No. 14-1665

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

United States of America, Plaintiff–Appellee, v. Bruce Jones, Defendant–Appellant.	Appeal from the United States District Court for the Southern District of Indiana Case No. 1:12-Cr-00072-TWP-DML-1 The Honorable Tanya Walton Pratt

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For the Southern District of Indiana, Indianapolis Division
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BRIEF OF DEFENDANT–APPELLANT BRUCE JONES

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DISCLOSURE STATEMENT

I, the undersigned counsel for the Defendant–Appellant, Bruce Jones, furnish the following list in compliance with Fed. R. App. P. 26.1 and Cir. R. 26.1:

1. The full name of every party or amicus the attorney represented in the case:

   Bruce Jones.

2. This party is not a corporation.

3. The names of all law firms whose partners or associates are expected to appear for the party before this Court:

   Sarah O'Rourke Schrup (attorney of record), Matthew Heins (senior law student), and Jonathon Studer (senior law student) of the Bluhm Legal Clinic at the Northwestern University School of Law.

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Jurisdictional Statement

The United States District Court for the Southern District of Indiana had jurisdiction over Appellant Bruce Jones's federal criminal prosecution pursuant to 18 U.S.C. § 3231 (2012), which states that the "district courts of the United States shall have original jurisdiction . . . of all offenses against the laws of the United States." This jurisdiction was based on an indictment charging Jones with violations of 18 U.S.C. §§ 922(g)(1) and 1347.

Jones was initially indicted on May 5, 2012. (R.1.)[1] The district court severed Jones's healthcare-fraud count from the three firearms counts, and the latter proceeded to trial between October 21, 2013, and October 24, 2013. A jury found him guilty on all three counts. On March 25, 2014, the district court sentenced Jones, (A.9–11), and entered its judgment on March 27, 2014, (A.1). Jones filed his timely notice of appeal that same day. (A.21.)

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291, which grants jurisdiction of "all final decisions of the district courts of the United States" to their courts of appeal, and 18 U.S.C. § 3742, which provides for review of the sentence imposed.

[1] References to the sequentially paginated trial transcript shall be denoted as (Trial Tr. ___), references to the sentencing hearing transcript as (Sentencing Hr'g Tr. ___), references to the pretrial status

Statement of the Issues

I. Whether the district court violated Federal Rule of Criminal Procedure 11 when it repeatedly commented on the plea negotiations, including warning the defendant that he should work with his lawyer because he faced "very, very serious" charges and the government was willing to dismiss most of them.

II. Whether the government's second superseding indictment was multiplicitous or duplicitous when it impermissibly charged Jones—over three separate counts—based solely on the location where authorities found the firearms when the evidence showed that the defendant possessed the firearms as a single course of conduct.

III. Whether the district court incorrectly calculated Jones's sentencing guideline range and criminal history category by using a conviction that occurred more than fifteen years prior to the commencement of the conduct in this case.

Statement of the Case

In early 2010 the FBI began investigating Appellant Bruce Jones for potential fraudulent healthcare billing arising from his counseling practice. (Trial Tr. 131:4–10.) On May 10, 2010, authorities obtained a warrant and searched his home in Anderson, Indiana for evidence related to his therapy business and its billing. (R.49.) Although agents started in Jones's home office, they quickly spread throughout the rest of the house, looking anywhere that could contain even a thumb drive capable of storing billing records. (Trial Tr. 136:16–137:25.) Agents eventually ended up in the master bedroom closet, (A.32:25–33:4), where they discovered a loaded revolver in a drawer, (A.32:25–33:4). Because twenty five years earlier Jones had been convicted of a felony—his only criminal offense—and as a result was not allowed to possess firearms, (Trial Tr. 40:16–17), the officers sprang into action upon finding this gun.

Although it was not clear whether the search ceased immediately after agents found this gun,[2] agents eventually left to obtain an expanded search warrant that covered guns and ammunition in Jones's home. (R.100 at 3.) The FBI seized several items, including the revolver and a shotgun found in a different bedroom closet, (R.100 at 4), and they uncovered many rounds of ammunition in a storage room in the basement, (A.33:5–10). Jones's home office yielded additional firearm-related evidence. Agents found a folder containing proofs of purchase and receipts for most of the firearms and ammunition. (A.35:2–11.) Agents also searched the computer in Jones's office and discovered pictures of many of the firearms recovered in the case. (A.40:9–13.)

[2] According to one agent, once the gun was discovered, "the search kind of went through a little change where we started looking at every single thing." (Trial Tr. 276:15–17.)

While searching Jones's home office, agents learned that he owned other properties, including a cabin in Montana and a converted garage just around the corner from his home that he called his "treatment lodge." (A.34:2–6.) After completing the search of Jones's home, officers obtained another search warrant for the treatment lodge. (A.37:11–13.) During that search, they found over twenty guns, all locked in a safe. (A.34:22–25.) It is undisputed that when agents asked Jones for the combination to the safe, he told them that his wife—who was out of the country—had the combination and that he would have to call her to obtain it. (A.34:7–12.) He did so, and the agents were then able to access the contents of the safe. (A.34:13–23.)

Almost a month later, agents obtained another search warrant for Jones's cabin in Montana. (A.37:11–13.) When agents initially searched the cabin, they found no guns. (A.37:11–13.) They later learned, however, that Jones's neighbor in Montana, Gary Hotchkiss, had removed all of the firearms from Jones's cabin at Jones's request. (A.38:1–23.) At trial Jones explained that in March and April of 2010—before the search warrants in this case—he had suffered several home-alarm failures at the cabin and was concerned that the safe containing the guns would be found and robbed. (Trial Tr. 740:4–742:18.) Jones testified that he asked Hotchkiss to move the guns to his ramshackle trailer down the road because no thief would believe it contained items of value and, therefore, the items would be safer there. (Trial Tr. 739:19–740:8.) When the agents recovered the safe from Hotchkiss, they found at least fifteen guns. (A.38:1–23.)

On May 15, 2012, the government charged Jones with one count of health care fraud, 18 U.S.C. § 1347 (2012), and forty-seven counts of being a felon in possession of a firearm and ammunition, 18 U.S.C. § 922(g)(1). (R.1.) As the case progressed, in early 2013, Jones's lawyer raised the possibility of moving to sever the felon-in-possession charges from the health-care

charges. (3/1/13 Hr'g Tr. 3:7–10); *see also* (R.94). The government agreed that it "really ha[d] no reason to prevent them from doing so." (3/1/13 Hr'g Tr. 3:10–11.) The parties were also actively engaged in plea negotiations throughout this period. During a March 2013 hearing, the district court inquired about the plea negotiations and, specifically, whether the government had made an offer. (A.14:2–3.) The government reported to the court that it had and that under its plea offer forty-six of the charges would be dismissed, leaving just the health-care-fraud count and one felon-in-possession count. (A.14:4–17.) The government further reported that it would recommend a thirty-one to thirty-seven month sentence. (A.14:13–19.) The district court confirmed, asking "[s]o you would dismiss forty-six counts?" (A.14:10.) It then further asked whether this was "the government's final and best offer?" (A.15:1–2.) After the government noted that it did not anticipate any other deal, the district court warned Jones to "work with your lawyer, . . . because these are very, very serious charges . . . and the government is willing to dismiss 46 of the 48 counts." (A.20:11–13.)

When the parties reconvened for the next status hearing in June 2013, Jones was represented by new counsel and the government's approach had changed. The government started out by discussing the new indictment in the case. (A.22:11–23:8.) It had previously dismissed its first superseding indictment and had recently filed its second. Its theory was that although the two indictments contained no substantive difference "whatsoever," the first superseding indictment was multiplicitous. (A.22:24–23:20.) It was the government's belief that if it "grouped into three counts based upon where they were found" rather than charging each weapon individually, it would remedy a double jeopardy and multiplicity problem, even though "[t]he evidence has not changed, [and] the charging theory has not changed." (A.25:4–9.) The government then brought

up prior defense counsel's intent to sever the counts, and indicated that although it had not yet happened, they "all kn[e]w" this was going to occur. (6/5/13 Hr'g Tr. 10:6–8.) Jones's new defense counsel moved for a continuance, citing its need to become familiar with the case that it had just joined. (6/5/13 Hr'g Tr. 8:14–9:2) ("Judge, we simply need more time to do an adequate job for Mr. Jones. . . ."). The district court denied the motion. (A.26:21–22.)

Finally, the district court circled back to the plea negotiations, and asked the government if an offer was "still on the table." (A.26:25.) The prosecutor responded that Jones's first attorney had told him that Jones had rejected the plea offer, though Jones was never asked on the record to confirm this fact. (A.27:4–5.) The prosecutor then noted that even if Jones did not reject the plea deal, the government's superseding indictment "revoked the offer" by operation of law. (A.27:6–8). And because of the government's additional trial preparation, it represented that it could "no longer in good conscience make the same offers." (A.27:10–12.)

A few weeks later, Jones's older brother David, whom he viewed as a father figure, died unexpectedly. (7/5/13 Hr'g Tr. 36:19–22.) Jones spiraled into a bereavement-induced depression, which led the district court to conduct a competency hearing on July 5, 2013, just three days before the scheduled trial date. (7/5/13 Hr'g Tr. 14:3–16:15.) Although the district court recognized that Jones's fear and anxiety about trial was likely exacerbated by the recent loss of his brother, it found that he was nonetheless legally competent to stand trial. (7/5/13 Hr'g Tr. 45:21.) The district court denied the defense's request for an additional thirty days to prepare for trial and ordered that the trial would proceed as scheduled. (7/5/13 Hr'g Tr. 48:23–49:3.)

On the morning that trial was to start, July 8, 2013, Jones did not appear in court. (7/8/13 (morning) Hr'g Tr. 3:1–4.) Jones was found in his home, mostly unresponsive. (7/8/13 (morning)

Hr'g Tr. 3:24–25.) An ambulance took him to the local hospital in Anderson, where he was treated, eventually detained by authorities, and then transferred to a secure wing of an Indianapolis hospital. (7/8/13 (morning) Hr'g Tr. 14:14–15; 7/8/13 (afternoon) Hr'g Tr. 5:11–16.) That afternoon, the district court granted the defendant's request to continue the jury trial, and also sua sponte ordered a competency evaluation. (7/8/13 (afternoon) Hr'g Tr. 8-10; R.143.) Jones was subsequently moved to a federal medical facility, where he was evaluated and treated. (10/15/13 Hr'g Tr. 3:15–17.)

Jones made a full recovery, and the court rescheduled the jury trial for the fall. Shortly before the trial date, the district court held another competency hearing to ensure that Jones could proceed. (10/15/13 Hr'g Tr.) During the hearing, the district court admitted a forensic psychological report prepared while Jones was at the federal medical center. (10/15/13 Hr'g Tr. 3:21–4:7.) Jones's treating psychologist diagnosed him with a "personality disorder with narcissistic features." (10/15/13 Hr'g Tr. 4:10–13.) The psychologist also reported that Jones was still suffering from depression related to his brother's death. (10/15/13 Hr'g Tr. 4:13–17.) The court found by a preponderance of the evidence that Jones was competent to stand trial. (10/15/13 Hr'g Tr. 6:4–7.)

The felon-in-possession trial began on October 21, 2013. At trial, the government proceeded on several theories of possession. It at times claimed that Jones directly possessed the weapons. (A.41:9–17) ("In addition to the picture—two pictures, actually—of the defendant holding at least one of these guns that we found, you've also heard from the defendant's own words that he possessed these firearms."). Other times it argued that he constructively possessed them. (Trial Tr. 335:5–22) (playing a video of Jones in his Montana cabin claiming ownership of everything

there as evidence of constructive possession); *see also* (6/14/13 Hr'g Tr. 104:24–105:5) (referring to transfer agreement as evidence of constructive possession because of the "exercise of control to the extent he's directing someone to take his guns to somebody else"). The government also used evidence of ownership as indicative of possession. (Trial Tr. 184:8–25) (introducing receipts, proofs of purchase, and owner's manuals to show possession). *But see* (10/15/13 Hr'g Tr. 18:19–22) (government contending "the statute charges possession; ownership is irrelevant, and testimony as to ownership is inadmissible under the rules as it's not relevant"). To advance these various theories, the government admitted forty-six firearms and much of the ammunition into evidence. *See, e.g.*, (Trial Tr. 54:22–55:3) (admitting canisters of ammunition into evidence); (Trial Tr. 235:15–21) (admitting twenty-eight of the firearms into evidence); *see also, e.g.*, (Trial Tr. 106:3–14) (admitting a "black powder" weapon—a firearm Jones was allowed to possess—into evidence). Some of the firearms were matched to receipts of purchase, some to box tops that contained the weapon when it was purchased, and some to both. *See, e.g.*, (Trial Tr. 194:2–195:23) (showing evidence of an owner's manual, purchase receipt, and box top related to a single firearm). Some of the firearms were mentioned in emails Jones sent, *see, e.g.*, (A.30:16–31:7), and other firearms had no accompanying evidence at trial.[3]

Jones's defense focused on showing that others possessed the guns and ammunition. Evidence at trial showed that in the wake of his first felony conviction, Jones endeavored to separate himself from the guns. Immediately after his conviction, Jones turned the gun collection over to a friend, where it was locked up during his term of imprisonment and many years after.

