APPENDIX

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APPENDIX A

[PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-10579

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN R. MOORE, JR.,
TANNER J. MANSELL,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:22-cr-80073-DMM-2

Before WILSON, GRANT, and LAGOA, Circuit Judges.

WILSON, Circuit Judge:

Defendants-Appellants John Moore, Jr., and Tanner Mansell jointly appeal their convictions for theft of property within special maritime jurisdiction, in violation of 18 U.S.C. § 661. Their sole argument centers on the district court's refusal to give their requested jury instruction—that the jury must find that Moore and Mansell stole the relevant property for the use or benefit of themselves or others, i.e., *lucri causa*, to convict them under § 661. After careful review, and with the benefit of oral argument, we affirm.

I. Background

Moore and Mansell worked as boat crew for a company that facilitated shark encounters in Jupiter, Florida. On August 10, 2020, the Kuehl family was taken out by Moore and Mansell to snorkel with sharks. During the trip, Moore and Mansell spotted a long fishing line attached to a marked buoy, which they hauled into the boat with the help of the Kuehls. The Defendants told the Kuehls they had stumbled upon an "illegal longline fishing line," and there were sharks caught on the line. In the process of gathering the line into the boat, Moore and Mansell cut the sharks caught in the hooks free.

Unbeknownst to Moore and Mansell, the line was properly placed. Scott Taylor, who ran a seafood-distribution business and was the owner of *Day Boat III*, had received the proper permit with the National Oceanic and Atmospheric Administration to conduct shark research. The *Day Boat III* was specially rigged for such work.

As part of its research, the boat used a main line with attached hooks for catching sharks and fish that was weighed down to the sea bottom using anchors and connected to buoys, one of which was far off from the boat. Taylor explained at trial that, after the *Day Boat III* returned from a trip on August 10, 2020, it had lost certain bits of its gear.

While retrieving the line, Moore and Mansell encouraged the Kuehls to record what was happening. Moore also called Barry Partelow, a Florida Fish and Wildlife Officer at the time of the incident, to notify him of their activities and their alleged finding—illegal fishing in federal waters. Moore told Partelow he found sharks attached to hooks and cut them off the line.

Later, Partelow encountered Moore and saw that the floor of his boat was covered with fishing line, hooks, and fresh bait, but did not see any buoys. After receiving a call from an unknown individual, who reported that they had seen the commercial boat suspected of engaging in the illegal fishing, Partelow investigated the boat. It turned out to be the *Day Boat III*, and Partelow determined that it had all the proper permits. He then reached out to Moore so that he could inspect the fishing line, and Moore told him it had been thrown into a dumpster at a nearby marina. Special Agent Benjamin Boots of the National Oceanic and Atmospheric Administration's Office of Law Enforcement confirmed that the *Day Boat III* had the appropriate permit for the type of fishing it had been engaged in. The instant case ensued.

Moore and Mansell were indicted by grand jury for one count of theft of property within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. § 661. The indictment alleged that they were operating a charter vessel engaged in "conducting trips for snorkelers and scuba divers to view sharks in federal waters offshore of Jupiter, Florida" when they "with the intent to steal and purloin, did take and carry away the personal property of another . . . having a value exceeding $1,000." Moore and Mansell jointly proceeded to trial.

Moore and Mansell submitted proposed jury instructions to the district court. Among the instructions, they requested the following for the description of the elements of § 661: "It's a federal crime for anyone to take and carry away, with the intent to steal or purloin, any property worth more than $1,000 and belonging to another, when the offense is committed within the special maritime and territorial jurisdiction of the United States." They also requested that the court define "to 'steal' or 'unlawfully take'" as "to wrongfully take good[s] or property belonging to someone else with intent to deprive the owner of the use or benefit permanently or temporarily and to convert it to one's own use or the use of another." Further, they requested the following theory-of-the-defense instruction:

> It is the defense's theory of the case that when a defendant removes and brings to the attention of law enforcement, property that he erroneously believes was being unlawfully used, posing an unreasonable danger to maritime life, he has not acted with the

> intent to steal or purloin and you must find him not guilty.
>
> It is also the defense's theory of the case that when a defendant removes items from open water, and does not take those items for his own use or benefit or the benefit or use of others, then he lacks the intent to steal or purloin and you must find him not guilty.

The Government objected to the inclusion of "conversion language" in the proposed definition of "to steal or unlawfully take," asserting, "[w]e are not really riding on conversion here." The Government argued that § 661 does not charge conversion. Instead, it countered, the statute only covers taking and carrying, stealing, and purloining. "[The Defendants] think conversion means with the intent to, obviously, employ yourself, keep for yourself, and that is not the definition of steal or take away," the Government contended. In response, Moore and Mansell requested that the language be included, stating, "I don't think it's just a conversion," and that "the conversion of [the property], as well, is what creates the theft." Moore and Mansell specifically noted that they took the language regarding conversion of property "to one's own use or the use of another" from the pattern jury instruction for theft of an interstate shipment, which they contended was comparable to § 661.

The district court sustained the government's objection based on *Morissette v. United States*, 342 U.S. 246 (1952), reasoning that "conversion is when you get something lawfully and then you

keep it." The court noted that, regarding interstate goods theft, conversion is when someone is given property with authorization to take it but then decides to keep it: "Conversion differs from theft in that regard. And so based on *Morissette*, I don't think conversion is an issue." Moore and Mansell then argued that both § 661 and theft of interstate goods required the taking of property "for one's own possession or the possession of another" because the property covered by those statutes was "not in someone's personal home" but "in open water, or the open road," and so required "more than the simple removal of it." The court replied that was not a relevant distinction. The Government added that the geographic spot was the jurisdictional issue, noting that the words "conversion" or "to convert" had been left out of § 661, but were used in other theft and embezzlement statutes. The district court also decided to define "purloin" as "to appropriate wrongfully."

The district court instructed the jury as follows: "To steal or lawfully [sic] take means to wrongfully take property belonging to someone else with the intent to either permanently or temporarily deprive the owner of his right to the property or the use of the benefit from it." It also instructed on the definition of purloin as "to appropriate wrongfully" and stated the Defendants' theory of the case was "that the Defendants removed property without the bad purpose to disobey or disregard the law and therefore did not act with the intent to steal or purloin."

The jury deliberated for two days—longer than the actual presentation of the evidence—and sent multiple notes to the court.

It expressed it was unable to reach a unanimous decision, and the court gave an *Allen*[1] charge. After the court read the *Allen* charge, the jury submitted another note asking if there were any other defense theories. Ultimately, the jury found both Defendants guilty of the single count. The court sentenced both Defendants to a term of one year of probation.[2] As such, Moore and Mansell now have the status of convicted felons. They timely appealed.

II. Analysis

We note at the outset that the decision to seek the return of the indictment from the grand jury essentially rests within the discretion of the United States Attorney—those decisions may be based on pre-indictment considerations not a part of the record. Nor are we asked to determine the sufficiency of the evidence to convict. Instead, we are tasked with reviewing one issue only: whether the district court abused its discretion in issuing the jury instructions. For the reasons stated below, we find that the district court did not abuse its discretion. That ends our review, and we therefore affirm.

We review a district court's rejection of a proposed jury instruction for abuse of discretion. *United States v. Dean*, 487 F.3d 840, 847 (11th Cir. 2007) (per curiam). We find "reversible error where the requested instruction (1) was correct, (2) was not substantially covered by the charge actually given, and (3) dealt with some point

[1] *Allen v. United States*, 164 U.S. 492 (1896).

[2] The district court also imposed a $1,000 fine against Moore only.

in the trial so important that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense." *United States v. Eckhardt*, 466 F.3d 938, 947–48 (11th Cir. 2006). "We review the legal correctness of a requested jury instruction de novo." *United States v. Takhalov*, 827 F.3d 1307, 1312 (11th Cir. 2016) (quotation marks omitted and alteration adopted). Importantly, pattern jury instructions do not hold binding authority, unlike precedential case law. *United States v. Carter*, 776 F.3d 1309, 1324 (11th Cir. 2015).[3]

Statutory interpretation begins with the text of the statute. *United States v. Garcon*, 54 F.4th 1274, 1277 (11th Cir. 2022) (en banc), *abrogated on other grounds*, *Pulsifer v. United States*, 144 S. Ct. 718 (2024). Here, the relevant statutory text provides that "[w]hoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished." 18 U.S.C. § 661. The Supreme Court has stated that, when interpreting federal criminal statutes "where a federal criminal statute uses a common-law term of established meaning without otherwise defining it, the general practice is to give that term its common-law meaning." *United States v. Turley*, 352 U.S. 407, 411 (1957). However, "stealing" and "stolen" have no accepted common-law meaning and should not be likened to common-law larceny. *Id.* at 411–12.

