No. _____

In the Supreme Court of the United States

ROBERT KESHAUN TURNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

Appendix to Petition for Writ of *Certiorari*

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March 4, 2025

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APPENDIX A
Memorandum Opinion and Order re: Motion to Suppress
U.S. District Court for the Middle District of North Carolina

UNITED STATES OF AMERICA	
v.	**1:20-cr-350-1**
ROBERT KESHAUN TURNER	

THOMAS D. SCHROEDER, Chief District Judge.

Before the court is the motion of Defendant Robert Keshaun Turner to suppress all evidence seized, including a Ruger .45 caliber handgun and magazine, as a result of a warrantless search of a black Buick automobile he occupied (as the driver) parked at 702 North Alston Avenue in Durham, North Carolina, on June 4, 2020. (Doc. 11.) The Government has filed a response in opposition (Doc. 12), and Turner has replied (Doc. 14). An evidentiary hearing was held on June 8, 2021. For the reasons set forth below, the motion will be denied.

I. BACKGROUND

The Government presented the testimony of Officer David Flores, a three-year veteran of the Durham Police Department. The court finds his testimony credible, particularly as it was corroborated by his body-camera audio-video of the encounter, which the Government introduced

and which was viewed in open court. Based on the complete record, the court finds the following facts by a preponderance of the evidence.

On June 1, 2020, at approximately 6:30 p.m., Flores responded to a report by Calvin Fearington of a larceny at a boarding house located at 1515 Liberty Street. Fearington told Flores that his brother, Robert Keshaun Turner, stole his firearm, a .45 caliber black and gray SR Ruger, from a lock box located in Fearington's bedroom. Fearington provided Flores with the serial number for the firearm. According to Fearington, Turner was the only person who knew where the firearm was located within the bedroom. Fearington also informed Flores that Turner was involved with the Folk Nation street gang and that the gang was in conflict with another gang, possibly the Bloods.

After taking Fearington's report, Flores entered the firearm as stolen in the National Crime Information Center database. Flores then presented evidence to a magistrate in Durham County who issued a warrant for Turner's arrest. In the process, Flores learned that Turner was a felon and a validated gang member.

The next day, June 2, 2020, at approximately 11:30 p.m., Flores responded to a report of a carjacking at 302 Raynor Street. The victim,

Israel Beairs, informed Flores that he had been parked and waiting to meet with a friend, known as "Uncle," to have his car fixed. While waiting, Beairs was approached by Uncle's nephew, whom Israel identified as Defendant Turner. After making conversation with Beairs, Turner allegedly pulled out a gun—which Beairs described as a black and gray Ruger .45—and told Beairs to get out of the vehicle. Beairs reported that Turner then entered the vehicle and drove away. After Flores took Beairs's report, but prior to leaving, Beairs called Turner in an attempt to have his vehicle returned. Turner told Beairs that he needed "to make money" and hung up. Flores subsequently went to the magistrate's office to apply for an arrest warrant. While *en route*, however, an officer called Flores and informed him that Uncle had convinced Turner to return Beairs's vehicle. Ultimately, the magistrate declined to issue an arrest warrant and instead informed Flores that the matter required further investigation.

Less than 27 hours later, on June 4, 2020, at approximately 2:00 a.m., Flores responded to a "sound of shots" call at the EZ Mini Mart located at 702 North Alston Drive. Flores was familiar with the area and had previously responded to calls relating to disturbances in that area,

including other "sound of shots" calls, reports of heavy gambling, and gang activity. By the time Flores arrived on the scene, other Durham Police officers were already present.

In responding to the call, Flores parked on the side of the street, without blocking in any vehicles, and walked toward the front of the EZ Mini Mart. His activities were recorded by his body-worn camera. As Flores approached the store's parking lot, he spotted Turner in the driver's seat of a parked Buick SUV; a minor passenger occupied the SUV's backseat. As Flores reached the vehicle, Turner rolled down his window and Flores asked him his identity, which Turner confirmed. Flores then asked Turner to exit the vehicle, placed him under arrest for larceny of Fearington's firearm, and frisked him. Both Turner and the minor were detained, and Turner was placed in the backseat of Flores's police vehicle.

Flores returned to the parking lot and approached the SUV to conduct a search. At that time, Durham Police Corporal Peterson—Flores's immediate supervisor—was already in the process of searching the SUV. Shortly thereafter, Peterson discovered a firearm in the glove compartment of the vehicle. Flores checked the serial number of the

firearm in his police database and confirmed that it was the same black and grey Ruger .45 firearm that Fearington reported stolen on the evening of June 1.

Turner is presently charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) and possession of a stolen firearm in violation of 18 U.S.C. §§ 922(j) and 924(a)(2). (Doc. 4.) He now moves under the Fourth Amendment to exclude all evidence seized in the warrantless search of the Buick SUV on June 4, 2020. Turner contends that Flores lacked a "reasonable basis" to search the vehicle incident to his arrest. (Doc. 11 at 6–7.) The Government responds that, based on the totality of the circumstances known to Flores at the time of the arrest, he had not only a reasonable basis, but probable cause to search the vehicle for evidence relating to Turner's larceny of a firearm arrest and thus the search was justified both as a search incident to arrest and under the automobile exception to the Fourth Amendment. (Doc. 12 at 6–8.) In response, Turner argues that the search was not permissible under the automobile exception because Flores did not have probable cause and the vehicle was not "readily mobile." (Doc. 14 at 1.)

II. ANALYSIS

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. Evidence obtained in violation of the Fourth Amendment is subject to the exclusionary rule, which dictates that such evidence "cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *United States v. Calandra*, 414 U.S. 338, 347 (1974). Warrantless searches "are per se unreasonable under the Fourth Amendment—subject to only a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967). Accordingly, where the Government seeks to introduce evidence obtained through a warrantless search, it must prove by a preponderance of the evidence that the warrantless search was justified under one of those exceptions. *See Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971) (government bears burden to show legality of warrantless search); *United States v. Matlock*, 415 U.S. 164, 177 n.14 (1974) (burden of proof applicable to a motion to suppress is preponderance of the evidence).

