NO. _____

In The
Supreme Court of the United States

KENDESIA JUINIZE MAY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the trial court committed plain error in refusing to grant a "buy-sell" defense jury instruction when the government's evidence of a conspiracy consisted of a series of buy-sell transactions.

2. Whether the trial court erred in refusing to grant the defendant's Rule 29 motion for judgment of acquittal when the government's evidence failed to prove the agreement necessary to establish the defendant's participation in a conspiracy.

STATEMENT OF RELATED CASES

- *United States v. May*, No. 19-cr-00007-LMB-1, U. S. District Court for the Eastern District of Virginia. Judgment entered Jubne 7, 2019.

- *United States v. May*, No. 19-4454, U. S. Court of Appeals for the Fourth Circuit. Judgment entered July 1, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kendesia Juinize May ("Mr. May" or "Petitioner") respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's opinion appears at Pet. App. 1a-6a. The judgment of the United States District Court for the Eastern District of Virginia is found at *United States v. May*, Pet. App. 7a-11a.

JURISDICTION

The Fourth Circuit entered the judgment for which review is sought on July 1, 2020 (Pet. App. 1a-6a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The federal statutes at issue in this case are 21 U.S.C. §§ 841(a)(1) and 846. Section 841(a)(1) provides in relevant part:

> Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense a controlled substance . . .

21 U.S.C. § 841(a)(1).

Section 846 provides:

> Any person who . . . conspires to commit any offense defined in this Subchapter shall be subject to the same penalties as those prescribed for The offense, the commission of which was the object of the . . . conspiracy.

21 U.S.C. § 846.

INTRODUCTION

The defendant, Kendesia May, was indicted for conspiracy to distribute methamphetamine. At trial the government presented evidence of numerous buy-sell transactions, some involving large quantities of methamphetamine. None of the transactions, however, displayed any hallmarks of the type of agreement present in, and necessary to, a conspiracy. Moreover, none of the witnesses testified as to any such relationship with the defendant. The trial court, however, refused to grant a "buy-sell" jury instruction proposed by the defense and so committed plain error. Additionally, the trial court erred by failing to grant the defendant's Rule 29 motion for judgment of acquittal when the evidence did not demonstrate the type of agreement necessary to a conspiracy.

STATEMENT OF THE CASE

On January 10, 2019 a federal grand jury in the Eastern District of Virginia charged Kendesia May and Matthew Cochran with Conspiracy to Distribute Methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. JA 187-95. The Indictment alleged that the offense involved "a. 50 grams or more of methamphetamine . . . and b. 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine." *Id*.

Prior to trial defendant Kendesia May filed a proposed Jury Instruction outlining a "Buyer-Seller Relationship" as a defense to the conspiracy charge. JA 256.

The case went to trial on March 12, 2019. JA 264. The Government's first witness was Gabriel Figueroa. JA 266. Mr. Figueroa was incarcerated at the time

of his testimony, having pleaded guilty to Possession of Methamphetamine with the Intent to Distribute. He was testifying as part of his plea agreement with the Government. JA 267-69. Figueroa identified the defendant May. JA 267. Figueroa identified himself as a drug dealer and described his use of a scale in that role as well as terms used to describe quantities of drugs. He admitted that, while cooperating with law enforcement he continued to use illegal drugs. JA 272.

Figueroa identified Thomas Teeters as his "source/business partner" in California for obtaining pound quantities of methamphetamine. JA 273. He then identified a photograph of Teeters JA 274, JA 665. He and Teeters shipped the methamphetamine to a number of locations, including "Washington, D.C. [and] Virginia." JA 275. They would ship the methamphetamine via Federal Express using false accounts. JA 276. Figueroa described how he, Teeters and others, not including the defendant, created fraudulent shipping labels that were placed on packages to send methamphetamine to various locations. JA 276-77. They would provide customers with tracking numbers for the packages. JA 278.

Figueroa shipped and received money as well as drugs. The money was in payment for the drugs. JA 282. Figueroa named the defendant as one of his and Teeters "customers". JA 282. He sent the defendant methamphetamine and received cash in return. JA 282. Figueroa then described how he travelled to Washington D.C. from California to sell methamphetamine. JA 283. Thomas Teeters would send him the methamphetamine *via* Federal Express. JA 284.

According to Figueroa, he met the defendant May in the Washington, D.C. area "at the end of 2017" on a "gay hookup site." JA 284. Figueroa said that May told him that he, May, was in Washington "escorting and drug dealing" and that he was in D.C. "every weekend." JA 286. While in D.C. he would stay at the "Joud Residence." JA 286.

At the end of 2017 when he met May, Figueroa had decided to return to California as he was fearing arrest by the Drug Enforcement Agency. Figueroa testified that the defendant said that he wished to purchase Figueroa's methamphetamine customers. JA 288-89. After returning to California Figueroa decided to sell his customers to May for $25,000.00. May would also agree to purchase his methamphetamine from Figueroa. JA 289. Figueroa informed his customers in Washington that he was selling his customer list to May by selling him his cell phone with his customers' names and telephone numbers. JA 290. Figueroa claimed to have arranged meetings in New York and California between May and Figueroa's "business partner" Tom Teeters, although he did not claim to be present at the meetings. JA 292-93. According to Figueroa, a person named "Frankie," who was May's "husband" also sent Figueroa money for drugs in California. JA 292.

Figueroa testified that, at the beginning of his relationship with May, the latter would purchase "one to two pounds of methamphetamine." This increased to "5 or 6 pounds" before May switched and became Tom Teeters' customer. JA 295.

The packages were sent, *via* Federal Express, to May's addresses in New York and the Joud Residence in Washington D.C. JA 295.

Figueroa stated that methamphetamine would be sold to May with the latter receiving the drugs under various names, JA 296, and identified a shipping label as having been sent to the defendant's address from Figueroa's and Teeter's address in California. JA 298.

Figueroa then identified several text messages between he and the defendant regarding the latter's payments for methamphetamine. JA 299-304. In addition, he described the "Cash App" method by which May would send payment for methamphetamine he had received. JA 305. He also identified a number of transactions between Figueroa and May representing payments in that manner. JA 306. Figueroa then went on to describe sales of methamphetamine to May after May became Tom Teeters' "customer." JA 306-07. Figueroa then identified a number of text communications through which he negotiated with May the price at which he and his "people" in California would sell methamphetamine to May and, eventually, the purchase price of Figueroa's phone with its customer telephone numbers. JA 309-21.

At the opening of the second day of trial the defendant informed the court of his desire to represent himself. The court granted the defendant's motion and retained original trial counsel as "backup/standby counsel". JA 331-334. From this point until the close of the trial the defendant represented himself.

