APPENDIX A

Decisions Below

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4447

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

CARL MICHAEL MANN, II, a/k/a Pike,

Defendant – Appellant.

No. 23-4448

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

GABRIEL L'AMBIANCE INGRAM, a/k/a Big Shot, a/k/a Big Shot Rock, a/k/a Rock,

Defendant – Appellant.

No. 23-4630

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DARRELL LAROD CROCKETT, a/k/a Unc, a/k/a Croc,

Defendant – Appellant.

Appeals from the United States District Court for the District of South Carolina, at Rock Hill. Mary G. Lewis, District Judge. (0:18-cr-00557-MGL-9; 0:18-cr-00557-MGL-3; 0:18-cr-00557-MGL-6)

Argued: May 9, 2025 Decided: August 4, 2025

Before QUATTLEBAUM, RUSHING, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

ARGUED: William Michael Duncan, DUNCAN & HEYDARY LAW, PLLC, Greensboro, North Carolina; Louis H. Lang, CALLISON, TIGHE & ROBINSON, LLC, Columbia, South Carolina; Brian Michael Aus, Durham, North Carolina, for Appellants. Andrea Gwen Hoffman, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee. **ON BRIEF:** Brook B. Andrews, Acting United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

A federal jury convicted Carl Mann, II, Gabriel Ingram, and Darrell Crockett for their roles in a drug conspiracy and related offenses. The district court sentenced Mann to 300 months' imprisonment, Ingram to 260 months' imprisonment, and Crockett to 240 months' imprisonment. On appeal, Defendants jointly contest the district court's denial of their motion to suppress evidence and denial of a motion to dismiss the indictment. Mann also brings separate challenges to his convictions, and Ingram raises numerous additional objections to his convictions and sentence. Finding no reversible error, we affirm.

First, we consider Defendants' argument that the district court erred in denying their motion to suppress evidence obtained by a wiretap because the Government failed to demonstrate the wiretap was necessary. To receive authorization for a wiretap, the Government must submit an application containing "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. § 2518(1)(c). A district court may authorize a wiretap only if it determines that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." *Id.* § 2518(3)(c). We review determinations of necessity for abuse of discretion. *United States v. Wilson*, 484 F.3d 267, 280 (4th Cir. 2007).

Defendants were members of a complex drug trafficking organization, and the Government sought permission to intercept communications on the phones of two members of the organization during its investigation. The Government, in the affidavit in

support of its wiretap application, explained at length the techniques that had been used up to that point in the investigation, including physical surveillance, controlled purchases, confidential sources, interviews, pen registers, and financial investigation. Those tools had failed to uncover the identity of all enterprise members and co-conspirators, including the sources of supply for the narcotics. The Government's affidavit explained why other techniques were unlikely to succeed and why a wiretap was necessary to identify the out-of-district sources of the drugs.

We conclude that the authorizing court did not abuse its discretion when it determined that the Government had submitted sufficient facts to show the need for the wiretap. The Government carried its burden to "present specific factual information sufficient to establish that it ha[d] encountered difficulties in penetrating the criminal enterprise or in gathering evidence . . . [such that] wiretapping bec[a]me[] reasonable," despite "the statutory preference for less intrusive techniques." *United States v. Smith*, 31 F.3d 1294, 1298 (4th Cir. 1994) (internal quotation marks, citation, and brackets omitted). Accordingly, the district court did not err in denying Defendants' motion to suppress the wiretap evidence.

Second, we consider Defendants' argument that the district court should have dismissed the indictment because of a violation of the Speedy Trial Act. Mann and Crockett waived any right to dismissal because they did not "move to dismiss the charges before the start of trial." *United States v. Henry*, 538 F.3d 300, 304 (4th Cir. 2008); *see* 18 U.S.C. § 3162(a)(2). Ingram filed a timely motion to dismiss, but his objection fails on the merits.

The Speedy Trial Act instructs that the trial of a defendant charged in an indictment "shall commence within seventy days from the filing date . . . of the . . . indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs." 18 U.S.C. § 3161(c)(1). However, various delays are excluded from the seventy-day period, such as "[a]ny period of delay resulting from a continuance granted . . . on the basis of [the court's] findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." *Id.* § 3161(h)(7)(A). If the district court grants one codefendant's motion to continue, that time generally is excluded as to all codefendants. *United States v. Shealey*, 641 F.3d 627, 632 (4th Cir. 2011); *see* 18 U.S.C. § 3161(h)(6). We review a district court's interpretation of the Speedy Trial Act de novo and its factual findings for clear error. *United States v. Pair*, 84 F.4th 577, 582 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2589 (2024).

Ingram takes issue with a continuance the district court granted from April 2022 to August 2022 based on the motions of two of his codefendants, Mann and Hemphill. Mann and Hemphill each requested a continuance because they had recently received new attorneys, who needed additional time to prepare for trial. On appeal, Ingram contends that the continuance was unreasonable and should not be excluded for Speedy Trial purposes because Hemphill's motion was a result of the Government's "inexcusable delay" in moving to disqualify Hemphill's former counsel "years after it knew of the potential conflict." Opening Br. 81. But Ingram does not contend that a similar defect afflicts the continuance sought by Mann's new counsel, who was appointed for reasons unrelated to

the conflict or the Government's disqualification motion. Nor does Ingram otherwise object on appeal to the district court's determination that the ends of justice warranted the April to August delay so Mann's new counsel could prepare for trial. Because that determination independently supports the entire period of delay, Ingram's argument fails and the district court did not err in denying his motion to dismiss the indictment.

Finally, we have also considered Ingram's and Mann's numerous other arguments on appeal. After reviewing the briefs and hearing oral argument, we find no reversible error.

AFFIRMED

FILED: September 15, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4448
(0:18-cr-00557-MGL-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GABRIEL L'AMBIANCE INGRAM, a/k/a Big Shot, a/k/a Big Shot Rock, a/k/a Rock

Defendant - Appellant

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Quattlebaum, Judge Rushing, and Judge Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: November 18, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-4448
(0:18-cr-00557-MGL-3)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

GABRIEL L'AMBIANCE INGRAM, a/k/a Big Shot, a/k/a Big Shot Rock, a/k/a Rock

Defendant - Appellant

ORDER

Upon consideration of appellant's pro se motion to release sealed volumes 3 and 4 of the joint appendix, the court denies the motion to release or unseal volume 3 of the joint appendix. Regarding volume 4, the Clerk of Court is directed to send appellant a copy under seal. Appellant is instructed that this volume remains under seal and is being released to him solely for his use in litigating his own case.

Entered at the direction of Judge Rushing with the concurrence of Judge Quattlebaum and Judge Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

APPENDIX B

Judgment, Verdict, and Charging Documents

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL ACTION NO.:0:18-557
	)	
v.	)	
	)	21 U.S.C. §846
	)	18 U.S.C. §2
DARRYL HEMPHILL,	)	18 U.S.C. §922(g)(1)
a/k/a "D"	)	18 U.S.C. §924(a)(2)
a/k/a "D-Hemp"	)	18 U.S.C. §924(c)(1)
MIKIE MARCELL CALDWELL,	)	18 U.S.C. §924(e)
a/k/a "Big Mike"	)	18 U.S.C. §924(d)(1)
GABRIEL L'AMBIANCE INGRAM,	)	18 U.S.C. §982(a)(1)
a/k/a "Big Shot"	)	18 U.S.C. §1956(h)
a/k/a "Big Shot Rock"	)	18 U.S.C. §1956(a)(1)(A)(i)
a/k/a "Rock"	)	18 U.S.C. §1956(a)(1)(B)(i)
ARCHIE ARSENIO CALDWELL,	)	18 U.S.C. §1956(a)(1)(B)(ii)
a/k/a "Nuk"	)	21 U.S.C. §802(57)
a/k/a "Nuk Crook"	)	21 U.S.C. §802(58)
DARRELL LAROD CROCKETT	)	21 U.S.C. §841(a)(1)
a/k/a "Unc"	)	21 U.S.C. §841(b)(1)(A)
a/k/a "Croc"	)	21 U.S.C. §841(b)(1)(B)
PATRICIA ANN HEMPHILL,	)	21 U.S.C. §841(b)(1)(C)
DRECE LAROD MCMULLEN,	)	21 U.S.C. §841(b)(1)(D)
a/k/a "Cup"	)	21 U.S.C. §853
CARL MICHAEL MANN, II,	)	21 U.S.C. §881
a/k/a "Pike"	)	28 U.S.C. §2461(c)
HERBERT REGINALD DEMARIO DEWESE,	)	
a/k/a "50"	)	
a/k/a "Big 50"	)	
ODARRIUS BREONTE ADAMS,	)	**SECOND**
a/k/a "Breezy"	)	**SUPERSEDING INDICTMENT**
SEQVOYA ANGINETTE NEELY,	)	
a/k/a "Sequoya Anginette Neely"	)	
QUANDARIOUS KENTRELL NEELY	)	
BRANDON MARQUIS KIMBLE	)	
CHARLES HENRY MASSEY	)	
FATE THOMAS MCCLURKIN, JR.	)	
JUSTIN DE NEKO CUNNINGHAM	)	

COUNT 1

THE GRAND JURY CHARGES:

That beginning at least by January 2015, and continuing thereafter, up to and including the date of this Second Superseding Indictment, in the District of South Carolina, the Defendants, **DARRYL HEMPHILL, a/k/a "D", a/k/a "D-Hemp", MIKIE MARCELL CALDWELL, a/k/a "Big Mike", GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock", ARCHIE ARSENIO CALDWELL, a/k/a "Nuk", a/k/a "Nuk Crook", DARRELL LAROD CROCKETT, a/k/a "Unc", a/k/a "Croc", PATRICIA ANN HEMPHILL, DRECE LAROD MCMULLEN, a/k/a "Cup", CARL MICHAEL MANN, II, a/k/a "Pike", HERBERT REGINALD DEMARIO DEWESE, a/k/a "50", a/k/a "Big 50", ODARRIUS BREONTE ADAMS, a/k/a "Breezy", SEQVOYA ANGINETTE NEELY, a/k/a "Sequoya Anginette Neely", QUANDARIOUS KENTRELL NEELY, BRANDON MARQUIS KIMBLE, CHARLES HENRY MASSEY, FATE THOMAS MCCLURKIN, JR. and JUSTIN DE NEKO CUNNINGHAM** knowingly and intentionally did combine, conspire, agree and have tacit understanding with each other and with others, both known and unknown to the grand jury, to possess with intent to distribute and distribute cocaine, cocaine base (commonly known as "crack" cocaine), a mixture or substance containing a detectable amount of methamphetamine, and a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4–piperidinyl] propanmide (commonly known as fentanyl), all Schedule II controlled substances; and a quantity of marijuana and a mixture of substance containing a detectable amount of heroin, both Schedule I controlled substances;

a. With respect to **DARRYL HEMPHILL, a/k/a "D", a/k/a "D-Hemp"**, the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him is 5 kilograms or more of cocaine, 280 grams or more of cocaine base (commonly known as "crack" cocaine), 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4–piperidinyl] propanmide (commonly known as "fentanyl"), 1 kilogram or more of a mixture or substance containing a detectable amount of heroin, and a quantity of marijuana, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A) and 841(b)(1)(D);

b. With respect to **MIKIE MARCELL CALDWELL, a/k/a "Big Mike"**, the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him is 5 kilograms or more of cocaine, 28 grams or more of cocaine base (commonly known as "crack" cocaine), 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4–piperidinyl] propanmide (commonly known as "fentanyl"), and 100 grams or more of a mixture or substance containing a detectable amount of heroin, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), and 841(b)(1)(B);

c. With respect to **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him is 500 grams or more of cocaine, 28 grams or more of cocaine base (commonly known as "crack" cocaine), a quantity of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4–piperidinyl] propanmide (commonly known as "fentanyl"), a quantity of a mixture or substance containing a detectable amount of heroin, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 841(b)(1)(C);

d. With respect to **ARCHIE ARSENIO CALDWELL, a/k/a "Nuk", a/k/a "Nuk Crook"**, the amount involved in the conspiracy attributable to him as a result of his own conduct, and the conduct of other conspirators reasonably foreseeable to him is 5 kilograms or more of cocaine, 280 grams or more of cocaine base (commonly known as "crack" cocaine), 500 grams or more or a mixture or substance containing a detectable amount of methamphetamine, 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N[1-(2-phenylethyl)-4–piperidinyl] propanmide (commonly known as "fentanyl"), and a quantity of marijuana, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(A), 841(b)(1)(B) and 841(b)(1)(D);

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT 8

THE GRAND JURY FURTHER CHARGES:

On or about June 13, 2018, in the District of South Carolina, the Defendant, **DARRYL HEMPHILL, a/k/a "D", a/k/a "D-Hemp"**, knowingly possessed firearms and ammunition in and affecting commerce to wit: a Remington 7400 .270 caliber rifle, a Taurus, model G2C 9mm pistol and a Smith & Wesson, model MP9 9mm pistol and an assortment of ammunition, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year, and knowing that he had been convicted of such a crime;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

COUNT 9

THE GRAND JURY FURTHER CHARGES:

On or about June 23, 2017, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly, intentionally and unlawfully did possess with intent to distribute and did distribute a quantity of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, and a quantity of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 10

THE GRAND JURY FURTHER CHARGES:

On or about August 1, 2017, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock",** knowingly, intentionally and unlawfully did possess with intent to distribute and did distribute a quantity of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 11

THE GRAND JURY FURTHER CHARGES:

On or about August 1, 2017, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock",** knowingly used and carried a firearm during and in relation to, and did possess a firearm in furtherance of, a drug trafficking crime, which is prosecutable in a court of the United States;

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

COUNT 12

THE GRAND JURY FURTHER CHARGES:

On or about January 19, 2018, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly possessed a firearm in and affecting commerce, to wit: a Glock, .40 caliber pistol, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year and knowing that he had been convicted of such a crime;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

COUNT 13

THE GRAND JURY FURTHER CHARGES:

On or about January 19, 2018, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of marijuana, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D).

COUNT 14

THE GRAND JURY FURTHER CHARGES:

On or about April 4, 2018, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock",** knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of cocaine and a quantity of cocaine base (commonly known as "crack" cocaine), both Schedule II controlled substances;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 15

THE GRAND JURY FURTHER CHARGES:

On or about April 4, 2018, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock",** knowingly used and carried a firearm during and in relation to, and did possess a firearm in furtherance of, a drug trafficking crime, which is prosecutable in a court of the United States;

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

COUNT 16

THE GRAND JURY FURTHER CHARGES:

On or about April 4, 2018, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock",** knowingly possessed a firearm, in and affecting commerce, to wit: a Ruger model P95, 9mm pistol, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year and knowing that he had been convicted of such a crime;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

COUNT 17

THE GRAND JURY FURTHER CHARGES:

On or about June 13, 2018, in the District of South Carolina, the Defendant, **CARL MICHAEL MANN, II, a/k/a "Pike",** knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of cocaine base (commonly known as "crack" cocaine), a Schedule II controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT 20

THE GRAND JURY FURTHER CHARGES:

On or about September 1, 2016, in the District of South Carolina, the Defendant, **ARCHIE ARSENIO CALDWELL, a/k/a "Nuk", a/k/a "Nuk Crook"**, knowingly, intentionally and unlawfully did possess with intent to distribute 28 grams or more of cocaine base (commonly known as "crack" cocaine), a Schedule II controlled substance, and a quantity of marijuana, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B) and 841(b)(1)(D).

COUNT 21

THE GRAND JURY FURTHER CHARGES:

On or about January 19, 2018, in the District of South Carolina, the Defendant, **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly used and carried a firearm during and in relation to, and did possess a firearm in furtherance of, a drug trafficking crime, which is prosecutable in a court of the United States;

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	§	CRIM. NO.: 0:18-557-MGL
	§	
v.	§	
	§	
GABRIEL L'AMBIANCE INGRAM,	§	
a/k/a "Big Shot"	§	**VERDICT**
a/k/a "Big Shot Rock	§	
a/k/a "Rock"	§	
DARRELL LAROD CROCKETT,	§	
a/k/a "Unc"	§	
a/k/a "Croc"	§	
CARL MICHAEL MANN, II,	§	
a/k/a "Pike"	§	

We the Jury, following due deliberation in the above matter, unanimously return the following verdict:

COUNT 1:

Conspiracy to Possess with Intent to Distribute and to Distribute
Cocaine, Cocaine Base ("Crack" Cocaine), Fentanyl, Marijuana, or Heroin

1. As to Count 1, we find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

(If the jury finds "Guilty" as to this Defendant on this count, proceed to the drug types and drug weights. If the jury finds "Not Guilty," proceed to the next question.)

WE, THE JURY, unanimously find the amount and type of controlled substances attributable to the defendant, **Gabriel L'Ambiance Ingram**, are as follows:

Cocaine
☐ None
☐ A quantity amount
☑ 500 grams or more

Heroin
☐ None
☑ A quantity amount

Fentanyl
☑ None
☐ A quantity amount

Crack Cocaine
☐ None
☐ A quantity amount
☑ 28 grams or more

2. As to Count 1, we find the defendant, **Darrell Larod Crockett,**

☐ Not Guilty

☑ Guilty

(If the jury finds "Guilty" as to this Defendant on this count, proceed to the drug types and drug weights. If the jury finds "Not Guilty," proceed to the next question.)

WE, THE JURY, unanimously find the amount and type of controlled substances attributable to the defendant, **Darrell Larod Crockett,** are as follows:

Cocaine
☐ None
☐ A quantity amount
☐ 500 grams or more
☑ 5 kilograms or more

Crack Cocaine
☐ None
☐ A quantity amount
☑ 28 grams or more

Fentanyl
☐ None
☑ A quantity amount
☑ 40 grams or more

COUNT 9:
Possession with Intent to Distribute and
Distribution of a Quantity of Cocaine and Heroin

5. As to Count 9, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 10:
Possession with Intent to Distribute and
Distribution a Quantity of Heroin

6. As to Count 10, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 11:
Possession of a Firearm in Furtherance of a Drug Trafficking Crime or
Use or Carry of a Firearm During and in Relation to a Drug Trafficking Crime

7. As to Count 11, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 12:

Felon in Possession of a Firearm

8. As to Count 12, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 13:
Possession with Intent to Distribute a Quantity of Marijuana

9. As to Count 13, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 14:
Possession with Intent to Distribute a Quantity of Cocaine and Cocaine Base ("Crack" Cocaine)

10. As to Count 14, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 15:
Possession of a Firearm in Furtherance of a Drug Trafficking Crime or
Use or Carry of a Firearm During and in Relation to a Drug Trafficking Crime

11. As to Count 15, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 16:
Felon in Possession of a Firearm

12. As to Count 16, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

COUNT 17:

Possession with Intent to Distribute a Quantity of Cocaine Base ("Crack" Cocaine)

13. As to Count 17, we unanimously find the defendant, **Carl Michael Mann, II**:

☐ Not Guilty

☑ Guilty

COUNT 21:

Possession of a Firearm in Furtherance of a Drug Trafficking Crime or
Use or Carry of a Firearm During and in Relation to a Drug Trafficking Crime

14. As to Count 21, we unanimously find the defendant, **Gabriel L'Ambiance Ingram**:

☐ Not Guilty

☑ Guilty

I certify that this decision is the unanimous decision of the jury.

[redacted]
FOREPERSON SIGNATURE

[redacted]
FOREPERSON PRINTED NAME

August 19, 2022

Columbia, South Carolina

AO 245B (SCDC Rev. 10/20) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of South Carolina

UNITED STATES OF AMERICA
v.
GABRIEL L'AMBIANCE INGRAM,
a/k/a "Big Shot"
a/k/a "Big Shot Rock" a/k/a "Rock"

JUDGMENT IN A CRIMINAL CASE

Case Number: 0:18-557-003-MGL

USM Number: 33535-171

Louis Lang
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) 1, 9-16, 21 of the Second Superseding Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846; 21:841(a)(1) & 841(b)(1)(B)	Please see Second Superseding Indictment	4/4/2018	1
21:841(a)(1), 841(b)(1)(C) & 21:851	Please see Second Superseding Indictment	6/23/2017	9
21:841(a)(1), 841(b)(1)(C) & 21:851	Please see Second Superseding Indictment	8/1/2017	10
18:924(c)(1)(A)(i)	Please see Second Superseding Indictment	8/1/2017	11
18:922(g)(1) & 924(a)(2)	Please see Second Superseding Indictment	1/19/2018	12
21:841(a)(1), 841(b)(1(D) & 21:851	Please see Second Superseding Indictment	1/19/2018	13
21:841(a)(1), 841(b)(1)(C) & 21:851	Please see Second Superseding Indictment	4/4/2018	14
18:924(c)(1)(A)(i)	Please see Second Superseding Indictment	4/4/2018	15
18:922(g)(1) & 924(a)(2)	Please see Second Superseding Indictment	4/4/2018	16
18:924(c)(1)(A)(i)	Please see Second Superseding Indictment	1/19/2018	21

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

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

☒ Count(s) 1-2 of the Indictment; 1-2, 9-16 of the Superseding Indictment ☒ are dismissed on the motion of the United States.

☐ Forfeiture provision is hereby dismissed on motion of the United States Attorney.

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.

June 27, 2023
Date of Imposition of Judgment

s/Mary Geiger Lewis
Signature of Judge

Mary Geiger Lewis, United States District Judge
Name and Title of Judge

June 28, 2023
Date

DEFENDANT: GABRIEL L'AMBIANCE INGRAM
CASE NUMBER: 0:18-557

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
two hundred sixty (260) months, consisting of eighty (80) months as to counts 1, 9, 10, and 14, to run concurrently; sixty (60) months as to counts 12, 13, and 16, to run concurrently; sixty (60) months as to count 11, to run consecutively to all other terms of imprisonment; sixty (60) months as to count 15, to run consecutively to all other terms of imprisonment; and sixty (60) months as to count 21, to run consecutively to all other terms of imprisonment.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be housed at either FCI Bennettsville or FCI Jesup for period of incarceration and that he be allowed to participate in the RDAP program while incarcerated.

☒ 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

DEFENDANT: GABRIEL L'AMBIANCE INGRAM

CASE NUMBER: 0:18-557

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: six (6) years, consisting of four (4) years as to count 1; six (6) years as to counts 9, 10, and 14; three (3) years as to counts 11, 12, 15, 16, and 21; and four (4) years as to count 13, all terms to run concurrently.

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 and the following special condition:

1) You must submit to substance abuse testing to determine if you have used a prohibited substance. You must contribute to the cost of such program not to exceed the amount determined reasonable by the court-approved U.S. Probation Office's "Sliding Scale for Service," and you will cooperate in securing any applicable third-party payment, such as insurance or Medicaid.

DEFENDANT: GABRIEL L'AMBIANCE INGRAM
CASE NUMBER: 0:18-557

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, based on your criminal record, personal history or characteristics, that you pose a risk to another person (including an organization), the probation officer, with the prior approval of the Court, 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 _____

AO 245B (SCDC Rev. 10/20) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: GABRIEL L'AMBIANCE INGRAM
CASE NUMBER: 0:18-557

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	$ 1,000.00	$	$	$	$

☐ 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	$ _____	$ _____

☐ 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 ☐ fine ☐ restitution.

☐ the interest requirement for ☐ 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 (SCDC Rev. 10/20) Judgment in a Criminal Case
Sheet 6 — Schedule of Payments

DEFENDANT: GABRIEL L'AMBIANCE INGRAM
CASE NUMBER: 0:18-557

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 $ 1,000.00 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:
As directed in the Preliminary Order of Forfeiture, filed 12/6/2022 and the said order is incorporated herein as part of this judgment.

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.

AO 245B (Rev. 10/15 – DSC 3/16) Judgment in a Criminal Case Not for Public Disclosure
Attachment (Page 1) — Statement of Reasons

DEFENDANT: Gabriel L'Ambiance Ingram
CASE NUMBER: 0:18CR00557-003
DISTRICT: District Of South Carolina

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A. ☐ **The court adopts the presentence investigation report without change.**

B. ☒ **The court adopts the presentence investigation report with the following changes.** *(Use Section VIII if necessary)*

(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)

1. ☒ **Chapter Two of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to base offense level, or specific offense characteristics)*
The Court sustained a defense objection to 5 grams of crack cocaine included in Paragraph 28. However, this change had no impact on determining the defendant's base offense level.

2. ☐ **Chapter Three of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)*

3. ☐ **Chapter Four of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)*

4. ☒ **Additional Comments or Findings:** *(include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)*
See Section VIII

C. ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE *(Check all that apply)*

A. ☒ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence is at or above the applicable mandatory minimum term.

B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:

☐ findings of fact in this case: *(Specify)* _____

☐ substantial assistance (18 U.S.C. § 3553(e))
☐ the statutory safety valve (18 U.S.C. § 3553(f))

C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF ADVISORY GUIDELINE RANGE: *(BEFORE DEPARTURES OR VARIANCES)*

Total Offense Level: 32
Criminal History Category: IV
Guideline Range: *(after application of §5G1.1 and §5G1.2)* 168 to 210 month as to Cts 1, 9, 10, 12, 13, 14, and 16; 60 consecutive months as to each of Cts. 11, 15, and 21
Supervised Release Range: 4 years as to Cts 1 and 13; 6 years as to Cts 9, 10, and 14; 2 to 5 years as to Cts 11, 15, and 21; 1 to 3 years as to Cts 12 and 16
Fine Range: $ Not calculated due to an inability to pay

☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: Gabriel L'Ambiance Ingram
CASE NUMBER: 0:18CR00557-003
DISTRICT: District Of South Carolina

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.

B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary)*

C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. *(Also complete Section V.)*

D. ☒ The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. **The sentence imposed departs:** *(Check only one)*
- ☐ above the guideline range
- ☐ below the guideline range

B. **Motion for departure before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
   - ☐ binding plea agreement for departure accepted by the court
   - ☐ plea agreement for departure, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense departure motion.
2. **Motion Not Addressed in a Plea Agreement**
   - ☐ government motion for departure
   - ☐ defense motion for departure to which the government did not object
   - ☐ defense motion for departure to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for departure

C. **Reasons for departure:** *(Check all that apply)*

☐	4A1.3 Criminal History Inadequacy	☐	5K2.1 Death	☐	5K2.12 Coercion and Duress
☐	5H1.1 Age	☐	5K2.2 Physical Injury	☐	5K2.13 Diminished Capacity
☐	5H1.2 Education and Vocational Skills	☐	5K2.3 Extreme Psychological Injury	☐	5K2.14 Public Welfare
☐	5H1.3 Mental and Emotional Condition	☐	5K2.4 Abduction or Unlawful Restraint	☐	5K2.16 Voluntary Disclosure of Offense
☐	5H1.4 Physical Condition	☐	5K2.5 Property Damage or Loss	☐	5K2.17 High-Capacity, Semiautomatic Weapon
☐	5H1.5 Employment Record	☐	5K2.6 Weapon	☐	5K2.18 Violent Street Gang
☐	5H1.6 Family Ties and Responsibilities	☐	5K2.7 Disruption of Government Function	☐	5K2.20 Aberrant Behavior
☐	5H1.11 Military Service	☐	5K2.8 Extreme Conduct	☐	5K2.21 Dismissed and Uncharged Conduct
☐	5H1.11 Charitable Service/Good Works	☐	5K2.9 Criminal Purpose	☐	5K2.22 Sex Offender Characteristics
☐	5K1.1 Substantial Assistance	☐	5K2.10 Victim's Conduct	☐	5K2.23 Discharged Terms of Imprisonment
☐	5K2.0 Aggravating/Mitigating Circumstances	☐	5K2.11 Lesser Harm	☐	5K2.24 Unauthorized Insignia
				☐	5K3.1 Early Disposition Program (EDP)

☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. **State the basis for the departure.** *(Use page 4 if necessary)*

DEFENDANT: Gabriel L'Ambiance Ingram
CASE NUMBER: 0:18CR00557-003
DISTRICT: District Of South Carolina

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. **The sentence imposed is:** *(Check only one)*
- ☐ above the guideline range
- ☒ below the guideline range

B. **Motion for a variance before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
   - ☐ binding plea agreement for a variance accepted by the court
   - ☐ plea agreement for a variance, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense motion for a variance
2. **Motion Not Addressed in a Plea Agreement**
   - ☐ government motion for a variance
   - ☐ defense motion for a variance to which the government did not object
   - ☒ defense motion for a variance to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for a variance

C. **18 U.S.C. § 3553(a) and other reason(s) for a variance** *(Check all that apply)*

☒ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)
- ☐ Mens Rea
- ☐ Extreme Conduct
- ☐ Dismissed/Uncharged Conduct
- ☐ Role in the Offense
- ☐ Victim Impact
- ☐ General Aggravating or Mitigating Factors *(Specify)* _____

☒ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
- ☐ Aberrant Behavior
- ☐ Lack of Youthful Guidance
- ☐ Age
- ☐ Mental and Emotional Condition
- ☐ Charitable Service/Good Works
- ☐ Military Service
- ☐ Community Ties
- ☐ Non-Violent Offender
- ☐ Diminished Capacity
- ☐ Physical Condition
- ☐ Drug or Alcohol Dependence
- ☐ Pre-sentence Rehabilitation
- ☐ Employment Record
- ☐ Remorse/Lack of Remorse
- ☐ Family Ties and Responsibilities
- ☐ Other: (Specify) _____
- ☐ Issues with Criminal History: *(Specify)* _____

☒ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

☒ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

☒ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

☒ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))

☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))

☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

☒ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (Specify in section D)

☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

- ☐ Acceptance of Responsibility
- ☐ Conduct Pre-trial/On Bond
- ☐ Cooperation Without Government Motion for Departure
- ☐ Early Plea Agreement
- ☐ Global Plea Agreement
- ☐ Time Served *(not counted in sentence)*
- ☐ Waiver of Indictment
- ☐ Waiver of Appeal
- ☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007))*: *(Specify)* _____
- ☐ Other: *(Specify)* _____

D. ***State the basis for a variance.*** *(Use Section VIII if necessary)*

See Section VIII

DEFENDANT: Gabriel L'Ambiance Ingram
CASE NUMBER: 0:18CR00557-003
DISTRICT: District Of South Carolina

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. ☒ **Restitution Not Applicable.**

B. **Total Amount of Restitution: $** _____

C. **Restitution not ordered:** *(Check only one)*

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or . 3663A, restitution is not ordered because the victim(s)'(s) losses were not ascertainable (18 U.S.C. § 3664(d)(5))
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons. *(Explain)*

D. ☐ **Partial restitution is ordered for these reasons *(18 U.S.C. § 3553(c))*:**

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

Additional Comments or Findings: The Court sustained a defense objection to the defendant's mandatory minimum as to Count One of the Indictment. As such, the penalties as to Count One on Page 1 and in Paragraphs 102, 106, 110, and 114 are now: At least 5 years but not more than 40 years imprisonment, a term of at least 4 years supervised release, a fine of $5,000,000.00, and a special assessment of $100.00

After having considered the advisory sentencing guidelines and the relevant statutory factors contained in 18 U.S.C. § 3553(a), all of which were placed on the record, the Court granted a defense motion for a variance and determined a sentence of 260 months imprisonment was sufficient but not greater than necessary to achieve the purposes of sentencing.

Defendant's Soc. Sec. No.: 251-77-3542

Defendant's Date of Birth: 4/9/1989

Defendant's Residence Address: 313 Rutledge Street
Lancaster, South Carolina 29720

Defendant's Mailing Address: 313 Rutledge Street
Lancaster, South Carolina 29720

U.S. Marshal Number: 33535-171

Date of Imposition of Judgment June 27, 2023

s/Mary Geiger Lewis
Signature of Judge

Mary Geiger Lewis, United States District Judge
Name and Title of Judge

Date Signed June 28, 2023

APPENDIX C

Jury Instructions and Trial Sentencing Record

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	§	CRIM. NO.: 0:18-557-MGL
	§	
v.	§	
	§	
GABRIEL L'AMBIANCE INGRAM,	§	
a/k/a "Big Shot"	§	
a/k/a "Big Shot Rock	§	
a/k/a "Rock"	§	
DARRELL LAROD CROCKETT,	§	
a/k/a "Unc"	§	
a/k/a "Croc"	§	
CARL MICHAEL MANN, II,	§	
a/k/a "Pike"	§	
Defendants.	§	

COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

It is now my duty to instruct you on the rules of law that you must follow and apply in deciding this case. When I have finished, you will go to the jury room and begin your discussions — what we call your deliberations. You will have a written copy of these instructions on the law with you in your jury room during your deliberations. You will also have with you all of the exhibits that were received into evidence, except for any drugs that were admitted and any audio or video exhibits that were admitted.

CREDIBILITY OF WITNESSES

You are the sole judges of the believability of each witness, and of the importance the testimony of each witness deserves. You should carefully scrutinize all of the testimony of each witness, the circumstances under which the witness testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief.

Consider each witness' intelligence, motive to testify falsely, state of mind, and appearance and manner while on the witness stand.

Consider the witness' ability to observe the matters about which the witness has testified and consider whether the witness impresses you as having an accurate memory of the matters about which the witness testified.

You should also ask yourself whether there was evidence tending to prove that the witness testified falsely concerning some important fact; or, whether there was evidence that at some other time the witness said or did something, or failed to say or do something, which was different from the testimony he or she gave before you during the trial.

Inconsistencies or discrepancies in the testimony of a witness or between the testimonies of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently.

And, innocent misrecollection, like failure of recollection, is not an uncommon human experience. A simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. In weighing the effect of a discrepancy, however, always consider whether the discrepancy pertains to a matter of importance or to an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

Consider also any relation each witness might have to or be affected by the verdict and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case. Credibility is not merely choosing between one witness or another. As to each witness you are free to reject all that testimony, accept all that testimony, or as a third alternative reject some part and accept some other part of his or her testimony.

The weight of the evidence is not necessarily to be determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to a fact is more persuasive than that of a greater number of witnesses, or you may find that they are not persuasive at all.

IMPEACHMENT – FELONY CONVICTION

You have also heard testimony of a witness who was previously convicted of a crime, punishable by more than one year in jail. This prior conviction was put into evidence for you to consider in evaluating the witness's credibility. You may consider the fact that the witness who testified is a convicted felon in deciding how much of his or her testimony to accept and what weight, if any, it should be given.

CREDIBILITY – LAW ENFORCEMENT

In considering the testimony of a witness who is a police officer or agent of the government, you may not give more weight to the testimony of a police officer or agent of the government than you give to the testimony of other witnesses for the mere reason that the witness is a police officer or an agent of the government.

as evidence only what you hear on the tape.

You will notice that a complete record of the trial and all of the testimony is being made by the Court Reporter; but you should not expect to have typewritten transcripts of the trial available to you during your deliberations. Should you need to rehear testimony in your deliberations; the court will make it available by other means.

COOPERATING WITNESSES

The use of cooperators is common and permissible. The government also is permitted to recommend a reduced sentence in exchange for a cooperator's cooperation. The testimony of a cooperator, someone who provides evidence against someone else for money or for other personal reason or advantage, must be examined and weighed by you with greater care and caution than the testimony of a witness who is not so motivated.

You should not concern yourself with why the government made such an agreement with the witness. Your concern is whether the witness has given truthful testimony. You should not convict the defendants upon the unsupported testimony of such a witness unless you believe that testimony beyond a reasonable doubt.

You must determine whether the cooperator's testimony has been affected by self-interest, or by the agreement he or she has with the government, or his or her own interest in the outcome of this case, or by prejudice against the defendant or defendants. If you conclude that the furnishing of consideration to the cooperator was fully or partially contingent upon the content of his or her testimony at trial or upon a finding of guilt, then you should subject his or her testimony to an even higher degree of scrutiny.

You should not draw any conclusion or inference of any kind about the guilt of the defendants on trial from the fact that a witness pled guilty to a similar crime. That witness's

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B) and Title 18, United States Code, Section 2.

Count **Nine** charges on or about June 23, 2017, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly, intentionally and unlawfully did possess with intent to distribute and did distribute a quantity of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, and a quantity of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

Count **Ten** charges on or about August 1, 2017, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly, intentionally and unlawfully did possess with intent to distribute and did distribute a quantity of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

Count **Eleven** charges on or about August 1, 2017, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly used and carried a firearm during and in relation to, and did possess a firearm in furtherance of, a drug trafficking crime, which is prosecutable in a court of the United States;

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

Count **Twelve** charges on or about January 19, 2018, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly possessed a firearm in and affecting commerce, to wit: a Glock, .40 caliber pistol, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year and knowing that he had been convicted of such a crime;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

Count **Thirteen** charges on or about January 19, 2018, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of marijuana, a Schedule I controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(D).

Count **Fourteen** charges on or about April 4, 2018, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of cocaine and a quantity of cocaine base (commonly known as "crack" cocaine), both Schedule II controlled substances;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

Count **Fifteen** charges on or about April 4, 2018, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly used and carried a firearm during and in relation to, and did possess a firearm in furtherance of, a drug trafficking crime, which is prosecutable in a court of the United States;

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

Count **Sixteen** charges on or about April 4, 2018, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock"**, knowingly possessed a firearm, in and affecting commerce, to wit: a Ruger model P95, 9mm pistol, having previously been convicted of a crime punishable by imprisonment for a term exceeding one year and knowing that he had been convicted of such a crime;

In violation of Title 18, United States Code, Sections 922(g)(1), 924(a)(2), and 924(e).

Count **Seventeen** charges on or about June 13, 2018, that Defendant **CARL MICHAEL MANN, II, a/k/a "Pike",** knowingly, intentionally and unlawfully did possess with intent to distribute a quantity of cocaine base (commonly known as "crack" cocaine), a Schedule II controlled substance;

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

Count **Twenty-One** charges on or about January 19, 2018, that Defendant **GABRIEL L'AMBIANCE INGRAM, a/k/a "Big Shot", a/k/a "Big Shot Rock", a/k/a "Rock",** knowingly used and carried a firearm during and in relation to, and did possess a firearm in furtherance of, a drug trafficking crime, which is prosecutable in a court of the United States;

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

COUNT 1 – CONSPIRACY

Under the law, a "conspiracy" is an agreement or a kind of "partnership in criminal purposes" in which each member becomes the agent or partner of every other member. For you

to find each defendant guilty of the crime charged in Count 1, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. That there was an agreement between two or more persons to possess with intent to distribute, or to distribute, a quantity of the illegal drugs
2. That the defendant knew of the unlawful purpose of the agreement; and
3. That the defendant knowingly and willfully joined in the agreement; that is, he joined with the intent to further its unlawful purpose.

In order to establish a conspiracy offense, it is not necessary for the government to prove that all of the people named in the indictment were members of the scheme, or that those who were members had entered into any formal type of agreement. In other words, a tacit understanding among the parties is sufficient. It is also not necessary to proof of a conspiracy that the conspiracy have a discrete, identifiable or formal organizational structure; the requisite agreement to act in concert need not result in any such formal structure. Contemporary drug conspiracies can contemplate only a loosely knit association of members linked by a mutual interest in sustaining the overall enterprise of catering to the ultimate demands of a particular drug consumption market. Thus, while many conspiracies are executed with precision, the fact that a conspiracy is loosely knit, haphazard, or ill-conceived does not render it any less a conspiracy—or any less unlawful.

It is also not necessary for the government to prove that all of the people involved in the conspiracy were named in the indictment. Also, because the essence of a conspiracy offense is the making of the agreement itself, it is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

In other words, the government need only show that the defendant knew of the conspiratorial goal and that he voluntarily participated in helping to accomplish the goal. A

person's knowing participation in a conspiracy may be established through proof of surrounding circumstances, such as acts which furthered the purpose of the conspiracy.

Before you can find that a defendant became a member of a conspiracy as charged in Count 1, you must find beyond a reasonable doubt from the evidence that he knew the purpose or goal of the agreement or understanding and willfully entered into the agreement intending, in some way, to accomplish the goal or purpose by this common plan or joint action. As I stated earlier, to prove the existence of a conspiracy, the government need not prove a formal or explicit agreement. It is sufficient if there is a concert of action with the parties working together with a common design, purpose or understanding. Moreover, the government is not required to prove that any particular defendant committed an overt act in order for you to find him guilty of conspiracy.

By its very nature, a conspiracy may be clandestine and covert, and thereby may result in little direct evidence of such an agreement. Hence, a conspiracy generally is proved by circumstantial evidence and the context in which the circumstantial evidence is adduced. Indeed, a conspiracy may be proved wholly by circumstantial evidence. Circumstantial evidence tending to prove a conspiracy may consist of a defendant's relationship with other members of the conspiracy, the length of this association, the defendant's attitude and conduct, and the nature of the conspiracy. Additionally, evidence of a large quantity of controlled substances can create an inference of a conspiracy.

A person may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly joins in that plan on one occasion, that is sufficient to convict him of conspiracy even though he had not participated before and even though he played only a minor part. Each member of the

conspiracy may perform separate and distinct acts and, indeed, some conspirators may play only a minor role in the total illegal operation. A defendant's knowing participation in a conspiracy may be established through proof of surrounding circumstances such as conduct which furthered the purpose of the conspiracy.

In other words, if the evidence establishes beyond a reasonable doubt that the defendant knowingly and intentionally entered into the conspiracy alleged in the indictment to possess with intent to distribute or to distribute cocaine, the fact that the defendant did not join the agreement at its beginning, or did not know all of the details of the agreement, or did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal is not important to your decision regarding membership in the conspiracy.

I want to caution you, however, that a defendant's mere presence at the scene of an alleged crime does not by itself make him a member of the conspiracy. Similarly, mere association with one or more members of the conspiracy does not automatically make a defendant a member. A person may know a criminal without being a criminal himself. Further, mere knowledge, acquiescence, or approval of a crime is not enough to establish that an individual is part of a conspiracy. The government must show that the defendant knew the unlawful purpose of the conspiracy and knowingly and voluntarily joined the conspiracy.

Mere similarity of conduct or the fact that people may have assembled together and discussed common aims and interests does not establish proof of the existence of a conspiracy. To prove that an individual was a participant in a conspiracy, the evidence must show that the individual knew the essential objectives of the conspiracy and knowingly took part in the conspiracy. However, you may find knowledge and voluntary participation from evidence of presence when the presence is such that it would be unreasonable for anyone other than a knowledgeable participant to be present.

BUYER-SELLER DEFENSE

Multiple sales of controlled substances can be evidence of a conspiracy to distribute controlled substances. However, mere evidence of a simple buy-sell transaction is sufficient to prove a distribution violation, but not conspiracy. This is so because the buy-sell agreement, while illegal in itself, is not an agreement to commit an offense, it is the offense of distribution itself. But evidence of any understanding reached as part of the buy-sell transaction that either party will engage in or assist in further distribution is sufficient to prove both a distribution violation and a conspiracy violation.

QUANTITIES OF DRUGS ALLEGED IN COUNT 1

If you find that the government has proved beyond a reasonable doubt that a defendant participated in the drug conspiracy as charged in Count 1, in other words, if you find that the government has proved all three elements of the crime I have just described to you, then there is an additional question that you must decide.

Specifically, you will need to determine, and indicate on your verdict form, the amount of controlled substances attributable to each defendant. There are spaces on the verdict form for you to record your verdict on the question of drug type and amount, should you get this far in your deliberations. Again, for purposes of these instructions, I instruct you that cocaine base ("crack" cocaine), heroin, and cocaine are controlled substances. Additionally, a "quantity" or "quantity amount" of cocaine base ("crack" cocaine), heroin, or cocaine is a detectable amount.

Remember that you should address the issue of drug type and quantity if, and only if, you first find that the government has proved the elements of conspiracy beyond a reasonable doubt. If you do not find that the government has proved all three elements, then you do not need to go further in your deliberations and make a determination as to drug type and quantity.

You will need to determine, unanimously and beyond a reasonable doubt, the type and quantities of controlled substances attributable to each defendant if you have found him or her to be a member of the drug conspiracy. In determining the quantities of controlled substances attributable to each defendant, you should consider:

1. The amount of controlled substances that each defendant was involved in possessing with intent to distribute or distributing as a member of the conspiracy; and

2. The amount of controlled substances possessed with intent to distribute or distributed by other members of the conspiracy, provided that the actions of those co-conspirators were both reasonably foreseeable to each defendant and in furtherance of the jointly undertaken criminal activity.

There are separate sections on the verdict form to record these findings. Remember that at all times, the government bears the burden of proof beyond a reasonable doubt on all of these issues. We will go over the verdict form together in a few minutes.

COUNT 3 – POSSESSION WITH INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF COCAINE BASE ("CRACK" COCAINE)

COUNT 9 – POSSESSION WITH INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF HEROIN AND COCAINE

COUNT 10 – POSSESSION WITH INTENT TO DISTRIBUTE AND/OR DISTRIBUTION OF HEROIN

For you to find a defendant guilty of the crime of distribution or possession with intent to distribute, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. That the defendant distributed the amount of the controlled substance alleged in the indictment;

2. That the defendant knew that the substance distributed was a controlled substance under the law at the time of the distribution; and

3. That the defendant did so knowingly or intentionally.

OR

1. That the defendant knowingly possessed a controlled substance;

2. That the substance was in fact a quantity of the substance alleged in the indictment; and

3. That the defendant possessed the substance with the intent to distribute it.

"**Intent to distribute**" may be inferred from a number of factors. An inference is a conclusion that the law allows but does not require you, the jury, to draw from a fact or facts. It does not shift the burden onto the defendant, and the United States must prove the elements of an offense beyond a reasonable doubt before you can find the defendant guilty.

However, as I was saying, an intent to distribute may be inferred from a number of factors. Those factors include, but are not limited to:

1. The quantity of the drugs is greater than for personal use;

2. The packaging of the drugs and/or the possession of packaging paraphernalia;

3. Where the drugs were located, and if and/or where the drugs were hidden; and

4. The amount of money seized with the drugs.

Again, for purposes of these instructions, I instruct you that cocaine base ("crack" cocaine), heroin, and cocaine are controlled substances and a "quantity" or "quantity amount" of cocaine base ("crack" cocaine), heroin, or cocaine is a detectable amount.

AIDING AND ABETTING

As to Count 3, if you do not find Defendant Crockett guilty based on the previous instruction, you may also consider whether he aided and abetted someone else in this offense. If you find Defendant Crockett aided and abetted in the Distribution of Cocaine Base ("Crack" Cocaine) as charged in Count 3, you should find him guilty of that count.

The guilt of an accused in a criminal case may be established without proof that he personally did every act constituting the offense alleged. The law recognizes that ordinarily anything a person can do for himself may also be accomplished by him through direction of another person as his agent, or by acting in concert with, or under the direction of another person or persons in a joint effort or enterprise.

For you to find the defendant guilty, the government must prove each of the following beyond a reasonable doubt:

1. That the crime charged (Distribution of Cocaine Base ("Crack" Cocaine) as charged in Count 3) was in fact committed by someone other than Defendant Crockett;

2. That Defendant Crockett participated in the criminal venture as in something that he wished to bring about;

3. That Defendant Crockett associated himself with the criminal venture knowingly and voluntarily; and

4. That Defendant Crockett sought by his actions to make the criminal venture succeed.

Simply put, aiding and abetting means to assist the perpetrator of the crime.

One who aids, abets, counsels, commands, induces, or procures the commission of an act is as responsible for that act as if he committed it directly.

To prove association, the government must show that the defendant shared in the criminal intent of the person(s) committing the crime. This requires evidence that the defendant was aware of his criminal intent and the unlawful nature of the criminal acts.

The government is not required to prove that the defendant participated in every stage of an illegal venture, but the government is required to prove beyond a reasonable doubt that the defendant participated at some stage and that the participation was accompanied by knowledge of the result and intent to bring about that result.

Again, I caution you that mere association with one who is committing a criminal offence is not sufficient. Mere presence on the premises where drugs are found, or association with one who possesses drugs, is insufficient to establish possession needed under the statute.

There must be evidence to establish that the defendant engaged in some affirmative conduct, that is, that the defendant committed an act designed to aid in the success of the venture, and there must be evidence to establish that the defendant shared in the criminal intent of the person the defendant was aiding and abetting.

If two persons act in concert with a common purpose or design to commit an unlawful act, then the act of one of them in furtherance of the unlawful act is in law considered the act of the other.

COUNTS 11, 15, 21 – USE AND CARRY OF A FIREARM DURING AND IN RELATION TO, OR POSSESSION OF A FIREARM IN FURTHERANCE OF, A DRUG TRAFFICKING CRIME

For you to find Defendant Ingram guilty of the crime of use and carry of a firearm during and in relation to, and possession of a firearm in furtherance of, a drug trafficking crime, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. That the defendant possessed a firearm; and
2. That the defendant did so in furtherance of a drug trafficking crime which may be prosecuted in federal court.

OR

1. That the defendant used/carried a firearm; and
2. That the defendant did so in during/in relation to a drug trafficking crime which may be prosecuted in federal court.

The term **"carry"** requires knowing possession and movement, conveying, transporting, or bearing the firearm in some manner. However, the firearm does not have to be readily accessible.

