PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-4280

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

DEMETRICE R. DEVINE, a/k/a Respect,

Defendant – Appellant.

No. 20-4327

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

BRANDON JOWAN MANGUM, a/k/a B-Easy,

Defendant – Appellant.

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (5:16-cr-00012-D-1; 5:16-cr-00012-D-6)

Argued: May 5, 2022 Decided: July 7, 2022

Before WILKINSON and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Agee and Senior Judge Floyd joined.

ARGUED: Rudolph Alexander Ashton, III, DUNN PITTMAN SKINNER & CUSHMAN, PLLC, New Bern, North Carolina; Eugene Ernest Lester, III, SHARPLESS MCCLEARN LESTER DUFFY, PA, Greensboro, North Carolina, for Appellants. Kristine L. Fritz, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee. **ON BRIEF:** G. Norman Acker, III, Acting United States Attorney, Jennifer P. May-Parker, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Raleigh, North Carolina, for Appellee.

WILKINSON, Circuit Judge:

Demetrice Devine and Brandon Mangum led a violent street gang known as the Black Mob Gangstas. During the Gangstas' reign of terror over the Haywood Street neighborhood of Raleigh, North Carolina, the gang murdered 16-year-old Adarius Fowler and 18-year-old Rodriguez Burrell. Devine and Mangum were convicted of various offenses including murder in aid of racketeering, and each received multiple consecutive life sentences. On appeal, the defendants raise numerous claims. For the reasons that follow, we affirm the judgment of the district court.

I.

A.

Demetrice Devine (known by the street name "Respect") formed the Black Mob Gangstas in the early 2000s as a semi-autonomous set of the "United Blood Nation," a larger gang with tentacles stretching throughout the east coast. J.A. 167, 1932. The violent pursuit of "Power Money Respect"—words permanently inscribed on Devine's neck through a tattoo—defined the Gangstas. J.A. 1932. Violence was endemic from the moment of initiation, which often required a savage baptism into gang life during which existing members attacked aspiring members while chanting "31 seconds to be born Blood." J.A. 1945. Other initiates bypassed this ritualized violence by "putting in work," i.e., by earning membership through the infliction of violence on the gang's enemies. J.A. 396.

To instill fear and maintain power, the gang adopted military-style ranks such as lieutenant and captain. Mangum joined the Gangstas in the mid-2000s and eventually rose

to the rank of three-star general. The gang's hierarchical structure was reinforced by strict rules which the Gangstas enforced to avoid accountability for their crimes and to cement their dominance over the neighborhood. The gang's most important rules were a prohibition on "snitching" to law enforcement and a requirement that members follow orders from gang superiors to carry out acts of violence and criminality. J.A. 393, 890–92. Those who disobeyed faced beatings or death.

Devine frequently led gang meetings at local parks and residences where gang oaths were recited, information was shared, criminal activity was planned, and brutal discipline was enforced. During a video-recorded 2009 discipline session, a wayward Gangsta could be heard pleading for mercy as Devine punched him in the face and screamed at him to "shut the fuck up" and "do your fucking job." J.A. 1946.

Gang members were required to pay weekly dues which were used to facilitate gang activities (such as purchasing drugs and guns or helping arrested members). Nonmembers who dealt drugs on Haywood Street were also forced to pay the gang "rent." J.A. 584. Gangstas raised the money needed to pay their dues through drug dealing on Haywood Street or by engaging in other crimes. Mangum, for example, advanced from selling small quantities of marijuana on the street to selling distribution quantities to fellow Gangstas, which they then resold in the neighborhood. He also managed prostitutes, organized scams, and directed lower-level gang members to engage in robberies he planned.

1.

The tragic events that led to the murder of Adarius Fowler began when Devine received a call informing him that one of his girlfriends had been robbed. Enraged by this

show of disrespect, Devine handed a loaded gun to two gang hitters and ordered them to "put in work," which in gang lingo meant to kill the perpetrator. J.A. 1257.

After approaching a store where they believed the robber might be located, the hitters opened fire on Fowler, a 16-year-old boy whom they mistook for Devine's target. Fowler bled out at the scene. Recognizing that his killers had mistakenly shot an innocent party, Devine stopped by a memorial being held for Fowler the next day, expressed condolences to Fowler's father, and placed a red gang bandana on the memorial.

When a gang member later expressed suspicion about Gangstas involvement in the Fowler murder, Devine ordered his death as well. Devine's hitter shot the target repeatedly but failed to kill him. In a perverse coincidence, the target was taken to a hospital where another of Devine's girlfriends was seeking treatment for her son. After learning of her presence, Devine called her to order her to go into the target's room and blow "air in his tube to [stop] his heart," but she demurred. J.A. 797.

2.

