No. 08-10238-FF

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

HARRISON NORRIS, JR.,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AS APPELLEE

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United States v. *Harrison Norris, Jr.*
No. 08-10238-FF

AMENDED CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Counsel for Appellee United States of America hereby certifies, in accordance with Federal Rules of Appellate Procedure 26.1 and 11th Circuit Rule 26.1-1, that the following persons may have an interest in the outcome of this case:

(1) Camp, Jack T., Honorable, Judge for the United States District Court for the Northern District of Georgia;

(2) Coppedge, Susan, Assistant United States Attorney, counsel for United States;

(3) Harrington, Sarah E., Attorney, United States Department of Justice, Civil Rights Division, Appellate Section, counsel for United States;

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(8) Norris, Harrison, Jr., Defendant-Appellant;

(9) Silver, Jessica Dunsay, Attorney, United States Department of Justice, Civil Rights Division, Appellate Section, counsel for United States;

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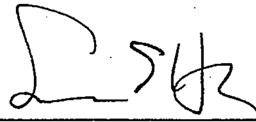

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

The district court had jurisdiction over this case pursuant to 18 U.S.C. 3231. This Court has jurisdiction pursuant to 28 U.S.C. 1291. Judgment was entered against the defendant on April 2, 2008. R.372.[1] The defendant filed a timely

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[1] References to "R.__" are to documents filed in the district court, identified by docket number; references to "Tr. __" are to pages in the consecutively-paginated trial transcript; references to "Sent. Tr. __" are to pages in the sentencing transcript; references to "Br. __" are to pages in Norris's brief as appellant. Record items 156, 372, and 430 are included in the Appellant's Record Excerpts, but are not consecutively paginated or tabbed.

notice of appeal on April 10, 2008. R.376.

STATEMENT OF THE ISSUES

1. Whether there was sufficient evidence presented at trial for a reasonable juror to conclude that Norris coerced his victims to provide their labor by using force and threats of force.

2. Whether the district court impermissibly coerced the jury to reach a verdict when it delivered this Circuit's pattern modified *Allen* instruction.

3. Whether the district court erred in sentencing Norris to life in prison.

STATEMENT OF THE CASE

On June 13, 2006, a federal grand jury returned a second superceding indictment against Harrison Norris, Jr. (a.k.a. "Hardbody Harrison") charging him with 28 counts of violating federal law in connection with his forcing and attempting to force multiple young women to engage in prostitution in and around Atlanta, Georgia, from 2004 through early 2006. R.156.

Norris was charged with (1) conspiracy in violation of 18 U.S.C. 371 (count 1)[2]; (2) holding five young women in a condition of peonage in violation of 18 U.S.C. 1581(a) (counts 2-6); (3) obtaining the forced labor and services of six

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[2] The indictment named two co-conspirators, Aimee Allen and Cedric Jackson. R.156 at 1-16. Both Allen and Jackson pleaded guilty to conspiracy.

young women in violation of 18 U.S.C. 1589(1) (counts 7-12); (4) trafficking of six young women for purposes of peonage and forced labor in violation of 18 U.S.C. 1590 (counts 13-18); (5) trafficking of six young women for commercial sex acts in violation of 18 U.S.C. 1591(a) (counts 19-24); (6) tampering with witnesses in violation of 18 U.S.C. 1512(b)(3) (counts 25-27); and (7) obstructing a peonage investigation in violation of 18 U.S.C. 1581(b) (count 28). R.156.

Norris's trial commenced on November 5, 2007, and lasted nine days. Norris chose to represent himself at trial and relied periodically on the help of stand-by counsel appointed by the district court. Norris moved for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29 at the close of the government's primary case and the district court denied the motion. Tr. 1329-1341. Norris did not renew his motion at the close of his case or at the close of the government's rebuttal case. Tr. 2106, 2128. On November 21, 2007, the jury returned a verdict of guilty on 24 of the 28 counts in the indictment; the jury acquitted Norris on the four counts related to alleged victim TW.[3] Tr. 2348-2352; R.322. The jury further found that 14 of the offenses of which Norris was

[3] The defendant and the United States refer to the victims by their initials in order to protect their privacy. The United States respectfully requests that this Court also refer to the victims by their initials in its opinion.

convicted included aggravated sexual assault or attempt to commit aggravated sexual assault. Tr. 2348-2351; R.322.

On April 1, 2008, the district court held a sentencing hearing and sentenced Norris to life in prison. R.371, 372.

STATEMENT OF FACTS

The defendant Harrison Norris, Jr. is a former professional wrestler who lived in Cartersville, Georgia. Tr. 786, 1206, 1222-1223, 1966. As detailed in the following pages, the evidence presented to the jury established that Norris forced young women to engage in prostitution, to dance with men at night clubs, and to perform various forms of labor around his house, all for his benefit. In order to induce compliance from his victims and to keep them from leaving him, Norris employed force, threats of force, and the imposition of monetary debts. Norris ran his operation through a military-style hierarchy. Tr. 211, 216-217, 240, 351-352, 646. Several women lived with Norris voluntarily and assisted him in his scheme. Norris referred to those women as his "team leaders" or "bottom bitches." Tr. 181, 211, 274, 339, 349, 399, 449, 554, 570-572, 588, 1216. The team leaders carefully monitored the victims – whom Norris referred to as "soldiers" – and enforced Norris's rules, including through violence and threats of violence. Tr. 186, 211, 213, 274, 365, 432, 455, 585, 588, 646-648, 671, 677, 763, 766. Aimee Allen, one

of Norris's indicted co-conspirators, testified that she helped Norris "recruit" young women – some of whom were poor, homeless, and/or addicted to drugs – through force and false pretenses, knowing that they would be forced to engage in prostitution. Tr. 420-421. Another team leader confirmed that some women were forced to engage in prostitution. Tr. 606.

1. How Norris Gained Control Of His Victims

Norris was convicted of victimizing five young women, all of whom testified at trial. Norris gained control of his victims through various means. He and one of his co-conspirators used physical force and intimidation to gain control of victims NH and KR. He gained control of victims ST, DM, and LM by initially falsely promising to train them to be wrestlers and later using physical force and intimidation to prevent them from leaving him.

a. NH

NH testified that she was visiting Atlanta from Ohio when Norris approached her at a gas station and asked whether she wanted to see his Denali truck. Tr. 159-163. When she declined, he put his arm around her and walked her over to the truck. Tr. 163-164. NH testified that she did not want to go over to the truck with him, but did so because he had his arm around her, is much bigger than she, and was accompanied by two other large men. Tr. 163-164. When they

reached the truck, Norris opened the back door and NH saw several women inside. Tr. 164. NH tried to back up, but Norris told her to get in the truck and then drove her to his home in Cartersville. Tr. 164-169. NH testified that she did not want to get in the truck, but did so because she felt she had no choice. Tr. 164-165.

b. *KR*

KR testified that she lived in Norris's home for 12 or 13 days in 2004 against her will, during which time she was forced to do things she did not want to do. Tr. 318-319. KR came under Norris's control when one of his co-conspirators – a pimp named Cedric Jackson – "gave" her to Norris. Tr. 320-338. In August 2004, KR met Jackson while working at her job at Popeye's in Decatur, Georgia. Tr. 320-321. Jackson expressed an interest in dating KR, who did not know at the time that Jackson was a pimp. Tr. 322-323. Jackson picked her up one night and told her he wanted her to work for him on Metropolitan Street, which is a location known for prostitution. Tr. 323-325. She thought it was a joke at first, told him no, and asked him to take her home. Tr. 325. He refused, got very angry, took KR to his home, and took away her possessions including her cell phone. Tr. 325-327. KR saw Jackson punch and bite another woman who was with them and was afraid, so she did what he demanded when he told her to put on a very revealing dress. Tr. 326.

Jackson took KR to Metropolitan and made her and the other woman get out of the car. Tr. 327. KR was crying when the police pulled up and told the women to go home. Tr. 327. She told the police about her situation, but they did not believe her and arrested her because she did not have any identification with her. Tr. 327. The following night, Jackson bailed KR out of jail without her permission. Tr. 328. As she was attempting to leave the building, Jackson grabbed her and told her she would have to pay him back. Tr. 328. When she resisted, he grabbed her around the neck and told her she had to make money for him or she was not going anywhere. Tr. 328. Jackson drove her to a deserted area and told her to get out of the car, threatening to "beat [her] ass" and to kill her. Tr. 329-330. He choked her, telling her she had to pay him back, and she thought she was going to die. Tr. 330.

Jackson then called Norris, who was previously unknown to KR, and Norris told KR that she had to pay Jackson back. Tr. 331-332. Jackson then took KR back to his house where he forced her to have sex with him. Tr. 332-333. The next morning, Jackson handed KR over to two men who were supposed to hold her for Norris. Tr. 333. The two men did not allow KR to leave when she wanted to. Tr. 334. The men later called Jackson because KR would not stop crying; Jackson told her he would beat her ass if she did not stop crying and said, "You

must want to die because we ain't going to let you go." Tr. 335-336. The two men who were holding her forced her to have sex with them. Tr. 336.