The government continued with its direct examination of the Gabriel Figueroa on the second day. JA 336. Figueroa stated that the defendant normally stayed at an address in the District of Columbia when he came to the D.C. area. JA 338-39. Figueroa confirmed that he sold his telephone to May and that he communicated with May in arranging that transaction at the defendant's phone number. JA 339. Figueroa identified text messages in which May stated that, although he sold methamphetamine, he did not sell to many of the people whose numbers were on Figueroa's telephone. JA 341.

Using Government's Exhibit 3-1C Figueroa stated that a meeting occurred between Tom Teeters and May on April 2, 2018 to establish the price at which May would purchase methamphetamine from Teeters. JA 342-43, JA 669. The government also established that Figueroa viewed May as Teeters' "customer" by that date. JA 344. Figueroa then explained the method for determining the pricing for the sale of methamphetamine once a "customer" had been "passed on" from Figueroa to Teeters and vice versa. JA 343-44.

Figueroa then explained how methamphetamine was used and the quantity ingested per use by the average user. JA 345-46. He then confirmed that, to him, an ounce of methamphetamine was a "distribution quantity." JA 346.

On cross examination by the defendant, Figueroa stated that he had no knowledge as to whether the defendant shipped any drugs. He also admitted that, once the defendant bought drugs from Figueroa, the latter had no control over what the defendant did with them and did not know what the defendant would do with

the drugs. Figueroa was not paying the defendant to sell drugs for him. JA 349. Figueroa admitted that the defendant had no obligation to sell drugs to the "customers" who were on the phone that Figueroa had sold to the defendant. JA 352. Figueroa sold drugs to the defendant and the latter bought drugs from Figueroa "[n]othing more, nothing less." JA 352.

As its next witness the government called Phillip Voorhees. JA 354. Vorhees testified that he lived in Springfield, Virginia and that he knew the defendant. JA 355-56. He admitted that he was testifying pursuant to a plea agreement with the government and identified the agreement. JA356. Voorhees testified that he was a user of, *inter alia*, methamphetamine. JA 357. He also stated that he met Gabriel Figueroa through a "gay chat site" ant that he began to purchase methamphetamine from him. JA 358-59. Voorhees testified that Figueroa told him that, when the latter was out of town that "he would be working with [May]." JA 359. This, of course is contrary to Figueroa's testimony that he sold his customers to May and thereafter had no relationship with May other than that of seller and purchaser. JA 350. Voorhees testified that Figueroa did not introduce Voorhees to May. JA 359. Voorhees bought methamphetamine from the defendant "three, maybe four times" in quantities of no more than 3.5 grams. He never saw the defendant with more than that amount. The transactions were arranged by text. JA 360. Voorhees then identified, as Government's Exhibits 3-5A through J screenshots of his text messages with Figueroa and May regarding his purchases of methamphetamine. The government used these text messages in an effort to

establish that Figueroa and May were working together selling methamphetamine. JA 361-64, JA 726-735. This, again, was contrary to Figueroa's earlier testimony. JA 349-52

The government next called Michael Larson as a witness. JA 365. Larson testified that he lived in Alexandria, Virginia and that he knew the defendant. JA 366. Larson admitted that he was testifying "pursuant to a grant of testimonial immunity." JA 367. He stated that he had used illegal drugs, including methamphetamine, as recently as the week prior to his testimony. JA 367. Larson also admitted that he had previously sold methamphetamine. JA 368. Larson stated that Gabriel Figueroa had previously sold him methamphetamine and introduced him to Kendesia May in January, 2018. JA 368-69, 370. Larson purchased methamphetamine from the defendant "five or six times" in quantities of 1 to 2 ounces. JA 369. He then resold to others some of the drugs that he had purchased. Larson never saw the defendant with a digital scale. JA 370. Larson used the telephone number that he once used to contact Gabriel Figueroa to contact May. He identified, as Government Exhibit 3-4M a text message he received from Figueroa informing him of the transfer of his telephone number to the defendant. JA 372, JA 716.

Using Government Exhibits 3-4Q-S, Larson then described three occasions on which he purchased ounce quantities of methamphetamine from the defendant. JA 373-77, JA 720-722. He then agreed that he provided "portions of that methamphetamine to others for money." JA 377. On cross examination Larson

admitted that the drugs were "mostly for personal use" and that the defendant had "no say" regarding what Larson did with the drugs after purchasing them. JA 379. The defendant, the witness admitted, had no "invested interest in what [Larson] did with the drugs after" Larson purchased them. JA 379-80.

The government then called Rodney Quinones as a witness. JA 381. Mr. Quinones identified the defendant and admitted that he was testifying pursuant to a grant of testimonial immunity. JA 382. Quinones admitted to having used a number of illegal drugs, including methamphetamine. JA 384. Quinones also admitted that he was, at one time, a drug dealer. JA 384. He identified Gabriel Figueroa as his "dealer," and agreed that he would sell methamphetamine obtained from Figueroa. JA 385. According to Quinones, Figueroa introduced him to the defendant at the beginning of 2018. JA 385. He thereafter purchased "an ounce" of methamphetamine from the defendant "two or three times." JA 387. On one occasion there was a "younger kid there" who brought the bag with the meth from the room," and "handed the drugs to the defendant." JA 388. Quinones admitted that he was arrested in Arlington, Virginia and that, when arrested he was in possession of approximately "a gram" of methamphetamine the he had obtained from the defendant. JA 389. Quinones then identified the phone number at which he contacted May as having previously belonged to Gabriel Figueroa. JA 391. He also identified a text communication from Figueroa confirming that Figueroa's telephone had been sold to the defendant. JA 390-91, JA 680. Quinones then

identified text communications from, and to, the defendant arranging for the purchase, and sale, of methamphetamine. JA 392-394.

On cross examination Quinones agreed that, once he purchased the methamphetamine from May, the latter retained no interest in the drugs or a say with respect to what Quinones did with the drugs. JA 396. The witness agreed that he was not friends with May and that they were not part of a gang. Finally, Quinones agreed that it was he, himself, who made the decision to sell the drugs and that the defendant had not given him any "instructions on what to do with the drugs after [he] left the hotel." JA 398.

The government's next witness was Paul Goddin. JA 399. Goddin identified the defendant and, like Larson and Quinones, admitted that he was testifying pursuant to a grant of testimonial immunity. JA 400. Goddin, like the earlier witnesses, admitted to having used a number of illegal drugs, including methamphetamine. JA 401. Goddin knew Gabriel Figueroa as his drug dealer and purchased quantities of methamphetamine from him "from an 8 ball to an ounce." JA 401-02. Goddin admitted to having picked up Federal Express packages containing methamphetamine for Figueroa. JA 403.

