No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JERON GASKIN,

Petitioner,

v.

UNITED STATE OF AMERICA,

Respondent.

On Petition for A Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

PETITIONER'S APPENDIX
IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

PART ONE
Appendices A-H
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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

File Name: 19a0397n.06

Case No. 18-1957

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JERON GASKIN, Petitioner–Appellant, v. UNITED STATES OF AMERICA, Respondent–Appellee.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

BEFORE: COLE, Chief Judge; GRIFFIN and BUSH, Circuit Judges.

JOHN K. BUSH, Circuit Judge. Jeron Gaskin was charged with one count of conspiracy to distribute narcotics and two counts of possession with intent to distribute narcotics. Each of these counts carried a statutory maximum of twenty years' imprisonment, for a total maximum of sixty years' imprisonment. The government offered Gaskin a plea deal stipulating to a Guidelines range of 15 to 20 years and recommending a sentence of 17.5 years. Gaskin rejected this offer, went to trial, and was convicted of all counts, after which he was sentenced to 360 months' imprisonment, more than the maximum for any individual count. Gaskin moved to vacate his sentence under 28 U.S.C. § 2255 on the ground that his counsel was constitutionally ineffective for failing to explain to him that if he rejected the plea deal and was convicted, there was a possibility that he would be sentenced to consecutive terms of imprisonment. The district court denied that motion, and for the reasons below, we AFFIRM.

APPENDIX A

"Section 2255 provides federal prisoners with a means to secure a second look at the legality of their conviction or sentence, beyond the direct appeal of right." *Ajan v. United States*, 731 F.3d 629, 631 (6th Cir. 2013). "In reviewing a district court's denial of a motion under Section 2255, we apply a clearly erroneous standard to its factual findings and review its conclusions of law *de novo*." *Braden v. United States*, 817 F.3d 926, 929 (6th Cir. 2016) (quoting *Hyatt v. United States*, 207 F.3d 831, 832 (6th Cir. 2000)). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). "This standard plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985).

Ineffective assistance of counsel claims are governed by the now-familiar *Strickland* standard:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984). If a defendant has been offered a plea bargain, his counsel is constitutionally deficient if she tells him that his sentences for multiple counts, if convicted, cannot run consecutively.[1] *Magana v. Hofbauer*, 263 F.3d 542, 549–50 (6th Cir. 2001).

[1] Gaskin provides out-of-circuit support for the proposition that failing to inform a client of the sentencing consequences of rejecting a plea agreement is as ineffective as affirmatively misleading the client. *See United States v. Aguiar*, 894 F.3d 351, 359 (D.C. Cir. 2018). We have stated that "[a] criminal defendant has a right to expect at least that his attorney will . . . explain the sentencing exposure the defendant will face as a consequence of exercising each of the options available [to him]." *Smith v. United States*, 348 F.3d 545, 553 (6th Cir. 2003); *see also Rinckey v. McQuiggan*, 510 F. App'x 458, 461 (6th Cir. 2013) ("[T]rial counsel had an obligation to ensure that his client understood that he faced the possibility of consecutive sentences."). And here, the government does not argue that Gaskin's trial counsel was effective even if he failed to inform Gaskin of the possibility of consecutive sentences, and

A petitioner is prejudiced by counsel's deficient performance if "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." *Lafler v. Cooper*, 566 U.S. 156, 164 (2012).

The parties disagree both over whether Gaskin's trial counsel informed him that the sentences for each count could run consecutively and, if trial counsel did so inform Gaskin, he has shown that he would have accepted the plea.

At a hearing that occurred after Gaskin was convicted but before he was sentenced, the government off-handedly mentioned that Gaskin was facing "up to potentially 60 years because he was convicted on all three counts." Immediately upon hearing this, Gaskin spoke up, telling the court that "I didn't understand about the 60 years part. I didn't understand what he just meant by that." Gaskin then said:

> Your honor, I said this was my first time hearing, after the case was done, that my cases was trying to get ran consecutive. I never knew nothing what consecutive mean. Was never told before trial by my prosecutors or my lawyers or nobody that it was a possibility it could get ran consecutive.
>
> Every time I asked my lawyer, I was told this was one charge and that my cases was all getting ran under a 20-year max and my plea was 17 years. So, I couldn't—17 years and 20-year max, that's why I went to trial, sir. And now I'm hearing 60 years and I'm really confused in this courtroom, sir. I never heard of this.

At an evidentiary hearing before the district court, Gaskin testified that after reading the indictment he understood that the maximum sentence on each count was 20 years, so he thought

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we thus assume for the purpose of this opinion that if Gaskin can show that his trial counsel failed to inform him of the possibility of consecutive sentences, Gaskin has satisfied the first *Strickland* prong.

that he was facing a maximum of 20 years' imprisonment. Gaskin also testified that when his trial counsel, Mr. Randolph, presented the plea agreement, Gaskin "asked him like what's the most they can give me, and that's when he had told me like they can give you 20" and that Randolph told Gaskin that he should accept the plea agreement because "[Gaskin] can get a couple more years, we might as well just go ahead." This testimony was broadly corroborated by Gaskin's mother and sister.

Against this evidence, the district court weighed the fact that at each of his three arraignments, Gaskin had told the court that he understood the indictment and the potential penalty for each count. And at his first arraignment, the magistrate judge told Gaskin that each count carried a maximum of 20 years' imprisonment and said "[n]ot that they are necessarily concurrent penalties but it is the same maximum penalty under the statute."

Also, although Randolph did not testify that he had specifically told Gaskin that he was facing a maximum of 60 years, Randolph did testify that he "told Mr. Gaskin that a sentence of 20 years is better than life" and explained that statement as "[m]eaning that if he, if he was found guilty and allowed the judge to sentence him, that he possibly could spend the rest of his life in prison, whether that—that didn't necessarily mean that the sentence would be life, but it would be a lot of years." This cohered with an earlier affidavit signed by Randolph in which he wrote that "[d]uring discussions with Mr. Gaskin to persuade him to accept the Rule 11 agreement, I told him that 15–20 years is better than a life sentence, Mr. Gaskin again refused, intimating that (paraphrasing) 20 years is like a life sentence to him."[2]

[2] Gaskin denied having made this statement.

After considering all of the testimony and the other evidence proffered to the court, the district court determined that "Gaskin has not shown that his attorney performed deficiently during plea bargaining." Gaskin's first hurdle on appeal is challenging this factual determination.

Gaskin "faces a steep climb in making this argument, needing to leave us 'with the definite and firm conviction that a mistake has been committed.'" *Christopher v. United States*, 831 F.3d 737, 739 (6th Cir. 2016) (quoting *U.S. Gypsum*, 333 U.S. at 395). "While 'we review transcripts for a living,'" the district court "assesses live witnesses for a living, and we must account for this 'ring-side perspective' when reviewing a trial judge's findings of fact." *Id.* (quoting *United States v. Poynter*, 495 F.3d 349, 351–52 (6th Cir. 2007)). In cases such as this, where two parties testify to different versions of the facts, so long as both versions have evidence to support them, "the factfinder's choice between them cannot be clearly erroneous." *Anderson*, 470 U.S. at 574 (citations omitted).

Here, the district court specifically found Randolph's testimony credible and also that Gaskin was not a credible witness, in part because of his "obvious incentives to be untruthful."[3] Because there is evidence supporting Randolph's testimony, the district court's determination that Randolph was more credible cannot be disturbed. And having reviewed the remaining evidence proffered by the parties before the district court, we cannot say that the district court clearly erred in determining that Randolph informed Gaskin of the potential sentence should he go to trial.

[3] Gaskin spends a not insignificant portion of his opening brief arguing that the district court's finding that Gaskin's testimony was not credible "runs afoul of a 140 year-old statute and [S]upreme [C]ourt case law." The gist of his argument appears to be that, at one point, the common law prohibited the testimony of interested parties; American jurisprudence has since rejected that principle; and the district court's finding that Gaskin was not credible because of his interest in the outcome was an illegitimate readoption of the principle. But the principle is well recognized that "[b]ias may be induced by a witness' . . . self-interest" and "[p]roof of bias is almost always relevant because the . . . finder of fact and weigher of credibility[] has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." *United States v. Abel*, 469 U.S. 45, 52 (1984).