Norris arrived to pick her up in the early morning, accompanied by a number of women. Tr. 337. When KR asked when she could leave, Norris told her that she first had to pay back the money she owed him for Jackson's posting bond. Tr. 338. Norris told KR she was his property, that she could leave when she paid him back, and that she would pay him back by working for him. Tr. 338. Norris took KR to his house. Tr. 341.

c. ST

ST testified that she met Norris at a gas station in 2005. Tr. 864. At the time, she was using drugs and living on the streets or with friends. Tr. 864-865. Norris asked her if she had ever considered a career as a professional wrestler and told her that he and the women with him were wrestlers. Tr. 865-866. ST initially agreed to go with Norris because she was tired of living on the streets and wanted to try a career as a wrestler. Tr. 867.

d. DM

In 2005, DM met Norris at a gas station where Norris told her that he was in the business of training female wrestlers and offered to train her. Tr. 1042. He did not mention prostitution. Tr. 1044. Norris gave DM his phone number and

she called him the next day. Tr. 1043-1045. Norris and his team leaders picked DM up and took her to Norris's house. Tr. 1044-1049. The hour got late and DM decided to spend the night on the couch. Tr. 1048-1049. DM testified that she was not allowed to walk out of the house after she arrived there, Tr. 1076, and that Norris did not let her leave when she later told him she wanted to, Tr. 1080, 1084-1086.

e. LM

LM testified that she initially went with Norris willingly because she was a heavy drug user and wanted to change her life. Tr. 779-784. Unlike Norris's other victims, LM understood when she joined his household that she would engage in prostitution. Tr. 785-786, 791. However, she also testified that she believed at first that she would be able to walk away when and if she chose. Tr. 785-786, 791.

2. Norris's Treatment Of His Victims

Once Norris had his victims at his house, he exercised total control over them by, *e.g.*, confiscating their identification documents, giving them new names, choosing what they wore, and dictating what they ate and when they slept.[4] Tr.

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[4] Norris states (Br. 9) in his brief that his neighbors and family members testified that the women in Norris's house had free run of the house and were free

(continued...)

170, 180, 195-197, 211, 236-239, 342-344, 349-350, 365-370, 449, 583, 669, 876-880, 1061-1066, 1813-1814. His victims consistently testified that they were never permitted to be alone while living with Norris because he made sure that either he or one of his team leaders was always with them. Tr. 186, 342-343, 874-877, 1051, 1061-1063, 1066-1067, 1812-1814. On the few occasions when Norris allowed one of his victims to use the telephone, either he or one of his team leaders was present, listening to the call. Tr. 189, 562-563, 566, 669, 1061-1063, 1813. NH testified that the doors in Norris's house were locked and could not be opened from the inside without a key, which she did not have. Tr. 182, 1437, 1440.

Norris forced his victims to engage in various acts, including prostitution, dancing for money, and performing various tasks in and around his two houses. Norris was able to make his victims perform such acts by using force, threats of force, and monetary debts he alleged they owed to him. As explained more fully pp. 26-36, *infra*, Norris's victims testified that he subjected them to physical violence, sexual violence, threats of violence, and violence at the hands of his

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[4] (...continued)
to go shopping and eat at restaurants. It was clear from their testimony, however, that those witnesses were referring to the team leaders, not to the victims. Tr. 1453-1462, 1491-1498.

team leaders when the victims did not do what he wanted.[5] Tr. 182-194, 216, 318-320, 340-341, 352-353, 803-804, 808-809, 878-880, 908-909, 916, 919-921, 1056-1059, 1076-1078. Four of Norris's victims testified that he forced them to have sex with him. Tr. 182-184, 189-192 (NH); 319-320, 352-353 (KR); 878-880, 908-909, 916-919-921 (ST); 1076-1078 (DM). Two of his victims testified that he physically assaulted them by head-butting or pushing them. Tr. 804, 823 (LM); 919 (ST). Four of Norris's victims testified that he "pinned" them by pushing military rank insignia pins into their flesh until they bled. Tr. 216 (NH); 352 (KR), 808-809 (LM); 1072-1074 (DM). Two of Norris's victims testified that they were physically or sexually assaulted by Norris team leaders either on his orders or in front of him. Tr. 190-191 (NH); 804-807, 824 (LM). The victims also testified that they observed Norris inflict violence on other women and feared that he would harm them if they disobeyed him. Tr. 212-216, 354-356, 383, 416-417, 889-892, 1078. Two victims testified that they witnessed Norris "trade" two women to another pimp, that Norris told them other pimps physically mistreated the women with them, and that they feared Norris would trade them to another pimp if they disobeyed him. Tr. 898-899, 902-903, 1080-1083. After one of

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[5] Details of the violence victims NT, KR, ST, and LM suffered and observed are recounted in the first section of the argument portion of this brief, pp. 26-36, *infra*.

Norris's victims escaped, Norris told other women that he would kill the woman who escaped if he ever found her. Tr. 193-194, 384, 417.

Norris took the women to so-called "Mexican clubs" where they danced with male customers in exchange for money. Tr. 203-206, 233, 370-374, 430-431, 621-627, 793, 868-869, 1052-1055. The women consistently testified that Norris required them to turn over all of the money they made to him. Tr. 431, 623, 793-795, 869. On many occasions, Norris arranged for the women to engage in sexual activity with men in exchange for money, whether they wanted to or not. Tr. 354, 376-379, 385, 415-416, 432, 623-624, 795-799, 893-895, 900-901, 972, 1041-1042, 1052-1059. Norris negotiated the price for those encounters, arranged for the location, and provided the women with condoms. Tr. 207-208, 237-238, 291, 376, 454, 624, 629-630, 798, 895. DM testified about one occasion on which Norris took her to a man's apartment and ordered her to have sex with him. Tr. 1056-1058. When DM refused, Norris brought in two team leaders who ordered her to have sex with the man while Norris stood there with his hand balled in a fist. Tr. 1055-1056. DM testified that she was afraid Norris would hurt her, and consequently had sex with the man although she did not want to. Tr. 1057-1058. The women testified that Norris transported them to locations in North Carolina

and northern Georgia where they had to engage in prostitution as well. Tr. 345-348, 629, 885-886, 893, 1058-1060.

In addition, all of Norris's victims testified that he forced them to engage in what he called a "cut party." At the cut parties, Norris forced the women to engage in sexual activity with multiple men and sometimes with other women. Tr. 211-212, 215-216, 376-379, 618-619, 801-808, 823-824, 887-889, 1078-1080. Norris and his team leaders told the women that the purpose of the cut party was for Norris to judge the women's "skill" at performing various sex acts so that he would know how much to charge men for their services. Tr. 427, 801. Norris's victims testified that they did not know what a cut party was until they arrived, that they told Norris and his team leaders they did not want to participate, and that Norris and the team leaders told them they had no choice. Tr. 210-212, 216, 233, 267, 309-311, 314-315 (NH); 376-379 (KR); 801-808, 823-824 (LM); 886-889 (ST); 1078-1080 (DM). Some of the women initially refused to participate and Norris responded with physical violence by head-butting them, threatening to throw them through a wall or out the window, or forcing other women to rape them with dildos. Tr. 212-216, 381-383, 416-417, 428-429, 803-808, 823-824. KR testified that there were eight men at her cut party, that it lasted for five hours, and that she was in pain and acquired an infection as a result of being forced to

participate. Tr. 378-379. LM testified that her cut party lasted 12 to 14 hours and described the ordeal as "torture." Tr. 808.

Norris also forced the women to perform various acts of labor at his properties in Cartersville, including landscaping, cutting down trees, moving concrete, and laying sod. Tr. 217-220, 356-359, 680, 1068-1069. Norris assigned tasks to the women in the house by listing them on a "duty roster" he kept on his refrigerator. Tr. 217-219, 356-359, 682-684, 878-880, 916-917, 1068-1069. Each woman was required to perform all of the tasks assigned to her on the duty roster, and none of the women was paid for her labor. Tr. 217-219, 359, 684, 917, 1068-1069, 1075. If a woman did not complete the work assigned to her, the tasks were added to the list of tasks she was required to perform on the following day. Tr. 218-219, 439-440. Each woman could be assigned up to 40 or 50 tasks on a duty roster. Tr. 682-683.

Norris also coerced his victims by imposing an elaborate system of debts on the women and telling the women they could not leave him until they paid off their debts. Tr. 220-221, 338, 434-441, 459, 661, 816, 901, 925-926, 973, 1084-1086. Norris collected all of the money the women were forced to earn, and kept it locked in a safe in his bedroom closet. Tr. 205, 224-226, 374, 431, 631, 679, 907, 971, 1060-1061, 1072. He automatically took 50% of the money for himself. Tr.

431, 434, 630-633, 644, 679, 760-761, 774-775, 1060. From the remaining money, he deducted amounts for things such as rent, food, and utilities. Tr. 226, 374, 630-633, 679, 760, 774. He also deducted amounts to pay for the women's having their nails done and for the clothes they wore to the clubs – although he required them to have their nails done whether they wanted to or not and told them what to wear to the clubs. Tr. 633, 675, 907.

