

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

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KARLYNN TONES
DONTA LYVOID BLACKMON
ARVIN TERRELL CARMEN

PETITIONERS,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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APPENDIX B TO PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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FILED IN THE
 U.S. DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 JAN 25 2013
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 SPOKANE, WASHINGTON DEPUTY

6 UNITED STATES DISTRICT COURT
 6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,)

8 vs. Plaintiff,)

9) CR-13-8-WFN

10) INDICTMENT

11 ARVIN TERRELL CARMEN,)
 12 RICHARD JAMAL HAYNES,)
 12 SHARITA RENEE HORN,)
 13 INALIEL COHAN LISBEY,)
 13 GILBERT LEROY MADISON,)
 14 GLEN EUGENE TURNER,)
 14 ASHLEY BRITANY ARREDONDO,)
 15 DONTA LYVOID BLACKMON,)
 16 AMBER CHEROKEE BRANCH,)
 16 KATRIEL MARQUIS BULLEY,)
 17 BRANDON LEIGH CHAVEZ,)
 17 JESSICA LYNN CLINTON,)
 18 ANGELA BELL COLLINS,)
 19 BRITTANI NICOLE COLLINS,)
 19 DAVID EMILE COLBERT,)
 20 ANDREA FELICE FOWLER,)
 20 SALLY BLAKELY GUTHRIE,)
 21 TYEMAR TYRONE HAYNES,)
 21 ERIC CARDALL JAMERSON,)
 22 ALEX (MNU) JAMES,)
 23 JOEISHA LANAY JEFFERSON,)
 23 MARLON DESHAWN JOHNSON,)
 24 HARRY JOSEPH JOHNWELL, JR.,)
 24 KEVIN BYRON LONDON,)
 25 DONALD ARTHUR LYNCH,)
 26 PORSHA RENEE MARCUS,)
 26 DEANDRE DERRICK MEIGHAN,)

11) Vio: 21 U.S.C. § 848
 Continuing Criminal
 Enterprise
 (Count 1)
 12) 21 U.S.C. § 846
 Conspiracy to Distribute
 a Controlled Substance
 (Count 2)
 13) 21 U.S.C. § 841(a)(1)
 Distribution of a
 Controlled Substance
 (Counts 4-10, 12, 13, 15,
 17-18, 20, 22, 26-32)
 14) 21 U.S.C. § 841(a)(1)
 Possession with Intent
 to Distribute a
 Controlled Substance
 (Counts 3, 11, 16, 19,
 21, 23-25)
 15) 21 U.S.C. § 846
 Attempted Possession
 with Intent to Distribute
 a Controlled Substance
 (Count 14)
 16) 21 U.S.C. § 853
 Criminal Forfeiture

1 KEVIN DARNELL MILES,
2 ANTHONY MAURICE MILLER,
3 NOCOMIE TOMIA MOORE,
4 TAHEI DEVOND MOORE,
5 PRINCETON JAMAALLEE PERRY,
6 NACRISSA LEANE RAMZY (A/K/A
7 GREENIDGE),
8 MERCEDES LASHAWN REEVES,
9 MAURICE KEYONGRAY SHELMON,
10 KARLYNN ROMEO TONES,
11 JAMES DWAYNE WARD,
12 RUFUS (MNU) WARNOCK,
13 BOBBY JOE WINES,
14 ERICA MICHELLE WOODS,
15 DONALD RAY WRIGHT,
16 TINOAH ARDANIEL JEWREL BRAGG,
17 KENDRA LASHEENA BROWN,
18 TREASURE UNITY BROWN,
19 IRREIS CHANELL ANN BURNS,
20 AARONIKA TIAUNI KIARA
21 DUROUSSEAU,
22 LASADA KIYONTE GEORGE,
23 SALIMAH NOORAH GLASS,
24 SHINDONA RENEE JONES,
25 JEHVEAIRR (MNU) MAIDEN,
26 LESLIE PRESHIANNE MARTIN,
27 DIAMOND LEANNE MCDONALD,
28 ERICA DOUGLISHA MCDONALD,
TRIVIAH VIOLA ROBINSON,
ANTOINETTE ARTHENA GAMBOA
SANCHEZ,
JOYIAH CHARISSE THOMPSON,
TERRAI MONAE TRAYLOR,
LANAE TYONNA WHITE,
JOHN CODY BALKA,
NICHOLAS SAN NICOLAS DE CARO,
MICHELLE DOMINIQUE FRIED,
DANIEL JOSHUA HUNKA,

