

RECORD NO. 19-4324

In The
United States Court of Appeals
For The Fourth Circuit

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

TERRILL BERNARD WEATHERSPOON,

Defendant – Appellant.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
AT GREENSBORO**

**JOINT APPENDIX
VOLUME I OF III
(Pages 1 – 133)**

George E. Crump, III
ATTORNEY AT LAW
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Counsel for Appellee

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**Exhibit to Motion to Suppress Hearing before
The Honorable Thomas D. Schroeder
on November 13, 2018:**

Government’s Exhibit:

- 1. DVD of Days Inn security camera
undated.....161

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APPEAL,CLOSED

**U.S. District Court
North Carolina Middle District (NCMD)
CRIMINAL DOCKET FOR CASE #: 1:18-cr-00333-TDS-2**

Case title: USA v. ESPINOZA

Date Filed: 08/27/2018

Date Terminated: 05/02/2019

Assigned to: CHIEF JUDGE THOMAS D. SCHROEDER

Appeals court case number: 19-4324

Defendant (2)

**TERRILL BERNARD
WEATHERSPOON**
TERMINATED: 05/02/2019

represented by **GEORGE ENTWISTLE CRUMP , III**
GEORGE E. CRUMP, III
POB 1523
ROCKINGHAM, NC 28379
910-997-5544
Fax: 910-895-8006
Email: crumplawoffice@yahoo.com
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment*

Pending Counts

18:922(g)(1) and 924(a)(2) Felon in possession of a firearm
(2)

Disposition

Ninety-four (94) months imprisonment, three (3) years supervised release, \$100 special assessment

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

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https://ecf.ncmd.uscourts.gov/cgi-bin/DktRpt.pl?122551351403591-L_1_0-1

Plaintiff

USA

represented by **KYLE D. POUSSON**

U. S. ATTORNEY'S OFFICE
 101 S. EDGEWORTH ST., 4TH FLOOR
 GREENSBORO, NC 27401
 336-333-5351
 Fax: 336-333-5381
 Email: kyle.pousson@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: United States Attorney

Date Filed	#	Docket Text
09/24/2018	4	SUPERSEDING INDICTMENT as to JOSHUA KENNETH ESPINOZA (1) count(s) 1s, TERRILL BERNARD WEATHERSPOON (2) count(s) 2. (Daniel, J) (Entered: 09/25/2018)
09/25/2018	6	ARREST Warrant Issued in case as to TERRILL BERNARD WEATHERSPOON (2). (Daniel, J) (Entered: 09/25/2018)
10/01/2018		Attorney update in case as to TERRILL BERNARD WEATHERSPOON. Attorney GEORGE ENTWISTLE CRUMP, III for TERRILL BERNARD WEATHERSPOON added pending review of Financial Affidavit. (O'Doherty, Sinead) (Entered: 10/01/2018)
10/03/2018	7	PETITION for Writ of Habeas Corpus ad prosequendum by USA as to TERRILL BERNARD WEATHERSPOON. (POUSSON, KYLE) (Entered: 10/03/2018)
10/04/2018	8	ORDER granting 7 Motion for Writ of Habeas Corpus ad prosequendum as to TERRILL BERNARD WEATHERSPOON (2). Writ issued for Arraignment on 10/5/2018 at 9:30 a.m. in Winston-Salem. Signed by MAG/JUDGE L. PATRICK AULD on 10/4/2018. (Sheets, Jamie) (Entered: 10/04/2018)
10/05/2018		Minute Entry for proceedings held before JUDGE LORETTA C. BIGGS:Arraignment as to TERRILL BERNARD WEATHERSPOON as to Count 2 held on 10/5/2018. Defendant enters plea of NOT GUILTY as to all charges. AUSA Randall Galyon present on behalf of the Government. Attorney George Crump, III present on behalf of the Defendant. (Court Reporter Lori Russell.) (Blay, Debbie) (Entered: 10/05/2018)
10/05/2018	11	SCHEDULING ORDER as to TERRILL BERNARD WEATHERSPOON Signed by John S. Brubaker, Clerk, U. S. District Court.Motions shall be filed on or before 10/10/2018, and responses shall be filed on or before 10/17/2018. The defendant is ordered to appear for hearing on any motions at 9:30 a.m., 11/5/2018, in Winston-Salem, NC. If the need for a hearing shall become moot, the Defendant shall notify the Court in writing and any hearing shall be considered canceled. Plea agreements due 12:00 noon, 11/1/2018 unless otherwise instructed by the Court. Change of Plea hearing set at 9:30 a.m. on 11/5/2018, in Winston-Salem, NC, unless otherwise ordered by the Court. Counsel are instructed to notify the U.S. Attorneys Office of any scheduling conflicts no later than Monday, 10/29/2018. Jury Trial set at 9:30 a.m. on 11/13/2018, in Winston-Salem, NC, unless otherwise ordered by the Court. (Blay, Debbie) (Entered: 10/05/2018)

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10/05/2018	12	SEALED FINANCIAL AFFIDAVIT by TERRILL BERNARD WEATHERSPOON. (Sheets, Jamie) (Entered: 10/05/2018)
10/05/2018	13	ORDER appointing CJA Panel Attorney GEORGE E. CRUMP, III for TERRILL BERNARD WEATHERSPOON as of October 1, 2018. Signed by MAG/JUDGE L. PATRICK AULD on 10/5/2018. (Sheets, Jamie) (Entered: 10/05/2018)
10/09/2018	17	Arrest Warrant Returned Executed on 10/5/2018 in case as to TERRILL BERNARD WEATHERSPOON. (Sheets, Jamie) (Entered: 10/10/2018)
10/16/2018	20	Writ of Habeas Corpus ad Prosequendum Returned Executed as to TERRILL BERNARD WEATHERSPOON on 10/5/2018. (Sheets, Jamie) (Entered: 10/16/2018)
10/30/2018	22	Factual Basis Document as to JOSHUA KENNETH ESPINOZA, TERRILL BERNARD WEATHERSPOON filed on 10/30/2018 (POUSSON, KYLE) (Entered: 10/30/2018)
10/31/2018	24	MOTION to Suppress by TERRILL BERNARD WEATHERSPOON. Response to Motion due by 11/7/2018 (CRUMP, GEORGE) (Entered: 10/31/2018)
10/31/2018	25	MEMORANDUM by TERRILL BERNARD WEATHERSPOON (CRUMP, GEORGE) (Entered: 10/31/2018)
11/07/2018	28	RESPONSE to Motion filed by USA as to TERRILL BERNARD WEATHERSPOON re 24 MOTION to Suppress Replies due by 11/21/2018 (POUSSON, KYLE) (Entered: 11/07/2018)
11/08/2018	29	PETITION for Writ of Habeas Corpus ad prosequendum by USA as to TERRILL BERNARD WEATHERSPOON. (POUSSON, KYLE) (Entered: 11/08/2018)
11/09/2018	30	ORDER granting 29 Motion for Writ of Habeas Corpus ad prosequendum as to TERRILL BERNARD WEATHERSPOON (2). Writ issued for Motion Hearing on 11/13/2018 at 2:00 p.m. in Winston-Salem. Signed by MAG/JUDGE L. PATRICK AULD on 11/9/2018. (Sheets, Jamie) (Entered: 11/09/2018)
11/13/2018	31	Minute Entry for proceedings held before CHIEF JUDGE THOMAS D. SCHROEDER in WS-2: Motion Hearing held on 11/13/2018 regarding 24 MOTION to Suppress filed by TERRILL BERNARD WEATHERSPOON. AUSA Kyle Pousson present for the Government. Attorney George Crump present for the defendant. Defendant present in custody. Evidence presented (See Witness and Exhibit List). Matter taken under advisement. (Court Reporter Briana Bell.) (Engle, Anita) (Entered: 11/13/2018)
11/15/2018	32	PETITION for Writ of Habeas Corpus ad prosequendum by USA as to TERRILL BERNARD WEATHERSPOON. (POUSSON, KYLE) (Entered: 11/15/2018)
11/15/2018	33	ORDER granting 32 Motion for Writ of Habeas Corpus ad prosequendum as to TERRILL BERNARD WEATHERSPOON (2). Writ issued for Motion Hearing on 11/16/2018 at 2:00 p.m. in Winston-Salem. Signed by MAG/JUDGE L. PATRICK AULD on 11/15/2018. (Sheets, Jamie) (Entered: 11/15/2018)
11/16/2018	34	Writ of Habeas Corpus ad Prosequendum Returned Executed as to TERRILL BERNARD WEATHERSPOON on 11/13/2018. (Sheets, Jamie) (Entered: 11/16/2018)
11/16/2018		Minute Entry for proceedings held before CHIEF JUDGE THOMAS D. SCHROEDER in WS-2: Motion Hearing as to TERRILL BERNARD WEATHERSPOON held on 11/16/2018. AUSA Kyle Pousson present for the Government. Attorney George

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		Crump, III present for the defendant. Defendant present in custody. For the reasons stated from the bench, 24 MOTION to Suppress filed by TERRILL BERNARD WEATHERSPOON is DENIED. Judge Schroeder retains jurisdiction of case. (Court Reporter Briana Bell.) (Engle, Anita) (Entered: 11/16/2018)
11/16/2018		Case as to TERRILL BERNARD WEATHERSPOON Reassigned to CHIEF JUDGE THOMAS D. SCHROEDER. UNASSIGNED no longer assigned to the case. (Engle, Anita) (Entered: 11/16/2018)
11/16/2018	35	Exhibit Receipts Pursuant to Local Rule 79.4 for Exhibits from Suppression Hearing held 11/13/2018. (Engle, Anita) (Entered: 11/16/2018)
11/16/2018	36	PLEA AGREEMENT as to TERRILL BERNARD WEATHERSPOON. (Engle, Anita) (Entered: 11/16/2018)
11/16/2018		ORAL ORDER issued by CHIEF JUDGE THOMAS D. SCHROEDER on 11/16/2018. 24 Motion to Suppress as to TERRILL BERNARD WEATHERSPOON (2) DENIED.(Engle, Anita) (Entered: 11/16/2018)
11/16/2018		Minute Entry for proceedings held before CHIEF JUDGE THOMAS D. SCHROEDER in WS-2: CHANGE OF PLEA HEARING held on 11/16/2018. AUSA Kyle Pousson present for the Government. Attorney George Crump, III present for the defendant. Defendant present in custody. Defendant placed under oath and advised of rights/charges/penalties. Court reviews the plea agreement. TERRILL BERNARD WEATHERSPOON (2) pleads GUILTY to Count 2. Court finds the Defendant is competent to enter a guilty plea. Court accepts plea and defendant ADJUDGED GUILTY of Count 2. Court orders the preparation of a Presentence Report. Sentencing set for 4/17/2019 at 09:30 AM in Winston-Salem Courtroom #2 before CHIEF JUDGE THOMAS D. SCHROEDER. (Court Reporter Briana Bell.) (Engle, Anita) (Entered: 11/16/2018)
11/27/2018	37	Writ of Habeas Corpus ad Prosequendum Returned Executed as to TERRILL BERNARD WEATHERSPOON on 11/16/2018. (Sheets, Jamie) (Entered: 11/27/2018)
02/26/2019	50	SEALED Draft Presentence Investigation Report as to TERRILL BERNARD WEATHERSPOON. Per LCrR32.2, the parties shall notify the probation officer of initial objections or corrections/modifications to the presentence report by 3/12/2019. Pleadings related to sentencing factors are due by 3/19/2019. (Bailey, Jeanne) (Entered: 02/26/2019)
03/08/2019	53	SEALED Response to Draft PSR - NOTICE TO PROBATION AND OPPOSING COUNSEL ONLY as to TERRILL BERNARD WEATHERSPOON. (CRUMP, GEORGE) (Entered: 03/08/2019)
03/26/2019	54	(SEALED) POSITION PAPER RE SENTENCING FACTORS - NOTICE TO THE COURT AND OPPOSING COUNSEL ONLY as to TERRILL BERNARD WEATHERSPOON (CRUMP, GEORGE) (Entered: 03/26/2019)
04/03/2019	55	SEALED PRESENTENCE INVESTIGATION REPORT - FINAL as to TERRILL BERNARD WEATHERSPOON. (King, Alison) (Entered: 04/03/2019)
04/11/2019	56	(SEALED) POSITION PAPER RE SENTENCING FACTORS - NOTICE TO THE COURT AND OPPOSING COUNSEL ONLY as to TERRILL BERNARD WEATHERSPOON (CRUMP, GEORGE) (Entered: 04/11/2019)

04/16/2019	57	PETITION for Writ of Habeas Corpus ad prosequendum by USA as to TERRILL BERNARD WEATHERSPOON. (POUSSON, KYLE) (Entered: 04/16/2019)
04/16/2019	58	ORDER granting 57 Motion for Writ of Habeas Corpus ad prosequendum as to TERRILL BERNARD WEATHERSPOON. Writ issued for Sentencing on 4/17/2019 at 9:30 a.m. in Winston-Salem. Signed by MAG/JUDGE L. PATRICK AULD on 4/16/2019. (Sheets, Jamie) (Entered: 04/16/2019)
04/17/2019		Minute Entry for proceedings held before CHIEF JUDGE THOMAS D. SCHROEDER in WS-2: Sentencing as to TERRILL BERNARD WEATHERSPOON held on 4/17/2019 on Count 2. AUSA Kyle Pousson present for the Government. Attorney George Crump present for the defenant. Defendant present in custody. Defendant remanded to the custody of USMS. (Court Reporter Briana Bell.) (Engle, Anita) (Entered: 04/17/2019)
04/25/2019	59	Writ of Habeas Corpus ad Prosequendum Returned Executed as to TERRILL BERNARD WEATHERSPOON on 4/17/2019. (Sheets, Jamie) (Entered: 04/25/2019)
05/02/2019	60	JUDGMENT as to TERRILL BERNARD WEATHERSPOON (2), Count(s) 2, Ninety-four (94) months imprisonment, three (3) years supervised release, \$100 special assessment. Signed by CHIEF JUDGE THOMAS D. SCHROEDER on 5/1/2019. (Sheets, Jamie) (Entered: 05/02/2019)
05/02/2019	61	SEALED Statement of Reasons as to TERRILL BERNARD WEATHERSPOON. (Sheets, Jamie) (Entered: 05/02/2019)
05/07/2019	62	NOTICE OF APPEAL without payment of fees by TERRILL BERNARD WEATHERSPOON (CRUMP, GEORGE) (Entered: 05/07/2019)
05/07/2019	63	Electronic Transmission of Notice of Appeal and Docket Sheet as to TERRILL BERNARD WEATHERSPOON to US Court of Appeals re 62 Notice of Appeal Without Fee Payment. (Sheets, Jamie) (Entered: 05/07/2019)
05/08/2019	64	NOTICE of Docketing Record on Appeal from USCA as to TERRILL BERNARD WEATHERSPOON re 62 Notice of Appeal Without Fee Payment filed by TERRILL BERNARD WEATHERSPOON. USCA Case Manager: Jeffrey S. Neal. USCA Case Number 19-4324. (Sheets, Jamie) (Entered: 05/08/2019)
05/08/2019	65	USCA ORDER as to TERRILL BERNARD WEATHERSPOON. The court appoints George Entwistle Crump, III to represent Terrill Bernard Weatherspoon. 19-4324. (Sheets, Jamie) (Entered: 05/08/2019)
05/21/2019	66	CJA 20 as to TERRILL BERNARD WEATHERSPOON: Authorization to Pay GEORGE E. CRUMP, III. Amount: \$ 7,779.09, Voucher # 0418.0823566. Signed by CHIEF JUDGE THOMAS D. SCHROEDER on 5/2/2019. (Sheets, Jamie) (Entered: 05/21/2019)
06/27/2019	67	TRANSCRIPT filed as to TERRILL BERNARD WEATHERSPOON for dates of 11/13/2018, before Judge Thomas D. Schroeder, re 31 Motion Hearing, Court Reporter Briana L. Bell, Telephone number 336-734-2514. Email: brinesbit@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. <P> NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice

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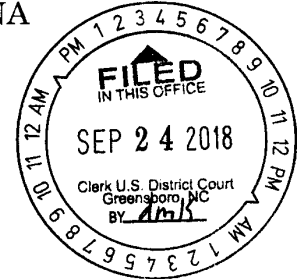
https://ecf.ncmd.uscourts.gov/cgi-bin/DktRpt.pl?122551351403591-L_1_0-1

		<p>is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</p> <p>Does this satisfy all appellate orders for this reporter? n Redaction Request due 7/22/2019. Redacted Transcript Deadline set for 8/1/2019. Release of Transcript Restriction set for 9/30/2019. (Bell, Briana) (Entered: 06/27/2019)</p>
06/27/2019	68	<p>TRANSCRIPT filed as to TERRILL BERNARD WEATHERSPOON for dates of 11/16/2018, before Judge Thomas D. Schroeder, re Motion Hearing, Court Reporter Briana L. Bell, Telephone number 336-734-2514. Email: brinesbit@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. <P>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</P> Does this satisfy all appellate orders for this reporter? n Redaction Request due 7/22/2019. Redacted Transcript Deadline set for 8/1/2019. Release of Transcript Restriction set for 9/30/2019. (Bell, Briana) (Entered: 06/27/2019)</p>
06/27/2019	69	<p>TRANSCRIPT filed as to TERRILL BERNARD WEATHERSPOON for dates of 04/17/2019, before Judge Thomas D. Schroeder, re Sentencing, Court Reporter Briana L. Bell, Telephone number 336-734-2514. Email: brinesbit@gmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. <P>NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER.</P> Does this satisfy all appellate orders for this reporter? y Redaction Request due 7/22/2019. Redacted Transcript Deadline set for 8/1/2019. Release of Transcript Restriction set for 9/30/2019. (Bell, Briana) (Entered: 06/27/2019)</p>

PACER Service Center			
Transaction Receipt			
07/12/2019 13:07:00			
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Description:	Docket Report	Search Criteria:	1:18-cr-00333-TDS
Billable Pages:	5	Cost:	0.50

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA : SUPERSEDING
: :
v. : :
: :
JOSHUA KENNETH ESPINOZA : 1:18CR333-1
TERRILL BERNARD : 1:18CR333-2
WEATHERSPOON :



The Grand Jury charges:

COUNT ONE

On or about July 18, 2018, in the County of Durham, in the Middle District of North Carolina, JOSHUA KENNETH ESPINOZA, having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in commerce and affecting commerce a firearm, that is, a Taurus 9mm handgun; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

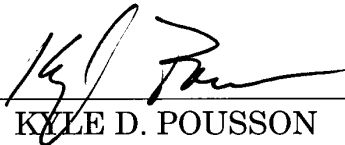
COUNT TWO

On or about July 18, 2018, in the County of Durham, in the Middle District of North Carolina, TERRILL BERNARD WEATHERSPOON, having been convicted of a crime punishable by imprisonment for a term exceeding one year, knowingly did possess in commerce and affecting commerce a

firearm, that is, a Ruger .40 caliber handgun; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

DATED: September 24, 2018

MATTHEW G.T. MARTIN
United States Attorney


BY: KYLE D. POUSSON
Assistant United States Attorney

A TRUE BILL:

FOREPERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
 :
 v. :
 :
 :
 JOSHUA KENNETH ESPINOZA : 1:18CR333-1
 TERRILL BERNARD : 1:18CR333-2
 WEATHERSPOON :

FACTUAL BASIS

NOW COMES the United States of America, by Matthew G.T. Martin, United States Attorney for the Middle District of North Carolina, through the undersigned Assistant United States Attorney, and as a factual basis under Rule 11, Fed. R. Crim. P., states as follows:

On July 18, 2018, members of an FBI task force were conducting surveillance on the Days Inn located at 3460 Hillsborough Road in Durham, in an attempt to locate the defendant, Joshua Kenneth Espinoza, who had outstanding warrants. As a result of a state court order, officers had information from the phone company that Espinoza’s cell phone was in the area.