[3] For example, the government admitted as a group twenty-nine of the firearms. *See* (Trial Tr. 235:20–21.) Within that group was exhibit 114, a Harrington and Richardson Arms Revolver. (R.112.) After it was admitted, however, the government never specifically mentioned it at trial. *But cf.* (Trial Tr. 235:3–6) (referencing the batch of weapon pulled from the safe, which ostensibly included exhibit 114).

(A.29.) Jones decided to marry in the mid-1990s. A few years later, in 2001, he transferred to his wife Larissa, by written agreement,[4] the gun collection that had been stored at his friend's home, expressly acknowledging that "because of [his] conviction in 1984 [he] cannot possess firearms." (A.29.) Recognizing the firearms' investment value, Jones asked her to "please keep them oiled, locked up, and protected until a much later time when you might want to sell for retirement" because in his opinion "[g]uns and ammo will appreciate faster than money in the bank." (A.29.) The jury found Jones guilty on all three counts of being a felon in possession under 18 U.S.C. § 922(g)(1). (Trial Tr. 866:8–23.)

Sentencing occurred on March 25, 2014. (Sentencing Hr'g Tr.) The court, over defense counsel's objection, counted Jones's 1985 felony conviction, which bumped up his base offense level as well as his criminal history category. (A.7:11–25.) After applying enhancements for obstruction of justice and for the number of firearms, Jones's Guidelines range was 87 to 108 months' imprisonment. (Sentencing Hr'g Tr. 18:13–15.) The judge sentenced Jones to 100 months' imprisonment on each of the three counts, to be served concurrently, along with three years of supervised release and a fine of $12,500. (A.9:16–10:15.) Jones filed a timely notice of appeal on March 27, 2014. (A.21.)

[4] The government moved in limine to exclude this transfer agreement. (R.63; R.64.) The court took that motion under advisement. (R.99.) At trial, the defense ultimately decided not to admit the transfer agreement as evidence, (Trial Tr. 603:6–9), but Larissa and Jones were allowed to testify about the document, *see, e.g.*, (Trial Tr. 606:2–12).

Summary of the Argument

Bruce Jones's sentence and convictions should be overturned for three reasons. First, the district court participated in ongoing plea negotiations, prejudicing Jones. The judge emphasized that the government would dismiss forty-six of forty-eight counts of Jones's indictment if he agreed to a plea. The judge also stressed to Jones that he faced "very, very serious" charges. These comments violated Rule 11, calling into question the court's impartiality. Thus, this Court should reverse Jones's conviction and remand for proceedings in front of a new judge.

Next, the second superseding indictment was both multiplicitous and duplicitous. It was multiplicitous because the government arbitrarily broke up a single collection of firearms—just one continuous possession—into three separate charges based solely on where the guns were recovered by authorities. The government did not prove that these were three separate courses of conduct that justified the three separate counts. Alternatively, the second superseding indictment was duplicitous, because it charged multiple acts of possession within each single count. The duplicitous indictment impacted evidentiary rulings and Jones's ability to defend the case. And the general verdict form exacerbated the problems of duplicity, further frustrating his defense.

Finally, in sentencing, the district court erroneously treated as relevant conduct the 1996 prenuptial agreement and the 2001 transfer agreement, which indicated that Jones "owned" and "transferred" weapons, respectively. Yet such supposed prior "possessions"—years before the offense dates alleged in the indictment—should not have been used to apply an otherwise-expired 1984 felony as a sentencing enhancement for purposes of both his base offense level and his criminal history level. This Court should vacate Jones's sentence and remand for resentencing.

ARGUMENT

I. The district court improperly participated in the plea negotiations.

When a district court judge weighs in on ongoing plea negotiations between a defendant and the government, it undermines the court's impartiality and smacks of coercion. *United States v. Rodriguez*, 197 F.3d 156, 158–59 (5th Cir. 1999) (stating that such participation diminishes the judge's impartiality because "[b]y encouraging a particular agreement, the judge may feel personally involved, and thus, resent the defendant's rejection of his advice"); *see also United States v. Bradley*, 455 F.3d 453, 460 (4th Cir. 2006). For these reasons, Federal Rule of Criminal Procedure 11 categorically forbids any judicial participation in the plea negotiation process. Fed. R. Crim. P. 11(c)(1) (stating "the court must not participate in [plea] discussions"). Such a ban reduces the possibility that the judge's actions will be viewed as coercive by the defendant, whether or not he ultimately accepts a plea. *Rodriguez*, 197 F.3d at 158. Courts are clear that any participation of any kind in the plea process is proscribed under Rule 11. *United States v. Hemphill*, 748 F.3d 666, 672 (5th Cir. 2014) (internal quotation marks omitted) (quoting *United States v. Pena*, 720 F.3d 561, 570 (5th Cir. 2013)) (finding this "bright line rule" to be an "absolute prohibition on all forms of judicial participation in or interference with the plea negotiation process"); *Rodriguez*, 197 F.3d at 159 (finding that "*any* involvement" by the judge exerts inherent pressure on the defendant) (emphasis in original). Although courts are clear that there is no prescribed set of judicial statements that a defendant must show before being able to show a Rule 11 violation, courts have at times provided examples of the types of judicial conduct that violate the rule. *See, e.g.*, *id.* When, for example, the district court discusses the consequences that will arise from the defendant's decisions, it places undue pressure on the

defendant, which in turn violates Rule 11. *Id.* Here, the district court improperly participated in the plea negotiations. Jones did not object below, so this Court reviews for plain error. *United States v. Davila*, 133 S. Ct. 2139, 2147 (2013); *United States v. Olano,* 507 U.S. 725, 732 (1993) (articulating four-prong plain-error standard); *United States v. Burnside*, 588 F.3d 511, 520 (7th Cir. 2009). Even so, the judge's comments here satisfy that standard and this Court should reverse and remand for resentencing before a different judge.

First, there was a plain error because it is beyond dispute that the district court made statements about the plea offer and negotiations during the March 2013 status hearing. (A.14–15, 20.) This alone breaches the "bright line" rule against *any* participation in the plea process. *Rodriguez*, 197 F.3d at 159. And, like *Rodriguez*, the district court also engaged in the type of specific comments—ones that emphasized the consequences of failing to enter a plea—that exerted undue pressure on Jones. *Id.* at 157–58. The judge initially asked about the plea negotiations and whether the government had made an offer. (A.14:2–3.) The judge then emphasized to Jones that the government would dismiss most of the charges against him in exchange for a plea. (A.14:10) (asking the government, with Jones present, "[s]o you would dismiss 46 counts?"). The judge applied more pressure when it asked whether this was "the government's final and best offer." (A.5:1–2.) Later, and most significantly, the judge stressed to Jones that the charges he faced were "very, very serious," (A.20:12), and ultimately admonished him to "work with [his] lawyer . . . because these are very, very serious charges that you're facing, and the government is willing to dismiss 46 of the 48 counts. So you discuss these with your lawyer," (A.20:11–14). These statements violated the language and spirit of Rule 11 and constitute plain error.

The remaining prongs of the plain-error test are satisfied here as well. The pressure exerted on Jones with respect to the plea impacted his decision to reject it, and thus affected his substantial rights. Courts have found the impact of such Rule 11 violations so pervasive, that it "would be difficult to imagine a situation in which . . . a judge's participation in the plea negotiation process [would] be harmless given the inherent pressure placed on the defendant." *Rodriguez*, 197 F.3d at 160. Although in the typical case, the pressure exerted by a district court might lead a defendant to accept a plea, it matters not whether the plea was accepted or rejected because judicial coercion is itself a harm to be avoided. *Id.* at 158. And Jones's rejection of the plea is hardly surprising given the special features of his personality. (A.12:22–23); *see also* (10/15/13 Hr'g Tr. 4:10–13). Because he suffers from a variant of narcissistic personality disorder he was likely to be particularly defiant to an authority figure, and susceptible to being swayed against considering a plea when told to do so. Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders 671 (5th ed. 2013) ("Vulnerability in self-esteem makes individuals with narcissistic personality disorder very sensitive to 'injury' from criticism or defeat. . . . They may react with disdain, rage, or defiant counterattack."). Thus, when the judge emphasized to Jones—twice—that the government would dismiss forty-six "very, very serious" charges, Jones was likely coerced, unfairly influencing his decision to reject the plea offer. *See* (A.27:5.)

Finally, the Rule 11 violation here impacts the fairness and integrity of the judicial system, the fourth prong of the plain-error test. *Bradley*, 455 F.3d at 463 (stating that Rule 11's ban serves "critical interests" in maintaining the fairness of criminal proceedings). The goal of the Rule is to preserve the judge's impartiality and prevent any public perception that the judge may be "anything less than a neutral arbiter." *Id.* at 460. Therefore, a "failure to notice this sort of clear

Rule 11 error would almost inevitably seriously affect the fairness and integrity of judicial proceedings." *Id.* at 463. Jones was entitled to have a fair opportunity to consider the offered plea without the influence of the district court judge's remarks. This Court should reverse and remand for proceedings before a different district judge. *See, e.g.*, *Hemphill*, 748 F.3d at 677; *Pena*, 720 F.3d at 577; *United States v. Baker*, 489 F.3d 366, 376 (D.C. Cir. 2007); *United States v. Kraus*, 137 F.3d 447, 458 (7th Cir. 1998).

II. Multiplicity and duplicity infected the government's second superseding indictment and its proof.

The plea negotiations lost momentum in April and May 2013. By the next status hearing—on June 5, 2013—the government had filed a second superseding indictment, had disavowed any intent to engage in further plea negotiations, and had reiterated its interest in severing the healthcare-fraud count from the firearms counts. (R.49; A.27:6–12; 6/5/13 Hr'g Tr. 10:7–14.)

The government's original two indictments[5] charged Jones with 48 counts for conduct occurring in 2010: healthcare fraud (Count 1); being a felon in possession of 46 assorted firearms (Counts 2–33 and Counts 35–48); and being a felon in possession of several rounds of ammunition (Count 34). (R.1 at 2–5.) This indictment did not specify the date each weapon or ammunition was acquired, nor the location in which it was stored. (R.1 at 2–5.) The only differentiation between the counts was that Counts 2–33 specified a single date, May 10, 2010, Count 34 was reserved for ammunition, and Counts 35-48 identified a date span of March to June, 2010. (R.1 at 2–5.) But the second superseding indictment that the government filed in May 2013 was markedly different. (R.38 at 2–7.)

[5] The first two indictments were substantially similar, with the first superseding adding only forfeiture allegations. *Compare* (R.1) (initial indictment), *with* (R.38 at 2–7) (first superseding indictment).

Claiming that its original set of charges was multiplicitous by being spread over 47 counts, the government presented a second superseding indictment that it claimed cured the multiplicity problem. (A.23:18–23.) In its last indictment, the government consolidated the forty-six weapons and the many rounds of ammunition into three counts, differentiated only by the place where the authorities found them when executing their search warrants. (R.49 at 2–7.) And the case went to trial on this configuration of counts. The government did not present proof that each weapon or batch of ammunition was either acquired separately or acquired as a part of the same transaction, nor was the jury told to find this additional fact beyond a reasonable doubt.

The government's indictment was flawed for many reasons, but most notably because it was simultaneously multiplicitous and duplicitous.[6] It was multiplicitous because the evidence showed *not* that Jones engaged in three separate courses of conduct based on the location where the agents found the guns (as the government charged), but rather that these weapons and ammunition were part of a longtime collection that Jones himself had started as a young man, and that Larissa Jones had continued after their marriage. At the same time, the indictment was duplicitous because it joined what the government admitted were multiple transactions, as many as forty-six, into just three counts.

[6] The flawed indictment yielded other legal errors, including evidence-sufficiency and fatal variance issues. Material differences existed between the charged counts and the proof at Jones's trial. The government did not prove the three separate courses of conduct necessary to sustain its three separately charged counts. In fact, the government's evidence and its theory at trial was that Jones was a lifelong collector of weapons and that—as the prosecutor emphasized in closing arguments—he had possessed "every one of these guns the entire time from 1985 all of the way through and including the dates of the indictment, from the moment in time he got them." (A.47:21–24); *see also* (Trial Tr. 845:16–19) (government telling the jury that it could convict Jones on "all [these three] counts" just based on Jones's testimony about a gun kept in Montana, one of the separate courses of conduct alleged in the indictment). Because these additional errors were by-products of the initial charging errors, Appellant does not break them here out for separate discussion. Appellant notes, however, that these too would serve as alternative grounds for reversal.

In short, the government could have charged forty-six separate counts if it was willing and able to prove beyond a reasonable doubt Jones's separate acquisition and possession of each of these weapons. Alternatively, it could have charged a single count containing all of the weapons and ammunition so long as it told the jury that it needed to unanimously indicate which weapons Jones possessed (or find that Jones collected these weapons and ammunition over a period of time as a single transaction). Although Jones did not object prior to trial to these infirmities, this Court should review for plain error, *United States v. Parker*, 508 F.3d 434, 440 (7th Cir. 2007), and vacate and remand for resentencing on only a single count.

A. *The indictment was multiplicitous because Jones's continuous possession of firearms over decades was simultaneous and undifferentiated, which courts have repeatedly held to sustain only one count.*

The second superseding indictment was multiplicitous because Jones's collection of firearms was simultaneous and undifferentiated. *United States v. Buchmeier*, 255 F.3d 415, 423 (7th Cir. 2001) (noting that separate counts could only arise when "the firearms were stored or acquired separately *and* at different times or places") (emphasis added). When the government charges a single offense over separate counts, it engages in multiplicity. *United States v. Starks*, 472 F.3d 466, 468–69 (7th Cir. 2006). Under § 922(g)(1), the unit of prosecution is the "act of possession, and not the number of firearms possessed." *United States v. Moses*, 513 F.3d 727, 731 (7th Cir. 2008). Thus, the crux of the inquiry is whether it is a single course of conduct or multiple transactions. *United States v. Conley*, 291 F.3d 464, 470 (7th Cir. 2002) ("Congress intended that persons convicted of violating 18 U.S.C. § 922(g)(1) should be punished only for possessing weapons in separate courses of conduct.").

To the extent that Jones possessed these weapons, his possession was simultaneous and undifferentiated, a single course of conduct rather than a series of separate transactions. First, Jones's firearm collection was a single, continuous possession lasting decades, a fact that the government repeatedly conceded. *See, e.g.*, (A.47:24–48:5) (prosecutor arguing in closing that "[Jones] loved guns. . . . He's an avid, avid collector, an avid lover of guns."); (A.30:17) (prosecutor referring to all of the guns as an "arsenal of weapons and ammunition"); *see also* (R.182 at 1–3) (government referring to various trial exhibits as evidence of Jones's ongoing possession or "control" of these weapons since 1988); (R.182 at 1-2, 9) (government grouping all of the guns together for sentencing and referring to Jones's firearms as a "collection" that he added to since his release from prison in 1988). The government's own proof showed that all of the records relating to all the guns were kept in Jones's desk in Anderson, Indiana. *See, e.g.*, (Trial Tr. 143:23–144:5) (describing the blue expandable folder where several of the firearm and ammunition purchase receipts were kept).[7] And the evidence also showed that the collection existed mainly for sentimental and investment purposes. Agents recovered Jones's first gun, the one he received from his older brother in 1956, (Trial Tr. 672:17–21), colorful, flamboyant firearms that his wife enjoyed, (Trial Tr. 794:17–24), and wood-stock and grain stock guns that Jones believed would "hold more value," (Trial Tr. 794:17–24). The collection also included ammunition that the district court recognized Jones viewed as an investment. (Trial Tr. 303:6–11) (noting in an email to his brother that Jones asserts that he believed a few cases of ammunition

[7] *See also* (Trial Tr. 184:18–185:2) (government's witness testifying that many of the firearm purchase receipts were found in the same drawer as the blue folder—"[e]ither in it or right on top of it"—in Jones's desk); (A.47:25–48:2) (prosecutor arguing in closing "[Jones] kept all the records, he has all these bullets, he has all these guns"); (Trial Tr. 331:11–332:22) (admitting into evidence government exhibit 152, a balance sheet in Jones's home office that listed this entire collection of guns and ammunition as a $35,000 asset).

"will be more valuable than a hundred sacks of gold or silver coins in the near future when this depression deepens"); *see also* (A.13:10–11) (district court finding that it "believe[s] that [Jones] continued to collect and possess the firearms for investment purposes").

The government will likely claim—as it did below—that "multiple firearms are not multiplicitous to the extent they are stored in separate and distinct locations." (A.24:5–7.) And although language from some of this Court's cases does recognize that separate storage can serve as a basis for separate counts, those cases do not apply here. *See, e.g.*, *United States v. McKinney*, 919 F.2d 405, 418 (7th Cir. 1990). First, as a threshold matter, this Court has never applied that exception to *uphold* multiple counts. *Cf. id.* ("[W]e conclude that McKinney cannot receive separate sentences for the firearms charges. . . . The government did not demonstrate that the guns were stored or obtained in different locations or used in carrying out different drug trafficking crimes."); *United States v. Baugh*, 787 F.2d 1131, 1133 (7th Cir. 1986) ("The information does not allege that Baugh either acquired his weapons separately or stored them in different locations."); *United States v. Oliver*, 683 F.2d 224, 232 (7th Cir. 1982) ("There is also nothing to suggest that these items were stored at different places."); *United States v. Calhoun*, 510 F.2d 861, 869 (7th Cir. 1975) (remanding case because the government failed to show that the firearms were stored or acquired at different times or places); *McFarland v. Pickett*, 469 F.2d 1277, 1279 (7th Cir. 1972) ("In this case there is no evidence to show whether the two firearms were stored at the same or different locations or whether they were acquired at the same or different times.").

To the contrary, the cases in which the exception originated and took root were ones where this Court limited the government's attempts to bring separate counts based on similar conduct.

See Oliver, 683 F.2d at 232 ("The Government in this case failed to show that the ammunition and revolver were acquired at different times . . . . [and] that these items were stored at different places."); *Calhoun*, 510 F.2d at 869 ("[A]bsent a showing that two firearms were stored or acquired at different times or places, there is only one offense, not two . . . ."); *McFarland*, 469 F.2d at 1279 ("There is no indication, however, that proof of all allegations in the government information would have required proof that two weapons were acquired at different times and concealed in different locations."). Consistent with its measured approach to multiplicity, this Court has repeatedly tethered the storage exception to other facts indicating the separateness of the "transaction or acquisition by which [the defendant] attempts to arm himself unlawfully." *Buchmeier*, 255 F.3d at 423 (requiring that separate counts could only arise when "the firearms were stored or acquired separately *and* at different times or places") (emphasis added); *McFarland*, 469 F.2d at 1279 (stating that there would need to be "proof that two weapons were acquired at different times *and* concealed in different locations") (emphasis added).[8]

The proof of separate "transaction or acquisition" is not present in this case. Therefore, this Court should refuse to expand the storage exception to uphold the government's arbitrary decision to divvy up the gun counts based solely on where the agents found them when executing the warrant. The government never pursued a theory of possession where Jones engaged in one course of possessory conduct related to his home, another related to his treatment lodge, and a

[8] *McFarland* was the first case to recognize the possible exception for separate storage, but it was based on a totally different statute—18 U.S.C. § 922(j)—that explicitly made it unlawful "for any person to receive, conceal, *store*, barter, sell, or dispose of any stolen firearm or stolen ammunition . . . ." (emphasis added). That courts have grafted this storage language onto other statutes where storage is not an element is yet another reason to reject that exception here.

third related to the Montana cabin.[9] In fact, the evidence of how the firearms were owned, acquired, and possessed shows precisely the opposite. The government's evidence painted Jones as the mastermind of all of these weapons, marshaling control over them all from a single spot: his home office. *See, e.g.*, (Trial Tr. 143–144; 184–185) (describing firearms records found in Jones's office). Further, the government knew and the evidence showed that location was not a differentiating factor in this case because the guns' locations were fluid. For example, evidence showed that guns moved between properties in Indiana and Montana. *See* (Trial Tr. 365:23–366:19) (witness testifying that he drove one of the firearms from Anderson, Indiana to Montana); (Trial Tr. 301:15–16, 308:22–24; Gov. Ex. 155) (email from Jones to his brother referencing guns he will take out to Montana); (Trial Tr. 311:19–20; Gov. Ex. 156) (7/22/2009 email from Jones to a friend referencing a double barrel shotgun he is "bringing to Montana"); (Trial Tr. 846:9–15) (prosecutor acknowledging that the firearms were transferred among properties, but using that fact to show control for purposes of constructive possession). Thus, where the gun was located at one particular point in time does not reflect the fact that this was a single possession of a single collection of firearms. (A.47:21–24) (prosecutor arguing at closing that Jones had continuously possessed every gun "from 1985 all the way through and including the dates of the indictment"). This Court should reject the government's arbitrary metric of where the weapons happened to be when officers found them.

[9] As noted above, the government even conceded that "substantively, there [was] no difference whatsoever" between the indictment it dismissed and the one it ultimately took before the jury. (A.23:18, 24:7–10.)

B. The indictment was alternatively duplicitous because it bundled firearms and ammunition not by transaction but by the arbitrary determinant of location.

Not only was the indictment multiplicitous, it was also duplicitous. An indictment is duplicitous when it joins two or more offenses into a single count. *United States v. Marshall*, 75 F.3d 1097, 1111 (7th Cir. 1996); Fed. R. Crim. P. 8(a) (requiring a "separate count for each offense"). Here, the government joined in a single count a series of alleged firearm possessions charged together solely because of where authorities discovered them.

Duplicitous indictments become particularly problematic when paired with a general verdict form, as was the case here. With a general verdict form, the jury cannot make a finding as to the specific basis underlying the conviction, *see United States v. Washington*, 127 F.3d 510, 513 (6th Cir. 1997), and therefore the defendant is hindered in his ability to challenge that finding on insufficiency grounds, *see, e.g.*, *United States v. Cherif*, 943 F.2d 692, 701 (7th Cir. 1991); *see also Washington*, 127 F.3d at 513 ("Duplicity can potentially prejudice the defendant in . . . obtaining appellate review . . . .").

This Court's decision in *United States v. Buchmeier*, 255 F.3d 415 (7th Cir. 2001) is instructive. There, the government charged the defendant in four counts with a group of firearms received (Counts III and VI) and possessed (Counts I and IV) over two transactions on the same date. *Id.* at 419. This Court found the collection of charges duplicitous:

> [O]nce the government chose to charge Buchmeier with acquiring and receiving all ten firearms, we find that it was required to either charge him with one violation of § 922(g)(1) and § 922(j), by way of a continuing course of conduct, or with three separate violations of § 922(g)(1) and § 922(j), in order to avoid formulating either a duplicitous or multiplicitous indictment. Therefore, we do not think the government's decision to combine the two August 5 transactions into the same two counts of the indictment was proper.

Id. at 423–24. *Buchmeier* applies to Jones's case. Once the government decided to charge Jones with possessing forty-seven firearms along with rounds of ammunition, it either needed to charge

Jones with 48 separate counts of § 922(g)(1), each alleging sufficient facts to prove that Jones possessed that particular firearm and ammunition at a particular time, or it needed to charge him with one count of § 922(g)(1) as a continuing course of conduct. Because the government's evidence did not prove that each gun was possessed separately (that is, acquired at different times or places, and stored separately from every other firearm), it chose to divide up the guns based on the location where the FBI recovered them. This arbitrary division is duplicitous because it contains multiple transactions in each count.

In some instances a unanimity instruction can cure a duplicitous indictment, particularly when it is paired with a special verdict form. *United States v. Starks*, 472 F.3d 466, 471 (7th Cir. 2006) (noting that although the judge gave a unanimity instruction, "[t]he judge wisely went further by using the special verdict form so that the record clearly reflects that the jury unanimously found Starks guilty of obstructing the government through his actions with the affidavit"). Duplicity is not remedied, however, when it creates notice problems for the defendant, leads to prejudicial evidentiary rulings at trial, limits a defendant's appeal, creates the specter of double jeopardy, or impacts sentencing. *Buchmeier*, 255 F.3d at 425–26; *see also Starks*, 472 F.3d at 471.

The jury was given a unanimity instruction in Jones's case, (Trial Tr. 856:18–857:19), but it was only given a general verdict form, (R.161). And Jones's trial was plagued with the other problems stemming from the duplicitous indictment that this Court flagged in *Buchmeier* and *Starks*. First, given the differences between the government's presentation at trial and the structure of its indictment, Jones could not discern whether he was to defend against three separate transactions or only one course of conduct. *Compare* (A.42:3–7) (prosecutor describing

as a unit the "mountain of ammunition . . . [and] the guns to fire that mountain"), *and* (A.47:21–24) (prosecutor arguing that Jones had continuously possessed the weapons since 1985 to the present), *with* (R.49) (second superseding indictment listed three separate courses of conduct, each with their own separate elements).

Similarly, the fact that the government never clearly articulated its theory of possession—alternating between constructive and direct, and invoking ownership as both relevant and irrelevant to the charges—meant that Jones was forced to defend against a moving target. *Compare* (Trial Tr. 69:2–4) (government seeking admission of gun book because it "goes to ownership . . . . [o]r to possession"), *with* (10/15/13 Hr'g Tr. 18:19–22) (prosecutor stating "the statute charges possession; ownership is irrelevant, and testimony as to ownership is inadmissible under the rules as it's not relevant"), *and* (A.46:13–15) ("He's in possession of it. Heck, who knows? Maybe Larissa Jones does legally own them. Who cares? He's not charged with ownership. He's charged with possession."), *with* (Trial Tr. 793:10–11) (government asking Jones whether "you had all the ownership documents for it in your desk").

When the duplicitous indictment is layered on top, with several independent charges lumped together under one count, Jones lacked notice as to how to proceed. Taking the indictment at its word required him to challenge the elements that differentiated the counts: date and location. (R.49.) And Jones's defense reflects that understanding. *See, e.g.,* (Trial Tr. 597:3–8; Trial Tr. 613:4–5) (evidence that Larissa controlled the ammunition because Jones could not access that part of the house and that she placed the other two guns in the closets for her own purposes); (Trial Tr. 710:17–711:3) (referring to fact that Jones had to telephone Larissa for the safe combination in the treatment lodge as proof that he did not possess that batch of weapons). But if

Jones had suspected that each gun within each count actually should have been challenged as a separate transaction, he would have mounted a very different defense, one that addressed every single one.

Additionally, several evidentiary decisions were driven by the way the government structured its charges and argued its case. As one example, had the defense and the district court been on notice that government needed to charge either one count containing all the weapons or individual counts for each weapon, then the government's use of receipts, owner's manuals, proofs of purchase, and gun books would have been subject to more scrutiny. Specifically, Jones would have objected to the admission of these items because his ownership of any individual weapon would have been relevant to his separate acquisition of each one and also relevant to (though not dispositive of) his subsequent possession of some weapons when compared individually to others. *Cf.* (Trial Tr. 210:5–7) (defense withdrawing earlier objection to admission of gun book because "we've kind of reevaluated our trial strategy, and we're not even going to object to the admission of these books"); *see also* (6/14/13 Hr'g Tr. 43:15–22) (noting that Jones did not object to the admissibility of "receipts of on-line purchases of ammunition . . . [and] receipts and proofs of purchases from gun stores for firearm purchases"); (Trial Tr. 833:4–5) (defense in closing stating that there was "[o]verwhelming evidence of ownership. We conceded that he owned firearms."). In a similar vein, the government would not have been so cavalier with respect to the ownership question because it would have been relevant to each separate acquisition. (A.46:3–15) (Prosecutor in closing stated, "Maybe Larissa Jones does legally own them. Who cares? [Jones is] not charged with ownership. He's charged with possession.").

Finally, the duplicity limits this Court's review on appeal, particularly because the district court used a general verdict rather than a special verdict form. *See Starks*, 472 F.3d at 471. It is impossible to tell which gun or guns the jury found he possessed. For example, if the jury had found via special verdict that Jones "possessed" the gun that was placed in the Jeep that Hotchkiss drove out to Montana, *see* (Trial Tr. 366:8–10), Jones could have mounted an insufficiency challenge because Hotchkiss could not even say whether it was a gun or a rifle (he said it could have been either), and the prosecution left it at that, (Trial Tr. 366:8–10). The government never established when the gun was acquired or which gun, precisely, was placed in the Jeep. In fact, out of the fifteen firearms charged in Count 4 (the Montana Count), only four of the guns had a receipt or purchase packet in evidence.[10] (Gov. Exs. 67, 70, 72, 74.) The jury's general verdict does not reveal the answer. Thus, the duplicitous indictment negatively impacted Jones's conviction as well as this Court's review.

C. Reversal is nonetheless required because the government did not adduce sufficient evidence of its charges, the jury was not instructed that it must find separate transactions, and its verdict does not reflect that it did so.

A remand is required because the evidence did not support, nor did the jury find via its general verdict, the three possessions alleged in the indictment. First, this Court has recognized that the government must actually produce evidence of separate possession or acquisition in order to sustain multiple counts. *United States v. Buchmeier*, 255 F.3d 415, 423 (7th Cir. 2001) (permitting multiple firearms charges where the government "*can produce evidence demonstrating*" separate storage or acquisition and at different times or places) (emphasis added); *United States v. McKinney*, 919 F.2d 405, 418 (7th Cir. 1990) ("the government *did not*

[10] For example, one of the rifles recovered in Montana had a purchase receipt from Anderson, Indiana. *See supra* Section II.A.

demonstrate that the guns were stored or obtained in different locations") (emphasis added); *United States v. Oliver*, 683 F.2d 224, 232 (7th Cir. 1982) (finding only one offense when the government "*failed to show* that the ammunition and revolver were acquired at different times") (emphasis added). Other courts agree. *United States v. Frankenberry,* 696 F.2d 239, 246 (3d Cir. 1982) ("[T]he government must prove separate receipt rather than merely separate possession in order to support multiple offenses . . . ."); *United States v. Wiga*, 662 F.2d 1325, 1336 (9th Cir. 1981) ("[O]nly one offense is charged . . . regardless of the number of firearms involved, absent a showing that the firearms were stored or acquired at different times and places."). Thus, under the theory pursued by the government, to sustain each of the three § 922(g) counts, it needed to adduce evidence showing the essential element that the guns contained within each count were linked via the same transaction or acquired together. *Buchmeier*, 255 F.3d at 423; *United States v. Valentine*, 706 F.2d 282, 294 (10th Cir. 1983) (noting that under government's theory, "separate receipt is a necessary element for multiple convictions" stemming from 18 U.S.C. §§ 922 and 1202).

The government did not prove within each count that the weapons listed there were the product of the same transaction or course of conduct. As just one example, the government's evidence showed not that there was a deliberate rhyme or reason to the way the weapons were acquired or stored, but rather that they were acquired at different times and stored randomly. *Compare* (R.49 at 3, 4) (charging in Count 3 (the "treatment lodge" count) with possession of a "Browning .300 caliber rifle" and a "Henry Repeating Arms .22 caliber rifle"), *with* (Trial Tr. 239:6–240:18; Gov. Ex. 64) (showing 2010 purchase date for the Browning) *and* (Trial Tr. 244:13–245:7; Gov. Ex. 67) (showing the Henry rifle was purchased a year earlier, in 2009). In

fact, the government's own exhibits featured receipts that reflected many different purchase dates. *See* (Gov. Exs. 63–68.) Therefore, the government did not provide sufficient evidence to prove beyond a reasonable doubt each of the three separate counts it charged in the indictment.[11]

Not only must the evidence support the charged counts, the jury must be instructed to find—and actually find—separate acquisition or possession for multiple convictions to stand. *See, e.g., United States v. Szalkiewicz*, 944 F.2d 653, 654 (9th Cir. 1991) (overturning conviction because jury made no "finding of fact as to separate acquisition or possession"). Even where there is "uncontroverted" evidence of separate transactions, if the jury lacked the proper instructions or did not make the proper findings, reversal is nonetheless required. *Valentine,* 706 F.2d at 294 (noting that although "there was uncontroverted evidence of separate delivery of the two guns, the jury did not find and was not asked to find that there had been, indeed, two separate acts," and this was an "essential issue" supporting the conviction); *see also United States v. Chalan*, 812 F.2d 1302, 1317 n.10 (10th Cir. 1987) (rejecting government's argument that both convictions and sentences should be upheld because "[a]lthough there is evidence that Chalan may have used two firearms during the robbery and murder, the jury did not find, nor was it required to find, that two weapons were used"); *Frankenberry,* 696 F.2d at 245 (vacating and remanding for

[11] The government also did not provide sufficient evidence of a single course of conduct that would have avoided the multiplicity problem. As a threshold matter, the government did not prove when at least thirty-five of the forty-six firearms, and much of the ammunition, were acquired. For example. the firearms contained in the government's exhibits 118, 127, 133, 136, and 218–20 had corresponding receipts of purchase, and government's exhibits 129, 222, and 228–29 had box-top proofs of purchase. The government did not offer proof of when the remaining firearms were acquired. Additionally, some of the government's evidence proved that two of the firearms were acquired at the same time. *See* (Gov. Ex. 64); *see also* (Trial Tr. 187:7–15). To the extent that any evidence about the acquisitions exists, the government's evidence proves the exact opposite of what it should have: that most of the guns charged in the same count were not acquired at the same time.

resentencing when "the court did not present the case to the jury on any theory of non-simultaneous possession" so the court could not assume that the jury so found).

Here, neither the indictment nor the instructions, (R.49; R.158), told the jury to determine whether the firearms joined under each count were the product of a separate course of conduct—a "transaction or acquisition by which [Jones attempted] to arm himself unlawfully," *Buchmeier*, 255 F.3d at 423,—nor did the general verdict form require that finding, (R.161); *cf. United States v. Marshall*, 75 F.3d 1097, 1111 (7th Cir. 1996) (quoting *United States v. Blandford*, 33 F.3d 685, 699 n.17 (6th Cir.1994)) ("The overall vice of duplicity is that the jury cannot in a general verdict render its finding on each offense, making it difficult to determine whether a conviction rests on only one of the offenses or both."). And the jury never did make the required specific finding. *See* (R.161.)

Given this series of errors, this Court should vacate Jones's multiple convictions and remand for resentencing on only a single count. *See, e.g.*, *United States v. Bloch*, 718 F.3d 638, 640 (7th Cir. 2013) ("A single incident of firearm possession can yield only one conviction under § 922(g), no matter how many disqualified classes the defendant belongs to or how many firearms he possessed. . . ."); *McFarland v. Pickett*, 469 F.2d 1277, 1279 (7th Cir. 1972) (remanding for resentencing because of the possibility that "the trial judge was influenced in his sentence by his belief that two offenses rather than one had been committed").

III. The district court incorrectly calculated Jones's sentencing guideline range and criminal history category.

The district court improperly included Jones's 1985 felony conviction when calculating his base offense and criminal history levels because it found that Jones had possessed these same

weapons for decades before the conduct charged in the indictment, and treated that possession as relevant conduct. Based on this finding, the district court then enhanced Jones's base offense level to 20 and his criminal history level to II. (A.7–8.) After factoring in other enhancements for the number of firearms and for obstruction of justice, the district court settled on a base offense level of 28, which yielded a Guidelines range of 87 to 108 months. (Sentencing Hr'g Tr. 18:13–15.) The district court imposed concurrent 100-month sentences on each count. (A.9:16–20.) Had the district court not included this prior conviction and kept all other enhancements the same, Jones's sentencing range would have dropped to 41 to 51 months' imprisonment.[12] *See* U.S. Sentencing Guidelines Manual ch. 5, pt. A (2013) [hereinafter U.S.S.G.] (sentencing table). And because without the conviction Jones would have been eligible for a collection reduction under the U.S. Sentencing Guidelines Manual § 2K2.1(b)(2)—one that should have been applied in his case—his sentencing range could have been even lower: 0 to 6 months.[13] *See id.* Defense counsel objected to the inclusion of Jones's prior conviction, claiming that it fell outside of the 15-year look-back period contemplated by § 2K2.1. (Sentencing Hr'g Tr. 88:10–89:6.) This Court reviews the district court's application of the sentencing guidelines de novo, and its findings of fact for clear error. *United States v. Santoro*, 159 F.3d 318, 320 (7th Cir. 1998).

The applicable guideline for a violation of 18 U.S.C. § 922(g)(1) is U.S. Sentencing Guidelines Manual § 2K2.1. Under that section, a "prohibited person"—as Jones was at the time of the offense—starts with a base offense level of 14. U.S.S.G., *supra*, § 2K2.1(a)(6). If, however, "the defendant committed any part of the instant offense subsequent to sustaining one felony conviction of . . . a controlled substance offense," then the base offense level jumps to 20.

[12] This assumes Jones's offense level would be 22 with a criminal history category of I.
[13] This assumes Jones's offense level would be 6 with a criminal history category of I.

Id. § 2K2.1(a)(4)(A).[14] In defining the applicable "prior felony conviction," this section cross-references the criminal history Guideline, § 4A1.2. The only qualifying convictions for purposes of criminal history points are those that fall within a fifteen-year look-back period, starting from the defendant's "commencement of the instant offense." *Id.* § 4A1.2(e)(1). Although the date alleged in the indictment generally pegs the timing of the "commencement of the instant offense" for purposes of the 15-year look-back, the commentary notes that any "relevant conduct" can be used to calculate and extend the look-back period. *Id.* § 4A1.2 cmt. n.8.

Relevant conduct is "all acts and omissions committed . . . that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense," *id.* § 1B1.3(a), but this Court has made clear that relevant conduct is limited to acts that bear "similarity, regularity, and temporal proximity" to the charged offense, *United States v. Ortiz*, 431 F.3d 1035, 1040 (7th Cir. 2005) (internal quotation marks omitted) (quoting *United States v. Acosta*, 85 F.3d 275, 281 (7th Cir. 1996)). This Court has assessed these standards in totality, and has not deemed any single one a prerequisite or found any particular combination as conclusively establishing relevant conduct. *See United States v. Sumner*, 325 F.3d 884, 889 (7th Cir. 2003) ; *United States v. Sykes*, 7 F.3d 1331, 1336 (7th Cir. 1993) (internal citations and quotations omitted) (noting that this Court "cannot formulate precise recipes or ratios" in determining relevant conduct). When one or more components is absent, however, the remaining component must have a "stronger presence" to support a finding of relevant conduct. *Sykes*, 7 F.3d at 1336. With respect to the temporal proximity requirement, appellate courts generally have found conduct to be relevant

[14] The Guidelines commentary to § 2K2.1 defines "prior felony conviction" as only "those felony convictions that receive criminal history points under § 4A1.1(a), (b), or (c)." U.S.S.G., *supra*, § 2K2.1 cmt. n.10.

when it is no more than a few months before the date charged in the indictment. *See, e.g.*, *United States v. Powell*, 124 F.3d 655, 666 (5th Cir. 1997); *Ortiz*, 478 F.3d at 802 (eight months too temporally remote); *Sykes*, 7 F.3d at 1336 (fourteen months too temporally remote)[15]. As for similarity and regularity—as the definition of these terms suggests—the conduct must be separate and/or iterative in order to qualify. *Sumner*, 325 F.3d at 889–90 (considering for similarity inquiry whether the charged offense and alleged relevant conduct have comparable characteristics and facts); *United States v. Spry*, 190 F.3d 829, 837 (7th Cir. 1999) (defining regularity as discrete acts conducted at consistent intervals); *see also Similar Definition*, The New Oxford American Dictionary 1590 (2001) (defining similar as "having a resemblance in appearance, character, or quantity, without being identical"); *Regular Definition*, *id.* at 1435 (defining regular as "recurring at short, uniform intervals").

