IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPEAL NUMBER 23-3013

UNITED STATES OF AMERICA,
Appellee,

v.

RAMOINE WHITE,
Appellant.

APPEAL FROM THE NOVEMBER 7, 2023, JUDGMENT OF CONVICTION AND SENTENCE ENTERED IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AT NUMBER 21-CR-353

APPENDIX TO BRIEF FOR THE APPELLANT

José Luis Ongay
Attorney for the Appellant

600 West Germantown Pike
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Plymouth Meeting, PA 19462
Telephone: (484) 681-1117

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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V.	:	
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RAMOINE WHITE,	:	
Defendant.	:	

CORRECTED NOTICE OF APPEAL

Please take notice that on this date, the defendant Ramoine White, hereby files a Notice of Appeal for the November 8, 2022, Judgment of Sentence. The defendant had CJA counsel, as such, he did not pay the filing fee.

Respectfully,

/s/ José Luis Ongay

José Luis Ongay

Date: November 12, 2023

CERTIFICATE OF SERVICE

I certify that on this date, I serve a true and correct copy of this Notice of Appeal upon Maryteresa Soltis, via email at mary.soltis@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: November 12, 2023

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania

UNITED STATES OF AMERICA
v.
Ramoine White

JUDGMENT IN A CRIMINAL CASE

Case Number: DPAE2:21CR000353-001

USM Number: 63750-509

Jose Luis Ongay, Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

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

☑ was found guilty on count(s) One of the Indictment.
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 922(g)(1)	Possession of a firearm by a felon	2/11/2021	One

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ 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.

11/7/2023
Date of Imposition of Judgment

S/PAUL S. DIAMOND
Signature of Judge

Paul S. Diamond, U.S. District Court Judge
Name and Title of Judge

11/8/2023
Date

AO 245B (Rev. 09/19) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Ramoine White
CASE NUMBER: DPAE2:21CR000353-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

92 months on Count One of the Indictment.

☑ The court makes the following recommendations to the Bureau of Prisons:
The defendant be recommended for drug counseling while in BOP. Court also recommends defendant be place in a facility near Delaware.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Ramoine White
CASE NUMBER: DPAE2:21CR000353-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three years on Count One of the Indictment.

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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 3A — Supervised Release

DEFENDANT: Ramoine White
CASE NUMBER: DPAE2:21CR000353-001

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: Ramoine White
CASE NUMBER: DPAE2:21CR000353-001

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall cooperate with Immigration and Customs Enforcement to resolve any problems with the defendant's status in the United States. The defendant shall provide truthful information and abide by the rules and regulations of the Bureau of Immigration and Customs Enforcement. If deported, the defendant shall not re-enter the United States without the written permission of the Attorney General. If the defendant re-enters the United States, the defendant shall report in person to the nearest U.S. Probation Office within 48 hours.

The defendant shall refrain from illegal possession and/or use of drugs and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that the defendant shall participate in drug treatment and abide by the rules of any such program until satisfactorily discharged.

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Ramoine White
CASE NUMBER: DPAE2:21CR000353-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 100.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

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

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

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

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

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

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

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

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

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

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: Ramoine White
CASE NUMBER: DPAE2:21CR000353-001

SCHEDULE OF PAYMENTS

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

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

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

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

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

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

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

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
Smith & Wesson, M&P40, .40 caliber semi-automatic pistol, bearing serial number DXB9296; and fourteen live rounds of .357 Sig Speer ammunition;

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.

CLOSED,APPEAL,FORFEITURE

United States District Court
Eastern District of Pennsylvania (Philadelphia)
CRIMINAL DOCKET FOR CASE #: 2:21-cr-00353-PD-1

Case title: USA v. WHITE

Date Filed: 09/07/2021

Date Terminated: 11/08/2023

Assigned to: DISTRICT JUDGE PAUL S. DIAMOND

Appeals court case number: 23-3013 USCA FOR THE THIRD CIRCUIT

Defendant (1)

RAMOINE WHITE
TERMINATED: 11/08/2023
also known as
RHUMONE WHITE
TERMINATED: 11/08/2023

represented by **RAMOINE WHITE**
63750-509
PHILADELPHIA
FEDERAL DETENTION CENTER
Inmate Mail/Parcels
P.O. BOX 562
PHILADELPHIA, PA 19105
PRO SE

JOSE LUIS ONGAY
600 WEST GERMANTOWN PIKE
SUITE 400
PLYMOUTH MEETING, PA 19462
484-681-1117
Email: jlolaw@live.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

ANDREW GERALDUS GAY , JR.
LAW OFFICE OF ANDREW G. GAY, JR., LLC
1518 WALNUT ST SUITE 807
PHILADELPHIA, PA 19102
215-545-7110
Email: aggjr@aggjr.com
TERMINATED: 05/16/2023
Designation: Retained

Pending Counts

18:922(g)(1) - POSSESSION OF A FIREARM BY A FELON
(1)

Disposition

IMPRISONMENT: 92 MONTHS;
SUPERVISED RELEASE: 3 YEARS;
SPECIAL ASSESSMENT: $100

Highest Offense Level (Opening)

Felony

Terminated Counts **Disposition**

None

Highest Offense Level (Terminated)

None

Complaints **Disposition**

None

Plaintiff

USA represented by **MARYTERESA SOLTIS**
U.S. ATTORNEY'S OFFICE
615 CHESTNUT ST
PHILADELPHIA, PA 19106
215-861-8480
Email: Mary.Soltis@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
09/07/2021	1	SEALED INDICTMENT as to RAMOINE WHITE (1) count(s) 1. (Attachments: # 1 Designation Form) (tomg,) (Additional attachment(s) added on 9/8/2021: # 2 SIGNATURES, # 3 INFORMATION SHEET) (tomg,). (Entered: 09/08/2021)
09/07/2021	2	MOTION AND ORDER TO SEAL AS TO RAMOINE WHITE. Signed by MAGISTRATE JUDGE SCOTT W. REID on 9/7/2021.9/8/2021 Entered. (tomg,) (Entered: 09/08/2021)
09/07/2021	3	ORDER FOR ISSUANCE OF BENCH WARRANT AS TO RAMOINE WHITE. Signed by MAGISTRATE JUDGE SCOTT W. REID on 9/7/2021.9/8/2021 Entered. (tomg,) (Entered: 09/08/2021)
09/08/2021		***INDICTMENT UNSEALED as to RAMOINE WHITE (ke,) (Entered: 09/08/2021)
09/08/2021	4	Letter from AUSA Unsealing Indictment as to RAMOINE WHITE (ke,) (Entered: 09/08/2021)
09/09/2021	5	NOTICE OF ATTORNEY APPEARANCE ANDREW GERALDUS GAY, JR appearing for RAMOINE WHITE (GAY, ANDREW) (Entered: 09/09/2021)
09/10/2021	6	Minute Entry for proceedings held before MAGISTRATE JUDGE SCOTT W. REID: IA/AC as to RAMOINE WHITE held on 9/10/2021. The Government's Motion for Temporary Detention is Granted. A detention and arraignment hearing are scheduled for 9/14/21. Signed by United States Magistrate Judge Scott W. Reid. Court Reporter: ESR. (ems) (Entered: 09/10/2021)

09/13/2021	7	ARREST Warrant Returned Executed on 9/10/2021 in case as to RAMOINE WHITE. (ems) (Entered: 09/13/2021)
09/15/2021	8	Minute Entry for proceedings held before MAGISTRATE JUDGE CAROL SANDRA MOORE WELLS: ARRAIGNMENT / PRETRIAL DETENTION as to RAMOINE WHITE (1) Count 1 held on 9/14/2021. The Defendant stipulated to pretrial detention. Plea entered by RAMOINE WHITE: Not Guilty on ALL COUNTS. Counsel have 14 days to file pretrial motions. Signed by United States Magistrate Judge Carol Sandra Moore Wells. Court Reporter: ESR. (ems) (Entered: 09/15/2021)
09/15/2021	9	NOTICE OF HEARING as to RAMOINE WHITE - JURY TRIAL SET FOR 10/26/2021 at 9:30 AM BEFORE HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 09/15/2021)
09/27/2021	10	First MOTION for Leave to File *FURTHER AND ADDITIONAL PRE-TRIAL MOTIONS* by RAMOINE WHITE. (GAY, ANDREW) (Entered: 09/27/2021)
09/27/2021		***Set/Reset Deadlines as to RAMOINE WHITE: PRETRIAL MOTIONS DUE BY 10/12/2021. (JL) (Entered: 09/27/2021)
09/27/2021	11	ORDER as to RAMOINE WHITE THAT DEFENDANT'S MOTION FOR LEAVE TO MAKE FURTHER AND ADDITIONAL PRETRIAL MOTIONS IS GRANTED IN PART. DEFENDANT SHALL FILE ANY PRETRIAL MOTIONS BY 10/12/21; ETC.. Signed by HONORABLE PAUL S. DIAMOND on 9/27/21.9/27/21 ENTERED AND E-MAILED.(JL) (Entered: 09/27/2021)
10/14/2021	12	Letter as to RAMOINE WHITE dated 10/6/2021. (ems) (Entered: 10/14/2021)
10/14/2021	13	NOTICE OF HEARING as to RAMOINE WHITE - STATUS CONFERENCE SET FOR 10/20/2021 at 03:00 PM BEFORE HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 10/14/2021)
10/18/2021	14	NOTICE OF HEARING as to RAMOINE WHITE STATUS CONFERENCE SET FOR 10/20/2021 has been postponed until 10/26/2021 at 9:30 AM BEFORE HONORABLE PAUL S. DIAMOND. (lk,) (Entered: 10/18/2021)
10/26/2021	15	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Status Hearing as to RAMOINE WHITE held on 10/26/2021. Judge addresses counsel. The Court addresses counsel. AUSA addresses the Court. Defense counsel addresses the Court. Defendant is sworn. Counsel to follow-up with the Court at a later date. Court Reporter: ESR. (ems) (Entered: 10/26/2021)
11/03/2021	16	First MOTION to Continue *the Commencement of Trial* by RAMOINE WHITE. (GAY, ANDREW) (Entered: 11/03/2021)
11/16/2021	17	NOTICE OF HEARING as to RAMOINE WHITE - JURY TRIAL SET FOR 10/26/2021 HAS BEEN POSTPONED UNTIL 3/22/2022 AT 9:30 AM BEFORE HONORABLE PAUL S. DIAMOND; FINAL PRETRIAL CONFERENCE SET FOR 3/16/2022 AT 2:00 PM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 11/16/2021)
11/16/2021	18	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S UNOPPOSED MOTION FOR CONTINUANCE OF TRIAL (DOC. NO. 16) IS GRANTED. A CRIMINAL JURY TRIAL IN THE ABOVE CAPTIONED MATTER SHALL COMMENCE ON MARCH 22, 2022 AT 9:30 A.M.. Signed by HONORABLE PAUL S. DIAMOND on 11/16/2021. 11/16/2021 ENTERED AND COPIES E-MAILED. (ems) (Entered: 11/16/2021)
11/16/2021	19	ORDER TO CONTINUE - ENDS OF JUSTICE PURSUANT TO 18 U.S.C. SECTION 3161(h)(7)(A)(B) AS TO RAMOINE WHITE THAT THE COURT FINDS THAT THE ABOVE ACTION CANNOT PROCEED TO TRIAL AND DISPOSITION AND MUST

		BE CONTINUED BECAUSE OF THE FOLLOWING REASON: THE FAILURE TO GRANT SUCH A CONTINUANCE IN THE PROCEEDING WOULD BE LIKELY TO MAKE A CONTINUATION OF SUCH PROCEEDING IMPOSSIBLE, OR RESULT IN A MISCARRIAGE OF JUSTICE. COUNSEL REQUIRES ADDITIONAL TIME TO PREPARE FOR TRIAL AND TO EXPLORE THE POSSIBLITY OF A NON-TRIAL DISPOSITION, ETC. Signed by HONORABLE PAUL S. DIAMOND on 11/16/2021. 11/16/2021 Entered and Copies E-Mailed. (ems) (Entered: 11/16/2021)
11/16/2021	20	SCHEDULING ORDER AS TO RAMOINE WHITE THAT THE ABOVE CAPTIONED CASE IS LISTED FOR TRIAL ON MARCH 22, 2022 AT 9:30 A.M. IN COURTROOM 14A OF THE UNITED STATES COURTHOUSE, 601 MARKET STREET, PHILADELPHIA, PENNSYLVANIA, ETC. Signed by HONORABLE PAUL S. DIAMOND on 11/16/2021. 11/16/2021 Entered and Copies E-Mailed. (ems) (Entered: 11/16/2021)
01/10/2022	21	MOTION to Suppress by RAMOINE WHITE. (GAY, ANDREW) (Entered: 01/10/2022)
01/31/2022	22	RESPONSE in Opposition re 21 MOTION to Suppress filed by USA (SOLTIS, MARYTERESA) (Entered: 01/31/2022)
02/28/2022	23	Second MOTION to Continue *Commencement of Trial* by RAMOINE WHITE. (GAY, ANDREW) (Entered: 02/28/2022)
03/17/2022	24	NOTICE OF HEARING as to RAMOINE WHITE - SUPPRESSION HEARING SET FOR 6/6/2022 AT 2:00 PM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 03/17/2022)
03/17/2022	25	NOTICE OF HEARING as to RAMOINE WHITE - JURY TRIAL SET FOR 3/22/2022 HAS BEEN POSTPONED UNTIL 7/19/2022 AT 9:30 AM BEFORE HONORABLE PAUL S. DIAMOND; FINAL PRETRIAL CONFERENCE SET FOR 3/16/2022 HAS BEEN POSTPONED UNTIL 7/13/2022 AT 10:00 AM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 03/17/2022)
03/17/2022	26	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S UNOPPOSED MOTION FOR CONTINUANCE OF TRIAL (DOC. NO. 23) IS GRANTED. A CRIMINAL JURY TRIAL IN THE ABOVE CAPTIONED MATTER SHALL COMMENCE ON JULY 19, 2022 AT 9:30 A.M.. Signed by HONORABLE PAUL S. DIAMOND on 3/17/2022. 3/17/2022 ENTERED AND COPIES E-MAILED. (ems) (Entered: 03/17/2022)
03/17/2022	27	ORDER TO CONTINUE - ENDS OF JUSTICE PURSUANT TO 18 U.S.C. SECTION 3161(h)(7)(A)(B) AS TO RAMOINE WHITE THAT THE COURT FINDS THAT THE ABOVE ACTION CANNOT PROCEED TO TRIAL AND DISPOSITION AND MUST BE CONTINUED BECAUSE OF THE FOLLOWING REASON: THE FAILURE TO GRANT SUCH A CONTINUANCE IN THE PROCEEDING WOULD BE LIKELY TO MAKE A CONTINUATION OF SUCH PROCEEDING IMPOSSIBLE, OR RESULT IN A MISCARRIAGE OF JUSTICE. COUNSEL REQUIRES ADDITIONAL TIME TO PREPARE FOR TRIAL AND TO EXPLORE THE POSSIBILITY OF A NON-TRIAL DISPOSITION, ETC. Signed by HONORABLE PAUL S. DIAMOND on 3/17/2022. 3/17/2022 Entered and Copies E-Mailed. (ems) (Entered: 03/17/2022)
03/17/2022	28	SCHEDULING ORDER AS TO RAMOINE WHITE THAT THE ABOVE CAPTIONED CASE IS LISTED FOR TRIAL ON JULY 19, 2022 AT 9:30 A.M. IN COURTROOM 14A OF THE UNITED STATES COURTHOUSE, 601 MARKET STREET, PHILADELPHIA, PENNSYLVANIA, ETC. Signed by HONORABLE PAUL S. DIAMOND on 3/17/2022. 3/17/2022 Entered and Copies E-Mailed. (ems) (Entered: 03/17/2022)

06/08/2022	29	NOTICE OF HEARING as to RAMOINE WHITE - SUPPRESSION HEARING SET FOR 6/6/2022 HAS BEEN POSTPONED UNTIL 7/27/2022 AT 2:00 PM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 06/08/2022)
06/14/2022	30	Third MOTION to Continue *Trial* by RAMOINE WHITE. (GAY, ANDREW) (Entered: 06/14/2022)
06/28/2022	31	NOTICE OF HEARING as to RAMOINE WHITE - JURY TRIAL SET FOR 7/19/2022 HAS BEEN POSTPONED UNTIL 10/18/2022 AT 9:30 AM BEFORE HONORABLE PAUL S. DIAMOND; FINAL PRETRIAL CONFERENCE SET FOR 7/13/2022 HAS BEEN POSTPONED UNTIL 10/5/2022 AT 2:00 PM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 06/28/2022)
06/28/2022	32	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S UNOPPOSED MOTION FOR CONTINUANCE OF TRIAL (DOC. NO. 30) IS HEREBY GRANTED. A CRIMINAL JURY TRIAL IN THE ABOVE CAPTIONED MATTER SHALL COMMENCE ON OCTOBER 18, 2022 AT 9:30 A.M.. Signed by HONORABLE PAUL S. DIAMOND on 6/28/2022. 6/28/2022 ENTERED AND COPIES E-MAILED. (ems) (Entered: 06/28/2022)
06/28/2022	33	ORDER TO CONTINUE - ENDS OF JUSTICE PURSUANT TO 18 U.S.C. SECTION 3161(h)(7)(A)(B) AS TO RAMOINE WHITE THAT THE COURT FINDS THAT THE ABOVE ACTION CANNOT PROCEED TO TRIAL AND DISPOSITION AND MUST BE CONTINUED BECAUSE OF THE FOLLOWING REASON: THE FAILURE TO GRANT SUCH A CONTINUANCE IN THE PROCEEDING WOULD BE LIKELY TO MAKE A CONTINUATION OF SUCH PROCEEDING IMPOSSIBLE, OR RESULT IN A MISCARRIAGE OF JUSTICE. COUNSEL REQUIRES ADDITIONAL TIME TO PREPARE FOR TRIAL AND TO EXPLORE THE POSSIBILITY OF A NON-TRIAL DISPOSITION, ETC. Signed by HONORABLE PAUL S. DIAMOND on 6/28/2022. 6/28/2022 Entered and Copies E-Mailed. (ems) (Entered: 06/28/2022)
06/28/2022	34	SCHEDULING ORDER AS TO RAMOINE WHITE THAT THE ABOVE CAPTIONED CASE IS LISTED FOR TRIAL ON OCTOBER 18, 2022 AT 9:30 A.M. IN COURTROOM 14A OF THE UNITED STATES COURTHOUSE, 601 MARKET STREET, PHILADELPHIA, PENNSYLVANIA, ETC. Signed by HONORABLE PAUL S. DIAMOND on 6/28/2022. 6/28/2022 Entered and Copies E-Mailed. (ems) (Entered: 06/28/2022)
07/27/2022	35	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Suppression Hearing as to RAMOINE WHITE held on 7/27/22. Court addressed counsel. Witnesses called and sworn. Defendant is remanded to USM. Court Reporter ESR.(mac) (Entered: 07/28/2022)
07/29/2022	36	TRANSCRIPT OF SUPPRESSION HEARING held on 7/27/2022, before Judge PAUL S. DIAMOND. Court Reporter: ESR. TRANSCRIBED BY: NEAL R. GROSS. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/19/2022. Redacted Transcript Deadline set for 8/29/2022. Release of Transcript Restriction set for 10/27/2022. (tomg) (Entered: 07/29/2022)
07/29/2022	37	Notice of Filing of Official Transcript with Certificate of Service re 36 Transcript - PDF, 7/29/2022 Entered and Copies Emailed. (tomg) (Entered: 07/29/2022)
08/12/2022	38	Proposed Findings of Fact and Conclusions of Law (GAY, ANDREW) (Entered: 08/12/2022)

08/15/2022	39	Proposed Findings of Fact and Conclusions of Law by USACertificate of Service(SOLTIS, MARYTERESA) (Entered: 08/15/2022)
08/19/2022	40	RESPONSE in Opposition re 21 MOTION to Suppress *and Defendant's Proposed Conclusions of Law in Connection with Motion to Suppress* filed by USA (SOLTIS, MARYTERESA) (Entered: 08/19/2022)
08/22/2022	41	Response by RAMOINE WHITE *TO THE GOVERNMENTS CONCLUSIONS OF LAW REGARDING MOTION TO SUPPRESS* (GAY, ANDREW) (Entered: 08/22/2022)
09/06/2022	42	Joint MOTION to Continue *Deadlines for Filing Trial Documents* by USA as to RAMOINE WHITE. (SOLTIS, MARYTERESA) (Entered: 09/06/2022)
09/23/2022	43	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S MOTION (DOC. NO. 21) IS DENIED. Signed by HONORABLE PAUL S. DIAMOND on 9/23/2022. 9/23/2022 ENTERED AND COPIES E-MAILED. (ems) (Entered: 09/23/2022)
09/23/2022	44	ORDER AS TO RAMOINE WHITE (1) THAT THE JOINT MOTION TO CONTINUE DEADLINES FOR PRETRIAL FILINGS IS GRANTED. THE PARTIES SHALL FILE ALL OF THE PRETRIAL DOCUMENTS REFERENCED IN THIS COURT'S JUNE 28, 2022, SCHEDULING ORDER (DOC. NO. 34) AND DESIGNATE ANY EXPERT WITNESSES ON OR BEFORE FOURTEEN DAYS FROM THIS COURT'S RULING ON THE PENDING MOTION TO SUPPRESS (DOC. NO. 21) OR OCTOBER 3, 2022, WHICHEVER IS LATER. Signed by HONORABLE PAUL S. DIAMOND on 9/23/2022. 9/23/2022 ENTERED AND COPIES E-MAILED. (ems) (Entered: 09/23/2022)
09/27/2022	45	NOTICE OF HEARING as to RAMOINE WHITE - FINAL PRETRIAL CONFERENCE SET FOR 10/5/2022 HAS BEEN POSTPONED UNTIL 10/11/2022 AT 2:00 PM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 09/27/2022)
10/07/2022	46	NOTICE OF HEARING as to RAMOINE WHITE - FINAL PRETRIAL CONFERENCE SET FOR 10/11/2022 HAS BEEN POSTPONED UNTIL 10/13/2022 AT 11:00 AM BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 10/07/2022)
10/07/2022	47	Jury Verdict Sheet as to RAMOINE WHITE.CERTIFICATE OF SERVICE(SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	48	Proposed Jury Instructions by USA as to RAMOINE WHITECERTIFICATE OF SERVICE(SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	49	Proposed Voir Dire by USA as to RAMOINE WHITECERTIFICATE OF SERVICE(SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	50	STIPULATION TO JURY of Less Than 12 Members by USA as to RAMOINE WHITECERTIFICATE OF SERVICE(SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	51	TRIAL MEMORANDUM by USA as to RAMOINE WHITECERTIFICATE OF SERVICE(SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	52	Memorandum by USA as to RAMOINE WHITE *as to Citations for Jury Instructions* (SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	53	STIPULATION - *proposed trial stipulations* by USA (SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/07/2022	54	Letter as to RAMOINE WHITE (SOLTIS, MARYTERESA) (Entered: 10/07/2022)
10/11/2022	55	NOTICE re: Cancellation of Hearing - Final Pretrial Conference, scheduled for 10/13/2022 is cancelled. (lk) (Entered: 10/11/2022)

10/11/2022	56	NOTICE OF HEARING as to RAMOINE WHITE - Change of Plea Hearing set for 10/13/2022 at 11:00 AM before HONORABLE PAUL S. DIAMOND. (lk) (Entered: 10/11/2022)
10/12/2022	57	Plea Memorandum by USA as to RAMOINE WHITE (Attachments: # 1 Exhibit A - Plea Agreement)(SOLTIS, MARYTERESA) (Entered: 10/12/2022)
10/13/2022	58	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Change of Plea Hearing as to RAMOINE WHITE held on 10/13/2022. Defendant consents to videoconference. Plea colloquy begins. Defense counsel requires time to speak with his client. Hearing postponed. Defendant is remanded to the Marshal. Court Reporter: ESR. (ems) (Entered: 10/13/2022)
10/13/2022	59	NOTICE re: Cancellation of Trial scheduled for 10/18/2022. (lk) (Entered: 10/13/2022)
10/21/2022	60	NOTICE OF HEARING as to RAMOINE WHITE - Change of Plea Hearing set for 10/13/2022 will resume on 11/1/2022 at 2:00 PM in Courtroom 14A before HONORABLE PAUL S. DIAMOND. (lk) (Entered: 10/21/2022)
10/31/2022	61	Fourth MOTION to Continue *TIME FOR COMMENCEMENT OF TRIAL* by RAMOINE WHITE. (GAY, ANDREW) (Entered: 10/31/2022)
11/16/2022	62	NOTICE OF HEARING as to RAMOINE WHITE - JURY TRIAL SET FOR 2/14/2023 at 9:30 AM IN Courtroom 14A BEFORE HONORABLE PAUL S. DIAMOND; FINAL PRETRIAL CONFERENCE SET FOR 2/8/2023 AT 02:00 PM IN COURTROOM 14A BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 11/16/2022)
11/16/2022	63	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S UNOPPOSED MOTION FOR CONTINUANCE OF TRIAL (DOC. NO. 61) IS GRANTED. A CRIMINAL JURY TRIAL IN THE ABOVE CAPTIONED MATTER SHALL COMMENCE ON FEBRUARY 14, 2023 AT 9:30 A.M.. Signed by HONORABLE PAUL S. DIAMOND on 11/8/2022. 11/16/2022 ENTERED AND COPIES E-MAILED. (ems) (Entered: 11/16/2022)
11/16/2022	64	ORDER TO CONTINUE - ENDS OF JUSTICE PURSUANT TO 18 U.S.C. SECTION 3161(h)(7)(A)(B) AS TO RAMOINE WHITE THAT THE COURT FINDS THAT THE ABOVE ACTION CANNOT PROCEED TO TRIAL AND DISPOSITION AND MUST BE CONTINUED BECAUSE OF THE FOLLOWING REASON: THE FAILURE TO GRANT SUCH A CONTINUANCE IN THE PROCEEDING WOULD BE LIKELY TO MAKE A CONTINUATION OF SUCH PROCEEDING IMPOSSIBLE OR RESULT IN A MISCARRIAGE OF JUSTICE. COUNSEL REQUIRES ADDITIONAL TIME TO PREPARE FOR TRIAL AND TO EXPLORE THE POSSIBLITY OF A NON-TRIAL DISPOSITION, ETC. Signed by HONORABLE PAUL S. DIAMOND on 11/8/2022. 11/16/2022 Entered and Copies E-Mailed. (ems) (Entered: 11/16/2022)
11/16/2022	65	SCHEDULING ORDER AS TO RAMOINE WHITE THAT THE ABOVE CAPTIONED CASE IS LISTED FOR TRIAL ON FEBRUARY 14, 2023 AT 9:30 A.M. IN COURTROOM 14A OF THE UNITED STATES COURTHOUSE, 601 MARKET STREET, PHILADELPHIA, PENNSYLVANIA, ETC. Signed by HONORABLE PAUL S. DIAMOND on 11/8/2022. 11/16/2022 Entered and Copies E-Mailed. (ems) (Entered: 11/16/2022)
11/16/2022		***Terminate Deadlines and Hearings as to RAMOINE WHITE: (ems) (Entered: 11/16/2022)
02/06/2023	66	AMENDED DOCUMENT by USA. *Amended Expert Disclosure* (SOLTIS, MARYTERESA) (Entered: 02/06/2023)

02/08/2023	67	EXHIBIT LIST by USA as to RAMOINE WHITECertificate of Service(SOLTIS, MARYTERESA) (Entered: 02/08/2023)
02/13/2023	68	EXHIBIT LIST by RAMOINE WHITE(GAY, ANDREW) (Entered: 02/13/2023)
02/13/2023	69	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Final Pretrial Status Hearing as to RAMOINE WHITE held on 2/8/2023. Judge addresses counsel. Discussion regarding trial procedure. Defendant is remanded to the Marshal. Court Reporter: ESR. (ems) (Entered: 02/13/2023)
02/13/2023		***Terminate Deadlines and Hearings as to RAMOINE WHITE: (ems) (Entered: 02/13/2023)
02/13/2023	70	EXHIBIT LIST by USA as to RAMOINE WHITECertificate of Service(SOLTIS, MARYTERESA) (Entered: 02/13/2023)
02/14/2023	71	WAIVER of Presence of Court Stenographer or Electronic Sound Recording Operator and Defendant(s) at Drawing of Jury Panel Members in Criminal Trials as to RAMOINE WHITE (ems) (Entered: 02/14/2023)
02/14/2023	72	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Criminal Jury Trial - Day 1 held on 2/14/2023 as to RAMOINE WHITE. Voir Dire. Witnesses called and sworn. Exhibits admitted. Defendant is remanded to the Marshal. Court Reporter: ESR. (ems) (Entered: 02/14/2023)
02/15/2023	73	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Criminal Jury Trial - Day 2 as to RAMOINE WHITE (1) held on 2/15/2023. Witnesses called and sworn. Exhibits admitted. VERDICT: Jury finds the defendant GUILTY of Count 1. Defendant is remanded to the Marshal. Sentencing to be scheduled. Court Reporter: ESR. (ems) (Entered: 02/15/2023)
02/15/2023	74	JURY VERDICT FORM AS TO RAMOINE WHITE. (ems) (Entered: 02/15/2023)
02/16/2023	75	NOTICE OF HEARING as to RAMOINE WHITE: Sentencing set for 6/6/2023 at 2:00 PM in Courtroom 14A before HONORABLE PAUL S. DIAMOND. (ems) (Entered: 02/16/2023)
02/21/2023	76	ORDER THAT THE CLERK OF COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA IS DIRECTED TO FURNISH LUNCH FOR 14 JURORS ON FEBRUARY 15, 2023 ENGAGED IN THE ABOVE-ENTITLED CASE. Signed by HONORABLE PAUL S. DIAMOND on 2/15/2023. 2/21/2023 Entered. (ems) (Entered: 02/21/2023)
02/23/2023	77	(PRO SE) Letter as to RAMOINE WHITE dated 2/17/2023. (ems) (Entered: 02/23/2023)
02/27/2023	78	TRANSCRIPT OF FINAL PRETRIAL STATUS HEARING held on 2/8/2023, before Judge PAUL S. DIAMOND. Court Reporter/Transcriber: ESR / MAUKELE TRANSCRIBERS, LLC. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/20/2023. Redacted Transcript Deadline set for 3/30/2023. Release of Transcript Restriction set for 5/30/2023. (ems) (Entered: 02/27/2023)
02/27/2023	79	Notice of Filing of Official Transcript with Certificate of Service re 78 Transcript - PDF,, 2/27/2023 Entered and Copies Emailed. (ems) (Entered: 02/27/2023)
02/27/2023	80	SEALED TRANSCRIPT as to RAMOINE WHITE held on 2/8/2023 before Judge PAUL S. DIAMOND. Court Reporter: ESR / MAUKELE TRANSCRIBERS, LLC. (FILED UNDER SEAL) (ems) (ems). (Entered: 02/27/2023)

03/24/2023	81	STIPULATION - *Forfeiture* by USA (SOLTIS, MARYTERESA) (Entered: 03/24/2023)
05/03/2023	82	NOTICE OF HEARING as to RAMOINE WHITE - STATUS OF COUNSEL HEARIING IS SET FOR 5/16/2023 AT 10:30 AM IN Courtroom 14A BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 05/03/2023)
05/16/2023	83	NOTICE OF HEARING as to RAMOINE WHITE - STATUS OF COUNSEL HEARING SET FOR 5/16/2023 WILL NOW TAKE PLACE AT 1:00 PM IN Courtroom 14A BEFORE HONORABLE PAUL S. DIAMOND. (lk) (Entered: 05/16/2023)
05/16/2023	84	SEALED CJA 23 Financial Affidavit by RAMOINE WHITE. (FILED UNDER SEAL) (ems) (ems). (Entered: 05/16/2023)
05/16/2023	85	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Status of Counsel Hearing as to RAMOINE WHITE held on 5/16/2023. Defendant sworn. Defendant requests CJA counsel. Defendant presents Financial Affidavit dated 5/9/2023. Court will grant defendant's request. Order to appoint CJA counsel to follow. Mr. Gay is withdrawn from the case. Defendant is remanded to the Marshal. Court Reporter: ESR. (ems) (Entered: 05/16/2023)
05/16/2023	86	ORDER AS TO RAMOINE WHITE THAT JOSE LUIS ONGAY, ESQUIRE, IS APPOINTED TO REPRESENT THE ABOVE-NAMED DEFENDANT IN THIS MATTER PURSUANT TO THE CRIMINAL JUSTICE ACT. IT IS FURTHER ORDERED THAT ANDREW GERALDUS GAY, JR. IS WITHDRAWN FROM THIS CASE. Signed by HONORABLE PAUL S. DIAMOND on 5/16/2023. 5/16/2023 Entered and Copies E-Mailed. (ems) (Entered: 05/16/2023)
05/30/2023	87	NOTICE OF HEARING as to RAMOINE WHITE - Sentencing set for 6/6/2023 has been postponed until 6/13/2023 at 11:30 AM in Courtroom 14A before HONORABLE PAUL S. DIAMOND. (lk) (Entered: 05/30/2023)
06/06/2023	88	MOTION for Forfeiture of Property by USA as to RAMOINE WHITE. (SOLTIS, MARYTERESA) (Entered: 06/06/2023)
06/06/2023	89	SENTENCING MEMORANDUM Certificate of Service by USA as to RAMOINE WHITE (SOLTIS, MARYTERESA) (Entered: 06/06/2023)
06/06/2023	90	SENTENCING MEMORANDUM CERTTIFICATE OF SERVICE by RAMOINE WHITE (ONGAY, JOSE) (Entered: 06/06/2023)
06/14/2023	91	NOTICE OF HEARING as to RAMOINE WHITE- Sentencing set for 6/13/2023 has been postponed until 7/27/2023 at 2:00 PM in Courtroom 14A before HONORABLE PAUL S. DIAMOND. (lk) (Entered: 06/14/2023)
06/15/2023	92	MOTION for Extension of Time to File by RAMOINE WHITE. (ONGAY, JOSE) (Entered: 06/15/2023)
06/22/2023	93	RESPONSE in Opposition re 92 MOTION for Extension of Time to File filed by USA (SOLTIS, MARYTERESA) (Entered: 06/22/2023)
07/19/2023	94	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S MOTION FOR LEAVE TO FILE MOTIONS PURSUANT TO RULES 29 AND 33 (DOC. NO. 92) IS GRANTED. Signed by HONORABLE PAUL S. DIAMOND on 7/19/2023. 7/19/2023 ENTERED AND COPIES E-MAILED. (ems) (Entered: 07/19/2023)
07/24/2023	95	Letter as to RAMOINE WHITE (ONGAY, JOSE) (Entered: 07/24/2023)
07/31/2023	96	NOTICE OF HEARING as to RAMOINE WHITE- Sentencing set for 7/27/2023 has been postponed until 9/26/2023 at 2:00 PM in Courtroom 14A before HONORABLE

