NO.

SUPREME COURT OF THE UNITED STATES

ANDRE WATSON	)
	)
Petitioner	)
	)
- VS. -	)
	)
UNITED STATES OF AMERICA	)
	)
Respondent.	)

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

/s Michael Losavio
Michael M. Losavio
1819 Edenside Avenue
Louisville, Kentucky 40204
losavio@losavio.win.net
(502) 417-4970
Counsel of Record for Petitioner
Andre Watson

QUESTION PRESENTED FOR REVIEW

Question I. Did the United States, under our federal-state jurisdiction as set out in our Constitution, fail to establish Watson was properly guilty of Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire under Count 1 where the only "jurisdictional hook" was the use of the ubiquitous cell phone as part of the criminal scheme?

If this assertion of Commerce Clause jurisdiction through a ubiquitous and pervasive personal technology is appropriate, doesn't this provide for limitless federal power and the evisceration of the Tenth Amendment and its reservations of powers to the states?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT
WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Andre Watson, Appellant, Petitioner

United States of America, Appellee, Respondent

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OPINIONS AND ORDERS BELOW

The opinion below of the United States Court of Appeals for the Sixth Circuit was rendered in *United States v. Andre Watson*, Case number 19-2311; that opinion affirmed the judgment of the United States District Court for the Western District of Michigan in case number 16-CR- 20123 where the original sentence for, *inter alia*, use of a facility of interstate commerce in a murder-for-hire, committed Watson to the custody of the Bureau of Prisons to, *inter alia*, two terms of life imprisonment.

JURISDICTION

i. The opinion of the United States Court of Appeals for the Sixth Circuit was entered on March 22, 2021; pursuant to Rule 13.1 of the rules of this Court, the Petition is timely filed.

ii. A petition for a rehearing was not filed in this matter; no extension of time within which to file a petition for a writ of certiorari has been made.

iii. This is not a cross-Petition pursuant to Rule 12.5.

iv. The statutory provision conferring jurisdiction upon this Court to review upon a writ of certiorari the judgment or order in question is 28 U.S.C. §1254.

Constitutional Provisions And Other Authorities Involved In This Case

Tenth Amendment to the Constitution of the United States

Commerce Clause, Article I, Section 8, Clause 3

STATEMENT OF THE CASE

Jurisdiction in the First Instance

Subject matter jurisdiction vested in the U.S. District Court for the Western District of Michigan pursuant to 18 U.S.C. §3231; Watson was indicted for offenses against the laws of the United States and was convicted after trial within that district .

Appellate jurisdiction vested in the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1291 and 28 U.S.C. §1294.

Presentation of Issues in the Courts Below and Facts

Andre Watson was indicted for offenses against the laws of the United States including Count 1 18 U.S.C. § 1958(a), Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire.

Billy Chambers described driving Brown and Watson to the scene of the Wallace homicide while Belcher was calling via cell phone and claimed Watson exited the backseat and "finishes the job" firing shots into the decedent Wallace's car.

Witnesses detailed cell phone call data related to the investigation and the defendants. SA Jensen of the Cellular Analysis Survey Team gave his analysis of the cell phone data.

Thereafter the jury convicted Watson on all counts and the District Court sentenced Watson to two terms of life imprisonment on Counts 1 and 3 and one term of ten years imprisonment on Count 2.

On appeal, Watson argued that in light of this Court's ruling as the impact of cell phones everywhere on legal doctrine in *United States v Carpenter*, 585 U.S. ___ , 138 S. Ct. 2206; 201 L. Ed. 2d 507 (2018) that under contemporary facts of the ubiquity of cell phones, this essential

made all crimes subject to federal jurisdiction due to the presence and use of those cell phones.

The Court of Appeals rejected that argument and affirmed the conviction, noting that:

> …"[o]ur caselaw unequivocally holds that 'cellular telephones, even in the absence of evidence that they were used to make interstate calls, [are] instrumentalities of interstate commerce."' *United States v. Dais*, 559 F. App'x 438, 445 (6th Cir. 2014) (quoting *United States v. Weathers*, 169 F.3d 336, 341 (6th Cir. 1999)); *see also United States v. Willoughby*, 742 F.3d 229, 240 (6th Cir. 2014) ("Willoughby's cell phone is such an instrumentality.") (overruled on other grounds); *United States v. Pina*, 724 F. App'x 413, 422–23 (6th Cir. 2018); *United States v. Wise*, 278 F. App'x 552, 561 (6th Cir. 2008).2 In fact, Watson concedes that there is no case law supporting his position.3 Therefore, there was no plain error. (Opinion, p. 6)

This Petition follows.

REASONS FOR GRANTING THE WRIT

Question I. The United States failed to establish Watson was properly guilty of Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire under Count 1. The "jurisdictional hook" in the statute and allegedly used by Watson was the use of the cell phone as part of the criminal scheme.

If this assertion of Commerce Clause jurisdiction through a ubiquitous and pervasive personal technology is appropriate, doesn't this provide for limitless federal power and the evisceration of the Tenth Amendment and its reservations of powers to the states?

If we look to the original intent of our forebearers, it was to build this messy federalism under which we live. The government would destroy that. This Court should, as was done in *United States v. Carpenter*, preserve the rights of the people and of the several states. To do otherwise ends this experiment.

