No.

IN THE SUPREME COURT OF THE UNITED STATES

JOHN SHIELDS,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOHN SHIELDS, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

Before: STRANCH, LARSEN, and NALBANDIAN, Circuit Judges.

LARSEN, Circuit Judge. John Shields was charged with and convicted of committing several offenses related to his participation in a drug-trafficking enterprise. On appeal, he raises a host of issues, ranging from the district court's refusal to hold an evidentiary hearing on his double jeopardy claim to the procedural reasonableness of his sentence. We AFFIRM.

I.

A.

Sometime around March 2013, law enforcement began investigating the Memphis Peda Roll Mafia (PRM), a street gang associated with the Los Angeles-based Grape Street Crips. Fred McCaster, Jr. was the leader of the Memphis PRM, and he testified that his membership in the gang "enhanced" his ability to obtain drugs from suppliers in California. For instance, a fellow gang member introduced McCaster to Eric and Calvin Avendano, two members of what appears to be a different gang—the Grape Street Tiny Wynos. And McCaster also began working with

Reginald Wright, Jr., a "close associate of [the] Grape Street Crips." McCaster eventually leveraged these connections to distribute a variety of drugs in Memphis: Wright supplied him with marijuana, and the Avendanos provided harder drugs as well, including crystal meth, heroin, and cocaine.

At some point, McCaster initiated Shields into the Memphis PRM. With McCaster's blessing and introduction, Shields was then able to work with the Avendano brothers and Wright as his own suppliers. But the law soon caught up with Shields. Based on a multi-year investigation into the Memphis PRM, the government discovered that Shields had engaged in the trafficking of a number of drugs, including marijuana, heroin, and methamphetamine. On May 25, 2017, a grand jury returned separate indictments charging Shields with participation in the Avendano and Wright drug-trafficking conspiracies, and with associated drug-trafficking charges.

According to the Wright indictment—to which Shields pleaded guilty—Shields participated in a conspiracy to possess and distribute marijuana on behalf of Wright's organization from March 2013 through May 2017. The plan was straightforward. Using mainly the U.S. Postal Service as an unwitting courier, Wright would ship the marijuana from California to Shields and others in Tennessee. In exchange, Shields would deposit cash into certain Wells Fargo and Bank of America accounts, and Wright and his associates would withdraw the money in California. Based on these allegations, Shields pleaded guilty to: (1) conspiracy to possess with intent to distribute marijuana; (2) possession with intent to distribute marijuana; and (3) conspiracy to commit money laundering.

The Avendano indictment charged Shields with participating in a separate conspiracy from March 2013 until September 2015 to possess and distribute two different drugs—heroin and methamphetamine—on behalf of the Avendano organization. As alleged in the indictment, the

Avendanos would mail heroin and methamphetamine to Shields, who would then pay for the drugs by depositing cash into various Wells Fargo and Bank of America accounts controlled by the Avendanos. The grand jury accordingly charged Shields with: (1) conspiracy to possess with the intent to distribute heroin (Count 1); (2) conspiracy to possess with the intent to distribute methamphetamine (Count 2); and (3) conspiracy to money launder (Count 9). As further described below, the grand jury also indicted Shields on one count of (4) aiding or abetting possession with the intent to distribute heroin (Count 6), based on the interception of a Memphis-bound package containing the drug.

Following his guilty plea in the Wright case, Shields joined a codefendant's motion to dismiss the methamphetamine and heroin conspiracy charges in the Avendano indictment on double jeopardy grounds. The defendants argued that the Wright and Avendano indictments separately charged what was, in reality, "a single, unified conspiracy." After a hearing on the merits, the district court disagreed and denied the defendants' motion to dismiss. It also denied the defendants' request for an evidentiary hearing.

B.

Shields then proceeded to trial on the Avendano charges. As to the conspiracy counts, Shields' strategy was to admit to the jury that he dealt marijuana but to argue that he was not involved in the Avendanos' distribution of methamphetamine and heroin. However, the government introduced extensive evidence contradicting this theory.

First, many of Shields' coconspirators testified against him. McCaster testified that the Avendanos provided Shields with "[c]rystal meth and heroin" and explained how he had initially

vouched for Shields so that he could work with the Avendanos. Timothy Wright[1] testified that Shields told him "something about" receiving "ice water" or "meth" from the Avendanos. Jeremy Davis spoke extensively about his and Shields' dealings with heroin and said that they had received shipments of heroin from the Avendanos. And Eric Avendano explained how his family's organization operated—by sending drug-filled packages through the mail and using Bank of America and Wells Fargo accounts to collect payment from their Memphis associates. Eric further testified that he knew that his brothers, Calvin and Jeffrey Avendano, provided Shields with heroin and other drugs.

In addition, the government introduced text messages sent to a Los Angeles-area number from a phone seized from Shields' pocket. The messages contained several pieces of incriminating evidence linking Shields to the conspiracy: tracking numbers for packages; requests for Memphis addresses to mail drugs to; texts confirming payment; references to Wells Fargo and Bank of America accounts that Eric Avendano recognized as accounts his organization used for funneling money; and requests by Shields for "bottles" of "glass," which Eric identified as code in his organization for "pounds of meth." The call logs on the phone also showed multiple calls between Shields and two of the Avendano brothers.

Furthermore, a forensic auditor discussed his investigation into the bank accounts referenced in the text messages on Shields' phone. His review of Bank of America and Wells Fargo bank statements showed that, on dozens of occasions, an individual in Memphis had deposited $9,000 into the accounts, and that same amount was quickly withdrawn in California.

[1] Based on the record, there does not appear to be any relation between Timothy Wright, a Memphis resident, and Reginald Wright, Jr., the California-based supplier named in the Wright indictment.

The government connected those deposits to Shields by introducing surveillance video from the Memphis-area banks that captured Shields making large cash deposits into the listed accounts.

A postal inspector next testified that he had identified over 200 suspicious packages throughout the investigation into the Memphis PRM. Several of them had been seized by law enforcement and were found to contain methamphetamine, heroin, cocaine, or marijuana.

One of those seized packages is relevant to Shields' charge for aiding and abetting possession with the intent to distribute heroin (Count 6). On September 17, 2015, a police officer obtained a search warrant to inspect a 20-pound package sent from Los Angeles to Memphis. The package contained two bricks of heroin sealed inside a metal box. Officials removed the heroin, resealed the package, and "prepare[d] for what's called a controlled delivery . . . to get the suspects who would be receiving the box into custody."

Meanwhile, text messages showed that Shields had provided Jeremy Davis, one of Shields' coconspirators, with a tracking number for this particular heroin-filled package. Davis testified that on the morning of September 17, Shields also called to tell him "that it was green light that the package had arrived," and Davis admitted that they were "expecting" heroin to be in the package. When Davis arrived to pick up the package, he was quickly apprehended by police. Davis then cooperated with the arresting officers, and he turned over his phone "[t]o show the address and tracking number that [he] received from [Shields]." He also placed a recorded phone call to Shields while in custody, in an attempt to get "Shields to pick the package up." But that effort was unsuccessful, as Shields had already heard that Davis had been arrested.

C.

Toward the end of Shields' trial, the government asked the district court to issue the following joint-possession instruction for Count 6:

> The government does not have to prove that the defendant was the only one who had possession of the alleged controlled substances. Two or more people can together share actual or constructive possession over property. If they do, both are considered to have possession as far as the law is concerned.
>
> But remember that just being present with others who had possession is not enough to convict. The government must prove the defendant had either actual or constructive possession of the alleged controlled substances and knew that he did for you to find him guilty of this crime.