		PAUL S. DIAMOND. (lk) (Entered: 07/31/2023)
08/09/2023	97	TRANSCRIPT OF JURY TRIAL DAY 1 - JURY SELECTION held on 2/14/2023, before Judge PAUL S. DIAMOND. Court Reporter/Transcriber: ESR / NEAL R. GROSS. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/30/2023. Redacted Transcript Deadline set for 9/11/2023. Release of Transcript Restriction set for 11/7/2023. (ems) (Entered: 08/09/2023)
08/09/2023	98	TRANSCRIPT OF CRIMINAL JURY TRIAL - DAY 1 held on 2/14/2023, before Judge PAUL S. DIAMOND. Court Reporter/Transcriber: ESR / NEAL R. GROSS. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/30/2023. Redacted Transcript Deadline set for 9/11/2023. Release of Transcript Restriction set for 11/7/2023. (ems) (Entered: 08/09/2023)
08/09/2023	99	TRANSCRIPT OF CRIMINAL JURY TRIAL - DAY 2 held on 2/15/2023, before Judge PAUL S. DIAMOND. Court Reporter/Transcriber: ESR / NEAL R. GROSS. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/30/2023. Redacted Transcript Deadline set for 9/11/2023. Release of Transcript Restriction set for 11/7/2023. (ems) (Entered: 08/09/2023)
08/09/2023	100	Notice of Filing of Official Transcript with Certificate of Service re 98 Transcript - PDF,, 97 Transcript - PDF,, 99 Transcript - PDF, 8/9/2023 Entered and Copies Emailed. (ems) (Entered: 08/09/2023)
08/22/2023	101	MOTION for Extension of Time to File by RAMOINE WHITE. (ONGAY, JOSE) (Entered: 08/22/2023)
08/23/2023	102	ORDER AS TO RAMOINE WHITE THAT THE DEFENDANT'S MOTION TO EXTEND THE TIME TO FILE POST VERDICT MOTIONS (DOC. NO. 101) IS GRANTED. DEFENDANT IS PERMITTED TO FILE POST VERDICT MOTIONS ON OR BEFORE AUGUST 30, 2023. Signed by HONORABLE PAUL S. DIAMOND on 8/23/2023. 8/23/2023 Entered and Copies E-Mailed. (ems) (Entered: 08/23/2023)
08/30/2023	103	MOTION to Dismiss , MOTION for New Trial by RAMOINE WHITE. (ONGAY, JOSE) (Entered: 08/30/2023)
09/13/2023	104	RESPONSE in Opposition re 103 MOTION to Dismiss MOTION for New Trial filed by USA (SOLTIS, MARYTERESA) (Entered: 09/13/2023)
09/14/2023	105	Letter as to RAMOINE WHITE (ONGAY, JOSE) (Entered: 09/14/2023)
09/21/2023	106	ORDER AS TO RAMOINE WHITE THAT THE DEFT'S REPLY TO THE GOVT'S RESPONSE NO LATER THAN 9/28/2023. Signed by HONORABLE PAUL S. DIAMOND on 9/21/2023.9/21/2023 Entered and Copies E-Mailed. (tomg) (Entered: 09/21/2023)
09/26/2023	107	NOTICE OF HEARING as to RAMOINE WHITE - Sentencing set for 9/26/2023 has been postponed until 11/7/2023 at 2:00 PM in Courtroom 14A before HONORABLE PAUL S. DIAMOND. (lk) (Entered: 09/26/2023)
09/28/2023	108	REPLY TO RESPONSE to Motion by RAMOINE WHITE re 103 MOTION to Dismiss MOTION for New Trial (ONGAY, JOSE) (Entered: 09/28/2023)

10/03/2023	109	ORDER AS TO RAMOINE WHITE (1) THAT THE DEFENDANT'S MOTION TO DISMISS THE INDICTMENT OR FOR A NEW TRIAL ARE DENIED. Signed by HONORABLE PAUL S. DIAMOND on 10/3/2023. 10/3/2023 ENTERED AND COPIES E-MAILED. (ems) (Entered: 10/03/2023)
11/01/2023	110	Corrected SENTENCING MEMORANDUM by RAMOINE WHITE (ONGAY, JOSE) (Entered: 11/01/2023)
11/07/2023	111	ORDER OF FORFEITURE AS TO RAMOINE WHITE. Signed by HONORABLE PAUL S. DIAMOND on 11/7/2023. 11/7/2023 Entered and Copies E-Mailed; Mailed to ICE. (ems) (Entered: 11/07/2023)
11/07/2023	112	Minute Entry for proceedings held before HONORABLE PAUL S. DIAMOND in Courtroom 14A: Sentencing held on 11/7/2023 for RAMOINE WHITE (1), Count(s) 1, IMPRISONMENT: 92 MONTHS; SUPERVISED RELEASE: 3 YEARS; SPECIAL ASSESSMENT: $100. Court Reporter: ESR. (ems) (Entered: 11/07/2023)
11/08/2023	113	NOTICE OF APPEAL by RAMOINE WHITE. (**APPEALABLE ORDER NOT YET FILED**). (**FEE NOT PAID - FILED BY CJA COUNSEL**). Appeal Record due by 11/21/2023. (ONGAY, JOSE) Modified on 11/8/2023 (ke). (Entered: 11/08/2023)
11/08/2023	114	JUDGMENT AS TO RAMOINE WHITE (1), Count(s) 1, IMPRISONMENT: 92 MONTHS; SUPERVISED RELEASE: 3 YEARS; SPECIAL ASSESSMENT: $100. Signed by HONORABLE PAUL S. DIAMOND on 11/8/2023.11/8/2023 Entered and Copies E-Mailed. (tomg) (Entered: 11/08/2023)
11/12/2023	115	NOTICE OF APPEAL by RAMOINE WHITE. (**FILING FEE NOT PAID - FILED BY CJA COUNSEL**). Appeal Record due by 11/22/2023. (ONGAY, JOSE) Modified on 11/13/2023 (ke). (Entered: 11/12/2023)
11/13/2023	116	NOTICE of Docketing Record on Appeal from USCA as to RAMOINE WHITE re 115 Notice of Appeal - Final Judgment filed by RAMOINE WHITE. USCA Case Number 23-3013 (ems) (Entered: 11/13/2023)
12/27/2023	117	TPO Form re 115 Notice of Appeal - Final Judgment : (tomg) (Entered: 12/27/2023)
03/27/2024	118	TRANSCRIPT OF SENTENCING HEARING held on 11/7/2023, before Judge PAUL S. DIAMOND. Court Reporter/Transcriber: ESR/ NEAL R. GROSS. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/17/2024. Redacted Transcript Deadline set for 4/29/2024. Release of Transcript Restriction set for 6/25/2024. (ems) (Entered: 03/27/2024)
03/27/2024	119	Notice of Filing of Official Transcript with Certificate of Service re 118 Transcript - PDF, 3/27/2024 Entered and Copies Emailed. (ems) (Entered: 03/27/2024)
04/12/2024	120	MOTION for Order *Final Order of Forfeiture* by USA as to RAMOINE WHITE. (SOLTIS, MARYTERESA) (Entered: 04/12/2024)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	DOCKET NO. 21-353
	:	
	:	
RAMOINE (aka Rhumone) WHITE	:	

DEFENDANT'S, RAMOINE WHITE, MOTION TO SUPPRESS

Defendant Ramoine white, by and through his counsel, Andrew G. Gay, Jr., Esquire, hereby submits this Motion to Suppress. Defendant seeks suppression of all physical evidence seized during a pedestrian search that occurred on February 11, 2021. In support thereof, Defendant avers the following:

1. Defendant, Ramoine White, was arrested in Philadelphia, Pennsylvania, by Philadelphia Narcotics Officers who were initially investigating another individual for the sale of narcotics. White was subsequently indicted on one count of Possession of a Firearm by a Felon in violation of 18 U.S.C. δ 922(g)(1).
2. White was seized without reasonable suspicion, or probable cause.
3. Defendant did not consent to a search of his person following his illegal detention/arrest.
4. A firearm and three small bags of marijuana seized from Defendant's waistband and pocket were obtained in violation of his Fourth Amendment rights. As such, Defendant seeks to suppress all evidence seized.

WHEREFORE, for the foregoing reasons, and for the reasons described more fully in the accompanying Memorandum of Law, Defendant respectfully requests the Court grant his Motion and suppress all physical evidence seized during the search.

Respectfully submitted,
LAW OFFICE OF ANDREW G. GAY, JR., LLC

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Email: AGGJR@AGGJR.com

Date: January 10, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	DOCKET NO. 21-353
	:	
	:	
RAMOINE (aka Rhumone) WHITE	:	

ORDER

AND NOW, this _____ day of _____ 2022, considering the issues raised in the Motion to Suppress Evidence, it is hereby ORDERED that Defendant's motion is GRANTED.

By the Court:

_____
Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	DOCKET NO. 21-353
	:	
	:	
RAMOINE (aka Rhumone) WHITE	:	

MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO SUPPRESS EVIDENCE

I. FACTS

On February 11, 2021, at, or about, 8 p.m., Philadelphia Police officers were conducting a narcotics surveillance on the 5100 block of Arch Street. Officers Mischel Matos and Ryan Wong were part of a plain-clothes backup team, supporting a narcotics surveillance.

Acting upon information received from fellow officers, Officers Matos and Wong, along with approximately six other plain-clothes and uniformed officers, executed a "takedown" of all individuals situated on the front porch of the residence located at 5100 Arch Street. Ramoine White was one of six individuals standing on the porch at the aforementioned location. The group of officers received orders to stop all individuals on the porch.

Prior to receiving the order to stop the individuals, and prior to ascending the porch to detain the group of males, the "takedown" officers did not observe White engaged in any illegal activity.

Upon approach by the group of officers, Officer Matos observed White smoking a cigar. Officer Matos instructed White to put down the cigar. At that moment, Officer Matos indicated that White "bladed" (turned away) from the officer; thereafter, the officer conducted a pat down. The pat down revealed a hard object in Defendant's waistband. Officer Matos asked White if he possessed a license to carry a firearm, to which White nodded, "No." Following this non-verbal response from Defendant, Officer Matos reached into White's waistband. It was at that moment Officer Matos discovered White possessed a firearm, to wit, a Smith & Wesson, model M&P, .40 cal. handgun, bearing Serial No. DXB9296, loaded with fourteen live rounds.

As the narcotics investigation continued, officers confirmed White was not the individual suspected of selling drugs.

Officer Matos conducted a search incident to arrest for the firearm, recovering three small bags of marijuana from Defendant's pocket.

Defendant was initially charged by the Philadelphia District Attorney's Office. On, or about September 7, 2021, a federal grand jury indicted White on one count of Possession of a Firearm by a Felon in violation of 18 U.S.C. δ 922(g)(1).

II. ARGUMENT

The Defendant was subject to a wholesale stop of several individuals at a location where officers were pursuing another person for narcotics sales. Lacking reasonable suspicion, or probable cause, that White had engaged in any illegal activity, he was seized

in violation of his Fourth Amendment rights. Consequently, the firearm, and any other incriminating evidence, recovered during the illegal search must be suppressed.

A. The Defendant was Seized from the Moment the Group of Officers Converged on the Residence at 5100 Arch Street.

People have a right "to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV.

A brief investigatory stop of a person in limited circumstances is consistent with the Fourth Amendment when an "officer has a reasonable, articulable suspicion that criminal activity is afoot." Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968).

Our Third Circuit has succinctly stated the relevant analysis of what constitutes a seizure during a Terry stop:

> In assessing the legality of a Terry stop, we must first pinpoint the moment of the seizure and then determine "whether that seizure was justified by reasonable, articulable facts known to [the officer] as of that time that indicated that [the suspect] was engaged in criminal activity." Campbell, 332 F.3d at 205. "A seizure occurs when there is either (a) a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful,' or (b) submission to 'a show of authority.'" Brown, 448 F.3d at 245 [quoting California v. Hodari D., 499 U.S. 621, 626, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)]. Where a seizure falls in the latter category, we determine if there has been a "show of authority" using an objective test: "whether the officer's words and actions would have conveyed ... to a reasonable person" that he was not free to leave.

United States v. Lowe, 791 F.3d 424, 430 (3d Cir.2015) (citation omitted).

White submitted to the overwhelming show of authority displayed by the convergence of approximately eight plain-clothes and uniformed officers upon the residence at 5100 Arch Street. The submission is demonstrated by White: (1) remaining

on the porch (not fleeing), (2) not making any threatening movements or gestures, and (3) remaining stationary until the subsequent search occurred. See Lowe, supra, 791 F.3d at 434. The seizure of Defendant occurred at that moment without reasonable suspicion, or probable cause, specific to White.

The Defendant was part of a wholesale stop of several people when it appears the narcotics team was pursuing one of the individuals on the porch for the sale of drugs in the area of the 5100 block of Arch Street. Officers seized White without observing any illegal activity on his part. Indeed, only after the illegal search of his person, and recovery of the firearm, did the arresting officers *then* confirm he was not sought in connection with the unrelated narcotics investigation.

B. The Defendant was Further, Individually Seized at the Moment Officer Matos Approached Him on the Porch and Conducted a Pat Down.

In the event this Court finds White was not seized when the team of officers converged upon the residence, he was seized upon the officer's first physical contact. "A seizure occurs [with the] laying on of hands or application of physical force to restrain movement ... ." United States v. Brown, 448 F.3d 239, 245 (3d Cir.2006) [quoting California v. Hodari D., 499 U.S. 621, 626, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)], supra.

Not only was White subjected to an illegal detention upon the seizure of all individuals on the porch, he was further physically, individually seized by Officer Matos when he was instructed to put down his cigar and the officer, subsequently, touching his

waistband absent a showing of reasonable, articulable suspicion that criminal activity was afoot concerning the Defendant.

As with the wholesale seizure of all individuals on the porch, White immediately submitted to the show of Officer Matos' individual authority, buttressed by the other members of the narcotics takedown team. Likewise, this seizure occurred without a showing of any criminal conduct on Defendant's part, and certainly devoid of reasonable suspicion.

C. The Firearm and Marijuana Must Be Suppressed.

When the police conduct an illegal search of an individual, items seized are subject to suppression. United States v. Gooch, 915 F. Supp.2d 690, 702 (E.D. Pa. 2012) [citing Weeks v. United States, 232 U.S. 383, 398 (1914); Wong Sun v. United States, 371 U.S. 471, 487-88 (1963)]. The Third Circuit has emphasized the purpose of the exclusionary rule: "The exclusionary rule is designed to deter police conduct that violates the constitutional rights of citizens. [] 'The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right.' By excluding evidence seized as a result of an unconstitutional search and seizure, 'the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused.'" United States v. Zimmerman, 277 F.3d 426, 436 (3d Cir. 2002).

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For the reasons stated above, Defendant respectfully requests that his Motion to Suppress be granted.

Respectfully submitted,
LAW OFFICE OF ANDREW G. GAY, JR., LLC

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Date: January 10, 2022

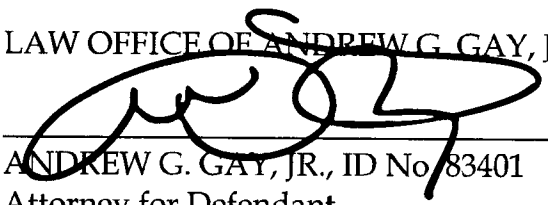
CERTIFICATION OF SERVICE

I, Andrew G. Gay, Jr., certify that on January 10, 2022, one copy of the above Motion to Suppress has been served via First Class Mail and/or electronic filing upon the following individuals:

The Honorable Paul S. Diamond
United States District Court
14614 United States Court House
601 Market Street
Philadelphia, PA 19106

MaryTeresa B. Soltis, Esquire
United States Department of Justice
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

LAW OFFICE OF ANDREW G. GAY, JR., LLC



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Date: January 10, 2022

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**Docket No. 21-353**
v.	:	
RAMOINE WHITE	:	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

The United States of America, through its attorneys, Jennifer Arbittier Williams, United States Attorney, and MaryTeresa B. Soltis, Assistant United States Attorney, respectfully submits this response in opposition to defendant, Ramoine White's (hereinafter, "defendant," or "White") Motion to Suppress the firearm and marijuana lawfully seized from him on February 11, 2021. For the reasons that follow, White's motion should be denied.

PRELIMINARY STATEMENT

The exclusion of evidence is, and "has always been" a last resort, not a first impulse. *Herring v. United States,* 555 U.S. 135, 140 (2009). The officers here had reasonable suspicion under *Terry v. Ohio* to conduct an investigatory stop given all of the information known to the officers at the time and set forth below. White's actions when Officer Matos approached him demonstrate that he did not submit to the officer's authority and provided further reasonable suspicion that White was armed and dangerous. Acting on these circumstances, his nine years of experience as a police officer, and to ensure his safety and that of his fellow officers and all involved, Officer Matos reasonably frisked the bulge he observed in White's waistband and, upon White's admission that he lacked a permit, retrieved the firearm at issue from White's waistband. When a database search confirmed that White lacked a permit to carry that firearm,

Officer Matos arrested White for illegal possession of a concealed weapon and a lawful search incident to that arrest recovered marijuana from White's person.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On February 11, 2021, Philadelphia Police Officers who were part of a joint operation from the 16th, 18th, and 19th Districts were conducting surveillance at 51st and 52nd and Arch Streets due to repeated reports of drug activity and a recent shooting in the area. Officer Barry Stewart was at a location watching the target address, a rowhome located at the corner of 51st and Arch Streets and observed suspected drug dealing activity. As he observed what he believed to be hand to hand narcotics sales from that location, Officer Stewart sent flash information out to fellow officers regarding the buyer and his/her direction of travel. The closest police unit to the buyer stopped the buyer to determine whether a drug sale had occurred and what specific drug was purchased from the target location. In that manner, several buyers were stopped, and the operation revealed that marijuana was being sold from the rowhome. As a result, many buyers were given citations and were not arrested.

At approximately 8:00 p.m., after stopping several buyers seen leaving the rowhome at the corner of 5100 Arch Street, the officers decided to approach the seller at that location in an attempt to make an arrest. Officer Stewart relayed flash information for the seller and stated that there were six other individuals on the porch that he had been watching. Officer Stewart directed his fellow officers to secure the individuals on the porch until he could safely identify the seller. Officer Mischel Matos, Officer Ryan Wong, who were in plain clothes and in an unmarked car that evening, and approximately six other officers went to the porch and each secured one of the individuals.

Officer Matos approached White who hesitated and appeared to Officer Matos as if he was going to run. White was smoking a type of cigar and Officer Matos instructed White to put the cigar down. White refused and immediately began to blade his body to his side and lean forward and away from Officer Matos while moving his arm down towards his waist, which appeared to Officer Matos as if White was protecting or hiding something. Officer Matos, who was approximately two feet away from White at the time, observed a bulge in White's waist. While this was going on, another person on the porch began pushing an Officer and a commotion ensued behind Officer Matos and White. Officer Matos put his hand on the bulge and felt a hard object.

Officer Matos told White he knew what he had and asked White if he had a permit. White hung his head and nodded no (he did not give a verbal response). Officer Matos verbally notified other officers that he believed White had a gun and another officer placed White in handcuffs. Officer Matos then went to White's waistband and recovered the firearm at issue, a Smith and Wesson M&P .40 caliber handgun with Serial #DXB9296 that was loaded with 14 live .357 Sig Speer rounds.

Officer Ryan Wong, Officer Matos' partner that evening, secured another individual on the porch and witnessed White's behavior when Officer Matos approached him. Officer Wong observed that White would not remove his hands from the waist band area of his pants when encountered by Officer Matos. Officer Wong and another officer who was securing another individual to the left of White[1] saw Officer Matos retrieve the firearm from White's waistband.

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[1] These two officers, along with Officer Matos were in plain clothes and, thus, were not wearing body cameras that evening pursuant to police department policy. The government obtained body camera footage from other responding uniformed officers and produced it in discovery. While the footage does not depict the retrieval of the firearm from White's waistband, it does show the commotion that ensued when the officers approached and secured the porch area.

White was secured and remained at the location until Officer Stewart arrived and identified those he had seen selling narcotics. He did not identify White as one such individual. Most of the individuals on the porch were issued citations for the marijuana found on their persons.

In the meantime, Officer Matos checked the police database to see if White had a permit to carry a weapon and he did not. White was arrested for unlawfully carrying a concealed weapon. Officers searched White incident to his arrest and recovered three packets (one sandwich bag and two commercial size packets) each containing a green leafy substance that later tested positive for marijuana and had a collective weight of approximately six grams.

On September 7, 2021, a grand jury returned an indictment charging White with one count of possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). This motion followed.

ARGUMENT IN REPLY

White moves to suppress the firearm and narcotics recovered from his person on February 11, 2021, arguing that he was seized without reasonable suspicion or probable cause. *See* Def.'s Mot., Docket No. at ¶¶ 2, 4. His motion should be denied. The officers had reasonable suspicion to approach the porch based on the surveillance of drug dealing from the porch that evening. White's disobedience of Officer Matos' directions and his deliberate actions in blading his body away from Officer Matos and attempting to conceal something near his waist while a commotion went on between another individual and officer nearby demonstrate that White did not submit to Officer Matos' authority, and thus was not seized at that point. These actions also provided ongoing reasonable suspicion of White's criminal activity, specifically that White was armed and dangerous. As a result, Officer Matos was then permitted to conduct a frisk of White,

which he did. Upon feeling a hard object in White's waistband, Officer Matos asked White if he had a permit. White hung his head indicating to Officer Matos that he did not. Officer Matos notified his fellow officers that he believed he had located a gun and once White was handcuffed, he lawfully retrieved the firearm at issue from White's waistband. When Officer Matos confirmed that White did not have a permit to carry that firearm, he had a probable cause to arrest White and lawfully seized the marijuana in White's pockets during a search incident to that arrest.

A. The Officers Had Reasonable Suspicion to Approach the Porch Given the Earlier Surveillance of Drug Dealing from that Location.

As is well settled, "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972). Instead, where a police officer observes unusual conduct which leads him to reasonably believe in light of his experience that criminal activity is afoot, he may stop a suspect to permit further investigation, and where he further reasonably suspects that the person with whom he is dealing may be armed and presently dangerous, he is entitled to conduct a carefully limited search of such person to discover weapons which may be used to assault him. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Such "reasonable suspicion" is a less demanding standard than probable cause and "requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). The question is whether, based on the totality of the circumstances, a reasonably prudent man would be warranted in the belief that his safety or that of others was in danger. *United States v. Valentine*, 232 F.3d 350, 353 (3d Cir. 2000).

While "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure[,] ... the Fourth Amendment imposes no irreducible requirement

of such suspicion." *United States v. Martinez–Fuerte,* 428 U.S. 543, 560–61 (1976). Instead, "[t]he touchstone of the Fourth Amendment is reasonableness, not individualized suspicion." *Samson v. California,* 547 U.S. 843, 855 n. 4 (2006).When assessing whether the reasonable suspicion standard is satisfied, a court must "consider the totality of the circumstances, including the police officer's knowledge, experience, and common-sense judgments about human behavior." *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). "The test is one of reasonableness given the totality of the circumstances, which can include [the defendant's] location, a history of crime in the area, [the defendant's] nervous behavior and evasiveness, and [an officer's] 'common sense judgments and inferences about human behavior.'" *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003), quoting *Illinois v. Wardlow*, 528 U.S. at 124-25. *See also United States v. Arvizu,* 534 U.S. 266, 273 (2002) (reiterating that officers must be allowed to "draw on their own experience and specializedtraining to make inferences from and deductions about the cumulative information available to them").

Here, the officers observed more than unusual conduct. They received information that there had been repeated drug activity and a recent shooting in the area of 51st and Arch Streets and sought to verify that information by conducting surveillance. As part of that surveillance, Officer Stewart watched the porch at issue, observed what he believed to be hand to hand narcotics transactions, and relayed information to his fellow officers stationed nearby of the descriptions of individuals he saw leaving that location. Officers stopped those individuals and recovered various quantities of marijuana, confirming the accuracy of Officer Stewart's believed observations of illegal drug sales at the location. After this continued for a period of time, and with reasonable suspicion that criminal activity was afoot and that the individuals on the porch were involved in that criminal activity, Officer Stewart gave instructions to secure the porch at

issue. Officers Matos, Wong and approximately six other officers followed those instructions. They approached the porch and secured the seven individuals thereon until Officer Stewart arrived to identify the person he had seen selling narcotics. *See United States v. Paetsch,* 900 F. Supp. 2d 1202, 1212-13 (D. Colo. 2012) (finding that officers' initial stop of twenty vehicles was reasonable, and therefore did not violate the Fourth Amendment where the stop occurred fifteen minutes after an armed bank robbery and with knowledge from a GPS tracker that a vehicle at the robbery was one of the twenty vehicles stopped). The fact that Officer Stewart did not identify White as the ultimate narcotics seller does negate the reasonable suspicion to approach the porch in the first instance.

B. White did not Submit to the Officers' Authority; was not Seized Upon the Officers' Approach; and his Actions Provided Further Reasonable Suspicion that he was Armed and Dangerous.

White's actions after Officer Matos approached him demonstrate that he was not "seized" for purposes of the Fourth Amendment upon approach because he did not submit to Officer Matos' authority. A seizure occurs in one of two situations: (1) when officers apply physical force to the person being seized, or (2) when force is absent, where officers make a show of authority *and the person seized submits to the show of police authority. United States v. Samuels*, 131 F. Appx. 859, 862 (3d Cir. 2005) (citing *California v. Hodari D.*,499 U.S. 621, 626–28 (1991); *United States v. Valentine* 232 F.3d 350, 358 (3d Cir. 2000)) (emphasis in original). In *United States v. Samuels*, for example, the court held that a defendant who did not comply with officers' demands to raise his hands and instead made hand movements towards his waist where an officer observed a bulge did not submit to officer's authority and was not seized at that point. *Id. See also United States v. Lowe*, 791 F.3d 424, 431 (3d Cir. 2015) (noting that there was no submission to a show of authority when a suspect makes suspicious motions consistent with

reaching for a weapon); *United States v. Johnson,* 212 F.3d 1313, 1316–17 (D.C. Cir. 2000) (holding that a suspect did not submit to a show of authority when he made "continued furtive gestures" including "shoving down" motions that were "suggestive of hiding (or retrieving) a gun").

Here, White's failure to follow Officer Matos' directions and White's actions that were suggestive of hiding (or retrieving) a gun demonstrate that he did not submit to the officer's authority, and therefore, was not seized when Officer Matos approached him. His actions also provided further justification for the search of White's person and recovery of the firearm at issue. *See Brendlin v. California,* 551 U.S. 249, 254 (2007) (noting that a show of authority without actual submission is no more than an "attempted seizure," and a suspect's conduct in the interval between the show of authority and the submission can be considered in determining the reasonableness of the eventual seizure). Specifically, when Officer Matos approached White, White hesitated and appeared to Officer Matos as if he was going to run. Officer Matos instructed White to put down the cigar he was holding. White refused. Officer Matos saw a bulge in White's waist area and saw White move his arm toward that area, lean forward, and turn his body away from Officer Matos, which Officers Matos and Wong perceived as an effort to resist the officer's directions and conceal an object on his person.[2] While this was going on, another

[2] Any innocent explanation White may offer for these actions, likewise, does not change the analysis. Reasonable suspicion is often based "on acts capable of innocent explanation." *United States v. Valentine*, 232 F.3d 350, 356 (3d Cir. 2000). Indeed, "[a] reasonable suspicion of criminal activity may be formed by observing exclusively legal activity." *United States v. Ubiles*, 224 F.3d 213, 217 (3d Cir. 2000). It should be recalled that in *Terry* itself, the Supreme Court found that a stop and frisk was permitted when a detective simply observed two men repeatedly pacing back and forth in front of a store and peering into it, in a manner which suggested to the experienced officer that a robbery was contemplated. *Terry*, 392 U.S. at 5-7. Indeed, even in relation to the greater threshold of probable cause (which the Supreme Court has stated itself "is not a high bar," *Kaley v. United States*, 571 U.S. 320, 338 (2014)), the Supreme Court recently reminded, "probable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts." *District of Columbia v. Wesby*, 138 S. Ct. 577, 588

person on the porch began pushing an Officer and a commotion ensued behind Officer Matos and White. It was only after White refused Officer Matos' directions and the above actions occurred that Officer Matos put his hand on the bulge in White's waist area and felt what he initially suspected to be a firearm and told White "I know what you have; I got it" or words to that effect. Officer Matos asked White if he had a permit. White put his head down and Officer Matos verbally notified other officers that he believed White had a gun. Additional officers placed White in handcuffs and Officer Matos, who reasonably believed White was armed and dangerous, then retrieved the firearm from White's waistband.

Where, as here, an officer is conducting a *Terry* stop and is justified in believing that the subject is armed and dangerous, the officer is permitted to conduct a pat-down for weapons. *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993). Where an officer conducting a permissible pat-down for weapons has probable cause to believe that an item upon plain touch is incriminating evidence, he is permitted to seize it without a warrant. *Id.* at 374-75. This principle has become known as the "plain feel" or "plain touch" doctrine, analogous to the "plain view" doctrine. *Id.* Under the plain view doctrine, "if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." *Id.* at 375. *Dickerson* found that the doctrine has obvious application where an officer discovers contraband through the sense of touch during a lawful search. *Id.* More specifically,

> If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is *contraband*, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.

(2018).

Id. at 375-76.[3]

Here, neither the handcuffing of White nor the seizure of the firearm was unreasonable under the circumstances. As discussed above, there was observed drug activity at the porch which the officers secured with one police officer to one individual suspect. White's refusal to comply with Officer Matos' directions and his actions to conceal a bulge in his waist area demonstrated that he did not submit to the officers' authority and led Officer Matos to suspect White was armed and dangerous. Officer Matos reasonably began a pat down search of White and placed his hand on the bulge in White's waist and felt a hard object he suspected to be a firearm. Upon receiving White's nonverbal admission that he lacked a carry permit Officer Matos notified his fellow officers that he believed White had a gun. To ensure the safety of everyone on the porch that evening, officers placed White in handcuffs while Officer Matos retrieved what indeed was a firearm. *See United States v. Hensley,* 469 U.S. 221, 235 (1985) (where officers make an investigative stop, they make take steps that are "reasonably necessary to protect their personal safety and maintain the status quo during the course of the stop"); *United States v. Edwards*, 53 F.3d 616, 619 (3d Cir. 1995) (officer who felt hard, bulky object in an envelope had reasonable suspicion to believe it was a gun and permissibly opened the envelope). Under these circumstances, the officers' actions over just a few minutes to were appropriate to further investigate Officer Matos' reasonable suspicion and to protect officer safety and did not convert the stop into a custodial arrest. *See United States v. Samuels*, 131 F. Appx. at 862 (3d Cir. 2005) (discussing *Adams v. Williams*, 407 U.S. 143, 146 (1972)) (where

3 Additionally, where an officer feels an object and cannot yet ascertain whether or not it is a weapon, the officer is permitted to continue to manipulate it until satisfied that it is not – and if during that time the officer gains probable cause that the object is contraband or evidence of a crime, it may be seized. *United States v. Yamba,* 506 F.3d 251, 259 (3d Cir. 2017).

defendant who made hand movements towards his waist where officer observed a bulge did not submit to show of authority; seizure did not occur until he was physically restrained; and defendant's actions provided reasonable suspicion for officer to "go directly to the area" where he believed the gun to be and retrieve it). *See also United States v. Paetsch,* 900 F. Supp. 2d 1202, 1216 (D. Colo. 2012) (removing defendant from vehicle and handcuffing him after he disobeyed police directions to keep his hands outside the vehicle was a reasonable continuation of an investigative stop, not an arrest).[4]

C. White Was Properly Arrested For Carrying a Concealed Weapon and the Marijuana at Issue was Recovered During a Lawful Search Incident to White's Arrest.

When Officer Matos confirmed that White did not have a permit to carry the firearm recovered from his waistband, he had probable cause to arrest White for carrying a concealed weapon. *See United States v. Hensley,* 469 U.S.at 235 (officers who discovered weapons during a lawful search had probable cause to arrest defendant for possession of firearms). *See also United States v. Watson*, 423 U.S. 411, 418 (1976); *Paff v. Kaltenbach*, 204 F.3d 425, 436 (3d Cir. 2000); *United States v. Cruz*, 910 F.2d 1072, 1076 (3d Cir. 1990) (officers may arrest a suspect for whom they have probable cause to believe committed a crime). Officer Matos did so and recovered the three packets of marijuana described above during a lawful search incident to that arrest. *See United States v. Brown,* 565 Fed. Appx. 98, 102 (3d Cir. 2014) (holding police

[4] The fact that there were approximately eight officers to the seven individuals on the porch, likewise, was not unreasonable given the nature of the suspected criminal activity, the fact that it was nighttime, in a high crime area that had a recent shooting, and the number of people involved. It did not take long for the officers to secure the area and Officer Stewart to identify the individual he had seen selling narcotics that evening. *See Hiibel v. Sixth Judicial District Court of Nev., Humboldt Cnty.,* 542 U.S. 177, 185–86 (2004) (noting that an officer's action must be justified at its inception and reasonably related in scope to the circumstances that justified the interference in the first place).

lawfully recovered packets of heroin in search of vehicle incident to defendant's arrest based on probable cause to believe he had committed firearms offenses); *United States v. Samuels*, 131 Fed. Appx. at 860-61 (upholding denial of motion to suppress crack cocaine and money recovered during search incident to firearms arrest).

CONCLUSION

For the aforementioned reasons, White's motion to suppress should be denied in all respects.

Respectfully submitted,

JENNIFER ARBITTIER WILLIAMS
United States Attorney

/s/ MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: January 31, 2022

CERTIFICATE OF SERVICE

I certify that a copy of the Government's Response to the Defendant's Motion to Suppress was served by electronic mail and electronic case filing upon Andrew Gay, Jr., Esquire, counsel for Mr. White, on this date.

/s/ MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: January 31, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	DOCKET NO. 21-353
	:	
	:	
RAMOINE (aka Rhumone) WHITE	:	

DEFENDANT'S, RAMOINE WHITE, PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING MOTION TO SUPPRESS (ECF 21)

Defendant, Ramoine White, through his counsel, Andrew G. Gay, Jr., as order by the Court, respectfully submits the following Proposed Findings of Fact and Conclusions of Law, regarding the Suppression Hearing held on July 27, 2022.

I. PROPOSED FINDINGS OF FACT

1. Officer Barry Stewart is a 28-year veteran of the Philadelphia Police Department. (N.T., 7/27/22, p. 4.)

2. Approximately twenty-four (24) years of his tenure at the Philadelphia Police Department has been with the Narcotics Enforcement Team. Id.

3. On February 11, 2021, beginning at approximately 6:55 p.m., Officer Stewart conducted a plain clothes surveillance from an unmarked vehicle on the 5100 block of Arch Street in Philadelphia. (N.T., 7/27/22, p. 5.) On that date, the temperature outside was cold and there was snow on the ground. (N.T., 7/27/22, p. 18.)