25 Defendants.

The Grand Jury Charges:

COUNT ONE

3 That beginning on a date unknown, but by no later than the year 2008, the
4 exact date being unknown to the Grand Jury, and continuously thereafter up
5 through and including January 25, 2013, within the Eastern District of
6 Washington, and elsewhere, ARVIN TERRELL CARMEN, RICHARD JAMAL
7 HAYNES, GILBERT LEROY MADISON, SHARITA RENEE HORN, INALIEL
8 COHAN LISBEY, Defendants herein, did unlawfully, knowingly and intentionally
9 engage in a continuing criminal enterprise in that the Defendants unlawfully,
10 knowingly and intentionally violated 21 U.S.C. §§ 841(a)(1), 843(b), 846, 854,
11 856, which violations include, but are not limited to Conspiracy to Distribute a
12 Controlled Substance alleged in Count Two, and the substantive violation alleged
13 in Counts Eighteen, Twenty, and Twenty-Four, which Counts and Overt Acts are
14 realleged and incorporated herein by reference as though fully set forth in this
15 Count, and which violations were part of a continuing series of violations of the
16 Controlled Substances Act, 21 U.S.C. § 801, et seq., undertaken by Defendants, in
17 concert with at least five other persons with respect to whom, occupied positions
18 of organizer, supervisor, and any position of management, and from which such
19 continuing series of violations the defendants obtained substantial income and
20 resources; all in violation of 21 U.S.C. § 848(a), (c).

COUNT TWO

22 That beginning on a date unknown, but by no later than the year 2008, the
23 exact date being unknown to the Grand Jury, and continuously thereafter up
24 through and including January 25, 2013, in the Eastern District of Washington and
25 elsewhere, ARVIN TERRELL CARMEN, RICHARD JAMAL HAYNES,
26 SHARITA RENEE HORN, INALIEL COHAN LISBEY, GILBERT LEROY
27 MADISON, GLEN EUGENE TURNER, ASHLEY BRITANY ARREDONDO,
28 DONTA LYVOID BLACKMON, AMBER CHEROKEE BRANCH, KATRIEL