This was nearly identical to our pattern instruction. *See* Pattern Crim. Jury Instr. 6th Cir. 2.11. But Shields objected, claiming there was no "evidence to suggest that there was any joint possession of that particular package between Mr. Shields and anyone else." The district court overruled Shields' objection, reasoning that Davis had testified that he and Shields were "partners," and "when [Davis] grabbed the package, he was doing it jointly with Mr. Shields."

After less than two hours of deliberation, the jury convicted Shields on all four counts. The parties then agreed to consolidate Shields' sentencing for his convictions under the Avendano and Wright indictments. Although the advisory Sentencing Guidelines called for life imprisonment, the government asked for 30 years at the sentencing hearing. The district court decided to go even lower. It sentenced Shields to concurrent aggregate prison terms of 95 months for the three convictions under the Wright indictment, and 240 months for the four convictions under the Avendano indictment.

Shields timely appealed. He raises several issues, including: (1) the district court's refusal to hold an evidentiary hearing on his double jeopardy claim; (2) insufficiency-of-the-evidence claims for three of his four convictions; (3) a pair of evidentiary challenges; (4) a challenge to the joint-possession instruction; and (5) a handful of claims related to the procedural reasonableness of his sentence.

II.

We turn first to Shields' contention that the district court "deprived him of a fair and reliable adjudication of his double jeopardy claim" by forgoing an evidentiary hearing. On this front, Shields does not ask us to review the merits of his double jeopardy claim. He asks that the case "be remanded for an evidentiary hearing" so that claim can "be further explored."

We review the district court's refusal to hold an evidentiary hearing for an abuse of discretion. *United States v. Brika*, 416 F.3d 514, 529 (6th Cir. 2005). "A finding of an abuse of discretion requires 'a definite and firm conviction that the trial court committed a clear error of judgment.'" *Blue Diamond Coal Co. v. Trs. of the UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001) (quoting *Davis v. Jellico Cmty. Hosp., Inc.*, 912 F.2d 129, 133 (6th Cir. 1990)).

We are left with no such conviction here. The district court explained that it was not holding an evidentiary hearing "because the parties did not disagree about the facts. They only disagreed about the legal implications of those facts." The court, accordingly, held a hearing at which the parties could argue those legal implications. That was not an abuse of discretion.

To be sure, the "general rule" in this circuit is that "once a defendant has put forth a non-frivolous claim of double jeopardy, the court should hold an evidentiary hearing to resolve any factual disputes that arise." *In re Grand Jury Proceedings*, 797 F.2d 1377, 1385 (6th Cir. 1986). But we are not aware of any context in which we have held that a defendant is entitled to an evidentiary hearing without making "at least some initial showing of contested facts." *United States v. Giacalone*, 853 F.2d 470, 483 (6th Cir. 1988). Further, this showing must be "sufficiently definite, specific, detailed, and non-conjectural to enable the district court to conclude that contested issues of fact" actually exist. *United States v. Abboud*, 438 F.3d 554, 577 (6th Cir. 2006) (emphasis and citation omitted); *see also Gonzales v. Galvin*, 151 F.3d 526, 535 (6th Cir. 1998)

("Evidentiary hearings are not necessary where the parties' briefs clearly set forth the relevant facts and arguments of a case such that a hearing would not add anything to the briefs . . . .").

Even in his brief to us, Shields does not dispute any of the facts upon which the district court based its decision. Thus, Shields was not entitled to an evidentiary hearing on his double jeopardy claim, and the district court did not err in rejecting his request for one. *See United States v. Ickes*, 922 F.3d 708, 713 (6th Cir. 2019); *United States v. Gross*, 1 F.3d 1242, 1993 WL 300393, at *1, *3 (6th Cir. 1993) (table) (per curiam) (upholding the district court's denial, "without holding an evidentiary hearing," of a motion to dismiss an indictment on double jeopardy grounds based "upon the proffers submitted by the parties").

III.

Shields' next raises an evidentiary challenge; we again review for an abuse of discretion. *See United States v. Collins*, 799 F.3d 554, 577 (6th Cir. 2015). Shields believes that the district court erred in admitting evidence of his gang affiliation, because it "was not relevant to the key contested issue in the case." To Shields, the only contested issue was whether the Avendanos supplied him with heroin and methamphetamine, as opposed to marijuana. This argument is a nonstarter.

"Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. That's a low bar to admission. We have explained that "[e]vidence of gang affiliation is relevant where," for instance, "it demonstrates the relationship between people and that relationship is an issue in the case, such as in a conspiracy case." *United States v. Ford*, 761 F.3d 641, 649 (6th Cir. 2014). On the other hand, such evidence is inadmissible when "there is *no*

connection between the gang evidence and the charged offense." *Id.* at 650 (emphasis added) (quoting *United States v. Anderson*, 333 F. App'x 17, 24 (6th Cir. 2009)).

Here, the evidence falls on the relevant side of the line. The government bore the burden of establishing Shields' participation in the Avendano conspiracy to sell methamphetamine and heroin. *See United States v. Potter*, 927 F.3d 446, 453 (6th Cir. 2019). And the gang-related evidence was highly probative of that participation. McCaster knew Shields well enough to "bless[] him" into the PRM, a clique within the Grape Street Crips. McCaster's membership in the PRM "enhanced" his ability to obtain drugs from the Avendanos. And due to that relationship, the Avendanos "always called [McCaster] on the phone" "whenever they wanted to work with somebody else" in Memphis, including Shields. Evidence of Shields' gang affiliation was therefore probative of his ability to develop a business relationship with the Avendanos. As the district court explained, Shields' "membership in the Peda Roll Mafia and the Grape Street Crips [was] the springboard that allowed Mr. Shields to then work with Mr. McCaster and with the Avendano family in terms of obtaining the drugs." The gang relationship was "the glue that connect[ed] these parties" and showed "how they kn[e]w one another and worked together." We have little trouble concluding that this evidence was relevant to establish "the interrelationship of the individuals participating in the conspiracy." *United States v. Miller*, 48 F. App'x 933, 948 (6th Cir. 2002) (citing *United States v. Gibbs*, 182 F.3d 408, 430 (6th Cir. 1999)).

Shields responds that what made the evidence irrelevant is that he "did not contest the fact that he had an illegal business relationship with the Avendano Organization" selling marijuana. But this argument is triply flawed. First, McCaster testified that the Avendanos provided Shields with "[c]rystal meth and heroin," and so the gang-related evidence was equally probative of Shields' ability to deal in these harder drugs. Second, Shields did not stipulate—or even offer to

stipulate—to the existence of the drug conspiracies or his participation in them. The government still had the burden of proving these elements beyond a reasonable doubt. *See United States v. Ray*, 803 F.3d 244, 259 (6th Cir. 2015). Third, even if Shields had made such an offer, the government is entitled in cases like this one to prove its case free from a defendant's preference to stipulate otherwise relevant evidence away. *Old Chief v. United States*, 519 U.S. 172, 189 (1997); *see United States v. Rios*, 830 F.3d 403, 422 n.5 (6th Cir. 2016) (deeming it "irrelevant" in a conspiracy case that "the defendants did not contest their membership in the [gang]"). Shields would have had no basis to "stipulate or admit his way out of the full evidentiary force of the case as the Government cho[se] to present it." *United States v. Luck*, 852 F.3d 615, 626 (6th Cir. 2017) (quoting *Old Chief*, 519 U.S. at 186–87).

