

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 10-20410-CR-LENARD/TURNOFF

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TREMAINE EDWARD KALE,

Defendant.

**OMNIBUS ORDER DENYING AS MOOT DEFENDANT TREMAINE EDWARD
KALE'S MOTION TO DISMISS COUNT 8 OF THE INDICTMENT (D.E. 553)
AND GRANTING GOVERNMENT'S MOTION TO STRIKE SURPLUSAGE
(D.E. 555)**

THIS CAUSE is before the Court on Defendant Tremaine Edward Kale's Motion to Dismiss Count 8 of the Superseding Indictment (D.E. 553), filed on December 21, 2010. On that same day, the United States filed its Unopposed Motion to Strike Surplusage and Response to Kale's Motion (D.E. 555).

Count 8 of the Superseding Indictment (D.E. 459) charges Defendant Kale with possessing a firearm in furtherance of a drug trafficking crime in violation of 21 U.S.C. § 846 and 841(a)(1), as set forth in Counts 1 and 2 of the indictment. The criminal conduct charged in Count 8 is alleged to have occurred on September 16, 2009. However, the drug trafficking violations charged in Count 2 are alleged to have occurred on November 17, 2009.

Kale moves to dismiss Count 8 as defective and failing to state an offense. (Mot. at 2.) In its Response to Kale's Motion and Unopposed Motion to Strike Surplusage, the

Government moves to strike language from Count 8 that refers to the conduct charged in Count 2. (Resp. at 1.) The Government indicates that its Motion to Strike is unopposed and striking all reference to Count 2 will remove the defect from Count 8 of the Superseding Indictment. (*Id.* at 1-2.) The Court agrees.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant Tremaine Edward Kale's Motion to Dismiss Count 8 of the Superseding Indictment (D.E. 553), filed on December 21, 2010, is **DENIED** as moot.
2. The United States' Motion to Strike Surplusage (D.E. 555), filed on December 21, 2010, is **GRANTED**. All reference to charged conduct in Count 2 is **STRICKEN** from Count 8 of the Superseding Indictment.

DONE AND ORDERED in Chambers at Miami, Florida, this 23rd day of August, 2011.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE