INDEX TO APPENDICES

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **4:15-CR-00369-DGK(1)**
LAMONT E. OWENS	§	USM Number: **28181-045**
	§	**David Guastello**
	§	Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.
☒	was found guilty on Counts 1-8 after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
Possession with Intent to Distribute 28 Grams or More of Cocaine Base 21 U.S.C. §§ 841(a)(1) and (b)(1)(B)	10/27/2015	1s
Possession of Firearms in Furtherance of a Drug Trafficking Crime 18 U.S.C. § 924(c)(1)(A)(i)	10/27/2015	2s
Felon in Possession of Firearms 18 U.S.C. §§ 922(g)(1) and 924(a)(2)	10/27/2015	3s
Distribution of Cocaine Base 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)	08/31/2015	4s
Distribution of Cocaine Base 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)	09/16/2015	5s
Distribution of Cocaine Base 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)	10/05/2015	6s
Distribution of Cocaine Base 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)	10/14/2015	7s
Distribution of Cocaine Base 21 U.S.C. §§ 841(a)(1) and (b)(1)(C)	10/20/2015	8s

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

☒ All remaining counts are dismissed on the motion of the United States.

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.

March 7, 2019
Date of Imposition of Judgment

/s/ Greg Kays
Signature of Judge

GREG KAYS
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

March 8, 2019
Date

DEFENDANT: LAMONT E. OWENS
CASE NUMBER: 4:15-CR-00369-DGK(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:

120 months as to each of Counts 1, 3, 4, 5, 6, 7, and 8, concurrent; and 100 months on Count 2, consecutive, for a total term of 220 months custody. This term should run consecutively to any term of imprisonment with State Court cases.

☒ The court makes the following recommendations to the Bureau of Prisons:
Defendant be designated to a facility close to the Kansas City area.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: LAMONT E. OWENS
CASE NUMBER: 4:15-CR-00369-DGK(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 5 years as to each of Counts 1 and 2, and 3 years on each of Counts 3, 4, 5, 6, 7, and 8, all terms to run concurrently, for a total of 5 years supervised release.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☐ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

DEFENDANT: LAMONT E. OWENS
CASE NUMBER: 4:15-CR-00369-DGK(1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: LAMONT E. OWENS
CASE NUMBER: 4:15-CR-00369-DGK(1)

SPECIAL CONDITIONS OF SUPERVISION

(a) Successfully participate in any substance abuse counseling program, which may include urinalysis, sweat patch, or Breathalyzer testing, as approved by the Probation Office, and pay any associated costs as directed by the Probation Office.

(b) The defendant shall submit his person, and any property, house, residence, office, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to a search at any time, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

(c) Satisfy any warrants/pending charges within the first 60 days of supervision.

(d) The defendant shall comply with the Western District of Missouri Offender Employment Guideline which may include participation in training, counseling, and/or daily job searching as directed by the probation officer. If not in compliance with the condition of supervision requiring full-time employment at a lawful occupation, the defendant may be required to perform up to 20 hours of community service per week until employed, as approved or directed by the probation officer.

ACKNOWLEDGMENT OF CONDITIONS

I have read or have read the conditions of supervision set forth in this judgment and I fully understand them. I have been provided a copy of them.

I understand that upon finding of a violation of probation or supervised release, the Court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

_____ _____
Defendant Date

_____ _____
United States Probation Officer Date

DEFENDANT: LAMONT E. OWENS
CASE NUMBER: 4:15-CR-00369-DGK(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	Assessment	JVTA Assesment*	Fine	Restitution
TOTALS	$800.00		$.00	$.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
** 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.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $800.00 for Counts 1s, 2s, 3s, 4s, 5s, 6s, 7s and 8s, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

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) JVTA Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 19-1516

United States of America,

Plaintiff - Appellee,

v.

Lamont E. Owens,

Defendant - Appellant.

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: February 13, 2020
Filed: July 15, 2020

Before SMITH, Chief Judge, COLLOTON and STRAS, Circuit Judges.

COLLOTON, Circuit Judge.

Lamont Owens was convicted by a jury of drug trafficking and firearms offenses, and the district court[1] sentenced him to 220 months in prison. On appeal,

[1]The Honorable Greg Kays, United States District Judge for the Western District of Missouri.