"[A] search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment." *United States v. Robinson*, 414 U.S. 218, 224 (1973). In the context of a vehicle search, the Supreme Court has held that a warrantless search of a vehicle may be conducted incident to the arrest of a recent occupant where "it is reasonable to believe the vehicle contains evidence of the crime of arrest." *Arizona v. Gant*, 556 U.S. 332, 351 (2009).[1] Although the Fourth Circuit has not definitively articulated what "reasonable to believe" means under the Gant exception in the vehicle context, existing cases indicate that it is a less demanding standard than probable cause.[2] *See United States v.*

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1 *Gant* also provides that police may search a vehicle incident to arrest where "the arrestee is within reaching distance of the passenger compartment at the time of the search." *Id.* The parties do not contend that this exception is implicated here.

2 Both the Government and Turner conflate the "reasonable to believe" standard under *Gant* with probable cause to some extent. (See Doc. 12 at 7 n.6; Doc. 11 at 7.) The Government notes *United States v. Brinkley*, where the Fourth Circuit expressly equated "reasonable to believe" with probable cause in the context of serving an arrest warrant within a home. *See* 980 F.3d 377, 385–86 (4th Cir. 2020). However, neither *Brinkley* nor the cases cited within it discuss vehicle searches under *Gant*.

Rather, Brinkley addressed circumstances in which law enforcement may warrantlessly enter a home to execute an arrest

(cont.)

and held that "reasonable belief in the *Payton* [*v. New York*, 445 U.S. 573 (1980)] context embodies the same standard of reasonableness inherent in probable cause." *Id.* (emphasis added) (internal quotation marks omitted) (quoting *United States v. Vasquez-Algarin*, 821 F.3d 467, 477 (3d Cir. 2016)). The higher standard applied in that context is based on the understanding that private dwellings are "afforded the most stringent Fourth Amendment protection." *Id.* at 383 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976)).

However, it does not follow that the formulation of "reasonable to believe" in *Brinkley* applies equally in the context of vehicle searches pursuant to *Gant*, and no court appears to have extended the holding of *Brinkley* (or the cases cited within it) to the context of vehicle searches under *Gant*. Vehicles have a "lesser expectation of privacy" than one's home, *United States v. Kelly*, 592 F.3d 586, 590 (4th Cir. 2010) (citing *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976)), and the exception articulated in *Gant* derives from circumstances "unique to the vehicle context," *Gant*, 556 U.S. at 343. The *Gant* court expressly distinguished the exception articulated—which allows officers to search vehicles for evidence of the crime of the arrest based on a reasonable belief—with the automobile exception—which allows officer to search vehicles for evidence of any crime but must be supported by probable cause. *See id.* at 346–47. The Court would have little reason to have done so had the two standards been redundant.

The Fourth Circuit has also contrasted probable cause with a "mere" reasonable belief in the context of Gant. *See United States v. Baker*, 719 F.3d 313, 319 (4th Cir. 2013) (noting that, "in contrast to *Gant*'s rule, [the automobile] exception permits police officers to search a vehicle for evidence of any crime, not just the crime of arrest, but only on a showing of probable cause rather than a mere reasonable belief" (emphasis added)); *see also United States v. Davis*, 997 F.3d 191, 201–02 (4th Cir. 2021) (considering the

(cont.)

Baker, 719 F.3d 313, 319 (4th Cir. 2013) ("[I]n contrast to Gant's rule, [the automobile] exception permits police officers to search a vehicle for evidence of any crime, not just the crime of arrest, but only on a showing of probable cause rather than a mere reasonable belief."); *see also United States v. Vinton*, 594 F.3d 14, 25 (D.C. Cir. 2010) ("Presumably, the 'reasonable to believe' standard requires less than probable cause . . ."); *United States v. Rodgers*, 656 F.3d 1023, 1028 n.5 (9th Cir. 2011) (noting that the *Gant* standard "appears to require a level of suspicion less than probable cause"); *United States v. Edwards*, 769 F.3d 509, 514 (7th Cir. 2014) (indicating that reasonable belief "may be a less demanding standard" than probable cause).

A second exception, the automobile exception, permits a warrantless search of a vehicle where it "'is readily mobile and probable

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"reasonable to believe" standard of *Gant* after having found that the automobile exception's probable cause standard was not met).

Given this context, the court does not read "reasonable to believe" to mean probable cause in the *Gant* context. *See also Brinkley*, 980 F.3d at 395 (Richardson, J. dissenting) (explaining that not every use of "reasonable to believe" or "reasonable belief" by the Supreme Court invokes probable cause, citing *Terry v. Ohio*, 392 U.S. 1 (1968) and *Maryland v. Buie*, 494 U.S. 325 (1990)).

[Paragraph breaks added for readability.]

cause exists to believe it contains contraband' or evidence of criminal activity." *Baker*, 719 F.3d at 319 (quoting *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)). The automobile exception requires that a vehicle be "readily mobile" only "in the sense that it is 'being used on the highways' or is 'readily capable of such use' rather than, say, 'elevated on blocks.'" *United States v. Kelly*, 592 F.3d 586, 591 (4th Cir. 2010) (quoting *California v. Carney*, 471 U.S. 386, 392–93, 394 n.3 (1985)). Probable cause "plainly 'exist[s] where the known facts and circumstances are sufficient to warrant a [person] of reasonable prudence in the belief that contraband or evidence of a crime will be found.'" *United States v. Allen*, 631 F.3d 164, 172 (4th Cir. 2011) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)).