In addition, Norris imposed a system of "fines" on the women, whereby he charged the women "points" – which translated to monetary amounts – when he determined that they violated his house rules. Tr. 220-226, 359-361, 871-876, 1071-1072. Norris fined the women for such alleged infractions as talking back, not performing a task up to his standards, or wearing something he did not like. Tr. 224, 809. Norris was the sole arbiter of when a woman violated a rule and how much she had to pay for an infraction. Tr. 359-361, 1439-1441. He also fined the women if they failed to meet the "quota" he set for how much money they were required to make through dancing and prostitution. Tr. 196-199, 206, 209, 273, 290, 628, 644-645, 808-809. When the FBI searched Norris's residences, they found a number of envelopes locked in a safe in his closet. Tr. 1142-1145, 1919-1921. The envelopes contained cash and were marked with designations such as "Hardbody, 50%," "Team Leaders," "Feed the Pigs," "Talk

Too Much, Chloe" "Temper and Attitude," and "Grocery." Tr. 1919-1921. They also found a number of piggy banks locked in the closet and full of money. Tr. 1140-1142. The women testified that Norris referred to paying certain fines as "feed[ing] the pigs." Tr. 225-226, 362-365, 407, 440-441, 573, 668, 674, 761, 874-875.

3. How Norris's Victims Escaped From Him

Because Norris did not allow his victims to leave voluntarily, each victim had to escape from him.

a. NH And KR

On August 17, 2004, NH and KR escaped from Norris's control when they encountered police officers while shopping at a store called "Citi Trends" in Smyrna, Georgia. Tr. 228-231, 385-386. Detectives Keith Zgonc and Louis Defense, who worked for the Smyrna Police Department at the time, testified at trial, as did the clerk who was working at Citi Trends. The store clerk testified that Norris entered the store with a number of women that day, and that one of the women was constantly watched and physically held by one of the other women. Tr. 150-154. Detective Zgonc testified that he reported to Citi Trends to assist uniformed officers in responding to a reported business disturbance. Tr. 76. As he and the other officers stood on the sidewalk in front of the store, a woman later

identified as victim TW ran out of the store and told the officers that she was being held against her will and needed help. Tr. 76-77, 127, 386. She was quickly followed by another woman – later identified as one of Norris's team leaders – who told the officers not to pay attention to TW and tried to take TW back into the store. Tr. 77-79. The team leader eventually returned to the store and TW stayed with the officers. Tr. 79.

Detective Zgonc entered the store and found Norris with six or seven other women. Tr. 79-80. When Norris and the women told Zgonc that they were a wrestling group, Zgonc felt that their story was rehearsed. Tr. 81; see also Tr. 229. Zgonc called for more officers and the officers then separated the women and talked to them individually. Tr. 80-82. Zgonc testified that NH seemed calm when she first exited the store with the rest of the group, but started crying and seemed upset when she was separated. Tr. 82-83. The same was true of KR. Tr. 83-84. Each woman requested that the officers take her into custody so that they could get away from Norris and the rest of the group. Tr. 85-86, 230-231, 386-387. The officers took NH, KR, and TW to the police station so that the officers could further interview them away from Norris and the rest of the women. Tr. 85-86, 386.

When Detective Defense encountered Norris inside the store, he searched Norris's pockets and fanny pack with Norris's consent and found business cards, money in small denominations, and condoms. Tr. 127-129. The officers also searched Norris's car with his consent and found a bag filled with sexual devices such as dildos and handcuffs; a large quantity of condoms; a hotel receipt from a hotel in North Carolina; a number of spiral notebooks with ledgers showing who owed money to whom; and several envelopes, some of which had money in them and some of which were marked as money being owed. Tr. 87-98, 130-131.

b. ST And DM

ST testified that she decided to escape after she concluding that Norris would never let her leave. Tr. 925-930. After waiting until the team leader with whom she shared a room was asleep, ST went into the bathroom and turned on the water so that people outside the bathroom would think she was taking a shower. Tr. 925-926. She then took a razor blade out of a pedicure tool in the bathroom, cut the window screen, climbed out the window, and ran through the woods for two miles until she found a business where she called a friend to pick her up. Tr. 926-930.

Prior to ST's escape, she and DM had traded contact information for their families in case either of them was ever able to escape. Tr. 930, 1090-1091.

When ST managed to get away, she phoned DM's mother as promised, and told her what was happening. Tr. 930-932. Together, they called the police. Tr. 930-932. The police went to Norris's residence and pretended that DM's mother was in the hospital so that DM could leave with them. Tr. 931-934, 1091-1092. DM testified that she initially told the police everything was fine when Norris was standing right next to her, but told the police she was being held against her will as soon as the police took her out of Norris's hearing. Tr. 1091-1092. The police removed DM from Norris's house and brought her to her mother. Tr. 931-934.

c. LM

LM escaped by literally running away from the team leaders who had taken her with them to a Wal-Mart. Tr. 810-812. Although LM was not left alone by the team leaders at the store, she took the opportunity to escape because Norris was not with them. Tr. 811. LM waited until all of the team leaders but one had stepped inside the store, and then ran away from them through the parking lot to a hotel. Tr. 811-812.[6]

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[6] Norris was also convicted on four counts related to witness tampering and obstruction because he convinced his team leaders to lie to law enforcement investigators and to lie under oath in federal court. He does not challenge those convictions, which were also amply supported by the evidence presented to the jury. Tr. 696-700, 996-1010.

STANDARDS OF REVIEW

1. This Court normally reviews "the sufficiency of evidence to support a conviction *de novo*, viewing the evidence in the light most favorable to the Government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict." *United States* v. *Taylor*, 480 F.3d 1025, 1026 (11th Cir.), cert. denied, 128 S. Ct. 130 (2007). Where a defendant fails to move for a judgment of acquittal at the close of all of the evidence, however, this Court must affirm a defendant's conviction "unless a manifest miscarriage of justice would result." *United States* v. *Jones*, 32 F.3d 1512, 1516 (11th Cir. 1994) (per curiam).

2. This Court's review of a district court's decision to give a modified *Allen* charge is "limited to evaluating the coercive impact of the charge."[7] *United States* v. *Trujillo*, 146 F.3d 838, 846 (11th Cir. 1998). Because Norris did not object when the district court announced it would give the pattern modified *Allen* charge, the court's decision to give the instruction is reviewed for plain error. *United States* v. *Solomon*, 565 F.2d 364, 366 (5th Cir. 1978); Fed. R. Crim. P. 52(b).

3. This Court reviews the reasonableness of a sentence under "the deferential abuse-of-discretion standard of review." *Gall* v. *United States*, 128 S. Ct. 586, 598 (2007). This Court generally reviews the legality of a sentence *de*

[7] *Allen* v. *United States*, 164 U.S. 492, 17 S. Ct. 154 (1896).

novo. *United States* v. *Moriarty*, 429 F.3d 1012, 1023 (11th Cir. 2005). However, because Norris did not object to the legality of his sentence before the district court, this Court reviews those claims for plain error. *Ibid.*; *United States* v. *Raad*, 406 F.3d 1322, 1323 (11th Cir.), cert. denied, 546 U.S. 893, 126 S. Ct. 196 (2005).

SUMMARY OF ARGUMENT

Norris cannot prevail on his challenge to the sufficiency of the evidence to support his peonage and forced labor convictions as to four of his victims because the jury heard abundant evidence that Norris used physical violence, sexual violence, and threats of physical harm in order to coerce the victims to provide their labor for his benefit. The jury heard from the victims themselves that they provided their labor for Norris's benefit precisely because they feared physical violence or even death if they did not do what he told them to do. Under this Court's precedents – indeed, under any definition of coercion – the evidence was more than sufficient to support Norris's convictions.

Norris also cannot prevail on his claim that the jury was coerced into rendering a verdict when the district court delivered this Circuit's pattern modified *Allen* instruction. The Supreme Court has upheld the constitutionality of the *Allen* instruction and this Court has upheld the exact language of the modified *Allen* instruction given in this case on numerous occasions. Moreover, nothing in the

circumstances surrounding the jury's deliberations or the district court's delivery of the instruction was in any way coercive.

In addition, the district court did not err in imposing a life sentence on Norris. That sentence was exactly what the United States Sentencing Guidelines advised. Indeed, as the district court noted, it would have had to reduce Norris's guideline offense level by six levels in order to get an advisory sentence less than life in prison. It was not an abuse of discretion for the district court not to undertake a departure of such magnitude in this case. Nor can Norris establish such an abuse of discretion – let alone an Eighth Amendment violation – by pointing to lower sentences imposed on defendants who pleaded guilty to or were convicted of other, less serious offenses.

Finally, it is true that this Court does not allow a district court to impose a "general sentence" – the length of which is justified by some of the counts of conviction, but which is longer than authorized by at least one count of conviction – as the district court did in this case. Because Norris did not raise this objection below, however, it is subject to plain error review and merits reversal only if prejudice resulted. Even if this Court were to grant Norris relief on this claim by remanding the case to the district court for clarification that Norris is to serve a life sentence on 19 of the counts of conviction, along with concurrent 5-, 10-, and 20-

year sentences on the remaining five counts, Norris would be in exactly the same position he is in today – namely, convicted on 24 counts and serving a life sentence. He has, therefore, failed to establish prejudice.