Owens raises several challenges to his convictions and sentence. We conclude that there is no reversible error and therefore affirm the judgment.

I.

In August 2015, a Kansas City police officer learned from a confidential informant that Owens was selling drugs. Over the next few months, an undercover officer purchased crack cocaine from Owens on five occasions. Three times, officers observed Owens leave a house on Montgall Avenue before arriving at the location of the sale.

Police executed a search warrant at the house on Montgall Avenue in October 2015 and seized evidence of drug trafficking. On Owens's person, officers found 75 bags containing a total of fifteen grams of cocaine base. In a safe in one of the bedrooms, officers found a loaded handgun and nearly $10,000 in cash. From a dresser in the same bedroom, officers seized seven bags containing approximately two grams of cocaine base. In the basement, officers found nearly forty grams of cocaine base, approximately 100 baggies, a money counter, four digital scales, and two handguns, one of them loaded.

A grand jury returned an indictment with eight charges against Owens. One count, arising from drugs seized at the house, charged possession with intent to distribute 28 grams or more of cocaine base. Another count alleged possession of two firearms, seized from the basement of the house, in furtherance of a drug trafficking crime. A third count charged unlawful possession of firearms as a previously convicted felon. Five more charges were for distribution of cocaine base based on the sales to the undercover officer. After a trial, a jury found Owens guilty on all counts.

At sentencing, the district court determined an advisory guideline range of 152-175 months' imprisonment. The court then varied upward from the range and sentenced Owens to 220 months in prison.

II.

A.

On appeal, Owens first argues that he was convicted in violation of his right under the Sixth Amendment to trial by an impartial jury drawn from a fair cross section of the community. *See Duren v. Missouri*, 439 U.S. 357, 364 (1979). Owens, an African American, complains that the forty-five member venire panel for his trial included no African Americans. He objected to the composition of the panel and unsuccessfully moved to dismiss it. The district court noted that "from time to time our . . . jury panels lack diversity," but explained that the panel had been selected according to the district's ordinary practice, which draws names from merged lists of general election voter registration and licensed drivers. *See United States v. Horton*, 756 F.3d 569, 578 n.9 (8th Cir. 2014).

"The Constitution does not guarantee a defendant a proportionate number of his racial group on the jury panel or the jury which tries him; it merely prohibits deliberate exclusion of an identifiable racial group from the juror selection process." *United States v. Jefferson*, 725 F.3d 829, 835 (8th Cir. 2013) (internal quotation omitted). To establish a prima facie case of a constitutional violation, a defendant must show "(1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." *Duren*, 439 U.S. at 364. If a defendant makes this showing, then the

government must demonstrate that attainment of a fair cross section is incompatible with a significant governmental interest. *Id*. at 367-68.

Owens has not made a prima facie showing. He points to census data establishing that approximately twenty-four percent of citizens in Jackson County, Missouri, are African American, but Jackson County is not the entire Western District, and a discrepancy between demographic data and the composition of a single venire panel does not establish systematic exclusion in any event. *See Horton*, 756 F.3d at 578. Owens contends that the district court acknowledged systematic exclusion when it admitted that jury panels lack diversity "from time to time," but the court merely observed that not every venire panel drawn from the rolls of voters and drivers is racially diverse. A stronger showing is required to make a prima facie case of systematic exclusion.

B.

Owens raises several arguments related to jury instructions. We review to determine whether the instructions, taken as a whole, fairly and adequately submitted the issues to the jury. *United States v. Collier*, 932 F.3d 1067, 1076 (8th Cir. 2019).

Owens first challenges the court's instruction on reasonable doubt. The court used a definition of reasonable doubt that appeared for many years in the Eighth Circuit Model Jury Instructions. *See* R. Doc. 84, at 32; *Eighth Circuit Manual of Model Jury Instructions (Criminal)* 3.11 (1996).[2] Owens argues that the court erred

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[2]The district court gave the following instruction:

> A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond

by declining to use a different definition that appears in more recent publications of the model instructions. *See* R. Doc. 81, at 2; *Eighth Circuit Manual of Model Jury Instructions (Criminal)* 3.11 (2018).[3] The former instruction provides that proof beyond a reasonable doubt "must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it," while the latter adds that a person would not hesitate to rely and act upon the proof "in life's most important decisions." Owens's preferred instruction also adds that proof beyond a reasonable doubt is "proof that leaves you firmly convinced of the defendant's guilt." Owens also notes that the revised model instruction provides that a reasonable doubt is "not doubt based on speculation" whereas the earlier version said it is not a doubt based on "the mere possibility of innocence."