Additionally, to the extent Shields raises a challenge under Federal Rule of Evidence 403, he has not shown that the "probative value" of the gang-related evidence was "substantially outweighed" by any danger of "unfair prejudice." Fed. R. Evid. 403. Of course, "[t]rial courts must treat evidence of gang affiliation with care since most jurors are likely to look unfavorably upon a defendant's membership in a street gang." *United States v. Tolbert*, 8 F. App'x 372, 378 (6th Cir. 2001). But here, the evidence served a valid purpose. It helped illustrate Shields' interrelationship, coordination, and ability to deal with his coconspirators. And it was highly probative as to both the existence of the charged conspiracies and Shields' association with them. "The district court's limiting instruction about the narrow uses for this evidence also diminished any *unfair* prejudice by reducing the risk that the jury would put the evidence to an improper purpose." *Potter*, 927 F.3d at 452. During trial, the district court advised the jury that "being a member of a gang is not itself unlawful." It further explained that the "evidence of gang membership [was] offered here to show a relationship among some of the individuals in this case

and should not be considered by you for any other purpose." The district court repeated this limiting instruction before submitting the case to the jury. Shields offers nothing to overcome the presumption that the jury followed these clear limiting instructions. *See United States v. Burns*, 298 F.3d 523, 543 (6th Cir. 2002).

Accordingly, the district court did not abuse its discretion by admitting evidence of Shields' affiliation with the Peda Roll Mafia and the Grape Street Crips.

IV.

We now move to Shields' sufficiency-of-the-evidence challenges. Shields contends that, based on the evidence introduced at trial, no rational jury could have convicted him on three of the four counts: Count 1 (conspiracy to possess and distribute methamphetamine), Count 6 (aiding and abetting possession with intent to distribute heroin), and Count 9 (conspiracy to commit money laundering). Evidence is sufficient to support a conviction if, "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). In making this assessment, "'[w]e do not weigh the evidence, assess the credibility of the witnesses, or substitute our judgment for that of the jury,' and '[c]ircumstantial evidence alone is sufficient to sustain a conviction.'" *United States v. Hendricks*, 950 F.3d 348, 352 (6th Cir. 2020) (second alteration in original) (citations omitted).

A.

The evidence introduced at trial was more than sufficient to support Shields' conviction for conspiracy to commit money laundering. To prove this charge, the government had to show that Shields "knowingly and voluntarily joined an agreement between two or more people to (1) conduct a financial transaction from the proceeds of illegal activity, (2) knowing the money

came from illegal activity, and (3) intending to promote that activity." *United States v. Tolliver*, 949 F.3d 244, 248 (6th Cir. 2020) (per curiam); *see* 18 U.S.C. § 1956(a)(1), (h).

Shields says that the evidence falls short on the "proceeds" element. He notes that there was no testimony that Shields used any *profits* from drug sales to prepay the Avendanos for future shipments of drugs. Instead, the evidence showed that Shields deposited *income* from sales produced by the previous drug shipment to reimburse the Avendanos and prompt the next shipment. That is a distinction without a difference. The money laundering statute explicitly defines "proceeds" to "includ[e] the gross receipts" that a defendant obtains "through some form of unlawful activity." 18 U.S.C. § 1956(c)(9). It thus does not matter "[t]hat the money [Shields] allegedly moved around was income and not profits" from illicit drug sales. *Tolliver*, 949 F.3d at 248; *see also United States v. Skinner*, 690 F.3d 772, 782 (6th Cir. 2012).

Applying this standard, a rational juror could easily have found that Shields made financial transactions using money obtained from the sales of illegal narcotics. Consider, first, the nature of the scheme itself: "If you sell and pay, you get more drugs[.]" Eric Avendano testified that his organization would often "front" drugs to distributors in Memphis by sending the drugs through the mail. In turn, the organization used two national banks—Bank of America and Wells Fargo—to receive payment. To make it all work, the Avendanos would send text messages containing the bank account information of one of several individuals to the Memphis distributors, who would typically deposit $9,000 at a time into the accounts. McCaster and Davis both confirmed that they would make $9,000 deposits into Bank of America and Wells Fargo accounts, "[b]ecause anything . . . over ten would probably be a red flag at the bank." After the deposits were made in Memphis, somebody from Los Angeles would withdraw the money, often the next day. This scheme plainly violated the money laundering statute. *See United States v. King*, 169 F.3d 1035,

1039 (6th Cir. 1999) (explaining that paying for drugs delivered on consignment "constitute[s] 'promotion' for the purposes of the money laundering statute when," as here, "such payment encourages further drug transactions"); *Tolliver*, 949 F.3d at 248 (similar).

Then there was plenty of evidence linking Shields to the scheme. Davis testified that he had accompanied Shields to the bank when Shields had made deposits in the past. Surveillance footage from Bank of America and Wells Fargo showed Shields depositing large amounts of cash at times corresponding to several of the $9,000 transactions identified by the government. Sums corresponding to those deposits were all withdrawn shortly thereafter in Los Angeles. Beyond that, the government introduced text messages between Shields' phone and a Los Angeles number from January 2015. After Shields sent an address for delivery, he said, "[s]end the numbers." The response was "Aurora Gran," followed by a bank account number, the letters "B-O-A," and the number "9000." A few days later—and the same day a 20-pound package was delivered from California to the address Shields had provided—surveillance footage showed Shields depositing a stack of cash at a Memphis-area Bank of America. The name on the account? Aurora Gran. The amount deposited? $9,000. The location of withdrawal just a few days later? Los Angeles County. The amount withdrawn? $9,000. Everything about this transaction conformed with the Avendanos' money-laundering scheme and with the text messages on Shields' phone. There was sufficient evidence to support the jury's conviction on Count 9.

B.

The next sufficiency challenge concerns the type of drugs that Shields purveyed. Notwithstanding Shields' insistence that he "dealt solely in marijuana and had nothing to do with

other drugs marketed by the Avendanos," the evidence tells another story. A rational jury could have found that Shields conspired to possess and distribute methamphetamine.

To support this conviction, the government needed to prove three elements: (1) an agreement between two or more persons to possess with the intent to distribute methamphetamine, (2) the defendant's knowledge of the agreement, and (3) the defendant's voluntary participation in the enterprise. *Potter*, 927 F.3d at 453; *see* 21 U.S.C. §§ 841(a)(1), 846. The existence of a conspiracy may be inferred through circumstantial evidence. *United States v. Faulkenberry*, 614 F.3d 573, 584 (6th Cir. 2010). And the agreement need not be explicit; rather, a "tacit or mutual understanding among the parties" will suffice. *Potter*, 927 F.3d at 453 (citation omitted).

The prosecution offered ample evidence to prove Shields' participation in the methamphetamine conspiracy. We begin with the testimony of his alleged coconspirators. First, Eric Avendano testified that he and his brothers shipped pounds of meth to the Memphis area. This was corroborated by federal investigators, who seized two packages destined for Memphis that contained large quantities of the drug and were linked to the Avendanos. Second, Fred McCaster—a known close associate of both the Avendanos and Shields—testified that he knew the Avendanos were providing Shields with crystal meth. Third, Timothy Wright testified that Shields told him he had received "ice water" or "meth" from the Avendanos.