While Devine's wounded pride led to the murder of Adarius Fowler, greed motivated the execution of Rodriguez Burrell. Burrell was a member of the rival 9-Trey gang who sold drugs from the porch of his father's Haywood Street home. Despite repeated demands to pay rent for dealing on Gangstas turf, Burrell refused to pay. Under the law of the street, the penalty for refusal was death.

On the evening of May 25, 2009, several Gangstas convened at a Haywood Street bus stop to plan Burrell's death. The meeting was led by Dontaous Devine—Demetrice Devine's cousin and second-in-command. Dontaous instructed Mangum and a Gangsta

named Demetrius Toney—who was already armed with a 9mm pistol—to personally carry out the killing, with other members assigned to act as lookouts and getaway drivers.

While the Gangstas plotted, Rodriguez Burrell was sitting on his Haywood Street porch with his father, Rodney Burrell, and a friend. At trial, Rodney Burrell and the friend each testified that a light-skinned black male with dreadlocks—matching Mangum's description—walked by and asked if they had marijuana. Mangum then continued down the street without stopping to complete his feigned purchase. Approximately 10 minutes after Mangum scouted the porch, a shorter man dressed all in black—matching Toney's description—approached under the same ruse of purchasing marijuana. Immediately after stepping onto the porch, Toney pulled out the 9mm and repeatedly shot Rodriguez Burrell in the head. Toney fled without stopping even to steal cash or marijuana. Rodney Burrell called EMS and tried to staunch the blood pouring out of his 18-year-old son to no avail.

Mangum, Toney, and Dontaous were indicted for the murder in North Carolina state court. The charges were eventually dropped, leading Mangum to think he had gotten away with murder. He had not.

B.

Devine, Mangum, and numerous other Gangstas were eventually indicted in the Eastern District of North Carolina.[1] Most gang members opted to plead guilty, cooperate with the government, and testify against Devine and Mangum at trial.

[1] Dontaous Devine was also indicted but committed suicide before trial. Toney pleaded guilty to RICO conspiracy based on the Burrell murder and received the statutory maximum sentence. *Toney v. United States*, 2021 WL 5828036 (E.D.N.C. Dec. 8, 2021).

As relevant to this appeal, both defendants were charged with conspiracy to participate in racketeering activity in violation of 18 U.S.C. § 1962(d) (RICO conspiracy) and conspiracy to distribute cocaine and marijuana in violation of 21 U.S.C. § 846 (drug conspiracy). Devine was charged for the murder of Adarius Fowler while Mangum was charged for the murder of Rodriguez Burrell. Each was charged both with aiding and abetting murder with a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §§ 2 and 924(j) (firearms murder) and with murder in aid of racketeering in violation of 18 U.S.C. §§ 2 and 1959(a)(1) (VICAR murder).

Trial began on October 15, 2019, and after two weeks of testimony from nearly a dozen cooperating Gangstas members, the jury returned guilty verdicts on all counts.

1.

The district court held Devine's sentencing hearing on April 22, 2020. The court adopted the presentence report which provided a Criminal History Category of V and an offense level of 54. The Guidelines top out at 43, so Devine's offense level was reduced to the level 43 maximum, leading to a Guidelines range of life imprisonment.

Because Devine's conviction for the VICAR murder of Adarius Fowler carried a mandatory life sentence, *see* 18 U.S.C. § 1959(a)(1), defense counsel focused on conditions of confinement, asking the court to recommend placement near Devine's family, the ability to make calls to family members, and inclusion in the general population.

Devine refused to accept responsibility, denying any involvement in the murders to the victims' families and interrupting the government's sentencing argument to yell that the judge should "[g]o ahead and give me life, man." J.A. 1800.

While Devine was charged only for the Fowler murder, the court found by a preponderance that he had ordered the Burrell murder as well. J.A. 1811. The government read a victim statement from Burrell's sister in which she shared that Burrell was "the heart of my family, the baby of my family, the glue to my family," that because of Devine's actions he "never had a chance to smell his daughter" who "loves her daddy so much," and that Devine "tore a hole in our hearts that will never be filled." J.A. 1797–98.

The district court acknowledged that the Guidelines were merely advisory and explained why the 18 U.S.C. § 3553(a) factors supported the chosen sentence. The district court focused on the "absolutely chilling" nature and circumstances of Devine's offenses, the impact of the crimes on the "people of Raleigh," Devine's "terrible" history and "[a]bsolutely horrific" criminal record, the importance of deterring others by sending the message that "if you join a gang, it's not going to end well," and the need to maximally incapacitate Devine. J.A. 1808–18. The district court therefore imposed the maximum sentence on each count, leading to four consecutive life sentences plus 240 months.

2.

Mangum's sentencing hearing was held on June 5, 2020. Before addressing Mangum's sentence, the court rejected Mangum's motion for acquittal, explaining that a "tsunami" of trial evidence demonstrated that Mangum "was the man who approached the porch. And he is responsible for murdering Rodriguez Burrell." J.A. 1837–40. The court then adopted the presentence report, which provided a Criminal History Category of VI

and an offense level of 43—the maximum category and level possible—leading to a Guidelines range of life.