ARGUMENT

I

THE GOVERNMENT PRESENTED MORE THAN SUFFICIENT EVIDENCE THAT NORRIS COMMITTED PEONAGE AND INVOLUNTARY SERVITUDE

Norris argues (Br. 15-23) that the government failed to present sufficient evidence to support the convictions for peonage and forced labor with respect to four of his victims. He does not challenge the sufficiency of evidence to support: his convictions for conspiracy (count 1), trafficking with respect to peonage and forced labor (counts 13-14, 16-18), sex trafficking (counts 19-20, 22-24), witness tampering (counts 25-27), or obstruction (count 28); or his peonage and forced labor convictions related to victim DM (counts 6, 12). He has waived his right to do so. *E.g.*, *United States* v. *Levy*, 416 F.3d 1273, 1275 (11th Cir.), cert. denied, 546 U.S. 1001, 126 S. Ct. 643 (2005). Norris asserts that the government failed to present sufficient evidence from which a jury could conclude that Norris coerced NH, KR, ST, and LM into providing their labor.

Because Norris failed to move for a judgment of acquittal at the close of all of the evidence, this Court must affirm his convictions "unless a manifest miscarriage of justice would result." *United States* v. *Jones*, 32 F.3d 1512, 1516 (11th Cir. 1994) (per curiam). This "heavier burden" requires the defendant to show "that the evidence on a key element of the offense is so tenuous that a conviction would be shocking." *United States* v. *Greer*, 440 F.3d 1267, 1271 (11th Cir. 2006). There is substantial evidence to support all of Norris's peonage and forced labor convictions.

In order to establish that Norris violated 18 U.S.C. 1581's prohibition on peonage, the government had to demonstrate that he intentionally held another person in "a status or condition of compulsory service" based upon a real or alleged indebtedness. *Bailey* v. *Alabama*, 219 U.S. 219, 242, 31 S. Ct. 145, 152 (1911) (quoting *Clyatt* v. *United States*, 197 U.S. 207, 215, 25 S. Ct. 429 (1905)); *Pierce* v. *United States*, 146 F.2d 84, 86 (5th Cir. 1944), cert. denied, 324 U.S. 873, 65 S. Ct. 104 (1945).[8] The type of "compulsory service" the government must prove is the equivalent of "involuntary servitude." *Bailey*, 219 U.S. at 243, 31 S. Ct. at 152; *United States* v. *Farrell*, Nos. 08-1559 & 08-1561, 2009 WL

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[8] Fifth Circuit decisions rendered prior to September 30, 1981, are binding precedent on this court. See *Bonner* v. *City of Prichard*, 661 F.2d 1206, 1209-1210 (11th Cir. 1981).

1025722, at *7 (8th Cir. Apr. 17, 2009). The Supreme Court and this Court have held that an offense of involuntary servitude is established where "the victim [was] forced to work for the defendant by the use or threat of physical restraint or physical injury." *United States* v. *Pipkins*, 378 F.3d 1281, 1296-1297 (11th Cir. 2004) (alteration in original), reinstated by 412 F.3d 1251 (11th Cir. 2005); *United States* v. *Kozminksi*, 478 U.S. 931, 952, 108 S. Ct. 2751, 2754 (1988).

In order to establish that Norris violated 18 U.S.C. 1589's prohibition on forced labor, the government had to establish that he "knowingly provide[d] or obtain[ed] the labor or services of a person" through either of two possible means: "(1) by threats of serious harm to, or physical restraint against, that person or another person; [or] (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint." The district court properly instructed the jury about what it had to find in order to convict Norris of committing peonage and forced labor, and Norris did not then and does not now challenge the district court's instructions.

Norris argues that the government failed to present sufficient evidence that he compelled the labor of victims NH, KR, ST, and LM through the use or

threatened use of physical force or restraint.[9] Norris is incorrect. The evidence presented to the jury demonstrates beyond reasonable doubt that Norris used physical violence and threats of physical violence in order to compel his victims to work for him. The evidence also shows that the women in fact provided their labor because they were afraid of being subject to physical force if they did not.

A. Testimony Of The Victims

1. NH

The jury heard ample evidence that Norris coerced NH to provide her labor by using force and threats of force. NH testified that Norris abducted her from a public place by physically guiding her over to his truck and telling her to get in when she tried to back away. Tr. 160-164. She testified that she did not want to get into the truck, but felt she had no choice because of the way in which Norris approached her. Tr. 164-165. During the second night NH spent with Norris and his team leaders, Norris subjected her to sexual violence by forcing her to have sex with him. Tr. 182-184. She testified that she told Norris she did not want to have sex with him, but he forced himself on her anyway, telling her to "relax" while he

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[9] Norris does not challenge the sufficiency of evidence to establish that Norris committed forced labor by coercing his victims' labor "by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint." 18 U.S.C. 1589.

did so. Tr. 183-184, 189-192. She testified that he forced her to have sex with him a number of times and that every time it was against her will. Tr. 184.

NH also testified that she was subject to sexual assault and other kinds of physical violence when Norris took her and other women on a trip to Las Vegas and insisted that all of the women engage in sexual activity with him. Tr. 189-190. When NH refused, three team leaders jumped on her and started punching her. Tr. 190-191. They did not stop hitting her until Norris told them to, at which point NH's mouth was bleeding. Tr. 191. Norris then took NH into the bathroom and forced her to have sex with him, despite her objections. Tr. 191-192. Norris later forced NH to perform oral sex on one of the team leaders, although NH told him repeatedly that she did not want to. Tr. 192-193.

On several occasions, Norris bestowed NH's "rank" on her by physically pushing a military insignia pin into her flesh, causing her to bleed and experience pain. Tr. 216. NH also testified that she was told that two team leaders would beat her if she stepped out of line. Tr. 186. In addition, NH observed Norris physically assault and threaten to physically assault other women who did not do as he instructed. Tr. 212-213, 215. While NH was living with Norris, another of his victims escaped and NH heard Norris threaten to kill that woman if he found her. Tr. 193-194.

The evidence also established that NH performed various types of labor because she feared being subjected to physical abuse if she did not. When NH told Norris that she did not want to have sex with multiple men at her "cut party," he told her she "had better do it." Tr. 211-212; see also Tr. 216.[10] She also testified that Norris required her to perform labor in and around his house against her will, that she had no choice but to perform those tasks, and that she was not paid for that work. Tr. 217-221. NH specifically testified that she was "scared that [she] was going to get beat or even killed" if she did not do what he required of her. Tr. 219; see also Tr. 215-216. NH told the jury that she adhered to Norris's rules and requirements because she "was scared for [her] life." Tr. 224.

2. KR

The jury also heard ample evidence that Norris coerced KR to provide her labor through the use and threatened use of force. KR testified that Norris's co-conspirator Cedric Jackson raped her and assaulted her before he handed her over to two other men who raped her again. Tr. 318-336. Norris himself also sexually

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[10] Norris's claim (Br. 17-18) that he did not force NH to engage in prostitution is belied by the record. Although, as Norris points out, NH initially testified that she was not forced to engage in prostitution, she later testified that Norris did force her to engage in sex with multiple men at her cut party and that Norris received monetary compensation for NH's participation in the cut party. Tr. 233, 266-267.

assaulted KR after he picked her up. Tr. 319-320, 352-353. KR also saw Norris violently head-butt one victim, witnessed him order the sexual assault of another victim, and heard his team leaders threaten to beat and kill a third victim. Tr. 355-356, 383-384, 416-417. She further stated that she saw a gun in a closet in Norris's house. Tr. 365-366. Norris also pushed a military rank pin into KR's breast until she bled. Tr. 352.

KR testified that she was frightened by the violent behavior of Norris and his team leaders. Tr. 356. She testified that Norris forced her to engage in sexual activity with multiple men at her cut party against her will and made her engage in prostitution in a hotel with one of his friends against her will. Tr. 354, 376-379, 385, 415-416. KR told the jury that she was scared the entire time she was with Norris. Tr. 342. The jury also heard that KR felt she had no choice but to perform the labor Norris required of her around the house. Tr. 359.

3. ST

The evidence before the jury also established that Norris used force and threats of force to compel ST to work for him. Like NH and KR, ST testified that Norris used sexual violence by forcing her to have sex with him against her will. Tr. 878-880, 908-909, 916, 919-923. When she refused to have sex with him on one occasion, he threw something at her, poked her in the chest, threatened to

throw her through a wall, and punished the other women. Tr. 919-920; see also 443-444, 659-661. He also threatened to have a team leader physically harm her. Tr. 920-921. ST further testified that she heard Norris hit other women. Tr. 889-892. She also knew that Norris had "traded" two women to other pimps because they would not adhere to his rules. Tr. 898-899, 902-903.

ST testified that she engaged in sexual activity with multiple men at her cut party because Norris and her team leader told her she had to and she was scared of what would happen if she did not. Tr. 887-889. The jury also heard directly from ST that she was afraid Norris would subject her to physical abuse, would punish other women in the house, or would trade her to another pimp if she made him angry. Tr. 902-903. She also testified that Norris told her she could not leave until she completed all of the tasks he assigned to her on the "duty roster." Tr. 906-908, 924-925.