Tack on to that the evidence from Shields' cell phone. Shields requested "four bottles" of "[g]lass" from a Los Angeles-area number. Eric Avendano testified that "[g]lass is meth" and that a "bottle" was a code word used in his organization to refer to a pound of meth. He rejected defense counsel's suggestion that a "bottle" might refer to other drugs, such as marijuana. On top of this specific conversation, Shields sent several other text messages to various numbers

concerning "bottles." The proof against Shields regarding the methamphetamine conspiracy was therefore strong, and a rational jury could have found him guilty beyond a reasonable doubt.

Shields offers two responses; neither persuade us. First, he says that the text-message evidence was not properly authenticated, insisting that the government didn't offer anything connecting the messages to Shields. Because he did not object on this point, we review for plain error. *See Collins*, 799 F.3d at 576. Even under de novo review, however, we would find that the government "produce[d] evidence sufficient to support a finding" that the text messages were sent by Shields. Fed. R. Evid. 901(a).

For one, the texts were extracted from the iPhone found in Shields' pocket during the execution of a valid search warrant. Moreover, there was circumstantial evidence linking Shields to the messages on the phone. For example, an incoming message instructed the recipient to deposit $9,000 into the "Aurora Gran" account at "B-O-A." The recipient responded on January 16, 2015 that he had done so. Bank records and surveillance footage from a Memphis-area Bank of America showed Shields depositing $9,000 into an account for Aurora Gran on that same date, exactly as instructed. Similarly, outgoing messages from the phone reported $9,000 going into an account for "Vanessa Sanchez." Bank records and surveillance footage likewise showed Shields depositing $9,000 into that account. In light of this evidence, a reasonable factfinder could conclude that Shields was the one sending the text messages from the phone seized from his pocket.

Second, Shields argues that there was no evidence that the Los Angeles number on the other side of the "four bottles" of "glass" conversation was held by a member of the Avendano organization. We disagree. Based on other evidence introduced at trial, a reasonable jury could believe just that. Eric Avendano testified that "bottles" was a code word that he and his brothers

used to refer to a pound of meth, thereby providing circumstantial evidence of identity. Eric also explained that to receive payment for their drug shipments, the Avendanos would text the names and numbers associated with Bank of America and Wells Fargo accounts to their associates in Memphis. That is consistent with what occurred in the exchange here. What's more, Eric even recognized the account names referenced in Shields' conversation, as those were some of the ones that he and his brothers used to funnel money back to California.

Despite this evidence, Shields makes much of the fact that Eric Avendano could not identify the Los Angeles number in the text exchange as belonging to one of his brothers. But this comes as little surprise. Eric explained that the Avendanos would each use three cell phones at a time with Los Angeles area codes to conduct their business, and they would throw all those phones away each month to avoid being tracked. The fact that Eric could not identify one of those ten-digit numbers more than two years later while on the stand does not change our conclusion. A reasonable factfinder could still believe that the counterparty to Shields' meth deal was a member of the Avendano conspiracy. Accordingly, there was sufficient evidence to find Shields guilty beyond a reasonable doubt on the methamphetamine conspiracy charge. We affirm the jury's conviction on Count 1.

C.

We now confront Shields' challenge to his conviction on Count 6. The prosecution could prove this charge by showing that Shields: (1) knowingly or intentionally, (2) possessed, (3) with the intent to distribute, (4) heroin. 21 U.S.C. §§ 812(c) & sched. I(b)(10), 841(a)(1). But "[p]roof of actual possession with intent to distribute is not necessary to sustain a conviction under 21 U.S.C. § 841(a)(1) as long as there is proof, beyond a reasonable doubt, that a defendant aided and abetted the criminal venture." *United States v. Clark*, 928 F.2d 733, 736 (6th Cir. 1991); *see* 18

U.S.C. § 2. "In proscribing aiding and abetting, Congress used language that 'comprehends all assistance rendered by words, acts, encouragement, support, or presence.'" *Rosemond v. United States*, 572 U.S. 65, 73 (2014) (quoting *Reves v. Ernst & Young*, 507 U.S. 170, 178 (1993)).

On appeal, Shields argues that his aiding-and-abetting conviction cannot stand because there was no evidence that Jeremy Davis—the person Shields allegedly assisted—ever possessed any heroin on or about September 17, 2015 (the date listed in the indictment). That is not, however, what Shields argued below. To the contrary, in his Rule 29 motion, Shields' counsel took the opposite position and explicitly stated that he thought "the government ha[d] proven that Mr. Davis possessed heroin with intent to distribute" on September 17, 2015. He then asserted a different theory of insufficiency altogether—"that the evidence [didn't] show that Mr. Shields was involved with [the possession] or that he aided and abetted Mr. Davis in possessing that heroin with intent to distribute." And his post-trial motion for a judgment of acquittal also failed to press the argument he now makes on appeal.

"Although specificity of grounds is not required in a Rule 29 motion, where a Rule 29 motion is made on specific grounds, all grounds not specified are waived[.]" *United States v. Dandy*, 998 F.2d 1344, 1356–57 (6th Cir. 1993) (internal citation omitted). This is because "[t]he specification of grounds in the motion is an indication that counsel has evaluated the record and has these particular reasons for his motion." *Id.* at 1357 (citation omitted). In that case, we "do[] not review the omitted grounds *at all*; *i.e.*, we deem them completely waived." *United States v. Martinez-Lopez*, 747 F. App'x 326, 331 (6th Cir. 2018); *see also, e.g.*, *United States v. Osborne*, 886 F.3d 604, 618 (6th Cir. 2018); *United States v. Winkle*, 477 F.3d 407, 415 (6th Cir. 2007); *United States v. Wesley*, 417 F.3d 612, 617 (6th Cir. 2005). Shields has therefore waived his new argument.

Osborne is particularly instructive on this point. There, as in this case, the defendant moved for a judgment of acquittal in the district court. *Osborne*, 886 F.3d at 618. In that motion, the defendant raised particular grounds for acquittal. *See id.* But he did not advance his appellate theory—that the evidence failed to show that another individual committed an element of the crime, and "thus Osborne could not have aided and abetted him in that crime." *Id.* "Because Osborne made a motion for judgment of acquittal on specified grounds, and those grounds did not include the claim that [was raised] on appeal," we held that he had waived his appellate argument. *Id.* So too here. As in *Osborne*, Shields is arguing that there was no evidence that Davis completed the crime of possession with intent to distribute heroin and thus Shields could not have aided and abetted Davis in its commission. Since this is distinct from the theory of insufficiency asserted below, Shields "cannot now raise this argument." *Id.* We affirm as to Count 6.

V.

Shields also claims that the district court erred in issuing a joint-possession instruction because there was no evidence that Davis possessed the heroin. *See generally United States v. James*, 819 F.2d 674, 675 (6th Cir. 1987) ("[A]n instruction should not be given if it lacks evidentiary support . . . ." (citation omitted)). Shields did not object on this ground, so we review only for plain error. *See United States v. Pearce*, 912 F.2d 159, 163 (6th Cir. 1990); Fed. R. Crim. P. 30(d).

Shields has not shown plain error. The instruction was neither "prejudicial" nor did it "result[] in a miscarriage of justice." *United States v. Treadway*, 328 F.3d 878, 883–84 (6th Cir. 2003) (citing *United States v. Olano*, 507 U.S. 725, 735–36 (1993)). Shields contends that the instruction prejudiced him because it invited the jury to believe it could convict him based on joint possession with the law-enforcement officer who intercepted the package containing heroin. We

find that theory implausible. The government argued to the jury that it was Shields and Davis who shared a mutual interest in the package. Unsurprisingly, it never suggested that Shields might have "share[d] actual or constructive possession" of heroin "together" with a government official who was investigating him and whom he had never met. R. 493, PageID 2346 (jury instruction). We think it highly unlikely that the jury even contemplated such a possibility. We are therefore confident that the joint-possession instruction had no effect on the jury's verdict and did not affect Shields' "substantial rights." Fed. R. Crim. P. 52(b); *see Olano*, 507 U.S. at 734–35. There was no plain error.

VI.

We turn our attention finally to Shields' claims that the district court imposed a procedurally unreasonable sentence. Procedural reasonableness requires the sentencing court to "properly calculate the guidelines range, treat that range as advisory, consider the sentencing factors in 18 U.S.C. § 3553(a), refrain from considering impermissible factors, select the sentence based on facts that are not clearly erroneous, and adequately explain why it chose the sentence." *United States v. Rayyan*, 885 F.3d 436, 440 (6th Cir. 2018) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)).

A.

Shields first contends that the district court erred in its factual determination of the quantity of drugs attributable to him. We review that determination for clear error. *See United States v. Walton*, 908 F.2d 1289, 1300–1301 (6th Cir. 1990). We will find clear error only if, after reviewing the full record, we are "left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

The Sentencing Guidelines advise that a defendant is accountable for "all acts and omissions" that were: "(i) within the scope of the jointly undertaken criminal activity, (ii) in furtherance of that criminal activity, and (iii) reasonably foreseeable in connection with that criminal activity." U.S.S.G. § 1B1.3(a)(1)(B). In a drug-conspiracy case, this includes "all quantities of contraband that were involved in transactions carried out" by participants in the conspiracy, including by the defendant himself. *Id.* § 1B1.3(a)(1)(B) cmt. n.3(D). "A drug quantity need only be established by a preponderance of the evidence, and an estimate will suffice so long as it errs on the side of caution and likely underestimates the quantity of drugs actually attributable to the defendant." *United States v. Anderson*, 526 F.3d 319, 326 (6th Cir. 2008). Accordingly, a district court may extrapolate from seized drugs information about other drugs involved in the case. *See United States v. Jackson*, 470 F.3d 299, 310–11 (6th Cir. 2006); *United States v. Price*, 761 F. App'x 568, 571 (6th Cir. 2019). But it must "provide an explanation for its decision (not merely a rote extrapolation from the few to the many or an unsupported estimation)." *United States v. Rodriguez-Iznaga*, 575 F. App'x 583, 588 (6th Cir. 2014); *see also United States v. Henley*, 360 F.3d 509, 515 (6th Cir. 2004) ("In determining whether a district court's calculation of drug quantity is clearly erroneous, a key issue is the extent to which the court identified the evidence on which it relied in making that calculation.").

The district court found that Shields was responsible for 12.5 kilograms of heroin, 1,814 grams (four pounds) of methamphetamine, and 108.7 kilograms of marijuana, for a total of just under 49,000 kilograms of converted drug weight. Because this was between 30,000 and 90,000 kilograms, the court found that Shields' base offense level was 36, in accordance with the Guidelines' Drug Quantity Table. *See* U.S.S.G. § 2D1.1(c)(2).

The methamphetamine determination alone was sufficient to sustain that conclusion.[2] The Drug Quantity Table provides for a base offense level of 36 when the defendant is responsible for 1.5 kilograms or more of at least 80% pure methamphetamine. *See id.* § 2D1.1(c) & n.(B)–(C). Text messages introduced at trial showed that in January 2015, Shields asked for "four bottles" of "glass." Avendano testified that "bottles of glass" referred to "pounds of meth." And he confirmed that "when bottles are mentioned, that's methamphetamine[.]" Faced with this evidence, Shields' trial counsel conceded at the sentencing hearing that his client was responsible for "4 pounds" or "1,814 grams of methamphetamine." Nevertheless, counsel protested that the government had no evidence as to the purity of the methamphetamine that Shields ordered in the text exchange, as that particular package was never seized. The government, however, pointed to other packages seized in 2015 that were also sent to Memphis by the Avendano organization. Lab testing revealed that those packages contained methamphetamine ranging from 94 to 100 percent purity. The district court found that this was "pretty strong proof" that "the methamphetamine sent from California in connection with Mr. Shields was actual methamphetamine" too, as opposed to some diluted mixture.

We see no clear error in that conclusion. It was Shields' obligation to "produce some evidence that call[ed] the reliability or correctness of the alleged [purity] into question." *United States v. Lang*, 333 F.3d 678, 681 (6th Cir. 2003) (citation omitted). And "[a]side from bald assertions, [he] failed to produce any evidence" to refute that assessment. *United States v. Adkins*, 729 F.3d 559, 570 (6th Cir. 2013). Not to mention, the district court's estimate of the total weight attributable to Shields was conservative. The government also pointed to another package that

[2] For this reason, we need not address Shields' argument related to the amount of heroin attributable to him. Either way, his base offense level would be 36.

was mailed to an address Shields had provided to a Los Angeles number in relation to the sending of "bottles." Though the Postal Service discovered nine packages sent to that same location, the district court ignored all of them in arriving at its final figure of just four pounds of methamphetamine. And it further ignored any evidence regarding the pounds of meth sent to Shields' coconspirators. The district court's determination of the quantity of drugs attributable to Shields was not clearly erroneous.

B.

We next consider Shields' claim that his counsel rendered ineffective assistance in withdrawing an objection to a two-level increase for possession of a firearm. In general, "a defendant may not raise ineffective assistance of counsel claims on direct appeal, since there has not been an opportunity to develop and include in the record evidence bearing on the merits of the allegations." *United States v. Ledbetter*, 929 F.3d 338, 364 (6th Cir. 2019) (citation omitted). Such claims are generally best raised in a motion filed under 28 U.S.C. § 2255, which gives the claimant access to "the forum best suited to developing the facts necessary to determining the adequacy of representation." *Massaro v. United States*, 538 U.S. 500, 505 (2003). This case is no exception. The trial record is "incomplete or inadequate" to assess either the reasonableness of counsel's actions at the time or any prejudice that may have resulted therefrom. *Id.* All the record shows is that counsel raised but then withdrew an objection to the firearm enhancement with no explanation. Without "additional factual development," we have "no way of knowing" why counsel did so. *Id.* We therefore decline to address the merits of Shields' claim on this direct appeal.

C.

Lastly, Shields contends that the district court failed to credit him for the 42-month prison sentence he had already completed for a related felon-in-possession charge. At the sentencing hearing, the court made clear that it intended the sentence for the present case to run "concurrent[ly]" with the felon-in-possession sentence and that Shields would "have credit back to April of 2016." The court also stated that due to this credit, Shields would have "about 16 years to go" on his sentence, even though the "total sentence [was] 240 months." The government concedes that the district court's "clear" intention was to give Shields credit "for his time served" on the related charge. Shields nonetheless protests that the written judgment makes no mention of this "credit back" and only states that the sentences would run "concurrent to each other." To correct what he sees as an ambiguity in his sentence, he asks this court to vacate his sentence and remand for resentencing.