As Justice Brandeis warned, the use of cell phones to tag federal jurisdiction erodes federalism into a distinction with no meaning. While he may not have spoken of the universal cellular telephone, he spoke of new technologies functionally equivalent to universal data nets, such as the ability to read minds that our inferential AI effectively accomplish.

With the expansion of asserted Commerce Clause jurisdiction and the pervasiveness of modern technology, federal jurisdiction via "facilities of interstate commerce" may lose its originalist *limited* nature. In the follow-on remand and re-petition case, *Bond v. United States*, 572 U.S. 844 (2014), the Supreme Court held the federal statute implementing the federal Chemical Warfare Act could not apply to her local, state-based conduct and she could not be charged under the federal statute. (emphasis added) as it would undermine the very foundations of federalism and the regulatory powers reserved to the states. Watson's conduct was state-based conduct that should not be federalized.

Watson does not make an easy challenge, as pre-*Carpenter* decisions on this have held cell phone jurisdiction is fine. See, e.g., *United States v Runyon*, 707 F3d 475 (4th Cir. 2013) ;

United States v. Nader, 542 F.3d 713, 716 (9th Cir. 2008). *United States v. Perez*, 414 F.3d 302 (2d Cir. 2005) (per curiam); *United States v. Mandel*, 255 647 F.3d 710 (7th Cir. 2011); *United States v. Marek*, 198 F.3d 532 (5th Cir. 1999)); *United States v. Weathers*, 169 F.3d 336, 338 (6th Cir. 1999) ; *Rewis v. United States*, 401 U.S. 808 (1971).

Some have suggested that the impact on universal cell phone usage as a link to Travel Act jurisdiction was unanticipated by Congress.[1]

But This All Changes With The New Jurisprudence Of United States v Carpenter, 585 US __ (2018), Riley v California, 573 U. S. (2016) *and United States v. Jones* U. S. (2012)

In *Carpenter* the Supreme Court radically altered understanding of the third-party doctrine regarding expectations of privacy in Fourth Amendment2 3 protections due to the nature of cell phone technology. It noted that mechanical application third-party doctrine did not fully appreciate relatively limitless and revealing nature cell phone vocational information. The

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1 *See* Andrew Wiktor, You Say Intrastate, I Say Interstate: Why We Should Call the Whole Thing Off, 87 Fordham L. Rev. 1323 (2018).
"A slightly better argument is that Congress certainly did not foresee cellphones being as pervasive as they are today, but this argument is only somewhat more compelling. Though it is certainly true that Congress did not envision a world of cellphones—the first cellphone was not used until 1973—it is not as though there were no long-distance calls in the early 1960s. In fact, Attorney General Kennedy even expressed concern about bookmakers using phones to establish a national network of support for each other. So, while the pervasive use of cellphones certainly was not considered by Congress, it considered that cars traveled state to state and phones were capable of placing long-distance calls."

2 Id, at 4 "The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The "basic purpose of this Amendment," our cases have recognized, "is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Camara v. Municipal Court of City and County of San Francisco,* 387 U. S. 523, 528 (1967)."
3 Id, at 6 "On this score, our cases have recognized some basic guideposts. First, that the Amendment seeks to secure "the privacies of life" against "arbitrary power." *Boyd v. United States,* 116 U. S. 616, 630 (1886). Second, and relatedly, that a central aim of the Framers was "to place obstacles in the way of a too permeating police surveillance." *United States v. Di Re,* 332 U. S. 581, 595 (1948).
We have kept this attention to Founding-era understandings in mind when applying the Fourth Amendment to innovations in surveillance tools. "

Supreme Court noted that the voluntary sharing notion behind the third-party doctrine also failed because:

> First, cell phones and the services they provide are "such a pervasive and insistent part of daily life" that carrying one is indispensable to participation in modern society. Riley, 573 U. S., at ___. Second, a cell phone logs a cell-site record by dint of its operation, without any affirmative act on the user's part beyond powering up. Pp. 15–17.

It noted that "There are 396 million cell phone service accounts in the United States, for a Nation of 326 million people." Id, at 1

More telling is the novel intimate relationship with personhood and the information unity with others of the cell phone. Chief Justice Roberts in *Carpenter* noted this unity via the tracing of record data from a cell phone as an aspect of privacy and personal autonomy, core values of the American republic:

> In fact, historical cell-site records present even greater privacy concerns than the GPS monitoring of a vehicle we considered in *Jones*. Unlike the bugged container in *Knotts* or the car in *Jones*, a cell phone—almost a "feature of human anatomy," *Riley*, 573 U. S., at ___ (slip op., at 9)—tracks nearly exactly the movements of its owner. While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time. A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales. See *id*., at ___ (slip op., at 19) (noting that "nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower");
> contrast *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) (plurality opinion) ("A car has little capacity for escaping public scrutiny."). Accordingly, when the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user.

