why there was no showing that petitioner's cellphone had been used at all. Absent a good faith explanation, it was the obligation of the Second Circuit, or the district court below, to bar the use of cellphone evidence pursuant to the exclusionary rule established more than 100 years ago in *Weeks v. United States,* 232 US 383 (1914). The purpose of the rule was restated by this Court

> The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force. (quoting from *United States v. Peltier*…)

United States v. Leon, 468 US 897 at 921 (1984).

In our opinion, the Second Circuit's refusal to "*resolve this dispute or ask the District Court to do so*" is tantamount to an abdication of judicial responsibility. For this reason we respectfully suggest that a GVR Order appears to be the most practicable, appropriate way to compel the Second Circuit to reconsider its denial of

a *Franks* hearing without placing an undue burden on this Court, the Second Circuit or the District Court below.

CONCLUSION

For the foregoing reasons, we pray that the Court grant certiorari and issue an GVR order requiring the Second Circuit to authorize *Franks* hearing to be held, and for such other relief the Court may deem just and proper.

Dated: Melville, New York
January 29, 2025

JOSEPH W. RYAN, JR., P.C

By: /s/ Joseph W. Ryan, Jr.
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APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 25th day of November, two thousand twenty-four.

PRESENT: AMALYA L. KEARSE,
REENA RAGGI,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 24-362-cr

DAVION BROWN, AKA KOKAINE, AKA KOKAINE REDD,

*Defendant-Appellant.**

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* The Clerk of Court is directed to amend the caption as set forth above.

Appendix A

FOR APPELLEE:	BRADLEY T. KING, Assistant United States Attorney (Nicholas J. Moscow, Assistant United States Attorney, *on the brief*), *for* Breon Peace, United States Attorney for the Eastern District of New York, Brooklyn, NY
FOR DEFENDANT-APPELLANT:	JOSEPH W. RYAN, JR., Melville Law Center, Melville, NY

Appeal from a judgment of the United States District Court for the Eastern District of New York (Gary R. Brown, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is AFFIRMED.

Davion Brown appeals from a judgment of conviction entered on February 6, 2024 in the United States District Court for the Eastern District of New York (Brown, *J.*), following a guilty plea to one count of unlawful discharge of a firearm during a crime of violence in violation of 18 U.S.C. § 924(c)(1)(A)(iii). The District Court sentenced Brown principally to ten years' imprisonment. We assume the parties' familiarity with the underlying facts and the record of prior proceedings, to which we refer only as necessary to explain our decision to affirm.

Under the terms of his plea agreement, Brown reserved the right to challenge on appeal the District Court's denial of his motion to suppress evidence obtained from three cell phones seized during his arrest. Brown does not challenge the validity of the post-arrest search warrant pursuant to which data was extracted from his phones. Instead, he argues that two pre-arrest search warrants — for prospective cell-site location information ("CSLI") and for the use of a cell-site simulator — contained material misstatements that should have led the District Court to grant the motion to suppress.[1]

"[W]e review a district court's conclusions of law *de novo* [and] its conclusions of fact for clear error." *United States v. Sandalo*, 70 F.4th 77, 86 (2d Cir. 2023). Because Brown does not challenge the post-arrest warrant to search his phone and relies instead upon a derivative suppression argument, a threshold question is whether the cell phone evidence was the "fruit" of the challenged CSLI or cell-site simulator warrants. *See Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir. 1999); *see also California v. Hodari D.*, 499 U.S. 621, 629 (1991) (reversing grant of suppression motion where evidence was "not the fruit"

[1] Brown initially argued that the District Court erred by denying the motion without first holding an evidentiary hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978). At oral argument, however, Brown withdrew the *Franks* argument.

of challenged seizure).

We conclude that it was not. The CSLI and cell-site simulator warrants provided evidence of the general and specific location of one of Brown's cell phones and, therefore, of Brown's likely movements between his indictment and arrest. Brown contends that investigators procured these warrants by falsely representing that they required the CSLI and cell-site simulator information to locate and arrest him. The Government vigorously denies falsity. We need not resolve this dispute or ask the District Court to do so. First, to procure a search warrant, the Government need show only probable cause to believe that the search will yield incriminating evidence—or, in this case, facilitate an authorized arrest. It need not show that it has exhausted other investigative means without success. *See United States v. Smith*, 9 F.3d 1007, 1014 (2d Cir. 1993) (holding search warrant application "need not relate unproductive or unsuccessful efforts in the course of the investigation"); *cf.* 18 U.S.C. § 2518(3) (requiring showing that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous" to obtain wiretap authorization).

Second, Brown's claim of falsity undermines his argument that the cell

phone evidence was the fruit of those pre-arrest warrants. Brown argues that one of the government agents relied upon the CSLI warrant when he dialed Brown's phone number to identify and seize Brown's phone. But government agents already knew Brown's phone number and cell phone subscription information by the time they executed the pre-arrest warrants. And Brown effectively concedes that the agents would have lawfully and inevitably arrested him and seized his phones even without the challenged warrants.

We therefore affirm the District Court's denial of the motion to suppress because the Government searched Brown's phones pursuant to a valid warrant and because that search "inevitably would have been conducted . . . irrespective of" the challenged pre-arrest searches. *See United States v. Thompson*, 35 F.3d 100, 105 (2d Cir. 1994).

CONCLUSION

We have considered Brown's remaining arguments and conclude that they are without merit. For the foregoing reasons, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

24-362-CR

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

JUSSIAH HERBERT, AKA LOKO, AKA LOKKOO BEENHOUNDIN,
BRANDON HICKS, AKA BANG SWOOP, AKA SWOOPY,
JANELL JOHNSON, AKA JAHH JAHH, AKA GIZZY,

Defendants,

DAVION BROWN, AKA KOKAINE, AKA KOKAINE REDD,

Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of New York

PETITION FOR REHEARING OR REHEARING *EN BANC*

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PRELIMINARY STATEMENT

Rule 40 Statement: Appellant Davion Brown respectfully seeks a rehearing with a suggestion for rehearing *en banc* of the attached summary order entered on November 25, 2024 ("SUMMARY ORDER") upon the ground that panel decision misapprehended the core of appellant's argument that the government manipulated Magistrates to grant search warrants in violation of Mr. Brown's privacy rights under the Fourth Amendment. Of exceptional importance is preserving the integrity of the search warrant process by implementing the exclusionary rule to deter blatant lying to Federal Magistrates.

Appellant's counsel had argued that the exclusionary rule should be implemented because the government procured cellphone search warrants through manipulative, deceptive means, including the return of the indictment to "cover-up" its lack of probable cause coupled with the blatant lies claiming that Mr. Brown had "evaded capture."[1] A143. The indictment camouflaged the fact that there was no probable cause to believe that the cellphone had been used to commit the crimes charged in the indictment. The blatant lies claimed that Mr. Brown had "evaded capture" until his arrest at his home at 31 Walnut Road, Amityville, N.Y.

[1] Archive Oral Argument: US v Herbert, 11/15/24, Dkt.No.24-362, File 30 at 13:50 to end.

In the first set of lies, made to Magistrate Lee Dunst, the Task Force agent swore that it needed a warrant for CSLI in order to locate and arrest Mr. Brown when the Task Force knew that Mr. Brown had always resided at 31 Walnut Road. A44.

In the second set of lies, made to Magistrate Steven Locke, the Task Force agent swore that "law enforcement has been unable to apprehend BROWN pursuant to the Court's warrant," despite the fact that the Task Force had received more than 880 cell tower hits confirming that Mr. Brown had not evaded the Amityville-Farmingdale area. A71.

In the third set of lies, made to Magistrate Anne Sheilds at arraignment, the AUSA claimed that Mr. Brown had "evaded capture until his arrest yesterday in Amityville, New York." A143

In the fourth set of lies, made to Magistrate Steven Tiscione, the Task Force agent claimed that Mr. Brown had "evaded capture until his May 4, 2023, arrest." A91.

Proof of the agents lies were well documented in Mr.Brown's prior arrest and prosecution record, his mother and sister's guarantee to pay his cellphone bills, his prior report to the Suffolk County Police Department concerning a disabled motorist, and his civil service job application---- all of which confirmed that Mr. Brown lived at 31 Walnut Road, Amityville. A44.

REASONS FOR GRANTING PANEL REHEARING AND REHEARING EN BANC

The Panel Decision rests on fundamental misapprehensions. The Panel's finding that "Brown does not challenge the post-arrest warrant to search his phone and relies instead upon a derivative claim suppression argument," is inaccurate. OP at 3. Mr. Brown did in fact challenge the post-arrest warrant. The government brief had argued that the post-arrest warrant "had nothing to do with the fact that law enforcement agents were permitted to learn about where Brown was travelling during the days between the indictment and apprehension" Our Reply brief challenged that proposition:

> This argument must likewise be rejected. Before U.S. Magistrate Steven Tiscione, HSI agent Michael Fernandez, a member of the Long Island Violent Gang and Narcotics Task Force, (A84-85), acknowledged that he had relied upon the search warrant previously issued by Magistrate Lee G. Dunst when he dialed 631-620-0965 ("BROWN'S Phone number") upon seizing Mr. Brown's cell phone. A89-90.

Moreover, agent Fernandez was a key player in the Task Force prosecution of Mr. Brown. Three weeks after indictment, the agent seized the cellphone when he found Mr. Brown "inside of a room in close proximity to [the cell phone]" at 31 Walnut Road on the afternoon of May 4,2023—without any difficulty or resistance. A87.

The Fernandez application further confirms that the government was unable to present evidence to Magistrate Tiscione that Mr. Brown's cellphone had been used to carry on the crimes charged. Nowhere does the agent indicate that

Mr.Brown's cellphone was used to facilitate the shooting episode charged in Counts 13 and 14, or the drug trafficking charged in Count 15. Our view is reinforced by the agent's reliance on exchanges with co-defendant Justin Herbert published on Herbert's FACEBOOK account which, in the agent's opinion, evidenced "drug trafficking." A91-97.

Proof that the cellphone was used to commit crimes is an essential element for a Magistrate to issue a warrant for CSLI or cellphone contents. *Carpenter v. United States*, 585 U.S.296 (2018) and *Riley v. California* 573 U.S. 373 (2014). Significantly, none of the Task Force applications brought these relevant decision to the attention of any one of the Magistrates. Nor have we found a similar Fed. R. Crim. Proc 41 application where the government relied on the return of an indictment as proof of "probable cause."

Another misapprehension stems from the Panel finding that "Brown effectively concedes that the agents would have lawfully and inevitability arrested him and seized his phones even without the challenged warrants." OP at 5. To the contrary, Brown challenged in his Reply Brief at 3:

> This argument must be rejected because the doctrine does not apply "where the affidavits were made with intent to deceive or mislead or reckless disregard for the truth, then the challenged evidence should have been suppressed." *United States v. Lauria*, 70 F4th 106, 132 (2d Cir 2023).

Moreover, the seizure incident to arrest does not relieve the government of its obligation to secure a proper warrant from the Magistrate to search its contents. *Riley v. California* , *supra,* at 643 (" Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.").

Although the Panel's reliance on *Townes v. City of New York,* 176 F.3d 138,145 (2d Cir.1999) OP at 5, did not involve cellphone privacy, it nonetheless serves to emphasize the Court's obligation to implement the exclusionary rule when confronted with gross misconduct in the search warrant process.

> The fruit of the poisonous tree doctrine is calculated "to deter future unlawful police conduct" and protect liberty by creating an incentive--avoidance of the suppression of illegally seized evidence--for state actors to respect the constitutional rights of suspects.(citations omitted). Like the exclusionary rule, the fruit of the poisonous tree doctrine "is a judicially created remedy designed to safeguard *Fourth Amendment* rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *Calandra, 414 U.S. at 348, 94 S. Ct. at 620*; *see United States v. Janis, 428 U.S. 433, 446-47, 96 S. Ct. 3021,3028, 49 L. Ed. 2d 1046 (1976)*

Townes at 146.

It bears repetition to state: "It is the price society must pay for preserving the integrity of the search warrant process under the Fourth Amendment." App. Br.at 9

CONCLUSION

Upon rehearing, the Panel Decision of November 25, 2024, should be vacated, the district court Order denying the motion to suppress should be vacated and the case remanded to the district court to proceed in accordance with the Panel's revised decision, or grant whatever relief the Panel deems appropriate

Dated: Melville, New York
December 3, 2024

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE WITH FRAP 32(A)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 1,189 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, 14 point font.

Dated: Melville, New York
December 3, 2024

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of January, two thousand twenty-five.

United States of America,

Appellee,

v.

Davion Brown, AKA KoKaine, AKA Kokaine Redd,

Defendant - Appellant.

ORDER

Docket No: 24-362

Appellant Davion Brown, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

Appendix C

MRM:BTK
F. #2021R00555/OCEDTF# NY-NYE-0925

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA

- against -

JUSSIAH HERBERT,
also known as "Loko" and
"Lokkoo BeenHoundin,"
BRANDON HICKS,
also known as "Bang Swoop"
and "Swoopy,"
DAVION BROWN,
also known as "Kokaine"
and "Kokaine Redd," and
JANELL JOHNSON,
also known as "Jahh Jahh"
and "Glizzy,"

Defendants.