We need not do so. Like both of the parties, we agree that the sentencing transcript here plainly evinces the district court's intent to provide Shields with a reduction in his sentence for time served. This conclusion is reinforced by the docket entry for the written sentence, which says that "[t]he Court Ordered the defendant received credit from 4/8/2016 through 12/3/2019." Thus, even if the written sentence conflicted with the district court's oral sentence, "[t]he clarity of the oral sentence . . . means that we must consider the oral sentence as controlling on appeal." *United States v. Penson*, 526 F.3d 331, 334 (6th Cir. 2008). And because the district court's intent was clear, we need not remand for clarification. We take this opportunity to confirm that Shields' total sentence is 240 months minus the time he served for the related felon-in-possession case.

* * *

For the foregoing reasons, we AFFIRM.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. DONNELL TOUSANT, MONTRELL BENARD, JOHN SHIELDS, Defendants.	)	No. 2:17-cr-20103-TLP-1

ORDER DENYING DEFENDANT'S MOTION TO DISMISS ON DOUBLE JEOPARDY GROUNDS

Defendants move to dismiss this indictment because they already pleaded guilty to what they allege to be the same conspiracy count in another case.[1] (ECF No. 291 and 302.) So the pending conspiracy counts here allegedly violate the double jeopardy clause of the 5th Amendment. The Court held a hearing on the issue and announced its decision to deny the motion. (ECF No. 316.) The Court now explains its reasoning for that ruling. For the reasons below, the Court DENIES the Defendants' motion to dismiss the indictment.

BACKGROUND

This case arises from an investigation into a street gang by the name of Memphis Peda Roll Mafia ("PRM"). (ECF No. 10 at PageID 49.) PRM is allegedly a subset of the Grape Street Crips of California, "a national street gang that originated in the Jordan Downs housing projects

[1] Counsel for Defendants Montrell Benard and John Shields announced their desire to join in the Motion. The Court allowed them to do so. At the oral argument, counsel for Mr. Tousant argued on behalf of all defendants. (ECF No. 316.)

in the Watts area of Los Angeles, California." (ECF No. 274 at PageID 510). PRM allegedly operates mainly in Memphis, Tennessee.[2] (*Id.*) The investigation, which began in 2013, led to two indictments charging several defendants with conspiracies to possess with intent to distribute various drugs, including marijuana, heroin, methamphetamine, cocaine, hydrocodone and oxycodone. (ECF No. 10 and *United States v. Wright*, Case Number 17-20151, ECF No. 3 at PageID 4.) The government separates the cases based in part on two distinct drug suppliers. (ECF No. 312 at PageID 579.) For example, the government alleges here that brothers, Calvin and Eric Avendano, are the primary suppliers of cocaine, methamphetamine and heroin for the PRM. *(Id.* at PageID 580.) Meanwhile, the government alleges in another case (Case Number 17-20151) that Reginald Wright, Jr., is the primary supplier of marijuana, hydrocodone and oxycodone. (*Id.* at PageID 580.)

The government charged Donnell Tousant ("Defendant") in both cases.[3] In three counts in the *Wright* indictment, the government alleged that Defendant conspired to distribute marijuana, hydrocodone and oxycodone. (*Id.* at PageID 579.) In the second superseding indictment in the *Avendano* case, the government alleges that Defendant conspired to distribute methamphetamine and a substantive count of possession with intent to distribute methamphetamine.[4] (ECF No. 274 at Page ID 513-14.)

[2] The government has brought three indictments here and they are listed in the docket as ECF Nos. 4, 10, and 274.
[3] Because Tousant is the primary movant here, the Court will focus on the charges against him to explain its reasoning. The same reasoning applies to Defendants Shields and Benard.
[4] In the first superseding indictment in the *Avendano* case, the government named Defendant in four counts alleging conspiracy to distribute cocaine, heroin and methamphetamine and a substantive count of possession with intent to distribute methamphetamine. (ECF No. 312 at PageID 579.) So the Second Superseding indictment reduced the number of counts for Tousant.

After pleading guilty to count one, conspiracy to distribute marijuana, in the *Wright* case (*Wright*, Case Number 17-20151, ECF No. 503.)[5], Defendant moved to dismiss the *Avendano* indictment arguing that it violates double jeopardy. (ECF No. 291.) Defendant contends that the second superseding indictment in *Advendano* puts him in double jeopardy because he already pleaded guilty to conspiracy to distribute narcotics in the *Wright* case. (*Id.* at PageID 550.) Defendant claims that the *Wright* case and the *Avendano* case charge him for engaging in the same conspiracy. (*Id.* at PageID 550-53.)

Defendant focuses on the overlapping time frame of the two conspiracies, the overlapping co-defendants, and the fact that both conspiracies sent drugs through the mail from California to Memphis. (ECF No. 291 at PageID 550.) In fact, Defendant points out that one of the drug shipments in the *Avendano* Indictment contained both marijuana and methamphetamine.[6] (*Id.* at PageID 550.) Defendant relies on this fact to prove that he participated in a single conspiracy—one where he sent both marijuana and methamphetamine.[7] (*Id.* at PageID 550.)

Despite some overlap in time, some common co-defendants and similar distribution methods in the two cases, the government argues that Defendant participated in two separate conspiracies—the *Wright* marijuana conspiracy and the *Avendano* methamphetamine conspiracy. (ECF No. 312 at PageID 582.) The government focuses on the different drugs involved, the different drug suppliers, the different locations where the suppliers get their drugs, the different

[5] The Court entered an order dismissing counts 2 and 3 for Tousant, Benard and Shields. (*Wright* (Case No. 17-20151) ECF No. 495.)
[6] The government disputes that the shipment in question contains marijuana from Wright.
[7] The Court denied Defendant's request for an evidentiary hearing because the parties did not disagree about the facts. They only disagreed about the legal implications of those facts. Additionally, the indictments and the parties' briefs provided sufficient evidence from which to find by the preponderance of the evidence the existence of two separate conspiracies.

co-defendants, the different time periods, and the different money laundering techniques in the two cases. (*Id.* at PageID 580.) The government argues these differences validate its determination that Defendant participated in two separate conspiracies.

LEGAL STANDARD

When a Defendant moves to dismiss an indictment on double jeopardy grounds, he bears the burden "to show that a single conspiracy exists." *In re Grand Jury Proceedings*, 797 F.2d 1377, 1380 (6th Cir. 1986). That said, since "the government typically has better access to evidence, that burden is satisfied if the defendants advance a non-frivolous or prima facie showing of a single conspiracy." *Id.* If the defendant is successful, the "burden then shifts to the government to show separate conspiracies by a preponderance of the evidence." *Id.*

"In a conspiracy case it is the agreement which forms the nucleus of the offense." *United States v. Sinito*, 723 F.2d 1250, 1256 (6th Cir. 1984). Thus, "[a] single agreement to commit several crimes constitutes one conspiracy." *United States v. Vichitvongsa*, 819 F.3d 260, 273 (6th Cir. 2016). But separate conspiracies exist if there are "multiple agreements to commit separate crimes . . . ." *Id.* (quoting *United States v. Broce*, 488 U.S. 563, 570–71 (1989)). To determine whether "two conspiracies arise from a single agreement," the Sixth Circuit applies the "Totality of Circumstances Test." *Sinito*, 723 F.2d at 1256. The test requires the trial court to consider these factors:

> (1) time; (2) persons acting as co-conspirators; (3) the statutory offenses charged in the indictments; (4) the overt acts charged by the government or any other description of the offenses charged which indicates the nature and scope of the activity which the government sought to punish in each case; and (5) places where the events alleged as part of the conspiracy took place.