Because Gaskin has not therefore shown the first prong of *Strickland*, we need not address the second prong, and we **AFFIRM**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff / Respondent,

v.

D-1 JERON GASKIN,

Defendant / Petitioner.

_____/

Criminal Case No. 2:11-cr-20178

Civil Case No. 2:16-cv-11138

HON. STEPHEN J. MURPHY, III

OPINION AND ORDER
DENYING GASKIN'S MOTION TO VACATE SENTENCE [403]

After a Detroit jury convicted him, Petitioner Jeron Gaskin moved to vacate his sentence under 28 U.S.C. § 2255. His only remaining claim is ineffective assistance of counsel. The Court held evidentiary hearings on March 6, 2018 and April 23, 2018, and the issues are fully briefed. For the reasons below, the Court will deny Gaskin's motion.

BACKGROUND

In August 2010, the Government filed a complaint accusing Gaskin of distributing oxycodone as a member of criminal gang. ECF 1. Post indictment, Gaskin faced one count of conspiracy and two counts of possession with intent to distribute. ECF 78. After prolonged plea negotiations, the Government proffered a Rule 11 Plea Agreement that set the guideline sentencing range at 180 to 240 months. ECF 430-6, PgID 4094. Additionally, the Government said it would recommend 210 months at the sentencing hearing. ECF 444, PgID 4381. Gaskin rejected the offer and proceeded to trial.

After his conviction, the Court sentenced Gaskin to 360 months' imprisonment: 240 months for the conspiracy count, 120 months for the first possession count to run

consecutive to the conspiracy count, and 240 months for the second possession count to run concurrent to the sentences for the conspiracy count and the first possession count. ECF 324. Gaskin then moved to vacate his sentence and alleged that his attorney erroneously advised him that his maximum sentence exposure at trial was 240 months' imprisonment because all counts would run concurrently. ECF 403, PgID 3864.

LEGAL STANDARD

A prisoner may move to vacate a sentence that was imposed in violation of the U.S. Constitution. 28 U.S.C. § 2255(a). The Constitution provides that a criminal defendant shall "have the Assistance of Counsel for his defense." U.S. Const. amend. VI. That right to counsel attaches when the adversary judicial process is initiated. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009). And once the right attaches, the accused is guaranteed to have counsel at all critical stages of the criminal proceedings, *id.*, including during plea negotiations, *Missouri v. Frye*, 566 U.S. 134, 140 (2012). Moreover, the Constitution does not guarantee just any counsel—it guarantees "the effective assistance of competent counsel." *McMann v. Richardson*, 397 U.S. 759, 771 (1970).

Courts apply the *Strickland* standard to determine whether the accused received effective assistance of counsel during plea bargaining. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). To prevail under the *Strickland* standard, a defendant must show that: (1) his counsel's performance was deficient, and (2) counsel's deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To satisfy the first prong, the defendant must show that his counsel's representation "fell below an objective standard of reasonableness." *Id.* at 688. It is sufficient for a defendant to show that his counsel erroneously advised that he could not face consecutive sentences at trial, *see Magana v. Hofbauer*, 263 F.3d 542, 549 (6th Cir. 2001), but he must do so by a

preponderance of the evidence, *Potter v. United States*, 887 F.3d 785, 787–88 (6th Cir. 2018) (citing *Pough v. United States*, 442 F.3d 959, 964 (6th Cir. 2006)). To satisfy the second prong, the defendant must show that—but for the ineffective advice—the plea offer would be available, he would have accepted the offer, the Court would have accepted the agreement's terms, and that the punishment under the plea would have been less severe than what was actually imposed. *Lafler v. Cooper*, 566 U.S. 156, 164 (2012).

DISCUSSION

After reviewing the record, hearing live testimony, and making credibility determinations, the Court finds that Gaskin did not show by a preponderance of the evidence that his counsel's performance was deficient. Consequently, Gaskin cannot satisfy the *Strickland* standard and is not entitled to relief. The Court will therefore deny his motion.

Gaskin's counsel did not perform deficiently. Although Gaskin changed attorneys during his case, he focuses his attack now on Thomas Randolph, III—the attorney that represented him during negotiations of the Government's final plea offer. Specifically, Gaskin claims that Randolph advised him that his maximum sentence exposure at trial was 240 months' imprisonment because Randolph did not know the sentences could run consecutively. Admittedly, Gaskin provided persuasive evidence that Randolph lacked experience representing federal defendants in federal court. And the case should serve as a strong warning to Randolph and Claude Chapman[1] about the importance of fully preparing to represent a client, being forthright about potential conflicts of interest,

[1] Mr. Chapman represented a co-defendant in the case and recommended to Gaskin that he retain Randolph.

abstaining from accepting questionable payments of attorney's fees, and creating a complete written record of actions taken during a case. But ultimately, the evidence shows that Randolph's performance was not deficient.

First, there is strong evidence that Randolph knew about the potential for consecutive sentences despite his inexperience. For example, Chapman credibly testified that his conversations with Randolph suggested that Randolph knew Gaskin faced more than 240 months' imprisonment. ECF 440, PgID 4208–09. Because Gaskin's sentence could exceed 240 months' imprisonment only if he were sentenced consecutively, those conversations suggest Randolph knew Gaskin faced consecutive sentences. Additionally, the Government sent multiple plea agreements to Randolph that had guideline ranges above 240 months. ECF 430-2, PgID 4073; ECF 430-3, PgID 4082. Again, those ranges would be inconceivable if Gaskin faced only concurrent sentences.

Second, the Court believes Randolph's testimony that he advised Gaskin about consecutive sentencing. At the March 2018 evidentiary hearing, Randolph testified that he told Gaskin that he could face more than 240 months' imprisonment at trial. ECF 440, PgID 4251. Again, that could be true only if Gaskin were sentenced consecutively. After observing Randolph's demeanor while testifying, the Court finds his statement credible. Additionally, Randolph has been fairly consistent over time. For example, he signed an affidavit well before the first evidentiary hearing stating that he advised Gaskin to accept the Government's plea offer because "15-20 years is better than a life sentence[.]" ECF 430-11, PgID 4113. Although not technically precise—Gaskin faced 60 years' imprisonment if sentenced consecutively—the potential sentence could have practically approached a life sentence even for a young person. Although Randolph used colloquial

language in his affidavit, the best interpretation of that affidavit is that Randolph knew that Gaskin faced consecutive sentences and communicated that information to him.

Third, the Court does not credit Gaskin's testimony that he was not advised and did not know that he faced consecutive sentences. In addition to Gaskin's obvious incentives to be untruthful, his allegations are inconsistent with the numerous acknowledgments he made in writing and in open court. ECF 27 (written acknowledgment that he understood the indictment and the penalty for each count); ECF 34 (same); ECF 117 (same); ECF 364, PgID 3708 (oral acknowledgment that he faced imprisonment for "each of those charges"); ECF 438, PgID 4158 (oral acknowledgment that his potential sentences are not "necessarily concurrent"). And although Gaskin's mother and godmother corroborate his testimony, his mother admitted that she did not attend all of Gaskin's meetings with Randolph, ECF 440, PgID 4178, and his godmother admitted that the conversation she overheard was consistent with Randolph explaining the Government's plea offer rather than Gaskin's sentence exposure, *id.* at 4266.

For these reasons, Gaskin has not shown that his attorney performed deficiently during plea bargaining. The Court therefore finds that there was not a constitutional violation and that Gaskin is not entitled to relief under 28 U.S.C. § 2255(a). Accordingly, the Court will deny Gaskin's motion.

ORDER

WHEREFORE, it is hereby **ORDERED** that Gaskin's Motion to Vacate Sentence [403] is **DENIED**.