The district court did not abuse its discretion in defining reasonable doubt. The "model" jury instructions are not promulgated by this court. Unless mandated by this court in a decision, they may serve as "helpful suggestions," but are "not binding on

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> a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

[3]Owens requested the following instruction:

> Reasonable doubt is a doubt based upon reason and common sense, and not doubt based on speculation. A reasonable doubt may arise from careful and impartial consideration of all the evidence, or from a lack of evidence. Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person, after careful consideration, would not hesitate to rely and act upon that proof in life's most important decisions. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

the district courts." *United States v. Norton*, 846 F.2d 521, 525 (8th Cir. 1988). This court repeatedly has approved the version of the reasonable doubt instruction that the district court used here. *United States v. Spires*, 628 F.3d 1049, 1054 (8th Cir. 2011). That the Judicial Committee on Model Jury Instructions has amended the model instruction did not require the district court to deviate from its preferred version. *See United States v. Cornelison*, 717 F.3d 623, 628 (8th Cir. 2013).

Owens next disputes the district court's refusal to give an instruction as follows: "If you find and believe the evidence equally supports two theories, one consistent with guilt, one consistent with innocence, you must find the defendant not guilty." R. Doc. 81, at 3. The court declined to use this instruction, but told the jury that the defendant "begins the trial with a clean slate," and that the "burden of proof remains on the Government throughout the trial." R. Doc. 84, at 22. The court's instruction "accurately and correctly covered the substance" of Owens's proposed instruction, and the court was not required to use his preferred formulation. *United States v. Lewis*, 593 F.3d 765, 772 (8th Cir. 2010).

Owens's third contention relates to the instruction on the charge for unlawful possession of a firearm as a previously convicted felon. In light of *Rehaif v. United States*, 139 S. Ct. 2191 (2019), he argues that the district court erred by failing to instruct that the government must prove the defendant's knowledge that he was a person who had "been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(g)(1). Because Owens did not raise this objection in the district court, we review under the plain error standard. To prevail, Owens must show an obvious error that affected his substantial rights and seriously affected the fairness, integrity, or public reputation of judicial proceedings. *United States v. Olano*, 507 U.S. 725, 734-36 (1993).

The government tacitly acknowledges an obvious error after *Rehaif*, but maintains that Owens cannot satisfy the other two prongs of plain error review. The

third prong requires a defendant to "show a reasonable probability that, but for the error, the outcome of the proceeding would have been different." *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1343 (2016) (internal quotation omitted). The fourth prong calls for correction of an error only when a miscarriage of justice would otherwise result—that is, when the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Olano*, 507 U.S. at 736 (internal quotation and alteration omitted).

In this case, there was ample evidence available that Owens knew he was convicted of a crime punishable by imprisonment for a term exceeding one year. The record at sentencing showed that in 1990, Owens was convicted in Missouri state court of eight felonies, including second-degree murder, attempted first-degree robbery, armed criminal action, and first-degree assault. He was sentenced to eighty years' imprisonment and served twenty-two years. The government did not offer this evidence at trial, however, as it was not needed to prove the charge under then-prevailing law, and it would have been unfairly prejudicial to the defense if not relevant.

Assuming for the sake of analysis that plain error review should be limited to the record at trial, *see United States v. Miller*, 954 F.3d 551, 558 & n.17 (2d Cir. 2020), and that there would be a reasonable probability of a different outcome under a different jury instruction, this is not an appropriate case in which to correct an error. The full record shows that the government could have offered reliable evidence of Owens's criminal history at trial if it had been relevant under the prevailing law. There would have been no doubt that Owens, after serving twenty-two years in prison for murder and other felonies, was aware of his status as a person convicted of an offense punishable by more than a year in prison. Under these circumstances, rejecting Owens's claim would not seriously affect the fairness, integrity, or public reputation of judicial proceedings. *See id*. at 559-60. There was no plain error warranting relief.

C.