Cognizant of the mandatory VICAR murder life sentence, *see* 18 U.S.C. § 1959(a)(1), defense counsel requested a downward variance such that the sentences on the other counts would run concurrently, rather than consecutively. Mangum echoed this request for leniency but refused to accept responsibility for his crimes or even to express regret about the victims' deaths.

The government presented three victim impact statements, including that of Burrell's 12-year-old daughter born shortly before his murder. She recounted a day "where the school was having a daddy-daughter dance. All the other little girls in their class had their daddies there with them and she was incredibly sad that her dad could not be there." J.A. 1846. Burrell's mother also shared that "what hurts her the most is knowing that her granddaughters don't really know who their father is" and "have lots of questions about what happened to their father . . . she's not able to answer." *Id.*

The district court again acknowledged the advisory nature of the Guidelines and the requirement to impose a sentence no greater than necessary to meet the § 3553(a) factors. The court rejected Mangum's request for a downward variance based on the "horrifying" nature and circumstances of the offense, Mangum's history "of unabated violence," the need to incapacitate him for life, and the importance of deterring others from carrying out violence in service of gangs. J.A. 1852–64. The court therefore imposed three consecutive life sentences plus 240 months.

Devine and Mangum timely appealed, raising numerous assignments of error.

II.

We begin with Mangum's challenge to the sufficiency of the evidence supporting each count of conviction.[2] A defendant advancing such a challenge "faces a heavy burden." *United States v. Foster*, 507 F.3d 233, 245 (4th Cir. 2007). We must view the "evidence in the light most favorable to the government and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Lowe*, 65 F.3d 1137, 1142 (4th Cir. 1995). And we may not reweigh witness credibility, which is the "sole province of the jury." *Id.* Mangum's sufficiency arguments, which as the district court aptly noted "parrot[] the closing argument" that the jury rejected, come nowhere close to meeting his heavy burden. J.A. 1836.

A.

Mangum first challenges his conviction for aiding and abetting the murder of Rodriguez Burrell with a firearm during and in relation to a crime of violence under 18 U.S.C. §§ 2 and 924(j). Mangum claims that he simply was not involved in the murder and attacks the motives of the witnesses who described his participation. But credibility determinations belong exclusively to the jury, and the evidence of his involvement in the Burrell murder was extensive, so we reject his challenge.

Multiple Gangstas witnesses described the pre-shooting planning meeting during which Dontaous Devine ordered Mangum and Toney to carry out the Burrell murder. Rodney Burrell—Rodriguez's father—and a friend present during the killing each

[2] Devine does not contest the sufficiency of the evidence against him.

confirmed that a man matching Mangum's description scouted out the porch 10 minutes before Burrell was shot and that a man matching Toney's description carried out the shooting. Immediately after the shooting, Mangum and Toney returned the murder weapon to Dontaous. Toney was missing a shoe, which was found by police in a field near Burrell's house. In a subsequent police interview, Toney admitted ownership of the missing shoe but claimed that it had been stolen from him before the shooting.

Soon after the killing, Mangum was promoted within the gang. And when Mangum and Toney learned that a gang member might be feeding information on the murder to the police, they threated to shoot up his grandmother's house. Finally, Mangum admitted to another Gangsta that he helped carry out the murder and that Toney's missing shoe was "the only thing that can . . . mess him up." S.A. 2019.

In an attempt to outrun this "tsunami" of evidence, J.A. 1837, Mangum raises only two points. First, he argues that the testimony of the Gangstas witnesses should be disregarded because it was offered in a self-serving attempt to reduce their sentences through cooperation with the government. But the jury considered and rejected that argument, and we are prohibited from reweighing witness credibility on appeal. *Lowe*, 65 F.3d at 1142.

Next, Mangum points out that Rodney Burrell and the other witness to the murder could not specifically identify Mangum as the person who scouted the porch immediately prior to the murder. But both witnesses provided descriptions of the scout that matched Mangum's appearance. Mangum contends that witnesses of a highly traumatic event cannot be certain of the identity of an individual they saw for only a brief period during the

dark of night. But that contention only raises a jury question, and Mangum makes no claim he was prevented from challenging the identification before the jurors.

For the above reasons, therefore, Mangum cannot sustain his sufficiency challenge.

B.

Mangum also challenges his conviction for aiding and abetting the murder of Burrell in aid of racketeering in violation of 18 U.S.C. §§ 2 and 1959(a)(1). He first retreads the ground above, claiming he did not participate in the killing. We have already rejected that contention. Mangum next claims that even if he did participate in the murder, the government failed to demonstrate that his "purpose in so doing was to maintain or increase his position in" the Gangstas, as required for a VICAR murder conviction. *United States v. Zelaya*, 908 F.3d 920, 926–27 (4th Cir. 2018); *see also United States v. Fiel*, 35 F.3d 997, 1004 (4th Cir. 1994) (holding that the purpose element is satisfied if the jury could infer the murder was committed in furtherance of the enterprise or expected "by reason of his membership").