Officers observed Espinoza with the defendant, Terrill Bernard Weatherspoon, and another individual leaving one of the rooms and walking towards a car in the parking lot. Espinoza was carrying a paper bag in one hand. Officers confronted the three individuals. Espinoza dropped the bag and

fled on foot. Several officers gave chase. One officer stayed with Weatherspoon and the other individual. For safety, this officer asked if Weatherspoon or the other individual had guns. Weatherspoon responded that he had a gun. Officers subsequently recovered a Ruger .40 caliber handgun from Weatherspoon's hip.

The officers who were chasing Espinoza saw him holding a handgun at his waistband as he ran. These same officers observed Espinoza throw the gun into a trash can. Espinoza hid in a nearby garage, where he was taken into custody. Officers recovered the Taurus 9mm handgun Espinoza had thrown into the trash can. Officers also found an extended magazine containing 20 rounds of 9mm ammunition in the paper bag Espinoza dropped.

Espinoza was Mirandized and chose to make a statement. He admitted to being a Rolling 30's Crip. He told officers, "I threw the gun in that trash can so you guys didn't kill me." He claimed that he had the gun because someone had shot at him.

At the time of the instant offense, Espinoza had previously been convicted on January 28, 2005, in the Superior Court of Durham County of the felony offense of possession of a firearm by a convicted felon, for which he faced a possible sentence in excess of one year.

At the time of the instant offense Weatherspoon had previously been convicted on December 23, 2014, in Clark County, Nevada, of the felony offense

of assault with a deadly weapon, for which he received a sentence of seventy-two months.

As part of their investigation, officers determined that both the Taurus 9mm handgun possessed by Espinoza and the Ruger .40 caliber handgun possessed by Weatherspoon were firearms that had been manufactured outside of the State of North Carolina.

This, the 30th day of October, 2018.

Respectfully submitted,

MATTHEW G.T. MARTIN
United States Attorney

/s/ KYLE D. POUSSON
Assistant United States Attorney
NCSB #: 38437
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401
Phone: (336) 333-5351
E-mail: kyle.pousson@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
 :
 v. :
 :
 :
 JOSHUA KENNETH ESPINOZA : 1:18CR333-1
 TERRILL BERNARD : 1:18CR333-2
 WEATHERSPOON :

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Ames C. Chamberlin, Esq., and George E. Crump, III, Esq.

/s/ KYLE D. POUSSON
Assistant United States Attorney
NCSB #: 38437
United States Attorney's Office
Middle District of North Carolina
101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401
Phone: (336) 333-5351
E-mail: kyle.pousson@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
 v.) 1:18CR333-2
)
TERRILL BERNARD WEATHERSPOON)

DEFENDANT’S MOTION TO SUPPRESS EVIDENCE

SEIZED DURING POLICE DETENTION

The defendant, by and through counsel, herein makes the following motion to suppress evidence seized during a police detention and, based on information and belief, states and alleges:

1. Police officer T.K. Berry, Mebane Police Officer, applied for a search warrant of a cell phone on or about July 18, 2018.

2. Officer Berry stated in his application for a search warrant that:

a. On June 15, 2018 Mebane Police Officer responded to a breaking and entering at Ashley Jewelry, 130 Milstead Drive, Mebane, NC.

b. Four subjects were involved in the breaking or entering. Two subjects, Miecha Bryant and Joaquin Flores, were apprehended.

c. A cell phone that was seized was searched pursuant to a search warrant signed by the Judge Allen, North Carolina Superior Court Judge, on June 27, 2018.

d. The cell phone search indicated communication either before, during, and after the breaking and entering with a cell phone number connected to Joshua Kenneth Espinoza.

e. Joshua Kenneth Espinoza is known to associate with Miecha Bryant and has family relations with Joaquin Flores.

3. On July 18, 2018 TFO Heinrick requested TFO Thomas to conduct surveillance on the Days Inn located at 3460 Hillsborough Road, Durham, North Carolina.

4. Location data indicated that Joshua Espinoza was on the backside of the Days Inn.

5. Law enforcement investigators observed on July 18, 2018 at 1045 (10:45 a.m.) Espinoza and two males walk out of a hotel room (room 244) on the second floor of the Days Inn and walk to the first floor.

6. Joshua Espinoza had an active warrant out of Durham Count for DWI according to an affidavit for a search warrant of room 244, Days Inn, 3460 Hillsborough Road, Durham, NC by TFO T.S. Thomas, Durham Police Department.

7. Espinoza was carrying a brown paper bag.

8. Investigators pulled up to the subjects and attempted to take Espinoza into custody.

9. Espinoza dropped the brown bag, which contained an extended magazine, and ran. Espinoza was seen with a gun. Espinoza was arrested shortly thereafter a few blocks away. Espinoza had keys in his possession to a Gray Honda Accord, parked at the motel.

10. The two other subjects, Terrill Weatherspoon and Nigel Hemby, were detained by S.A. Maria Jocys' after Espinoza dropped the brown bag and fled on foot.

11. Terrill Weatherspoon and Nigel Hemby dropped the items in their hands and complied with S.A. Jocys' command to keep their hands raised and sit down.

12. S.A. Jocys' asked Weatherspoon and Hemby "who had a gun".

13. Terrill Weatherspoon responded "I do".

14. S.A. Jessup arrived and assisted S.A. Jocys. S.A. Jessup removed from Weatherspoon's left hip the handgun, identified as a Ruger 40 Caliber handgun. The handgun had 10 rounds of ammunition in a magazine and 1 round in the chamber.

15. Motel management notified officers that a second subject threw a hand gun in a laundry basket. S.A. Jessup recovered a pistol from a laundry basket and a magazine.

16. Law enforcement officers, particularly S.A. Jocys and S.A. Jessup, lacked a reasonable suspicion at 10:45 a.m. on July 18, 2018 that Terrill Weatherspoon was engaged in criminal

activity when he was walking from the Days Inn motel room down to the first floor.

17. The detention of Terrill Weatherspoon by law enforcement officers at approximately 10:45 a.m. on July 18, 2018, particularly by officers S.A. Jocys and S.A. Jessup, was a seizure of his person, protected by the United States Constitution, Fourth Amendment.

18. The demand by S.A. Jessup "who had a gun" and the seizure by S.A. Jessup of a handgun from Terrill Weatherspoon was a search and seizure, protected by the United States Constitution, Fourth Amendment.

19. The seizure of the person of Terrill Weatherspoon and the search of Terrill Weatherspoon and the seizure of a handgun from Terrill Weatherspoon on July 18, 2018 at approximately 10:45 a.m. by law enforcement, particularly by S.A. Jocys and S.A. Jessup, were in violation of Terrill Weatherspoon's right to be free from unreasonable searches and seizures under the United States Constitution, Fourth Amendment.

Now Therefore, the defendant, by and through counsel, moves that this Honorable Court:

1. Find that the seizure of the person of Terrill Weatherspoon and the search of Terrill Weatherspoon and the seizure of a handgun, a Ruger .40 caliber handgun, and any ammunition from Terrill Weatherspoon by law enforcement on July

18, 2018 at approximately 10:45 a.m. were in violation of Terrill Weatherspoon's right to be free from unreasonable searches and seizures under the United States Constitution, Fourth Amendment, and

2. Suppress the handgun, a Ruger .40 caliber handgun, and any ammunition seized from Terrill Weatherspoon on July 18, 2018 from the government's case against Terrill Weatherspoon, and suppress the statement of Terrill Weatherspoon to S.A. Jocys "I do."

3. Allow the late filing of the motion.

Respectfully submitted this the 31st day of October, 2018.

/s/ George E. Crump, III
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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kyle D. Pousson
Assistant United States Attorney
United States Attorney's Office
101 S. Edgeworth Street
Greensboro, NC 27401

Respectfully submitted, October 31, 2018.

/s/ GEORGE E. CRUMP, III
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) CASE NO. 1:18CR333-2
4)
4 vs.)
5) Winston-Salem, North Carolina
5 TERRILL BERNARD WEATHERSPOON) November 13, 2018
6 _____) 2:57 p.m.

7
8 TRANSCRIPT OF THE **MOTION TO SUPPRESS HEARING**
9 BEFORE THE HONORABLE THOMAS D. SCHROEDER
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: KYLE D. POUSSON, AUSA
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17
18 Court Reporter: BRIANA L. BELL, RPR
19 Official Court Reporter
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Winston-Salem, North Carolina 27120

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24
25 Proceedings recorded by mechanical stenotype reporter.
Transcript produced by computer-aided transcription.

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P R O C E E D I N G S

1
2 **MR. POUSSON:** Your Honor, if it should please the
3 Court, the Government would ask to call next United States
4 versus Terrill Bernard Weatherspoon. This is 1:18CR333-2.
5 Mr. Weatherspoon is present in custody. He's represented by
6 Mr. Crump. The matter is calendared for a hearing on a motion
7 to suppress.

8 (The Defendant entered the courtroom.)

9 **THE COURT:** Mr. Crump, good afternoon, sir.

10 **MR. CRUMP:** Good afternoon, Your Honor.

11 **THE COURT:** Mr. Weatherspoon, good afternoon.

12 **THE DEFENDANT:** Good afternoon, sir.

13 **THE COURT:** Are you ready to proceed?

14 **MR. CRUMP:** Yes, Your Honor.

15 **THE COURT:** I've read the briefs on the motion to
16 suppress. I presume the Government has witnesses?

17 **MR. POUSSON:** Yes, Your Honor.

18 **THE COURT:** All right. Does anybody want to be heard
19 before the witnesses are presented?

20 **MR. CRUMP:** No, Your Honor.

21 **THE COURT:** All right. You may call your witnesses.

22 **MR. POUSSON:** Your Honor, the Government would ask to
23 call Maria Jocys to the stand.

24 **FBI SPECIAL AGENT MARIA JOCYS, GOVERNMENT'S WITNESS, being**
25 first duly sworn, testified as follows, at 2:59 p.m.:

Direct -- SpAgt Jocys

4

1 DIRECT EXAMINATION

2 **BY MR. POUSSON**3 Q Once you get settled, if you could please state and spell
4 your name for the Court.

5 A My name is Maria Jocys, M-A-R-I-A J-O-C-Y-S.

6 Q And how are you employed?

7 A As a special agent with the Federal Bureau of
8 Investigation.

9 Q How long have you been a member of law enforcement?

10 A Twenty-nine years.

11 Q And were you working on July 18 of this year?

12 A Yes, I was.

13 Q On that day, did your duties bring you to the Days Inn on
14 Hillsborough Road in Durham?

15 A Yes, sir.

16 Q Why were you there?

17 A We had received information from the Mebane Police
18 Department that they had had a burglary of a jewelry store and
19 that they had developed a suspect by the name of Joshua
20 Espinoza. They believed that they had located him at the Days
21 Inn, and they requested our assistance in locating and
22 confirming he was there.23 Q Prior to traveling to the Days Inn, did you check to see
24 whether Mr. Espinoza had any warrants -- outstanding warrants?

25 A Yes, we did.

Direct -- SpAgt Jocys

5

1 Q And did Mr. Espinoza have any outstanding arrest warrants
2 on that day?

3 A He did.

4 Q On that day, were you working alone, or were you with a
5 group of other law enforcement officers?

6 A With a group of others.

7 Q And how many other officers were with you that day?

8 A Approximately six or seven.

9 Q Before traveling to the location, did all of you get
10 together and perform any sort of briefing about what you were
11 going to do that day?

12 A We did.

13 Q And in -- at that briefing, did you discuss Mr. Espinoza?

14 A We did.

15 Q What did you know about Mr. Espinoza going into your
16 interactions with him on that day?

17 A A search of law enforcement databases and information
18 provided by the Durham Police Department was that Mr. Espinoza
19 was a violent gang member well known to the Durham Police
20 Department, that he had a violent criminal history, which
21 included arrest for assault with a deadly weapon with intent to
22 kill, discharging a firearm into an occupied property, a number
23 of arrests for felon in possession of a firearm, and an arrest
24 for robbery with a dangerous weapon.

25 Q Did you also discuss the burglary that he was a suspect

Direct -- SpAgt Jocys

6

1 in?

2 A Yes, we did.

3 Q And from that discussion, did you know whether or not he
4 acted -- was suspected of acting alone or with others during
5 that burglary?

6 A With others.

7 Q Was this the only burglary -- the only crime that
8 Mr. Espinoza was a suspect in at the time of your interaction?

9 A No, sir.

10 Q And what else did you know him to be a suspect in?

11 A We were informed by the Durham Police Department that
12 there had been a shootout at a gas station close to Downtown
13 Durham in which a number of different individuals were
14 involved, over 70 shell casings had been recovered from the
15 shooting, and that Mr. Espinoza was identified as one of the
16 suspects.

17 Q And in your search of police databases prior to
18 interacting with Mr. Espinoza, do any of those databases
19 indicate to you whether or not he had been known to carry
20 weapons in the past?

21 A Yes, sir.

22 Q And what did you learn about that -- whether or not he
23 could carry weapons in the past?

24 A That he was a convicted felon and that he had been charged
25 and arrested previously for felon in possession of firearms.

Direct -- SpAgt Jocys

7

1 Q Once you arrived at the Days Inn, what steps did you take
2 to encounter Mr. Espinoza?

3 A Myself and another member of our team, Task Force Officer
4 Scott Newton, were in a vehicle riding together, and we set up
5 on the side of the hotel that we believed Mr. Espinoza could
6 possibly be located, and we began to conduct physical
7 surveillance.

8 Q And where were the other members of the team that you were
9 working with that day?

10 A Close in proximity to us. Well, there was another two-man
11 team, and then there was a two-man team that went to the front
12 desk.

13 Q Did you encounter Mr. Espinoza that day?

14 A Yes, sir.

15 Q And how did he come to your attention?

16 A While we were conducting the physical surveillance, we saw
17 Mr. Espinoza and two other individuals exit out of one of the
18 hotel rooms on the second floor. It's an exterior walkway. We
19 saw them walking. They came down the stairwell, which came
20 into almost directly behind us. We had pulled in forward, and
21 at that time we identified -- we confirmed it was Mr. Espinoza
22 with the other two individuals.

23 Q And what steps did you and other members of law
24 enforcement take at that point?

25 A We gave the order to take him into custody, and we began

Direct -- SpAgt Jocys

8

1 to effect the arrest -- attempt to effect an arrest.

2 Q How did Mr. Espinoza react upon the approach of law
3 enforcement?

4 A Mr. Espinoza had items in his hand that he threw down to
5 the ground, and he took off running. He fled.

6 Q And the two individuals that he was with, what did they
7 do?

8 A As one of the team members passed by, one of the
9 individuals, he pushed him down, and that's when I made the
10 approach and told them to both get on the ground, sit on the
11 ground, and put their hands up.

12 Q Did members of your team follow after Mr. Espinoza?

13 A They did.

14 Q And did you also follow after Mr. Espinoza?

15 A No, I did not.

16 **THE COURT:** Let me interrupt. I'm sorry. Let me
17 make sure I understood what you said.

18 Can you tell me who pushed whom down?

19 **THE WITNESS:** One of the officers -- one of the team
20 members -- one of my -- another agent working with me that day,
21 who was chasing after Mr. Espinoza, pushed one of the -- the
22 two other individuals down to like push him down to sit down.

23 **THE COURT:** Thank you.

24 **BY MR. POUSSON**

25 Q And were those two individuals that were with Mr. Espinoza

Direct -- SpAgt Jocys

9

1 later identified?

2 A Yes, they were.

3 Q And who were the two individuals that were with
4 Mr. Espinoza that day?

5 A Nigel Hemby and Terrill Weatherspoon.

6 Q And the individual that one of the agents pushed to a
7 seated position, was that Mr. Hemby or Mr. Weatherspoon?

8 A Mr. Hemby.

9 Q Did you chase after Mr. Espinoza?

10 A No, sir, I did not.

11 Q What did you do?

12 A I stayed and maintained control over Mr. Weatherspoon and
13 Mr. Hemby.

14 Q Did other agents chase after Mr. Espinoza?

15 A Yes, they did.

16 Q And once those other agents went after Mr. Espinoza, how
17 many agents were left with you and Mr. Hemby and
18 Mr. Weatherspoon?

19 A None. I was by myself.

20 Q Did you ask any questions or give any commands to
21 Mr. Weatherspoon and Mr. Hemby?

22 A I did.

23 Q What did you say?

24 A Commands that I gave them is to keep their hands up, and
25 then I asked did anyone -- I asked who had a gun.

Direct -- SpAgt Jocys

10

1 Q And did Mr. Weatherspoon respond to that question?

2 A He did.

3 Q And what he say?

4 A "I do."

5 Q At some point, did other law enforcement officers arrive?

6 A They did.

7 Q And was Mr. Weatherspoon subsequently detained in
8 handcuffs?

9 A Yes, he was.

10 Q And was he frisked for weapons?

11 A Yes, sir.

12 Q And were any weapons recovered?

13 A Yes.

14 Q What was found?

15 A There was a handgun on his left hip that had been
16 concealed by his shirt.

17 Q At the time that you asked Mr. Weatherspoon and Mr. Hemby
18 whether or not they had any weapons, had Mr. Espinoza already
19 been taken into custody?