Id.

ANALYSIS

The Sixth Circuit requires the Court to apply the five *Sinito* factors to determine whether the *Wright* conspiracy and *Avendano* conspiracy are separate conspiracies or one, unified conspiracy.

I. Time

The first factor is the alleged time frame of the two conspiracies in the *Wright* conspiracy and the *Avendano* conspiracy. Both conspiracy counts allege "[b]eginning at a time unknown to the grand jury but at least from in or about March 2013" but, the conspiracy in *Wright* extended until May 2017, one year and eight months past the *Avendano* conspiracy. (ECF No. 274 at PageID 513); (*United States v. Wright*, Case Number 17-20151, ECF No. 3 at PageID 4.) And the government points out that the starting date reflects the beginning of the PRM investigation in March 2013. The conspiracies do overlap in time but not exactly.

Even still, an "[o]verlap in time alone is 'not conclusive evidence of a single conspiracy.'" *United States v. Vichitvongsa*, 819 F.3d 260, 273 (6th Cir. 2016) (quoting *United States v. Lacey*, 983 F.2d 1070 (6th Cir. 1993)). It is possible for multiple criminal agreements to exist with the same overlapping time frames and overlapping personnel when the scheme involves the distribution of drugs. *United States v. Lacey*, 782 F.Supp. 66, 67–68 (E.D. Mich. 1992), *aff'd*, *United States v. Lacey*, 983 F.2d 1070 (6th Cir. 1993); *see also United States v. Okolie*, 3 F.3d 287, 290 (8th Cir. 1993) (finding that a "separate and ongoing agreement" existed despite the defendant being charged with two overlapping conspiracies because one of the conspiracies "continued for eight months" past the conclusion of the other conspiracy).

On balance, because the *Wright* conspiracy operated well longer than the *Avendano* conspiracy, this factor weighs slightly in favor of the government.

II. Persons Involved

The government charged some of the same co-defendants in both cases. In total, five co-defendants overlap between the marijuana conspiracy count of the *Wright* indictment and the methamphetamine count of *Avendano*. This leaves two of the defendants in the Avendano conspiracy who were not charged in Wright. But in *Wright* thirteen defendants were not also charged in *Avendano*. Courts also include unindicted individuals who "were involved in the activities charged under each indictment" in this factor. *United States v. Wheeler*, 535 F.3d 446, 451 (6th Cir. 2008). The Sixth Circuit in *United States v. Meda,* distinguished between the individuals who play minor roles and those who are central characters in each indictment. 812 F.3d 502, 509 (6th Cir. 2015). Thus, where "the central figures are different, or serve different functions, it is less likely that there is a single agreement." *Id.* (quoting *United States v. El-Mezain*, 664 F.3d 467, 547 (5th Cir. 2011)).

The Avendano brothers and Reginald Wright were central characters in their respective conspiracies. They supplied the drugs. The government also contends that Avendano was aggressive in his role. He traveled to Memphis and threatened his co-conspirators for failing to pay him and had them deposit funds in accounts using Hispanic names. (ECF No. 312 at PageID 580.) Meanwhile Wright did not travel to Memphis or resort to violent threats in his conspiracy. Wright had his operatives deposit funds in his father's bank account. The government emphasizes that the defendants never comingled any of the funds from the *Wright* conspiracy and the *Avendano* conspiracy. (*Id*. at PageID 580-81.) Besides, Wright's primary role was to source marijuana from dispensaries in southern California to be sent through the mail, while Avendano allegedly shipped an assortment of harder drugs to Memphis, Tennessee. (*Id*.) The government also contends that Wright and Avendano had no connection with each other. (*Id*.)

For these reasons, this factor of common defendants also slightly tips in the government's favor.

III. Statutory Offenses Charged

Defendant argues that, because the government charged him with violations of 21 U.S.C § 841 in both indictments, this factor favors finding a single conspiracy. Even so, the underlying statutory offense in the *Wright* conspiracy is based on possession of marijuana with the intent to distribute, while the *Avendano* conspiracy is based on the possession of methamphetamine with the intent to distribute. The Sixth Circuit in *Wheeler*, recognized that "even if 'the statutory offenses charged are the same . . . one can certainly enter two conspiracies to commit the same type of crime.'" 535 F.3d at 456 (quoting *United States v. Ledon*, 49 F.3d 457, 460 (8th Cir. 1995)). Even though both indictments allege violations of the same statute, the fact that the drugs in each conspiracy were different pushes this factor in favor of the government.

IV. Nature and Scope

The Sixth Circuit gives greater weight to this factor. *See Vichitvongsa*, 819 F.3d at 273 ("The scope and nature of the conduct charged . . . is the 'most significant.'") (quoting *United States v. Goff*, 400 F. App'x. 1, 9 (6th Cir. 2010); *see also Wheeler*, 535 F.3d at 455 (stating the fourth factor is the "most significant[]" of the five factors). Defendant argues that the scope and nature of the *Wright* and *Avendano* conspiracies suggest that Defendant was involved in one, large conspiracy to distribute and sell various drugs because one of the packages he sent contained both marijuana and methamphetamine. This argument is not persuasive because Defendant acknowledged that the government did not charge the same event in both conspiracies. Instead, the government alleges that Defendant sent the referenced package as part of the Avendano case only. The government alleges that Avendano dabbled in the distribution of

marijuana from time to time. Thus, Defendant sent the marijuana in the package for Avendano, not Wright.

Even if that package contained marijuana from Wright and methamphetamine from Avendano, this factor still favors the government. The Sixth Circuit in *Wheeler*, found that the scope and nature of conspiracies differed where the same Defendant was indicted in two cases, one for conspiracy to distribute cocaine and methamphetamine and another for conspiracy to distribute cocaine, methamphetamine, marijuana, LSD and valium. 535 F.3d at 457. The court found that the latter indictment "charged a conspiracy of a wider scope and of a different nature" than the former indictment. *Id.* Thus, many conspiracies can exist whether the same drugs or different drugs are involved.

The *Wright* conspiracy involved marijuana and pharmaceutical drugs while the *Avendano* conspiracy involves harder drugs, such as cocaine, heroin and methamphetamine. Furthermore, the scope of the *Wright* and *Avendano* indictments vary greatly beyond the type of drugs involved. The source of the drugs in each conspiracy suggests two conspiracies. The Avendano brothers obtained their drugs from the Mexican cartel and then members of the *Avendano* conspiracy sent them to Memphis, Tennessee. (ECF No. 312 at PageID 580.) The *Wright* coconspirators obtained the marijuana from dispensaries in California. (*Id.* at PageID 580.) Thus, this points to two separate conspiracies. *See United States v. Toaz*, 59 F App'x. 94, 102 (6th Cir. 2003) (finding that the nature and scope of two drug conspiracies different when the conspiracies "involved different suppliers, different customers and different co-conspirators.").