4. LM

Finally, the government presented more than sufficient evidence that Norris coerced LM to provide her labor through the use and threatened use of force. LM testified that Norris "pinned" her with a miliary rank insignia by pushing it into her flesh. Tr. 808-809. Although LM testified that she initially engaged in prostitution on behalf of Norris willingly, Tr. 785-786, 791, the jury heard that

Norris used physical violence to force her to participate in her cut party, Tr. 383, 416-417, 801-808. When LM learned that she would be required to engage in sexual activity with multiple men at her cut party, she refused. Tr. 803. In response, Norris head-butted her "rather hard," causing LM to feel dazed and see stars. Tr. 620, 804, 823. Norris told her he would throw her out the window if she did not take her dress off. Tr. 803-804, 823. Norris then forced LM to lie on a bed while other women held her legs open and sexually assaulted her with dildos on Norris's orders. Tr. 428-429, 804-807, 824. Norris then made LM have sex with the men attending the cut party. Tr. 807-808. She described the 12- to 14-hour ordeal as "torture." Tr. 797, 808.

B. The Evidence Was More Than Sufficient To Prove Coercion

The precedents of this Court and other courts leave no room to doubt that the jury heard more than sufficient evidence that Norris held NH, KR, ST, and LM in a condition of peonage and forced labor.[11] In *Pipkins*, this Court upheld an

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[11] Because Norris does not challenge the sufficiency of the evidence establishing that Norris compelled NH, KR, and ST to provide their labor in order to satisfy real and imagined debts, he has waived his right to do so. *Levy*, 416 F.3d at 1275. In any case, there was ample evidence of Norris's use of debts against those women. Tr. 220-226, 815-816 (NH); 338, 362 (KR); 893-895, 900-901, 916-917, 925-926, 972-973 (ST). Norris purports (Br. 20) to challenge the sufficiency of the evidence to prove that he held LM in a condition of peonage. But his argument is irrelevant as Norris was neither charged with nor convicted of (continued...)

involuntary servitude conviction where the defendant forced his victim to engage in prostitution with threats of physical force. 378 F.3d at 1297. This Court found that the defendant in that case had sexual intercourse with his victim and that she felt she had no choice but to do what the defendant told her to do because he was "intimidating." *Ibid.* The defendant in *Pipkins* also forced his victim to engage in oral sex with another prostitute. *Ibid.* The same facts are present in the instant case as Norris forced his victims to submit to his demands that they engage in prostitution, dance at the clubs, and perform labor around his house by using and threatening to use violence, forcing his victims to have sex with him, and forcing at least one of his victims to engage in oral sex with another woman. By sexually assaulting NH, KR, and ST, and otherwise physically assaulting LM and ST, Norris put them in fear of further bodily injury at his hands if they did not do everything he told them to do.

In *United States* v. *Bibbs*, 564 F.2d 1165, 1168 (5th Cir. 1977), cert. denied, 435 U.S. 1007, 98 S. Ct. 1877 (1978), this Court upheld involuntary servitude convictions as to victims who "were not beaten, [but] were aware that the defendants had beaten other persons." Similarly, in *United States* v. *Harris*, 701

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[11] (...continued)
holding LM in a condition of peonage. See R.156.

F.2d 1095, 1100-1101 (4th Cir.), cert. denied, 463 U.S. 1214, 103 S. Ct. 3554 (1983), the Fourth Circuit upheld an involuntary servitude conviction where a victim heard the defendant threaten violence against other victims. In the instant case, Norris's victims witnessed Norris use physical violence against other women who did not do as he instructed, and were afraid that he would do the same to them.

Norris attempts to discount the abundant evidence that he intentionally coerced his victims' labor by pointing to the fact that NH, ST, and KR did not attempt to escape from him (and from Jackson, in KR's case). But this Court has held that it is "of no moment" that a victim of involuntary servitude had an opportunity to escape where a defendant has placed the victim in fear of physical harm if she makes such an attempt. *United States* v. *Warren*, 772 F.2d 827, 834 (11th Cir. 1985); see also *Pipkins*, 378 F.3d at 1297; *Bibbs*, 564 F.2d at 1168. Cases from this Court and other courts of appeals affirm that a defendant holds a victim in a condition of involuntary servitude where the defendant uses violence and threats of violence to create a climate of fear such that his victims are afraid to leave or to otherwise disobey his orders. *Warren*, 772 F.2d at 834; *Harris*, 701 F.2d at 1100; *United States* v. *Booker*, 655 F.2d 562, 566 (4th Cir. 1981).

In any case, Norris is incorrect as a factual matter. All of Norris's victims eventually did attempt to escape and succeeded – three with a police escort, one by cutting through a screen, and one by literally running away through a parking lot. Norris did not allow any of his victims to leave freely. Norris argues that he could not have coerced the labor of ST and LM because they joined him voluntarily and even engaged in prostitution willingly. It is true that both women testified that they joined Norris willingly and initially agreed to engage in prostitution without being coerced. But both women also testified that they – like NH and KR – were eventually forced by Norris to engage in sex acts with men and to perform various forms of labor against their will by Norris's use of violence and threats of violence. The government need not prove that Norris held each victim in a condition of involuntary servitude from the first day Norris met her through the day she escaped. In this case, what began as voluntary for ST and LM became coercive through Norris's use and threatened use of violence. This Court has unambiguously held that the offense of involuntary servitude requires that a victim be held for "any term," even if that term is of "slight" temporal duration. *Pipkins*, 378 F.3d at 1297. All of Norris's victims testified that their labor was coerced at some point during their stay with Norris, if not throughout.

Norris further argues (Br. 18-19) that ST could not have felt coerced because she did not seek help when it was supposedly available. First, Norris argues that she should have asked for help from the police when she was arrested on an outstanding warrant when she, Norris, and the other women were returning from a prostitution trip to northern Georgia. Tr. 895-897. But ST testified that she was afraid the police would prosecute her for prostitution if she told them what was happening with Norris. Tr. 895-897. In addition, ST freely admitted that she was with Norris voluntarily at the beginning and even engaged in prostitution willingly for a time. Tr. 867-870, 885-886. Second, Norris argues that she should have asked for help from hospital staff when she was admitted to the emergency room during a trip to Detroit. But ST testified that she was unconscious when she was admitted, that Norris's co-conspirator and primary team leader Aimee Allen was in ST's hospital room when she woke up, and that Allen did not leave ST's side the entire time she was in the hospital. Tr. 960, 974. Finally, Norris argues that ST could have asked for help from security personnel who were allegedly stationed in and around one of the Mexican clubs to which Norris often took the women. But ST testified that she never saw police officers at the club, that Norris or a team leader was always with or near her when she was at

the club, that he did not allow her to speak to anyone at the club, and that he was friendly with the security personnel employed by the club. Tr. 950-952, 974-975.

Norris's only remaining sufficiency challenge (Br. 17-23) is his argument that the jury should not have found the victims' testimony to be credible because of alleged minor internal inconsistencies or because it conflicted with the testimony of Norris's friends and co-conspirator. However, it is firmly established that credibility determinations are solely within the province of the jury. *United States* v. *Chastain*, 198 F.3d 1338, 1351 (11th Cir. 1999), cert. denied, 532 U.S. 996, 121 S. Ct. 1658 (2001).

Because there was more than sufficient evidence to prove that Norris used violence and threats of violence to coerce NH, KR, ST, and LM to provide their labor, there was sufficient evidence for the jury to convict Norris of forced labor as to those women. There was also sufficient evidence to convict Norris of peonage as to NH, KR, and ST because the evidence of coercion was sufficient to prove involuntary servitude and he does not challenge the sufficiency of the evidence to prove that the labor of those women was coerced in order to satisfy a debt imposed upon them by Norris.

II

THE DISTRICT COURT DID NOT VIOLATE NORRIS'S CONSTITUTIONAL RIGHTS WHEN IT GAVE THE JURY THE MODIFIED *ALLEN* CHARGE THAT HAS BEEN REPEATEDLY APPROVED BY THIS COURT

Norris argues that the district court's delivery of this Circuit's pattern jury instruction for a deadlocked jury – known as a "modified *Allen*" charge – deprived him of his constitutional right to a determination of his guilt by a jury of his peers. He is incorrect. The Supreme Court has upheld the constitutionality of such an instruction and this Court has consistently held that district courts may deliver the Circuit's pattern instruction where doing so is not coercive given the surrounding circumstances. *Allen* v. *United States*, 164 U.S. 492, 501-502, 17 S. Ct. 154, 157 (1896); *United States* v. *Trujillo*, 146 F.3d 838, 846-847 (11th Cir. 1998); *United States* v. *Chigbo*, 38 F.3d 543, 544-545 & n.1 (11th Cir. 1994), cert. denied, 516 U.S. 826, 116 S. Ct. 92 (1995). Because Norris did not object when the district court announced it would give the pattern modified *Allen* charge,[12] the court's

[12] As Norris notes (Br. 29), before the district court gave the *Allen* instruction, Norris asked that the jury be given the option of reconvening after the Thanksgiving holiday rather than having to deliberate into the evening on the day before Thanksgiving. Tr. 2334-2335. The district court agreed to give the jury that option closer to the end of the day. Tr. 2335. Norris did not, however, object to the wording of the modified *Allen* instruction or to the court's giving the instruction at all.

decision to give the instruction is reviewed for plain error. *United States* v. *Solomon*, 565 F.2d 364, 366 (5th Cir. 1978); Fed. R. Crim. P. 52(b).