----------X

INDICTMENT

Cr. No. CR 23 164

(T. 18, U.S.C., §§ 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 924(d)(1), 1959(a)(3), 1959(a)(5), 1959(a)(6), 1962(c), 1962(d), 1963, 1963(a), 1963(m), 2 and 3551 et seq.; T. 21, U.S.C., §§ 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C), 846, 853(a) and 853(p); T. 28, U.S.C., § 2461(c))

AZRACK, J.

LOCKE, M. J.

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

The Racketeering Enterprise

1. The Bloodhound Brims (hereinafter the "BHB" or the "Enterprise") was a violent street gang with members located throughout Long Island, New York, and elsewhere. The defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and JANELL JOHNSON, also known as "Jahh Jahh"

and "Glizzy," were BHB members. BHB members and associates have engaged in acts of violence, including acts involving murder, robbery and assault, as well as other criminal activity, including narcotics trafficking. Participation by a member or an associate in criminal activity, especially violence directed at rival gangs or anyone who disrespected the BHB, increased the respect accorded to that member or associate and could result in gaining entrance to the BHB or a promotion to a leadership position. Members of the BHB purchased, maintained and circulated a collection of firearms for use in criminal activity.

2. BHB, including its leadership, membership and associates, constituted an "enterprise" as defined in Title 18, United States Code, Section 1961(4), that is, a group of individuals associated in fact. The Enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the Enterprise. BHB was an organized criminal group that operated in the Eastern District of New York and elsewhere. BHB was engaged in, and its activities affected, interstate and foreign commerce.

3. BHB routinely held meetings to, among other things, plan criminal activity. At meetings, members paid dues into a treasury. The treasury funds were used to, among other things, purchase firearms and ammunition and assist members who had been arrested. BHB members sometimes signified their membership and allegiance to the gang by wearing the color red, displaying special hand signals and tattoos.

Purposes of the Enterprise

4. The purposes of the Enterprise included the following:

(a) Promoting and enhancing the prestige, reputation and position of the Enterprise with respect to rival criminal organizations.

(b) Preserving and protecting the power, territory and criminal ventures of the Enterprise through the use of intimidation, threats of violence and acts of violence, including assault and murder.

(c) Keeping victims and rivals in fear of the Enterprise and its members and associates.

(d) Enriching the members and associates of the Enterprise through criminal activity, including robbery and drug trafficking.

(e) Ensuring discipline within the Enterprise and compliance with the Enterprise's rules by members and associates through threats of violence and acts of violence.

Means and Methods of the Enterprise

5. Among the means and methods by which the members and their associates conducted and participated in the conduct of the affairs of the Enterprise were the following:

(a) Members of the Enterprise and their associates committed, attempted to commit and threatened to commit acts of violence, including acts involving murder, robbery and assault, to enhance the Enterprise's prestige and protect and expand the Enterprise's criminal operations.

(b) Members of the Enterprise and their associates used and threatened to use physical violence against various individuals, including members of rival criminal organizations and Enterprise members who violated the Enterprise's rules.

(c) Members of the Enterprise and their associates used, attempted to use and conspired to use robbery and drug trafficking as means of obtaining money.

COUNT ONE
(Racketeering)

6. The allegations contained in paragraphs one through five are realleged and incorporated as if fully set forth in this paragraph.

7. In or about and between June 2018 and the date of this Indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, being persons employed by and associated with BHB, an enterprise engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly and intentionally conduct and participate, directly and indirectly, in the conduct of the affairs of BHB through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, Sections 1961(1) and 1961(5), consisting of the racketeering acts set forth below.

RACKETEERING ACT ONE
(Attempted Murder of John Doe #1)

8. On or about August 16, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT and BRANDON HICKS, together with others, did knowingly and intentionally attempt to cause the death of another person, to wit: John Doe #1, an individual whose identity is known to the Grand Jury, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

RACKETEERING ACT TWO
(Attempted Murder of John Doe #2)

9. On or about August 25, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT and BRANDON HICKS, together with others, did knowingly and intentionally attempt to cause the death of another person, to wit: John Doe

#2, an individual whose identity is known to the Grand Jury, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

RACKETEERING ACT THREE
(Attempted Murder of John Doe #3)

10. On or about October 15, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT and BRANDON HICKS, together with others, did knowingly and intentionally attempt to cause the death of another person, to wit: John Doe #3, an individual whose identity is known to the Grand Jury, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

RACKETEERING ACT FOUR
(Attempted Murder of John Doe #4, John Doe #5 and John Doe #6)

11. On or about September 15, 2021, within the Eastern District of New York and elsewhere, the defendant JUSSIAH HERBERT, together with others, did knowingly and intentionally attempt to cause death of another person, to wit: John Doe #4, John Doe #5 and John Doe #6, individuals whose identities are known to the Grand Jury, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

RACKETEERING ACT FIVE
(Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances)

12. In or about and between June 2018 and the date of this Indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT and BRANDON HICKS, together with others, did knowingly and intentionally conspire to distribute and possess with intent to distribute one or more controlled substances, which offense involved (a) a substance containing cocaine, a Schedule II controlled substance; (b) a substance containing heroin, a Schedule I controlled

substance; (c) a substance containing N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide ("fentanyl"), a Schedule II controlled substance; and (d) a substance containing cocaine base, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

(Title 18, United States Code, Sections 1962(c), 1963 and 3551 et seq.)

COUNT TWO
(Racketeering Conspiracy)

13. The allegations contained in paragraphs one through five are realleged and incorporated as if fully set forth in this paragraph.

14. In or about and between June 2018 and the date of this Indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, being persons employed by and associated with BHB, an enterprise that engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly and intentionally conspire to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of BHB through a pattern of racketeering activity, as that term is defined in Title 18, United States Code, Sections 1961(1) and 1961(5).

15. The pattern of racketeering activity through which the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of BHB, consisted of the racketeering acts set forth in paragraphs eight through 12 of Count One of this Indictment, as

Racketeering Acts One through Five, which are realleged and incorporated as if fully set forth in this paragraph. It was part of the conspiracy that HERBERT and HICKS each agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of BHB.

(Title 18, United States Code, Sections 1962(d), 1963 and 3551 et seq.)

COUNT THREE
(Attempted Murder in Aid of Racketeering – John Doe #1)

16. At all times relevant to this Indictment, BHB, as more fully described in paragraphs one through five, which are realleged and incorporated as if fully set forth in this paragraph, including its leadership, membership and associates, constituted an "enterprise" as defined in Section 1959(b)(2) of Title 18, United States Code, 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 ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the Enterprise.

17. At all times relevant to this Indictment, BHB, 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, acts and threats involving murder and robbery, chargeable under New York Penal Law and punishable by imprisonment of more than one year and offenses involving trafficking of controlled substances, punishable under Title 21, United States Code, Sections 841 and 846.

18. On or about August 16, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise

engaged in racketeering activity, did knowingly and intentionally attempt to murder John Doe #1, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

(Title 18, United States Code, Sections 1959(a)(5), 2 and 3551 et seq.)

COUNT FOUR

(Assault With a Dangerous Weapon in Aid of Racketeering – John Doe #7 and Jane Doe)

19. The allegations contained in paragraphs one through five, 16 and 17 are realleged and incorporated as if fully set forth in this paragraph.

20. On or about August 16, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise engaged in racketeering activity, with the intent to assault another person, to wit: a rival gang member, did knowingly and intentionally assault with a dangerous weapon, to wit: a firearm, John Doe #7 and Jane Doe, individuals whose identities are known to the Grand Jury, in violation of New York Penal Law Sections 120.05(2) and 20.00.

(Title 18, United States Code, Sections 1959(a)(3), 2 and 3551 et seq.)

COUNT FIVE

(Brandishing and Discharging Firearms During Crimes of Violence: Attempted Murder of John Doe #1 and Assault of John Doe #7 and Jane Doe)

21. On or about August 16, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to one or more crimes of violence, to wit: the crimes charged in Counts Three and Four,

and did knowingly and intentionally possess said firearms in furtherance of such crimes of violence, which firearms were brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 et seq.)

COUNT SIX
(Attempted Murder in Aid of Racketeering – John Doe #2)

22. The allegations contained in paragraphs one through five, 16 and 17 are realleged and incorporated as if fully set forth in this paragraph.

23. On or about August 25, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder John Doe #2, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

(Title 18, United States Code, Sections 1959(a)(5), 2 and 3551 et seq.)

COUNT SEVEN
(Assault With a Dangerous Weapon in Aid of Racketeering – John Doe #8)

24. The allegations contained in paragraphs one through five, 16 and 17 are realleged and incorporated as if fully set forth in this paragraph.

25. On or about August 25, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise engaged in racketeering activity, with the intent to assault another person, to wit: a rival gang

member, did knowingly and intentionally assault with a dangerous weapon, to wit: a firearm, John Doe #8, an individual whose identity is known to the Grand Jury, in violation of New York Penal Law Sections 120.05(2) and 20.00.

(Title 18, United States Code, Sections 1959(a)(3), 2 and 3551 et seq.)

COUNT EIGHT

(Brandishing and Discharging Firearms During Crimes of Violence: Attempted Murder of John Doe #2 and Assault of John Doe #8)

26. On or about August 25, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to one or more crimes of violence, to wit: the crimes charged in Counts Six and Seven, and did knowingly and intentionally possess said firearms in furtherance of such crimes of violence, which firearms were brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 et seq.)

COUNT NINE

(Attempted Murder in Aid of Racketeering – John Doe #3)

27. The allegations contained in paragraphs one through five, 16 and 17 are realleged and incorporated as if fully set forth in this paragraph.

28. On or about October 15, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise

engaged in racketeering activity, did knowingly and intentionally attempt to murder John Doe #3, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

(Title 18, United States Code, Sections 1959(a)(5), 2 and 3551 et seq.)

COUNT TEN
(Assault With a Dangerous Weapon in Aid of Racketeering – John Doe #3)

29. The allegations contained in paragraphs one through five, 16 and 17 are realleged and incorporated as if fully set forth in this paragraph.

30. On or about October 15, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise engaged in racketeering activity, did knowingly and intentionally assault another individual, to wit: John Doe #3, with a dangerous weapon, to wit: a firearm, in violation of New York Penal Law Sections 120.05(2) and 20.00.

(Title 18, United States Code, Sections 1959(a)(3), 2 and 3551 et seq.)

COUNT ELEVEN
(Brandishing and Discharging Firearms
During Crimes of Violence: Attempted Murder and Assault of John Doe #3)

31. On or about October 15, 2020, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to one or more crimes of violence, to wit: the crimes charged in Counts Nine and Ten,

and did knowingly and intentionally possess said firearms in furtherance of such crimes of violence, which firearms were brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 et seq.)

COUNT TWELVE

(Attempted Murder in Aid of Racketeering – John Doe #4, John Doe #5 and John Doe #6)

32. The allegations contained in paragraphs one through five, 16 and 17 are realleged and incorporated as if fully set forth in this paragraph.

33. On or about September 15, 2021, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and JANELL JOHNSON, also known as "Jahh Jahh" and "Glizzy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to murder John Doe #4, John Doe #5 and John Doe #6, in violation of New York Penal Law Sections 125.25(1), 20.00 and 110.00.

(Title 18, United States Code, Sections 1959(a)(5), 2 and 3551 et seq.)

COUNT THIRTEEN

(Attempted Assault With a Dangerous Weapon in Aid of Racketeering – John Doe #4, John Doe #5 and John Doe #6)

34. The allegations contained in paragraphs one through five and 16 through 17 are realleged and incorporated as if fully set forth in this paragraph.

35. On or about September 15, 2021, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and

JANELL JOHNSON, also known as "Jahh Jahh" and "Glizzy," together with others, for the purpose of maintaining and increasing position in BHB, an enterprise engaged in racketeering activity, did knowingly and intentionally attempt to assault other individuals, to wit: John Doe #4, John Doe #5 and John Doe #6, with a dangerous weapon, to wit: a firearm, in violation of New York Penal Law Sections 120.05(2), 20.00 and 110.00.

(Title 18, United States Code, Sections 1959(a)(6), 2 and 3551 et seq.)

COUNT FOURTEEN
(Brandishing and Discharging Firearms
During a Crime of Violence: Attempted Murder and Attempted Assault of
John Doe #4, John Doe #5 and John Doe #6)

36. On or about September 15, 2021, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and JANELL JOHNSON, also known as "Jahh Jahh" and "Glizzy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to one or more crimes of violence, to wit: the crimes charged in Counts Twelve and Thirteen, and did knowingly and intentionally possess said firearms in furtherance of such crimes of violence, which firearms were brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 et seq.)