[3] Both parties discuss the Circuit's pattern jury instructions in arguing their case. We do not address these arguments as they have no bearing on our decision—pattern jury instructions are not binding law.

"Freed from a common-law meaning, we should give 'stolen' the meaning consistent with the context in which it appears." *Id.* at 412–13. In the context of a statute criminalizing transportation of stolen vehicles, the Supreme Court concluded, "'[s]tolen' includes all felonious takings . . . with intent to deprive the owner of the rights and benefits of ownership, regardless of whether or not the theft constitutes common-law larceny." *Id.* at 417 (internal citation omitted).[4]

In *Morissette v. United States*, the Supreme Court considered an appeal of a conviction under 18 U.S.C. § 641, which stated, "'whoever embezzles, steals, purloins, or *knowingly converts*' government property is punishable by fine and imprisonment." 342 U.S. at 248 (emphasis added). It concluded that the omission of an explicit intent element in § 641 did not imply that the element did not need to be proven. *Id.* at 263. In its discussion of the history and purpose of § 641 to determine Congress's intent regarding mental state, the Court distinguished, in dicta, between stealing and conversion. *Id.* at 263–73. "Probably every stealing is a conversion, but certainly not every knowing conversion is a stealing. 'To steal means to take away from one in lawful possession without right with the intention to keep wrongfully.'" *Id.* at 271 (quoting *Irving Tr. Co. v. Leff*, 171 N.E. 569, 571 (N.Y. 1930)).

[4] The Supreme Court clarified that it was using the term felonious "in the sense of having criminal intent rather than with reference to any distinction between felonies and misdemeanors." *Turley*, 352 U.S. at 410 n.4.

While our circuit has not interpreted the meaning of "steal" in the context of § 661, our predecessor Fifth Circuit considered the term's meaning in a nearly identical statute. In *United States v. Bell*, the Fifth Circuit evaluated a violation under 18 U.S.C. § 2113(b), which states, "'[w]hoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding [$1,000] belonging to . . . any bank . . . shall be . . .imprisoned.'"[5] 678 F.2d 547, 548 (5th Cir. Unit B 1982) (en banc) (quoting 18 U.S.C. § 2113(b)).[6] In interpreting whether the relevant conduct fell within § 2113(b)'s ambit, our predecessor court reaffirmed its holding in *Thaggard v. United States*, 354 F.2d 735 (5th Cir. 1965), in which it embraced the Supreme Court's definition of "steal" from *Turley* in the context of § 2113(b). *Id.* at 736–37. Several of our sister circuits have interpreted § 661 and held it is broader than the common-law definition of larceny under *Turley*.[7]

[5] The original monetary value included in the statute as quoted in *Bell* was $100. The bracketed text states the monetary value reflected in 18 U.S.C. § 2113(b) today.

[6] Because Eleventh Circuit judges were the same judges who decided former Fifth Circuit cases by Unit B panel and en banc, the Unit B panel decisions are binding on the Eleventh Circuit. *See Stein v. Reynolds Sec., Inc.*, 667 F.2d 33, 34 (11th Cir. 1982) (stating Unit B panels of the old Fifth Circuit are binding on the Eleventh Circuit).

[7] *United States v. Henry*, 447 F.2d 283, 285–86 (3rd Cir. 1971) (holding that "18 U.S.C. § 661 and its predecessor statutes were not codifications of the common law crime of larceny but were intended to broaden that offense," and affirming a jury instruction that defined "to steal or purloin" as "any taking whereby a person, by some wrongful act, willfully obtains or retains possession of property belonging to another without the permission or beyond any permission

In this case, the district court did not abuse its discretion in rejecting the Defendants' proposed jury instruction because the proposed instruction was not a correct interpretation of § 661. *See Dean*, 487 F.3d at 847; *Eckhardt*, 466 F.3d at 947–48. Moore and Mansell state they rely on *Morisette* and *Turley* to support the conclusion that the *lucri causa* element should apply in the context of § 661. Yet *Morisette* does not support this analysis, and applying *Turley* yields the opposite result.

First, the text of § 661 does not explicitly include any language requiring a *lucri causa* element. *See* 18 U.S.C. § 661. But Moore and Mansell's argument centers on the term "steal," which is not necessarily clear on its face, so the plain text does not require a specific outcome. *See id.*

The Supreme Court held in *Turley* that "stealing" in federal statutes is not defined by common law. 352 U.S. at 411–12. "[S]tolen" as interpreted in *Turley* includes "all felonious takings . . . with intent to deprive the owner of the rights and benefits of ownership, regardless of whether or not the theft constitutes common-law larceny." *See id.* at 417. The old Fifth Circuit found this definition applied to § 2113(b), a statute with intent language identical to § 661's. *Bell*, 678 F.2d at 548. Similarly, our sister circuits have also

given with the intent to deprive the owner of the benefit of ownership"); *United States v. Maloney*, 607 F.2d 222, 226, 231 (9th Cir. 1979) (explaining § 661 was not limited to the common-law definition of larceny and the Supreme Court's definition of "stolen" in *Turley* was applicable in the context of § 661); *see also United States v. Gristeau*, 611 F.2d 181, 184 (7th Cir. 1979) (adopting the Ninth Circuit's reasoning in *Maloney*).

interpreted *Turley*'s definition to apply to § 661. *United States v. Henry*, 447 F.2d 283, 285–86 (3rd Cir. 1971); *United States v. Maloney*, 607 F.2d 222, 231 (9th Cir. 1979); *United States v. Gristeau*, 611 F.2d 181, 184 (7th Cir. 1979). These cases do not indicate that the federal statutory definition of "steal" includes the idea of *lucri causa*. Moore and Mansell rely on the term "felonious" in *Turley*'s definition, but the *Turley* Court explained that it was using felonious "in the sense of having criminal intent," not to incorporate common-law terms where it previously stated they do not apply. 352 U.S. at 410 n.4, 411–12. Moore and Mansell contend that they are not arguing that "steal" in § 661 has a common-law definition, but this is belied by the attempt to interpret § 661 by reference to common law. The term *lucri causa* derives from the common-law definition of larceny in Blackstone, and therefore does not belong in the definition of "steal" in § 661, which is broader than the common-law definition of larceny under *Turley* and *Bell*'s reasoning. *See id.* at 411–12; *Bell*, 678 F.2d at 548; 4 William Blackstone, *Commentaries* *229–232.

Morissette, on the other hand, is not explicitly relevant to this case. *Morisette*'s analysis centered on 18 U.S.C. § 641. This statute included the term "convert," which, importantly, is not present in § 661. As such, any attempts to overlay *Morisette*'s reasoning to § 661 would be inapposite.

Moore and Mansell make much of the offhand dicta in *Morisette*: "Probably every stealing is a conversion, but certainly not every knowing conversion is a stealing." 342 U.S. at 271. This,

however, their case does not make. *Morissette* examined whether § 641 had a criminal-intent element despite having no *mens rea* language in its text. *Id.* at 249–50. It did not concern the interpretation of "steal" in the federal statutory context. The Supreme Court's conversation regarding the difference between stealing and conversion was to provide background context for its analysis regarding the absence of *mens rea* language in § 641—not to provide conclusive definitions of stealing and conversion. *See id.* at 263–73. This is evidenced by: (1) the Supreme Court's phraseology, "*Probably* every stealing is a conversion, but certainly not every knowing conversion is a stealing," and that (2) the Court cited a New York Court of Appeals decision for its definition of stealing. *Id.* at 271 (emphasis added) (citing *Leff*, 171 N.E. at 571). Both indicate that it was not crafting a generally applicable definition for "steal" within statutory interpretation, unlike in *Turley*. *See* 352 U.S. at 411–12, 417. *Turley* overtly addressed the definition of "steal" within a federal statute and considered its applicability to the common law in a general context.