20 A No, he had not.

21 Q And where was he and the rest of your team in relation to
22 the two individuals you were with?

23 A They had lost sight of him, and they had called for a K-9
24 to help track to find him.

25 Q Later, did you and other members of law enforcement reach

Direct -- SpAgt Jocys

11

1 out to the hotel to determine whether or not they had any
2 surveillance cameras at the hotel?

3 A Yes, sir.

4 Q And were you able to determine whether or not there were
5 cameras?

6 A Yes, sir.

7 Q Were there cameras?

8 A There were.

9 Q And did those cameras capture any portion of the events
10 you've just described to us?

11 A They did.

12 Q Were you able to obtain copies of this footage?

13 A Yes, sir.

14 Q And did you put that footage onto a disk and provide it to
15 the Government as part of discovery in this case?

16 A Yes, sir.

17 **MR. POUSSON:** Your Honor, permission to approach the
18 witness?

19 **THE COURT:** Yes.

20 **BY MR. POUSSON**

21 Q I've handed you what's been marked for identification as
22 Government's Exhibit 1. Do you recognize this item?

23 A I do.

24 Q And what is it?

25 A It's a DVD that contains the videos from the Days Inn.

Direct -- SpAgt Jocys

12

1 Q And have you had occasion to review that footage prior to
2 your testimony here today?

3 A I have.

4 Q And does the footage on that disk depict -- fairly and
5 accurately depict portions of the events that you've described
6 here today?

7 A It does.

8 **MR. POUSSON:** Your Honor, I move to introduce
9 Government's 1 into evidence.

10 **THE COURT:** Admitted.

11 **MR. POUSSON:** Your Honor, if I could ask that the
12 monitors be turned on, I'd ask to play a portion of that video
13 to the Court.

14 **THE COURT:** Does it have sound or not?

15 **MR. POUSSON:** It does not, Your Honor.

16 **THE COURT:** All right. Mr. Crump, have you already
17 seen this?

18 **MR. CRUMP:** Your Honor, I'm unsure. I have seen -- I
19 think these are still photos of the scene but not of the actual
20 arrest.

21 **THE COURT:** All right.

22 **MR. POUSSON:** I can't speak as to whether he's seen
23 it. I do know it's been provided in discovery, Your Honor.

24 **THE COURT:** All right. You may play it.

25 (Exhibit 1 was played.)

1 **BY MR. POUSSON**

2 Q Agent Jocys, looking at the footage here, do we see an
3 individual?

4 A Yes, sir.

5 Q Who is it that we see here in the footage?

6 A Mr. Espinoza.

7 Q And are there -- do you see any vehicles in the parking
8 lot that's depicted?

9 A I do.

10 Q Are any of those vehicles of note?

11 A Yes, they are.

12 Q Could you describe for the Court which vehicles play a
13 portion in this story -- play a part in this story?

14 A The vehicle that is in front of Mr. Espinoza is his
15 vehicle, and there is a -- the pickup truck on the far left is
16 a pickup truck that's from one of our two-man teams.

17 Q Does the video also depict other individuals behind
18 Mr. Espinoza?

19 A It does.

20 Q And who is it that we see in the video here?

21 A It's Mr. Weatherspoon.

22 Q And then this third individual?

23 A Mr. Hemby.

24 Q In relation to the footage that we see here, where would
25 you be in relation to this angle?

Direct -- SpAgt Jocys

14

1 A In looking at the picture, I am to the right of the
2 stair -- at the end of the stair -- railing for the staircase.

3 Q Is there another camera angle that depicts portions of
4 the -- your interactions with Mr. Weatherspoon and Mr. Hemby?

5 A There is.

6 **MR. POUSSON:** If I could switch footage, Your Honor?

7 **BY MR. POUSSON**

8 Q Where would you be in relation to this image?

9 A Standing in front of Mr. Hemby and Mr. Weatherspoon.

10 Q And at what point do you ask the question about whether or
11 not these two individuals are armed?

12 A After Mr. Weatherspoon started to move a little to his
13 left, I asked the question.

14 Q And has that already happened at this point?

15 A No, not that I've seen.

16 Q Do we see other individuals on the footage coming up?

17 A I do.

18 Q And who are these people that are coming up?

19 A They are other members of our law enforcement team.

20 Q Is the footage now depicting Mr. Weatherspoon and
21 Mr. Hemby being taken into custody?

22 A It does.

23 Q Prior to this point, had you already asked the question
24 and received the answer from Mr. Weatherspoon?

25 A I had.

1 **MR. POUSSON:** Your Honor, I believe that's all the
2 video I would ask to show, and I believe those are all the
3 questions that I would have for Agent Jocys.

4 **THE COURT:** Any cross-examination?

5 **MR. CRUMP:** Yes, Your Honor.

6 CROSS-EXAMINATION

7 **BY MR. CRUMP**

8 Q Special Agent Jocys, you testified that there were
9 warrants, plural, for the arrest of Mr. Espinoza? In response
10 to the question, you answered there were warrants with a plural
11 for the arrest of Mr. Espinoza that morning July 18, 2018; is
12 that correct?

13 A Sir, I think I said in response was, yes, there was a
14 warrant.

15 Q A warrant.

16 **MR. CRUMP:** May I approach the witness?

17 **THE COURT:** Yes.

18 **MR. CRUMP:** And also the clerk? May I approach and
19 get Defendant's Exhibit No. 1?

20 **THE COURT:** Yes.

21 **MR. CRUMP:** May I give a copy to the Court?

22 **THE COURT:** Yes, please.

23 **BY MR. CRUMP**

24 Q Special Agent Jocys, I showed you what is designated as
25 affidavit for search warrant, 3460 Hillsborough Road, Room 224,

1 Durham, North Carolina.

2 **THE COURT:** 244.

3 **BY MR. CRUMP**

4 Q 244. Is that what it purports to be?

5 A Yes, sir.

6 Q And this affidavit is by Task Force Officer T.S. Thomas is
7 what it purports to be; is that correct?

8 A Yes, sir.

9 Q And on that same first page, it's dated July 18, 2018; is
10 that correct?

11 A Yes, sir.

12 Q And he was a member of the group of officers there at the
13 Days Inn on that morning; is that correct?

14 A Yes, sir, the task force team.

15 Q And does the typed portion of this -- based on your
16 information and belief, is the typed portion, not the
17 handwritten, but the typed portion that -- does that appear to
18 be correct, just based on your information and belief?

19 A Sir, I haven't had a chance to read this.

20 Q Okay. If you would, would you glance at it.

21 A (Complies.)

22 **THE COURT:** Are you talking about all three pages of
23 it?

24 **MR. CRUMP:** Yes. I'm just going to ask her, though,
25 to focus on paragraph 3 on page 2.

SpAgt Jocys -- Cross

17

1 **THE WITNESS:** Yes, sir.

2 **BY MR. CRUMP**

3 Q And that paragraph indicates, according to his affidavit,
4 that Espinoza had an active warrant out of Durham County for
5 DWI; is that correct?

6 A That's what it says, yes, sir.

7 Q But it doesn't mention any other outstanding warrants; is
8 that correct?

9 A Not in that paragraph, no, sir.

10 Q Okay. Do you have any reason to believe that Officer
11 Thomas was incorrect in what he told the issuing officer for a
12 search warrant or was intentionally incorrect?

13 A No, sir.

14 Q Okay. There might be something minor, but there's nothing
15 intentional based on your information and belief?

16 A That's correct.

17 Q Okay. When the three individuals walked from the second
18 floor stairwell to the first floor, down the stairwell, toward
19 the parking lot, did you observe anything unusual about Terrill
20 Weatherspoon's behavior as he's walking toward the car?

21 A No, sir.

22 Q Okay. And what time of day or night was this?

23 A It was early morning, mid morning.

24 Q Okay. And were you in a -- were you a uniformed
25 officer -- were you in a police officer's uniform on July 18,

1 2018, at the Days Inn?

2 A No, sir.

3 Q Okay. Were any of the officers in a law enforcement
4 uniform?

5 A No, sir.

6 Q Okay. And were any of the officers in marked police cars?

7 A No, sir.

8 Q What identification -- immediately prior to Espinoza
9 running, what identification did either you or any other
10 officers give Espinoza as to your identity and what you were
11 there for?

12 A Well, sir, as you can see on the video, each member,
13 including myself, who you can't see, had markings. We had
14 displayed "POLICE" or "FBI" that were very visible, big
15 letters, and gave the orders, "Police. Put your hands up."

16 Q Okay. That's good. That was my question.

17 Your dress indicated that you were with law enforcement?

18 A That's correct.

19 Q It's very clear?

20 A Yes, sir.

21 Q And did one of the officers indicate to Espinoza that he
22 was under arrest?

23 A Sir, I wasn't present when Mr. Espinoza was arrested
24 because he ran away.

25 Q No, no. Okay. Did one of the officers there at the car,

SpAgt Jocys -- Cross

19

1 the stairwell indicate that Espinoza -- there was an arrest
2 warrant for him that -- for him?

3 A Sir, there wasn't time for that. He almost immediately
4 ran once he saw us approaching him.

5 Q Okay. So Espinoza ran without officers calmly stating,
6 Mr. Espinoza, you're under arrest for? He just ran?

7 A Well, they were yelling at him, "Police. Stop."

8 Q Okay. But he just took off and ran?

9 A That's correct.

10 Q Okay. Mr. Weatherspoon is the next individual of the
11 three? Espinoza was the first to come down the stairwell, then
12 Mr. Weatherspoon, and then Mr. Hemby?

13 A That's correct.

14 Q Okay. One officer pushed down Mr. Hemby on the ground; is
15 that right -- or Hemby?

16 A That's correct.

17 Q Okay. No one pushed Mr. Weatherspoon down?

18 A No, sir. He had made it off the stairs onto more of the
19 pavement of the parking lot.

20 Q Okay. Now, did you or another officer give a command to
21 Mr. Weatherspoon to sit down?

22 A The officer that ran past told him to sit down, and then
23 when I arrived, I told him to sit down and put his hands up.

24 Q You told Mr. Weatherspoon to sit down and put his hands
25 up?

SpAgt Jocys -- Cross

20

1 A Sir, I was telling both of them, sit down, put your hands
2 up.

3 Q Okay. When you said that, Special Agent Jocys, to
4 Mr. Weatherspoon, was he already down?

5 A He was starting to sit down. He was going down.

6 Q He was starting to sit down. Another officer told him to
7 sit down, and then you told him to sit down and raise his
8 hands; is that correct?

9 A Sir, I know when an officer ran past was yelling "Get
10 down."

11 Q Okay. Mr. Weatherspoon immediately complied with the
12 request of either the other officer or you; he sat down and he
13 raised his hands?

14 A That's correct.

15 Q Okay. When Mr. Weatherspoon sat down, did you -- did you
16 or any other officer have an arrest warrant for
17 Mr. Weatherspoon for any offense at that time?

18 A I didn't know who he was.

19 Q Didn't even know who he was?

20 A That's correct.

21 Q So the answer to the question is you did not have an
22 arrest warrant for Mr. Weatherspoon at that time?

23 A Sir, I didn't know who he was, and whether I had -- I
24 didn't know who -- I didn't have his -- him identified yet.

25 Q Therefore, you did not have an arrest warrant for

SpAgt Jocys -- Cross

21

1 Mr. Weatherspoon if you didn't know who he was?

2 A Correct.

3 Q Okay. All right. Mr. Espinoza immediately ran away, and
4 a K-9 dog was sent for Mr. Espinoza; is that correct?

5 A That's correct.

6 Q And you said that you were not present when Mr. Espinoza
7 was actually arrested?

8 A I was with Mr. Hemby and Mr. Weatherspoon.

9 Q Okay. So you were not in the vicinity of Mr. Espinoza at
10 the time of the arrest?

11 A That's correct.

12 Q Okay. Mr. Weatherspoon was not in the vicinity of
13 Mr. Espinoza at the time of Mr. Espinoza's arrest?

14 A No, sir. He was with me.

15 Q Okay. Did you have a -- did you have a gun drawn at the
16 time that Mr. Weatherspoon was instructed to sit down and raise
17 his hands?

18 A I did.

19 Q All the other officers went after Mr. Espinoza?

20 A That's correct.

21 **MR. CRUMP:** Your Honor, that's all the questions that
22 the Defendant has of Special Agent Jocys.

23 **THE COURT:** Any more questions?

24 **MR. POUSSON:** If I could briefly, Your Honor?

25 **THE COURT:** All right.

Redirect -- SpAgt Jocys

22

1 REDIRECT EXAMINATION

2 **BY MR. POUSSON**

3 Q When you started this process of looking for Mr. Espinoza,
4 what, if anything, was this warrant for?

5 A For Mr. Espinoza?

6 Q Yes.

7 A DWI.

8 Q And you also described a suspect -- that him being a
9 suspect in a burglary incident. Do you know whether or not
10 warrants were ever taken out for that -- his involvement in
11 that burglary?

12 A They were while we were effecting the arrest at the hotel.

13 Q And so at the time that Mr. Espinoza was served with his
14 warrants, how many warrants was he served with that day?

15 A I don't know the number. It was more than one.

16 Q And when you talk about being in the vicinity of
17 Mr. Espinoza's arrest, did you see Mr. Espinoza being taken
18 into custody?

19 A No, sir, I wasn't in the vicinity of his arrest.

20 Q And when you say that, what do you mean by that?

21 A He had fled out the back of the hotel across the
22 courtyard, past another hotel, and into the woods.

23 Q And from what you knew when you were standing there with
24 Mr. Weatherspoon and Mr. Hemby, what did you know about where
25 he was at that time?

Recross -- SpAgt Jocys

23

1 A Mr. Espinoza?

2 Q Yes.

3 A That he had gone into the woods.

4 Q And so how far could you see him travel before you lost
5 sight of him?

6 A I was not looking at him. I focused on Mr. Hemby and
7 Mr. Weatherspoon, and I also heard radio traffic once the other
8 officers arrived to assist me.

9 **MR. POUSSON:** Your Honor, I believe those are the
10 only questions I have.

11 **MR. CRUMP:** I have a follow-up question.

12 **THE COURT:** All right.

13 **RECROSS-EXAMINATION**

14 **BY MR. CRUMP**

15 Q Special Agent Jocys, as to the burglary arrest or robbery
16 arrest for Mr. Espinoza, those were processed after this
17 encounter mid-morning at the Days Inn; is that correct?

18 A After he was taken into custody, he was served with those
19 warrants.

20 Q Okay. But those warrants were not present -- to your
21 knowledge, were those arrest warrants for robbery issued prior
22 to 10:30 a.m., October 18, 2018?

23 A Sir, I don't know the answer to that.

24 Q Okay.

25 **THE COURT:** Do you know how much longer it was after

Recross -- SpAgt Jocys

24

1 you had the Defendant and Mr. Hemby on the ground there and
2 Mr. Espinoza ran that it was before Mr. Espinoza was eventually
3 apprehended and arrested?

4 **THE WITNESS:** Sir, it was several minutes before he
5 was actually taken into custody.

6 **THE COURT:** Was there any pause in any of those
7 proceedings, or was that an ongoing effort to arrest him?

8 **THE WITNESS:** It was an ongoing effort. I recall
9 hearing responding officers with sirens from Durham County
10 Sheriff's Office, Durham Police Department coming to assist.

11 **THE COURT:** And during that time, where were you?

12 **THE WITNESS:** I was with Mr. Hemby and
13 Mr. Weatherspoon.

14 **THE COURT:** All right. And was there any other
15 officer with you?

16 **THE WITNESS:** Eventually one came, yes, sir, and
17 assisted me in detaining Mr. Hemby and Mr. Weatherspoon and
18 taking them into custody.

19 **THE COURT:** And you said you asked the two gentlemen,
20 Hemby and Weatherspoon, whether either had a gun; is that
21 right?

22 **THE WITNESS:** Yes, sir, I asked who had a gun.

23 **THE COURT:** And what was the answer?

24 **THE WITNESS:** Mr. Weatherspoon said, "I do."

25 **THE COURT:** So what did you do then?

1 **THE WITNESS:** I told him if he moved, I would kill
2 him.

3 **THE COURT:** You indicated, I think, that there was a
4 handgun on the left hip concealed by a shirt. Who was that?

5 **THE WITNESS:** Mr. Weatherspoon.

6 **THE COURT:** And was that accurate?

7 **THE WITNESS:** Yes, sir, it was. When the other
8 officer came to assist me, he was able to put restraints on
9 Mr. Weatherspoon and pat him down and feel the firearm, and he
10 retrieved it.

11 **THE COURT:** Did you have a firearm trained on the two
12 individuals at the time they were on the ground there waiting?

13 **THE WITNESS:** Yes, sir.

14 **THE COURT:** So when you asked them whether anybody
15 had a gun, did you have your firearm out?

16 **THE WITNESS:** I did, sir, because I -- with
17 Mr. Espinoza's violent history being a gang member, not knowing
18 who these two individuals were other than they were
19 accompanying him, that Mr. Espinoza had recently been in
20 involved in a shootout, I didn't know if they had been
21 involved, yes, sir, for officer safety, out of concern for my
22 safety, I had a firearm on them.

23 **THE COURT:** Is there any reason you asked whether
24 they had a firearm as opposed to patting them down?

25 **THE WITNESS:** If I -- number one, I didn't pat them

1 down because there was only one of me and two of them, and I
2 didn't want to put myself in a position that I could be
3 overtaken by not paying attention to one or the other. Two,
4 while there, Mr. Weatherspoon was kind of against the van, as
5 you can see in the video, kind of slumped like this, and when I
6 first encountered him, he initially started to move towards his
7 left where we eventually found the firearm. So when he started
8 to move, that's when I told him, "Don't move. Keep your hands
9 up."

10 **THE COURT:** All right. Thank you. Any questions in
11 light of my questions?

12 **MR. POUSSON:** No, Your Honor.

13 **MR. CRUMP:** No, Your Honor.

14 **THE COURT:** All right. Thank you, ma'am. You may
15 step down.

16 (At 3:31 p.m., witness excused.)

17 **MR. POUSSON:** That will be the only evidence from the
18 Government, Your Honor.

19 **THE COURT:** All right.

20 **MR. CRUMP:** Your Honor, I move to introduce
21 Defendant's Exhibit No. 1.

22 **THE COURT:** All right. It's admitted.
23 Any evidence other than the exhibit?

24 **MR. CRUMP:** No, Your Honor.