The government effectively acknowledges this, with the proviso that it is OK that there be such universal jurisdiction through these universal devices (Appellee's Brief, pp 25-29)

These facts on the ground of modern personal technology changed the analysis for Fourth Amendment jurisprudence, just as they did in *Riley v California*. In *Riley* the Supreme Court modified the search-incident-to-an-arrest doctrine to exclude automatic search of a cell phone on

the person of a arrestee and require a search warrant before such an examination. The rationale was that this new technology contained an unprecedented compendium of the days of our lives, from photos and texts to call records, notes and files. Allowing such a massive invasion of privacy on the collateral doctrine was held inappropriate; a warrant upon probable cause is required.

And although the immediate predecessor opinion in *United States v. Jones*, 132 S Ct 945, 955 (2012) (Sotomayor, J. concurring); Id at 964 (Alito, J. concurring in the judgment) on the need for a warrant for placing GPS tracking device was resolved on traditional trespass grounds, both Justice Sotomayor and Justice Alito noted the need to address the new, invasive impact of the technology. Justice Sotomayor specifically said these technologies will change the relationship between citizen and government, where technological advances have made possible "nontresspassory surveillance techniques." *United States v. Jones*, 132 S Ct at 955 (2012) (Sotomayor, J. concurring) *See also Katz v. United States*, 389 U.S. 347 (1967) (The controlling standard is whether or not state action violated a reasonable expectation of privacy, not simply a physical trespass); *Kyllo v. United States*, 533 U. S. 27 (2001) (finding non-physically invasive thermal imaging or a home still violated a reasonable expectation of privacy and was improper.)

This reasoning as to new technologies can equally impact this Court's appreciation of the nature of contemporary federalism in a hyper-networked, hyper connected society, of which the cell phone is the heart of our new information personalities. By tying jurisdiction to a hook inherent to nearly every person, it asserts federal jurisdiction over nearly every person; the distinction between state and federal vanishes.

The ubiquitous nature of these systems means they are both intimately and universally personal and interconnected to the much larger world. They require we consider the impact and

legal decisions regarding ubiquitous networks and the possible legal entanglements of these technological systems. Under our common law this issue of regulation via jurisprudence can anticipate the growing data sphere and ubiquitous networking and prevent the complete merging of state and federal systems, as is the case here. [4]

Certainly Congress did not anticipate the end of federalism through this technology. Nor did the Founders consider this as either possible or desirable. Yet the common law lets this Court clarify and remedy any confusion as to that end. As with *Riley* and *Carpenter*, the Constitution's proper balance between powers of regulation of commerce and the powers of the several states will be maintained by this Court finding jurisdiction though cell phone use excessive and invasive, and finding Watson's conviction improper.

This expansion of the application of 18 USC §1958 to use of a facility of interstate commerce in the face of the new technologies of ubiquitous internet and telephone connectivity goes too far. This will explode with the rise of the Internet of Things, the consumer-level engineering of sensing, connectivity and computing to billions of mundane devices, from light switches to thermostats to pet collars to smart-clothes to, well, everything. The United States Internet-of-Things market is projected to be $11 billion by 2025. But policymakers in the United States are only beginning to address regulatory and market-support mechanisms for IOT implementation and use, access to infrastructure, and appropriate policy. Each of these will be a "facility of interstate commerce" that would support federal jurisdiction under the current rules of jurisdiction. Technology should not wipe out our federal system;

4 Losavio M., Elmaghraby A., Losavio A. (2018) Ubiquitous Networks, Ubiquitous Sensors: Issues of Security, Reliability and Privacy in the Internet of Things. In: Boudriga N., Alouini MS., Rekhis S., Sabir E., Pollin S. (eds) Ubiquitous Networking. UNet 2018. Lecture Notes in Computer Science, vol 11277. Springer, Cham

Watson should be acquitted.

To the extent this may be argued reviewable only as plain error, this conviction was error, it was plain on the face of the record of facts in this case, it prejudiced Watson by convicting him to a sentence of life imprisonment for an improper charge, and it is one as a matter of justice this Court should correct. Federal Rule of Criminal Procedure 52; *United States v. Olano*, 507 U.S. 725, 732–34 (1993). Watson should not be convicted of that which should not be a federal crime.

Watson's conviction and sentence should be reversed and set aside and this matter remanded to the District Court to dismiss Count I with prejudice. This Petition should be granted.

CONCLUSION

The judgment and sentence were erroneous and this Petition for Writ of Certiorari should be granted and Mr. Watson given the relief he has argued for herein.

Respectfully submitted,

/s Michael Losavio
Michael M. Losavio
1819 Edenside Avenue
Louisville, Kentucky 40204
(502) 417-4970
Counsel of Record for
Petitioner Andre Watson

Certification of Word Count and Petition Length

The undersigned certifies that this Petition for a Writ of Certiorari does not exceed 4000 words nor 15 pages in length, not counting the appendix materials, and is in compliance with the length rules of Supreme Court Rule 33.

/s Michael Losavio
Michael Losavio
1819 Edenside Avenue
Louisville, Kentucky 40204
losavio@losavio.win.net
(502) 417-4970
Counsel of Record for Petitioner
pursuant to the Criminal Justice Act

Certificate of Service

A copy of the foregoing Petition for a Writ of Certiorari has been served this day by U.S. Postal Mail or via a private expedited service on Hon. Elizabeth Prelogar Solicitor General of the United States, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001.

This1st day of April, 2021

/s Michael Losavio
Michael Losavio
1642 Jaeger Avenue
Louisville, Kentucky 40205
losavio@losavio.win.net
(502) 417-4970
Counsel of Record for Petitioner
pursuant to the Criminal Justice Act

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Statutes Involved in this Petition

Tenth Amendment to the Constitution of the United States:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Commerce Clause, Article I, Section 8, Clause 3

[The Congress shall have Power . . .] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . .

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NOT RECOMMENDED FOR PUBLICATION

No. 19-2311

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ANDRE WATSON,
Defendant-Appellant.

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

BEFORE: CLAY, McKEAGUE, and MURPHY, Circuit Judges.

CLAY, Circuit Judge. Defendant Andre Watson was convicted by a jury on three counts: (1) use of interstate commerce facilities in the commission of a murder-for-hire, in violation of 18 U.S.C. § 1958(a); (2) conspiracy to possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 846 and 841(1)(a); and (3) discharging a firearm during and in relation to a drug trafficking crime causing death, in violation of 18 U.S.C. §§ 924(c)(1) and (j). On appeal, Watson argues that § 1958(a) is unconstitutional as applied to him, that the district court provided the jury with incorrect instructions on the § 1958(a) count, and that the evidence was insufficient to sustain his convictions on the latter two counts. For the reasons set forth below, we **AFFIRM** Watson's convictions.

BACKGROUND

Darnell Bailey and Devin Wallace had been middle school friends. In 2013, they coincidentally met in a Walmart, and Bailey learned that Wallace, who was a drug trafficker and

dealer, owed a significant drug debt. Bailey, who had previously been convicted of several fraud schemes, then came up with a jointly operated tax fraud scheme that allowed Wallace to repay his debt.

Bailey and Wallace then began another illegal venture. Many drug dealers have sufficient cash to purchase or lease a car but lack the documented income required by car dealerships for these transactions. Bailey and Wallace solved this market failure by fraudulently using the personal information of Wallace's drug addicted customers to procure cars from dealerships that they then subleased to Wallace's drug dealer clients. Bailey and Wallace usually obtained cars from dealerships where they had a relationship with a salesperson—often the salesperson was one of Wallace's drug clients—because those salespeople would make the transaction easier by, for example, overlooking missing or deficient paperwork. Although the enterprise was lucrative, there was tension between Bailey and Wallace. According to Bailey, Wallace often "played a lot of games" with money that strained their relationship. (Trial Tr., R. 282 at PageID# 3097.)

Meanwhile, Deaunta Belcher, who was Bailey's cousin, was dealing drugs from a "dope house" on Beniteau Street in Detroit. (Trial Tr., R. 277 at PageID## 2536–37.) Stephen Brown sold drugs for Belcher, and, according to Bailey, Defendant Andre Watson served as an "enforcer" for Belcher. (Trial Tr., R. 283 at PageID# 3230.) After a chance encounter between Wallace and Belcher at a casino, Belcher was invited to join the car fraud scheme. Belcher's value add was his drug dealing contacts, which allowed the enterprise to expand beyond Wallace's clients, as well as his contacts at car dealerships. Bailey also hoped that Belcher's "street reputation" would encourage Wallace to stop playing games. (Trial Tr., R. 282 at PageID# 3104.) However, according to Bailey, Wallace's games with money did not stop, and Belcher did not get along with Wallace either.

Three incidents led to an escalation in the tension between Belcher and Wallace. First, Wallace intentionally provided low quality heroin to Belcher. Another issue arose after Bailey and Belcher purchased a couple of cars from a car dealership salesperson, who was one of Belcher's drug customers, "and sold them to a couple of Wallace people." (*Id.* at PageID# 3108.) The salesperson asked Bailey and Belcher to return the dealer license plates, and they called Wallace with the request. But Wallace kept stalling and took "a week or two to return them." (*Id.*) Bailey and Belcher were angry about Wallace's delay because they did not want to lose the dealership as a source of cars, and Belcher did not want to lose the salesperson as a drug customer. Finally, Wallace was indicted in federal court on drug charges. Following Belcher's subsequent arrest on state drug charges, Bailey and Belcher worried that Wallace was providing the government with incriminating information against them, although they "figured out later on that it wasn't him or . . . wasn't sure whether it was him or not." (*Id.* at PageID# 3111.)

In May 2015, Bailey and Belcher drove to Zeidman's pawnshop to meet with Watson and Brown. Upon arriving, Bailey stayed in the car while Belcher offered Watson and Brown a house and a car in exchange for killing Wallace. Bailey joined midway through the conversation and Brown asked him "where could he find Wallace at" to murder him. (*Id.* at PageID# 3115.) After the meeting at Zeidman's, Bailey was supposed to meet Wallace at a strip club in Dearborn. While Bailey went to a different strip club, Brown and Watson went to the Dearborn strip club to kill Wallace, but he escaped.

On September 11, 2015, Belcher and Bailey met Wallace at a car dealership. At the dealership, Bailey and Wallace "had an intense argument" about Belcher being at the dealership. (*Id.* at PageID## 3118–19.) Belcher and Bailey then met at a gas station and discussed having Wallace killed. As Belcher, Bailey, and Wallace had a previously scheduled meeting for that

afternoon, Belcher called Brown and told him that Wallace was going to be downtown with Bailey and that he would call back with more information. Brown then called Watson to let him know the news. Later, Belcher called back and told Brown that the location for the meeting was the They Say restaurant. Brown, Watson, and a third man, Billy Chambers, then drove towards the They Say restaurant.

Bailey was the first to arrive at the restaurant and, at some point, Wallace called to say that he was outside in his car. Bailey went to Wallace's car and began talking to him. Belcher then arrived with his daughter, but they left after a short time. Brown and Watson then received a call from Belcher letting them know to look for Bailey because he was standing outside of Wallace's car talking to him. When they arrived, according to Brown and Chambers, Watson got out of the car and shot Wallace. Responding law enforcement found Wallace dead in his car. At some later point, Bailey gave $2,000 to Watson for the killing.

Watson was charged with (1) use of interstate commerce facilities in the commission of a murder-for-hire, in violation of 18 U.S.C. § 1958(a); (2) conspiracy to possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 846 and 841(1)(a); and

1. discharging a firearm during and in relation to a drug trafficking crime causing death, in violation of 18 U.S.C. §§ 924(c)(1) and (j). After a fourteen day trial, the jury returned a guilty verdict on all three counts. Watson received a mandatory life sentence for his conviction under § 1958(a), ten years of imprisonment for his conviction under §§ 846 and 841(1)(a), and another mandatory life sentence for his conviction under §§ 924(c) and (j). This appeal follows.

DISCUSSION

2. Constitutionality of § 1958(a) As Applied to Watson's Conduct

Watson did not preserve this claim below, and "[t]his Court reviews unpreserved constitutional claims for plain error." *United States v. Dubrule*, 822 F.3d 866, 882 (6th Cir. 2016). "To establish plain error, a defendant must demonstrate: '(1) error, (2) that was plain, and (3) that affects substantial rights. If all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error seriously affected the fairness, integrity or public reputation of the judicial proceedings.'" *United States v. Collins*, 799 F.3d 554, 574–75 (6th Cir. 2015) (quoting *United States v. Johnson*, 488 F.3d 690, 697 (6th Cir. 2007)).

"Section 1958(a) is a jurisdictional statute allowing federal prosecutors to bring specific types of state murder cases into federal court." *United States v. Johnson*, 443 F. App'x 85, 97 (6th Cir. 2011). To obtain a conviction under § 1958(a), the government was required to prove that Watson: (1) used or caused another to use a facility of interstate commerce; (2) "with intent that a murder be committed in violation of the laws of any State or the United States;" and (3) committed the murder "as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value." 18 U.S.C. § 1958(a); *see also United States v. Acierno*, 579 F.3d 694, 699 (6th Cir. 2009). As to the first element, the Superseding Indictment alleged that Watson "used and caused another to use a facility of interstate or foreign commerce, to wit: a telephone." (Superseding Indictment, R. 141 at PageID## 613–14.) Following the presentation of evidence, the district court instructed the jury that a "'facility of interstate commerce' includes . . . the use of a cellular telephone." (Trial Tr., R. 287 at PageID# 3828.)

Watson challenges § 1958(a)'s constitutionality to the extent that a cell phone can be considered a facility of interstate commerce. The Constitution provides Congress with the

authority to regulate "the instrumentalities of interstate commerce . . . ,"[1] *Taylor v. United States*, --- U.S. ---, 136 S. Ct. 2074, 2079 (2016) (quoting *United States v. Lopez*, 514 U.S. 549, 558–559 (1995)), and "[w]e invalidate statutes only if they bear no rational relationship to" this power, *United States v. Coleman*, 675 F.3d 615, 619 (6th Cir. 2012) (citing *United States v. Faasse*, 265 F.3d 475, 481 (6th Cir. 2001) (en banc)). Watson nonetheless argues that a cell phone cannot be included as an instrumentality of interstate commerce because "the risks of globally expansive federal jurisdiction" due to the "ubiquitous nature" of cell phones "may warp traditional notions of American federalism." (Appellant Br. at 42, 46.)

However, "[o]ur caselaw unequivocally holds that 'cellular telephones, even in the absence of evidence that they were used to make interstate calls, [are] instrumentalities of interstate commerce.'" *United States v. Dais*, 559 F. App'x 438, 445 (6th Cir. 2014) (quoting *United States v. Weathers*, 169 F.3d 336, 341 (6th Cir. 1999)); *see also United States v. Willoughby*, 742 F.3d 229, 240 (6th Cir. 2014) ("Willoughby's cell phone is such an instrumentality.") (overruled on other grounds); *United States v. Pina*, 724 F. App'x 413, 422–23 (6th Cir. 2018); *United States v. Wise*, 278 F. App'x 552, 561 (6th Cir. 2008).[2] In fact, Watson concedes that there is no case law supporting his position.[3] Therefore, there was no plain error. *See United States v. Al-Maliki*,

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3. Watson does not contest that "there exists 'no meaningful distinction between the terms 'facilities' and 'instrumentalities' of interstate commerce.'" *United States v. Runyon*, 707 F.3d 475, 489 (4th Cir. 2013) (quoting *United States v. Marek*, 238 F.3d 310, 317 & n.26 (5th Cir. 2001) (en banc)).

