

Appendix Table of Contents

Appendix	Description	Appendix Page
Appendix A	Opinion of the United States Court of Appeals for the Eleventh Circuit, May 20, 2026	3a
Appendix B	Judgment of the United States Court of Appeals for the Eleventh Circuit, May 20, 2026	18a
Appendix C	Judgment in a Criminal Case, United States District Court for the Southern District of Georgia, July 25, 2025	19a
Appendix D	Relevant Sentencing Transcript Excerpts	23a
Appendix E	Order Denying Motion to Suppress (Doc 38), Feb 7, 2025	27a

Appendix F	Magistrate Judge's Report and Recommendation on Motion to Suppress (Doc. 26)	33a
Appendix G	Order Denying Petition for Panel Rehearing, July 7, 2026	37a
Appendix H	Notice of Appeal July 25, 2025	38a

Appendix A — Opinion of the United States

Court of Appeals for the Eleventh Circuit

United States Court of Appeals for the

Eleventh Circuit

Nos. 25-12544 and 25-12550

United States of America v. Malik Javier

McKenzie

Opinion Filed: May 20, 2026

Not for Publication

Opinion

PER CURIAM:

Malik McKenzie appeals his convictions and 595month sentence for one count of possession with intent to distribute fentanyl, cocaine, carfentanil, and methamphetamine; one count of possession of a machinegun in furtherance of a drug trafficking crime; and one count of possession of a firearm by a convicted felon. The convictions arose out of a traffic stop, after Officer Josh Myers of the Hinesville Police Department (“HPD”) witnessed a Ford Fiesta run a stop sign. When Officer Myers attempted to pull the car over, it drove away and eventually crashed, and two men fled from the car on foot. Officer Myers gave chase and caught up to one of the men, Malik McKenzie; McKenzie struggled with the officer, trying to reach his gun belt; McKenzie was apprehended; and drugs and a loaded Glock 9-mm pistol were found on McKenzie’s person.

Later, during his jury trial on the drug and firearm charges, McKenzie passed a note to a guard attempting to bribe a juror. He pled guilty to one count of obstructing justice by endeavoring to influence a juror and proceeded to a combined sentencing hearing on his trial convictions and his jury tampering conviction. His appeals from these related cases are consolidated here.

On appeal, McKenzie argues that: (1) the district court erred in denying his motion to suppress because the officer who stopped his car lacked reasonable suspicion necessary to justify a traffic stop; (2) the court abused its discretion in admitting evidence of McKenzie's past drug sales under Federal Rule of Evidence 404(b); (3) the court erred in denying his motion for judgment of acquittal based on insufficiency of the evidence; and (4) his sentence was procedurally unreasonable because the district court clearly erred in imposing guideline enhancements under both U.S.S.G. § 3A1.2(c)(1) (Official Victim) and § 3C1.2 (Reckless Endangerment During Flight). After thorough review, we affirm.

I.

When reviewing a district court's denial of a motion to suppress, we review findings of fact for clear error and the application of the law to the facts *de novo*. *United States v. Wilson*, 979 F.3d 889, 908 n.9 (11th Cir. 2020). In doing so, we view the evidence in the light most favorable to the prevailing party and consider the entire record. *Id.* We review the admission of evidence under Rule 404(b) for abuse of discretion.

United States v. Booker, 136 F.4th 1005, 1013 (11th Cir. 2025). We review de novo a district court’s denial of a motion for judgment of acquittal on sufficiency of evidence grounds, viewing the evidence in the light most favorable to the prosecution and drawing all reasonable inferences and credibility choices in its favor. United States v. Fleury, 20 F.4th 1353, 1367 (11th Cir. 2021). We will uphold the denial of a motion for judgment of acquittal and affirm the jury’s guilty verdict “if ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” Id. (citation modified).

We review the sentence a district court imposes for “reasonableness,” which “merely asks whether the trial court abused its discretion.” United States v. Pugh, 515 F.3d 1179, 1189 (11th Cir. 2008) (citation modified). This standard “allows a range of choice for the district court, so long as that choice does not constitute a clear error of judgment.” United States v. Riley, 995 F.3d 1272, 1278 (11th Cir. 2021) (quoting United States v. Irely, 612 F.3d 1160, 1188–89 (11th Cir. 2010) (en banc)).

II.

First, we are unpersuaded by McKenzie’s claim that the district court erred in denying his motion to suppress. The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “A traffic stop constitutes a seizure under the Fourth Amendment.” Wilson, 979 F.3d at 908. To be

reasonable, and thus compliant with the Fourth Amendment, “a traffic stop must be supported by an officer’s reasonable suspicion, that is a particularized and objective basis for suspecting the person stopped of criminal activity.” *Id.* (citation modified). This criminal activity includes minor traffic violations. *Id.*

“Where the district court has made a determination as to a witness’s credibility, we afford that determination substantial deference.” *United States v. Maddox*, 803 F.3d 1215, 1220 (11th Cir. 2015). “We will accept a factfinder’s credibility determination unless the proffered evidence is contrary to the laws of nature or is so inconsistent or improbable on its face that no reasonable factfinder could accept it.” *Id.* (citation modified). And “the fact that a witness is of dubious character does not, by itself, render his testimony incredible.” *Id.*

Here, the district court did not err in denying McKenzie’s motion to suppress. McKenzie argues that the officer who stopped his car, HPD Officer Myers was so unbelievable that Myers’s uncontroverted testimony — that he witnessed the Ford Fiesta in which McKenzie was travelling run a stop sign — could not establish reasonable suspicion of a traffic violation. This argument fails.