A firearm is carried **"in relation to"** a drug trafficking crime if it has some purpose or effect with respect to the crime and if its presence was not the result of accident or coincidence. The firearm must facilitate, or potentially facilitate, the crime.

The phrase **"in furtherance of"** means the act of furthering, advancing, or helping forward. In other words, the government must prove that the possession of the firearm furthered, advanced, or helped forward the drug trafficking crime.

The mere accidental or coincidental presence of a firearm at the scene of a drug trafficking crime is not enough to establish that it was possessed in furtherance of the drug trafficking crime.

You are free to consider the numerous ways which a firearm might further or advance a drug trafficking crime. For drug trafficking crimes, factors which you, the jury, may consider in making this determination include, but are not limited to, the following: the type of drug activity that is being conducted, accessibility of the firearm, the type of weapon, whether the weapon is stolen, the status of possession (legitimate or illegal), whether the gun is loaded, proximity to drugs or drug profits, and the time and circumstances under which the gun is found.

A **"drug trafficking crime"** means any felony under Title 21, United States Code, Sections 801 to 971. I instruct you that distribution of a controlled substance and possession with the intent to distribute a controlled substance are drug trafficking crimes within the meaning of Title 18, United States Code, Section 924(c).

COUNTS 12 AND 16 – FELON IN POSSESSION OF A FIREARM

For you to find Defendant Ingram guilty of the crime felon in possession of a firearm, you

must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. That the defendant had previously been convicted of a crime punishable by a term of imprisonment exceeding one year;

2. That the defendant knew he had previously been convicted of a crime punishable by a term of imprisonment exceeding one year;

3. That the defendant knowingly possessed, transported, shipped, or received, the firearm; and

4. That the possession was in or affecting commerce because the firearm had traveled in interstate and/or foreign commerce at some point during its existence.

Defendant Ingram has previously stipulated to or admitted that he has been previously convicted of a crime punishable by a term of imprisonment exceeding one year and that the possession was in or affecting commerce because the firearm had traveled in interstate and/or foreign commerce at some point during its existence. Therefore, you may accept those stipulations as fact and consider the first and fourth elements established beyond a reasonable doubt.

COUNT 13 – POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA
COUNT 14 – POSSESSION WITH INTENT TO DISTRIBUTE COCAINE AND COCAINE BASE ("CRACK" COCAINE)
COUNT 17 – POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE ("CRACK" COCAINE)

For you to find a defendant guilty of the crime of possession with intent to distribute, you must be convinced that the government has proved each of the following elements beyond a reasonable doubt:

1. That the defendant knowingly possessed a controlled substance;

2. That the substance was in fact a quantity of the controlled substance alleged in the

indictment; and

3. That the defendant possessed the substance with the intent to distribute it.

As I said before, "**intent to distribute**" may be inferred from a number of factors, including, but not limited to:

1. The quantity of the drugs is greater than for personal use;
2. The packaging of the drugs and/or the possession of packaging paraphernalia;
3. Where the drugs were located, and if and/or where the drugs were hidden; and
4. The amount of money seized with the drugs.

Again, for purposes of these instructions, I instruct you marijuana, cocaine base ("crack" cocaine), and cocaine are controlled substances and a "quantity" or "quantity amount" of marijuana, cocaine base ("crack" cocaine), or cocaine is a detectable amount.

KEY DEFINITIONS

During the course of these instructions, I have defined numerous terms for you in the context of the different counts of the indictment. However, many of the same terms appear repeatedly in different counts of the indictment, and I will define these for you now.

The term "**to possess**" as used in these instructions means to exercise dominion and control or authority over something at a given time. The law recognizes two kinds of possession: actual possession and constructive possession. **"Actual possession"** is defined as physical control over property.

Alternatively, the United States may prove **"constructive possession"** by demonstrating that the defendant exercised, or had the power to exercise, dominion and control over an item. Constructive possession does not require proof that the defendant actually owned the property on

which the contraband was found. A person has constructive possession over contraband when he or she has ownership, dominion, or control over the contraband itself, or over the premises in which it was concealed. A defendant's mere presence at a location where contraband is found, or his mere association with another person who possesses contraband, is not sufficient to establish constructive possession. However, proximity to the contraband coupled with inferred knowledge of its presence may be sufficient proof to establish constructive possession.

The law never imposes on a defendant the burden of testifying or of explaining possession, and it is the jury's province to draw or reject any inference from possession.

In addition, possession need not be exclusive, but may be shared with others, and is susceptible of proof by circumstantial as well as direct evidence.

The term "**distribute**" means to deliver (other than by administering or dispensing) a controlled substance. The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance, whether or not there exists an agency relationship. Therefore, under federal law, the term "distribute" encompasses a broader range of conduct than just the sale of controlled substances.

To act "**knowingly**" is to act with knowledge of the facts that constitute the offense but not necessarily with knowledge that the facts amount to illegal conduct. Expressed another way, an act is done knowingly if a defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that a defendant knew that his acts or omissions were unlawful. A person acts knowingly as to the result of his conduct when he knows that the result is practically certain to follow from his conduct. A person who causes a particular result is said to act knowingly if he is aware that the result is practically certain to follow from his conduct, whatever his desire may be as to that result.

To commit an act "**intentionally**" is to do so deliberately and not by accident. As a general rule, it is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts knowingly done or knowingly omitted. The jury may draw the inference that a defendant intended all of the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act knowingly done or knowingly omitted by the defendant. Any such inference drawn is entitled to be considered by the jury in determining whether or not the government has proved beyond a reasonable doubt that a defendant possessed the required criminal intent.

The phrase **"attributable to the defendant"** means the amount of controlled substances possessed with intent to distribute or distributed by the defendant personally and also the amount possessed with intent to distribute or distributed by other members of the conspiracy, so long as the actions of those co-conspirators were both reasonably foreseeable to the defendant and in furtherance of the jointly undertaken criminal activity.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America, Plaintiff, v. Gabriel L'Ambiance Ingram, Defendant.	CASE NO: 0:18-cr-557-MGL **PROPOSED JURY INSTRUCTION BY DEFENDANT REGARDING MULTIPLE CONSPIRACIES**

Defendant, Gabriel L'Ambiance Ingram, respectfully submits the following Jury Instruction regarding multiple conspiracies.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC

/s/Louis H. Lang
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Attorneys for the Defendant

August 19, 2022
Columbia, South Carolina

The government has charged a particular conspiracy, and the government must prove that the defendant was a member of the conspiracy charged in the indictment. If the government does not prove that, then you must find the defendant not guilty, even if you find that he was a member of some other conspiracy not charged in the indictment. Proof that a defendant was a member of some other conspiracy is not enough to convict unless the government also proves beyond a reasonable doubt that the defendant was a member of the conspiracy charged in the indictment.

A single conspiracy exists where there is one overall agreement, or one general business venture. Whether there is a single conspiracy or multiple conspiracies depends upon the overlap of key actors, methods, and goals.

Whether the evidence proves a single conspiracy or, instead, multiple conspiracies, is an issue for you, the jury

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION
CASE NO. 0:18-CR-00557-MGL

UNITED STATES OF AMERICA,
Plaintiff,

AUGUST 17, 2022
9:06 a.m.
Columbia, SC

vs.

GABRIEL L'AMBIANCE INGRAM, *also known as* Big Shot, *also known as* Big Shot Rock, *also known as* Rock; DARRELL LAROD CROCKETT, *also known as* Unc, *also known as* Croc; CARL MICHAEL MANN, II, *also known as* Pike,

Defendants.

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VOLUME 6
CRIMINAL JURY TRIAL
BEFORE THE HONORABLE MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:
Mr. William K. Witherspoon, AUSA
Mr. Elliott B. Daniels, AUSA
Ms. Elle E. Klein, AUSA
Mr. Lamar J. Fyall, AUSA
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FOR THE DEFENDANT:
(Gabriel Ingram)
Mr. Louis H. Lang, Esq.
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Columbia, SC 29201

(Appearances continue on next page)

(No Jury, 9:06 a.m.)

THE COURT: All right. Good morning. Please be seated. Where are our U.S. Attorneys?

COURTROOM DEPUTY: They were here when I was back there.

THE COURT: They just disappear.

(Mr. Fyall is now present.)

THE COURT: Good morning.

MR. FYALL: Good morning, Your Honor.

THE COURT: Here they come.

MR. FYALL: They were just out taking care of some logistics. But while we're here, I think we can talk about what's going to be admissible or inadmissible as it relates to Mr. Brock --

THE COURT: Okay.

MR. FYALL: -- who is related to the testimony of Officer Rainier yesterday and the controlled buys.

THE COURT: Right. Let's see what we've got for him. All right. Daniel Brock?

MR. FYALL: Yes, Your Honor.

THE COURT: All right. So what is the -- are there any prior convictions that the government is not arguing about?

MR. FYALL: Yes. So I think we are on the same page with the prior convictions.

THE COURT: Okay.

09:07

MR. FYALL: And Mr. Lang, please tell me if I miss anything. There's a 2011 attempted murder, a 2016 possession with intent to distribute meth.

MR. LANG: No, it's cocaine.

MR. FYALL: Possession with intent to distribute cocaine, I'm sorry. There is a 2016 possession; I actually don't know what that drug was.

MR. LANG: Maybe I can run through them quicker.

MR. FYALL: Yeah.

MR. LANG: That's a PWID meth.

MR. FYALL: Uh-huh, I got that. There is, 2016, two counts of assault and battery, second. And he has a 2022 possession with intent to distribute meth. That is the federal charge which he's serving time on right now.

MR. LANG: You missed a couple. There is a 2017 habitual traffic offender charge conviction and then a 2018 conspiracy to possess fentanyl conviction.

MR. FYALL: Yes.

MR. LANG: Okay?

THE COURT: Okay. All right.

MR. LANG: So we're all in agreement on that.

THE COURT: You're on the same page on that.

MR. LANG: Yes, ma'am.

THE COURT: Okay. Are there other issues about Mr. Brock?

09:09

MR. LANG: Yes, ma'am.

THE COURT: Okay.

MR. LANG: You want me to start? Okay. All right.

Judge, may it please the Court, Louis Lang for Gabriel Ingram. Your Honor, we pulled or I have pulled -- actually, Jack Duncan pulled all of Mr. Brock's SCDC disciplinary records, which are extensive, and they really fall into two categories, one of which the government and I agree on, and that concerns a disciplinary matter back in December of 2014 involving Mr. Brock trying to scam a civilian outside of SCDC into giving him money, and that's an honesty, truthfulness issue. So that's a 609 or 608, whatever the rule is, issue. The government and I agree on that.

There are -- however, the ones we disagree on are the ones -- and there are one, two, three, four, five, six, seven, eight, nine, ten, eleven -- eleven instances in which Mr. Brock either possessed a cell phone and a charger or possessed a weapon, possessed drugs and a cell phone. Those kind of possession things within SCDC, in my view, Your Honor, are 404(b) issues, common scheme or plan, because the plan is, the testimony yesterday was, you know, that law enforcement searched Mr. Brock, searched the other informants, searched the car, and then they took off and they came back and they searched him again, and these instances show a plan, a scheme, an ability of Mr. Brock to hide anything anywhere, and that's

why these, I would suggest to the Court, are admissible under 404(b).

And Your Honor is well aware, of course, the Fourth Circuit has said 404(b) is a rule of inclusion, not exclusion, and there's a test that I'm sure Your Honor is more familiar with than I am, but I would suggest to the Court that these instances -- and I'd be happy to show the government, I mean, these are records right from SCDC which demonstrate that all these instances occurred, were investigated by SCDC and were confirmed by SCDC because they levied disciplinary sanctions against Mr. Brock for all of these instances.

THE COURT: All right. So this is to show that Mr. Brock is just a master at making things happen or disappear without other people noticing and he did that during these controlled buys. Is that what you're trying to --

MR. LANG: That's correct, Your Honor.

THE COURT: Okay.

MR. LANG: And there's one other one. And this is an instance that occurred while he was in federal custody before he was sentenced for the federal offense which we agreed can come in for possession -- well, it's conspiracy to possess with intent to distribute methamphetamine, and that was a stabbing incident in the jail, I think it was Mecklenburg County jail. And the stabbing incident is of no concern to me, Your Honor, but what happened was, he had a shiv that he hid within the

09:12 pod. Again, just like hiding drugs and cell phones and those sorts of things, again demonstrates the common scheme or plan, a habitual ability to hide things and make things disappear, as Your Honor indicated, without law enforcement or corrections officers knowing that.

THE COURT: Okay. All right. Let me hear from you, Mr. Fyall.

MR. FYALL: Thank you, Your Honor. I think this is sort of where we depart. One, the -- you're not allowed to use character evidence to prove that someone acted in that same manner on a subsequent date, so this evidence --

THE COURT: Unless it goes to a common scheme or a methodology that that person uses.

MR. FYALL: Correct, Your Honor, and a common scheme of having a cell phone in prison, there is no indication from what I heard that he had this cell phone on his person, in his rectum, wherever. The facts of this case are that he went to law enforcement, he was physically searched, his person was searched, his car was searched, right? And so the context of SCDC and having a cell phone somewhere in the cell is much different than going to a controlled buy where you are searched by law enforcement. And so the common scheme or plan, in order for it to be admissible, has to be similar to the case at bar, that's what makes it a common scheme or plan. So unless there's some evidence he's hiding these things on his person in

09:14 a manner where law enforcement, after a thorough search, would not be able to find it, I think other than that it's very prejudicial and it's not relevant to the testimony that he's going to give, which is he showed up for a controlled buy, his person was searched by law enforcement, and they didn't find anything, right? So if he had some sort of strip search --

THE COURT: I know, but he's saying that you didn't find anything because he's just such a Houdini and he was able to hide all these things.

MR. FYALL: Yes, Your Honor, but it wasn't that he was able to hide those things on his person. The allegations are that he had a cell phone in his cell, and there's no allegation that he had a cell phone in a way that evaded detection by SCDC personnel or law enforcement. It's, there was a cell phone in his cell that he shouldn't have had. That's much different than having a cell phone -- like me having a cell phone on my clothing or somewhere where law enforcement couldn't detect it. Because that would have to be the scheme, that he had the ability to hide things that law enforcement -- in a way that law enforcement wouldn't be able to detect.

And secondly, there's no evidence that a phone came up missing. He didn't have a phone. The phone he had had a recorder on it and he gave it back to law enforcement. So I just don't think that's -- I think it's very prejudicial, first off, in the way it's attenuated. I don't think it's relevant

09:15

to show a common scheme or plan as it relates to this case.

Now, if he was testifying about -- if there was some indication that he was able to hide these things on his person in a way that law enforcement wouldn't be able to find out, if this was sort of a prison contraband case, sure, so be it, but I think the common scheme or plan as it relates to smuggling phones into a prison and having that phone in your cell --

THE COURT: I mean, that's so common, I mean, my goodness, yeah. Yeah. I don't know. Hmm.

MR. LANG: Judge, just as an example, and this is on my list which I provided Mr. Fail -- Fyall, I'm sorry, No. 6, possession of a cell phone, I, Corporal Michael Capra, found in the pocket of his tan shorts a homemade knife approximately six inches long with a wooden handle wrapped in a brown striped up cloth. I am charging inmate with possession of a weapon.

Okay. Found it actually on his person, in his pants. And, you know, like it's -- you know, I can't show that he was searched beforehand and they missed it, but this is certainly exactly what we're talking about.

In addition to that, Judge, we have a situation, and you may recall my cross-examination of one of the law enforcement officers, I don't have the second half of one of those purchases, the video. The video failed, at least that's my information, so there's nobody can see inside that car.

In addition, Your Honor, remember, there are two

people in that car and, you know, the video, and I assume we'll see it briefly -- you know, momentarily, the video doesn't show everything that's going on. So you can't tell what's going on between those two people and what's in the car and you can't see anything when they come back.

So I would suggest to the Court that all this is exactly the kind of thing 404(b) is made to demonstrate, that this person can hide all kinds of stuff, all kinds of ways, and put it over on law enforcement, and he's done that not once, twice, three times, but multiple times.

THE COURT: Okay.

MR. FYALL: That's exactly what I'm referring to, Your Honor. He had a cell phone in his pocket, so it's something that if law enforcement searched him, they would have found it, right? So that's why I think this is attenuated. He is not being accused by Mr. Lang of having contraband in his possession that's not able to be found, he's being accused of having contraband in his possession that is easily found, that was in his pocket, based on the complaint. And if he's searched by law enforcement and they don't find anything in his pockets, I don't see how that's a common scheme or plan.

Second, Your Honor also has to weigh 404 with 403. The facts before the jury are not whether or not Mr. Brock hid drugs from law enforcement, right? It's whether or not he got drugs from Gabriel Ingram, which is captured on video, and how

much those drugs were. In fact, if you ask me, if he took some drugs and hid them from law enforcement, that would probably be beneficial to Mr. Ingram because that would lessen the weight that he can be accused of having. But it's just irrelevant to this case.

And again, the common scheme or plan -- if the common scheme or plan is I had a cell phone in my pocket that's easily detectable by law enforcement, and he's searched by law enforcement, then how is that an issue? If it's not at issue and he's thoroughly searched by law enforcement, then at that point it's just prejudicial because there's no evidence that he would have hid it anywhere else other than in a manner that's easily discoverable.

THE COURT: All right. Well, why don't we do this. Why don't we see how his direct examination goes and then I'll decide what you can and can't go into.

MR. LANG: One more issue in dispute, Your Honor --

THE COURT: Okay.

MR. LANG: -- and that is this. Mr. Brock, when he pled guilty in the Western District of North Carolina, entered into a plea agreement, and this plea agreement -- I have a copy of it if Your Honor wants to take a look at it -- but the plea agreement itself is dated April 27, 2021. It is ECF No. 33 in United States versus Danny Brock, Civil Action -- or Criminal Action No. 3:19-CR-376.

09:20

And in this plea agreement, Your Honor, Mr. Brock agrees to plead guilty to one of two counts in the indictment that was pending. One count charged a conspiracy to possess with intent to distribute methamphetamine; the other was a substantive count. The government agrees to dismiss the substantive count.

In addition, Your Honor, this is in paragraph 3, it says, The United States will not oppose a sentence in this case running concurrent to the sentence for charges the defendant currently has pending in South Carolina state court.

And the question is -- what the government is objecting to is my desire to recite to Mr. Brock and the jury those pending charges that were pending both at the time of the alleged controlled purchases as well as are presently pending, in other words, all the pending charges, which I suggest to the Court are encompassed by this plea agreement which says the government will --

THE COURT: Why don't you just refer to charges? Why do you have to go into what they are?

MR. LANG: Well, you know, I think it's important to know what they are because the sentences are significant for these charges, and what he's agreed to --

THE COURT: I mean, you can ask him, "Aren't the sentences significant on those charges?"

MR. LANG: Well, I don't know what he'll say, Judge,

09:21

but, you know, I think the jury has a right to know that the deal with the government is, he does this and the government agrees. And of course this has the usual provisions, Your Honor, about him not violating any provision of federal law or -- it's not a cooperation agreement, but it is a significant factor in entering into this plea agreement.

And I would suggest to the Court that I need to -- I should be able to go through all of the pending charges. I won't make a big deal out of them, but I certainly will go through them all, there are nine in total, and they run from 2017 all the way to 2018.

THE COURT: Okay. Well, I mean, I don't think you need to go into what the specific charges are. I think you can let the jury know that there's a significant benefit to him, he recognizes it, they'll see that that obviously could have a potential effect on his credibility, I don't have a problem with that, but I don't see why you would need to go through and list out the specific charges.

MR. LANG: Your Honor --

MR. FYALL: Your Honor -- I'm sorry.

MR. LANG: Go ahead.

MR. FYALL: I'm confused on what the benefit is. He entered into a plea agreement that's already been -- and he's already been sentenced, and as a part of that plea agreement and sentence the federal government has promised not to oppose

his federal charges running concurrently with his state charges.

THE COURT: Okay.

MR. FYALL: That's over and done with. I'm not sure what he's asserting now. We did -- this is going to come out in evidence, when he -- he signed up for a CI because he had pending charges, and it was a pending PWID heroin charge. And, you know, he -- I'm sure he hopes to get some benefit for that because he was working as a CI to get those charges -- I think that's fair game.

But going to whatever the totality of the pending charges he has now and how that would affect a plea agreement that's already been signed and entered and that he's already been sentenced on, and the rest of it is for state court, which we're not in state court and I have no control over it, I don't think that's pertinent.

MR. LANG: It's not over, Judge. I just checked this morning to make sure that every one of these charges remains pending. And so what the government agreed to do, subject to Mr. Brock obeying the law, which he finds difficult, is to run these matters concurrent, the sentences -- or not object to the concurrent --

THE COURT: All right. I'm going to let you do that, but I'm not going to let you refer to the individual crimes.

MR. LANG: Well, Judge, in that case I'd like to at

09:24 least put on the record what I would refer to specifically.

THE COURT: Okay.

MR. LANG: But I will of course obey Your Honor's ruling. And these are the three I don't think we disagree on: A March 22, 2017, let's see, it looks like a possession with intent to distribute a narcotic of some description in which he's -- third offense, which he's facing a 5- to 20-year sentence; a habitual traffic offender offense, March 22, 2017, where he's looking at a five-year maximum; a PWID, third offense, charge on March 22, 2017, where he's looking at another 5- to 20-year sentence.

Possession of a weapon during violent crime, if not also sentenced to life without parole or death. There he's looking at a mandatory minimum of 15 years with a maximum of life, and that's February 11, 2018.

A burglary, first, which is another 15-year mandatory minimum to life, February 11, 2018.

A criminal conspiracy charge, where he's looking at a five-year maximum, February 11, 2018.

Assault and battery, first degree, where he's looking at a maximum of ten years; that's February 11, 2018.

An unlawful possession of a weapon, stolen pistol, where he's looking at a five-year maximum, February 13, 2018.

And another unlawful carrying of a weapon or pistol, where he's looking at a maximum of one year, February 13, 2018.

09:25

And what I'll do, Your Honor -- what?

(Off-the-record discussion between Mr. Lang and Defendant Ingram.)

MR. LANG: What I'll do, Your Honor, is when I cross-examine him I will tell him that there are a number of charges pending against him, a series of charges dating from March 2017 to February 2018, and part of his agreement was to -- the government would agree that they would run concurrent --

THE COURT: Okay.

MR. LANG: -- if that's satisfactory with Your Honor.

THE COURT: That's fine. I don't see any problem with that.

MR. LANG: Okay. But I will ask him specifically about the three that the government agrees to, and that's the 2017 ones.

MR. FYALL: Yes.

THE COURT: Okay. All right.

MR. FYALL: So just the pending charges. We're not getting into the penalties either.

MR. LANG: No. And Your Honor ruled that way, I assume.

THE COURT: I thought I did.

MR. FYALL: Okay. Just making sure.

THE COURT: All right. Anything else before we get

09:33

MR. DANIELS: I'm not sure that he'll testify to Mr. Crockett, will he?

(Pause.)

(Mr. Delgado is now present.)

THE COURT: I'm sorry, I forgot that you had stepped outside and we got started without you. I apologize.

BY MR. FYALL:

Q. So you were charged and convicted in a federal case for possession with intent to distribute meth; is that correct?

A. Yes.

Q. And you're currently serving a sentence on that case?

A. Yes.

Q. And you did not sign a cooperation plea agreement, correct?

A. No.

Q. But you're here testifying and you hope, despite the fact that you didn't sign the cooperation plea agreement, that you will get a benefit, correct?

A. Yes.

Q. And what's that benefit?

A. Time reduction.

Q. All right. And can you tell us what district you were sentenced in?

A. Western District, North Carolina.

Q. Western District of North Carolina. So it's up to the folks at the Western District of North Carolina if you -- if

09:34
they file a motion for you to get a time reduction, correct?
A. Yes.
Q. And ultimately up to judge in the Western District of North Carolina if that's going to happen.
A. Ultimate.
Q. All right. Now, do you understand what you have to do in order for any of that to happen?
A. Yes.
Q. What's that?
A. Tell the truth.
Q. Now, you also have a little bit of prior -- some substantial prior criminal history; is that correct?
A. Yes, sir.
Q. All right. You have a conviction for a 2011 attempted murder, correct?
A. Yes, sir.
Q. 2016, you have a PWID, is that a cocaine charge?
A. Yes.
Q. And in 2016 you have two counts of assault and battery, second degree, correct?
A. Yes.
Q. In 2017 you have a habitual traffic offender conviction?
A. Yes.
Q. All right. In 2018, a conspiracy to possess fentanyl?
A. Yes, sir.