A. *This Court's Approved Modified Allen Charge Is Not Per Se Unconstitutional*

Norris urges (Br. 23-28) this Court to ban completely the use of the Circuit's approved modified *Allen* charge because the giving of a modified *Allen* charge is inherently coercive and, therefore, *per se* unconstitutional. That argument is foreclosed by Supreme Court and Circuit precedent. More than 100 years ago, the Supreme Court found no error, constitutional or otherwise, in a district court's instructing a deadlocked jury:

> that in a large proportion of cases absolute certainty could not be expected; that, although the verdict must be the verdict of each individual juror, and not a mere acquiescence in the conclusion of his fellows, yet they should examine the question submitted with candor, and with a proper regard and deference to the opinions of each other; that it was their duty to decide the case if they could conscientiously do so; that they should listen, with a disposition to be convinced, to each other's arguments; that, if much the larger number were for conviction, a dissenting juror should consider whether his doubt was a reasonable one which made no impression upon the minds of so many men, equally honest, equally intelligent with himself. If, upon the other hand, the majority were for acquittal, the minority ought to ask themselves whether they might not reasonably doubt the correctness of a judgment which was not concurred in by the majority.

Allen, 164 U.S. at 501, 17 S. Ct. at 157. As the Court explained, "[i]t certainly cannot be the law that each juror should not listen with deference to the arguments, and with a distrust of his own judgment, if he finds a large majority of the jury taking a different view of the case from what he does himself." *Ibid.* Since that decision, instructions given to a deadlocked jury regarding further deliberation have been known as "*Allen* charges." The Court reaffirmed the constitutional validity of the *Allen* charge more recently in *Lowenfield* v. *Phelps*, 484 U.S. 231, 237-238, 108 S. Ct. 546, 551 (1988), noting that the "continuing validity of th[e] Court's observations in *Allen* are beyond dispute."

Since the Supreme Court held that the *Allen* charge is constitutionally permissible, no court of appeals has held – or could have held – otherwise. As Norris notes, however, three courts of appeals have prohibited the district courts they oversee from using a modified *Allen* charge. *United States* v. *Silvern*, 484 F.2d 879, 882-883 (7th Cir. 1973) (en banc); *United States* v. *Thomas*, 449 F.2d 1177, 1187 (D.C. Cir. 1971) (en banc); *United States* v. *Fioravanti*, 412 F.2d 407, 420 (3d Cir.), cert. denied, 396 U.S. 837, 90 S. Ct. 97 (1969). But each of those courts did so pursuant to its supervisory authority, specifically noting that the constitutionality of such charges had already been established by the Supreme Court. *Silvern*, 484 F.2d at 880-882; *Thomas*, 449 F.2d at 1187; *Fioravanti*, 412

F.2d at 419-420. Every other court of appeals generally permits the use of some form of modified *Allen* charge. *E.g.*, *United States* v. *Nichols*, 820 F.2d 508, 511-512 (1st Cir. 1987); *United States* v. *Crispo*, 306 F.3d 71, 75-77 (2d Cir. 2002); *United States* v. *Hylton*, 349 F.3d 781, 788 (4th Cir. 2003), cert. denied, 541 U.S. 1065, 124 S. Ct. 2391 (2004); *United States* v. *Winters*, 105 F.3d 200, 203-204 (5th Cir. 1997); *United States* v. *Tines*, 70 F.3d 891, 895-897 (6th Cir. 1995), cert. denied, 516 U.S. 1180, 116 S. Ct. 1280 (1996); *United States* v. *Smith*, 635 F.2d 716, 720-722 (8th Cir. 1980); *United States* v. *Wauneka*, 842 F.2d 1083, 1088-1089 (9th Cir. 1988); *United States* v. *Rodriguez-Mejia*, 20 F.3d 1090, 1091-1092 (10th Cir.), cert. denied, 513 U.S. 1045, 115 S. Ct. 640 (1994).

This Court has consistently upheld the use of its pattern modified *Allen* charge – the exact charge given in the instant case. *E.g.*, *United States* v. *Dickerson*, 248 F.3d 1036, 1050-1051 (11th Cir. 2001), cert. denied, 536 U.S. 957, 122 S. Ct. 2659 (2002); *Trujillo*, 146 F.3d at 846; *United States* v. *Beasley*, 72 F.3d 1518, 1528-1529 (11th Cir.), cert. denied, 518 U.S. 1027, 116 S. Ct. 2570 (1996); *Chigbo*, 38 F.3d at 544-546; *United States* v. *Elkins*, 885 F.2d 775, 783-784 (11th Cir. 1989), cert. denied, 494 U.S. 1005, 110 S. Ct. 1300 (1990). As Norris points out, twelve years ago, one panel of this Court expressed its view that the Court should ban the use of the modified *Allen* charge, but noted that it could

not do so itself in the face of binding Circuit precedent upholding such instructions. *United States* v. *Rey*, 811 F.2d 1453, 1457-1460 (11th Cir. 1987). In the intervening years, no other panel of this Court – let alone the Court sitting *en banc* – has banned outright the use of the approved modified *Allen* charge. This Court is bound by that unbroken line of Circuit precedent. *United States* v. *Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008).

B. The Modified Allen Charge Given In This Case Did Not Improperly Coerce The Jurors To Reach A Verdict

Although it is beyond dispute that the modified *Allen* charge is constitutional on its face, the Supreme Court and this Court have held that the giving of such a charge could raise constitutional problems if the charge is unduly coercive in a particular case. *Lowenfield*, 484 U.S. at 239-241, 108 S. Ct. at 552; *Chigbo*, 38 F.3d at 54. Thus, this Court has held that its review of a district court's decision to give a modified *Allen* charge is "limited to evaluating the coercive impact of the charge." *Trujillo*, 146 F.3d at 846. Where, as here, a district court does not poll a deadlocked jury to determine its numerical split prior to giving a modified *Allen* charge, this Court may reverse the verdict "only if [it] find[s] that the giving of the *Allen* charge was inherently coercive." *Ibid.*

1. This Court Has Held That The Wording Of The Instruction Given In This Case Is Not Inherently Coercive

Norris challenges (Br. 30-32) various aspects of the wording of the pattern instruction given in this case. But this Court has repeatedly held that this exact charge is not inherently coercive. *Dickerson*, 248 F.3d at 1050 ("We previously have upheld the language employed in the [pattern] *Allen* charge given here."); *Trujillo*, 146 F.3d at 846-847. Norris offers no argument about why those holdings should not apply to the same pattern instruction in this case. This panel is bound by those decisions. *Archer*, 531 F.3d at 1352.

Nor is there any merit to Norris's contention (Br. 32-33) that the modified *Allen* charge conflicted with the judge's earlier instruction that the jury make its decision based on the evidence. That instruction was also taken directly from this Circuit's pattern instructions and is entirely consistent with the admonition in the pattern *Allen* charge given by the district court that jurors should reach a verdict if they can "after full deliberation and consideration of the evidence in the case." Tr. 2340. Moreover, the district court instructed the jury to consider the *Allen* instruction "in conjunction with all of [the] other instructions." Tr. 2340.

2. The Circumstances Of This Case Did Not Render The Modified Allen Charge Inherently Coercive

Norris also argues (Br. 28-33) that the circumstances surrounding the delivery of the otherwise non-coercive pattern *Allen* instruction rendered it coercive in this case. The jury began its deliberations at 3:50 pm on the Monday before Thanksgiving. After deliberating until 5:15 that evening, through all of Tuesday, and into Wednesday afternoon, the jury sent three questions to the district court judge, one of which asked: "If we are undecided on a number of counts *after* we debated/deliberated several times, what is the procedure?" R.430. The government suggested that the district court give this Court's pattern modified *Allen* instruction, and Norris did not object. Tr. 2332-2340. Before the district court delivered the *Allen* instruction, Norris expressed concern that the jurors not feel rushed into a decision by the impending Thanksgiving holiday, and asked that they be allowed to resume their deliberations after the holiday. Tr. 2334-2335. The district court agreed to query the jurors about their plans closer to the end of the day before deciding whether to have them return on Friday or the following Monday. Tr. 2335-2336.

The judge called the jury into the courtroom at 3:05 pm and delivered the modified *Allen* charge, after which the jury continued its deliberations. Tr. 2336-

2340. At 4:55 pm, the judge informed the parties that he was inclined to bring the jury into the courtroom to inquire as to their progress toward a unanimous verdict and to instruct them about returning a partial verdict. Tr. 2344. Both the government and Norris expressed concern that the jury not feel rushed to a decision by the holiday and asked that the judge not give the jury a partial verdict instruction. Tr. 2344-2347. The judge agreed and expressed his intention to check in with the jury about both their progress towards a verdict and their preference between returning on Friday or the following Monday. Tr. 2347. In response to the judge's request that the jury return to the courtroom, the jury asked for and was given an additional five minutes. Tr. 2347. When the jurors returned to the courtroom at 5:11 pm, they had reached a unanimous verdict, finding Norris guilty of 24 counts and not guilty of four counts. Tr. 2348-2352. Norris asked that the jurors be polled individually; they were and they confirmed the voluntariness and unanimity of their verdict. Tr. 2352-2356.