COUNT FIFTEEN
(Conspiracy to Distribute Controlled Substances)

37. In or about and between June 2018 and the date of this Indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin,"

BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," and DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," together with others, did knowingly and intentionally conspire to distribute and possess with intent to distribute one or more controlled substances, which offense involved (a) a substance containing cocaine, a Schedule II controlled substance; (b) a substance containing heroin, a Schedule I controlled substance; (c) a substance containing fentanyl, a Schedule II controlled substance, and (d) a substance containing cocaine base, a Schedule II controlled substance, contrary to Title 21, United States Code, Section 841(a)(1). The amount of cocaine, heroin and fentanyl involved in the conspiracy attributable to each defendant as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him, was (a) 500 grams or more of a substance containing cocaine; (b) 100 grams or more of a substance containing heroin; and (c) 40 grams or more of a substance containing fentanyl.

(Title 21, United States Code, Sections 846, 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi) and 841(b)(1)(C); Title 18, United States Code, Sections 3551 et seq.)

COUNT SIXTEEN
(Unlawful Use of Firearms
in Connection with a Drug Trafficking Crime)

38. In or about and between June 2018 and the date of this Indictment, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," and BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to a drug

trafficking crime, to wit: the crime charged in Count Fifteen, and did knowingly and intentionally possess said firearms in furtherance of such drug trafficking crime.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 2 and 3551 et seq.)

COUNT SEVENTEEN
(Distribution and Possession with Intent to Distribute Cocaine)

39. On or about October 28, 2019, within the Eastern District of New York and elsewhere, the defendant BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally distribute and possess with intent to distribute a controlled substance, which offense involved a substance containing cocaine, a Schedule II controlled substance.

(Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT EIGHTEEN
(Brandishing and Discharging Firearms
in Connection with a Drug Trafficking Crime)

40. On or about October 28, 2019, within the Eastern District of New York and elsewhere, the defendant BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to a drug trafficking crime, to wit: the crime charged in Count Seventeen, and did knowingly and intentionally possess said firearms in furtherance of such drug trafficking crime, which firearms were brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 et seq.)

COUNT NINETEEN
(Distribution and Possession with Intent to Distribute Cocaine Base)

41. On or about October 15, 2020, within the Eastern District of New York and elsewhere, the defendant BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally distribute and possess with intent to distribute a controlled substance, which offense involved a substance containing cocaine base, a Schedule II controlled substance.

(Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT TWENTY
(Brandishing and Discharging Firearms
in Connection with a Drug Trafficking Crime)

42. On or about October 15, 2020, within the Eastern District of New York and elsewhere, the defendant BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to a drug trafficking crime, to wit: the crime charged in Count Nineteen, and did knowingly and intentionally possess said firearms in furtherance of such drug trafficking crime, which firearms were brandished and discharged.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 2 and 3551 et seq.)

COUNT TWENTY-ONE
(Possession with Intent to Distribute Controlled Substances)

43. On or about October 29, 2020, within the Eastern District of New York and elsewhere, the defendant BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally possess with intent to distribute one or

more controlled substances, which offense involved (a) a substance containing cocaine base, a Schedule II controlled substance; (b) a substance containing fentanyl, a Schedule II controlled substance; and (c) a substance containing cocaine, a Schedule II controlled substance.

(Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C); Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT TWENTY-TWO
(Unlawful Use of Firearms
in Connection with a Drug Trafficking Crime)

44. On or about October 29, 2020, within the Eastern District of New York and elsewhere, the defendant BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," together with others, did knowingly and intentionally use and carry one or more firearms during and in relation to a drug trafficking crime, to wit: the crime charged in Count Twenty-One, and did knowingly and intentionally possess said firearms in furtherance of such drug trafficking crime.

(Title 18, United States Code, Sections 924(c)(1)(A)(i), 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS ONE AND TWO

45. The United States hereby gives notice to the defendants charged in Counts One and Two that, upon their conviction of either of such offenses, the government will seek forfeiture in accordance with Title 18, United States Code, Section 1963(a), which requires any person convicted of such offenses to forfeit: (a) any interest the person acquired or maintained in violation of Title 18, United States Code, Section 1962; (b) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which the person has established, operated, controlled, conducted or participated in the conduct of, in violation of Title 18, United States Code, Section 1962; and (c) any property

constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity in violation of Title 18, United States Code, Section 1962, including but not limited to: (1) the following firearms seized on or about October 29, 2020, from a residence on Marlo Lane in Hauppauge, New York:

(a) one Intratec Model TEC-9, 9mm pistol and ammunition contained therein;

(b) one Feather Industries (AWI) Model AT-9, 9mm rifle;

(c) one Mossberg Model 500A 12 gauge shotgun and ammunition contained therein; and

(d) one Masterpiece Arms Model MPA Defender, 9mm pistol and ammunition contained therein;

(2) the following firearms seized on or about October 29, 2020, from inside a 2012 blue Infinity G37 vehicle in the vicinity of Express Drive North in Hauppauge, New York:

(a) a Smith & Wesson Model SD9VE, 9mm pistol and ammunition contained therein;

(b) a black and green Polymer P80, Model PF940V2, 9mm pistol and ammunition contained therein; and

(c) a black and tan Polymer P80, Model PF940V2, 9mm pistol and ammunition contained therein;

(3) one Glock Model 48, 9mm pistol and ammunition contained therein, which was seized on or about December 8, 2021, from a residence on Thompson Drive in Bay Shore, New York; and (4) the following firearms seized on or about September 16, 2021, in the vicinity of Great Neck Road in North Amityville, New York:

(a) a defaced Taurus .380 pistol;

(b) a Glock 19 9mm pistol bearing serial number BEYM239 and ammunition contained therein; and

(c) a Masterpiece Arms 9mm MPS Defender bearing serial number FX19363.

46. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or 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 which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 1963(m), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 1963(a) and 1963(m))

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS THREE THROUGH FOURTEEN, SIXTEEN, EIGHTEEN,
TWENTY AND TWENTY-TWO

47. The United States hereby gives notice to the defendants charged in Counts Three through Fourteen, Sixteen, Eighteen, Twenty and Twenty-Two that, upon their conviction of any of such offenses, the government will seek forfeiture in accordance with Title 18, United States Code, Section 924(d)(1) and Title 28, United States Code, Section 2461(c), which require the forfeiture of any firearm or ammunition involved in or used in any knowing violation of Title 18, United States Code, Section 922 or Section 924, or involved in or used in any violation of any other criminal law of the United States, including but not limited to: (1) the following firearms seized on or about October 29, 2020, from a residence on Marlo Lane in Hauppauge, New York:

(a) one Intratec Model TEC-9, 9mm pistol and ammunition contained therein;

(b) one Feather Industries (AWI) Model AT-9, 9mm rifle;

(c) one Mossberg Model 500A 12 gauge shotgun and ammunition contained therein; and

(d) one Masterpiece Arms Model MPA Defender, 9mm pistol and ammunition contained therein;

(2) the following firearms seized on or about October 29, 2020, from inside a 2012 blue Infinity G37 vehicle in the vicinity of Express Drive North, Hauppauge, New York:

(a) a Smith & Wesson Model SD9VE, 9mm pistol and ammunition contained therein;

(b) a black and green Polymer P80, Model PF940V2, 9mm pistol and ammunition contained therein; and

(c) a black and tan Polymer P80, Model PF940V2, 9mm pistol and ammunition contained therein;

(3) one Glock Model 48, 9mm pistol and ammunition contained therein, which was seized on or about December 8, 2021 from a residence on Thompson Drive in Bay Shore, New York; and

(4) the following firearms seized on or about September 16, 2021, in the vicinity of Great Neck Road in North Amityville, New York:

(a) a defaced Taurus .380 pistol;

(b) a Glock 19 9mm pistol bearing serial number BEYM239 and ammunition contained therein; and

(c) a Masterpiece Arms 9mm MPS Defender bearing serial number FX19363.

48. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or 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 which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 924(d)(1); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS FIFTEEN, SEVENTEEN, NINETEEN AND TWENTY-ONE

49. The United States hereby gives notice to the defendants charged in Counts Fifteen, Seventeen, Nineteen and Twenty-One that, upon their conviction of any of such offenses, the government will seek forfeiture in accordance with Title 21, United States Code, Section 853(a), which requires any person convicted of such offenses to forfeit: (a) any property constituting, or derived from, any proceeds obtained directly or indirectly as the result of such offenses; and (b) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offenses, including but not limited to: (1) the following firearms seized on or about October 29, 2020 from a residence on Marlo Lane in Hauppauge, New York:

(a) an Intratec Model TEC-9, 9mm pistol and ammunition contained therein;

(b) a Feather Industries (AWI) Model AT-9, 9mm rifle;

(c) a Mossberg Model 500A 12 gauge shotgun and ammunition contained therein; and

(d) a Masterpiece Arms Model MPA Defender, 9mm pistol and ammunition contained therein;

(2) the following firearms seized on or about October 29, 2020 from inside a 2012 blue Infinity G37 vehicle in the vicinity of Express Drive North in Hauppauge, New York:

(a) a Smith & Wesson Model SD9VE, 9mm pistol and ammunition contained therein;

(b) a black and green Polymer P80, Model PF940V2, 9mm pistol and ammunition contained therein; and

(c) a black and tan Polymer P80, Model PF940V2, 9mm pistol and ammunition contained therein;

(3) one Glock Model 48, 9mm pistol and ammunition contained therein, which was seized on or about December 8, 2021 from a residence on Thompson Drive in Bay Shore, New York; and

(4) the following firearms seized on or about September 16, 2021, in the vicinity of Great Neck Road in North Amityville, New York:

(a) a defaced Taurus .380 pistol;

(b) a Glock 19 9mm pistol bearing serial number BEYM239 and ammunition contained therein; and

(c) a Masterpiece Arms 9mm MPS Defender bearing serial number FX19363.

50. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or 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;

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 21, United States Code, Sections 853(a) and 853(p))

A TRUE BILL

Kevin J. Trudeau

FOREPERSON

By Carolyn Pokorny, Assistant U.S. Attorney

BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

F.#: 2021R00555
FORM DBD-34
JUN. 85

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin,"
BRANDON HICKS, also known as "Bang Swoop" and "Swoopy,"
DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and
JANELL JOHNSON, also known as "Jahh Jahh" and "Glizzy,"

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 924(c)(1)(A)(i), 924(c)(1)(A)(ii), 924(c)(1)(A)(iii), 924(d)(1), 1959(a)(3), 1959(a)(5), 1959(a)(6), 1962(c), 1962(d), 1963, 1963(a), 1963(m), 2 and 3551 et seq.; T. 21, U.S.C., §§ 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C), 846, 853(a) and 853(p); T. 28, U.S.C., § 2461(c))

A true bill.

Kevin J. Trudeau

_____ *Foreperson*

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

_____ *Clerk*

Bail, $ _____

_____

Bradley T. King, Assistant U.S. Attorney (631) 715-7900

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

United States of America
v.

DAVION BROWN,
also known as "Kokaine" and
"Kokaine Redd"

Defendant

Case No. CR 23 164
AZRACK, J.
LOCKE, M. J.

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested) DAVION BROWN, also known as "Kokaine" and "Kokaine Redd",

who is accused of an offense or violation based on the following document filed with the court:

☑ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☐ Complaint

☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

In Violation of:

Title 18, U.S.C. Sections 1959(a)(5) - Attempted Murder in Aid of Racketeering
Title 18, U.S.C. Sections 1959(a)(6) - Attempted Assault With a Dangerous Weapon in Aid of Racketeering
Title 18, U.S.C. Sections 924(c)(1)A)(i), 924(c)(1)(A)(ii), 924(c)(A)(iii) - Brandishing and Discharging Firearms During Crimes of Violence

Date: 04/13/2023

/s/ Arlene R. Lindsay
Issuing officer's signature

City and state: Central Islip, New York

ARLENE R. LINDSAY
HONORABLE ~~JAMES M. WICKS~~
Printed name and title

Return

This warrant was received on *(date)* _____, and the person was arrested on *(date)* _____
at *(city and state)* _____.

Date: _____

Arresting officer's signature

Printed name and title

Appendix E

Appendix F

ATTACHMENT A

Property to Be Searched

1. The cellular telephone assigned call number 631-620-0965, with listed subscriber Davion Brown (the "Target Cell Phone"), whose service provider is T-Mobile US, Inc. (the "Provider"), a wireless telephone service provider headquartered at 4 Sylvan Way, Parsippany, New Jersey 07054.

2. Records and information associated with the Target Cell Phone that is within the possession, custody, or control of the PROVIDER.

ATTACHMENT B

Particular Things to be Seized

I. Information to be Disclosed by the PROVIDER

All information about the location of the Target Cell Phone described in Attachment A for a period of thirty days, during all times of day and night. "Information about the location of the Target Cell Phone" includes all available E-911 Phase II data, GPS data, latitude-longitude data, and other precise location information, as well as all data about which "cell towers" (i.e., antenna towers covering specific geographic areas) and "sectors" (i.e., faces of the towers) received a radio signal from the cellular telephone described in Attachment A.

To the extent that the information described in the previous paragraph (hereinafter, "Location Information") is within the possession, custody, or control of the PROVIDER, the PROVIDER is required to disclose the Location Information to the government. In addition, the PROVIDER must furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the Location Information unobtrusively and with a minimum of interference with the PROVIDER's services, including by initiating a signal to determine the location of the Target Cell Phone on the PROVIDER's network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall compensate the PROVIDER for reasonable expenses incurred in furnishing such facilities or assistance.