4. Other circuits are in accord. *See United States v. Montijo-Maysonet*, 974 F.3d 34, 50 n.13 (1st Cir. 2020); *United States v. Taplet*, 776 F.3d 875, 882 (D.C. Cir. 2015) (holding that use of a cell phone "was sufficient evidence to show that Taplet used a facility of interstate commerce with the intent to commit a murder-for-hire."); *United States v. Morgan*, 748 F.3d 1024, 1031–32 (10th Cir. 2014); *United States v. Mandel*, 647 F.3d 710, 716 (7th Cir. 2011) (holding that the use of a cell phone satisfies the first element of § 1958(a)); *United States v. Evans*, 476 F.3d 1176, 1180–81 (11th Cir. 2007); *United States v. Giordano*, 442 F.3d 30, 40 (2d Cir. 2006); *United States v. Clayton*, 108 F.3d 1114, 1117 (9th Cir. 1997).

5. Watson relies extensively on cases involving cell phones and the Fourth Amendment's warrant requirement. However, the Supreme Court's Fourth Amendment jurisprudence does not limit Congress's power to regulate the instrumentalities of interstate commerce. In fact, "[n]owhere in *Lopez* or any other

787 F.3d 784, 794 (6th Cir. 2015) (citing *United States v. Woodruff*, 735 F.3d 445, 450 (6th Cir. 2013)).

4. Jury Instructions Regarding the § 1958(a) Offense

Watson did not object to the district court's jury instruction that he now argues was erroneous and, in fact, his counsel expressly agreed with the district court's proposed instruction. Ordinarily, "[b]ecause [Watson] did not object to the jury instructions at trial, review is for plain error." *United States v. Harvey*, 653 F.3d 388, 395 (6th Cir. 2011) (citing *United States v. Vasquez*, 560 F.3d 461, 470 (6th Cir. 2009)). The government argues, however, that Watson's challenge to the jury instructions is unreviewable because this Court has held that "[a]n attorney cannot agree in open court with a judge's proposed course of conduct and then charge the court with error in following that course." *United States v. Sloman*, 909 F.2d 176, 182 (6th Cir. 1990). This Court recently confronted this exact issue—whether an express agreement by trial counsel with the district court's jury instructions makes any challenge to those instructions unreviewable—and held that "we need not declare a winner on the standard-of-review point" because the defendant's "claim fails even on plain-error review." *United States v. Buchanan*, 933 F.3d 501, 509 (6th Cir. 2019). Because Watson's claim also fails on plain error review, we similarly decline to decide this standard of review dispute.

As to the second element of § 1958(a)—which requires the government to prove that Watson had "intent that a murder be committed in violation of the laws of any State or the United States"—Count I of the Superseding Indictment alleged that Watson had "intent that the murder of Devin Wallace be committed in violation of the laws of the State of Michigan or the United States." (Superseding Indictment, R. 141 at PageID# 614.) When discussing the proposed jury

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case has the Supreme Court limited Congress's regulatory authority to prevent the harmful use of an instrumentality of interstate commerce." *Morgan*, 748 F.3d at 1032; *see also Dais*, 559 F. App'x at 445.

instructions with counsel, in an effort to eliminate "stilted language," the district court recommended replacing the phrases "violation of Michigan law" and "first-degree murder in Michigan" with "violation of law" and "murder as defined by the law." (Trial Tr., R. 286 at PageID# 3665.) Both sides agreed with the district court's recommendation. Thus, when charging the jury on the § 1958(a) offense, the district court explained that the jury had to conclude beyond a reasonable doubt that Watson had "intent that a murder be committed in violation of the law." (Trial Tr., R. 287 at PageID# 3827.) The district court then provided the jury with the Michigan Model Criminal Jury Instruction's definition for first degree murder.

On appeal, Watson raises two issues with the district court's instructions. First, Watson contends that the district court's definition of murder was flawed because it did not include the element "that the killing was not justified, excused, or done under circumstances that reduce it to a lesser crime." Mich. Crim. J.I. 16.1(6). However, Watson never argued any defenses to his murder of Wallace, and the model instruction provides that this element "may be omitted if there is no evidence of justification or excuse, and the jury is not being instructed on manslaughter or any offense less than manslaughter." *Id.* n.4. Accordingly, the district court properly instructed the jury on what constitutes murder in violation of Michigan law.

Second, Watson argues that the district court's instructions constituted "an impermissible amendment and variance" from the Superseding Indictment. (Appellant Br. at 55.) "An amendment of the indictment occurs when the charging terms of the indictment are altered, either literally or in effect, by prosecutor or court after the grand jury has last passed upon them. A variance occurs when the charging terms of an indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment." *Martin v.*

Kassulke, 970 F.2d 1539, 1542 (6th Cir. 1992) (quoting *United States v. Ford*, 872 F.2d 1231, 1235 (6th Cir. 1989)); *see also United States v. Pritchett*, 749 F.3d 417, 428 (6th Cir. 2014).