Owens also contends that the district court erred in responding to a question from the jury. During deliberations, the jury submitted the following question: "Is there anywhere in the instructions that defines trafficking? If not, could we have clarification on this." R. Doc. 83, at 1. The term "trafficking" appeared in the court's instruction on the crime of possession of a firearm in furtherance of a drug trafficking crime as charged in Count Two. There, the court did not define "drug trafficking crime," but instructed the jury that the government was required to prove (1) that the defendant committed the crime of possession with intent to distribute cocaine base, as charged in Count One, and (2) that the defendant knowingly possessed firearms in furtherance of that crime. R. Doc. 84, at 25. Possession with intent to distribute cocaine base was the relevant drug trafficking crime.

In response to the jury's query, the court answered that "[d]rug trafficking offense means an offense under federal, state or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance or the possession of a controlled substance with intent to manufacture, import, export, distribute or dispense." R. Doc. 83, at 3. The court explained to the parties that the language was drawn from a definition of "drug trafficking offense" in the United States Sentencing Guidelines. *See* USSG § 2L1.2, comment. (n.2). Owens objected and argued that the court should have referred the jury back to the original instructions.

A supplemental instruction in response to a jury's inquiry should be "accurate, clear, neutral, and non-prejudicial," and it should remain "within the specific limits of the question presented." *United States v. Hudspeth*, 525 F.3d 667, 679 (8th Cir. 2008) (internal quotations omitted). Owens argues that the supplemental instruction was

neither neutral nor limited to the question presented: the jury asked only about "trafficking," but the court responded with a definition of "drug trafficking offense."

We are not convinced that it was error for the court to address the meaning of "trafficking" in the context of "drug trafficking offense." When the word "trafficking" appeared in the instructions, it was part of the phrase "drug trafficking crime." The court's answer thus did not improperly push the jury to associate "trafficking" with drug crimes. That was the only context in which the word was used in the instructions.

In his reply brief, Owens argues for the first time that the supplemental instruction was improper because it defined "drug trafficking offense" to encompass the manufacture, importation, and exportation of a controlled substance. We generally do not consider arguments raised for the first time in a reply brief, but Owens is correct that there was no evidence in this case of "manufacture, importation, or exportation" of drugs, and that definitions from the sentencing guidelines do not necessarily align with the meaning of terms in the federal criminal code.

Even so, Owens was not prejudiced by the supplemental instruction. The instructions already advised the jury that the firearms charge in Count Two required proof that he committed the crime of possession with intent to distribute cocaine base as charged in Count One, and that he possessed the firearms in furtherance of that crime. R. Doc. 84, at 25. There is no reason to believe that the jury convicted Owens under Count Two based on his furthering some other drug trafficking crime mentioned in the supplemental instruction for which there was no evidence. *Cf. Griffin v. United States*, 502 U.S. 46, 59-60 (1991).

D.

Owens next contends that two of his convictions are not supported by sufficient evidence. Taking the evidence in the light most favorable to the verdict, we consider

whether a rational jury could have found the elements of the offense beyond a reasonable doubt. *United States v. El Herman*, 583 F.3d 576, 579 (8th Cir. 2009); *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Owens challenges his conviction under 18 U.S.C. § 924(c) for possession of firearms in furtherance of a drug trafficking crime. The firearms at issue were a nine millimeter handgun and a .357 caliber revolver, both found in the basement of the residence. The underlying drug crime was possession of crack cocaine with intent to distribute, based on drugs also found in the basement. To secure a conviction under § 924(c), the government was required to show that the defendant possessed a firearm and did so to advance his drug trafficking crime. The evidence must establish "a nexus between the defendant's possession of the firearm and the drug offense." *United States v. Hamilton*, 332 F.3d 1144, 1150 (8th Cir. 2003).

Owens asserts that the evidence is insufficient because there was no proof that he carried a firearm during a drug transaction or that he handled the two firearms recovered from the house. There was other evidence, however, that Owens possessed the guns and did so in furtherance of his drug trafficking crime. The guns were found in the basement of Owens's residence, and Owens told police that his wife "had nothing to do with anything." So it was reasonable to infer that the guns belonged to him, and that he constructively possessed them.