Norris claims (Br. 32) that the fact that the jurors were deliberating on the day before Thanksgiving rendered the modified *Allen* charge inherently coercive. But there was nothing coercive in the court's delivery of the instruction in response to the jurors' unsolicited question about what to do if they remained undecided on several counts after deliberating. The jurors were neither told nor

given the impression that they would have to stay late into the evening that day or that they would have to return on Thanksgiving or even on the day after Thanksgiving to resume their deliberations. Nor did the instruction urge them to rush to a decision. On the contrary, the court specifically told the jury: "Now, you may be as leisurely in your deliberations as the occasion requires and should take the time which you may feel is necessary." Tr. 2340. Nothing in the circumstances can be construed as coercing the jury into reaching a verdict.

Finally, Norris argues (Br. 32) that the jury must have felt coerced because "the jurors had a real question concerning the government witnesses' reasonable belief that they had no opportunity to escape." Norris derives this supposition from the jury's request for clarification about the meaning of "any reasonable means the person may have had to escape" with regard to the peonage charges against Norris. R.430. The question itself is the only information available about what the jurors were considering or concerned about. It is unfounded speculation to conclude, as Norris seems to, that the jurors were inclined to believe that the government had failed to establish the elements needed to prove peonage when they asked the question and then felt compelled by the pattern *Allen* instruction to find him guilty of most of the peonage charges. The district court answered the jury's questions in a manner that was acceptable to both sides, and the jury was

able to reach a unanimous verdict without any hint of coercion.[13] Indeed, the fact that the jury convicted Norris on some, but not all, of the counts in the indictment is evidence that its verdict was the product of careful consideration of the evidence in the record, not the product of coercion.

III

THE DISTRICT COURT DID NOT ERR IN SENTENCING NORRIS TO LIFE IN PRISON

Norris argues that the district court erred in imposing a life sentence on him because that sentence (1) is unreasonable, (2) violates the Eighth Amendment's prohibition on cruel and unusual punishment, and (3) exceeds the statutory maximum sentence available for five of the 24 counts on which Norris was convicted. Norris cannot prevail on these claims.

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[13] Norris also suggests (Br. 28-30), without saying so explicitly, that the jury must have been coerced because it deliberated for two days before hearing the modified *Allen* instruction and returned a verdict two hours after receiving the instruction. But this Court has found no coercion in similar circumstances, as well as in cases in which the jury deliberated for a much shorter period of time. *United State* v. *Woodard*, 531 F.3d 1352, 1358-1360, 1364 (11th Cir. 2008); *United States* v. *Salum*, 257 F. App'x 225, 227-228, 231 (11th Cir. 2007); *Chigbo*, 38 F.3d at 544-546; *United States* v. *Scruggs*, 583 F.2d 283, 240-241 (5th Cir. 1978); *Brooks* v. *Bay State Abrasive Prods., Inc.*, 516 F.2d 1003, 1003 (5th Cir. 1975).

A. Norris's Sentence Is Not Unreasonable

A district court must impose a sentence on a criminal defendant that is both procedurally and substantively reasonable. *Gall* v. *United States*, 128 S. Ct. 586, 597 (2007). Norris concedes (Br. 35) that his sentence is procedurally reasonable.

Norris argues instead that his sentence is substantively unreasonable. The Supreme Court in *Gall* instructed courts of appeals to review the substantive reasonableness of a sentence under "the deferential abuse-of-discretion standard of review." 128 S. Ct. at 598. This Court has held that a review for reasonableness entails an evaluation of "whether the sentence imposed by the district court fails to achieve the purpose of sentencing as stated in [18 U.S.C.] 3553(a)," recognizing that there is "a range of reasonable sentences from which the district court may choose." *United States* v. *Talley*, 431 F.3d 784, 788 (11th Cir. 2005); see also *United States* v. *Irey*, No. 08-10997, 2009 WL 806860, at *2 (11th Cir. Mar. 30, 2009) ("Appellate judges are not authorized to substitute their personal views of what might be the best sentence for the sentence imposed by the district judge."). The Court "ordinarily expect[s] a sentence within the Guidelines range to be reasonable, and the appellant has the burden of establishing the sentence is unreasonable in light of the record and the § 3553(a) factors." *United States* v. *Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008).

The district court "very carefully" considered all of the factors listed in 18 U.S.C. 3553, and Norris does not contend otherwise. Sent. Tr. 54. The court concluded that Norris's offenses were "certainly serious," that "there is a great need for adequate deterrence," and that "the public needs some protections" from Norris. Sent Tr. 54. The court also took into account Norris's lack of previous criminal convictions and heard from Norris about his prior military service. Sent. Tr. 50-52. In addition, the court considered potential disparities between Norris's sentence and those of other defendants, including his co-conspirators. Sent. Tr. 33-36. After giving careful consideration to all of the factors listed in Section 3553, the district court imposed the sentence recommended by the Sentencing Guidelines, life in prison. In doing so, the court noted that the Guidelines would have recommended a life sentence even if the court had found a reason to reduce his advisory offense level by five levels. Sent. Tr. 53-54. In spite of the district court's careful adherence to the law, Norris argues that the court abused its discretion by not giving *enough* weight to two factors under Section 3553 – "the history and characteristics of the defendant" and "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."

1. First, Norris argues that his sentence is substantively unreasonable because he had not been convicted of a crime prior to his conviction on 24 counts in this case and because he once served honorably in the military. Norris's lack of a prior criminal record is already accounted for in the advisory guidelines calculation by his assignment to criminal history category one. Norris offers no reason why his lack of previous convictions would justify – let alone require – the imposition of a sentence far outside the advisory guideline range. The offenses of which Norris was convicted were extremely serious, involving the use and threatened use of violence, including aggravated sexual abuse as to 14 of his counts of conviction. The fact that he may not have been convicted of any crimes prior to these convictions does not diminish the seriousness of the crimes for which the district court imposed a life sentence in this case.

Norris also fails to explain how the district court's refusal to significantly reduce his total guideline offense level based on his prior military experience constituted an abuse of discretion. In fact, Norris employed his knowledge of the military as part of his scheme to control his victims by physically injuring them when he bestowed military "rank" on them and by imposing a military-style hierarchy by using "team leaders" to control the women beneath them in rank.

2. Second, Norris argues that his life sentence is unreasonable because of two types of alleged disparities: between his sentence and those of his co-defendants who pleaded guilty and cooperated with the government, and between his sentence and the sentences imposed on other defendants in different cases.

Norris's reliance on the 60-month and 34-month sentences of his co-defendants who pleaded guilty is unavailing. This Court has repeatedly held that a district court should not reduce a defendant's sentence in order to account for a disparity with the sentence of a co-defendant. *United States* v. *Regueiro*, 240 F.3d 1321, 1325-1326 (11th Cir. 2001) (explaining that adjusting the sentence of a co-defendant "in order to cure an apparently unjustified disparity between defendants in an individual case will simply create another, wholly unwarranted disparity between the defendant receiving the adjustment and all similar offenders in other cases"); *United States* v. *Chotas*, 968 F.2d 1193, 1197-1198 (11th Cir. 1992); see also *United States* v. *Bolen*, 285 F. App'x 655, 659-660 (11th Cir. 2008) (reaffirming holding of *Regueiro* after Supreme Court's holding in *Gall*). That is particularly true, the Court has held, when the co-defendant pleaded guilty and cooperated with the government. *United States* v. *Williams*, 526 F.3d 1312, 1323-1324 (11th Cir. 2008); see also *Bolen*, 285 F. App'x at 660. Because Cedric Jackson and Aimee Allen both pleaded guilty and cooperated with the

government, Norris is not similarly situated to them and cannot rely on any disparity with their sentences to impugn the reasonableness of his. Norris was convicted on 24 separate counts, 14 of which included behavior constituting aggravated sexual abuse. Jackson and Allen each pleaded guilty to only one count of conspiracy. The difference in crimes of conviction would be expected to produce a considerable disparity in sentencing.

In addition, Norris claims (Br. 37-41) that his life sentence is unreasonable because he can identify five cases in which defendants were sentenced to a term of imprisonment ranging from 14 to 40 years based on crimes involving some sort of coerced prostitution. In three of the five cases Norris identifies, the defendants pleaded guilty to either two counts or four counts, and received sentences of 14 or 15 years. *United States* v. *Carpenter*, 280 F. App'x 866 (11th Cir. 2008); *United States* v. *Madison*, 477 F.3d 1312 (11th Cir.), cert. denied, 127 S. Ct. 2925 (2007); *United States* v. *Jones*, No. 07-285, 2008 WL 60414 (N.D. Ga. Jan. 3, 2008). Defendants who plead guilty to an offense are not in the same position as Norris. *Williams*, 526 F.3d at 1323-1324. In addition, the offense conduct in those cases was not comparable to Norris's. None of the defendants was convicted of crimes involving five victims, none involved a defendant convicted on more than two

offenses, and none included findings that the defendant engaged in aggravated sexual abuse, let alone 14 separate counts including such abuse.