Overall, *Turley* is more applicable to § 661's interpretation in this case than *Morissette*'s conditioned definition offered in an unrelated context. *See Morissette*, 342 U.S. at 271; *Turley*, 352 U.S. at 411–12, 417. Applying *Turley*, we find no basis for Moore and Mansell's contention that takings must be *lucri causa* under § 661.

III. Conclusion

In short, Moore and Mansell's proposed jury instruction—that the jury must find that they took the fishing gear with

the intent to keep the gear for themselves or to convert it to their own use to convict them under § 661—was incorrect. Therefore, the district court did not abuse its discretion by rejecting it. We affirm the district court's rejection of Moore and Mansell's proposed jury instruction.

AFFIRMED.

LAGOA, Circuit Judge, joined by GRANT, Circuit Judge, concurring:

I concur in full with the majority. Because I am bound to consider only the single, narrow issue raised on appeal, I join my colleagues in affirming. But I do so with reluctance, as I explain below.

John Moore, Jr., and Tanner Mansell are felons because they tried to save sharks from what they believed to be an illegal poaching operation. They are the only felons I have ever encountered, in eighteen years on the bench and three years as a federal prosecutor, who called law enforcement to report what they were seeing and what actions they were taking in real time. They are felons who derived no benefit, and in fact never *sought* to derive any benefit, from the conduct that now stands between them and exercising the fundamental rights from which they are disenfranchised. What's more, they are felons for having violated a statute that no reasonable person would understand to prohibit the conduct they engaged in.

I.

As the majority explains, this case arose from events that occurred on a shark-tour charter boat, on which Moore was the operator and Mansell was a deckhand. I recount here only the facts most essential to my concurrence.

Camryn Kuehl is a tourist who was out for a shark tour with Moore and Mansell on August 10, 2020. She testified that, at some point during their tour, Moore and Mansell pointed out a long fishing line in the water and told Kuehl and her family that it was an

"illegal longline fishing line" with sharks caught on it. Moore, Mansell, Kuehl, and Kuehl's family all sprung to action, pulling the line into their boat. In the process, Moore and Mansell cut certain portions of the line to release the ensnared sharks. Shortly after they encountered the line and started working to free the sharks, someone on the boat (Kuehl did not recall who) called law enforcement to report what they were doing. Kuehl "thought [they] were doing a great thing" and shared pictures on social media reporting as much to her friends.

A Fish and Wildlife Conservation officer, Barry Partelow, testified that it was Moore who had called to report the shark-fishing line—and that he (Moore) was cutting the sharks free. Partelow told Moore to retain the gear for his investigation.

Christopher Perez, dockmaster at the nearby marina, testified that at some point on August 10, 2020, he learned that there was a pile of fishing line and gear on his dock. He instructed his employees to remove it and throw it in a dumpster, and they did.

The fishing gear turned out to be part of a shark research program, authorized by the National Oceanic and Atmospheric Administration. The owner of the boat that placed the line, Scott Taylor, and her captain, Richard Osburn, were duly permitted and approved to deploy this type of gear as part of the research initiative.

II.

For reasons that defy understanding, Assistant United States Attorney Tom Watts Fitzgerald learned of these facts and—taking

a page out of Inspector Javert's playbook—brought the matter to a grand jury to secure an indictment for a charge that carried up to five years in prison. Watts Fitzgerald decided to pursue this indictment despite the following undisputed facts: Moore and Mansell (1) called law enforcement to report what they were doing, (2) were comfortable involving their tourism customers in their actions, (3) encouraged Kuehl to record what was happening, and (4) returned the gear to the marina dock as instructed. Against the weight of all this—which, in my view, plainly suggests a good-faith mistake on Moore and Mansell's part—Watts Fitzgerald determined that this case was worth the public expense of a criminal prosecution, and the lifelong yokes of felony convictions, rather than imposition of a civil fine.[1]

To be sure, the executive branch is entrusted with "the decision whether or not to charge an individual with a criminal offense in the first place." *In re Wild*, 994 F.3d 1244, 1260 (11th Cir. 2021). As the Supreme Court has recognized, "the breadth of discretion that our country's legal system vests in prosecuting attorneys carries with it the potential for both individual and institutional abuse." *Bordenkircher v. Hayes*, 434 U.S. 357, 365 (1978). While "[t]his broad discretion rests largely on the recognition that the

[1] At oral argument, the government doubled down on its decision to prosecute. In response to the Appellants' suggestion that a civil fine would have been a more appropriate resolution in this case, the government asserted that "if someone steals a car on a military base, you don't—the proper response isn't, well, pay restitution for that. That's a crime." And, as Judge Grant aptly explained in the moment, "[t]hat is a silly example. There is no comparison."

decision to prosecute is particularly ill-suited to judicial review," *Wayte v. United States*, 470 U.S. 598, 607 (1985), prosecutors are not immune from judicial criticism for their imprudent—albeit lawful—exercises of authority. And that imprudent exercise of discretion is, in my view, what occurred in this case.

III.

Moore and Mansell were convicted of violating 18 U.S.C. § 661, which reads in relevant part:

> Whoever, within the special maritime and territorial jurisdiction of the United States, takes and carries away, with intent to steal or purloin, any personal property of another shall be punished as follows:
>
> If the property taken is of a value exceeding $1,000, or is taken from the person of another, by a fine under this title, or imprisonment for not more than five years, or both; in all other cases, by a fine under this title or by imprisonment not more than one year, or both.

There is no dispute that Moore and Mansell "took and carried away" the "personal property of another." That much, we can set aside. Our focus, then, narrows on "with *intent* to steal or purloin," which the government stretched to its farthest possible application in this case. Consider a few hypotheticals that shed some light on the problem of the government applying this statute in this way:

Adam, walking along a path in a federal park, sees an elderly woman carrying a purse overflowing with cash. Adam—seeing the purse and cash—rushes up behind her, grabs the purse, and flees.

We would all agree that Adam has stolen from the woman within the meaning of § 661: in a federal jurisdiction, he took the property of another with bad purpose, intending to deprive her of the rights to her property. That one is simple enough.

Now imagine that Bob, walking along a path in a federal park, sees a man rush up to an elderly woman from behind, pull a gun from his pocket, and yell "Give me your purse or I'll shoot." Bob rushes the robber, yanks the gun from his hand, and ushers the old woman out of harm's way while the robber flees. Bob holds onto the gun until the police arrive, and then he turns the gun over to law enforcement.

Has Bob stolen from the robber? Under the government's theory in this case and applying § 661 as broadly as the government did here, yes, Bob has committed a felony. Bob took and carried the property of another (the gun) with the intent to deprive its owner (the robber), either permanently or temporarily, of his right to use or benefit from the property. And, again based on the government's theories and the instructions given in our case, Bob's conduct would be criminally "willful" because he intended to do the thing the law forbids: he intended to take the gun from its owner to prevent the owner from using it, and that is forbidden under § 661. Perhaps Bob would be able to take advantage of certain affirmative defenses, including self-defense or defense of another, but Bob should not have to get to that point—because Bob should not be prosecuted.

Imagine, now, that Bob called the police during his encounter with the robber and told the police "I just walked into an armed robbery, and I disarmed the robber, and I am holding his gun now so he cannot shoot the victim." This clear gesture of good faith would not, according to the government here, mitigate Bob's culpability or factor into its charging decision.

Finally, consider a third variation that comes the closest to our facts. Imagine that what Bob witnessed was not a genuine robbery, but a scene being acted out by some students from the local community college. The robber was not a robber at all, but the elderly woman's scene partner for drama class. Bob, of course, had no way of knowing that when he interrupted what he believed to be a violent crime. Again, under the government's theory, this genuine mistake would be of no moment, because all that matters is that Bob took the "robber's" property with the intent to deprive him of it. Perhaps it would move the needle if Bob's lawyers requested an instruction on mistake of fact, aiming to undermine the mens rea needed to convict.[2] But, again, Bob should not be prosecuted in the first instance.