09:36
Q. All right. And at some point were you working as a CI with the Rock Hill Police Department?
A. Yes, sir.
Q. Specifically the drug enforcement unit or the DEU?
A. Yes, sir.
Q. All right. And you started working for them because you had pending charges at that time, correct?
(Reporter clarification.)
Q. You started working for them because you had pending charges at that time?
A. Yes, sir.
Q. All right. And those charges were a possession with intent to distribute heroin charge?
A. Yes.
Q. And a habitual traffic offender charge as well?
A. Yes.
Q. All right. And so you signed up as a CI and you hoped that if you helped them, buying drugs from someone, that they would help you with your charges.
A. Yes, sir.
Q. All right. Now, who is in charge of the disposition of those charges?
A. York County.
Q. York County what?
A. DA.

09:37
Q. All right. So you are hoping that you help them and that they would ask the York County District Attorney to help you.
A. Yes, sir.
Q. And those charges are still pending, correct?
A. Yes.
Q. Now, when you signed up as a CI, did you sign an agreement?
A. Yes.
Q. All right. Tell us, what were the terms of that agreement?
A. Couldn't be under the influence, couldn't do any illegal activity while I was making the controlled buy.
Q. Okay. So while you were making the controlled buy, you couldn't do anything illegal.
A. Yeah.
Q. Okay. Anything else that you remember?
A. No, not that I remember. There was several terms, conditions, I just don't remember them all.
Q. All right. So let's start with June 23rd, 2017. You already said you knew Gabriel Ingram and you had known him for some years, correct?
A. Yes.
Q. Did you work with law enforcement on June 23rd, 2017, to get a controlled buy from Gabriel Ingram?
A. Yes.
Q. How did you contact him?
A. Through Messenger at first.

09:38
Q. All right. I'm going to show you what's been marked as Government's 255 and 256 and ask if you recognize those. Do you recognize those?
A. Yes.
Q. Are those the messages between you and Mr. Ingram?
A. Yes.
MR. FYALL: Your Honor, at this point I'd move Government's 255 and 256 into evidence.
THE COURT: Any objection?
MR. LANG: No objection, Your Honor.
THE COURT: Okay. All right.
MR. FYALL: If we could publish Exhibit 255, Your Honor.
THE COURT: It's admitted.
BY MR. FYALL:
Q. All right. On the right side here of this screen, whose messages are those?
A. Those are mine.
Q. All right. And whose messages are these?
A. Those are Mr. Ingram's.
Q. All right. And so when you sent the message that said, 14 now he needs a socket to plug in, translate that for us. What does that mean?
A. Someone wanted 14 grams and a consistent supplier.
Q. All right. So does that mean by "socket to plug in"?

09:40
A. Yeah.
Q. So what were you saying your role was going to be in this transaction?
A. Middleman.
Q. Middleman. So you're trying to get drugs from Mr. Ingram to give to some third party.
A. Correct.
Q. All right. But that third party didn't exist?
A. No.
Q. All right. He responded, 1150.
So what did you do with that information?
A. You said, what did I do with that information?
Q. Yes.
A. Pass it on.
Q. All right. And I want to show you 256, and these are the further messages between you and Mr. Ingram prior to this drug deal, correct?
A. Yeah.
Q. All right. And what did you take the number 1150 to mean?
A. What's that?
Q. What did the number 1150 mean? What was that?
A. That was the price.
Q. The price. That's the price you negotiated?
A. For the 14 grams.
Q. All right. And so on June 23rd, 2017, did you actually

10:12
A. Mine.
Q. I'm sorry, let me just help you out. Whose phone number is that in your contacts?
A. Oh, that was Gabriel's.
MR. FYALL: Okay. I'm showing him what's marked as 255, Government's 255. Beg the Court's indulgence.
(Off-the-record discussion between government counsel.)
BY MR. FYALL:
Q. I'm just going to show you 255 one more time to clear up any confusion. That phone number on top of here, again, 803-616-5623, you said that was Gabriel Ingram's?
A. I believe so. That was five years ago. I'm not sure if that might be my old number, it might be Gabriel's.
MR. FYALL: Nothing further, Your Honor.
THE COURT: Okay. All right. Ladies and gentlemen, we're going to take just a short break, let you run to the restroom. I'll call you back in here in just a moment.
(Jury not present.)
THE COURT: All right. Let's just take a short break. I'll be back in about ten minutes.
(Recess, 10:14 a.m. to 10:33 a.m.)
THE COURT: All right. Let's be seated. All right. I thought about your request, Mr. Lang, to go into all of the disciplinary problems that Mr. Brock experienced or continues to experience during his periods of incarceration, but I think

10:33 what you're really trying to do and what it really is, is impermissible character evidence. I think what you're trying to do, and correct me if I'm wrong, is to demonstrate that he's pretty good at sneaking things in and sneaking things out. And that may well be true, and perhaps he's done that in the past, but that's not admissible for showing that he did it in this case unless there's some sort of pattern, methodology, some routine that he goes through before he does that. If, before he sneaks something in, he alerts someone to help him, the same accomplice, perhaps, or something like that, that might be permissible to show some sort of common scheme that would make that information admissible, but I have not heard a common scheme or methodology or practice or routine or anything like that that applies here, so I think my inclination is not to allow you to offer that evidence or to question this witness in that regard.

MR. LANG: Thank you, Your Honor. I would, though, make a complete proffer at some point in time, obviously outside of the presence of the jury.

THE COURT: Okay.

MR. LANG: And before I finish my cross-examination of Mr. Brock, I may do it at that time.

THE COURT: Okay.

MR. LANG: And I'm not disagreeing with Your Honor's certainly ruling --

10:35

THE COURT: Right.

MR. LANG: -- but I would like to at least try to revisit that.

THE COURT: Well, I want to give you that opportunity and so just make sure that I don't forget about that and we'll make sure that happens.

MR. LANG: Thank you.

THE COURT: Okay. All right. Anything else before we bring the jury in?

(No response.)

(Jury Present.)

THE COURT: All right. Mr. Lang.

MR. LANG: May it please the Court, Your Honor.

CROSS-EXAMINATION

BY MR. LANG:

Q. Mr. Brock --

A. Yes.

Q. -- my name is Louis Lang. I represent Gabriel Ingram. Let me start with your criminal history, if I could. I know the prosecutor went through it, but let me make sure I understand all of your prior convictions. You were convicted I think when you were 25 years old for attempted murder; isn't that right?

A. Yes.

Q. You tried to kill somebody; isn't that correct?

MR. FYALL: Objection, Your Honor. May we approach?

10:38 A. No, I didn't try to kill someone.

THE COURT: Hold on just a second.

(Sidebar Conference:)

MR. FYALL: He can only impeach on the conviction, he can't go into any of the underlying facts.

MR. LANG: I'm not going into any of the underlying facts.

MR. FYALL: You asked, Did you try and kill somebody?

MR. LANG: It's just a colloquial, you tried to kill somebody. That's attempted murder.

MR. FYALL: No, no, no.

(Laughter.)

MR. LANG: What's funny about that?

MR. FYALL: He can only go into the charge and the fact that he was convicted of it. He can't do anything else. You were convicted of attempted murder? Yes. Move on.

THE COURT: They have a problem with your characterization of his prior.

MR. LANG: Well, I didn't mean anything though. It was just a colloquialism.

THE COURT: Well, let's just skip over that.

MR. FYALL: Your Honor, if we could just -- I just want to make sure we're just going to stick to the statutory title of the charge and move on.

THE COURT: Okay.

04:40 separately back here. And I think that was confirmed, I would suggest, by -- who was the other witness? The gentleman who testified yesterday.

THE COURT: Jordan?

MR. LANG: Mr. McMullen --

THE COURT: Oh, McMullen.

MR. LANG: -- who said the same thing, you know, that Odarrius did his thing, Hemphill did his thing. So I think there is clearly a factual basis and I think I'm entitled to the multiple --

THE COURT: But wasn't Mr. Ingram talking with Mr. Adams as late as March of 2018? I realize that -- I heard the testimony that Mr. Adams and Mr. Hemphill had a little bit of a falling out and didn't coordinate all of their purchases from the source in Los Angeles together, but I think that the rest of this happy crew continued to operate in touch with each other and with each other's drugs. That's the way I saw it. I mean, there may have been some separation at the top as to how the source was handled in California, but I think on that call we heard today, I thought it was Mr. Ingram talking with Mr. -- or at least about Mr. Adams and doing business in March of 2018, right? Am I wrong? If I'm wrong about that --

MR. DANIELS: Not only are you right about that, but also, Gabriel Ingram is talking about Darryl Hemphill in March of 2018 in these calls.

04:41

THE COURT: Uh-huh.

MR. DANIELS: And what I'd say is that a breakup between two members of the same conspiracy does not establish a multiple conspiracy charge.

THE COURT: Yeah.

MR. DANIELS: In fact, one agreement with one person without knowledge or work with anybody else in the conspiracy is still sufficient. And even if, accepting as true, that at some point Gabriel and Darryl no longer liked each other or worked together, it doesn't demonstrate there's another conspiracy. In fact, there's not been any positive evidence of the multiple conspiracies. The only evidence that we've seen is that Mr. Adams -- Mr. Ingram, I apologize, works with other members who were on that summary chart who are members of the conspiracy.

THE COURT: Right.

MR. DANIELS: So even accepting a breakup, I don't see a second conspiracy.

THE COURT: I agree with that, and I'm afraid that if we start giving a charge on two different conspiracies, the jury is going to think, uh-oh, what have I missed, and they're going to be trying on their own, I think, to create two groups, and I just don't think there's a basis for that in the facts that I've heard.

MR. LANG: Thank you, Your Honor. I will take

04:42

exception then to the lack of the multiple conspiracy charge.

THE COURT: All right.

DEFENDANT INGRAM: There's no evidence of me talking to Mr. Adams, period.

(Off-the-record discussion between Mr. Lang and Defendant Ingram.)

MR. DUNCAN: At the risk of going me too, I mean, I would join in his request for that charge given that --

THE COURT: Which conspiracy is Mr. Mann a part of?

MR. DUNCAN: Neither. Neither. Neither, Your Honor.

(Laughter.)

THE COURT: All right. Okay. What else? Let's see, I've got -- now we're kind of getting down with my list -- multiple versus single conspiracy. I think we've dealt with that.

MS. KLEIN: And before we move on, we did find that language in the pattern jury instructions. It's on page 524, the second full paragraph.

MR. LANG: I'm sorry?

MS. KLEIN: It says, "The jury may find knowledge and voluntary participation from evidence of presence when the presence is such that it would be unreasonable."

MR. LANG: Right, I got it.

THE COURT: So you're okay with that.

MR. LANG: Yes, ma'am.

04:43

THE COURT: Okay. All right. Now, I had a note about consideration of gun possession on page 28. But I'm looking at my 28.

LAW CLERK: It's 27.

THE COURT: 27 on this one. Okay. Oh, consideration. Okay. One second. (Pause.) All right. I've got some language in blue. Is that what the government -- is that language that you are proposing goes in?

MS. KLEIN: Yes, Your Honor.

THE COURT: Is there a problem from the defendants with that?

MR. LANG: Yes, Your Honor. I would object to that charge. This is not a gun conspiracy, it's a drug conspiracy. I've never seen that charge, frankly. I don't know where it comes from. If it's a case, I could be enlightened, but again, I certainly object to that, because my client is the only one with a gun, principally, and that just -- again, this is a drug conspiracy case, it's not a gun conspiracy case.

MR. DANIELS: Your Honor, you know, one interesting thing that we had happening in this case is that, you know, it's well established that guns are tools of the drug trafficking trade, and presence, knowledge, possession of guns, even if they're just a straight 846 charge, is relevant evidence.

Mr. Ingram consistently had guns every time he

04:45 encountered law enforcement. That's relevant because he -- even to the 846 count pending against him, not just the substantive gun possessions.

We tried to figure out a place to put in this -- that guns are tools of the drug trafficking trade, which is a core charge in drug trafficking cases, and there wasn't a distinct place for us to put it. I think we tried to put it at the end of the drug conspiracy section, and I believe that the language is going to come from the trial that Ms. Taylor had in front of Your Honor just before COVID started. If Ms. Deal could remind me of the name of it again; it starts with a P.

COURTROOM DEPUTY: Parnell.

MR. DANIELS: Parnell. I believe the charge came from the Parnell case. And we're looking at it right now. Ms. Taylor had shared it with us. But in any event, we do strongly submit that the tools of the drug trafficking trade, which is a core charge in drug trafficking cases, should be somewhere in here. I mean, we're not married to it being here or being a standalone sentence, but we do think it's a relevant charge that the jury should hear.

MR. LANG: Well, Judge, if guns were the tool of this particular conspiracy, then why doesn't everybody have a gun? They don't. Only my client does. And again, I don't know where this charge comes from. I frankly --

THE COURT: Well, that would be like saying scales

aren't admissible or shouldn't be discussed or something just because only your client got caught with a set of scales.

MR. LANG: Well, no, Your Honor, I mean, this is highly prejudicial. We're talking about guns, we're not talking about scales or anything of that nature. We're talking about something that is particularly pejorative. And again, it just is -- I don't know where this charge is coming from. The government hasn't said that. It might have been in other case, I don't know. But frankly, I've never seen this charge in a drug conspiracy case and I will have to object to it.

THE COURT: Okay.

MR. DANIELS: I mean, Judge, we accept that it's prejudicial evidence, but the guns were on Mr. Ingram --

MR. LANG: Well, of course it's prejudicial, of course the government wants it in there, but that's not the point. The point is this --

THE COURT: That's correct.

MR. LANG: The point is, is this a proper charge? And I suggest it is not.

THE COURT: Okay. All right. Well, we'll think on that.

MR. DANIELS: And Judge, what we'll do is we'll figure out where the authority comes from that. I think it is the Parnell case, and we'll see if that charge included a cite.

THE COURT: Okay.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION
CASE NO. 0:18-CR-00557-MGL-3

UNITED STATES OF AMERICA,
Plaintiff,

JUNE 27, 2023
2:09 p.m.
Columbia, SC

vs.

GABRIEL L'AMBIANCE INGRAM,
also known as Big Shot,
also known as Big Shot Rock,
also known as Rock,

Defendant.

PAGES 1 THROUGH 95

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:
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STENOGRAPHICALLY REPORTED BY:
Ms. Carly L. Horenkamp, RDR, CRR, CRC
Official Court Reporter
U.S. DISTRICT COURT
901 Richland Street
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chase, a hundred miles an hour.

What's the other one? I think the possession of three firearms, he was convicted of three felon in possessions, which shows he had three different firearms, which the objection is -- I mean, the enhancement is three to seven firearms.

THE COURT: Okay. All right. I'm going to take a break and look over my notes about these objections and then we'll come out and rule on those so that we can go forward with the rest of the sentence.

MR. LANG: The only other thing, Judge, I meant to put this on the record, I did object to the multiplicity on sentencing of the three 924(c)s, and I would stand on what I wrote in my objections on that as well.

THE COURT: Okay. All right. Very good then. All right. Well, we'll be back here in just a few minutes.

MR. LANG: Thank you.

(Recess, 3:28 p.m. to 4:07 p.m.)

THE COURT: All right. Please be seated.

All right. I appreciate all the arguments, it was very, very helpful, and I'm going to try to now pronounce my rulings on all of the objections. Please let me know if I leave anything out.

I know the first objection, the government's only objection, was withdrawn.

So the defendant's first objection about paragraph 44

ones.

As far as -- excuse me, Objection No. 12 about the 924(c) stacking, there have been changes here, but it is still appropriate to apply the -- I guess it's -- is it 60 months for each one? Yes. Yeah, it would be appropriate for those to run consecutive.

All right. Those are my rulings on the objections. Have I left anything out or is there anything else that needs to be put on the record?

PROBATION OFFICER: I'm sorry, I may have missed it, but as regard to the specific offense characteristic for the number of guns in paragraph, I apologize, 71, Your Honor.

THE COURT: Paragraph 71?

PROBATION OFFICER: Yes, ma'am.

THE COURT: All right. Give me just a second here.

PROBATION OFFICER: And I may have just not heard you say it, Your Honor, but...

THE COURT: I'm sorry. Okay.

PROBATION OFFICER: It's included with the --

THE COURT: Oh, yes, yes. That -- I don't -- yeah, that was part of Objection No. 9?

PROBATION OFFICER: Yes, Your Honor.

THE COURT: Yeah, okay. I think that there still were more guns, at least three guns, so I think that that additional two-level enhancement belongs and should stay there.

04:16

All right. Those are my rulings on the objections. Are there any comments or corrections to that?

Mr. Witherspoon?

MR. WITHERSPOON: Judge, again, we would just -- I know the Court has ruled and I'll leave it at that, but we would object to the -- sustaining the Objection No. 1.

MR. LANG: I don't have anything to add, Your Honor. Thank you.

THE COURT: Okay. Thank you.

All right. Then -- all right. Now we have the presentence report with the few changes now that we have announced as far as the provisions that are applicable in calculating and determining the sentence.

Let me ask Mr. Ingram, sir --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- have you had an opportunity to go over all of this with your -- excuse me, Mr. Lang?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. So you understand these objections and how we've ruled on them?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Mr. Lang, I will -- I know you've been over this with him, and are you comfortable that he understands the impact of all of these rulings?

MR. LANG: Yes, ma'am, I believe he does. It will

04:30

All right. Mr. Ingram, if you would please stand. Sir, the statutory provisions for your offenses are as follows:

For Count 1, conspiracy to possess with intent to distribute, and to distribute, 500 grams or more of cocaine, 28 grams or more of crack cocaine, and a quantity of heroin, are as follows:

The statutes provide for custody for a minimum of five and a maximum of 40 years, followed by supervised release of at least four years. Probation is precluded by statute. There is a $5 million fine and a $100 special assessment fee.

Your offense set forth in Count 9, possession with intent to distribute and distribution of a quantity of cocaine and a quantity of heroin, the statutes provide for custody for a maximum of 30 years followed by supervised release of at least six years. Is that correct?

PROBATION OFFICER: Yes, Your Honor.

THE COURT: Okay. Probation is also precluded for this offense by statute. There is a $1 million fine. Is it 1 or 2? I've got it scratched up here.

PROBATION OFFICER: 2 million.

THE COURT: I'm sorry, $2 million fine and a $100 special assessment fee.

The offense set forth in Count 10, possession with intent to distribute and distribution of a quantity of heroin, the statutes provide for custody of not more than 30 years

followed by supervised release for at least six years. Probation is also precluded by statute. There is a $2 million fine and a special assessment fee of $100.

Count 11, possession of a firearm in furtherance of a drug trafficking crime or use or carry of a firearm during and in relation to a drug trafficking crime. The statutes provide for custody for a period of five years to life consecutive to any other term followed by supervised release of not more than five years. Probation is also precluded by statute for this offense. There is a $250,000 fine and a special assessment fee of $100.

Count 12, which is felon in possession of a firearm, the statutes provide for custody for a period of not more than ten years followed by supervised release of not more than three years. Probation is also precluded by statute for that offense. There's a $250,000 fine and a $100 special assessment fee.

Count 13, possession with intent to distribute a quantity of marijuana. The statutes provide for custody of not more than ten years followed by supervised release of at least four years. Again, probation is precluded by the statute. There is a $500,000 fine and a special assessment fee of $100.

Count 14, possession with intent to distribute a quantity of cocaine and a quantity of crack cocaine, the statutes provide for custody of not more than 30 years followed

by supervised release of at least six years. Again, probation is precluded. There is a $2 million fine and a $100 special assessment fee.

Count 15, which is possession of a firearm in furtherance of a drug trafficking crime, or use or carry of a firearm during and in relation to a drug trafficking crime, are the same as the provisions I stated for the prior count for that same offense.

Count 16 is another count of felon in possession of a firearm, and of course the statutory provisions are as I stated on that prior count.

Count 21 is a third count of possession of a firearm in furtherance of a drug trafficking crime, or use or carry of a firearm during and in relation to a drug trafficking crime, and, again, it is five years to life consecutive to any other term, not more than five years' supervised release, probation is precluded, it's a $250,000 fine, and a $100 special assessment fee.

Before I get to the guideline provisions, are there any comments that need to be made?

PROBATION OFFICER: No, Your Honor.

THE COURT: Okay. All right. Mr. Ingram, the advisory guideline range calculations for your offenses are as follows: The way the guidelines are set up, Counts 1, 9, 10, 13, and 14 are all grouped together. They are grouped together

04:34

and assigned a base offense level of 30. So the adjusted offense level for that grouping of offenses is 30.

Now, the guidelines group Count 12 and Count 16, the two felon-in-possession counts, together as well, and they are assigned a base offense level of 20.

That number is increased two levels because the offense involved at least three guns.

So the initial adjusted offense level before a cross-reference is applied is 22, but when you apply the cross-reference, that number becomes a 30. You take the higher of the two numbers, so that would be where you start before we add a two-level adjustment for obstruction, so that gives you a new adjusted offense level of 32. Your combined is the higher, so it's 32. So that makes your total offense level a 32. And your criminal history category, sir, has been determined to be a IV.

In that situation, the guidelines yield an imprisonment range for Counts 1, 9, 10, 12, 13, 14, and 16 of 168 to 210 months, and as to Count 11, Count 15, and Count 21, 60 months consecutive to any other sentence. So each of those counts, 11, 15, and 21, each carry a 60-month consecutive term.

All right. That is followed by supervised release for a period of eight years on Count 1, six years on Counts 9, 10, and 14, two to five years on 11, 15, and 21, one to three years on Counts 12 and 16, and four years on Count 13. Probation is

APPENDIX D

Pretrial Motions and Orders

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America, Plaintiff, v. Gabriel L'Ambiance Ingram, Defendant.	CASE NO: 0:18-cr-557-MGL **DEFENDANT'S MOTION TO SUPPRESS WIRETAP EVIDENCE**

Defendant, Gabriel L'Ambiance Ingram (Ingram), respectfully submits this Motion to Suppress evidence gathered by the government under the court's authorization orders issued under Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. §2510, *et seq.*

Filed with this Motion is a Sealed Memorandum setting out the specific facts Ingram respectfully submits support the relief requested – the source of the supporting facts being contained in the filings related to the subject Target Phones and being subject to the Court's Second Amended Protective Order Authorizing Disclosure, docket entry number 710.

This motion is directed to the Target Phones (subject Target Phones) listed in the Sealed Memorandum.

Ingram respectfully submits the applications and supporting affidavits submitted by the government to obtain the wiretap orders regarding the subject Target Phones were not sufficient to comply with the mandates of 18 U.S.C. § 2518, because: (1) there was an insufficient showing of necessity for the wiretaps; (2) the government did not comply with the minimization requirements of either the authorizing order(s) or the statute; and (3) the wiretapped evidence was not timely sealed.

The evidence Ingram's motion seeks to suppress includes:

1. All telephone conversations recorded under the Applications for the Interception of Wire Communications and all subsequent Applications for Continued Interception of Wire Communications regarding the subject Target Phones.
2. All telephone conversations intercepted and recorded by the government in relation to subject Target Phones that contain Ingram's voice or mention, pertain, or relate to Ingram.
3. The contents of all intercepted wire communications to which Ingram was a party.
4. Any evidence derived from the suppressed telephone calls.

STANDING

Ingram has standing to challenge the legality of the Applications, Affidavits, and Orders authorizing the wiretap of the subject Target Phones because he is an "aggrieved person" under 18 U.S.C.§ 2518(10)(a), and "any aggrieved person. . . may move to suppress the contents of any wire . . . communication intercepted pursuant to" Title III. 18 U.S.C. § 2518(10)(a). The statute defines an aggrieved person as any "person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed." 18 U.S.C. § 2510(11). Ingram's conversations on any target phones were recorded under wiretap authorization from March 7, 2018, and the continued wiretap authorizations of April 10, 2018 and May 14, 2018.

Ingram has standing to challenge the sufficiency of the affidavits supporting the wiretap applications, the legality of the order authorizing the wiretaps, and the admissibility of the wiretap recordings.

ARGUMENT

The Fourth Amendment's prescription against unreasonable searches and seizures "extends... to the recording of oral statements overheard." *Katz v. United States*, 389 U.S. 347, 353 (1967). For the government to conduct electronic surveillance, it must first resort to judicial process to comply with the Fourth Amendment. *Id.* at 354. Specifically, the government must comply with the statutory requirements governing the interception of electronic communications, including wiretaps. *See* 18 U.S.C. § 2510, *et. seq.*

Under § 2518(1)(a) – (f), a wiretap application must be submitted in writing, be made under oath and contain the following information:

1) The identity of the applicant;
2) A list of the "facts and circumstances relied upon by the applicant to justify his belief that an order should be issued;
3) A statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appeared unlikely to succeed if tried or to be too dangerous;
4) The period requested for the maintenance of the interception;
5) A description of all prior applications known to the applicant; and
6) A statement as to whether the application is to extend a prior order and the results obtained from any prior interception.