Here, Turner first argues that the search of the SUV was not justified as a search incident to arrest because Flores did not have a reasonable basis to believe that evidence of the crime of arrest—larceny of a firearm—would be found in the vehicle. (Doc. 11 at 6–7.) In making this argument, Turner appears to equate "reasonable basis" with probable cause. In response, the Government argues that Flores not only had a reasonable basis to believe evidence of the crime would be found in

the vehicle, but that he had probable cause to search the vehicle for evidence. (Doc. 12 at 6–8.)

Several courts have found that law enforcement will typically have a reasonable basis to believe that evidence of the crime of arrest will be found in a vehicle where the crime is weapons-related. For example, in *United States v. Vinton*, the D.C. Circuit held that an arrest for the unlawful possession of a weapon "makes it reasonable to believe" that "additional weapons are in the car" because "the defendant has been caught with a type of contraband sufficiently small to be hidden throughout a car and frequently possessed in multiple quantities." *See* 594 F.3d at 25–26; *see also United States v. Wade*, No. CRIM.A. 09-462, 2010 WL 1254263, at *5 (E.D. Pa. Mar. 29, 2010) ("After officer Spain arrested Wade for possession of a firearm, it was reasonable for him to believe that he might find contraband—such as another gun, ammunition, or drugs—in Wade's jacket" located within the vehicle). Similarly, the Fourth Circuit indicated there was a reasonable basis to believe that evidence of the crime of arrest would be found in a vehicle, such that the search was permitted incident to arrest, where a defendant was arrested for use of a firearm in the commission of a felony and officers

suspected he had a gun on the day of arrest, explaining that "the offense of arrest . . . suppl[ied] a basis for searching . . . [the] vehicle." *United States v. Laws*, 746 F. App'x 187, 189 (4th Cir. 2018) (quoting *Gant*, 556 U.S. at 344) (some alterations in original). In determining whether officers had a reasonable belief or probable cause to search a vehicle, courts have further considered the active warrants of the vehicle's occupants, *see United States v. Wright*, No. 5:18-cr-00005-6, 2018 WL 5046091, at *8 (W.D. Va. Oct. 17, 2018), if the vehicle was located in a high crime area, *United States v. Muti*, No. 4:09-cr-41-FL1, 2009 WL 3296091, at *3 (E.D.N.C. Oct. 13, 2009), and the time of day, *United States v. Skoda*, 705 F.3d 834, 838 (8th Cir. 2013).

At the time of Turner's arrest, Flores had significant knowledge of Turner's activity and circumstances over the preceding 56 hours that justified the warrantless search. On June 1, 2020, Flores personally took the report of Fearington who indicated that Turner both had stolen his firearm and was involved in a street gang that was possibly in conflict with another such gang. Less than 30 hours later, Flores personally responded to a carjacking call where the victim both identified Turner as the assailant and indicated that Turner brandished a firearm matching

the description of that stolen from Fearington. And less than 27 hours after that, Flores responded—again personally—to a shots-fired call in an area which he knew to be affiliated with gang activity at a late hour of night, where he encountered Turner. At that time, Turner confirmed his identity and Flores arrested him on his outstanding warrant for larceny of a firearm. Based on the crime of arrest, coupled with the surrounding circumstances of which Flores was aware, he had at least a reasonable belief that Turner's vehicle contained evidence of the larceny of the firearm, such that the search of the vehicle incident to arrest was permissible. The court need not, therefore, reach Turner's alternate argument that Flores lacked probable cause to search the SUV under the automobile exception.[3]

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[3] It is plain, however, that to the extent Turner argues that the search was not permissible under the automobile exception because the vehicle was not "readily mobile," that argument fails. Turner suggests that the vehicle was not readily mobile because there was no licensed individual available to move the vehicle once Turner was arrested. (Doc. 14 at 1- 2.) However, the crux of the readily mobile inquiry is the vehicle is readily capable of being moved, "rather than, say, elevated on blocks." *Kelly*, 592 F.3d at 591 (internal quotation marks omitted). The Fourth Circuit has expressly declined to "carve out exceptions to the automobile exception based on the degree of control police exercise over a

(cont.)

Finally, Turner argued, orally before the court, that Corporal Peterson—who discovered the stolen firearm in Turner's vehicle—did not have a reasonable belief sufficient to search Turner's vehicle because he did not have knowledge of the same facts known to Flores. In response, the Government argued that the gun inevitably would have been discovered by Flores during his lawful search of the vehicle.[4]

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vehicle." *Id.* As indicated by Flores's testimony, following Turner's arrest, his vehicle was ultimately moved by a licensed individual who came to the scene. His vehicle was therefore clearly capable of being moved and, despite the fact that the vehicle was under a degree of police control following Turner's arrest, was "readily mobile."

[4] The Government did not argue that the searching officers, namely Corporal Peterson, had sufficient collective knowledge to justify the search. The Fourth Circuit permits officers lacking personal knowledge sufficient to justify a search to rely upon the collective knowledge doctrine, applicable "where the search . . . is directed by an officer who himself has sufficient knowledge" to justify the search. *See United States v. Ferebee*, 957 F.3d 406, 411 (4th Cir. 2020). As discussed above, Flores had a reasonable basis to search the vehicle. However, it is unclear whether Peterson—who began searching the vehicle prior to Flores and ultimately discovered the firearm—began his search of the vehicle at Flores's direction or whether he otherwise had knowledge of the events leading to Turner's arrest, such that he also had a reasonable basis to search the vehicle. As such, the court cannot determine that Peterson's search of the vehicle was either independently lawful or permissible under the collective knowledge doctrine.

The Government is correct. The firearm discovered by Peterson does not need to be suppressed as it inevitably would have been discovered by Flores during his own lawful search of the vehicle. The inevitable discovery exception dictates that the government may use "information obtained from an otherwise unreasonable search if it can establish by a preponderance of the evidence that law enforcement would have 'ultimately or inevitably' discovered the evidence by 'lawful means.'" *United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017) (quoting *Nix v. Williams*, 467 U.S. 431, 444 (1984)). "'Lawful means' include an inevitable search falling within an exception to the warrant requirement." *Id.* (quoting *United States v. Allen*, 159 F.3d 832, 841 (4th Cir. 1998)).