As the record reveals, the magistrate judge who presided over McKenzie’s suppression hearing explicitly made a finding as to Myers’s credibility, finding him to be “wholly credible.” The magistrate judge noted that Myers described the events of March

6, 2024 “in detail” from the initial stop sign violation though the crash and apprehension of McKenzie. He found that Myers “straightforwardly and consistently testified” as to the events in question. And Myers’s testimony — that he saw the white Ford Fiesta in which McKenzie was travelling fail to stop at a stop sign — was not “contrary to the laws of nature or so inconsistent or improbable on its face that no reasonable factfinder could accept it.” *Id.* (citation modified). McKenzie’s attacks on Officer Myers’s credibility do not overcome the magistrate judge’s credibility finding, which we owe “substantial deference.” *Id.* And because Myers personally observed the Fiesta commit a traffic violation by failing to stop at the stop sign, he had reasonable suspicion for the stop. *Wilson*, 979 F.3d at 908. We affirm the district court’s decision to deny McKenzie’s motion to suppress.

III.

We also are unconvinced by McKenzie’s claim that the district court abused its discretion in admitting evidence of his past drug sales under Rule 404(b). Under Rule 404(b)(1), evidence of “other crime[s], wrong[s], or act[s]” may not be admitted “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” However, this evidence may be admissible for other purposes, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” *Fed. R. Evid.* 404(b)(2). “Because Rule

404(b) is a rule of inclusion, Rule 404(b) evidence should not be lightly excluded when it is central to the prosecution's case." Booker, 136 F.4th at 1013 (citation modified).

Under our "three-part test, evidence of other acts is admissible if: (1) the evidence is relevant to an issue other than the defendant's character; (2) there is sufficient proof to allow a jury to find by a preponderance of the evidence that the defendant committed the prior act; and (3) the probative value of the evidence is not substantially outweighed by the risk of unfair prejudice under Rule 403." *Id.* at 1013–14. As for the first prong, a drug trafficking defendant, by pleading not guilty, "place[s] his intent at issue and put[s] the government to its burden to prove the intent-to-distribute element beyond a reasonable doubt." *Id.* at 1014. As for the second prong, "a conviction based on a guilty plea to the prior [drug distribution] crime is sufficient proof for the jury to find by a preponderance of the evidence that [the defendant] possessed [the drugs] with intent to distribute" during those prior instances. *Id.* And, finally, we "repeatedly ha[ve] held that evidence of prior drug dealing is highly probative of intent to distribute a controlled substance and that such evidence is not overly prejudicial." *Id.* This is especially true when evidence of the defendant's prior drug sales is accompanied by a limiting instruction informing the jury of the proper and improper uses of the evidence. See *id.* at 1011–12, 1014.

Here, the district court did not abuse its discretion in admitting evidence of McKenzie's past drug sales through a redacted plea agreement. That evidence was relevant for the non-propensity purpose of showing that McKenzie intended to distribute the drugs with which he was found in this case. And the signed plea agreement wherein McKenzie admitted to the conduct in question was sufficient to prove that he sold the drugs by a preponderance of the evidence. In fact, McKenzie does not address the first two prongs for admissibility under Rule 404(b): (1) he does not claim that the evidence was not relevant to his intent to distribute the drugs; nor (2) does he claim that the plea agreement was not sufficient to prove that he sold the drugs on those occasions by a preponderance of the evidence. *Id.* at 1013–14.

However, McKenzie argues, as for the third prong, that the probative value of the evidence was substantially outweighed by the risk of unfair prejudice under Rule 403. *Id.* at 1014. But we've "repeatedly [] held that evidence of prior drug dealing is highly probative of intent to distribute a controlled substance and that such evidence is not overly prejudicial." *Id.* Like the defendant in *Booker*, McKenzie placed his intent at issue by pleading not guilty to Count One of his indictment, which required the government to prove he possessed the drugs with the intent to distribute them. 21 U.S.C. § 841(a)(1). And like in *Booker*, the district court gave the jury a limiting instruction, telling it to only consider the evidence of McKenzie's prior drug sales as evidence of

his intent and not to establish his propensity for similar conduct. Thus, all three prongs for admission of the Rule 404(b) evidence were satisfied, and the district court did not abuse its discretion in admitting McKenzie's redacted plea agreement.

IV.