We can quickly reject this argument. Mangum offers no explanation other than service to the Gangstas to explain the Burrell execution. Dontaous Devine—the gang's second-in-command—personally ordered Mangum to carry out the killing. Gang rules required subordinates to "put in work" when ordered by higher-ranking members and prohibited "backing out when G-work needs to be done." J.A. 890–92. Failing to follow Dontaous' order to execute Burrell thus posed a direct threat to Mangum's position within the gang. Moreover, Dontaous subsequently invoked the murder when threatening another recalcitrant dealer, making clear that the murder was explicitly carried out to terrorize any

who dealt on Gangstas turf without paying rent for the privilege. And soon after the killing, Mangum was promoted to three-star general, which a fellow Gangsta confirmed could only have been based on his participation in the Burrell execution. The evidence leaves no doubt that Mangum carried out the Burrell murder to maintain or increase his position within the Gangstas and was therefore guilty of VICAR murder.

C.

Mangum next challenges his conviction for conspiracy to distribute cocaine and marijuana in violation of 21 U.S.C. § 846. He admits to the purchase and sale of marijuana, but claims the evidence was insufficient to support a conspiracy conviction.

A drug conspiracy may be established based on a "tacit or mutual understanding," which can be "inferred from circumstantial evidence." *United States v. Kellam*, 568 F.3d 125, 139 (4th Cir. 2009). Such evidence includes "continuing relationships and repeated transactions," "coupled with substantial quantities of drugs." *United States v. Reid*, 523 F.3d 310, 317 (4th Cir. 2008). Thus, demonstration of a "loosely-knit association of members linked only by their mutual interest in sustaining the overall [drug-dealing] enterprise" is sufficient to establish a drug conspiracy. *United States v. Banks*, 10 F.3d 1044, 1054 (4th Cir. 1993).

The Gangstas were far more than "loosely-knit" and the protection of their Haywood Street territory to maximize revenue from the sale of illegal drugs was their *raison d'être*. Nearly a dozen cooperating Gangstas testified at trial, and each described the gang's drug trafficking activities. Trial testimony emphasized the steps the gang took to defend its territory, including hiding guns around Haywood Street, fighting off the rival 9-

Trey gang, and murdering Rodriguez Burrell as punishment for dealing on Gangstas territory without paying rent. Gang witnesses also emphasized the critical role drug sales played in funding the gang and meeting each member's required gang dues.

Mangum was personally and actively involved in the gang's dealing. Multiple Gangstas witnesses observed Mangum conducting drug sales and spoke to his reputation as a dealer of marijuana and cocaine. And a law enforcement witness recounted a 2013 traffic stop in which Mangum willingly handed over a mason jar containing a large amount of marijuana, which Mangum admitted belonged to him.

The trial evidence painted a vivid picture of Mangum's participation in the Burrell murder to secure Gangstas drug territory. The evidence also described his rise from purchasing drugs from other gang members to selling distribution quantities to lower-level Gangstas who had taken over his previous street-level position in the enterprise. Viewed in the light most favorable to the government, the evidence was more than sufficient to establish that Mangum conspired with his fellow gang members to distribute marijuana and cocaine.

D.

Finally, Mangum challenges his conviction for conspiracy to participate in a pattern of racketeering in violation of 18 U.S.C. § 1962(d). To prove a RICO conspiracy, the government must demonstrate that "each defendant knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two racketeering acts." *United States v. Simmons*, 11 F.4th 239, 258 (4th Cir. 2021). The racketeering acts underlying Mangum's conviction were drug trafficking and the Burrell murder. 18 U.S.C.

§ 1961(1). Mangum's arguments that he did not agree to the commission of these racketeering acts mirror his rejected claims to innocence of the underlying charges. And as we explained above, the evidence of his involvement in drug trafficking and murder in furtherance of the Gangstas was clear, so his RICO conspiracy conviction must stand.

III.

Mangum next contends that the district court abused its discretion by refusing to sever his trial from Devine's. Evidence admissible only against Devine, Mangum argues, was improperly considered by the jury when weighing his guilt, resulting in an impermissible evidentiary "spillover."

We have long adhered to the "principle that defendants indicted together should be tried together," *United States v. Cannady*, 924 F.3d 94, 102 (4th Cir. 2019), a presumption which applies with even more force in conspiracy cases, *United States v. Lawson*, 677 F.3d 629, 639 (4th Cir. 2012). And Mangum does not claim that he was impermissibly "indicted together" with Devine. Because joint trial with all its efficiencies is highly favored, establishing that a district court abused its discretion in denying a motion to sever requires a demonstration that joint trial deprived the defendant of a fair trial and resulted in a "miscarriage of justice." *United States v. Shealey*, 641 F.3d 627, 631 (4th Cir. 2011). Mangum has not come close to demonstrating such a deprivation. First, most of the purported spillover evidence was admissible against Mangum to prove the existence of a RICO enterprise. And second, the district court's use of limiting instructions cured any remaining risk of prejudice.