The Supreme Court has long recognized that wiretapping is a particularly intrusive investigative technique that raises special privacy concerns. Congress enacted Title III in 1968, to exceed the restrictions on wiretapping that the Supreme Court, in two 1967 decisions, found the Fourth Amendment to require. *See Katz* at 354-57; and *Berger v. New York,* 388 U.S. 41, 55-60 (1967). Title

III established what the Supreme Court described as a "comprehensive scheme for the regulation of wiretapping and electronic surveillance." *Gelbard v. United States,* 408 U.S. 41, 46 (1972).

Courts recognize that "[s]trict compliance" with the procedural safeguards embodied in Title III is "essential." *See e.g., United States v. Marion,* 535 F.2d 697, 706 (2d Cir. 1976); *see also United States v. Capra,* 501 F.2d 267, 276-77 (2d Cir. 1974) ("The standards [of Title III] are to be construed strictly").

To further assure that prosecutors and investigators observe the statutory and constitutional restrictions on wiretapping, Title III has its own exclusionary rule. Where the government (or anyone else) intercepts a communication other than in the manner that Title III expressly authorizes, the statute provides that "'no . . . such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court . . . of the United States." 18 U.S.C. § 2515. Moreover, Title III authorizes any aggrieved person to move to suppress any communication that was intercepted unlawfully or in violation of the relevant wiretap order, and evidence derived from such communication. 18 U.S.C. § 2518(10)(a). This statutory exclusionary rule is broader than the "judicially fashioned exclusionary rule aimed at deterring violations of Fourth Amendment rights," and requires suppression whenever "there is failure to satisfy any of [the] statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures to those situations clearly calling for the employment of this extraordinary investigative device." *United States v. Giordano*, 416 U.S. 505, 524, 527(1974).

I. THE GOVERNMENT FAILED TO DEMONSTRATE THAT LESS INTRUSIVE INVESTIGATIVE ALTERNATIVES HAD FAILED.

One factor a court must consider in issuing a wiretap is whether the application shows that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous." 18 U.S.C. 2518(3)(c).

Title III reflects the Congressional policy that "electronic surveillance cannot be justified unless other methods of investigation are not practicable," and therefore seeks to assure that "wiretapping is not resorted to in situations where traditional investigative techniques would suffice to expose the crime." *United States v. Kahn,* 415 U.S. 153 n.12 (1974). *See also United States v. Oriakhi*, 57 F.3d 1290, 1298 (4th Cir. 1995) (citing *Kahn* at 153 n.12 (1974)).

Title III permits wiretaps to occur only upon a judicial finding -- and not merely a determination by investigators and prosecutors -- that "normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried." 18 U.S.C. § 2518(3)(c). Recognizing that it would be impossible for judges to make that determination in a meaningful fashion without candid disclosure of the facts and circumstances, Title III requires that all wiretap applications include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." · 18 U.S.C. § 2518(1)(c).

Multiple subject drug trafficking investigations, like any multiple subject conspiracy investigation, can be, and usually are, onerous. However, investigative difficulty does not make the wiretap interception of telephone calls a "necessity"- as any large scale criminal investigation is onerous making traditional forms of investigation problematic.

Section 2518(3)(c) shows Congress' clear intent,

> ...to make doubly sure that the statutory authority [to grant wiretap authorizations] be used with restraint ... These [wiretap] procedures were not to be routinely employed as the initial step in criminal investigation. Rather, the applicant must state and the court must find that normal investigative procedures have been tried and failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

United States v. Lilla, 699 F.2d 99, 10 (2d Cir. 1983), quoting *Giordano* at 515.

A Title III affidavit that "... does not enlighten [the court] as to why this ... case presented any investigative problems which were distinguishable in nature or degree from any other [such] case [is inadequate]. In effect, the Government's position is that all [such] conspiracies are tough to crack...." *Lilla* at 104 – 105.

Here, over the short time, the government successfully used traditional methods of investigation to expose the crimes alleged in the superseding indictment and the alleged involvement of many defendants named in that indictment. There has been no showing these methods were tried and failed, because they succeeded. Likewise, there has been no showing these methods were unduly dangerous.

The issuance of the subject wiretap authorizations are not adequately supported by the government's filings and are, therefore, unnecessary and invalid. All evidence as it pertains to Ingram gathered from these wiretaps, and any evidence derived from them, should be suppressed.

II. THE WIRETAPS WERE NOT PROPERLY MINIMIZED.

Minimization is required under 18 U.S.C. §2518(5), which provides, in relevant part:

> Every order and extension [of a wiretap order authorized under this section] shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in thirty days. In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

An Order authorizing the interception of calls under Title III, and interception continuation orders must require the government to conduct the interceptions in such a way as to minimize the interception and disclosure of communications intercepted to those communication relevant to the pending investigation. Further, such orders must require the government to terminate monitoring

immediately when it is determined that the conversation is unrelated to communications subject to interception.

The Supreme Court has held in minimization, the ordinary Fourth Amendment standard of objective reasonableness governs the monitor's conduct. *Scott v. United States*, 436 U.S. 128, 137 (1978).

Based upon the statistics provided by the government, proper minimization did not occur, and the procedures utilized were not objectively reasonable.

The examples provided in the Sealed Memorandum and the low percentages of minimized calls, show that the conversations intercepted were not limited to those relevant to the pending investigation. Considering that "the protection of privacy was an overriding congressional concern" when Title III was enacted, the monitors were not acting in an objectively reasonable manner, and the wiretaps should be suppressed. *Gelbard v. United States,* 408 U.S. 41, 48 (1972).

III. THE WIRETAPS WERE NOT SEALED IN A TIMELY MANNER.

Section 2518(8)(a) requires the government to record Title III interceptions and to present all such recordings to the authorizing judge for sealing under the court's direction, "*immediately* upon the expiration of the period of the order, or extensions thereof (emphasis added)." This sealing provision was deemed so important to maintaining the integrity of electronic surveillance, that Congress made it a prerequisite to the government's use of the recordings and of "evidence derived therefrom." 18 U.S.C. § 2518(8)(a).

In *United States v. Rios*, 875 F.2d 17 (2nd Cir. 1989), the Second Circuit suppressed electronic surveillance evidence because the government had neither immediately sealed the recordings, nor satisfactorily explained the sealing delays. The Supreme Court affirmed saying that § 2518(8)(a) applies

to delays in sealing, and failures to seal. The Court emphasized the congressional intent to "insure the reliability and integrity of evidence maintained by means of electronic surveillance," *Rios* at 263.

"Immediately" means "without any delay or lapse of time; instantly, directly, straightaway, at once." Vol. V, The Oxford English Dictionary, at 62 (Oxford Univ. Press, 1961).

Section 2518(8)(a) provides no definition for "immediately." Various circuits have found that recordings sealed within one or two days is reasonable. *See United States v. Matthews*, 431 F.3d 1296, 1307 (11th Cir. 2005), *United States v. McGuire*, 307 F.3d 1192, 1204 (9th Cir. 2002), *United States v. Wilkerson*, 53 F.3d 757, 759 (6th Cir. 1995), *United States v. Wong*, 40 F.3d 1347, 1375 (2nd Cir. 1994). The Seventh Circuit found ten days was too long to be immediate. *United States v. Coney*, 407 F.3d 871, 873 (7th Cir. 2005). The Fourth Circuit has found that a thirteen-day delay is too long. *United States v. McWilliams*, 530 F. Supp. 2d 813 (4th Cir. 2008).

Section 2518(8)(a) has an explicit exclusionary remedy for noncompliance with the sealing requirement. "The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under subsection (3) of section 2517." 18 U.S.C. §2518(8).

No Title III filing has any explanation, much less a satisfactory one, explaining the government's failure to timely move for and seal the subject Target Phones, and there recordings, and any evidence derived from them, should be suppressed.

CONCLUSION

The applications and supporting affidavits submitted by the government to obtain the wiretap orders were not sufficient to comply with the mandates of 18 U.S.C. § 2518. The interception

authorizations were issued without a showing of necessity, the government did not comply with the minimization requirements, and the electronic evidence was not properly sealed.

Ingram respectfully requests that the Court suppress any wiretap evidence, and any fruits obtained from those wiretaps.

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Columbia, South Carolina
July 23, 2019
8333.001\Pleadings\Memo in Support...

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL ACTION NO.: 0:18-cr-557-MGL-3
	)	
	)	
v.	)	
	)	
	)	
GABRIEL L'AMBIANCE INGRAM	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO SEVER COUNTS IN THE INDICTMENT

The defendant Gabriel L'Ambiance Ingram has filed a motion to sever counts in the indictment. The Government opposes the motion.

FACTS

Ingram, along with 17 other defendants, were charged in a twenty count Superseding Indictment on March 20, 2019. Ingram was charged in Counts 1, 2, 9, 10, 11, 12, 13, 14, 15, and 16. He is seeking to sever Counts 12 and 16 from the other counts because of potential prejudice by a jury. In Counts 12 and 16, the Government charged Ingram with being a felon in possession of a firearm. Count 12 occurred on January 19, 2018 and Count 16 occurred on April 4, 2018. It should be noted that Ingram was also charged in Count 13 with possession with the intent to distribute marijuana on the same date as Count 12.[1] He was also charged with a violation of section 924(c) and possession with the intent to distribute cocaine and crack cocaine on the same date as Count 16.

[1] The Government, inadvertently, failed to charge Ingram with a violation of section 924(c) on this same date. The Indictment may be superseded to add this additional count.

In his motion, Ingram seeks to sever Counts 12 and 16 under Fed. R. Crim. P. 14. The Government opposes the motion.

ARGUMENTS

Federal Rule of Criminal Procedure 8(a) provides for joinder of offenses against a single defendant in the indictment if one of three conditions is satisfied. The offenses charged must be: (1) "of the same or similar character," or (2) "based on the same act or transaction," or (3) "connected with or constitute parts of a common scheme or plan." FED. R. CRIM. P. 8(a). Joinder under the first prong of Rule 8(a) requires a finding that the offenses were committed in a manner so similar that it is highly probable that the defendant committed both crimes. *United States v. Foutz*, 540 F.2d 733 (4th Cir. 1976). "Joinder of multiple charges involving the same statute 'is an unremarkable example of offenses of the same or similar character.'" *United States v. Sweeny*, No. 12-4689, 574 F. App'x 282, 283 (4th Cir. 2014) (quoting *United States v. Hawkins*, 589 F.3d 694, 702-03 (4th Cir. 2009)); *see also United States v. Windom*, 19 F.3d 1190, 1196 (7th Cir. 1994) (counts alleging the same crime are properly joined because they "are the same or of similar character and the elements to be proved in each count are the same").

Regarding the latter two prongs of Rule 8(a), the joined offenses must have a logical relationship to one another. *United States v. Cardwell*, 433 F.3d 378, 385 (4th Cir. 2005)(internal quotation marks omitted). Such a relationship exists when the individual counts against the defendant fail to provide a complete picture of his criminal enterprise. *Id.* (citing Wright & A. Miller, Federal Practice and Procedure § 143 (3d ed.1999). Likewise, a logical nexus also exists if the joined offenses present opportunity for cross-admissibility of evidence, such that evidence of one offense would be admissible at a separate trial for the other offense. *United States v.*

Hawkins, 776 F.3d 200, 205 (4th Cir. 2015) (citing *United States v. Foutz*, 540 F.2d 733, 737 (4th Cir. 1976); (*see also United States v. Carmichael*, 685 F.2d 903, 910 (4th Cir. 1982)).

"Where offenses are properly joined under Rule 8(a), severance of the offenses is rare." *United States v. Hornsby*, 666 F.3d 296, 309 (4th Cir. 2012) (citing *United States v. Cardwell*, 433 F.3d 378, 385 (4th Cir. 2005)). Joinder of offenses is regarded as the "rule rather than the exception". *United States v. Acker*, 52 F.3d 509, 514 (4th Cir. 1995). It is broadly permitted "because the prospect of duplicating witness testimony, impaneling additional jurors, and wasting limited judicial resources suggests that related offenses should be tried in a single proceeding". *United States v. Mir*, 525 F.3d 351, 357 (4th Cir. 2008).

Even when joinder is appropriate under Rule 8(a), Rule 14(a) permits a district court to "order separate trials of counts" at its discretion "[i]f the joinder of offenses . . . in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the Government . . .". "Such cases, however, will be rare." *United States v. Cardwell*, 433 F.3d 378, 387 (4th Cir. 2005). "Because of the efficiency in trying [a] defendant on related counts in the same trial[,] *United States v. Hawkins*, 776 F.3d 200, 206 (4th Cir. 2015) (quoting *Cardwell*, 433 F.3d at 385), our precedent makes clear that "joinder is the rule rather than the exception,'". *Id.* (quoting *United States v. Armstrong*, 621 F.2d 951, 954 (9th Cir. 1980)).

In the alternative, the court may "provide any other relief that justice requires". FED. R. CRIM. P. 14(a). A district court judge may use measures less drastic than severance, such as limiting instructions, to cure any risk of prejudice. *Cardwell*, 433 F.3d at 388 (citing *United States v. Mackins*, 315 F.3d 399, 415 (4th Cir. 2003)). "A district court should grant a severance under Rule 14 only if there is a serious risk that a joint trial would . . . prevent the jury from making a reliable judgment about guilt or innocence." *Cardwell*, 433 F.3d at 387 (citing *Zafiro v. United*

States, 506 U.S. 534 (1993)) "[T]he burden is on the defendant to show that joinder would be so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compelled exercise of the court's discretion to sever." *Acker*, 52 F.3d 509 at 514 (quoting *United States v. Armstrong*, 621 F.2d 951, 954 (9th Cir. 1980)). The party seeking severance bears the burden of demonstrating "a strong showing of prejudice". *United States v. Branch*, 537 F.3d 328, 341 (4th Cir. 2008)(quoting *United States v. Goldsmith*, 750 F.2d 1221, 1225 (4th Cir. 1984)). In cases where the offenses are identical, it is not an abuse of discretion to deny severance. *Acker*, 52 F.3d 509 at 514.

Ingram has failed to show that joinder of all of the charges would be so manifestly prejudicial that it outweighs the dominant concern with judicial economy and compelled exercise of the district court's discretion to sever. The possibility of prejudice exists in any case of joinder. *United States v. Jamar*, 561 F.2d 1103, 1108 (4th Cir. 1977). "Nevertheless, absent undue prejudice, cogent policy considerations continue to call for the application of rules of joinder." *Id.* Ingram's only assertion is the admission of proof of any Ingram's prior felony convictions to establish an element of the felon in possession counts would be highly prejudicial and pose a serious risk to prevent the jury from making a reliable judgment about the other counts.

In *United States v. Rhodes*, 32 F.3d 867 (4th Cir. 1994), the Fourth Circuit addressed this same issue. The defendant in *Rhodes* sought to sever his § 922(g)(1) count from his possession with the intent to distribute count and his section 924(c) count. *Rhodes*, 32 F.3d at 871. He argued that he was prejudiced by the failure to sever because the evidence influenced the jury to convict him on all the other charges. *Id.* The district court denied the motion and he was convicted at trial. On appeal, the Fourth Circuit held that the district court did not abuse its discretion in denying the motion. *Id.* at 872. The Court also said that a district court may deny a motion to sever a

count of felon in possession from other counts when they share a factual basis that was part of the same criminal scheme or plan. *Rhodes*, 32 F.3d at 872. Here, Ingram's felon in possession of a firearm counts arose out of the same conduct or factual basis as the distribution and section 924(c) counts. He has not shown any serious risk of an unreliable judgment at trial.

Instead of severance, courts have favored limiting instructions to the jury in the case of misjoinder of offenses under Rule 8(a). *United States v. Blair*, 661 F.3d 755, 769 (4th Cir. 2011); *United States v. LaRouche*, 896 F.3d 815 831 (4th Cir. 1990)(finding that a curative instruction given to the jury by the district court go a long way in eliminating any prejudice resulting from the spillover effects of [improper] joinder). Courts presume that jurors follow a judge's instructions. *United States v. Johnson*, 587 F.3d 625, 631 (4th Cir. 2009) (citing *Richardson v. Marsh*, 481 U.S. 200, 206 (1987); *Opper v. United States*, 348 U.S. 84 (1954) ("To say that the jury might have been confused amounts to nothing more than an unfounded speculation that the jurors disregarded clear instructions of the court . . . . Our theory of trial relies upon the ability of a jury to follow instructions."); *United States v. Allere*, 430 F.3d 681, 692 (4th Cir. 2005) (citing *Jones v. United States*, 527 U.S. 373, 394 (1999)). A single trial would eliminate the possibility of duplicating witness testimony and wasting judicial resources. Therefore, severance is not necessary; however, if the court believes that they are, an appropriate limiting instruction would cure any potential prejudice to Ingram. *United States v. Ketter*, 456 Fed. App'x. 293 (4th Cir. 2011)(unpublished); *United States v. Young*, 751 Fed. App'x. 381 (4th Cir. 2018)(unpublished).

CONCLUSION

Ingram has not shown any actual prejudice sufficient to warrant severance of counts of his Indictment under Rule 14, Federal Rules of Criminal Procedure and therefore his motion to sever should be denied.

Respectfully submitted,

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UNITED STATES ATTORNEY

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Columbia, South Carolina
August 12, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL ACTION NO.:0:18-557
	)	
v.	)	
	)	
DARRYL HEMPHILL,	)	
a/k/a "D"	)	
a/k/a "D-Hemp"	)	
MIKIE MARCELL CALDWELL,	)	
a/k/a "Big Mike"	)	
GABRIEL L'AMBIANCE INGRAM,	)	
a/k/a "Big Shot"	)	
a/k/a "Big Shot Rock	)	
a/k/a "Rock"	)	
ARCHIE ARSENIO CALDWELL,	)	
a/k/a "Nuk"	)	
a/k/a "Nuk Crook"	)	
DARRELL LAROD CROCKETT,	)	**CONTINUANCE ORDER**
a/k/a "Unc"	)	
a/k/a "Croc"	)	
CARL MICHAEL MANN, II,	)	
a/k/a "Pike"	)	
HERBERT REGINALD DEMARIO DEWESE,	)	
a/k/a "50"	)	
a/k/a "Big 50"	)	
ODARRIUS BREONTE ADAMS,	)	
a/k/a "Breezy"	)	
FATE THOMAS MCCLURKIN, JR.	)	
	)	

This matter comes before the court on motion of the Government for a continuance of this case which is currently set for December 4, 2019 until this court's term scheduled for April 8, 2020. The grounds for this motion are that the Government arrested Defendant McClurkin on November 1, 2019. He made his first appearance in this case on November 4, 2019. His counsel has requested additional time to obtain, review and discuss the evidence in this case with her client. The discovery in this case includes approximately 4 months of wiretap communications and more than 14,000 pages of

written discovery. McClurkin's counsel has not had an opportunity to receive and review this material as of this date. Moreover this continuance will give McClurkin's counsel ample time to file any suppression motions as is necessary. McClurkin also has not waived his right to be tried in less than thirty (30) days as is proscribed in 18 U.S.C. § 3161(c)(2).

In addition, Defendant Mann recently filed a motion to file a suppression motion out of time which was granted today. This suppression motion has not been filed and served on the Government. Thereafter, the Government will need additional time to respond to the suppression motion. Moreover, this court granted the Government until December 2, 2019, to respond to all of the remaining suppression motions that have been filed in this case.

All of the defendants, with the exception of Gabriel L'Ambiance Ingram, in open court, agreed to the continuance and waived their rights under the Speedy Trial Act. Defendant Ingram moved to sever the new defendant's case from the remaining defendants. This court, after hearing arguments, denied the motion for severance based upon evidence that Ingram and the other named defendants in this matter were involved in this conspiracy together. It is well settled that barring special circumstances, individuals indicted together should be tried together. *See, United States v. Brugman*, 655 F.2d 540, 542 (4th Cir. 1981); *United States v. Rusher,* 966 F.2d 868, 877–78 (4th Cir. 1992); *United States v. Brooks,* 957 F.2d 1138, 1145 (4th Cir. 1992); *United States v. West,* 877 F.2d 281, 287–88 (4th Cir. 1989); *United States v. Medford,* 661 F.3d 746, 753 (4th Cir. 2011). The presumption that co-defendants should and will be tried together applies equally to defendants indicted on conspiracy charges. *Zafro v. United States*, 506 U.S. 534, 537-

38 (1993); *United States v. Chavez*, 894 F.3d 593, 605-06 (4th Cir.), *cert. denied*, 139 S.Ct. 278 (2018). Indeed, unless "a miscarriage of justice" will result, there is a presumptive expectation that co-defendants should and will be tried together. *Richardson v. Marsh*, 481 U. S. 200, 206-11 (1987). This court determines that there will not be a miscarriage of justice by denying the motion to sever and continuing this matter until its April term of court.

In reaching the conclusion that the proposed continuance is appropriate, the court has balanced the best interest of the public and the defendants in a speedy trial against the ends of justice, and finds that the latter outweighs the former. The court finds that a continuance until the April 2020 term of court will allow defense counsel the time necessary to receive and review the discovery with the defendant and will afford the parties the opportunity to begin plea negotiations, if appropriate, which could possibly avoid the need for a trial. Moreover, this continuance will allow all parties time to file and the Government to respond to the pending suppression motions.

Therefore, the court finds that this continuance is justified under the provisions of Title 18, United States Code, Section 3161(h)(7)(A) and the court specifically finds, based on the entire record before it, that the ends of justice served by the granting of this continuance outweighs the interests of the public and the defendants in a speedy trial.

FOR ALL THE FOREGOING, it is ordered that the case of *United States v. Darryl Hemphill, et al.,* Criminal No. 0:18-557, be continued until the court's April 8, 2020, term of court and that all such period of delay is hereby excluded in computing the time within which trial must begin pursuant to the Speedy Trial Act, Title 18, United States Code, Section 3161, *et. seq.*

IT IS SO ORDERED.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

November 21, 2019

Columbia, South Carolina.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL ACTION NO.:0:18-557
	)	
v.	)	
	)	
DARRYL HEMPHILL,	)	
a/k/a "D"	)	
a/k/a "D-Hemp"	)	
MIKIE MARCELL CALDWELL,	)	
a/k/a "Big Mike"	)	**CONTINUANCE ORDER**
GABRIEL L'AMBIANCE INGRAM,	)	
a/k/a "Big Shot"	)	
a/k/a "Big Shot Rock	)	
a/k/a "Rock"	)	
DARRELL LAROD CROCKETT,	)	
a/k/a "Unc"	)	
a/k/a "Croc"	)	
CARL MICHAEL MANN, II,	)	
a/k/a "Pike"	)	
ODARRIUS BREONTE ADAMS,	)	
a/k/a "Breezy"	)	
	)	

This matter comes before the court on motion of the Defendants, Darryl Hemphill and Carl Michael Mann, II, for a continuance of this case, which is currently set for April 2, 2022, until this Court's term scheduled for August 3, 2022. The grounds for this motion are that this is a wiretap case with more than eighteen (18,000) thousand pages of discovery and three (3) months of taped wire telephone calls that have been turned over to the defendants. Both defendants have new attorneys that were appointed during the month of February 2022. Both attorneys stated they needed additional time to review the discovery and discuss it with their clients before a trial in this case. Defendant Hemphill and Mann, in open court, agreed to the continuance and waived their rights under the

Speedy Trial Act. The Government also agreed to the continuance. The remaining defendants objected to the continuance.

It is well settled that barring special circumstances, individuals indicted together should be tried together. *See, Zafiro v. United States,* 506 U.S. 534, 537 (1993) (noting there is a "preference in the federal system for joint trials of defendants who are indicted together" as such trials "promote efficiency and serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts.") (internal citation omitted); *United States v. Campbell*, 963 F.3d 309, 318-19 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 927 (2020); *United States v. Chavez*, 894 F.3d 593, 605-06 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 278 (2018); *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012); *United States v. Brugman*, 655 F.2d 540, 542 (4th Cir. 1981); *United States v. Rusher,* 966 F.2d 868, 877–78 (4th Cir. 1992); *United States v. Brooks,* 957 F.2d 1138, 1145 (4th Cir. 1992); *United States v. West,* 877 F.2d 281, 287–88 (4th Cir. 1989); *United States v. Medford,* 661 F.3d 746, 753 (4th Cir. 2011). Indeed, unless "a miscarriage of justice" will result, there is a presumptive expectation that co-defendants should and will be tried together. *Richardson v. Marsh*, 481 U.S. 200, 206-11 (1987). The Court has considered the arguments of the remaining defendants and finds their arguments objecting to the continuance do not rise to the level of a miscarriage of justice.

This case involves thousands of pages of discovery. All parties anticipate this case lasting at least three (3) weeks with many witnesses, some of whom will have to travel from California, Florida, and North Carolina to South Carolina for the trial. All the defendants were charged in the alleged conspiracy together, and the witnesses needed for Hemphill and Mann would also be needed for the remaining defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America, Plaintiff, v. Gabriel L'Ambiance Ingram, Defendant.	CASE NO: 0:18-cr-557-MGL **MOTION TO DISMISS COUNTS 11, 12, 15, 16 and 21 OF THE SECOND SUPERSEDING INDICTMENT**

Defendant, Gabriel L'Ambiance Ingram (Ingram), respectfully requests the Court dismiss Counts 11, 12, 15, 16 and 21 (collectively the "Gun Counts") levied against him in the Second Superseding Indictment.

INTRODUCTION

Counts 12 and 16 of the Second Superseding Indictment charge Ingram with separate violations of 18 U.S.C. § 922(g). Counts 11, 15 and 21 charge Ingram with separate violations of 18 U.S.C. § 924(c).

On June 23, 2022, the United States Supreme Court issued its opinion in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___, 142 S.Ct. 2111 (2002). *Bruen* constitutes a seismic shift in how U.S. Const. amend. II ("Second Amendment") is to be construed and applied. Under the Court's now explicit guidance regarding government restrictions on the right to carry and bear arms, the statutes under which Ingram has been charged in the Gun Counts are unconstitutional.

For the reasons set forth below, Ingram respectfully requests the Court dismiss the Gun Counts.

ARGUMENT

I. United States' Supreme Court's Opinion in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S.__ (2022).

The *Bruen* opinion addresses a New York state law that regulated the public carry of handguns since 1905. The New York statute required a license applicant, who wanted to possess a firearm outside the home, to obtain an unrestricted license to carry a concealed pistol or revolver. An unrestricted carry license could issue upon the applicant showing "proper cause," for carrying a firearm outside the home. The Court held this statute violates the Second Amendment, establishing a new test for assessing government restrictions on the right to carry and bear arms.

The *Bruen* test is straightforward and clear: When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively covers an individual's conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation follows our Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with that historical tradition may a court conclude an individual's conduct falls outside the Second Amendment's "unqualified command." *Bruen* *8, 15 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961). "[T]he government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at *16. Rejecting the government's position, the Court makes clear courts are not to engage in a "means-end" or "intermediate level scrutiny" as "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon." * 14 (quoting *Heller*, 554 U.S., at 634).

The *Bruen* test requires courts assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. *17. As the Court notes, "[t]hroughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms." *Id.* at *29. The Court noted the most analogous situation relating to convicted felons is described in the opinion at *48 where the Court acknowledges that a showing of special need, which would then require that the gun-bearer pay a surety, "was required only *after* an individual was reasonably accused of intending to injure another or breach the peace. And, even then, proving special need simply avoided the fee rather than a ban...." (Emphasis in original). "All told, therefore, "[u]nder surety laws...everyone started off with robust carrying rights" and only those reasonably accused were required to show a special need in order to avoid posting a bond." *Id.* In none of the lengthy historical analysis provided by the Court does there appear a prohibition against possessing a firearm due to status as a convicted felon:

> "The Second Amendment guaranteed to "all Americans" the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions. *Heller*, 554 U.S. at 581. Those restrictions, for example, limited the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms, such as before justices of the peace and other governmental officials."
>
> *Id.* *62.

Under the *Bruen* analysis, to sustain a firearm regulation, the government must meet its burden of showing that the regulation follows this Nation's history of firearm regulation. Ingram respectfully submits that the government cannot meet that burden regarding the Gun Counts.

II. History of Regulations Restricting Firearm Possession to Convicted Felons

Regulating the legality of possessing firearms based on a person's status as a felon is not rooted in our country's history but is a recent development. Prohibiting citizens from gun possession based on status did not exist until 1968 with the passage of the Gun Control Act.

Our country's first efforts to regulate firearms was in 1934, with the passage of the National Firearms Act (NFA). That legislation imposed a tax on the making and transfer of firearms and was passed in response to rising violence in the 1920's and 1930's during Prohibition. Certain categories of firearms were also regulated like machine guns and short-barreled rifles, and short-barreled shotguns.

Later, Congress passed the Gun Control Act of 1968 ("GCA") in response to fears of growing gun violence, most notably the assassinations of President Kennedy, Martin Luther King, Jr., and Senator Robert Kennedy. In this legislation, gun ownership began to be regulated based on the status of that individual. The GCA made it illegal for felons, minors, fugitives, drug addicts, and the mentally ill to possess firearms. In his remarks upon signing the bill on October 22, 1968, President Johnson said: "Today we begin to disarm the criminal and the careless and the insane."[1] Never before in our country's history were certain groups of people prohibited from being allowed to exercise the same constitutional rights as other citizens based on no other fact than status alone. The federal statute criminalizing Ingram's possession of a firearm merely for having the status of convicted felon is not deeply rooted in this country's history and is therefore unconstitutional.

The same analysis applies to 18 U.S.C. § 924(c), which had its genesis in the GCA, and is equally foreign to this Nation's historical traditions of gun ownership and use.

[1] *See* Remarks Upon Signing the Gun Control Act of 1968, at https://www.presidency.ucsb.edu/documents/remarks-upon-signing-the-gun-control-act-1968 (*last visited* June 26, 2022).

CONCLUSION

The Court should dismiss the Gun Counts because the statutes under which they are charged are unconstitutional.

Respectfully submitted,

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Attorneys for the Defendant

July 19, 2022
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	)	CRIMINAL NO. 0:18-557-MGL
	)	
v.	)	
	)	
GABRIEL L'AMBIANCE INGRAM,	)	
a/k/a "Big Shot"	)	
a/k/a "Big Shot Rock	)	
a/k/a "Rock"	)	

GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS COUNTS 11, 12, 15, 16, AND 21 OF THE SECOND SUPERSEDING INDICTMENT

Gabriel L'Ambiance Ingram was charged in a 16-defendant, 21-count Second Superseding Indictment with conspiracy to posses with intent to distribute and distribute cocaine, cocaine base, methamphetamine, fentanyl, marijuana, and heroin; conspiracy to launder drug proceeds; possession with intent to distribute and distribution of cocaine and heroin; possession with intent to distribute marijuana, cocaine, and cocaine base; three counts of using and carrying a firearm during and in relation to, and possessing a firearm in furtherance of, a drug trafficking crime; and two counts of being a felon in possession of a firearm. ECF No. 901.

Ingram has moved to dismiss Counts 11, 15, and 21, which charge him with using and carrying a firearm during and in relation to, and possessing a firearm in furtherance of, a drug trafficking crime under 18 U.S.C. § 924(c), and Counts 12 and 16, which charge him with being a felon in possession of a firearm under 18 U.S.C. § 922(g)(1). ECF No. 1606. He argues both statutes are unconstitutional under the Supreme Court's recent decision in *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 142 S.Ct. 2111 (2022). Ingram's claim regarding the § 924(c) charges fails because the Second Amendment does not provide a constitutional right to carry a gun in furtherance of drug-distribution activity or a federal crime of violence. His claim regarding the

which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Sections 924(c) and 922(g)(1) both proscribe conduct outside the scope of the Second Amendment, and both are sufficiently analogous to historical regulations to be deemed "longstanding." Both are constitutional, and Ingram's motion to dismiss should be denied.

A. Ingram's motion to dismiss the § 924(c) counts should be denied because the Second Amendment's plain text does not protect carrying a firearm while committing violent crimes or dealing drugs.

Bruen's threshold question is whether "the Second Amendment's plain text covers an individual's conduct." 142 S.Ct. at 2129–30. Here, it does not. Because gun-toting while dealing drugs or committing violent crimes does not fall within the scope of the Second Amendment's plain text, Ingram cannot show § 924(c) burdens a constitutional right. Even if he could, § 924(c) would still be constitutional because it squares with the nation's historical tradition of prohibiting the use of firearms for unlawful purposes. Ingram's motion to dismiss the § 924(c) counts should be denied.

1. Although the Supreme Court has recognized an individual right to possess and carry certain firearms, "it cannot seriously be contended that the Second Amendment guarantees a right to use a firearm *in furtherance of drug trafficking*" or violent crimes. *See United States v. Potter*, 630 F.3d 1260, 1261 (9th Cir. 2011). The Supreme Court has repeatedly emphasized that the Second Amendment right is tied to firearm possession and use for *lawful* purposes by *law-abiding* citizens. *See, e.g.*, *Heller*, 554 U.S. at 625 ("[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes[.]"); *id.* at 620 ("We described the right protected by the Second Amendment as bearing arms for a lawful purpose[.]") (quotation marks omitted); *see also McDonald*, 561 U.S. at 780 ("[T]he Second Amendment protects a personal right to keep and bear arms for lawful purposes[.]"). And in the wake of *Heller*

694, 705 (1951). The Constitution protects a person's right to interstate travel, but it does not prevent the government from banning interstate travel undertaken to commit a crime of violence or promote unlawful activity. *See, e.g., United States v. Lookretis*, 422 F.2d 647, 651 (7th Cir. 1970) (collecting cases supporting constitutionality of 18 U.S.C. § 1952(a)). And the Sixth Amendment protects a defendant's right be represented by counsel, but there is no right to counsel during the commission of a crime. *See United States v. Baker*, 373 F.2d 28, 30 (6th Cir. 1967) (discussing the right to counsel). So too here. An individual's right under *Heller* and *Bruen* to possess a firearm in his home or carry it in public does not extend to using a firearm to facilitate violence or drug distribution. The conduct § 924(c) prohibits is not entitled to any Second Amendment protection at all. *See Bruen*, 142 S.Ct. at 2129–30. The statute is constitutional.

2. Ingram's only argument in support of his extraordinary claim that the Constitution gives citizens the right to be armed while conducting drug deals and committing violent crimes is the bald assertion that § 924(c) is "foreign to this Nation's historical traditions of gun ownership and use." *See* ECF No. 1606 at 4. Because the Second Amendment's plain text does not protect the conduct § 924(c) prohibits, the Court need not determine whether the statute is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S.Ct. at 2129–30.

Even assuming, however, that Ingram's claim is enough to require a history-based justification on the government's part, the Supreme Court's lengthy historical analysis in *Bruen* confirms the constitutionality of the sort of regulation § 924(c) imposes. *Bruen* details a long history of laws prohibiting carrying and possessing weapons and firearms for particular unlawful purposes—*e.g.*, terrorizing the general public. *See id.* at 2143 (describing Colonial-era laws that "codified the existing common-law offense of bearing arms to terrorize the people"); *id.* at 2145 (describing Founding-era laws that prohibited bearing arms to spread fear or terror); *id.* at 2145–

46 (quoting *State v. Huntly*, 25 N.C. 418 (1843) (per curiam), which explained that the longstanding gun-bearing common-law offense dealt with "carrying for a 'wicked purpose' with a 'mischievous result'"); *id.* at 2156 (describing a tradition of "reasonable, well-defined restrictions" that limited, among other things, "the intent for which one could carry arms").[1] Section 924(c)'s prohibition on using or possessing firearms to further violent crimes fits squarely within this historical tradition, so Ingram's facial challenge to the constitutionality of the statute must fail. Additionally, although the statutes cited in *Bruen* do not speak specifically to gun possession in connection with illegal drug distribution, *Bruen* explained that the applicable "analogical reasoning . . . is neither a regulatory straightjacket nor a regulatory blank check." 142 S.Ct. at 2133. It "requires only that the government identify a well-established and representative *analogue*, not a historical *twin*." *Id.* The lengthy history of proscribing gun use for risky and dangerous purposes serves as the appropriate Founding-era analogy for a regulation designed to address the distinctly modern problem of armed drug dealers.

Our "Nation's historical tradition of firearm regulation" clearly includes limitations on using and possessing firearms in the service of dangerous or risky activities—which logically include drug distribution, drug conspiracies, and federal crimes of violence. Put differently, those dealing drugs, committing violent crimes, and combining drugs and guns are not "peaceable citizens." They pose a real danger to public safety by carrying guns for a "wicked purpose" in an effort to secure a "mischievous result." *See Bruen*, 142 S.Ct. at 2145 (quoting *Huntly*, 25 N.C. at 423). And as a result, they are not constitutionally entitled to use, carry, or a possess a firearm in

[1] This historical analysis is consistent with scholarly research, further discussed below, explaining that those posing a danger to the public were not understood to enjoy a right to bear arms.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America, Plaintiff, v. Gabriel L'Ambiance Ingram, Defendant.	CASE NO: 0:18-cr-557-MGL **DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION REGARDING THREAT EVIDENCE - CONTINGENT MOTION FOR SEVERANCE**

Defendant, Gabriel L'Ambiance Ingram (Ingram), respectfully submits this Response to the government's Motion in Limine, ECF 1625, and contingent Motion for Severance.

The government seeks to introduce what it labels as "Threat Evidence," which includes statements allegedly made and actions allegedly undertaken by three co-defendants. These alleged statements or actions include alleged threats by one co-defendant to "retaliate against and harm" an Assistant United States Attorney ("AUSA"), the alleged solicitation by a co-defendant to engage someone to "break the legs" of an AUSA in return for $10,000.00 to $20,000.00, or kill the same AUSA, and the alleged statements by two co-defendants to the effect that the AUSA "...should have been taken care of and killed earlier in the case." The alleged statements and/or actions are not confined to a single AUSA but include alleged threats against government witnesses and at least one government law enforcement agent. (Gov't's Motion in Limine, pp. 1 – 2).

Ingram objects to the admission of the proffered testimony. Fed.R.Evid. 403 says the Court may "exclude relevant evidence if its probative value is substantially outweighed by the danger of ... unfair prejudice...."

Admitting the proffered testimony would be unfairly prejudicial to Ingram, especially given the government's position these alleged threats and actions are "direct, intrinsic evidence of the ... drug conspiracy..." regarding which Ingram is also charged.

If the Court grants the government's Motion in Limine, Ingram respectfully requests that his case be severed from the trial of the other defendants and tried separately.

Ingram recognizes that "[b]arring special circumstances, individuals indicted together should be tried together." *United States v. Brugman,* 655 F.2d 540, 542 (4th Cir. 1981), and that there is a presumptive expectation that co-defendants should and will be tried together. *Richardson v. Marsh,* 481 U.S. 200, 206 -11 (1987).

However, Rule 14 provides that separate trials of co-defendants can, and Ingram submits should, be ordered where a joint trial "appears to prejudice ...." a defendant, and that "special circumstances..." may require the severance of what ordinarily would be a joint trial. *Brugman* at 542.

If the Court grants the government's Motion in Limine, allowing it to put before the jury evidence of the alleged but extremely inflammatory threats and actions it claims were undertaken by three of Ingram's co-defendants, the prejudice to Ingram is clear. This is especially true, as pointed out above, given the government's position these alleged threats and actions are "direct, intrinsic evidence of the ... drug conspiracy..." regarding which Ingram is also charged.

For the reasons set forth above, if the Court grants the government's motion in limine, Ingram respectfully requests his charges be severed and tried separately.

Respectfully submitted,

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Attorneys for the Defendant

July 27, 2022
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America, Plaintiff, v. Gabriel L'Ambiance Ingram, Defendant.	CASE NO: 0:18-cr-557-MGL **SUPPLEMENTAL AND REPLY MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS GUN COUNTS**

Defendant, Gabriel L'Ambiance Ingram (Ingram), respectfully submits this Supplemental Memorandum in Support of his Motion to Dismiss Counts 11, 12, 15, 16 and 21 (collectively the "Gun Counts").

REPLY TO GOVERNMENT'S RESPONSE

I. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

The government ignores the first step of the *Bruen* analysis, saying "after *Heller,* the Fourth Circuit explained that the first question when addressing a Second Amendment claim 'is whether the challenged law imposes a burden on conduct failing within the scope of the Second Amendment's guarantee..." Gov't's Response at 5. While that may be a correct statement of Fourth Circuit law before *Bruen,* after *Bruen,* it is no longer. "...[W]e hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at *21.[1] The government fails to address this first step of the new *Bruen* framework.

[1] Page citations are to the Lexis/Nexis published version of *Bruen.*

The government does not point to any part of the Second Amendment's "plain text" that excludes felons specifically or non-law-abiding/dangerous people generally. The government cites to *Heller's* "presumptively lawful" language, but that language is unreasoned, unexplained *dicta*.

The government says *Bruen* repeatedly describes the Second Amendment right as *limited* to 'law-abiding' citizens. That is incorrect. *Bruen* never said that felons or non-law-abiding citizens do not have Second Amendment rights. All the Court said is that the Petitioners, Brandon Koch and Robert Nash, were law-abiding citizens and they have Second Amendment rights.

The plain test of the Second Amendment covers the conduct of Ingram alleged in the Second Superseding Indictment – his being in possession or carrying a firearm.

Citing footnote 9 (*Bruen* at 48), the government asserts the Court "approved" the so-called "shall-issue regimes," of 43 states, which prohibit felons from possessing firearms. Once again, all footnote 9 says is that "nothing in our analysis should be interpreted to suggest the unconstitutionality" of such laws. That is not a holding. Moreover, disarming felons and non-law-abiding citizens is inconsistent with the historical evidence that *Bruen* makes paramount.

The government cites no statute from the founding era that disarmed felons specifically or even "dangerous" people generally. After *Bruen*, it's not enough to simply cite to pre-*Bruen* cases that made sweeping, historically unsupported statements about how the colonists thought it was fine to disarm dangerous people. The government must come forward with actual, historical evidence. It has failed to do that. All the government cites

are the proposals from the Pennsylvania and Massachusetts ratifying conventions, but those proposals did not pass, and were from only two states. Hardly a historical tradition.

The government also relies on the "virtue theory" to limit the scope and reach of the Second Amendment. Then Judge, now Justice Barrett, rejecting this Second Amendment limiting theory in her dissent in *Kanter v. Barr,* 919 F.3d 437, 462 (7th Cir. 2019), said:

> [T]he problem ... is that virtue exclusions are associated with civic rights – individual rights that 'require citizens to act in a collective manner for distinctly public purposes' ... *Heller,* however, expressly rejects this argument that the Second Amendment purely civic right. It squarely holds that 'the Second Amendment confer[s] *an individual right* to keep and bear arms.
>
> Citations omitted. Emphasis in the original. *See also Folajtar v. AG of the United States,* 980 F.3d 897, 914 (3rd Cir. 2020) (Folajta, J., dissenting) ("The touchstone was not virtue, but danger.").

Even if, however, the "virtue" theory is valid, post-*Bruen* the government must come forward with hard evidence of laws that disarmed unvirtuous people. They haven't done that. The government must establish a "relevant tradition of *regulation*"—not political theory or general intellectual currents. If certain activity was not *regulated*, then it is protected by the Second amendment.

The foregoing applies to the government's response to Ingram's arguments regarding the unconstitutionality of §§ 922(g)(1) and 924(c)(1).

SUPPLEMENTAL MEMORANDUM

The Supreme Court's opinion in *Bruen* marks a dramatic shift in Second Amendment law. Before *Bruen*, courts decided Second Amendment challenges by balancing the strength of the government's interest in firearm regulation against the degree of infringement on the challenger's right to keep and bear arms. *Bruen* rejected that approach, instructing courts, instead, to consider only "constitutional text and history." 142 S. Ct. at 2128-29. If "the Second Amendment's plain text covers an individual's conduct," then under *Bruen* "the

IV. Conclusion.

Sections 922(g)(1) and 924(c)(1) violate the Second Amendment as it was understood at the time of its adoption. The Court should, therefore, dismiss 11, 12, 15, 16 and 21.

Respectfully submitted,

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July 27, 2022
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA	§	
	§	
vs.	§	CRIMINAL ACTION NO.: 0:18-557-MGL-3
	§	
GABRIEL L'AMBIANCE INGRAM,	§	
Defendant.	§	

MEMORANDUM OPINION AND ORDER
DENYING DEFENDANT'S MOTION TO DISMISS

I. INTRODUCTION

The Court issued a text order denying Defendant Gabriel L'Ambiance Ingram's (Ingram) motion to dismiss counts 11, 12, 15, 16, and 21 of the second superseding indictment as unconstitutional under the Supreme Court's recent decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022). This opinion will set forth that decision in greater detail, taking into careful consideration the motion, the response, the reply, the oral argument, the record, and the applicable law.

II. PROCEDURAL HISTORY

A grand jury indicted Ingram in the second superseding indictment of, as relevant here, two counts of felon in possession of a firearm in violation of 18 U.S.C. § 922(g) and three counts of knowingly using or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a drug trafficking crime in violation of 18 U.S.C. § 924(c).

After the Supreme Court issued its decision in *Bruen*, Ingram filed this motion to dismiss. The government responded and Ingram replied. At the hearing, the Court heard argument from the government and Ingram and took the matter under advisement. The Court, having been fully briefed on the relevant issues, issued a text order denying the motion. Since that time, the Court held a trial in this matter, and a jury convicted Ingram of each count.

The Court will now expound upon its ruling denying Ingram's motion to dismiss.

III. STANDARD OF REVIEW

Under Federal Rule of Criminal Procedure 12, the Court should dismiss criminal charges in an indictment "where there is an infirmity of law in the prosecution[,]" such as an unconstitutional statute. *United States v. Engle*, 676 F.3d 405, 415 (4th Cir. 2012).

The Second Amendment to the United States Constitution 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." U.S. Const. Amend. II.

In *Bruen*, the Supreme Court explained that "[w]hen 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." 142 S. Ct. at 2129–30. Only after the government makes that showing "may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command." *Id.* at 2130 (internal quotation marks omitted).

Ingram makes a facial challenge to Section 922(g) and Section 924(c). "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the

challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

IV. DISCUSSION AND ANALYSIS

Ingram argues the conduct prohibited by both Section 922(g) and 924(c) are protected by the plain text of the Second Amendment and historically unregulated. The government responds that Second Amendment protections fail to extend to non-law-abiding citizens and to unlawful activity.

The Court first takes a brief look at Second Amendment jurisprudence prior to *Bruen*. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court recognized that the Second Amendment protects the right of law-abiding citizens to possess a handgun in the home for lawful purposes, such as self-defense.

The majority recognized in dicta, however, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited[.]" *Id.* at 626. In other words, "the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.*

The Court emphasized that "nothing in our opinion should be taken to cast doubt on the longstanding prohibitions on the possession of firearms by felons." *Id.* at 626–27; *see also McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) (same); *id.* at 767 (explaining that "individual self-defense is 'the *central component*' of the Second Amendment right" (emphasis in original) (quoting *Heller*, 554 U.S. at 599)).

Since *Heller*, most circuit courts, including the Fourth Circuit, developed a two-part test to assess Second Amendment claims. *See, e.g., Harley v. Wilkinson*, 988 F.3d 766 (4th Cir. 2021),

abrogated by Bruen, 142 S. Ct. at 2126–27 n.4 (employing the now invalid two-part test described below).

"At the first step, the government may justify its regulation by establishing that the challenged law regulates activity falling outside the scope of the right as originally understood." *Bruen*, 142 S. Ct. at 2126 (internal quotation mark and alteration omitted). "If the government can prove that the regulated conduct falls beyond the Amendment's original scope," the circuit courts ended the analysis and concluded "the regulated activity is categorically unprotected." *Id.* (internal quotation mark omitted). If not, the courts proceeded to step two. *Id.*

At the second step, the courts considered "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on that right." *Id.* (internal quotation mark omitted).

In *Bruen*, the Supreme Court held that this two-step approach was "one step too many," instead setting forth the standard this Court described above. *Id.* at 2127. As such, the Supreme Court recognized that the first step of the predominant circuit court framework was "broadly consistent with *Heller*, which demands a test rooted in the Second Amendment's text, as informed by history." *Id.* But, it determined *Heller*, and its successor, *McDonald*, fail to support the second step. *Id.* Instead, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.*

The Court agrees with the government that *Bruen* clarified and "reiterated[,]" rather than modified, the constitutional ruling in *Heller*, in the face of lower court rulings that failed to comport with its intended holding. *See id.* at 2129 ("Not only did *Heller* decline to engage in means-end scrutiny generally, but it also specifically ruled out the intermediate-scrutiny test that respondents and the United States now urge[d] [the Supreme Court] to adopt.").