Similarly, we find no merit to McKenzie's claim that the district court erred in denying his motion for judgment of acquittal. Determinations as to a witness's credibility "are the exclusive province of the jury, and on sufficiency review we must assume that they were answered in a manner that supports the verdict . . . unless [the] witness[s] testimony [was] 'unbelievable' as a matter of law." *United States v. Gregory*, 128 F.4th 1228, 1247 (11th Cir. 2025) (citation modified). Since credibility determinations are the exclusive province of the jury, "the court of appeals may not revisit [a witness's credibility] unless [his testimony] is incredible as a matter of law." *Id.* at 1249 (citation modified).

Under 21 U.S.C. § 841(a)(1), it is "unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." Thus, as we've noted, to convict a defendant under § 841(a) for possession with intent to distribute, the government must prove: (1) knowledge; (2) possession; and (3) intent to distribute. *United States v. Cremades*, 160 F.4th 1296, 1302 (11th Cir. 2025). The government can prove each element with circumstantial evidence, and the

possession element may be established through actual or constructive possession. *Id.* “Constructive possession exists when a defendant has dominion or control over the premises in which the object is kept.” *Id.* (citation modified). And the “[i]ntent to distribute” element “may be inferred from the amount of the drug involved.” *Id.* (citation modified).

To convict a defendant under 18 U.S.C. § 924(c)(1)(A), the government must prove that the defendant: (1) knowingly (2) possessed a firearm (3) during and in relation to a drug trafficking crime. *Gregory*, 128 F.4th at 1248. To possess a firearm “in relation to” a drug trafficking crime, the firearm “must merely facilitate, or have the potential of facilitating, the drug trafficking offense.” *Id.* To determine if the firearm in question had this potential, the court considers “the proximity of the firearm to the drugs or drug profits and the time and circumstances under which the firearm is found.” *Id.* (citation modified). Finally, to convict a defendant under 18 U.S.C. § 922(g)(1), the government must prove that the defendant knowingly possessed a firearm and “that he knew he was a felon when he possessed the firearm.” *Greer v. United States*, 593 U.S. 503, 505–06 (2021) (citation modified).

Here, McKenzie’s sufficiency-of-the-evidence argument fails as to each of his challenged convictions. McKenzie primarily argues that all of his convictions rested upon the testimony of Officer Myers, who he again claims was so unreliable that his convictions cannot stand. However, as we’ve noted, we

must accept a jury's credibility determination "unless [the] witness[s] testimony [was] unbelievable as a matter of law." Gregory, 128 F.4th at 1247 (citation modified). None of McKenzie's arguments satisfies this standard. The fact that Myers's camera did not capture his chase of McKenzie or the fact that Myers had been disciplined as a police officer in the past are insufficient. McKenzie also claims that Myers was incredible since he misidentified McKenzie as the driver of the Fiesta, but McKenzie's argument — that another man's phone was found on the driver's seat of the Fiesta after a high-speed chase and crash — does not establish that McKenzie was not the driver.

McKenzie does not otherwise cite the elements of his convictions nor explain how they were not satisfied. Moreover, McKenzie's convictions did not solely rest on Myers's testimony. At trial, HPD Officer Cody Harman testified that he responded to the traffic stop that day after Officer Myers reported he was engaged in an altercation with a fleeing suspect. After Officer Harman arrived and helped put McKenzie in a patrol car, Harman then personally searched McKenzie's person, where he found a fanny pack with drugs inside. In addition, HPD Officer William Artman testified that he personally pulled the Glock pistol out of McKenzie's pocket. And DEA Special Agent Jason Peters testified that all the evidence seized from McKenzie, including the weight of the drugs and his possession of digital scales, was consistent with the intent to distribute, and that drug distributors often carry firearms for protection. Finally, McKenzie

himself stipulated that on the day in question, he knew he was a felon. All in all, the government presented sufficient evidence to allow the jury to find McKenzie guilty of each charge beyond a reasonable doubt.

V.

Finally, we reject McKenzie’s claim that his sentence was procedurally unreasonable. In reviewing for procedural reasonableness, we “ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence — including an explanation for any deviation from the Guidelines range.” Pugh, 515 F.3d at 1190 (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). “A district court does not have to give all the factors equal weight, and it has discretion to attach great weight to one factor over others.” *United States v. Olson*, 127 F.4th 1266, 1276 (11th Cir. 2025) (citation modified).

A district court need not state on the record that it explicitly considered each § 3553(a) factor, nor discuss those factors. *United States v. Oudomsine*, 57 F.4th 1262, 1265 (11th Cir. 2023). Rather, it is enough if the record reflects that the court considered the § 3553(a) factors and the parties’ arguments. *Id.* “A district court’s failure to discuss mitigating evidence does not indicate that the court erroneously ignored or failed

to consider the evidence.” *United States v. Butler*, 39 F.4th 1349, 1356 (11th Cir. 2022) (citation modified).