The Superseding Indictment charged Watson with violating § 1958(a) and alleged that he had intent that Wallace's murder "be committed in violation of the laws of the State of Michigan or the United States." (Superseding Indictment, R. 141 at PageID# 614.) The district court's jury instruction stated that Watson had to have had "intent that a murder be committed in violation of the law," and the law provided to the jury was the definition of murder under Michigan law. (Trial Tr., R. 287 at PageID# 3827.) Therefore, both the Superseding Indictment and the jury instructions required the government to prove that Watson had intent to murder Wallace in violation of Michigan law. *See United States v. Davis*, 970 F.3d 650, 659 (6th Cir. 2020) ("The indictment did not thereby charge a different offense . . ."). Accordingly, neither an amendment nor a variance occurred in this case, and the district court's jury instructions were not plain error.

§ **Sufficiency of the Evidence**

"We review a challenge to the sufficiency of the evidence supporting a criminal conviction *de novo*." *Collins*, 799 F.3d at 589 (citing *Pritchett*, 749 F.3d at 430). A defendant "'bears a very heavy burden' in his sufficiency of the evidence challenge to his conviction." *United States v. Davis*, 397 F.3d 340, 344 (6th Cir. 2005) (quoting *United States v. Spearman*, 186 F.3d 743, 746 (6th Cir. 1999)). "In addressing sufficiency of the evidence questions, this Court has long recognized that we do not weigh the evidence, consider the credibility of witnesses or substitute our judgment for that of the jury." *United States v. Hilliard*, 11 F.3d 618, 620 (6th Cir. 1993) (citing *United States v. Evans*, 883 F.2d 496, 501 (6th Cir. 1989)). Instead, "[i]n evaluating such a challenge, we are tasked with determining 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of

the crime beyond a reasonable doubt."' *Collins*, 799 F.3d at 589 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

1 Count II

Count II of the Superseding Indictment charged Watson with conspiracy to possess with intent to distribute controlled substances, in violation of 21 U.S.C. §§ 846 and 841(a)(1). "In order to establish a drug conspiracy in violation of 21 U.S.C. § 846, the government must prove, beyond a reasonable doubt, (1) an agreement to violate drug laws, (2) knowledge and intent to join the conspiracy, and (3) participation in the conspiracy." *United States v. Powell*, 847 F.3d 760, 780 (6th Cir. 2017) (cleaned up). "Once the existence of the conspiracy is proven, only slight evidence is needed to connect a defendant to the conspiracy" and "knowledge and intent to join the conspiracy may be inferred from [the defendant's] conduct and established by circumstantial evidence." *Id.* (citations omitted).

Watson does not dispute that there was sufficient evidence that Belcher and Brown were engaged in a conspiracy to distribute drugs. Instead, he argues that there were two separate conspiracies: one revolving around cars and one around drugs. According to Watson, he did not join the drug distribution conspiracy, and the evidence only proved his mere association with Belcher and Brown.

However, even assuming that there were two separate conspiracies, there was sufficient evidence for the jury to conclude that Watson knowingly and intentionally participated in the drug distribution conspiracy. To be sure, as Watson argues, no evidence established that he personally distributed drugs. However, Bailey's testimony established that Watson served as Belcher's "enforcer." (Trial Tr., R. 283 at PageID# 3230.) Watson argues that this testimony could mean that he was an enforcer for Belcher's car fraud activities and not his drug distribution activities. But

Bailey testified that he saw Watson with a gun at the house on Beniteau Street that served as Belcher's drug distribution headquarters. This evidence was sufficient for a rational jury to conclude beyond a reasonable doubt that Watson knowingly and intentionally participated in the drug distribution activities as an enforcer. *See United States v. Aviles-Colon*, 536 F.3d 1, 18 (1st Cir. 2008) (holding that evidence that a defendant was an "enforcer" was sufficient to convict him for participating in a drug conspiracy). Moreover, Brown explained that the original purpose of meeting Belcher at Zeidman's was to purchase marijuana for resale purposes. As Watson drove Brown to that meeting, the jury could infer that Watson was a participant in Belcher and Brown's drug distribution conspiracy. Accordingly, we affirm Watson's conviction under §§ 846 and 841(a)(1).

Count III

Watson also argues that the evidence was insufficient to support his conviction on Count D of the Superseding Indictment for using a firearm during and in relation to a drug trafficking crime causing death, in violation of 18 U.S.C. §§ 924(c)(1) and (j). "To make out a violation of § 924(c)(1), the government must prove beyond a reasonable doubt that the defendant '(i) carried or used a firearm; (ii) during and in relation to a drug trafficking crime.'"[4] *United States v. Cecil*, 615 F.3d 678, 692–93 (6th Cir. 2010) (quoting *United States v. Warwick*, 167 F.3d 965, 971 (6th Cir. 1999)). "To meet the 'during and in relation to' requirement, a firearm must have some purpose or effect with respect to the drug trafficking crime, and at least must facilitate, or have the potential of facilitating, the drug trafficking offense." *United States v. Layne*, 192 F.3d 556, 571 (6th Cir. 1999) (cleaned up); *see also Cecil*, 615 F.3d at 693. "We analyze that purpose and effect

A. Section 924(j) provides for a penalty of death or life imprisonment when a violation of § 924(c) results in the murder of a person "through the use of a firearm." 18 U.S.C. § 924(j).

in terms of the 'totality of the circumstances surrounding the commission of the crime.'" *United States v. Ostrander*, 411 F.3d 684, 692 (6th Cir. 2005) (quoting *Warwick*, 167 F.3d at 971).