IT IS FURTHER ORDERED that the Clerk shall **CLOSE** civil case 2:16-cv-11138.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: August 8, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 8, 2018, by electronic and/or ordinary mail.

s/ David Parker
Case Manager

NOT RECOMMENDED FOR PUBLICATION
File Name: 14a0766n.06

No. 13–1824

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

JERON GASKIN,

Defendant – Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

BEFORE: DAUGHTREY, McKEAGUE, and WHITE, Circuit Judges.

HELENE N. WHITE, Circuit Judge. Jeron Gaskin was convicted of conspiracy to possess and distribute controlled substances, 21 U.S.C. §§ 841(a)(1) and 846, and two counts of possession with intent to deliver a controlled substance, 21 U.S.C. §§ 2 and 841(a)(1). The district court sentenced him to 360 months' imprisonment. On appeal, Gaskin argues that the district court erred in denying his motion to suppress evidence seized after a traffic stop, that there was insufficient evidence to convict him of one possession charge, and that his sentence is constitutionally infirm. We AFFIRM.

I.

Gaskin, a founding member of an east-Detroit street gang known as the "Hustle Boys," was indicted along with ten co-defendants (collectively, the Group) for trafficking controlled substances. The seven male members of the Group were affiliated with the "Hustle Boys," and the remaining four members are females who were employed as drug mules.

Originally, the Hustle Boys earned money by hosting parties, but with success came rival gangs, leading the Hustle Boys to engage in "shootings, robberies, [and] things of that nature." The Hustle Boys socialized, packaged narcotics, and planned various trafficking activities in Gaskin's Detroit residence, known as the "Hustle House." Generally, the Group would acquire prescription pills or guns in Michigan and then "go out of town and traffic drugs or guns" in southern Ohio and West Virginia. Gaskin recruited individuals to join the Group.

To conceal the drugs when "going out of town," the females in the Group acted as mules by placing pills, wrapped in condoms, in their vaginas. Gaskin collected the money for any pills trafficked (usually $10,000 or more per trip), and the female mule made up to $600 per trip, depending on who she was and how much she was able to carry. Typically, more than one female mule accompanied Gaskin on these trips.

Around 8:30 p.m. on August 6, 2010, co-defendant Pinkie Lewis drove Gaskin and co-defendants Vonda Hopkins and D'Marco Hodge on a trip "out of town." Just north of Lucasville, Ohio, State Highway Patrol Trooper Nicholas Lewis (Lewis), who was parked facing west in a highway cross-over, observed Pinkie drive by without headlights on. Just before pulling her over, Lewis saw Pinkie's headlights turn on; nevertheless, Lewis stopped Pinkie for driving after sunset without her headlights on, a minor misdemeanor in Ohio.[1] Shortly thereafter Trooper Theresa Mikesh (Mikesh)—who also saw Pinkie's car and agreed that she had been driving without her headlights on—arrived on the scene with her drug-sniffing dog, who subsequently alerted that drugs were in Pinkie's car.

Lewis approached the front passenger, Hopkins, a minor, who gave Lewis false identification and admitted that she had been smoking marijuana. Mikesh detained Hopkins,

[1] Ohio traffic laws require a driver, *inter alia*, to have his headlights on from "sunset to sunrise." Ohio Revised Code § 4513.03. The statute does not define how "sunset to sunrise" is to be determined.

patted her down, and felt a hard object protruding from her groin. Before being placed in Mikesh's cruiser, Hopkins told Mikesh that she had 300 to 400 pills in her vagina.

The remaining passengers in Pinkie's car, including Gaskin, were placed in Lewis's cruiser. While in Lewis's cruiser, Pinkie removed a condom containing pills from her groin area and hid it behind the cruiser's backseat. It was ultimately discovered that Hopkins was carrying 602 80-milligram OxyContin pills and Pinkie 437 of the same pills.

Six months after the stop, Gaskin was arrested and found with thirty-five oxymorphone pills. After his motion to suppress evidence flowing from the traffic stop was denied, he was tried and convicted of the conspiracy charge and two possession charges[2] and sentenced to an aggregate sentence of 360 months in prison and three years' supervised release.

II.

Gaskin presents three challenges to the district court's denial of his motion to suppress. First, he asserts that Lewis did not have probable cause to initiate the stop, and therefore the court erred in denying Gaskin's motion to suppress. Second, he argues that the Government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to produce a video recording of the traffic stop. Finally, he argues that the Government violated *Youngblood v. Arizona*, 488 U.S. 51 (1988), by failing to preserve the video of the traffic stop.

When reviewing a district court's denial of a motion to suppress, we review factual findings for clear error and conclusions of law *de novo*. *United States v. Foster*, 376 F.3d 577, 583 (6th Cir. 2004). In so doing, we review the evidence "in the light most likely to support the district court's decision" and give "due weight" to inferences drawn by the district court. *Id.*; *United States v. Navarro–Camacho*, 186 F.3d 701, 705 (6th Cir. 1999). "A factual finding is

[2] The conspiracy count was based on the drug distribution activities of the Hustle Boys and their "mules." One possession count was based on the pills possessed by Pinkie and found during the traffic stop; the second possession charge was based on the pills found on Gaskin when he was arrested.

clearly erroneous when, although there may be evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. Blair*, 524 F.3d 740, 747 (6th Cir. 2008) (citation and quotation marks omitted).

"This circuit has developed two separate tests to determine the constitutional validity of vehicle stops: an officer must have probable cause to make a stop for a civil infraction, and reasonable suspicion of an ongoing crime to make a stop for a criminal violation." *Id.* at 748. "[S]o long as the officer has probable cause to believe that a traffic violation has occurred or was occurring, the resultant stop is not unlawful and does not violate the Fourth Amendment," "regardless of whether this was the *only basis* or merely one basis for the stop." *United States v. Bradshaw*, 102 F.3d 204, 210 (6th Cir. 1996) (citation and quotation marks omitted); *United States v. Davis*, 430 F.3d 345, 352 (6th Cir. 2005).

"[T]he suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. A *Brady* violation occurs when: (1) the evidence at issue is "favorable to the accused, either because it is exculpatory, or because it is impeaching"; (2) the state suppressed the evidence, "either willfully or inadvertently"; and (3) prejudice ensued. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Regardless whether a defendant requested the evidence, "favorable evidence is material, and constitutional error results from its suppression by the [prosecution], if there is a *reasonable probability that*, had the evidence been disclosed to the defense, *the result of the proceeding would have been different.*" *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (emphasis added). We review the "denial of a motion for [a] new trial based on *Brady* violations under an abuse of

discretion standard." *United States v. Graham*, 484 F.3d 413, 416 (6th Cir. 2007). However, "the district court's determination as to the existence of a *Brady* violation is reviewed *de novo*." *Id.* at 416–17.

A.

Gaskin sought suppression of the pills seized during the traffic stop, arguing that Lewis lacked probable cause to stop the car because either the sun had not yet set or the car's lights were on.[3] At the evidentiary hearing, Lewis testified nineteen times that the sun had set. Gaskin's expert, Ken Glaza, stated that "official" sunset occurred after the traffic stop, but acknowledged that "you have to actually be there to determine when the sun sets," partially because the local topography could affect the time of sunset.[4] In closing argument, Gaskin's counsel conceded that it was unclear whether the car's lights were on, but argued that this is irrelevant because sunset is measured "objectively" and had not yet occurred.

The district court denied Gaskin's motion to suppress, finding that "[Pinkie's] vehicle did not have its lights on when Trooper[s] Lewis and Mikesh first observed the vehicle," and that "[b]oth Trooper[s] Lewis and Mikesh believed that the sun had set and that the visibility was such that the lights were required to be on." The district court concluded that "any mistake of fact the Troopers may have made [regarding sunset] was 'reasonable' and 'd[id] not negate probable cause.'"