Goddin testified that Figueroa introduced him to Kendesia May in 2017. JA 403-04. Fiueroa was "transferring his business to the defendant." JA 404. Thereafter Goddin began purchasing methamphetamine from May by text, using the same telephone number previously used by Figueroa. JA 404. The purchases of methamphetamine from May took place in Washington, D.C. and occurred "like,

maybe from six to ten times." JA 404-05. The quantities purchased were between "half an ounce to an ounce." JA 405. Goddin didn't see May with any more methamphetamine than what he was buying. JA 405. According to Goddin "a couple of younger guys" would bring the defendant "the product" from another room. JA 405. He also saw the defendant with digital scales, the purpose of which was to "measure out small to large amounts of a drug . . ." JA 406. Goddin stated that he would pay the defendant with Cash App, which accomplishes the electronic transfer of money between bank accounts. JA 406. He identified the defendant's Cash App user name as "RedXXL." JA 406-07. Goddin then identified, as Exhibits 5-5A through H, transfers of money from him to the defendant. JA 407-08, JA 1175-1182. The total was approximately $8,500.00. JA 408.

On cross examination the witness agreed that, after purchasing the drugs, he owned them and that May had no further say regarding what Goddin did with them. JA 409. He and the defendant were not part of a gang, did not "hang out," did not socialize. The extent of their relationship was the purchase and sale, between them, of methamphetamine. JA 410.

The government called Matthew Cochran as its next witness. JA 412. Cochran was incarcerated at the time of his testimony and he admitted that he had been charged in the case, with the defendant, with conspiracy to distribute methamphetamine. JA 413. He had pleaded guilty to the charge and his plea agreement was received in evidence. JA 413-14. The witness admitted to a pending drug charge in Arlington County as well, to which he had entered a guilty plea, JA

415, and another drug charge in Prince William County which had been dismissed. JA 416-17.

Cochran admitted to having used a number of drugs, including methamphetamine. JA 417. He admitted to knowing a woman named Nina Booher, with whom he had lived and to whom he had sold "half pounds and pounds" of methamphetamine. JA 418. The methamphetamine that he sold to Booher she would resell to others. JA 418.

Cochran testified that the methamphetamine that he sold to Booher he purchased from Kendesia May. JA 419. Cochran had contact with May initially when May texted him on Gabriel Figueroa's previous telephone number. JA 419. He stopped buying from Figueroa and started buying from the defendant in "early 2018." He purchased methamphetamine from the defendant "less than ten, but probably more than a handful" of times. JA 420. The transactions occurred until May of 2018. JA 420. He typically purchased a pound from the defendant and the most he purchased was 2 pounds. JA 420. After purchasing methamphetamine from the defendant he sold it to others. JA 421. Using Government Exhibits 3-2A through E, Cochran identified the phone number at which he would contact May and, previously, Gabriel Figueroa regarding the purchase of methamphetamine. JA 422, JA 675-679. According to Cochran the defendant said that "he [May] would be sent the methamphetamine" from California. JA 423. Cochran then identified Government Exhibits 3-2B, C and E as text messages between him and the defendant arranging the sale, from the defendant to Cochran, of methamphetamine.

JA 423-26, JA 676, 677, 679. Cochran also identified, as Government Exhibit 5-2, a Cash App transaction by which he paid the defendant for methamphetamine. JA 427-28, JA 1173. Finally, Cochran stated that the drugs that he possessed at the time of his arrest in Arlington County, Virginia he purchased from May. JA 429.

On cross examination, Cochran, like the other witnesses, admitted that the defendant had no control over what Cochran did with the drugs after purchasing them. When asked on re-direct examination what the nature of their business relationship was, Cochran stated "just that I would purchase methamphetamine from him again." JA 432-33.

The government then called as a witness Arlington Police Officer Mitchell Casey. JA 433. Officer Casey testified as to the arrest of Matthew Cochran and the discovery of drugs in Cochran's vehicle. He identified the packaging in court and described how he maintained chain of custody of same. JA 434-37, JA 669. On cross examination, Officer Casey testified that he had never before seen the defendant. JA 437-38.

The government then called Special Agent Kendrah Petersen of the Drug Enforcement Administration (DEA). JA 439. Agent Peterson identified the defendant as a subject of a DEA investigation. JA 439. Agent Petersen described taking custody of the alleged methamphetamine confiscated at the time of Matthew Cochran's arrest, and transporting it to the DEA Mid-Atlantic Laboratory. JA 440-43.

The government's next witness was Joseph Dembrowski, a forensic chemist with the DEA. JA 444. With the assistance of Government Exhibit 1-3A, Dembrowski testified that he analyzed the substance obtained from Matthew Cochran's vehicle and concluded that it was methamphetamine hydrochloride and methamphetamine. JA 447-451, JA 666.

The government next called Corporal Johnathan Malfi of the Maryland State Police. JA 454. Corporal Malfi testified that he participated in a traffic stop as a result of a "be on the lookout" on May 25, 2018 in Baltimore, Maryland. When he arrived at the scene he spoke to a passenger who said that weapons and drugs were present in the vehicle. JA 455-56. As a result, Corporal Malfi searched the vehicle and the luggage inside and found a scale and a package that appeared to contain methamphetamine. JA 457. Corporal Malfi identified the defendant as the driver of the vehicle.

Malfi transported the contents of the vehicle to the station and took photographs. JA 457-60. He then described having found in the vehicle two digital scales, five bags of suspected methamphetamine, a number of ziplock bags, a Federal Express shipping parcel bag and the registration for the vehicle in which the materials were found. JA 461. Malfi then identified the name on the shipping label for the FedEx packaging found in the vehicle as "K. May". The sender was "Tim Jewensky." JA 462-63. The government then read into evidence a stipulation between the government and the defense that the materials that Corporal Malfi recovered totaled 1,987.3 grams of methamphetamine. JA 463-64.

The government next called Detective Kevin Davis of the Maryland Transportation Authority Police. JA 468. Detective Davis testified that he interviewed the defendant following his arrest in Maryland. JA 469-70. During the interview the defendant provided his address, telephone number and admitted that he owned the vehicle he was driving that day. JA 474-75. Several excerpts of the defendant's recorded interview were then played for the jury. The defendant stated during the interview that he did not know what was in the FedEx package and that he was simply delivering it to someone. JA 479.

As its final witness the government called Detective Thomas Hanula of the Arlington County Police. JA 485. Det. Hanula also testified as a "deputized task force officer with the DEA." JA 485. Hanula testified that the defendant came to his attention through his investigation of Gabriel Figueroa and that he had learned through cooperating witnesses that Figueroa's customers and telephone were sold to May. JA 487. He identified the vehicle in which May was stopped in Baltimore, its registration, and the address and phone number associated with that registration. JA 487-89. Hanula was also aware of the phone number that became the defendant's when Figueroa sold May his phone. JA 490.

Hanula also identified the FedEx packaging and label obtained from the defendant's vehicle at the time of the Baltimore traffic stop. JA 492. Employing the package's tracking number, Hanula obtained records from Federal Express associated with that number. Using that information Hanula obtained a video of the sender of the package. JA 493. Hanula then identified a screen shot from the

video. JA 494. He then identified that sender in the photograph as Thomas Teeters and the date and time of the photograph. JA 495.

Hanula then subpoenaed additional Federal Express records, seeking any pattern with respect to addresses, customer numbers or billing numbers. JA 496. The government then moved in Exhibits 13-1, 2, 3 and 4 which were a large number of Federal Express shipping label, the authenticity of which, and status as business records, had been previously stipulated. JA 496, JA 18, 72, 140. Among the records Hanula found several that he associated with names used by the defendant. JA 497. He confirmed the addresses as being associated with May.

Hanula also subpoenaed billing records from several hotels at which the defendant had stayed when in the D.C. area. JA 497-98, JA 18, 72, 140. He confirmed through credit card records the dates when May stayed at each hotel. JA 500. Hanula then matched the dates of the defendant's presence at the hotels with the dates of sales of methamphetamine, and with FedEx packages having been sent to the defendant at those locations. JA 501. Additionally, Hanula discovered records of FedEx packages that the defendant had sent to California. JA 502.

Hanula also subpoenaed records from cell phone applications Cash App/Square Cash seeking evidence that the defendant sent or received money via that application when purchasing or selling methamphetamine. JA 503. Hanula then testified as to the totals of payments to the defendant's Cash App Account and matched several dates of sales to witnesses who had previously testified. JA 505-06.

Hanula also testified as to an extraction report based on an iCloud download of communications between the defendant's phone number and the phone number identified as being utilized by Thomas Teeters. JA 508. He also prepared extraction reports from the "chat" portion of the iCloud account. JA 508. From these extractions Hanula testified as to alleged communications between and various individuals relating to drug sales and purchases. JA 512-520. Hanula then identified several communications between the defendant's telephone number and a listing for "Tom T" the same number "identified [as] belonging to Tom Teeters." This being the same telephone number listed on the FedEx package "that was seized in Baltimore on May 24." JA 524. Hanula then read a number of communications arranging for the sale and shipment of methamphetamine from Thomas Teeters to May immediately before the defendant's arrest in Baltimore in May, 2018. JA 525-528.

Following Detective Hanula's testimony the government rested. JA 540. The defense chose not to offer any evidence. JA 543. The defendant then made a Rule 29 motion for judgment of acquittal, arguing that the government had not established his participation in a conspiracy. JA 541. The court denied the motion. JA 543. Following the close of the evidence, the trial court refused to give the defendant's proposed buy-sell jury instruction, reasoning that "the seller-buyer is not called for in this case because this is clearly, the law does not support that, and the evidence does not support that." JA 544. Following deliberations, the jury convicted the defendant of the charge for which he had been indicted. JA 1233.

SUMMARY OF THE ARGUMENT

The defendant, Kendesia May, was indicted for conspiracy to distribute methamphetamine. At trial the government presented evidence of numerous buy-sell transactions, some involving large quantities of methamphetamine. None of the transactions, however, displayed any hallmarks of the type of agreement present in, and necessary to, a conspiracy. Moreover, none of the witnesses testified as to any such relationship with the defendant. The trial court, however, refused to grant a "buy-sell" jury instruction proposed by the defense and so committed plain error. Additionally, the trial court erred by failing to grant the defendant's Rule 29 motion for judgment of acquittal when the evidence did not demonstrate the type of agreement necessary to a conspiracy.

STANDARD OF REVIEW

This Court reviews for "plain error" the district court's refusal to grant a jury instruction where the proponent fails to make a contemporaneous objection at the time of the refusal to grant the instruction. *United States v. Olano*, 507 U.S. 725, 731-32, 113 S. Ct. 1770 (1993).

This Court reviews the denial of a motion for judgment of acquittal *de novo*. *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 238 (2018).

ARGUMENT

I. The Trial Court Committed Plain Error When It Refused To Give Defendant's Proposed "Buy-Sell" Instruction To The Jury.

Prior to trial defendant Kendesia May filed a proposed Jury Instruction outlining a "Buyer-Seller Relationship" as a defense to the conspiracy charge. JA 256. Following the close of the evidence, the trial court refused to give the instruction, reasoning that "the seller-buyer is not called for in this case because this is clearly, the law does not support that, and the evidence does not support that." JA 544.

The defense in this case did not contemporaneously object at the time of the trial court's refusal to grant the defendant's proposed buy/sell jury instruction. JA 544, 554, 611. As a result, this Court will review the trial court's refusal to grant that instruction only for plain error that affects the defendant's "substantial rights". Fed. R. Crim. P. 52(b), *United States v. Olano*, 507 U.S. 725, 731-32, 113 S. Ct. 1770 (1993).

> For the appellate court to notice an error not preserved by a timely objection [a defendant] must show that an error occurred, that the error was plain, and that the error affected his substantial rights. Even if [a defendant] can satisfy these requirements, correction of the error remains within [the appellate court's] sound discretion, which [it] should not exercise unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

United States v. Hastings, 134 F.3d 235, 239 (4th Cir. 1998).

The trial court's error on this issue was plain. In *Olano*, *supra*, the Supreme Court defined "plain" as "synonymous with 'clear' or, equivalently, 'obvious.'" 507

U.S. at 734. Every lay witness who testified for the government as to their relationship with the defendant testified, at most, to a series of purchases or sales of methamphetamine. Gabriel Figueroa, after meeting the defendant in 2017, agreed to sell him his telephone with the names and telephone numbers of his customers. JA 288-89. The two did not enter into an agreement to sell to those customers. Figueroa admitted that the defendant had no obligation to sell drugs to the "customers" who were on the phone that Figueroa had sold to the defendant. JA 352. This was an arm's length transaction pursuant to which Figueroa sold the defendant a commodity, his phone and the contents and received compensation in return - $25,000.00. JA 289. Figueroa and, eventually, Thomas Teeters, entered into an agreement to sell methamphetamine to the defendant and the defendant agreed to buy it, but neither agreed to do anything beyond that.

> A drug-distribution conspiracy under 21 U.S.C. § 846 requires proof that the defendant knowingly agreed-either implicitly or explicitly-with someone else to distribute drugs. When the alleged coconspirators are in a buyer-seller relationship, however, we have cautioned against conflating the underlying buy-sell agreement with the drug-distribution agreement that is alleged to form the basis of the charged conspiracy. To support a conspiracy conviction, there must be sufficient evidence of an agreement to commit a crime *other than* the crime that consists of the sale itself.