To prove a defendant guilty of RICO conspiracy, the government must demonstrate "that an enterprise affecting interstate commerce existed." *Simmons*, 11 F.4th at 258. The "hallmark concepts" that identify RICO enterprises are "continuity, unity, shared purpose and identifiable structure." *Fiel*, 35 F.3d at 1003. And while an enterprise need not have a "hierarchical structure or a chain of command," *Boyle v. United States*, 556 U.S. 938, 948 (2009), the presence of those characteristics "provides additional evidence of a functioning enterprise," *United States v. Mathis*, 932 F.3d 242, 259 (4th Cir. 2019).

The government properly introduced evidence to prove this "enterprise" element. Testimony on the "beat in" initiations, gang rules, gang meetings, gang discipline, collection of dues, acts of violence carried out at the direction of gang superiors, and gang promotion for "putting in work" all support the jury's conclusion that the Gangstas constituted a RICO enterprise. *See id.* (holding that gang meetings, gang rules, drug sales, and the commission of acts of violence to enrich the gang were probative of the existence of a RICO enterprise). Because the evidence was admissible against him, Mangum suffered no prejudice from its introduction at his joint trial with Devine.

Any remaining possibility of prejudice was cured by the district court's use of limiting instructions, which we have held are generally sufficient to address any spillover risk. *United States v. Dinkins*, 691 F.3d 358, 368 (4th Cir. 2012); *see also United States v. Mir*, 525 F.3d 351, 357–58 (4th Cir. 2008) (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993)). The district court repeatedly instructed the jury to consider each defendant and each charge separately and emphasized that merely engaging in similar conduct or associating with criminals does not constitute an agreement or make someone part of a

conspiracy. We therefore have no difficulty in concluding that the district court did not abuse its discretion in denying Mangum's motion to sever.

IV.

Devine and Mangum next challenge their convictions for drug conspiracy, firearms murder, and VICAR murder under the Double Jeopardy Clause of the Fifth Amendment. They claim that those convictions were for the "same offense" as RICO conspiracy.

The Double Jeopardy Clause provides that no "person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb." U.S. Const. amend. V. While double jeopardy "protects against multiple punishments for the same offense," it does not "prohibit the legislature from punishing the same act or course of conduct under different statutes." *United States v. Ayala*, 601 F.3d 256, 264–65 (4th Cir. 2010).

Because "the power to define criminal offenses . . . resides wholly with the Congress," our only task "is to determine whether Congress intended to impose multiple punishments." *Id.* at 265. Here it is plain that Congress intended the above statutes to target distinct conduct and to constitute separate offenses. Put another way, it is clear that Congress intended in RICO to provide additional punishments for involvement in organized crime, and defendants' double jeopardy challenges must thus be rejected.

A.

Devine and Mangum claim that firearms murder, VICAR murder, and drug conspiracy are subsumed by RICO conspiracy, rendering them the same offense. Because Congress plainly intended separate punishments, we hold that firearms murder constitutes a separate offense from RICO conspiracy and reaffirm that VICAR murder and drug

conspiracy do as well. *See Ayala*, 601 F.3d at 265–66 (holding that VICAR murder conspiracy constitutes a separate offense from RICO conspiracy); *United States v. Love*, 767 F.2d 1052, 1062 (4th Cir. 1985) (holding that drug conspiracy constitutes a separate offense from RICO conspiracy).

A RICO conspiracy is generally understood to require: "(1) that an enterprise affecting interstate commerce existed; (2) that each defendant knowingly and intentionally agreed with another person to conduct or participate in the affairs of the enterprise and (3) that each defendant knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two racketeering [activities]." *Simmons*, 11 F.4th at 254.

It thus becomes clear that Congress intended firearms murder, VICAR murder, and drug conspiracy to constitute separate offenses from RICO conspiracy. Each offense obviously targets conduct that the other does not. RICO conspiracy requires an agreement to commit multiple racketeering acts, a requirement not shared by the other offenses. *See Simmons*, 11 F.4th at 258–59 (citing 18 U.S.C. § 1963(a)). By contrast, firearms and VICAR murder require a murder, while drug conspiracy requires an agreement to distribute drugs, requirements not present for RICO conspiracy. *See* 18 U.S.C. § 924(j)(1) (firearms murder); *id.* § 1959(a)(1) (VICAR murder); *Kellam*, 568 F.3d at 139 (drug conspiracy).

