No. 25-

IN THE

Supreme Court of the United States

RONALD DAMONE JENKINS, JR.,
AND JAPREE LORTEZ BROOKS,

Petitioners,

v.

UNITED STATES OF AMERICA
AND MALIK TREVONTE NEWSOME,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether The Court Of Appeals Erred By Holding The United States Met Its Burden To Prove Petitioners Participated In An "Enterprise" Within The Meaning Of 18 U.S.C. § 1959(a) During The Relevant Periods Charged In Counts One And Four Of The Second Superseding Indictment?

PARTIES TO THE PROCEEDING

The Petitioners are Ronald Damone Jenkins, Jr., and Japree Lortez Brooks.

The Respondents are the United States of America and Malik Trevonte Newsome.

STATEMENT OF RELATED CASES

United States v. Jenkins, et al., No. 2:22-cr-00101, U.S. District Court for the Eastern District of Virginia. Judgment entered April 16, 2024, and April 18, 2024.

United States v. Jenkins, et al., Nos. 24-4220, No. 24-4221, No. 24-4236, U.S. Court of Appeals for the Fourth Circuit. Judgment entered March 10, 2026.

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CITATION TO OPINION BELOW

Filed with this Petition is the published Opinion of the United States Court of Appeals for the Fourth Circuit dated March 10, 2026, as amended March 12, 2026 ("Opinion"). (Pet. App., 1a-34a), United States v. Jenkins, et al., No. 24-4220, No. 24-4221, No. 24-4236, 169 F.4th 497 (4th Cir. 2026). The District Court's unreported bench ruling on Defendants' motions for judgment of acquittal at the close of the Government's case-in-chief at trial on December 6, 2023. (Pet. App. 35a-57a.)

JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Virginia assumed subject matter jurisdiction pursuant to 18 U.S.C. § 3231. The district court entered a final Judgment on April 16, 2024 (C.A.J.A.1881-1887), sentencing Petitioner Ronald Damone Jenkins, Jr. ("Jenkins") to 300 months in prison followed by three years of supervised release. The district court then entered a final judgment on April 18, 2024, sentencing Petitioner Japree Lortez Brooks ("Brooks") to 420 months in prison followed by five years of supervised release. (C.A.J.A.2022-2028.)

Jenkins filed a timely Notice of Appeal to the United States Court of Appeals for the Fourth Circuit (C.A.J.A.1797), as did Brooks. (C.A.J.A.2029-2030.) The appellate court had jurisdiction to hear these consolidated appeals pursuant to 28 U.S.C. § 1291.

On March 10, 2026, the United States Court of Appeals for the Fourth Circuit issued its Opinion, as amended on March 12, 2026, affirming Jenkins's several counts of conviction, including Counts One and Four. The Court of Appeals vacated Brooks's convictions on two counts, but affirmed his conspiracy conviction on Count One.

The United States Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION

18 U.S.C. § 1959(a)(5)

> (a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—
>
> > (5) for attempting or conspiring to commit murder or kidnapping, by imprisonment for not more than ten years or a fine under this title, or both; . . . .

STATEMENT OF THE CASE

Petitioners were tried together by a jury in the United States District Court for the Eastern District of Virginia (Norfolk), having been named in a multi-defendant Second Superseding Indictment dated September 27, 2023. (C.A.J.A.81-99.) The grand jury alleged that the two men, along with others, participated in a

racketeering "enterprise" as defined in 18 U.S.C. § 1959(a) ("VICAR"). The enterprise planned to kill members of the "00 Gang," a Tidewater, Virginia set of the Crips, the grand jury charged.

Count One of the Second Superseding Indictment charged Jenkins, Brooks, and others with VICAR conspiracy to commit murder in aid of racketeering during the closed period between December 17 and 19, 2017 in violation of (18 U.S.C. § 1959(a)(5). In Count Two, Brooks was charged with VICAR attempted murder in aid of racketeering on December 18, 2017 (18 U.S.C. § 1959(a)(5)). In Count Three, the grand jury charged Brooks with discharging a firearm during a crime of violence on December 18, 2017. 18 U.S.C. § 924(c)(1)(A).

Counts Four, Five, and Six were interconnected charges directed at Jenkins. In Count Four the grand jury charged Jenkins with attempted murder in aid of racketeering of Shuntrel McNear on February 8, 2019, in violation of 18 U.S.C. § 1959(a)(5). In Count Five Jenkins was charged under 18 U.S.C. § 924(c) with discharging a firearm during that violent crime on February 8, 2019, while Count Six charged him with unlawful possession of ammunition on the same date as a previously convicted felon. See 18 U.S.C. §§ 922(g)(1); 924(a)(2).

Counts Seven and Eight were obstruction of justice charges against Brooks and another defendant under 18 U.S.C. § 1512(b). Count Seven charged Brooks with witness tampering and obstruction of an official proceeding on May 18, 2023. Count

Eight charged Brooks with witness tampering and obstruction of an official proceeding on September 12, 2023.

Following a jury trial, Jenkins was convicted on Counts One, Four and Six and acquitted of the Section 924(c) charge in Count Five. Brooks was convicted on Counts One, Two, Three, Seven and Eight. (C.A.J.A.1791-1793; C.A.J.A.1794-1795.) Jenkins was sentenced to 300 months in prison and Brooks to 420 months. (C.A.J.A.1882; C.A.J.A.2023.)

In this Petition, Jenkins and Brooks challenge their Count One VICAR conspiracy convictions. Jenkins also takes issue here with his Count Four conviction for attempted VICAR murder.

Statement of Relevant Facts[1]

Brandon Leonard ("Brandon") led a local gang known as the "Low Lives" in the small City of Franklin in eastern Virginia. The Low Lives was not affiliated with any national gang such as the east coast United Bloods Nation ("UBN" or "the Bloods") or the Bloods' traditional rival, the Los Angeles-based Crips. (C.A.J.A.1153.)

The Low Lives earned money by distributing drugs in and around Franklin until Brandon went to state prison in 2015. While he was incarcerated, Brandon became a Blood, eventually earning the relatively exalted rank of "Big Homie." The

[1] In keeping with controlling legal standards, the facts here are summarized in the light most favorable to the United States as the prevailing party at trial and on appeal.

Low Lives, meanwhile, faded to the vanishing point in Brandon's absence. (C.A.J.A.1160.)

Upon his release from incarceration, Brandon promptly returned to Franklin and resumed his vocation as a retail-level distributor of controlled substances. (C.A.J.A.1167-1168.) He recruited several relatives and friends to join a set of the Bloods known as "the Brim."

Brandon and his brother Edward Leonard ("Edward" or "EJ") lived in a rented Franklin residence on Railroad Avenue commonly called the "Railroad." Jenkins, Brooks, and other defendants frequently visited the Leonard brothers at the Railroad. (C.A.J.A.1162.)

Brandon's Murder in December 2017

In December 2017 Brandon, known around Franklin as "Lil B," got into an altercation over a firearm sale in a "shot house" (an after-hours drinking establishment) with a member of the 00 Gang. This dispute climaxed with Brandon drawing and brandishing a pistol directly at the 00 Gang member, whose street name is "Tooth." The standoff ended abruptly with no shots fired by Brandon or Tooth.

Within 48 hours of his shot house run-in with Tooth, Brandon was dead. A search party found Brandon's bullet-riddled body in a secluded ditch on December 18, 2017. Edward and others close to the deceased "Big Homie" quickly surmised Tooth and his fellow 00 Gang members killed Brandon. (C.A.J.A.1189.)

The December 17-19, 2017, Shootings in Franklin

Immediately after the discovery of Brandon's body, Edward, Jenkins, and others close to the decedent planned to avenge his death. On December 18 and again on December 19, 2017, Edward and Brooks carried out drive-by shootings in Franklin. Their targets were residences of 00 Gang members and their family members. (C.A.J.A.1192-1994.) The government argued at trial that these shootings were more than property crimes. According to the government, the shootings by Brandon's family and friends on December 18 and 19, 2017, were manifestations of a premediated and malicious plan to murder members of the 00 Gang in reprisal for Brandon's death. (C.A.J.A.1621-1622.)

The December 18, 2017 Shooting of Cynthia Barnes's House

Edward testified that after Brandon was found dead, people gathered at the Railroad and talked about his murder. A consensus congealed that "Tooth" and "Trell" killed Brandon. Mourners talked about how best to retaliate. (C.A.J.A.1189.) Edward testified in general terms about his belief that murder was on everybody's mind, but he did not specify any statements made by anyone present. (C.A.J.A.1190.)

The decedent's friends left Railroad to search for Tooth and Trell, but could not find them. (C.A.J.A.1190.) They then stopped at Monta's house. Edward was in a car with his cousin "Sweets." Brooks was in the driveway. Edward recalled that Brooks carried a .45 pistol. An AR-15 rifle rested in the passenger's seat of Brooks's

car. (C.A.J.A.1190-1991; C.A.J.A.1315-1316.) After talking to Monta for approximately five minutes, they left to continue their search. (C.A.J.A.1191.) At that time, Edward also had an AR-15. (C.A.J.A.1192.)

Edward again drove in the same car with Sweets, while Brooks drove alone directly behind them. (C.A.J.A.1192.) Not long after leaving Monta's house, Edward heard three to four rifle shots. (C.A.J.A.1193.) Edward looked back and saw gunfire. (C.A.J.A.1193.)[2]

According to Edward, it was well-known that Tooth's mother, Cynthia Barnes, lived five or six houses from Monta's house. (C.A.J.A.1193.) Tooth and his brother had stayed at that house at some point, but Edward did not specify when they last stayed there. (C.A.J.A.1194.) After the shots, they kept driving and later returned to Railroad. (C.A.J.A.1194.) Edward asked Brooks, "Hey, you shot that jank up?" and Brooks said, "Yeah, I shot that jank up." (C.A.J.A.1194.)

Cynthia Barnes lived alone in the single family house at 2200 South Street, in Franklin Virginia. (C.A.J.A.569.) She testified that on December 18, 2017, she was

[2] On cross examination, Edward admitted that his statements to law enforcement officers were inconsistent regarding the South Street shooting. At first, Edward said he did not know who shot up Tooth's mother's house. (C.A.J.A.1272.) In November 2020, Edward claimed that Brooks *said* he shot into the house, but Edward did not mention himself seeing gunfire. (C.A.J.A.1258.) Edward also said that he did not see Brooks with a rifle on the night the house was shot up. (C.A.J.A.1261.) Subsequently, Edward changed his statement to say that he saw a rifle in Brooks' car and saw Brooks shoot into the house. (C.A.J.A.1258-1259, C.A.J.A.1261.)

in bed asleep when, at approximately 3:00 a.m., she woke to the sound of gunshots. (C.A.J.A.569-570.) One bullet hit her house above the front door; a second came into her house above her bedroom window, hit the ceiling fan, and ricocheted off the wall (C.A.J.A.570); and a third hit over her attic. (C.A.J.A.570.) Subsequently, law enforcement officers recovered three 5.56 cartridge casings near the house—two from the sidewalk across the street from the residence, and one approximately 50 yards away (C.A.J.A.553; C.A.J.A.565.)

The Shooting of Shuntrel McNear on February 8, 2019

On February 8, 2019 (Brandon's birthday), Fourteen months after the shooting into Cynthia Barnes's house described above, 00 Gang member Shuntrel McNear ("McNear") posted on his Instagram account a sarcastic video singing "Happy Birthday" to Brandon. McNear also posted on Instagram a photo of a scoreboard which indicated a score of "0-1," along with a message "Ain't nobody from 00 got hit . . . but lil b did[.] . . . Check the scoreboard 0-1." (C.A.J.A.1214-1215.) These internet taunts prompted Edward and Jenkins to attack McNear later in the evening on that date, February 8, 2019.

Edward and Jenkins were at a store together in Franklin on the night of February 8, 2019, when they spotted McNear across the street. After retrieving firearms, they drove to Franklin's Wilson Street in Jenkins' car. After parking, Jenkins and Edward discharged multiple rounds into another parked car occupied by

McNear and a companion. McNear, struck by at least two bullets, survived after undergoing surgeries. (C.A.J.A.1476.)

Proceedings in the Court of Appeals

In the United States Court of Appeals for the Fourth Circuit Jenkins and Brooks challenged the sufficiency of the evidence supporting their convictions on Count One for VICAR conspiracy to commit murder under 18 U.S.C. § 1959(a)(5). Specifically, Petitioners posited that the "Franklin Enterprise" alleged in the Second Superseding Indictment, which prosecutors renamed "Brandon's Crew" at trial, did not meet the statutory requirements for a qualifying "enterprise" within the meaning of the VICAR statute, 18 U.S.C. § 1959(a). Jenkins also assailed his conviction on Count Four for attempted VICAR murder in violation of the same statute, 18 U.S.C. § 1959(a)(5).

A three-judge panel for the United States Court of Appeals for the Fourth Circuit affirmed Petitioners' VICAR conspiracy conviction on Count One as well as Jenkins's VICAR attempted murder conviction on Count Four. (Pet. 16a, 20a.)