25 **THE COURT:** No testimony? Okay.

1 All right. Let me hear from you as to any argument
2 you want to make. Mr. Pousson, the burden is on the
3 Government.

4 **MR. POUSSON:** Your Honor, I'll be relatively brief in
5 that I think I covered most of what I would want to say in my
6 briefing.

7 From the Government's perspective, this is a straight
8 safety analysis. There's an ongoing valid police activity at
9 the time. There is a valid arrest warrant that's being
10 executed on a known dangerous suspect.

11 I think the case law is relatively clear that had
12 this encounter occurred in a vehicle, the police would have
13 been able to detain everyone involved in the vehicle, and if
14 the encounter occurred in the hotel, that the police would have
15 been able to detain everyone in the hotel room for their safety
16 during those two encounters.

17 And I think the analogy carries that that same
18 analysis and that same safety concern should apply when the
19 Defendant is between the hotel and the car. This is a brief
20 detention. There's no question that the Defendant was detained
21 in this case. He was given orders. He complied, but it is a
22 brief detention, and it's in the very few minutes that it's
23 taking law enforcement to apprehend this wanted suspect that is
24 in the area.

25 And we know police at the time knew that the

1 Defendant was a companion of the wanted person. They knew the
2 wanted person to be dangerous. And, Your Honor, given that the
3 test here seems ultimately to be reasonableness, I would argue
4 that it was eminently reasonable for them to briefly detain
5 these two individuals that they did not know and they weren't
6 sure whether they were a danger while they went about their
7 business of arresting Mr. Espinoza.

8 That the contrast of that would be that it would seem
9 to be unreasonable to ask the officers to rush by these two
10 suspects who may be armed and turn their backs on them while
11 they are chasing Mr. Espinoza and leave them to their own
12 devices. It would open -- to ask the officers to do that would
13 open themselves up to potential danger and attack from these
14 two unknown suspects.

15 For those reasons, I would argue, Your Honor, that
16 the initial detention was justified, and that's all I think
17 need be shown here is a justification for the initial
18 detention, because once that initial detention happens, the
19 Defendant admits he's armed and gives the officers further
20 justification for detaining him long enough to disarm him and
21 to investigate the weapon that he has on him. That's the
22 analysis I would ask the Court to go through.

23 I will also note that there is some relatively on
24 point case law from the Fourth Circuit that's old that goes
25 beyond just simply justifying a detention but justifies not

1 just a detention, but a detention and a frisk, and I think the
2 rationale that the Court gives there, that safety rationale,
3 would further underpin the arguments here today and allow the
4 officers to briefly detain Mr. Weatherspoon long enough to
5 determine whether or not he's a danger.

6 **THE COURT:** All right. Mr. Crump?

7 **MR. CRUMP:** Your Honor, the memorandum of law that we
8 filed -- the defense filed with the Court was based on *Terry v.*
9 *Ohio*. Our analysis would be that the detention of Terrill
10 Weatherspoon is not warranted under *Terry v. Ohio*, that it's
11 10:30 in the morning, broad daylight at a motel, young men are
12 walking from a second floor of a motel room down the stairwell
13 to the first floor toward a parking lot.

14 Obviously -- well, not obviously, but Special Agent
15 Jocys said there was nothing unusual about that walking down.
16 *Terry* is invoked when officers in their experience encounter
17 something unusual. Based on that, they have a reasonable
18 articulable, suspicion that criminal activity is afoot, present
19 tense, and that's absent here.

20 Then the issue is does the Government -- does a law
21 enforcement officer have the right to search the companion of
22 Espinoza who is being arrested at that time for DWI? That's
23 their legal basis, and we would argue that Espinoza's behavior
24 gives rise to maybe other -- you know, other searches, other
25 arrest warrants, but at 10:30 in the morning, they have an

1 arrest warrant for DWI. That's a misdemeanor.

2 **THE COURT:** They had information, though, that he had
3 robbed a jewelry store; right?

4 **MR. CRUMP:** He was a suspect.

5 **THE COURT:** Suspect --

6 **MR. CRUMP:** I mean, he was definitely a suspect.

7 That's the reason he was under surveillance.

8 **THE COURT:** With two other people; right?

9 **MR. CRUMP:** Three other people. In other words, the
10 robbery was -- according to the various Government -- well,
11 search warrant affidavits, there were four individuals involved
12 in that Mebane jewelry store robbery. Espinoza was under
13 surveillance. He was known to be at the Days Inn, but their
14 legal authority without probable cause to take Espinoza into
15 custody was on a DWI warrant.

16 Now --

17 **THE COURT:** Well, if they were going to take Khalid
18 Sheikh Mohammed, the mastermind of 9/11 -- if they were taking
19 him in for a DWI, wouldn't they be justified in taking measures
20 to make sure that they were safe, given the violent nature of
21 the person they were taking into custody, even if the offense
22 for the warrant was not a violent offense?

23 **MR. CRUMP:** Now, are you talking about as to the
24 Sheikh or Espinoza or both?

25 **THE COURT:** Well, maybe that's a bad example. My

1 point is, let's say they have somebody who is a known bank
2 robber, armed, and the outstanding warrant, though, is for
3 something nonviolent.

4 **MR. CRUMP:** Your Honor, I might be wrong in this, but
5 I think that the Winston-Salem police could arrest me walking
6 out of here if I've got an unpaid traffic ticket and some
7 district court judge issued an order for my arrest. I think
8 you could -- I think if there is an arrest warrant, no matter
9 what it's for, you know, they can effect an arrest.

10 **THE COURT:** But if the police knew you were a violent
11 felon and a member of a gang, wouldn't that mean that they
12 should take other precautions, even if they're only arresting
13 you for a DWI? Why is that not reasonable is what I'm asking?

14 **MR. CRUMP:** That's reasonable as to Espinoza. It's
15 reasonable as to Espinoza, but not as to the other two
16 individuals.

17 **THE COURT:** So why -- the Government cites to me the
18 *Poms* decision and the cases that relate to *Poms*, which is *U.S.*
19 *v. Allen Martin Poms*. It's 484 F.2d 919, 1973, which
20 essentially says that for officer safety reasons they're
21 constitutionally permitted to conduct a cursory pat-down even
22 of people hanging out with the arrestee, even if you don't have
23 any information as to their violent nature. It happened in
24 *Poms* that apparently the other people had other violent pasts,
25 so that was even more so, but as I read the case, the Court

1 said that wasn't required.

2 **MR. CRUMP:** Before I address *Poms*, if I could, let me
3 just make about one or two points, and I will come back to
4 *Poms*.

5 This is not a search of Terrill Weatherspoon as a
6 companion in an automobile. They could have effected the
7 arrest after they got into the automobile. This is not a
8 search of Terrill Weatherspoon as an occupant of a motel room.
9 This is not a search of Terrill Weatherspoon instant to --
10 about a traffic arrest. So we go back and we argue that it's
11 not a search pursuant to *Terry v. Ohio*. What it is, if it's
12 permissible, it's permissible as a blanket search under *Poms*.

13 Counsel read *Poms* and reviewed it. I have two
14 arguments as to *Poms*. The first argument is -- I think the
15 Court is going to follow the Fourth Circuit rather than my
16 argument, but, you know, my first argument --

17 **THE COURT:** We're generally bound more by the Fourth
18 Circuit.

19 **MR. CRUMP:** I understand that.

20 Counsel questions whether that is good law. There's
21 a split in authorities, and one of these cases -- a very
22 interesting case cited by -- interesting case cited in the
23 Government's brief was the *Bell* case, and the *Bell* case comes
24 out -- it's 1985. It comes out of the Sixth Circuit, and
25 they're arguing -- they reversed the District Court's

1 suppression motion, allowed -- as I understand it, they allowed
2 the search pursuant to *Terry*, but they disagree with *Poms*, the
3 Fourth Circuit, and this, you know, blanket exception that the
4 companions and the arrestee may be searched. That's basically
5 what *Poms* is saying.

6 I'm just going to cite one case and that is -- and
7 it's mentioned in the *Bell* case. That's *Ybarra v. Illinois*,
8 444 U.S. 85, page 91, 100 U.S. S. Ct. 338, page 342, 62 L. Ed.
9 2d 238, 1979, and the Sixth Circuit is quoting the Supreme
10 Court:

11 "A person's mere propinquity to others independently
12 suspected of criminal activity does not, without more, give
13 rise to probable cause to search that person."

14 Obviously, the Court has got to follow the Fourth
15 Circuit. There's a blanket coverage in the Fourth Circuit
16 under *Poms*. We still argue that this -- the Court should grant
17 the motion to suppress because, in spite of that blanket
18 authority under the Fourth Circuit for an arresting officer to
19 search companions present in the vicinity of persons arrested,
20 Terrill Weatherspoon is not in the presence -- in the vicinity
21 of Espinoza at the time of his arrest. He's not in the
22 vicinity at the time of that arrest.

23 **THE COURT:** All right. Do you want to be heard any
24 further?

25 **MR. POUSSON:** Not unless the Court has questions.

1 **THE COURT:** Does it matter that he's not in the same
2 vicinity?

3 **MR. POUSSON:** If I could, Your Honor, I think when
4 the Court is talking about vicinity, there's no clear
5 definition. In order -- in interpreting that, I interpret it
6 using the justification for why the rule exists, which is to
7 protect the officer's safety. And so as I interpret vicinity,
8 the question is was this individual within a close enough
9 distance to effect harm to the officers while they are engaged
10 in their business.

11 I think when Officer Jocys was testifying -- or Agent
12 Jocys was testifying and she mentions vicinity, not being in
13 the vicinity, in her mind, as she used that term, it seemed to
14 describe I wasn't within eyesight, so I can't testify about
15 what happened.

16 I would argue that even if Mr. Espinoza ran back into
17 building and out the other side, that he was still -- this
18 Defendant was still close enough -- Mr. Weatherspoon was still
19 close enough to the officers who were engaged in pursuing
20 Mr. Espinoza that he was a threat to their safety, and that
21 they should have been able to detain him.

22 **THE COURT:** All right. I am going to take it under
23 advisement, and I will let you know as soon as I have decision.

24 Anything further at this time?

25 **MR. POUSSON:** No, Your Honor.

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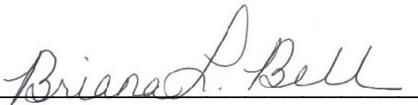
THE COURT: All right. Thank you very much. Please
adjourn Court.

(END OF PROCEEDINGS AT 3:46 P.M.)

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Bell, Official Court Reporter, certify
7 that the foregoing transcript is a true and correct transcript
8 of the proceedings in the above-entitled matter.
9

10 Dated this 26th day of June 2019.
11

12 
13 _____
14 Briana L. Bell, RPR
15 Official Court Reporter
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STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

**AFFIDAVIT FOR SEARCH WARRANT /3460 Hillsborough Rd/Room 244,
Durham, NC**

1. I, **Task Force Officer T.S. Thomas, Durham Police Department, Durham N.C.** being duly sworn, request that the court issue a warrant to search the person, place, and other items described in this application and to find and seize the property and person described in this application.

~~1~~ 2

THE APPLICANT SWEARS TO THE FOLLOWING FACTS TO ESTABLISH PROBABLE CAUSE FOR THE ISSUANCE OF A SEARCH WARRANT: I, Task Force Officer TS Thomas, has been a sworn law enforcement officer since 2003. I am currently assigned to the Federal Bureau of Investigation's Raleigh Durham Safe Streets Task Force. My duties include investigations into the sale of illegal controlled substances, gang investigations, kidnappings and bank robberies. I have participated in numerous investigations of the sale and possession of illegal controlled substances. I have received in-service training in drug identification and packaging as well as extensive training in law enforcement procedures. I have attended numerous courses and seminars dealing with gangs and illegal narcotics. I am familiar with the customary practices, procedures, terminology, and tactics used by persons engaged in the business of manufacturing and selling illegal controlled substances in this area and elsewhere. I have attended and completed training in Police Law Institute, Drug Interdiction, and Anti-Gang Training. I have been involved in numerous drug arrests, search warrants, and investigations while performing my duties as a sworn law enforcement officer and have participated in numerous investigations of crimes such as murder, robbery, sex offenses, burglary, larceny, DWI, traffic accidents, and other violations of North Carolina General Statutes.

3. **THE PROPERTY IS LOCATED IN THE FOLLOWING PREMISES:**

3460 Hillsborough Rd. Room 244, Durham, NC

4. **PERSON(S) TO BE SEARCHED:** N/A

why is the subject

ST STT

DEFENDANT'S EXHIBIT	
CASE NO.	18CB33
EXHIBIT NO.	1

1. **VEHICLE(S) TO BE SEARCHED:** 2014 Honda Civic NC Registration FDE9060

2. **ITEMS TO BE SEIZED:** There is probable cause to believe that the controlled substance Marijuana, a Schedule VI controlled substance. Documents relating to the crime of PWIMSD Marijuana, and any other controlled substance, drug paraphernalia, scales, baggies, and other drug packaging materials, U.S. currency, stocks, bonds, U. S., deeds, titles, jewelry, precious metals, and other valuable items representing

7/18/18

pg. 1

DATE
[Signature]

SIGNATURE OF ISSUING OFFICIAL

[Signature]

SIGNATURE OF APPLICANT

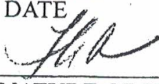
STATE OF NORTH CAROLINA
DURHAM COUNTY

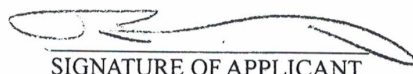
IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

**AFFIDAVIT FOR SEARCH WARRANT – 3460 Hillsborough Rd. Room 244,
Durham, NC**

proceeds of drug trafficking or the conversion of drug trafficking proceeds, firearms, ammunition, digital recording devices, cellular phones, photographs, video tapes, computers, computer equipment, bank statements, utility bills, phone records, mailed envelope covers, or any other forms of record keeping or documentation that shows possession or control of the premises and **constitutes evidence of a crime and the identity of a person participating in a crime: Possession with intent to sell and deliver Schedule VI in violation of G.S. 90-95, Maintain a dwelling/place to keep controlled substances in violation of G.S. 90-108(a)(7), Possession of a Firearm by Convicted Felon GS 14-415.1**

- 3. On July 18, 2018 TFO Thomas ^{Confidential Informant} received information from TFO Justin Heinrick that Joshua Espinoza DOB 2/6/1986 was the suspect in a Jewelry Store Break Inn and was possibly in the area of the Days Inn 3460 Hillsborough Rd. Durham, NC. Espinoza had an active warrant out of Durham County for DWI. Investigators are familiar with Espinoza and know him to be a violent Crip gang member.
- 4. Investigators conducted surveillance on the rear of the Days Inn and viewed three individuals exit Room 244 one of which was Espinoza. The three subjects walked down the stair towards a 2014 Honda Civic were law enforcement attempted to take Espinoza into custody for the warrant. Espinoza immediately took off running and placed a pistol in a trash can. Espinoza was arrested several blocks over with the keys to the Honda in his possession.
- 5. Additionally investigators located an extended magazine at the rear of the Honda and one of the other individuals a Kenneth Morris had a pistol in his waist band. Both Espinoza and Morris are convicted felons.
- 6. The door to room 244 was left standing open and Investigators cleared the room to ensure no other subjects were in there. As investigators cleared the room they noticed the burnt end of a marijuana blunt in a cup of water.
- 7. It is my opinion, based upon the foregoing information and based upon my training and experience as an Investigator; I have recognized facts and circumstances that indicate that Marijuana, Firearms and evidence related to PWIMSD Marijuana and Possession of a Firearm by Convicted Felon are being stored 3460 Hillsborough Rd Room 244, Durham, NC.

7/18/18
DATE

SIGNATURE OF ISSUING OFFICIAL

pg. 2

SIGNATURE OF APPLICANT

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

**AFFIDAVIT FOR SEARCH WARRANT - 3460 Hillsborough Rd. Room 244,
Durham, NC**

8. I respectfully request that the COURT issue a search warrant for 3460 Hillsborough Rd. Room 244.

7/18/18
DATE

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SIGNATURE OF APPLICANT

pg. 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) CASE NO. 1:18CR333-2
4)
4 vs.)
5) Winston-Salem, North Carolina
5 TERRILL BERNARD WEATHERSPOON) November 16, 2018
6 _____) 2:04 p.m.

7
8 TRANSCRIPT OF THE **RULING ON MOTION TO SUPPRESS/CHANGE OF PLEA**
9 BEFORE THE HONORABLE THOMAS D. SCHROEDER
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: KYLE D. POUSSON, AUSA
13 Office of the U.S. Attorney
14 101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

15 For the Defendant: GEORGE E. CRUMP, III, ESQ.
16 P.O. Box 1523
Rockingham, North Carolina 28379

17
18 Court Reporter: BRIANA L. BELL, RPR
19 Official Court Reporter
20 P.O. Box 20991
Winston-Salem, North Carolina 27120

21
22
23
24 Proceedings recorded by mechanical stenotype reporter.
25 Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 (The Defendant was present.)

3 **THE COURT:** All right. Good afternoon. Give me just
4 one moment.

5 We're here because I was going to give you a ruling
6 on or your motion to suppress in this case, which, I believe,
7 is Docket Entry 24.

8 I heard the testimony in this case the other day.
9 The testimony was of FBI Special Agent Maria Jocys. She's a
10 29-year law enforcement veteran. I find her testimony to be
11 not only credible, but very credible, and I find the facts as
12 testified by her. They are as follows:

13 On July 18, 2018, Special Agent Jocys was assigned to
14 effect the arrest of Joshua Espinoza. She was acting with six
15 to seven other agents. They were acting on information from
16 the Mebane Police Department that he was a suspect in the
17 burglary of a jewelry store.

18 Law enforcement had received a tip from an informant
19 that Espinoza was staying at the Days Inn at 3460 Hillsborough
20 Road in Durham, North Carolina. There was an outstanding
21 warrant from the Durham County -- from Durham County, rather,
22 for Espinoza for driving while intoxicated.

23 Agent Jocys knew the following information at the
24 time of these events:

25 From the Durham Police Department, she knew that

1 Mr. Espinoza was a violent gang member. He was well known to
2 the Durham Police Department, had a violent criminal history,
3 which included an arrest for assault with a deadly weapon with
4 intent to kill, discharging firearm into occupied property, a
5 number of arrests for a felon in possession of a firearm, and
6 an arrest for robbery with a dangerous weapon.