1 MARQUIS BULLEY, BRANDON LEIGH CHAVEZ, JESSICA LYNN
2 CLINTON, ANGELA BELL COLLINS, BRITTANI NICOLE COLLINS, DAVID
3 EMILE COLBERT, ANDREA FELICE FOWLER, SALLY BLAKELY
4 GUTHRIE, TYEMAR TYRONE HAYNES, ERIC CARDALL JAMERSON,
5 ALEX (MNU) JAMES, JOEISHA LANAY JEFFERSON, MARLON DESHAWN
6 JOHNSON, HARRY JOSEPH JOHNWELL, JR., KEVIN BYRON LONDON,
7 DONALD ARTHUR LYNCH, PORSHA RENEE MARCUS, DEANDRE
8 DERRICK MEIGHAN, KEVIN DARNELL MILES, ANTHONY MAURICE
9 MILLER, NOCOMIE TOMIA MOORE, TAHEI DEVOND MOORE,
10 PRINCTON JAMAALLEE PERRY, NACRISSA LEANE RAMZY (A/K/A
11 GREENIDGE), MERCEDES LASHAWN REEVES, MAURICE KEYONGRAY
12 SHELMON, KARLYNN ROMEO TONES, JAMES DWAYNE WARD, RUFUS
13 (MNU) WARNOCK, BOBBY JOE WINES, ERICA MICHELLE WOODS,
14 DONALD RAY WRIGHT, TINOAH ARDANIEL JEWREL BRAGG, KENDRA
15 LASHEENA BROWN, TREASURE UNITY BROWN, IRREIS CHANELL ANN
16 BURNS, AARONIKA TIAUNI KIARA DUROUSSEAU, LASADA KIYONTE
17 GEORGE, SALIMAH NOORAH GLASS, SHINDONA RENEE JONES,
18 JEHVEAIRR (MNU) MAIDEN, LESLIE PRESHIANNE MARTIN, DIAMOND
19 LEANNE MCDONALD, ERICA DOUGLISHA MCDONALD, TRIVIAH
20 VIOLA ROBINSON, ANTOINETTE ARTHENA GAMBOA SANCHEZ,
21 JOYIAH CHARISSE THOMPSON, TERRAI MONAE TRAYLOR, LANAЕ
22 TYONNA WHITE, JOHN CODY BALKA, NICHOLAS SAN NICOLAS DE
23 CARO, MICHELLE DOMINIQUE FRIED, DANIEL JOSHUA HUNKA, and
24 others not known to the Grand Jury, did knowingly and intentionally combine,
25 conspire, confederate and agree together with each other and with other persons,
26 both known and unknown to the Grand Jury, to commit the following offense
27 against the United States, to wit: conspiracy to distribute a mixture or substance
28 containing a detectable amount of oxycodone hydrochloride, an opiate and

1 Schedule II controlled substance, pursuant to 21 U.S.C. § 812(c), specifically in
2 the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
3 841(a)(1), (b)(1)(C), all in violation of 21 U.S.C. § 846.

COUNT THREE

5 That on or about May 19, 2010, in the Eastern District of Washington,
6 KEVIN DARNELL MILES, Defendant herein, did knowingly and intentionally
7 possess with intent to distribute a mixture or substance containing a detectable
8 amount of oxycodone hydrochloride, an opiate and Schedule II controlled
9 substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing
10 oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18
11 U.S.C. § 2

COUNT FOUR

13 That on or about June 29, 2011, in the Eastern District of Washington,
14 MARLON DESHAWN JOHNSON, Defendant herein, did knowingly and
15 intentionally distribute a mixture or substance containing a detectable amount of
16 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
17 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
18 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

COUNT FIVE

20 That on or about July 15, 2011, in the Eastern District of Washington,
21 MARLON DESHAWN JOHNSON, Defendant herein, did knowingly and
22 intentionally distribute a mixture or substance containing a detectable amount of
23 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
24 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
25 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

COUNT SIX

27 That on or about August 9, 2011, in the Eastern District of Washington,
28 DEANDRE DERRICK MEIGHAN and ASHLEY BRITANY ARREDONDO,

INSTRUCTION NO. 8

Defendants **CARMEN**, **BLACKMON**, **CHAVEZ**, and **TONES** are charged in Count 2 of Indictment No. 13-CR-0008 with conspiracy to distribute oxycodone hydrochloride in the form of pills. In order for a Defendant to be found guilty of that charge, the Government must prove each of the following elements as to that Defendant beyond a reasonable doubt:

8 First, beginning on a date unknown, but by no later than the year 2008, and
9 continuing through January 25, 2013, there was an agreement between two or more
10 persons to distribute oxycodone hydrochloride in the form of pills; and

11 Second, each Defendant joined in the agreement knowing of its purpose and
12 intending to help accomplish that purpose.

INSTRUCTION NO. 9

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

7 For a conspiracy to have existed, it is not necessary that the conspirators made a
8 formal agreement or that they agreed on every detail of the conspiracy. It is not enough,
9 however, that they simply met, discussed matters of common interest, acted in similar
10 ways, or perhaps helped one another. You must find that there was a plan to commit ~~the~~
11 distribution of oxycodone as charged in Count 2 of Indictment No. 13-CR-0008 as an
12 object or purpose of the conspiracy.