ARGUMENT

THE COURT OF APPEALS ERRED BY HOLDING THE UNITED STATES MET ITS BURDEN TO PROVE PETITIONERS PARTICIPATED IN AN "ENTERPRISE" WITHIN THE MEANING OF 18 U.S.C. § 1959(a) DURING THE RELEVANT PERIODS CHARGED IN COUNTS ONE AND FOUR OF THE SECOND SUPERSEDING INDICTMENT.

Introduction

The United States Supreme Court should grant this Petition because the Opinion misapplies the "enterprise" element of 18 U.S.C. § 1959(a) and deviates markedly from the controlling decision on enterprise liability in the VICAR context, Boyle v. United States, 556 U.S. 938 (2009).

A. Insufficient Evidence Supports The Convictions Of Jenkins And Brooks On Count One For VICAR Conspiracy To Commit Murder Between December 17 and December 19, 2017.

Count One of the Second Superseding Indictment charged Jenkins, Brooks, and others under 18 U.S.C. § 1959(a)(5) with participating in a VICAR conspiracy over the three-day period between December 17 and 19, 2017, in Franklin, Virginia. (C.A.J.A.81-85.) According to the grand jury, defendants were ". . . members and associates of the Franklin Enterprise." (C.A.J.A.82.) While the Franklin Enterprise was not affiliated or associated with the UBN, it followed or copied many of the Bloods' practices and "rules," the grand jury charged in paragraph 3 of the Second Superseding Indictment. (C.A.J.A.82.)

The spoke of the VICAR conspiracy alleged in Count One was Brandon, a Bloods "Big Homie," who resided in Franklin with his brother, Edward, a fellow Blood turned star prosecution witness. The Leonard brothers lived in a residence on Railroad Avenue commonly called simply the "Railroad."

Using the Railroad as a base of operations, "Enterprise members and associates distributed narcotics in Franklin, Virginia with [Brandon's] permission," the grand jury alleged in paragraph 6 of the Second Superseding Indictment. (C.A.J.A.83.) In the immediate aftermath of Brandon's death by gunshot in December 2017, Jenkins and other members of the Franklin Enterprise, or "Brandon's crew," purportedly conspired to murder members of the 00 Gang. Brandon's family believed 00 Gang had murdered him. (C.A.J.A.85.)

To withstand Petitioners' Rule 29 motion at trial on Count One, the government had to present evidence sufficient for rational jurors to find beyond any reasonable doubt that (1) an "enterprise" existed within the meaning of 18 U.S.C. § 1959(a); (2) the qualifying enterprise was engaged in racketeering activity; (3) Jenkins and Brooks had a "position" in the alleged enterprise; (4) Jenkins and Brooks conspired with the enterprise to murder members or associates of the Crips-affiliated 00 Gang; and (5) each Petitioners' "general purpose in doing so was to maintain or increase his position in the enterprise." See United States v. Fiel, 35 F.3d 997, 1003 (4th Cir. 1994).

Insufficient evidence exists that the "Franklin Enterprise" alleged in the Second Superseding Indictment, renamed "Brandon's crew" at trial, met the requirements for an "enterprise" within the meaning of the VICAR statute, 18 U.S.C. § 1959(a). An "enterprise" for VICAR purposes means the same in the RICO context. Compare, 18 U.S.C. § 1959(b)(2) (VICAR) *with* 18 U.S.C. 1961(4) (RICO); Fiel, 35 F.3d at 1003 ("The legislative history of the [VICAR] statute indicates that enterprise in this section and in RICO are intended to have the same scope") [internal citations omitted]. An association-in-fact or other informal entity may qualify as an "enterprise" under both RICO and VICAR, provided it has four characteristics: continuity, unity, shared purpose, and identifiable structure. United States v. Devine, 40 F.4th 139, 149 (4th Cir. 2022) ("The 'hallmark concepts' that identify RICO enterprises are 'continuity, unity, shared purpose and identifiable structure.'") (quoting Fiel, 35 F.3d at 1003).

In RICO and VICAR prosecutions targeting notorious gangs such as the Bloods and Crips, the Department of Justice typically establishes the threshold "enterprise" element by proving the racketeering organization operated in accordance with a set of rules and standardized practices with respect to initiation rites, participation expectations, and discipline. These prototypical features of gangs, while not necessary in every case, often amount to sufficient ". . . evidence of a functioning 'enterprise.'" United States v. Mathis, 932 F.3d 242, 259 (4th Cir. 2019). In Devine,

40 F.4th Cir. at 149, for instance, the United States Court of Appeals for the Fourth Circuit held that evidence of gang rules and rites of passage proved an outlaw association-in-fact, known "as the Gangstas," had sufficient unity, shared purpose and structure to constitute a RICO enterprise.

> The government properly introduced evidence to prove this "enterprise" element. Testimony on the "beat in" initiations, gang rules, gang meetings, gang discipline, collection of dues, acts of violence carried out at the direction of gang superiors, and gang promotion for "putting in work" all support the jury's conclusion that the Gangstas constituted a RICO enterprise.

Devine, 40 F.3d at 149.

The government presented no such evidence with respect to "Brandon's crew." Although the grand jury in the Second Superseding Indictment alleged this supposed enterprise copied Bloods "rules," the government's witnesses at trial made clear this was not so. For instance, Tony Sledge ("Sledge"), called to the stand by the government, testified neither Jenkins nor any other drug dealers who frequented the Railroad paid dues, or "tithes," to Brandon or his "crew." (C.A.J.A.816.) Sledge also testified that the Bloods' initiation rites were not replicated by Brandon or anyone else at the Railroad. (C.A.J.A.818.) Sledge was unequivocal that the men who congregated at the Railroad did not interact or function as members of the Bloods, Low Lives, or any other "gang" under Brandon's control.

> Q. So when you talked about how people just hung out at Railroad, everybody that hung out at the Railroad house with the Leonards, they weren't Bloods, were they?

A. No.

Q. Nobody sat around and answered to Brandon Leonard, did they?

A. No.

Q. Brandon Leonard didn't tell people what to do and tell people to go out in the street, did he?

A. No.

Q. Was everybody that hung out at that house in a gang together?

A. No.

(C.A.J.A.818-19.).

Sledge further testified that Brooks visited Railroad "once a month maybe" to play "[g]ames and chill." (C.A.J.A.760). Sledge denied any knowledge of Brooks selling drugs. (C.A.J.A.760).

In finding the prosecution presented sufficient evidence of the essential enterprise element within the broad confines of 18 U.S.C. § 1959(b)(2), the Court of Appeals relied heavily upon Boyle v. United States, 556 U.S. 938, 946 (2009). Petitioners agree Boyle controls on the elements of a RICO or VICAR enterprise. The Boyle Court confirmed that an enterprise in the RICO arena need not have a ". . . hierarchical structure or a chain of command." Id. at 948. But Boyle also confirmed that an "identifiable structure," unity, and joint purpose are the *sine qua non* of any RICO or VICAR enterprise.

> It is easy to envision situations in which proof that individuals engaged in a pattern of racketeering activity would not establish the existence of an enterprise. For example, suppose that several individuals, independently and without coordination, engaged in a pattern of crimes listed as RICO predicates--for example, bribery or extortion. Proof of these patterns would not be enough to show that the individuals were members of an enterprise.

Boyle, 556 U.S. at 948 and note 4.

Similarly, here the several individuals the Court of Appeals decided operated a cohesive, association-in-fact enterprise, actually were sole proprietors. They were not joint venturers. Each operated his own drug distribution venture.

The government's theory below was that Jenkins, Brooks, and others who frequented the Railroad formed a racketeering enterprise led by Brandon, even if they never were members of the moribund Low Lives or resurgent Bloods.[3] Brandon's crew was an enterprise distinct from the various Bloods sets and other recognized gangs in Franklin, including the defunct Low Lives, prosecutors insisted. The purpose of Brandon's eponymous enterprise was to distribute controlled substances, thundered the prosecution in closing arguments.

> The enterprise in this case is the group of guys that you have heard about for the last week. It's Brandon's crew.

(C.A.J.A.1614.)

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[3] Significantly, at no point did Jenkins belong to either the Low Lives or the Bloods. (C.A.J.A.1616.)

In the government's creative retelling of the trial evidence, this asserted enterprise engaged in interstate racketeering by selling controlled substances throughout the Franklin community. "Brandon's crew" purchased narcotics from a North Carolina-based seller whose moniker was "Weezy," prosecutors reminded jurors in closing.

> . . . The racketeering activity in this case is drug dealing. It's very simple. . . . Brandon's crew, this group, this enterprise, all got their drugs from Weezy, and Weezy lived in North Carolina, and we're talking about Franklin, Virginia.

(C.A.J.A.1615.)

Reduced to its essentials, then, the government's argument that "Brandon's crew" was a VICAR "enterprise" hinges on the notion that this group of men, led by Brandon, jointly engaged in the racketeering predicate of drug distribution in and around Franklin.

This enterprise theory collapses at the threshold. Government witnesses made clear Jenkins and others in Franklin who sold drugs supplied by Weezy did so as autonomous distributors rather than as constituents of a cohesive unit or joint venture.

Testimony of the government's central witness, Edward, thoroughly drowned out the government's refrain that Jenkins and others sold drugs as members of an integrated - or even loosely structured - enterprise directed by his late brother, Brandon. Edward testified that Brandon did not front or redistribute at wholesale

prices Weezy's products to Jenkins and others for street-level transactions with addicts. Instead, Jenkins and other putative members of "Brandon's crew" bought directly from Weezy using their own funds, just as Brandon bought from that supplier with his funds. Weezy's customers in Franklin did not pool resources, share profits, or contribute to a common fund overseen by Brandon.

Far from a joint venture, this was a collection of entrepreneurs. Edward's testimony makes clear the several dealers' parallel criminal conduct did not create a unitary or functionally integrated racketeering enterprise.

> Q. Did Brandon buy all the drugs from Weezy and hand them out to other people?
>
> A. No, I don't think so.
>
> Q. You never saw this?
>
> A. No.
>
> Q. As far as you know, everybody bought drugs from Weezy and sold them on their own?
>
> A. Yes.
>
> Q. Including G?[4]
>
> A. Yes.
>
> Q. You never saw G get drugs from Brandon to sell, did you?
>
> A. No.

[4] Jenkins's nickname is "G."

Q. As far as you know, G got his own supply, and he handled his own business?

A. Yes.

Q. And you did the same, right?

A. Yes.

Q. In fact, you guys didn't even sell the same products?

A. No.

(C.A.J.A.1288-1289.)

Other prosecution witnesses corroborated Edward's testimony that "Brandon's crew" was comprised of independent distributors rather than subordinate agents of Brandon working in a joint venture with an identifiable structure. See testimony of T. Sledge C.A.J.A.816-817, and T. Griffin, C.A.J.A.535.

Under the Supreme Court's in depth analysis of RICO requirements in Boyle, "Brandon's crew" was not an "enterprise." Justice Alito, author of the majority opinion in Boyle, envisaged a set of facts closely akin to the set presented here.

> It is easy to envision situations in which proof that individuals engaged in a pattern of racketeering activity would not establish the existence of an enterprise. For example, suppose that several individuals, independently and without coordination, engaged in a pattern of crimes listed as RICO predicates--for example, bribery or extortion. Proof of these patterns would not be enough to show that the individuals were members of an enterprise.

Boyle, 556 U.S. at 948 and note 4.

Misapplying Boyle, 556 U.S. at 948 and note 4, the Court of Appeals held "Brandon's Crew" qualified as a VICAR enterprise engaged in drug distribution. According to the Court of Appeals, the following purported facts and circumstances provided a rational basis for the jury's finding that "Brandon's Crew" was an "enterprise" as the Boyle Court defined that statutory element:

> 1. "Brandon fronted money to [Edward] to purchase drugs that would later be sold." (Pet. 12a.)
>
> 2. "Brooks introduced the crew to a Blood Member (Weezy) who became a primary drug supplier for many members of the crew." (Id.)
>
> 3. "Brandon's crew shared firearms stored at the Railroad, which they could use during their drug transactions." (Pet. 12a-13a.)
>
> 4. "Members of Brandon's crew were permitted to sell drugs freely throughout Franklin" while the 00s did so "only with Brandon's permission and by paying him tithes." (Pet. 13a.)

Considered individually or collectively, these four supposedly inculpatory circumstances were insufficient to establish beyond a reasonable doubt that Brandon's crew operated as an association-in-fact enterprise for VICAR purposes.

1. Brandon's advance of funds to facilitate his brothers' drug dealing did not establish a VICAR enterprise.

The only evidence of Brandon fronting funds to other members of his putative enterprise came from Edward in the testimony quoted below.

> He [Brandon] came home from prison. He came home with some money from prison, and he gave *me* money to go buy drugs, and that's how *I* start [sic] back full time selling drugs.

(C.A.J.A.1168) [emphasis added].

Edward's testimony about an advance from his brother does not bolster the Court of Appeals' enterprise theory. Edward testified his brother gave him money "to go buy drugs." Neither Edward nor anyone else testified Edward, in turn, advanced capital to Jenkins, Brooks, or any other purported member of "Brandon's crew."

2. Defendants' purchase of drugs from the same supplier was not evidence of enterprise.

The Court of Appeals pointed to defendants' wholesale purchases of drugs from the same source, a Bloods member in North Carolina named Weezy, as evidence of enterprise. Again, the record belies the Court of Appeals' VICAR analysis.