United States v. Johnson, 592 F.3d 744, 754 (7th Cir. 2010) (*citations omitted, emphasis in original).* In this case the government's evidence of the relationships between Figueroa, Teeters and the defendant, after Figueroa's sale of his phone to the defendant, consisted exclusively of evidence of an agreement to sell drugs to the

defendant and the defendant's agreement to buy them. JA 295, 299-304, 305-307, 342-343. No evidence whatever was presented of an agreement to act in concert to sell those drugs to others. *Johnson, supra.*

During his testimony, Figueroa referred to only one person as his "business partner," implying the sort of agreement that one would see in a conspiracy. That reference was to Thomas Teeters, the person in California with whom he had shipped methamphetamine throughout the United States. JA 273. Throughout his testimony he referred to the defendant as either his or Teeters' "customer" for the sale and purchase of methamphetamine. JA 282, 295, 306-307. The "customer" relationship is precisely the type of relationship described in *Johnson*, *supra*, as being insufficient, by itself, to establish a conspiratorial relationship.

This is also true with respect to the remaining lay witnesses. Michael Larson testified that he purchased methamphetamine from the defendant "five or six times." JA 369. Larson then resold some of that methamphetamine to others, JA 377, but admitted on cross examination that the drugs were "mostly for personal use." JA 379. Again, no agreement was established that Larson and the defendant agreed together to sell drugs to others.

The same can be said of Rodney Quinones, who testified that he purchased drugs from May "two or three times." JA 387. No evidence of a relationship was presented beyond these simple transactions.

Paul Goddin testified that he purchased methamphetamine from the defendant "six to ten times." JA 404-405. The government presented no evidence of any relationship or agreement between the two beyond these sales.

Finally, Michael Cochran testified that he purchased methamphetamine from May "less than ten, but probably more than a handful" or times. JA 420. All of the evidence of text communications between Cochran and the defendant consisted of arrangements to purchase or sell methamphetamine. JA 423-426. To the point, when asked on re-direct examination what the nature was of his business relationship with May, Cochran responded "just that I would purchase methamphetamine from him again." JA 432-33.

Lastly, even the numerous text and "chat" communications obtained from the iCloud download to which Detective Hanula testified, while at times explicit, did not contain any evidence of an agreement to do anything other than purchase or sell a quantity of methamphetamine. JA 432-33.

In arguing that an agreement to distribute methamphetamine did exist, the government may point to this Court's decision in *United States v. Hackley*, 662 F.3d 671 (4th Cir. 2011). In that decision this Court held that

> evidence of a continuing buy-sell relationship when coupled with evidence of large quantities of drugs, or continuing relationships and repeated transactions creates a reasonable inference of an agreement.

662 F.3d at 679, *citing United States v. Reid*, 523 F.3d 310, 317 (4th Cir. 2008).

Thus, the government may argue, the number of transactions of which evidence was presented here, the continuing nature of the relationships among May, Figueroa, Teeters and the other witnesses and the quantity of methamphetamine described, all combined to support a "reasonable inference," *Hackley*, *supra*, of an agreement to distribute methamphetamine.

This precedent, however, is distinguishable. In *Hackley* this Court concluded, based on "a continuous buy-sell relationship with [unknown] Maryland suppliers" that did not testify at trial, and the quantity of drugs sold, that "Hackley had a standing agreement – a conspiracy – with unnamed Maryland suppliers to bring their drugs to market in Virginia." 662 F.3d at 681. Thus this Court inferred the nature of the "agreement" – to bring the suppliers' drugs "to market" – from the repeated transactions and the absence of evidence to the contrary.

Unlike *Hackley*, in this case evidence was presented as to the nature of the agreement, or absence thereof. Gabriel Figueroa testified that the defendant agreed to purchase methamphetamine from him, nothing more. JA 352. No evidence was presented that the defendant agreed to sell drugs on behalf of Figueroa, or Teeters for that matter, or to "bring their drugs to market," as the inference of the Court in *Hackley* allowed.

Similarly, in *United States v. Reid*, 523 F.3d 310 (4th Cir. 2008) the evidence against the defendant was that

> Latorrence Singletary testified that he and Reid would split the cost of a "big eight" (4.5 ounces of powder cocaine) from a New York supplier, *which Reid would cook into crack for both of them to sell.* Isaiah Robinson

> and Bobby Wilson testified to selling crack to Reid or with Reid on multiple occasions. Hydell Harris testified to *helping Reid find a new supplier of cocaine in 2002 and arranging two nine-ounce purchases for Reid in 2003*.

523 F.3d at 317 (*emphasis added).*

In each of the relationships described there exists one or more actions taken, purposeful and knowing, to further together the mutual interests of the actors – cooking cocaine into crack for both to sell, selling cocaine *with* the defendant, and helping the defendant find a new supplier and arranging purchases.

No evidence of any such relationships was presented here. The relationship between the defendant and Figueroa and Teeters was clearly arm's length and none of them acted in concert with the other in any respect on any occasion. Similarly, the other lay witnesses, who purchased methamphetamine from the defendant, did only that. The witnesses never testified as to any fact that resembled the relationships in *Reid.*

It is conceded that this case involved evidence of many sales of methamphetamine, some of which were for large volumes of the drug; however, the basic nature of the relationship between buyer and seller never changed. Thus the trial court's refusal to give the proffered "buy/sell instruction" constituted plain error.

Moreover, that error affected the defendant's substantial rights. In most cases this means that the error must have been prejudicial, *i.e.*, "it must have had a prejudicial effect of the jury's deliberations." *Olano*, *supra*, 507, U.S. at 734 *citing United States v. Young*, 470 U.S. 1, 17 n.14, 105 S. Ct. 1038, 1047 n. 14 (1985). No

other instruction that the Court gave discussed the buyer/seller defense to a conspiracy charge. The jury, therefore, had no opportunity whatever to consider that possibility, despite that the evidence consisted of no more than a series of buy/sell transactions.

Finally, this Court should exercise its discretion to correct the plain error here if the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, *supra*, at 736. This does not, however, require a showing of the defendant's "actual innocence." *Id*. As previously stated, the government's evidence in this matter involved a series of transactions, albeit many, between people who did not work together, who did not have a common purpose or goal and whose sole goal was the purchase or sale of methamphetamine. That is a buyer-seller relationship, regardless of the number of transactions or the quantity of the drug. The failure, therefore, to grant the defendant's buy-sell instruction and allow the jury to consider that defense, affected "the fairness . . . of the judicial proceedings." *Olano*, *supra.*

II. The Trial Court Erred In Denying The Defendant's Rule 29 Motion For Judgment Of Acquittal As The Government's Evidence Was Insufficient To Establish The Existence Of An Agreement And, Thus, The Defendant's Participation In A Conspiracy.

At the close of the government's case the defendant made a Rule 29 motion for judgment of acquittal, claiming that the government had failed to establish the defendant's participation in a conspiracy. JA 357. The trial court denied the motion. JA 359.

The denial of a motion for judgment of acquittal is reviewed *de novo*. *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 238 (2018). This Court must "affirm the verdict if it is supported by substantial evidence, viewed in the light most favorable to the government." *United States v. Gillion*, 704 F.3d 284, 294 (4th Cir. 212). Nevertheless, this Court must reverse where the government's evidence failed to establish an element of the offense. *See, e.g., United States v. Palomino-Granado*, 805 F.3d 127, 130 (4th Cir. 2015).