Watson does not dispute that he used a firearm to murder Wallace. But he argues that there was insufficient evidence showing that the murder was during and in relation to the drug distribution conspiracy. He asserts that Belcher's purpose for having Wallace murdered was to facilitate the car fraud scheme, not the drug distribution conspiracy.[5] However, even assuming the existence of two separate conspiracies, there was ample evidence that the murder had a purpose, at least in part, to further the drug trafficking activities. According to Bailey, one of the events motivating Belcher to murder Wallace was Wallace providing him with low quality heroin. Belcher was also angry about Wallace's failure to return the dealer plates from the cars he and Bailey purchased because he was worried that it would make him lose a drug customer. Therefore, there was sufficient evidence for a rational juror to conclude that the murder was during and in relation to the drug trafficking crime.[6]

CONCLUSION

For the reasons stated above, we **AFFIRM** Watson's conviction on all counts.

B. Watson also argues that Belcher's true purpose for ordering Wallace's murder was the fear that Wallace was cooperating with the Drug Enforcement Administration ("DEA"). However, trial testimony established that Bailey and Belcher did not believe that Wallace was implicating them in any crimes**.** Regardless, murdering Wallace to stop him from providing evidence to the DEA would have had the purpose of facilitating the drug distribution conspiracy.

C. Watson argues that he lacked knowledge that the purpose of Wallace's murder was to further the drug trafficking activity. However, to sustain a conviction under § 924(c)(1), the government must only prove: (1) that the defendant committed a drug trafficking crime; (2) "[t]hat the defendant knowingly used or carried a firearm"; and (3) "[t]hat the use or carrying of the firearm was during and in relation to the
[drug trafficking] crime"—*mens rea* is only required for the underlying drug trafficking crime and the use or carrying of a firearm. Sixth Circuit Pattern Jury Instructions, § 12.02; *see also United States v. Brown*, 915 F.2d 219, 224–25 (6th Cir. 1990).

UNITED STATES DISTRICT COURT

Eastern District Of Michigan

UNITED STATES OF AMERICA

v.

ANDRE WATSON

§ **JUDGMENT IN A CRIMINAL CASE**
§
§
§ Case Number: 0645 2:16CR20143 (3)
§ USM Number: 54546-039
§ Bertram L. Johnson
§ Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded nolo contendere to count(s) which was accepted b y the court	
☒	was found guilty on count(s) after a plea of not guilty	**1, 2 and 3 of the First Superseding Indictment**

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18 U.S.C. § 1958(a), Use of Interstate Commerce Facilities in the Commission of Murder-for-Hire	09/11/2015	1s
21 U.S.C. §§ 846 and 841(a)(1), Conspiracy to Possess with Intent to Distribute Controlled Substances	09/2015	2s
18 U.S.C. § 924(j), Use of a Firearm During and in Relation to a Drug Trafficking Crime Causing Death	09/11/2015	3s

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.

2. The defendant has been found not guilty on count(s)
3. Count(s) ☐ is ☐ 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.

October 29, 2019
Date of Imposition of Judgment

s/Avern Cohn
Signature of Judge

The Honorable Avern Cohn
United States District Judge
Name and Title of Judge

10/31/2019
Date

DEFENDANT: Andre Watson
CASE NUMBER: 0645 2:16CR20143 (3)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Life on Counts 1 and 3, and 10 years on Count 2. All counts to run concurrently.

3. The court makes the following recommendations to the Bureau of Prisons:
The defendant be designated to a facility close to Detroit, Michigan, to facilitate family visitation, provided that it is consistent with the defendant's security and treatment classification.

6. 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.

5. 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: Andre Watson
CASE NUMBER: 0645 2:16CR20143 (3)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of**: 3 years on Count 2.**

MANDATORY CONDITIONS

§ You must not commit another federal, state or local crime.

§ You must not unlawfully possess a controlled substance.

§ 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*)

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

DEFENDANT: Andre Watson
CASE NUMBER: 0645 2:16CR20143 (3)

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.

2 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.
3 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.
4 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.
5 You must answer truthfully the questions asked by your probation officer.
6 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.
7 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.
8 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.
9 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.
10If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
11 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).
12 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.
13 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.
14 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: Andre Watson
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$300.00	Not Applicable	None	None

E The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

F The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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.

E Restitution amount ordered pursuant to plea agreement $

F The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

G The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for ☐ Fine ☐ restitution

☐ the the interest requirement for the ☐ Fine ☐ restitution is modified as follows:

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

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

DEFENDANT: Andre Watson
CASE NUMBER: 0645 2:16CR20143 (3)

SCHEDULE OF PAYMENTS

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

D. ☒ Lump sum payments of $300.00 due immediately, balance due

☐ not later than , or

☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

E. ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

F. ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after the date of this judgment; or

G. ☐ Payment in equal *(e.g., weekly, monthly, quarterly)* installments of $ over a period of *(e.g., months or years)*, to commence *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

H. ☐ Payment during the term of supervised release will commence within *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

§ ☐ Special instructions regarding the payment of criminal monetary penalties:

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.

☐ Joint and Several

Restitution is joint and several with the following co-defendants and/or related cases, in the amount specified below:

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

A. Defendant shall receive credit on «dft_his_her» restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

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.