In distributing narcotics they bought from Weezy in North Carolina, Jenkins, Brooks, and other alleged members of Brandon's crew did not operate as partners. They did not share their illicit profits and losses. (C.A.J.A.818-819; 1288-1289.) Each was an independent retailer. At most, Brandon's crew comprised a set of parallel, unlawful enterprises. The Boyle Court made clear independent ventures such as these do not comprise a sufficiently unified entity to trigger enterprise liability under RICO. Boyle, 556 U.S. at 948 and note 4.

3. Petitioners and others did not share and jointly store at the Railroad firearms used to protect their distributive ventures.

Evidence addressed at trial does not support the Court of Appeals' conclusion that members of Brandon's crew jointly stored and shared weapons at the Railroad.

The only witness to testify about placement of firearms was Edward, who related that he kept *his own* firearms at the Railroad. Particularly since he resided at the Railroad, Edward's testimony that he kept guns there hardly constitutes evidence of a VICAR enterprise. When other drug dealers visited, they frequently deposited their guns on the kitchen counter and retrieved the weapons when they departed. They did not share or store their guns at the Railroad.

> Q. Did they [Brandon's Crew] bring guns to Railroad?
>
> Edward. Yes.
>
> Q. How do you know that?
>
> Edward. Because I seen them.
>
> Q. And where did you see the guns in Railroad?
>
> Edward. I mean, on either on your hip, you take it out, put it on the counter, or wherever.
>
> Q. Why would members of the crew take their guns and put them on the counter at Railroad?
>
> Edward. I mean, because you feel like you just relax at my house at the time.

(C.A.J.A.1176.)

4. Brandon's coercive control and extraction of tithes from 00 Gang members did not support the Court of Appeals' conclusion that Brandon's crew was an enterprise.

Similarly misguided is the Court of Appeals' conclusion that Brandon's leadership and control over Franklin defined or generated a VICAR enterprise. The

Court of Appeals points to "tithes" Brandon imposed upon members of the 00 Gang. In exchange for these payments, Brandon permitted the Crips affiliate to sell drugs in parts of Franklin. Brandon's taxation of his Cripps rivals means he oversaw a VICAR enterprise, the Court of Appeals maintained. (Pet. 5a.)

Brandon's collection of tithes from 00 Gang members was not substantial evidence that he and his allies formed an "enterprise." Brandon did not share these proceeds with Jenkins or Brooks and other dealers aligned with him, or expend the funds for their collective benefit. Instead, Brandon enriched himself by pocketing the dues payments. (C.A.J.A.516-17.) As discussed *supra*, a VICAR enterprise exists only when its participants have at least a minimally coherent structure and a unitary venture which provides shared gains. Boyle, 556 U.S. at 948 and note 4; United States v. Pinson, 860 F.3d 152, 162 (4th Cir. 2017). Brandon's enrichment at the expense of the 00 Gang does not prove he and his friends operated a VICAR enterprise.

In short, Petitioners' convictions on Count One for VICAR conspiracy should be reversed by the United States Supreme Court because the government failed to prove the existence of the association-in-fact enterprise alleged in the Second Superseding Indictment. The Court of Appeals Opinion misapplied 18 U.S.C. § 1959(a) and Boyle, 556 U.S. at 938.

B. Insufficient Evidence Supports Jenkins's Conviction On Count Four.

The United States Supreme Court also should review and reverse Jenkins's conviction on Count Four for attempted VICAR murder because no evidence exists of an ongoing enterprise in February 2019 within the meaning of 18 U.S.C. § 1959(a)(5).

Even assuming, arguendo, "Brandon's crew" qualified as an "enterprise" under Section 1959(a)(5) during the closed period charged in Count One (December 17-19, 2017), this "enterprise" plainly no longer functioned 14 months later when Jenkins allegedly attempted to commit VICAR murder. Counts One and Four are temporally distinct from one another. The three-day period encompassed by the VICAR conspiracy charged in Count One transpired in the immediate aftermath of Brandon's murder. Count Four, in contrast, concerns a different substantive offense (VICAR attempted murder) 14 months after the "Big Homie's" downfall. The constellation of circumstances which the government insists proved "Brandon's crew" a VICAR enterprise in December 2017 prevailed no longer in February 2019.

The Court of Appeals' conclusory holding that the "Brandon's crew" enterprise continued to exist in February 2019 elides the substantially altered circumstances wrought by Brandon's murder in the Franklin drug world.

Brandon's death transformed his former Franklin turf in ways that taken together eviscerate the government's claim that his enterprise survived until 2019. First, when Brandon died, the tithes he imposed upon the 00 Gang ceased. The Court

of Appeals pointed to these tithes as evidence that Brandon operated an enterprise, as just discussed. Assuming arguendo that the tithing system Brandon enforced is probative of an enterprise at work, the prompt dismantling of that extortionate scheme upon his death is compelling evidence the enterprise ended well before February 8, 2019, when Jenkins allegedly attempted to commit VICAR murder as charged in Count Four.

Second, in the wake of Brandon's murder his alleged subordinates dispersed. Nobody took Brandon's place as leader. Members of "Brandon's crew" no longer congregated at the Railroad after the outburst of reprisal gunfire between December 17 and 19, 2017. Central to the government's enterprise theory both at trial and on appeal was the misguided notion that the Railroad served as the enterprise's headquarters and weapons arsenal. Again assuming for the sake of argument that these claims by the government were supported by the record, the departure of Edward and others from the Railroad following Brandon's demise demolishes the government's enterprise architecture. (C.A.J.A.1212.)

The Court of Appeals acknowledged in passing that in Brandon's wake Edward moved out of the Railroad and many of the drug distributors prosecutors consigned to "Brandon's crew" left the decedent's former "territory." (Pet 18a.) The Court of Appeals nonetheless implied that reasonable jurors could have found that despite the passage of 14 months since the "Big Homie's" final apotheosis, Edward and Jenkins

carried out shootings in February 2019 on behalf of the remnant enterprise. (Pet. 18a.) This theory that Jenkins and Edward acted as agents of a suddenly revived enterprise in February 2019 is unmoored to the trial evidence. Edward and Jenkins certainly acted out of anger on Bruce Street in response to the 00 Gang's taunting "Happy Birthday" video on February 8, 2019. But Edward was Brandon's brother and Jenkins his close friend. Their vengeful response to the provocative "Happy Birthday" message does not mean they reacted violently on behalf of "Brandon's crew," which had not operated since December 2017. The Supreme Court therefore should reverse Jenkins's conviction on Count Four for VICAR attempted murder in violation of 18 U.S.C. § 1959(a)(5).

CONCLUSION

For the foregoing reasons, the United States Supreme Court should issue a writ of certiorari and review and reverse Petitioners' convictions on Counts One and Four of the Second Superseding Indictment.

Respectfully submitted,

/s/ Paul G. Beers

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APPENDIX

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PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4220

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RONALD DAMONE JENKINS, JR., a/k/a G, a/k/a GG, a/k/a Gee, a/k/a Gee Gee,

Defendant – Appellant.

No: 24-4221

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

JAPREE LORTEZ BROOKS, a/k/a Choppa, a/k/a Khoppa, a/k/a Primo,

Defendant – Appellant.

No: 24-4236

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

MALIK TREVONTE NEWSOME, a/k/a Red, a/k/a Redd, a/k/a Hitman Redd,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia at Norfolk. Jamar Kentrell Walker, District Judge. (2:22-cr-00101-JKW-DEM-1)

Argued: September 12, 2025 Decided: March 10, 2026
Amended: March 12, 2026

Before AGEE, RICHARDSON and BERNER, Circuit Judges.

Affirmed in part and reversed, vacated, and remanded in part by published opinion. Judge Agee wrote the opinion in which Judge Richardson and Judge Berner join.

ARGUED: Paul Graham Beers, GLENN, FELDMAN, DARBY & GOODLATTE, Roanoke, Virginia; Sicilia Englert, LAW OFFICE OF SICILIA C. ENGLERT, LLC, Alexandria, Virginia, for Appellants. Kristen Shannon Taylor, OFFICE OF THE UNITED STATES ATTORNEY, Norfolk, Virginia, for Appellee. **ON BRIEF:** Mark Diamond, Pound Ridge, New York, for Appellant Malik Trevonte Newsome. Jessica D. Aber, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

AGEE, Circuit Judge:

Ronald Damione Jenkins, Japree Lortez Brooks, and Malik Trevonte Newsome appeal different components of their convictions and sentences arising from a conspiracy to commit and the commission of various violent crimes in retaliation for a rival gang killing Brandon Leonard. For the reasons set forth below, we largely reject the arguments on appeal and affirm the Defendants' convictions and sentences with one exception. Because the Government did not come forward with sufficient evidence to support Brooks' conviction for violent crime in aid of racketeering activity (VICAR) based on attempted murder and a related firearms conviction, we reverse the district court's denial of judgment of acquittal as to those convictions, vacate Brooks' sentence, and remand for resentencing.

I.

A.

This appeal arises from the activities of a group labeled at trial as "Brandon's crew," so denominated in reference to the group's leader, Brandon Leonard. The underlying events, tailored to discuss evidence relevant to the issues on appeal, are recounted from the trial record in the light most favorable to the Government. *United States v. Darosa*, 102 F.4th 228, 237 (4th Cir. 2024) ("In reviewing [a conviction after a jury trial], we construe the evidence in the light most favorable to the government, assuming its credibility, and drawing all favorable inferences from it." (cleaned up)).

In the early 2000s, Brandon was a leader of a street gang in Franklin, Virginia, known as the "Low Lives." This gang consisted of Brandon's brother, Edward Leonard

("EJ"); Derrick Griffin; and others who committed various criminal acts together. While serving time for state drug offenses, Brandon joined the Brim Bloods, a subset of the nationwide Bloods gang.

Upon his release from prison, Brandon lived with EJ and another individual in a house on Railroad Avenue known as the "Railroad." Around this time, Brandon gave EJ money to resume selling drugs in Franklin and EJ soon made enough money from selling drugs that it became his primary revenue source. Jenkins also sometimes lived at the Railroad and he too sold drugs regularly enough that it was his primary source of income. Brooks introduced EJ, Jenkins, and other individuals to a drug supplier in North Carolina, a member of the same Bloods set to which Brooks belonged. The Railroad became a "headquarters" of sorts, attracting members of the Low Lives (including Brandon and EJ), individuals belonging to different sets of Bloods (including Brooks and Newsome), as well as individuals who did not formally identify with any gang. J.A. 506.[1] From this location, individuals could relax, play dice and engage in other social activities, distribute drugs (including crack, heroin, and powder cocaine), and store or borrow an array of firearms that were "always around" for use. J.A. 517.[2]

[1] Brandon's crew was not itself a Bloods set, though it may be described as having a Bloods-leaning loyalty since many of its members were also members of several Bloods sets.

[2] EJ testified that he held firearms for and sold firearms to members of the crew. He also stored ammunition and other firearm accessories at the Railroad for use by others, using money earned from his drug transactions to purchase them.

During this time, Brandon developed a reputation as "the respected head Blood member," J.A. 1174, who "you don't cross," J.A. 498. Around the same time, a competing gang associated with the Crips, known as the 00s ("double 0s"), also operated in Franklin. Among the 00s' members were Shuntrel McNear, Loron Barnes, and Larry Parrish. While the Bloods and the Crips are nationwide rival gangs, for a period of time Brandon's crew (and its individual Bloods members) and the 00s coexisted without open hostility given their common upbringings and Brandon's exercise of authority. For example, Brandon charged members of the 00s "tithes" so that they too could distribute drugs in Franklin. J.A. 516–17.

That symbiotic existence ended in December 2017. The evening of December 16th, Barnes confronted Brooks for allegedly selling him a "broken gun." J.A. 1183. Brandon intervened and pulled a firearm on Barnes, leading Brooks and McNear to also pull their guns. The incident ended with Barnes telling Brandon that if he didn't use the firearm "now, then I'll be back." J.A. 519.

The next day, Brandon went missing. Friends and family spread word to look for him, and members of Brandon's crew gathered at the Railroad that afternoon and evening to discuss and coordinate a search. According to witnesses in attendance, "[t]he atmosphere [was] tense, a lot of anger, people upset, a lot of adrenaline running," "a lot of rage going on at this moment" as people discussed "revenge" and "[r]etaliation" and "shoot[ing] somebody up." J.A. 520 (first two quotes), 522 (last three quotes). By evening, Brandon's body had been discovered in a ditch near the Railroad.

Within a short time of learning of Brandon's death, EJ, Brooks, and others from the Railroad ended up reconvening at Newsome's brother's house on South Street to mourn and plot revenge against Barnes and McNear, the two 00s members that they believed were responsible for Brandon's death. Around 3:00 a.m., they left in search of Barnes and McNear. EJ and Brooks were in separate vehicles, and "[n]ot long" after departing, EJ heard "three or four" shots being fired from the other vehicle as they drove by the home of McNear's mother. J.A. 1193.[3] Shortly thereafter, EJ confirmed with Brooks that he'd fired the shots. A later police investigation revealed that three bullets had entered the residence above the front door, above a bedroom window, and into the attic.