4. The surveillance was a joint operation with officers from the 16th, 18th and 19th Districts in Philadelphia, along with members of the Pennsylvania Attorney General's Office. (N.T., 7/27/22, pp. 5-6.)

5. The 5100 block of Arch Street is a residential area and is considered a high crime area, primarily consisting of marijuana sales. (N.T., 7/27/22, pp. 6 & 8.)

6. In addition, shootings have occurred in the area. (N.T., 7/27/22, pp. 6-7.)

7. Officer Stewart observed an individual later identified as Watson on a porch of a residence located on the southwest corner of 5100 Arch Street. (N.T., 7/27/22, pp. 7 & 10.)

8. The approximate dimensions of the porch were 5-6' from the front steps of the porch to the door of the residence, and approximately 8-10' in length. (N.T., 7/27/22, pp. 7-8.)

9. Prior to conducting the surveillance, Officer Stewart was unfamiliar with Watson and the other males on the porch, all of whom were wearing black or dark clothing. (N.T., 7/27/22, p. 11.)

10. Watson "stuck out", as "he was heavier set than the other males". (N.T., 7/27/22, p. 14.) Watson was "heavier, chubby, chunky". (N.T., 7/27/22, p. 15.)

11. At approximately 7:20 p.m., Officer Stewart observed Watson engage in a hand-to-hand transaction of United States Currency for unknown objects with an individual later identified as Terell Davis. Mr. Davis was subsequently stopped, and marijuana was recovered from him. (N.T., 7/27/22, pp. 12-13.)

12. At approximately 7:40 p.m., Officer Stewart observed Watson engage in another hand-to-hand transaction of United States Currency for unknown objects with an individual later identified as Donald Brown. Mr. Davis was also stopped by backup officers, who relayed marijuana was recovered from him. (N.T., 7/27/22, p. 13.)

13. Officer Stewart observed a total of three (3) narcotics transactions. (N.T., 7/27/22, p. 17, 21.)

14. The Defendant, Ramoine White, was not involved in any of the narcotics transactions observed by Officer Stewart. (N.T., 7/27/22, p. 17.)

15. Twenty (20) minutes later, at approximately 8 p.m., Officer Stewart observed Watson huddled together with the other individuals on the porch. At that time, Watson handed unknown objects to one (1) of the other males, who was illuminating the objects with a phone or flashlight. Officer Stewart could not discern which of the other individuals engaged in this exchange with Watson, or the object that was passed. (N.T., 7/27/22, pp. 13-14, 17, 19, 22.)

16. Once the individuals got together in a group, Officer Stewart was unable to see what transpired. (N.T., 7/27/22, pp. 21-22.)

17. The area on the porch were the individuals huddled was less illuminated than the section of the porch where Watson was observed engaged in narcotics transactions. (N.T., 7/27/22, pp. 20-21.)

18. At 8 p.m., Officer Stewart ordered his backup officers to stop all males on porch. (N.T., 7/27/22, p. 14.)

19. Of the more than ten backup members who responded to the porch, there were "plenty enough [officers] to stop all the males on the porch". (N.T., 7/27/22, p. 15 & White's Exhibit 1, Body Worm Camera Footage of Officer Terone Travis.)

20. Pursuant to Officer Stewart's training and experience, even if police intend to stop one suspect, backup officers will stop other individuals, until the suspect is

identified. The others are checked for warrants and released from investigation. (N.T., 7/27/22, pp. 26-27.)

21. Officer, Mischel Matos, a ten-year veteran of the Philadelphia Police Department, was a member of the team of officers backing up Officer Stewart. (N.T., 7/27/22, pp. 28-29.) Officer Matos was accompanied by a partner, Officer Wong. (N.T., 7/27/22, p. 29.) Officers Matos and Wong were both in plain clothes and operating an unmarked car, accompanied by marked patrol vehicles. Id.

22. Uniformed officers participating in the operation were equipped with body cameras. (N.T., 7/27/22, p. 30.) At the end of each shift, the body cameras are docked and the footage is uploaded to the "cloud". (N.T., 7/27/22, p. 33.)

23. The narcotics team was in constant radio communication with Officer Stewart and each other. (N.T., 7/27/22, pp. 30, 43.)

24. At 8 p.m., Officer Matos and the other members of the takedown team were order by Officer Stewart "[t]o approach the location, 5100 Arch, and stop - detain every person that was on the porch for investigation". (N.T., 7/27/22, pp. 32, 43.)

25. In providing the instruction to stop all of the males on the porch, Officer Matos did not recall Officer Stewart providing a description of a heavier-set individual. (N.T., 7/27/22, p. 43.)

26. Officer Matos was one of seven or eight officers that descended upon the porch. Six males were on the porch. (N.T., 7/27/22, p. 34.)

27. The takedown team announced their presence as police officers. (N.T., 7/27/22, p. 35.)

28. Of the officers who occupied the porch, some were in uniform, and others were in plain clothes. Service weapons for the officers were displayed. (N.T., 7/27/22, p. 48.)

29. When Officer Matos entered the porch, the Defendant was the only male on the porch who didn't have an "escort"; the only person who didn't have a police officer holding him. (N.T., 7/27/22, pp. 51-52.) Every other officer had someone on the porch stopped. Since White "was the only one that wasn't being held by anybody, [Officer Matos] approached him". (N.T., 7/27/22, p. 35.)

30. The Defendant had a small cigarette or cigar in his right hand. (N.T., 7/27/22, pp. 36, 37.)

31. Officer Matos' first interaction with the Defendant was grabbing his left hand. (N.T., 7/27/22, pp. 37, 44.) Officer Matos did not see anything with respect to the Defendant before grabbing his left hand. (N.T., 7/27/22, p. 44.)

32. As Officer Matos grabbed the Defendant's left hand, he told him to put out the cigarette. (N.T., 7/27/22, p. 49.) The Defendant hesitated to drop the cigarette and another officer "knock[ed] it off his hands". (N.T., 7/27/22, p. 36, 37.)

33. At the time Officer Matos grabbed the Defendant's left hand, he intended to place him in handcuffs until the investigation was complete. (N.T., 7/27/22, p. 36.)

34. After grabbing White's left hand, Officer Matos noticed White move the right side of his body away from the officer. (N.T., 7/27/22, pp. 36, 44.)

35. At the moment Officer Matos noticed White leaning forward in an apparent attempt to conceal something, the officer already had a hold of White's left hand. (N.T., 7/27/22, p. 38.)

36. After grabbing the Defendant's left hand and the cigarette having been knocked out of his right hand, Officer Matos then made an observation that led the officer to believe White was attempting to conceal something. (N.T., 7/27/22, p. 36.)

37. After grabbing his left hand, and not until he bent his body, Officer Matos then noticed a bulge in the Defendant's waist area. (N.T., 7/27/22, p. 38.)

38. Once Officer Matos believed the Defendant was concealing something, he conducted a pat down. He felt a hard object. He grabbed the object, believing it was a gun. (N.T., 7/27/22, p. 36.)

39. Officer Matos asked Defendant White if he hand a permit. The Defendant put his head down and said, "No", in a low voice. (N.T., 7/27/22, p. 39.)

40. The Defendant was placed in handcuffs and Officer Matos retrieved a semi-automatic firearm from his waistband. It was loaded with fourteen (14) live rounds. (N.T., 7/27/22, pp. 36, 39, 40.)

41. From the moment Officer Matos stepped onto the porch, approximately thirty (30) seconds passed before he recovered the firearm from Defendant White. (N.T., 7/27/22, p. 47.)

42. A search incident to arrested for possession of the firearm revealed three (3) clear bags of marijuana. (N.T., 7/27/22, p. 41.)

43. Any of the other individuals searched and found to have marijuana were ticketed and released. And, if anyone was found to have no contraband, or warrants, they were simply released. Mr. Watson was arrested. (N.T., 7/27/22, p. 16.)

II. PROPOSED CONCLUSIONS OF LAW

44. People have a right "to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV.

45. A brief investigatory stop of a person in limited circumstances is consistent with the Fourth Amendment when an "officer has a reasonable, articulable suspicion that criminal activity is afoot." Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968).

46. The Third Circuit has succinctly stated the relevant analysis of what constitutes a seizure during a Terry stop:

> In assessing the legality of a Terry stop, we must first pinpoint the moment of the seizure and then determine "whether that seizure was justified by reasonable, articulable facts known to [the officer] as of that time that indicated that [the suspect] was engaged in criminal activity." Campbell, 332 F.3d at 205. "A seizure occurs when there is either (a) a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful,' or (b) submission to 'a show of authority.'" Brown, 448 F.3d at 245 [quoting California v. Hodari D., 499 U.S. 621, 626, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)]. Where a seizure falls in the latter category, we determine if there has been a "show of authority" using an objective test: "whether the officer's words and actions would have conveyed ... to a reasonable person" that he was not free to leave".

United States v. Lowe, 791 F.3d 424, 430 (3d Cir.2015) (citation omitted).

47. Having committed no observable illegal offense, Defendant White was subjected to a wholesale seizure at the moment the team of backup officers converged upon the porch located on the southeast corner of 5100 Arch Street in Philadelphia. The

show of authority was unmistakable, as "plenty enough [officers] to stop all the males on the porch" descended upon the location. (N.T., 7/27/22, p. 15.)

48. The show of authority was further evident in that all of the plain clothes and uniformed officers had weapons displayed. (N.T., 7/27/22, p. 48.) The police presence and show of authority was clearly demonstrated in the body worn camera footage admitted into the record at the Suppress Hearing. The convergence of officers upon the porch would have conveyed to a reasonable person that he, or she, was not free to leave. See, supra, United States v. Lowe, 791 F.3d 424, 430 (3d Cir.2015).

49. According to Officer Stewart, it is the practice of his unit within the Philadelphia Police Department to stop all individuals in a group, even if only one of them is suspected of criminal activity. (N.T., 7/27/22, pp. 26-27.)

50. Defendant White submitted to the presence of the officers and their concomitant show of authority. Indeed, Officer Matos "didn't see anything" with respect to the Defendant prior to approaching him on the porch. (N.T., 7/27/22, p. 44.)

51. At that moment, he was impermissibly seized in violation of the Fourth Amendment of the United States Constitution without reasonable suspicion, much less probable cause. See, supra, United States v. Lowe, 791 F.3d 424, 430 (3d Cir.2015).

52. Following the initial wholesale stop of the individuals on the porch, the Defendant was individually seized when Officer Matos entered the porch. Without previously making any observations of at all of Defendant White, much less any observations that would suggest White having committed an offense, Officer Matos testified he approached him because he was the only person that was not already under

the physical control of the officers on the porch. (N.T., 7/27/22, p. 35.) As the Court pointed out, he was the only individual on the porch without an "escort". (N.T., 7/27/22, pp. 51-52.)

53. The first interaction Officer Matos had with Mr. White was grabbing his left hand. At that moment, Defendant White was further seized, as Officer Matos laid his hands upon him. This "laying on of hands or application of physical force to restrain movement" constituted a further, individual, seizure without reasonable suspicion. See, Lowe, supra.

54. It was not until after Defendant White's submission to the police show of authority, and the subsequent individual, physical application of force, that Officer Matos then made any observations leading him to believe an object may be concealed in White's waistband.

55. When the police conduct an illegal search of an individual, items seized are subject to suppression. United States v. Gooch, 915 F. Supp.2d 690, 702 (E.D. Pa. 2012) [citing Weeks v. United States, 232 U.S. 383, 398 (1914); Wong Sun v. United States, 371 U.S. 471, 487-88 (1963)].

56. The items recovered from Defendant White, *to wit*, the firearm and marijuana recovered pursuant to the search incident to arrest for the firearm, must be suppressed as the result of the illegal seizure, and subsequent search, of White without reasonable suspicion. See United States v. Gooch, 915 F. Supp.2d 690, supra.

III. CONCLUSION

The Third Circuit has emphasized the purpose of the exclusionary rule: "The exclusionary rule is designed to deter police conduct that violates the constitutional rights of citizens. [] 'The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right.' By excluding evidence seized as a result of an unconstitutional search and seizure, 'the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused.'" United States v. Zimmerman, 277 F.3d 426, 436 (3d Cir. 2002).

Pursuant to the above rationale, all physical evidence recovered from Ramoine White is subject to, and must be, suppressed.

Respectfully submitted,
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CERTIFICATION OF SERVICE

I, Andrew G. Gay, Jr., certify that on August 12, 2022, one copy of the above Motion to Suppress has been served via First Class Mail and/or electronic filing upon the following individuals:

The Honorable Paul S. Diamond
United States District Court
14614 United States Court House
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Philadelphia, PA 19106

MaryTeresa B. Soltis, Esquire
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Attorney for Defendant

Date: August 12, 2022

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**Docket No. 21-353**
v.	:	
RAMOINE WHITE	:	

GOVERNMENT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING DEFENDANT'S MOTION TO SUPPRESS

The United States of America, through its attorneys, Jacqueline C. Romero, United States Attorney, and MaryTeresa B. Soltis, Assistant United States Attorney, respectfully submits these proposed findings of fact and conclusions of law regarding defendant, Ramoine White's (hereinafter, "defendant") Motion to Suppress the firearm and marijuana seized from him on February 11, 2021.

I. BACKGROUND AND PROCEDURAL HISTORY

On January 10, 2022, the defendant filed a Motion to Suppress all physical evidence seized on February 11, 2021. Docket No. 21. The government filed its response on January 31, 2022. Docket No. 22. On July 27, 2022, the Court held an evidentiary hearing on the defendant's motion. Docket No. 35. At the hearing, the government presented the testimony of Philadelphia Police Officers Barry Stewart and Mischel Matos and entered into evidence photographs of the porch at issue. The defendant cross examined both witnesses and offered as Defense Exhibit 1 body camera footage from one of the uniformed officers on the date in question.[1] The defendant did not present any further evidence. At the conclusion of the hearing, the Court ordered the

[1] As set forth herein, Officers Stewart and Matos were in plain clothes that evening and, thus, were not wearing body cameras. The body camera video offered by the defendant and the photographs offered by the government were received in evidence without objection.

parties to file proposed findings of fact and conclusions of law within two weeks of their receipt of the hearing transcript, and responses to each other's proposed conclusions of law within one week of the initial filings.

II. PROPOSED FINDINGS OF FACT

Following the parties' written submissions and the evidentiary hearing held on the motion to suppress, the government respectfully requests that the Court make the following findings of fact.

On February 11, 2021, Philadelphia Police Officers who were part of a joint operation from the 16th, 18th, and 19th Districts were conducting surveillance at 51st and 52nd and Arch Streets due to repeated reports of drug activity and a recent shooting in the area. Hrg. Tr., at 5:25-7:1; 31:8-10. That area has been a known area for marijuana sales throughout Officer Barry Stewart's twenty-eight-year career with the Philadelphia Police Department including twenty-four years working on the Narcotics Enforcement Team. *Id.* at 4:8-19; 6:10-14. There had also been recent shootings on the block of 5100 Arch Street involving individuals from that block fighting with, or shooting/getting shot at by, individuals from the 19th Police District. *Id.* at 6:15-7:1. Officer Stewart described this block as a high crime, mostly residential, neighborhood. *Id.* at 8:9-13.

On February 11, 2021, at about 6:55 in the evening, Officer Stewart was working in plain clothes and was alone in an unmarked vehicle stationed about fifty to seventy-five feet from the rowhome at issue located at 5100 Arch Street. Hrg. Tr., at 5:1-24. His role that night was to be the "eyes" or the surveillance officer while several other officers were in the area as "backup" and to respond to information Officer Stewart relayed about his observations over police radio. *Id.* at 7:4-5.

Officer Stewart saw several males on an outside porch at 5100 Arch Street when Officer Stewart began his surveillance that evening. Hrg. Tr., at 12:8-9. As he observed what he believed to be hand to hand narcotics sales from that location, Officer Stewart sent information out to fellow officers over police radio regarding the suspected buyer and his/her direction of travel. *Id.* at 7:8-17; 12:6-13; 30:11-17. The closest police unit to the suspected buyer stopped him/her to determine whether a drug sale had occurred and what specific drug was purchased from the target location. *Id.* In that manner, three buyers were stopped, and the operation revealed that marijuana was being sold from the porch at 5100 Arch Street. *Id. See also* Hrg. Tr., at 30:20-31:7.

Officer Stewart described the porch at 5100 Arch Street as being eight to ten feet wide and about six feet deep (as he estimated the distance from the stairs to the front door of the residence). Hrg. Tr. at 7:25-8:2. It is the first home on the southwest corner of Arch Street, which runs one way eastbound and has cars parked on both sides of the street. *Id.* at 78-14. He agreed that the photographs entered into evidence as Government Exhibits One and Two fairly and accurately depicted the porch that he was watching that evening. *Id.* at 8:3-9:19.[2]

Officer Stewart saw three hand to hand transactions, all of which occurred in a similar manner. The customer approached the porch via the front steps where he/she was met by the seller, later determined to be Bjorn Watson. *See* Hrg. Tr., at 10:21-22.[3] After a brief conversation with the seller, the customer gave the seller money and the seller handed over an unknown object

[2] Officer Mischel Matos, one of the responding officers that evening, agreed with this description of the porch and its depiction in Government Exhibit 2. *See* Hrg. Tr., at 32:10-14; 33:22-25. Officer Matos identified himself in the photo at Government Exhibit 2 as the second individual when looking at the photo from right to left wearing a grey hoodie and what he believed to be green pants. *Id.* at 34:1-7.

[3] As discussed herein, it was not until later in the evening, after the porch was secured, that Officer Stewart identified the seller from the group of males on the porch and learned that his name was Bjorn Watson. Hrg. Tr., at 10:18-11:3; 15:24-16:11.

"with a hand-to-hand motion involving a fist and a palm." The customer left the porch and returned to his or her vehicle or, in the case of the third customer, walked westbound on Arch Street. *Id.*, at 12:6-13:18. Officer Stewart did not see the defendant make any of the three transactions. Hrg. Tr., at 17:16-20.

At approximately 8:00 p.m., after other officers had stopped three buyers seen leaving the rowhome at the corner of 5100 Arch Street and relayed over radio that they had recovered marijuana from those individuals, Officer Stewart saw all of the individuals on the porch, including the defendant, huddle together back from where the steps met the porch. Hrg. Tr., at 11:15-25; 13:22-24; 17:16-20. He saw another male turn on the light on his phone as the seller gave unknown objects to him and the buyer passed what Officer Stewart believed to be United States currency to the seller. *Id.* at 14:1-5; 19:6-8.[4] Officer Stewart used his police radio to direct his backup officers to go to the porch and described the seller as someone who was "heavier, chubby, chunky," and who, like all the males on the porch, was wearing dark blue or black clothing. *Id.*, at 11:4-25; 14:5-15:4.

At the time the police interacted with the individuals on the porch it was dark outside, the porch was crowded and there was light coming only from a nearby streetlight and an officer's flashlight. *See* Defense Exhibit 1. *See also* Hrg. Tr., at 34:23-25 (describing the lighting of the porch as fair and coming from streetlights). Thus, while Officer Stewart testified that the seller was the only person that he was interested in having detained, because the porch was crowed and all of the males were huddled together and wearing dark clothing, Officer Stewart was not able

[4] Officer Stewart testified that the three narcotics sales that preceded the takedown took place near the top step of the porch such that he was able to see money being exchanged. Hrg. Tr., at 21:12-17. At 8:00 p.m. all the individuals on the porch huddled together and Officer Stewart saw the seller step closer to the house such that he could not see what was exchanged at that point. *Id.* at 21:18-22:22.

to identify that person until the porch was secured and his fellow officers brought the males down the steps so that he could make an identification. *Id.* at 4:10-17; 15:24-16:9; 24:6-25:17.

Upon hearing the information that Officer Stewart relayed over the radio, the backup officers went to and stopped all the males on the porch.[5] Hrg. Tr. at 14: 8-9. Officer Mischel Matos, one of the responding officers, testified that he was asked to approach 5100 Arch and "detain every person on the porch" because "[t]hey were all under investigation for the narcotics sales." *Id.* at 32:2-9. *See also* Hrg. Tr. at 43:10-15 (testifying that Officer Stewart instructed them to "stop everybody for investigation"). When everyone was secured and the males were brought down the steps by the various officers, Officer Stewart identified the seller as Bjorn Watson and arrested him. *Id.* at 16:1-12; 25:2-5; 41:21-42:3. The males on the porch, other than the defendant, were identified; those who were in possession of marijuana were given citations and released; and those who did not have outstanding warrants or contraband in their possession were released.[6] *Id.* at 16:13-20. Officer Stewart testified that this practice of securing a crowded area at which several individuals are wearing the same clothing until the surveillance officer identifies the seller from that group of individuals and then releasing the other individuals who do not have outstanding warrants is the practice that he has followed in similar circumstances during his twenty-eight years of experience as a police officer. *Id.,* at 26:21-27:9.

Officer Matos, who has been a Philadelphia Police Officer for ten years assigned to the 19th Police District's Narcotics Enforcement Team, was working with his partner in plain clothes

[5] Officer Stewart did not know the exact number of officers who responded to the porch that evening but stated that there were "plenty enough to stop all the males on the porch." Hrg. Tr., at 23-25. Officer Matos testified that a total of approximately seven or eight officers approached the porch that evening. *Id.* at 34:14-22.

[6] The defendant had been removed from the porch by the time Officer Stewart arrived to make his identification. Hrg. Tr. at 42:4-6.

and an unmarked vehicle that evening. Hrg. Tr., at 28:7-29:15.[7] Officer Matos received radio information from Officer Stewart and stopped one of the three buyers discussed above at 51st and Chestnut Streets, a few blocks from the house at 5100 Arch Street. Officer Matos recovered marijuana from that buyer, radioed this information to Officer Stewart, and gave the buyer a citation and released him. *Id.* at 30:18-31:7.

Officer Matos also responded to Officer Stewart's radio call to secure the porch at 5100 Arch Street at about 8:00 p.m. Hrg. Tr., at 31:20-32:9. An officer announced the police presence and Officer Matos testified that he was wearing a vest that displayed his Officer name and badge number. *Id.* at 35:1-7. Officer Matos was armed with his service weapon on his hip. *Id.*at 35:11-13.

Officer Matos approached the defendant who, along with the other males on the porch, was wearing dark clothing. Hrg. Tr., at 40:16-21. The defendant looked to Officer Matos to be surprised and "like … he was going to run." *Id.*, at 35:20-36:6; 37:2-13. As Officer Matos used his right hand to grab the defendant's left hand, he told him to drop the small cigar or cigarette that he was holding in his right hand. *Id.* at 36:6-15; 37: 15-22; 42:13-17; 49:11-18; 54:11-23. The defendant did not obey this command and took a puff from the cigarette such that another officer had to knock it from his hand. *Id.* at 36:11-12; 49:13-17. A few seconds later, Officer Matos noticed that the defendant was "blatant in trying to conceal something" on his right side. *Id.* at 36:17-18; 37: 15-25; 52:14-17; 52:18-22. The defendant moved the right side of his body away from Officer Matos, tucked his elbow close to his waist on his right side, and leaned forward "just enough to try to conceal something in his waist area." *Id.* at 36:5-15; 38:1-10. As

[7] Because they were in plain clothes and unmarked units, Officers Matos and Wong were not wearing – and were not required to wear - body cameras that evening. Hrg. Tr., at 30:1-3. There were, however, uniformed officers participating in the surveillance operation and securing of the porch who were equipped with body cameras. *Id.* at 30:4-6. Footage from one of the officers' body camera was entered into evidence as Defense Exhibit 1.

the defendant bent forward, Officer Matos saw a bulge in the defendant's waist area. Hrg. Tr., at 36:17-20; 38:20-23. Officer Matos put his left hand on the bulge and felt a hard square object that he grabbed and believed to be a gun. *Id.* at 36:17-20; 38:24-39:7; 52:23-53:5. He looked at the defendant and said: "I know what you have" and asked the defendant if he had a permit. *Id.*, at 36:20-21; 39:8; 39:23-25. The defendant looked at Officer Matos, put his head down, and quietly said "no." *Id.* at 39:7-12. A few seconds later, Officer Matos reached into the defendant's waistband, said "gun, gun," and retrieved a handgun, which was loaded with fourteen live rounds. *Id.* at 53:15-24; 40:13-15.

After Officer Matos announced that he had recovered a gun, there was a commotion involving other individuals on the porch to the right of Officer Matos. *Id.* at 40:3-8. Officer Travis came to assist Officer Matos in placing the defendant in handcuffs. Hrg. Tr., at 36:22-24. He and Officer Travis then moved the defendant off the porch in part because of the commotion that had just occurred. *Id.*at 36:24-25; 40:5-8. Officer Matos testified that his encounter with the defendant from when he spoke to him to when he recovered the firearm, said "gun, gun" and Officer Travis handcuffed the defendant lasted "less than a minute" and "probably about thirty seconds." *Id.* at 41:12-19; 50:3-8; 51:17-23.

Officer Matos went to a police vehicle and used the computer inside to check whether the defendant had a permit to carry a firearm. Hrg. Tr. at 39:25-41:4. Upon learning that he did not, Officer Matos arrested the defendant and a search revealed that he had three clear bags of marijuana on his person, which Officer Matos recovered. *Id.* at 41:5-11.

III. PROPOSED CONCLUSIONS OF LAW

The officers here had reasonable suspicion under *Terry v. Ohio* to conduct an investigatory stop based on the surveillance of drug dealing that they had just observed from the

porch that evening and the fact that roughly six or seven males all wearing dark clothing had huddled together on that dark, relatively small porch in a high crime neighborhood such that Officer Stewart could not identify the narcotics seller from his surveillance point about fifty feet away. *See* Hrg. Tr., 5:1-24; 7:8-8:13; 12:6-13; 30:11-31:7. Thus, when Officer Matos approached the defendant on the porch that evening, all of the individuals were under investigation and suspicion for those drug sales. *Id.*, at 32:2-9; 43:10-15.

The defendant's actions when Officer Matos approached him added to the reasonable suspicion of criminal activity because the defendant appeared to Officer Matos as though he was going to flee. Hrg. Tr., at 35:25-36:6. Officer Matos grabbed the defendant's left wrist and instructed him to drop the cigarette in his right hand. *Id.* at 36:6-15; 37: 15-22; 42:13-17; 49:11-18; 54:11-23. The defendant refused and was "blatant in trying to conceal something" on his right side. *Id.* at 36:17-18; 37: 15-25; 52:14-17; 52:18-22. He moved the right side of his body away from Officer Matos, tucked his elbow close to his waist on his right side, and leaned forward "just enough to try to conceal something in his waist area." *Id.* at 36:5-15; 38:1-10. As the defendant bent forward, Officer Matos saw a bulge in the defendant's waist area. *Id.* at 36:17-20; 38:20-23. Acting on these circumstances, his nine years of experience as a police officer, with reasonable suspicion that the defendant was armed, and to ensure his safety and that of his fellow officers and all involved, in a matter of seconds, Officer Matos went directly to the bulge he saw in the defendant's waistband, put his hand on it and felt a hard, square object that he believed to be a gun. *Id.* 36:17-20; 38:24-39:7; 52:23-53:5. He then said to the defendant, "I know what you have" and asked him if he had a permit. Hrg. Tr., at 36:20-21; 39:8; 39:23-25. The defendant hung his head and said quietly, "no." *Id.*, at 39:7-12. Officer Mattos notified his fellow officers by saying, "gun, gun;" another Officer assisted in handcuffing the defendant and

Officer Mattos lawfully retrieved the firearm from the defendant's waistband – all in a matter of seconds. *Id.*, at 36:22-24; 40:13-15; 52:4-53:24. When Officer Matos confirmed that the defendant did not have a permit to carry that firearm, he had probable cause to arrest the defendant and lawfully seized the marijuana in his pockets during a search incident to that arrest. These reasonable actions to seize the firearm at issue, which occurred in under one minute, and arrest the defendant were not unlawful.

A. The Officers Had Reasonable Suspicion to Approach and Secure the Porch at 5100 Arch Street.

As is well settled, "[t]he Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." *Adams v. Williams*, 407 U.S. 143, 145 (1972). Instead, where a police officer observes unusual conduct which leads him to reasonably believe in light of his experience that criminal activity is afoot, he may stop a suspect to permit further investigation, and where he further reasonably suspects that the person with whom he is dealing may be armed and presently dangerous, he is entitled to conduct a carefully limited search of such person to discover weapons which may be used to assault him. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Such "reasonable suspicion" is a less demanding standard than probable cause and "requires a showing considerably less than preponderance of the evidence." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000).

While "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure[,] ... the Fourth Amendment imposes no irreducible requirement of such suspicion." *United States v. Martinez–Fuerte,* 428 U.S. 543, 560–61 (1976). Instead, "[t]he touchstone of the Fourth Amendment is reasonableness, not individualized suspicion." *Samson v. California,* 547 U.S. 843, 855, n. 4 (2006).When assessing whether the reasonable

suspicion standard is satisfied, a court must "consider the totality of the circumstances, including the police officer's knowledge, experience, and common-sense judgments about human behavior." *United States v. Robertson*, 305 F.3d 164, 167 (3d Cir. 2002). "The test is one of reasonableness given the totality of the circumstances, which can include [the defendant's] location, a history of crime in the area, [the defendant's] nervous behavior and evasiveness, and [an officer's] 'common sense judgments and inferences about human behavior.'" *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003), quoting *Illinois v. Wardlow*, 528 U.S. at 124-25. *See also United States v. Arvizu,* 534 U.S. 266, 273 (2002) (reiterating that officers must be allowed to "draw on their own experience and specializedtraining to make inferences from and deductions about the cumulative information available to them"); *United States v. Rickus,* 737 F.2d 360, 365 (3d Cir. 1984) (when determining whether a stop is justified a court "must view the circumstances surrounding the stop in its entirety giving due weight" to the officers' experience). Other factors in this analysis include the defendant's presence in a high crime area and his or her evasive or nervous behavior upon encounter with law enforcement. *See United States v. Valentine*, 232 F.3d 350, 356 (3d Cir. 2000) (internal quotations and citations omitted) (defendant's presence in a high crime area "is among the relevant contextual considerations in a *Terry* analysis") *accord United States v. Calloway,* 571 Fed. Appx. 131, 136 (3d Cir. 2014); *United States v. Scott*, 816 Fed. Appx. 732, 737 (3d Cir. 2020) (citations omitted).

Here, the officers had information, and knew from their experience, that the area of 51st and Arch Streets was a high crime area known for marijuana sales and recent shootings. Hrg. Tr., at 6:10-7:1; 8:9-13; 31:8-10. They sought to verify that information by conducting surveillance. *Id.* at 5:9-6:7; 7:2-14; 29:4-6. As part of that surveillance, Officer Stewart watched the porch at issue, observed what he believed to be hand to hand narcotics transactions, and relayed

information to his fellow officers stationed nearby of the descriptions of individuals he saw leaving that location. *Id.*, at 7:2-14; 132:6-13:30;30:14-31:7. Officers stopped those individuals and recovered various quantities of marijuana, confirming the accuracy of Officer Stewart's believed observations of illegal drug sales at the location. *Id.* After this continued for about one hour, at about 8:00 p.m. at night, Officer Stewart saw several individuals on that crowded porch – all of whom were wearing dark clothing - huddle together back from the front steps and closer to the door of the residence. *Id.*, at 13:22-14:11. Given the totality of the circumstances including the previously observed narcotics sales, the fact that this was a high crime area, and Officer Stewart's twenty-eight years of experience as a police officer during which time that area had always been known for illegal marijuana sales, Officer Stewart saw what can be reasonably inferred as another illicit transaction. *See* Hrg. Tr., at 13:35-14:6; 17:25-22:8. While he had a description of the seller that he relayed over the police radio, it was not until the porch was secured and its occupants brought down the stairs to a better lit area that he could positively identify that individual from the several males huddled together on the porch. *Id.* at 10:23-11:3; 11:22-25; 14:4-10; 19:24-20:2; 26:21-27:9. So, with reasonable suspicion that criminal activity was afoot and that the individuals on the porch were involved in that criminal activity, Officer Stewart gave instructions to secure the porch at issue. *Id.* at 14:4-20.

Officer Matos understood those instructions to be to detain all of the males on the porch for investigation and he and his partner, Officer Wong and approximately six other officers followed those instructions. *See* Hrg. Tr., at 32:4-9; 43:10-15. They approached the porch and secured the individuals thereon until Officer Stewart arrived to identify the person he had seen selling narcotics. *Id.* at 41:12-42:3. This happened in a matter of minutes and the officers' suspicions as to the individuals on the porch that evening were quickly confirmed (as to the

seller, the defendant, and those in possession of illegal narcotics and/or with outstanding warrants) and dispelled (as to those found not to have illegal narcotics or warrants). [8] *See* Hrg. Tr., at 15:24-16:20; 41:12-42:3. *See also United States v. Sharpe,* 470 U.S. 675, 686 (1985)) (in assessing whether a detention is too long in duration to be justified as an investigative stop, the court examines whether the police diligently pursued a means of investigation that would confirm or dispel their suspicions quickly); *United States v. Scott,* 816 Fed. Appx. 732, 738 (3d Cir. 2020) (detention, handcuffing, and pat-down and victim's identification of defendant as the robber, all of which occurred in a span of nineteen minutes, was reasonable). The fact that Officer Stewart did not identify the defendant as the ultimate narcotics seller does not negate the reasonable suspicion to approach the porch in the first instance or the suspicion that was undoubtedly enhanced when the defendant appeared to Officer Matos as if he was going to run.[9] *See* Hrg. Tr., at 35:25-36:6. *See also United States v. Edwards,* 53 F.3d 616, 619 (3d Cir. 1995)

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[8] The fact that there were approximately one to two officers to each individual on the porch, likewise, was not unreasonable given the nature of the suspected criminal activity, the fact that it was nighttime, in a high crime area that had a recent shooting, and the number of people involved. It did not take long for the officers to secure the area and Officer Stewart to identify the individual he had seen selling narcotics that evening. *See Hiibel v. Sixth Judicial District Court of Nev., Humboldt Cnty.,* 542 U.S. 177, 185–86 (2004) (noting that an officer's action must be justified at its inception and reasonably related in scope to the circumstances that justified the interference in the first place).

[9] Any innocent explanation the defendant may offer for his presence on the porch that evening, likewise, does not change the analysis. Reasonable suspicion is often based "on acts capable of innocent explanation." *United States v. Valentine*, 232 F.3d 350, 356 (3d Cir. 2000). Indeed, "[a] reasonable suspicion of criminal activity may be formed by observing exclusively legal activity." *United States v. Ubiles*, 224 F.3d 213, 217 (3d Cir. 2000). It should be recalled that in *Terry* itself, the Supreme Court found that a stop and frisk was permitted when a detective simply observed two men repeatedly pacing back and forth in front of a store and peering into it, in a manner which suggested to the experienced officer that a robbery was contemplated. *Terry*, 392 U.S. at 5-7. Indeed, even in relation to the greater threshold of probable cause (which the Supreme Court has stated itself "is not a high bar," *Kaley v. United States*, 571 U.S. 320, 338 (2014)), the Supreme Court recently reminded, "probable cause does not require officers to rule out a suspect's innocent explanation for suspicious facts." *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018).