The Troopers' testimony adequately supports the district court's factual findings and we are not left with a definite and firm conviction that a mistake has been made. Nor did the district

[3] Gaskin makes a passing comment that Lewis pulled Pinkie over because of the car occupants' race. However, the district court found credible Lewis's testimony that he could not see the car's passengers (and thus did not know their race).

[4] For purposes of this hearing, the parties defined sunset as "after the upper edge of the disc of the sun has dropped below the visible horizon." The term is undefined in Ohio's Traffic Code. Lewis and Mikesh both testified that Lucasville, Ohio, is surrounded on both sides by large hills, and nestled in a river valley.

court err in its legal conclusion that because any mistake of fact the Troopers may have made regarding sunset was reasonable, it would not negate probable cause.

Here, the question is not whether Pinkie was *actually* violating the Ohio Traffic Code when she was driving without her headlights on; rather, it is whether Lewis *reasonably believed* that Pinkie was violating the Ohio Traffic Code. *See United States v. Hughes*, 606 F.3d 311, 320 (6th Cir. 2010); *see also United States v. Chanthasouxat*, 342 F.3d 1271, 1276 (11th Cir. 2003) ("A traffic stop based on an officer's incorrect but reasonable assessment of facts does not violate the Fourth Amendment."). Lewis's reasonable belief that Pinkie was driving without headlights after sunset satisfies probable cause for the traffic stop, even if he was technically incorrect as to the time of sunset. *See Hughes*, 606 F.3d at 320. Thus, the district court properly denied Gaskin's motion to suppress based on a purported lack of probable cause.

B.

Gaskin argues that the Government violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to produce a video recording of the traffic stop that would have shown that the sun had not yet set. Assuming *arguendo* that *Brady* applies to suppression hearings, *see United States v. Taylor*, 471 F. App'x 499, 520 (6th Cir. 2012), Gaskin has not shown that a *Brady* violation occurred.

Gaskin argues that Lewis's DVR recording would have shown that the sun had not yet set when Lewis stopped Pinkie, that this would establish that the traffic stop was invalid, and that the evidence should be suppressed and the charge dismissed based on the failure to produce this exculpatory evidence.

Even assuming that the DVR recording was "favorable to the accused," Gaskin cannot prove a *Brady* violation because he cannot show prejudice, i.e., that there is a reasonable

probability that the result of the hearing would have been different if the tape had been produced. *Strickler*, 527 U.S. at 282. The issue is whether Lewis *reasonably believed* that Pinkie was driving without headlights after sunset. Given the testimony, it is unlikely that the video would have caused the district judge to conclude anything other than that Lewis reasonably believed sunset had occurred.

C.

Gaskin also argues that the Government committed a due process violation under *Youngblood v. Arizona*, 488 U.S. 51 (1988), by failing to preserve Lewis's DVR recording of the traffic stop. This argument fails because Gaskin has not shown that any failure to preserve evidence was done in bad faith. *See Illinois v. Fisher*, 540 U.S. 544, 547–48 (2004) ("the failure to preserve this 'potentially useful evidence' does not violate due process 'unless a criminal defendant can show bad faith on the part of the police'" (quoting *Youngblood*, 488 U.S. at 58)).

In Ohio, Troopers typically generate audio and video recordings of traffic stops through either DVR or VHS. Once a Trooper with DVR technology activates his cruiser's emergency lights, an external memory card saves the recording from one minute prior to the lights being turned on until the lights are turned off (a manual override also appears to exist). The older VHS technology starts recording only when a Trooper turns the cruiser's emergency lights on; it does not capture the one minute prior to the lights being activated.

During Gaskin's traffic stop, Lewis's DVR recording system appeared to be working, but his memory card malfunctioned, was full, or otherwise failed to save the recording. Lewis discovered that his memory card malfunctioned only after returning to Highway Patrol headquarters and trying to watch the tape with his supervisor. The network administrator issued Lewis a new memory card and apparently disposed of the old one. There is no indication that

this was outside of Highway Patrol protocol or otherwise suspicious. Mikesh's VHS system operated as designed, although a few audio transmissions were "broken" due to a faulty microphone cord. The Government provided Mikesh's tape to Gaskin.

Lewis himself wanted to view and listen to the recording, believing it would have allowed him to hear the conversation that took place when Pinkie removed the pills she was carrying and concealed them in the backseat of his patrol car. However, as confirmed by Lewis's supervisor, the memory card in Lewis's cruiser did not save the recording. Once Lewis discovered this, he followed Highway Patrol policy and informed his supervisor of the malfunction. Further, the Government produced the VHS recording from Mikesh's vehicle, which contained evidence tending to exculpate other members of the Group, leading the district court to question why Mikesh's video would have been produced had the Government been acting in bad faith. Because there is nothing in the record to suggest that Lewis or the Government was acting in bad faith in failing to produce the video, the district court's finding that the Government was not in bad faith is not clearly erroneous.

III.

Gaskin argues that there was insufficient evidence to convict him of possessing, with the intent to distribute, the pills found on him when he was arrested. When reviewing the sufficiency of the evidence, this court considers whether "any rational trier of fact could find the elements of the crime beyond a reasonable doubt," and, in so doing, this court "view[s] the evidence in the light most favorable to the prosecution, . . . giving the government the benefit of all inferences that could reasonably by drawn from the testimony." *United States v. M/G Transp. Servs., Inc.*, 173 F.3d 584, 589 (6th Cir. 1999); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). "Circumstantial evidence alone is sufficient to sustain a conviction and such evidence need not

remove every reasonable hypothesis except that of guilt." *United States v. Barnett*, 398 F.3d 516, 522 (6th Cir. 2005).

To convict Gaskin of Count III, the Government had to prove that Gaskin "knowingly or intentionally . . . manufacture[d], distribute[d], or dispense[d], or possess[ed] with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. § 841(a)(1). Gaskin concedes that he had thirty-five oxymorphone pills—a schedule II controlled substance—in his waist band when he was arrested, but argues that there was no evidence that he possessed the pills with the intent to distribute them. We disagree.

Pinkie testified that a typical transaction for these types of pills involved between ten to fifty pills. Gaskin did not have a prescription for oxymorphone and was concealing the pills when they were discovered, and Gaskin's entire livelihood was financed and premised on distributing controlled substances. To be sure, Pinkie testified that Gaskin abused prescription pills himself, from which the jury could have inferred that the pills may have been for his personal use. However, viewing the evidence in the light most favorable to the Government, a rational trier of fact could conclude that Gaskin possessed the oxymorphone with an intent to distribute it. The Government introduced sufficient evidence to convict Gaskin of Count III.

IV.

Gaskin's final arguments relate to his sentence. Criminal sentences are reviewed for both procedural and substantive reasonableness. A sentence is procedurally unreasonable if the district court improperly calculated the guidelines range, failed to treat the guidelines as advisory and not binding, failed to consider the § 3553(a) factors and adequately explain the chosen sentence, or failed to reasonably determine the facts. *United States v. Morgan*, 687 F.3d 688, 693 (6th Cir. 2012). We review claims of error in sentencing with differing standards depending

on whether the alleged error was properly preserved. *United States v. Bostic*, 371 F.3d 865, 870–71 (6th Cir. 2004). If preserved, we review for abuse of discretion; if not preserved, we review for plain error. Claims of procedural error are further governed by the *Bostic* rule. If a sentencing court asks the question required by *Bostic*—whether there are any objections not previously raised—and the party challenging the sentence on appeal fails to object, we will review the unpreserved objection for plain error. *Morgan*, 687 F.3d at 694; *United States v. Berry*, 565 F.3d 332, 340 (6th Cir. 2009) ("Berry's claim is reviewed for plain error because after the district court pronounced the sentence and asked if Berry had any objections, defense counsel answered in the negative."). But if the *Bostic* question is not asked, we review for abuse of discretion.

A.

Gaskin argues that he was deprived of due process when he pleaded not guilty without being warned that the district court could order that his sentences run consecutively. At the beginning of the sentencing proceeding, Gaskin told the district court:

> First, I would like to let you know I was never aware going through this trial that I even had—that they can even go over 20-year maximum. I never signed nothing saying anything about no concurrency, consecutive sentence. I was never told, I never signed nothing. If I was aware of that, I wouldn't have a problem with whatever they was trying to give me today. . .