Barnes and McNear were not located on the evening of December 18, but they were seen the next evening. After learning that Barnes and other 00s were on Madison Street, EJ, Newsome, and others "plotted and planned to do a shooting over there." J.A. 407. Newsome and others took one of EJ's firearms to execute their plan, leading to Barnes and another 00s member being shot. Their wounds were not fatal.

After the Madison Street shooting, things calmed for many months and some members of Brandon's crew left town or were incarcerated. But in February 2019, on what would have been Brandon's birthday, 00s began posting and circulating an image of a blue hat (Crips imagery) and a scoreboard of "0 to 1" on social media with the text "[a]in't nobody from Double 0 get his but Lil B [i.e., Brandon] did." J.A. 1214–15. In addition, McNear posted a video recorded "happy birthday" message that EJ interpreted as

[3] McNear's mother lived a few houses down from Newsome's brother.

"taunt[ing], like he killed my brother." J.A. 1217. "[F]urious," EJ "sent [the social media posts] all over," ultimately reconvening with Jenkins to exact revenge. J.A. 1217–18. They determined McNear's location and "shot him up" by firing multiple rounds at him and another individual as they were in a vehicle. J.A. 1221. McNear survived, with extensive injuries.

B.

After their arrests, Jenkins, Brooks, and Newsome were detained pending trial. In July 2023, Newsome used another inmates' identification number to call his friend Quenacia Bynum. During the call—which was recorded—Newsome asked Bynum to say that the two had been together in North Carolina from December 18 to 19, 2017. Bynum responded that she would not do that and hung up the phone. She then ignored several more phone calls and ripped up a letter Newsome later sent her.

That was not Newsome's only attempt to secure an alibi; in August 2023, he contacted his child's mother, Akeiba Goodwyn, to ask her to say that they were together in December 2017. Goodwyn testified she could not recall if they were together.

C.

Defendants exercised their right to a jury trial, and a jury convicted them of the following offenses that are challenged on appeal:

- Count I (all defendants): conspiracy to commit VICAR murder, namely, the December 17–19, 2017 conspiracy to murder 00s after Brandon's death, in violation of 18 U.S.C. § 1959(a)(5);
- Count II (Brooks): VICAR attempted murder arising from the December 18, 2017 shooting at the South Street residence of McNear's mother, in violation of 18 U.S.C. §§ 1959(a)(5) and (2);

- Count III (Brooks): discharge and use of a firearm in relation to a crime of violence, namely, the VICAR attempted murder described in Count II, in violation of 18 U.S.C. §§ 1959(a)(5) and (2);
- Count IV (Jenkins): VICAR attempted murder arising from the February 8, 2019 shooting of 00s gang member McNear, in violation of 18 U.S.C. §§ 1959(a)(5) and (2); and
- Count IX (Newsome): witness tampering for attempting to influence one or more persons to give false testimony at trial, in violation of 18 U.S.C. § 1512(b)(1).[4]

Defendants' motions for a Rule 29 judgment of acquittal were denied. In separate sentencing hearings, the district court sentenced Jenkins to 300 months' imprisonment, Brooks to 420 months' imprisonment, and Newsome to 273 months' imprisonment.

Defendants noted timely appeals, and the Court consolidated them for briefing and oral argument. The Court has jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

II.

"[W]e review de novo a district court's denial of a motion for judgment of acquittal." *United States v. Fuertes*, 805 F.3d 485, 501–02 (4th Cir. 2015).

Most of the arguments on appeal challenge the sufficiency of the evidence to convict. Such arguments "must overcome a heavy burden" to prevail, *United States v. Robinson*, 855 F.3d 265, 268 (4th Cir. 2017), and we will reverse only when "the prosecution's failure is clear," *Fuertes*, 805 F.3d at 502 (cleaned up). When reviewing the

[4] Three convictions are not at issue on appeal. Jenkins' one count of being a felon in possession of ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count VI); and Brooks' two counts of witness tampering, in violation of 18 U.S.C. § 1512(b)(1) (Counts VII and VIII). In addition, the jury found Jenkins not guilty of one firearms offense (Count V).

sufficiency of the evidence, the Court "does not decide for itself whether the evidence establishes guilt beyond a reasonable doubt." *Bufkin v. Collins*, 604 U.S. 369, 386 (2025). "Instead, it construes all evidence and makes all reasonable inferences in favor of the prosecution, and asks whether '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). And the Court may not "overturn a substantially supported verdict" simply because it deems "the verdict unpalatable" or concludes that "another, reasonable verdict would be preferable." *Robinson*, 855 F.3d at 268 (internal quotation marks omitted).

A. VICAR-related Convictions

The federal "VICAR statute complements the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 through 1968, by addressing the particular danger posed by those who are willing to commit violent crimes in order to bolster their positions within [racketeering] enterprises." *United States v. Keene*, 955 F.3d 391, 394 (4th Cir. 2020) (cleaned up).[5] To establish that Defendants violated the VICAR statute, the Government had to prove:

(1) the existence of a RICO enterprise;

(2) that the enterprise was engaged in racketeering activity;

(3) that the defendant had a position in the enterprise;

[5] "The legislative history of the [VICAR] statute indicates that 'enterprise' in this section and in RICO are intended to 'have the same scope[,]'" so cases regularly rely on discussions of one when analyzing the other. *United States v. Fiel*, 35 F.3d 997, 1003 (4th Cir. 1994).

> (4) that the defendant committed one of the crimes specified in the VICAR statute[, which includes both conspiracy to murder and attempted murder, § 1959(a)(5); and]
>
> (5) that the defendant's purpose was to maintain or increase his position in the enterprise.

Id. (cleaned up and formatting added).

Thus, one common element for the conspiracy and other VICAR offenses is the existence of an "enterprise," which exists when a group of individuals "associate[] together for a common purpose of engaging in a course of conduct." *United States v. Turkette*, 452 U.S. 576, 583 (1981). An enterprise is "proved by evidence of [(1)] an ongoing organization, formal or informal, and [(2)] by evidence that the various associates function[ed] as a continuing unit." *Id.*

Further, 18 U.S.C. § 1959(b)(2) defines an "enterprise" to "include[] any . . . group of individuals associated in fact although not a legal entity." In interpreting what this language means, the Supreme Court has held that "an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." *Boyle v. United States*, 556 U.S. 938, 946 (2009). That said, the Supreme Court has reiterated that this language is "obviously broad" and "expansive," with the term "any" to describe the relevant "group" "ensur[ing] that the definition has a wide reach." *Id.* at 944; *accord United States v. Palacios*, 677 F.3d 234, 249 (4th Cir. 2012) (stating that the Supreme Court has "cautioned . . . against reading the term 'enterprise' too narrowly").

1. Conspiracy to Commit Murder in Aid of Racketeering (Count I)

Defendants were each convicted of Count I, which charged a conspiracy to commit murder in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(5), based on the events of December 17–19, 2017—their endeavor to murder individuals they suspected of killing Brandon. Defendants all challenge the sufficiency of the evidence to support the existence of an "enterprise." In addition, Brooks and Newsome raise additional arguments challenging other elements of the offense. We address each argument in turn.

a. Existence of an Enterprise

Defendants challenge the sufficiency of the evidence to show that the group the Government termed "Brandon's crew" constituted an association-in-fact enterprise for purposes of the VICAR statute. In other words, they argue there's insufficient evidence of structure, unity, and common purpose. They point out that the record does not show the hallmarks of a traditional gang, such as a hierarchy between individuals, that dues were paid, or that there were initiation rites or rules for this group of individuals. In addition, they assert that the Railroad was simply a social hub for hanging out and playing dice, not for coordinating criminal activity. And they argue that, although the record shows that several members of the group may have sold drugs, it does not show synchronized or coordinated criminal activity, but separate entrepreneurship. Based on the foregoing, they argue the record fails to show the requisite characteristics of an enterprise.

Under our deferential review of jury verdicts, we conclude that there was sufficient evidence from which a rational jury could conclude that "Brandon's crew" has the requisite

"structure" for purposes of VICAR.[6] In *Boyle*, the Supreme Court discussed what this term meant: "a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose." 556 U.S. at 946. And at the outset, in undertaking our review of the record for this evidence, we are mindful that we must view the evidence in the light most favorable to the Government, drawing all reasonable inferences in its favor. *United States v. Savage*, 885 F.3d 212, 219–20 (4th Cir. 2018).

At trial, the jury heard testimony that showed the purpose of Brandon's crew was to control who trafficked drugs in Franklin, Virginia. This included evidence of drug dealing by members of Brandon's crew. For instance, Brandon fronted money to EJ to purchase drugs that would later be sold. Other members benefited from Brandon's ties to the Bloods. And Brooks introduced the crew to a Blood member (Weezy) who became a primary drug supplier for many members of the crew. Trial testimony also established that Brandon's

[6] Our deferential standard of review supports upholding the verdict. We first note that the facts of this case could reflect that the individuals might have been charged and convicted for a general, state-law conspiracy to commit murder rather than a federal VICAR conspiracy. In addition, we note that our opinion should not be read to suggest that mere associations of friends, even those involved in individual illicit activities, would, in and of itself, satisfy the requirements of an "enterprise" for purposes of VICAR and RICO. *See e.g.*, *Boyle*, 556 U.S. at 947 n.4 ("It is easy to envision situations in which proof that individuals engaged in a pattern of racketeering activity would not establish the existence of an enterprise. For example, suppose that several individuals, independently and without coordination, engaged in a pattern of crimes listed as RICO predicates . . . . Proof of these patterns would not be enough to show that the individuals were members of an enterprise."); *United States v. Pinson*, 860 F.3d 152, 162 (4th Cir. 2017) (distinguishing separate ventures from the common purpose required of a RICO conspiracy).

crew shared firearms stored at the Railroad, which they could use during their drug transactions.

Beyond the purpose of solidifying their own drug trafficking, Brandon's crew also operated to control the ability of non-crew members to engage in any independent competitive criminal activity in Franklin. Jurors heard about Brandon's reputation and how others knew that they should not cross him or they would suffer the consequences. Members of Brandon's crew were permitted to sell drugs freely throughout Franklin. By contrast, until 2017, the 00s operated in Franklin only with Brandon's permission and by paying him tithes, enabling them to enter an otherwise-closed drug market. Until Brandon's death in December 2017, the 00s were viewed as an entity operating in opposition to crew members. The circumstances leading up to Brandon's death, the crew's coordinated revenge toward the 00s immediately after his death, the 00s taunting social media posts, and the February 2019 attempted murder of the 00s member thought to be responsible for Brandon's death serve as additional circumstantial evidence supporting the jury's determination that the crew possessed a common purpose.

Moving on to the next element, the record also contains sufficient evidence from which the jury could find the requisite relationships between group members. Brandon's crew consisted of his brother and other compatriots with familial and other connections who resided in and around Franklin and frequented the Railroad. Many of the same individuals from Franklin who were purchasing drugs from Weezy for resale often did so from the common location of the Railroad, and those same individuals then rallied in defense of Brandon's death to inflict the violent crimes that occurred in December 2017

and, later, February 2019. *See United States v. Tillett*, 763 F.2d 628, 631–32 (4th Cir. 1985); *see also United States v. Harris*, 695 F.3d 1125, 1136 (10th Cir. 2012) (concluding sufficient evidence of "relationships" existed when, inter alia, "the record demonstrate[d] that the members of the different sets saw and interacted with one another" and socialized together at the group's "club").

Finally, the record contains sufficient evidence of longevity to sustain the jury verdict. From the time Brandon was released from prison in 2012 through at least the February 2019 shootings, Brandon's crew operated in Franklin. Almost immediately upon returning to Franklin, Brandon leveraged his existing reputation to gain control of Franklin's drug operations and build a network of associates who used the Railroad as a gathering place for drug deals, firearms storage and utilization, and social activities. The record further showed that Brandon's crew banded together with others in the wake of his execution to exact vengeance in a multi-day shooting spree around town. A year later, after the 00s posted a provocative scoreboard and birthday message for Brandon on social media, two members of the crew joined forces to once again seek to avenge Brandon's death. All told, the jury could reasonably conclude from this evidence that Brandon's crew operated for a sufficient period to carry out the purpose of the charged enterprise—namely to maintain control over and profit from drug sales within Franklin. Other cases have found the longevity component of an association-in-fact enterprise satisfied by shorter and comparable periods of time. *E.g.*, *Amazon.com, Inc. v. WDC Hldgs. LLC*, 155 F.4th 313, 326 (4th Cir. 2025) (concluding longevity component was satisfied by evidence showing the scheme was devised in 2017 "and continued into early 2020"); *United States v. Garcia*,

74 F.4th 1073, 1112 (10th Cir. 2023) (reviewing cases indicating that "longevity" is satisfied by evidence that the enterprise operated "over a period of years" (cleaned up)); *United States v. Fattah*, 914 F.3d 112, 163–64 (3d Cir. 2019) (holding longevity requirement satisfied based on conduct spanning about seven years).

As for the components of some enterprises that this record does not contain—and which Defendants point to as a basis for arguing the evidence is deficient—*Boyle* itself made clear that "an association-in-fact enterprise is simply a continuing unit that functions with a common purpose." 556 U.S. at 948. It does not require formality or "much" structure. *Id.* (cleaned up). To that end,

> [s]uch a group need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules or regulations, disciplinary procedures, or induction or initiation ceremonies. . . . Nor is [an enterprise] limited to groups whose crimes are sophisticated, diverse, complex or unique; for example, a group that does nothing but engage in extortion through old-fashioned, unsophisticated, and brutal means may fall squarely within the statute's reach.

Id.

Given our deferential standard of review, we conclude that the evidence is legally sufficient for the jury to have found that there was "the requisite commonality of purpose between [individuals in the group] to give form to the associational enterprise charged." *United States v. Griffin*, 660 F.2d 996, 1000 (4th Cir. 1981). Put another way, the evidence showed that Defendants "conducted or participated in the conduct of the *enterprise's*

affairs, not just their *own* affairs." *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 163 (2001) (cleaned up).

We therefore reject Defendants' argument that their conviction for VICAR conspiracy must be vacated for lack of evidence supporting the enterprise element.

b. Other Arguments

Brooks and Newsome raise additional arguments challenging other elements of their VICAR conspiracy convictions. None are convincing.

First, Brooks argues that even if there was sufficient evidence demonstrating the existence of an enterprise, there's insufficient evidence to: show he was a member of that enterprise; demonstrate that he held a position within it; or support that he engaged in any act to join, maintain, or increase a position within it. Rather, he maintains that the evidence supports that he was sometimes present at the Railroad, nothing more, and that mere presence does not make someone a member of an enterprise. Last, he argues that seeking revenge after a friend's death demonstrates motive, not that any of those acts were taken for the purpose of joining, maintaining, or increasing any position within an enterprise.

We have reviewed the record and conclude that Brooks has not met his high burden of showing that no rational factfinder could have found these elements of the charged conspiracy. Brooks was a regular at the Railroad before the events surrounding Brandon's death, connected Brandon to the group's out-of-state drug supplier, and was part of the altercation that eventually led to Brandon's death. He was also present at the Railroad and other locations where members of the enterprise decided to take revenge for Brandon's death. Further, witness testimony connected Brooks to specific firearms and shootings that

occurred over the relevant days. From this, we readily conclude a reasonable jury could infer Brooks' membership and position within the enterprise, and that he committed these acts as part of his position within it. *See, e.g.*, *United States v. Zelaya*, 908 F.3d 920, 927 (4th Cir. 20180) (observing that the purpose element is not a heavy burden and requires only evidence from which a "jury could properly infer that the defendant committed his violent crime . . . in furtherance of [his] membership," and that this purpose need not be his "only or primary concern" in carrying out the charged acts).

For similar reasons, we reject Newsome's additional challenges to his conspiracy conviction. He too contends that the record does not show that he knowingly entered into the charged conspiracy to maintain or increase a position within an enterprise. As support, he suggests that evidence placing him at the Railroad on the night of Brandon's death lacks credibility. But credibility determinations are squarely within the province of the factfinder, and the jury was entitled to credit that testimony. *E.g.*, *United States v. Murphy*, 35 F.3d 143, 148 (4th Cir. 1994) ("The jury, not the reviewing court, weighs the credibility of the evidence and resolves any conflicts in the evidence presented, and if the evidence supports different, reasonable interpretations, the jury decides which interpretation to believe."). What's more, his arguments ignore evidence placing him at the Railroad when the conspiracy underlying Count I formed and, later that evening, possessing a firearm whose bullets were connected to one of the shootings. Accordingly, a rational factfinder could find the challenged elements of the conspiracy offense, and we will not disturb that verdict.

2. Jenkins' Conviction for VICAR Attempted Murder (Count IV)

Next, Jenkins challenges his conviction for VICAR attempted murder, Count IV, which is based on the February 8, 2019 attempted murder of rival gang member Shuntrel McNear. He contends that there is insufficient evidence to support this conviction because, for the reasons already argued, there was not an "enterprise," and even if there ever was one, it no longer existed by February 2019 when the acts underlying Count IV occurred. He asserts that by then, Brandon had been deceased for some fourteen months and most of the enterprise's purported members had left town or were in prison and, in any event, were out of contact. He thus argues that the attempted killing of McNear in February 2019—which involved just two of the original members of the enterprise—was an act not attributable to or part of any enterprise.

To the extent Jenkins' argument rests on there never having been an "enterprise," that argument fails for the same reasons we rejected it earlier. *See supra* II.A.1.a.

Jenkins' remaining arguments fare no better. At the outset, he is incorrect in suggesting that a fourteen-month gap in time between an enterprise's criminal acts must mean that they were not part of the same criminal enterprise's endeavors. In *Boyle*, the Supreme Court recognized that "[w]hile the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence." 556 U.S. at 948. *Boyle*'s facts illustrate how this ebb and flow can operate. There, the record showed that a core group of individuals participated in multiple thefts over several years and then the defendant joined that group "over the [following] five

years" to participate in "numerous attempted night-deposit-box thefts and at least two attempted bank-vault burglaries." *Id.* at 942. Over the defendant's objections, the Court affirmed that the periods of "quiescence" between criminal "spurts" over the course of years did not preclude the requisite jury findings connecting the latter conduct to the same criminal enterprise that had first acted years prior. *Id.* at 948. Thus, insofar as Jenkins is arguing that, as a matter of law, the February 2019 incident could not be part of the enterprise that last acted some fourteen months earlier, that argument fails under *Boyle*. Simply put, a period of "quiescence" does not mean that an enterprise must have ceased and a new criminal endeavor commenced.

The above understanding of what the law permits means that the only remaining question before us is a quintessential matter for the jury to determine as the fact finder: under the record evidence, were the requisite characteristics of an association-in-fact still present as of February 2019 such that those acts could be deemed part of the same enterprise's conduct? Here, we conclude that "a rational trier of fact could" answer that question affirmatively. *Darosa*, 102 F.4th at 237 ("We must sustain the jury's verdict if any rational trier of fact could have found the defendant guilty beyond a reasonable doubt." (cleaned up)).

As discussed above, the Government's evidence contained enough for a jury to find a commonality of purpose (to maintain dominance in Franklin against the 00s and avenge Brandon's death), relationship (EJ and Jenkins), *and* duration (forming and reconstituting for members of the group to pursue that same purpose) to find that the "enterprise" labeled as Brandon's crew continued through February 2019. The challenged enterprise element

of the VICAR attempted murder conviction thus satisfied, we therefore affirm Jenkins' conviction as to Count IV.

B. Brooks' VICAR Attempted Murder & Related Firearm Convictions (Counts II and III)

Count II charged Brooks with VICAR attempted murder, in violation of 18 U.S.C. §§ 1959(a)(5) and (2), and Count III charged him with unlawful discharge of a firearm in furtherance of a crime of violence (the VICAR attempted murder in Count II), in violation of 18 U.S.C. §§ 924(c)(1)(A) and (2). The underlying factual basis for these counts was a December 2017 "attempt to murder individual occupants of the residence located in the 2200 block of South Street in Franklin, Virginia, in violation of Va. Code §§ 18.2-32, 18.2-26, and 18.2-18." J.A. 86.

To convict Brooks, the Government had to prove, in addition to the enterprise-related elements, that he attempted to "commit murder" consistent with Virginia's offense of attempted murder. *See* 18 U.S.C. § 1959(a)(5); *see also United States v. Simmons*, 11 F.4th 239, 271 (observing that we look to state law to determine whether the cross-referenced state-law predicate offense that is alleged in the indictment occurred). To prove attempted murder under Virginia law, the Government had to prove that Brooks acted with "(1) a specific intent to kill the victim and (2) some overt act in furtherance of that intent." *United States v. Lassiter*, 96 F.4th 629, 636 (4th Cir. 2024) (quoting Virginia cases); *see, e.g.*, *Commonwealth v. Herring*, 758 S.E.2d 225, 235 (Va. 2014). Virginia defines "specific intent" as "the intent to accomplish the precise criminal act that one is later charged with."

Winston v. Commonwealth, 604 S.E.2d 21, 41 (Va. 2004) (quoting Black's Law Dictionary 826 (8th ed. 2004)).

On appeal, Brooks challenges these convictions principally by arguing that the record does not establish his specific intent to kill anyone when he fired three rounds into the South Street residence. He contends there's no evidence that Brooks believed McNear—or anyone else, for that matter—was home in the early morning hours when the shots were fired from the street toward the residence. He notes that the shots were fired *ad hominem* at an upward trajectory toward the single-level home, entering over the front door, above a bedroom window, and into the attic. From this, Brooks asserts that the record does not permit a reasonable fact finder to find that he possessed the specific intent to kill anyone, much less a specific person, by firing those shots at the house.

Having reviewed Virginia's case law regarding the specific intent required to commit the offense of attempted murder, and mindful of the heavy burden Brooks faces in raising a sufficiency challenge, we agree with him that the evidence of record does not support a finding that he had the specific intent to murder when he discharged his firearm toward the South Street residence. At the outset, it is clear that "use of a deadly weapon, standing alone, is not sufficient to prove the specific intent required to establish attempted murder." *Hargrave*, 201 S.E.2d 597, 598 (Va. 1974) (per curiam); *see also Thacker v. Commonwealth*, 114 S.E. 504, 505 (Va. 1922) ("The law does not presume, because an assault was made with a weapon likely to produce death, that it was an assault with the intent to murder."). More is required to convict, and that "more" requires establishing the defendant's specific intent to murder when employing the deadly force. After all, "[w]hen

a statute makes an offense to consist of an act combined with a particular intent, that intent is just as necessary to be proved as the act itself, and must be found as a matter of fact before a conviction can be had[.]" *Thacker*, 114 S.E. at 505. To satisfy its burden of proving specific intent, the government can rely on "inferences to be drawn from proven facts, so long as they are reasonable," showing specific intent "by circumstances, including by a person's conduct or by his statements." *Hancock v. Commonwealth*, 407 S.E.2d 301, 306 (Va. App. 1991). And, in all events, "[i]t is permissible for the fact finder to have concluded that a person intended the immediate, direct, and necessary consequences of his voluntary acts." *Id.*

Over a century ago, Virginia's highest court looked to a respected treatise to elaborate what proof is necessary to show the specific intent to murder by way of an example that fits the facts of this case. In *Thacker v. Commonwealth*, the court opined:

> To set fire to a house and burn a human being who is in it, but not to the offender's knowledge, would be murder, though the intent was to burn the house only; but to attempt to set fire to the house under such circumstances would be an attempt to commit arson only and not an attempt to murder. A man actuated by general malevolence may commit murder, though there is no actual intention to kill; to be guilty of an attempt to murder there must be a specific intent to kill.

114 S.E. at 506 (quoting Clark's *Criminal Law*, p. 111). Subsequent Virginia cases have reaffirmed this point—sustaining attempted murder convictions challenged on the basis of evidence supporting specific intent only when the facts directly or circumstantially permit the conclusion that, at the moment the defendant employed deadly force, he intended to kill someone. *See, e.g.*, *Coles v. Commonwealth*, 621 S.E.2d 109, 112 (Va. 2005) (affirming conviction for attempted murder when the defendant driver "swerved to the left

and *aimed [his vehicle] directly toward* [a police] officer and the police vehicle," "ram[ming] the heavy police cruiser and push[ing] it toward [the officer], causing him to 'jump back' to avoid injury"); *Hancock*, 407 S.E.2d at 306 (affirming attempted murder conviction based on evidence that the defendants (1) knew a building was occupied, (2) "poured gasoline on a cushion, placed it in front of the only door which provided a means of egress, and set it on fire," and (3) then threatened the occupants "that they would be shot if they attempted to leave"); *accord Bell v. Commonwealth*, 399 S.E.2d 450, 452–53 (Va. App. 1991) (same).

Applying these principles from *Thacker* and its progeny to the record in this case compels the reversal of Brooks' VICAR attempted murder conviction. The evidence does not permit a rational jury to find that when he discharged his firearm, he possessed the specific intent to murder anyone at the residence. As these cases demonstrate, when examining whether Brooks possessed the requisite specific intent, "the question . . . is not whether [his] acts might have resulted in the murder of [an inhabitant of the residence]. Rather, the question is whether [Brooks], [when shooting at the residence], formed the specific intent . . . for the unequivocal purpose of murdering [someone]." *Haywood v. Commonwealth*, 458 S.E.2d 606, 608 (Va. App. 1995). Here, there's no evidence that, at the time he discharged his weapon, Brooks intended to kill McNear's mother, any other occupant of the house, or someone within the trajectory of his shots. Evidence of Brooks' familiarity with the neighborhood meant that he knew that McNear's mother resided at this location, but it does not permit an inference that Brooks intended at that time to kill her or any other occupant. At most, evidence that he knew whose residence it was shows why he

decided to shoot at *this* residence, not that he attempted to murder an occupant.[7] And although the Government points to the early-morning hour and the fact that Brooks shot at a residence as a basis for inferring it *might* be occupied at the time, that is a far cry from sufficient evidence to permit an inference that Brooks fired his weapon with the specific intent to murder an occupant of that residence. The record does not show that Brooks knew or had any reason to know that *anyone* was inside the residence (or, for that matter, anywhere within the trajectory of his shots). *Cf. Secret v. Commonwealth*, 819 S.E.2d 234, 249 (Va. 2018). (affirming attempted murder conviction based on record evidence "establish[ing] that [the defendant] had full knowledge that [the residence] was undoubtedly occupied by several individuals at the time he set the fire"). Last, while the Government came forward with evidence from which a jury could infer that Brooks had the specific intent to kill McNear on the evening of the shooting, nothing placed McNear at that property on the evening of the shooting (or, for that matter, with any regularity in the timeframe at issue). This disconnect is fatal to the Government's case as to Count IV.

In sum, there's no evidence supporting a finding that "*the immediate, direct, and necessary consequences*" of Brooks' firing at the residence would have been the murder of one or more individuals absent intervening events. *Hancock*, 407 S.E.2d at 306. As *Thacker* reflects, had Brooks actually killed someone when he discharged his firearm toward the

[7] While not directly bearing on Brooks' sufficiency argument, we note that Virginia has a separate offense of shooting at an occupied dwelling, Va. Code § 18.2-279, which does not contain an intent element. *See Bryant v. Commonwealth*, 811 S.E.2d 250 (Va. 2018); *Ellis v. Commonwealth*, 706 S.E.2d 849 (Va. 2011). To permit the facts here to satisfy a charge of attempted murder would essentially turn every firearm discharge at an occupied dwelling into an attempted murder offense.

South Street residence, regardless of his intent, the evidence would have supported a finding of general intent sufficient to support a murder conviction (assuming the other elements were satisfied). 114 S.E. at 506. From these same principles, had he only injured someone as a result of discharging his weapon, that would not be sufficient to show attempted murder without the specific intent to kill by so doing. *Accord Secret*, 819 S.E.2d at 241. (Under these facts, such an individual might be guilty of malicious or unlawful wounding under Virginia law, but those are separate offenses, and are also distinguished based on evidence regarding the shooter's intent. *See* Va. Code § 18.2-51.) These hypotheticals point precisely to the distinction that matters here; as a specific intent offense, attempted murder requires proof that the defendant acted with the intent to kill when he fired the shots.

Permitting the evidence in this case to satisfy Virginia's specific intent requirement for attempted murder would run afoul of well-established case law, which we are not at liberty to do. Thus, despite the high hurdle a defendant faces to disturb a jury verdict, we must vacate Brooks' VICAR attempted murder conviction (Count II) for failure of proof of specific intent to murder an occupant of the South Street residence. Given that disposition, we also reverse the related unlawful discharge conviction (Count III), which was predicated only on being "in furtherance of" that VICAR attempted murder offense.

See § 924(c)(1)(A). As Brooks' convictions for Counts II and III are vacated, we also vacate his sentence and remand for resentencing.[8]

C. Newsome's Conviction for Witness Tampering (Count IX)

Newsome challenges the sufficiency of the evidence to support his conviction for witness tampering, in violation of 18 U.S.C. § 1512(b)(1), which makes it a crime to "knowingly use[] intimidation, threaten[], or corruptly persuade[] another person, or attempt[] to do so, or engage[] in misleading conduct toward another person" with the intent to influence the testimony of any person in an official proceeding. Count IX of the operative indictment charged Newsome with committing this offense "[o]n or about July 21, 2023." J.A. 93.

At trial, Quenacia Bynum testified that in July 2023, Newsome—with whom she had a personal relationship—called her from prison and asked her to say that she had been with him at his grandma's house in North Carolina from December 18 to 19, 2017 (the days after Brandon's death). She testified that saying so would have been false, and that she promptly ended the call after realizing what he wanted her to do. Thereafter, she

[8] There are two ways the now-vacated counts impacted Brooks' overall sentencing proceeding. First, to calculate Brooks' Guidelines range, the PSR grouped his convictions for Counts I, II, VII, and VIII to calculate one offense level and separately calculated the offense level for Count III. It then relied on the higher level, which ended up being for Count III. From there, it determined Brooks' Guidelines range. At sentencing, the district court adopted the PSR Guidelines calculation over Brooks' objections. This resulted in an adjusted Guidelines range of 360 to 720 months' imprisonment. Second, the district imposed a total sentence of 420 months' imprisonment, imposing consecutive sentences of various lengths for Counts I, II, III, and VII, and a concurrent sentence for Count VIII. Given the plain impact that Counts II and III had both in calculating Brooks' Guidelines range and in then formulating the sentence imposed, vacating and remanding for resentencing is the proper remedy.

ignored dozens more of his calls and ripped up a letter that he sent from prison. The Government also introduced an audio recording of their conversation and proof that Newsome had used another inmate's identification to place the call.

The Government also elicited testimony from Akeiba Goodwyn, who has a child with Newsome, that in August 2023 Newsome had called her from prison to ask her to say that they were together during the relevant December 2017 dates, but that she could not recall if they were actually together at that time because "he pops in and pops out . . . from certain time frames." J.A. 889–93.

When instructing the jury on this count, the court recited Count IX of the indictment, quoted the relevant statutory language, and then set out the three elements of the offense.

On appeal, Newsome contends that the evidence showed that he never threatened any witness, but rather asked them to testify truthfully to information that would exonerate him from participating in the offenses that occurred in December 2017. He also maintains that the jury verdict is further suspect because the jury was instructed that Newsome had to participate in four distinct acts—intimidating, threatening, corruptly persuading, *and* attempting to do the same—when there's no evidence at all of a threat or intimidation. So, according to Newsome, the jury could not have followed these instructions and found that he engaged in all three acts. As a final basis for reversing his obstruction conviction, Newsome argues that at trial the Government presented evidence based on Newsome's statements to two witnesses—Bynum *and* Goodwyn—but on appeal, the Government relies on his statements to Bynum alone support his conviction. He concludes that because the jury heard evidence of witness tampering as to both witnesses and was told that he had

thereby tampered with "one or more persons," it's entirely possible that the guilty verdict is based on evidence relating to Goodwyn, not Bynum. For all these reasons, he asks us to reverse his conviction.

None of Newsome's arguments cast doubt on his conviction for witness tampering. The jury was entitled to credit Bynum's testimony, recounted above, that Newsome asked her to lie about being together on the relevant dates, and that testimony is sufficient to find each necessary element of witness tampering. *United States v. Arrington*, 719 F.2d 701, 704 (4th Cir. 1983) ("[I]n assessing the sufficiency of the evidence to support the jury's determination, we can only inquire whether there is substantial evidence, taking the view most favorable to the [G]overnment, from which the jury might find the defendant guilty beyond a reasonable doubt. We, of course, do not weigh the evidence or review the credibility of witnesses[.]" (internal citations omitted)).

Nor does Newsome's attack on the jury instructions persuade. Among other things, this argument is based solely on the instruction that simply recounts the indictment and ignores the remaining instructions. *See* J.A. 1603. It's the totality of the instructions that matter. *United States v. Sanders*, 107 F.4th 234, 259 (4th Cir. 2024) ("[W]e do not view a single instruction in isolation; rather we consider whether taken as a whole and in the context of the entire charge, the instructions accurately and fairly state the controlling law." (cleaned up)). Collectively, the instructions accurately quote the indictment, which itself "*must* allege conjunctively the disjunctive components of [the] underlying statute." *E.g.*, *United States v. Vann*, 660 F.3d 771, 774 (4th Cir. 2011) (en banc) (per curiam) (emphasis added). The instructions then correctly recited the elements of the offense, the means of

satisfying each element, and what findings were necessary to convict. Nothing about this approach or repetition suggests that the jury would be confused or that the verdict would be based on anything other than what the statute requires.

To the extent Newsome's argument relies on a lack of evidence of threats or intimidation, he ignores that this element of this offense can also be satisfied upon proof of corrupt persuasion of a witness. § 1519(b)(1). That "require[s] the Government to prove a defendant's action was done voluntarily and intentionally to bring about false or misleading testimony with the hope or expectation of some benefit to the defendant." *United States v. Edlind*, 887 F.3d 166, 174 (4th Cir. 2018) (citation omitted); *see also id.* at 173–74 (describing how the phrase "corrupt persuasion" operates to distinguish innocent acts from those committed by "persons conscious of wrongdoing, that is, persons acting with wrongful, immoral, depraved, or evil intent" (cleaned up)); *accord Arthur Andersen LLP v. United States*, 544 U.S. 696, 704–06 (2005) (same). "A defendant's directive to a witness to lie to investigators or at trial always suffices" to satisfy corrupt persuasion. *Edlind*, 887 F.3d at 174 (citation omitted). Notably, Newsome raises no argument that the evidence is insufficient as to this means of committing the offense.[9]

[9] Nor are we persuaded by Newsome's argument that the Government has shifted its theory from tampering with both Bynum and Goodwyn at trial and relying on Bynum alone on appeal. Count IX charged Newsome with committing this offense "on or about July 31, 2023," J.A. 93, a date that directly corresponds to the evidence relating to his prison call to Bynum. While the charge also alleged that Newsome attempted to influence "one or more" persons, J.A. 93, proof that Newsome attempted to influence Bynum alone patently satisfies that charge.

For these reasons, Newsome's sundry arguments challenging the sufficiency of the evidence to support and the accuracy of the jury instructions concerning his obstruction offense fail. We therefore affirm this conviction.

E. Newsome's Sentence

Last, Newsome challenges the procedural and substantive reasonableness of his 273-month sentence of imprisonment: 120 months' for the RICO conspiracy (Count I) and 153 months' for the witness tampering conviction (Count IX), consecutive to Count I.[10] In his view, the district court should have granted a downward variant sentence because the § 3553(a) factors favor that reduction. As support, he points to his difficult upbringing and other personal characteristics, but he mostly points to perceived weaknesses with the evidence supporting his witness-tampering conviction. In addition, he observes that the district court had acknowledged that he was the "least culpable" of the three co-defendants, yet it ultimately imposed a sentence only twenty-seven months lower than Jenkins's 300-month sentence. He argues that this isn't a sufficient enough difference to meaningfully account for their relative culpability.[11]

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[10] At sentencing, no party objected to Newsome's Guidelines calculation. With a total offense level of 39 and a criminal history category of V, Newsome's Guidelines range was 360 months' to life, capped at 360 months' imprisonment due to the statutory maximum sentence. Newsome successfully moved for a downward departure of 27-months under U.S.S.G. § 4K2.23, which the court considered when imposing its sentence. The Government advocated for a 360-month sentence, and Newsome asked for 180 months' total imprisonment.

[11] In passing, Newsome asserts that "[f]or the same reasons" the district court erred in imposing a two-level enhancement to his offense level under U.S.S.G. § 3C1.1 for obstructing or impeding the administration of justice. Opening Br. 50. Newsome has

(Continued)

We review the procedural and substantive reasonableness of a sentence for abuse of discretion, reviewing "the district court's factual conclusions for clear error . . . and its legal conclusions *de novo*." *United States v. Elboghdady*, 117 F.4th 224, 234 (4th Cir. 2024) (cleaned up). In undertaking this review, we must first consider the procedural reasonableness of the sentence—such as whether the court failed to appropriately consider the relevant sentencing factors—before turning to its substantive reasonableness, "considering the totality of the circumstances." *United States v. Friend*, 2 F.4th 369, 379 (4th Cir. 2021) (cleaned up).

Having reviewed the district court's thorough exchange with counsel and explanation of the sentence imposed, we reject Newsome's argument. In short, the district court considered his non-frivolous arguments for a lower sentence, explained why it was rejecting those arguments and why—in its view of the lengthy trial record—its sentence

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arguably waived review of this issue for failure to develop a cogent argument about why the enhancement was error. *See United States v. Fernandez-Sanchez*, 46 F.4th 211, 219 (4th Cir. 2022). But even assuming he did not, our review would be for plain error given that he did not directly develop any Guidelines-based objection to imposing the enhancement at sentencing. *See United States v. Knight*, 606 F.3d 171, 177 (4th Cir. 2010); *see also* Fed. R. Crim. P. 52(b).

We discern no error, let alone plain error, in the court's decision to impose this enhancement based on the conviction for witness tampering given that the convictions were grouped for purposes of establishing Newsome's offense level and the conspiracy conviction set the base offense level. *See* U.S.S.G. § 3C1.1 app. n.8 ("If the defendant is convicted both of an obstruction offense . . . and an underlying offense (the offense with respect to which the obstructive conduct occurred), the count for the obstruction offense will be grouped with the count for the underlying offense . . . . The offense level for that group of closely related counts will be the offense level for the underlying offense increased by the 2-level adjustment specified by this section, or the offense level for the obstruction offense, whichever is greater.").

satisfied the § 3553(a) factors. That's sufficient to satisfy its duties to impose a procedurally reasonable sentence. *See, e.g.*, *Friend*, 2 F.4th at 379–81 (rejecting similar arguments for similar reasons).

Newsome's sentence is also substantively reasonable. Here, the sentence imposed, which was based on a downward departure from the calculated Guidelines range, is presumptively reasonable on appeal. *Id.* And Newsome's burden is high—as the "fact that the appellate court might reasonably have concluded that a different sentence was appropriate is insufficient to justify reversal of the district court." *Id.* Sentencing "is a quintessentially fact-specific and multifaceted exercise," and we will not disturb the district court's discretion to determine how a particular defendant's conduct (whether more or less culpable than his co-defendant's) ultimately stacks up against the § 3553(a) assessment. *Id.* at 382–83.