Officer Flores's warrantless search of the vehicle, as discussed above, was permissible as a search incident to arrest under *Gant*. As demonstrated by Flores's testimony and his body camera footage from the night of the arrest, Flores was beginning to search Turner's vehicle when shortly thereafter Peterson discovered the firearm in the vehicle's glove compartment. Had Flores searched the entire vehicle without Peterson's assistance, Flores inevitably would have checked the glove

compartment and discovered the firearm himself. Therefore, the inevitable discovery doctrine applies to the discovery of the firearm, and the fact that Peterson actually discovered its presence does not invalidate the search.

III. CONCLUSION

For the reasons stated, IT IS THEREFORE ORDERED that Defendant's motion to suppress (Doc. 11) is DENIED.

/s/ Thomas D. Schroeder
United States District Judge

June 15, 2021

APPENDIX B
Criminal Judgment
U.S. District Court for the Middle District of North Carolina

[Reprinted at 19A–26A *infra*.]

United States District Court
Middle District of North Carolina

UNITED STATES OF AMERICA

v.

ROBERT KESHAUN TURNER

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:20-CR-00350-1

USM Number: 42176-509

Daniel A. Harris
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count 1s of the superseding indictment filed November 30, 2020.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	June 4, 2020	1s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count 1 of the original indictment filed August 31, 2020 and Count 2s of the superseding indictment filed November 30, 2020 are dismissed on the motion of the defendant without objection from the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the economic circumstances.

January 18, 2022
Date of Imposition of Judgment

/Thomas D. Schroeder/
Signature of Judge

Thomas D. Schroeder, United States District Judge
Name & Title of Judge

January 19, 2022
Date

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **57 months.**

☒ The court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to a Bureau of Prisons facility where he may receive counseling, where he may participate in the most intensive form of substance abuse treatment available, where he may study to obtain his GED and, to the extent it does not conflict with that, a facility as close as possible to his home in Durham, North Carolina

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

☐ at _____ am/pm on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 pm on .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **Three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
4. ☐ You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
7. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date_____

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall abide by the mandatory and standard conditions of supervised release.

The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall participate in any educational and/or vocational services programs, as directed by the probation officer, and pay for any program fees as directed by the probation officer. Such programs may include, but is not limited to, High School Diploma, GED preparation, on-the-job training, job readiness training, and skills development training.

The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

The defendant shall not associate with or be in the company of any Folk Nation/Gangster Disciples gang member/security threat group member. The defendant shall not frequent any locations where gangs/security threat groups congregate or meet. The defendant shall not wear, display, use, or possess any clothing or accessories which have any gang or security threat group significance.

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$.00	$.00		

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived pursuant to 18 U.S.C. Section 3612(f)(3) for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

*** Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.**
**** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.**
***** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.**

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (*e.g. weekly, monthly, quarterly*) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (*e.g. weekly, monthly, quarterly*) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties: **To the extent the defendant cannot immediately comply, the Court recommends the defendant participate in the Inmate Financial Responsibility Program.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names, Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

DISPOSITION OF EVIDENCE

☒ **That at the expiration of time for appeal, the firearm seized from the defendant shall be destroyed or returned to its lawful and rightful owner, if one can be determined.**

APPENDIX C
Published Opinion
U.S. Court of Appeals for the Fourth Circuit

No. 22-4055

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

ROBERT KESHAUN TURNER,

Defendant – Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Thomas D. Schroeder, District Judge. (1:20-CR-00350-TDS-1)

Argued: September 24, 2024 Decided: December 4, 2024

Before THACKER, HARRIS, and QUATTLEBAUM, Circuit Judges.

Affirmed in part, vacated in part, and remanded by published opinion. Judge Harris wrote the opinion, in which Judge Thacker and Judge Quattlebaum joined.

ARGUED: Ryan M. Prescott, PRESCOTT LAW, PLLC, Clemmons, North Carolina, for Appellant. Laura Jeanne Dildine, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee. **ON BRIEF:** Daniel A. Harris, CLIFFORD & HARRIS,

PLLC, Greensboro, North Carolina, for Appellant. Sandra J. Hairston, United States Attorney, Margaret M. Reece, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greensboro, North Carolina, for Appellee.

PAMELA HARRIS, Circuit Judge:

Robert Keshaun Turner pleaded guilty to being a felon in possession of a firearm after the police seized a gun from a car in which Turner was sitting. On appeal, Turner first challenges the denial of his motion to suppress the gun on Fourth Amendment grounds. Finding no Fourth Amendment violation, we affirm Turner's conviction. With respect to his sentence, Turner argues that inconsistencies between the supervised-release conditions announced at his sentencing and those in his written judgment constitute error under *United States v. Rogers*, 961 F.3d 291 (4th Cir. 2020). Again, we disagree and conclude no Rogers error was committed. But because Turner's criminal history score concededly was miscalculated, resulting in a too-high Sentencing Guidelines advisory range, we vacate Turner's sentence and remand for resentencing.

I.

A.

The events underlying this case unfolded over a roughly two-day period in Durham, North Carolina. During the evening of June 1, 2020, the brother of the defendant, Robert Keshaun Turner, notified local law enforcement that his handgun, a black and gray Ruger Model SR45, was missing from its usual place in a lockbox in his bedroom. When Officer David Flores responded, Turner's brother reported that the gun had been stolen by Turner, the only other person with knowledge of the gun and access to its location. Turner's brother also advised that Turner was involved with the Folk Nation street gang, which was in conflict with another gang at the time. Flores presented this information to a state magistrate judge, who issued a warrant for Turner's arrest. In the process, Flores also learned that Turner was a felon and a validated gang member.