[2] In certain circumstances, a mistake of fact is sufficient to negate the mens rea element of a charged offense. *See, e.g.*, *Staples v. United States*, 511 U.S. 600, 607 n.3 (1994) ("Generally speaking, such knowledge is necessary to establish mens rea, as is reflected in the maxim *ignorantia facti excusat*."); *United States v. Feola*, 420 U.S. 671, 686 (1975) (observing that, with respect to a statute prohibiting assault on a federal officer, "where an officer fails to identify himself or his purpose . . . . one might be justified in exerting an element of resistance, and an honest mistake of fact would not be consistent with criminal intent."); § 13:2. Mistake of Fact, 1 Wharton's Criminal Law § 13:2 (16th ed.) ("Generally

IV.

I am bound to affirm Moore and Mansell's convictions because the only issue their lawyers identified on appeal—the "conversion" jury instruction—fails to persuade, for all the reasons explained in the Majority Opinion. But I would be remiss if I joined in affirming without commenting on the troublesome aspects of the case before us.

speaking, a person who engages in penalty prohibited conduct is relieved of criminal liability if, because of ignorance or mistake of fact, they did not entertain the culpable mental state required for commission of the offense.").

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-80073-DMM

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MOORE, JR.
TANNER MANSELL,

Defendants.
_____/

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it - even if you do not agree with the law - and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. A Defendant does not have to prove his innocence or produce any evidence at all. A Defendant does not have to testify, and if a Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial. But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

The indictment charges a single crime, called a "count," against each of the Defendants. You'll be given a copy of the indictment to refer to during your deliberations.

The single Count charges that the Defendants committed what is called a "substantive offense," specifically that they stole property of another with a value of more than $1,000. I will explain the law governing that substantive offense in a moment.

It's a federal crime for anyone to take and carry away, with the intent to steal or purloin, any property worth more than $1,000 and belonging to another, when the offense is committed within the special maritime and territorial jurisdiction of the United States.

A Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) that the property described in the indictment belonged to someone other than the Defendant;

(2) the Defendant took and carried away such property;

(3) the Defendant acted with the intent to steal or purloin the property;

(4) the property had a value greater than $1,000;

(5) the offense was committed within the special maritime and territorial jurisdiction of the United States.

The term "Special maritime and territorial jurisdiction of the United States" is defined in 18 U.S.C. § 7, and includes the high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out

of the jurisdiction of any particular state.

To "steal" or "unlawfully take" means to wrongfully take property belonging to someone else with the intent to, either permanently or temporarily, deprive the owner of his right to the property or the use or benefit from it. A "taking" doesn't have to be any particular type of movement or carrying away. But any appreciable and intentional change in the property's location is a taking, even if the property isn't removed from the owner's premises.

To "purloin" means to appropriate wrongfully.

The word "value" means the greater of (1) the face, par, or market value, or (2) the price, whether wholesale or retail.

It's possible to prove the Defendant guilty of a crime even without evidence that the Defendant personally performed every act charged.

Ordinarily, any act a person can do may be done by directing another person, or "agent." Or it may be done by acting with or under the direction of others.

A Defendant "aids and abets" a person if the Defendant intentionally joins with the person to commit a crime.

A Defendant is criminally responsible for the acts of another person if the Defendant aids and abets the other person. A Defendant is also responsible if the Defendant willfully directs or authorizes the acts of an agent, employee, or other associate.

But finding that a Defendant is criminally responsible for the acts of another person requires proof that the Defendant intentionally associated with or participated in the crime – not just proof that the Defendant was simply present at the scene of a crime or knew about it.

In other words, you must find beyond a reasonable doubt that the Defendant was a willful participant and not merely a knowing spectator.

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the crime occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

The word "willfully" means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted "willfully," the person need not be aware of the specific law or rule that his conduct may be violating.

It is the defense's theory of the case that the Defendants removed property without the bad purpose to disobey or disregard the law and therefore did not act with the intent to steal or purloin.

Evidence of a defendant's character traits may create a reasonable doubt. You should consider testimony that a defendant is an honest and law-abiding citizen along with all the other evidence to decide whether the Government has proved beyond a reasonable doubt that the Defendant committed the offense.

You must consider the case of each Defendant and the evidence relating to him separately and individually. If you find one Defendant guilty, that must not affect your verdict for any other Defendant.

I caution you that each Defendant is on trial only for the specific crime alleged in the indictment. You're here to determine from the evidence in this case whether each Defendant is guilty or not guilty.

You must never consider punishment in any way to decide whether a Defendant is guilty. If you find a Defendant guilty, the punishment is for the Judge alone to decide later.

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts.

Your only interest is to seek the truth from the evidence in the case.

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible - either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 22-80073-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

JOHN R. MOORE, JR. and
TANNER J. MANSELL,

Defendant(s).

_____/

QUESTION/NOTE FROM THE
JURY TO THE COURT

Please provide the context of the definitions on page 11 "knowingly and willfully". We do not see them used in the instructions elsewhere.

PLEASE SIGN: _____

PRINT: _____

12-2-22
DATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-80073-DMM

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MOORE, JR.
TANNER MANSELL,

Defendants.
_____/

Thank you for pointing out an omission in the jury instructions.

On Page 8, the instructions should read as follows:

"A Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) that the property described in the indictment belonged to someone other than the Defendant;

(2) the Defendant knowingly took and carried away such property;

(3) the Defendant acted willfully with the intent to steal or purloin the property;

(4) the property had a value greater than $1,000;

(5) the offense was committed within the special maritime and territorial jurisdiction of the United States."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 22-80073-CR-MIDDLEBROOKS

UNITED STATES OF AMERICA,

Plaintiff(s),

vs.

JOHN R. MOORE, JR. and
TANNER J. MANSELL,

Defendant(s).

_____/

QUESTION/NOTE FROM THE
JURY TO THE COURT

Page 12 of the instructions outlines the defense's theory of the case. This theory seems to speak to #3 on page 8.

Is there any other defense theories related to the 5 items on page 8.

PLEASE SIGN
PRINT: _

12-2-22
DATE

Please consider all of the instructions including the defense's theory of the case and apply them to the evidence and the facts as you find them. I cannot further amplify or add to the instructions.

Don Middlebrooks

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-CR-80073-DMM

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN MOORE, JR.
TANNER MANSELL,

Defendants.
_____/

DEFENDANTS PROPOSED JURY INSTRUCTIONS AND OBJECTIONS TO THE GOVERNMENT'S PROPOSED JURY INSTRUCTIONS

Defendants hereby file their Proposed Jury Instructions and would show:

Similar to the Government's Proposal, the attached proposal, subject to possible developments at trial of this case, are founded on the Eleventh Circuit Pattern Jury Instructions, as revised March 2022, with the exception of the Offense Instruction for 18 U.S.C. § 661, for which no pattern instruction has been developed, the Good Faith Instruction, and Theory of Defense Instruction. The § 661 offense instruction has been crafted from the statute and the same offense instructions dealing with theft of money or property reflected in Pattern Offense Instructions 021, 022, and 023.1 that the Government used. The Good Faith Instruction is based on the Eleventh Circuit Pattern Jury Instruction S17.

For ease of the Court's review of the two proposed instructions, the defense removed the Possession instruction, as "possession" is not an element of the offense and the Identification Testimony instruction, as there is no dispute as to identification in this case. The defense also added B2.1 The Duty to Follow Instructions and the Presumption of Innocence as an alternative if the Defendant testifies, B6.1 Impeachment of Witnesses Because of Inconsistent Statements

and alternatively B6.2 Impeachment of Witnesses Because of Inconsistent Statements or Felony Conviction, and S12 Character Evidence.

Lastly, any and all changes to the government's proposed instructions and the reasons for such changes are outlined in the footnotes.

Respectfully submitted,

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/s/ Ian J. Goldstein
IAN J. GOLDSTEIN, ESQUIRE
Florida Bar No. 0085219

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2022, the foregoing document was electronically filed via CM/ECF which will serve all parties of record.

/s/ *Marc David Seitles*
Marc David Seitles

BI
Face Page - Introduction

UNITED STATES DISTRICT
COURT SOUTHERN DISTRICT OF
FLORIDA

CASE NO. 22-80073-CR-
MIDLEBROOKS

UNITED STATES OF AMERICA
v.