In reaching both of these conclusions, we take special note of the following aspects of the district court's sentencing explanation. First, the district court engaged in a dialogue with the Government about Newsome's comparative culpability with his co-defendants and later discussed that factor at length when explaining the sentence it decided to impose. On that point, Newsome cherry picks part of the court's assessment (that he was somewhat less culpable than his co-defendants) without considering the whole of the court's observations, which took "in[to] consideration" that Newsome had not been "convicted of participating in any of the actual shootings" (as had his co-defendants), but nonetheless recognized that Newsome had fully participated in a conspiracy that "was unquestionably serious and undoubtedly troubling," inflicting "deliberate and reckless and harmful"

conduct on the community." J.A. 2066; *see also* J.A. 2066–67 ("[R]egardless of your specific involvement in the shootings themselves, it was clearly reasonably foreseeable to you that engaging in a conspiracy of this type and engaging in the planning associated with such a conspiracy, that retaliation for murder might result in other bloodshed."); J.A. 2073 ("[I]t is clear to the Court . . . that you are the least culpable of the three [defendants.] That's not to say you are not culpable. You are quite culpable, and you engaged in conduct that is incredibly troubling and problematic to the Court, but the Court does not agree [with the Government] that [it] should impose a sentence more than it imposed on Mr. Brooks or Mr. Jenkins."). Second, with respect to the witness tampering charge, the district court plainly took a different view about the weight of the evidence against Newsome—as well as the significance of—his efforts to cover up his earlier crimes. Concluding that "reasonable minds simpl[y] cannot disagree on your consistent brazen efforts to engage in witness tampering," the court described the recorded calls and written requests submitted into evidence at trial in which Newsome "essentially begging various people to alibi you . . . when you knew full well that they could not do so without lying for you." J.A. 2067–68. The court observed that Newsome had been charged with only one count relating to witness tampering, but noted that, in its view, the evidence would have "easily" supported multiple counts of that offense. J.A. 2068. Third and last, the court discussed in some detail numerous additional § 3553(a) factors unrelated to the offense characteristics and his co-defendants' sentences, including Newsome's personal history and criminal history, as well as the need to deter "not just" Newsome but also "others." J.A. 2072.

On the record before the Court, we conclude that Newsome has not shown that the sentence the district court imposed was an abuse of discretion. Accordingly, Newsome's sentence is affirmed.

III.

For the reasons discussed, we affirm Defendants' convictions for conspiracy to commit VICAR murder (Count I), Jenkins' conviction for VICAR attempted murder (Count IV), and Newsome's conviction for witness tampering (Count IX). We also reject Newsome's challenge to his sentence. But we reverse the denial of judgment of acquittal as to Brooks' VICAR attempted murder and related firearms convictions (Counts II and III) and, as a consequence, also vacate his sentence and remand: (1) with instructions to the district court to enter a judgment of acquittal for Brooks as to Counts II and III; and (2) for resentencing as to Brooks only.

AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART, AND REMANDED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA v. RONALD JENKINS, JAPREE LORTEZ BROOKS, and MALIK TREVONTE NEWSOME, Defendants.	CRIMINAL ACTION NO. 2:22cr101

TRANSCRIPT OF PROCEEDINGS
(Jury Trial - Day 6)

Norfolk, Virginia

December 6, 2023

BEFORE: THE HONORABLE JAMAR K. WALKER, and a Jury
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Kristen S. Taylor
Christopher Taylor
Assistant United States Attorneys
Counsel for the United States

SMITH LAW FIRM
By: Emily M. Munn
Counsel for Defendant Ronald Jenkins, Jr.

- continued -

Carol L. Naughton, Official Court Reporter

THE COURT: Any objections to proceeding that way?

MR. TAYLOR: As long as we're good to fix that stipulation, which Your Honor already indicated, that's the only thing we wanted to make sure -- before we rest, we don't want to get stuck with the stipulation --

THE COURT: Understood.

MR. TAYLOR: But other than that.

THE COURT: So we'll go ahead and proceed to the Rule 29 motion with the understanding that the government will formally rest in front of the jury tomorrow once those stipulations get resolved. And all parties are in agreement as to that.

All right. Mr. Good?

MR. GOOD: Thank you, Your Honor.

Your Honor, I'll move for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure as the evidence is insufficient to sustain the conviction for any of the counts that apply to Mr. Brooks, which would be Counts One, Two, Three, Seven, and Eight.

With regard to Count One of the Second Superseding Indictment, Your Honor, which -- I'm paraphrasing -- alleges from on or about December 17 to December 19, 2017, in the Eastern District of Virginia, and as specifically applies to Mr. Brooks, Japree Brooks, for the purpose of maintaining and increasing position in the Franklin enterprise, an enterprise

engaged in racketeering activity, did knowingly and willingly conspire to murder Double O gang members and associates in violation of Virginia Code.

Your Honor, I respectfully submit to the Court that there's no evidence whatsoever about maintaining or increasing position in the so-called Franklin enterprise. There's no evidence that Mr. Brooks had a position within an enterprise -- in this case, specifically the Franklin enterprise as alleged -- or sought to gain entrance into the enterprise. Further, there's no specific evidence as to Mr. Brooks that he conspired to murder anyone.

There was no enterprise, Your Honor, I respectfully submit to the Court, but *arguendo*, if there were, there's no evidence that it affected interstate or foreign commerce. There's no evidence, even if an enterprise was proven, that it was engaged in racketeering activity. Further, it was not proven -- there was no evidence -- that Mr. Brooks was part of a conspiracy to commit murder.

As to Count Two, attempted murder in aid of racketeering, I respectfully submit that the evidence regarding Mr. Brooks, the South Street shooting, the 2200 South Street shooting of a house, that there was no evidence that Mr. Brooks did the shooting, or no credible evidence that Mr. Brooks did the shooting, but even if there were, there is no malice proven.

Your Honor, the bullets in this case, the evidence was that they hit this house high. In fact, the police looked in the attic trying to retrieve the bullets. There was testimony that, I assume, a single bullet clipped the ceiling fan, went into the -- high in the wall or the ceiling.

Your Honor, the lights were off in the house. That was the testimony from the government's witness, the sole occupant of this house. Based on her testimony, there was no evidence at all that I heard that there was any -- any evidence of anyone being at home at the time of this shooting.

This witness testified that she was at home, she was in bed asleep in her bedroom when these few rounds struck high in her room, but there was no evidence that anyone was at home, that I heard. Your Honor, at absolute best, this would be a shooting into an occupied dwelling under Virginia law, and under no theory of law could this be attempted murder.

I would respectfully adopt the same argument from Count One as to no evidence of any purpose of maintaining or increasing position in the Franklin enterprise and adopt the same argument as to no enterprise and no racketeering activity.

The Indictment alleges, as to Count Two, an attempt

to murder individual occupants, plural, of the residence, but again, I'm just underscoring there was no evidence of any occupants being in that house when that house received those bullets.

As to Count Three, Your Honor, I would argue that the evidence is insufficient that Mr. Brooks discharged, carried, and used a firearm and, again, that there is no crime of violence, again adopting the arguments from Counts One and Two.

And as to Counts Seven and Eight, the witness-tampering charges, Your Honor, I would respectfully submit that with regard to Count Seven, as alleged on May 18, 2023, that there was no evidence that Mr. Brooks knowingly intimidated, threatened, or attempted to corruptly persuade or, indeed, corruptly persuaded anyone to influence, delay, or prevent testimony of any one or more persons.

The Court heard the two government witnesses with regard to these calls, Your Honor. Count Seven applies to Asante Evans. She testified concerning this phone call with Mr. Brooks and that Mr. Brooks had heard that Edward Leonard was lying about him, that Mr. Brooks was concerned about that, but that Mr. Brooks said that he had no hard feelings and that he was not angry.

Count Eight deals with the allegation from September the 12th of this year. The government's witness -- primary

witness for this was Aneshia Williams. And she testified that Mr. Brooks was nice and polite; in fact, he was real nice, he was very polite, and he just wanted to let her know that there were some guys on E.J.'s paperwork -- E.J. Leonard -- Edward Leonard's paperwork. He wanted E.J. to be aware of that. And he did say that E.J. may be on his paperwork, and as Ms. Williams testified, Mr. Brooks said he had no hard feelings.

Based on that, Your Honor, I would ask the Court to grant a judgment of acquittal as to those counts.

THE COURT: Thank you, Mr. Good.

MR. GOOD: Yes, sir.

THE COURT: Ms. Munn?

MS. MUNN: Thank you, Judge.

For the record, I would join in Mr. Good's arguments generally. I would just point out, again, that the issue is not whether attempted murders occurred, it's whether the attempted -- the way that the Indictment reads, it's whether they occurred in the furtherance of this enterprise.

And the government listed specific expectations of what they would prove in the Indictment about advancing the territory or rank of the enterprise, which there has been no evidence presented, so I'd just use that to highlight Mr. Good's arguments.

Specific to Mr. Jenkins, he is charged in Count Six

with a felon in possession of firearm ammunition, and the Indictment goes through and lists specific cartridge cases that he possessed.

The Court, to allow the case to survive the Rule 29 motion at this point, would have to agree with Mr. Leonard that he gave my client a gun and that he fired it. He had no idea how many shots were fired. He had no idea how many were left in the gun when he supposedly got it back from Mr. Jenkins. And then Ms. Lake is left to analyze the cartridge cases that are recovered, but there simply hasn't been credible evidence sufficient to survive a Rule 29 motion against Mr. Jenkins for that count. So I join in that motion as well.

THE COURT: Thank you, Ms. Munn.

Mr. Matthews?

MR. MATTHEWS: May it please the Court. Judge, I'd ask for a -- I'm making a motion for acquittal under Rule 29.

Judge, I would -- my client is in a little different place than the other two co-defendants. He only has two charges. He has the conspiracy, and the witness tampering. I'd like to adopt what Mr. Good said about the conspiracy.

THE COURT: All right.

MR. MATTHEWS: I mean, just instead of keeping on going through it, but I would like to add just a little bit.

Judge, they have to prove an association in fact.

And, Judge, I would submit that not only have they not proven a conspiracy, but they haven't proven the association in fact either, and I think Mr. Good touched on that.

They have to show that this enterprise that they have to prove is the structure that has -- first, they have to show -- it has three parts -- a purpose, relationships among associates, and a longevity sufficient to permit the associates to pursue the enterprise's purpose.

What we have is, essentially, I would submit, a weak state court conspiracy because I'm still not sure what the plan is. Derrick Griffin says that everyone is in a rage when Brandon Leonard is missing, but that's even before they knew he had been shot.

Judge, the jury also has to find the existence of elements of a crime beyond a reasonable doubt, and as far as he's concerned, I would submit, there is no evidence of a crime beyond a reasonable doubt. He doesn't -- Judge, again, he's not charged with the Madison Street shooting. He's not charged with that. He's charged with planning it. Or he's -- E.J. Leonard doesn't even mention him being around on the 17th. Now, I know that Tony Sledge does. But E.J. Leonard says he wasn't even available on December 17th.

Judge, I would just say that, first of all, they haven't proven the conspiracy part. So I say they've taken *Boyle*, the *Boyle* case, and tried to make a weak state court

conspiracy into a federal case. And, Judge, I just don't see where they have done that.

Judge, again, without belaboring the point, I'll just submit it to the Court on that basis.

THE COURT: Thank you, Mr. Matthews.

Ms. Taylor, and before you begin, I will -- I want to try to focus your attention here because the Court does have some concerns about two pieces of the elements that the government needs to prove: First, the enterprise existence and what evidence that you believe you put forth in front of the jury to meet that element; and, secondly, and perhaps even more importantly, the portion of it about maintaining -- or entrance into the enterprise itself.

So those are the two primary areas I would like you to focus your argument on.

And then, I guess, a third area is somewhat related, which is there was a lot of evidence in front of the jury about Defendant Brooks' involvement in gangs, about Defendant Newsome's involvement in gangs, but several witnesses have testified that Defendant Jenkins was not a Blood, that he was not a Low Live.

I understand that you don't need to prove that he was in a gang to prove that he was involved in the enterprise, but I just want you to talk to me about, from your perspective, what evidence you believe the government

has put forth on those three issues.

MS. TAYLOR: I understand, Your Honor.

So as defense counsel correctly noted, we do have to prove an association-in-fact enterprise. And an association-in-fact enterprise is an informal enterprise. The elements that the Court needs to find is relationships between the members, a stated purpose -- or a purpose, and continuity sufficient to accomplish that purpose.

The government believes the evidence that was set forth regarding the Low Lives and the Blood affiliations go to that element of relationships. It's what ties this group together. It defines the foundational piece of how these individuals -- some of them -- met.

The timeline was established through witness testimony about how the Low Lives started off as this neighborhood street gang. They had family ties. They had neighborhood ties. They sold drugs. They ran the town.

You heard from E.J. regarding how they had drug territories and how they came up on top in the ops, they engaged in acts of violence. Those were the sort of evidence that came out from E.J. Leonard regarding that.

He then testified that his brother left and went to prison and that he came back and, when he came back, some of these Low Lives members, even though the gang had largely disbanded, came back and started hanging out with Brandon,

and that Brandon started bringing these Blood members in, and collectively they became Brandon's crew. And that's exactly how he defined it.