We will therefore review for abuse of discretion.

In this court, "there is no requirement . . . that the court explicitly admonish a defendant that a sentence may be imposed consecutively." *United States v. Opina*, 18 F.3d 1332, 1334 (6th Cir. 1994) (citing *Paradiso v. United States*, 482 F.2d 409 (3d Cir. 1973)). Further, both Gaskin and his counsel signed a document outlining the potential penalties. Although this document did not warn of consecutive sentences, it did not imply in any way that the sentences would run

concurrently. Moreover, Gaskin did not claim that he would have accepted a plea offer had he been aware of the potential for consecutive sentences. Rather, he stated he did not initially accept a plea agreement because he thought it would help other members of the Group, and he later refused to plead guilty because he was not willing to accept a seventeen-year sentence. We conclude that Gaskin has not shown that the failure to specifically advise him of the potential for consecutive sentences deprived him of due process.

B.

Gaskin next contends that the district court failed to adequately explain its rationale for imposing consecutive sentences. In certain circumstances, a district court has discretion to impose concurrent or consecutive sentences. 18 U.S.C. § 3584(a). In exercising this discretion, the district court must consider factors set forth in 18 U.S.C. § 3553(a), but it need not expressly address every factor. *United States v. Williams*, 436 F.3d 706, 708 (6th Cir. 2006). If, after assessing the crimes committed, the district court determines that "the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment." *See* U.S. Sentencing Guidelines Manual § 5G1.2(d). Further, when a sentence is imposed within the applicable Guidelines range, and there is no argument for departure or variance, the district court need not explicitly state that it has considered and rejected each of defendant's arguments. *Rita v. United States*, 551 U.S. 338, 357 (2007).

Here, the Guidelines provided for a sentence of life imprisonment, but the potential sentence was limited by each count's statutory maximum, to an aggregate of 720 months. The district court sentenced Gaskin to 240 months in prison (statutory maximum sentence) for the

conspiracy, 120 months in prison (half the statutory maximum) for the OxyContin seized during the traffic stop, and 240 months in prison (maximum sentence) for the oxymorphone seized when he was arrested. The district court imposed the first two sentences to run consecutively, with the third sentence to run concurrently with the first, resulting in an aggregate 360-month sentence, half the maximum sentence allowed under the Guidelines.

The longest sentence available for any of Gaskin's convictions was 20 years (240 months). However, anything less than 360 months, according to the district court, "would not serve the purposes of this sentence, particularly to provide just punishment and reflect the seriousness of the offense." The district court stated that it imposed the sentence to deter Gaskin and others from engaging in similar activity in the future and wanted the "sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment." The district court thus concluded that consecutive sentences were necessary to impose a sentence that adequately addressed the offense. *See* Guidelines § 5G1.2(d). This was a reasonable conclusion, adequately explained.

C.

Gaskin also challenges the district court's decision to enhance his sentence for being a leader or organizer of the Group. An enhancement under Guidelines § 3B1.1 "depends on a number of factual nuances that a district court is better positioned to evaluate"; thus, deferring to the trial court's judgment "whether someone is or is not a 'leader' of a conspiracy" is appropriate. *United States v. Washington*, 715 F.3d 975, 983 (6th Cir. 2013).

Under the Guidelines, "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase [the base offense level] by 4 levels." Guidelines § 3B1.1. "Factors the court should consider include the exercise

of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others." *Id.* at Appl. Note 4. Gaskin does not challenge that the Group consisted of five or more individuals, he simply argues that the district court should not have found that he was an organizer or leader.

There is ample support for the district court's decision. Pinkie and Hopkins testified that the females worked for, and would carry pills for, Gaskin. Gaskin's residence—the Hustle House—was the Group's central meeting place in Detroit, Gaskin took a much larger portion of the profits from the trafficking trips, and Gaskin recruited individuals to join the Group. This evidence suggests that Gaskin held a leadership position within the Group. The Government need not establish each factor set out in Application Note 4; it is enough that the district court's finding that Gaskin was the organizer or leader of the Group is reasonable on the record. *See Washington*, 715 F.3d at 983.

D.

Gaskin's final argument is that his 360-month sentence is cruel and unusual in violation of the Eighth Amendment. We review an Eighth Amendment challenge to a sentence *de novo*, reviewing the district court's underlying factual determinations for clear error. *United States v. Jones*, 569 F.3d 569, 573 (6th Cir. 2009).

The Eighth Amendment precludes "cruel and unusual punishments." U.S. Const. amend. VIII. "Embodied in the Constitution's ban on cruel and unusual punishments is the precept of justice that punishment for crime should be graduated and proportioned to the offense." *Graham v. Florida*, 560 U.S. 48, 59 (2010). We consider all the circumstances of a case to determine

whether the sentence is unconstitutionally excessive, and begin by comparing the gravity of the offense and the severity of the sentence. *Id.* at 60 (citing *Harmelin v. Michigan*, 501 U.S. 957, 1005 (1991) (opinion of Kennedy, J.)). We must give "substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes, as well as the discretion that trial courts possess in sentencing convicted criminals." *Solem v. Helm*, 463 U.S. 277, 290 (1983). We afford a sentence within the properly calculated Guidelines range "a rebuttable presumption of reasonableness," *Williams*, 436 F.3d at 708, because it "reflects the fact that, by the time an appeals court is considering a within-Guidelines sentence on review, both the sentencing judge and the Sentencing Commission will have reached the same conclusion as to the proper sentence in the particular case," *Rita*, 551 U.S. at 347.

Gaskin's base offense level was 34 but he received enhancements for possessing illegal guns, his residence being headquarters for the trafficking scheme, involving a minor, intimidating a witness, and being an organizer or leader.[5] Cumulatively, this resulted in an offense level of 44, but the Guidelines capped the level at 43. With a category IV criminal history,[6] this resulted in a Guidelines sentence of life imprisonment, which was reduced to the statutory maximum of sixty years.

The district court sentenced Gaskin to 30 years in prison, followed by three years of supervised release. Given the circumstances of Gaskin's offenses, his criminal history, and the deference due to Congress and the district judge, Gaskin's 30-year sentence is neither disproportionate nor cruel and unusual.

---

[5] Other Group members were arrested on March 1, 2010, with 422 OxyContin pills. This led law enforcement to search the Hustle House on June 7 and 9, 2010; they found seven handguns, two assault rifles, 15 80-milligram OxyContin pills, and $5,690.00.

[6] Gaskin's criminal history includes assaulting a police officer, illegally concealing weapons, resisting and obstructing the police, and domestic violence. He also received negative remarks from his time in pretrial detention stemming from a fight.

V.

For the foregoing reasons, we AFFIRM.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 11-CR-20178

vs.

HONORABLE PATRICK J DUGGAN

D-1 JERON GASKIN,

Defendant.
_____/

DEFENDANT'S ACKNOWLEDGMENT OF INDICTMENT

I, Jeron Gaskin, defendant in this case, hereby acknowledge that I have received a copy of the indictment before entering my plea, and that I have read it and understand its contents.

I know that if I am convicted or plead guilty, I may be sentenced as follows:

Count one, Not more than 20 years in prison, a $1,000,000.00 fine, or both
Count two, Not more than 20 years in prison, a $1,000,000.00 fine, or both.

Jeron Gaskin
JERON GASKIN
Defendant

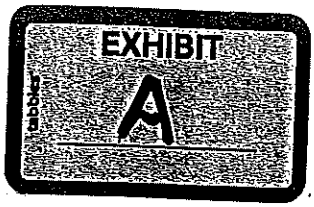
ACKNOWLEDGMENT OF DEFENSE COUNSEL

I acknowledge that I am counsel for defendant and that I have received a copy of the Standing Order for Discovery and Inspection which requires all pre-trial motions to be filed within twenty (20) days of arraignment.