We held in *United States v. Keene* that we will not rule on the validity of a disputed guideline adjustment if (1) the district court stated it would have given the same sentence regardless of the outcome of the disputed guideline provision; and (2) assuming that there was an error, the sentence is still reasonable. 470 F.3d 1347, 1349 (11th Cir. 2006). We have described this concept in later decisions as “a species of the harmless error doctrine.” *Olson*, 127 F.4th at 1275 (“If the asserted error did not matter to the result in the district court, whether there was error doesn’t matter in the appeal.”). To reiterate, we generally will not vacate a defendant’s sentence where “(1) the district court states it would have imposed the same sentence, even absent an alleged error, and (2) the sentence is substantively reasonable.” *Id.* (citation modified). At the second part of the analysis, we must decide whether the defendant’s sentence is still substantively reasonable if the guideline dispute “ha[d] been decided in the way the defendant argued and the advisory range reduced accordingly.” *Keene*, 470 F.3d at 1349.

Here, McKenzie argues that his sentence is procedurally unreasonable because the district court clearly erred in imposing the six-level guideline enhancement in U.S.S.G. § 3A1.2(c)(1) (Official Victim) and the two-level enhancement in § 3C1.2 (Reckless Endangerment During Flight). However, as the record reveals, the district court expressly said

that it would have imposed the same 595-month sentence regardless of the outcome of the disputed guideline enhancements in § 3A1.2(c)(1) and § 3C1.2. As a result, we will not vacate and remand for resentencing so long as McKenzie's sentence would be substantively reasonable if the contested enhancements had been decided in the way McKenzie argued and the advisory range reduced accordingly. Id.

To perform this analysis, we must determine what McKenzie's guideline range would be without the contested enhancements. At sentencing, the district court adopted the presentence investigation report's total offense level of 34, which would have been reduced to 26 without the disputed enhancements in U.S.S.G. § 3A1.2(c)(1) and § 3C1.2. With a criminal history category of V, a total offense level of 26 would have yielded a guideline range of 110–137 months, which would have been increased to 470–497 months due to the mandatory 30-year concurrent sentence under Count Two. U.S.S.G. § 5A; 18 U.S.C. § 924(c)(1)(B)(ii). Thus, we next must decide whether McKenzie's 595-month sentence would be substantively reasonable where the guideline range was 470–497 months. See Olson, 127 F.4th at 1275.

We conclude that his 595-month sentence is reasonable under the Keene analysis. To begin with, the district court relied heavily on several of the § 3553(a) factors, including the seriousness of McKenzie's offenses, in justifying the 595-month

sentence. Among other things, it noted that the drugs McKenzie possessed — especially fentanyl and carfentanil — were “extremely dangerous substances” that could have killed the law enforcement officers by merely touching their skin. The court described how McKenzie engaged in all of this conduct while carrying a loaded machinegun that could shoot over 20 bullets in “the blink of an eye.” It commented on the “alarming” nature of the circumstances of McKenzie’s flight from the officers, including how he evaded the police, fought an officer, and was armed with a machinegun. The district court also focused on the need to promote respect for the law, noting how McKenzie failed to accept responsibility for his charges and even tried to bribe a juror to acquit him. The court found this to be an attempt to corrupt the system of justice.

In addition, the district court placed significant weight on McKenzie’s lengthy and violent criminal history, finding that even after several chances to correct his behavior, McKenzie chose to engage in this type of conduct “again and again.” It added that the sentence it imposed was necessary “to protect the public from [McKenzie’s] crimes.” The district court was permitted to attach more weight to these sentencing factors over others; it did not abuse its considerable discretion in doing so. Thus, the record reveals that in selecting the 595-month sentence, the district court sufficiently considered the § 3553(a) factors and the parties’ arguments and more than adequately explained its chosen sentence.

In short, McKenzie's 595-month sentence, although it would constitute an upward variance, does not "lie[] outside the range of reasonable sentences dictated by the facts of th[is] case." Riley, 995 F.3d at 1278 (quoting Irej, 612 F.3d at 1190). And because McKenzie's 595-month sentence is substantively reasonable even without the application of the disputed guideline enhancements, we affirm. Keene, 470 F.3d at 1349.

AFFIRMED.

**Appendix B — Judgment of the United States
Court of Appeals for the Eleventh Circuit**

**In the United States Court of Appeals for the
Eleventh Circuit**

No. 25-12544

**UNITED STATES OF AMERICA, Plaintiff-
Appellee,
versus
MALIK JAVIER MCKENZIE,
DefendantAppellant.**

Appeal from the United States District Court for the
Southern District of Georgia
D.C. Docket No. 4:24-cr-00047-RSB-CLR-1 **No.**

25-12550

**UNITED STATES OF AMERICA, Plaintiff-
Appellee,
versus
MALIK JAVIER MCKENZIE,
DefendantAppellant.** Appeal from the United
States District Court for the
Southern District of Georgia
D.C. Docket No. 4:25-cr-00065-RSB-CLR-1

JUDGMENT

It is hereby ordered, adjudged, and decreed that the
opinion issued on this date in this appeal is entered
as the judgment of this Court. Entered: May 20, 2026
For the Court: David J. Smith, Clerk of Court

Appendix C — Judgment in a Criminal Case

(District Court)

**United States District Court, Southern District
of Georgia, Savannah Division**

**UNITED STATES OF AMERICA v. Malik Javier
McKenzie**

Case Numbers: 4:24-CR-00047-1; 4:25-CR-00065-1

USM Number: 22857-021

Defendant's Attorney: Daniel James O'Connor

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty on Counts 1, 2, and 4 of Docket Number 4:24-CR-00047-1 after a plea of not guilty. The defendant pleaded guilty to Count 1 of Docket Number 4:25-CR-00065-1.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)(1); 21 U.S.C. § 841(b)(1)(C)	Possession with intent to distribute quantities of fentanyl, cocaine, carfentanil, and methamphetamine	March 6, 2024	1

18 U.S.C. § 924(c)(1)(A); 18 U.S.C. §	Possession of a machinegun in furtherance of a	March 6, 2024	2
924(c)(1)(B)(i)	drug trafficking crime		
18 U.S.C. § 922(g)(1); 18 U.S.C. § 924(a)(8)	Possession of a firearm by a prohibited person	March 6, 2024	4
18 U.S.C. § 1503(a); 18 U.S.C. § 1503(b)(2)	Obstructing justice by endeavoring to influence a juror	April 9, 2025	1 (Docket No. 4:25-CR00065-1)

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

Imprisonment

The defendant is committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **595 months**. This total term is comprised of:

- 235 months as to Count 1 of Docket Number 4:24CR-00047;
- 180 months as to Count 4 of Docket Number 4:24CR-00047; and
- 36 months as to Count 1 of Docket Number 4:25CR-00065;

all to be served concurrently with one another and concurrently with any sentence imposed as to the pending state charges in Liberty County, Georgia.

The total term of imprisonment also includes a term of **360 months** as to Count 2 of Docket Number 4:24CR-00047, which shall be served consecutively to all other counts.

This total term of 595 months shall be served consecutively to the sentence imposed in Southern District of Georgia, Docket Number 4:23-CR-00096-3, and consecutively to any sentence which may be imposed upon revocation of the defendant's term of supervised release in Southern District of Georgia, Docket Number 4:18-CR-00259-1.

The Court recommends that the defendant be given credit toward this federal sentence for all time served in custody since March 6, 2024, that is not credited toward another sentence. The Court recommends that the defendant be evaluated by Bureau of Prisons officials to establish his participation in an appropriate program of substance abuse treatment and counseling, including the Residential Drug Abuse Program (RDAP). The Court recommends that the defendant be designated to a Bureau of Prisons facility in Jesup, Georgia, or Estill, South Carolina, to remain close to his family. The defendant is remanded to the custody of the United States Marshal.

Supervised Release

Upon release from imprisonment, the defendant will be on supervised release for a term of 3 years as to Counts 1 and 4 of Docket Number 4:24-CR-00047 and Count 1 of Docket Number 4:25-CR-00065, and 5 years as to Count 2 of Docket Number 4:24-CR-00047, all to be served concurrently with one another.

Criminal Monetary Penalties

Assessment: \$400. Restitution: N/A. Fine: None. The lump sum payment of \$400 is due immediately.

Forfeiture

The defendant shall forfeit the defendant's interest in the following property to the United States: the Glock, Model 19, 9mm pistol seized in this case; the affixed machinegun conversion device; the firearm's magazine; and the related 24 rounds of ammunition. The Consent Order of Forfeiture entered on June 25, 2025, is incorporated into this judgment by specific reference.

Denial of Federal Benefits

As to Count 1 of the indictment and pursuant to 21 U.S.C. § 862, the defendant shall be ineligible for federal benefits for a period of three years.

Date of Imposition of Judgment: July 22, 2025

**R. Stan Baker, Chief Judge, United States
District Court, Southern District of Georgia**

Date: July 25, 2025

Appendix D — Relevant Sentencing Transcript Excerpts

United States District Court, Southern District of Georgia, Savannah Division United States v. Malik Javier McKenzie, Nos. 4:24-CR-00047 and 4:25-CR-00065

Excerpts of Sentencing Hearing Transcript

(certified by Kelly A. McKee, Official Court Reporter)

Heard on: July 22, 2025

[Excerpt 1 — Ruling on the § 3A1.2(c)(1) and § 3C1.2 enhancements]

THE COURT: Okay. Thank you. I'm going to overrule this objection. I think there's sufficient evidence to make a specific finding that the defendant actively caused the reckless behavior at issue.

First, I'd note that, you know, I don't apply 3C1.2 if the other application that we were talking about, 3A1.2(c)(1), has been applied solely on the basis of the same conduct. That's Application Note 1. Well, I didn't apply 3A1.2(c)(1) solely on the basis of any of the three issues here. Obviously just the fact that there's three of them shows that it wasn't solely on the basis of those. All three of those are sufficient in and of themselves for the application of 3A1.2(c)(1).

I discussed at length the second and third chronologically, that being blading towards the officer and wrestling in the woods. So, here, both of those independently also would be enough for 3C1.2. . . . So both of those, blading towards the officer and the

fighting, those would be enough for 3A1.2(c)(1) and 3C1.2, and since I didn't rely solely on one or the other, either one can support one, then the other.