The guns and ammunition were located near quantities of crack cocaine suitable for distribution, four digital scales, packaging material, and a money counter. The government presented expert testimony that drug traffickers typically possess firearms "for the safety of themselves, their product, and their proceeds of their drug sales." The proximity of the guns and ammunition to cocaine and to other items associated with drug trafficking supports a reasonable inference that Owens possessed the firearms to further his drug trafficking offense. There was sufficient evidence to support the conviction.

Owens also argues that the government presented insufficient evidence to support a conviction of unlawful possession of a firearm as a previously convicted felon. *See* 18 U.S.C. § 922(g)(1). In light of *Rehaif*, the government was required to prove that Owens knew when he possessed a gun that he previously had been convicted of a crime punishable by more than a year in prison. Owens contends that the record at trial is insufficient on this element. Owens made general motions for judgment of acquittal at the close of the government's case and at the close of all evidence. R. Doc. 114, at 170, 173. Because he did not raise specific grounds that implicitly excluded others, *cf. United States v. Samuels*, 874 F.3d 1032, 1036 (8th Cir. 2017), we will assume for the sake of analysis that the general motions were sufficient to preserve a sufficiency challenge on the knowledge element. *See United States v. May*, 476 F.3d 638, 640 (8th Cir. 2007); *United States v. Staggers*, 961 F.3d 745, 754 (5th Cir. 2020); *United States v. Maez*, 960 F.3d 949, 958-59 & n.6 (7th Cir. 2020).

Given the prevailing law at the time, the government's evidence at trial about Owens's knowledge was limited to a stipulation of the parties that Owens "had sustained at least one felony conviction for which he could receive a term of imprisonment greater than one year." R. Doc. 114, at 160. Although the evidence was slender, we conclude that it was legally sufficient to establish knowledge and sustain the conviction. Rational jurors, using reason and common sense in light of their own observations and experiences, could infer beyond a reasonable doubt that a felony conviction would be a significant life event that a person would know about when it happened and remember at a later date. Generally speaking, "it is highly improbable that a person could be convicted of a felony without being aware that his possible sentence would exceed one year's imprisonment." *Miller*, 954 F.3d at 559. We thus conclude that Owens's conviction for unlawful possession of a firearm was supported by sufficient evidence. *Accord Staggers*, 961 F.3d at 757.

III.

Owens raises two challenges to his sentence. First, he contends that the district court erred in applying a two-level specific offense characteristic under USSG § 2D1.1(b)(12) for a defendant who "maintained a premises for the purpose of manufacturing or distributing a controlled substance." The district court adopted the recommendation of the probation office, which concluded that "one of the residence's primary or principal uses was to assist the defendant in distributing and storing drugs." R. Doc. 91, at 21; *see* R. Doc. 116, at 5. We review the court's factual findings for clear error and its interpretation of the guidelines *de novo*. *United States v. Sesay*, 937 F.3d 1146, 1153 (8th Cir. 2019).

The guideline commentary explains that this two-level increase applies to a defendant who "knowingly maintains a premises (*i.e.*, a building, room, or enclosure) for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution." USSG § 2D1.1 comment. (n.17). The court should consider "whether the defendant held a possessory interest in (*e.g.*, owned or rented) the premises," and "the extent to which the defendant controlled access to, or activities at, the premises." *Id*. The commentary further provides that "[m]anufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises." *Id.*

Owens argues that he held no possessory interest in the house, but the evidence to the contrary is sufficient to sustain the district court's finding. In May 2015, several months before the search, Owens reported an automobile accident to police and gave the house on Montgall Avenue as his address. During the search of the house, officers found a bill from Missouri Gas Energy addressed to Owens at the Montgall Avenue address. After the search, when Owens was transported to the police station, he told the officers that he lived at the residence with his wife and children.

Owens also claims that distribution of drugs was not one of the "primary purposes" for which he maintained the house. The record contained ample evidence to support the district court's finding to the contrary. Officers saw Owens depart the house immediately before selling drugs to an undercover officer on three occasions. Investigators found quantities of crack cocaine suitable for distribution in two rooms of the house. The basement, in particular, stored extensive evidence of drug distribution: nearly forty grams of cocaine base, approximately 100 baggies, a money counter, four digital scales, and two handguns. Consistent with this evidence, the district court found that "the main thing that was going on down . . . in the basement . . . was a drug premises." R. Doc. 116, at 5. Owens points out that none of the undercover drug buys took place at the house, but a transaction on the premises is not a prerequisite for applying the specific offense characteristic. There was no clear error in applying the two-level increase.