7 She knew Espinoza was alleged to have acted in the
8 Mebane jewelry store robbery with accomplices. She also knew
9 from the Durham Police Department that Espinoza had allegedly
10 been involved in a shootout at a gas station in Downtown
11 Durham, North Carolina, with a number of other individuals.
12 There were over 70 shell casings that were recovered from that
13 scene, and Espinoza was one of the suspects.

14 Database checks before this event, that is, before
15 the arrest of Espinoza on July 18, 2018, revealed and were
16 known by Agent Jocys to indicate that Mr. Espinoza was a
17 convicted felon and had been charged and arrested before for
18 felon in possession of firearms.

19 Special Agent Jocys set up at the side of the Days
20 Inn hotel with another agent. One two-man team went to the
21 front hotel desk to inquire to determine what room Espinoza was
22 staying in. Officers were not in uniform at the time but
23 clearly had displayed lettering on their clothing indicating
24 "FBI," "POLICE," et cetera, indicating to everyone that they
25 were law enforcement.

1 While surveying the situation and the scene that
2 morning, and it was early to mid-morning on the 18th that this
3 occurred, law enforcement observed Espinoza exit his room on
4 the second floor of the hotel. He came down the exterior
5 walkway and down a stairwell and toward the parking lot. With
6 him and following him were two men, who later identified as
7 Nigel Hemby and the Defendant, Mr. Terrill Weatherspoon.

8 Jocys and agents gave orders to take Espinoza into
9 custody, and they began to effect his arrest. The agents
10 yelled, "police" and "stop." Espinoza had items in his hand.
11 He immediately threw them to the ground and ran as he saw the
12 agents approaching. One agent passed Special Agent Jocys and
13 the two others, which included the Defendant, and the agent
14 pushed Hemby to the ground and told both Hemby and
15 Mr. Weatherspoon to get to the ground, to sit, and to put their
16 hands up.

17 Special Agent Jocys stayed with Mr. Weatherspoon and
18 Mr. Hemby, and she had her gun on them. She testified that she
19 did this because she was aware of Espinoza's violent history as
20 a gang member and not knowing the history of the Defendant and
21 Mr. Hemby, but knew that Mr. Espinoza had recently been in a
22 shootout and was not sure if Hemby and the Defendant were
23 involved and was also aware of the recent jewelry store robbery
24 with alleged accomplices. So for officer safety, she was
25 drawing her gun on them.

1 She was the only agent with the Defendant and
2 Mr. Hemby at this time. She told them to put their hands up.
3 She noticed that Mr. Weatherspoon began to move a little bit to
4 his left, so she asked whether either of the two men, that is,
5 Hemby or Weatherspoon, had a gun. The Defendant said, "I do."

6 I will note that at this time it was early in the
7 foot chase of Mr. Espinoza, who had not been found and
8 arrested. Special Agent Jocys told the Defendant that if he
9 moved, she would kill him.

10 Other agents chased Espinoza. A K-9 was released to
11 chase Espinoza, and Special Agent Jocys heard radio chatter
12 calling for help as they pursued Mr. Espinoza. So while
13 Special Agent Jocys had her gun drawn on the Defendant and
14 Mr. Hemby to detain them, all the other officers were going to
15 effect the arrest of Mr. Espinoza, who had fled.

16 Mr. Espinoza had fled to the back of the hotel,
17 across the courtyard, past another hotel, and into the nearby
18 woods. Special Agent Jocys was not aware of where Espinoza
19 was, other than that he had gone into the woods, but she knew
20 he had not yet been apprehended at the time. The arrest of
21 Espinoza was an ongoing proceeding without pause until he was
22 located and arrested.

23 Special Agent Jocys kept her firearm trained on the
24 Defendant and Mr. Hemby until backup arrived. Eventually
25 another officer came to assist Special Agent Jocys. Special

1 Agent Jocys and the other officer eventually detained the
2 Defendant and Mr. Hemby with handcuffs, and they conducted a
3 pat-down of the Defendant. They found a .40 caliber handgun on
4 his left hip concealed under his shirt. The Defendant's motion
5 indicates that the handgun was loaded with a round chambered.

6 According to Special Agent Jocys, she asked about the
7 presence of the gun and did not pat down Mr. Weatherspoon any
8 earlier than when she had initially detained him because there
9 was only one of her and two of the accomplices. She did not
10 want to put herself in a position to be overtaken by the two
11 men. Also, she had noticed that the Defendant had moved to the
12 left when she initially encountered him, and she was concerned
13 for her safety, and she told him, "Don't move" and "Keep your
14 hands up."

15 So when Special Agent Jocys had asked the Defendant
16 and Mr. Hemby whether either had a gun and the Defendant
17 answered yes, the agents were still in pursuit of Mr. Espinoza
18 for his arrest and had given chase, and he had not been
19 detained.

20 The Defendant contends that the search of him was
21 unreasonable, and it was an unreasonable search and seizure
22 under the Fourth Amendment. He contends that law enforcement
23 lacked reasonable, articulable suspicion under *Terry v. Ohio* to
24 detain him, to order him to raise his hands, and to effect the
25 frisk.

1 He contends that while Espinoza may have had a
2 violent history, he was an innocent bystander who displayed no
3 threat or danger to the officers. Citing *U.S. v. Mayo*, 361
4 F.3d 802, a Fourth Circuit case from 2004, Mr. Weatherspoon
5 contends that there were no reasonable grounds to believe that
6 he was armed and dangerous, that, indeed, officers did not even
7 know who he was. He seeks to suppress the firearm and
8 ammunition and his statement of "I do" in response to the
9 question of whether he had a gun.

10 The Government responds that the scenario is covered
11 by *United States v. Poms*, 484 F.2d 919, a 1973 case from the
12 Fourth Circuit, and *U.S. v. Mobley*, 40 F.3d 688, a 1994 case
13 from the Fourth Circuit.

14 The Court agrees with the Government. *Poms* provides,
15 quote, all companions of the arrestee within the immediate
16 vicinity capable of accomplishing a harmful assault on the
17 officer are constitutionally subjected to the cursory pat-down
18 reasonably necessary to give assurance that they are unarmed,
19 citing *U.S. v. Berryhill*, a Ninth Circuit case.

20 In *Poms*, the Court permitted a protective search of a
21 handbag of a known companion of an arrestee who was emerging
22 from an elevator and near the arrest scene. The Fourth Circuit
23 followed the *Poms* decision in *U.S. v. Hicks*, 121 F.3d 701, a
24 1997 case. It is an unpublished decision. It is not binding,
25 but I find it to be persuasive. There, the officers were

1 impounding a car after a traffic stop, and since neither the
2 driver nor the passenger had a license, the officers decided to
3 impound the car, and they discovered a 9mm gun and ammunition
4 in an overnight bag in the trunk. Officers conducted a
5 pat-down of the defendant, who was the passenger, and searched
6 her purse for officer safety. The Defendant moved to suppress
7 drugs that were found in her purse, and the motion was denied.
8 The Court, that is, the Fourth Circuit, held that it was a
9 valid protective search because the officers had reasonable
10 suspicion that the defendant may have been armed under the
11 circumstances.

12 Similarly, in *U.S. v. Williams*, 215 F.3d 1323, a 2000
13 opinion from the Fourth Circuit, again unpublished but which I
14 find to be instructive, the Court upheld the search of a
15 companion, who otherwise had given no indication at the time of
16 the search that he was engaged in criminal activity. There,
17 Williams and Mr. Dourdoumis, that's D-O-U-R-D-O-U-M-I-S, had
18 been at a Burger King restaurant. An officer was dispatched
19 after a 911 hang-up call occurred, and it was a neighborhood
20 where robberies had been reported. The Burger King employee
21 had gotten nervous when Mr. Williams and Mr. Dourdoumis had
22 been hanging around near the restroom area, but then they left,
23 and so the employee hung up the phone. The defendants were
24 standing by a payphone outside the restaurant when the officer
25 arrived, and the officer followed the defendants as they walked

1 away from the scene.

2 The Court found that when the officers caught up with
3 the defendants, the officer conducted what was a consensual
4 encounter with them. Mr. Dourdoumis permitted a pat-down for
5 weapons. None was found. As the officer picked up
6 Mr. Dourdoumis' jacket from the ground, however, he felt it was
7 unusually heavy and suspected a gun in the pocket. He also
8 then felt the gun. So he drew his gun and directed the two
9 defendants, Mr. Williams and Mr. Dourdoumis, to lie down.
10 Another police unit arrived. Officers handcuffed the
11 defendants, frisked them, and found a gun on Mr. Williams in
12 his waistband. Williams moved to suppress the firearm.

13 As pertinent here, the Court found that while the
14 officer had probable cause to arrest Dourdoumis, but not
15 Williams, the presence of the weapon on Dourdoumis provided the
16 officer the right to perform a *Terry* frisk of Mr. Williams, his
17 companion, for officer safety, citing the *Poms* decision. The
18 Court noted the officer's cuffing of Williams before the
19 pat-down did not convert the detention into an arrest because
20 the restraint was reasonable under the circumstances.

21 In the present case, Mr. Weatherspoon argues the
22 following:

23 He acknowledges that *Poms* is controlling, but
24 contends that it is not as persuasive as the Sixth Circuit's
25 opinion in *U.S. v. Bell*, 762 F.2d 495, a Sixth Circuit case

1 from 1985 where the Court declined to adopt an automatic
2 companion rule as an exception to *Terry v. Ohio*.

3 The Defendant also argues that he was not in the
4 vicinity of Mr. Espinoza, who had fled the scene and was being
5 pursued. As for *Poms*, it is circuit law, and, moreover, I am
6 not applying an automatic companion rule in this case. I am
7 finding that the circumstances of the encounter here provide
8 reasonable, objective bases for the officers to have searched
9 the Defendant and made the inquiry.

10 As for the vicinity argument, the facts demonstrate
11 that at the time of the command to the Defendant to sit, to put
12 his hands up, and the question of whether he had a gun, it was
13 very early in the encounter, virtually at its outset. The
14 Defendant and Mr. Hemby had been immediate companions of
15 Mr. Espinoza before Mr. Espinoza had begun his flight from the
16 officers. There was no doubt they were in his immediate
17 vicinity at that time. While Special Agent Jocys did not know
18 Mr. Weatherspoon's identity, she knew she was a companion of
19 Mr. Espinoza, a known violent gang member. She knew
20 Mr. Espinoza was a suspect in recent jewelry store robbery with
21 multiple accomplices.

22 The scene was very fluid. The officers demonstrated
23 a need to contain the scene until Mr. Espinoza was apprehended
24 and arrested. Special Agent Jocys was in a vulnerable
25 position, as all of the other officers had given chase to

1 Mr. Espinoza. An actual pat-down at that time would have been
2 very dangerous to Special Agent Jocys, as she was outnumbered
3 by the Defendant and Mr. Hemby. The pat-down was actually
4 conducted only after the Defendant had admitted he was armed
5 with a concealed firearm. Certainly, it was reasonable at that
6 time unless the question and the Defendant's answer were
7 unconstitutionally obtained, and I find that they were not
8 under the unique facts of this case.

9 As to the request to suppress the Defendant's
10 statement in response to the question of whether he had a gun,
11 the briefing does not raise a Fifth Amendment and *Miranda*
12 challenge in the briefing. However, I find that Special Agent
13 Jocys' question and the Defendant's answer were reasonably
14 necessary to protect the law enforcement officers effecting the
15 arrest of Mr. Espinoza and the general public from any
16 immediate danger associated with the weapon.

17 There are a number of factors to support this.
18 First, this was a public hotel. The takedown was immediately
19 near the multiple hotel rooms and their entrances, all of which
20 can be viewed on the video that was shown at the hearing, which
21 recorded the actual events. The situation was fluid.
22 Mr. Espinoza was a known violent gang member and had fled with
23 all the other officers in pursuit. Special Agent Jocys was
24 alone with the Defendant and Mr. Hemby. The Defendant started
25 to move to the left, causing the officer to have objectively

1 reasonable safety concerns. Had Special Agent Jocys allowed
2 the Defendant and Mr. Hemby to go at that time, they would have
3 presented a potential threat to the officers, as they were in
4 the process of trying to detain Mr. Espinoza, a known violent
5 gang member.

6 Special Agent Jocys' question was reasonably limited
7 to her safety. It only asked whether either of them was armed
8 with a gun, and the safety -- it was also reasonably limited to
9 the safety of those in the immediate area.

10 At the time Special Agent Jocys asked the Defendant
11 this question, she had no idea how long it would have been --
12 she would have to be there, but, in any event, the pursuit of
13 Espinoza took only minutes, not hours, and was a continuous
14 operation.

15 So I find that the case falls within the narrow
16 public safety exception of *U.S. v. Mobley*, 40 F.3d 688, a 1994
17 Fourth Circuit decision, which cites and relies on *New York v.*
18 *Quarles*, 467 U.S. 649, 1984, since I find that Special Agent
19 Jocys had an objectively reasonable concern for her immediate
20 danger, both to herself as a police officer and to the public.

21 Any questions about my ruling?

22 **MR. CRUMP:** No.

23 **MR. POUSSON:** No, Your Honor.

24 **THE COURT:** Having made this decision in the case, I
25 am going to assign this case to me for handling further out.

1 So I am going to ask Ms. Engle just to make an assignment to
2 me.

3 All right. Anything further?

4 **MR. CRUMP:** Your Honor, just to notify the Court,
5 it's Mr. Weatherspoon's intention to enter a conditional plea
6 of guilty. We'll probably execute that agreement in the next
7 five minutes. I will hand it either to the clerk or
8 Mr. Pousson to file with the court, and just let the Court know
9 that we don't anticipate a trial in this matter.

10 **THE COURT:** All right. Are you asking that that be
11 heard today?

12 **MR. CRUMP:** That's just up to the Court. The Court
13 might want to do it, might not. I'm letting -- want to let the
14 Court know, as far as scheduling in terms of trial this term,
15 that that's what we anticipate.

16 **THE COURT:** Thank you. I have a trial Monday,
17 Tuesday, and then it's the holiday after that. I am here this
18 afternoon. If there were a matter brought to me, then I can
19 probably do it this afternoon up to a point in time, not too
20 late because I have some other things scheduled. It would be
21 helpful to get a draft so that I can at least prepare for it.

22 Hold on just a minute. Can you say which count or
23 counts are involved?

24 **MR. CRUMP:** It would be Count Two.

25 Your Honor, I think all I need is about five minutes

1 with my client and then just a minute or two with Mr. Pousson,
2 and then we'll let the Court know if we're ready to proceed
3 this afternoon.

4 **THE COURT:** Okay. Well, I'll be happy -- if there's
5 something for me to consider, I would be happy to consider it
6 this afternoon. I can do that until about 3:30, and then
7 after, I will be tied up with other matters. I would be happy
8 to do that. Just let Ms. Engle know. If not, we'll find a
9 time to do it some other day. So there's no rush to have it
10 done today, if you understand.

11 We'll stand in recess then.

12 (The court recessed at 2:26 p.m.)

13 (The court was called back to order at 3:08 p.m.)

14 (The Defendant was present.)

15 **THE COURT:** Mr. Pousson?

16 **MR. POUSSON:** Your Honor, if it should please the
17 Court, the Government would ask to call Terrill Bernard
18 Weatherspoon, 1:18CR333-2. Mr. Weatherspoon is present with
19 counsel, Mr. Crump, for a change of plea.

20 **THE COURT:** All right. Mr. Crump, are you ready to
21 proceed, sir?

22 **MR. CRUMP:** Yes, Your Honor.

23 **THE COURT:** Have you had sufficient time to review
24 the file in this case?

25 **MR. CRUMP:** Yes, Your Honor.

1 **THE COURT:** Do you believe that Mr. Weatherspoon
2 understands the charges against him and the nature of the
3 hearing today?

4 **MR. CRUMP:** He does.

5 **THE COURT:** Does he wish to enter a plea of guilty?

6 **MR. CRUMP:** He does.

7 **THE COURT:** My understanding is he's intending to
8 plead guilty to Count Two of the indictment; is that right?

9 **MR. CRUMP:** That's correct.

10 **THE COURT:** Did anyone make any threat or promise to
11 induce the plea other than those in his plea agreement, to your
12 knowledge?

13 **MR. CRUMP:** No, Your Honor.

14 **THE COURT:** Do you recommend that I accept it?

15 **MR. CRUMP:** I do.

16 **THE COURT:** Based on your representation of your
17 client, is it your belief he offers his plea today knowingly
18 and voluntarily?

19 **MR. CRUMP:** It is.

20 **THE COURT:** All right. Thank you.

21 Please administer the oath to Mr. Weatherspoon.

22 (The Defendant was duly sworn.)

23 **THE COURT:** Mr. Weatherspoon, do you understand you
24 are now under oath, and if you answer any of my questions
25 falsely, your answers may later be used against you in another

1 prosecution for perjury or for making a false statement?

2 You need to stand please, sir.

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** What is your full name, sir?

5 **THE DEFENDANT:** Terrill Bernard Weatherspoon.

6 **THE COURT:** How old are you?

7 **THE DEFENDANT:** Forty.

8 **THE COURT:** How far you have attended in school, sir?

9 **THE DEFENDANT:** I graduated.

10 **THE COURT:** From high school?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** All right. Can you read and understand
13 the superseding indictment against you?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Can you read and understand your plea
16 agreement?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Have you been treated recently for any
19 mental illness?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** Have you been treated recently for any
22 addiction to the narcotic drug?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** Now, I know you've been in custody, and
25 you do not appear to be under the influence of any substance,

1 but I need to ask you whether you are currently under the
2 influence of any alcoholic beverage, any drug, or any kind of
3 medication?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** Did you receive a copy of the superseding
6 indictment?

7 **THE DEFENDANT:** Yes.

8 **THE COURT:** Did you read that with Mr. Crump, your
9 attorney?

10 **THE DEFENDANT:** Yes, I did.

11 **THE COURT:** Do you understand the current indictment
12 and the charges against you?

13 **THE DEFENDANT:** Yes, I do.

14 **THE COURT:** Have you fully discussed the charges in
15 the indictment and your case in general with your attorney?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Have you had sufficient time to speak
18 with him about your case?

19 **THE DEFENDANT:** Yes, we did.

20 **THE COURT:** Are you satisfied that to this point in
21 time you have fully explored all of your options in your case,
22 including a discussion with Mr. Crump whether or not you may
23 have any possible defenses to the charges?

24 **THE DEFENDANT:** No.

25 **THE COURT:** All right. Have you explored all of your

1 options in the case up to this point in time?

2 **THE DEFENDANT:** Oh, yeah.