The next night, Flores responded to a carjacking report in which the victim alleged that Turner pointed a black and gray Ruger Model SR45 handgun at him and threatened to shoot unless he gave Turner the keys to his car. Flores sought a second arrest warrant for Turner, but

while he was *en route* to the magistrate judge, the victim informed law enforcement that Turner had returned his vehicle. Finding that the matter required further investigation, the magistrate judge declined to issue a second warrant.

At around 2:00 a.m. on June 4, 2020—less than 27 hours after the carjacking report, and approximately two days after the initial theft of the gun—Flores responded to a shots-fired call at an EZ Mini Mart. Flores was familiar with the location, having previously responded to calls reporting gunshots, heavy gambling, and gang activity in that area. When Flores arrived, other police officers were already on the scene, and Flores parked his patrol car a short distance away. From that point forward, his activities were captured by his body-worn camera.

As Flores approached the store, he recognized Turner sitting in the driver's seat of a stationary black Buick. After verifying Turner's name, Flores asked Turner to exit the vehicle, then handcuffed and arrested him on his outstanding warrant. Flores asked Turner if there was anything on his person or in the vehicle about which law enforcement should be aware; Turner replied that there was not. Flores proceeded to

frisk Turner, finding no weapons or contraband. He then placed Turner in the back of his patrol car.

By the time Flores returned to the black Buick—roughly two minutes after first taking Turner into custody—Flores's immediate supervisor, Corporal Peterson, was already searching the vehicle. Flores joined the search and, shortly thereafter, Peterson found a firearm in the glove compartment. Flores later confirmed that the gun in the black Buick was the gun stolen from Turner's brother.

B.

Turner was charged with possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and possession of a stolen firearm, in violation of 18 U.S.C. § 922(j). He moved to suppress the handgun, arguing that the officers' warrantless search of the black Buick violated the Fourth Amendment. The government opposed, arguing that two Fourth Amendment warrant exceptions—the search-incident-to-arrest exception and the automobile exception—each applied and independently justified the search.

At the suppression hearing, Officer Flores testified as to the events described above. The district court credited Flores's account, which was

corroborated by the footage from his body-worn camera that was admitted as evidence. *See United States v. Turner*, No. 1:20-cr-350-1, 2021 WL 2435609, at *1 (M.D.N.C. June 15, 2021). The district court then denied Turner's motion to suppress, holding that the search of the car in which Turner was sitting was a lawful search incident to arrest. *Id.* at *4. In a thoroughly reasoned opinion, the court applied the Supreme Court's decision in *Arizona v. Gant*, 556 U.S. 332 (2009), explaining that it allows for a warrantless search of a vehicle incident to the arrest of a recent occupant so long as "it is reasonable to believe the vehicle contains evidence of the crime of arrest." *Turner*, 2021 WL 2435609, at *3 (quoting *Gant*, 556 U.S. at 351). This "reasonable to believe" standard, the court found, is a "less demanding standard than probable cause." *Id.*; see also *id.* at *3 n.2. And based on all the facts and circumstances of which Officer Flores was aware at the time of the search, the district court concluded there was "at least a reasonable belief that Turner's vehicle contained evidence of the larceny of the firearm" for which Turner was arrested "such that the search of the vehicle incident to arrest was permissible" under *Gant*. *Id.* at *4.

C.

After his motion to suppress was denied, Turner pleaded guilty to possession of a firearm by a convicted felon but reserved his right to appeal the denial of his suppression motion.

At sentencing, the district court adopted a Sentencing Guidelines advisory range of 46 to 57 months' imprisonment. That Guidelines range was based on an offense level of 19 and seven criminal history points, which put Turner in criminal history category IV. Though the parties had initially debated the proper offense level, they ultimately agreed with the district court's determination, endorsing all parts of its calculation. The court sentenced Turner to a within-Guidelines term of imprisonment of 57 months, to be followed by three years of supervised release. As relevant here, Turner's sentence included four special conditions of supervised release.

Turner timely appealed. His counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), stating that there were no meritorious grounds for appeal. After reviewing the record, this court appointed new counsel for Turner and directed supplemental briefing on three issues: the denial of Turner's motion to suppress; the consistency of

the district court's oral pronouncement of supervised-release special conditions with the written judgment; and the calculation of Turner's advisory Sentencing Guidelines range, especially with respect to Turner's criminal history score.

II.

A.

We begin with Turner's suppression motion. When, as here, a district court denies a motion to suppress, we review the court's "legal conclusions de novo and its factual findings for clear error, considering the evidence in the light most favorable to the government." *United States v. Kolsuz*, 890 F.3d 133, 142 (4th Cir. 2018). Having undertaken that review, we agree with the district court that the warrantless search of the black Buick was justified by the search-incident-to-arrest exception as set out in Gant and did not violate the Fourth Amendment.[1] The

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[1] Accordingly, and like the district court, see *Turner*, 2021 WL 2435609, at *4, we need not consider the government's alternative argument under the automobile exception to the warrant requirement, which allows for a search of a "readily mobile" vehicle if there is probable cause to believe it contains contraband or evidence of any criminal activity. See *United States v. Baker*, 719 F.3d 313, 319 (4th Cir. 2013) (describing automobile exception).

district court correctly denied Turner's suppression motion, and we therefore affirm Turner's conviction.

1.