(quoting *United States v. Hensley,* 469 U.S. 221, 235 (1985) (where officers make an investigative stop, they make take steps that are "reasonably necessary to protect their personal safety and maintain the status quo during the course of the stop")

B. The Defendant's Actions When and After Officer Matos Approached him Provided Reasonable Suspicion that he was Armed and Dangerous.

Officer Matos approached the defendant who appeared as if he was going to run. Hrg. Tr., at 35:25-36:6. Officer Matos grabbed the defendant's left hand and instructed him to drop the cigarette that the defendant was holding in his right hand. *Id.*, at 39:3-18; 52:4-16. Although the defendant did not comply with Officer Matos' instructions, he was "seized" for purposes of the Fourth Amendment when Officer Matos grabbed his left hand. *See United States v. Samuels*, 131 Fed. Appx. 859, 862 (3d Cir. 2005) (citing *California v. Hodari D,* 499 U.S. 621, 626-28 (1991); *United States v. Valentine,* 232 F.3d 350, 358 (3d Cir. 2000)) (a seizure occurs when officers apply physical force to the person being seized or when force is absent, when officers make a show of authority and the person seized submits to that show of authority). *See also United States v. Brown*, 765 F.3d 278, 289 (3d Cir. 2014) (while there was no threatening presence where the number of detectives evenly matched the number of individuals in a group, the encounter "ripened into a *Terry* stop" when officer grabbed defendant to prevent him from fleeing).

The defendant's actions in the seconds that followed provided reasonable suspicion that he was armed and dangerous and justify the limited search of his person and recovery of the firearm at issue. *See United States v. Calloway,* 517 Fed. Appx. 131, 136 (3d Cir. 2014) (that stop occurred in a high crime area; defendant looked around in a manner indicating he might attempt to escape, failed to follow orders and kept his hands near his waist were the "specific, articulable facts that *Terry* contemplates" and warranted a pat-down search for weapons); *United*

States v. Frisy, 474 Fed. Appx. 865, 866-67 (3d Cir. 2012) (officer who approached defendant in a group of individuals in a known "open air" drug market, observed a bulge in defendant's hip and defendant tucking his right elbow against his hip and heard defendant say "I have everything" reasonably took control of defendant, separated him from the group and performed a pat-down search through which he recovered a firearm from the defendant's waistband); *United States v. Samuels,* 131 Fed. Appx. at 863 (defendant's presence in a high crime area, the visible bulge in his waistband and his conduct in acting nervous while being questioned provided the officers with a reasonable belief that criminal activity was afoot); *United States v. Johnson,* 212 F.3d 1313, 1317 (D.C. Cir. 2000) (defendant who did not comply with officer's direction and made gestures which a reasonable officer could have thought were suggestive of hiding or retrieving a gun gave reasonable belief that he may have been engaged in criminal activity); *United States v. Moorefield,* 111 F.3d 10, 12 (3d Cir. 1997) (defendant's "furtive hand movements" and refusal to obey the officers' orders justified a pat down search for weapons). Specifically, the defendant turned his body away from Officer Matos tucked his elbow towards his waist and bent forward, in a deliberate effort to conceal something on his right side. *See* Hrg. Tr., at 36:5-15; 38:1-10. As he did this, Officer Matos noticed a bulge in the defendant's waist area. *Id.*, at 36:17-20; 38:20-23. Officer Matos put his hand on that bulge, felt a hard object, said to the defendant, "I know what you have" and asked the defendant if he had a permit. *Id.*, at 36:20-21; 39:8; 39:7-12; 23-25. The defendant hung his head and said quietly, "no." *Id.*, at 39:7-12. Believing that the defendant had a gun, Officer Matos immediately went directly the area where he felt the hard object, retrieved a loaded firearm, and announced "gun, gun." *Id.*, at 36:22-24; 40:13-15; 52:4-53:24. All of this happened in a matter of seconds. *Id.*

Where, as here, an officer is conducting a *Terry* stop and is justified in believing that the subject is armed and dangerous, the officer is permitted to conduct a pat-down for weapons. *Terry v. Ohio,* 392 U.S. at 27; *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993); *United States v. Samuels,* 131 Fed. Appx. at 863. The test is whether, under the totality of the circumstances, "a reasonably prudent man … would be warranted in the belief that his safety or that of others was in danger." *Terry v. Ohio,* 392 U.S. at 27 (citations omitted); *United States v. Valentine*, 232 F.3d 350, 353 (3d Cir. 2000). Where an officer conducting a permissible pat-down for weapons has probable cause to believe that an item upon plain touch is incriminating evidence, he is permitted to seize it without a warrant. *Minnesota v. Dickerson,* 408 U.S. at 374-75. This principle has become known as the "plain feel" or "plain touch" doctrine, analogous to the "plain view" doctrine. *Id.*

As discussed above, this is what Officer Matos did when he recovered the firearm at issue. In fact, he conducted a more limited search than a full pat down designed to address his concern for his and his fellow officers' safety by going directly to the area he knew the weapon was most likely to be – the bulge in the defendant's waistband that he was trying to conceal. Thus, the gun was legally discovered and the defendant's motion to suppress should be denied. *See United States v. Samuels,* 131 Fed. Appx. at 863 (discussing *Adams v. Williams,* 407 U.S. 143, 146 (1972) which upheld an officer's conduct when, as here, he removed a gun from the defendant's waistband "by going directly to the area where the officer knew the weapon was most likely to be"); *United States v. Edwards*, 53 F.3d at 619 (Officer was within bounds of *Terry* in opening envelope in defendant's jacket pocket after feeling a "hard, bulky object" and having the reasonable, albeit mistaken, belief that it contained a weapon).

C. The Defendant Was Properly Arrested For Carrying a Concealed Weapon and the Marijuana on his Person was Recovered During a Lawful Search Incident to that Arrest.

When Officer Matos received and confirmed the defendant's admission that the did not have a permit to carry the firearm recovered from his waistband, he had probable cause to arrest the defendant for carrying a concealed weapon. *See United States v. Hensley,* 469 U.S.at 235 (officers who discovered weapons during a lawful search had probable cause to arrest defendant for possession of firearms); *United States v. Brown*, 765 F.3d at 290 (defendant's admission that he lacked a permit to carry the firearm found under the driver's seat of his car provided probable cause to support his arrest). Officer Matos did so and recovered three packets of marijuana during a lawful search incident to that arrest. *See* Hrg. Tr., at 41:9-11. *See also United States v. Brown,* 565 Fed. Appx. 98, 102 (3d Cir. 2014) (holding police lawfully recovered packets of heroin in search of vehicle incident to defendant's arrest based on probable cause to believe he had committed firearms offenses); *United States v. Samuels*, 131 Fed. Appx. at 860-61 (upholding denial of motion to suppress crack cocaine and money recovered during search incident to firearms arrest).

IV. CONCLUSION

The government respectfully submits the aforementioned proposed findings of fact and conclusions of law and requests that the Court so find and issue an order denying the defendant's motion to suppress.

Respectfully submitted,

JACQUELINE C. ROMERO
United States Attorney

/s MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: August 15, 2022

CERTIFICATE OF SERVICE

I certify that a copy of the Government's Proposed Findings of Fact and Conclusions of Law was served by electronic mail and electronic case filing upon Andrew Gay, Jr., Esquire, counsel for the defendant, on this date.

/s MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: August 15, 2022

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	**Docket No. 21-353**
v.	:	
RAMOINE WHITE	:	

GOVERNMENT'S OBJECTIONS TO DEFENDANTS PROPOSED CONCLUSIONS OF LAW REGARDING DEFENDANT'S MOTION TO SUPPRESS

The United States of America, through its attorneys, Jacqueline C. Romero, United States Attorney, and MaryTeresa B. Soltis, Assistant United States Attorney, respectfully submits these objections to defendant, Ramoine White's (hereinafter, "defendant") proposed conclusions of law regarding the Motion to Suppress the firearm and marijuana seized from him on February 11, 2021. The government hereby objects to the following paragraphs of the defendant's proposed conclusions of law, Docket No. 38, for the following reasons.

Defendant's Proposed Conclusion of Law Paragraph 47

The government objects to the proposed conclusion that "[h]aving committed no observable illegal offense, Defendant White was subjected to a wholesale seizure at the moment the team of back up officers converged upon the porch. . . ." Docket No. 38, p. 7, para. 47. The officers approached the defendant based upon their reasonable suspicion that criminal activity was occurring, not because they definitively knew that he had committed an illegal offense. Additionally, the defendant was not seized during the officers' initial approach onto the porch, but instead was seized when force was applied to him. That seizure was justified under the circumstances.

While Officer Stewart did not see the defendant make any of the hand-to-hand narcotics transactions observed taking place on the porch in the hour before the takedown team arrived, all of the individuals on that porch were in a high crime area that was well known for narcotics sales and "were under investigation" for those sales. Hrg. Tr., at 4:8-19; 6:10-7:1; 8:9-13;.32:2-9. *See also United States v. Edwards,* 53 F.3d 616, 619 (3d Cir. 1995) (quoting *United States v. Hensley,* 469 U.S. 221, 235 (1985) (where officers make an investigative stop, they make take steps that are "reasonably necessary to protect their personal safety and maintain the status quo during the course of the stop"). Based upon the prior observations, the officers had reasonable suspicion to believe that criminal activity was occurring, including by the defendant, in the area of the drug sales. The fact that the defendant appeared to Officer Matos as though he was going to flee when the officers approached added to that reasonable suspicion. *See* Hrg. Tr., at 35:25-36:6.

Moreover, any innocent explanation for the defendant's presence on the porch that evening does not negate the officers' reasonable suspicion to approach the porch and continue their investigation. *See United States v. Valentine*, 232 F.3d 350, 356 (3d Cir. 2000); ("[r]easonable suspicion is often based "on acts capable of innocent explanation"); *United States v. Ubiles*, 224 F.3d 213, 217 (3d Cir. 2000) ("[a] reasonable suspicion of criminal activity may be formed by observing exclusively legal activity"). In *Terry* itself, the Supreme Court found that a stop and frisk was permitted when a detective simply observed two men repeatedly pacing back and forth in front of a store and peering into it, in a manner which suggested to the experienced officer that a robbery was contemplated. *Terry*, 392 U.S. at 5-7.

Additionally, a seizure occurs when officers apply physical force to the person being seized or, when force is absent, when officers make a show of authority and the person seized

submits to that show of authority *United States v. Valentine,* 232 F.3d 350, 358 (3d Cir. 2000)]. *See also Brendlin v. California,* 551 U.S. 249, 254 (2007) (noting that a show of authority without actual submission is no more than an "attempted seizure").

Here, the defendant was seized at the moment Officer Matos grabbed his left hand – not before. *Id. See also United States v. Brown*, 765 F.3d 278, 289 (3d Cir. 2014) (holding that an encounter "ripened into a *Terry* stop at the moment" the detective grabbed the defendant to prevent him from fleeing). Even if the responding officers – who were approximately one to two officers to each male on the porch – made a show of authority (which the government disputes[1]), the defendant did not submit to that authority. *See United States v. Smith*, 575 F.3d 308, 313 (3d Cir. 2009) (noting that "the simple act of an assertion of authority by an officer is insufficient to transform an encounter into a seizure without actual submission on the part of the person allegedly seized"). Rather, he appeared to Officer Matos as though he was going to run; he disobeyed Officer Matos' direction to drop the cigarette he was holding; and he and took other actions, by bending forward and tucking his elbow into his side, that are consistent with disregarding authority and concealment. *See* Hrg. Tr., at 35:25-36: 15; 37: 15-22; 42:13-17; 49:11-18; 54:11-23. *See also United States v. Samuels*, 131 F. Appx. 859, 862 (3d Cir. 2005) (holding that defendant who did not comply with officers' demands to raise his hands and instead made hand movements towards his waist where an officer observed a bulge did not submit to officer's authority and was not seized at that point); *United States v. Lowe*, 791 F.3d

[1] *See United States v. Brown*, 765 F.3d 278, 289 (3d Cir. 2014) (while there was no threatening presence where the number of detectives evenly matched the number of individuals in a group, the encounter "ripened into a *Terry* stop" when officer grabbed defendant to prevent him from fleeing). Here, there was approximately one to two officers to each individual on the porch, which is not unreasonable given that the officers were dealing with a group of individuals in a small area at night and in a high crime neighborhood.

424, 431 (3d Cir. 2015) (noting that there was no submission to a show of authority when a suspect makes suspicious motions consistent with reaching for a weapon); *United States v. Johnson,* 212 F.3d 1313, 1316–17 (D.C. Cir. 2000) (holding that a suspect did not submit to a show of authority when he made "continued furtive gestures" including "shoving down" motions that were "suggestive of hiding (or retrieving) a gun"). These actions provided additional reasonable suspicion that led Officer Matos to grab his right hand, thereby seizing him at that point. *See United States v. Carstarphen,* 298 Fed. Appx. 151, 156 (3d Cir. 2008) (noting that the suspect's actions are a relevant consideration).

Defendant's Proposed Conclusion of Law Paragraph 48

The government objects to the conclusion regarding a show of authority based on the defendant's argument that "all of the plain clothes and uniformed officers had weapons displayed." There is no evidence of this fact in the record. Officer Matos, the only witness to offer testimony on this issue, stated that his service weapon was on his hip. Hrg. Tr., at 35:11-13. Moreover, it is clear from his testimony that Officer Mattos could not possibly have brandished or used his service weapon given that he needed both hands to deal with the defendant who did not submit to his authority. Specifically, Officer Matos used his right hand to grab the defendant's left wrist and his right hand to feel for, and then lawfully retrieve, the loaded firearm from the defendant's waistband. *See* Hrg. Tr., at 36:6-20; 37: 15-22; 38:24-39:7; 40:13-15; 42:13-17; 49:11-18; 52:23-53:5; 53:15-24; 54:11-23. Additionally, as discussed above, even if the officers made a show of authority when they approached the porch, the defendant did not submit to that authority and, thus, was not seized until Officer Matos grabbed the defendant's left wrist because the defendant appeared to him as if he was going to flee.

Defendant's Proposed Conclusion of Law Paragraph 50

The government objects to the conclusion that the defendant "submitted to the presence of the officers and their concomitant show of authority" for the reasons set forth above.

Defendant's Proposed Conclusion of Law Paragraph 51

The government objects to the conclusion that the defendant "was impermissibly seized in violation of the Fourth Amendment of the United States Constitution without reasonable suspicion, much less probable cause" for the reasons set forth above and in the government's Proposed Findings of Fact and Conclusions of Law, Docket No. 39.

Additionally, the defendant's reliance on *United States v. Lowe,* 791 F.3d 424 (3d Cir. 2015), is misplaced. There, the court concluded that the defendant submitted to the officers' authority and was seized when the officers approached and directed the defendant to show his hands because the defendant did not make any threatening gesture, or "move[] his hands or arms in any way, much less … reach[] for a weapon or otherwise act[] to rebuff the officers' authority." 791 F.3d at 433. The facts as to how this defendant responded to the officers in this case are markedly different and demonstrate, as discussed above, that the defendant did not submit to Officer Matos' or any other officers' authority and was not seized until Officer Matos reasonably grabbed the defendants' wrist in an effort to prevent him from fleeing. *See United States v. Hill,* No. 18-458, 2019 WL 1236058, at *3 (E.D. Pa. March 11, 2019) (contrasting *Lowe* with the factual scenario where the defendant, among other things, turned his body away from the officer and moved his hand toward his pocket, and, thus, did not submit and was not seized at that point).

Defendant's Proposed Conclusion of Law Paragraph 52

The government objects to the conclusion that "the Defendant was individually seized when Officer Matos entered the porch;" and that Officer Matos acted "[w]ithout previously making any observations of at all of Defendant White, much less any observations that would suggest White having committed an offense" for the reasons set forth above and in the government's Proposed Findings of Fact and Conclusions of Law, Docket No. 38.

Defendant's Proposed Conclusion of Law Paragraph 53

While the government agrees that the defendant was seized for purposes of the Fourth Amendment when Officer Matos grabbed the defendant's left hand, it objects to the proposed conclusion that the defendant "was further seized" at that time for the reasons set forth above and in the government's Proposed Findings of Fact and Conclusions of Law at Docket No. 38.

Defendant's Proposed Conclusion of Law Paragraph 54

The government objects to the conclusion that the defendant "submi[tted] to the police show of authority" when he appeared to Officer Matos as if he was going to flee and refused his command to drop the cigarette he was holding. *See* Hrg. Tr., at 35:20-36:15; 37:2-22; 42:13-17; 49:11-18; 54:11-23. The government agrees, based on this record, that it was in the seconds as, and after, Officer Matos grabbed the defendant's left wrist that he made the observations that gave him a reasonable belief that the defendant was armed and dangerous, namely, that he was "blatant in trying to conceal something" as he moved the right side of his body away from Officer Matos, tucked his elbow close to his waist on his right side, and leaned forward "just enough to try to conceal something in his waist area" revealing a bulge in that area that Officer Matos put his hand on and believed to be a gun. *See* Hrg. Tr., at 36:5-20; 37: 15-25; 38:1-39:7; 52:14-53:5. These actions, and the defendant's admission that he did not have a permit to carry

the firearm he possessed, allowed Officer Matos to lawfully seize the loaded firearm, arrest the defendant, and recover the marijuana at issue during a valid search incident to that arrest. *See* Hrg. Tr., at 36:20-21; 39:8; 39:7-25. *See also United States v. Calloway,* 517 Fed. Appx. 131, 136 (3d Cir. 2014) (that stop occurred in a high crime area; defendant looked around in a manner indicating he might attempt to escape, failed to follow orders and kept his hands near his waist were the "specific, articulable facts that *Terry* contemplates" and warranted a pat-down search for weapons); *United States v. Frisy*, 474 Fed. Appx. 865, 866-67 (3d Cir. 2012) (officer who approached defendant in a group of individuals in a known "open air" drug market, observed a bulge in defendant's hip and defendant tucking his right elbow against his hip and heard defendant say "I have everything" reasonably took control of defendant, separated him from the group and performed a pat-down search through which he recovered a firearm from the defendant's waistband); *United States v. Hensley,* 469 U.S.at 235 (officers who discovered weapons during a lawful search had probable cause to arrest defendant for possession of firearms); *United States v. Brown*, 765 F.3d at 290 (defendant's admission that he lacked a permit to carry the firearm found under the driver's seat of his car provided probable cause to support his arrest); *United States v. Brown,* 565 Fed. Appx. 98, 102 (3d Cir. 2014) (holding police lawfully recovered packets of heroin in search of vehicle incident to defendant's arrest based on probable cause to believe he had committed firearms offenses); *United States v. Samuels*, 131 Fed. Appx. at 860-61 (upholding denial of motion to suppress crack cocaine and money recovered during search incident to firearms arrest).

Defendant's Proposed Conclusion of Law Paragraph 56

The government objects to the conclusion that the firearm and marijuana recovered from the defendant on February 12, 2021, "must be suppressed as the result of the illegal seizure, and

subsequent search of White without reasonable suspicion" for the reasons set forth above and in the government's Proposed Findings of Fact and Conclusions of Law at Docket No. 38.

Respectfully submitted,

JACQUELINE C. ROMERO
United States Attorney

/s MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: August 19, 2022

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by electronic mail and electronic case filing upon Andrew Gay, Jr., Esquire, counsel for the defendant, on this date.

/s MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: August 19, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	DOCKET NO. 21-353
	:	
	:	
RAMOINE (aka Rhumone) WHITE	:	

DEFENDANT'S, RAMOINE WHITE, OBJECTIONS TO THE GOVERNMENT'S CONCLUSIONS OF LAW REGARDING MOTION TO SUPPRESS (ECF 39)

Defendant, Ramoine White, through his counsel, Andrew G. Gay, Jr., respectfully submits the within objections to the Government's Proposed Conclusions of Law (EFC 39), regarding the Suppression Hearing held on July 27, 2022.

I. OBJECTION TO THE GOVERNMENT'S CONCLUSION OF LAW CONCERNING THE SECURING OF THE PORCH AT 5100 ARCH STREET

Defendant does not object to the Government's conclusion that reasonable suspicion existed. However, that reasonable suspicion was limited to Watson, who was the only one observed to have committed any offense. White, along with the other individuals on the porch, we merely present when Watson conducted three (3) marijuana sales over an approximate one (1) hour time period.

The record is devoid of any testimony from Officer Stewart that he made any observations of White being involved in any suspected criminal activity. Additionally, upon approaching the porch, Officer Matos did not see anything with respect to the Defendant before grabbing his left hand. (N.T., 7/27/22, p. 44.)

Despite Officer Stewart having a description of Watson, the individual selling narcotics, that was distinguishable from the others on the porch, backup officers were

ordered to stop all males on porch. (N.T., 7/27/22, p. 14.) The convergence of officers upon the porch would have conveyed to a reasonable person that he, or she, was not free to leave. See, supra, United States v. Lowe, 791 F.3d 424, 430 (3d Cir.2015).

Officer Stewart testified that even if police intend to stop only one suspect, other individuals are stopped and checked before being released. (N.T., 7/27/22, pp. 26-27.) This wholesale stop of all males on the porch, including White, is without reasonable suspicion of criminal activity concerning those individuals merely in the vicinity of Watson.

II. OBJECTION TO THE GOVERNMENT'S CONCLUSION OF LAW THAT DEFENDANT WHITE'S ACTIONS UPON OFFICER MATOS' APPROACH PROVIDED REASONABLE SUSPICION THAT WHITE WAS ARMED

Although Officer Matos testified he thought Defendant White was going to run upon approaching the porch, there is nothing on the record to support that conclusion. The Defendant was on a porch with five (5) other males and approximately 6-8 uniformed and plain clothes officers. The dimensions of the porch were approximately 6 feet by 10 feet. There was nowhere to run.

In fact, Officer Matos offered no other reason for stopping White except for the fact he was only male on the porch who didn't have an "escort"; the only person who didn't have a police officer holding him. (N.T., 7/27/22, pp. 51-52.) Every other officer had someone on the porch stopped. Since White "was the only one that wasn't being held by anybody, [Officer Matos] approached him". (N.T., 7/27/22, p. 35.) As previously noted, Officer Matos did not see anything with respect to the Defendant before grabbing his left hand. (N.T., 7/27/22, p. 44.)

Defendant White concedes Officer Matos made observations that amount to reasonable suspicion. However, those observations were made after White submitted to the show of authority as the group of officers converged upon the porch, and not until after White was further, individually seized when Officer Matos grabbed his left hand.

Officer Matos' first interaction with the Defendant was to grab his left hand. (N.T., 7/27/22, pp. 37, 44.) As Officer Matos placed his hands upon Defendant White, he instructed him to put down the cigarette. (N.T., 7/27/22, p. 49.) Only after grabbing White's left hand did Officer Matos then observe him possibly attempting to conceal something in his waistband. (N.T., 7/27/22, p. 36.) Then, and only then, did Officer Matos observe a bulge in White's waist area. (N.T., 7/27/22, p. 38.) The seizure had already occurred. United States v. Lowe, 791 F.3d 424, 430 (3d Cir.2015).

III. OBJECTION TO THE GOVERNMENT'S CONCLUSION OF LAW THAT DEFENDANT WHITE WAS PROPERLY ARRESTED FOR POSSESSION OF A FIREARM BEFORE RECOVERING MARIJUANA

Defendant White concedes that officers recovered marijuana incident to his arrest for carrying a firearm. However, the initial search for the firearm was improper under the Fourth Amendment, as White was seized prior to the officers developing reasonable suspicion.

When the police conduct an illegal search of an individual, items seized are subject to suppression. United States v. Gooch, 915 F. Supp.2d 690, 702 (E.D. Pa. 2012) [citing Weeks v. United States, 232 U.S. 383, 398 (1914); Wong Sun v. United States, 371 U.S. 471, 487-88 (1963)].

The items recovered from Defendant White, *to wit*, the firearm and marijuana recovered pursuant to the search incident to arrest for the firearm, must be suppressed as the result of the illegal seizure, and subsequent search, of White without reasonable suspicion. See United States v. Gooch, 915 F. Supp.2d 690, supra.

IV. CONCLUSION

The Third Circuit has emphasized the purpose of the exclusionary rule: "The exclusionary rule is designed to deter police conduct that violates the constitutional rights of citizens. [] 'The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right.' By excluding evidence seized as a result of an unconstitutional search and seizure, 'the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused.'" United States v. Zimmerman, 277 F.3d 426, 436 (3d Cir. 2002).

Consequently, all physical evidence recovered from Ramoine White is subject to, and must be, suppressed.

Respectfully submitted,
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Date: August 22, 2022

CERTIFICATION OF SERVICE

I, Andrew G. Gay, Jr., certify that on August 22, 2022, one copy of the above Motion to Suppress has been served via First Class Mail and/or electronic filing upon the following individuals:

The Honorable Paul S. Diamond
United States District Court
14614 United States Court House
601 Market Street
Philadelphia, PA 19106

MaryTeresa B. Soltis, Esquire
United States Department of Justice
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

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ANDREW G. GAY, JR., ID No. 83401
Attorney for Defendant

Date: August 22, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 21-353**
	:	
RAMOINE WHITE	:	
	:	

ORDER

Defendant Ramoine White is charged with possession of a firearm by a felon. (Doc. No. 1); 18 U.S.C. § 922(g)(1). He now moves to suppress a gun and three small bags of marijuana. (Doc. No. 21.) I will deny the Motion.

FINDINGS OF FACT

Having conducted a suppression hearing, I make the following findings pursuant to Federal Rule of Criminal Procedure 12(d).

At the hearing, the Government called Philadelphia Police Officers Barry Stewart and Mischel Matos. The Officers were experienced. (Suppression Hr'g Tr. 4:6-8 (Officer Stewart had 28 years of experience), 28:7-20 (Officer Matos had 10 years of experience), Doc. No. 36.) I credit their testimony. The Government also introduced photographs of the porch where the gun was seized. Defendant introduced a video taken from the body camera of Officer Tyrone Travis, another Officer at the scene.

On February 11, 2021, at approximately 6:55 p.m., Officer Stewart was in plain clothes and an unmarked car conducting surveillance in the area of 5100 Arch Street, a high-crime area: the block had a history of reported drug sales and several recent shootings. (Hr'g Tr. 5:1-15, 6:15-7:1, 8:9-11.) Officer Stewart saw several men, including the Defendant, on an enclosed porch at the corner of 51st and Arch Streets in Philadelphia. (Hr'g Tr. 5:9-15, 7:8-14.) All the men were

wearing dark clothing and at times were "huddled on the porch like a football huddle." (Hr'g Tr. 11:15-25.)

Officer Stewart witnessed three hand-to-hand transactions take place on the steps of the porch between 7:00 p.m. and 7:40 p.m. (Hr'g Tr. 12:3-13:21.) At 7:00 p.m., a black woman approached the porch. (Hr'g Tr. 12:9-12.) A man (later identified as Mr. Bjourn Watson), "met her at the top of the steps," they had a brief conversation, and the woman gave Mr. Watson money, and Mr. Watson "gave unknown objects back to her . . . with a hand-to-hand motion involving a fist and a palm." (Hr'g Tr. 12:13-18.) When the woman left in a blue SUV, Officer Stewart told his team to stop her for a narcotics investigation. (Hr'g Tr. 12:18-21.) Minutes later, his team reported "that they had a positive for marijuana." (Hr'g Tr. 12:21-22.)

At 7:20 p.m., a black man approached the porch and Mr. Watson met him at the top of the porch steps. (Hr'g Tr. 12:23-25.) The two men had a brief conversation, the man gave Mr. Watson money, and Mr. Watson gave the man unidentified objects "with a hand-to-hand motion involving the fist and the palm." (Hr'g Tr. 13:1-6.) When the man left in a blue minivan, Officer Stewart told his team to stop him for a narcotics investigation. (Hr'g Tr. 13:5-8.) Minutes later, his team reported "positive narcotics for marijuana." (Hr'g Tr. 13:21-22.)

At approximately 7:20 p.m., another black man approached the top of the porch steps and had a brief conversation with Mr. Watson. (Hr'g Tr. 13:10-13.) Officer Stewart observed another hand-to-hand transaction: the man gave money to Mr. Watson and Mr. Watson gave unknown objects to the man. (Hr'g Tr. 13:14-17.) The man walked westbound and Officer Stewart told his team to stop him for a narcotics investigation. (Hr'g Tr. 13:18-19.) Minutes later, his team reported "they had a positive for marijuana." (Hr'g Tr. 13:19-21.)

During each of these transactions, Officer Stewart could see the currency being exchanged.

(Hr'g Tr. 21:15-17.) Although he could not see the items Mr. Watson had given the individuals, he believed they were narcotics. (See Hr'g Tr. 12:19-21, 13:7-8, 18-19.) Because of his observations and because the individuals had been stopped and each possessed marijuana, he believed Mr. Watson was selling marijuana. (See Hr'g Tr. 15:23-16:2 (Officer Stewart identifying Mr. Watson as his "seller").)

At 8:00 p.m., Officer Stewart saw all the men on the porch, including Defendant and Mr. Watson, in "huddle mode," and Mr. Watson gave another man an object. (Hr'g Tr. 13:22-14:3.) The man turned on a light, either a flashlight or the light on his phone, to look at the item. (Hr'g Tr. 18:24-19:2.) Officer Stewart could not tell which man took the object or what the object was because it was dark, and the men were huddled in a circle on the porch rather than at the top of the steps. (Hr'g Hr. 13:22-14:5, 18:23-19:2, 19:19-21.)

Officer Stewart told his team to approach the porch and gave the best description he could of Mr. Watson: that he was wearing dark blue or black, and that he was heavier than the other men. (Hr'g Tr. 14:4-15:6.) He told the team to detain all the individuals on the porch. (Hr'g Tr. 32:2-9.) Officer Stewart was able to positively identify Mr. Watson as the man who made the hand-to-hand transactions because he was "heavier set than the other males." (Hr'g Tr. 14:12-20.)

Officer Matos was a plain clothes Officer and part of narcotics team with which Officer Stewart was communicating. (Hr'g Tr. 29:4-6, 30:14-17, 43:7-9 (Officer Matos was in "constant radio communication with Officer Stewart.").) He stopped one of the three individuals Officer Stewart believed had purchased narcotics from Mr. Watson and recovered marijuana from that individual and issued a ticket. (Hr'g Tr. 30:20-7.) At approximately 8:00 p.m. when Officer Stewart instructed the team, including Officer Matos, to approach the house at 5100 Arch Street, Officer Matos understood that he was to stop all the men on the porch for investigation. (Hr'g Tr.

32:4-6, 43:10-15.)

When Officer Matos arrived on the scene, there were six individuals and approximately seven or eight officers on the porch, including Officers in uniform. (Hr'g Tr. 34:14-22.) Officer Matos approached Defendant—the only person who wasn't being held by an Officer—grabbed his left hand and asked him to put out the cigarette he was holding in his right hand. (Hr'g Tr. 35:20-23, 42:13-25, 52:7-13.) Defendant did not comply and moved his body away from Officer Matos. (Hr'g Tr. 36:5-12.) Officer Matos "noticed that [Defendant] was blatant in trying to conceal something," and noticed a bulge in Defendant's waistband. (Hr'g Tr. 36:17-23, 54:11-16.) He conducted a pat down, felt a hard object in Defendant's waistband, and "believed 100 percent it was a gun." (Hr'g Tr. 36:17-23, 53:3-5.) Officer Mattos said to Defendant "I know what you have," retrieved the gun from Defendant's waistband, and then said "gun, gun" to alert the other Officers. (Hr'g Tr. 53:3-20.) A uniformed Officer then handcuffed Defendant. (Hr'g Tr. 55:23-56:2.) The entire interaction—from when Officer Matos stepped onto the porch until Defendant was handcuffed—took some 45 seconds. (See Def. Ex. 1.)

Officer Matos then confirmed that Defendant did not have a permit to carry a gun. (Hr'g Tr. 41:2-7.) He placed Defendant under arrest, conducted a search of his person, and recovered three clear bags of marijuana. (Hr'g Tr. 41:9-11.)

CONCLUSIONS OF LAW

Defendant moves to suppress the gun and marijuana. He argues that they were obtained pursuant to an improper search and seizure. I disagree.

Police may conduct a brief, investigatory stop and protective search when they have a reasonable, articulable suspicion that criminal activity is afoot. Terry v. Ohio, 392 U.S. 1, 21 (1968). "[T]here can be no Fourth Amendment violation until a seizure occurs." U.S. v. Valentine,

232 F.3d 350, 358 (3d Cir. 2000). Accordingly, I must first "pinpoint the moment of the seizure and then determine whether that seizure was justified by reasonable, articulable facts known to [the officer] as of that time that indicated that [the suspect] was engaged in criminal activity." United States v. Lowe, 791 F.32 424, 431 (3d Cir. 2015) (internal quotation marks omitted) (alternation in original).

A seizure occurs when there is either (a) "'a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful,' or (b) submission to 'a show of authority.'" U.S. v. Brown, 448 F.3d 239, 245 (3d Cir. 2006) (quoting California v. Hodari D., 499 U.S. 621, 626 (1991)). It is clear that Defendant was seized the moment that Officer Matos grabbed his left hand, which occurred almost immediately after Officer Matos approached Defendant. (Hr'g Tr. 42:13-25 (Officer Matos' "first interaction with [Defendant] was grabbing his left hand" . . . . "before [he] grabbed [Defendant's] left hand [he] didn't see anything")); see Brown, 448 F.3d at 245.

Defendant argues that he was seized when the group of officers initially converged on the porch. (Doc. No. 38 at ¶ 47.) "[T]he test for existence of a 'show of authority' is an objective one: not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person." Hodari D., 499 U.S. at 628. The record is unclear as to the other Officers' words and actions before Officer Matos arrived. Nevertheless, even if Defendant was seized when the Officers approached the porch, reasonable suspicion existed for such a seizure.

"Police may only seize a person consistent with the Fourth Amendment if they have reasonable, articulable, and individualized suspicion that a suspect is engaged in criminal activity." Lowe, 791 F.3d at 435. An officer may establish reasonable suspicion if he can "articulate some

minimal, objective justification for an investigatory stop." United States v. Robinson, 529 F. App'x 134, 138 (3d Cir. 2013).

In determining whether reasonable suspicion existed, I must consider the totality of the circumstances. U.S. v. Robertson, 305 F.3d 164, 167 (3d Cir. 2002). I must also give "great deference to the officer's knowledge of the nature and the nuances of the type of criminal activity that he had observed in his experience." Id. My analysis "must be limited to the facts known to the officers when they effected a Terry stop." Id. at 436. Because "reasonable suspicion is always evaluated as of the moment of seizure, [I] cannot consider facts that develop after that moment." Lowe, 791 F.3d a 424.