13 One becomes a member of a conspiracy by willfully participating in
14 the unlawful plan with the intent to advance or further some object or purpose
15 of the conspiracy, even though the person does not have full knowledge of all the
16 details of the conspiracy. Furthermore, one who willfully joins an existing
17 conspiracy is as responsible for it as the originators. On the other hand, one who has no
18 knowledge of a conspiracy, but happens to act in a way which furthers some
19 object or purpose of the conspiracy, does not thereby become a conspirator.
20 Similarly, a person neither becomes a conspirator merely by associating with one
21 or more persons who are conspirators nor merely by knowing that a conspiracy
22 exists.

23 A conspiracy may continue for a long period of time and may include the
24 performance of many transactions. It is not necessary that all members of the conspiracy
25 join it at the same time, and one may become a member of a conspiracy without full
26 knowledge of all the details of the unlawful scheme or the names, identities, or locations
27 of all of the other members.

INSTRUCTION NO. 9 (cont.)

Even though a Defendant did not directly conspire with other conspirators in the overall scheme, the Defendant has, in effect, agreed to participate in the conspiracy if it is proven beyond a reasonable doubt that:

(1) The Defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy;

(2) The Defendant knew or had reason to know that other conspirators were involved with those with whom the Defendant directly conspired; and

(3) The Defendant had reason to believe that whatever benefits the Defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is no defense that a person's participation in a conspiracy was minor or for a short period of time.

INSTRUCTIONS GIVEN BY THE

INSTRUCTION NO. 10

Evidence that a Defendant purchased a controlled substance from other individuals is not sufficient to establish a conspiracy to distribute the controlled substance. Rather, the Government must prove beyond a reasonable doubt the Defendant had an agreement with another or others to further the distribution of a controlled substance beyond the Defendant's purchase of the controlled substance itself.

INSTRUCTIONS GIVEN BY TH

INSTRUCTION NO. 11

You must decide whether the conspiracy charged in Count 2 of Indictment No. 13-CR-0008 existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict on Count 2 of Indictment No. 13-CR-0008, even though you may find that some other conspiracy existed. Similarly, if you find that any Defendant was not a member of the charged conspiracy, then you must find that Defendant not guilty, even though that Defendant may have been a member of some other conspiracy.

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INSTRUCTIONS GIVEN BY THE

INSTRUCTION NO. 33

When you begin your deliberations, you should elect one member of the jury as your presiding juror. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict as to each count, whether guilty or not guilty, must be unanimous.

8 Each of you must decide the case for yourself, but you should do so only after you
9 have considered all the evidence, discussed it fully with the other jurors, and listened to the
10 views of your fellow jurors.

11 Your verdict must be based solely on the evidence and on the law as I have given it
12 to you in these instructions. However, nothing that I have said or done is intended to
13 suggest what your verdict should be--that is entirely for you to decide.

14 Some of you have taken notes during the trial. Whether or not you took notes, you
15 should rely on your own memory of what was said. Notes are only to assist your memory.
16 You should not be overly influenced by the notes.

17 Do not be afraid to change your opinion if the discussion persuades you that you
18 should. But do not come to a decision simply because other jurors think it is right.

19 It is important that you attempt to reach a unanimous verdict but, of course, only if
20 each of you can do so after having made your own conscientious decision. Do not change
21 an honest belief about the weight and effect of the evidence simply to reach a verdict.

22 Verdict forms have been prepared for you. After you have reached unanimous
23 agreement on each verdict, your presiding juror will fill in the forms that has been given to
24 you, sign and date the forms, fill in their juror number, and advise the bailiff outside your
25 door that you are ready to return to the courtroom.

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INSTRUCTIONS GIVEN BY TH^E