The government's position at sentencing—one that the Probation Office and district court accepted, (A.7:1–2),—was that Jones engaged in a "continued possession of at least one firearm charged in each count dating back to 1983," (R.182 at 7).[16] Without separate, iterative conduct, it cannot be deemed similar or regular for purposes of relevant conduct.[17]

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[15] In cases where this Court has upheld temporally remote conduct of more than a year, it has generally done so only when the lapse is due to events outside of the participants' control, such as an intervening arrest and incarceration. *See United States v. Cedano-Rojas*, 999 F.2d 1175, 1180 (7th Cir. 1993).

[16] Because the district court characterized this as a single, decades-long possession, it essentially treated conduct that formed the basis of the element of the charged counts with the conduct that comprised relevant conduct, an approach that the Guidelines explicitly forbids. U.S.S.G., *supra*, § 1B1.3 cmt. background (excluding from relevant conduct that which is "an element of the offense of conviction").

[17] Even if the lack of separate, iterative conduct were not enough to preclude the use of similarity and regularity in this case, they also would fail on the facts. The two facts on which the district court relied occurred in 1996 and 2001; two occurrences in a 15-year span is hardly regular. Nor were the guns included in the 1996 and 2001 possessions sufficiently similar to the charged conduct because they involved different firearms (some of the charged firearms were not even purchased until 2009 and 2010), and the earlier conduct did not involve ammunition at all. *See, e.g.*, (Trial Tr. 187:6–15) (noting that two rifles were purchased on January 5, 2010).

The temporal proximity prong is also not met. The district court first found that Jones was released from custody in 1988 and the look-back period thus expired in 2003. (A.7:14–16.) Yet the district court then found that the evidence showed that he possessed the firearms at issue in the cases "as early as 1996" because the prenuptial agreement between Jones and his wife listed several firearms as his "assets." (A.7:17–25.) The district court also relied on the 2001 transfer agreement—where Jones purported to transfer his ownership of the weapons from his lawyer to his wife—as further proof of Jones's possession. (A.7:20–25.) This gap of at least twelve years between the alleged relevant conduct and the start of trial,[18] and the gap of about eight and a half years between the indictment and purported relevant conduct cannot be deemed temporally proximate under even the most expansive definition of the term. Therefore, this Court should vacate Jones's sentence and remand for resentencing. *See, e.g.*, *Ortiz*, 431 F.3d at 1043.

[18] Twelve years is calculated by comparing Jones's felon-in-possession trial, starting on October 21, 2013, (Trial Tr. 1), to the transfer agreement, dated September 19, 2001, (R.64).

Conclusion

For the foregoing reasons, Jones respectfully requests that this Court reverse, vacate his multiple convictions and, at a minimum, remand for resentencing.

Respectfully Submitted,

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No. 14-1665

United States Court of Appeals for the Seventh Circuit

United States of America, Plaintiff–Appellee, v. Bruce Jones, Defendant–Appellant.	Appeal from the United States District Court for the Southern District of Indiana Case No. 1:12-Cr-00072-TWP-DML-1 The Honorable Tanya Walton Pratt

Certificate of Compliance with Federal Rule of Appellate Procedure 32(a)(7)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because this brief contains 10,285 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Circuit Rule 32 and Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2011 in 12-point Equity font with footnotes in 11-point Equity font.

/s/ Sarah O'Rourke Schrup
Attorney #6256644

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Dated: December 8, 2014

No. 14-1665

United States Court of Appeals for the Seventh Circuit

United States of America, Plaintiff–Appellee, v. Bruce Jones, Defendant–Appellant.	Appeal from the United States District Court for the Southern District of Indiana Case No. 1:12-Cr-00072-TWP-DML-1 The Honorable Tanya Walton Pratt

Circuit Rule 30(a) Appendix of Defendant–Appellant Bruce Jones

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Rule 30(a) Appendix Table of Contents

UNITED STATES DISTRICT COURT

SOUTHERN District of **INDIANA**

UNITED STATES OF AMERICA
V.
BRUCE JONES

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:12CR00072-001

USM Number: 11614-046

Charles David Pumphrey and John D. Manley
Defendant's Attorney

THE DEFENDANT:

G pleaded guilty to count(s) _____

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

X was found guilty on count(s) 2, 3, and 4
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count(s)
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	5/10/10	2
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	5/10/10	3
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm or Ammunition	6/30/10	4

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

G Count(s) _____ G is G are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/25/2014
Date of Imposition of Judgment

A CERTIFIED TRUE COPY
Laura A. Briggs, Clerk
U.S. District Court
Southern District of Indiana
By _____ Deputy Clerk

Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

03/27/2014
Date

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 100 months

100 months on each of Counts 2, 3, and 4, all to be served concurrently

☐ The court makes the following recommendations to the Bureau of Prisons:

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 3 years

3 years on each of Counts 2, 3, and 4, all to be served concurrently

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

X 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.)

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

X The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

G The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.)* as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check, if applicable.)

G The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall pay any fine that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

2. The defendant shall provide the probation officer access to any requested financial information.

3. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.

4. The defendant shall submit to the search (with the assistance of other law enforcement as necessary) of his person, vehicle, office/business, residence and property, including computer systems and peripheral devices. The defendant shall submit to the seizure of contraband found. The defendant shall warn other occupants the premises may be subject to searches.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

_____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

DEFENDANT: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

CRIMINAL MONETARY PENALTIES

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

	Assessment	Fine	Restitution
TOTALS	$ 300.00	$ 12,500.00	$

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

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

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

G Restitution amount ordered pursuant to plea agreement $ _____

The defendant shall 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).

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

X the interest requirement is waived for the X fine G restitution.

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

* 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: BRUCE JONES
CASE NUMBER: 1:12CR00072-001

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

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

B X Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ G 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 ☐ If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future.

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

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant Name	Case Number	Joint & Several Amount

☐ The defendant shall pay the cost of prosecution.

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

X The defendant shall forfeit the defendant's interest in the following property to the United States:
all firearms and ammunition involved in the offense and seized by the government.

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) penalties, and (8) costs, including cost of prosecution and court costs.

THE COURT: The Court will accept the Presentence Report for the record under seal. In the event of appeal, counsel on appeal will have access to the report, but not the recommendation portion, which shall remain confidential.

Counts 2, 3, and 4 group, and the aggregate number is used. The United States Sentencing Commission guideline for the offense charged, the Court is going to find, does call for a base offense level of 20, because the firearm and ammunition possession was committed subsequent to sustaining a conviction for a felony, a controlled substance offense.

Defense counsel argued in their memo that the 15-year look-back does not apply because Mr. Jones was released from custody in 1988. However, application note 8 relevant to conduct under 4A1.2(e) does apply. Mr. Jones was released from prison in October of 1988, which would date the 15 years up to 2003.

There is evidence that he possessed firearms and ammunition as early as 1996, that being the 1996 prenuptial agreement, which outlined Mr. Jones' assets as 15 pistols, nine shotguns and 14 rifles. In 2001, the transfer of receipts, signed by both Bruce Jones and Larissa Jones involving Bob, transferred several firearms listed in the document, and Mr. Jones requested that Larissa not sell three guns until after his death, which the Court believes indicates possession.

For these reasons, the Court finds that the base offense level is 20. For the specific offense characteristic that the defendant possessed between 25 and 99 firearms, there's a six-level increase. The Court is not awarding the 2.2 -- I'm sorry, the 2K2.1(b)(2) specific offense characteristic and two-level reduction that counsel argued for, that being that the defendant possessed the firearms and ammunition solely for lawful sporting and collection purposes, because it does not apply since the base offense level is 20. This specific offense characteristic only applies if the base offense level is 12 or 14.

And even if the Court were allowed under the guidelines to give the 2K2.1(b)(2) reduction, the Court would not, because, although the majority of the firearms were collector firearms, there is substantial evidence that the firearm inside his bedroom drawer and the one that he carried on his waist in Montana were carried or possessed for personal protection. The Court has sustained the objection and found that the adjustment for role in the offense does not apply, so there's not a two-level increase.

The adjustment for obstruction of justice applies, and so a two-level increase is given because Mr. Jones obstructed justice numerous times during the investigation and trial. Specifically, the Court is going to find that he obstructed justice by not -- by failing to appear for his jury

MR. PUMPHREY: In regards to his health, some of the 353353 (sic) conditions, we've heard evidence, Judge, I think the PSR speaks eloquently as to his health condition. It's deteriorating as we speak. Other than that, I think we have no other comment. Whereas Mr. Shepard limited his comments to what the record presented, the inferences are for Your Honor to decide.

THE COURT: All right. Thank you.

All right. Does Mr. Jones need to remain seated? Do you need to stay seated?

MR. PUMPHREY: Please, Judge.

THE COURT: Okay. All right. The Court is prepared to state what the sentence in this case will be. And, Counsel, you will each have a final opportunity to state any legal objections before sentence is finally imposed.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Bruce Jones, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 100 months on Counts 2, 3, and 4, to be served concurrently. This sentence addresses the history and characteristics of the defendant, as well as the nature and circumstances of the offenses, and is sufficient but not greater than necessary to achieve the goals of sentencing.

The defendant shall pay to the United States a fine of $12,500 based upon the defendant's financial resources and

future ability to pay. The Court finds that the defendant does not have the ability to pay interest and waives the interest requirement. The defendant shall notify his probation officer of any material change in economic circumstances that might affect his ability to pay the fine.

The defendant shall forfeit all -- was it 47 firearms?

MR. SHEPARD: Yes, Your Honor.

THE COURT: And 14,000 rounds of ammunition involved in the offense and seized by the government.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years, concurrent. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which he is released.

While on supervised release, the defendant shall not commit another federal, state, or local crime, shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon, shall cooperate with the collection of a DNA sample, and shall refrain from any unlawful use of a controlled substance.

The defendant is suspended from drug testing mandated by the Crime Control Act of 1994 based on the Court's determination that Mr. Jones poses a low risk of future substance abuse.

Further, the defendant shall comply with the standard conditions as adopted by the Judicial Conference of the United States, as well as the following additional conditions: The defendant shall pay any portion of the fine imposed by this judgment that remains unpaid at the commencement of the term of supervised release; the defendant shall provide his probation officer access to any requested financial information; he shall not incur new credit charges or open additional lines of credit without the approval of the Probation Department; the defendant shall submit to the search, with the assistance of other law enforcement as necessary, of his person, vehicle, office, business, residence, and property, including computer systems and peripheral devices; the defendant shall submit to the seizure of any contraband found and shall warn other occupants the premises may be subject to searches.

The defendant shall pay to the United States a special assessment of $300. Payment of the fine and special assessment shall be due immediately and is to be made payable directly to the Clerk, United States District Court.

The sentence that the Court intends to impose is at the mid range of the applicable sentencing guideline. The Court believes this sentence accomplishes the purposes of 3553(a). The Court has considered the nature and circumstances of the offense, the defendant's criminal

Although the Court did not give a two-level adjustment for role in the offense, the Court does believe that Mr. Jones utilized his counseling patients, who became his friends, to purchase weapons on his behalf after he was no longer able to do so. For example, the 12-gauge Remington shotgun that was found in his residence was purchased by Mr. Sokal. Mr. Jones gave Mr. Sokal the funds and directed which firearms he was to purchase.

As another example, Spencer Kinley accompanied Mr. Jones to Montana and purchased one of the firearms seized from the cabin. Mr. Jones gave Mr. Kinley cash to purchase the weapon, Mr. Kinley left it in the cabin, and it had to be for no person other than Mr. Jones. Mrs. Jones never, ever went to the Montana cabin. Over the years, the defendant continued to purchase ammunition despite having the felony conviction, and the Court considers these actions as aggravating factors under 3553(a).

The Court agrees with the diagnosis of the doctors at the Federal Medical Center in Lexington, Kentucky, that Mr. Jones does have a personality disorder with narcissistic features. Mr. Jones exhibits behavior, and I believe he is manipulative, he believes he's above the law. He's very defiant, very obstinate. And I think his personality is such that if he wants to possess firearms again once he's released from prison on this case, he will, regardless of what this

Court orders or what the laws in this country tell him.

Mr. Jones did not -- does not feel that his actions were criminal, and he maintains his innocence, which is his perfect right to do so, but the evidence of his guilt and the evidence that this jury heard was overwhelming.