Defendant urges that he was part of a "wholesale" stop and that there was no individualized reasonable suspicion that he had engaged in any illegal activity. (Doc. No. 21 at 2; Doc. No. 38 at ¶ 47.) Yet, "[t]o establish reasonable suspicion, the particularity requirement need not be as stringent as it might be for probable cause." United States v. Ramos, 443 F.3d 304, 309 (3d Cir. 2006). The area of 5100 Arch Street is a high crime area that has a history of drug sales and several recent shootings. (Hr'g Tr. 5:1-15, 6:15-7:1, 8:9-11); Valentine, 232 F.3d at 356. ("[T]he fact that the stop occurred in a 'high crime area' [is] among the relevant contextual considerations in a Terry analysis.") (quoting Illinois v. Wardlow, 258 U.S. 119, 124 (2000)) (alterations in original). Officer Stewart saw Mr. Watson, one of the men on the porch, make three hand-to-hand transactions, which, in Officer Stewart's experience, was consistent with drug sales. (Hr'g Tr. 12:3-13:21.) Other members of the team stopped each of the buyers, and each possessed marijuana. (Id.) Officer Stewart then observed all the men on the porch "huddle" up. (Hr'g Tr. 13:22-14:5.) One man used the light on his phone or flashlight and Mr. Watson handed him unknown objects. (Id.)

Based on the totality of the circumstances—the Officers' experience, the high-crime area, Officer Stewart's surveillance of hand-to-hand transactions and the men on the porch "huddling," and the recovery of marijuana from each of the individuals after they met on the porch with Watson—the Officers had reasonable suspicion that criminal activity was afoot. They knew drug transactions were occurring and that the individual who sold drugs was giving items to another man on the porch. Even if the items passed between the men on the porch were not drugs, this does not dispel the officer's reasonable suspicion. Valentine, 232 F.3d at 356 (reasonable suspicion may be "based on acts capable of innocent explanation"). Accordingly, the Officers had reasonable suspicion to seize all the individuals on the porch, including Defendant.

Because Defendant was detained and searched as part of a lawful Terry stop, the gun discovered as part of this stop is admissible. Officers are entitled to conduct a pat down for weapons pursuant to a lawful Terry stop. See Terry, 392 U.S. at 30; United States v. Edwards, 53 F.3d 616, 69 (3d Cir. 1995) (during a Terry stop, officers may take steps "reasonably necessary to protect their personal safety and maintain the status quo during the course of the stop"). During the pat down Officer Matos felt a hard object, and knew with certainty that it was a gun. (Hr'g Tr. 36:17-23, 53:3-5.) Accordingly, Officer Matos properly seized the gun. Minnesota v. Dickerson, 408 U.S. 366, 375 (1993) (An officer may seize without a warrant items if, during a lawful pat down of a suspect's "outer clothing" he feels an object whose "contour or mass makes its identity immediately apparent" that it is contraband.).

Officer Matos confirmed that Defendant did not have a permit to carry the gun and thus placed him under arrest. (Hr'g Tr. 41:2-11); see United States v. Brown, 765 F.3d 278, 290 (3d Cir. 2014) (probable cause to arrest for possession of firearm without a permit). In a lawful search incident to the arrest, Officer Matos recovered three bags containing marijuana. (Hr'g Tr. 41:9-

11); United States v. Ley, 876 F.3d 103, 108 (3d. Cir. 2017) ("[P]olice [may] conduct a warrantless search of an individual incident to arresting him.").

In these circumstances, I will deny Defendant's Motion to Suppress.

* * *

AND NOW, this 23rd day of September, 2022, after conducting an evidentiary hearing, and upon consideration of Defendant's Motion to Suppress (Doc. No. 21), the Government's Response (Doc. No. 22), and the Parties' Proposed Findings of Fact and Conclusions of Law (Doc. Nos. 38, 39), and all related submissions, it is hereby **ORDERED** that Defendant's Motion (Doc. No. 21) is **DENIED**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Docket No.
v.	:	
	:	21-CR-00353
RAMOINE WHITE,	:	
Defendant.	:	

MOTION TO DISMISS THE INDICTMENT
AND
MOTION FOR A NEW TRIAL

Now comes Ramoine White, the Defendant, and moves this Court to dismiss the Indictment or grant a new trial, and in support thereof, states the following:

I. Introduction

This motion will discuss the status of the case, the relevant facts, the constitutionality of §922(g)(1), the ineffective assistance of counsel, the Motion to Dismiss, and the Motion for a New Trial.

II. Status of the Case

This case is at the post-verdict level, pending Post-Verdict Motions and Sentencing. However, in this case, there is a Second Amendment issue involving the constitutionality of § 922(g)(1), at least as applied, [1] which should have been raised in a Pre-trial Motion to Dismiss. It is respectfully submitted that the most

[1] 18 U.S.C. § 922(g)(1).

efficient way of addressing this issue is for the Court to accept a Nunc Pro Tunc Motion to Dismiss.

If the Court does not accept a Nunc Pro Tunc Motion to Dismiss, the next option for the Defendant is to raise this issue as an ineffective assistance of counsel claim in a Motion for a New Trial under Federal Rule of Criminal Procedure 33.[2] However, issues of ineffective assistance of counsel are generally discouraged in Motions for a New Trial unless the record is sufficiently developed to permit the Court to decide the issue. *See United States v. O'Donnell*, 803 F. App'x 624, 625 (3d Cir. 2020), *citing United States v. Washington*, 869 F.3d 193, 203 (3d Cir. 2017). The Defendant respectfully submits that the record is sufficiently developed.

If the Court does not accept the Motion for a New Trial, the Defendant's next option to raise the issue would be on direct appeal. On direct appeal, the Defendant will face the same obstacle because claims of ineffective assistance of counsel are also generally discouraged on direct appeal. *See United States v. Steele*, 733 F.3d 894, 897 (9th Cir. 2013) (quoting *United States v. Ross*, 206 F.3d 896, 900 (9th Cir. 2000)). *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1060 (9th Cir. 2000) (quoting *Ross*, 206 F.3d at 900). As such, the Third Circuit may also refuse to hear the issue.

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[2] Fed. R. Crim. P. 33.

If the Third Circuit refuses to hear the issue on direct appeal, the Defendant's next and last option is to raise the issue in a Motion to Vacate, Set Aside or Correct the Sentence under 28 U.S.C. § 2255. However, by then, the Defendant would have spent years in custody since his arrest on February 11, 2021, for a charge that violates the Second Amendment. As a result, the Defendant respectfully submits that the fairest and most expeditious way to resolve this issue is for the Court to accept the Defendant's Nunc Pro Tunc Motion to Dismiss.

III. Relevant Facts

On February 11, 2021, the Philadelphia Police Department conducted a narcotics investigation focusing on a porch at 5130 Arch Street, Philadelphia, Pennsylvania. The Defendant was one of the individuals on the porch. The Police then arrested the suspect and, in the process, stopped and searched the people who were on the porch. The Police allege that it found a Smith & Wesson semiautomatic handgun on the Defendant. As a result, on September 7, 2021, the Grand Jury indicted the Defendant for Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922 (g)(1).

After the initial appearance and several other listings, on January 10, 2022, trial counsel filed a Motion to Suppress the Firearm.

On June 23, 2022, before the hearing on the Motion to Suppress and before trial, the Supreme Court decided *New York State Rifle and Pistol Association, Inc. v.*

Bruen, 142 S. Ct. 211 (2022). *Bruen* created authority to challenge the constitutionality of the charge of Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1). However, after *Bruen*, trial counsel did not file a Motion to Dismiss, challenging the constitutionality of §922(g)(1).

On July 27, 2022, the Court held a hearing on the Defendant's Motion to Suppress. On September 23, 2022, the Court denied the Defendant's Motion to Suppress. Again, this was the only pre-trial motion, excluding motions to continue and extend deadlines filed by trial counsel.

A jury trial began on February 14, 2023, and on February 15, 2023, the jury convicted the Defendant of Possession of a Firearm by a Felon. Trial counsel did not file either a Rule 29[3] or a Rule 33[4] motion during or after the trial.

On May 16, 2023, after the Defendant requested a new attorney, the Court appointed new counsel. On July 19, 2023, the Court granted the Defendant's Nunc Pro Tunc Motion for Leave to File Post-Verdict Motions. On August 23, 2023, the Court granted a second extension, extending the time to file Post-Verdict Motions to August 30, 2023.

[3] Fed. R. Crim. P. 29.

[4] Fed. R. Crim. P. 33.

IV. Section 922(g)(1) violates the Defendant's Second Amendment Right to Possess a Firearm

While the Defendant was convicted of Possession of a Firearm by a Felon in violation of §922(g)(1),[5] the Supreme Court had concluded that the Second Amendment[6] gave "the people" the right to possess and carry weapons. *See District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). Then, on June 23, 2022, *before the trial*, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court modified the test to analyze a claim that a law violated the Second Amendment. *Bruen* involved two New York individuals who had applied for unrestricted licenses to carry handguns in public. New York did not approve the unrestricted licenses to carry handguns in public and instead approved restricted licenses for hunting and target shooting. Under New York law, the applicants had to show proper cause. In *Bruen*, New York, concluded that the applicants had not shown good cause. Litigation ensued, and the matter reached the Supreme Court.

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[5] Section 922(g)(1) reads as follows: ". . . it shall be unlawful for any person . . . who has been convicted . . . of [ ] a crime punishable by imprisonment for a term exceeding one year . . . to possess in or affecting commerce, any firearm . . . which has been shipped or transported in interstate commerce." 18 U.S.C. § 922(g)(1).

[6] The Second Amendment reads as follows: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. Amend. II.

Bruen began its discussion by stating that it was holding "that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *Bruen* at 2122. *Bruen* then proceeded to modify the standard to evaluate Second Amendment cases and developed the following two-part test:

First, does the Second Amendment text cover an individual's conduct? If it does, then the Constitution presumptively protects the conduct.

Second, if the individual's conduct is covered by the Second Amendment, to justify the regulation of the conduct, the Government must prove that the regulation is consistent with the Nation's historical tradition of firearm regulation.[7]

Bruen concluded that the applicants were covered by the text of the Second Amendment and that New York had not established an analogous historical regulation that would have permitted New York to regulate and prohibit the applicants receiving unrestricted licenses to carry handguns in public.

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[7]Specifically, the language about the two part test in *Bruen* reads as follows:

> We reiterate that the standard for applying the Second Amendment is as follows: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The Government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

Bruen at 2129-2130.

The Court of Appeals for the Third Circuit followed *Bruen* in *Range v. A.G. of the United States*, 69 F. 4th 96 (3rd Cir. 2023). *Range* involved a Pennsylvania resident who attempted to buy a firearm on two occasions, but his applications to buy a firearm were rejected because the background checks revealed that he had been convicted of an offense that was punishable by a term of imprisonment that exceeded one year, which violated 18 U.S.C. §922(g)(1). After the second rejection, Range filed a suit seeking a declaration that §922(g)(1) violated the Second Amendment.

The Third Circuit in *Range*, *citing Bruen*, began its discussion of the Second Amendment issue by stating, "we must first decide whether the text of the Second Amendment *applies to a person* and *his proposed conduct.*" *Range* at 101.[8] (*emphasis added*). *Range* continued the analysis and, citing *Heller,* stated, ". . . the people as used throughout the Constitution unambiguously refers to all members of the political community, not an unspecified subset. [citation omitted] So, the Second Amendment right . . . presumptively "belongs to all Americans." *Range* at 101, *citing Heller* at 580-581. The above includes individuals like Range and the Defendant with felony convictions.

[8] *Range* appears to divide the first part of the *Bruen* test into two, i.e., the person and the conduct. This motion will apply the *Bruen* test that way.

As part of the *Bruen* test, *Range* went on to discuss the phrase "law abiding, responsible citizens" and stated that the phrase "is as expansive as it is vague" and, as such, did not remove certain individuals, Range included, from "the people" as stated in the Second Amendment. *Range* then summarized its conclusion that Range was one of the persons covered by the Second Amendment, stating, "[i]n sum, we reject the Government's contention that only "law-abiding, responsible citizens" are counted among "the people" protected by the Second Amendment. *Heller* and its progeny lead us to conclude that Bryan Range remains among "the people" despite his 1995 false statement conviction." *Range* at 102 -103. This further confirms that *Range* concluded that the "the people" includes convicted felons like *Range* and the Defendant.

Range then went on to determine whether §922(g)(1) regulates Second Amendment conduct, and it quickly concluded that it did and stated:

> Range's request – to possess a rifle to hunt and a shotgun to defend himself at home – tracks the constitutional right as defined by *Heller*, 554 U.S. at 582 . . . So "the Second Amendment's plain text covers [Range's] conduct," and the Constitution presumptively protects that conduct."

Range at 103, *citing Bruen*, 142 S. Ct. at 2126.

Range then proceeded to the last step of the test and stated, ". . . we must determine whether the Government has justified applying §922(g)(1) to Range by demonstrating that [the regulation] is consistent with the Nation's historical tradition of firearm regulation." *Range* at 103, *citing Bruen* at 2130.

Range, like *Bruen,* reviewed the Government's arguments and evidence, claiming that the regulation was consistent with the Nation's historical tradition of firearm regulation. Similarly, like *Bruen*, *Range* also concluded that the Government did not establish that there was a historical tradition of firearm regulation analogous to the regulation in *Range, i.e.*, §922(g)(1).

In addition to *Bruen* and *Range*, other courts have also addressed this issue and found the regulation violated the Defendant's Second Amendment rights.

Recently, on August 9, 2023, the Court of Appeals for the Fifth Circuit decided *U.S. v. Daniels*, 2023 U.S. App. LEXIS 20870. *Daniels* involved a Defendant who was stopped pursuant to a traffic stop and was found to possess two firearms and multiple partially burned marijuana blunts. Daniels then admitted that he had been using marijuana since he graduated from high school and that he uses marijuana approximately 14 days a month. *Id.* at 3 – 4. As a result, Daniels was indicted with Unlawful Possession of a Firearm by a Person who is an Unlawful User of or Addicted to Drugs in violation of 18 U.S.C. §922(g)(3).[9] This case, like *Range,* also involved §922(g), albeit a different subsection. *Daniels,* following *Bruen*, applied the *Bruen* two-part test and concluded that §922(g)(3) violated Daniels' Second Amendment rights because the regulated conduct was covered by the text of the

[9] The Fifth Circuit in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023) also found that individuals accused under §922(g)(8) that deals with domestic violence had Second Amendment Rights.

Second Amendment (*Daniels* at 9 - 10) and because the Government did not establish that §922(g)(3) was consistent with the Nation's historical tradition of firearm regulation (*Daniels* at 13 - 33).

Last, while not a Court of Appeals case, *U.S. v. Jessie Bullock*, 18-CR-00165, also addressed the constitutionality of §922(g)(1). *Bullock* also followed *Bruen* and similarly concluded that §922(g)(1) was covered by the text of the Second Amendment and that the Government did not establish that §922(g)(1) was consistent with the Nation's historical tradition of firearm regulation.

At this point, the Defendant respectfully submits, as will be demonstrated below, that if the Court applies *Bruen* and *Range* to this case, the Court will also conclude that §922(g)(1), as applied to the Defendant, violates his Secon Amendment rights.

a. Is the Defendant a person within the meaning of "the people" in the Second Amendment?

Yes. *Range* involved a person who, like the Defendant, was convicted in Pennsylvania of a crime punishable by more than one year. The Court in *Range* concluded that "the people" in the Second Amendment applied to all citizens. This finding was made knowing that Range was a convicted felon in Pennsylvania. Thus, under *Bruen* and *Range,* the Defendant is a person covered by "the people" in the Second Amendment.

b. Is the Defendant's conduct, i.e., possession of a firearm, within the text of the Second Amendment?

Yes. The Defendant's possession of a firearm on February 11, 2021, is conduct covered by the Second Amendment, which guarantees the right to possess and carry weapons.

c. Does §922(g)(1) regulate Second Amendment conduct?

Yes. A law that prohibits a person from possessing a firearm regulates Second Amendment conduct.

d. Can the Government show that §922(g)(1) constitutes part of the Nation's historical tradition of firearm regulation?

No. Based on the evidence recently presented by the Government in *Range*, the Defendant submits that the Government cannot establish that §922(g)(1) constitutes part of the Nation's historical tradition of firearm regulation. Further, because the Government, under the *Bruen* test, has the burden to establish that §922(g)(1) constitutes part of the Nation's historical tradition of firearm regulation, this motion will not discuss this issue. It is respectfully submitted that it is more efficient for the Defendant to respond to the Government's position than for the Defendant to attempt to anticipate the Government's argument and evidence that §922(g)(1) is part of the Nation's historical tradition of firearm regulation. As such, the Defendant respectfully requests leave to reply to the Government's argument.

Therefore, at this point, it is respectfully submitted that under *Bruen* and *Range*, the §922(g)(1) charge, as applied to the Defendant's case, violates the Defendant's rights under the Second Amendment.

V. Ineffective Assistance of Counsel

The Sixth Amendment of the Constitution of the United States guarantees an accused the right to be represented by counsel during a criminal trial. Specifically, the relevant portion of the amendment reads, "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense." U.S. Const. amend. VI. The cases that have interpreted the assistance of counsel language have added the qualification that an accused is entitled to "effective" assistance of counsel. *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003); *see also Padilla v. Kentucky*, 130 S. Ct. 1473, 1480-81 (2010) (Sixth Amendment right to counsel is a right to effective assistance of counsel). To establish a claim of ineffective assistance of counsel, an accused must establish that (1) counsel's performance fell below an objective standard of reasonableness and (2) counsel's deficient performance prejudiced the Defendant. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). In evaluating an ineffectiveness claim, the Court must consider the totality of the circumstances. *Id.* at 690.

Here, on June 23, 2022, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). *Bruen* modified the

standard used to evaluate Second Amendment claims, which, as shown above, gave the Defendant an argument to dismiss his Indictment as unconstitutional. *Bruen* was decided almost eight months before the Defendant's trial began on February 14, 2023. However, trial counsel did not file a motion to dismiss raising this issue. Under the totality of the circumstances in this case, trial counsel's failure to file a Motion to Dismiss fell below an objective standard of reasonableness. There was no valid reason for trial counsel not to have filed a motion to dismiss, alleging that the Indictment violated the Defendant's rights under the Second Amendment. As shown above, the Second Amendment covers all citizens. The conduct in question, i.e., prohibiting felons from possessing a firearm, clearly falls within the plain text of the language of the Second Amendment. This means that under *Bruen and Range*, the Defendant's possession of the firearm was protected by the Second Amendment, and the only way in which he could have lost that protection was if the Government proved that § 922(g)(1) was consistent with the Nation's historical tradition of firearm regulation. Thus, the trial counsel's failure to file the Motion to Dismiss affected the outcome of the case. Last, please note that the Defendant was not convicted of another charge in this case. Considering the above, the record shows that trial counsel was ineffective.

VI. Motion to Dismiss

Rule 12(b)(1)[10] of the Federal Rules of Criminal Procedure permits a Defendant to raise any defense, objection, or request that the Court can determine without a trial on the merits in a pre-trial motion. A pre-trial motion challenging the constitutionality of §922(g)(1), the only charge in an Indictment, should have been filed. Further, the merits of the motion could have been decided without a trial. As such, It would be unfair for the Defendant to have to wait until he can file a Motion to Vacate, Set Aside or Correct the Sentence to pursue this issue. As such, the Court should permit the Defendant to file a Nunc Pro Tunc Motion to Dismiss.

VII. Motion for a New Trial

Rule 33 of the Federal Rules of Criminal Procedure allows the Defendant to file a Motion for a New Trial when "there is a serious danger that a miscarriage of justice has occurred." *United States v. Johnson*, 302 F.3d 139, 150 (3d Cir. 2002). However, this Circuit does not favor raising ineffective assistance of counsel claims in Motions for a New Trial. *See United States v. Alice Shu*, No. 2:19-cr-0678 (W.J.M.), 2022 U.S. Dist. LEXIS 233053, at *6-7 (D.N.J. Dec. 29, 2011) *citing United States v. Kennedy*, 354 F. App'x 632, 637 (3d Cir. 2009). Yet, despite this preference, the Third Circuit has stated that a district court can consider ineffective assistance of counsel claims in a motion for a new trial "[w]here the

[10] Fed. R. Crim. P. 12(b)(1).

record is sufficient to allow determination of ineffective assistance of counsel, [and] an evidentiary hearing to develop the facts is not needed." *See United States v. Thompson*, No. 3:22-cr-0002, 2023 U.S. Dist. LEXIS 12511, at *5-7 (D.V.I. July 20, 2023), *citing United States v. Headley*, 923 F.2d 1079, 1083 (3d Cir. 1991).

Here, it is submitted that it would be a miscarriage of justice, after *Bruen and Range*, not to address, as soon as possible, the constitutionality of §922(g)(1) as applied to the Defendant's case. Especially because the record is sufficient for the Court to determine whether trial counsel was ineffective. However, if the Court does not accept the Defendant's Nunc Pro Tunc Motion to Dismiss, the Motion for a New Trial is the most expeditious avenue for the Defendant to litigate this issue. If the Court accepts and grants the Motion for a New Trial, the Defendant can quickly file a Motion to Dismiss. If the Court does not, the Defendant will have to wait in jail until he can file a Motion to Vacate, Set Aside or Correct the Sentence.

CONCLUSION

For these reasons, the Defendant respectfully requests that this Court either grant the Motion to Dismiss or the Motion for a New Trial.

Respectfully,

/s/ José Luis Ongay

José Luis Ongay

Date: August 30, 2023

CERTIFICATE OF SERVICE

I certify that on this date, I served a true and correct copy of this motion upon AUSA MaryTeresa Soltis at MaryTeresa.Soltis@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: August 30, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Docket No.
v.	:	
	:	21-CR-00353
RAMOINE WHITE,	:	
Defendant.	:	

ORDER

Now this __ day of _____ 2023, it is ORDERED that Defendant's Nunc Pro Tunc Motion to Dismiss to the Indictment alleging the §922(g)(1), as applied, violates the Defendant's Second Amendment rights is unconstitutional, is GRANTED.

_____
J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Docket No.
v.	:	
	:	21-CR-00353
RAMOINE WHITE,	:	
Defendant.	:	

ORDER

Now this __ day of _____ 2023, it is ORDERED that Defendant's Motion for a New Trial alleging Ineffective Assistance of Counsel is GRANTED.

_____
J.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	**CRIMINAL NUMBER 21-353**
RAMOINE WHITE	:	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS INDICTMENT OR FOR A NEW TRIAL

Defendant Ramoine White, who was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1), has moved to dismiss the indictment or for a new trial (so that he may file a pretrial motion to dismiss asserting the same arguments raised in the present motion), asserting that the prosecution and his conviction stands in violation of his Second Amendment right to bear arms and that his trial counsel was ineffective for failing to raise this argument pretrial. His arguments are without merit.

I. BACKGROUND AND PROCEDURAL HISTORY

On February 15, 2023, a jury convicted the defendant of the sole count in the indictment, possession of a firearm by a felon, in violation of 18 U.S.C. § 922(g)(1). Thereafter, the defendant sought, and was granted, leave to file Rule 29 and 33 Motions *Nunc Pro Tunc.* This motion followed.

A. The Instant Offense.

On February 11, 2021, Philadelphia Police Officers who were part of a joint operation from the 16th, 18th, and 19th Districts were conducting surveillance at a porch located at 51st and Arch Streets in the City of Philadelphia due to repeated reports of drug activity and a recent shooting in the area. After observing what he believed to be hand to hand narcotics sales from that location and learning, from the subsequent stops of at least three individuals who left that location, that marijuana was being sold from that porch, Officer Barry Stewart directed his backup officers to go to the porch and secure it so that he could safely identify the individual he saw selling narcotics that evening.

Upon hearing the information that Officer Stewart relayed over the radio, the backup officers went to and stopped all the males on the porch. When everyone was secured and the males were brought down the steps by the various officers, Officer Stewart identified the seller as Bjorn Watson and arrested him. The males on the porch, other than the defendant, were identified; those who were in possession of marijuana were given citations and released; and those who did not have outstanding warrants or contraband in their possession were released.

Officer Mischel Matos was working with his partner in plain clothes and in an unmarked vehicle that evening. Officer Matos had stopped one of the three buyers discussed above at 51st and Chestnut Streets, a few blocks from the house at 5100

Arch Street. Officer Matos recovered marijuana from that buyer, radioed this information to Officer Stewart, and gave the buyer a citation and released him.

Officer Matos also responded to Officer Stewart's radio call to secure the porch at 5100 Arch Street at about 8:00 p.m. Officer Matos approached the defendant who, along with the other males on the porch, was wearing dark clothing. The defendant looked to Officer Matos to be surprised and as though he was going to run. As Officer Matos used his right hand to grab the defendant's left hand, he told him to drop the small cigar or cigarette that he was holding in his right hand. The defendant did not obey this command and took a puff from the cigarette such that another officer had to knock it from his hand. A few seconds later, the defendant moved the right side of his body away from Officer Matos, tucked his elbow close to his waist on his right side, and leaned forward "just enough to try to conceal something in his waist area." As the defendant bent forward, Officer Matos saw a bulge in the defendant's waist area. Officer Matos put his left hand on the bulge and felt a hard square object that he grabbed and believed to be a gun. He looked at the defendant and said: "I know what you have" and asked the defendant if he had a permit. The defendant looked at Officer Matos and put his head down. A few seconds later, Officer Matos reached into the defendant's waistband, said "gun, gun," and retrieved a handgun, which was loaded with fourteen live rounds. Additional Philadelphia Police Officers helping to secure the porch that evening saw

Officer Matos retrieve the firearm from the defendant's waistband.

The firearm was a Smith & Wesson, M&P .40 caliber handgun with serial number DXB9296. It was loaded with 14 live .357 Sig Speer rounds. It was placed on Philadelphia Police Property Receipt #3489058.

After Officer Matos announced that he had recovered a gun, there was a commotion involving other individuals on the porch to the right of Officer Matos. Officer Travis came to assist Officer Matos in placing the defendant in handcuffs. He and Officer Travis then moved the defendant off the porch in part because of the commotion that had just occurred.

Officer Matos went to a police vehicle and used the computer inside to check whether the defendant had a permit to carry a firearm. Upon learning that he did not, Officer Matos arrested the defendant and a search revealed that he had three clear bags of marijuana on his person, which Officer Matos recovered.[1]

Officers from the Firearms Identification Unit examined the firearm recovered from the defendant. It was test-fired it and found to be operable, and the defendant stipulated to these facts at the time of trial.

[1] The Philadelphia Police Department's Office of Forensic Science analyzed the suspected narcotics recovered that evening. All substances tested positive for marijuana. The government did not introduce the marijuana recovered at trial.

Special Agent Dominic Raguz of the Bureau of Alcohol, Tobacco, Firearms and Explosives did an interstate nexus analysis on that same firearm. He determined that the firearm was manufactured in Massachusetts and was received and/or possessed in Pennsylvania. The defendant stipulated to these facts at trial as well.

Certified records from the Philadelphia Court of Common Pleas, to which the defendant stipulated at the time of trial, demonstrate that the defendant had a prior felony conviction and was aware – at the time he possessed the firearm at issue here - that he had been convicted of a crime punishable by more than one year in prison.

B. Prior Criminal Convictions.

The defendant has several prior convictions, all of which are in the Philadelphia Court of Common Pleas, and which are as follows. On June 15, 2009, he was convicted of the felony offenses of conspiracy to possess with intent to distribute controlled substances in violation of 18 Pa. C.S. § 903 § A1 and possession with intent to distribute controlled substances in violation of 35 Pa.C.S. § 780-13 § A30, following an arrest on April 15, 2006, and was sentenced to five to ten years' imprisonment. That same day, he was convicted of the felony offense of carrying a firearm without a license in violation of 18 Pa. C.S. § 6106 § A1, following an arrest on September 1, 2006, during which officers recovered, among other things, a Beretta handgun and 16 live rounds of ammunition and was

sentenced to one to two years' imprisonment.[2] He also a prior felony conviction for aggravated assault in violation of 18 Pa. C.S. § 2702 §A, stemming from a May 24, 2007 arrest during which he punched and bit a police officer and for which he was sentenced to one to two years' imprisonment.[3] Finally, he has two prior convictions for possession of controlled substances, one of which he received a sentence of twelve months' probation and the other for which he received no further penalty.

The prior conviction supporting the charge for which the defendant was convicted in this case is his 2009 conviction for conspiracy to possess with intent to distribute controlled substances in violation of 18 Pa. C.S. § 903 § A1 and possession with intent to distribute controlled substances in violation of 35 Pa.C.S. § 780-13 § A30 for which he was sentenced to five to ten years in prison. At trial, the defendant entered into the following stipulation with respect to this sentence:

> Prior to February 11, 2021, defendant RAMOINE WHITE had been convicted in a court of the Commonwealth of Pennsylvania of a crime punishable by imprisonment for a term exceeding one year, that is, he had been convicted of a felony within the meaning of Title 18, United States Code, Section 922(g)(1). Further, at the time of the offense charged in this matter that allegedly occurred on or about February 11, 2021, defendant

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[2] The defendant was also convicted of the misdemeanor offenses of carrying a firearm in public, resisting arrest and possession of a controlled substance in connection with that case.

[3] The defendant was also convicted of the misdemeanor offenses of simple assault, reckless endangerment and resisting arrest in connection with that case.

> RAMOINE WHITE knew that he had previously been convicted of a crime punishable by imprisonment for a term exceeding one year. Government Exhibit 12, the certified copy of conviction, is admitted into evidence in support of this stipulated fact.

See Gov't Trial Ex. 20 (Stipulations) and Ex. 12 attached hereto as Exhibit "A."

C. Charge.

On September 7, 2021, a grand jury returned a one-count Indictment alleging that defendant Ramoine White, knowing he had been previously convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly possessed a firearm in and affecting interstate commerce, in violation of Title 18, United States Code, Section 922(g)(1). The indictment stated that White possessed a "Smith & Wesson, M&P40, .40 caliber semi-automatic pistol, bearing serial number DXB9296, loaded with 14 live rounds of .357 Sig Speer ammunition." On August 30, 2023, White filed the motion to dismiss the indictment to which the government responds here.

II. DISCUSSION

The defendant's motion is based on the recent decision in *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (en banc), which postdates the trial in this case, and which held that the felon-in-possession statute may not constitutionally be applied to bar firearm possession by the plaintiff, who was previously convicted of making a false statement to obtain food stamps. The government maintains that *Range*, which is the only circuit court decision to conclude that the government did

not carry its burden to demonstrate Section 922(g)(1)'s constitutionality as applied to a person with a felony conviction, was wrongly decided and preserves all arguments in support of that position.[4] But *Range* is distinguishable from this case and does not help the defendant in any event.

The Third Circuit emphasized that its decision was a "narrow one," applicable only to the exceptional circumstances of Bryan Range, who filed a civil

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[4] In *United States v. Jackson*, 69 F.4th 495 (8th Cir. 2023), the Eighth Circuit recently held that § 922(g) is valid as applied to a person who previously committed any felony. In *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), the court held that 18 U.S.C. § 922(g)(8), that prohibits the possession of firearms by someone subject to a domestic violence restraining order, is constitutionally invalid. The *Rahimi* court, however, was careful to distinguish that provision, that rests only on a civil finding, from a felony conviction that traditionally has permitted firearm dispossession. *See id.* at 452. And further, the Supreme Court promptly granted the government's petition for certiorari to review the decision. *United States v. Rahimi*, -- U.S. --, 2023 WL 4278450 (June 30, 2023).

Moreover, as will be discussed, *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), abrogated the second "means-end scrutiny" step of the Second Amendment framework previously applied by many courts of appeals, but notably, many courts before *Bruen* had rejected challenges to felon-possession prohibitions without relying on means-end scrutiny. The D.C. Circuit "look[ed] to tradition and history" to conclude that "those convicted of felonies are not among those entitled to possess arms," "reject[ing] the argument that non-dangerous felons have a right to bear arms." *Medina v. Whitaker*, 913 F.3d 152, 157-61 (D.C. Cir. 2019). *See also, e.g., United States v. Rozier*, 598 F.3d 768, 771 (11th Cir. 2010) (per curiam); *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010); *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009). The same is true of scores of district court decisions, both before and after *Bruen*, that have upheld § 922(g)(1) in the face of Second Amendment challenges. *See, e.g., United States v. Hampton*, 2023 WL 3934546, at *10-12 (S.D.N.Y. June 9, 2023).

lawsuit and vindicated his right to possess a firearm for self-defense and recreational purposes notwithstanding a single decades-old conviction for making a false statement to obtain food stamps. *Id.* at 106; *see also id.* at 110 (Ambro, J., concurring) (explaining that the *Range* majority opinion "speaks only to [Range's] situation, and not to those of murderers, thieves, sex offenders, domestic abusers, and the like"); *id.* at 111 (Ambro, J., concurring) (explaining that Range "stands apart from most other individuals subject to § 922(g)(1)"). Defendant White, whose multiple previous convictions involved dangerous conduct and/or repeated drug dealing, is manifestly not like Range. The prohibition of firearm or ammunition possession by a convicted offender such as this defendant passes constitutional muster.[5]

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

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[5] For convenience, the government refers to the defendant as a previously convicted "felon" subject to § 922(g). His additional previous convictions for violation of 18 Pa. Cons. Stat. §§ 2071 and 2705 and under 18 Pa. Cons. Stat. §§ 5104 were for "misdemeanors of the second degree," punishable by up to two years' imprisonment. 18 Cons. Stat. § 1104(1). For purposes of § 922(g)(1), Congress accounted for variations in state-law labels by adopting a uniform federal definition of "crime punishable by imprisonment for a term exceeding one year," excluding "any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." 18 U.S.C. §

continued . . .

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court stated that the Amendment protects the "law-abiding, responsible" citizen's possession of arms for the "lawful purpose of self-defense." *Id.* at 630, 635; *see also McDonald v. City of Chicago*, 561 U.S. 742, 767-68 ("[W]e concluded [in *Heller* that] citizens must be permitted to 'use [handguns] for the core lawful purpose of self-defense.'"). Later, in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), the Court held that the Second Amendment further protects the right of "ordinary, law-abiding citizens" to "carry a handgun for self-defense outside the home." *Id.* at 2122.

Following the decision in *Heller*, the courts of appeals "coalesced around a 'two-step' framework for analyzing Second Amendment challenges." *Bruen*, 142 S. Ct. at 2125, 2127 n.4 (collecting cases). Under the first step, courts engaged in a historical study to determine whether the challenged law burdens conduct protected by the Second Amendment. Second, if so, courts applied means-end scrutiny to assess the propriety of a particular restriction.

921(a)(20). Thus, similarly situated individuals are generally treated similarly, whether they were convicted in Pennsylvania (where a variety of incontestably serious offenses are called first-degree misdemeanors, *see Holloway v. Attorney Gen.*, 948 F.3d 164, 175 (3d Cir. 2020)), in New Jersey (where crimes are divided by class without the labels "misdemeanor" and "felony," *id.* at 174-75), or under the laws of the many other jurisdictions that follow the more common practice of labeling crimes felonies when they are punishable by more than one year of imprisonment, *see, e.g.*, 18 U.S.C. § 3559(a)(5).

Bruen rejected this approach as involving "one step too many." 142 S. Ct. at 2127. It stated that the first inquiry, regarding historical pedigree, is "broadly consistent with *Heller*." *Id.* It held that a restriction on firearm possession is valid only if "it comported with history and tradition." *Id.* at 2128. The Court stated:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, . . . the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 2126 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961).[6]

In the initial inquiry, the Court must assess whether the defendant is "part of 'the people' whom the Second Amendment protects," whether the weapon at issue is "'in common use' today for self-defense," and whether the "proposed course of

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[6] *Bruen* struck down a New York law that required residents to demonstrate "proper cause" to obtain a license to carry a handgun outside the home on the ground that the law was not supported by "th[e] Nation's historical tradition of firearm regulation." *Id.* at 2122, 2126. The defendant faults his trial counsel for failing to file a motion to dismiss the indictment based on *Bruen*. *Bruen*, however, was limited in application to "ordinary, law-abiding citizens" and their right to "carry a handgun for self-defense outside the home." 142 S. Ct. at 2122. It was not until *Range*, which postdated that trial, that the determination was made "the people" in the constitutional text refers to all Americans and not only law-abiding persons. *Range*, 69 F.4th at 101. *See also United States v. O'Connor*, 2023 WL 5542087, at *2 (W.D. Pa. Aug. 29, 2023) (noting that "[n]umerous decisions rejected challenges to Section 922(g)(1) after the Supreme Court's decision in *Bruen*"). As such, the defendant cannot show, that a pretrial *Bruen* motion, if made, would have resulted in a different outcome.

conduct" falls within the Second Amendment. *Id.* at 2134-35. If so, the Court then turns to the historical inquiry.

Under *Range*, the defendant is one of "the people" protected by the Second Amendment. The Third Circuit majority held that "the people" in the constitutional text refers to all Americans and not only law-abiding persons. *Range*, 69 F.4th at 101. The Court agreed with a statement of then-Judge Barrett that "all people have the right to keep and bear arms," though the legislature may constitutionally "strip certain groups of that right." *Id.* at 102 (quoting *Kanter v. Barr*, 919 F.3d 437, 452 (7th Cir. 2019) (Barrett, J., dissenting)).

The defendant's challenge, however, fails for two, independent reasons: (1) he does not maintain that he possessed the gun and ammunition for a lawful purpose; and (2) even assuming *Range* was correctly decided, the bar on firearm possession for a felon such as the defendant is constitutionally permissible based on the historical test outlined in *Bruen*.

A. The Second Amendment Does Not Apply Because the Defendant Does Not Maintain That He Possessed a Firearm for a Lawful Purpose.

As noted above, the Supreme Court has made clear that the core purpose of the Second Amendment is to protect the right to maintain arms to use in self-defense. *See Bruen*, 142 S. Ct. at 2132 ("As we stated in *Heller* and repeated in *McDonald*, 'individual self-defense is "the *central component*" of the Second

Amendment right.'") (citations omitted; emphasis in original).[7] Certainly, in contrast, the government may disarm a person who possesses a firearm for an illegal purpose, say, a person who arms himself with intent to commit a robbery or abet an illegal drug transaction. *Cf. United States v. Alaniz*, 69 F.4th 1124, 1127-30 (9th Cir. 2023) (holding that a sentencing enhancement for possession of a dangerous weapon in relation to a felony drug offense is constitutional, as there is a "longstanding tradition of enhancing a defendant's sentence for the increased risk of violence created by mere possession of a firearm during the commission of certain crimes.").

In this matter, the firearm at issue was recovered from the defendant's waistband and after he was stopped on a crowded porch that was not his residence and where drug sales were taking place. Obviously, the Smith & Wesson, M&P40,

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[7] The limited extent of the decisions in *Heller* and *Bruen* is apparent in *Bruen*'s first paragraph:

> In *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), we recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with *Heller* and *McDonald*, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

Bruen, 142 S. Ct. at 2122.

.40 caliber semi-automatic pistol loaded with 14 live rounds of ammunition, which the defendant concealed in his waistband and took deliberate actions to disguise, was not maintained or readily available for deer hunting or home/self-defense. Because the defendant has not argued that he had a lawful reason for possessing the firearm, his challenge should be denied.

B. Application of Section 922(g)(1) to an Offender Such as the Defendant is Permitted Under the Second Amendment.

A bar on the defendant's possession of a firearm and ammunition as a felon is permitted under the Second Amendment based on historical practice. The narrow permission carved in *Range* does not apply here.

As stated earlier, *Bruen* established that where, as here, a person is within the group protected by the Second Amendment, the government may justify a restriction on firearm possession "by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 142 S. Ct. at 2130. The government meets this test by identifying a historical "analogue" for the current restriction, dating to the time of the founding. Notably, the analogue need not be a "historical twin." *Id.* at 2133. The question, rather, is "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." *Id.* at 2133.

There is clear historical support for restricting the possession of firearms by persons who, like the defendant, previously committed dangerous felonies. Indeed,

in affirming the right of "law-abiding, responsible citizens" to keep firearms for self-defense, *Heller* clarified that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited," 554 U.S. at 626, and that "nothing in [its] opinion should be taken to cast doubt" on certain "presumptively lawful regulatory measures," such as "longstanding prohibitions on the possession of firearms by felon," *id.* at 626-27 & n.26. Consistently, the Supreme Court in *Bruen* repeatedly emphasized "law-abidingness" as a limitation on the Second Amendment's reach. 142 S. Ct. 2111, 2122, 2125, 2131, 2133-34, 2135 n.8, 2138 n.9, 2150, 2156 (2022). And two concurring opinions in *Bruen* reaffirmed *Heller*'s statements that felon dispossession statutes are longstanding and presumptively lawful. *See Bruen*, 142 S. Ct. at 2157 (Alito, J., concurring) (noting that the decision does not "disturb[] anything that [the Court] said in *Heller* . . . about restrictions that may be imposed on the carrying of guns"); *see also id.* at 2162 (Kavanaugh, J., concurring) (emphasizing that "the Second Amendment allows a 'variety' of gun regulations," and *Bruen* did not "cast doubt on longstanding prohibitions on the possession of firearms by felons") (citation omitted).[8]

[8] The suggestion that the Supreme Court's list in *Heller* of "presumptively lawful" regulations, including Section 922(g)(1), is dicta, is unavailing. The Third Circuit specifically concluded that the guidance was "not dicta," concluding, "[a]s such, we are bound by it." *United States v. Barton*, 633 F.3d 168, 171-72 (3d Cir. 2011) (overruled on other grounds by *Binderup v. Att'y Gen.*, 836 F.3d 336, 349

continued . . .

The Second Amendment "codified a right 'inherited from our English ancestors.'" *Heller*, 554 U.S. at 599 (citation omitted). In England, a 17th century statute empowered the government to "seize all arms in the custody or possession of any person" who was "judge[d] dangerous to the Peace of the Kingdom." Militia Act 1662, 13 & 14 Car. 2, c. 3, § 13. The use of that statute "continued unabated" after the adoption of the 1689 English Bill of Rights, which expressly guaranteed the right to keep and bear arms. Diarmuid F. O'Scannlain, "Glorious Revolution to American Revolution: The English Origin of the Right to Keep and Bear Arms," 95 Notre Dame L. Rev. 397, 405 (2019).

Colonial and early state legislatures likewise disarmed individuals who "posed a potential danger" to others. *NRA v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 200 (5th Cir. 2012). Some early laws categorically disarmed entire groups deemed dangerous or untrustworthy, such as those who refused to swear allegiance. *Id.*; *see, e.g.*, Act of May 1, 1776, ch. 21, § 1, 1776 Mass. Acts 479; Act of June 13, 1777, ch. 21, § 4, 1777 Pa. Laws 63; Act of May 28, 1777, ch. 3 (Va.), reprinted in 9 William Waller Hening, The Statutes

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(3d Cir. 2016) (en banc)). The Court of Appeals went on to state: "922(g)(1) is one of *Heller's* enumerated exceptions." 633 F.3d at 172 n. 2; *see also id* at 172 ("[B]ecause *Heller* requires that we 'presume,' under most circumstances, that felon dispossession statutes regulate conduct which is unprotected by the Second Amendment, [defendant's] facial challenge must fail.") (citations omitted). *Barton* remains binding precedent on this point today.

at Large; Being a Collection of all the Laws of Virginia from the First Session of the Legislature, in the Year 1619, at 281-83 (1821). Other laws called for case-by-case judgments about dangerousness. *See, e.g.*, Act for Constituting a Council of Safety, ch. 40, § 20, 1777 N.J. Laws 90 (empowering officials to "take from such Persons as they shall judge disaffected and dangerous to the present Government, all the Arms, Accoutrements and Ammunition which they own or possess"). Still other laws disarmed individuals who had demonstrated their dangerousness by engaging in particular types of conduct, such as carrying arms in a manner that spreads fear or terror among the people. *See, e.g.*, Act for the Punishing of Criminal Offenders, 1692 Mass. Laws 11-12; Act for the Punishing Criminal Offenders, 1696-1701 N.H. Laws 15.

Even the *Range* court recognized that "Founding-era governments disarmed groups they distrusted," such as "Loyalists" and religious dissenters. 69 F.4th at 105. These were people "who, the political majority believed, would threaten the orderly functioning of society if they were armed." *Id.* at 111 (Ambro, J., concurring). The group of persons convicted of dangerous crimes, such as felony drug trafficking or possessing a firearm while trafficking drugs, would qualify as "distrusted" by society, and thus may be disarmed consistent with the Second Amendment.

Precursors to the Second Amendment proposed in the state ratifying conventions likewise suggest that legislatures may disarm certain categories of individuals, including those who are dangerous. A proposal presented at the Pennsylvania ratifying convention, for instance, stated that "no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals." 2 Bernard Schwartz, The Bill of Rights: A Documentary History 665 (1971) (emphasis added). A proposal presented by Samuel Adams at the Massachusetts ratifying convention likewise provided that Congress may not "prevent the people of the United States, who are peaceable citizens, from keeping their own arms." *Id.* at 681 (emphasis added).

Post-ratification practice points in the same direction. In the mid-19th century, many States enacted laws requiring "those threatening to do harm" to "post bond before carrying weapons in public." *Bruen*, 142 S. Ct. at 2148; *see, e.g.*, Mass. Rev. Stat. ch. 134, § 16, 750 (1836); Me. Rev. Stat. ch. 169, § 16, 709 (1840); Mich. Rev. Stat. ch. 162, § 16, 162 (1846). Those statutes show that individuals who were "reasonably accused of intending to injure another or breach the peace" could properly be subject to firearm restrictions that did not apply to others. *Bruen*, 142 S. Ct. at 2148-49. Or as one early scholar wrote, the government may properly restrict a person's right to carry firearms when there is "just reason to fear that he purposes to make an unlawful use of them." William

Rawle, A View of the Constitution of the United States of America 126 (2d ed. 1829).

The understanding that dangerous individuals could be disarmed persisted after the Civil War. In 1866, for example, a federal Reconstruction order applicable to South Carolina provided that the "rights of all loyal and well-disposed inhabitants to bear arms will not be infringed," but that "no disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms." Cong. Globe, 39th Cong., 1st Sess. 908-909 (1866). A circular issued by the Freedman's Bureau at around the same time explained that a person "may be disarmed if convicted of making an improper or dangerous use of weapons." *Bruen*, 142 S. Ct. at 2152 (citation omitted).

In keeping with that history, the Supreme Court explained in *Heller* that the right to keep and bear arms belongs only to "law-abiding, responsible citizens." 554 U.S. at 635. And in *Bruen*, the Court stated that the Second Amendment protects the right of "an ordinary, law-abiding citizen" to possess and carry arms for self-defense. 142 S. Ct. at 2122. Those descriptions suggest that the government may properly disarm citizens who are dangerous, irresponsible, or unlikely to abide by the law.[9]

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[9] Consistently, felons also have historically been excluded from exercising

continued . . .

The Eighth Circuit, presenting a historical review with even greater detail,[10] thus recently concluded:

> In sum, we conclude that legislatures traditionally employed status-based restrictions to disqualify categories of persons from possessing firearms. Whether those actions are best characterized as restrictions on persons who deviated from legal norms or persons who presented an unacceptable risk of dangerousness, Congress acted within the historical tradition when it enacted § 922(g)(1) and the prohibition on possession of firearms by felons. Consistent with the Supreme Court's assurances that recent decisions on the Second Amendment cast no doubt on the constitutionality of laws prohibiting the possession of firearms by felons, we conclude that the statute is constitutional as applied to Jackson.

United States v. Jackson, 69 F.4th 495, 505-06 (8th Cir. 2023).[11]

In short, the defendant's stunning suggestion that any felon may possess a firearm at any time is plainly without historical or legal foundation. And accordingly, the Third Circuit majority in *Range* is appropriately taken at its word, that its decision "is a narrow one," holding only that there is no history or tradition

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other vital rights, including the right to vote, hold public office, and serve on juries. Akhil Reed Amar, The Bill of Rights 48 (1998).

[10] In dissent in *Range*, Judge Krause also presented an exhaustive, scholarly account of the pertinent history of bans on firearm possession by felons and other dangerous persons. *Range*, 69 F.4th at 120-28.

[11] In *Jackson*, the defendant's earlier convictions were for sale of a controlled substance. His possession of a firearm occurred over three years after his release from state prison for the second of his convictions, and after he completed parole. *See Jackson*, 69 F.4th at 498.

that supports "depriving people like Range of their firearms." *Range*, 69 F.4th at 106. To recount, Range incurred a single conviction over 25 years earlier, when he was "earning between $9.00 and $9.50 an hour," and his wife "prepared an application for food stamps that understated Range's income, which she and Range signed," leading to a sentence of three years' probation. *Id.* at 98.[12]

Defendant White is unquestionably not "like Range." As set forth above, White has a series of prior felony convictions involving distribution and assault and the prior conviction anchoring the charge – and to which White stipulated - here was for conspiracy to distribute and distribution of controlled substance, which earned him a sentence of five to ten years' imprisonment. It is axiomatic that "drugs and guns are a dangerous combination," *Smith v. United States*, 508 U.S. 223, 240 (1993); *see, e.g.*, *United States v. Jones*, 900 F.3d 440, 449 (7th Cir. 2018), such that those previously convicted of felony drug crimes may be disarmed. Guns are, indeed, well accepted "'tools of the trade' for drug dealers, especially in large-scale transactions." *United States v. Bellitti*, 45 F. App'x 134, 136 (3d Cir. 2002) (not precedential) (quoting *United States v. Martinez*, 938 F.2d 1078, 1083-84 (10th Cir. 1991)). The combination of firearms and drug trafficking

[12] Likewise, in *Bruen*, the petitioners were law-abiding citizens who simply wanted to possess a weapon for self-defense, and challenged New York's requirement that they set forth a "special need." *Bruen*, 142 S. Ct. at 2125.

itself increases the risk of violence and poses a particularly virulent threat to public safety. *United States v. Mosqueda*, 2017 WL 5157847, at *4 (W.D. Pa. Nov. 7, 2017) ("The combination of drugs and guns constitutes a very serious danger to the community."). Thus, even under *Range*, a person like the defendant who has committed previous drug trafficking offenses is the kind of dangerous person who has historically been disarmed: convicted drug dealers would "threaten the orderly functioning of society if they were armed." 69 F.4th at 111 (Ambro, J., concurring); *see Jackson*, 69 F.4th at 498, 501 (affirming district court's holding that "§ 922(g)(1) is not unconstitutional as applied to [a non-violent drug offender] based on his particular felony convictions" for drug trafficking).[13]

The defendant's reliance on the Fifth Circuit's recent decision in *United States v. Daniels* is misplaced. There, the court addressed a conviction for possession of a firearm by an unlawful user of a controlled substance in violation of 18 U.S.C. 922(g)(3) where there was no evidence that the defendant was intoxicated at the time of his arrest or when he had last used controlled substances.

[13] The defendant also was convicted of the felony of carrying a firearm without a license. *See* 18 Pa. Cons. Stat. § 6106(a)(1). That conviction shows that he cannot be trusted to obey firearm regulations designed to protect public safety, and thus that he falls into the historical group of people who "may be disarmed if convicted of making an improper or dangerous use of weapons." *Bruen*, 142 S. Ct. at 2152.

United States v. Daniels, 77 4th 337, 339 (5th Cir. 2023). The court held that history and tradition did "not justify disarming a sober citizen based exclusively on his past drug use." *Id.* at 340. The facts here stand in stark contrast to *Daniels* in that the defendant was charged and convicted for his possession of a firearm as a convicted felon – not an unlawful drug user and the evidence of his possession of that firearm and prior conviction - to which he stipulated – was overwhelming.

In sum, barring the defendant's future possession of firearms is squarely "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen*, 142 S. Ct. at 2127.[14]

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[14] At this time, as stated earlier, *Range* stands alone among appellate court decisions in finding § 922(g)(1) unenforceable, and only with respect to one "narrow" application. And moreover, as mentioned, there are approximately 200 district court decisions that have upheld the application of § 922(g)(1) in recent years to any felony.

Nationally, there are very few exceptions among district court decisions dissenting from this view. One is *United States v. Bullock*, 2023 WL 4232309 (S.D. Miss. June 28, 2023), a decision on which the defendant relies, which held § 922(g)(1) unconstitutional as applied to a person who committed aggravated assault and manslaughter 26 years before his alleged possession of a firearm. The court flatly determined that there was no historical tradition of firearm disentitlement as to felons who wish to keep a firearm in the home for self-defense. That solitary decision is wrong, for the reasons explained at length here. Notably, the court in *Bullock* observed that the government there submitted only a very short brief, *id.* at *29 (referring to the government's "three-and-a-half page response"), which in fact did not set forth the full history of felon dispossession explained here. Moreover, *Bullock* cannot prevail in the Third Circuit, where, as noted, binding precedent in *Barton* holds that the Supreme Court's guidance in support of felon

continued . . .

dispossession is controlling. In the Fifth Circuit, the Court of Appeals held that the Supreme Court's statements are only dicta, *United States v. Scroggins*, 599 F.3d 433, 451 (5th Cir. 2010), and *Bullock* relied on that, at *18. That conclusion cannot be applied in this Circuit. (*Bullock* stated that the Third Circuit in *Range* rejected as dicta the Supreme Court's earlier endorsement of felon dispossession laws as presumptively valid, citing *Range*, 69 F.4th at 101, but that is not accurate; the passage in *Range* only discussed whether the protection of the Second Amendment is limited to "law-abiding persons," not the Supreme Court's more specific statements about the presumptive validity of the application of felon dispossession laws.) And finally, *Bullock* is not applicable to the defendant here for the reasons stated earlier, that is, he cannot show that his purpose in possessing a firearm was for self-defense in his home.

Another dissenting opinion is *United States v. Quailes*, 2023 WL 5401733 (M.D. Pa. Aug. 22, 2023), where the court rejected the government's arguments presented here, and ordered dismissal of a 922(g) charge against a person who had four recent prior convictions for felony drug trafficking, and was on state parole at the time of the charged firearm offense. And, in *United States v. Harper,* the same judge who decided *Quailes* reached a similar conclusion as to a defendant with at least thirteen prior felony convictions some of which included multiple armed robberies and drug trafficking. 2023 WL 5672311 (M.D. Pa. Sept. 1, 2023). The government disagrees with these extreme positions for all the reasons stated here. Of note, in *Quailes,* the court agreed with the government that the defendant was "manifestly not like Range," *id.* at *7, yet still found his conduct constitutionally protected, in an opinion that might if sustained authorize firearm possession by just about any convicted felon. The court's reasoning is difficult to discern, apart from a broad and incorrect rejection of the notion that historic examples of disarmament of dangerous individuals are sufficient to justify a modern bar on firearm possession by convicted dangerous felons.

Other statements by the *Quailes* and *Harper* court are not persuasive. The court declined, for instance, to require the defendant to attest that his firearm possession was for a purpose protected by the Second Amendment, stating that would amount to an admission of guilt. But as stated earlier, it is entirely appropriate to require such a statement in support of an as-applied challenge, that then would not be admissible in the government's case. The court also mentioned the fact that Quailes and Harper were on state parole, but other than confirming

continued . . .

For all these reasons, the defendant's conduct is not protected by the Second Amendment, and his motion to dismiss the indictment should be denied.

C. The Defendant's Other Arguments Are Without Merit.

The defendant seeks to raise the same arguments based on the *Range* decision via a "Nunc Pro Tunc Motion to Dismiss" or a motion for a new trial under Rule 33 of the Federal Rules of Criminal Procedure based upon ineffective assistance of counsel. Def. Mot, at p. 14. The defendant's arguments fail for the reasons stated above regardless of how he titles the motion raising them.

The defendant's claim of ineffective assistance of counsel fails for two additional reasons. First, the claim generally is not ripe at this stage of the

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that these defendants remained among the "people" addressed in the Second Amendment (an undisputed proposition), did not address how it could be unconstitutional to deprive such an offender of a firearm at this time. The government is presently assessing whether to present an appeal of these district court decisions, that stand in grievous conflict with so many others.

In this district, since *Range* was decided, one of numerous motions to dismiss has been resolved. In *United States v. Tyquan Atkinson*, No. 23-99, the defendant moved to dismiss a 922(g) charge based on *Range*. His prior felony convictions were for making a prohibited weapon, in violation of 18 Pa. Cons. Stat. § 908, and introducing a weapon for purposes of escape, in violation of 18 Pa. Cons. Stat. § 5122. On August 3, 2023, Judge Savage summarily denied the motion to dismiss, without opinion. *See also United States v. Ames,* 2023 WL 5538073, at *2-3 (E.D. Pa. Aug. 28, 2023) (J. Kenney) (denying motion to dismiss indictment charging a violation of Section 922(g) and finding that the statute is "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms" and is constitutional as applied to the defendant who, unlike Range, had prior convictions for robbery and aggravated assault)

proceedings where the defendant has not yet been sentenced. *See United States v. Kennedy,* 354 Fed. App'x. 632, 637 (3d Cir. 2009) ("Rarely, if ever, should an ineffectiveness of counsel claim be decided in a motion for a new trial or on direct appeal"); *United States v. Thornton*, 327 F.3d 268, 271 (3d Cir. 2003) ("It has been long the practice of this court to defer the issue of ineffectiveness of trial counsel to a collateral attack"); *United States v. DeRawal*, 10 F.3d 100, 105 (3d Cir. 1993) (quoting *United States v. Ugalde*, 861 F.2d 802, 809 (5th Cir. 1988)) (noting that a collateral attack is better suited "to accommodate the interests in finality and fairness with respect to ineffective assistance of counsel claims"). Second, and alternatively, the defendant cannot demonstrate that his trial counsel's failure to anticipate the Third Circuit's *Range* decision and/or file a motion raising the meritless arguments discussed above fell below an objective standard of reasonableness or that he suffered prejudice given the inapplicability of *Range* and the overwhelming evidence supporting his conviction. *See Strickland v. Washington,* 466 U.S. 668, 687-88 (1984).

III. CONCLUSION.

For these reasons, the defendant's motion to dismiss the indictment or for a new trial should be denied.

Respectfully yours,

JACQUELINE C. ROMERO
United States Attorney

/s MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Government's Response In Opposition to the Defendant's Motion to Dismiss has been served on this date by electronic filing on counsel of record via the Court's electronic filing system.

/s MaryTeresa Soltis
MARYTERESA SOLTIS
Assistant United States Attorney

Dated: September 13, 2023.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	Docket No.
v.	:	
	:	21-CR-00353
RAMOINE WHITE,	:	
Defendant.	:	

DEFENDANT'S REPLY

Now Comes the Defendant and Replies to the Government's Response as follows:

The Government's Response states that the Defendant's Post Verdict Motion should be denied because: 1) *Range v. Attorney General,* 69 F.4th 96 (3rd Cir. 2023) was incorrectly decided, 2) the Defendant did not maintain that he possessed the gun and ammunition for a lawful purpose, and 3) even assuming *Range* was correctly decided, the bar on firearm possession for a felon such as the Defendant is constitutionally permissible based on the historical test outlined in *Bruen.* However, before discussing the Government's response, the Reply will discuss the Defendant's criminal history and the § 922(g)(1) charge.

The Defendant's Criminal History

The Defendant does have several criminal convictions. These convictions are fully discussed in the PSR at ¶¶ 28 to 33. The conviction used for the § 922(g)(1) charge involves the 2009 conviction for the Conspiracy to Possess with

Intent to Distribute a Controlled Substance and Possession with Intent to Distribute a Controlled Substance. The Controlled Substance involved was 149 grams of Marijuana. The Defendant was sentenced to five to ten years. While the Defendant does not deny his prior criminal history, the Defendant respectfully submits that only this conviction is the one that was the basis for the § 922(g)(1) charge, not the Defendant's entire criminal history. The Indictment only alleged one prior felony conviction.

Section 922(g)(1), Felon in Possession of a Firearm

Section 922(g)(1) has two versions. The initial version that was enacted in 1938 prohibited those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary but extended to both felons and misdemeanants convicted of qualifying offenses from possessing a firearm. The current version of § 922(g)(1) which was enacted in 1961 prohibits individuals convicted of crimes punishable by more than one year of imprisonment from possessing firearms. This offense is much broader and is not limited to persons convicted of violent offenses. Generally, any offense, regardless of the conduct involved, where the potential sentence exceeds one year, can be the basis of a § 922(g)(1) charge.

Range v. Attorney General was Incorrectly Decided

The Government's position that *Range v. AG United States*, 69 F.4th 96 (3d Cir. 2023) was decided incorrectly does not establish that § 922(g)(1) does not violate the Defendant's Second Amendment rights. As such, this Reply will not address this statement. Further, *Range* is binding precedent until it is overruled by the Third Circuit or the Supreme Court.

The Defendant Did Not Allege that He Possessed the Firearm and Ammunition for a Lawful Purpose

The Government argues that to be protected by the Second Amendment, a Defendant must maintain that he possessed the firearm for a lawful purpose. To satisfy the Government's requirement that the Defendant must maintain that he possessed the firearm for a lawful purpose requires the Defendant to admit that he possessed the firearm. This is a confession since the crime is the possession of a firearm by a felon. This forces the Defendant to make an inculpatory statement in violation of his Fifth Amendment rights. Further, the possession of a firearm is the very conduct covered by the plain text of the Second Amendment. Nothing else is required. The very text of the Second Amendment, i.e., "the right of the people to keep and bear Arms, shall not be infringed" proves this point. *United States v. Quailes*, 2003 U.S. Dist. LEXIS 147657 and *United States v. Harper*, 2023 U.S. Dist. LEXIS 155822. Thus, the Defendant does not have to maintain that he

possessed the firearm for a lawful purpose to be covered by the Second Amendment.

More importantly, the Defendant was found on a porch from which another person, not the Defendant, was observed selling Marijuana. The Defendant was not charged with an offense related to these drug transactions. Other than the § 922(g)(1) charge, the Defendant was not charged with another offense. Further, even if not charged, no evidence was introduced that he was involved in the drug transactions. In fact, during the trial, on direct examination, Police Officer Wong testified as follows:

> Q. Am I correct that the Defendant was not the person who was identified as the seller of narcotics that evening?
>
> A. That's correct.

N.T. 2/14/2023 p. 37.

Last, neither *Bruen* nor *Range*, in interpreting the *Bruen* test, included an element that the Second Amendment only applies if the Defendant maintains that he was involved in a lawful purpose.

The Government's Claim That it Established that § 922(g)(1) is Based on the Nation's Historical Tradition of Firearm Regulation.

In evaluating whether the Nation has a historical tradition of firearm regulation, *Bruen* set up a test to be followed by the courts.

Range outlined the *Bruen* test as follows:

> Historical tradition can be established by analogical reasoning, which "requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*." [*N.Y. State Rifle & Pistol Assn v. Bruen,* 142 S. Ct. 2111, 2133 (2022)] To be compatible with the Second Amendment, regulations targeting longstanding problems must be "distinctly similar" to a historical analogue. *Id.* at 2131. But "modern regulations that were unimaginable at the founding" need only be "relevantly similar" to one. *Id.* at 2132. *Bruen* offers two metrics that make historical and modern firearms regulations similar enough: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2133.

Range at 103. *Range* went on to state that it was determining whether the historical firearms regulations cited by the Government were analogous to Range's situation. *Id.* at 105. On this point, *Range* states that Bryan Range challenged the constitutionality of 18 U.S.C. § 922(g)(1) only as applied to him given his violation of 62 Pa. Stat. Ann. § 481(a) . . . [making false statements to obtain food stamps] . . . Because the Government has not shown that our Republic has a longstanding history and tradition of depriving people like Range of their firearms, § 922(g)(1) cannot constitutionally strip him of his Second Amendment rights. *Id.* at 106. *See also, United States v. Quailes*, 2003 U.S. Dist. LEXIS 147657 and *United States v. Harper*, 2023 U.S. Dist. LEXIS 155822. This means that there must be a relevant similarity between the current law prohibiting the possession of a firearm by a convicted drug dealer and the comparator law or laws cited by the Government.

The Government begins by quoting *Heller* for the proposition that "nothing in our opinion should be taken to cast doubt on [the] long-standing prohibitions on the possession of firearms by felons." *District of Columbia v. Heller*, 554 U.S. 570, 626-627 & n. 26 (2008). The Government then quotes two of *Bruen's* concurring Opinions for similar propositions. Alito's Concurrent Opinion states that "[n]or have we disturbed anything that we said in *Heller* or *McDonald* v. *Chicago*, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), about restrictions that may be imposed on the possession or carrying of guns." *Bruen* at 2157. Kavanaugh's Concurrent Opinion states that "the Second Amendment allows a variety of gun regulations, and *Bruen* did not cast doubt on long-standing prohibitions on the possession of firearms by felons." *Id.* at 2162.

Range specifically addressed these statements and concluded that these statements were incorrect and that § 922(g)(1) does not qualify as a long-standing regulation because it was enacted in 1961, i.e., it was not enacted during the enactment of the Second or the 14th Amendments. Specifically, *Range* stated:

> In attempting to carry its burden, the Government relies on the Supreme Court's statement in *Heller* that "nothing in our opinion should be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons." 554 U.S. at 626. A plurality of the Court reiterated that point in *McDonald v. City of Chicago*, 561 U.S. 742, 786, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). And in his concurring opinion in *Bruen*, Justice Kavanaugh, joined by the Chief Justice, wrote that felon-possession prohibitions are "presumptively lawful" under *Heller* and *McDonald*. 142 S. Ct. at 2162 (quoting *Heller*, 554 U.S. at 626-27 & n.26).[foot note omitted]

> Section 922(g)(1) is a straightforward "prohibition[] on the possession of firearms by felons." *Heller*, 554 U.S. at 626. And since 1961 "federal law has generally prohibited individuals convicted of crimes punishable by more than one year of imprisonment from possessing firearms." Gov't En Banc Br. at 1; *see* An Act To Strengthen The Federal Firearms Act, Pub. L. No. 87-342, 75 Stat. 757 (1961). But the earliest version of that statute, the Federal Firearms Act of 1938, applied only to *violent* criminals. Pub. L. No. 75-785, §§ 1(6), 2(f), 52 Stat. 1250, 1250-51 (1938). As the First Circuit explained: "the current federal felony firearm ban differs considerably from the [original] version . . . . [T]he law initially covered those convicted of a limited set of violent crimes such as murder, rape, kidnapping, and burglary, but extended to both felons and misdemeanants convicted of qualifying offenses." *United States v. Booker*, 644 F.3d 12, 24 (1st Cir. 2011); *see also United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (en banc).
>
> Even if the 1938 Act were "long-standing" enough to warrant *Heller*'s assurance—a dubious proposition given the *Bruen* Court's emphasis on Founding- and Reconstruction-era sources, 142 S. Ct. at 2136, 2150—Range would not have been a prohibited person under that law. Whatever timeframe the Supreme Court might establish in a future case, we are confident that a law passed in 1961—some 170 years after the Second Amendment's ratification and nearly a century after the Fourteenth Amendment's ratification—falls well short of "long-standing" for purposes of demarcating the scope of a constitutional right. So the 1961 iteration of § 922(g)(1) does not satisfy the Government's burden. [foot note omitted]

Range at 103-104. Last, the statements in *Heller, McDonald, and Bruen* about the long-standing prohibition on possession of firearms by felons is dicta. *See United States v. Bullock*, 2023 U.S. Dist. LEXIS 112397at 42 to 45. Therefore, these statements do not establish that § 922(g)(1) is part of the Nation's historical tradition of firearm regulation.

The Government then lists laws that it maintains are part of the Nation's historical tradition of firearms regulations that establish that the Government can regulate possession of firearms based on dangerousness.

- The Militia Act of 1662 was a British law that allowed the Government to "seize all arms in the custody or possession of any person" who was judge[d] *dangerous to the Peace of the Kingdom*." (*emphasis added*)

Government's Response at 16. This law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. Remember *Bruen* stated that the two regulations must be relevantly similar. *Bruen* at 2132. Further, "dangerous to the peace of the kingdom" does not require a conviction. One can be dangerous to the peace of the kingdom without ever been charged or convicted. This law does not require a felony conviction, nor does it involve drug trafficking or something similar.

- Colonial and early state legislatures disarmed individuals *who "posed a potential danger" to others."* (*emphasis added*) The Government cited *NRA v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 70 F.3d 185, 200 (5th Cir. 2012) as the source.

Government's Response at 16. A review of the source shows that this quote refers to laws disarming loyalists and states the following: "Although these Loyalists were neither criminals nor traitors, American legislators had determined that permitting these persons to keep and bear arms posed a potential danger." *Id.* at

200. *Range* rejected laws involving status offenses and loyalists and other similar laws as part of the Nation's historical tradition of firearm regulations. Specifically, *Range* states, "[t]hat Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that Range is part of a similar group today. And any such analogy would be "far too broad[]." *Range* at 105. This law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. As such, this law is not relevantly similar. Further, "individuals who "*posed a potential danger" to others*" also does not require a conviction. (*emphasis added*) A person can pose a danger to others without having engaged in conduct that could have resulted in a criminal charge. Further there is no way of showing that the law covers conduct similar to drug trafficking.

- The Act of May 1, 1776, a Massachusetts law; the Act of June 13, 1777, a Pennsylvania law; and the Act of May 28, 1777, a Virginia law, were laws that "*disarmed groups or individuals that were deemed dangerous or untrustworthy, such as those who refused to swear allegiance.*" (*emphasis added*)

Government's Response at 16. This law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. Further, groups or individuals that were "deemed dangerous or untrustworthy" also does not require a conviction, never mind a felony conviction. In fact, the example given, i.e., "those who refused to swear

allegiance", clearly shows that it does not involve criminal behavior, but if it did it was not relevantly similar to the conduct of the Defendant.

- The Act for Constituting a Council of Safety was a 1777 New Jersey law empowering officials to take from such *Persons as they shall judge disaffected and dangerous to the present Government*, all arms, Accoutrements, and ammunition which they own or possess. (*emphasis added*)

Government's Response at 17. This law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. The law is not relevantly similar. This law does not require that the person be a convicted felon. The law covers political conduct.