This warrant does not authorize the seizure of any tangible property. In approving this warrant, the Court finds reasonable necessity for the seizure of the Location Information. *See* 18 U.S.C. § 3103a(b)(2).

II. Information to Be Seized by the Government

All information described above in Section I that will assist in arresting DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," who was charged with violations of Title 18, United States Code, Sections 924(c) (Using, Carrying, Brandishing and Discharging Firearms in Connection with Crimes of Violence), 1959 (Attempted Murder and Attempted Assault in Aid of Racketeering) and Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C) and 846 (Possession with Intent to Distribute, Distribution and Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, including more than 40 grams of fentanyl, more than 100 grams of heroin and more than 500 grams of cocaine) in Indictment 23-CR-164 (JMA) (Sealed) and who is the subject of an arrest warrant issued on April 13, 2023, and thus is a "person to be arrested" within the meaning of Federal Rule of Criminal Procedure 41(c)(4).

Law enforcement personnel (who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, agency personnel assisting the government in this investigation, and outside technical experts under government control) are authorized to review the records produced by the Provider in order to locate the things particularly described in this Warrant.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE SEARCH OF THE CELLULAR TELEPHONE ASSIGNED CALL NUMBER 631-620-0965	Case No. 23-MJ-367 (LGD) **Filed Under Seal**

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT

I, TYLER DAVILA, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 and 18 U.S.C. §§ 2703(c)(1)(A) for information about the location of the cellular telephone assigned call number 631-620-0965, with listed subscriber DAVION BROWN (the "Target Cell Phone"), whose service provider is T-Mobile US, Inc. (the "PROVIDER"), a wireless telephone service provider headquartered at 4 Sylvan Way, Parsippany, New Jersey 07054. The Target Cell Phone is described herein and in Attachment A, and the location information to be seized is described herein and in Attachment B.

2. Because this warrant seeks the prospective collection of information, including cell-site location information, that may fall within the statutory definitions of information collected by a "pen register" and/or "trap and trace device," *see* 18 U.S.C. § 3127(3) & (4), the requested warrant is designed to also comply with the Pen Register Act. *See* 18 U.S.C. §§ 3121-3127. The requested warrant therefore includes all the information required to be included in an order pursuant to that statute. See 18 U.S.C. § 3123(b)(1).

3. I am a Special Agent with the Department of Homeland Security, Homeland Security Investigations ("HSI"). As such, I am a "federal law enforcement officer" within the

meaning of Federal Rule of Criminal Procedure 41(a)(2)(C), that is, a government agent engaged in enforcing the criminal laws and duly authorized by the Attorney General to request a search warrant. I have been a Special Agent with HSI since 2016. As a Special Agent with HSI, I have participated in numerous investigations involving the importation and distribution of narcotics, during which I have: (a) conducted physical surveillance, (b) executed search warrants, including at locations where drugs, drug proceeds, and records of narcotics transactions have been found, and search warrants of electronic devices; (c) debriefed cooperating witnesses; (d) reviewed and analyzed numerous taped conversations of those engaged in narcotics trafficking activities; and (e) monitored wiretapped conversations and reviewed line sheets prepared by wiretap monitors. . I have also received training on the uses and capabilities of cellular telephones and location information in connection with criminal activity. I have experience and training executing warrants, including warrants for location information.

4. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

5. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Sections 924(c) (Using, Carrying, Brandishing and Discharging Firearms in Connection with Crimes of Violence), 1959 (Attempted Murder and Attempted Assault in Aid of Racketeering) and violations of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C) and 846 (Possession with Intent to Distribute, Distribution and Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, including more than 40 grams of fentanyl, more than

100 grams of heroin and more than 500 grams of cocaine) (collectively, the "Subject Crimes") have been committed by DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and others. On April 13, 2023, a federal Grand Jury sitting in Central Islip, New York, handed up an Indictment charging BROWN and others with the Subject Crimes (the "Indictment"). *See* 23-CR-164 (JMA) (Sealed). Based upon the Indictment, the Court issued a Warrant for BROWN's arrest, which is outstanding. Accordingly, there is also probable cause to believe that the location information described in Attachment B will assist law enforcement in arresting BROWN, who is a "person to be arrested" within the meaning of Federal Rule of Criminal Procedure 41(c)(4).

6. The court has jurisdiction to issue the proposed warrant because it is a "court of competent jurisdiction" as defined in 18 U.S.C. § 2711. Specifically, the Court is a Magistrate Judge of a district court of the United States that has jurisdiction over the offenses being investigated, *see* 18 U.S.C. § 2711(3)(A)(i).

PROBABLE CAUSE

7. On April 13, 2023, following a long-term investigation into the Bloodhound Brims street gang ("BHB"), a Grand Jury issued the Indictment, charging BROWN and others with the Subject Crimes. Debriefings of numerous cooperating witnesses, who have collectively pleaded guilty to federal controlled substances and firearms offenses and crimes of violence, and review of communications seized from electronic devices and social media accounts established that BROWN is a BHB member who participated in a shooting that occurred on September 15, 2021, at a location in Bay Shore, New York. On this occasion, BROWN and other BHB members fired shots at individuals whom they believed were members of a rival street gang. In addition, debriefings of cooperating witnesses, review of electronic communications, social

media posts and other information demonstrated that, between approximately June 2018 and the present, BROWN conspired with BHB members to distribute and possess with intent distribute more than 40 grams of fentanyl, more than 100 grams of heroin and more than 500 grams of cocaine in Suffolk County, New York and elsewhere.

8. Subpoenaed information from the PROVIDER demonstrated that BROWN is the listed subscriber for the Target Cell Phone and that the responsible financial parties for the Target Cell Phone are BROWN's sister and mother, whose identities are known to the United States Attorney ("Jane Doe #1 and Jane Doe #2"). The subpoenaed records further showed that the address listed for Jane Doe #1 and Jane Doe #2 with the PROVIDER was "31 Walnut Road, Amityville, NY 11701." As relevant here, BROWN's record of arrest and prosecutions demonstrated that BROWN provided the address "31 Walnut Road, Amityville, NY 11701"—the same address listed for Jane Doe #1 and Jane Doe #2 with the PROVIDER—as his address in connection with a September 9, 2022 civil service application.

9. The subpoenaed records from the PROVIDER further showed that the Target Cell Phone is active and was subscribed through approximately May 14, 2023. In addition, the subpoenaed records showed that the Target Cell Phone engaged in more than 1,900 communications in March 2023, including communications with Jane Doe #1 and Jane Doe #2. Furthermore, documents obtained from the Suffolk County Police Department ("SCPD") demonstrated that, on or about June 7, 2022, an individual who identified himself as "DAVION BROWN," used the Target Cell Phone to call SCPD to report a disabled motorist. Accordingly, there is probable cause to believe that BROWN is the user of the Target Cell Phone and that tracking the Target Cell Phone will assist in locating BROWN and arresting him pursuant to the Court's Arrest Warrant.

10. In my training and experience, I have learned that the PROVIDER is a company that provides cellular telephone access to the general public. I also know that providers of cellular telephone service have technical capabilities that allow them to collect and generate information about the locations of the cellular telephones to which they provide service, including E-911 Phase II data, also known as GPS data or latitude-longitude data and cell-site data, also known as "tower/face information" or cell tower/sector records. E-911 Phase II data provides relatively precise location information about the cellular telephone itself, either via GPS tracking technology built into the phone or by triangulating on the device's signal using data from several of the provider's cell towers. Cell-site data identifies the "cell towers" (i.e., antenna towers covering specific geographic areas) that received a radio signal from the cellular telephone and, in some cases, the "sector" (i.e., faces of the towers) to which the telephone connected. These towers are often a half-mile or more apart, even in urban areas, and can be 10 or more miles apart in rural areas. Furthermore, the tower closest to a wireless device does not necessarily serve every call made to or from that device. Accordingly, cell-site data is typically less precise that E-911 Phase II data.

11. Based on my training and experience, I know that the PROVIDER can collect E-911 Phase II data about the location of the Target Cell Phone, including by initiating a signal to determine the location of the Target Cell Phone on the PROVIDER's network or with such other reference points as may be reasonably available.

12. Based on my training and experience, I know that the PROVIDER can collect cell-site data about the Target Cell Phone. Based on my training and experience, I know that for each communication a cellular device makes, its wireless service provider can typically determine: (1) the date and time of the communication; (2) the telephone numbers involved, if

any; (3) the cell tower to which the customer connected at the beginning of the communication; (4) the cell tower to which the customer connected at the end of the communication; and (5) the duration of the communication. I also know that wireless providers such as the PROVIDER typically collect and retain cell-site data pertaining to cellular devices to which they provide service in their normal course of business in order to use this information for various business-related purposes.

AUTHORIZATION REQUEST

13. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41 and 18 U.S.C. § 2703(c).

14. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days after the collection authorized by the warrant has been completed. There is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the subscriber or user of the Target Cell Phone would seriously jeopardize the ongoing investigation, as such a disclosure would give that person an opportunity to destroy evidence, change patterns of behavior, notify confederates, and flee from prosecution. *See* 18 U.S.C. § 3103a(b)(1). As further specified in Attachment B, which is incorporated into the warrant, the proposed search warrant does not authorize the seizure of any tangible property. *See* 18 U.S.C. § 3103a(b)(2). Moreover, to the extent that the warrant authorizes the seizure of any wire or electronic communication (as defined in 18 U.S.C. § 2510) or any stored wire or electronic information, there is reasonable necessity for the seizure for the reasons set forth above. *See* 18 U.S.C. § 3103a(b)(2).

15. I further request that the Court direct the PROVIDER to disclose to the government any information described in Attachment B that is within the possession, custody, or control of the PROVIDER. I also request that the Court direct the PROVIDER to furnish the government all information, facilities, and technical assistance necessary to accomplish the collection of the information described in Attachment B unobtrusively and with a minimum of interference with the PROVIDER's services, including by initiating a signal to determine the location of the Target Cell Phone on the PROVIDER's network or with such other reference points as may be reasonably available, and at such intervals and times directed by the government. The government shall reasonably compensate the PROVIDER for reasonable expenses incurred in furnishing such facilities or assistance.

16. I further request that the Court authorize execution of the warrant at any time of day or night, owing to the potential need to locate the Target Cell Phone outside of daytime hours.

17. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of

the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Respectfully submitted,

TYLER M DAVILA Digitally signed by TYLER M DAVILA Date: 2023.04.17 16:41:17 -04'00'

Tyler Davila
Special Agent
HSI

Subscribed and sworn to before me on April 17, 2023

Lee G Dunst

HONORABLE LEE G. DUNST
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

In the Matter of *(Briefly describe the property to be searched or identify the person by name and address)* THE USE OF A CELL-SITE SIMULATOR TO LOCATE THE CELLULAR DEVICE ASSIGNED CALL NUMBER 631-620-0965, WITH INTERNATIONAL MOBILE SUBSCRIBER IDENTITY NUMBER 310260788300058	)	Case No. 23-MJ-399(SIL)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Eastern District of New York *(identify the person or describe the property to be searched and give its location)*:

SEE ATTACHMENT A. This court has authority to issue this warrant under 18 U.S.C. §§ 2703(c)(1)(A), 2711(3)(A) and Federal Rule of Criminal Procedure 41. Because the government has satisfied the requirements of 18 U.S.C. § 3122, and the requested warrant includes all the information required to be included in an order pursuant to 18 U.S.C. § 3123, this warrant also constitutes an order under 18 U.S.C. § 3123. Therefore, the service provider is directed to furnish information, facilities and trace device under 18 U.S.C. § 3124.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*:

SEE ATTACHMENT B.

YOU ARE COMMANDED to execute this warrant on or before May 9, 2023 *(not to exceed 14 days)*

☐ in the daytime 6:00 a.m. to 10:00 p.m. ☑ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to the Duty Magistrate Judge.
(United States Magistrate Judge)

☑ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

☑ for 30 days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of _____.

Date and time issued: April 26, 2023 at 3:03 pm

Judge's signature

City and state: Central Islip, New York

Hon. Steven I. Locke U.S.M.J.
Printed name and title

Appendix G

AO 93 (Rev. 11/13) Search and Seizure Warrant (Page 2)

Return

Case No.:	Date and time warrant executed:	Copy of warrant and inventory left with:
Inventory made in the presence of :		
Inventory of the property taken and name of any person(s) seized:		

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: _____

_____
Executing officer's signature

_____
Printed name and title

ATTACHMENT A

This warrant authorizes the use of the electronic investigative technique described in Attachment B to identify the location of the cellular device assigned phone number 631-620-0965, with International Mobile Subscriber Identity Number 310260788300058, and whose listed subscriber is Davion Brown.