Nonetheless, I also find by a preponderance of the evidence that the defendant was the driver of the vehicle, and therefore, is responsible for all this extremely reckless behavior of driving this vehicle in such a dangerous manner

And so I find by a preponderance of the evidence that he was the driver of the vehicle that caused all of that and that the enhancement applies for that. But like I said, even if it didn't, the other two are independently sufficient for the application of these enhancements.

[Excerpt 2 — Adoption of the presentence report and Guidelines calculation]

THE COURT: . . . I overrule all the objections to the presentence investigation report, and I adopt all the factual statements and all the conclusions of the presentence investigation report as the rulings and the findings of the Court.

I find that the total offense level is 34. The criminal history category is V. That results in guideline recommendations of 235 to 293 months of imprisonment as to Counts One and Four of the indictment and Count One of the information and 360 months of imprisonment as to Count Two of the indictment, to be served consecutively to all other counts

[Excerpt 3 — Imposition of sentence]

THE COURT: . . . [I]t's my judgment that you are committed to the custody of the Bureau of Prisons to be imprisoned for a total term of [595] months.

This term is comprised of 235 months as to Count One of the indictment, [180] months as to Count Four of the indictment and 36 months as to Count One of the information, all to be served concurrently with one another and concurrently with any sentence imposed as to the pending state charges in Liberty County, Georgia.

The total term of imprisonment includes a term of 360 months as to Count Two of the indictment, which will be served consecutively to all other counts.

[Excerpt 4 — Statement that the Guidelines did not drive the sentence]

THE COURT: . . . I don't find any reason to vary or depart from application of the guidelines here.

. . .

THE COURT: We've had a lot of discussion of the guidelines in this hearing, as we should have, but regardless of what the guidelines say, this is the sentence that I would have given in the case. A sentence this exact amount is sufficient, but not greater than necessary to achieve the parsimony balance of the sentencing statute.

[Excerpt 5 — Correction of the total-term figure]

MR. O'CONNOR: If I may, Your Honor, I think I understand it's 59[5] — I think at some point you misspoke and said 800, but I don't think —

THE COURT: I probably did. Let me restate it. . . . He's imprisoned for a total term of [595] months. The total term is comprised of 235 months as to Count One of the indictment, 180 months as to Count Four of the indictment and 36 months as to Count One of the information, all to be served concurrently with one another The total term of imprisonment includes a term of 360 months as to Count Two of the indictment, which shall be served consecutively to all other counts.

[Excerpt 6 — Post-pronouncement objections]

THE COURT: . . . Other than any objections that have been previously stated for the record, does the United States or the defense have any objections to my findings of facts, my conclusions of law or to the manner in which I pronounced the sentence?

MR. THOMPSON: Not from the government, Your Honor.

THE COURT: Mr. O'Connor?

MR. O'CONNOR: None other than the ones we've made on the record, Your Honor.

**Appendix E — Order Denying Motion to
Suppress
In the United States District Court for the
Southern District of Georgia, Savannah
Division**

**UNITED STATES OF AMERICA v. Malik
McKenzie**

Case No. 4:24-cr-47 (Doc. 38)

R. Stan Baker, Chief United States District Judge
Entered: February 7, 2025

ORDER

After a careful de novo review of the entire record, the Court concurs with the Magistrate Judge's November 26, 2024, Report and Recommendation, (doc. 26), to which Defendant Malik McKenzie has objected, (doc. 35). For the following reasons, the Defendant's objections are **OVERRULED**, the Report and Recommendation is **ADOPTED**, (doc. 26), and Defendant's Motion to Suppress is **DENIED**, (doc. 18).

Defendant moves to suppress evidence seized from his person pursuant to a warrantless search and seizure following an allegedly unlawful traffic stop. The Magistrate Judge recommends denying the motion because the arresting officer, Officer Josh Myers of the Hinesville Police Department, had probable cause to believe that a traffic violation had occurred, justifying his attempt to initiate a traffic stop. The issues raised in Defendant's objection largely mirror

the arguments made in his briefing before the Magistrate Judge. Although McKenzie's briefing proffers facts different from those to which Meyers testified, the Magistrate Judge found Officer Myers' testimony was "wholly credible," (doc. 26, p. 6). The Eleventh Circuit has cautioned district judges from overruling a magistrate [judge's] finding where credibility determinations are dispositive. See *Proffitt v. Wainwright*, 685 F.2d 1227, 1237 (11th Cir. 1982); *Manning ex rel. Manning v. Sch. Bd. of Hillsborough Cty., Fla.*, 244 F.3d 927, 947 (11th Cir. 2001). Mindful of those admonitions, the Court finds that Defendant has not identified any basis to reject the Magistrate Judge's credibility finding.

Defendant argues that "[t]he Magistrate Judge's Findings of Fact are in error in determining that reasonable suspicion existed to stop the vehicle in which McKenzie was a passenger, ultimately resulting in the seizure of evidence relied upon by the Government to support the underlying Indictment." Defendant does not dispute the Magistrate Judge's statement of the applicable law, but only that his application was erroneous. Specifically, Defendant finds fault with the Magistrate Judge's determination that Officer Myers' testimony that he observed the vehicle in question run a stop sign was credible.

Defendant provides three arguments that Officer Myers' "cumulative credibility issues" undermine his testimony such that the Government failed to meet its burden to justify the warrantless seizure and

subsequent search. First, he argues that “the unexplained lack of either bodycam or dashcam recordings by Officer Myers raises suspicion as to the officer’s credibility.” Second, he contends that Officer Myers’ “admitted history of discipline related to law enforcement protocols . . . weighs against his credibility.” Third, he argues that Officer Myers mistakenly identified the driver of the vehicle Defendant concedes he, at least, occupied during the alleged traffic violation and subsequent pursuit, despite “all other evidence pointing to a separate driver.”

The Magistrate Judge expressly addressed two of Defendant’s three arguments in his Report and Recommendation. As to the bodycam footage, it is patently incorrect to state that the lack of bodycam or recording by Officer Myers is “unexplained.” The record explains that both the bodycam and dashcam were designed to automatically turn on when Myers activated his police lights but did not due to an unidentified technical malfunction. Further, the Report and Recommendation correctly observed that “the absence of video evidence of a traffic violation is not even extraordinary, much less fatal to finding an officer’s testimony credible.” The Court, therefore, finds that the Magistrate Judge adequately addressed the lack of body-worn or dashboard camera video in his credibility analysis.

Defendant argues that Officer Myers’ purported misidentification of the driver of the vehicle Defendant occupied undermines his testimony

regarding the observation of the alleged stop sign violation. However, McKenzie's Objection merely reasserts purported facts from which he infers that Meyer's perception was mistaken. The Magistrate Judge already noted that at least some facts underlying "the natural conclusion" are not in evidence. Moreover, the Magistrate Judge's analysis indicates the ways in which the conclusion is not as "natural" as Defendant asserts. As the Report and Recommendation explains, the location of the phone "in a particular location in the car after a high-speed chase, crash, and flight of the occupants is, at most, suggestive." Additionally, the information about the ownership of the phone is of "uncertain evidentiary value because it is only mentioned in Defendant's brief and an attached exhibit, which was not admitted at the hearing." Defendant makes no effort to rehabilitate the value of this evidence in his Objections. Lastly, it should be noted that, even if Myers had clearly misidentified the driver of the vehicle after a high-speed chase near residential areas, the circumstances of that observation are drastically different and more challenging than observing a minor traffic violation while parked in a vehicle facing towards the violation. Defendant's dispute about whether he was the driver of the vehicle or its passenger, therefore, does not undermine the validity of the Magistrate Judge's credibility determination.

Defendant's objections also overstate the nature of Officer Myers' disciplinary history. The most

significant policy violations that cross-examination revealed were “rudeness complaints.” Officer Myers clarified that he had never been disciplined for failure to follow arrest protocol over the course of nearly ten years as a law enforcement officer. Defendant’s crossexamination of Meyers concerning his record as a law enforcement officer revealed no history of serious misconduct or dishonesty. While politeness may well be a “law enforcement protocol,” the fact that Officer Meyers may have breached it does not suggest that he would fabricate the existence of a traffic violation, much less that he would subsequently provide perjured testimony to the Court. While Officer Myers’ disciplinary history may draw his manners into question, it does not undermine his honesty, memory, or overall credibility as a law enforcement official testifying against a defendant he arrested. Although the Magistrate Judge did not expressly address Officer Myers’ disciplinary history in the Report and Recommendation, the Court finds that he appropriately considered it in evaluating his credibility after observing his testimony.

Taken cumulatively, Defendant’s Objections fail to show that the Magistrate Judge erred in concluding Officer Meyers’ testimony was credible, even under a de novo standard of review. Therefore, Officer Myers was justified in attempting the traffic stop of the vehicle Defendant occupied because he had probable cause to believe that the vehicle had committed a traffic violation. For the foregoing reasons, therefore, the Defendant’s objections are **OVERRULED**, and

the Court **ADOPTS** the Report and Recommendation as its opinion. (Doc. 26.) The Defendant's Motion to Suppress is **DENIED**. (Doc. 18.)

SO ORDERED, this 7th day of February, 2025.

R. Stan Baker, Chief Judge
United States District Court
Southern District of Georgia

Appendix F — Magistrate Judge’s Report and Recommendation on Motion to Suppress United States District Court, Southern District of Georgia, Savannah Division

UNITED STATES OF AMERICA v. Malik Javier McKenzie

Case No. 4:24-cr-00047 (Doc. 26)

Christopher L. Ray, United States Magistrate Judge

Entered: November 26, 2024

[Credibility Finding]

The Court finds Officer Myers’ testimony wholly credible. Myers was able to describe the events of March 6, 2024 in detail, confidently and calmly, from the initial traffic violation, through the crash, and Defendant’s ultimate apprehension. As relevant to the instant Motion, Myers straightforwardly and consistently testified that he was positioned to observe the intersection where the violation occurred; about the particularized basis for his conclusion that a violation occurred; and about the subsequent chase, seizure, and search. His testimony was consistent with the incident report he wrote shortly after the incident. He explained that the reason why he could not provide bodycam or dashcam evidence of the alleged violation was largely out of his control as a function of automated systems. His relevant testimony is confirmed by the written report of Officer Torres.