- The Act for Punishing of Criminal Offenders a 1692 Massachusetts law, and the Act for Punishing Criminal Offenders a 1696 New Hampshire law that disarmed individuals who had *demonstrated their dangerousness by engaging in particular types of conduct, such as carrying arms in a manner that spreads fear or terror among the people.* (*emphasis added*)

Government's Response at 17. This appears to involve criminal conduct. However, this law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. The law is not relevantly similar. This law does not require that the person be a convicted felon.

- The Government also states that even *Range* recognized that "Founding-era governments disarmed groups they distrusted, such as *Loyalists and religious dissenters.*" (*emphasis added*)

Government's Response at 17. This incorrectly creates the impression that *Range* found these laws to be an example of the National's historical tradition of firearm

regulation. *Range* stated that these laws did not constitute part of the Nation's historical tradition of firearm regulation. Specifically, *Range* states:

> The Government's attempt to identify older historical analogues also fails. [footnote omitted] The Government argues that "legislatures traditionally used status-based restrictions" to disarm certain groups of people. Gov't En Banc Br. at 4 (quoting *Range*). Apart from the fact that those restrictions based on race and religion now would be unconstitutional under the First and Fourteenth Amendments, the Government does not successfully analogize those groups to *Range* and his individual circumstances. That Founding-era governments disarmed groups they distrusted like Loyalists, Native Americans, Quakers, Catholics, and Blacks does nothing to prove that *Range* is part of a similar group today. And any such analogy would be "far too broad[ ]." *See Bruen,* 142 S. Ct. at 2134 (noting that historical restrictions on firearms in "sensitive places" do not empower legislatures to designate any place "sensitive" and then ban firearms there).

Range at 105. Laws disarming loyalists are not similar to the law in question. This law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. This law is not relevantly similar. This law does not require that the person be a convicted felon or even convicted of a misdemeanor. This law only addresses the status of distrusted persons.

- The Government also cited two proposed amendments to the Constitution during ratifying convention: Pennsylvania, "no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals," and Massachusetts, stating that Congress may not "prevent the people of the United States, who are peaceable citizens, from keeping their own arms.

Government's Response at 18. These proposed amendments were not enacted and, as such, are not part of the Nation's historical tradition of firearm regulation.

- The Government also cited mid-19th century laws from Massachusetts, Maine, and Michigan that required "*those threatening to do harm" to "post bond before carrying weapons in public.*" (*emphasis added*) Then, the Government cites *Bruen* at 2148 as the source of this information.

Government's Response at 18. This also creates an impression that *Bruen* is stating that these laws are part of the National historical tradition of firearm regulation. However, *Bruen* only distinguishes these laws and states, "[t]hese laws were not *bans* on public carry, and they typically targeted only those threatening to do harm." *Bruen* at 2148. This law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. This law is not relevantly similar. This law does not require that the person be a convicted felon or even convicted of a misdemeanor. This law only requires the posting of a bond.

- The Government also cited a post-civil war 1866 Decree, applicable to South Carolina, that stated that the "rights of all loyal and well-disposed inhabitants to bear arms will not be infringed, but that *no disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms*. (*emphasis added*)

Government's Response at 19. While this law also may involve criminal conduct, this law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. This law is not

relevantly similar. This law also does not require that the person be convicted of a felony or even convicted of a misdemeanor.

- Last, the Government also cites a "circular" from the Freedman's Bureau from around 1866 that states that a person may be disarmed if convicted of making an improper or dangerous use of a weapon. Then, the Government cites *Bruen* at 2152 as the source of this information.

Government's Response at 19. This also creates an impression that *Bruen* is stating that these laws are part of the National historical tradition of firearm regulation. However, *Bruen* states the contrary. Specifically, *Bruen* states: "[a]t the end of this long journey through the Anglo-American history of public carry, we conclude that respondents have not met their burden to identify an American tradition justifying the State's proper-cause requirement. *Bruen* at 2156. This statement was not only in reference to the circular, but to all the laws cited by the Government to establish the Nation's historical tradition of firearm regulation. *Bruen* found that the Government had not established a historical tradition of firearm regulation. This law involves criminal conduct and involves criminal convictions. However, the law is not comparable to the Defendant's facts, i.e., a permanent bar to the possession of a firearm due to a drug trafficking conviction. The law is not relevantly similar. The law deals with improper use of weapons, not just firearms.

The Government also argues that there is a historical tradition of enacting laws to disarm dangerous individuals. That individuals involved in drug trafficking are dangerous individuals and that as such, the Government can enact regulations like § 922(g)(1) to disarm them.

To determine whether the historical disarmament of those deemed dangerous is relevantly similar to disarming a convicted drug trafficker, the Court will use two metrics: how and why the regulation burdens a law-abiding citizen's right to armed self-defense. *Bruen* at 2134. The Government's Response does present a how and why analysis. Instead, the Government has listed the laws that disarmed individuals who they claim posed a risk of danger and claim that they can justify the bar of convicted drug traffickers based on those regulations. In *Harper*, a District Court from the Middle District of Pennsylvania confronted and rejected the same arguments. Here, like in *Harper*, the Government listed regulations and laws that listed entire groups like Loyalists; a law that disarmed individuals that had demonstrated dangerousness by engaging in conduct such as carrying arms in a manner that spreads fear or terror among the people; a law that require those threatening to do harm to post a bond before they could be permitted to carry weapons; and a law from South Carolina that disarmed disorderly persons, vagrants, and disturbers of the peace. *Harper* at 20. However, the Government did

not explain how and why these laws were similarly relevant. On this point, *Harper* stated:

> [T]he Government did not explain the "how" of each regulation-such as the length of time the individuals were disarmed; whether a conviction was required or any other information about how the dangerousness determination was made; or what kind of offenses qualified as dangerous. The Government also did not present any argument as to the "why" or purpose of the historical regulations. Because the Government has not provided the court with a basis to determine whether the mechanics and purpose of the historical regulations disarming those deemed "dangerous" are similar to the mechanics and purpose of Section 922(g)(1), the Government has not carried its burden to establish that the historical regulations are "relevantly similar."

Harper at 20. Again, the Government argues here, and argued in *Harper*, that the prior convictions demonstrate that the Defendant poses a danger to society. Specifically, it argues and cites several cases about the dangers of drugs and firearms. *Harper* then concludes that "[t]he Government conclusions rest on dangerousness as the historical touchstone without any explanation of how the earlier regulations compare in mechanics or purpose, the why and how, to Section 922(g)(1). This comparison is too broad and does not carry the Government's burden under the *Bruen/Range* standard." *Harper* at 21.

CONCLUSION

Therefore, it is respectfully submitted that here, like in *Harper*, the Government failed to establish a National historical tradition of firearm regulations that was similarly relevant to § 922(g)(1).

/s/ José Luis Ongay

José Luis Ongay

Date: September 28, 2023

CERTIFICATE OF SERVICE

I certify that on this date, I served a true and correct copy of this Reply upon AUSA MaryTeresa Soltis at mary.soltis@usdoj.gov.

/s/ José Luis Ongay

José Luis Ongay

Date: September 28, 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	**Crim. No. 21-353**
	:	
RAMOINE WHITE	:	

ORDER

Ramoine White moves under Rule 33 for a new trial and moves *nunc pro tunc* to dismiss his § 922(g)(1) indictment, arguing that the statute is unconstitutional as applied. (Doc. No. 103.); N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen, 142 S. Ct. 2111 (2022); Range v. Att'y Gen. of the U.S., 69 F.4th 96 (3d Cir. 2023) (en banc), 18 U.S.C. § 922 (g)(1). I will deny both Motions.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On February 11, 2021, Philadelphia Police Officers observed hand-to-hand narcotics sales on a porch where White and other men were standing. (Doc. No. 104.) Police approached the men and subsequently arrested White after a search revealed a Smith & Wesson M&P .40 caliber handgun loaded with fourteen live rounds and three bags of marijuana. (Id.)

White has three prior felony convictions for: (1) conspiracy to posses with intent to distribute controlled substances; (2) possession with intent to distribute controlled substances; and (3) carrying a firearm without a license. (Id.)

After White moved to suppress the firearm, I held an evidentiary hearing and denied his Motion. (Doc. Nos. 21, 35, 43.) Between the indictment and the order Denying Defendant's Motion to Suppress, the Supreme Court decided Bruen. (Doc. No. 103.) Defendant's trial counsel did not file a Motion to Dismiss the Indictment, however. (Doc. No. 103.)

A jury convicted White on February 15, 2023. (Id.) His trial counsel did not file Rule 29

or Rule 33 Motions during or after trial. (Id.) On July 19, 2023, I granted Defendant's *nunc pro tunc* Motion for leave to file post-verdict motions. (Doc. No. 94.) On August 30, 2023, White moved to dismiss the indictment and alternatively for a new trial. (Doc. No. 103.)

II. LEGAL STANDARD

"[A]n indictment should be upheld unless it is so defective that it does not, by any reasonable construction, charge an offense." United States v. Advantage Med. Transp., Inc., 751 F. App'x 258, 262 (3d Cir. 2018) (citing United States v. Willis, 844 F.3d 155, 162 (3d Cir. 2016)).

I may, upon a defendant's motion, "vacate any judgment and grant a new trial if the interest of justice so requires." Fed. R. Crim. P. 33(a); United States v. Cimera, 459 F.3d 452, 458 (3d Cir. 2006). I may grant Rule 33 motions "sparingly" and only if I "believe[] that there is a serious danger that a miscarriage of justice has occurred—that is, that an innocent person has been convicted and only in exceptional cases." United States v. Silveus, 542 F.3d 993, 1005 (3d Cir. 2008) (internal quotation marks and citations omitted).

III. DISCUSSION

A. Motion to Dismiss the Indictment

In evaluating a firearm regulation, I determine whether the Second Amendment "applies to a person and his proposed conduct." Range, 69 F.4th at 101 (citing Bruen, 142 S. Ct. at 2134-35). If it does, the Government must show that the regulation is "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Id. (citing Bruen, 142 S. Ct. at 2127).

i. Bruen's First Prong

The Range Court emphasized that Second Amendment rights "presumptively belong[] to

all Americans." Range, 69 F.4th at 101. (internal quotation marks and citations omitted). Accordingly, Defendant is one of the people the Second Amendment protects.

I need not address Defendant's proposed conduct because the Government has met its burden as to Bruen's second prong, showing that § 922(g)(1) is "consistent with the Nation's historical tradition of firearm regulation." See United States v. Ames, No. 23-178, 2023 WL 5538073, at *2 (E.D. Pa. Aug. 28, 2023) ("The Court need not resolve whether Ames' conduct is covered by the plan (sic) text of the Second Amendment, because, even if his conduct is covered, the Government has affirmatively shown that 18 U.S.C. § 922(g)(1) is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."); United States v. Blackshear, No. 23-159, 2023 WL 5985284, (E.D. Pa. Sept. 14, 2023) (same).

Still, the dissimilarities between Range, the plaintiffs in Bruen, and the Defendant here are of note. Having been convicted of making false statements to obtain food stamps, Range then applied to "possess a rifle to hunt and a shotgun to defend himself at home." Id. Bruen involved New Yorkers who applied for licenses to carry handguns for self-defense. Bruen, 142 S.Ct. at 2125.

White does not maintain he possessed a firearm for a lawful purpose. (Doc. Nos. 103, 104, 108.) He was searched and arrested "on a crowded porch that was not his residence and where drug sales were taking place." (Doc. No. 104.) White attempted to conceal the weapon from police by moving away from the Officer and tucking his elbows close to where the gun was located. (Id.) These facts suggest his proposed conduct might not be covered by the Second Amendment.

i. Bruen's Second Prong

"Historical tradition can be established by analogical reasoning, which 'requires only that the government identify a well-established and representative historical analogue, not a historical

twin.'" Range, 69 F.4th at 103 (quoting Bruen, 142 S. Ct. at 2133). Regulations targeting longstanding problems must be "distinctly similar" to an historical analogue, but "'modern regulations that were unimaginable at the founding' need only be 'relevantly similar' to one." Id. (quoting Bruen, 142 S. Ct. at 2132). The question is "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified." Bruen, 142 S. Ct. at 2133.

The Supreme Court has already recognized that § 922(g)(1) is presumptively lawful. District of Columbia v. Heller, 554 U.S. 570, 626-27 n.26 ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons" as such a prohibition is "presumptively lawful."); Bruen, 142 S. Ct. 2157 (Alito, J., concurring) (Bruen does not "disturb[ ] anything that [the Court] said in Heller . . . about restrictions that may be imposed on the possession or carrying of guns."); see also id. at 2162 (Kavanaugh, J., concurring) ("[T]he Second Amendment allows a 'variety' of gun regulations," and Bruen did not "cast doubt on longstanding prohibitions on the possession of firearms by felons.") The "narrow" holding in Range did not displace this presumption, which accords with historical tradition. Range, 69 F.4th at 109 (Ambro, J., concurring).

Defendant incorrectly interprets Range to reject the entire history of disarmament relied upon by the Government. (Doc. No. 108.) The Range Court rejected only the history discussed as it related to Range. United States v. King, No. 5:22-CR-00215-001, 2023 WL 4873648, at *4 (E.D. Pa. July 31, 2023) (Range said that "early law that prohibited convicted felons from possessing firearms applied only to violent criminals, and Range had not been convicted of a violent crime."); United States v. O'Connor, No. CR 03-134, 2023 WL 5542087, at *3 (W.D. Pa. Aug. 29, 2023) ("[T]he majority opinion in Range recognized that the statute is constitutional when

applied to violent felons.").

Even before the Second Amendment's ratification, firearm regulation disarmed individuals who posed a potential danger. Range, 69 F.4th at 111-12 (Ambro, J., concurring) ("From this perspective it makes sense that § 922(g)(1) is presumptively lawful."). That is because "[m]ost felons have broken laws deemed to underpin society's orderly functioning, be their crimes violent or not." Id. at 112 (Ambro, J., concurring).

Although Range had previously pled guilty to a non-violent offense entirely unrelated to armament, White was convicted of conspiracy with intent to distribute controlled substances, possession with intent to distribute controlled substances, and illegal firearm possession. (Doc. No. 104.) These crimes "demonstrate that, if armed, he poses a danger to society" or to its orderly functioning. Blackshear, 2023 WL 5985284, at *3 ("Drugs and guns are a 'dangerous combination' that increases the risk of violence." (quoting Smith v. United States, 508 U.S. 223, 240 (1993))); see also United States v. Reichenbach, No. 4:22-CR-00057, 2023 WL 5916467, at *8 (M.D. Pa. Sept. 11, 2023) ("[D]rug traffickers are dangerous and disruptive to society. Especially so given the well understood connection between drugs, firearms, and deadly violence . . . ."); United States v. Harrison, No. 22-CR-455, 2023 WL 4670957, at *2-*3 (N.D. N.Y. Jul. 20, 2023) (defendant's disarmament for a prior felony drug conviction was consistent with text and history of the Second Amendment); United States v. Johnson, No. 23-188, 2023 WL 6049529, at *5-*9 (W.D. Okla. Sept. 15, 2023) (declining to dismiss a § 922(g)(1) indictment even though prior felony was a mere drug possession).

B. Motion for a New Trial

Defendant asks me to find that his trial counsel provided constitutionally ineffective assistance of counsel. (Doc. No. 103.) To make out an ineffective assistance of counsel claim,

Defendant must "show that counsel's representation fell below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. 668, 688 (1984). "It is well settled that Sixth Amendment ineffective assistance of counsel claims . . . are generally not entertained on direct appeal" or in a motion for a new trial. United States v. McLaughlin, 386 F.3d 547, 555 (3d Cir. 2004); see also United States v. Kennedy, 354 F. App'x 632, 637 (3d Cir. 2009) ("[R]arely, if ever, should an ineffectiveness of counsel claim be decided in a motion for a new trial or on direct appeal."). I may, however, rule at this stage if "the record is sufficient to allow determination of ineffective assistance of counsel." McLaughlin, 386 F.3d at 556.

Defendant, who is represented by new counsel, states in conclusory fashion that "the record is sufficient for the Court to determine whether trial counsel was ineffective." (Doc. No. 103.) He argues that because Bruen was decided before trial, his trial counsel should have brought Rule 29 and Rule 33 Motions to have the claims dismissed. (Doc. No. 103.) These arguments fail for two reasons. First, Bruen (and Range) did not make § 922(g) unconstitutional as it applied to White. See supra. Second, Defendant has not explained how failing to raise these arguments—which I have decided are meritless—falls below the "objective standard of reasonableness." See Strickland, 466 U.S. at 689 ("Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is . . . the challenged action might be considered sound trial strategy." (quotation marks omitted)). In these circumstances, a hearing is unnecessary. The record conclusively refutes Defendant's ineffectiveness claim.

* * *

AND NOW, this 3rd day of October, 2023, it is hereby **ORDERED** that Defendant's Motions to Dismiss the Indictment or for a New Trial are **DENIED**.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

Paul S. Diamond, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	Case No. 2:21-cr-00353-PD-1
Plaintiff,	
v.	U.S. Courthouse 601 Market Street Philadelphia, PA 19106
RAMOINE WHITE,	
Defendant.	
	July 27, 2022 2:04 p.m.

TRANSCRIPT OF SUPPRESSION HEARING
BEFORE HONORABLE PAUL S. DIAMOND
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Government:	MARYTERESA SOLTIS, ESQ. U.S. ATTORNEY'S OFFICE EASTERN DISTRICT OF PENNSYLVANIA 615 Chestnut Street, Suite 1250 Philadelphia, PA 19106
For the Defendant:	ANDREW GERALDUS GAY, JR., ESQ. LAW OFFICE OF ANDREW G. GAY, JR., LLC 1518 Walnut Street, Suite 807 Philadelphia, PA 19102
Audio Operator:	LENORA KASHNER WITTJE
TRANSCRIBED BY:	NEAL R. GROSS

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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THE CLERK: All rise. Court is in session, the Honorable Paul S. Diamond is presiding.

THE COURT: All right, please be seated everybody. Afternoon, Mr. Gay, Ms. Soltis, nice to see you both. We are here for a suppression hearing. Ms. Soltis?

MS. SOLTIS: Your Honor, did you want me to start with our first witness?

THE COURT: However you wish to proceed.

MS. SOLTIS: All right, the Government is going to call Officer Barry Stewart.

THE COURT: Okay.

BARRY STEWART, WITNESS, SWORN

THE DEPUTY: Please state your full name for the record.

THE WITNESS: Officer Barry Stewart, B-A-R-R-Y, badge S-T -- I'm sorry, last name S-T-E-W-A-R-T, assigned to 16th District Philadelphia Police Department. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. SOLTIS: Can I be seated, Your Honor?

THE COURT: If it would be easier for you, Ms. Soltis, you certainly can remain seated.

MS. SOLTIS: Thank you very much.

DIRECT EXAMINATION

MS. SOLTIS: Officer Stewart, good afternoon.

THE WITNESS: Good afternoon.
BY MS. SOLTIS:
Q And you told us you're employed by the Philadelphia Police Department, is that correct?
A That's correct.
Q And for how long have you worked for the Philadelphia Police Department?
A 28 years.
Q And in what capacity, sir?
A The last 23 to 24 years I've been doing, working in fire squad, narcotics enforcement team, which changed their name to VCRT, Violent Crime Response Team, which our main thing is outside drug sales, but the last year, and a half we've been working with the Attorney General's Office, so now we also have two individuals working from my unit that do search warrants. So, pretty much outside, and inside it's drug stuff.
Q How long have you worked with the narcotics enforcement team?
A It's been about 24 years.
Q Okay, and am I correct that you're currently assigned to the 16th District?
A Yes.
Q And what area does that cover?
A West Philadelphia around the Drexel Zoo area, Mantua, and Mill Creek.

Q All right, Officer, I want to direct your attention to February the 11th of 2021 at approximately 6:55 in the evening. Were you working at that time?

A Yes, I was.

Q And were you in the area of 5100 Arch Street here in Philadelphia?

A Yes, I was.

Q And what were you doing sir?

A I was working plain clothes in an unmarked vehicle. I was conducting a surveillance for outside narcotics sales, which I set up at 5100 Arch Street, which at this time I observed a male later IDed as Mr. Bjourn, B-J-O-U-R-N, I believe, Watson on a southwest corner outside the porch area of his property with other several males including the defendant, Mr. White.

Q And where were you when you were making these observations, sir?

A I was parked on the block east of them, perhaps about 50, 75 feet on the south side.

Q Okay, were you inside your vehicle?

A Yes.

Q Were you with any -- did you have any other officers inside the vehicle with you?

A I was in the vehicle by myself.

Q Okay, and am I correct that this operation that was

going on that evening was a joint operation involving the 16th, the 18th, and the 19th police districts?

A Yes, that particular night, it was the 16th, my district, the 19th, which we border, and also the 18th, and right now, currently we're at detailed task with the Attorney General, we all work together pretty much. So, at the time we all worked together.

Q Okay, and why were you all in the area of 5100 Arch Street that evening?

A I was there that particular block my whole career has been pretty much sales of marijuana, that particular area, a person goes there to buy marijuana, and all the surveillances I did in my career, or backup officers on that block, it's mostly marijuana sales in that area.

Q Had there been any recent shootings in the area?

A Yes, there's been shootings on that block. Some of the individuals on that block of 5100 Arch were at times -- I can't remember, but they were fighting with -- I don't know what particular block in the 19th.

Q Okay, when you say they were fighting with a particular block, what do you mean?

A Some individuals from the 19th were coming up there, shooting at that location, and then I guess at times we had -- the particular area they were shooting at, 5100 Arch, they were getting shot at also. So, it was like a back, and forth thing

on the block.

Q Okay. And were you what you refer to as the eyes on that job that evening?

A Yes, I was the eyes, which is the surveillance officer.

Q Okay, and where specifically on the block were you watching?

A Mr. Watson and the other males were on top of an outside porch. This particular block, Your Honor, is a one way street eastbound, parking on both sides. And this property was like the first house on the southwest corner there. And not all the houses on that block have outside porches, but the first house they were on was an outside porch, next to it was an enclosed porch.

And it's maybe one of two outside porches on that block. But that one next to it, when I was watching the southwest corner, was open, and next to it was enclosed.

Q And about how long say from right to left would you say that porch was?

A I'd say from the front door to like the steps, five, or six feet, and I'd say from this direction, it's maybe eight to ten maybe.

Q Okay, and when you say from this direction, are you referring to left to right?

A Yeah, I can say about width eight to ten, something

like that, and then from the steps to the front door, maybe six feet.

MS. SOLTIS: Okay, Your Honor, may I approach with what we've marked as Government Exhibit Nos. 1, and 2 please?

(Whereupon, the above-referred to documents were marked as Government Exhibit Nos. 1 and 2 for identification.)

THE COURT: Sure.

MS. SOLTIS: Thank you.

THE COURT: Would I be correct if I characterized the neighborhood of 5100 Arch as a high crime neighborhood?

THE WITNESS: Yes it is, and it's also mostly residential. There's a corner store, but it's west of the property I was watching like half a block.

THE COURT: Okay.

BY MS. SOLTIS:

Q Officer Stewart, I'm showing you what we marked as Government Exhibit Nos. 1 and 2, do you recognize those?

A Yes, this is the 5100 Arch Street, and the picture of the gentleman in the white tank top sitting on the steps, that's the typical porch area, Mr. Watson and the other males were standing on the porch with.

Q And there, sir, are you referring to what's depicted in Government Exhibit No. 1?

A Yes.

Q Okay, and am I correct that that's a photograph that

was taken in the daytime?

A Yes it is.

Q And is this a photograph that you obtained utilizing Google Maps?

A Yes.

Q Okay, and then if you could direct your attention to what we've marked as Exhibit No. 2, what do you recognize that to be, sir?

A It's a picture of the same porch area at nighttime, and it looks like a picture from an officer's body cam.

Q Yes, and is that in fact a picture from the body camera on the evening in question, that being February 11th of 2021?

A Yes, because I believe I see somebody to the far left, I see some of my backup officers on the porch that I can see in the picture there.

Q Okay Officer, and does that fairly and accurately depict the scene that you were surveilling that evening?

A Yes, it does.

MS. SOLTIS: Your Honor, I move for the admission of Government Exhibit Nos. 1 and 2 at this time.

MR. GAY: No objection, Your Honor.

THE COURT: If it's a picture of February 11th, why does it say February 12th?

MS. SOLTIS: I believe, Your Honor, that's the --

THE COURT: I'd like the witness to answer.

MS. SOLTIS: Yeah, I can ask it of the witness.

THE WITNESS: It's not my body cam, Your Honor, but I don't know if it has something to do once they put the camera on the docking station, if that's the time it was uploaded, I'm not sure.

THE COURT: Okay. They'll be admitted.

(Whereupon, the above-referred to documents were received into evidence as Government Exhibit Nos. 1 and 2.)

MS. SOLTIS: Thank you, Your Honor.

BY MS. SOLTIS:

Q Now, Officer Stewart, I want to step back just for a moment to the surveillance that you talked about earlier. As you're sitting in your police car, and you're watching this area here at 5100 Arch Street that evening, what do you see?

A Like I said, I observed Mr. Watson on the porch area with the other males.

Q Okay, and at the time you were making those observations as you were sitting in your police car, did you know that it was Mr. Watson that you were looking at?

A Later on that evening found his name, he was identified later on that evening after everything was done.

Q Okay, so but as you're sitting in your police car that evening, and you're making the observations you're making from the car, you don't know that that's Mr. Watson that you're

looking at, is that correct?

A At that time, I didn't know any individuals' names at that time on that porch.

Q Okay, and approximately how many people did you see coming, and going from that porch?

A I couldn't give an exact count, but I just knew it was Mr. Watson and several males, there was enough that at times it looked like they were huddled on the porch, and I couldn't tell you -- it was more than four, I can tell you that, more than four.

THE COURT: You're saying males right, not mills?

THE WITNESS: Males, all males, no females, all males.

THE COURT: Understood, understood.

THE WITNESS: There was quite a few, I couldn't give an exact count, but I knew it was quite a few that there was times they were huddled on the porch like a football huddle.

THE COURT: Okay.

BY MS. SOLTIS:

Q Were you able to see what color clothing they were wearing?

A At the time Mr. Watson, by being at night, I knew he had all dark clothing, I didn't know if it was a dark blue or black, but all the individuals on that porch looked like they had all black or dark clothing.

Q Okay, and were you able to see the individuals exchanging anything?

A Yes, like after I observed three transactions, I don't know if you want me to go through all that.

MS. SOLTIS: Go ahead, yes please.

THE WITNESS: Like I said, I set up at 6:55 p.m. on 5100 Arch Street. I was watching the south side, this porch was on the southwest corner. All the males and Watson and the defendant were on the porch already. Approximately about 7:00 o'clock p.m. I observed a black female later IDed as Ms. Mickey Woods (phonetic). Ms. Woods approached the porch area by the steps.

Mr. Watson met her at the top of the steps, after Ms. Woods had a brief conversation with Mr. Watson, Ms. Woods then gave (unintelligible). I'd say it's currency, to Mr. Watson. Mr. Watson then gave unknown objects back to her after the money exchange with a hand to hand motion involving a fist, and a palm, and right after this exchange she got into a blue SUV.

Drove eastbound on Arch Street, I radioed my backup officers on my police radio at the time, to stop them for the narcotics investigation. Within a few minutes, Your Honor, they radioed back to me they had a positive for marijuana. Approximately about 7:20 p.m. I observed a black male later IDed as Mr. Terell Davis (phonetic). Mr. Davis approached the porch area, Mr. Watson met at the top of the steps.

After Mr. Davis had a brief conversation with Mr. Watson, Mr. Davis then gave unknown, I'd say it's currency, to Mr. Watson. Mr. Watson then gave unknown, some objects to Mr. Davis, similar to Ms. Woods, with a hand to hand motion involving the fist and the palm. After this exchange Mr. Davis got into a blue minivan, and drove eastbound on Arch street.

I relayed the information on Mr. Davis's vehicle to my backup officers, to stop him for narcotics investigation. Within a few minutes they radioed back to me a positive narcotics for marijuana. Approximately about 7:40 p.m., I observed a black male later IDed as Mr. Donald Brown (phonetic). Mr. Brown approached the porch area, met with Mr. Watson. Mr. Brown had a brief conversation with Mr. Watson.

And after that conversation, Mr. Brown gave unknown, I'd say it's currency to Mr. Watson. Mr. Watson gave unknown, some objects in a hand to hand motion similar to the first two, and after that exchange Mr. Brown started to walk westbound on Arch Street. I relayed that information to my backup officers to stop him for narcotics investigation. Within a few minutes they radioed back to me through the police radio, they had a positive for marijuana.

Approximately about 8:00 o'clock p.m., Mr. Watson was up on the porch, and kind of like going into that huddle mode with the rest of the males on the porch. And with one particular male, it was hard for me to tell which one it was,

but they -- one of the males on the porch turned his light on on his phone, I'm assuming it was his phone, unless it was a flashlight he was carrying.

And at this time they were -- Mr. Watson was giving him unknown objects. And at this time, at 8:00 o'clock, I told my backup officers to come in, I told them to go to that porch area, and tried to best describe the individual I was watching selling that day. All of the males were on the porch, my backup officers came in, they stopped all males on the porch. I had them bring the males down off the porch (unintelligible) saw at that time.

Because it was so crowded on the porch with all the males, once Mr. Watson came down the steps, I could positive ID him at the time, and later found out the light being on the porch, Paul Samatos (phonetic), we were investigating him, because at that time all the males to me looked like they had black on, dark clothes. So, my male that I was actually watching doing the transaction, he stuck out a little more to me, because he was heavier set than the other males, he was a little heavier.

BY MS. SOLTIS:

Q What information did you relay to your backup officers regarding the description of the individual you were watching?

A I told them it was either dark blue or black, because

at night time dark blue can be black watching from a distance.

Q Okay, and when you gave the --

THE WITNESS: And I'm sorry, he was like, compared to the other males, he was heavier, chubby, chunky.

BY MS. SOLTIS:

Q All right, and when you talk about relaying information to your backup officers, sir, how many officers are we talking about?

A I can estimate, I won't be exact. More than ten, like I said, that particular day was three districts, three of us. 16th, 19th, 18th, so there were six officers from my squad, and the supervisor is seven. 18th had maybe at least four to five, and a supervisor, and then at least more than four, or five from the 19th. I think their supervisor was working with us too also.

THE COURT: Just so I'm clear, the fellow you described as your guy, the chubby guy, that was Mr. Watson?

THE WITNESS: Yes.

THE COURT: Okay, all right.

BY MS. SOLTIS:

Q And am I correct that there were about eight officers who actually went up onto the porch that evening?

A I don't know that count, but plenty enough to stop all the males on the porch. And then I told, I kind of pretty much had to tell them to bring the males down, so that I could

kind of clear out, so I could see which one distinctly, my seller.

Q Okay, and were you ultimately able to identify the individual you're referring to as your seller?

A Yes.

Q And is that when you determined that that person was Mr. Watson?

A Yes, that's when I was able to determine exactly who was that.

Q Okay, what happened -- and was Mr. Watson ultimately arrested?

A Yes, he was.

Q And what happened, to your knowledge, the other individuals on the porch that evening?

A Mr. White was, during the investigation, found to have a firearm on him. Another male, either one or more had marijuana on them, which they were just given a ticket, a citation ticket, and released. And whoever else didn't have any warrants, or didn't have any contraband, they were released after their names were given.

MS. SOLTIS: I have nothing further, Your Honor.

MR. GAY: May I, Your Honor?

THE COURT: Yes.

MR. GAY: Would you prefer for me to stand --

THE COURT: Wherever you're most comfortable.

MR. GAY: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. GAY:

Q Officer Stewart, what was the time that you instructed your takedown team to come in?

A Approximately 8 o'clock.

Q So, you observed a total of three transactions prior to the takedown team order to go in at 8:00 p.m.?

A That's correct.

Q None of those transactions involved Mr. White here at all?

A That's correct.

Q And during the time that you were making your observations, you, with your own two eyes, never saw Mr. White do anything illegal?

A I didn't see him make transactions, but like I said, 8:00 o'clock, he was huddled with all the males huddled up, and I couldn't tell which particular male, but he -- Mr. Watson gave something to another male on the porch, but I couldn't distinguish that male, and be able to actually ID him.

Q All right, so let's break that down for a moment. After the three observations that you saw with Mr. Watson, and the other individuals, you said that the people that were on the porch then huddled together?

A Yes, pretty much like a huddle.

Q It was February, right?
A Yes.
Q There was snow on the ground?
A From that video, it looks like it, yeah. I don't recall if there was snow, but if that's how it was, that's how it was.
Q It was cold?
A Yeah, it was cold.
THE COURT: Do you think they were huddling to stay warm, Mr. Gay?
MR. GAY: I don't know, Your Honor, I hadn't gotten that far, or (inaudible).
(Simultaneous speaking.)
THE COURT: Well, I'm sure you'll ask.
MR. GAY: I'm sorry?
THE COURT: I'm sure you'll ask.
MR. GAY: Yes.
BY MR. GAY:
Q So, when you saw the huddle, you said that you saw Mr. Watson pass one of the other individuals something, correct?
A That's correct.
Q But you have no idea what that was?
A No, it was so dark, that's why I said one of the individuals passing that had a light on. I don't know if it

was a flashlight or a cell phone. He had his light on, I guess to look at whatever was being passed.

Q So, whatever was being passed, you're not able to tell us here on the record that that was any sort of illegal transaction, correct?

A Well, if I was able to distinguish which male it was, and I believe that it was United States currency, I'd say it could have been conspiracy.

Q Okay, could have been, but you have no idea, right?

A But I couldn't distinguish which male it was.

Q Right, and when you say that it could have been United States currency, you're saying that that's a complete guess on your part?

A That's correct.

Q Because you really couldn't see it?

A I couldn't tell what it was that was being passed.

Q You couldn't tell what it was because it was too dark out?

A Yeah, I couldn't see what was being passed, because besides being up on that porch, like I said, they were in a circle all together.

Q Right, and you also couldn't tell what it was because you were too far away to make that observation?

A I think more them being on that porch, the porch had no porch light, and once they kind of -- Mr. Watson stepped

away from the steps into the porch a little bit, it was hard for me to actually see what was going on at the time.

Q Okay, and that's where it was that you claim that Mr. Watson might have given something to somebody else, correct?

THE WITNESS: I'm sorry, repeat the question?

MR. GAY: When you went onto the porch area, where you said that it was not illuminated, it was at that point that you said Mr. Watson may have handed an object to another individual on the porch.

THE WITNESS: You said when somebody went on the porch area?

MR. GAY: Mr. Watson.

THE WITNESS: Oh, I thought you said me.

MR. GAY: No.

THE WITNESS: No, he's already on the porch, but at times he was standing towards the top of the step area.

MR. GAY: That's when the other people were coming over to make the transaction for marijuana, right?

THE WITNESS: Yeah, he would pretty much meet them at the top step, at the steps.

BY MR. GAY:

Q And then he would go back onto the porch where it was less illuminated than the top step was, correct?

A I just recall after that third transaction, he stepped beyond that top step area, which was harder for me to

see.

MR. GAY: Okay, understood.