That said, Mr. Jones is of advanced age. He's 66 years old. He does have a number of health conditions: hypertension, degenerative disk disease, and asthma. And although he is not entitled to an adjustment for these conditions, I do believe that he continued to collect and possess the firearms for investment purposes, and maybe for hunting. And the Court does not believe that he intended to hurt anyone or commit any criminal acts. He did not intend to go out and do robberies with these firearms. But Mr. Jones was not allowed to possess those firearms, and he gave up and forfeited his right to be a firearms collector once he received that felony conviction.

Mr. Jones has a great deal of support from friends and patients and associates. He, no doubt, has done a great deal of good in the community and with his work, both here and in Indianapolis and in Anderson. The Court is impressed by the sheer number of patients, friends, and even inmates in the Marion County Jail, who have written about his generosity, his kindness and his compassion.

But some of Mr. Jones' friends and associates write

10:00 a.m. 10:00 a.m.

And then, Government, that being said, have you made an offer in this case?

MR. SHEPARD: Your Honor, I have a formal written offer I brought with me today, summarizing the terms of the offer. It's an offer to plead guilty to Counts 1 and 4. In return, the government would dismiss the remaining counts. And, therefore, obviously, there would only be two special assessments as opposed to 48.

THE COURT: So you would dismiss 46 counts?

MR. SHEPARD: Correct.

THE COURT: Okay.

MR. SHEPARD: Although relevant conduct would apply. If the government did its guideline calculations correctly, he would have a final offense level, after acceptance, of a 19 with a criminal history of I. And I believe that range, without having the book, is approximately 31 to 37 months. And the government would agree that it would not recommend a sentence higher than the guideline level. The defense would be able to argue for any sentence, so it would obviously not be restricted to making a guideline. It could argue under 3553(a) for, based upon a multitude of factors, for something smaller than that. And I would present that to the defense at this time.

MR. ALI: Thank you, sir.

THE COURT: And, Mr. Shepard, is that the government's final and best offer?

MR. SHEPARD: Without anything proffered back from the defense, we would have to evaluate. We can't imagine coming up with a different offer than that.

THE COURT: Okay. All right. Since the offer has been relayed on the record, we're going -- the Court is going to set a deadline to accept or reject that plea offer. In the event that the plea offer is rejected, then, lawyers, you need to prepare and proceed with getting ready for trial, and we will try this case on July 8th. There will be no further continuances, because you've already had three.

MR. SHEPARD: Understood, Your Honor.

THE COURT: All right. How about June 5th, 2013, at 2:00 p.m., for an accept-or-reject hearing? And we'll also make June 5th the motions deadline. So that will be the deadline for filing any motions in the event we're going to proceed with trial.

Mr. Ali, do you intend to file a motion to sever?

MR. ALI: Yes, Your Honor, I will. Those are my intentions, to file that. And Mr. Shepard is correct in assuming that.

THE COURT: And you're not going to object, Counsel?

MR. SHEPARD: We would not object to severing Count 1 from the remaining. We would want all the other counts

tried together.

THE COURT: Okay. And the Court would -- once that motion is filed, the Court will grant that. And then after the July 8th date, we will -- once that trial is over, we'll -- at that time, we'll schedule the trial on the healthcare fraud count. So we'll -- is that acceptable to the government or do you want a trial date on that other count now?

MR. SHEPARD: No, I don't think we need a trial date. I just -- for point of clarification, the final pretrial, which is set for June 14th; and the motions deadline, which is set for June the 5th, are those for all counts or only the counts for which we are proceeding on to trial on the 8th of July?

THE COURT: All counts.

MR. SHEPARD: All counts?

THE COURT: All counts. Your global offer will be either accepted or rejected on that date.

MR. SHEPARD: Okay. But all pretrial, for instance a 404(b), if it would pertain to Count 1, that would also have to be filed by June the 5th?

THE COURT: Yes.

MR. SHEPARD: Okay. Thank you, Your Honor.

THE COURT: And so your offer will remain open until what date? Till the June 5th date?

MR. SHEPARD: It will, Your Honor. It will expire at the conclusion of the hearing set, the accept-or-reject hearing, on June 5th.

THE COURT: Okay. Do you understand what that means, Mr. Jones? You will have until June 5th at the latest to determine whether or not you're going to accept the government's plea offer. If you accept the plea offer, then we'll go ahead and set it for a guilty plea and sentencing down the road. If you reject the plea offer, then we're definitely going to trial on July 8th, and the plea offer will be withdrawn. Do you understand?

THE DEFENDANT: May I ask a question?

THE COURT: Ask your lawyer.

MR. ALI: May I, Your Honor?

THE COURT: Sure. Cut your mic off.

(Off the record.)

MR. ALI: Your Honor, I don't think my client has questions for --

THE COURT: You will be able to answer those questions?

MR. ALI: I will be able to answer that. Thank you.

THE COURT: All right. Were there any other matters the Court needs to entertain this afternoon? Mr. Ali?

MR. ALI: Judge, I think that the only question or the only issue that may come about is the fact that thus far,

myself and my staff have invested quite a bit of time and effort and energy into Mr. Jones' case, that in the event that Mr. Jones cannot meet his contractual obligation, that -- is there a deadline or a time that the Court would reserve for counsel to prospectively withdraw as his attorney? Or how would the Court advise, if at all, how to proceed on that?

THE COURT: Well, it appears, from the docket in this case, that your client is not indigent, and that he is able to afford counsel. Is that correct, Mr. Jones?

THE DEFENDANT: Ma'am?

THE COURT: You're able to afford an attorney?

THE DEFENDANT: I am able to afford an attorney, but I'm working to get the monies freed to be able to do that, yes, ma'am.

THE COURT: Okay. Because you're not entitled to indigent counsel, so that's totally out of the question. So you're going to have to pay your lawyer, all right? So -- and that's it.

He's not allowed indigent counsel, and the only way the Court would let you out, Mr. Ali, is if he hires another lawyer. So that's where we are.

So you need to pay your lawyer. Your lawyer has apparently invested a great deal of time and effort in the case. These are very serious matters. I spent 12 years as a trial judge in major felony criminal court in Marion Superior

Court, and when I came over to Federal Court, it's an entirely different ballgame. So, that being -- we have these guidelines that we're under. It's totally different. And the charges are brought pursuant to indictment, whereas in the state court it's informations, with one single prosecuting attorney filing the charges.

But it's a totally different ballgame over here, and these are very serious matters. And you're charged with very serious felony offenses, and you need representation of an attorney. And you've got a good attorney, and so you need to pay your lawyer and get this case worked up.

So we're either going to go to trial on July 8th or we're going to get a guilty plea hearing set when we come in on June 5th, all right? Anything further today?

MR. SHEPARD: Nothing from the point of the government, Your Honor.

MR. ALI: Nothing from the defense, Your Honor.

THE COURT: Okay.

MR. SHEPARD: I assume -- sorry, your Honor. I didn't mean to cut the Court off. I assume that, pursuant to the agreement of the parties, the defendant's waiver, and in the interest of justice, that the time set, up until all the delays, is totaled in a speedy trial, and now that we have a date certain, we're not in violation of the Act for the trial date?

THE COURT: That is correct. Do you agree, Mr. Ali?

MR. ALI: Yes, Your Honor. Reluctantly, I do agree.

THE COURT: Okay. Because when you filed your request for a continuance on January 30th, at that time the Court found that the delay attributable to the charged trial date shall be excluded from the computation of time pursuant to the Speedy Trial Act, Title 18 United States Code, Section 3161. So this delay is all you guys, okay?

MR. ALI: Yes, Your Honor.

THE COURT: All right. So everybody get ready.

And work with your lawyer, Mr. Jones, because these are very, very serious charges that you're facing, and the government is willing to dismiss 46 of the 48 counts. So you discuss these issues with your lawyer and we'll see everyone on June 5th.

MR. SHEPARD: Thank you, Your Honor.

THE COURT: We adjourned.

MR. ALI: Thank you, Your Honor.

THE COURTROOM DEPUTY: All rise.

(Proceedings adjourned at 2:03 p.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No. 1:12-cr-00072-TWP-DML
BRUCE JONES,	)	
	)	
Defendant.	)	

CLERK'S NOTICE OF APPEAL

Pursuant to Fed. R. Crim. P. 32(j)(2) and at the request of Defendant made in open court at the conclusion of the sentencing hearing, the Clerk hereby files this notice of appeal on behalf of Defendant.

Date: 3/27/2014

Laura A. Briggs, Clerk

BY: _____
Deputy Clerk, U. S. District Court

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All right --

MR. DAVID: I've calmed a little.

THE COURT: Well, good. We also have present David Moxley, is the court reporter today.

And when we were last in court on March 1st, 2013, there was discussion held regarding pretrial motions, and the defendant, Bruce Jones, was given until today, June 5th, 2013, to either accept or deny the government's plea offer. And I believe that offer expires today. We'll talk about that in a moment.

Since that time, Mr. Jones has retained new counsel, Mr. Pumphrey and Mr. Manley. And the government has filed a superseding, as well as a second superseding, indictment. And so we'll have an initial hearing today on the second superseding indictment.

And Mr. Pumphrey and Mr. Manley have filed a motion to continue the July 8th trial by jury, and the government has filed an objection there, too. So we'll discuss that, also.

So we're on the calendar for the accept/reject hearing, the initial hearing on the second superseding indictment, and the Court will entertain the defendant's motion for a continuance. We'll begin with the initial hearing on the second superseding indictment.

A superseding -- the original indictment was filed on May 15th, 2012, and Mr. Jones appeared before a magistrate

judge for an initial hearing. A second superseding indictment was filed in this case on May 22nd, and there was an initial appearance on the superseding indictment on May 30th, 2013, in front of the magistrate judge. At that time, the charges were read, the penalties and rights were reviewed and explained, and Mr. Jones waived a formal arraignment.

And yesterday, June 4th, the government filed a second superseding indictment. Counsel, do you have a copy of the second superseding indictment, and have you been able to review that with your client?

MR. PUMPHREY: We have, Your Honor. We haven't reviewed it as much as we would like with the short nature of time we've got, but we have gone over it, and he understands the changes, and we waive the reading of that, as well.

THE COURT: Okay. Mr. Shepard, what are the -- what's the difference in the superseding indictment and the second one that was filed yesterday?

MR. SHEPARD: Your Honor, substantively, there's no difference whatsoever. Arguably, the -- well, not arguably. The first superseding indictment was multiplicitous. I had believed that the remedy for that was a motion for merger if more than one were ultimately convicted at a jury trial. And, certainly, there is case law that supports that.

There is also, however, another branch of case law that says, "District court, maybe you should have made the

government elect upon which count to proceed prior to going to trial." In order to cure any multiplicity in the indictment, we went back to the Grand Jury, presented our evidence, and returned the second superseding indictment.

It is not -- multiple firearms are not multiplicitous to the extent they are stored in separate and distinct locations. So counts 2, 3, and 4 are all of the firearms which were originally charged as Counts 2 through 48 in both -- in the first superseding indictment, just broken up by where they were found. So count 2 is the Smith & Wesson revolver, the Remington shotgun, and all the ammunition.

The only -- to the extent it is a substantive change, the only thing that is different, the jury need only unanimously agree as to one of those to find a conviction for that count. They don't have to agree that he possessed all three; just one. The same thing is true for Count 3. That would be the remaining firearms, which would have been old Counts 4 through 33.

THE COURT: Okay.

MR. SHEPARD: And they were found in the treatment lodge. Again, the jury just has to unanimously agree to one of those weapons in order to sustain a conviction on Count Number 3. And then Count 4 are the weapons that were recovered from the Montana cabin. And that's why they're broken up that way. And those were former Counts 34 through

48.

THE COURT: All right. So it's the exact same counts; they have just been --

MR. SHEPARD: Exactly. The evidence has not changed, the charging theory has not changed. Just, instead of being individual counts, they are grouped into three counts based upon where they were found, thereby remedying any double jeopardy or multiplicity issues in the first superseding indictment.

THE COURT: Okay. Thank you for that clarification. Mr. Jones, when you were in court for the initial hearing on the superseding indictment, the magistrate judge did give you a thorough initial hearing. You were advised of your right to remain silent, your right to counsel, your right to not incriminate yourself, your right to a speedy trial by jury, and your appellate rights. And all of those rights that were previously explained to you do remain in effect under the second superseding indictment. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Under Rule 10, you do have a right to a formal arraignment. However, you may waive a formal arraignment.

And, Counsel, have you discussed that with your client?

MR. DAVID: We have, Your Honor. We would waive.

with the government for six hours one day last week. There is little likelihood that much more could be accomplished with a continuance that can't be accomplished in the next 30 days. And you may have to do the full court press that you talked about, defense counsel, but I know you can do it.

A continuance also would be extremely inconvenient and burdensome to this Court. The Court has a civil bench trial beginning on Monday. We have several criminal matters scheduled this summer. We have a multi-defendant speedy trial in New Albany. Is that in August? We have the Outlaws Motorcycle Club RICO trial. It originally was 51 defendants. We're down to about 21. We've got a trial of the first nine that is scheduled to proceed, to begin on September 9th, and the government claims that they're going to need six to eight weeks. So that's putting us into -- towards the end of this year.