Even more, the conspiracies differed greatly. As discussed above, the government will present evidence that Avendano was more aggressive in carrying out his conspiracy. (ECF No. 312 at No. 581.) He allegedly traveled to Tennessee and threatened to hire a hitman if his co-

conspirators failed to pay him. (*Id.* at No. 581.) On the other hand, the government has no evidence that Wright resorted to any violent threats. (*Id.* at No. 581.) The government also contends that the *Avendano* conspiracy used encrypted communications by Blackberry Messenger. (*Id.* at No. 585.) This evidence suggests two different conspiracies. Thus, this factor weighs strongly in favor of the government.

V. Location

The *Wright* conspiracy involved the shipment of drugs from California to Memphis and the *Avendano* conspiracy also involved the shipment of drugs from California to Memphis. The government concedes that this factor partially favors the Defendant because of the overlapping location of the conspiracies. (*Id.* at PageID 585.) That said, this factor is not persuasive here because the suppliers reside and operate in different parts of southern California and, as mentioned above, there is no alleged connection between the Avendano brothers and Wright.

CONCLUSION

After reviewing the five Sinito factors and considering the totality of circumstances here, the Court holds that the government as satisfied its burden of proving by a preponderance of evidence the existence of two separate conspiracies. The Court therefore DENIES Defendant's motion to dismiss the Indictment on double jeopardy grounds.

SO ORDERED, this 19th day of February, 2019.

s/Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

Western District of Tennessee

UNITED STATES OF AMERICA
v.
JOHN SHIELDS
a/k/a "John John"
a/k/a "John Juan"

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17CR20103-007-TLP

USM Number: 27330-076

Andre B. Mathis, CJA
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☑ was found guilty on count(s) after a plea of not guilty. 1, 3, 6 and 9 of the Second Superseding Indictment on 7/22/2019.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846;	Conspiracy to Possess with Intent to Distribute and	5/5/2017	1, 3
21 U.S.C. § 841(a)(1)	Distribution of Heroin and Methamphetamine.		
21 U.S.C. § 841(b)(1)(A)			

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ 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.

12/3/2019
Date of Imposition of Judgment

s/ Thomas L. Parker
Signature of Judge

THOMAS L. PARKER, UNITED STATES DISTRICT COURT
Name and Title of Judge

12/9/2019
Date

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1);	Possession with Intent to Distribute and Distribution of	9/17/2015	6
21 U.S.C. §841(b)(1)(A);	Heroin, Aiding and Abetting.		
18 U.S.C. §1956(h);	Conspiracy to Commit Money Laundering	9/30/2016	9
21 U.S.C. §1956(a)(1)			
(A)(i); and			
18 U.S.C. §1956(a)(1)			
(B)(i),			

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

IMPRISONMENT

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

240 months. The Sentence shall be allocated as follows: Count 1: 215 months on the underlying offense, 25 months on enhancement under 18 U.S.C. § 3147; Count 3: 215 months on underlying offense, 25 months on § 3147 enhancement; Count 6: 180 months on underlying offense, 25 months on § 3147 enhancement; and Count 9: 36 months on underlying offense, 25 months on § 3147 enhancement. Sentences on underlying offenses are concurrent to each other and Case Numbers15-20060 & 17-20151 but consecutive to the 25-month sentence for the § 3147 enhancement. Each 25-month sentence under the 18 U.S.C. § 3147 enhancement is concurrent with each other. The Total Sentence is therefore 240 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

1. The defendant be allowed to participate in the RDAP Program.
2. The defendant be incarcerated at a facility in or near the Memphis, TN, area.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

5 years. 5 years as to Counts 1, 3 and 6; 3 years as to Count 9 to run concurrent to each other and concurrent to the Sentence in Case Nos. 15-20060 and 17-2015103 in the Western District of Tennessee.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall participate in drug testing and treatment as directed by the probation officer.

2. The defendant shall participate in GED courses and/or vocational training as directed by the probation officer.

3. The defendant shall participate in mental health counseling as directed by the probation officer.

4. The defendant shall participate in Moral Reconation Therapy (MRT) or another similar and approved cognitive behavioral therapy program as directed by the probation officer.

5. The defendant shall submit person, property, house, residence, vehicle, papers or office to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at the reasonable time and in a reasonable manner.

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

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	$ 400.00	$	$	$

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ 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).

☐ 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 the ☐ fine ☐ restitution.

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

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20103-007-TLP

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

C ☐ 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

D ☐ 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

E ☐ 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

F ☐ 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 the period of 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

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

☐ 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.

AO 245B (Rev. 09/17) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Western District of Tennessee

UNITED STATES OF AMERICA
v.
JOHN SHIELDS
a/k/a "John John"
a/k/a "John Juan"

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:17CR20151-007-TLP

USM Number: 27330-076

Andre B. Mathis, CJA
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1, 7 and 9 of the Indictment on 12/3/2018.

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846; and	Conspiracy to Possess with Intent to Distribute and	5/5/2017	1
21 U.S.C. § 841(b)(1)(B)	Distribution of Marijuana.		

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ 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.

12/3/2019
Date of Imposition of Judgment

s/ Thomas L. Parker
Signature of Judge

THOMAS L. PARKER, UNITED STATES DISTRICT COURT
Name and Title of Judge

12/9/2019
Date

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

ADDITIONAL COUNTS OF CONVICTION

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. §841(a)(1)	Possession with Intent to Distribute and Distribution of	4/29/2014	7
and 18 U.S.C. §2	Marijuana, Aiding and Abetting.		
18 U.S.C. §1956(h)	Conspiracy to Commit Money Laundering	9/30/2016	9

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
240 months. The sentence shall be allocated as follows: Count 1: 70 months on the underlying offense, 25 months on enhancement under 18 U.S.C. § 3147; Count 7: 35 months on the underlying offense, 25 months on the § 3147 enhancement; and Count 9: 70 months on the underlying offense, 25 months on the § 3147 enhancement. Sentences on the underlying offenses are concurrent to each other and Case Numbers 15-20060 & 17-20103 but consecutive to the 25-month sentence for the § 3147 enhancement. Each 25-month sentence under the 18 U.S.C. § 3147 enhancement is concurrent with each other. The total Sentence is therefore 240 months.

☑ The court makes the following recommendations to the Bureau of Prisons:

1. The defendant be allowed to participate in the RDAP Program.
2. The defendant be incarcerated at a facility in or near the Memphis, TN, area.

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

5 years. 4 years as to Count 1, 3 years as to Count 7 and 3 years as to Count 9 to run concurrent to each other and concurrent to the 5 years Sentence in Case Nos 15-20060 and 17-20103-007 in the Western District of Tennessee.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant shall participate in drug testing and treatment as directed by the probation officer.

2. The defendant shall participate in GED courses and/or vocational training as directed by the probation officer.

3. The defendant shall participate in mental health counseling as directed by the probation officer.

4. The defendant shall participate in Moral Reconation Therapy (MRT) or another similar and approved cognitive behavioral therapy program as directed by the probation officer.

5. The defendant shall submit person, property, house, residence, vehicle, papers or office to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at the reasonable time and in a reasonable manner.

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

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	$	$	$

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ 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, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ 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).

☐ 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 the ☐ fine ☐ restitution.

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

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOHN SHIELDS a/k/a "John John" a/k/a "John Jua
CASE NUMBER: 2:17CR20151-007-TLP

SCHEDULE OF PAYMENTS

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

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

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

C ☐ 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

D ☐ 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

E ☐ 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

F ☐ 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 the period of 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

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

☐ 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.