In his concurrence in *Bruen*, Justice Kavanaugh echoes *Heller*'s and *McDonald*'s assurances that "[n]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Id.* at 2162 (Kavanaugh, J., concurring). To be sure, the language in *Heller* and *McDonald* to which Justice Kavanaugh cites is merely dicta. And, Kavanaugh's concurrence is merely persuasive. But, although this Court is "not bound by dicta or separate opinions of the Supreme Court[,]" *Myers v. Loudoun Cnty. Pub. Sch.*, 418 F.3d 395, 406 (4th Cir. 2005), it should "give great weight to Supreme Court dicta," *N.L.R.B. v. Bluefield Hosp. Co., LLC*, 821 F.3d 534, 541 n.6 (4th Cir. 2016).

This Court "cannot simply override a legal pronouncement endorsed by a majority of the Supreme Court, particularly when the supposed dicta is recent and not enfeebled by later statements." *Hengle v. Treppa*, 19 F.4th 324, 347 (4th Cir. 2021) (internal quotation marks and alterations omitted); *see also Manning v. Caldwell for City of Roanoke*, 930 F.3d 264, 282 (4th Cir. 2019) (explaining courts must give deference to dicta and separate opinions of the Supreme Court because "[r]espect for the rule of law demands nothing less: lower courts grappling with complex legal questions of first impression must give due weight to guidance from the Supreme Court, so as to ensure the consistent and uniform development and application of the law.").

To recap, similar discussion regarding felon-in-possession and comparable statutes appears in three different opinions: *Heller*, *McDonald*, and *Bruen*. By distinguishing non-law-abiding citizens from law-abiding ones, the dicta in *Heller* and *McDonald* clarifies the bounds of the plain text of the Second Amendment. This, coupled with the majority's focus in *Bruen* on the Second Amendment rights of "law-abiding citizens" throughout the opinion convinces this Court that the Supreme Court would conclude that these statutes fail to infringe on any Second Amendment rights. *See Bruen*, 142 S. Ct. at 2134 ("It is undisputed that petitioners Koch and Nash—two

ordinary, law-abiding, adult citizens—are part of 'the people' whom the Second Amendment protects"); *id.* at 2156 ("New York's proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms."). The Court has found no contradictory authority.

For these reasons, the Court denied the motion as to Ingram's Section 922(g) felon-in-possession charges. And, although the Supreme Court cases explained above fail to explicitly mention Section 924(c), the rationale also applies to that statute in equal or greater measure. *Heller* and its progeny emphasize that the enumerated list "presumptively lawful" regulatory measures is inexhaustive. *Heller*, 554 U.S. at 627 n.26. Therefore, because it prohibits the use of firearms by non-law-abiding citizens for unlawful purposes, such conduct is also unprotected by the Second Amendment. The Court thus denied the motion to dismiss as to those counts as well.

V. CONCLUSION

Wherefore, based on the foregoing discussion and analysis, it is the judgment of the Court Ingram's motion to dismiss, ECF No. 1606, is **DENIED**.

IT IS SO ORDERED.

Signed this 25th day of August, 2022, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

UNITED STATES OF AMERICA, PLAINTIFF, -VERSUS- DARRELL CROCKETT, GABRIEL INGRAM, AND CARL MANN, DEFENDANTS.	0:18-CR-00557 JULY 29, 2022 COLUMBIA, SC

BEFORE THE HONORABLE MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE, PRESIDING
MOTION HEARING

A P P E A R A N C E S:

FOR THE GOVERNMENT:	WILLIAM WITHERSPOON, AUSA DEWAYNE PEARSON, AUSA ELLIOTT DANIELS, AUSA LAMAR FYALL, AUSA ELLE KLEIN, AUSA UNITED STATES ATTORNEY'S OFFICE 1441 MAIN STREET, SUITE 500 COLUMBIA, SC 29201
FOR THE DEFENDANT: CROCKETT	JOHN DELGADO, ESQ. BILL NETTLES LAW 2008 LINCOLN STREET COLUMBIA, SC 29201
FOR THE DEFENDANT: INGRAM	LOUIS LANG, ESQ. CALLISON TIGHE AND ROBINSON PO BOX 1390 COLUMBIA, SC 29202

THAT MOTION BY THE GOVERNMENT WAS HEARD AND DECIDED ON JANUARY 19TH, 2022, WHERE YOUR HONOR, I'M SURE YOUR HONOR RECALLS, YOU FOUND THAT THERE WAS A NON-WAIVABLE CONFLICT BETWEEN THOSE TWO CLIENTS AND MR. SWERLING, MR. HEMPHILL AND MR. BROCK, AND THEREFORE RELIEVED MR. SWERLING AS COUNSEL FOR MR. HEMPHILL.

AT THE TIME THAT THAT MOTION WAS HEARD, THIS CASE WAS SET FOR TRIAL IN APRIL OF 2022. ON FEBRUARY 3RD, 2022, THE COURT GRANTED -- NEW COUNSEL WAS APPOINTED AND THEREAFTER, YOUR HONOR, THE COURT GRANTED -- I THINK THE COURT GRANTED THE MOTION, A CONTINUANCE IN THIS MOTION OR THIS HEARING UNTIL THE AUGUST TERM I THINK AROUND THE SAME TIME, AND I APOLOGIZE FOR NOT HAVING WRITTEN THIS DOWN, MAYBE IN MARCH OF 2022, SOMETIME AT THE -- ABOUT THE NEXT STATUS CONFERENCE, AND THAT WAS ON THE MOTION OF THE NEW -- ONE OF THE MOTIONS OF THE NEW COUNSEL FOR MR. HEMPHILL WHO SIMPLY DIDN'T HAVE TIME TO PREPARE IN A MONTH'S TIME TO TRY THE CASE.

AND THE BASIS OF OUR MOTION IS THIS. I WOULD SUGGEST TO YOUR HONOR THAT THE GOVERNMENT'S JUST TOO LATE IN COMING TO THIS COURT IN A CASE THAT WAS PENDING FOR NEARLY FOUR YEARS AT THE POINT IN TIME AND BRINGING TO THE ATTENTION OF THE COURT A CONFLICT THAT HAD -- THAT THEY KNEW ABOUT AT LEAST THREE YEARS BEFORE AND THEN SAY, OH, WE HAVE TO DISQUALIFY THE COUNSEL FOR THE LEAD DEFENDANT IN THIS CASE WHICH WOULD INEVITABLY RESULT IN A CONTINUANCE TO WHICH MY CLIENT

OBJECTED.

HE WAS ARRESTED IN I THINK IT WAS APRIL OF 2018. HE'S BEEN IN PRETRIAL CONFINEMENT ALL THAT TIME FROM THEN UNTIL NOW. AND I WOULD SUGGEST TO THE COURT THAT BECAUSE OF THE GOVERNMENT'S DELAY, AND OF COURSE THE GOVERNMENT SAID IN ITS MOTION IT HAS A DUTY TO THIS COURT TO BRING THESE KINDS OF CONFLICTS TO THE ATTENTION OF THE COURT SO THE COURT CAN DEAL WITH THEM EARLY ON AND EFFICIENTLY. THE GOVERNMENT FAILED TO DO THAT.

YOUR HONOR, I WOULD SUGGEST TO THE COURT THAT BECAUSE OF THAT FAILURE, BECAUSE OF THAT NEGLECT OR OVERSIGHT OR WHATEVER, HOWEVER YOU WANT TO CHARACTERIZE IT, THAT THAT TIME, FROM THE TIME OF THE FILING OF THE MOTION UNTIL NOW, IS NOT PROPERLY EXCLUDABLE UNDER THE SPEEDY TRIAL ACT BECAUSE OF THE GOVERNMENT'S NEGLECT AND THEREFORE THIS CASE SHOULD BE DISMISSED UNDER THE SPEEDY TRIAL ACT.

THE COURT: ALL RIGHT.

MR. LANG: THANK YOU.

THE COURT: OKAY. THANK YOU. MR. HEMPHILL?

MR. WITHERSPOON: WITHERSPOON.

THE COURT: EXCUSE ME. I'M SORRY. I GUESS I'VE JUST GOT IT ON THE BRAIN. YEAH, MR. WITHERSPOON.

MR. WITHERSPOON: JUDGE, THE FIRST THING, I CAN SPEAK LOUDLY IF THAT'S -- BECAUSE I'VE GOT PAPERS SPREAD OUT.

THE COURT: OKAY.

MR. WITHERSPOON: THE FIRST THING IS MR. LANG SAID THAT HIS CLIENT'S BEEN IN PRETRIAL DETENTION SINCE APRIL OF 2018. HE WAS ARRESTED ON STATE CHARGES IN APRIL OF 2018, SO LET ME CLEAR THAT UP RIGHT AWAY.

JUDGE, WHEN YOU LOOK AT THIS CASE, I THINK WHAT MR. LANG IS FOCUSING ON IS THAT THE GOVERNMENT'S MOTION OF DECEMBER OF 2021 WHERE WE MOVED TO RECUSE MR. SWERLING AS THE CASE. WHAT HE HAS NOT TOLD THE COURT IS THAT CARL MANN FILED A MOTION.

THIS COURT, JANUARY OF 2022, THIS COURT SET THIS TRIAL FOR ITS APRIL OF 2022. TEN DAYS LATER, CARL MANN FILED A MOTION TO RECUSE HIS COUNSEL. IN HIS MOTION HE SAID THAT HIS LAWYER WAS NOT PROPERLY PROTECTING HIM. THAT WAS JANUARY 28TH, 2022 AFTER THE GOVERNMENT'S MOTION TO DISQUALIFY MR. SWERLING.

THAT MOTION, CARL MANN'S MOTION, WAS HEARD ON FEBRUARY 2ND. HIS LAWYER DID NOT SHOW UP FOR THAT HEARING FOR SCHEDULING, MEETINGS, WHATEVER ELSE, AND THE DISTRICT COURT -- I MEAN THE MAGISTRATE COURT AT THAT POINT APPOINTING A NEW LAWYER FOR CARL MANN, WHO IS HERE NOW.

SO AT THAT POINT WE HAD TWO NEW LAWYERS. NOT ONLY WAS JACK SWERLING RELEASED, BUT ALSO CARL MANN'S LAWYER WAS RELEASED. SO WE HAVE TWO INCIDENTS AT THAT POINT THAT CAUSED THE DELAY.

MR. INGRAM ONLY POINTS TO JACK SWERLING. HE FAILS TO ADDRESS THE ISSUE WITH CARL MANN'S LAWYER. THAT HEARING

HAPPENED ON FEBRUARY 2ND, AND NEW COUNSEL WAS APPOINTED.

ON MARCH 24TH WE HAD THE PRETRIAL IN THIS CASE WHERE THE COURT SET THIS CASE FOR 8TH OF AUGUST OF 2022. NOT ONLY DID DARRYL HEMPHILL'S MOTION FOR A CONTINUANCE BUT ALSO CARL MANN MADE A MOTION IN THAT REGARDS FOR A CONTINUANCE.

JUDGE, IN YOUR ORDER ON THAT MARCH DATE, YOU SAID THE REASON FOR THE DELAY WAS TO ALLOW DEFENSE COUNSEL THE TIME NECESSARY TO RECEIVE AND REVIEW THE DISCOVERY IN THIS CASE WITH THE DEFENDANTS AND TO AFFORD THE PARTIES THE OPPORTUNITY TO BEGIN PLEA NEGOTIATIONS WITH APPROPRIATE -- WHICH COULD AVOID THE POSSIBILITY OF A TRIAL, AND YOU MADE THAT DETERMINATION UNDER 18 USC 3161 (H)(7)(B) -- (H)(7)(A) WHICH IS YOU BALANCE THE BEST INTEREST OF THE PARTIES AGAINST HAVING A SPEEDY TRIAL.

JUDGE, AS PART OF THAT SPEEDY TRIAL ACT, UNDER 7(B) THERE LISTS SOME FACTORS THAT THE COURT SHOULD TAKE INTO CONSIDERATION WHEN MAKING ITS DETERMINATION FOR WHETHER A CONTINUANCE SHOULD HAPPEN. (B)(1) SAYS WHERE THE FAILURE TO GRANT SUCH A CONTINUANCE TO THE PROCEEDINGS WOULD BE LIKELY TO MAKE A CONTINUATION OF SUCH PROCEEDINGS IMPOSSIBLE OR RESULT IN A MISCARRIAGE OF JUSTICE.

HAD THE COURT WENT AHEAD WITH A APRIL SENTENCE -- I MEAN COURT HEARING, MR. MANN CERTAINLY, OR LAWYER, CERTAINLY WOULD HAVE BEEN IN A SITUATION WHERE HE COULD NOT PROPERLY PROCEED IN THIS CASE.

AS THE COURT KNOWS, THERE'S MORE THAN 18,000 PAGES IN THIS DISCOVERY, IN THESE PAGES, MORE THAN FOUR MONTHS OF WIRETAPS IN THIS CASE. TO EVEN THINK THAT MR. DUNCAN, WHO IS A VERY COMPETENT LAWYER, COULD BE PREPARED TO GO FORWARD AT THAT POINT, ASIDE FROM MR. SWERLING, WOULD HAVE BEEN ALMOST IMPOSSIBLE.

UNDER (B)(4), THAT ANOTHER THING TO CONSIDER IS WHETHER THE FAILURE TO GRANT SUCH A CONTINUANCE IN A CASE, WHICH TAKEN AS A WHOLE IS NOT SO UNUSUAL OR SO AS COMPLEX TO FALL WITHIN THE CLAUSE AND, UNDER 2 WOULD BE -- WOULD DENY THE DEFENDANT REASONABLE TIME TO OBTAIN COUNSEL OR, IN THIS CASE, THE REASONABLE TIME NECESSARY FOR EFFECTIVE, FOR PREPARATION, AND TAKE INTO ACCOUNT THE EXERCISE OF DUE DILIGENCE.

THAT'S THE REASON, JUDGE, THAT THE CONTINUANCE HAPPENED IN APRIL UNTIL NOW. IT ALSO SAID GIVE THE PARTIES AN OPPORTUNITY TO SEE IF WE COULD RESOLVE THE CASE WITHOUT TRIAL. THAT HAPPENED IN MARCH. MR. HEMPHILL PLED IN MAY. YESTERDAY WE HAD TWO MORE DEFENDANTS WHO PLED, WHICH CERTAINLY SHORTENS THE CASE. SO JUDGE, UNDER THE SPEEDY TRIAL ACT ITSELF, I THINK THAT TIME IS REASONABLE.

NOW, SWITCH OVER TO THE SIXTH AMENDMENT RIGHT OF THE SPEEDY TRIAL ACT UNDER THE BARKER AND THOMAS DECISION WHERE YOU HAVE TO LOOK AT FOUR FACTORS. THOSE FOUR FACTORS ARE WHETHER THE DELAY WAS UNCOMMONLY LONG. WE'RE ONLY TALKING ABOUT FROM APRIL TO AUGUST.

THE COURT: YEAH, I REALLY THINK IF IT HADN'T BEEN FOR THE COVID DELAYS, WOULDN'T EVEN BE MENTIONED. BUT THE COVID DELAYS WERE REAL, THEY WERE JUSTIFIED. ALL OF THOSE CONTINUANCES HAD TO BE, HAD TO BE GRANTED. BUT YEAH, GO ON OVER THE OTHER FACTORS.

MR. WITHERSPOON: SO, BUT MR. LANG ONLY TALKS ABOUT FROM APRIL UNTIL AUGUST. SO WE ARE TALKING ABOUT A FOUR-MONTH DELAY. WE'RE NOT TALKING ABOUT A LONG DELAY IN THIS CASE.

WHETHER THE GOVERNMENT OR THE DEFENDANT WAS TO BLAME, MR. LANG IS FOCUSING ON THE GOVERNMENT'S FILING THE MOTION IN DECEMBER. HE FAILS TO TALK ABOUT THE MOTION FILED BY MR. MANN IN JANUARY. WHERE THE DEFENDANT ASSERT HIS RIGHT TO A SPEEDY TRIAL, HE ALWAYS OBJECTED TO ANY CONTINUANCE, BUT THERE WAS NO MOTION FILED TO DISMISS THIS CASE UNTIL A WEEK OR SO AGO.

AND HAS THE DEFENDANT SUFFERED ANY PREJUDICE? YOU HAVE NOTICED THAT MR. LANG HASN'T SHOWN ANY PREJUDICE, ASSERTED ANY PREJUDICE. WHEN YOU TALK ABOUT PREJUDICE, JUDGE, WE TALK ABOUT -- GET MY NOTES HERE -- WHERE THE WITNESS HAS BEEN -- CANNOT BE FOUND, WHERE THE WITNESS' TESTIMONY CAN'T BE FOUND, WHERE THE WITNESS' MEMORY IS LACKING. THERE'S BEEN CERTAINLY NO INDICATION THAT THERE'S BEEN ANY PREJUDICE ASSERTED HERE.

AND I CITE TO THE CASE OF BLOATE VERSUS UNITED STATES, B-L-O-A-T-E, US 130 SUPREME COURT 1345. IT'S THE 2010

CITING. IT SAYS, SEEMINGLY IGNORED WERE THE BREVITY OF THE DELAY -- IN THIS CASE FOUR MONTHS -- AND THE CONSEQUENTIAL LACK OF PREJUDICE TO THE RESPONDENT. WE HAVE HEARD NO EVIDENCE HERE, JUDGE, THAT THERE'S BEEN ANY PREJUDICE ALLEGED BY MR. INGRAM OTHER THAN HE JUST DOES NOT LIKE TO HAVE THE FOUR MONTHS DELAY.

SO JUDGE, WE ASK THAT YOU DENY THEIR MOTION.

THE COURT: ALL RIGHT. THANK YOU. ALL RIGHT. ANYTHING IN REPLY?

MR. LANG: JUST VERY BRIEFLY, YOUR HONOR, IF YOUR HONOR CAN HEAR ME FROM HERE.

THE COURT: I THINK I CAN.

MR. LANG: JUDGE, THE ONLY REPLY WOULD BE THIS. THE GOVERNMENT SAYS THAT, WELL, YOU WOULD HAVE GOT -- THE CONTINUANCE WOULD HAVE HAPPENED ANY WAY BECAUSE OF MR. MANN'S PROBLEM WITH HIS LAWYER. WELL, THE GOVERNMENT CAN'T RELY UPON SOMETHING ELSE HAPPENING IN THIS CASE.

THE FACT OF THE MATTER IS THAT CONTINUANCE WOULD HAVE BEEN GRANTED REGARDLESS OF WHAT HAPPENED TO MR. MANN BECAUSE JACK SWERLING HAD BEEN DISQUALIFIED, AND THE GOVERNMENT KNEW OF THAT DISQUALIFYING CONFLICT YEARS BEFORE IT BROUGHT IT TO THE ATTENTION OF THIS COURT.

AND I WOULD SUGGEST TO THE COURT THAT THE GOVERNMENT CANNOT RELY UPON SOME OTHER CIRCUMSTANCE OVER WHICH IT HAD NO CONTROL TO SAY, OH, GEE WHIZ, NOT OUR FAULT. IT IS DIRECTLY

THEIR FAULT, IT IS THEIR PROBLEM, THEIR NEGLECT IN NOT BRINGING THAT TO THE ATTENTION OF THE COURT, AND THEREFORE THIS COURT SHOULD NOT EXCLUDE THIS, THAT TIME UNDER THE SPEEDY TRIAL ACT.

I'M NOT RAISING A SIXTH AMENDMENT ISSUE BECAUSE I CAN'T PROVE PREJUDICE, YOUR HONOR, SO YOU DON'T HAVE TO WORRY ABOUT THAT.

THE COURT: OKAY.

MR. LANG: BUT IT'S PURELY -- SPEEDY TRIAL ACT, SEVENTY DAYS HAS LONG SINCE COME AND GONE. THANK YOU, YOUR HONOR.

THE COURT: OKAY. THANK YOU. ALL RIGHT. I'M GOING TO DENY THE MOTION TO DISMISS. I'M COMFORTABLE, BASED ON WHAT THE GOVERNMENT HAS SAID AND THE ARGUMENTS THAT WERE PUT FORTH, THAT THERE'S NOT BEEN A VIOLATION OF THE SPEEDY TRIAL ACT, AND I UNDERSTAND IT WAS NOT A, REALLY A CONSTITUTIONAL CHALLENGE TO IT IN THE FIRST PLACE. THAT WOULDN'T -- IF THERE WERE, THERE'S CERTAINLY NO PREJUDICE BECAUSE OF THIS. SO THAT MOTION IS DENIED.

ALL RIGHT. LET'S SEE WHAT THE NEXT THING I HAVE ON MY LIST IS.

THERE WAS A SECOND MOTION TO DISMISS FROM MR. INGRAM. IS THAT STILL -- THAT THE SAME THING? NO? GOVERNMENT'S RESPONSE. OKAY. ALL RIGHT.

MR. LANG: THAT'S THE GUN CHARGES, YOUR HONOR,

THAT...

THE COURT: THAT'S THE WHAT?

MR. LANG: THE GUN CHARGES.

THE COURT: OKAY. I WILL BE HAPPY TO HEAR FROM YOU.

MR. LANG: OKAY. MAY IT PLEASE THE COURT. ONCE AGAIN, YOUR HONOR, LOUIS LANG FOR THE DEFENDANT GABRIEL INGRAM.

YOUR HONOR, THIS IS -- MY MOTION IS TO DISMISS SEVERAL COUNTS OF THE INDICTMENT AGAINST MR. INGRAM. TWO COUNTS ASSERT A VIOLATION OF 18 UNITED STATES CODE, 922(G)(1), A FELON IN POSSESSION OF A FIREARM. AND THE OTHER TWO COUNTS ASSERT A VIOLATION OF 922(C)(1), WHICH IS THE USE, POSSESSION, OR CARRYING OF A FIREARM IN FURTHERANCE OF A DRUG OFFENSE.

AND YOUR HONOR, I'M GOING TO HAVE TO BEG THE COURT'S INDULGENCE IN THIS ARGUMENT BECAUSE THIS IS RELATIVELY NEW LAW FOR ME.

THE COURT: YES, IT IS. IT'S NEW FOR ALL OF US, ALTHOUGH EVERYTHING COMING OUT OF THE SUPREME COURT IS NEW LATELY, SO...

MR. LANG: I WILL CONCEDE THAT I WAS AWARE OF HELLER AT THE TIME IT CAME OUT IN 2008. I WAS ALSO AWARE OF THE CHALLENGES THAT SPRANG FROM HELLER IN THE CIRCUIT COURTS AROUND THE COUNTRY DEALING WITH ASSERTIONS THAT 922, THE

FELON IN POSSESSION CHARGE, WAS UNCONSTITUTIONAL BASED ON HELLER. I WAS AWARE OF THE UNIVERSAL REJECTION OF THOSE CHALLENGES BY EVERY CIRCUIT COURT THAT I'M AWARE OF INCLUDING THE FOURTH CIRCUIT.

BUT I WOULD SUGGEST TO THE COURT THAT UNDER BRUEN, WE ARE IN A WHOLE NEW ERA OF SECOND AMENDMENT LITIGATION. AND THE REASON FOR THAT IS BRUEN REJECTED THE TWO-STEP PROCESS THAT HAD BEEN ADOPTED BY THE CIRCUIT COURTS AROUND THE COUNTRY IN ANALYZING SECOND AMENDMENT CLAIMS AND SECOND AMENDMENT ASSERTIONS.

AND YOUR HONOR, THAT -- AS I UNDERSTAND THAT TWO-STEP PROCESS, IT INVOLVED FIRST AN ANALYSIS OF WHETHER OR NOT THE CONDUCT THAT WAS PROHIBITED BY THE CERTAIN STATUTE BURDENED THE SECOND AMENDMENT RIGHT TO BEAR OR KEEP OR BEAR ARMS. AND THEN IF IT DID NOT, IF -- IN OTHER WORDS, IF THAT CONDUCT, WHATEVER IT WAS, DIDN'T COME WITHIN THE SECOND AMENDMENT, THEN THE ANALYSIS ENDED AT THAT POINT.

IF IT DID OR IF IT ARGUABLY DID, THEN THE COURTS WERE TO ENGAGE IN SOMETHING CALLED THE MEANS-ENDS ANALYSIS WHICH, YOU KNOW, I THINK I AM VAGUELY FAMILIAR WITH FROM LAW SCHOOL AND THAT WAS, YOUR HONOR, THE CIVIL RIGHTS--

THE COURT: ALL THAT STUFF WE LEARNED IN LAW SCHOOL IS GONE.

MR. LANG: RIGHT. RIGHT. BUT ANY WAY, I THINK--

THE COURT: WE HAVE TO GET NEW LAW BOOKS.