ATTACHMENT B

Pursuant to an investigation of DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," for a violations of Title 18, United States Code, Sections 924(c) (Using, Carrying, Brandishing and Discharging Firearms in Connection with Crimes of Violence), 1959 (Attempted Murder and Attempted Assault in Aid of Racketeering) and violations of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C) and 846 (Possession with Intent to Distribute, Distribution and Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, including more than 40 grams of fentanyl, more than 100 grams of heroin and more than 500 grams of cocaine), this Warrant authorizes the officers to whom it is directed to determine the location of the cellular device identified in Attachment A by collecting and examining:

1. radio signals emitted by the target cellular device for the purpose of communicating with cellular infrastructure, including towers that route and connect individual communications; and
2. radio signals emitted by the target cellular device in response to radio signals sent to the cellular device by the officers;

for a period of thirty days, during all times of day and night. This warrant does not authorize the interception of any telephone calls, text messages, other electronic communications, and this warrant prohibits the seizure of any tangible property. The Court finds reasonable necessity for the use of the technique authorized above. *See* 18 U.S.C. § 3103a(b)(2).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE USE OF A CELL-SITE SIMULATOR TO LOCATE THE CELLULAR DEVICE ASSIGNED CALL NUMBER 631-620-0965, WITH INTERNATIONAL MOBILE SUBSCRIBER IDENTITY NUMBER 310260788300058	Case No. 23-MJ-399(SIL) **Filed Under Seal**

AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT

I, Brian Valentin, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant under Federal Rule of Criminal Procedure 41 to authorize law enforcement to employ an electronic investigative technique, which is described in Attachment B, to determine the location of the cellular device assigned call number 631-620-0965, with International Mobile Subscriber Identity Number 310260788300058 (the "Target Cellular Device"), which is described in Attachment A.

2. I am a Task Force Officer ("TFO") with the United States Department of Homeland Security, Homeland Security Investigations ("HSI"), and have been since approximately 2021. In addition to my work as a TFO, I have served as a member of the Suffolk County Police Department ("SCPD") for approximately 22 years, including nearly 17 years as a Detective in SCPD's Narcotics Section. During the course of my law enforcement career, I have participated in numerous investigations involving the distribution of narcotics, during which I have: (a) conducted physical surveillance, (b) executed search warrants, including at locations

where drugs, drug proceeds, and records of narcotics transactions have been found, search warrants of electronic devices and search warrants for cell-site information; (c) debriefed cooperating witnesses; (d) reviewed and analyzed numerous taped conversations of those engaged in narcotics trafficking activities; and (e) monitored wiretapped conversations and reviewed line sheets prepared by wiretap monitors. I have also received training on the uses and capabilities of cellular telephones and location information in connection with criminal activity. I have experience and training executing warrants, including warrants for location information.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. One purpose of applying for this warrant is to determine with precision the Target Cellular Device's location. However, there is reason to believe the Target Cellular Device is currently located somewhere within this district because of prospective cell-site information for the Target Cellular Device, which was obtained pursuant to a Search Warrant that the Honorable Lee G. Dunst issued on April 17, 2023 (Dkt. No. 23-MJ-367 (LGD) (Sealed) (the "April 17 Warrant")), which demonstrated that the Target Cellular Device was repeatedly present in areas around Amityville and Farmingdale, New York between April 17, 2023 and April 25, 2023. Indeed, during that time, the Target Cellular Device was only present in the vicinity of either Amityville or Farmingdale. Pursuant to Rule 41(b)(2), law enforcement may locate the Target Cellular Device outside this district provided that, as here, there is probable cause to believe that the device is within this district when the warrant is issued.

5. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Sections 924(c) (Using, Carrying, Brandishing and Discharging Firearms in Connection with Crimes of Violence), 1959 (Attempted Murder and Attempted Assault in Aid of Racketeering) and violations of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C) and 846 (Possession with Intent to Distribute, Distribution and Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, including more than 40 grams of fentanyl, more than 100 grams of heroin and more than 500 grams of cocaine) (collectively, the "Subject Crimes") have been committed by DAVION BROWN, also known as "Kokaine" and "Kokaine Redd," and others. Indeed, on April 13, 2023, a federal Grand Jury sitting in Central Islip, New York, handed up an Indictment charging BROWN and others with the Subject Crimes (the "Indictment"). *See* 23-CR-164 (JMA) (Sealed). Based upon the Indictment, the Court issued a Warrant for BROWN's arrest, which is outstanding. Accordingly, there is also probable cause to believe that he Target Cellular Device's location will assist law enforcement in arresting BROWN, who is a "person to be arrested" within the meaning of Federal Rule of Criminal Procedure 41(c)(4).

6. Because collecting the information authorized by this warrant may fall within the statutory definitions of a "pen register" or a "trap and trace device," *see* 18 U.S.C. § 3127(3) & (4), this warrant is designed to comply with the Pen Register Statute as well as Rule 41. *See* 18 U.S.C. §§ 3121-3127. This warrant therefore includes all the information required to be included in a pen register order. *See* 18 U.S.C. § 3123(b)(1).

PROBABLE CAUSE

7. As an initial matter, this Affidavit incorporates by reference the Affidavit submitted in support of the April 17 Warrant, which is attached as Exhibit 1. As described in that Affidavit: on April 13, 2023, BROWN was indicted for the Subject Crimes; that same day, the Court issued a Warrant for BROWN's arrest; the Target Cellular Device is subscribed to BROWN through May 14, 2023; the financial responsible parties for bills issued based upon use of the Target Cellular Device are BROWN's sister and mother, whose address is listed with the Target Cellular Device's service provider as a location in Amityville, New York that BROWN listed on a September 2022 civil service application; and, in September 2022, an individual identifying himself as "Davion Brown" used the Target Cellular Device to call SCPD to report a disabled motorist. *See* Exhibit 1. Based upon these facts and others set forth in the Affidavit attached as Exhibit 1, Judge Dunst issued the April 17 Warrant.

8. Execution of the April 17 Warrant has shown that, between approximately April 17, 2023 and April 25, 2023, on the more than 880 occasions for which cell-site data for the Target Cellular Device was obtained, the Target Cellular Device was utilizing cellular telephone towers that were located in either Amityville or Farmingdale, New York. This data does not, however, show the precise location of the Target Cellular Device. Instead, the data has shown the location of the Target Cellular Device within an area that is between approximately 500 and 4,000 meters of the Target Cellular Device's actual location. And despite having access to this data, law enforcement has been unable to apprehend BROWN pursuant to the Court's warrant. Nonetheless, based upon my training and experience and the facts set forth above and in Exhibit 1, I submit that there is probable cause to believe that: BROWN is the user of the Target Cellular

11. The investigative device may interrupt cellular service of phones or other cellular devices within its range. Any service disruption to non-target devices will be brief and temporary (i.e., generally less than three seconds in length), existing calls by non-target devices will not be affected, and all operations will attempt to limit the interference with such devices. In order to connect with the Target Cellular Device, the device may briefly exchange signals with all phones or other cellular devices in its range. These signals may include cell phone identifiers. The device will not complete a connection with cellular devices determined not to be the Target Cellular Device, and law enforcement will limit collection of information from devices other than the Target Cellular Device. To the extent that any information from a cellular device other than the Target Cellular Device is collected by the law enforcement device, law enforcement will delete that information, and law enforcement will make no investigative use of it absent further order of the court, other than distinguishing the Target Cellular Device from all other cellular devices.

AUTHORIZATION REQUEST

12. Based on the foregoing, I request that the Court issue the proposed search warrant, pursuant to Federal Rule of Criminal Procedure 41. The proposed warrant also will function as a pen register order under 18 U.S.C. § 3123.

13. I further request, pursuant to 18 U.S.C. § 3103a(b) and Federal Rule of Criminal Procedure 41(f)(3), that the Court authorize the officer executing the warrant to delay notice until 30 days from the end of the period of authorized surveillance. This delay is justified because there is reasonable cause to believe that providing immediate notification of the warrant may have an adverse result, as defined in 18 U.S.C. § 2705. Providing immediate notice to the

16. A search warrant may not be legally necessary to compel the investigative technique described herein. Nevertheless, I hereby submit this warrant application out of an abundance of caution.

Respectfully submitted,

Brian Valentin
TFO
HSI

Subscribed and sworn to before me
On: April 26, 2023

HON. STEVEN I. LOCKE
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

ATTACHMENT A

This warrant authorizes the use of the electronic investigative technique described in Attachment B to identify the location of the cellular device assigned phone number 631-620-0965, with International Mobile Subscriber Identity Number 310260788300058, and whose listed subscriber is Davion Brown.

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

In the Matter of the Search of *(Briefly describe the property to be searched or identify the person by name and address)* IN THE MATTER OF THE SEARCH OF THREE ELECTRONIC DEVICES, DESCRIBED IN ATTACHMENT A-1, WHICH ARE CURRENTLY LOCATED AT A DEPARTMENT OF HOMELAND SECURITY FACILITY IN CENTRAL ISLIP, NEW YORK	)	Case No. 23-mj-00460

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Eastern District of New York *(identify the person or describe the property to be searched and give its location)*:

SEE ATTACHMENT A-1 (incorporated by reference).

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized)*:

SEE ATTACHMENT B-1 (incorporated by reference).

YOU ARE COMMANDED to execute this warrant on or before May 28, 2023 *(not to exceed 14 days)*

☐ in the daytime 6:00 a.m. to 10:00 p.m. ☑ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to the Duty Magistrate Judge.
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

☐ for _____ days *(not to exceed 30)* ☐ until, the facts justifying, the later specific date of _____.

Date and time issued: 05/15/2023 12:30 pm

Steven Tiscione
Judge's signature

City and state: Central Islip, New York

Hon. Steven L. Tiscione U.S.M.J.
Printed name and title

Appendix H

BTK
F. #2021R00551

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN THE MATTER OF THE SEARCH OF:

(i) ONE GREEN iPHONE IN A BLACK CASE ("DEVICE 1");

(ii) ONE BLACK LG CELLULAR TELEPHONE WITH A CRACKED SCREEN ("DEVICE 2");

(iii) ONE GRAY iPHONE S ("DEVICE 3"),

(collectively, the "DEVICES"),

CURRENTLY LOCATED AT A DEPARTMENT OF HOMELAND SECURITY FACILITY IN CENTRAL ISLIP, NEW YORK

AND

IN THE MATTER OF THE SEARCH OF INFORMATION ASSOCIATED WITH FACEBOOK ACCOUNT 100044325700839 THAT IS STORED AT PREMISES CONTROLLED BY META PLATFORMS, INC. (the "SUBJECT ACCOUNT")
.

TO BE FILED UNDER SEAL

APPLICATION FOR SEARCH WARRANTS FOR ELECTRONIC DEVICES AND A FACEBOOK ACCOUNT

Case No. 23-mj-00460

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR SEARCH WARRANTS

I, Michael Fernandez, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a search warrant authorizing the examination of property—one Green iPhone in a black case, which is currently in the custody of the Department of Homeland Security, Homeland Security Investigations ("HSI") under Seizure No. 2023SA0013856 ("Device 1"); one Black LG cellular telephone with a cracked screen, which is currently in HSI custody under Seizure No. 2023SA0013856 ("Device 2"); and one Gray iPhone, which is currently in HSI custody under Seizure No. 2023SA0013856 ("Device 3")—and the extraction from that property of electronically stored information described in Attachment B-1.[1]

2. I further make this affidavit in support of an application for a search warrant for information associated with certain Facebook user ID number: 100044325700839 (the "Subject Account") that is stored at premises owned, maintained, controlled, or operated by Meta Platforms, Inc. ("Meta"), a company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A-2. This affidavit is made in support of an application for search warrants under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Meta to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the Subject Account.

3. I am a Special Agent with the Department of Homeland Security, Homeland Security Investigations ("HSI"), and have been since 2006. I am currently a member

[1] Devices 1-3 are referred to collectively in this Affidavit as the "Devices."

of the Long Island Violent Gangs and Narcotics Task Force and have been involved in the investigation of numerous cases involving gangs, drug trafficking and firearms offenses. I have participated in investigations involving search warrants, including searches of electronic devices and social media. I am familiar with the facts and circumstances set forth below from my participation in the investigation, my review of the investigative file, and reports of other law enforcement officers involved in the investigation.

4. This affidavit is intended to show only that there is sufficient probable cause for the requested warrants and does not set forth all of my knowledge about this matter.

IDENTIFICATION OF THE DEVICES AND FACEBOOK ACCOUNT TO BE EXAMINED

5. The Devices were seized during the execution of a Warrant for the Arrest of DAVION BROWN, also known as "Kokaine" and "Kokaine Redd." The Devices are currently located at an HSI facility that is located at 545 Federal Plaza, Central Islip, New York.

6. The applied-for warrant would authorize the forensic examination of the Devices for the purpose of identifying electronically stored data particularly described in Attachment B.

7. The Subject Account is associated with the vanity name "Kokaine Redd," which is one of BROWN's aliases.[2]

[2] A vanity name is a customized Uniform Resource Locator ("URL") that a Facebook user can create for a Facebook Page to make the Page easier to find and remember. This replaces the default URL, such as the User ID for the Subject Account, which is usually a random series of numbers.