In concrete terms, a member of a gang engaged in kidnapping and sex-trafficking would be guilty of a RICO conspiracy without committing a firearms murder, a VICAR murder, or a drug conspiracy. In contrast, a solo bank robber who shot and killed a guard, a gang-initiate who had not yet been involved in a pattern of racketeering activity, or a pair of drug dealers unaffiliated with a larger organization could commit firearms murder,

VICAR murder, and drug conspiracy respectively without engaging in a RICO conspiracy. *See Ayala*, 601 F.3d at 265–66.

The available evidence of legislative intent confirms that Congress intended separate punishment for RICO conspiracy and these offenses. RICO's purpose is "to seek the eradication of organized crime in the United States . . . by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, 84 Stat. 922, 923 (1970). The RICO statute therefore cautions that "[n]othing in [it] shall supersede any provision of Federal . . . law imposing criminal penalties . . . in addition to those provided for [here]." *Id.* § 904(b), at 947. Congress also placed each offense in a separate Code section from RICO conspiracy and provided each offense with its own penalties. *See* 18 U.S.C. § 1963(a)-(m) (RICO penalties); *id.* § 924(j)(1) (firearms murder penalties); *id.* § 1959(a)(1) (VICAR murder penalties); 21 U.S.C. § 841 (drug conspiracy penalties). And each statute is directed at a separate but related evil: RICO conspiracy targets those engaged in organized crime generally, *Ayala*, 601 F.3d at 266, while firearms murder is aimed at combatting the scourge of gun violence, VICAR murder punishes those "willing to commit violent crimes in order to bolster their positions within [RICO enterprises]," *id.*, and drug conspiracy aims to specifically deter the trafficking of narcotics, *see United States v. White*, 116 F.3d 903, 932 (D.C. Cir. 1997).

Our sister circuits have been repeatedly faced with a dizzying variety of double jeopardy challenges to various combinations of RICO-related offenses. And time and time again these challenges have been rejected. Courts have rejected double jeopardy challenges for RICO and predicate drug offenses, RICO and other predicate offenses, and for RICO

and VICAR offenses. *See, e.g.*, *United States v. Sutton*, 700 F.2d 1078, 1081 (6th Cir. 1983) (RICO and drug offense); *United States v. Grayson*, 795 F.2d 278, 282–83 (3d Cir. 1986) (same); *White*, 116 F.3d at 930–32 (same); *United States v. Hicks*, 5 F.4th 270, 275 (2d Cir. 2021) (same); *United States v. Hampton*, 786 F.2d 977, 979–80 (10th Cir. 1986) (RICO and nondrug predicate); *United States v. Lequire*, 931 F.2d 1539, 1540 (11th Cir. 1991) (per curiam) (same); *United States v. Luong*, 393 F.3d 913, 914 (9th Cir. 2004) (same); *United States v. Garcia*, 754 F.3d 460, 474 (7th Cir. 2014) (same), *United States v. Merlino*, 310 F.3d 137, 141 (3d Cir. 2002) (RICO and VICAR offense); *United States v. Marino*, 277 F.3d 11, 39 (1st Cir. 2002) (same); *United States v. Basciano*, 599 F.3d 184, 198–99 (2d Cir. 2010) (same). The case law of other circuits thus confirms that Devine and Mangum's prosecution for RICO conspiracy did not bar their prosecution for firearms murder, VICAR murder, and drug conspiracy.

B.

The defendants also contend that double jeopardy prevents their conviction for both VICAR murder and firearms murder. But demonstrating that VICAR murder and firearms murder constitute separate offenses is altogether straightforward. VICAR murder requires proof that the defendant's general purpose in carrying out the murder was to maintain or increase his position in a RICO enterprise. *Zelaya*, 908 F.3d at 926–27 (citing 18 U.S.C. § 1959). Firearms murder contains no such requirement. *United States v. Bran*, 776 F.3d 276, 280 (4th Cir. 2015) (citing 18 U.S.C. § 924(j)). In contrast, firearms murder requires demonstrating that the defendant used a firearm to cause the victim's death, a requirement not shared by VICAR murder. *Id.* (citing 18 U.S.C. § 924(j)); *Zelaya*, 908 F.3d at 926–27

(citing 18 U.S.C. § 1959); *see also United States v. Ledbetter*, 929 F.3d 338, 365–66 (6th Cir. 2019) (rejecting double jeopardy challenge to conviction for both firearms and VICAR murder for the same killing).

Again, a concrete example may be helpful: The solo bank robber guilty of the firearms murder invoked above would not have committed VICAR murder because he was not involved in a RICO enterprise. On the other hand, an enforcer for a gang could commit a VICAR murder without committing a firearms murder by beating a rival gang member to death with a baseball bat on the capo's orders.

Devine and Mangum can point to no evidence of contrary legislative intent. We thus conclude that there is no double jeopardy bar to punishing a defendant for both a VICAR murder and a firearms murder when the offenses arise out of the same course of conduct.

V.

Lastly, we turn to the defendants' contention that their consecutive life sentences are substantively unreasonable. We review sentences in two steps. *United States v. Fowler*, 948 F.3d 663, 668 (4th Cir. 2020) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). We first ensure the district court committed no significant procedural error, and we then determine whether the sentence imposed was substantively reasonable. *Id.*

Significant procedural errors include improperly calculating the Guidelines range, treating the Guidelines as mandatory, failing to consider the § 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence. *Id.* Devine and Mangum wisely concede the procedural reasonableness of their sentences, as the district court properly calculated their respective Guidelines ranges, did

not treat the ranges as mandatory, and extensively explained their sentences under the § 3553(a) factors in hearings stretching 29 and 34 transcript pages respectively. Instead, Devine and Mangum attack the substantive reasonableness of their sentences on two grounds.

A.

Devine and Mangum first contend that their consecutive life sentences are *per se* substantively unreasonable. They argue that because they were each convicted of charges involving only a single murder, subjecting them to consecutive rather than concurrent life sentences violated 18 U.S.C. § 3553(a)'s admonition that sentences be no "greater than necessary" to address the factors set forth in § 3553(a).

We reject the contention that defendants convicted of involvement in "only" a single murder may not receive consecutive life sentences. For one thing, we have repeatedly affirmed consecutive sentences in cases involving a single murder. *See Bran*, 776 F.3d at 278–82 (affirming consecutive life sentences on VICAR and firearms murder charges stemming from same gang-related murder); *United States v. Lespier*, 725 F.3d 437 (4th Cir. 2013) (affirming consecutive life sentences).

For another, the imposition of a consecutive punishment over and above a life sentence wasn't just permissible; it was legally required in this case. Mangum and Devine were each convicted of VICAR murder, which carries a mandatory sentence of life imprisonment. 18 U.S.C. § 1959(a)(1). They were also convicted of firearms murder which requires the imposition of a mandatory *consecutive* sentence in addition to the mandatory life sentence for their VICAR murder convictions. *Bran*, 776 F.3d at 282; *see also Abbott*

v. United States, 562 U.S. 8 (2010) (permitting consecutive sentences in addition to penalties for violating § 924).

B.

Devine and Mangum also claim that even if not categorically impermissible, their consecutive life sentences were not justified by the § 3553(a) factors. A sentence is substantively unreasonable only where under the totality of the circumstances, the "sentencing court abused its discretion in concluding that the sentence it chose satisfied the standards set forth in § 3553(a)." *United States v. Mendoza-Mendoza*, 597 F.3d 212, 216 (4th Cir. 2010). And "any sentence that is within or below a properly calculated Guidelines range is presumptively reasonable." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014).

1.

The district court's extensive explanation of Devine's sentence makes clear that it is justified by the § 3553(a) factors. The court grounded the within-Guidelines sentence on three primary components: (1) the seriousness of Devine's conduct; (2) Devine's extensive criminal history and unremitting commitment to gang life; and (3) the need to deter other wannabe gangsters from following in Devine's footsteps. Devine comes nowhere close to undermining the presumption of substantive reasonableness.

The court first addressed the "absolutely chilling" "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), and the "seriousness of the offense," *id.* § 3553(a)(2)(A). J.A. 1811. The court emphasized the "overwhelming" evidence of Devine's "egregious criminal activity" and "the violence that has been the hallmark of his life." J.A. 1812–16.

The court also recounted witness testimony describing how the Gangstas transformed Haywood Street from a "nice street where people could sit on the porch and children could play on the street" to a "den of . . . violent criminal activity." J.A. 1812.

While Devine was charged only for the Fowler murder, the court found that he was also responsible for the Burrell murder, explaining it "couldn't have happened on that street without Mr. Devine's blessing and order." J.A. 1811. And it has long been accepted that district courts may consider uncharged conduct found by a preponderance of the evidence. *United States v. Mouzone*, 687 F.3d 207, 220 (4th Cir. 2012) (affirming enhanced RICO conspiracy sentence based on a finding by the district court that it was "more likely than not" that the defendant committed a related murder).

The court then turned to Devine's "terrible" "history and characteristics," 18 U.S.C. § 3553(a)(1), and walked through his "[a]bsolutely horrific" criminal record. J.A. 1813–14. The court also noted that unlike the typical gang defendant, Devine was raised in a stable, two-parent, middle-class household and was never subject to abuse, violence, or neglect. Despite all these advantages, he dropped out of school and turned to a life of crime.

Finally, the court focused on the need for incapacitation and deterrence. 18 U.S.C. § 3553(a)(2). The sentence needed to be sufficient to deter impressionable young men from joining gangs and to counter "this terrible lie that's told: Join a gang, it's like a family." J.A. 1815. But a gang is "nothing like a family," and the "reality is if you join a gang, it's not going to end well. You're either going to die on the street, you're going to die in prison." J.A. 1815.