JOHN R. MOORE, JR. and
TANNER J. MANSELL,

Defendants.
_____/

COURT'S INSTRUCTIONS
TO THE JURY

Members of the Jury:

It's my duty to instruct you on the rules of law that you must use in deciding this case. After I've completed these instructions, you will go to the jury room and begin your discussions – what we call your deliberations.

You must decide whether the Government has proved the specific facts necessary to find the Defendant guilty beyond a reasonable doubt.

B2.1
The Duty to Follow Instructions and the Presumption of Innocence

Your decision must be based only on the evidence presented here. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government. You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law. The indictment or formal charge against a defendant isn't evidence of guilt. The law presumes every defendant is innocent. The Defendant does not have to prove [his] [her] innocence or produce any evidence at all. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

ANNOTATIONS AND COMMENTS

In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073, 25 L. Ed. 2d 368 (1970) (The due process clause protects all criminal defendants "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); *see also Harvell v. Nagle*, 58 F.3d 1541, 1542 (11th Cir. 1995), reh'g denied, 70 F.3d 1287 (11th Cir. 1995).

B2.2
The Duty to Follow Instructions and the Presumption Of Innocence When a Defendant Does Not Testify

Your decision must be based only on the evidence presented during the trial. You must not be influenced in any way by either sympathy for or prejudice against the Defendant or the Government.

You must follow the law as I explain it – even if you do not agree with the law – and you must follow all of my instructions as a whole. You must not single out or disregard any of the Court's instructions on the law.

The indictment or formal charge against a Defendant isn't evidence of guilt. The law presumes every Defendant is innocent. A Defendant does not have to prove his innocence or produce any evidence at all. A Defendant does not have to testify, and if the Defendant chose not to testify, you cannot consider that in any way while making your decision. The Government must prove guilt beyond a reasonable doubt. If it fails to do so, you must find the Defendant not guilty.

ANNOTATIONS AND COMMENTS

United States v. Teague, 953 F.2d 1525, 1539 (11th Cir. 1992), *cert. denied,* 506 U.S. 842, 113 S. Ct. 127, 121 L. Ed. 2d 82 (1992), Defendant who does not testify is entitled to instruction that no inference may be drawn from that election; *see also United States v. Veltman,* 6 F.3d 1483, 1493 (11th Cir. 1993) (Court was "troubled" by "absence of instruction on the presumption of innocence at the beginning of the trial... Although the court charged the jury on the presumption before they retired to deliberate, we believe it extraordinary for a trial to progress to that stage with nary a mention of this jurisprudential bedrock.")

B3
Definition of "Reasonable Doubt"[1]

The Government's burden of proof is heavy, but it doesn't have to prove a Defendant's guilt beyond all possible doubt. The Government's proof only has to exclude any "reasonable doubt" concerning the Defendant's guilt.

A "reasonable doubt" is a real doubt, based on your reason and common sense after you've carefully and impartially considered all the evidence in the case.

"Proof beyond a reasonable doubt" is proof so convincing that you would be willing to rely and act on it without hesitation in the most important of your own affairs. If you are convinced that the Defendant has been proved guilty beyond a reasonable doubt, say so. If you are not convinced, say so.

ANNOTATIONS AND COMMENTS

United States v. Daniels, 986 F.2d 451 (11th Cir. 1993), opinion readopted on rehearing, 5 F.3d 495 (11th Cir. 1993), *cert. denied,* 511 U.S. 1054, 114 S. Ct. 1615, 128 L. Ed. 2d 342 (1994) approves this definition and instruction concerning reasonable doubt; *see also United States v. Morris,* 647 F.2d 568 (5th Cir. 1981); *Victor v. Nebraska,* 511 U.S. 1, 114 S. Ct. 1239, 127 L. Ed. 2d 583 (1994) (discussing "reasonable doubt" definition and instruction).

[1] The underlining of the word possible places unnecessary emphasis on the term possible.

B4
Consideration of Direct and Circumstantial Evidence; Argument of Counsel; Comments by the Court

As I said before, you must consider only the evidence that I have admitted in the case. Evidence includes the testimony of witnesses and the exhibits admitted. But, anything the lawyers say is not evidence and isn't binding on you.

You shouldn't assume from anything I've said that I have any opinion about any factual issue in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision about the facts.

Your own recollection and interpretation of the evidence is what matters.

In considering the evidence you may use reasoning and common sense to make deductions and reach conclusions. You shouldn't be concerned about whether the evidence is direct or circumstantial.

"Direct evidence" is the testimony of a person who asserts that he or she has actual knowledge of a fact, such as an eyewitness.

"Circumstantial evidence" is proof of a chain of facts and circumstances that tend to prove or disprove a fact. There's no legal difference in the weight you may give to either direct or circumstantial evidence.

ANNOTATIONS AND COMMENTS

United States v. Clark, 506 F.2d 416 (5th Cir. 1975), *cert. denied,* 421 U.S. 967, 95 S. Ct. 1957, 44 L. Ed. 2d 454 (1975) approves the substance of this instruction concerning the lack of distinction between direct and circumstantial evidence; *see also United States v. Barnette,* 800 F.2d 1558, 1566 (11th Cir. 1986), *reh 'g denied,* 807 F.2d 999 (11th Cir. 1986), *cert. denied,* 480 U.S. 935, 107 S. Ct. 1578, 94 L. Ed. 2d 769 (1987) (noting that the "test for evaluating circumstantial evidence is the same as in evaluating direct evidence") (citing *United States v. Henderson,* 693 F.2d 1028, 1030 (11th Cir. 1982)).

United States v. Hope, 714 F.2d 1084, 1087 (11th Cir. 1983) ("A trial judge may comment upon the evidence as long as he instructs the jury that it is the sole judge of the facts and that it is not bound by his comments and as long as the comments are not so highly prejudicial that an instruction to that effect cannot cure the error.") (citing *United States v. Buchanan,* 585 F.2d 100, 102 (5th Cir. 1978)). *See also United States v. Jenkins,* 901 F.2d 1075 (11th Cir. 1990).

United States v. Granville, 716 F.2d 819, 822 (11th Cir. 1983) notes that the jury was correctly instructed that the arguments of counsel should not be considered as evidence (citing *United States v. Phillips,* 664 F.2d 971, 1031 (5th Cir. 1981)); *see also United States v. Siegel,* 587 F.2d 721, 727 (5th Cir. 1979).

For an alternative description of evidence, see Preliminary Instruction, "what is evidence.

B5
Credibility of Witnesses

When I say you must consider all the evidence, I don't mean that you must accept all the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision you may believe or disbelieve any witness, in whole or in part. The number of witnesses testifying concerning a particular point doesn't necessarily matter.

To decide whether you believe any witness I suggest that you ask yourself a few questions:

- Did the witness impress you as one who was telling the truth?
- Did the witness have any particular reason not to tell the truth?
- Did the witness have a personal interest in the outcome of the case?
- Did the witness seem to have a good memory?
- Did the witness have the opportunity and ability to accurately observe the things he or she testified about?
- Did the witness appear to understand the questions clearly and answer them directly?
- Did the witness's testimony differ from other testimony or other evidence?

ANNOTATIONS AND COMMENTS

No annotations associated with this instruction.

B6.1
Impeachment of Witnesses Because of Inconsistent Statements

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial. But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

ANNOTATIONS AND COMMENTS

See United States v. D'Antignac, 628 F.2d 428, 435-36 n.10 (5th Cir. 1980), cert. denied, 450 U.S. 967, 101 S. Ct. 1485, 67 L. Ed. 2d 617 (1981) (approving a previous version of this instruction used in conjunction with Basic Instruction 5 and Special Instruction 2.1 as befitted the facts of that case). *See also United States v. McDonald*, 620 F.2d 559, 565 (5th Cir. 1980), and *United States v. Soloman*, 856 F.2d 1572, 1578 (11th Cir. 1988), reh'g denied, 863 F.2d 890 (1988), cert. denied, 489 U.S. 1070, 109 S. Ct. 1352, 103 L. Ed. 2d 820 (1989).