8. Based on the facts set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Sections 924(c) (Using, Carrying, Brandishing and Discharging Firearms in Connection with Drug Trafficking Crimes and Crimes of Violence), 1959 (Attempted Murder, Assault and Attempted Assault in Aid of Racketeering), 1962 and 1963 (Racketeering and Racketeering Conspiracy) and violations of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B)(i), 841(b)(1)(B)(ii)(II), 841(b)(1)(B)(vi), 841(b)(1)(C) and 846 (Possession with Intent to Distribute, Distribution and Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances, including more than 40 grams of fentanyl, more than 100 grams of heroin and more than 500 grams of cocaine) (collectively, the "Subject Crimes") have been committed by BROWN, JUSSIAH HERBERT, also known as "Loko" and "Lokkoo BeenHoundin," BRANDON HICKS, also known as "Bang Swoop" and "Swoopy," JANELL JOHNSON, also known as "Jahh Jahh" and "Glizzy" and others. There is also probable cause to believe that the Devices and the Subject Account contain evidence, fruits and instrumentalities of the Subject Crimes.

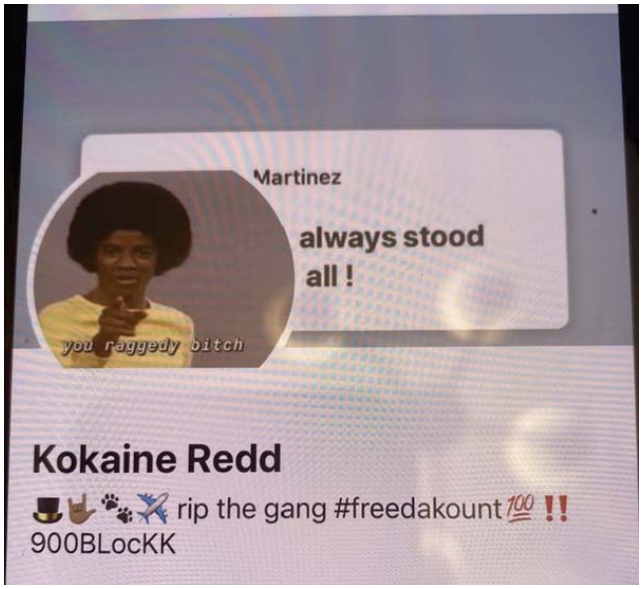
PROBABLE CAUSE

9. On April 13, 2023, following a long-term investigation into the Bloodhound Brims street gang ("BHB"), a Grand Jury issued an Indictment, Dkt. No. 23-CR-164 (GRB) (the "Indictment"), charging BROWN, HERBERT, HICKS and JOHNSON with the Subject Crimes. Debriefings of numerous cooperating witnesses, who have collectively pleaded guilty to federal controlled substances and firearms offenses and crimes of violence, and review of communications seized from electronic devices and social media accounts established that HERBERT is a BHB leader, who ordered members of the BHB, including BROWN, HICKS and

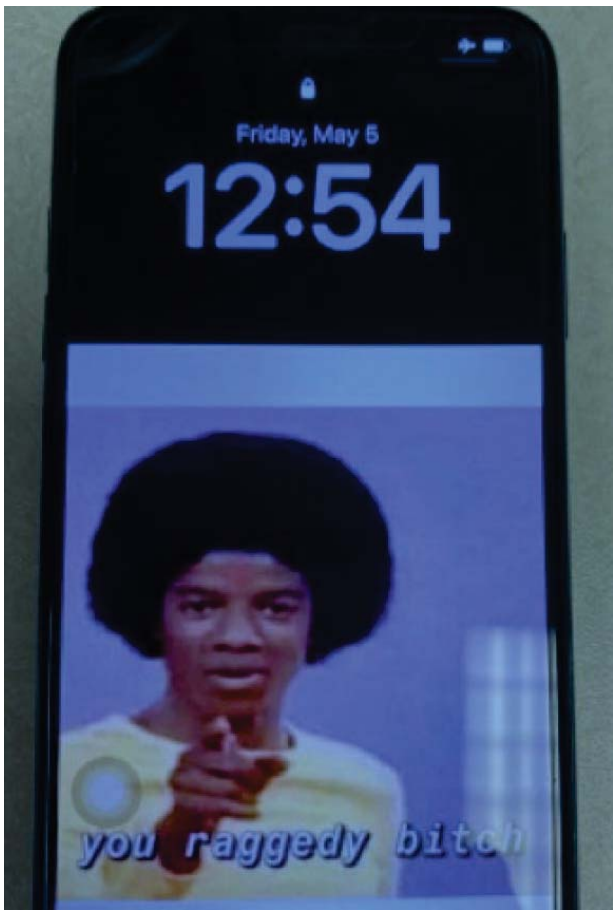
JOHNSON to murder members of rival gangs, including street gangs known as the Apes, Hit Squad, the Red Stone Gorillas and Southside. As a result of these directions, BHB members engaged in shootings in Suffolk County, including shootings on August 16, 2020, August 25, 2020, October 15, 2020, which resulted in gunshot injuries to four victims, and in another shooting on September 15, 2021, which did not result in any injuries. The Indictment charges HERBERT with crimes related to each of these shootings; HICKS is charged with participating in the August 16, August 25 and October 15, 2020 shootings; and BROWN and JOHNSON are charged with participating in the September 15, 2021 shooting. In addition, debriefings of cooperating witnesses and review of electronic communications and social media posts and seizures of narcotics demonstrated that, between approximately June 2018 and the present, HERBERT conspired with BHB members, including HICKS and BROWN, to distribute and possess with intent distribute more than 40 grams of fentanyl, more than 100 grams of heroin and more than 500 grams of cocaine in Suffolk County, New York and elsewhere.

10. Based upon the Indictment, the Court issued a Warrant for BROWN's arrest and on May 4, 2023, BROWN was arrested, pursuant to that Warrant, at his residence in Amityville, New York. At the time of his arrest, BROWN was found alone in a room in close proximity to the Devices, and as described further below, Device 1 displayed a photograph that I previously observed on the Subject Account, which also contained communications between HERBERT and BROWN that related to their membership in the BHB and commission of the Subject Crimes. Furthermore, execution of a Search Warrant that this Court issued for an iPhone seized from HERBERT when he was arrested on April 19, 2023 demonstrated electronic communications and data concerning BROWN's involvement in BHB activities. See Dkt. No. 23-MJ-406 (SLT) (Sealed).

11. In addition, execution of a Search Warrant that the Honorable James M. Wicks issued a Search Warrant for HERBERT's Facebook Account revealed numerous communications related to HERBERT's leadership of the BHB and commission of the Subject Crimes, including communications with an individual using the Facebook vanity name, "Kokaine Redd," which is an alias that Brown uses. On or about April 3, 2023—about a month before BROWN's arrest—I reviewed the publicly-available portion of the Subject Account, which contained the below photograph and a communication containing emojis that related to the BHB. In particular, based upon my training and experience and involvement in the investigation, I know that in the string of emojis depicted below, the hat emoji relates to the term "Brims" and the plane emoji relates to the term "Jet," both of which BHB members use as slang references to BHB members. In addition, the paw emoji is also a reference to the BHB and the term "freedakount" is a reference to freeing all incarcerated BHB members. Based upon these emjois, I believe that the statement the "gang" in the below communication is a reference to BHB.



12. While executing the Arrest Warrant at BROWN's residence, I observed that the lock screen of Device 1 had the same photograph as that depicted above, which was shown on the publicly-available portion of the Subject Account on April 3, 2023. A screenshot of the lock screen of Device 1, which I observed inside of BROWN's residence on May 4, 2023 is below.



13. At the time that I made this observation, BROWN was alone inside of a room in close proximity to the Devices, which were located on top of tables inside of that room. At the time of this observation, I also knew that a person using the Facebook vanity name "Kokaine Redd," which is linked to the Subject Account, had exchanged Facebook messages with HERBERT that concerned BHB activities and the Subject Crimes; that the vanity name for the

Subject Account was "Kokaine Redd"; and that the above photograph was depicted on the publicly-available portion of the Subject Account and on Device 1, which was in close proximity to BROWN at the time of his arrest. In addition, before seizing Device 1, I called the telephone number 631-620-0965 ("BROWN's Phone Number") and observed Device 1 ring. Furthermore, BROWN's Phone Number was the subject of a Cell-Site Simulator Warrant that the Honorable Lee G. Dunst issued on April 17, 2023. Dkt. No. 23-MJ-367 (Sealed). Before that Warrant was issued, subpoenaed toll records showed that BROWN was the subscriber for BROWN's Phone Number; that the billing address for BROWN's Phone Number was BROWN's Amityville residence, where BROWN was arrested; that a person identifying himself as BROWN had used BROWN's Phone Number to call the Suffolk County Police Department to report a disabled vehicle on or about June 7, 2022 and that a person identifying himself as BROWN had contacted an insurance company regarding an insurance claim on or about April 24, 2023.

14. With respect to Facebook messages with HERBERT, the execution of the warrant on HERBERT's Facebook account showed that BROWN discussed gang activities, including shootings and narcotics trafficking with HERBERT. For example, on October 13, 2020, HERBERT wrote a Facebook message to BROWN, stating, "Gutta got shot last night by apes. I need u outside today."[3] Based upon the investigation, "Gutta" is Darnell Lewis, a BHB leader, and the "[A]pes" are gang that is engaged in an ongoing conflict with BHB that has resulted in numerous shootings in Suffolk County. In this context, I believe that HERBERT's need for BROWN to be "outside" was a reference to BROWN assisting HERBERT and other BHB

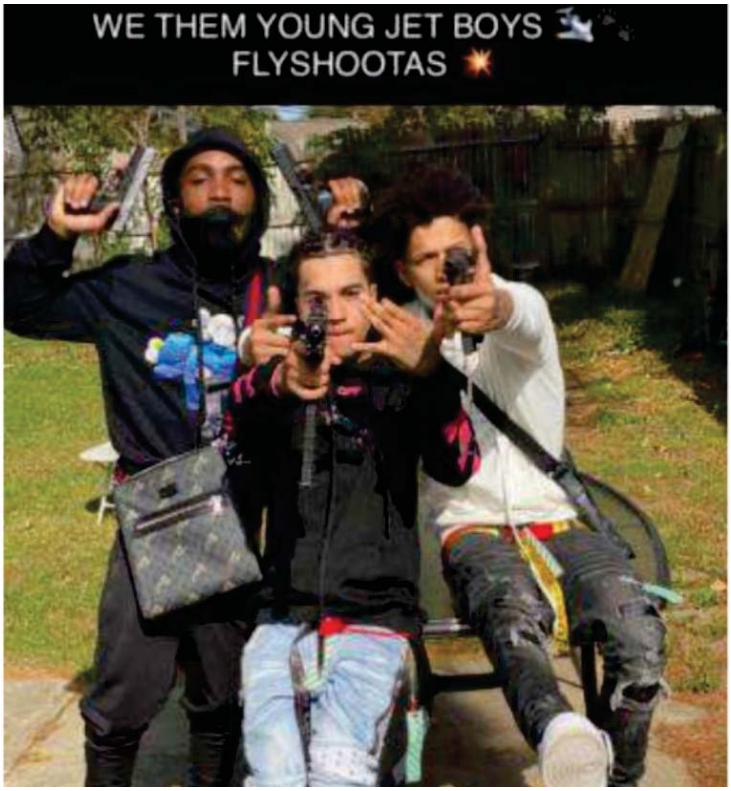
[3] Unless otherwise noted, all electronic communications reproduced in this Affidavit are quoted verbatim.

members in retaliating against the Apes. Throughout his Facebook messages with HERBERT, BROWN wrote "Whoopty," a term that BHB members use to signal their allegiance to the gang. Furthermore, in a signal of his willingness to engage in violence at HERBERT's direction, on November 27, 2020, BROWN wrote to HERBERT that "I be wanting to hang with the guys fuck the streets up. Hound stylllin."

15. Based upon interviews with multiple cooperating witnesses, on September 15, 2021, BROWN, along with HERBERT and JOHNSON, fired multiple rounds at individuals whom they believed were rival gang members in Bay Shore, New York. Although several BHB members were arrested after the incident and found in possession of firearms, BROWN evaded capture until his May 4, 2023 arrest. [redacted]

16. The execution of the warrant on HERBERT's Facebook Account further showed that BROWN (who is pictured below, front-row-center, in the teal shirt) was depicted in a photograph that was posted on September 7, 2021—about a week before BROWN engaged in the charged September 15, 2021 attempted murder—posing with HERBERT (second row, far right, blue-black-green-and-red sweatshirt) and fellow BHB members, while displaying, what I know, based upon my training and involvement in the investigation, are gang hand signals:

17. In addition, in December 12, 2020 Facebook communications with HERBERT, BROWN stated, in substance, that he "met" with HICKS, one of his co-defendants, whom the investigation revealed, conducted multiple shootings at HERBERT's direction. The defendant acknowledged having met with HICKS after HERBERT sent him the below photograph, which shows HICKS (far right) and other BHB members displaying firearms.