Kimberly W Stout
KIMBERLY WINONA STOUT
Counsel for Defendant

Dated: 4-7-11

APPENDIX D



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

File No. 11-20178

JERON GASKIN,

Defendant.
_____/

ARRAIGNMENT

BEFORE THE HONORABLE VIRGINIA M. MORGAN

United States Magistrate Judge

U.S. Courthouse & Federal Building

231 Lafayette Boulevard West

Detroit, Michigan

Thursday, April 7, 2011

TRANSCRIPT PRODUCED FROM DIGITAL VOICE RECORDING

TRANSCRIBER NOT PRESENT AT LIVE PROCEEDINGS

EXHIBIT B

APPEARANCES:

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To Obtain a Certified Transcript:

PEG L. GOODRICH, CSR-0258, RMR
Federal Official Court Reporter
www.transcriptorders.com

TABLE OF CONTENTS

EXHIBITS:	IDENTIFIED	RECEIVED
None marked.		

Detroit, Michigan

Thursday, April 7, 2011

At 1:18 p.m.

(Court, counsel and defendant present)

* * * * * * * * *

THE CLERK: Calling Case No. 11-20178, the United States of America versus Jeron Gaskin.

THE COURT: Yes.

MS. JONES: Jeanine Jones on behalf of the United States.

MS. STOUT: Kimberly Stout on behalf of Mr. Gaskin who is standing to my left, your Honor. We acknowledge receipt of the indictment. I have the form. If I could just have my client sign the other two.

THE COURT: Mr. Gaskin, how old are you?

THE DEFENDANT: Nineteen.

MS. STOUT: We waive formal reading, your Honor. Stand mute.

THE COURT: Defendant waiving the reading and standing mute. The Court will enter a plea of not guilty.

Mr. Gaskin, you are charged in Count 1 and in Count 2 with violations of federal criminal drug laws. You don't have to say anything. Anything you say could be used against you. This is the date and time that was set for the preliminary exam on the complaint. The Grand Jury has considered the matter and returned an indictment. And so this is an arraignment on the indictment.

Miss Stout is appearing here as your lawyer. She has had an opportunity to go over the charges with you. I want to make sure you understand in general the nature of the charges.

Do you?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. I have entered a plea of not guilty for you. I have the acknowledgement now. As to Count 1, the maximum penalty is up to 20 years in prison, a one million dollar fine or both. And that is the same penalty on Count 2. Not that they are necessarily concurrent penalties but it is the same maximum penalty under the statute.

Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. He is currently detained. Detention was ordered apparently after a hearing before Judge Michelson. Attorney -- Attorney General?

MS. JONES: No, your Honor.

THE COURT: The order of detention is continued, assigned to Judge Duggan and you are to appear before Judge Duggan.

MS. STOUT: Thank you, your Honor.

If I may just address the Court briefly. And I believe this is already resolved with Miss Jones but my client is currently incarcerated at Wayne County Jail and I believe there is going to be a transfer. I don't know if the marshals can confirm that but I think it might be -- I'm asking for a transfer to Milan or another

county jail where perhaps it would be a better environment for him.

THE COURT: Okay. He has now pending dates --

MS. STOUT: Thank you.

THE COURT: -- so that's likely to occur as soon as they have availability at a place.

MS. STOUT: Thank you, your Honor.

THE COURT: Okay. Thank you.

(At 1:20 p.m. - proceedings adjourned)

****

CERTIFICATE OF TRANSCRIBER

I, PEG L. GOODRICH, Official Court Reporter in and for the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing proceedings held before the HONORABLE VIRGINIA M. MORGAN, United States Magistrate Judge, is a true and correct transcription, to the best of my ability, of the digital sound recording taken in the matter of UNITED STATES OF AMERICA v. JERON GASKIN, File No. 11-20178, held on Thursday, April 7, 2011.

s/Peg L. Goodrich
Peg L. Goodrich, CSR, RMR
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: February 26, 2018
Detroit, Michigan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, CRIMINAL NO. 11-CR-20178

vs. HONORABLE PATRICK J DUGGAN

D-1 JERON GASKIN,

Defendant.
_____/

DEFENDANT'S ACKNOWLEDGMENT OF FIRST SUPERSEDING INDICTMENT

I, Jeron Gaskin, defendant in this case, hereby acknowledge that I have received a copy of the First Superseding Indictment before entering my plea, and that I have read it and understand its contents.

I know that if I am convicted or plead guilty, I may be sentenced as follows:

Count one, Up to five years in prison, a $250,000.00 fine, or both
Count two, Up to twenty years in prison, a $1,000,000.00 fine or both.
Count three, Up to twenty years in prison, a $1,000,000.00 fine or both

Jeron Gaskin
JERON GASKIN
Defendant

ACKNOWLEDGMENT OF DEFENSE COUNSEL

I acknowledge that I am counsel for defendant and that I have received a copy of the Standing Order for Discovery and Inspection which requires all pre-trial motions to be filed within twenty (20) days of arraignment.

Kimberly W Stout
KIMBERLY STOUT
Counsel for Defendant

Dated:

APPENDIX E

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Case No. 11-20178

-v-

JERON GASKIN,

Defendant.
_____/

ARRAIGNMENT

BEFORE THE HONORABLE **LAURIE J. MICHELSON**
United States Magistrate Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, May 5, 2011

APPEARANCES:

FOR THE PLAINTIFF: **JEANINE JONES**
U.S. Attorney's Office
211 W. Fort Street
Detroit, MI 48226

FOR THE DEFENDANT: **KIMBERLY W. STOUT**
370 East Maple Road
Third Floor
Birmingham, MI 48009

Transcribed by:
Christin E. Russell
RMR, CRR, FCRR, CSR
(248) 420-2720

EXHIBIT D

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Detroit, Michigan

May 5, 2011

1:07 p.m.

(Transcriber not present for these proceedings.)

* * *

THE CLERK: The Court calls case 11-20178. USA vs. Jeron Gaskin.

Are you signing?

MS. STOUT: I'm signing the acknowledgment.

MS. JONES: Good afternoon, your Honor. Jeanine Jones on behalf of the United States.

MS. STOUT: Good afternoon. Kimberly Stout on behalf of Jeron Gaskin, who is standing to my right.

Your Honor, we acknowledge receipt of the superseding indictment, plead not guilty. And I will tender two copies.

THE COURT: Thank you.

Good afternoon, Mr. Gaskin. I am in receipt of your acknowledgment of first superseding indictment. And I just, I do want to remind you that anything you do say in this proceeding could be used against you in any subsequent proceedings. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Mr. Gaskin, you're here today for an arraignment on a first superseding indictment. And if you are convicted or plead guilty of the charges in the first

superseding indictment, you could be sentenced as follows:

On Count 1, up to five years in prison, a $250,000 fine, or both.

On Count 2, up to 20 years in prison, a 1 million dollar fine, or both.

And Count 3, up to 20 years in prison, a 1 million dollar fine, or both.

And I just want to make sure, Mr. Gaskin, have you had an opportunity to review the first superseding indictment and the charges against you?

MS. STOUT: I handed him a copy and explained it to him, your Honor. And then I'll go meet with him in lockup to further explain it to him.

THE COURT: Okay.

MS. STOUT: He's aware of the added charge.

THE COURT: So, Mr. Gaskin, you are aware of the added charge from the previous indictment?

THE DEFENDANT: Yes.

THE COURT: And do you wish to waive reading --

MS. STOUT: Yes.

THE COURT: -- of the superseding?

MS. STOUT: Waive formal reading and plead not guilty, your Honor.

THE COURT: Okay. We will enter a plea of not guilty. And, let's see, we previously dealt with the issue of

detention, correct?

MS. STOUT: We did, your Honor.

THE COURT: And your next court appearance will be before Judge Duggan.

MS. JONES: Thank you.

MS. STOUT: Thank you, your Honor.

THE COURT: Thank you.