3 **THE COURT:** Have you talked with Mr. Crump about
4 whether or not you may have any defenses to the charges?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** I'm sorry. I didn't hear you.

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** All right. And so are you satisfied
9 fully that to this point in time you've explored all of your
10 options before deciding whether or not to plead guilty?

11 **THE DEFENDANT:** I'm not sure of the question
12 because --

13 (Mr. Crump conferred with the Defendant.)

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. So you had a chance to talk
16 to Mr. Crump. Do you understand my question?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Are you satisfied that to this point in
19 time you've explored all the options you may have in your case
20 other than pleading guilty before deciding today whether to
21 plead guilty?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** And do you believe you've fully explored
24 all of those options?

25 **THE DEFENDANT:** Yes, sir.

1 **THE COURT:** And are you satisfied with the services
2 that Mr. Crump has provided and the advice he has given you?

3 **THE DEFENDANT:** Yes, I am.

4 **THE COURT:** Now, there is a written plea agreement in
5 your case.

6 Mr. Crump, do you have a copy, sir?

7 **MR. CRUMP:** Yes, sir.

8 **THE COURT:** Is yours executed?

9 **MR. CRUMP:** Yes, Your Honor.

10 **THE COURT:** If you would turn to page 8 and show that
11 to your client.

12 Mr. Weatherspoon, is that your signature on the last
13 page of your plea agreement?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** And my understanding is you signed that
16 just today; is that right?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Did you read and fully understand all the
19 terms of the agreement before you decided to sign it?

20 **THE DEFENDANT:** Yes, I did.

21 **THE COURT:** I'm going to ask to Mr. Crump to review
22 with all of us the key terms of your plea agreement. Please
23 listen to him carefully. When he finishes, I'm going to turn
24 back to you and ask you whether or not you agree with what he
25 says so I can decide whether I believe you understand your

1 agreement.

2 Mr. Crump.

3 **MR. CRUMP:** Your Honor, Terrill Weatherspoon is
4 charged in Count Two of the superseding indictment with being a
5 felon in possession of a firearm, and Terrill Weatherspoon
6 pleads guilty to felon in possession of a firearm. The maximum
7 penalties are not more than 10 years' imprisonment, a fine of
8 not more than \$250,000, and there's the alternative fine of not
9 more than twice the gain or twice the loss, and there is a term
10 of supervised release of not more than 3 years.

11 In this case, there are enhanced penalties if the
12 Defendant has a combination of three violent felonies or three
13 serious drug offenses, a combination of a total of three, and
14 if these offenses occurred on different occasions. And the
15 enhanced penalties are not less than 15 years nor more than
16 life, and the enhanced penalties, the Defendant cannot be
17 placed on probation or receive a suspended sentence, not more
18 than 5 years of supervised release.

19 The sentence is in the discretion of the Court
20 subject to the statutory minimum and maximum penalties. The
21 Court must determine the advisory sentencing guidelines, but
22 it's not bound by the guidelines.

23 And if the Defendant is not a United States citizen,
24 this plea may have immigration consequences, including
25 deportation. By this plea, the Defendant is giving up his

1 constitutional rights to a trial by a jury, the Defendant
2 pleads guilty because he is, in fact, guilty.

3 The plea bargain is this:

4 If the Defendant qualifies for the two-level
5 acceptance of responsibility and the guidelines are 16 or
6 greater prior to the reduction, then the Government recommends
7 to the Court one additional level reduction for acceptance of
8 responsibility.

9 The Defendant abandons any interest -- abandons
10 interest in any item seized by law enforcement in its
11 investigation of this case, and he waives any notice as to
12 destruction or disposition of those items.

13 Your Honor, the Defendant is entering a conditional
14 plea of guilty to Count Two, reserving the right to appeal the
15 adverse ruling of the Court on the Defendant's motion to
16 suppress.

17 Restitution is due upon the judgment. The Defendant
18 agrees that any debt will be submitted to the Treasury Offset
19 Program. There is a 100-dollar special assessment. If the
20 Defendant cannot -- at sentencing. If the Defendant cannot
21 pay, he agrees to participate in the Inmate Financial
22 Responsibility Program.

23 The Defendant and the Government reserve to bring to
24 the Court's attention anything deemed relevant at the time of
25 sentencing. And this is the entire plea agreement.

1 **THE COURT:** All right.

2 So, Mr. Weatherspoon, you've heard Mr. Crump review
3 the key terms of your agreement. Is that, in fact, your
4 understanding of your agreement, sir?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Do you understand all the terms of your
7 agreement?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Does your plea agreement contain the
10 entire agreement between you and the Government in your case?

11 **THE DEFENDANT:** Yes, it does.

12 **THE COURT:** Have you had sufficient opportunity to
13 read the agreement and to discuss it with Mr. Crump?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you have any questions at this time,
16 either for Mr. Crump or for me, about any term of your plea
17 agreement?

18 **THE DEFENDANT:** No, sir.

19 **THE COURT:** Do you understand that as part of the
20 plea bargaining in your case, the Government has agreed to make
21 a recommendation to the Court? It's in paragraph 5A of your
22 plea agreement on page 5.

23 The agreement is that if you qualify for the
24 two-point decrease in your offense level under the guidelines
25 and your offense level is 16 or greater, then the Government

1 will recommend that you receive an additional one-level
2 decrease for your acceptance of responsibility.

3 Do you understand that?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Do you understand that's only a
6 recommendation that will not be binding on me?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you understand that if I were to
9 reject the recommendation for any reason, I could do that
10 without permitting you to withdraw your plea?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** And do you understand that if I reject
13 the recommendation, I could impose a sentence that might be
14 more severe than you may have hoped if you had received the
15 recommendation?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Did anybody make any threat or promise to
18 you other than those in your plea agreement in an effort to
19 persuade you to plead guilty today?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** Did anybody in any way attempt to force
22 you to plead guilty against your wish?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** Now, you are a U.S. citizen; is that
25 right, sir?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you understand that you're pleading
3 guilty to a felony offense, and if I accept your plea of
4 guilty, you will be adjudged guilty of that offense, and you
5 may lose certain valuable civil rights, such as the right to
6 vote, the right to hold public office, the right to serve on a
7 jury, and the right to possess any kind of a firearm?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Let me review the maximum penalties that
10 can be imposed if I accept your plea.

11 As Mr. Crump alluded to, there are actually two
12 different sets of penalties, depending on what I determine as
13 to your prior criminal history when I review your presentence
14 report.

15 Ordinarily, the imprisonment and penalties will be as
16 follows:

17 Imprisonment for not more than 10 years, a fine of
18 not more than \$250,000, or twice the gross gain or loss,
19 whichever is larger, a period of supervised release following
20 imprisonment of not more than 3 years, you may be required to
21 forfeit the firearm and ammunition, you may be required to pay
22 restitution, and there is a 100-dollar special assessment.

23 Do you understand those penalties?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Now, I said there are two sets because,

1 depending on your criminal history, you might be subject to
2 what's known as the Armed Career Criminal Act; and if I find at
3 your sentencing that you have -- before this crime here that
4 you are pleading to, if I find that you have three previous
5 convictions for violent felonies or for serious drug offenses,
6 or both, committed on occasions that are different from one
7 another, then the enhanced penalties would apply instead of the
8 ones I read to you; that is, the imprisonment that you would be
9 subjected to would be a period of not less than 15 years up to
10 a maximum of life -- in other words, a mandatory minimum of 15
11 years of imprisonment up to life -- the same fine provision,
12 that is, not more than \$250,000, or twice the gross gain or
13 loss, the period of supervised release could be extended up to
14 5 years, you could be required to forfeit the firearm and
15 ammunition, to pay restitution, you will be required to pay a
16 100-dollar special assessment, and there is no probation or
17 suspended sentence available.

18 Do you understand those penalties?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Now, as to the penalty of supervised
21 release, do you understand that following any term of
22 imprisonment, you will be placed on a period of supervision by
23 the Court; and if you violate any of the conditions of your
24 supervision, you could be sent back to prison for a period of
25 time?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you understand to your satisfaction,
3 Mr. Weatherspoon, all of the possible penalties and
4 consequences of your plea of guilty?

5 **THE DEFENDANT:** I do.

6 **THE COURT:** Now, we've just reviewed the various
7 penalties that can be imposed. It'll be up to me to determine
8 a sentence at your sentencing hearing, which will occur at a
9 later date, probably this spring.

10 The U.S. Sentencing Commission has created what are
11 known as sentencing guidelines and policy statements that I
12 must consider when I determine your sentence.

13 Are you aware of that?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you understand that I cannot determine
16 your sentencing guideline range until your written presentence
17 investigation report is prepared by the United States Probation
18 Office?

19 **THE DEFENDANT:** I do.

20 **THE COURT:** Once the report is completed, you will
21 have the opportunity to review it with Mr. Crump, and you can
22 file any objection you may have to the report, including any
23 objection you may have to the guidelines recommended by the
24 probation office.

25 Do you understand?

1 **THE DEFENDANT:** I do.

2 **THE COURT:** It may be that Mr. Crump and others may
3 have given you an estimate of what they believe your sentencing
4 guideline range and your sentence may be in your case. If so,
5 do you understand those are only estimates and may be different
6 from the guideline range that I calculate and the sentence that
7 I impose at your sentencing?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Do you understand that once I calculate
10 your sentencing guideline range, I will not be required to
11 follow it because the guidelines are advisory and not binding
12 on the Court?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Do you understand that what I will do is
15 consider all of the factors under Title 18 of the U.S. Code,
16 Section 3553(a), as well as the advisory guidelines when I
17 consider your sentence?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Do you understand that because the
20 guidelines are advisory, I have the authority to impose a
21 sentence that may be more or less severe than what the
22 guidelines may recommend to me?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Do you understand that parole has been
25 abolished; so if you are sentenced to prison, you would not be

1 released early on parole?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Do you understand that you or the
4 Government may have the right to appeal any sentence in your
5 case?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Now, let me review your rights under our
8 Constitution.

9 As you stand before the Court and before I accept any
10 plea you may offer, you have the right under our constitution
11 to plead not guilty to either or both of the counts against you
12 in your superseding indictment and to persist in that plea.
13 You can demand that your case be tried by a jury.

14 At any trial, you would be presumed to be innocent
15 and the United States would bear the burden of proving of your
16 guilt beyond a reasonable doubt. That means that the United
17 States must prove each and every element of each of these
18 crimes against you beyond a reasonable doubt before you could
19 be found guilty of them.

20 Do you understand?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Now, you also have the right under our
23 constitution to the assistance of a lawyer and, if necessary,
24 to have the Court appoint a lawyer at trial and at every other
25 stage of the proceedings against you.

1 You have the right to see and hear all the witnesses
2 that may be presented against you. You have the right to
3 confront those witnesses, and you or Mr. Crump would have the
4 right to cross-examine them.

5 You have the right to choose to testify if you wish.
6 However, nobody can force you to testify. If you choose not to
7 testify, then that decision could never be held against you.

8 You also have the right to present evidence, and you
9 can have subpoenas issued from the Court to require witnesses
10 to attend who would testify for you. If you did not present
11 any evidence at all, however, that fact alone cannot be used
12 against you.

13 Do you understand all of those rights?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you understand further that once you
16 enter a plea of guilty and I accept it, then there will be no
17 trial in your case, and you will have given up forever your
18 right to a trial as well all of the other rights associated
19 with a trial that I reviewed?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Do you understand that if I do accept
22 your plea of guilty, it is highly unlikely that the decision
23 would ever be reversed?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** All right. Now, if you were to put the

1 Government to its burden in this case of a trial, it would be
2 required to prove the elements of Count Two, to which you are
3 intending to plead guilty, to a jury of 12 beyond a reasonable
4 doubt.

5 Do you understand?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** That means that each and every juror
8 would have to agree as to every element before you could be
9 found guilty.

10 Do you understand?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** So I am going to read to you the elements
13 of the offense, which represents the burden the Government has
14 in this case. I would ask you to listen carefully. When I am
15 finished, I am going to ask whether or not you agree with the
16 elements.

17 The Government charges and would be required to prove
18 beyond a reasonable doubt that you were previously convicted in
19 any court of a crime punishable by a term of imprisonment
20 exceeding one year.

21 Also, that on or about July 18, 2018, in Durham
22 County, here in the Middle District, you knowingly possessed a
23 firearm. The Government charges it was a Ruger .40 caliber
24 handgun.

25 And, third, the Government must prove that the

1 possession was in or affecting commerce.

2 Do you understand the elements of the offense --

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** -- that's charged in Count Two?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** And how are you pleading to this offense?

7 **THE DEFENDANT:** Guilty.

8 **THE COURT:** Do you understand you're pleading
9 guilty -- or, rather, are you pleading guilty because you are,
10 in fact, guilty of that offense?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you understand that by pleading
13 guilty, you are admitting each of the elements of the offense?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Do you understand as part of your plea
16 bargaining as well, you are preserving your right to appeal the
17 adverse ruling on your motion to suppress?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** It is the finding of this Court in Case
20 18CR333-2, United States versus Terrill Bernard Weatherspoon,
21 that Mr. Weatherspoon is fully competent and capable of
22 entering an informed plea, that he understands the nature of
23 the charges against him and the consequences of his plea, and
24 his plea of guilty is offered today knowingly and voluntarily.

25 I have a factual basis that's Docket Entry 22. Do

1 you have a copy, Mr. Crump?

2 **MR. CRUMP:** Yes. Can I ask one question?

3 **THE COURT:** Yes.

4 **MR. CRUMP:** The Court accepts the plea agreement in
5 terms of his right to appeal that adverse ruling?

6 **THE COURT:** I've accepted the agreement, including
7 whatever terms are in it, and he's preserved his right to
8 appeal the adverse ruling on his motion to suppress.

9 **MR. CRUMP:** Thank you, Your Honor.

10 **THE COURT:** I haven't accepted the plea yet because I
11 haven't gone through the factual basis, but when I do accept
12 the plea, if I do, and I presume I will, he has preserved his
13 right to appeal the adverse ruling on the motion to suppress.

14 Is that your question?

15 **MR. CRUMP:** Yes.

16 **THE COURT:** All right. Did you receive a copy of the
17 factual basis?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Mr. Crump?

20 **MR. CRUMP:** Yes. And he had -- he's been given a
21 copy.

22 **THE COURT:** Did you review it with him?

23 **MR. CRUMP:** Yes, I did.

24 **THE COURT:** Do you have any objections to it?

25 **MR. CRUMP:** Two objections.

1 **THE COURT:** All right.

2 **MR. CRUMP:** The first objection is on page 1,
3 paragraph 2, that Joseph -- Joshua Espinoza had outstanding
4 warrants, plural. That's just a factual objection. We contend
5 there's just one outstanding warrant.

6 The other objection is on page -- I assume -- I'm
7 objecting to -- okay. On page 2, first paragraph, second line
8 that says, "For safety, this officer asked if Weatherspoon or
9 the other individual had guns," we object to the allegation of
10 fact that the officer was acting for her own safety. We know
11 that the Court has -- that was a part of the Court's factual
12 findings, but we object to it as part of the factual basis.

13 **THE COURT:** All right. Do you agree -- or let me ask
14 you: Do you contend that either of these objections undermines
15 the factual basis for purposes of the plea?

16 **MR. CRUMP:** No, Your Honor.

17 **THE COURT:** Mr. Weatherspoon, did you read this
18 document?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Did you discuss it with Mr. Crump?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Do you agree with his comments as to it?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** All right. I've read a factual basis,
25 and I will find that the unobjected-to portions do provide an

1 independent basis in fact that contain each of the essential
2 elements of the offense. So I will accept the plea, and the
3 Defendant is adjudicated guilty of the offense charged in Count
4 Two of the superseding indictment. As I've said, he preserves
5 his right to appeal the adverse ruling on the motion to
6 suppress.

7 So the next step then, Mr. Weatherspoon, is the
8 preparation of a written presentence investigation report. You
9 will be asked to provide information for it. Mr. Crump may be
10 present for your interview.

11 Once the report is completed, you'll have the chance
12 to review it, and you and Mr. Crump can file any objections if
13 you disagree with any aspect of the report. Keep in mind, the
14 Government will be reading the report, too, and it may have
15 objections. If there are objections from either party that are
16 not resolved by the time of your sentencing, I will resolve
17 them at your sentencing, and then I will determine a sentence
18 in your case.

19 You'll have the opportunity to speak at your
20 sentencing hearing, if you wish, but as always, you enjoy the
21 right to remain silent without any retribution.

22 I am going to direct the preparation of a written
23 presentence report. Sentencing will be Wednesday -- let me ask
24 a question. Hold on just a minute.

25 (Off-the-record discussion.)

1 **THE COURT:** I believe I took the plea as to the
2 co-defendant as well. Is there any reason these need to be on
3 the same date in terms of sentencing that you are aware of?

4 **MR. POUSSON:** No, Your Honor.

5 **THE COURT:** I am going to set this one for April 17
6 then because that's my next sentencing date, April 17, 2019,
7 that's a Wednesday, at 9:30 in Winston-Salem here in Courtroom
8 No. 2.

9 Anything further I need to address?

10 **MR. POUSSON:** No, Your Honor, thank you.

11 **THE COURT:** Thank you. We'll adjourn then. Please
12 adjourn Court.

13 (END OF PROCEEDINGS At 3:32 P.M.)

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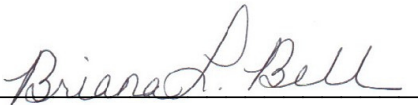
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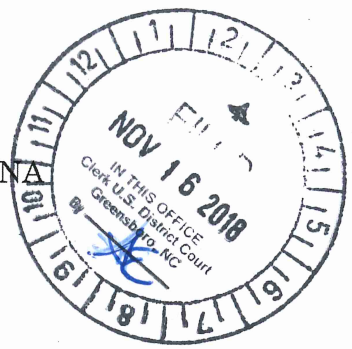
1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Bell, Official Court Reporter, certify
7 that the foregoing transcript is a true and correct transcript
8 of the proceedings in the above-entitled matter.
9

10 Dated this 26th day of June 2019.
11

12 
13 _____
14 Briana L. Bell, RPR
15 Official Court Reporter
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



UNITED STATES OF AMERICA : 1:18CR333-2
: :
v. : :
: :
TERRILL BERNARD : :
WEATHERSPOON : PLEA AGREEMENT

NOW COME the United States of America, by and through Matthew G.T. Martin, United States Attorney for the Middle District of North Carolina, and the defendant, TERRILL BERNARD WEATHERSPOON, in his own person and through his attorney, George E. Crump, III, and state as follows:

1. The defendant, TERRILL BERNARD WEATHERSPOON, is presently under Superseding Indictment in case number 1:18CR333-2, which in Count Two charges him with a violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2), felon in possession of a firearm.