B6.2
Impeachment of Witnesses Because of Inconsistent Statements or Felony Conviction

You should also ask yourself whether there was evidence that a witness testified falsely about an important fact. And ask whether there was evidence that at some other time a witness said or did something, or didn't say or do something, that was different from the testimony the witness gave during this trial. To decide whether you believe a witness, you may consider the fact that the witness has been convicted of a felony or a crime involving dishonesty or a false statement. But keep in mind that a simple mistake doesn't mean a witness wasn't telling the truth as he or she remembers it. People naturally tend to forget some things or remember them inaccurately. So, if a witness misstated something, you must decide whether it was because of an innocent lapse in memory or an intentional deception. The significance of your decision may depend on whether the misstatement is about an important fact or about an unimportant detail.

ANNOTATIONS AND COMMENTS

See United States v. Solomon, 856 F.2d 1572, 1578 (11th Cir. 1988), *reh'g denied*, 863 F.2d 890 (1988), *cert. denied*, 489 U.S. 1070, 109 S. Ct. 1352, 103 L. Ed. 2d 820 (1989).

S12
Character Evidence

Evidence of a defendant's character traits may create a reasonable doubt. You should consider testimony that a defendant is an honest and law-abiding citizen along with all the other evidence to decide whether the Government has proved beyond a reasonable doubt that the Defendant committed the offense.

ANNOTATIONS AND COMMENTS

Rule 404. [Fed. R. Evid.] Character Evidence; Crimes or Other Acts (a) Character Evidence. (1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait. (2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case: (A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it; See United States v. Broadwell, 870 F.2d 594, 609 (11th Cir. 1989), cert. denied, 493 U.S. 840, 110 S. Ct. 125, 107 L. Ed. 2d 85 (1989). United States v. Darland, 626 F.2d 1235 (5th Cir. 1980) held that it can be plain error to refuse this instruction when the Defendant offers evidence of good character; and, further, the admission of such evidence may not be conditioned on the Defendant testifying as a witness. Character evidence may be excluded, however, when the proffered witness has an inadequate basis for expressing an opinion as to the Defendant's character. United States v. Gil, 204 F.3d 1347 (11th Cir. 2000). A distinction must be drawn between evidence of a pertinent trait of the Defendant's character, offered under Fed. R. Evid. 404(a)(2), and evidence of the character of a witness for truthfulness (including the Defendant as a witness) offered under Fed. R. Evid. 608(a). This instruction should be given when the evidence has been admitted under Rule 404. Basic Instruction 6.7 should be given when evidence has been admitted under Rule 608. 2 In either case - - whether character evidence is admitted under Rule 404 or Rule 608 - - Rule 405(a) provides that "it may be proved by testimony about the person's reputation or by testimony in the form of an opinion."

S5
Note-taking

You've been permitted to take notes during the trial. Most of you – perhaps all of you – have taken advantage of that opportunity.

You must use your notes only as a memory aid during deliberations. You must not give your notes priority over your independent recollection of the evidence. And you must not allow yourself to be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than your memories or impressions about the testimony.

ANNOTATIONS AND COMMENTS

No annotations associated with this instruction.

B8
Introduction to Offense Instructions

The indictment charges a single crime, called a "count," against each of the Defendants. You'll be given a copy of the indictment to refer to during your deliberations.

The single Count charges that the Defendants committed what is called a "substantive offense," specifically that they stole property of another with a value of more than $1,000. I will explain the law governing that substantive offense in a moment.

ANNOTATIONS AND COMMENTS

No annotations associated with this instruction.

Theft of Property Within the Special Maritime and Territorial Jurisdiction[2] 18 U.S.C. § 661

It's a federal crime for anyone to take and carry away, with the intent

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[2] The definition of "Steal" or "Unlawfully take" is from Eleventh Circuit Pattern Jury Instruction O23.1, Theft from an Interstate Shipment, an instruction also used by the Government to craft this Offense Instruction. Theft from an Interstate Shipment is the most analogous statute to the one at issue, as it is a theft that violates federal law because of where the theft took place (i.e. "part of an interstate shipment" for Theft from an Interstate Shipment and "within the special maritime and territorial jurisdiction of the United States" for Theft of Property Within the Special Maritime and Territorial Jurisdiction). The Eleventh Circuit Pattern Jury Instruction O66.1, Theft of Mail, also has the same definition for "steal."

The alternate "steal" definition comes from *Morissette v. United States*, 72 S.Ct. 240, 271 (1952).

There is no definition of "purloin" in any Eleventh Circuit Pattern Jury Instruction. Thus, defense uses the definition of "purloin" from the Merriam-Webster Dictionary. https://www.merriam-webster.com/dictionary/purloin

The definition of "Value" is also from Eleventh Circuit Pattern Jury Instruction O23.1, Theft from an Interstate Shipment, as both statutes only criminalize the theft if the property's value is more than $1000.

The defense modified the definition of "Special maritime and territorial jurisdiction of the United States" to include only the relevant parts of the definition from 18 U.S.C. § 7 and to include a definition of the high seas and the territorial seas taken from *United States v. Marino-Garcia*, 679 F.2d 1373, n.8 (11th Cir. 1982). *See also Florida Fish and Wildlife Commission,* Boundary Maps and Management Zones (stating "Florida state waters are from shore to 3 nautical miles on the Atlantic.."). The defense also added this as an element the government must prove because it is an element of the offense. *See* O45.1 First Degree Murder: Premeditated Murder, where the fact that "the killing took place within the [special maritime][territorial] jurisdiction of the United States" was a fact that must be proven beyond a reasonable doubt because it was an element of the offense.

The defense removed the definition of a "taking" as a "taking" is not an element of the statute, rather the statute states "take and carry away" which are not terms of art and do not need legal definitions.

Lastly, the defense added the term "knew" to subsection (i) as the Defendant must know that the property belongs to another. The Eleventh Circuit explained in *United States v. Wilson*, 788 F.3d 1298, in regards to theft of government property in violation of 18 U.S.C. § 641, whose offense instruction the government relied on (O21), that "The defendant must know that his taking of property is an unlawful conversion….Knowing conversion requires more than knowledge that defendant was taking the property into his possession. He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion." *Id.* at 1309 (quoting *Morissette*, 3421 U.S. at 270-71)

to steal or purloin, any property worth more than $1,000 and belonging to another, when the offense is committed within the special maritime and territorial jurisdiction of the United States.

A Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

(1) that the Defendant knew the property described in the indictment belonged to someone other than the Defendant;

(2) the Defendant took and carried away such property;

(3) the Defendant acted with the intent to steal or purloin the property;

(4) the property had a value greater than $1,000.

(5) The offense was committed within the special maritime and territorial jurisdiction of the United States.

To "steal" or "unlawfully take" means to wrongfully take good or property belonging to someone else with intent to deprive the owner of the use or benefit permanently or temporarily and to convert it to one's own use or the use of another.

[To "steal" means to take away from one in lawful possession without right, with the intention to keep wrongfully.]

To "purloin" means to appropriate wrongfully and often by a breach of

trust, it stresses removing or carrying off for one's own use or purposes.

"Value" means the greater of (1) the face, par, or market value, or (2) the price, whether wholesale or retail.

The term "Special maritime and territorial jurisdiction of the United States" is defined in 18 U.S.C. § 7, and includes the high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State. The high seas include all waters beyond the territorial seas of the United States. The territorial seas of the United States extend three nautical miles from the Coast.

ANNOTATIONS AND COMMENTS

18 U.S.C. § 661

18 U.S.C. § 7(1)

B9.1A

On or About; Knowingly; Willfully - Generally

You'll see that the indictment charges that a crime was committed "on or about" a certain date. The Government doesn't have to prove that the crime occurred on an exact date. The Government only has to prove beyond a reasonable doubt that the crime was committed on a date reasonably close to the date alleged.

The word "knowingly" means that an act was done voluntarily and intentionally and not because of a mistake or by accident.

The word "willfully" means that the act was committed voluntarily and purposely, with the intent to do something the law forbids; that is, with the bad purpose to disobey or disregard the law. While a person must have acted with the intent to do something the law forbids before you can find that the person acted "willfully," the person need not be aware of the specific law or rule that his conduct may be violating.

ANNOTATIONS AND COMMENTS

The Definition of willfulness in this instruction can be used in most cases where willfulness is an element. For crimes requiring a particularized knowledge of the law being violated, such as tax and currency-structuring cases, use 9.1 B's definition of willfulness.