(Proceedings adjourned at 1:10 p.m.)

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from audio recorded proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, RMR, CRR, FCRR, CSR

Federal Official Court Reporter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 11-20178

vs.

HONORABLE PATRICK J. DUGGAN

D-1 JERON RAMONE GASKIN,

Defendant.
_____/

DEFENDANT'S ACKNOWLEDGMENT OF SECOND SUPERSEDING INDICTMENT

I, JERON RAMONE GASKIN, defendant in this case, hereby acknowledge that I have received a copy of the second superseding indictment before entering my plea, and that I have read it and understand its contents.

I know that if I am convicted or plead guilty, I may be sentenced as follows:

COUNT 1: up to 20 years imprisonment and/or a $1,000,00.00 fine
COUNT 2: up to 20 years imprisonment and/or a $1,000,00.00 fine
COUNT 3: up to 20 years imprisonment and/or a $1,000,00.00 fine

Jeron Gaskin
JERON RAMONE GASKIN
Defendant

ACKNOWLEDGMENT OF DEFENSE COUNSEL

I acknowledge that I am counsel for defendant and that I have received a copy of the Standing Order for Discovery and Inspection which requires all pre-trial motions to be filed within twenty (20) days of arraignment.

Counsel for Defendant

Dated:

APPENDIX F

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Case No. 11-20178

-v-

JERON GASKIN,

Defendant.
_____/

ARRAIGNMENT

BEFORE THE HONORABLE R. STEVEN WHALEN
United States Magistrate Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, January 17, 2012

APPEARANCES:

FOR THE PLAINTIFF: JENNIFER GORLAND
U.S. Attorney's Office
211 W. Fort Street
Detroit, MI 48226

FOR THE DEFENDANT: THOMAS H. RANDOLPH, III
The Randolph Law Group
32255 Northwestern Highway
Suite 251
Farmington Hills, MI 48334

Transcribed by:
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(248) 420-2720

EXHIBIT F

TABLE OF CONTENTS

Detroit, Michigan

January 17, 2012

1:23 p.m.

(Transcriber not present for these proceedings.)

* * *

THE CLERK: The Court calls case No. 11-20178, United States of America vs. Jeron Gaskin.

MS. GORLAND: Good afternoon, your Honor. Jennifer Gorland on behalf of the United States.

Your Honor, this is the defendant's arraignment on the indictment.

MR. RANDOLPH: Good afternoon, your Honor. Thomas Randolph, III appearing on behalf of Jeron Gaskin.

THE COURT: Good afternoon.

Good afternoon, Mr. Gaskin. Mr. Gaskin, you are here to be arraigned on a second superseding indictment. Have you received a copy of this, sir?

THE DEFENDANT: Yes.

THE COURT: Have you had a chance to talk that over with your attorney?

THE DEFENDANT: Yes.

THE COURT: And, Mr. Randolph, do you have a signed acknowledgment? Tender that to the clerk, please.

Okay. Mr. Gaskin, do you understand that if you were convicted or pled guilty to Count 1, which charges conspiracy

with intent to distribute controlled substances, and Counts 2 and 3, each of which charge possession with intent to distribute a controlled substance, as to each of those charges, if you were convicted, you could get a sentence of up to 20 years imprisonment and/or a fine of 1 million dollars. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Do you have any questions of me or of your attorney at this time?

THE DEFENDANT: No.

THE COURT: Okay. Mr. Randolph, how do you want to plead?

MR. RANDOLPH: Plead not guilty at this time.

THE COURT: Do you waive the reading?

MR. RANDOLPH: Waive the formal reading.

THE COURT: I'll enter a plea of not guilty.

What's the bond situation in this?

MS. GORLAND: The defendant was detained by Judge Duggan.

THE COURT: Okay. That will continue. Thank you.

MR. RANDOLPH: Thank you, your Honor.

(Proceedings adjourned at 1:25 p.m.)

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from audio recorded proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, RMR, CRR, FCRR, CSR

Federal Official Court Reporter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERON RAMONE GASKIN,

Defendant.
_____/

HONORABLE PATRICK J. DUGGAN

No. 12-20678

MOTION FOR WITHDRAWAL OF ATTORNEY

Detroit, Michigan -- Monday, December 17, 2012

APPEARANCES:

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Margaret.smith@usdoj.gov
On behalf of Plaintiff

Thomas H. Randolph, III, Esq.
The Randolph Law Group
32255 Northwestern Highway, #2
Farmington Hills, MI 48334
Tel: (734) 425-1200
thomasrandolph@mac.com
On behalf of Defendant

- - -

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Detroit, Michigan 48226
www.transcriptorders.com • jodi_matthews@mied.uscourts.gov

Proceedings recorded by mechanical stenography.
Transcript produced by computer-aided transcription.

APPENDIX G

Motion for Withdrawal of Attorney
Monday, December 17, 2012

I N D E X

- - -

Detroit, Michigan

Monday, December 17, 2012

2:33 p.m.

- - -

THE CLERK: Criminal action number 12-20678; United States versus Jeron Gaskin.

THE COURT: All right.

MR. CHASTEEN: Good afternoon, Your Honor. Mark Chasteen and Maggie, Smith, for the United States.

MR. RANDOLPH: Good afternoon, Your Honor. Thomas Randolph, III, appearing on behalf of Mr. Gaskin.

THE COURT: All right. You have a motion?

MR. RANDOLPH: Yes, Your Honor.

THE COURT: All right. The record should reflect Mr. Gaskin is here?

Motion for Withdrawal of Attorney

ALLOCUTION BY MR. RANDOLPH

MR. RANDOLPH: Yes, that is correct.

Your Honor, I entered an appearance on this case during the pendency of Mr. Gaskin's drug proceedings. Since that time, and of course we've had a verdict in the drug matter, Mr. Gaskin and I have had a parting of ways as far as trial strategy, the quality of my representation, the effectiveness of my counsel. There's been a communication breakdown and it's my

belief that Mr. Gaskin will be best served by another attorney.

He has articulated that he would like another attorney and I agree with him that another attorney might be better or more effective in representing him.

THE COURT: All right. Mr. Gaskin, what do you have to say?

STATEMENT BY DEFENDANT

THE DEFENDANT: That I agree to what he saying, sir.

THE COURT: You agree to this request to withdraw as your attorney?

THE DEFENDANT: Yes, for the new case.

THE COURT: For what?

THE DEFENDANT: For the second case?

THE COURT: Yes.

THE DEFENDANT: Yes.

THE COURT: Yes, for the second case. And the Court will then -- assuming you filled out or will fill out the appropriate -- well, let me ask this, will you be obtaining another lawyer to represent you on the second case?

THE DEFENDANT: I can't say exactly right now, sir.

THE COURT: I didn't hear you.

THE DEFENDANT: No, not for right now. No, sir.

MR. RANDOLPH: Your Honor, it's my understanding that Mr. Gaskin does not currently have the funds to retain an attorney. I would, of course, ask that the Defender's Office be appointed to represent him.

THE COURT: Well, I ask you to assist him in filling out the required form to show that he's indigent and needs court appointed counsel. And then upon receipt of that form, if it's properly filled out, the Court will consider appointing counsel through the Federal Defender's Office.

Any comment?

ALLOCUTION BY MR. CHASTEEN

MR. CHASTEEN: My only comment, Your Honor, on behalf of the Government is, obvious we have no objection to whatever Mr. Gaskin wishes with respect to this case going forward.

But Mr. Randolph, and by adoption, Mr. Gaskin's comments indicate that he was dissatisfied with Mr. Randolph's representation in the case we just tried. My concern is that Mr. Gaskin acknowledged that he wishes Mr. Randolph to go forward -- because he hasn't been sentenced on that yet. With sentencing on the other case and that he's happy with Mr. Randolph's representation insofar as going forward with the

sentencing on that case.

It seems to me a little confusing if he was unhappy on that old case, does he want Mr. Randolph to go forward on the old case or not? We need to hear, on the record, whether he does or not and whether he's unhappy with his representation.