THE COURT: I think what Mr. Gay is getting at is that you could see more easily what was going on when Mr. Watson was at the front of the porch, at the step area, than when he was further back on the porch --

THE WITNESS: Well, yeah, once --

THE COURT: Let me finish. Closer to the house, is that right?

THE WITNESS: Yeah, basically once they got in that group it was harder for me to see what was --

THE COURT: Well, you told us that you saw three hand to hand transactions at the top of the steps.

THE WITNESS: Yes.

THE COURT: And you actually could see currency, is that right?

THE WITNESS: That's correct.

THE COURT: But when he was -- when Mr. Watson was further back onto the porch, you couldn't even see the currency, is that right?

THE WITNESS: No, I don't know if I understand the question, but after the three transactions -- I mean during the three transactions, I saw money exchanged in the hand to hand exchange, but after 8 o'clock, he stepped into the porch closer to the building. Yeah, once they got together in a group,

yeah, I couldn't see.

THE COURT: Okay.

BY MR. GAY:

Q So, with all that explanation, what you're really telling us on the record here today is that you have no idea what, even if anything Mr. Watson handed to another person on the porch?

A I couldn't see what was exchanged --

MS. SOLTIS: Objection, Your Honor, asked, and answered.

THE COURT: No, he can ask it, but whether or not I choose to make an inference, I will overrule the objection, go ahead.

BY MR. GAY:

Q So, are you even able to tell us that Watson passed anything to the other individual when he was back on the porch outside of the light?

A Yeah, because he had his hands, and he was fooling with his hands in like a hand to hand to the other male, but I couldn't see what was being passed. The other male he was doing a hand to hand with on that porch had a light on to see what he was giving him.

Q Understood. You're not able to say that whatever was going on between the two of them was illegal whatsoever?

A If I was able to see which male he was exchanging

items with, I would have had my officers stop them also.

Q But you weren't able to see that?

THE COURT: You're going -- you're starting to argue with him, and you're kind of sort of asking for what he might have inferred as to that fourth hand to hand transaction, and whatever he says, whatever the witness says, I'm going to have to make an inference from that, not him. But you're free to ask him what you want.

MR. GAY: Thank you, Your Honor.

THE COURT: But as long as you're not arguing with him.

BY MR. GAY:

Q After that interaction took place, sir, you then ordered your take down team to stop everybody on the porch?

THE WITNESS: Which one, the 8 o'clock one, the 7:20, or which one?

MR. GAY: After the third transaction, and after you have testified for us that the individuals on the porch huddled together, you then instructed your take down team to come in at 8 o'clock?

THE WITNESS: Pretty much at 8 o'clock. Three bars, I was telling my backup officers to come in, and get them on the porch area, and during this time before they got there, this was going on.

MR. GAY: Understood.

THE WITNESS: So, this was kind of happening during the time I'm telling them yeah, come get them.

BY MR. GAY:

Q Understood, so come get all of them, right? Is that what you instructed your take down team to do?

A Well, I told them to come get my seller, but they don't -- they all appear to be -- all dark clothing on, they had to stop everybody until I was able to ID my seller.

Q Okay, so you instructed your take down team to stop everybody on the porch?

A I directed my backup officers on the best description on my male, and I told them he was on the porch with several other males, so --

THE COURT: Please, listen to the question. Mr. Gay is saying you told your take down team -- you told the team to stop everybody on the porch, is that correct, or not correct?

THE WITNESS: No, I'm --

THE COURT: What did you tell them to do?

THE WITNESS: I told them the description of the individual I wanted --

THE COURT: You wanted them to stop just one?

THE WITNESS: Yes.

THE COURT: Then why'd they stop everybody else?

THE WITNESS: Your Honor, like I said, at night time, like it was, everybody seemed like they had black on --

THE COURT: So, you couldn't tell?

THE WITNESS: And they didn't know until I actually physically IDed him, once they brought him down the steps. For me to even see which one that they, all the officers, and all the people on the porch.

THE COURT: Okay.

BY MR. GAY:

Q And in your description to your backup officers, did you say that the guy who is selling the marijuana is the chubby guy on the porch?

A Yeah, I pretty much said that he was -- compared to the other ones up there, he was heavier, he was heavier build.

Q And you instructed them to stop him because he was the only one that you saw engaged in any sort of illegal activity that was still on the porch?

A That was the only male I was interested in being detained.

MR. GAY: No other questions, Your Honor.

THE COURT: Ms. Soltis?

REDIRECT EXAMINATION

BY MS. SOLTIS:

Q Officer Stewart, why is it that you didn't go up on the porch, and participate in the take down that evening?

A Usually I don't -- I stay in my vehicle, because then that'll give up my vehicle, give up where I'm parked at, so

then it'd be harder for me to go back to that particular area if they know my vehicle, if they recognize me, where I came from. So, I don't enter -- I pretty much just do the surveillance, and once I'm done picking off buyers, I positive ID the person when they stop them.

And then after that, I leave that location, because I don't want to give my vehicle, or where I was parked at. So, in the future when I go back there, I can go park.

Q And in your training, and experience, when you have a situation where you have a porch there are several individuals on, is it your practice to not have that area secured?

THE COURT: I don't understand that question, even a little.

MS. SOLTIS: Let me rephrase it, it was a really bad question, I apologize.

BY MS. SOLTIS:

Q In your training, and experience officer, when you're dealing with a situation where you have multiple people in one location, do you secure that location, or do you not secure that location?

A In my experience, Your Honor, being backup officers to another team member of mine doing surveillance, if we had a take down to go get a seller, and it's several males, or one, or more males on location wearing the same thing, I'm pretty much going to one of -- me, or my partner, I'm grabbing one

person, he maybe stops another person if there's more than one, and then the backup officers will tell us over the radio which one, Officer Stewart, you have the right one, the other guys can go.

And then usually in that situation Your Honor, the one that's being cleared is not the one -- the ones not being arrested, it may be a PCI, NCI, you check to make sure they don't have any warrants, and then released from the investigation.

THE COURT: Are you done?

MS. SOLTIS: I am, Your Honor.

THE COURT: Mr. Gay?

MR. GAY: Yes, Your Honor, I believe I have no follow up questions, thank you.

THE COURT: Thank you very much.

THE WITNESS: Thank you.

MS. SOLTIS: Officer Matos, Your Honor.

MISCHEL MATOS, WITNESS, SWORN

THE DEPUTY: Please state your full name for the record.

THE WITNESS: Police Officer Mischel Matos, M-I-S-C-H-E-L, last name M-A-T-O-S, badge number 3918, assigned to the 19th District.

THE COURT: Please sit down.

THE WITNESS: Thank you, Your Honor.

MS. SOLTIS: Officer Matos, good afternoon.

THE WITNESS: Good afternoon.

MS. SOLTIS: I'm going to ask you to pull that microphone close to you, and speak right into it, okay?

DIRECT EXAMINATION

BY MS. SOLTIS:

Q You told us officer, that you're employed by the Philadelphia Police Department in the 19th District, how long have you held that position?

A I've been in the 19th for ten years.

Q Okay, and are you assigned to any specific team within the 19th District?

A Right now with the 19th District, I'm assigned to the net narcotics investigation. Also I'm working with the AG's Office also doing narcotics in the southwest and west division.

Q And sir, I want to direct your attention to February 11th, 2021 at approximately 6:55 in the evening, were you --

THE COURT: Hold on, before you do, how long have you been a police officer?

THE WITNESS: Ten years.

THE COURT: Okay, go ahead.

BY MS. SOLTIS:

Q Were you working that evening, sir?

A Yes, that's correct, ma'am.

Q And did your job take you to the area of 5100 Arch

Street here in Philadelphia?

A Yes ma'am.

Q What were you doing?

A I was doing -- it was a narcotics surveillance, and I was part of the plain clothes narcotics, stopping the buyers, and also at the end stopping the dealer.

Q Were you working alone, or were you working with a partner that evening?

A I was working with a partner.

Q And who was your partner that evening?

A Officer Wong (phonetic).

Q And was Officer Wong also in plain clothes?

A Yes, he was plain clothes.

Q And were you two in a marked or an unmarked car?

A Unmarked vehicle.

Q All right, were there other officers participating in this operation who were in marked vehicles?

A Yes. I believe two 19th District officers, and 16th District officers as well.

Q And were there some officers who were participating in this operation who were in uniform?

A Yes. The ones on the marked unit.

Q All right. Now, you said you yourself and your partner, Officer Wong, were in plain clothes, correct?

A Yes, that's correct.

Q Did you have body cameras on that evening?
A No, we're not required to have body cameras when we're working in plain clothes.
Q And am I correct that the officers who were in uniform had body cameras on that evening?
A Yes, they were.
Q Now, you told us that part of what you were doing was stopping individuals who were believed to be buyers leaving that location at 5100 Arch Street, is that right?
A Yes, that's correct.
Q How did you get the information as to who you were supposed to stop, or who you were looking for? Put it that way.
A Officer Stewart from the 16th District was doing the surveillance at that location. We were in constant radio communication telling us who to stop, who were the possible buyers.
Q And did you yourself stop any of the buyers that evening?
A I did, I did stop one buyer that left in a vehicle, was stopped at 51st and Chestnut. And marijuana was recovered, and a CVM was issued, a ticket for the small amount of marijuana, and released.
Q And what did you do with any of the information that you got from that stop?

A It was reported.

Q Okay, when you say it was reported, do you mean it was relayed over the police radio?

A It was relayed back to Officer Stewart with the positive on the confiscation of the marijuana, and also the ticket, the CVM number, was recorded after the person was released.

Q Okay, and why was it that you and your fellow officers were surveilling that area that evening?

A Numerous narcotics complaints in the neighborhood.

Q Okay, and while you were doing the surveillance, about how many individuals would you say that you received information about over the radio?

THE WITNESS: That were in that particular location?

MS. SOLTIS: Yes, that were seen leaving that particular location at 5100 Arch Street.

THE WITNESS: There were, that left the location, I do not remember how many people, actually buyers, left.

BY MS. SOLTIS:

Q At some point did you receive information about approaching the porch at 5100 Arch Street?

A Yes, that's correct, at the end of the -- when the surveillance had been terminated by Officer Stewart.

Q Okay, is this about 8 o'clock in the evening at this point?

A Yes, it is ma'am.

Q And what were you asked to do at about 8 o'clock in the evening?

A To approach the location, 5100 Arch, and stop -- detain every person that was on the porch for investigation at that moment.

Q And why was that?

A They were all under investigation for the narcotics sales.

Q And would you describe the porch at 5100 Arch Street as you saw it on that evening? What's it look like?

A It's not a big porch for a normal row home, I will say about eight, nine feet wide, and maybe three, four feet deep.

Q Okay, are there some photographs in front of you up there?

A Okay.

Q I want to direct your attention to the one that's marked Government Exhibit No. 2, do you see that? It'll be at the bottom right hand corner of the document, do you see that one, sir?

A Yes, I see it.

Q Do you recognize that photograph?

A Yes, it looks like it's a body cam still picture, yes. And showing the porch of the house.

Q Okay. Do you see the time stamp at the top of the photograph? See where it says 2/12/2021?

A Yes, the date.

Q Yeah. Let me ask you this, Officer, you've done operations where you yourself have worn a body cam, correct?

A Yes.

Q And when the operation is over, what happens to the body camera footage?

A It gets -- it needs to get tagged with the location, and DC numbers, and uploaded -- it'll get uploaded at the end of the shift into the system.

Q And when you say the end of the shift, what do you mean?

A At the end of -- like if I'm working 4:00 to 12:00, the end of my shift. Everything that would get recorded between 4:00 until midnight, once we're done, the camera gets docked, and all the information gets uploaded into the cloud.

Q And so the stamp that appears on the photograph, does that indicate the time that the footage was uploaded to the system?

A I do not know, I don't have all that information.

Q Okay, does the photograph -- Government Exhibit No. 2, do they fairly and accurately depict the porch at 5100 Arch Street as you saw it that evening?

A Yes, it does.

Q Okay. And are you able to see yourself in either of those photographs? Why don't you flip to the second page?

A Yes.

Q Which one are you?

A From the right to the left, the second body silhouette with a grey hoodie, and I believe I was wearing green pants.

Q Okay. And does that photograph show us about how many folks were up there on the porch that evening when you, and your fellow officers arrived? I'm not asking how many in number, I'm just saying is that what we're looking at?

A It looks like a fair amount of officers, plus the males that were on the porch.

Q Do you recall approximately how many males were on the porch when you got there that evening?

A Six I believe.

Q And was it roughly one officer to each male, one or two officers to each male, how did it work?

A It was probably seven or eight officers, I cannot remember the total.

Q Seven or eight in total, correct?

A In total, yes.

Q What's the lighting like?

A Fair, I would say, street lights. I don't remember exactly how much light we had, but fair light.

Q Okay. When you and your fellow officers approached the porch that evening, did someone announce the police presence in the area?

A Yes, we are required to announce, especially working plain clothes capacity. Even though we have the vest that says police and badge number/name, but we are all required to say police. I believe I said it as well when I got to the porch.

Q And am I correct that some officers were in uniform, and some officers such as yourself were not?

A Yes, that is correct.

Q Okay. And did you have a service weapon on your person at that time?

A Yes. It was on my hip.

Q Okay, did you draw your weapon at any time?

A I do not remember, I don't think I did.

Q Did Officer Wong go up on the porch with you as well?

A Yes, he did. I believe he went in there first, and I followed.

Q And when you got up onto that porch, what did you do?

A When I got to the porch, pretty much every other officer had somebody stopped, and I proceeded, and the defendant was the only one that wasn't being held by anybody, and I approached him.

Q What happened then?

A When I approached him, he looked at me, he looked

kind of surprise, like either he was going to run, or --

MR. GAY: Objection.

THE COURT: Overruled by -- your objection really goes more to weight than anything. Go ahead.

THE WITNESS: He looked surprised, like either he was going to run, I held one of his hands, and he was smoking a cigarette on it, and I was going to place him in handcuffs, or detain him for after the investigation was done. I noticed that he moved his body, his right side away from me, and also he tucked in a little bit, his right side. He hesitated to get rid of the cigarette. Another officer had to knock it off his hands.

THE COURT: Which hand was he holding the cigarette in?

THE WITNESS: The right hand.

THE COURT: Okay.

THE WITNESS: At that point, when I noticed he was blatant in trying to conceal something, I conducted a pat down, and I felt a hard object. Once I grabbed it, I believe it was a gun, and I looked at him, and said I know I have it, I know what you have, and he just put his head down. He was placed in handcuffs. Another officer, Officer Travis came in, helped me put him in handcuffs.

I retrieved the handgun out of his waistband, and we just moved him out of the porch of the house.

BY MS. SOLTIS:

Q Okay, I want to just go back a little bit Officer. Let me ask you, at the outset, do you see the individual that you interacted with that night on the porch in the courtroom today?

A Yes, the defendant sitting next to the counsel with the green shirt.

Q Okay, and is that the individual you later learned was Ramoine White?

A Yes.

MS. SOLTIS: Your Honor, I ask the record reflect the identification of the defendant.

THE COURT: Yes.

BY MS. SOLTIS:

Q You told us that as you approached him, he was smoking what appeared to be some form of cigarette, correct?

A Yes, that's correct, a small cigarette or cigar.

Q And did you give him any direction with respect to what to do with that cigarette?

A To drop it.

Q All right, and did he?

A He wasn't -- he hesitated to do it.

Q Okay, and you said before you grabbed -- did I hear you say you grabbed his right hand?

A His left first.

Q Left, okay. And when you grabbed his left hand, what is he doing with his right hand?

A He tucked in like this, with the elbow, tucked in on his waist.

Q And when you say tucked in like this, are you drawing your elbow close to your waist?

A Yes, correct.

Q Okay, was he leaning forward, or backward?

A He leaned forward a little bit, not just bending, but just enough to try to conceal something on his waist area.

Q Okay. How far away from Mr. White were you at this point?

A Close, about a foot. I already had his left hand grabbed, so it was pretty close.

Q Okay, and after you asked him to drop the cigarette and he refused, what if anything happened with his right hand?

A That's when the other officer snatched it off, and then he just turned around after I grabbed the handgun, he just turned around, and he was placed in handcuffs.

Q Okay, before you grabbed the handgun, did you notice anything with respect to his waist area?

A When he bended, I noticed the bulge, that something was there.

Q And is that when you put your hand on it?

A That's when I put my hand on it, yes.

Q And what did you feel at that point?
A I felt the hard square object.
Q Okay. And then what happened next?
A I put my hand around it and grabbed it, so in case he wanted to retrieve it, he wasn't able to retrieve it.
Q And what did you think you had at that point?
A At that point I believed I had a gun. I asked him if he had a permit, he looked at me, put his head down, and said no.
THE COURT: Did he actually say no, or just put his head down?
THE WITNESS: He said no, really low.
MS. SOLTIS: Okay.
THE COURT: Was it an automatic gun?
THE WITNESS: Semi-automatic gun, yes.
THE COURT: So, it was a square gun, not a revolver.
THE WITNESS: Yes, square, not a revolver.
THE COURT: Okay.
BY MS. SOLTIS:
Q And where is Officer Wong during all of this?
A He was further off to my left, I don't remember how far he was.
Q When you reached your hand in and recovered the gun, did you say anything?
A Yes, I did, I said gun, gun, and that's when Officer

Travis came over from behind me, helped me out, put him in handcuffs, and we escorted him out of the porch of the house.

Q Okay, and after you said gun, gun, did anything else happen on the porch that evening?

A Yeah, I felt commotion on my right side, one of the guys said something, started yelling, and a little scuffle came on. And that's one of the reasons we just removed him out of the porch.

Q Okay, and did you ultimately give the gun that you had recovered to Officer Wong?

A I recovered it and I held it, I believe, until we got to the police vehicle.

Q Okay, all right. And am I correct that that was a handgun loaded with 14 live rounds?

A Yes.

Q What was Mr. White wearing that evening?

A Dark clothing that I remember, I do not remember the exact color.

Q Okay, and the other males that were on the porch, were they also wearing dark clothing?

A Yes.

Q You mentioned that you had asked Mr. White if he had, for lack of a better term, a permit for the handgun, correct?

A Yes, that's correct.

Q Did you do anything in addition to check whether he

had a permit?

A Yes, I did. After I walked to the police vehicle, I used the MBT, the computer in the car, to run his name for a permit, which came back negative.

Q Okay, and when you say came back negative, he did not have a permit, correct?

A He did not have a permit.

Q Okay, so what happened next?

A He was under arrest, conducted a search, three bags -- three clear bags containing marijuana was recovered from him as well, and he was placed in the back of the police vehicle.

Q And Officer Matos, how much time would you say it was between when you first encountered Mr. White on the porch, and when you recovered the firearm?

A I do not recall exactly, but it happened pretty quick, probably about --

THE COURT: It sounded like less than a minute, it sounded like a matter of seconds.

THE WITNESS: Yeah, less than a minute.

BY MS. SOLTIS:

Q And did Officer Stewart eventually arrive at that location?

A Yes, after everybody was secured, he did arrive, and point out who was who.

Q Okay, and when you say point out who was who, did he

ultimately identify the person he had seen selling marijuana that evening?

A Correct, he did.

Q And where was -- had Mr. White already been removed from the porch area when that happened?

A Yes, he was, yes.

MS. SOLTIS: Okay. I have nothing further, Your Honor.

THE COURT: Mr. Gay?

MR. GAY: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. GAY:

Q Officer Matos, help me understand the exact sequence of events that occurred as you approached Mr. White. Do I understand it correctly, sir, that your first interaction with him was grabbing his left hand?

A Correct.

Q After that happened, you then saw him lean over, is that correct?

A Move his body forward, yes.

Q Okay, and --

THE COURT: What -- did you see anything with respect to this defendant before you grabbed his left hand?

THE WITNESS: Before I grabbed his left hand, I didn't see anything.

THE COURT: Okay.

BY MR. GAY:

Q Now, you have testified for us that you received communication from Officer Stewart throughout this investigation?

A Correct.

Q You were in constant radio communication with Officer Stewart?

A Yes.

Q And when you received the instruction to take down the members, the people that were standing on the porch, it was an instruction from Officer Stewart to just stop everybody on the porch?

A Yes, he indicated to stop everybody for investigation.

Q All right, there was no description that you received from Officer Stewart about a heavyset person?

A I do not recall the description of the seller at that --

Q That's not what I'm asking you. I'm asking you in the order to stop everyone on the porch, was anything said about a heavier-set individual?

A I do not remember.

Q Officer Matos, have you observed or viewed the body worn camera footage from this incident?

A I did see one video, I believe, I don't know how many videos were there, how many body cams.

Q I'm sorry to interrupt you, sir. Was there a uniformed officer that was there that evening, Tyrone Travis (phonetic).

A Yes.

Q All right, he was one of the uniformed officers from the 18th?

A The 19th.

MR. GAY: 19th District. Your Honor, I would like to mark and display a video of the body worn camera footage from Tyrone Travis. There has been a stipulation between Ms. Soltis and I, this is an accurate and fair representation of --

THE COURT: It'll be admitted. I assume you want to ask this witness questions about it, which is why you're playing it now?

MR. GAY: Yes.

THE COURT: Okay, fine, go ahead.

MR. GAY: Thank you, just wanted to make sure concerning the admissibility first.

THE COURT: They've taken my screen, so I'll have to watch that.

MR. GAY: Are you able?

THE COURT: I can see it, it's okay.

BY MR. GAY:

Q Officer Matos, are you able to see the video?
A I might get up and take a better look.
THE COURT: Sure, go ahead.
THE WITNESS: You can play it.
MR. GAY: Thank you.
BY MR. GAY:
Q All right, so I just want to ask you, Officer Matos, do you recognize just generally what is depicted on the video at this time?
A The inside of the police vehicle.
Q Okay, and I'm going to play the video for you for a second, and then I'll stop in a moment. Right now the video is starting from 18 seconds. Now, there's no audio in the video right now, do you understand the reason for that or can you provide a reason for that?
A Yes, the camera uses a buffer, so the first 60 seconds is no audio. It starts recording after we turn it -- it's on standby, and it starts recording once we tap it.
Q Okay, and do I understand your testimony to mean that once you tap it, it then goes back approximately 60 seconds?
A Correct.
Q Understood, okay. Okay, I'm going to stop the video right there. Do you see anyone or any vehicles in this paused portion of the video that you recognize? One moment, I'm going to back it up. Your Honor, I didn't know it would time out so

quickly. Let me just play the video for a second, and we'll go back, and ask some questions about it. Do you see the individual that was just shown in the video, sir?

A Correct.

Q Is that Mr. White?

A Yes.

Q Okay, so let's roll it back, and we will -- I'd like to ask you how many officers you see that are approaching the porch once the uniformed officer exits his patrol vehicle. At this point, sir, do you know how many officers are already on the porch?

A I can't tell, but I will say probably five or six.

Q You were one of them?

A I was one of them, yes.

Q And that interaction that you had described with Mr. White had occurred right at this period of time, correct?

A It is happening right now, if you look at the video, the silhouette with the grey hoodie in the far, far left, that's me.

Q That's you. So, the officer exits his video at exactly one minute, and the time on the video is shown right now as 1:12. So, you had already had that interaction with Mr. White, where you grabbed his left hand at this moment, correct?

A I would probably have to go back, I don't think it happened that -- I'm walking up the steps.

THE COURT: That's you walking up the steps?

THE WITNESS: Yeah, and that's when I approached him. I'm having the interaction with him right now.

BY MR. GAY:

Q That's you right there?

A And then that's me standing on the left there.

Q Okay. So, by 25 seconds into the officers converging onto the porch, you had already had that interaction that you described for us on the stand earlier with Mr. White, correct?

THE COURT: That's not what I see, but you're free to answer.

THE WITNESS: Yeah, I would have to see, and see the time.

MR. GAY: Okay, you want me to play it again for you, sir?

THE WITNESS: Yes, please. Farther back. That's good.

THE COURT: At that point it's already happened, you said gun.

THE WITNESS: It's already happened, so now when it says gun, I believe we see 33 seconds. I believe when there's three seconds on the video, that's when I'm walking, taking the last step onto the porch, so that would be 30 seconds.

MR. GAY: Okay, thank you.

BY MR. GAY:

Q And you indicated that you had a firearm on you, but you do not recall if you drew your firearm, correct?
A Correct, I do not recall.
Q But your firearm was displayed?
A Yes.
Q As with the other undercover officers had displayed firearms, correct?
A Yes, correct.
Q As well as uniformed officers?
A Yes.
Q And I cannot answer for you, but how many plain clothes vehicles did you see in that video? Undercover vehicles.
THE COURT: You mean unmarked vehicles?
MR. GAY: Unmarked vehicles, excuse me. Plain clothes, yeah.
THE WITNESS: On that video, two.
BY MR. GAY:
Q All right, and there were two patrol vehicles as well, marked vehicles?
A I believe I just saw the one that Officer Travis exited. I don't remember if there was another one in front.
MR. GAY: All right, no other questions, Your Honor.
MS. SOLTIS: Briefly, Your Honor.
THE COURT: Yes.

REDIRECT EXAMINATION

BY MS. SOLTIS:

Q Officer Matos, I want to just go back to when you approached the porch that evening, and Mr. White, and the testimony again with respect to the cigarette. When was it that you saw the cigarette in Mr. White's hand?

A Once I started my interaction with him.

Q Okay, so he's got the cigarette in his hand as you walk up to him, correct?

A Yes.

Q And you tell him to put it out, correct?

A Yes.

Q And he does not obey your command, right?

A Not right away. I believe he took a puff as well, and yeah, but not right away.

Q And does that happen before, or after you grab his left arm? Or as you're grabbing it?

A As I was grabbing his left.

MS. SOLTIS: I have nothing further, Your Honor.

MR. GAY: No follow-up.

THE COURT: We're dissecting this as though it were a slow-motion chess match, this obviously all happened very quickly, but that's our job, we're just trying to figure out exactly what happened. If you remember, fine, if you don't know, that's fine too. A bunch of police officers are running

up towards that porch, correct?

THE WITNESS: Correct.

THE COURT: And it looks to me like within a second or two of you getting on that porch, you're saying gun, gun, is that right, or am I -- I'd like to see it again if I'm wrong. Everything to me almost seems to be happening at once.

THE WITNESS: In terms of for what I was looking at the time, I would say probably about 30 seconds.

THE COURT: Let's go back to where we can see Officer Matos get sort of to the right, just getting up on the -- go ahead.

MR. GAY: Roll it from here, Your Honor?

THE COURT: Yeah, keep going. Now, that's the --

THE WITNESS: That's me right there.

THE COURT: That's you, I see, okay, so I got it wrong, all right. So, you -- let's go back a bit. Okay, go ahead, and as soon as we see Officer Matos, please freeze it.

MR. GAY: Yes sir.

THE WITNESS: Right there, right there.

THE COURT: That's you?

THE WITNESS: Yes.

THE COURT: And you're getting up on the porch?

THE WITNESS: I'm getting up on the porch, so we have 49 minutes and one second.

THE COURT: I kept thinking -- I thought the Z was a

two, it's a two.

THE WITNESS: Yeah, the Z is throwing it off.

THE COURT: All right, so you're at 49 minutes and one second, okay.

THE WITNESS: So, I'm walking up.

THE COURT: Go ahead, please play it.

MR. GAY: Yes sir.

THE WITNESS: I looked around, and then approach Mr. White, it was like four seconds.

THE COURT: All right, those are the handcuffs being put on Mr. White, and that was --

THE WITNESS: No, that's another man. So, at 30 seconds, that's when I said I have a gun here. And that's when Officer Travis comes in, and we just place him in handcuffs.

THE COURT: All right, so you --

THE WITNESS: So, 30 seconds minus the first --

THE COURT: You go up on the porch --

THE WITNESS: Correct.

THE COURT: And 30 seconds later Officer Travis handcuffs him, or did you handcuff him?

THE WITNESS: Officer Travis.

THE COURT: So, 30 seconds?

THE WITNESS: Yes.

THE COURT: And so you get up there, and as I recall your testimony, and if I'm wrong, you tell me. Mr. White was

the only person who didn't have an escort, who didn't have a police officer holding him?

THE WITNESS: Yes, that's correct.

THE COURT: And so you walked up to him, and you see him smoking something, a cigar or cigarette?

THE WITNESS: Correct, yes.

THE COURT: And you're going to detain him, so you take his left hand?

THE WITNESS: Correct, yeah. Left hand was the free hand, he had nothing in it.

THE COURT: And you tell him to throw the cigarette away or the cigar away?

THE WITNESS: Correct.

THE COURT: And he doesn't, and that's when you see him curling down to his right, as though he's trying to hide something on his right side?

THE WITNESS: Correct.

THE COURT: So, from the time you grab his left hand to the time he's curling around, that's got to be a second, two seconds, three seconds?

THE WITNESS: Give or take, yeah, two or three seconds.

THE COURT: And then you see the bulge, and you reach, and you feel something hard, and square.

THE WITNESS: Correct.

THE COURT: And you say I know what you have, I know it's --

THE WITNESS: I know what you have, as soon as -- when I felt it, felt the square, I know what you have, I believed 100 percent it was a gun.

THE COURT: And are you still holding his left hand at this point or -- ?

THE WITNESS: Yes.

THE COURT: You are. And does the defendant say anything?

THE WITNESS: No, no. He --

THE COURT: At that point -- I'm sorry, I didn't --

THE WITNESS: Yeah, he wasn't fighting, he didn't try to push over me and run, he didn't do none of it.

THE COURT: You said I know what you have. How long after that do you actually reach into the waistband of his pants and retrieve the weapon, another couple of seconds?

THE WITNESS: Yes, another couple of seconds, yeah.

THE COURT: And that's when you say gun, gun?

THE WITNESS: I say gun, gun, once I grab it.

THE COURT: Once you grab it, so from the time you grab his left hand to the time you say gun, gun is again going to be five seconds, if that? A few seconds?

THE WITNESS: A few seconds, yeah.

THE COURT: Okay, that's all I have. If anybody

wants to ask any questions, please.

MR. GAY: Ms. Soltis?

MS. SOLTIS: I don't have any questions, Your Honor.

MR. GAY: I just have a couple.

THE COURT: Sure.

MR. GAY: When you first placed your hand on Mr. White, you made some motions up there on the stand that were not memorialized on the record. So, can you show us with your hands what you did when you first placed your hand on Mr. White's waistband?

THE WITNESS: Yes. I'll explain, when I approached him, he was kind of facing me, so his left hand was near me. So, I approached, grabbed the left, and that's when he had the cigarette, and he turned it away from me a little bit, and that's when I saw the bulge, where he was hiding it, and moving his --

THE COURT: Just so we're clear, you're grabbing his left hand, is he facing you?

THE WITNESS: He was facing me once I grabbed him, that's when he --

THE COURT: Okay, so you're grabbing his left hand with your left hand?

THE WITNESS: With my right hand.

THE COURT: With your right hand. And so it's with your left hand that you pat the --

THE WITNESS: That's correct.
THE COURT: So, you weren't carrying your gun --
THE WITNESS: It wasn't in my hand, yes.
THE COURT: Wasn't in your hand.
THE WITNESS: Yes, it wasn't in my hand.
THE COURT: All right, and is it at all likely that you would have been running up those -- I don't know how many stairs there were, two or three stairs to go up with a gun in your hand, and then put the gun away and then grabbed him with your left hand, does that seem likely?
THE WITNESS: No, it would have happened if I would have known that there was a gun --
THE COURT: But you didn't know?
THE WITNESS: No.
THE COURT: So, you run up the stairs, and it appears both your hands are empty, you grab his left hand with your right hand, and you -- and he's leaning to keep you from seeing his right side, according to your testimony, with your left hand you tap and feel --
THE WITNESS: Left hand, that's when I felt it, and I grabbed it with my left hand.
THE COURT: Okay.
THE WITNESS: So, he was right hand, at this point we're kind of like facing each other, and that's when Officer Travis, when I said gun, gun, Officer Travis came over, and

grabbed his left hand, took his right, took the left, and put him in handcuffs, and I retrieved the gun.

THE COURT: Anything further from either of you?

MR. GAY: No other questions.

MS. SOLTIS: Nothing further.

THE COURT: Thank you, Officer Matos.

THE WITNESS: You're welcome, thank you.

THE COURT: Does the Government have anything else?

MS. SOLTIS: Can I just have one moment, Your Honor?

THE COURT: Sure.

MS. SOLTIS: We do not, Your Honor, no.

THE COURT: Okay, so you've concluded your evidentiary presentation?

MS. SOLTIS: That's correct, Your Honor.

THE COURT: Mr. Gay, do you have anything you wish to present?

MR. GAY: I just move for the admission of the video, but I have no testimony or evidence.

THE COURT: It'll be admitted as D1.

(Whereupon, the above-referred to document was marked and received into evidence as Defense Exhibit No. 1.)

MR. GAY: I'm sorry, sir?

THE COURT: It'll be admitted as D1, and if possible, if I could have a copy of it, because I have to decide this.

MR. GAY: Yes.

THE COURT: Could I have -- please sit down. I'll order an immediate transcript of this hearing. And so today is Wednesday.

MS. SOLTIS: The 27th, I think.

THE COURT: Twenty-seventh, yes. Could I get, for both of you, proposed findings and conclusions a week after you get the transcript? Is that doable? If it's not, tell me, honestly it's -- I don't want to put you under any unnecessary pressure.

MR. GAY: Your Honor, it certainly seems doable from my perspective. I do have a couple of obligations and a few days away from the office.

THE COURT: Two weeks after you get your -- is that all right? And it'll probably be a few days before you get the transcript anyway. And then seven days after that, if you could submit responses to each other's proposed conclusions of law. You don't need to respond to each other's proposed findings of fact, but the conclusions of law, that's really -- you're arguing the briefs when you're arguing that, is that okay?

MR. GAY: Yes, Your Honor.

MS. SOLTIS: That's fine, Your Honor.

THE COURT: All right, then, is there anything else we need to address right now?

MS. SOLTIS: Not from the Government, Your Honor, no.

MR. GAY: No, Your Honor.

THE COURT: What is the trial date for this matter, Lenore? Do we have one?

MS. SOLTIS: I think it's late October.

THE CLERK: November 14th.

THE COURT: All right, so we have time to do this. Okay, my thanks to both of you. My thanks to our marshals. Please, everybody, stay healthy.

MS. SOLTIS: Thank you, Your Honor.

MR. GAY: Thank you, Your Honor.

THE CLERK: All rise.

* * * * *

C E R T I F I C A T E

I, court approved transcriber, certify that the foregoing is a true and accurate complete transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Neal R. Gross

July 29, 2022

Neal R. Gross

CERTIFICATE OF SERVICE

Service on the Assistant United States Attorney

I, José Luis Ongay, certify that today I served two copies of the Brief and the Appendix to the Brief for the Appellant upon Assistant United States Attorney MaryTeresa Soltis at 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106.

Service on Mr. Ramoine White

I also certify that today I served Mr. Ramoine White a copy of the Brief and the Appendix to the Appellant's Brief via first class mail to Ramoine White, 63750-509, FCI Allenwood, Medium, Federal Correctional Institution, P.O. Box 2000, White Deer, PA 17887

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