And then I have all my civil trials and other criminal matters. There's just no way that the Court could reschedule this matter until the summer of 2014. And that's just not going to happen, because of the state of the -- all of the alleged victims and witnesses in this matter. So the motion to continue is going to be denied.

And the final matter that we need to talk about is what we were originally scheduled for, was an accept or deny the plea offer. Is there still an offer on the table,

Mr. Shepard?

MR. SHEPARD: Your Honor, the original offer that was read into the record in March was communicated to me by Attorney Ali approximately three weeks thereafter, that the client rejected that offer. To the extent that that didn't happen, we filed the superseding indictment. That, by operation of law, revoked the offer, because the original plea was to the indictment. There's been two new charging instruments.

Plus, as I've indicated to the defense, based upon our trial prep, the government can no longer in good conscience make the same offers. And on May 30th, to the extent that it wasn't -- before, at the initial appearance, I formerly, by letter, withdrew the plea offer of March 1st.

We talked this morning, indicated to the defense that the best offer the government can make at this point would be a guideline recommendation to what we believe his guidelines are, which is a level -- if he gets two points of acceptance -- based upon the amount of work the government has done, we would resist the third, or just not move for the third point. He would be at a 27.2 under our calculations, and the guideline range would be 97 to 87 months. And it was indicated to me that the defendant has no interest in that plea offer. So at this point, Your Honor, there are there no plea offers on the table.

THE COURT: Okay. All right, anything further for the record today, Government? The Court did docket a deadline -- pretrial deadline sheet yesterday, so you've got all of your -- both sides have the upcoming deadlines. And the government did file numerous motions today. I know there are some motions in limine and some other things that have been filed.

MR. PUMPHREY: And, Judge, I do have a specific request for that. It was kind of predicated -- Mr. Shepard and I had a conversation. If the motion to continue was denied, we would assume the deadlines would have followed the motion to continue. Had it been granted, those being -- having been denied -- the due dates for the motions that are set out in your scheduling order from the June 4th entry, I don't think Mr. Shepard objects if we extend those a week, if the Court is comfortable with that. I -- my daughter is getting married Saturday.

THE COURT: Okay. Let me pull that up. You want to extend --

MR. PUMPHREY: Essentially what I think we would be requesting for is the deadlines that are all tendered for the 7th, possibly the 12th, to be extended out a week from that deadline, an additional seven days.

THE COURT: Tanesa, do you have that pulled up?

(Off the record.)

Transfer, Receipt, and Agreement of Firearms

I want to congratulate you on becoming a United States Citizen a few days ago on September 11, 2001. That was a scary day thet we will never forget. As I mentioned to you because of my conviction in 1984 I cannot possess firearms, except muzzle loaders, until I file to have my rights to own a gun returned after 15 years. These weapons have been locked up at Bob's house since I got home. The list with BEJ Cattle Ranch as a caption showing values inn 1983 deseribes each firearm that I am transferring from Bob to you this day.

These are given to out of love, trust, and are removed from premuptial agreement. I ask you to please keep them oiled, locked up, and protected until a much later time when you might want to sell for retirement. If you will buy ammo to go with each gun as you have a few bucks I will get metal boxes for you to store. As you will invest in new firearms I will help keep a list and look up values for you. Guns and ammo will appreciate faster than money in the bank. I believe gun ownership is threatened thus making them more valuable. As you purchase more I will help you get insurance and will pay for it. Just add a gun here and there and you will see how fast they grow in value. I suggest you purchase only high quality ones and I will offer my advise. It is important that you also but ammunition for each weapon because if they can't take weapons they might stop making the ammo.

There are three guns that I would ask you to not sell until I pass on: the Harrington Richardson Pistol..my fathers, the JC Higgins 22 rifle I got from my brother David in 1956, and a Stevens 16 ga shotgun brother David gave me when I was about 16 years old. These have sentimental value and I would like kept in the family. Should you need advise David Sokol can be trusted. He knows guns and would not cheat you.

Bob Cowles suggested I write this up so no one would make trouble over my owning them.

Dated this 19th day of September 2001.

Bruce Edward Jones

Larissa V. Jones

Larissa Victor Jones

GOVERNMENT EXHIBIT A

THE COURT: Mr. Surmacz, you may make your opening statement.

MR. SURMACZ: Thank you.

OPENING STATEMENT BY:

MR. SURMACZ: Ladies and gentlemen, this is a simple case, and it's simple because over the next few days you will hear overwhelming evidence that the defendant, Bruce Jones, possessed in excess of 40 firearms and over 10,000 rounds of ammunition, even though it was against the law for him to possess a single gun or even one bullet.

The reason why Bruce Jones couldn't possess firearms or ammunitions is that Bruce Jones is a convicted felon. In fact, it's been illegal for Bruce Jones to possess a firearm or ammunition for almost 30 years when he was convicted of a felony in 1985.

This felony conviction, however, did not stop Bruce Jones from amassing an arsenal of weapons and ammunition. In order to give you an idea of the sheer size of this arsenal, I'll let Bruce Jones describe it to you in his own words from an e-mail he wrote his brother. "So far, I have as follows: 12mm, 2,750 rounds; .22 long rifle, 3,500 rounds; .223, 1,200 rounds; .243, 800 rounds; .270 WSM, 680 rounds; .270 W, 900 rounds; 7mm Remington magnum, 900 rounds; 7mm Weatherby magnum, 200 rounds; .30-30 Winchester, 920 rounds; .30-06, 1,000 rounds; .30 Winchester mag, 500 rounds; .4570, 140

rounds; .221 Fireball, 725 rounds; 9mm, 100 rounds; .38, 100 rounds; .38 Special, 200 rounds; .357, 500 rounds; .45 ACP, 450 rounds."

He goes on to say, "I have at least one gun for each caliber and .30-34, .30-06, four guns. I have been hoarding them for six months." These were the words of Bruce Jones in a June 7th, 2009, e-mail to his brother, David.

In this case, Bruce Jones is charged with possessing in 2010 the very same firearms and ammunition he bragged to his brother that he was hoarding in 2009.

Now, even though the evidence in this case will show that the firearms and ammunition charged in the indictment were owned by Bruce Jones, notice I said he is only charged with possessing them, not owning them. This is something that the judge will talk to you more about in detail at the end of the trial, but for now it's important to know that it is a crime to possess firearms or ammunition if you're a convicted felon.

Now, as I'm sure you know, a person can possess something a number of different ways. The obvious way is holding an object. I'm possessing these Kleenex right now. But you can possess something if you don't own it.

For example, if you borrow your neighbor's truck to run an errand, as you're driving that truck, you're possessing it even though you don't own the truck. You can also possess

an item by exercising dominion and control over it. For example, if you store an item in a place where you have access to it, you're exercising dominion or control over the item.

Also, if you direct a person to move an item from one place to another, again, you've possessed it by exerting dominion or control over it. During the trial, you will hear evidence that Bruce Jones possessed firearms and ammunition in both of these ways.

So, who exactly is Bruce Jones? Well, he's a resident of Anderson, Indiana; and he also owned a cabin in Montana near a town called Roundup. He operated a consulting business out of his home, where he generally met with patients in one of two places: One, in an office in his house; or, two, in what he called the treatment lodge, which is essentially around the corner from his house. Although he's not a medical doctor, the defendant does have a doctorate, and the evidence will show that Bruce Jones enjoyed being called doctor and he would ask people to call him doc.

In May 2010, the FBI obtained a search warrant to search Bruce Jones' residence and lodge. When the FBI arrived at his house in Anderson, Bruce Jones was home. According to their procedures, the FBI asked him, "Are there any guns in the house?" for their safety. Bruce Jones responded, "No." The evidence will show that this was a lie.

The FBI then began to search Bruce Jones' house. As

they started the search, FBI Task Force Officer Andy Shank found a fully loaded .357 magnum revolver in the master bedroom closet. Officer Shank found the gun in a drawer directly underneath Bruce Jones' shirts.

Separate from Officer Shank, FBI Special Agent Kathy Guider searched another bedroom in the house. While searching that bedroom, Special Agent Guider discovered a Remington shotgun in that closet. The evidence will show that in that closet were stored Bruce Jones' personal items and Bruce Jones' clothes.

Special Agent Guider and Task Force Officer Shank also searched the basement of Bruce Jones' residence. While searching that basement, in a storage room they came across over 20 large metal containers. When they opened these metal containers, they discovered that every one of them was filled to the brim with ammunition, many of which in their original boxes, often with the price tags still attached to them.

The evidence will show that inside of these 20 metal containers were over 10,000 rounds of ammunition in Bruce Jones' basement. The evidence will also show that Bruce Jones had organized this ammunition in these boxes. On each of the boxes were written numbers in Bruce Jones' handwriting that listed the caliber of the bullets that were inside of the containers. The evidence will show that the bullets inside of the containers matched what was written on the outside of the

boxes.

Now, in addition to searching the house, the FBI also searched Bruce Jones' treatment lodge. The evidence will show that this lodge was essentially a converted garage where Bruce Jones stored some of his toys, including boats, ATVs, vehicles, and even a replica slot medicine.

When searching that lodge, the FBI came across a locked gun safe. When the FBI asked the defendant to open that gun safe or they would have to be forced to crack it or open it themselves, the defendant claimed not to know the combination to the safe; but instead, he said his wife had it but she's out of the country.

However, just a couple minutes later, he came to the FBI and said, "Hey, I was able to reach my wife out of the country. She gave me the combination." Bruce Jones said, "She gave me this combination." It was 1721 was the combination to that gun safe. The evidence will show that Bruce Jones' home address is 1721 Williams Way. The evidence will also show that at the time the FBI conducted this search, Bruce Jones' wife had left him and was no longer living in the house.

Now, after getting that combination, 1721, from Bruce Jones, the FBI opened the safe. And inside this safe, they found over 20 guns, including handguns, rifles, and shotguns. One of these guns even had the name "Bruce Jones"

engraved into it.

The FBI also conducted a thorough search of Bruce Jones' home office, where they discovered that he kept meticulous records. One of the records they found was a large blue folder that was handwritten on the outside in Bruce Jones' handwriting, "Guns Ammo." It's not surprising that inside of that folder were a number of records relating to his guns and ammo, including receipts for the purchase of ammunition, receipts for the purchase of guns, proofs of purchase from the purchase of guns, and a handwritten ammunition ledger.

Specifically, many of the receipts for the purchase of ammunition actually listed the name of the person that bought the ammunition. On every one of these receipts that listed the name, the name listed was Bruce Jones. Also, a number of these ammunition receipts were credit card receipts. The evidence will show that every one of these credit card receipts, the ammunition was purchased with Bruce Jones' credit card. Some of these credit card receipts even had signatures on them. And every one that had a signature on it was signed either "Bruce Jones" or "Dr. Bruce Jones."

In addition to the ammunition receipts inside of that blue folder where he had written "Guns Ammo," were receipts for the purchase of guns. Many of these receipts contained serial numbers written on the receipt for the gun

that was purchased. The evidence will show that these serial numbers found on these receipts matched the serial numbers on the guns recovered by the FBI.

Some of these receipts showed that the guns were originally purchased by someone other than Bruce Jones, specifically two individuals: David Sokal and Spencer Kinley. The evidence will show that David Sokal and Spencer Kinley were patients of the defendant and that Bruce Jones used these patients to buy guns for him because he knew he couldn't pass the background check since he was a convicted felon.

Just like the ammunition receipts, a number of these receipts for the purchase of guns, including some of the guns purchased by Mr. Sokal and Mr. Kinley, were credit card receipts in that folder. The evidence will show, every one of these credit card receipts, the guns were purchased with Bruce Jones' credit card.

Since he was such a good record keeper, in addition to just the receipts, he also kept many of the proofs of purchase for these guns. When you buy a firearm, a lot of times the box will have a proof of purchase on it, just like any other product, except on these firearm boxes, the evidence will show that the serial number for the firearm is also on the proof of purchase. The evidence will show that Bruce Jones kept a number of these and put it in that folder. The evidence will also show that these serial numbers on the

proofs of purchase matched the guns that were recovered by the FBI.

Finally, the FBI found a handwritten ammunition ledger in the "Guns Ammos" folder. The evidence will show that this ledger showed that Bruce Jones had accumulated over 10,000 rounds of ammunition.

Also inside the defendant's office, the FBI found a document titled "Montana Guns at Cabin August 16, 2009." The document listed 13 additional guns, including a detailed description and serial number for each gun.

On June 4th, 2010, a few weeks after finding this document, the FBI executed another search warrant, this time in Montana on Bruce Jones' cabin in Roundup. During this search, the FBI found more of these metal containers filled to the brim again with ammunition. They also found ammunition in boxes in his nightstand next to the bedroom in the cabin.

During a search of the garage that was next to the cabin, the FBI found a number of gun cases, except these gun cases were empty. They also found during the search an address book. Inside of the front cover of the address book, Bruce Jones had handwritten his name. He had also stamped "Bruce Jones" and an address with an official stamp inside of that address book. Also inside that front cover, underneath Bruce Jones' name, was the combination to a safe. The FBI, however, during the search did not find a safe.