The committee in its most recent revisions to the pattern instructions has changed the approach to how "willfully" should be charged in the substantive offenses which include it as an essential element of the offense. The previous editions of the pattern

instructions included the following definition that historically has been used in most cases:

> The word "willfully," as that term has been used from time to time in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law.

Although this definition has been useful as a general definition that encompasses many different aspects of the legal concept of "willfulness" in a concise and straightforward manner, the Committee has concluded, along with every other Circuit Pattern Instruction Committee that has considered the issue, that the definition is not accurate in every situation. A review of the case law reveals how the courts have struggled with the meaning of "willfulness" as a *mens rea* requirement for substantive criminal offenses. *See Bryan v. United States,* 524. U.S. 184, 189-92, 114 S. Ct. 1939, 1944-45 (1998) ("The word 'willfully' is sometimes said to be 'a word of many meanings' whose construction is often dependent on the context in which it appears." (citing *Spies v. United States,* 317 U.S. 492, 497, 63 S. Ct. 364, 367 (1943))); *see also*
Ratzlaf v. United States, 510 U.S. 135, 140-41, 114 S. Ct. 655, 659 (1994); *United States v. Phillips,* 19 F.3d 1565, 1576-84 (11th Cir. 1994) (noting the difficulty in defining "willfully" and discussing the term in various contexts), amended to correct clerical errors, 59 F.3d 1095 (11th Cir. 1995); *United States v. Granda,* 565 F.2d 922, 924 (5th Cir. 1978) (noting, *inter alia,* that "willfully" has defied any consistent interpretation by the courts"); *see generally United States v. Bailey,* 444 U.S. 394, 403, 100 S. Ct. 624, 631 (1980) ("Few areas of criminal law pose more difficulty that the proper definition of the *mens rea* requirement for any particular crime.").

Based on the case law, the Committee has concluded that the criminal offenses that expressly include "willfulness" as an essential element can be divided into two broad categories. For the first category (Instruction 9.1A, which encompasses most offenses) "willfully" is defined to require that the offense be committed voluntarily and purposely with the intent to do something unlawful. However, the person need not be aware of the specific law or rule that his or her conduct may be violating. This definition is narrower than the traditional definition that has been used in our pattern charges in the past, but the Committee believes that this narrower definition is required under the law. *See, e.g. Bryan v. United States,* 524 U.S. 184, 118 S. Ct. 1939 (1998) (holding that the term "willfully" in 18 U.S.C. §§ 922(a)(l)(A) and 924(a)(l)(D) requires proof that the defendant knew that his conduct was generally unlawful, but does not require that the defendant knew of the specific licensing requirement that he was violating).

The second category of criminal offenses that have "willfulness" as an essential element have a heightened *mens rea* requirement. For this limited class of offenses,

the Government must prove more than the defendant knew that his conduct was done with a bad purpose to disobey the law in general. The Government must prove that the defendant had an intent to violate a known legal duty, that is with the *specific* intent to do something the law forbids. For these offenses, the Committee recommends that the definition of "willfully" in Instruction 9. lB be given to the jury. These offenses include currency structuring statutes and certain tax laws, which tend to involve "highly technical statutes that present the danger ofensnaring individuals engaged in apparently innocent conduct." *Bryan,* 118 S. Ct. at 1946-47. For example, *see Ratzlafv. United States,* 114 S. Ct. 655 (1994) (holding that with respect to 31
U.S.C. § 5322(a) and the monetary transaction provisions that it controls, the Government must prove that the defendant acted willfully, *i.e.,* with specific knowledge that the structuring of currency transactions in which he was engaged was unlawful); *see also Cheek v. United States,* 111 S. Ct. 604, 609-10 (1991) (explaining that due to the complexity of tax laws, there is an exception to the general rule that "ignorance of the law or a mistake of law is no defense to criminal prosecution," and "[t]he term 'willfully' [as used in certain federal criminal tax offenses] connot[es] a 'voluntary, intentional violation of a known legal duty'" (citing *United States v. Pomponio,* 429 U.S. 10, 12, 97 S. Ct. 22, 23 (1976) and *United States v. Bishop,* 412,
U.S. 346, 360-61, 93 S. Ct. 2008, 2017 (1973))). In *Cheek,* the Supreme Court found error in the trial court's instruction to the jury that in order for the defendant's belief that he was not violating the law to be a defense, his good-faith belief must have been objectively reasonable. The Court further explained, however, that "a defendant's views about the validity of the tax statutes are irrelevant to the issue of willfulness and need not be heard by the jury, and, if they are, an instruction to disregard them would be proper." *Cheek,* 498 U.S. at 206, 111 S. Ct. at 613.

The Committee observes that the required mental state may be different even for different elements of the same crime. This possibility should be considered when determining what definition of *mens rea* should be charged. *See Liparota v. United States,* 471 U.S. 419, 423, 105 S. Ct. 2084, 2087 n.5 (1985).

Note: If the Defendant raises a good faith defense, it may be appropriate to give Special Instruction 9 [Good Faith Defense to Willfulness (as under the Internal Revenue Code)], Special Instruction 18 [Good Faith Reliance Upon Advice of Counsel].

S17
Good-Faith Defense[3]

"Good faith" is a complete defense to a charge that requires intent to do something the law forbids.

A defendant isn't required to prove good faith. The Government must prove intent to steal or purloin the property beyond a reasonable doubt.

An honestly held opinion or an honestly formed belief cannot not be criminal intent even if the opinion or belief is mistaken. Similarly, evidence of a mistake in judgement, an error in management, or carelessness can't establish criminal intent to steal or purloin.

ANNOTATIONS AND COMMENTS

United States v. Gross, 650 F.2d 1336 (5th Cir. 1981), failure to give this instruction as a theory-of-defense charge, when requested to do so, is error if there is any evidentiary foundation to support the Defendant's claim. Note, however, that there must be some evidentiary basis for the request. If the usual instructions are given defining willfulness and intent to defraud, that will ordinarily suffice in the absence of evidence of good faith, *United States v. Boswell*, 565 F.2d 1338 (5th Cir. 1978), *reh'g denied*, 568 F.2d 1367 (11th Cir. 1978), *cert. denied*, 439 U.S. 819, 99 S. Ct. 81, 58 L. Ed. 2d 110 (1978); *Unites States v. England*, 480 F.2d 1266 (5th Cir. 1973), *cert. denied*, 414 U.S. 1041, 94 S. Ct. 543, 38 L. Ed. 2d 332 (1973); *United States v. Williams*, 728 F.2d 1402 (11th Cir. 1984).

[3] This instruction was modified from the Eleventh Circuit Pattern Jury Instruction S17, discussing an intent to defraud, for the intent to steal or purloin that is required under § 661

Theory of Defense

It is the defense's theory of the case that when a defendant removes and brings to the attention of law enforcement, property that he erroneously believes was being unlawfully used, posing an unreasonable danger to maritime life, he has not acted with the intent to steal or purloin and you must find him not guilty.

It is also the defense's theory of the case that when a defendant removes items from open water, and does not take those items for his own use or benefit or the benefit or use of others, then he lacks the intent to steal or purloin and you must find him not guilty.

ANNOTATIONS AND COMMENTS

A criminal defendant is entitled to a theory-of-defense instruction where there is any foundation for the instruction in the evidence, even if the evidence is "weak, insufficient, inconsistent, or of doubtful credibility." *United States v. Lively* 803 F.2d 1124, 1126 (11th Cir. 1986) (quoting *United States v. Young*, 464 F.2d 160, 164 (5th Cir. 1972))

B10.3
Caution: Punishment
(Multiple Defendants, Single Count)

You must consider the case of each defendant and the evidence relating to it separately and individually. If you find one Defendant guilty, that must not affect your verdict for any other Defendant.

I caution you that each Defendant is on trial only for the specific crime alleged in the indictment. You're here to determine from the evidence in this case whether each Defendant is guilty or not guilty.

You must never consider punishment in any way to decide whether a Defendant is guilty. If you find a Defendant guilty, the punishment is for the Judge alone to decide later.