Warrantless searches—like the search of the vehicle in which Turner was sitting when he was arrested—are "per se unreasonable under the Fourth Amendment," subject to "only a few specifically and well-delineated exceptions." *Turner*, 2021 WL 2435609, at *2 (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Among those exceptions is one for searches incident to arrest. As relevant here, that exception authorizes a warrantless vehicle search "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Gant*, 556 U.S. at 343 (2009) (internal quotation marks omitted).[2]

Neither the Supreme Court nor this court has articulated the precise quantum of proof necessary to satisfy *Gant*'s "reasonable to

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[2] *Gant* permits a warrantless search of a vehicle incident to arrest in only one other circumstance: "when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." 556 U.S. at 343; *see Baker*, 719 F.3d at 317. The parties agree that this prong of the search-incident-to-arrest exception does not apply here. See *Turner*, 2021 WL 2435609, at *3 n.1.

believe" standard. But as the district court observed, our cases "indicate that ['reasonable to believe'] is a less demanding standard than probable cause." *Turner*, 2021 WL 2435609, at *3. We made that point most clearly in *United States v. Baker*, 719 F.3d 313 (4th Cir. 2013), contrasting the Gant search-incident-to-arrest exception with the automobile exception. The automobile exception, we explained, is in some ways the broader of the two, allowing police officers to "search a vehicle for evidence of any crime, not just the crime of arrest" as permitted by *Gant*. *Id.* at 319. But there is a catch: Under the automobile exception, police may search only "on a showing of probable cause," rather than the "mere reasonable belief" that will justify a search incident to arrest under Gant. *Id.* (emphasis added); *see also United States v. Davis*, 997 F.3d 191, 201–02 (4th Cir. 2021) (considering the *Gant* "reasonable to believe" standard after first finding an absence of probable cause under the automobile exception).[3] Our precedent may not

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[3] As the district court noted, there is a different context in which our precedent equates "reason to believe" with "probable cause." *See Turner*, 2021 WL 2435609, at *3 n.2. Under *Payton v. New York*, 445 U.S. 573 (1980), police may enter a suspect's home to execute an arrest warrant if there is "reason to believe the suspect is *(cont.)*

conclusively define *Gant*'s "reasonable to believe" standard, in other words, but it does treat that standard as requiring something less than probable cause.

Like the district court, we think that is the most sensible reading of *Gant*. Most obviously, if the Supreme Court in Gant had intended to set the bar at probable cause, then it could have just said so; "probable cause" is an often used and well-understood Fourth Amendment term of art, and its absence from *Gant*'s search-incident-to-arrest analysis is conspicuous. *United States v. Edwards*, 769 F.3d 509, 514 (7th Cir. 2014) (*Gant* Court's "choice of phrasing" suggests a standard "less demanding"

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within." *Id.* at 603. And in *United States v. Brinkley*, 980 F.3d 377 (4th Cir. 2020), we held that this standard requires a showing of probable cause that the suspect will be home when the police enter. *Id.* at 384–86. But "it does not follow," as the district court explained, "that the formulation of 'reasonable to believe' in *Brinkley* applies equally in the context of vehicle searches pursuant to *Gant*." *See Turner*, 2021 WL 2435609, at *3 n.2. While *Brinkley* is based largely on the "special protections that the Fourth Amendment affords the home," 980 F.3d at 386, vehicles are afforded a significantly lesser expectation of privacy, *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976), and Gant's "reasonable to believe" standard derives expressly from "circumstances unique to the vehicle context," *Gant*, 556 U.S. at 343; see *Turner*, 2021 WL 2435609, at *3 n.2. Turner does not argue otherwise on appeal, agreeing that *Brinkley* is inapplicable to warrantless vehicle searches under *Gant*.

than probable cause); see *Wynne v. Town of Great Falls, South Carolina*, 376 F.3d 292, 298 n.3 (4th Cir. 2004) ("[C]arefully considered language of the Supreme Court . . . generally must be treated as authoritative."). Moreover, *Gant* permits a vehicular search incident to arrest when it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Baker*, 719 F.3d at 317 (quoting *Gant*, 555 U.S. at 343) (emphasis added). While that formulation is not used consistently throughout the opinion, see *Gant*, 555 U.S. at 351, its prominence further suggests that the Gant Court had in mind a level of suspicion lower than probable cause. *Cf., e.g., Illinois v. Gates*, 462 U.S. 213, 238 (1983) (defining probable cause as "a fair probability that contraband or evidence of a crime will be found in a particular place" (emphasis added)).

Finally, there is a more practical point. As the district court explained, see *Turner*, 2021 WL 2435609, at *3 n.2, because the automobile exception allows for a warrantless search of a vehicle for any contraband or evidence on a showing of probable cause, reading *Gant* also to require probable cause would render its search-incident-to-arrest exception largely redundant. That result would be especially odd because

Gant is at pains to distinguish the two doctrines. *Gant*, 556 U.S. at 347; see *United States v. Vinton*, 594 F.3d 14, 25 (D.C. Cir. 2010) ("Presumably, the 'reasonable to believe' standard requires less than probable cause, because otherwise *Gant*'s evidentiary rationale would merely duplicate the 'automobile exception,' which the Court specifically identified as a distinct exception to the warrant requirement.").

For all these reasons, we agree with the district court that *Gant*'s "reasonable to believe" standard can be satisfied with something less than probable cause. That conclusion aligns with the approach taken by our own precedent and with the views expressed by our sister circuits, see *Edwards*, 769 F.3d at 514; *United States v. Rodgers*, 656 F.3d 1023, 1028 n.5 (9th Cir. 2011); *Vinton*, 594 F.3d at 25, and we think it is most faithful to the Supreme Court's opinion in *Gant*.

2.

We need go no further today in explicating *Gant*'s "reasonable to believe" standard—considering, for instance, how it relates to the "reasonable suspicion" standard associated with *Terry v. Ohio*, 392 U.S. 1 (1968). *Cf. Vinton*, 59 F.3d at 25 (comparing Gant's "reasonable to believe" standard to the "reasonable suspicion" standard); *Brinkley*,

980 F.3d at 395–96 (Richardson, J., dissenting) (discussing Supreme Court's use of "reasonable suspicion," "reasonable belief," and "reason to believe" in *Terry* and other contexts). That is because we agree with the district court in a second respect: Whatever the precise contours of *Gant*'s "reasonable to believe" standard, that standard is met here.