In order to prove conspiracy, the government must prove, *inter alia*, that "an agreement existed between two or more persons to engage in conduct that violates a federal law . . .". *United States v. Gomez-Jimenez*, 750 F.3d 370, 378 (4th Cir. 2014). Proof of a drug conspiracy "may, of course, be by circumstantial evidence . . .". *United States v. Mabry*, 953 F.2d 127, 130 (4th Cir. 1991). Evidence of mere "buy-sell" transactions, however, while relevant to the existence of a conspiratorial relationship, is insufficient. *United States v. Allen*, 716 F.3d 98 (4th Cir. 2013).

Every lay witness who testified for the government as to their relationship with the defendant testified, at most, to a series of purchases or sales of methamphetamine. Gabriel Figueroa, after meeting the defendant in 2017, agreed to sell him his telephone with the names and telephone numbers of his customers. JA 288-90. The two did not enter into an agreement to sell to those customers. Figueroa admitted that the defendant had no obligation to sell drugs to the "customers" who were on the phone that Figueroa had sold to the defendant. JA 352. This was an arm's length transaction pursuant to which Figueroa sold the

defendant a commodity, his phone and its contents, and received compensation in return - $25,000.00. JA 289. Figueroa and, eventually, Thomas Teeters, entered into an agreement to sell methamphetamine to the defendant and the defendant agreed to buy it, but neither agreed to do anything beyond that.

> A drug-distribution conspiracy under 21 U.S.C. § 846 requires proof that the defendant knowingly agreed-either implicitly or explicitly-with someone else to distribute drugs. When the alleged coconspirators are in a buyer-seller relationship, however, we have cautioned against conflating the underlying buy-sell agreement with the drug-distribution agreement that is alleged to form the basis of the charged conspiracy. To support a conspiracy conviction, there must be sufficient evidence of an agreement to commit a crime *other than* the crime that consists of the sale itself.

United States v. Johnson, 592 F.3d 744, 754 (7th Cir. 2010) (*citations omitted, emphasis in original).* In this case the government's evidence of the relationships between Figueroa, Teeters and the defendant, after Figueroa's sale of his phone to the defendant, consisted exclusively of evidence of an agreement to sell drugs to the defendant and the defendant's agreement to buy them. JA 295, 299-304, 305-307, 342-343. No evidence whatever was presented of an agreement to act in concert to sell those drugs to others. *Johnson, supra.*

During his testimony, Figueroa referred to only one person as his "business partner," implying the sort of agreement that one would see in a conspiracy. That reference was to Thomas Teeters, the person in California with whom he had shipped methamphetamine throughout the United States. JA 273. Throughout his testimony he referred to the defendant as either his or Teeters' "customer" for the

sale and purchase of methamphetamine. JA 282, 295, 306-307. The "customer" relationship is precisely the type of relationship described in *Johnson*, *supra*, as being insufficient, by itself, to establish a conspiratorial relationship.

This is also true with respect to the remaining lay witnesses. Michael Larson testified that he purchased methamphetamine from the defendant "five or six times." JA 369. Larson then resold some of that methamphetamine to others, JA 377, but admitted on cross examination that the drugs were "mostly for personal use." JA 379. Again, no agreement was established that Larson and the defendant agreed together to sell drugs to others or even that the defendant sold him the drugs so that he might sell to others.

The same can be said of Rodney Quinones, who testified that he purchased drugs from May "two or three times." JA 387. No evidence of a relationship was presented beyond these simple transactions.

Paul Goddin testified that he purchased methamphetamine from the defendant "six to ten times." JA 404-405. The government presented no evidence of any relationship or agreement between the two beyond these sales.

Finally, Michael Cochran testified that he purchased methamphetamine from May "less than ten, but probably more than a handful" or times. JA 420. All of the evidence of text communications between Cochran and the defendant consisted of arrangements to purchase or sell methamphetamine, with no expectation, goal or relationship, explicit or implicit, beyond that sale. JA 423-426. To the point, when asked on re-direct examination what the nature was of his business relationship

with May, Cochran responded "just that I would purchase methamphetamine from him again." JA 432-33.

Lastly, the numerous text and "chat" communications obtained from the iCloud download to which Detective Hanula testified did not contain any evidence of an agreement to do anything other than purchase or sell a quantity of methamphetamine. JA 432-33.

In arguing that an agreement to distribute methamphetamine did exist, the government may point to this Court's decision in *United States v. Hackley*, 662 F.3d 671 (4th Cir. 2011). In that decision this Court held that

> evidence of a continuing buy-sell relationship when coupled with evidence of large quantities of drugs, or continuing relationships and repeated transactions creates a reasonable inference of an agreement.

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nature of the "agreement" – to bring the suppliers' drugs "to market" – from the repeated transactions and the absence of evidence to the contrary.

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523 F.3d at 317 (*emphasis added).*

In each of the relationships described there exists one or more actions taken, purposeful and knowing, to further together the mutual interests of the actors – cooking cocaine into crack for both to sell, selling cocaine *with* the defendant, and helping the defendant find a new supplier and arranging purchases.

No evidence of any such relationships was presented here. Gabriel Figueroa, after meeting the defendant in 2017, agreed to sell him his telephone with the names and telephone numbers of his customers. JA 288-90. The two did not enter

into an agreement to sell to those customers. Figueroa admitted that the defendant had no obligation to sell drugs to the "customers" who were on the phone that Figueroa had sold to the defendant. JA 352. This was an arm's length transaction pursuant to which Figueroa sold the defendant a commodity, his phone and the contents, and received compensation in return - $25,000.00. JA 289. Figueroa and, eventually, Thomas Teeters, entered into an agreement to sell methamphetamine to the defendant and the defendant agreed to buy it, but neither agreed to do anything beyond that. During his testimony, Figueroa referred to only one person as his "business partner," implying the sort of agreement that one would see in a conspiracy. That reference was to Thomas Teeters, the person in California with whom he had shipped methamphetamine throughout the United States. JA 273. Throughout his testimony he referred to the defendant as either his or Teeters' "customer" for the sale and purchase of methamphetamine. JA 282, 295, 306-307.

The relationship between the defendant and Figueroa and Teeters was clearly arm's length and none of them acted in concert with the other in any respect on any occasion. Similarly, the other lay witnesses, who purchased methamphetamine from the defendant, did only that. The witnesses never testified as to any fact that resembled the relationships in *Reid*. Thus no agreement to distribute methamphetamine was proven or could be inferred, and the trial court erred by not granting the defendant's Rule 29 motion for judgment of acquittal.

CONCLUSION

For the foregoing reasons, this Court should grant the defendant's Petition for Certiorari.

Dated this 30th day of November, 2020.

Respectfully Submitted

Kendesia May
By counsel

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VSB #26102
Mark S. Thrash, Attorney at Law
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Arlington, Virginia 22203
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Counsel of Record for Appellant Kendesia May

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4454

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENDESIA JUINIZE MAY, a/k/a Red, a/k/a Reds,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Leonie M. Brinkema, District Judge. (1:19-cr-00007-LMB-1)

Submitted: May 28, 2020 Decided: July 1, 2020

Before NIEMEYER, FLOYD, and QUATTLEBAUM, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Mark S. Thrash, Arlington, Virginia, for Appellant. G. Zachary Terwilliger, United States Attorney, David A. Peters, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Kendesia Juinize May was convicted after a jury trial of one count of conspiracy to distribute and possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 846 (2018). The district court sentenced May to 168 months' imprisonment. May appeals, asserting that the district court erred in instructing the jury and in denying his Fed. R. Crim. P. 29 motion for judgment of acquittal. Finding no error, we affirm.

May first challenges the district court's rejection of his requested buyer-seller jury instruction. We review the denial of a proposed jury instruction for abuse of discretion. *United States v. Sonmez*, 777 F.3d 684, 688 (4th Cir. 2015). A district court abuses its discretion in refusing to provide a requested instruction "only if the instruction: (1) was correct; (2) was not substantially covered by the court's charge to the jury; and (3) dealt with some point in the trial so important, that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense." *United States v. Savage*, 885 F.3d 212, 223 (4th Cir. 2018) (internal quotation marks omitted). Because May did not object to the denial of his proposed jury instruction contemporaneous to the jury instructions the court ultimately gave, we review for plain error. *United States v. Cowden*, 882 F.3d 464, 475 (4th Cir. 2018). Under this standard, May "has the burden to show that: (1) there was error; (2) the error was plain; and (3) the error affected his substantial rights." *Id.* If May makes this showing, we "may exercise our discretion to correct the error only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (brackets and internal quotation marks omitted).

May contends that the court erred in declining a buyer-seller jury instruction because the evidence established, at most, a series of purchases or sales of methamphetamine. We disagree. The Government adduced evidence establishing that May worked closely with Gabriel Figueroa to maintain a methamphetamine distribution scheme. Figueroa sold his distribution contacts in the Washington, D.C., area to May in the form of a mobile phone. He also introduced clients to May. Further, May consented to continue a distribution stream by buying certain quantities of methamphetamine at an established price from Figueroa. There was also evidence of other distributors and Figueroa's past clients working with May. Moreover, the district court's instructions accurately stated the law and did not impair May's defense to the conspiracy charge. The court instructed the jury on the difference between conspiracy and distribution and explained that May was only charged with conspiracy. May therefore fails to establish plain error, as the evidence presented at trial did not support a buyer-seller instruction.

May also challenges the denial of his motion for acquittal. "We review a district court's denial of a motion for acquittal de novo." *United States v. Zelaya*, 908 F.3d 920, 925 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 855 (2019). A jury verdict should be affirmed where, "viewing the evidence in the light most favorable to the prosecution, [it] is supported by substantial evidence." *United States v. King*, 628 F.3d 693, 700 (4th Cir. 2011) (internal quotation marks omitted). Substantial evidence is that which "a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Id.* (internal quotation marks omitted). Denial of such a motion "is proper where, viewed in the light most favorable to the

prosecution, substantial evidence supports a guilty verdict." *Zelaya*, 908 F.3d at 925. While this standard presents a "heavy burden" for defendants, reversal is appropriate when "the prosecution's failure is clear." *United States v. Pinson*, 860 F.3d 152, 161 (4th Cir. 2017).

To prove a drug conspiracy pursuant to 21 U.S.C. § 846, the Government must establish that (1) May "entered into an agreement with one or more persons to engage in conduct that violated 21 U.S.C. § 841(a)(1)"; (2) that May knew of the conspiracy; and (3) that May "knowingly and voluntarily participated in the conspiracy." *United States v. Howard*, 773 F.3d 519, 525 (4th Cir. 2014) (internal quotation marks omitted). Conspiracy may be proven by circumstantial evidence. *United States v. Burgos*, 94 F.3d 849, 858 (4th Cir. 1996) (en banc). The existence of a buyer-seller relationship, without more, is insufficient to support a conspiracy conviction. *See Howard*, 773 F.3d at 525. However, evidence of a buy-sell transaction, "when coupled with evidence of large quantities of drugs, or continuing relationships and repeated transactions, creates a reasonable inference of an agreement." *United States v. Hackley*, 662 F.3d 671, 679 (4th Cir. 2011) (internal quotation marks omitted).

May argues that the Government failed to prove he was involved in a conspiracy. The record, however, does not support this claim. The trial evidence established May's relationships with his coconspirators, their drug transactions, their mutual interest in the local drug market, and their mutual agreement to supply and distribute methamphetamine. After review of the record, we conclude that May agreed with others to distribute methamphetamine, that he knew of the conspiracy, and that he knowingly and voluntarily

participated in a scheme to do so. *See Howard*, 773 F.3d at 525. We therefore conclude that the district court did not err in denying May's Rule 29 motion.

We therefore affirm the district court's judgment. We dispense with oral argument because the facts and legal conclusions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: July 1, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4454
(1:19-cr-00007-LMB-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KENDESIA JUINIZE MAY, a/k/a Red, a/k/a Reds

Defendant - Appellant

J U D G M E N T

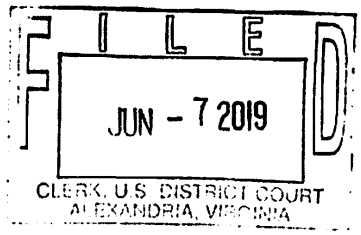
In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

AO 245 S (Rev. 2/99)(EDVA rev.1) Sheet 1 - Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Eastern District of Virginia
Alexandria Division



UNITED STATES OF AMERICA

v.

Case Number 1:19CR00007-001

KENDESIA JUINIZE MAY,
a.k.a. "Red,"
a.k.a. "Reds,"

Defendant.

JUDGMENT IN A CRIMINAL CASE

The defendant, KENDESIA JUINIZE MAY, was represented by standby counsel Mark S. Thrash, Esquire.

The defendant was found guilty by a Jury as to Count 1 of the Indictment. Accordingly, the defendant is adjudged guilty of the following count, involving the indicated offense:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number
21 U.S.C. §§ 846 and 841(a)(1)	**Conspiracy to Distribute Fifty (50) Grams or More of Methamphetamine and Five Hundred (500) Grams or More of a Mixture and Substance Containing a Detectable Amount of Methamphetamine (Felony)**	**01/10//2019**	**1**

As pronounced on June 7, 2019, the defendant is sentenced as provided in pages 2 through 7** of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall 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.

Signed this 7th day of June, 2019.

/s/
Leonie M. Brinkema
United States District Judge

**Page 7 of this document contains sealed information.

Defendant: KENDESIA JUINIZE MAY
Case Number: 1:19CR00007-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of ONE HUNDRED AND SIXTY-EIGHT (168) MONTHS, with credit for time served.

The Court makes the following recommendations to the Bureau of Prisons:

The defendant to be designated to a facility as close to New York City as possible.

The defendant to participate in the Residential Drug Abuse Program (RDAP).

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

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

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

c: P.O. (2) (3)
Mshl. (4) (2)
U.S.Atty.
U.S.Coll.
Dft. Cnsl.
PTS
Financial
Registrar
ob

_____
United States Marshal

By _____
Deputy Marshal

AO 245 S (Rev. 2/99)(EDVA rev.1) Sheet 3 - Supervised Release

Judgment--Page 3 of 7

Defendant: KENDESIA JUINIZE MAY
Case Number: 1:19CR00007-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of FIVE (5) YEARS.

The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

The defendant shall 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.

While on supervised release, the defendant shall not commit another federal, state, or local crime.

While on supervised release, the defendant shall not illegally possess a controlled substance.

While on supervised release, the defendant shall not possess a firearm or destructive device.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

STANDARD CONDITIONS OF SUPERVISED RELEASE

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below):

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to 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 within 72 hours, or earlier if so directed, of any change in residence.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by 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.

Defendant: KENDESIA JUINIZE MAY
Case Number: 1:19CR00007-001

SPECIAL CONDITIONS OF SUPERVISION

While on supervised release, pursuant to this Judgment, the defendant shall also comply with the following additional conditions:

1. The defendant must remain alcohol free and submit to mandatory alcohol testing. The defendant must satisfactorily participate in, and complete, any inpatient or outpatient alcohol treatment to which defendant is directed by the probation officer. The defendant shall waive all rights of confidentiality regarding alcohol treatment to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider. The defendant to pay all costs as able, as directed by the probation officer.

2. The defendant shall undergo a mental health evaluation and, if recommended, participate in a program approved by the United States Probation Office for mental health treatment with a focus on anger management, which program may include residential treatment and testing, all as directed by the probation officer. The defendant shall take all medications as prescribed and waive all rights of confidentiality regarding mental health treatment to allow the release of information to the United States Probation Office and authorize communication between the probation officer and the treatment provider. The defendant to pay all costs as able, as directed by the probation officer.

3. The defendant shall provide the probation officer access to any requested financial information.

4. Although mandatory drug testing is waived pursuant to 18 U.S.C §3564 (a)(4), the defendant must remain drug free and his probation officer may require random drug testing at any time. Should a test indicate drug use, then the defendant must satisfactorily participate in, and complete, any inpatient or outpatient drug treatment to which defendant is directed by the probation officer.

Defendant: KENDESIA JUINIZE MAY
Case Number: 1:19CR00007-001

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total monetary penalties in accordance with the schedule of payments set out below.

Count	Special Assessment	Fine
1	$100.00	$0.00
Total	**$100.00**	**$0.00**

FINE

No fines have been imposed in this case.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

The special assessment is due in full immediately. If not paid immediately, the court authorizes the deduction of appropriate sums from the defendant's account while in confinement in accordance with the applicable rules and regulations of the Bureau of Prisons.

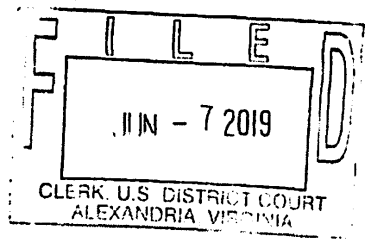
Any special assessment, restitution, or fine payments may be subject to penalties for default and delinquency.

If this judgment imposes a period of imprisonment, payment of Criminal Monetary penalties shall be due during the period of imprisonment.

All criminal monetary penalty payments are to be made to the Clerk, United States District Court, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

FORFEITURE

Forfeiture in the amount of $500,000.00 is directed in accordance with the Consent Order of Forfeiture entered by this Court on June 7, 2019.



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
	)	Criminal Case: 1:19-CR-7
v.	)	
	)	Hon. Leonie Brinkema
	)	
KENDESIA JUINIZE MAY,	)	
	)	Sentencing: June 7, 2019
Defendant.	)	

PRELIMINARY ORDER OF FORFEITURE

WHEREAS, on January 10, 2019, a grand jury returned an indictment charging the defendant, Kendesia Juinize May, a.k.a. "Red," with one count of conspiracy to distribute controlled substances, to wit: 50 grams or more of methamphetamine, a Schedule II controlled substance; and 500 grams or more of a mixture and substance containing methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841 and 846;

WHEREAS, included in the indictment was a Forfeiture Notice wherein the defendants were notified that if convicted they shall forfeit to the United States, pursuant to 21 U.S.C. § 853(a), any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as the result of his involvement in the conspiracy; and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation;

WHEREAS, on March 14, 2019, after a jury trial the defendant was found guilty as charged in Count One of the Indictment;

WHEREAS, in Detective Thomas Hanula's affidavit presented in support of the government's motion for forfeiture, the government established that the defendant obtained at least $500,000 (U.S. Currency) in profits during his participation in the conspiracy to distribute methamphetamine;

AND WHEREAS, entry of this order shall be made a part of the sentence, in or out of the presence of the defendant, and included in the Judgment in this case without further order of the Court.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The United States of America shall have a forfeiture money judgment, pursuant to Fed. R. Crim. P. 32.2(b)(1) and 21 U.S.C. § 853, against the defendant, Kendesia Junize May, for $500,000 (U.S. currency), an amount that represents illegal proceeds the defendant obtained from participation in the conspiracy to distribute cocaine, knowing and intending that it would be unlawfully imported into the United States, in violation of 21 U.S.C. §§ 841 and 846, and an amount for which the defendant shall be solely liable.

2. The United States of America may collect said judgment by all available means, including but not limited to the forfeiture of direct proceeds and substitute assets.

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), upon entry of this order, the United States is authorized to conduct any appropriate discovery including depositions, interrogatories, requests for production of documents and for admissions, and pursuant to Fed. R. Civil P. 45, the issuance of subpoenas.

4. The Attorney General, Secretary of Homeland Security, Secretary or the Treasury, or a designee, is hereby authorized to seize, inventory, and otherwise maintain custody

and control of the property, whether held by the defendant or by a third party, and to conduct any discovery proper in identifying, locating or disposing of the property subject to forfeiture pursuant to Fed. R. Crim. P. 32.2(b)(3) and 21 U.S.C. § 853(g).

5. Because the forfeiture consists of a money judgment, no ancillary proceeding is necessary as directed by Fed. R. Crim. P. 32.2(c)(1).

Entered in Alexandria, Virginia, this 7th day of June, 2019.

/s/
Leonie M. Brinkema
United States District Judge