THE COURT: All right.

MR. RANDOLPH: And let me explain, Your Honor, and of course I'm sure you want to hear from my client. The issue comes down to a matter of trial strategy. My client has indicated -- and we've discussed this in detail -- that he would like me to continue due to my knowledge of the case, the trial that was just completed, continue with sentencing just on that case.

But he, at this time, is demanding a trial on the new charges of witness intimidation and so he would like a new trial attorney because he's demanding a trial on that issue, but he would like me to continue with the initial matter.

THE COURT: Is that true, you wish Mr. Randolph to continue representing you on the previous case that was tried?

THE DEFENDANT: Yes, sir, because it's basically over, you know, all he got to do is come in on the sentencing and I don't want to go to trial on my second

case with somebody I lost with.

THE COURT: He will represent you at the sentencing?

THE DEFENDANT: Yes.

MR. CHASTEEN: I just want Mr. Gaskin to understand that it's not just basically over. We have a verdict, but the sentencing, I assume, will be very much in dispute. So, there is quite a bit of work still to do since there was not a plea agreement and sentencing could be anywhere from, you know, whatever the Court decides is the low end, up to potentially 60 years because he was convicted on all three counts.

And the Government does intend to ask for a very considerable prison sentence for him. I want him to know that when he decides that he wants to go forward with Mr. Randolph, I'm not saying he shouldn't, I'm just saying he needs to understand it's not a forgone conclusion what his sentence is going to be.

THE COURT: Go ahead.

MR. RANDOLPH: Mr. Chasteen has articulated himself. I have, Your Honor, and my client understands.

THE COURT: All right. You want to speak?

THE DEFENDANT: Yes, I didn't understand about the 60 years part. I didn't understand what he just meant

by that.

THE COURT: Well, I have no idea what sentence will be imposed. I haven't seen the presentence report. I haven't seen the arguments you'll make, your attorney will make, so I have no idea.

THE DEFENDANT: I do want to let you know that, you know, I was told that my cases was getting ran concurrent. I never -- this is my first time hearing something --

THE COURT: I'm sorry, will you get in the microphone? Have him come up to the podium.

THE DEFENDANT: Your Honor, I said this was my first time hearing, after the case was done, that my cases was trying to get ran consecutive. I never knew nothing what consecutive mean. Was never told before trial by my prosecutors or my lawyers or nobody that it was a possibility it could get ran consecutive.

Every time I asked my lawyer, I was told this was one charge and that my cases was all getting ran under a 20-year max and my plea was 17 years. So, I couldn't -- 17 years and 20-year max, that's why I went to trial, sir. And now I'm hearing 60 years and I'm really confused in this courtroom, sir. I never heard of this.

THE COURT: Mr. Randolph, you want to comment at

this time at all?

MR. RANDOLPH: I don't think any comment is necessary on that issue, Your Honor.

THE COURT: I have no idea.

THE DEFENDANT: I'm just trying to let you know what's going on, sir.

Decision By The Court

THE COURT: Okay. All right. I'm going to GRANT the Motion to Withdraw --

MR. RANDOLPH: Thank you, Your Honor.

THE COURT: -- from the second case.

MR. RANDOLPH: Thank you, Your Honor.

THE COURT: And you'll remain his attorney for the sentencing on the original case.

MR. RANDOLPH: Okay. Just for the record, that second case is 2012-CR-20678.

THE COURT: Okay.

MR. RANDOLPH: Thank you.

MR. CHASTEEN: Thank you, Your Honor. Will we -- I assume we will set a new trial date when new counsel is appointed?

THE COURT: We'll wait 'till new counsel gets appointed and I'll meet with the attorneys and decide where we'll go from there.

MR. CHASTEEN: All right. I just ask that the

Court find that because of the issue with respect to representation, that the time between the filing of Mr. Randolph's motion and whatever time we set for the new trial date be excludable time under the Speedy Trial Act for good cause and the interest of justice. And probably should clarify for Mr. Gaskin that this means there will be a delay of his trial and a delay of his Speedy Trial Rights while his new counsel is appointed and brought up to speed on this case.

THE COURT: All right. You understand that because we have to get a new lawyer involved, that this may take longer than if Mr. Randolph were still representing you?

MR. RANDOLPH: Yes, sir, I do understand.

THE COURT: All right.

MR. RANDOLPH: Thank you, Your Honor.

(Whereupon proceedings concluded at 2:44 p.m.)

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United States District Court
Eastern District of Michigan

United States of America
V.
JERON RAMONE GASKIN

JUDGMENT IN A CRIMINAL CASE

Case Number: 11CR20178-1
USM Number: 45520-039

Thomas Randolph
Defendant's Attorney

THE DEFENDANT:

■ Was found guilty on count(s) **SS1, SS1 & SS3** after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846&841(b)(1)(C)	Conspiracy to Possess with Intent to Distribute & to Distribute Controlled Substances.	March, 2011	SS1
21:841(a)(1)	Possession with Intent to Distribute a Controlled Substance.	March, 2011	SS2 &SS3

The defendant is sentenced as provided in pages **2 through 6** of this judgment. This sentence is imposed pursuant to the Sentencing Reform Act of 1984

■ Count(s) **1,2,S1,S2&S3** are dismissed on the motion of the United States after a plea of not guilty.

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

June 4, 2013
Date of Imposition of Judgment

s/Patrick J. Duggan
United States District Judge

June 06, 2013
Date Signed

APPENDIX H

DEFENDANT: JERON RAMONE GASKIN
CASE NUMBER: 11CR20178-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **240 months on Count SS1, 120 months on Count SS2, to run consecutive to the term imposed on Count SS1 and 240 months on Count SS3, to run concurrent to the terms imposed on Counts SS1&SS2.**

The court makes the following recommendations to the Bureau of Prisons: **that defendant participate in a comprehensive drug treatment program.**

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____, with a certified copy of this judgment.

_____
United States Marshal

_____
Deputy United States Marshal

DEFENDANT: JERON RAMONE GASKIN
CASE NUMBER: 11CR20178-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years on each of Counts SS1, SS2 and SS3, to run concurrent.**

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

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

If the defendant is convicted of a felony offense, DNA collection is required by Public Law 108-405.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. Revocation of supervised release is mandatory for possession of a controlled substance.

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

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

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report ot the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and

14) the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. Revocation of supervised release is mandatory for possession of a firearm.

DEFENDANT: JERON RAMONE GASKIN
CASE NUMBER: 11CR20178-1

SPECIAL CONDITIONS OF SUPERVISION

☒ The defendant shall participate in a program approved by the Probation Department for mental health counseling. ☒ If necessary.

☒ The defendant shall participate in a program approved by the Probation Department for substance abuse which program may include testing to determine if the defendant has reverted to the use of drugs or alcohol. ☒ If necessary.

The defendant shall be lawfully and gainfully employed on a full-time basis, or shall be seeking such lawful, gainful employment on a full-time basis. "Full-time" is defined as 40 hours a week. In the event the defendant has part-time employment, he shall devote the balance of such 40 hours per week to his efforts of seeking additional employment.

The defendant shall take all medications as prescribed by his treating physician.

DEFENDANT: JERON RAMONE GASKIN
CASE NUMBER: 11CR20178-1

CRIMINAL MONETARY PENALTIES

	Assessment	Fine	Restitution
TOTALS:	$ 300.00	$ 0.00	$ 0.00

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

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS:	$ 0.00	$ 0.00	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JERON RAMONE GASKIN
CASE NUMBER: 11CR20178-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:
[A] Lump sum payment of **$300.00** due immediately.

Unless the court has expressly ordered otherwise in the special instructions above, while in custody, the defendant shall participate in the Inmate Financial Responsibility Program. The Court is aware of the requirements of the program and approves of the payment schedule of this program and hereby orders the defendant's compliance. All criminal monetary penalty payments are to be made to the Clerk of the Court, except those payments made through the Bureau of Prison's Inmate Financial Responsibility Program.

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.