Myers' credible testimony that he observed a traffic violation provides ample justification for the attempted traffic stop.

[Absence of Video Evidence]

Although, as Defendant's counsel argued, video evidence might have obviated any credibility inquiry, the absence of video evidence of a traffic violation is not even extraordinary, much less fatal to finding an officer's testimony credible. See *United States v. Gause*, 2023 WL 2194295, at *2 (11th Cir. Feb. 24, 2023) (finding that a police officer's credible testimony is "in no way contradicted" by the dashcam's failure to capture an alleged traffic violation when the officer straightforwardly explained why it did not do so). There is simply no inference to be drawn from the lack of video recordings of the traffic violation. After all, absence of proof is not proof of absence.

[Driver Identity]

The parties disagree whether Defendant was the driver or a passenger in the car. Officer Myers testified at the October 31 hearing that he witnessed Defendant leave the vehicle from the driver's side. This assertion was not directly challenged upon crossexamination. Defendant argues that Officer Myers' credibility should be questioned because the following facts suggest that Defendant was not the driver: (1) the Ford Fiesta was registered to Marie Harrell; (2) Devin Lee, a suspected occupant of the vehicle, lived in Ms. Harrell's residence; (3) Devin Lee's aunt, Barbara Jenkins, reported that her phone was in police evidence after being seized from Devin

Lee; (4) Ms. Jenkins' phone was in fact recovered from the driver's seat of the wrecked Ford Fiesta. Defendant argues that these facts amount to "probable evidence" that a third-party suspect was the driver. The Court disagrees. The registration and ownership of the vehicle and the relationship between the owner and Devin Lee do not even imply that he was necessarily in the car, much less that he was driving. To the extent that the location of the phone might imply that he was present, the fact that it was located in a particular location in the car after a high-speed chase, crash, and flight of the occupants is, at most, suggestive. The weight of this circumstantial evidence does not overcome Officer Myers' credible direct testimony.

[Recommendation]

Myers' observation of the stop sign violation gave him probable cause to believe that the vehicle Defendant, at least, occupied failed to stop at a sign, in violation of O.C.G.A. § 40-6-72. Because Myers had probable cause to believe that a traffic violation had occurred, he was justified in attempting to initiate a traffic stop of the violating vehicle. *Whren*, 517 U.S. at 810. At the evidentiary hearing, Defendant conceded that, if the initial traffic stop was properly supported by probable cause, there is not another basis to exclude the evidence found on Defendant's person. Therefore, Defendant's Motion to Suppress should be **DENIED**.

This Report and Recommendation is submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 72.3.

Within 14 days of service, any party may file written objections to this R&R with the Court and serve a copy on all parties.

s/ Christopher L. Ray United
States Magistrate Judge
Southern District of Georgia

**Appendix G — Order Denying Petition for
Panel Rehearing
In the United States Court of Appeals for the
Eleventh Circuit**

No. 25-12544

**UNITED STATES OF AMERICA, Plaintiff-
Appellee,
versus
MALIK JAVIER MCKENZIE,
DefendantAppellant.**

Appeal from the United States District Court for the
Southern District of Georgia
D.C. Docket No. 4:24-cr-00047-RSB-CLR-1**No. 25-
12550**

**UNITED STATES OF AMERICA, Plaintiff-
Appellee,
versus
MALIK JAVIER MCKENZIE,
DefendantAppellant.**

Appeal from the United States District Court for the
Southern District of Georgia
D.C. Docket No. 4:25-cr-00065-RSB-CLR-1

Before **LUCK**, **LAGOA**, and **MARCUS**, Circuit
Judges.

PER CURIAM:The Petition for Panel Rehearing filed
by the Appellant is **DENIED**.

Entered: July 7, 2026

Appendix H — Notice of Appeal

**United States District Court, Southern District
of Georgia, Savannah Division**

**UNITED STATES OF AMERICA, Plaintiff, vs.
MALIK JAVIER MCKENZIE, Defendant.**

Case No. 4:24-cr-00047-1

Case No. 4:25-cr-00065-1

NOTICE OF APPEAL

Notice is hereby given that MALIK JAVIER MCKENZIE, Defendant, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the final judgment and sentence entered on July 22, 2025, in Case No. 4:24-cr-047 after a jury trial, and in Case No. 4:25-cr-065 after a guilty plea. These matters were sentenced together and a single judgment was entered in both cases. Defendant acknowledges a limited waiver of appeal in Case No. 4:25-cr-065 and states that this appeal is limited to issues arising from Case No. 4:24-cr-047.

This 25th day of July, 2025.

s/ Daniel J. O'Connor Daniel
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End of Appendix.