As the district court emphasized, at the time of Turner's arrest at the EZ Mini Mart for theft of a firearm, Officer Flores was very familiar with Turner's activities and circumstances over the past two and a half days. *Turner*, 2021 WL 2435609, at *4. In investigating the original theft on June 1, Flores personally took the report of Turner's brother, learning that Turner was involved in a street gang that was potentially engaged in a gang conflict. The next night, Flores responded to a carjacking call and discovered that Turner had apparently stolen his brother's gun for personal use, rather than for a quick sale or trade, and was already putting it to work. And then the night after that, Flores came upon Turner moments after a shots-fired call, in an area known for gang activity—again, during a period when Turner's gang was reportedly at odds with another gang.

Under those circumstances, we agree with the district court that it was eminently reasonable for Flores to believe that Turner was likely armed—if only for self-defense—while he was sitting in the black Buick at the EZ Mini Mart just after reported gunfire. It was also reasonable for Flores to believe that Turner was armed with the same stolen gun he had reportedly used just the night before in an apparent carjacking. And because Turner was not carrying a gun on his person—Flores's frisk had turned up nothing—the car in which Turner was sitting became the most likely place for Turner to have stowed a readily accessible weapon. Under *Gant*, that is enough to permit a search of the passenger compartment of the black Buick incident to Turner's lawful arrest on the outstanding warrant for theft of a gun.[4] Accordingly, the district court correctly denied Turner's motion to suppress.

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[4] During the suppression hearing, Turner argued to the district court for the first time that even if Officer Flores had a reasonable belief that the stolen gun would be found in the black Buick, Corporal Peterson, who participated in the search and found the gun in the glove compartment, did not. *Turner*, 2021 WL 2435609, at *5. The district court rejected that argument, reasoning that even apart from Peterson's intervention, the gun inevitably would have been discovered by Flores during his own lawful search of the car. *Id.* We do not understand Turner to have challenged this ruling on *(cont.)*

B.

We next consider Turner's sentence and his claim that the district court committed an error under *United States v. Rogers*, 961 F.3d 291 (4th Cir. 2020), when it entered in his written judgment certain special conditions of supervised release that differed from those announced at sentencing. We review the consistency of the district court's oral sentence and the written judgment de novo. *Rogers*, 961 F.3d at 296.

Rogers and its progeny "require a district court to orally pronounce all discretionary conditions of supervised release at the sentencing hearing." *United States v. Mathis*, 103 F.4th 193, 197 (4th Cir. 2024). However, "a district court may satisfy its obligation to orally pronounce discretionary conditions through incorporation." *Rogers*, 961 F.3d at 299. The district court here did just that. It imposed four special conditions of supervised release, each of which was included in the sentencing recommendation provided in the Presentence Investigation Report ("***PSR***") compiled by the United States Probation Office. At Turner's

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appeal. In any event, we see no error in the district court's application of the inevitable discovery doctrine. *See United States v. Bullette*, 854 F.3d 261, 265 (4th Cir. 2017) (describing inevitable discovery doctrine).

sentencing hearing, the district court incorporated the conditions as set forth in the PSR, after confirming that defense counsel had reviewed them with Turner and had no objection. J.A. 159–160. Those special conditions—the conditions laid out in the PSR and incorporated at Turner's sentencing hearing—are a word-for-word match with those in Turner's written judgment. That is enough to satisfy the dictates of our *Rogers* decision.

Turner nevertheless faults the district court for going further than was required and reading aloud the special conditions from the PSR, so that each discretionary condition was announced "in open court with the defendant present." *Rogers*, 961 F.3d at 299 (cleaned up) (describing optimal practice). In so doing, the district court deviated ever so slightly from the language in the PSR and written judgment—which, according to Turner, amounts to a *Rogers* error.

We disagree. Not every inconsistency between a written judgment and an oral pronouncement is reversible Rogers error. *Mathis*, 103 F.4th at 197. The "written judgment does not have to match perfectly with the oral pronouncement," and only a "material discrepancy" between the two

violates the *Rogers* line of cases. *Id.* We see no such discrepancy in either of the two special conditions challenged by Turner.

The first, as incorporated at the sentencing hearing and written in the judgment, requires Turner to "cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer." J.A. 169 (emphasis added). In reading that condition aloud at sentencing, the district court informed Turner of his obligation to "cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient and residential treatment, and to pay for those services as directed by the probation officer." J.A. 159 (emphasis added). We cannot see—and Turner has not explained—how referring to the treatment services already listed as "those services" instead of as "treatment services" materially altered the nature of this condition.

So too with the second challenged condition. As written in the incorporated PSR and the judgment, the condition states that Turner shall not "associate with or be in the company of any Folk Nation/Gangster Disciples gang member/security threat group member,"

J.A. 169; as stated orally in court, the condition states that Turner shall not "associate with or be in the company of any gang member, including the Folk Nation or Gangster Disciples gang, or security threat group," J.A. 160. Aside from simply quoting the two formulations of the condition, Turner has not identified any inconsistency with which he takes issue, let alone explained how it could be material. Moreover, Turner never responded to the government's argument that any difference is immaterial because the two formulations can plausibly be read to proscribe the same conduct. *See Mathis*, 103 F.3d at 197 ("[S]ome difference between the oral pronouncement and the written judgment is permitted when the government has offered an explanation for the alleged inconsistency to which the defendant has not responded."). We thus readily conclude that there is no material discrepancy as to this condition either.[5]

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[5] At oral argument, Turner's counsel acknowledged that the differences between the written judgment and oral pronouncement did not seem to be material. We appreciate counsel's candor, and we recognize that he briefed the Rogers issue at our court's instruction.

The *Rogers* rule is an important one, protecting the right of a defendant to be present when sentenced and facilitating sometimes meritorious objections to discretionary conditions of supervised release. See *Rogers*, 961 F.3d at 296, 298. But it was never intended to be an empty formality or a trap for district court judges who go beyond incorporation to provide an additional layer of protection to the defendants they are sentencing. Turner has identified no "material discrepancy" between his oral sentence and written judgment, *Mathis*, 103 F.4th at 197, and it follows that there is no *Rogers* error here.