In the other two cases, the defendants who were convicted after trial received 28-, 30-, and 40-year sentences. *United States* v. *Sims*, 299 F. App'x 954, 946-947 (11th Cir. 2008); *United States* v. *Pipkins*, 378 F.3d 1281, 1287 (11th Cir. 2004). None of the defendants in those cases was convicted on 24 separate counts; the defendant with the most offenses was convicted on 14 counts. *Pipkins*, 378 F.3d at 1287. Moreover, the district court specifically considered *Sims* and another case in which a defendant received a 40-year sentence before deciding to impose a life sentence on Norris. Sent. Tr. 34-35.

As the Supreme Court noted in *Gall*, a sentencing judge "is in a superior position to find facts and judge their import under § 3553(a) in the individual case" because he "sees and hears the evidence, makes credibility determinations, has full knowledge of the facts and gains insights not conveyed by the record." 128 S. Ct. at 597; see also *Rita* v. *United States*, 531 U.S. 338, 357, 127 S. Ct. 2456, 2469 (2007). Norris cannot demonstrate that the district court abused its discretion by considering all of the factors in Section 3553 and imposing the sentence recommended by the Guidelines.

Given the egregious nature of Norris's offenses, as well as the sheer number of convictions and victims, the district court acted well within its discretion in sentencing Norris based on his correctly calculated advisory guideline range. As the district court found, even if it had reduced Norris's total offense level by five levels, the advisory guideline would still have been life in prison.

B. Norris's Life Sentence Does Not Violate The Eighth Amendment's Prohibition On Cruel And Unusual Punishment

Norris argues (Br. 41-42) that his life sentence violates the Eighth Amendment's prohibition on cruel and unusual punishment for precisely the same reason he argues that it is unreasonable – because other defendants in other cases who committed fewer crimes against fewer victims received shorter sentences. Because Norris did not raise this objection before the district court, this Court reviews his claim for plain error. *United States* v. *Moriarty*, 429 F.3d 1012, 1023 (11th Cir. 2003); *United States* v. *Raad*, 406 F.3d 1322, 1323 (11th Cir. 2005). This Court and the Supreme Court have held that, outside the context of capital punishment, the Eighth Amendment "encompasses, at most, only a narrow proportionality principle." *Raad*, 406 F.3d at 1323; see also *Ewing* v. *California*, 538 U.S. 11, 20, 123 S. Ct. 1179, 1185 (2003); *United States* v. *Johnson*, 451 F.3d 1239, 1242-1243 (11th Cir.), cert. denied, 549 U.S. 987, 127 S. Ct. 462 (2006).

The Supreme Court has also made clear that, in a non-capital context, "*successful* challenges to the proportionality of particular sentences [are] exceedingly rare" because of the substantial deference accorded to Congress's "broad authority" to determine "the types and limits of punishments for crimes." *Solem* v. *Helm*, 463 U.S. 277, 289-290, 103 S. Ct. 3001, 3009 (1983).

Norris argues that his life sentence is cruel and unusual because other defendants who pleaded guilty to or were convicted of other crimes did not receive life sentences. But this Court has made clear that, *before* the Court may consider sentences imposed on other defendants, this defendant has the burden of showing that the sentence imposed on him "is grossly disproportionate to the offense committed." *Johnson*, 451 F.3d at 1243; *Raad*, 406 F.3d at 1324 & n.4. Norris does not even attempt to make that showing beyond merely asserting that it is so. Nor could he. Cf. *Harmelin* v. *Michigan*, 501 U.S. 957, 1001-1009, 111 S. Ct. 2680, 2705-2709 (2005) (joint opinion of Kennedy, O'Connor, & Souter, JJJ., concurring in part & concurring in the judgment) (affirming mandatory life sentence without parole for possession of more than 650 grams of cocaine). Norris was convicted of using physical violence, sexual violence, and threats of violence against five young women in order to coerce them into prostituting themselves and otherwise providing their labor for his financial benefit. The jury

found that Norris's offense conduct included aggravated sexual abuse in 14 of the 24 counts of conviction.

In any case, this Court has held that, "[i]n general, a sentence within the limits imposed by statute is neither excessive nor cruel and unusual under the Eighth Amendment." *Johnson*, 451 F.3d at 1243; *Moriarty*, 429 F.3d at 1024. Congress authorized a life sentence for any defendant convicted of peonage, 18 U.S.C. 1581(a); forced labor, 18 U.S.C. 1589(1); or trafficking with respect to peonage, involuntary servitude or forced labor, 18 U.S.C. 1590, where the offense conduct included aggravated sexual abuse. Congress also authorized a life sentence for any defendant convicted of sex trafficking that includes force, fraud, or coercion, 18 U.S.C. 1591(b)(1). Thus, Norris was convicted on 19 offenses for which Congress explicitly authorized the imposition of a life sentence. "Because the district court sentenced [Norris] within the statutory limits, he has not made a threshold showing of disproportionality with respect to his sentence." *Johnson*, 451 F.3d at 1243; see also *Moriarty*, 429 F.3d at 1024; *Raad*, 406 F.3d at 1324. This Court "need not," therefore, "consider the sentences imposed on others convicted in the same jurisdiction and the sentences imposed for commission of the same crime in other jurisdictions." *Johnson*, 451 F.3d at 1243. Although Norris's life sentence "is severe," it is "not more severe than the life long

psychological injury he inflicted" on his five victims. *Ibid.* (discussing 140-year sentence for child pornography).[14]

C. *The District Court's Imposition Of A General Sentence Was Not Plain Error*

The district court imposed a general sentence covering all of Norris's convictions without specifying which counts of conviction garnered what individual sentences. Norris urges (Br. 42-43) this Court to vacate his sentence because five of the 24 offenses of which he was convicted carry statutory maximum sentences ranging from 5 to 20 years. Because Norris does not dispute that the other 19 offenses of which he was convicted statutorily authorize a life sentence, he does not claim that the life sentence was unsupported by his convictions as a whole.

This Court has held that a "general sentence" – defined as "an undivided sentence for more than one count that does not exceed the maximum possible aggregate sentence for all the counts but does exceed the maximum allowable sentence on one of the counts" – is "*per se* illegal." *United States* v. *Woodard*,

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[14] Even if the Court were to consider sentences imposed on other defendants in other cases, for the reasons discussed in argument Section III.A, *supra*, Norris has not identified any defendant similarly situated to him who received a significantly shorter sentence. Indeed, he fails to identify any defendant in any jurisdiction who was convicted of the same crimes he was.

938 F.2d 1255, 1256 (11th Cir. 1991), cert. denied, 502 U.S. 1109, 112 S. Ct. 1210 (1992); see also *Moriarty*, 429 F.3d at 1025. Because Norris did not raise this objection before the district court, however, this Court reviews his claim for plain error. *United States* v. *Olano*, 507 U.S. 725, 732, 113 S. Ct. 1770, 1776-1777 (1993); Fed. R. Crim. P. 52(b).

Although certain types of illegal sentences are automatically subject to reversal regardless of whether the defendant objected below, this Court has held that not all illegal sentences are exempt from the rigors of plain error review where a defendant failed to object before the district court. *United States* v. *Cobbs*, 967 F.2d 1555, 1557-1558 (11th Cir. 1992). The Court has not determined the full universe of illegal sentences that warrant reversal, but has held that that universe includes sentences that are "beyond the statutory power of the court to impose" – usually because they exceed the relevant statutory maximum. *Ibid.* The Court has not yet had occasion to decide whether the imposition of a general sentence is the type of illegal sentence that is subject to plain error review. However, because a general sentence by definition does not exceed the district court's statutory authority under at least one of the counts of conviction at issue, it does not fall within the category of illegal sentences that this Court has found warrant automatic reversal.

Even where a defendant can demonstrate that an error was plain, this Court may exercise its discretion to grant relief as to that error *only* if the error "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings." *Johnson* v. *United States*, 520 U.S. 461, 466-467, 117 S. Ct. 1544, 1548-1549 (1997). Under plain error review, the defendant bears the burden of proving prejudice – that the error affected the outcome of the proceedings. *United States* v. *De La Garza*, 516 F.3d 1266, 1269 (11th Cir. 2008), cert. denied, 129 S. Ct. 1668 (2009).

Although the district court's imposition of a general sentence in this case was plain error, this Court should not vacate that sentence because Norris cannot demonstrate that the total length of his sentence would have been any different had the district court specified which convictions garnered what sentences. It is undisputed that 19 of his 24 convictions support a life sentence. The Sentencing Guideline governing sentencing on multiple counts of conviction instructs that, when "the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, then the sentences on all counts shall run concurrently." U.S.S.G. § 5G1.2. Thus, the only remedy this Court could order would be a limited remand for the district court to specify that it is imposing a life sentence on counts 2, 3, 5-8, 10-14, 16-20, and 22-24, and a lesser sentence

on the other counts, to run concurrently. See Presentence Report 35. Because the outcome for Norris would be exactly the same – namely, that he would be convicted on the same 24 counts and would be serving a life sentence without the possibility of parole – he has failed to prove prejudice and is not entitled to relief on this forfeited error.

CONCLUSION

This Court should affirm Norris's convictions and life sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation required by Fed. R. App. P. 32(a)(7)(B). This brief was prepared using WordPerfect X4 and contains no more than 13,989 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

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Date: May 6, 2009

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2009, one copy of the foregoing *Brief for the United States As Appellee* was served by overnight mail, postage prepaid, on the following counsel of record:

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