After reviewing the district court's sentencing explanation, we readily conclude the sentence was substantively reasonable. Devine's criminal culpability was literally off the charts, requiring his Guidelines offense level of 54 to be reduced to the level 43 maximum. Throughout the case, he dripped with contempt for law enforcement, for the courts, and for his victims. When initially questioned after his arrest on federal charges, he mockingly claimed that the Gangstas were a "community organization set up to hand out Christmas presents." J.A. 1948. While incarcerated, he continued to lead the gang, to organize criminal activity, and to threaten and intimidate witnesses against him. And during his sentencing hearing, he refused to accept an iota of responsibility and baldly proclaimed to the families of his victims that "I had nothing at all to do with y'all's kids getting hurt" and that "I still I love y'all." J.A. 1796. We accordingly reject Devine's claim of substantive unreasonableness.

2.

Mangum's sentence is reasonable for much the same reasons as Devine's. While Mangum, unlike Devine, requested a downward variance such that his life sentences would run concurrently rather than consecutively, the district court thoroughly explained why the § 3553(a) factors did not warrant a downward variance.

The district court began the sentencing hearing by summarizing the evidence that Mangum was a high-ranking member of the Gangstas and that he carried out the execution of Rodriguez Burrell as punishment for Burrell's refusal to pay rent to the gang for the privilege of dealing on Gangstas turf. J.A. 1837–40.

The court focused first on the "horrifying" "nature and circumstances of the offense," 18 U.S.C. § 3553(a)(1), and the "tremendous loss to the families." J.A. 1854–58. The court described Mangum's "chilling" role as the "first person to go by to make sure, confirmed that [Rodriguez Burrell] was on the porch before the shooter came behind you." J.A. 1855. Because of Mangum's killing of Burrell, "all that [Burrell's daughters] will ever get to see are photographs of their father." J.A. 1858. The court summarized Mangum's racketeering activities as part of the gang, including drug dealing, violent crimes, and fraud schemes, and emphasized that the gang "made [Haywood Street] a place where the law-abiding people didn't even feel they could go outside." J.A. 1857.

The court then turned to Mangum's "history and characteristics," 18 U.S.C. § 3553(a)(1), emphasizing that he joined the gang at a very young age and that his history "has been one of unabated violence." J.A. 1860. In describing Mangum's prodigious criminal history, the court emphasized that state sentences "didn't seem to slow you down. [They] seemed to embolden you." J.A. 1858–59. The court also noted that even while incarcerated on state charges, Mangum remained committed to the gang and attempted to "paint the correctional institution red," i.e., "to try and grow the gang" behind bars. J.A. 1860. When Mangum's state murder charges were dropped, he might have thought that he was "home free," but rather than taking that apparent leniency as an opportunity to reform, Mangum doubled down on violence and criminality. J.A. 1856. Based on this commitment to gang life, the court rejected Mangum's claim that he deserved leniency because he had "renounced life in the gang and turned over a new leaf." J.A. 1860.

The court also concluded that a downward variance would not provide for sufficient deterrence, 18 U.S.C. § 3553(a)(2)(B), and would not appropriately send the message to those "thinking about whether to join a gang, whether to put in work for a gang, whether to murder a child for a gang." J.A. 1861. Finally, the court found that the only sufficient form of incapacitation, 18 U.S.C. § 3553(a)(2)(C), was incarceration in a "maximum security penitentiary . . . until the day you die." J.A. 1861.

The district court did not err in refusing to vary downward based on these facts and we decline to overrule this reasonable exercise of sentencing discretion.

VI.

The essence of defendants' complaint throughout this case is that the prosecution has overcharged them and that Congress has over legislated in this field. For us to reach such a conclusion, however, would raise serious separation-of-powers questions, and neither the Supreme Court nor the legislative branch has provided us with the kind of firm authority we would need to adopt the defendants' view.

Such a conclusion would also overlook the full magnitude of what happened here. Demetrice Devine and Brandon Mangum led a gang that sought to dominate the Haywood Street neighborhood and to impose its violent will on the people who dwelled there. Those who were not direct victims were left in fear and apprehension that they would soon become one. Devine's desire for "respect" at all costs led to the murder of Adarius Fowler, while the Gangstas' insatiable desire for "money" led to the execution of Rodriguez Burrell. This collective malevolence, the sentencing court reasoned, led to a neighborhood where so many deserved so much better and where respect for the old and opportunities

for the young existed no longer. As our opinion makes clear, Congress has manifested a resolute intention to target the different facets of the most serious violence and criminality. We have above all adhered scrupulously to law here and to the proposition that law affords legitimate room for society to address its most menacing and pressing problems. For the foregoing reasons, we affirm the judgment of the district court.

AFFIRMED.