18. Furthermore, execution of the Warrant on HERBERT's Facebook account revealed communications between BROWN and HERBERT, dated November 27, 2020 and November 28, 2020, in which BROWN and HERBERT discussed narcotics trafficking. During those communications, HERBERT stated, "I got a phone . . . need sombody to work for me . . . Whoever can get they hands on shit." In response, BROWN wrote, "I can get the work need the heads." HERBERT then responded, "Hard n chow? N u mobile." And BROWN wrote, "Absolutely n I can get mobile to slaps till I'm able to give that other 2 for the veeski type." In response, HERBERT wrote, "light we gonna get this phone back jumping. All I want is 100 a day glo." And BROWN responded, "Swag that shyt clickin. . . . WHOPTYYYY."

19. Based upon my training and experience, in the above communications, HERBERT and BROWN are discussing narcotics trafficking. Based upon my training and experience, the terms "work," "hard" and "chow" are used by narcotics traffickers to respectively refer to quantities of narcotics and specifically, cocaine base, which is a hard, rock-like substance, and heroin, which often has a tan-like color that resembles dry dog food or "chow." In my training and experience, narcotics traffickers use coded and cryptic terms like these to refer to quantities of narcotics to avoid detection of their communications by law enforcement. In addition, based upon my training and experience, narcotics traffickers use the term "heads" to refer to purchasers of narcotics. Thus, when BROWN says, "I can get the work need the heads," I understand him to mean that he can acquire narcotics, but that he needs a customer base to sell those narcotics to.

20. My belief is also based upon HERBERT's statement that he has a "phone" and needs someone to "work" for him so that he can get "100 a day." Based upon my training and experience, narcotics traffickers often acquire cellular telephones from other narcotics traffickers that are used to communicate with drug purchasers or "heads." In the context of the above communications, I believe that HERBERT has a acquired such a phone and is requesting that BROWN assist him by selling cocaine base and heroin to drug users who will contact the phone seeking quantities of narcotics and that HERBERT wants to earn around $100 per day based upon HERBERT and BROWN's narcotics trafficking activities. I further believe that these activities are related to HERBERT and BROWN's membership in BHB because during the course of the communications, BROWN stated, "WHOPTYYYY," which is a term that BHB member use to signal their allegiance to BHB. As further relevant here, when BROWN was arrested, he was in close proximity to the Devices, three cellular telephones. Based upon my

training and experience, narcotics traffickers often use multiple cellular telephones to engage in narcotics trafficking activities in an effort to shield their communication from law enforcement. As such, there is probable cause to believe that the Devices will contain evidence, fruits and instrumentalities of the Subject Crimes.

21. Execution of the Warrant for HERBERT's iPhone, which was seized at the time of his April 19, 2023 arrest, showed that HERBERT had stored electronic data related to BROWN. For example, in a note dated June 16, 2022, HERBERT included "Kokaine," BROWN's alias, in a list of individuals, including "Nash" and "Quazzy," whom I know based upon my involvement in the investigation are BHB members, whose true names are Jayvonte Nash and Quazhay McTizic.

22. In addition, the execution of the Warrant for HERBERT's iPhone showed photographs, which were date-stamped July 4, 2021 and July 17, 2021, respectively, that depicted BROWN, HERBERT and other BHB members displaying gang signs. Those photographs are set forth below. In the first photograph, HERBERT is wearing a hooded sweatshirt with the hood up and BROWN is standing to HERBERT's left, wearing a white hooded sweatshirt. In the second photograph, BROWN is second from the left, wearing a black hooded sweatshirt with the hood up.

23. The execution of the Warrant for HERBERT's iPhone also revealed that HERBERT video-recorded a conversation with BROWN, on or about January 1, 2021, in which he and BROWN discussed "GFs" or "Godfathers" of the BHB who operated in and around New York City. Based upon my training and experience and involvement in the investigation, I know that "Godfathers" is a term that BHB members use to refer to BHB leaders.

INFORMATION CONCERNING THE DEVICES

24. The Devices are currently in the lawful possession of HSI. They came into HSI's possession in the following way: the Devices were seized during the execution of the Warrant for Brown's arrest on May 4, 2023. Therefore, while the HSI might already have all necessary authority to examine the Devices, I seek this additional warrant out of an abundance of caution to be certain that an examination of the Devices will comply with the Fourth Amendment and other applicable laws.

25. The Devices are currently in storage at an HSI facility located at 545 Federal Plaza, Central Islip, New York. In my training and experience, I know that the Devices have been stored in a manner in which its contents are, to the extent material to this investigation, in substantially the same state as they were when the Devices first came into the possession of HSI.

TECHNICAL TERMS

26. Based on my training and experience, I use the following technical terms to convey the following meanings:

a. Wireless telephone: A wireless telephone (or mobile telephone, or cellular telephone) is a handheld wireless device used for voice and data communication

through radio signals. These telephones send signals through networks of transmitter/receivers, enabling communication with other wireless telephones or traditional "land line" telephones. A wireless telephone usually contains a "call log," which records the telephone number, date, and time of calls made to and from the phone. In addition to enabling voice communications, wireless telephones offer a broad range of capabilities. These capabilities include: storing names and phone numbers in electronic "address books;" sending, receiving, and storing text messages and e-mail; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Wireless telephones may also include global positioning system ("GPS") technology for determining the location of the device.

b. Digital camera: A digital camera is a camera that records pictures as digital picture files, rather than by using photographic film. Digital cameras use a variety of fixed and removable storage media to store their recorded images. Images can usually be retrieved by connecting the camera to a computer or by connecting the removable storage medium to a separate reader. Removable storage media include various types of flash memory cards or miniature hard drives. Most digital cameras also include a screen for viewing the stored images. This storage media can contain any digital data, including data unrelated to photographs or videos.

c. Portable media player: A portable media player (or "MP3 Player" or iPod) is a handheld digital storage device designed primarily to store and play audio, video, or photographic files. However, a portable media player can also store other digital data. Some portable media players can use removable storage media. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can also store any digital data. Depending on the model, a portable media player may have the ability to store very large amounts of electronic data and may offer additional features such as a calendar, contact list, clock, or games.

d. GPS: A GPS navigation device uses the Global Positioning System to display its current location. It often contains records the locations where it has been. Some GPS navigation devices can give a user driving or walking directions to another location. These devices can contain records of the addresses or locations involved in such navigation. The Global Positioning System (generally abbreviated "GPS") consists of 24 NAVSTAR satellites orbiting the Earth. Each satellite contains an extremely accurate clock. Each satellite repeatedly transmits by radio a mathematical representation of the current time, combined with a special sequence of numbers. These signals are sent by radio, using specifications that are publicly available. A GPS antenna on Earth can receive those signals. When a GPS antenna receives signals from at least four satellites, a computer connected to that antenna can mathematically calculate the antenna's latitude, longitude, and sometimes altitude with a high level of precision.

e. PDA: A personal digital assistant, or PDA, is a handheld electronic device used for storing data (such as names, addresses, appointments or notes) and utilizing computer programs. Some PDAs also function as wireless communication devices and are used to access the Internet and send and receive e-mail. PDAs usually include a memory card or other removable storage media for storing data and a keyboard and/or touch screen for entering data. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can store any digital data. Most PDAs run computer software, giving them many of the same capabilities as personal computers. For example, PDA users can work with word-processing documents, spreadsheets, and presentations. PDAs may also include global positioning system ("GPS") technology for determining the location of the device.

f. Tablet: A tablet is a mobile computer, typically larger than a phone yet smaller than a notebook, that is primarily operated by touching the screen. Tablets function as wireless communication devices and can be used to access the Internet through cellular networks, 802.11 "wi-fi" networks, or otherwise. Tablets typically contain programs called apps, which, like programs on a personal computer, perform different functions and save data associated with those functions. Apps can, for example, permit accessing the Web, sending and receiving e-mail, and participating in Internet social networks.

g. Pager: A pager is a handheld wireless electronic device used to contact an individual through an alert, or a numeric or text message sent over a

telecommunications network. Some pagers enable the user to send, as well as receive, text messages.

h. IP Address: An Internet Protocol address (or simply "IP address") is a unique numeric address used by computers on the Internet. An IP address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet computer must be assigned an IP address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. Most Internet service providers control a range of IP addresses. Some computers have static—that is, long-term—IP addresses, while other computers have dynamic—that is, frequently changed—IP addresses.

i. Internet: The Internet is a global network of computers and other electronic devices that communicate with each other. Due to the structure of the Internet, connections between devices on the Internet often cross state and international borders, even when the devices communicating with each other are in the same state.

27. Based on my training, experience, and research, I know that the Devices have capabilities that allow the Devices to serve as a wireless telephone, digital camera, portable media player, GPS navigation device, and PDA. In my training and experience, examining data stored on devices of these types of Devices can uncover, among other things, evidence that reveals or suggests who possessed or used the devices.

ELECTRONIC STORAGE AND FORENSIC ANALYSIS

28. Based on my knowledge, training, and experience, I know that electronic devices can store information for long periods of time. Similarly, things that have been viewed via the Internet are typically stored for some period of time on the device. This information can sometimes be recovered with forensics tools.

29. There is probable cause to believe that things that were once stored on the Devices may still be stored there, for at least the following reasons:

a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.

b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer's operating system may also keep a record of deleted data in a "swap" or "recovery" file.

c. Wholly apart from user-generated files, computer storage media—in particular, computers' internal hard drives—contain electronic evidence of how a computer

has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory "swap" or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or "cache."

30. Forensic evidence. As further described in Attachment B-1, this application seeks permission to locate not only electronically stored information that might serve as direct evidence of the crimes described on the warrant, but also forensic evidence that establishes how the Devices were used, the purpose of their use, who used the Devices, and when. There is probable cause to believe that this forensic electronic evidence might be on the Devices because:

a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and

passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created.

b. Forensic evidence on a device can also indicate who has used or controlled the device. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence.

c. A person with appropriate familiarity with how an electronic device works may, after examining this forensic evidence in its proper context, be able to draw conclusions about how electronic devices were used, the purpose of their use, who used them, and when.

d. The process of identifying the exact electronically stored information on a storage medium that is necessary to draw an accurate conclusion is a dynamic process. Electronic evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding evidence of how a device was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium.

f. I know that when an individual uses an electronic device to coordinate gang activities, including activities related to the Subject Crimes, the individual's electronic device will generally serve both as an instrumentality for committing the crime, and also as a storage medium for evidence of the crime. The electronic device is an instrumentality of the crime because it is used as a means of committing the criminal offense. The electronic device is also likely to be a storage medium for evidence of crime. From my training and experience, I believe that an electronic device used to commit a crime of this type may contain: data that is evidence of how the electronic device was used; data that was sent or received; and other records that indicate the nature of the offense.

31. Nature of examination. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit the examination of the Devices consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of the Devices to human inspection in order to determine whether it is evidence described by the warrant.

32. Manner of execution. Because this warrant seeks only permission to examine devices already in law enforcement's possession, the execution of this warrant does not involve the physical intrusion onto a premises. Consequently, I submit there is reasonable cause

for the Court to authorize execution of the warrant for the Devices at any time in the day or night.

BACKGROUND CONCERNING META

33. Meta owns and operates Facebook, a free-access social networking website that can be accessed at http://www.facebook.com. Facebook users can use their accounts to share communications, news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

34. Meta asks Facebook users to provide basic contact and personal identifying information either during the registration process or thereafter. This information may include the user's full name, birth date, gender, e-mail addresseses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Each Facebook user is assigned a user identification number and can choose a username.

35. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

36. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a

Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

37. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In addition, Facebook users can "check in" to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

38. Facebook users can upload photos and videos to be posted on their Wall, included in chats, or for other purposes. Users can "tag" other users in a photo or video, and can be tagged by others. When a user is tagged in a photo or video, he or she generally receives a notification of the tag and a link to see the photo or video.

39. Facebook users can use Facebook Messenger to communicate with other users via text, voice, video. Meta retains instant messages and certain other shared Messenger content unless deleted by the user, and also retains transactional records related to voice and video chats.

of the date of each call. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile.

40. If a Facebook user does not want to interact with another user on Facebook, the first user can "block" the second user from seeing his or her account.

41. Facebook has a "like" feature that allows users to give positive feedback or connect to particular pages. Facebook users can "like" Facebook posts or updates, as well as webpages or content on third-party (i.e., non-Facebook) websites. Facebook users can also become "fans" of particular Facebook pages.

42. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

43. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as "liking" a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user's Facebook page.

44. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

45. In addition to the applications described above, Meta provides users with access to thousands of other applications ("apps") on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

46. Meta also retains records of which IP addresses were used by an account to log into or out of Facebook, as well as IP address used to take certain actions on the platform. For example, when a user uploads a photo, the user's IP address is retained by Meta along with a timestamp.

47. Meta retains location information associated with Facebook users under some circumstances, such as if a user enables "Location History," "checks-in" to an event, or tags a post with a location.

48. Social networking providers like Meta typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Meta about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Meta typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

49. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's IP log, stored electronic communications, and other data retained by Meta, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is

analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Meta logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, location information retained by Meta may tend to either inculpate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner's state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner's motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

50. Therefore, the servers of Meta are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

51. I anticipate executing the warrant for the Subject Account under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Meta to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

52. Based on the foregoing, I request that the Court issue the proposed search warrant for the Subject Account.

53. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant. The government will execute this warrant by serving it on Meta. Because the warrant will be served on Meta, who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

54. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is a Magistrate Judge of "a district court of the United States . .. that – has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i).

55. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

56. I submit that this affidavit supports probable cause for the requested search warrants.

REQUEST FOR SEALING

57. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and search warrant. I believe that sealing this document is necessary because the warrant is relevant to an ongoing investigation into a criminal organizations as not all of the targets of this investigation will be searched at this time. Based upon my training and experience, I have learned that, criminals actively search for criminal affidavits and search warrants via the internet, and disseminate them to other criminals as they deem appropriate. Premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness.

Respectfully submitted,

Michael Fernandez
Special Agent
HSI

Subscribed and sworn to before me
on May 15, 2023

HONORABLE STEVEN L. TISCIONE
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

U.S. Department of Justice

United States Attorney
Eastern District of New York

610 Federal Plaza
Central Islip, New York 11722

BTK
F. #2021R00555

May 5, 2023

By ECF

The Honorable Anne Y. Shields
United States Magistrate Judge
United States District Court
100 Federal Plaza
Central Islip, NY 11722

Re: United States v. Davion Brown,
also known as "Kokaine"
and "Kokaine Redd"
Docket No. 23-CR-164 (GRB)

Dear Judge Shields:

The government respectfully submits this letter in anticipation of the defendant's arraignment on the above-referenced Indictment. For the reasons set forth below, the Court should find, in accordance with the statutory presumption that applies here, that the defendant poses a danger to the community and a flight risk and enter a Permanent Order of Detention against him.

I. Background

Based upon a long-term investigation conducted by the Department of Homeland Security Investigations ("HSI") and the Suffolk County Police Department, which involved interviews with multiple cooperating witnesses, reviews of seized electronic communications and social media postings and seizure of at least ten firearms and quantities of cocaine, cocaine base, fentanyl and heroin, the defendant, a member of the Bloodhound Brims ("BHB") street gang, was charged, in the above-captioned 22-count indictment, along with other BHB members, with attempted murder and assault in aid of racketeering, possessing, brandishing and discharging firearms in furtherance of violent crimes and narcotics possession and distribution.

In summary, the investigation revealed that the defendant was a member of a set of the BHB that operated in Suffolk County, New York. In seized Facebook messages, the defendant discussed gang activities, including shootings and narcotics trafficking with

Appendix I

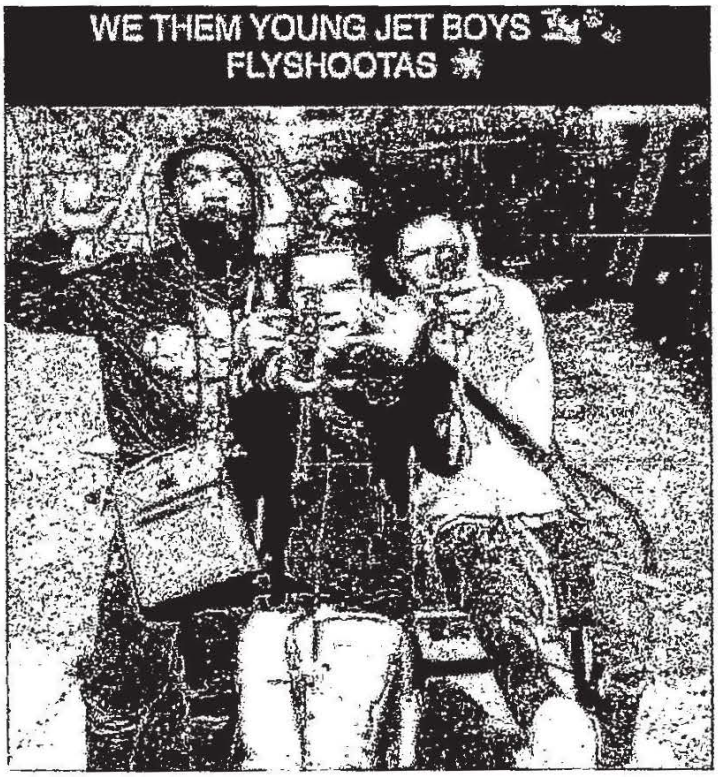
Jussiah Herbert, a BHB leader. For example, on October 13, 2020, Herbert wrote a Facebook message to the defendant, stating, "Gutta got shot last night by apes. I need u outside today."[1] Based upon the investigation, "Gutta" is Darnell Lewis, a BHB leader, and the "[A]pes" are gang that is engaged in an ongoing conflict with BHB that has resulted in numerous shootings in Suffolk County. Throughout his Facebook messages with Herbert, the defendant wrote "Whoopty," a term that BHB members use to signal their allegiance to the gang. In a signal of his willingness to engage in violence at Herbert's direction, on November 27, 2020, the defendant wrote to Herbert that "I be wanting to hang with the guys fuck the streets up. Hound stylllin."

The investigation has revealed that the defendant's communications with Herbert were not idle chatter. Indeed, on September 15, 2021, the defendant, along with Herbert and co-defendant Janell Johnson, fired multiple rounds at individuals whom they believed were rival gang members in Bay Shore, New York. Although several BHB members were arrested after the incident and found in possession of firearms, the defendant evaded capture until his arrest yesterday in Amityville, New York.

Showing his allegiance with BHB, the defendant (who is pictured below, front-row-center, in the teal shirt) was depicted in a photograph that was posted on September 7, 2021—about a week before the defendant engaged in the charged September 15, 2021 attempted murder—with Herbert, his co-defendant and BHB leader (second row, far right, blue-black-green-and-red sweatshirt) and fellow BHB members, while displaying gang hand signals:

[1] Unless otherwise noted, all referenced electronic communications are quoted verbatim in this letter.

In addition, in December 12, 2020 Facebook communications with Herbert, the defendant stated, in substance, that he "met" with Brandon Hicks, one of his co-defendants, whom the investigation revealed, conducted multiple shootings at Herbert's direction. The defendant acknowledged having met with Hicks after Herbert sent him the below photograph, which shows Hicks (far right) and other BHB members displaying firearms.



A review of the defendant's record of arrest and prosecutions shows that he is a Criminal History Category II based upon his 2019 conviction for attempted possession of dangerous prison contraband, for which he was sentenced to one year imprisonment and for which he was convicted only after being returned to court on a warrant. As such, he is facing a mandatory minimum prison term of five-to-fifty years' imprisonment and a Sentencing Guidelines range of 188-235 months' imprisonment based upon the charges set forth in the Indictment.

II. Legal Standard

Under the Bail Reform Act, 18 U.S.C. § 3141 et seq., federal courts are empowered to order a defendant's detention pending trial upon a determination that the defendant is either a danger to the community or a risk of flight. See 18 U.S.C. § 3142(e). The statute "provides that there is a rebuttable presumption that 'no condition or combination of conditions will reasonably assure'" against flight or danger where probable cause supports

a finding that the person seeking bail committed certain types of offenses, including—as applicable here—"an offense under Title 18, United States Code] section 924(c)" or "'an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. § 801 et seq.).'" See United States v. English, 629 F.3d 311, 319 (2d Cir. 2011) (quoting 18 U.S.C. § 3142(e)(3)(A)). "An indictment returned by a duly constituted grand jury conclusively establishes the existence of probable cause for the purpose of triggering the rebuttable presumptions set forth in § 3142(e)." See id. (quoting United States v. Contreras, 776 F.2d 51, 55 (2d Cir.1985) (internal alteration and quotation marks omitted)).

The Bail Reform Act lists four factors to be considered in the detention analysis, whether for risk of flight or dangerousness: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g); see also United States v. Jacobson, 502 F. App'x 31, 32 (2d Cir. 2012).

The concept of "dangerousness" encompasses not only the effect of a defendant's release on the safety of identifiable individuals, such as victims and witnesses, but also "'the danger that the defendant might engage in criminal activity to the detriment of the community.'" United States v. Millan, 4 F.3d 1038, 1048 (2d Cir. 1993) (quoting legislative history).

The Government must support a finding of dangerousness by clear and convincing evidence, see United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995), and a finding of risk of flight by a preponderance of the evidence, see United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); see also United States v. Abuhamra, 389 F.3d 309, 320 n.7 (2d Cir. 2004). Under the Bail Reform Act, the government may proceed by proffer, United States v. Ferranti, 66 F.3d 540, 541 (2d Cir. 1995); see also United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (explaining that the government is entitled to proceed by proffer in a detention hearing); United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986), (same). Furthermore, "[t]he rules of evidence do not apply in a detention hearing." Ferranti, 66 F.3d at 542; see also United States v. Agnello, 101 F. Supp. 2d 108, 110 (E.D.N.Y. 2000) ("[E]vidence may be supplied through proffers and hearsay information, and the rules of evidence do not apply.").

III. The Defendant Should Be Detained

A. The Defendant is a Danger to the Community

A long-term investigation revealed that the defendant is a member of the Suffolk County set of BHB, a violent street gang. To further the gang's intimidating reputation, the defendant engaged with other BHB members in a September 2021 shooting that targeted rival gang members. In addition, the defendant worked with Herbert and other BHB members to distribute controlled substances—including potentially deadly fentanyl—to finance BHB's illegal activities, which further damaged the community. As a result of these

offenses, the defendant is facing a Section 924(c) charge as well as controlled substances charges that trigger the statutory presumption that he is both a danger to the community and a flight risk. That the defendant engaged in violent conduct and potentially deadly drug dealing after he experienced what should have been the chastening effect of a one-year State sentence for attempted promotion of prison contraband only further underscores the danger to the community that his release would pose.

Thus, in light of the defendant's membership in a violent street gang, his demonstrated disregard for public safety, his record of recidivism, use of dangerous firearms, narcotics dealing and the presumption in favor of detention that applies here, the Court should conclude that the only proper course is to order the defendant's detention pending trial.

B. The Defendant Is a Risk of Flight

The defendant also poses a substantial flight risk. First, the weight of the evidence against the defendant is overwhelming. Numerous cooperating witnesses and seized electronic communications show that the defendant is a BHB member who engaged in a dangerous gang-motivated shooting and narcotics trafficking to enhance the reputation and resources of a violent street gang. The proof against the defendant also includes numerous seized firearms and quantities of fentanyl, heroin, cocaine and cocaine base. Such insurmountable proof, provides the defendant, as courts have repeatedly recognized, with a "considerable additional incentive to flee." United States v. Millan, 4 F.3d 1038, 1046 (2d Cir. 1993); see also United States v. Palmer-Contreras, 835 F.2d 15, 18 (1st Cir. 1987) (per curiam) (where "the evidence against defendants is strong, the incentive for relocation is increased"). That conclusion is only further bolstered by the defendant's previously-noted bench warrant history.

Finally, the defendant is facing a potential of fifty years' imprisonment with a mandatory minimum term of five years' imprisonment based upon the charges in the Indictment, which creates a substantial incentive for him to flee. The possibility of a severe sentence is an important factor in assessing a defendant's likelihood of flight. See United States v. Jackson, 823 F.2d 4, 7 (2d Cir. 1987); United States v. Martir, 782 F.2d 1141, 1147 (2d Cir. 1986) (defendants charged with serious offenses whose maximum combined terms created potent incentives to flee); United States v. Cisneros, 328 F.3d 610, 618 (10th Cir. 2003) (defendant was a flight risk because her knowledge of the seriousness of the charges against her gave her a strong incentive to abscond); United States v. Townsend, 897 F.2d 989, 995 (9th Cir. 1990) ("Facing the much graver penalties possible under the present indictment, the defendants have an even greater incentive to consider flight,"); United States v. Dodge, 846 F. Supp. 181, 18485 (D. Conn. 1994) (possibility of a "severe sentence" heightens the risk of flight). Moreover, based upon the defendant's Criminal History Category of II, his estimated sentencing guidelines range is 188-235 months' imprisonment. This provides him with an even greater incentive to flee.

IV. Conclusion

For the reasons set forth above, the Court should enter a Permanent Order of Detention against the defendant.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/
Bradley T. King
Assistant U.S. Attorney
(631) 715-7900

cc: Joseph Ryan, Esq.
United States Pretrial Services Agency

07/20/2023		ORDER denying 36 Motion to Exclude as to Davion Brown. Defendant moves to exclude electronic evidence obtained from a search of cell phones seized at the time of his arrest. While defendant argues that the evidence should be suppressed based upon the Supreme Court's decision in US v. Carpenter, that the evidence was obtained pursuant to duly-authorized search warrants, ensuring that defendant's Fourth Amendment rights were adequately protected undermines this argument. The only remaining suggestion is a kind of derivative suppression contention arising from a purported misstatement by the affiant in obtaining cell site location data prior to the arrest (rather than the subsequent cell phone search warrants), to wit: that the cell site information evidence would aid in the defendant's apprehension. While counsel labels this assertion a "charade," no persuasive evidence is offered that the statement was untrue, and certainly nothing is provided that would satisfy the demanding standards required under Franks. Therefore, no hearing is required and defendant's motion to suppress is DENIED in all respects. Ordered by Judge Gary R. Brown on 7/20/2023. (Brown, Gary) (Entered: 07/20/2023)

Appendix J