2. The defendant, TERRILL BERNARD WEATHERSPOON, will enter a voluntary plea of guilty to Count Two of the Superseding Indictment herein. The nature of this charge and the elements of this charge, which must be proved by the United States beyond a reasonable doubt before the defendant can be found guilty thereof, have been explained to him by his attorney.

a. The defendant, TERRILL BERNARD WEATHERSPOON, understands that the maximum term of imprisonment provided by law for Count Two of the Superseding Indictment herein is not more than ten years, and the maximum fine for Count Two of the Superseding Indictment herein is \$250,000, or both. If any person derived pecuniary gain from the offense, or if the offense resulted in pecuniary loss to a person other than the defendant, TERRILL BERNARD WEATHERSPOON, the defendant may, in the alternative, be fined not more than the greater of twice the gross gain or twice the gross loss unless the Court determines that imposition of a fine in this manner would unduly complicate or prolong the sentencing process. The fine provisions are subject to the provisions of Title 18, United States Code, Section 3571, entitled "Sentence of Fine." The defendant, TERRILL BERNARD WEATHERSPOON, also understands that the Court may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release of not more than three years after imprisonment, pursuant to Title 18, United States Code, Section 3583.

b. The defendant, TERRILL BERNARD WEATHERSPOON, further understands that upon the acceptance by the Court of a guilty plea to Count Two of the Superseding Indictment herein, the defendant could be subject to the enhanced penalty provisions of Title 18, United States Code,

Section 924(e)(1) at the time of sentencing if the defendant has three previous convictions by any court for a violent felony or a serious drug offense, committed on occasions different from one another. If the Court determines that Title 18, United States Code, Section 924(e)(1) is applicable, the term of imprisonment shall be not less than fifteen years, nor more than life. In addition, the defendant cannot be placed on probation or receive a suspended sentence. The defendant, TERRILL BERNARD WEATHERSPOON, also understands that the Court may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release of not more than five years after imprisonment, pursuant to Title 18, United States Code, Section 3583.

c. The defendant, TERRILL BERNARD WEATHERSPOON, further understands that the sentence to be imposed upon him is within the discretion of the sentencing Court subject to the statutory maximum and mandatory minimum penalties set forth above. The sentencing Court is not bound by the sentencing range prescribed by the United States Sentencing Guidelines. Nevertheless, the sentencing Court is required to consult the Guidelines and take them into account when sentencing. In so doing, the sentencing Court will first calculate, after making the appropriate findings of fact, the sentencing range prescribed by the Guidelines, and then will consider

Total Pages:(102 of 144)

that range as well as other relevant factors set forth in the Guidelines and those factors set forth in Title 18, United States Code, Section 3553(a) before imposing the sentence.

d. The defendant, TERRILL BERNARD WEATHERSPOON, understands that if he is not a citizen of the United States that entering a plea of guilty may have adverse consequences with respect to his immigration status. The defendant, TERRILL BERNARD WEATHERSPOON, nevertheless wishes to enter a voluntary plea of guilty regardless of any immigration consequences his guilty plea might entail, even if such consequence might include automatic removal and possibly permanent exclusion from the United States. The defendant, TERRILL BERNARD WEATHERSPOON, further understands that in the event he is a naturalized citizen, entering a plea of guilty may result in denaturalization proceedings being instituted against him leading to his removal and possible permanent exclusion from the United States.

3. By voluntarily pleading guilty to Count Two of the Superseding Indictment herein, the defendant, TERRILL BERNARD WEATHERSPOON, knowingly waives and gives up his constitutional rights to plead not guilty, to compel the United States to prove his guilt beyond a reasonable doubt, not to be compelled to incriminate himself, to confront and cross-examine the

witnesses against him, to have a jury or judge determine his guilt on the evidence presented, and other constitutional rights which attend a defendant on trial in a criminal case.

4. The defendant, TERRILL BERNARD WEATHERSPOON, is going to plead guilty to Count Two of the Superseding Indictment herein because he is, in fact, guilty and not because of any threats or promises.

5. The extent of the plea bargaining in this case is as follows:

a. It is understood that if the Court determines at the time of sentencing that the defendant, TERRILL BERNARD WEATHERSPOON, qualifies for a 2-point decrease in the offense level under Section 3E1.1(a) of the Sentencing Guidelines and that the offense level prior to the operation of Section 3E1.1(a) is 16 or greater, then the United States will recommend a decrease in the offense level by 1 additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. This portion of the Plea Agreement is made pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

b. The defendant, TERRILL BERNARD WEATHERSPOON, hereby abandons interest in, and consents to the official use, destruction, or other disposition of each item seized and/or maintained by any law enforcement agency during the course of the investigation, unless such item is specifically provided for in another section of this plea agreement. The

defendant, TERRILL BERNARD WEATHERSPOON, waives any and all notice of any proceeding to implement the official use, destruction, or other disposition of such items.

c. It is further agreed between the United States and the defendant, TERRILL BERNARD WEATHERSPOON, that the defendant is entering a conditional plea of guilty to Count Two of the Superseding Indictment herein, pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure, thereby reserving the right of the defendant to appeal the adverse ruling of the Court on his motion to suppress filed herein.

6. The defendant, TERRILL BERNARD WEATHERSPOON, agrees that pursuant to Title 18, United States Code, Section 3613, all monetary penalties, including restitution imposed by the Court, shall be due immediately upon judgment and subject to immediate enforcement by the United States. The defendant agrees that if the Court imposes a schedule of payments, the schedule of payments shall be merely a schedule of minimum payments and shall not be a limitation on the methods available to the United States to enforce the judgment.

7. The defendant, TERRILL BERNARD WEATHERSPOON, agrees that his debt resulting from the criminal monetary penalties due under the

criminal judgment will be submitted to the Treasury Offset Program even if he is current in his payments under any Court imposed payment schedule.

8. It is further understood that the United States and the defendant, TERRILL BERNARD WEATHERSPOON, reserve the right to bring to the Court's attention any facts deemed relevant for purposes of sentencing.

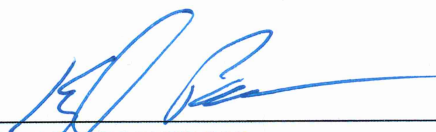
9. The defendant, TERRILL BERNARD WEATHERSPOON, further understands and agrees that pursuant to Title 18, United States Code, Section 3013, for any offense committed on or after October 11, 1996, the defendant shall pay an assessment to the Court of \$100 for each offense to which he is pleading guilty. This payment shall be made at the time of sentencing by cash or money order made payable to the Clerk of the United States District Court. If the defendant is indigent and cannot make the special assessment payment at the time of sentencing, then the defendant agrees to participate in the Inmate Financial Responsibility Program for purposes of paying such special assessment.

10. No agreements, representations, or understandings have been made between the parties in this case other than those which are explicitly set

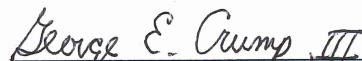
forth in this Plea Agreement, and none will be entered into unless executed in writing and signed by all the parties.


This the 16th day of November, 2018.

MATTHEW G.T. MARTIN
United States Attorney



KYLE D. POUSSON
NCSB #38437
Assistant United States Attorney
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336/333-5351



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PO Box 1523
Rockingham, N.C. 28380
910-1997-5544


TERRILL BERNARD
WEATHERSPOON
Defendant



1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA) CASE NO. 1:18CR333-2
4)
4 vs.)
5) Winston-Salem, North Carolina
5 TERRILL BERNARD WEATHERSPOON) April 17, 2019
6) 3:22 p.m.

7
8 TRANSCRIPT OF THE **SENTENCING HEARING**
9 BEFORE THE HONORABLE THOMAS D. SCHROEDER
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For the Government: KYLE D. POUSSON, AUSA
13 Office of the U.S. Attorney
14 101 S. Edgeworth Street, 4th Floor
Greensboro, North Carolina 27401

15 For the Defendant: GEORGE E. CRUMP, III, ESQ.
16 P.O. Box 1523
Rockingham, North Carolina 28379

17
18 Court Reporter: BRIANA L. BELL, RPR
19 Official Court Reporter
20 P.O. Box 20991
Winston-Salem, North Carolina 27120

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22
23
24 Proceedings recorded by mechanical stenotype reporter.
25 Transcript produced by computer-aided transcription.

P R O C E E D I N G S

(The Defendant was present.)

THE COURT: Mr. Pousson?

MR. POUSSON: Your Honor, if it should please the Court, the Government would ask to call the case of United States versus Terrill Bernard Weatherspoon. This is 1:18CR333-2. Mr. Weatherspoon is present with counsel, Mr. Crump, for sentencing.

THE COURT: All right. Mr. Crump, good afternoon.

MR. CRUMP: Good afternoon, Your Honor.

THE COURT: You didn't know you were spending your whole day at the federal courthouse probably.

MR. CRUMP: Well, I learned a lot from two eloquent lawyers, so it's been well worth my time and the patience of the Court.

THE COURT: I apologize for the delay in getting to your case, which was on the calendar for this morning.

Ms. Bratt-Boylan is here on behalf of Probation.

Did you receive a copy of the presentence report in this case, Mr. Crump?

MR. CRUMP: Yes, Your Honor.

THE COURT: Did you review that with your client?

MR. CRUMP: I did, Your Honor.

THE COURT: And are you prepared for his sentencing?

MR. CRUMP: We are prepared.

1 **THE COURT:** All right.

2 Mr. Weatherspoon, good afternoon. Did you receive a
3 copy of your written presentence investigation report, sir?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Did you review that with your attorney?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Do you understand the contents of the
8 report?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right. Thank you. You may have a
11 seat.

12 I've read the presentence report. I've received the
13 Defendant's position paper along with a supplement. I've read
14 those.

15 Did I have a paper from the Government? I don't
16 think I have one.

17 **MR. POUSSON:** No, Your Honor, you did not.

18 **THE COURT:** Do you have an objection you want to be
19 heard on?

20 **MR. CRUMP:** Your Honor, the only objection is an
21 enhancement for high-capacity magazine, and that's on paragraph
22 17 of the presentence report, and, Your Honor, I feel like
23 we've set it out, our position, fully in the supplement
24 position paper --

25 **THE COURT:** Is there any dispute that the magazine

1 found in the hotel room, in fact, qualifies as a large
2 capacity?

3 **MR. CRUMP:** There is no dispute on that.

4 **THE COURT:** The only question is whether your client
5 possessed it?

6 **MR. CRUMP:** That's correct.

7 **THE COURT:** And your position is he did not?

8 **MR. CRUMP:** There's no evidence.

9 **THE COURT:** All right.

10 **MR. POUSSON:** Judge, I'm not going to disagree with
11 much of that. I think Probation properly has identified that a
12 high-capacity magazine is involved in this offense. I think
13 there's the one in the hotel room. I believe the
14 co-defendant's gun also had the high-capacity magazine, but I
15 can't -- after speaking with the officers, I can't put that gun
16 in the Defendant's hand as opposed to the other two people who
17 came out of that hotel room, and so I am going to ask the Court
18 to allow me to speak of the high-capacity magazine more under
19 the nature and circumstances of the offense and the 3553(a)
20 section and not necessarily as an enhancement here for his base
21 offense level.

22 **THE COURT:** Whose was it? This is the case where
23 they all came running out of the hotel room, and the
24 co-defendant Mr. Espinoza, I think his name was, took off and
25 ran, and then Mr. Weatherspoon and somebody else was stopped by

1 an FBI agent or task force agent who put a gun on them or said,
2 Don't move or I will shoot.

3 **MR. POUSSON:** Yes, Your Honor. You are remembering
4 the facts of the case.

5 Mr. Weatherspoon, the gun that he's pled to was in
6 his hip. There was also this one that's in the hotel room that
7 they all came out of in a bag, and I've spent the time in
8 preparation for sentencing talking to the officers, and from
9 talking to them, I can't -- there was nothing unique in the bag
10 that would distinguish whether or not it belonged to
11 Mr. Weatherspoon or Mr. Espinoza or the other individual who
12 was present.

13 **THE COURT:** So the one he had on his hip was what
14 capacity?

15 **MR. POUSSON:** It's paragraph 7. It had 11 rounds in
16 it, 10 in the magazine --

17 **THE COURT:** It was a .40 caliber?

18 **MR. POUSSON:** Yes, Your Honor.

19 **THE COURT:** And the one in the hotel room that --

20 **MR. POUSSON:** In paragraph 9, it's referred to as a
21 9mm TEC-9 handgun with 22 rounds loaded.

22 **THE COURT:** Who signed in the room?

23 **MR. POUSSON:** The room was not under anyone's name
24 that was there.

25 **THE COURT:** There's a shocker.

1 All right. Do you have any evidence who paid for the
2 room?

3 **MR. POUSSON:** No, Your Honor. No evidence as to
4 that.

5 **THE COURT:** All right. So the Government is
6 conceding the --

7 **MR. POUSSON:** The base offense level, and I have
8 spoken to Probation, who I believe has the revised
9 calculations.

10 **THE COURT:** All right.

11 **THE PROBATION OFFICER:** Your Honor, the base offense
12 level would now be a 24, and with the acceptance, his total
13 offense level would be 21. He is a Criminal History Category
14 VI, and that would place him with an imprisonment range of 77
15 months to 96 months, and the fine range would be \$15,000 to
16 \$150,000.

17 **THE COURT:** Okay. Do you agree with those?

18 **MR. CRUMP:** Your Honor, the Defendant agrees with
19 that.

20 **MR. POUSSON:** Yes, Your Honor.

21 **THE COURT:** All right. Any other objections?

22 **MR. CRUMP:** No, Your Honor.

23 **THE COURT:** All right. I'm going to adopt the
24 presentence report as amended. As to all matters in it, I will
25 now adopt as findings of fact.

1 We're here today because Mr. Weatherspoon did plead
2 guilty to Count Two, being a felon in possession of a firearm
3 in violation of Title 18, U.S. Code, Section 922(g)(1).

4 We've calculated the advisory guidelines of total
5 offense level 21, Criminal History Category VI, guideline range
6 77 to 96 months with 10 years maximum under the statute,
7 supervised release range 1 to 3 years, fine range 15,000 to
8 \$150,000, restitution does not apply, and a 100-dollar special
9 assessment.

10 Do you agree?

11 **MR. CRUMP:** Yes, Your Honor.

12 **MR. POUSSON:** Yes, Your Honor.

13 **THE COURT:** All right. So I would be happy to hear
14 from you as to an appropriate disposition in light of the
15 advisory guidelines and the 3553(a) factors.

16 **MR. CRUMP:** Your Honor, the Defendant requests a
17 variant sentence of 72 months, which is 5 months below the low
18 end of the guidelines, and 72 months would be a 6-year
19 sentence, and he would contend and I would argue on his behalf
20 that that's a reasonable sentence.

21 Your Honor, before I forget it, one thing that I did
22 not argue in my position paper, if the Court looks at paragraph
23 31 of the presentence report as to his criminal history, he got
24 three points for an offense committed in 2001, and that three
25 points is correctly calculated, but it barely comes within the

1 15-year time frame, and if -- but not -- but for that three
2 points, he would be --

3 **THE COURT:** So I've got three months --

4 **MR. CRUMP:** Three points.

5 **THE COURT:** I mean, it was about three months'
6 difference.

7 **MR. CRUMP:** That's right. If it was not for that
8 three points and that three months, Your Honor, he would be at
9 guideline 70 to 87 months.

10 Your Honor, I've enjoyed representing
11 Mr. Weatherspoon. There are a couple of things unique about
12 him. He was born into the Crips. His mother and his father
13 were Crips. His father was a professional drug dealer. In
14 other words, at about --

15 **THE COURT:** I didn't know there were different kinds.

16 **MR. CRUMP:** There is a difference. It's like a
17 professional gambler. A professional gambler is winning. I
18 think most people who gamble lose. His father is selling drugs
19 and supporting his family, a large family, and that's the only
20 source of income. Now, I know he's been to prison, but in that
21 sense, I'd call his father a professional drug dealer. That
22 what was his, you know, line of work, and that's the life that
23 Terrill Weatherspoon was raised in.

24 Terrill is an intelligent man. He reports that --
25 well, he graduated from high school. He enjoyed high school.

1 He was a point guard, liked friends. One thing that he helped
2 him in school was that he liked the girls. That kept him in
3 school. He's very likable. And despite being kind of raised
4 in the Crips and his father a professional drug dealer, it's
5 commendable to graduate from high school, do well in high
6 school, play sports.

7 There are two things in the presentence report that I
8 read last night that to me are noteworthy. One is, I believe
9 it was paragraph 49, he was placed in foster care let's say
10 about age 11 or thereabouts because of his father's criminal
11 livelihood. Terrill Weatherspoon kept in touch with his foster
12 parents up until their deaths, and that's commendable. He was
13 reunited back with his parents, but, Your Honor, the defense
14 contends that it's remarkable that this young man, raised in
15 that background, would continue to talk -- be in touch with his
16 foster parents until their death, and they must have been very
17 good foster parents. They gave him piano lessons and etiquette
18 lessons, and it made him realize that his father's livelihood
19 was not normal and the way he was raised was not normal.

20 Here's the second thing that's noteworthy, and this
21 might just -- I might be the only one in the courtroom that
22 feels this way, but if you look at paragraph 8 on the
23 presentence report, when Terrill Bernard Weatherspoon came out
24 of that motel room, he had everything on him. He carried all
25 of his goods out of the motel room, and he had in his

1 possession a book. I just think that's wonderful. At some
2 point in time, he's in a motel room with two other individuals.
3 He walks out of the motel room. It's just commendable that
4 this young man has a book that he's reading, not a video game,
5 not some kind of smartphone, but an actual book, and I just
6 think it's just wonderful that he would read.

7 He has so much going for him. He has ambition. He
8 wants to own an apartment complex, wants to help, you know,
9 homeless mothers. He just has a lot going for him.

10 And the final reason we ask for the 72-month sentence
11 is that there were three individuals who came out of that motel
12 room. One individual was Espinoza, who was under surveillance,
13 and as soon as police announced "police," he's running to the
14 woods. The third individual did not get charged. Terrill
15 Weatherspoon is sitting here. As soon as the police -- he did
16 everything the police told him to do. He stopped.

17 **THE COURT:** There's a reason for that, of course.
18 There was a reason for it. I remember the hearing.