C.

We must nevertheless vacate Turner's sentence and remand for resentencing because, as the government concedes, Turner's criminal history score was improperly calculated, leading to the adoption of an advisory Guidelines sentencing range that was higher than it should have been.

At the sentencing hearing, the parties agreed that Turner's criminal history score was seven, placing him in criminal history category IV and resulting in a Guidelines range of 46 to 57 months' imprisonment. That was a mistake. One of Turner's criminal history points was

assigned for a 45-day sentence imposed in 2011, nine years before the current conviction. *See* U.S.S.G. §§ 4A1.1(c), 4A1.2(e) (assigning, as a general rule, one criminal history point for a sentence of less than 60 days imposed within 10 years of the instant offense). But because Turner was under 18 when his 45-day sentence was imposed, it should have been counted in his criminal history only if it was imposed within five years of the instant offense, see *id.* § 4A1.2(d)(2)(B), which it was not. The parties now agree that Turner's criminal history score should have been six, not seven; his criminal history category III, not IV; and his Guidelines sentencing range 37 to 46 months' imprisonment, not 46 to 57.[6]

Although Turner raised objections to the calculation of his offense level at sentencing, he never objected to the calculation of his criminal

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[6] The government also calls to our attention that Turner may be eligible for an additional two-level reduction in his criminal history category due to the recent retroactive Amendment 821 to the Sentencing Guidelines. Turner, for his part, argues that there are additional errors in his Guidelines calculation, though the government contends those arguments have been waived. We leave these issues for the district court to assess in the first instance at resentencing. We express no view as to the ultimate calculation of Turner's advisory sentencing range or any sentencing enhancement or reduction not discussed in our opinion. *See United States v. Evans*, 90 F.4th 257, 264 n.5 (4th Cir. 2024).

history score. Our review is thus for plain error only. *United States v. McLaurin*, 764 F.3d 372, 388 (4th Cir. 2014); Fed. R. Crim. P. 52(b). But the government, with forthrightness we appreciate, concedes that the error here was plain, that it affected Turner's substantial rights, and that we should correct the error now. *See Molina-Martinez v. United States*, 578 U.S. 189, 201 (2016) ("[T]he court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights."); *Rosales-Mireles v. United States*, 585 U.S. 129, 145 (2018) ("In the ordinary case, as here, the failure to correct a plain Guidelines error that affects a defendant's substantial rights will seriously affect the fairness, integrity, and public reputation of judicial proceedings."). We agree and, accordingly, vacate Turner's sentence and remand so that he may be resentenced under a correctly calculated advisory sentencing range.

III.

For the reasons given above, we affirm Turner's conviction, vacate Turner's sentence, and remand for resentencing consistent with this opinion.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED

APPENDIX D
Judgment Order
U.S. Court of Appeals for the Fourth Circuit

No. 22-4055
1:20-cr-00350-TDS-1

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ROBERT KESHAUN TURNER

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part and vacated in part. This case is remanded to the district court for further proceedings consistent with the court's decision.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

APPENDIX E
Amended Criminal Judgment
U.S. District Court for the Middle District of North Carolina

[Reprinted at 51A–58A *infra*.]

United States District Court
Middle District of North Carolina

UNITED STATES OF AMERICA

v.

ROBERT KESHAUN TURNER

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 1:20-CR-00350-1

USM Number: 42176-509

Daniel A. Harris
Defendant's Attorney

Date of Original Judgment: January 18, 2022

THE DEFENDANT:

☒ pleaded guilty to count 1s of the superseding indictment filed November 30, 2020.

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	June 4, 2020	1s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☒ Count 1 of the original indictment filed August 31, 2020 and Count 2s of the superseding indictment filed November 30, 2020 are dismissed on the motion of the defendant without objection from the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the economic circumstances.

February 20, 2025
Date of Imposition of Judgment

/Thomas D. Schroeder
Signature of Judge

Thomas D. Schroeder, United States District Judge
Name & Title of Judge

Feby 25, 2025
Date

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: ***52 months.**

☒ The court makes the following recommendations to the Bureau of Prisons: That the defendant be designated to a Bureau of Prisons facility where he may receive counseling, where he may participate in the most intensive form of substance abuse treatment available, where he may study to obtain his GED and, to the extent it does not conflict with that, a facility as close as possible to his home in Durham, North Carolina

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district.

☐ at _____ am/pm on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 pm on .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at

_____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

BY _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **Three (3) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
4. ☐ You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
7. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall abide by the mandatory and standard conditions of supervised release.

The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall participate in any educational and/or vocational services programs as directed by the probation officer and pay for any program fees as directed by the probation officer. Such programs may include, but is not limited to, High School Diploma, GED preparation, on-the-job training, job readiness training, and skills development training.

The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

The defendant shall not associate with or be in the company of any Folk Nation/Gangster Disciples gang member/security threat group member. The defendant shall not frequent any locations where gangs/security threat groups congregate or meet. The defendant shall not wear, display, use, or possess any clothing or accessories which have any gang or security threat group significance.

DEFENDANT: ROBERT KESHAUN TURNER
CASE NUMBER: 1:20-CR-00350-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$.00	$.00		

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived pursuant to 18 U.S.C. Section 3612(f)(3) for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ROBERT KESHAUN TURNER
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately, balance due
☐ not later than _____ , or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g. weekly, monthly, quarterly)* installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g. weekly, monthly, quarterly)* installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties: **To the extent the defendant cannot immediately comply, the Court recommends the defendant participate in the Inmate Financial Responsibility Program.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names, Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

DEFENDANT: ROBERT KESHAUN TURNER
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DISPOSITION OF EVIDENCE

☒ **That at the expiration of time for appeal, the firearm seized from the defendant shall be destroyed or returned to its lawful and rightful owner, if one can be determined.**