I submit to Your Honor that Brandon's crew is sufficient to establish an enterprise; those relationships, the fact that they had Low Lives connections, the fact that the others had Blood connections -- they didn't all have to be Low Lives, and they didn't all have to be Bloods, but that helps to define those relationships between those individuals.

The purpose was to -- and of course, the racketeering activity that we've alleged, and I believe proven beyond a reasonable doubt, is drug trafficking. It was the primary activity that they engaged in.

Mr. Leonard testified that he and Brandon and Mr. Jenkins -- he talked -- he described them on redirect this morning as a 3-headed snake, the three most profitable drug dealers at the time.

He also testified on the stand that everybody in that crew was selling drugs. He testified that when Brandon came back, they were selling drugs -- or they were purchasing drug from a plug in North Carolina, Weezy, who's come up multiple times during the course of this trial. And he testified to going to North Carolina And purchasing these drugs.

So drug trafficking, inherently, in many ways affects interstate commerce, but the fact that they were traveling from the city of Franklin to North Carolina to get drugs and Weezy was traveling from North Carolina to Franklin to get drugs affects interstate commerce and, therefore, meets that element.

Continuity, we've established how long the group was together. They met when Brandon came back. I think we established that was around 2016. They don't have to be together for a long time. They only have to be together for a period of time sufficient to satisfy the purpose of the group.

And I think the evidence more than shows that they were successful in achieving the purposes that they set out to achieve in terms of being some of the top drug dealers in that town and being able to do it by virtue of their reputation in the city of Franklin.

We heard about that from E.J. His brother, as their leader, their collective -- someone that they all looked to as a leader or somebody that they believed would protect them, had a reputation in Franklin that these people would not cross him, and because of that, they benefitted from that. They benefitted because they got to sell drugs in that town, and the ops largely stayed away, until they didn't. And when that happened, they responded accordingly.

And E.J. Leonard talked extensively about disrespect. I mean, he responded candidly. When -- especially, like, for example, when he saw the posting, so in response to the Bruce Street shooting, he talked about the "Happy Birthday" video, and he talked about the scoreboard.

That scoreboard is a very strong piece of enterprise evidence in this case, because that lays out exactly how they perceived it. It was us against them. 0-1. We're down one -- or we're up one, and you're down one. We took your guy out. It was taunting. It was a form of disrespect, and they responded immediately -- immediately. The social media evidence shows that they were sharing that amongst each other.

Now, for the Bruce Street shooting, and as you heard from Mr. Leonard, several of these guys had been locked up at that time. And we agree to that. Mr. Brooks was locked up at that time. He's not charged in the Bruce Street shooting. But the fact that this information was passed around, again, is further evidence of that conspiracy.

So I do believe, Your Honor, that based on the collective evidence in this case, based on the testimony of E.J. Leonard -- which, I submit to you, is not incredible in any way, it's actually been corroborated in many ways by the physical evidence in this case and by the testimony of several other witnesses who have testified.

THE COURT: It's fair to say, I guess, at this point that the Court at the Rule 29 stage is not assessing the witness's credibility; is that correct?

MS. TAYLOR: Correct, Your Honor. On consideration of this motion, the evidence is viewed in the light most favorable to the prosecution. In appraising the sufficiency of the evidence, it is not necessary that you be convinced beyond a reasonable doubt. The question is simply whether there is substantial evidence upon which a jury may justifiably find the defendants guilty beyond a reasonable doubt.

THE COURT: All right. Thank you, Ms. Taylor.

Anything further?

MS. MUNN: Judge, I don't think we have any response. We'd submit it to the Court at this point.

THE COURT: All right. Thank you.

As the government has noted, at this stage of the case, the Court must view the evidence in the light most favorable to the government and determine whether any rational trier of fact could find the defendants guilty beyond a reasonable doubt.

In order to convict the defendants of VICAR conspiracy to commit murder, the government must establish that an enterprise existed, as alleged in the Second Superseding Indictment, and that the enterprise engaged in or

its activities affected interstate or foreign commerce, that the enterprise engaged in racketeering activity, that the defendants had a position within the enterprise or sought to gain entrance into it, that the defendants committed the alleged crime of violence -- i.e., conspiracy to commit murder in violation of Virginia law -- that the defendants' general purpose for committing the crime of violence was to maintain or increase position in the enterprise.

With respect to the existence of an enterprise, the VICAR statute defines enterprise as, quote, "any group of individuals associated in fact, although not a legal entity, which is engaged in or the activities of which affect interstate or foreign commerce," end quote. 18 U.S.C. Section 1959(b)(2).

Courts treat the definition of "enterprise" in VICAR as identical to RICO.

A RICO enterprise is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates functioned as a continuing unit. The Supreme Court has explained that an association-in-fact enterprise must have at least three structural features: purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose.

Put differently, the key concepts that identify

VICAR enterprises are continuity, unity, shared purpose, and identifiable structure.

The government has produced evidence that, when viewed in the light most favorable to the prosecution, is sufficient to establish an enterprise as defined in VICAR.

First, E.J. Leonard testified to a common purpose, drug trafficking and protection; second, the government has produced evidence of unity and relationships among the members, including other individuals alleged to have been involved in the conspiracy and in the enterprise.

The government has produced evidence of common tattoos, clothing, hand signals. Mr. Sledge, Mr. Griffin, and Mr. Leonard testified that the members regularly congregated at the Railroad house.

Admittedly, those were not membership meetings; however, they testified that narcotic sales regularly occurred there. And the jury heard testimony that the members planned an alleged shooting there.

Finally, while the Court has some questions about the extent of the proof of an identifiable structure, the question is whether any rational juror could conclude that such a structure existed.

The government is not required to prove a hierarchical structure or chain of command, but presence of such organizational features provides additional evidence of

a functioning enterprise.

The jury heard testimony that Brandon Leonard made decisions regarding the alleged enterprise territory, whether to allow rival gang members into that territory. The evidence before the jury referred to him as an "underboss" or as a "boss man" in some exhibits presented to the jury. Witnesses also testified, however, that he did not directly engage them in -- or direct them to engage in any racketeering.

The jury, though, also heard testimony about the process for being brought into an enterprise and sufficient evidence to conclude that these three defendants were a part of it.

With regard to the racketeering evidence, the evidence is also sufficient for a rational trier of fact to conclude that the enterprise engaged in racketeering activity; namely, drug trafficking through various individuals, including, among others, Mr. Leonard and Mr. Jenkins.

The government has not elicited evidence of shared profit, but they did, however, elicit testimony of drug sales in connection with the enterprise which shared common sources of drug production even if the individuals engaged in individual sales.

From the evidence they received, the jury could

infer that such sales affected, at a minimum, interstate commerce, as they heard testimony about distribution of drugs and sales of drugs between North Carolina and Virginia.

With regard to the defendants committing a crime of violence as alleged in the Second Superseding Indictment, the jury heard testimony from a number of witnesses about the retaliation planned after the death of Brandon Leonard. The jury also heard evidence related to firearms that were used by the defendants allegedly to commit these offenses, and they also heard testimony that, at a minimum, a rational trier of fact could conclude is circumstantial evidence of their presence at the various shootings as alleged in the Second Superseding Indictment.

Lastly, with respect to maintaining or increasing a position in the enterprise, this element is satisfied if the jury could properly infer that the defendants committed the violent crime because they knew it was expected of them by reason of their membership in the enterprise or that they committed it in furtherance of the membership.

The evidence the government has presented to the jury on this element is sufficient for purposes of a Rule 29 motion.

Mr. Griffin, Mr. Sledge, and Mr. Leonard testified that they believed members of a rival gang murdered Brandon Leonard, the alleged leader of this specific enterprise.

These witnesses have also testified that the defendants were with fellow enterprise members in enterprise territory when they conspired and then attempted to murder the members of a rival gang.

Accordingly, the evidence provides a reasonable basis for inferring that the defendants believed that fellow enterprise members may have expected them to carry out the shooting.

To be sure, the jury has heard no evidence that Defendant Jenkins was officially a Blood or a Low Live, but other testimony the jury heard about his presence at the Railroad house, his relationship to Brandon Leonard and E.J. Leonard, his participation in the retaliatory shootings could lead the jury to conclude that he was a member of the enterprise, even if they do not believe he was a member of a gang.

In order to convict Defendant Brooks and Jenkins of VICAR attempted murder as alleged in Count Two, the government must prove:

One, that an enterprise existed as alleged in the Second Superseding Indictment and that the enterprise engaged in or its activities affected interstate and foreign commerce;

Two, that the enterprise engaged in racketeering activity;

Three, that the defendants had a position within the enterprise or sought to gain entrance into the enterprise;

Four, that the defendants committed or aided and abetted the commission of the alleged crime of violence -- i.e., attempted murder in violation of Virginia law; and,

Five, that the defendants' general purpose for committing the crime of violence is to maintain or increase position in the enterprise.

The Court has already walked through many of these elements as relates to Count One and finds that those facts hereto could lead a rational trier of fact to find the defendants guilty beyond a reasonable doubt.

And certainly given the testimony the jury heard about the alleged roles the defendants had in these murders, they could, at a minimum, conclude they had aided and abetted the commission of these offenses -- specifically, attempted murder in violation of Virginia law -- based on the testimony of Mr. Leonard and the physical evidence.

With respect to the element of malice with respect to -- I believe that Mr. Good referenced with respect to Count One, the jury can infer malice based on the use of a deadly weapon, and the government has presented evidence of the use of numerous weapons.

As relates to Counts Three and Five, the government must prove that the defendants, aided and abetted by others,

knowingly used, possessed, or carried a firearm, the defendants used or carried the firearm during and in relation to a crime of violence which may be prosecuted in federal court, and that the defendants discharged the firearm.

These counts are specific to Defendants Brooks and Jenkins. The jurors received evidence about the defendants' alleged use of firearms in the commission of the attempted murders that are the subject of the Second Superseding Indictment and at least circumstantial evidence that each defendant discharged a firearm in the commission of these offenses.

As it relates to Count Six, which pertains to Defendant Jenkins, the government had to prove:

One, that he knowingly possessed the ammunition as charged;

Two, that he possessed the ammunition, knew he had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year -- that is, a felony offense; and,

Third, that the possession of ammunition was in and affecting commerce -- that is, before the defendant possessed the ammunition, it had traveled at some point from one state to another.

The parties have agreed to a factual stipulation as it relates to element two, and the jury heard testimony from

which it can infer the defendants' use of ammunition in connection with the shooting on February 8th, 2019.

Given the testimony that the jury heard about the illegal sales and purchases of firearms and ammunitions, the jury can infer that the ammunition as alleged in Count Six of the Second Superseding Indictment traveled in interstate commerce.

Lastly, with respect to Counts Seven, Eight, and Nine, the witness-tampering counts, the government would have to prove beyond a reasonable doubt that:

The defendant used intimidation, threatened, or corruptly persuaded, or attempted to use intimidation, threatened, or corruptly persuade another person;

Second, that the defendant did so with the intent to influence, delay, or prevent the testimony of any person in an official proceeding; and,

Third, that the defendant did so knowing -- that is, that the defendant knew or had notice of the official proceeding and he intended or knew that his actions were likely to affect the official proceeding.

These counts relate to Defendant Brooks and Defendant Newsome:

The jury heard substantial evidence of jail calls and messages sent through other individuals from which it could conclude that the purpose of those communications was

to persuade, intimidate, or threaten witnesses from cooperating with law enforcement or testifying in this trial, of which the defendants were clearly aware as the evidence has presented.

Therefore, based upon the standard outlined in Rule 29 of the Federal Rules of Criminal Procedure, this motion is denied.

Anything further with respect to this issue or anything else before we recess for the day?

MS. TAYLOR: Not from the government, Your Honor.

THE COURT: I know that Mr. Taylor mentioned jury instructions. With the exception of the one that the Court has before it, are there others that either party is intending to propose?

MR. TAYLOR: I believe -- so Your Honor has the conscious-of-guilt instruction? Is that what you're referring to?

THE COURT: Yes.

MR. TAYLOR: So I believe the defense has some that we have discussed, that I haven't seen, but in theory we are amenable to.

MS. MUNN: Have we received the final set of the ones that the Court is going to grant from what we submitted?

THE COURT: The Court has reviewed the joint proposed instructions, so my plan was to provide you all in

FILED: March 10, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4220 (L)
(2:22-cr-00101-JKW-DEM-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

RONALD DAMONE JENKINS, JR., a/k/a G, a/k/a GG, a/k/a Gee, a/k/a Gee Gee

Defendant - Appellant

No. 24-4221
(2:22-cr-00101-JKW-DEM-2)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JAPREE LORTEZ BROOKS, a/k/a Choppa, a/k/a Khoppa, a/k/a Primo

Defendant – Appellant

No. 24-4236
(2:22-cr-00101-JKW-DEM-5)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MALIK TREVONTE NEWSOME, a/k/a Red, a/k/a Redd, a/k/a Hitman Redd

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgments of the district court are affirmed in part and reversed in part. Defendant Brooks' sentence is vacated, and his case is remanded to the district court for further proceedings consistent with the court's decision.

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

/s/ NWAMAKA ANOWI, CLERK