19 **MR. CRUMP:** Well, but he still --

20 **THE COURT:** The task force agent had a gun pointed at
21 both of them and said, if you move --

22 **MR. CRUMP:** Well, the task force -- they also had a
23 gun pointed at Espinoza, but Espinoza ran. He had the good
24 sense to do everything they asked, and --

25 **THE COURT:** That's true.

1 **MR. CRUMP:** So that's the reason that we ask for --
2 the guidelines are 77 to 96. That's the reason we ask for five
3 months below the guidelines. Thank you.

4 **THE COURT:** Thank you.

5 Mr. Pousson?

6 **MR. POUSSON:** Thank you, Your Honor.

7 Your Honor, I'm going to ask the Court to swing in
8 the other direction and ask the Court to consider a sentence at
9 the top end of the guideline range as it's calculated here
10 today.

11 In support of that request, I'm going to talk a
12 little bit about the nature of the offense, which I would
13 characterize as aggravated, and then also the Defendant's
14 criminal history, which I think also well supports his criminal
15 history category of VI.

16 The Court heard testimony about the incident here. I
17 would consider it an aggravated possession. Not only was the
18 firearm that the Defendant carried loaded with a round
19 chambered, but the Defendant was associating with a felon and
20 other individuals who were armed themselves. As the Court
21 heard, there was Mr. Espinoza, who had a firearm with the
22 extended magazine, and then we've already discussed the other
23 firearm that was in the hotel room; but that's not all that the
24 individuals had with them that day. In addition to the
25 firearms, the PSR reflects that Mr. Weatherspoon was carrying a

1 Taser on his person, that's paragraph 8, along with a
2 flashlight with a police decal.

3 He also -- in paragraph 10 and 12, the PSR reflects
4 that there is a bulletproof vest in the car that they're
5 walking to that Mr. Weatherspoon claimed that was his, along
6 with latex gloves in the car, bandannas and other
7 paraphernalia, which suggests that this group had not come
8 together for any good purpose.

9 **THE COURT:** What does it mean that it had a police
10 decal?

11 **MR. POUSSON:** I assume that the item had a police --
12 like just the word "police" written on it.

13 **THE COURT:** That much I figured out. What does that
14 mean? Does that mean it's stolen from police, or does that
15 mean you can go buy a police decal somewhere?

16 **MR. POUSSON:** No, Your Honor, I don't think it was a
17 stolen item. What I will tell the Court is I have seen cases
18 in the past where individuals who are committing robberies
19 carry police items, hats, shirts, et cetera, so that the people
20 that they are approaching hesitate, thinking that it's the
21 police approaching them and not someone else.

22 In addition, Your Honor, I would suggest that the
23 evidence in this case would support a finding that the
24 Defendant has followed in his parents' footsteps with their
25 association with the Crips. Paragraph 52 reflects tattoos

1 associated with the Crips, and then the facts of this case, in
2 paragraph 10, indicate that there were blue bandannas and a
3 blue baseball cap, which are colors associated with the Crips,
4 that were possessed along with all these other things.

5 So as a whole, Your Honor, I would characterize these
6 circumstances as highly dangerous and then aggravated
7 possession of a firearm on the spectrum of firearm by felon
8 cases.

9 The Defendant's criminal history here is also serious
10 and certainly not overrepresented by his criminal history. The
11 Defendant's criminal history starts with a robbery conviction
12 in paragraph 29, which is old enough that it isn't counted for
13 points. There is a felony flight from an officer in paragraph
14 30 that, from the dismissed charges, appeared to have involved
15 a gun. That paragraph 30 reflects that there was a charge for
16 a firearm that was dismissed that was accompanying that.

17 There's -- his next charge actually seemed to have
18 occurred while he was in prison for the offense in paragraph
19 30. The facts of that that are reflected in the PSR describe a
20 fight in the jail that was serious enough for a detention
21 officer to discharge a firearm, and that in spite of that, the
22 Defendant fought with officers and had to be eventually subdued
23 with pepper spray.

24 The Defendant has multiple felony convictions for
25 drug offenses, paragraphs 32 and 33, and other firearm

1 offenses, paragraph 34, and other firearm by felon, which is we
2 see conduct repeated here, and felony assault with a dangerous
3 weapon that appears to have involved a gun in paragraph 36.

4 Given this lengthy criminal history of serious
5 felonies over a long period of time and, as probation noted,
6 across multiple states and the dangerousness of this offense,
7 we would ask the Court to consider a sentence at the top end of
8 the range, and we would also ask the Court to include a
9 disposition order for the seized firearm along with any
10 judgment.

11 Unless there are questions, those would be my only
12 requests.

13 **THE COURT:** It looks like from -- I made a chart when
14 I read the PSR and walked through his convictions, but it looks
15 like from 1997 to 2014, he pretty much went from prison to
16 right almost back in prison, like a revolving door. Is that
17 what happened?

18 **MR. POUSSON:** That would be my read as well. With
19 the exception of the one conviction that seemed to have
20 occurred in custody, all the others seemed to have been
21 committed shortly after release from the sentence before.

22 I've got a December of '03 in 31 to a March of '04 in
23 32, and we jump to '07 -- a release in '07 from that one and an
24 '07 offense date, 2010 discharge date and a 2010 offense date,
25 2013 discharge to 2014 offense. There doesn't seem to be a

1 period of much more than a year where he's gone without a
2 pending criminal charge or imprisonment.

3 **THE COURT:** So paragraph 36, that's discharged; is
4 that right? 28 to 72 months, he's served that? He's in
5 federal custody now; right?

6 **MR. POUSSON:** He is in federal custody.

7 **MR. CRUMP:** No, he's not.

8 **THE COURT:** Is he on a writ?

9 **THE PROBATION OFFICER:** Yes, Your Honor. Paragraph
10 41 in the presentence report are still pending. Well,
11 correction, Your Honor. Number one and two of that paragraph,
12 it looked like they have been dismissed, but it looks like
13 charge three and four are now being heard in superior court.
14 So they are still pending.

15 **MR. POUSSON:** The related state charges.

16 **THE COURT:** Okay. Paragraph 36 is discharged,
17 though?

18 **THE PROBATION OFFICER:** Yes, Your Honor.

19 **THE COURT:** Okay. Thank you. All right. Thanks.

20 Mr. Weatherspoon, is there anything you would like to
21 say on your own behalf before I make a decision? You need not
22 speak. If you would like to remain silent, that's your right,
23 and I won't hold it against you; but if you would like to say
24 anything, now would be the appropriate time.

25 **THE DEFENDANT:** No, sir.

1 **THE COURT:** All right, sir. You may have a seat.

2 (Pause in the proceedings.)

3 All right. I have taken the guideline into account
4 on an advisory basis. The range is 77 to 96 months. I've
5 considered all matters of record and all the 3553(a) factors,
6 and the sentence I will impose is that which, in my view, is
7 sufficient but no greater than necessary to meet the sentencing
8 objectives of Section 3553(a) and any sentencing objectives
9 that may apply as well under the advisory guidelines.

10 I'm going to impose a sentence of 94 months in this
11 case. That's within the guideline range, which is less than 24
12 months.

13 I know, Mr. Crump, you asked for a sentence of 72
14 months. I thought about that. For the reasons I'm about to
15 state, I'm not inclined to do that. I appreciate the argument.

16 The nature and circumstances of the offense was the
17 possession of the firearm after the police came upon
18 Mr. Weatherspoon with his two other friends. Granted, he did
19 everything the police told him to do, and that was to his
20 credit, although it was a good thing he did that because I do
21 remember the testimony, and I believe the agent's testimony was
22 "If you move, I'll kill you." So it's a good thing he didn't
23 move. He did the right thing to stop. However, Mr. Espinoza
24 apparently didn't do that and gave chase. He was off headed in
25 another direction.

1 You're 41 years old, Mr. Weatherspoon. You have some
2 college. I did agree with Mr. Crump on virtually everything he
3 said about your presentence report. You describe yourself as
4 being different. You're not typical. "I have the potential to
5 do these things," and I would agree with you; you have the
6 potential to do all of those.

7 For some reason, which I can't really explain, you've
8 constantly been engaged in criminal conduct, and you're just
9 wasting your opportunity. You had a 3.2 GPA in high school. I
10 don't know that I've had anybody in my courtroom with the kind
11 of background that you've had that was able to come above it,
12 rise above it, and do the kinds of things that you did.

13 You have very little employment history, mainly
14 because you've been in and out of prison pretty much your whole
15 life, which is unfortunate. At some point -- you're 41 years
16 old. You're an adult. You have to make the decision not to be
17 associated with these folks that do these kinds of things.

18 I do agree with the Government that it's highly
19 concerning the various things that were found among your group
20 when you were stopped. In your situation, the .40 caliber gun
21 with the ammunition, the Taser, the material found with your
22 two other friends, which included the ballistic vest, lots of
23 ammunition, and the fact that your guns were loaded and
24 chambered -- with a round chambered is a concern in light of
25 your previous criminal convictions. At some point the duty to

1 protect the public that I'm charged with overcomes these other
2 factors. It becomes the prominent factor, and in your case
3 that's certainly the situation. I'm concerned about protecting
4 the public in light of your criminal history.

5 And I thought it was interesting when I read your
6 presentence report that you said that you liked North Carolina,
7 and I know you have been in several states, but you liked North
8 Carolina because it's more peaceful than California, which is a
9 little bit ironic in light of the fact that you're running
10 around with a handgun that's loaded with these guys. It would
11 be even more peaceful if you wouldn't do that. That's part of
12 the problem.

13 You have violent felonies. In 2014, you were
14 convicted of felony assault with a deadly weapon where you
15 assaulted three individuals with a firearm, and you've had
16 other possessions of semiautomatic weapons, and you just
17 haven't -- a concealed firearm. You haven't gotten the
18 message. So I'm concerned about deterrence, and I'm concerned,
19 above and beyond everything else, protecting the public in
20 light of your extensive criminal history.

21 So, Mr. Crump, sorry you had to sit here all day to
22 make your argument for 72 months and then I'm not adopting it,
23 but in light of these facts, I am not inclined to do that.

24 I'm ordering that you be committed to the custody of
25 the United States Bureau of Prisons for a term of 94 months

1 followed by 3 years of supervised release.

2 You're ordered to pay a 100-dollar special
3 assessment. To the extent that you cannot immediately comply,
4 I do recommend you participate in the Inmate Financial
5 Responsibility Program. Any fine will be waived based on
6 inability to pay.

7 In addition to the standard and mandatory conditions
8 of supervision, I'm ordering that you submit to substance abuse
9 testing at any time as directed by your officer, that you
10 cooperatively participate in a substance abuse treatment
11 program, which may include drug testing and inpatient and
12 residential treatment, and to pay for those services as
13 directed by your officer. During the course of treatment, you
14 shall abstain from the use of alcoholic beverages.

15 You shall provide any requested financial information
16 to your probation officer.

17 You shall not associate with or be in the company of
18 any Crips gang member or security threat group member. You
19 shall not frequent any locations where gangs or security threat
20 groups congregate or meet. You shall not wear, display, use,
21 or possess any clothing or accessories which have any gang or
22 security threat group significance.

23 You shall submit your person, residence, office,
24 vehicle, or any other property that's under your control to a
25 warrantless search. Such a search shall be conducted by a U.S.

1 probation officer at a reasonable time and in a reasonable
2 manner based upon reasonable suspicion of contraband or
3 evidence of a violation of a condition of your supervised
4 release. Failure to submit to such a search may be grounds for
5 revocation, and you shall warn any residents that the premises
6 may be subject to such searches.

7 He was named in the remaining Count One; is that
8 right?

9 **MR. CRUMP:** That's right.

10 **THE COURT:** All right. Pursuant to the plea
11 agreement, without objection, the remaining count is dismissed.

12 Any recommendations you want me to make?

13 **MR. CRUMP:** Your Honor, I'm not sure that he
14 qualifies, but he would like the substance abuse in the federal
15 Bureau of Prisons, and he would also like to be located as
16 close to North Carolina as he could be within the federal
17 Bureau of Prisons.

18 **THE COURT:** All right. I'll make the recommendation
19 that he be permitted to participate in the most intensive form
20 of substance abuse treatment that he's eligible for and that he
21 be designated to a facility as near as possible to his home in
22 North Carolina.

23 **MR. CRUMP:** Thank you.

24 **THE COURT:** Any requests from the Government?

25 **MR. POUSSON:** Can I get a request for the destruction

1 or otherwise disposition of the firearm at the conclusion of
2 the period of appeal?

3 **THE COURT:** At the expiration of time for appeal, it
4 will be returned to its lawful, rightful owner or destroyed.

5 Have you had an opportunity to speak with
6 Mr. Weatherspoon of any rights of appeal that he may have?

7 **MR. CRUMP:** Yes, Your Honor.

8 **THE COURT:** Please make sure he is aware that if he
9 does choose to file notice of appeal, he must do so in writing
10 within 14 days of the entry of the Court's judgment in this
11 case. If he cannot afford the cost of his appeal, he can ask
12 the Fourth Circuit to waive the cost. All right.

13 **MR. CRUMP:** Thank you.

14 **THE COURT:** Mr. Weatherspoon, good luck to you, sir.

15 We'll take a break here, and then we'll pick up with
16 our last matter.

17 (END OF PROCEEDINGS AT 3:52 P.M.)

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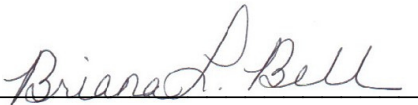
24

25

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

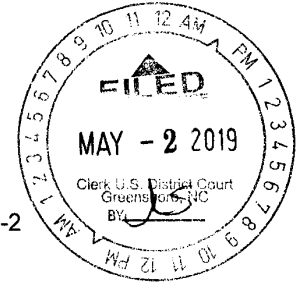
6 I, Briana L. Bell, Official Court Reporter, certify
7 that the foregoing transcript is a true and correct transcript
8 of the proceedings in the above-entitled matter.
9

10 Dated this 26th day of June 2019.
11

12 
13 _____
14 Briana L. Bell, RPR
15 Official Court Reporter
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AO 245B (NCMD Rev. 02/18) Sheet 1 - Judgment in a Criminal Case

United States District Court Middle District of North Carolina



UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

TERRILL BERNARD WEATHERSPOON

Case Number: 1:18-CR-00333-2

USM Number: 34557-057

George Entwistle Crump, III

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count 2.
- pleaded nolo contendere to count(s) _____ which was accepted by the court.
- was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:922(g)(1) and 924(a)(2)	Felon in Possession of a Firearm	July 18, 2018	2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s)
- Count(s) is are dismissed on the motion of the United States.

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

April 17, 2019
Date of Imposition of Judgment

Signature of Judge

Thomas D. Schroeder, United States District Judge

Name & Title of Judge

Date

May 1, 2019

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **94 months.**

The court makes the following recommendations to the Bureau of Prisons: that the defendant be evaluated for and permitted to participate in the most intensive substance abuse treatment program provided by the Bureau of Prisons. It is further recommended that the defendant be designated to a facility as close as possible to his home in North Carolina.

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

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

at _____ am/pm on _____ .

as notified by the United States Marshal.

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

before 2 pm on .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____

_____, with a certified copy of this judgment.

UNITED STATES MARSHAL

BY

DEPUTY UNITED STATES MARSHAL

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **three (3) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
4. You must make restitution in accordance with 18 U.S.C §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
7. You must participate in an approved program for domestic violence. *(Check, if applicable.)*

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

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall abide by the mandatory and standard conditions of supervised release.

The defendant shall submit to substance abuse testing, at any time, as directed by the probation officer. The defendant shall cooperatively participate in a substance abuse treatment program, which may include drug testing and inpatient/residential treatment, and pay for treatment services, as directed by the probation officer. During the course of treatment, the defendant shall abstain from the use of alcoholic beverages.

The defendant shall provide any requested financial information to the probation officer.

The defendant shall not associate with or be in the company of any Crips gang member/security threat group member. The defendant shall not frequent any locations where gangs/security threat groups congregate or meet. The defendant shall not wear, display, use, or possess any clothing or accessories which have any gang or security threat group significance.

The defendant shall submit his person, residence, office, vehicle, or any property under his control to a warrantless search. Such search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		\$.00	\$.00

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

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

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

Restitution amount ordered pursuant to plea agreement \$

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

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

- the interest requirement is waived pursuant to 18 U.S.C. Section 3612(f)(3) for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 100.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g. weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g. weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties: **To the extent the defendant cannot immediately comply, the Court recommends the defendant participate in the Inmate Financial Responsibility Program.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk of Court, United States District Court for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401-2544, unless otherwise directed by the court, the probation officer, or the United States Attorney. **Nothing herein shall prohibit the United States Attorney from pursuing collection of outstanding criminal monetary penalties.**

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

Joint and Several

Defendant and Co-Defendant Names, Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

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

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: TERRILL BERNARD WEATHERSPOON
CASE NUMBER: 1:18-CR-00333-2

DISPOSITION OF EVIDENCE

That at the expiration of time for appeal, the firearm seized from the defendant shall be destroyed or returned to its lawful and rightful owner, if one can be determined.

IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
 V.) 1:18CR333-2
)
Terrill Bernard Weatherspoon)

NOTICE OF APPEAL

Notice is hereby given that Terrill Bernard Weatherspoon, defendant in the above named case, by and through the undersigned counsel, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final judgment and sentence by the Honorable Thomas D. Schroeder, Chief United States District Court Judge for the Middle District of North Carolina, entered in this case on the 2nd day of May, 2019.

Respectfully submitted this the 7th day of May, 2019.

/S/ GEORGE E. CRUMP, III
Attorney at Law N.C.S.B #7676
PO Box 1523
Rockingham, NC 28380
910-997-5544
Attorney for the Defendant
Email: georgecrump@bellsouth.net

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Kyle D. Pousson
Assistant United States Attorney
United States Attorney's Office
101 South Edgeworth Street
Greensboro, NC 27401

Respectfully submitted this the 7th day of May, 2019.

/S/ GEORGE E. CRUMP, III
Attorney at Law N.C.S.B #7676
PO Box 1523
Rockingham, NC 28380
910-997-5544
Attorney for the Defendant
Email: georgecrump@bellsouth.net

RECORD NO. 19-4324

In The
United States Court of Appeals
For The Fourth Circuit

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

TERRILL BERNARD WEATHERSPOON,

Defendant – Appellant.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
AT GREENSBORO**

**JOINT APPENDIX
VOLUME III OF III – EXHIBIT
(Pages 161 – 161)**

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1. DVD of Days Inn Security Camera