The evidence will show the reason why the FBI did not find guns or a safe during the search in Montana is because Bruce Jones was trying to hide those guns from the FBI. You see, soon after the Indiana search was done -- excuse me. After the Montana search was done, the FBI was contacted by an individual named Gary Hotchkiss, who was Bruce Jones' neighbor in Montana. Mr. Hotchkiss told the FBI that Bruce Jones had made a number of phone calls to him from Indiana to Mr. Hotchkiss in Montana, asking him to move all of his guns from the cabin to Mr. Hotchkiss' residence. The evidence will show that Bruce Jones did not make any of these phone calls until after the FBI executed the search warrant in Anderson, Indiana.

At trial, you will hear from Mr. Hotchkiss, who thought it was an odd request for the guns to be moved from Bruce Jones' secure cabin, that had an alarm system, to Mr. Hotchkiss' residence. And that's because Mr. Hotchkiss lived in a trailer that didn't even have a lock on the door.

Ultimately, Mr. Hotchkiss did move those guns because he was Bruce Jones' neighbor and Mr. Jones asked him to do so, so he did it. However, as soon as Mr. Hotchkiss learned of this investigation, he called the FBI and voluntarily gave those over.

The evidence will show that the FBI recovered those guns from Mr. Hotchkiss. And every one of the guns listed on

that document I talked about before, "Montana Guns at Cabin August 6, 2009," found in Anderson, every one of those guns were turned over to the FBI by Mr. Hotchkiss. And those serial numbers were an exact match.

Mr. Hotchkiss will also testify that Bruce Jones paid for him to fly from Montana to Indiana so that he could drive a Jeep back to Montana for him. Mr. Hotchkiss will testify that right before he took off in the Jeep, he witnessed Bruce Jones place a gun into the Jeep so it could be taken to Montana.

At trial, you will also hear from another of Bruce Jones' Montana neighbors, Ms. Schery Berthoud. Ms. Berthoud will testify that Bruce Jones would sometimes get lost on her property while driving an ATV. She will testify that one of these times when he got lost, he showed up on her property armed with a revolver.

In addition to all the documents I talked about before, that the FBI found in that "Guns Ammo" folder, the evidence will show that Bruce Jones also had a computer in his office. And the FBI, during the search, retrieved records from that computer and made a copy. After they made that copy, they analyzed what was on the computer and found a number of things, including a number of e-mails to and from Bruce Jones, where he discussed his gun and ammo collection, including the e-mail I read to you earlier from June 2009,

from Bruce Jones to his brother, where he says he has over 15,000 rounds of ammunition and over ten different calibers and a gun to match.

Also on his computer was an e-mail from June of 2009. In this e-mail, Bruce Jones talks about shooting a squirrel in the head with a Colt gold cup semiautomatic pistol. The evidence will show that the FBI recovered a Colt gold cup semiautomatic pistol from Bruce Jones.

Also on the computer that the FBI found a folder called, "My Guns." Inside of that folder, they found over 75 photos of guns. The evidence will show that a majority of those photos on the computer matched the guns that were recovered by the FBI.

Also on the computer, the FBI recovered two photos of Bruce Jones holding a rifle. The evidence will show that these photos were taken by a digital camera in 2009.

Also on the computer was a personal balance sheet for Bruce Jones. This document was labeled, "Personal Balance Sheet Bruce Jones, August 26, 2009." And on this personal balance sheet, Mr. Jones listed his assets. One of the assets he listed was an item called "Gun collection/ammo, worth $35,000."

Finally, the FBI also recovered a CD containing a video shot by Bruce Jones of his Montana cabin and the surrounding properties. On the video, Bruce Jones talks about

MR. SHEPARD: Thank you, Your Honor.

CLOSING ARGUMENT BY:

MR. SHEPARD: Ladies and gentlemen, before I begin, I just want to take a brief moment to thank you for giving us the last four days of your time. I know jury duty isn't always what everyone wants, but hopefully it's been a rewarding experience. I know that I speak for all of the attorneys, that we really appreciate it.

At the beginning of this case, my colleague, Mr. Surmacz, told you it was going to be a simple one. And if you remember Government's 151, this case is really just as simple as believing your own eyes.

But that's not all we have. In addition to the picture -- two pictures, actually -- of the defendant holding at least one of these guns that we found, you've also heard from the defendant's own words that he possessed these firearms.

If you will remember in the opening, my colleague read you a portion of an e-mail. It was a portion of what came to be entered as Government's 155. And in that e-mail conversation between the defendant and his brother, if you recall, remember, he stated the following: I agree! So far I have as follows: 17mm Mach II, 2,750; 22 Long Rifle, 3,500; 223, 1,200; 243, 800; 270WSM, 680; 270W, 900; 7mm Rem Mag, 900; 7mm," I think he meant Weatherby, "200; 30-30 Winchester,

920; 30-06, 1,000; 300 Win Mag, 500, and on and on until we get to statements not just about the ammunition.

"I have at least one gun for each caliber." For 30-30, I've got four. 30-06, I've got four. And, "I have been hoarding them for six months." Well, ladies and gentlemen, there's that mountain of ammunition. Here are the guns to fire that mountain of ammunition.

Now, those aren't the only words of the defendant that we've heard. In another portion of Government's 155, again, where this man is talking with his brother, "I went hunting with some friends in a small woods behind Grace Baptist Church...we ran out of long guns," so, "I carried a Colt Gold Cup semiautomatic pistol." Guess what we found? A Colt Gold Cup -- the document viewer doesn't show it very well, but you guys all got a chance to look at it -- semiautomatic pistol and in a holster with the defendant's initials on it.

He shot a squirrel with it, bragging about it. Now, the defendant wants you to believe that he's talking about something that happens way back in 1978 or '70s, '60s, I think he even said at one point, but the latest was the '70s.

There's a couple problems with this: One, one of the things you're asked to do as jurors is to judge the credibility of each and every witness that you saw testify. And I think we all saw the credibility or, maybe better

stated, the lack thereof of both the Joneses. I'm going to talk about that more later, but I just wanted to bring that up.

The other part is: Everything else in this e-mail is in the present tense. I mean, look at the very next paragraph, "I hope we can both shoot guns in Montana...I will make an attempt to take everything I will need out there in one trip. Guns, ammo, tools, fireworks, generator, compressor," and the list goes on.

Remember when Special Agent Teeling went through the pictures out there in the search warrant, and there was a lot of focusing on the ammunition and the bullets and the guns? What do we see in the background? We saw guns, we saw ammo. Out in the garage, we saw tools, we saw fireworks. On the video, I believe we saw a generator. We saw clothes. Basically, we saw everything out there that the defendant said he was going to take, including the ammunition.

We didn't see the guns, except for that gun hanging up on the wall. That was probably one of those there on the end. But we later found out why. Because, of course, the defendant tried to have them moved after the search warrant. Again, we're going to talk about that a little bit later.

We've got more words from the defendant, Government's 156. This is the e-mail correspondence between -- I think it's accurately described as maybe flirting

have to tie it this way because that's the only way you can make a wheel gun safe -- this would pop right down in there. The problem is, it can't right now because the cylinder is preventing it. If we could snap that in, it would fit it exactly. This is the gun and belt that Schery Berthoud saw. And who did she see it on? The man right there.

We also have testimony of Mr. Hotchkiss, the sick cancer survivor of whom Mr. Jones clearly was taking advantage. Now, as is probably expected, Mr. Hotchkiss could get a little confused. But if you remember his direct testimony, he testified with a lot of detail. Now, you're going to be the ones that have to judge whether or not he really remembered what he told you he remembered, but I want you to remember the amount of detail he told you on direct and ask yourself, could he really have made up that amount of detail?

We talked about how Jones, Mr. Jones, paid to fly him from Montana to Indiana on May the 2nd, 2010 -- remember, you all saw that itinerary -- at a time when he's pretty sick. Mr. Hotchkiss testified that Mr. Jones told him that he and Mrs. Jones were estranged. Mrs. Jones -- or "estranged" may be my word. I think Mr. Hotchkiss said they were getting a divorce or they had separated, one of the two. Mrs. Jones was nowhere at the house. In fact, he's never met Mrs. Jones.

That in the morning, Mr. Jones loaded up a Jeep for

him to drive out to Montana. How long do you all think that is? But not only that, Mr. Jones loaded a gun into that Jeep for him to take to Montana from Anderson, Indiana, in the Southern District.

Mr. Hotchkiss said that sometime after that, he started receiving phone calls from Doc. And this is where I want you to remember the detail in which he remembered it, the urgency in Doc's voice, the amount of times that Doc was calling him.

Now, sure, he said something about the alarm system not working, but we've seen, and I think you will probably agree with me, a number of less-than-true statements Mr. Jones has said about his guns. But, "I need you to get over there, I need you to pull those guns out of the cabin and take them to your place," that doublewide trailer that barely had a lock.

He had to do it multiple times, and only the guns. He also told you how valuable ammunition was. Leave the ammunition, leave everything else that was in there, that generator, all those other things; only the guns. If you don't have an alarm system, wouldn't you want everything valuable out of that house? Absolutely you would.

But if seven days after Mr. Hotchkiss leaves out to Montana -- remember, May the 3rd -- flew in May 2nd, drove out the next day, May the 3rd -- seven days later, May the 10th,

One of the things that you're going to be instructed on is the definition of "possession." You can control an object either directly or through others. You can possess it even if you're not in physical contact with it, and even if you don't own it. And more than one person can possess an object.

That's exactly what he was describing in his own words with the ammunition. It's also what he was describing with the firearms. "We give the money for the purchase. I would tell her what to go buy." We just saw where he's negotiating the purchase of one, and Sokal buys it the very next day, his patient.

He's in possession of it. Heck, who knows? Maybe Larissa Jones does legally own them. Who cares? He's not charged with ownership. He's charged with possession. And he clearly had it. And then he had, again, all those records that we've talked about.

We talked about all the stuff out in the Montana cabin. He says he didn't know any of the ammunition was out there. Yet 197, literally, his name is all over it. What's inside? Ammo. 201, "Doc's 308," "308."

Ladies and gentlemen, the truth is, these ammunition -- or this ammunition, sorry to use improper grammar -- and these guns were only Larissa Jones' guns and ammunition when it was convenient for the defendant, like when

the FBI talks to him, like when he comes in here and tries to testify to you. But when he's safe, or when he feels like he's safe, it's a completely different story.

155, when he's talking to his brother, "I have all these." "I have all these. I have at least one gun for each caliber. I have been hoarding them for six months."

When he's flirting with Heather Buxbaum, "I have a .28 gauge double-barrel shotgun I'm bringing to Montana. I prefer rifles and pistols."

And, finally, when he's kicking back, sitting with his buddies, snapping pictures, the gun that was in the mysterious room that the FBI ransacked the whole place, just missed. That's not true. You all know it. It's one of those two that Special Agent Jensen talked about. He showed you how the straps matched, how the scopes matched.

Then it was, "Oh, well, maybe that one is not going over so well. Well, someone just threw it to me, and I was so mad. I was so mad, I posed. I got a good look, I got a good hold, and I held that pose seven seconds so they could snap another one."

Ladies and gentlemen, the truth is, he possessed every one of these guns the entire time from 1985 all the way through and including the dates of the indictment, from the moment in time he got them. He loved guns. He kept -- his brother even talked about it with him. He kept all the

records, he has all these bullets, he has all these guns. He's an avid, avid collector, an avid lover of guns. And nothing, certainly not some stupid law of the government, that he doesn't like -- you heard him say that, also -- was going to keep him from what he liked.

The evidence shows he possessed these guns. The evidence shows we've met our burden. The evidence shows he's guilty. And we ask you to return that verdict on all counts. Thank you, ladies and gentlemen.

THE COURT: Thank you, Counsel.

Mr. Pumphrey, will you be making the closing argument on behalf of the defendant?

MR. PUMPHREY: I will, Your Honor.

THE COURT: You may, Counsel.

CLOSING ARGUMENT BY:

MR. PUMPHREY: Like Mr. Shepard, I want to thank you for being here. I don't think there's probably a higher duty for an American citizen to perform than the one you're doing today. And what a grave responsibility, to hold the United States Government to its burden. It's powerful stuff. Not everybody everywhere gets it. We're pretty lucky.

And that burden to sit and spend the time you're about to spend in a room going over the evidence and making a determination, sitting in judgment of another human being, I don't think it gets any tougher. I think it's an incredible

Certificate of Service

I, the undersigned, counsel for the Defendant–Appellant, Bruce Jones, hereby certify that I electronically filed this brief and appendix with the clerk of the Seventh Circuit Court of Appeals on December 8, 2014, which will send the filing to counsel of record in the case.

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Dated: December 8, 2014

No. 14-1665

United States Court of Appeals for the Seventh Circuit

United States of America, Plaintiff–Appellee, v. Bruce Jones, Defendant–Appellant.	Appeal from the United States District Court for the Southern District of Indiana Case No. 1:12-Cr-00072-TWP-DML-1 The Honorable Tanya Walton Pratt

Circuit Rule 30(d) Statement

I, the undersigned, counsel for the Defendant–Appellant, Bruce Jones, hereby state that all of the materials required by Circuit Rules 30(a), 30(b), and 30(d) are included in the Appendix to this brief.

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