ANNOTATIONS AND COMMENTS

United States v. Gonzalez, 940 F.2d 1413, 1428 (11th Cir. 1991), *cert. denied,* 502 U.S. 1047, 112 S. Ct. 910 (1992), and *cert. denied,* 502 U.S. 1103, 112 S. Ct. 1194, 117 L. Ed. 2d 435 (1992) states that "cautionary instructions to the jury to consider the evidence as to each defendant separately are presumed to guard adequately against prejudice." See also *United States v. Adams,* 1 F.3d 1566 (11th Cir. 1993), *reh'g denied,* 9 F.3d 1561 (1993), *cert. denied,* 510 U.S. 1198, 114 S. Ct. 1310, 127 L. Ed. 2d 660 (1994), and *cert. denied,* 510 U.S. 1206, 114 S. Ct. 1330, 127 L. Ed. 2d 677 (1994).

United States v. Watson, 669 F.2d 1374, 1389 (11th Cir. 1982) allowed use of single verdict form for multiple defendants when the form listed each defendant separately and jury was instructed that each defendant "should be considered separately and individually." *See also United States v. Russo,* 796 F.2d 1443, 1450 (11th Cir. 1986).

B11

Duty to Deliberate

Your verdict, whether guilty or not guilty, must be unanimous – in other words, you must all agree. Your deliberations are secret, and you'll never have to explain your verdict to anyone.

Each of you must decide the case for yourself, but only after fully considering the evidence with the other jurors. So you must discuss the case with one another and try to reach an agreement. While you're discussing the case, don't hesitate to reexamine your own opinion and change your mind if you become convinced that you were wrong. But don't give up your honest beliefs just because others think differently or because you simply want to get the case over with.

Remember that, in a very real way, you're judges – judges of the facts. Your only interest is to seek the truth from the evidence in the case.

ANNOTATIONS AND COMMENTS

See United States v. Brokemond, 959 F.2d 206, 209 (11th Cir. 1992). *See also United States v. Cook,* 586 F.2d 572 (5th Cir. 1978), *reh 'g denied,* 589 F.2d 1114 (1979), *cert. denied,* 442 U.S. 909, 99 S. Ct. 2821, 61 L. Ed. 2d 274 (1979); *United States v. Dunbar,* 590 F.2d 1340 (5th Cir. 1979).

B12
Verdict

When you get to the jury room, choose one of your members to act as foreperson. The foreperson will direct your deliberations and will speak for you in court.

A verdict form has been prepared for your convenience.

[Explain verdict]

Take the verdict form with you to the jury room. When you've all agreed on the verdict, your foreperson must fill in the form, sign it, date it, and carry it. Then you'll return it to the courtroom.

If you wish to communicate with me at any time, please write down your message or question and give it to the marshal. The marshal will bring it to me and I'll respond as promptly as possible – either in writing or by talking to you in the courtroom. But I caution you not to tell me how many jurors have voted one way or the other at that time.

ANNOTATIONS AND COMMENTS

United States v. Norton, 867 F.2d 1354, 1365-66 (11th Cir. 1989), *cert. denied,* 491 U.S. 907, 109 S. Ct. 3192, 105 L. Ed. 2d 701 (1989) and 493 U.S. 871, 110 S. Ct. 200, 107 L. Ed. 2d 154 (1989) notes that the Court should not inquire about, or disclose, numerical division of the jury during deliberations but states that "[r]eversal may not be necessary even where the trial judge undertakes the inquiry and thereafter follows it with an *Allen* charge, absent a showing that either incident or a combination of the two was inherently coercive." See *United States v. Brokemond,* 959 F.2d 206, 209 (11th Cir. 1992). *See also United States v. Cook,* 586 F.2d 572 (5th Cir. 1978), *reh'g*

denied, 589 F.2d 1114 (1979), *cert. denied,* 442 U.S. 909, 99 S. Ct. 2821, 61 L. Ed. 2d 274 (1979).

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA

v.

JOHN R. MOORE, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: **9:22-CR-80073-DMM(1)**
USM Number: **16156-510**

Counsel for Defendant: **Marc David Seitles**
Counsel for United States: **Thomas Austin Watts-Fitzgerald**

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	**One**

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18:661 – Theft of Property W/In Special Maritime Jurisdiction	08/10/2020	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

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

February 13, 2023
Date of Imposition of Judgment

Signature of Judge

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

February 13, 2023
Date

DEFENDANT: JOHN R. MOORE, JR.
CASE NUMBER: 9:22-CR-80073-DMM(1)

PROBATION

The defendant is hereby sentenced to probation for a term of:

ONE (1) YEAR as to Count 1.

Counts to run: ☐ Concurrent ☐ Consecutive

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 you pose a low risk of future substance abuse. (*check if applicable*)
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
5. ☐ 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*)
6. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)
7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8. ☐ You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. ☐ If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. ☐ You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

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

DEFENDANT: JOHN R. MOORE, JR.
CASE NUMBER: 9:22-CR-80073-DMM(1)

STANDARD CONDITIONS OF PROBATION

As part of your probation, 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. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JOHN R. MOORE, JR.
CASE NUMBER: 9:22-CR-80073-DMM(1)

SPECIAL CONDITIONS OF PROBATION

Community Service: The defendant shall perform 50 hours per year of community service which shall be completed no later than three months prior to termination of supervision. The defendant shall perform community service hours on a monthly basis as directed by the U.S. Probation Office.

Defendant shall have no travel restrictions. U.S. Probation shall return Defendant's U.S. passport.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: JOHN R. MOORE, JR.
CASE NUMBER: 9:22-CR-80073-DMM(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$3,343.72	$1,000.00		

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

See victim list.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. 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 the schedule of payments page 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 for the ☐ fine ☐ restitution
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

Restitution - It is further ordered that the defendant shall pay joint and several restitution in the amount of **$3,343.72**.

The defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** 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: JOHN R. MOORE, JR.
CASE NUMBER: 9:22-CR-80073-DMM(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 payments of $100.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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 made to the clerk of the court.

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

☒ Joint and Several in Case No. 22-80073-CR-DMM - Tanner J. Mansell in the amount of $3,343.72
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

UNITED STATES OF AMERICA

v.

TANNER J. MANSELL

JUDGMENT IN A CRIMINAL CASE

Case Number: **9:22-CR-80073-DMM(2)**

USM Number: **16159-510**

Counsel for Defendant: **Ian Jeremy Goldstein**

Counsel for United States: **Thomas Austin Watts-Fitzgerald**

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	**One**

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:661 – Theft of Property W/In Special Maritime Jurisdiction	08/10/2020	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States

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

February 13, 2023
Date of Imposition of Judgment

Signature of Judge

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

February 13, 2023
Date

DEFENDANT: TANNER J. MANSELL
CASE NUMBER: 9:22-CR-80073-DMM(2)

PROBATION

The defendant is hereby sentenced to probation for a term of:

ONE (1) YEAR as to Count 1.

Counts to run: ☐ Concurrent ☐ Consecutive

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 you pose a low risk of future substance abuse. (*check if applicable*)
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
5. ☐ 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*)
6. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)
7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8. ☐ You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. ☐ If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. ☐ You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

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

DEFENDANT: TANNER J. MANSELL
CASE NUMBER: 9:22-CR-80073-DMM(2)

STANDARD CONDITIONS OF PROBATION

As part of your probation, 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. I understand additional information regarding these conditions is available at www.flsp.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: TANNER J. MANSELL
CASE NUMBER: 9:22-CR-80073-DMM(2)

SPECIAL CONDITIONS OF PROBATION

Community Service: The defendant shall perform 50 hours per year of community service which shall be completed no later than three months prior to termination of supervision. The defendant shall perform community service hours on a monthly basis as directed by the U.S. Probation Office.

Defendant shall have no travel restrictions. U.S. Probation shall return Defendant's U.S. passport.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: TANNER J. MANSELL
CASE NUMBER: 9:22-CR-80073-DMM(2)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$3,343.72	$.00		

☐ The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

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

See victim list.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. 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 the schedule of payments page 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 for the ☐ fine ☐ restitution

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

Restitution - It is further ordered that the defendant shall pay joint and several restitution in the amount of **$3,343.72**.

The defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.
** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.
*** 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: TANNER J. MANSELL
CASE NUMBER: 9:22-CR-80073-DMM(2)

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 payments of $100.00 due immediately.

It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716

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 made to the clerk of the court.

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

☒ Joint and Several in Case No. 22-80073-CR-DMM - John R. Moore, Jr in the amount of $3,343.72
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

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.