MR. LANG: I THINK I KNEW WHAT THEY WERE TALKING ABOUT THEN. BUT THE BRUEN COURT AND THE MAJORITY JUST REJECTED ALL OF THAT AND SAID -- AND I JUST QUOTE FROM THE CASE, TODAY WE DECLINE TO ADOPT THAT TWO-PART APPROACH -- IS WHAT I JUST ADDRESSED.

AND THEN THEY KIND OF TIP THEIR HAT TO HELLER, ALTHOUGH I DON'T THINK HELLER -- I THINK THEY JUST, YOU KNOW, THEY'RE JUST KIND OF SAYING, WELL, WE UNDERSTAND HELLER WAS OUT THERE. BUT THIS IS A NEW CASE. THIS ISN'T A HELLER CASE. THIS IS COMPLETELY DIFFERENT IN MY VIEW.

THEY SAY, IN KEEPING WITH HELLER, WE HOLD THAT WHEN THE SECOND AMENDMENT'S PLAIN TEXT COVERS AN INDIVIDUAL'S CONDUCT, THE CONSTITUTION PRESUMPTIVELY PROTECTS THAT CONDUCT. SO IN OTHER WORDS, IF I'M COMING WITHIN -- OR THE STATUTE PROHIBITS CONDUCT WHICH IS PRESUM -- WHICH IS PROTECTED BY THE SECOND -- THE PLAIN TEXT OF THE SECOND AMENDMENT, THEN THAT SECOND STEP NO LONGER EXISTS AND THE BURDEN SHIFTS TO THE GOVERNMENT TO DEMONSTRATE THAT HISTORIC TRADITION AND USE OF, YOU KNOW, LOOKING AT THE HISTORY.

AND HERE'S WHERE I, YOU KNOW, VEER OFF INTO HISTORY, WHICH IS A PROBLEM FOR ME -- THAT THE HISTORIC TRADITION OF THE UNITED STATES AT THE TIME OF THE FOUNDING COVERED THE CONDUCT THAT IS PROHIBITED BY THAT PARTICULAR STATUTE.

IN OTHER WORDS, IF THERE WAS HISTORICALLY A PROHIBITION AGAINST WHATEVER IT WAS THAT IS PROHIBITED BY THIS MODERN

STATUTE, THEN THE SECOND AMENDMENT IS NOT PROTECTED BY THE SECOND AMENDMENT.

AND IN THIS CIRCUMSTANCE, YOUR HONOR, MY FIRST STEP -- AND THE ONLY THING THAT I HAVE THE BURDEN OF IS TO SAY THAT I COME -- MY CONDUCT COMES WITHIN THE SECOND AMENDMENT'S PROTECTION. BECAUSE IF I DO THAT, THEN THE BURDEN IS COMPLETELY ON THE GOVERNMENT TO SHOW THAT HISTORICAL TRADITION GOING BACK TO 1791 AND MAYBE 1789 AND MAYBE 1793, BUT NOT VERY FURTHER THAN THOSE TWO TIMEFRAMES, THAT THE TRADITION -- THAT THERE WAS A HISTORY AND TRADITION OF THAT KIND OF PROHIBITION OF THE RIGHT TO KEEP AND BEAR ARMS.

SO WITH THAT IN MIND, YOUR HONOR, LET ME TALK ABOUT 924(H), 924(G)(1) WHICH SAYS IT IS ILLEGAL FOR A FELON TO POSSESS A FIREARM. AND THE KEY WORD THERE I WOULD SUGGEST IS POSSESSION.

924(C)(1) PROHIBITS -- AND THERE MAY BE TWO STATUTES, MAY BE ONE, THERE'S SOME DISPUTE ABOUT THAT -- BUT IT PROHIBITS THE USE OR CARRY OR POSSESSION OF FIREARM IN FURTHERANCE OF A DRUG-TRAFFICKING OFFENSE.

NOW, WHEN YOU LOOK AT THE FIRST AMENDMENT, WHAT DOES THE FIRST AMENDMENT SAY? AND IT SAYS, A WELL-REGULATED MILITIA BE NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF, THE PEOPLE, TO KEEP AND BEAR ARMS SHALL NOT BE INFRINGED.

AND THE COURT, IN ITS TEXTUAL NATURE, WHICH IS ANOTHER NEW KIND OF WAY OF LOOKING AT THINGS FOR ME, SAYS WHAT YOU DO

IS YOU LOOK AT THE PLAIN TEXT OF THE SECOND AMENDMENT AND DETERMINE WHETHER OR NOT THAT PLAIN TEXT COVERS WHAT IT IS THAT THE GOVERNMENT WISHES TO BURDEN IN TERMS OF THE RIGHT TO KEEP AND BEAR ARMS.

AND I WOULD SUGGEST THAT IT CLEARLY DOES BECAUSE IN UNDER THE STATUTE, 922(G)(1) SAYS IT'S UNLAWFUL TO POSSESS A FIREARM BY A CERTAIN GROUP OF PEOPLE OR A SERIES OF GROUPS OF PEOPLE AND--

THE COURT: FELONS ARE PEOPLE.

MR. LANG: FELONS ARE PEOPLE. I'LL GET TO PEOPLE IN JUST A MOMENT. BUT THAT'S THE PLAIN TEXT OF -- YOU DON'T TALK ABOUT ANYTHING BUT THE PLAIN TEXT. AND THE PLAIN TEXT SAYS, THE RIGHT TO KEEP AND BEAR ARMS. AND I CAN GO THROUGH THE, YOU KNOW, THE BLACK'S LAW DICTIONARY'S DEFINITION OF KEEP IS TO HAVE OR RETAIN IN ONE'S POSSESSION OR POWER.

SO AGAIN WE ARE TALKING ABOUT KEEP AND POSSESS. THEY MEAN THE SAME THING IN TERMS OF THE SECOND AMENDMENT.

IN TERMS OF 924(C)(1), IT PROHIBITS THE USE, CARRY, OR POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG-TRAFFICKING OFFENSE. NOW OF COURSE, AGAIN, IT USES SPECIFICALLY -- I MEAN, THAT COMES WELL, WELL WITHIN THE WORD KEEP AS IT IS USED IN THE SECOND AMENDMENT. AND THE RIGHT TO BEAR ARMS, OF COURSE, IS TO SUPPORT, SUSTAIN, OR CARRY, WHICH IS, AGAIN, USED IN THE 924(C) STATUTE.

SO I WOULD RESPECTFULLY SUGGEST, YOUR HONOR, THAT I HAVE

MET THAT FIRST I GUESS HURDLE IN WHICH TO COME WITHIN THE PROTECTION OF THE SECOND AMENDMENT, AND THAT IS TO SAY THAT BOTH THE -- BOTH THE STATUTES THAT I SUGGEST ARE UNCONSTITUTIONAL AS TO THE SECOND AMENDMENT YOU--

THE COURT: BUT WAIT. I MEAN, OKAY, ON THE STRICT FELON IN POSSESSION, OKAY, I'M FOLLOWING YOU. BUT ON IN FURTHERANCE OF -- USE IN FURTHERANCE OF A CRIME, OKAY, THEN I'M NOT SURE ABOUT THAT BEING COVERED BECAUSE THE CONSTITUTION DOESN'T SAY ANYTHING ABOUT USING IT FOR ANY PARTICULAR PURPOSE EXCEPT MAYBE PROTECTION, SELF-PROTECTION.

I'M NO CONSTITUTIONAL SCHOLAR, BUT I SEE A DIFFERENCE BETWEEN THE LANGUAGE OF THE SECOND AMENDMENT COVERING FELON IN POSSESSION, POSSESS A GUN, RIGHT TO POSSESS A GUN, A FELON POSSESS A GUN. A FELON IS A PERSON.

BUT USING IT IN FURTHERANCE OF CRIMINAL ACTIVITY, I MEAN, I THINK YOU'RE DEFINITELY GOING TO RUN INTO PROBLEMS FROM THE HISTORICAL ANALYSIS PART OF THIS. BUT I'M HAVING ALSO TROUBLE ON THE ACTUAL LANGUAGE OF THE SECOND AMENDMENT COVERING THIS. I MEAN, YOU ADMIT THERE'S A DISTINCTION THERE.

MR. LANG: WELL, YOUR HONOR, I DON'T THINK SO. AND WHEN I WAS THINKING ABOUT THIS, YOU KNOW, IT BECOMES MORE CLEAR -- STILL NOT VERY CLEAR, FRANKLY -- BUT IT BECOMES MORE CLEAR THE MORE I THINK ABOUT--

THE COURT: I MEAN, I HAVE BEEN THINKING ABOUT IT A

LOT AND I TRIED TO COME UP WITH WAYS TO UNDERSTAND WHAT THE COURT WAS SAYING IN BRUEN, AND IT'S A LITTLE BIT OF INCONSISTENCY IN THAT OPINION AND...

MR. LANG: WELL, BUT WHEN YOU LOOK AT THE LANGUAGE OF 924(C)(1), IT PROHIBITS THE USE, THE CARRY, OR POSSESSION. AND THAT'S EXACTLY WHAT THE SECOND AMENDMENT IS TALKING ABOUT. IT DOESN'T -- YOU KNOW, AND THAT'S WHAT--

THE COURT: BECAUSE IT'S, OR POSSESS, IS IN THERE, TOO.

MR. LANG: RIGHT. EXACTLY, YOUR HONOR. SO THAT I WOULD SUGGEST TO THE COURT THAT I HAVE MET THAT FIRST HURDLE THAT SAYS THAT THESE TWO STATUTES WHICH I'M ATTACKING ON CONSTITUTIONAL GROUNDS, COVER -- ARE COVERED BY THE SECOND AMENDMENT IN ITS KEEP AND BEAR ARMS LANGUAGE.

THE SECOND, I GUESS, AND I'M NOT SURE THIS IS A DISTINCT HURDLE THAT I HAVE TO LEAP OVER, BUT IS WHETHER OR NOT I'M, THE PEOPLE, BECAUSE THE SECOND AMENDMENT, YOU KNOW, PROTECTS, THE PEOPLE, AGAINST PROHIBITIONS REGARDING THE USE AND CARRY OF FIREARMS.

AND OF COURSE, STRAIGHT OUT OF HELLER -- WHICH, AGAIN BRUEN MAKES SEVERAL REFERENCES TO -- HELLER SAYS THAT ALL MEMBERS OF THE POLITICAL COMMUNITY ARE, THE PEOPLE. IT ALSO SAYS THAT THE SECOND AMENDMENT BELONGS TO ALL AMERICANS.

AND THERE'S NOTHING IN THE SECOND AMENDMENT, WHICH IS A VERY SHORT, YOU KNOW, JUST A SENTENCE LONG, I'VE FORGOTTEN

THE WORDS, BUT PROBABLY COUNT THEM ON BOTH YOUR HANDS. THERE'S NOTHING IN THE SECOND AMENDMENT THAT CATEGORIZES CERTAIN PEOPLE THAT ARE NOT WITHIN ITS PROTECTION.

DOESN'T SAY PEOPLE DON'T INCLUDE FELONS, PEOPLE DON'T INCLUDE DRUG ABUSE, DRUG USERS, PEOPLE DON'T INCLUDE ILLEGAL ALIENS. IT DOESN'T SAY ANYTHING LIKE THAT. IT JUST--

THE COURT: DOES IT INCLUDE WOMEN?

MR. LANG: I'M SORRY?

THE COURT: DOES IT INCLUDE WOMEN?

MR. LANG: I WOULD SUGGEST IT DOES WHEN YOU -- WHEN YOU PUT A MORE MODERN SORT OF GLOSS ON, ON THE WORD PEOPLE. AND I WOULD ALSO INVITE THE COURT'S ATTENTION TO THE FOURTH AMENDMENT WHICH ALSO SAYS THE PEOPLE SHALL BE FREE FROM UN -- YOU KNOW, UNREASONABLE SEARCHES AND SEIZURES.

AND OF COURSE, WE APPLY THE FOURTH AMENDMENT EVERY DAY IN COURTS, DISTRICT COURTS ACROSS THE COUNTRY, TO PEOPLE WHO ARE FELONS, DRUG USERS, ILLEGAL ALIENS, ALL SORTS OF PEOPLE AND--

THE COURT: YEAH, BUT THE FOURTH AMENDMENT, WITHIN IT, IT RECOGNIZES REASONABLE. IT'S IN THE FOURTH AMENDMENT.

MR. LANG: RIGHT, BUT THAT'S ANOTHER--

THE COURT: AND THE SECOND AMENDMENT DOESN'T, SO...

MR. LANG: NO, THE SECOND AMENDMENT, I MEAN, THAT'S ANOTHER FACTOR OF, YOU KNOW, OF THE FOURTH AMENDMENT.

IN ANY EVENT, YOUR HONOR, I KNOW THE GOVERNMENT WILL

ARGUE WITH THAT, AND IT WILL ALSO -- WELL, LET ME TALK ABOUT ONE OTHER ASPECT OF THE PEOPLE.

AND THERE'S BEEN SOME LITIGATION, SOME ARGUMENT ABOUT, WELL, THE SECOND AMENDMENT ONLY INCLUDES LAW-ABIDING PEOPLE OR SO-CALLED VIRTUOUS PEOPLE, YOU KNOW, PEOPLE WHO ARE, YOU KNOW, I GUESS LAW-ABIDING AND VIRTUOUS, OR HOWEVER YOU WANT TO CALL IT, AND OF COURSE -- AND THE GOVERNMENT WILL POINT TO A FOOTNOTE IN HELLER -- I'M SORRY, IN BRUEN -- WHICH TALKS ABOUT EXACTLY THAT.

AND IN THAT REGARD, YOUR HONOR, I WOULD JUST SIMPLY SAY THAT THAT IS PURE DICTA, THAT IS DICTA IN BRUEN BECAUSE IN BRUEN, OF COURSE, THE PEOPLE WERE LAW-ABIDING. THERE WERE TWO MEMBERS OF A GUN CLUB I THINK IN NEW YORK CITY. JUST AS IN HELLER, I THINK THE PLAINTIFF OR THE PETITIONER IN THAT CASE WAS A SPECIAL POLICEMAN WITH THE DISTRICT OF COLUMBIA.

IN ANY EVENT, YOUR HONOR, I WILL SUGGEST THAT THAT'S -- THAT SETS THE FLOOR FOR THE SECOND AMENDMENT, NOT THE CEILING. SO, OKAY, LAW-ABIDING CITIZENS COME WITHIN THIS BUT THAT DOESN'T MEAN A LOT OF OTHER PEOPLE DON'T EITHER.

AND AGAIN, WHEN YOU SAY, WELL, WHO ARE THOSE A LOT OF OTHER PEOPLE, YOU GO BACK TO THE PLAIN TEXT OF THE SECOND AMENDMENT, AND IT SAYS, THE PEOPLE, AND THAT INCLUDES MY CLIENT, WHO IS, THE PEOPLE.

HE'S A CITIZEN OF THE UNITED STATES. HE'S A MEMBER OF THE BODY POLITIC. HE'S ALL THOSE THINGS THAT WOULD INCLUDE

HIM AND THE PEOPLE BOTH FOR 924(G)(1) PURPOSES AND FOR 924(C)(1) PURPOSES.

FINALLY, YOUR HONOR, IN TERMS OF THAT VIRTUOUS ASPECT OF IT, I WOULD INVITE THE COURT'S ATTENTION -- AND THIS IS A DISTINCTION WHICH I FIND HARD, BUT JUSTICE BARRETT, THEN JUDGE BARRETT, DIDN'T HAVE ANY DIFFICULTY MAKING, AND THAT IS THIS.

FIND IT. BEGGING THE COURT'S INDULGENCE FOR A MOMENT. THIS IS THEN JUDGE, NOW JUSTICE BARRETT'S, DISSENT IN KANTER VERSUS BARR, WHICH HAD A 922 -- WHICH WAS AN ATTACK ON 922(G)(1), I FORGOT WHICH SUBSECTION, BUT HER CLIENT WAS A FELON WHO HAD BEEN CONVICTED I THINK OF TAX EVASION. SO IT WASN'T A VIOLENT OFFENSE, BUT IT WAS A FELONY, NO QUESTION ABOUT THAT.

AND HERE'S WHAT SHE SAID ABOUT THE VIRTUE ASPECT OF THIS. SAID THE PROBLEM WITH THIS ARGUMENT -- IN OTHER WORDS, THE SECOND AMENDMENT DOESN'T INCLUDE NON-VIRTUOUS PEOPLE -- IS THAT THE VIRTUE EXCLUSIONS ARE ASSOCIATED WITH CIVIC RIGHTS, INDIVIDUAL RIGHTS THAT REQUIRE CITIZENS TO ACT IN A COLLECTIVE MANNER IN -- FOR DISTINCTLY PUBLIC PURPOSES.

SHE GOES ON TO SAY HOW -- HELLER, HOWEVER, EXPRESSLY REJECTS THE ARGUMENT THAT THE SECOND AMENDMENT PROTECTS A PURELY CIVIC RIGHT. IT SQUARELY HOLDS -- TALKING ABOUT HELLER AGAIN -- THAT THE SECOND AMENDMENT CONFIRMS AN INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS.

SO WE ARE NOT COMPARING THE SECOND AMENDMENT OR TO PROHIBITIONS THAT SAY, WELL, FELONS CAN'T VOTE, FELONS CAN'T SIT ON A JURY, THOSE KIND OF CIVIC RIGHTS THAT ARE TAKEN AWAY WHEN YOU'RE CONVICTED OF A FELONY. WE ARE TALKING ABOUT AN INDIVIDUAL RIGHT.

AND THAT INDIVIDUAL RIGHT GOES RIGHT BACK TO THE PLAIN TEXT OF THE SECOND AMENDMENT AND I WOULD SAY, SUGGEST TO THE COURT, FALLS SQUARELY WITHIN 924, 922(G)(1) AND 924(C)(1).

HAVING SAID ALL THAT, YOUR HONOR, AGAIN, I THINK I HAVE SUGGESTED TO THE COURT I THINK THE ANALYSIS IS COMPELLING THAT MY CLIENT'S -- OR THE CONDUCT PROHIBITED BY 922(G) AND 924(C) FALLS WITHIN THE PLAIN TEXT AND PLAIN LANGUAGE OF THE SECOND AMENDMENT.

HAVING DONE THAT, THEN THE BURDEN IS COMPLETELY ON THE GOVERNMENT TO DEMONSTRATE THE HISTORIC TRADITION OF THAT KIND OF BURDEN ON THE SECOND AMENDMENT.

AND YOUR HONOR, IN THE GOVERNMENT'S RESPONSE, THEY DIDN'T EVEN TRY TO DO THAT. YOU KNOW, THEY TALK ABOUT THE FEDERAL FIREARMS ACT 1938, WHICH IS THE GENESIS OF THE FELON IN POSSESSION STATUTE, AND, OF COURSE, I MEAN, THERE ARE PEOPLE ALIVE TODAY THAT REMEMBER 1938. I DON'T, BUT THERE ARE PEOPLE ALIVE TODAY THAT REMEMBER 1938, BUT THAT'S NOT 1791.

IT IS NOT USEFUL IN THE ANALYSIS OF WHETHER OR NOT THE TRADITIONS AT THE TIME OF THE FOUNDING INCLUDED FELON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,	
Plaintiff,	Docket No. 0:18-cr-00557
vs.	Columbia, SC
DARRYL HEMPHILL, MIKIE MARCELL CALDWELL, GABRIEL L'AMBIANCE INGRAM, DARRELL LAROD CROCKETT, CARL MICHAEL MANN, II, ODARRIUS BREONTE ADAMS,	
Defendants.	DATE: March 24, 2022

BEFORE THE HONORABLE MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE, PRESIDING
PRETRIAL CONFERENCE

A P P E A R A N C E S:

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DEFENDANT CALDWELL: Yes, ma'am.

THE COURT: And I will have to make a decision about that. But I need to hear from the other defendants first. So you do not want a continuance?

DEFENDANT CALDWELL: No, ma'am.

THE COURT: All right. How about you, Louis, what's Mr. Ingram's position?

MR. LANG: May it please the Court, Your Honor. Louis Lang for Mr. Ingram. Your Honor, we would object to a continuance. I've said this before. My client has been in pretrial confinement since April of 2018. Four years is too long, I would suggest.

THE COURT: Yeah. Well, it is too long. But, I mean, everybody keeps changing lawyers, you know, at the drop of a damn hat. And then we have, you know, COVID for two years. So, I mean, I couldn't do it. And it seems every time I try to set it for trial, you know, we have these complications with people fussing about their lawyers.

All right. Anyway, so you would oppose the continuance and ask for a speedy trial; is that right, Mr. Ingram?

DEFENDANT INGRAM: Yes, ma'am.

THE COURT: Thank you, sir.

All right. Mr. Delgado, Mr. Crockett, what's his position?

MR. DELGADO: Mr. Crockett wishes not to waive --

THE COURT: I'm sorry. I can't hear you.

MR. DELGADO: I'm sorry. I apologize.

THE COURT: It's me. I'm deaf.

MR. DELGADO: He opposes a continuance and wishes to assert his right to a speedy trial.

THE COURT: All right. Mr. Crockett; is that right, sir?

DEFENDANT CROCKETT: Yes, ma'am.

THE COURT: All right. Thank you. All right. Let me hear from Mr. Duncan.

MR. DUNCAN: Yes, Your Honor. On behalf of Mr. Mann, I have requested a continuance. I'm similarly situated to Mr. Milling. I was appointed last month. And I've talked with my client. I've talked with Mr. Witherspoon, but that's about as far as I've gotten, very frankly. And I hear everything you just said. I will echo most of what Jonathan Milling said about needing some time, and would appreciate as much as possible, given the fact that the case is four years old.

THE COURT: What I don't want to do is continue it until August if you are going to come in here and tell me in August that you are not ready for trial. Because, I mean, every lawyer I know would probably like to have as much time as possible to get ready. And I do understand there's a lot,

but there's a lot that's been done on this case.

MR. DUNCAN: Your Honor, from my standpoint, knowing as little as I know, six months would seem like a reasonable period of time to get prepared, talk to my client, understand as best I can what the defense would be. So as comfortable as I could be at the end of March about what's going to happen in August, I think August would be fine.

THE COURT: All right. Let's see. Thank you.

Okay. All right. Mr. Rutherford.

MR. RUTHERFORD: Thank you, Your Honor. May it please the Court. On behalf of Mr. Adams, we would oppose a continuance and wish to assert his right to a speedy trial; however, I have a request if we could not do anything that second week of August. I already made plans the second week of August. That would be great if jury selection was the third. But that second week of August, if we could try to avoid doing anything that second week.

THE COURT: I don't think I can accommodate that. There may be some flexibility for some period of time in the middle of the trial during that week that we could do. I don't know what your -- what you need. But I think we are going to have to set for August and just insist that everybody -- I mean, we are all going to have to make changes. And I apologize for that. I'm going to have to make some myself.

But I think given the fact that, particularly with Mr. Duncan and Mr. Milling, are new lawyers, I am aware of how much discovery is out there in this case, having dealt with some of it over the last few years, but I also understand the defendants' desire and their right to have this done as expeditiously as possible. I mean, they have obviously a strong interest in that, and public does as well. But because of that and the fact that we don't have any severability possibilities, I think that I'm going to have to grant the motion to continue.

And I am going to set this trial with jury selection in August. Jury selection is August 3rd. And we will begin the trial likely immediately thereafter, perhaps that Monday the 8th. And I'm serious. I need y'all to -- you've accepted these appointments and these assignments. And I know it's going to take a lot of effort, but you've got to get prepared for that August trial.

MR. DUNCAN: Yes, ma'am.

THE COURT: And so I think that -- you know, I hate to do it. I would like to try this case in April, but I think that a continuance is justified in these circumstances. And I find based on all of these things that I've said and the whole record, that the ends of justice are served by the granting of this continuance because that outweighs the interest of the public and the defendants in a speedy trial.

APPENDIX E

Sealed Title III Record

This appendix identifies sealed Title III filings from the district court record, included solely to document their existence under seal.

ECF No. 1071

Sealed Title III applications, affidavits, interception orders, and sealing orders.

ECF No. 1044

Sealed memorandum and exhibits relating to Defendant's motion to suppress Title III wiretap evidence.

ECF No. 1070

Sealed surveillance reports and line sheets generated pursuant to authorized Title III Interceptions.

APPENDIX F

Constitutional and Statutory Provisions

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. II

"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. IV

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

U.S. Const. amend. V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Const. amend. VI

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

18 U.S.C. § 924(c)(1)(A)

"Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years."

21 U.S.C. § 846

"Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy."

21 U.S.C. § 841(a)(1)

"Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."

18 U.S.C. § 2518(1)(c)

"Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication shall include a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

18 U.S.C. § 3161(c)(1)

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

18 U.S.C. § 3161(h)(6)

"A reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and no motion for severance has been granted."