Second, Owens maintains that the district court imposed an unreasonable sentence when it varied upward from the advisory range of 152 to 175 months' imprisonment to a term of 220 months. A sentence must be reasonable with regard to the factors set forth in 18 U.S.C. § 3553(a). We review reasonableness under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). "We may consider the extent of any deviation from the guideline range, *id*. at 47, but *Gall* forbids requiring proportional justifications for variances from the range, and even extraordinary variances do not require extraordinary circumstances." *United States v. Johnson*, 916 F.3d 701, 703 (8th Cir. 2019).

In explaining its decision, the district court cited Owens's prior sentence for murder and observed that he violated prison rules fifty-seven times while serving twenty-two years of his term in Missouri. The violations included rioting, assaultive behavior, physical struggle, fighting, theft, intoxicating substance possession, creating a disturbance, and disobeying an order. The court thus expressed concern about Owens's respect for the rule of law. The court also remarked that while there were

some positive things going on in Owens's life, "much of it is clouded with putting poison in the community," and cited the need for deterrence and protection of the public. In sum, the court concluded that the guidelines were "too low on this case" and did not "adequately account for this behavior, and all those other factors."

Owens complains that the court put too much weight on his criminal history and too little weight on the "non-violent" nature of his crime. District courts, however, have "wide latitude to weigh the § 3553(a) factors in each case and to assign some factors greater weight than others." *Johnson*, 916 F.3d at 703 (internal quotation omitted). Owens's offense conduct, criminal history, and prison conduct were appropriate factors for the court to consider, and it was permissible for the court to view Owens's drug trafficking, even if "non-violent," as a serious offense that put "poison in the community." We conclude that the court did not commit a clear error in judgment in fashioning a sentence.

* * *

The judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1516

United States of America

Plaintiff - Appellee

v.

Lamont E. Owens

Defendant - Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:15-cr-00369-DGK-1)

JUDGMENT

Before SMITH, Chief Judge, COLLOTON, and STRAS, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

July 15, 2020

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Adopted April 15, 2015
Effective August 1, 2015

Revision of Part V of the Eighth Circuit Plan to Implement the Criminal Justice Act of 1964.

V. Duty of Counsel as to Panel Rehearing, Rehearing En Banc, and Certiorari

Where the decision of the court of appeals is adverse to the defendant in whole or in part, the duty of counsel on appeal extends to (1) advising the defendant of the right to file a petition for panel rehearing and a petition for rehearing en banc in the court of appeals and a petition for writ of certiorari in the Supreme Court of the United States, and (2) informing the defendant of counsel's opinion as to the merit and likelihood of the success of those petitions. If the defendant requests that counsel file any of those petitions, counsel must file the petition if counsel determines that there are reasonable grounds to believe that the petition would satisfy the standards of Federal Rule of Appellate Procedure 40, Federal Rule of Appellate Procedure 35(a) or Supreme Court Rule 10, as applicable. *See Austin v. United States,* 513 U.S. 5 (1994) (per curiam); 8th Cir. R. 35A.

If counsel declines to file a petition for panel rehearing or rehearing en banc requested by the defendant based upon counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion to withdraw must be filed on or before the due date for a petition for rehearing, must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for rehearing, and must request an extension of time of 28 days within which to file pro se a petition for rehearing. The motion also must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

If counsel declines to file a petition for writ of certiorari requested by the defendant based on counsel's determination that there are not reasonable grounds to do so, counsel must so inform the court and must file a written motion to withdraw. The motion must certify that counsel has advised the defendant of the procedures for filing *pro se* a timely petition for writ of certiorari.

A motion to withdraw must be accompanied by counsel's certification that a copy of the motion was furnished to the defendant and to the United States.

Where counsel is granted leave to withdraw pursuant to the procedures of *Anders v. California,* 386 U.S. 738 (1967), and *Penson v. Ohio*, 488 U.S. 75 (1988), counsel's duty of representation is completed, and the clerk's letter transmitting the decision of the court will notify the defendant of the procedures for filing pro se a timely petition for panel rehearing, a timely petition for rehearing en banc, and a timely petion for writ of certiorari.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-1516

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Appellant

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:15-cr-00369-DGK-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 18, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans