

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

KEENAN ROLLERSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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In the
United States Court of Appeals
For the Seventh Circuit

No. 20-2258

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KEENAN ROLLERSON,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:17-cr-00101-JPH-DML-1 — **James P. Hanlon**, *Judge*.

ARGUED MAY 26, 2021 — DECIDED JULY 30, 2021

Before EASTERBROOK, ROVNER, and HAMILTON, *Circuit Judges*.

HAMILTON, *Circuit Judge*. A jury convicted defendant Keenan Rollerson on drug and firearm charges but acquitted him on other drug charges. He appeals only his sentence, arguing that the district court erred by increasing his Sentencing Guideline range based on drug activity for which he was either acquitted or never charged. Specifically, Rollerson claims that the prosecution did not present sufficiently reliable

information that he sold heroin and fentanyl to an informant during four controlled drug buys for which he was not charged. He also asserts that those uncharged controlled buys and other drugs for which he was acquitted were not “part of the same course of conduct ... scheme or plan” as his offenses of conviction. U.S.S.G. § 1B1.3(a)(2). We affirm Rollerson’s sentence because the conduct at issue was supported by sufficiently reliable information and was relevant to his convictions. To be sure, the record at sentencing on the controlled buys was sparse. But at least in the absence of contradictory evidence, a police officer’s affidavit attesting that the buys actually occurred provided the “modicum of reliability” that is needed to find by a preponderance of the evidence that Rollerson committed those additional crimes. See *United States v. Holding*, 948 F.3d 864, 871 (7th Cir. 2020).

I. *Factual and Procedural Background*

In July 2016, the Drug Enforcement Administration (DEA) began investigating Rollerson’s drug dealing activities in Indianapolis. The following spring, the DEA and local law enforcement used a confidential informant to arrange controlled drug buys from Rollerson. The government asserts that on four occasions, Rollerson sold drugs to the informant at an Indianapolis apartment that he controlled: twenty-five grams of heroin on March 31, twenty-five grams of heroin on April 3, twenty-four grams of fentanyl on April 17, and thirty grams of fentanyl on April 24. The police used these controlled buys to secure search warrants for the apartment and for Rollerson’s home.

On April 27, 2017, after setting up surveillance at both addresses, the police stopped Rollerson for speeding. They recovered a gun and marijuana from his car. Rollerson admitted

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the gun and marijuana were his. He also acknowledged that he was a convicted felon. When told that police were about to search his residences, Rollerson said he would cooperate and that, although his son was home, Rollerson himself “was the only one who had something to do with the drug sales.”

Police then took Rollerson to his home, where they found over \$150,000 in cash that Rollerson admitted were drug proceeds. Rollerson was also in possession of a key to the stash house apartment. He told police that they would find multiple kilograms of heroin hidden there. The search of the apartment actually uncovered four kilograms of fentanyl, fifty-two grams of heroin, ninety-seven grams of cocaine, and two hundred thirty-six grams of tramadol, as well as digital scales, multiple firearms, and mail addressed to Rollerson at that address.

On May 2, 2017, the government filed a criminal complaint against Rollerson based on an affidavit by DEA Task Force Officer Marc Campbell. In the affidavit, Officer Campbell described the course of the investigation and the contraband found at Rollerson’s home and apartment. The affidavit also included a brief description of the controlled buys, attesting that “Between March 2017 and April 2017, DEA/IMPD utilized an IMPD Confidential Source (CS) to conduct multiple controlled purchases of heroin from ROLLERSON in Indianapolis, Indiana. Each of these controlled purchases resulted in the seizure of heroin and fentanyl.” These controlled buys, however, were not included in the government’s charges—which focused instead on the drugs and guns uncovered at the stash house apartment.

A grand jury indicted Rollerson on eight charges: Possession with Intent to Distribute Fentanyl (Count 1), Heroin

(Count 2), Cocaine (Count 3), and Tramadol (Count 4), as well as Unlawful Possession of Firearms by a Convicted Felon (Counts 5–8). The case went to trial, where the jury convicted Rollerson on Counts 2 and 5–8 (heroin and firearm offenses) but acquitted him on Counts 1, 3, and 4 (the fentanyl, cocaine, and tramadol).

The Presentence Investigation Report (PSR) recommended a Sentencing Guideline range of 262 to 327 months for Count 2. This range was based upon a quantity of drugs that included not only the heroin in the offense of conviction but also the fentanyl, cocaine, and tramadol from the acquitted counts and the four controlled buys used to obtain the search warrants. (The different types and amounts of drugs were all converted to a total “Converted Drug Weight” of 10,445.75 kilograms using the drug conversion tables in § 2D1.1, Note 8.)

At sentencing, Rollerson objected to the PSR’s drug quantity, arguing (1) that the record contained no reliable information supporting the uncharged controlled-buy amounts, and (2) that neither the controlled buys nor the acquitted fentanyl, cocaine, and tramadol were relevant to his conviction for heroin. Without these uncharged and acquitted drug quantities, Rollerson’s guideline range for Count 2 would have been a much lower 110 to 137 months.

The district court overruled Rollerson’s objections and explained its reasons for including both the uncharged and acquitted drug amounts in calculating the guideline range. As to the controlled buys, Judge Hanlon said:

[I]n Paragraph 12 of the presentence report there is some detailed information about the

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controlled purchases. It lays out that there were four controlled purchases involving Fentanyl and heroin. It lays out the quantities involved. *We also have the affidavit that was filed in support of the criminal complaint, which also discusses the controlled purchases.*

On that basis, the court concluded “that the information ... relating to controlled buys is not unsupported or naked allegations” but rather “reliable” and “established by a preponderance of the evidence.” The judge added that “there isn’t any evidence that I have been made aware of from [Rollerson’s] counsel that would cause me to call into question the reliability of what’s contained in the report.” The judge then explained that these controlled buys also constituted “relevant conduct” under U.S.S.G. § 1B1.3(a)(2) because (1) they involved heroin, the same controlled substance as the offense of conviction; (2) they occurred at the same stash house as the convicted offense; and (3) they occurred within one month of the offense of conviction.

As for the fentanyl, cocaine, and tramadol for which the jury acquitted Rollerson, the judge explained that the trial evidence connecting Rollerson to the stash house—including but not limited to the mail addressed to him and the key in his possession—established his possession of those drugs by a preponderance of the evidence. The judge also found that this acquitted conduct was still relevant conduct for sentencing because it was all part of the same course of drug trafficking at the stash house. This was especially true, the judge said, because two of the controlled buys involved fentanyl, one of the substances found at the same stash house soon after that.

Accordingly, the judge sentenced Rollerson within the recommended guideline range: 276 months for Count 2, as well as 120 months for each gun charge (Counts 5–8), all to run concurrently. On appeal, Rollerson renews the arguments he raised at sentencing, that the district court erred by including both the uncharged and acquitted drug amounts in his guideline calculation.

II. *Reliability*

“A criminal defendant has a due process right to be sentenced based on accurate information.... [W]here the district court sentences a defendant based on the drug-quantity guidelines, it must find the government’s information sufficiently reliable to determine drug quantity by a preponderance of the evidence.” *Helding*, 948 F.3d at 870, citing *United States v. Tucker*, 404 U.S. 443, 447 (1972), and *United States v. Lister*, 432 F.3d 754, 762 (7th Cir. 2005). Rollerson claims that the uncharged and acquitted drug amounts should not count toward his guideline range because the prosecution failed to prove them with reliable information by a preponderance of the evidence.

We review the substantive reasonableness of a sentence under an abuse-of-discretion standard, but we “must first ensure that the district court committed no significant procedural error, such as ... selecting a sentence based on clearly erroneous facts....” *Gall v. United States*, 552 U.S. 38, 51 (2007). We have thus said that “whether the district court followed the proper procedures in imposing sentence is a question of law that we review *de novo*.” *United States v. Young*, 863 F.3d 685, 688 (7th Cir. 2017), citing *United States v. Mendoza*, 510 F.3d 749, 754 (7th Cir. 2007). Here, though, the “significant procedural error” that Rollerson points to is the enhancement

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of his sentence “based on *clearly erroneous* facts.” *Gall*, 552 U.S. at 51 (emphasis added). So ultimately we ask whether the district judge clearly erred in finding that the government proved Rollerson’s conduct by a preponderance of the evidence. See *United States v. Sandidge*, 784 F.3d 1055, 1061–63 (7th Cir. 2015) (affirming sentence enhancement; district court “did not commit clear error” in finding “sufficiently reliable” information proving defendant’s conduct by preponderance of evidence).

“A sentencing court acts within its discretion when it credits its confidential informants’ statements about drug quantity, but when a defendant objects, the evidence supporting that quantity must be found to be reliable.” *Helding*, 948 F.3d at 866. The “threshold for a sufficient reliability finding” is “low.” *Id.* at 871. But if the PSR “asserts ‘nothing but a naked or unsupported charge,’ the defendant’s denial of that information suffices to cast doubt on its accuracy.” *Id.* at 870, quoting *United States v. Marks*, 864 F.3d 575, 580 (7th Cir. 2017). A truly bare allegation and bare denial would be in equipoise, unable to meet the prosecution’s burden of proof by a preponderance of the evidence. Once the prosecution presents sufficiently reliable evidence, however, it will meet its burden unless the defense can muster evidence in the other direction.

Here, the prosecution provided sufficiently reliable evidence. As for Rollerson’s acquitted conduct, the evidence at trial amply supported a finding by a preponderance of the evidence that Rollerson possessed the fentanyl, cocaine, and tramadol found in the stash house. Rollerson had the key to the stash house. Mail was addressed to him there. An officer testified to seeing him enter or exit the apartment on at least six occasions over the course of the investigation. To top those

off, when officers told Rollerson that the apartment would be searched, he admitted that multiple kilograms of drugs were hidden there and that he—not his son—was responsible for them.¹

The uncharged drug buys present a different problem. The PSR described these four controlled buys in detail, saying that, on each occasion, Rollerson directed the informant to meet him at the stash house, drove there, and then sold the informant either heroin or fentanyl. The PSR stated the drug amount recovered in each buy. The PSR said that its source for all these details was the police affidavit used to obtain the search warrant for the stash house. That affidavit, however, was not attached to the PSR and was not offered at sentencing by the government or the defense. It is not in the record at all, even though both sides admit it is *the* key piece of evidence bearing on the reliability of the uncharged drug amounts. As a result, the only statement of the drug amounts in our record came from the PSR's summary of that police document that the district judge and we have not seen.²

The record establishing the reliability of the controlled buys was sparse, but it was sufficient as a matter of due process, at least in the absence of conflicting evidence. In addition to the PSR's summary of the search warrant affidavit, the judge also relied upon Officer Campbell's affidavit attached

¹ The practice of considering acquitted conduct at sentencing is controversial but is clearly allowed if the conduct is proven by a preponderance of the evidence. *United States v. Watts*, 519 U.S. 148, 149 (1997); *United States v. Waltower*, 643 F.3d 572, 577 (7th Cir. 2011).

² The absence of the search warrant affidavit presents something of a mystery. Both sides have it and both could easily have offered it at sentencing. For tactical reasons, however, both sides chose not to do so.

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to the criminal complaint. That affidavit also attested to the occurrence of the controlled buys, albeit briefly: “Between March 2017 and April 2017, DEA/IMPD utilized an IMPD Confidential Source (CS) to conduct multiple controlled purchases of heroin from ROLLERSON in Indianapolis, Indiana. Each of these controlled purchases resulted in the seizure of heroin and fentanyl.”

This police affidavit added a “modicum of reliability” to the PSR’s description of the controlled-buy amounts. *Helding*, 948 F.3d at 871. It was sworn under penalty of perjury, a process meant to “impress upon the affiant ‘the solemnity and importance of his or her words and of the promise to be truthful, in moral, religious, or legal terms.’” 2 Wayne R. LaFave, *Search & Seizure* § 4.3(e) (6th ed.), quoting *State v. Gutierrez-Perez*, 337 P.3d 205, 210 (Utah 2014). Indeed, the Fourth Amendment’s express requirement that warrants may issue only if “supported by Oath or affirmation” reflects the idea that sworn affidavits bear an added signal of reliability. Accordingly, the district judge’s explicit reliance on Officer Campbell’s affidavit submitted with the criminal complaint was enough to establish the reliability of the PSR’s allegations. See *United States v. Smith*, 280 F.3d 807, 810–11 (7th Cir. 2002) (rejecting reliability challenge to gun enhancement where detective testified that, after a controlled drug buy, the informant told the detective that Smith pointed a gun at the informant).

For purposes of argument, we assume that, absent Officer Campbell’s affidavit, the prosecution might well have needed to come forward with the search warrant affidavit if it wanted to rely on the four buys. Although the PSR contained specific allegations, “specificity alone ... does not make information

reliable.” *Helding*, 948 F.3d at 869. We say might, however, because there are important differences between the PSR allegations here and those we held insufficient in *Helding*. In *Helding*, the defendant’s drug calculation skyrocketed based on a confidential informant’s unsubstantiated allegations that the defendant sold him methamphetamine a year before the actual police investigation that led to the defendant’s charges. Unlike this case, *Helding* “involved no controlled buys with any CI...” *Id.* at 868. The informant’s alleged purchase of methamphetamine in *Helding* was not initiated and observed by police—it was merely a story about *Helding*’s past activity that was relayed to police. Moreover, in *Helding*, “The district court saw no affidavits ... corroborating” the informant’s allegations. *Id.* at 871. “More to it, nowhere did the PSR contain any information—even a representation by law enforcement—that the informants’ statements were known to be reliable.” *Id.* at 869.

The uncharged drug amounts in this case were not based on uncorroborated allegations by an informant whose trustworthiness was unknown. Rather, the PSR’s description came from police documents supplied to the probation office recounting the officers’ roles in setting up and observing these controlled buys. Language in *Helding* suggested that this might be sufficient: “It may be enough for the government to supply the probation office, and, in turn, for the PSR to include, some statement bearing on the reliability of information provided by a confidential source.” *Id.* at 872. We need not decide that, however, given the inclusion of Officer Campbell’s affidavit in the sentencing record.

At least in the absence of conflicting evidence, the PSR’s assertions concerning the controlled-buy amounts were

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sufficiently reliable to support a finding that they were proven by a preponderance of the evidence. In due process terms, the defense had the opportunity to present conflicting evidence about the controlled buys. The defense also had the opportunity to present the search warrant affidavit or to call Officer Campbell to testify. The defense chose not to exercise those options, which left the government's sparse evidence un rebutted. We see no indication that the defense was denied a fair hearing on these subjects. Still, it is worth repeating our earlier advice: "While it's not required that a judge hear personally from witnesses under oath at a sentencing hearing about drug quantities, we think it's not a terribly bad idea to do so when the witness is going to provide the basis for ... a defendant's relevant conduct." *Helding*, 948 F.3d at 871, quoting *United States v. Robinson*, 164 F.3d 1068, 1070 (7th Cir. 1999).

III. Relevant Conduct

Even if proven by a preponderance of the evidence, Rollerson's uncharged and acquitted conduct must still be "relevant" to his offenses of conviction to be used in his guideline calculation. U.S.S.G. § 1B1.3(a)(2). Rollerson asserts that neither the controlled buys nor the fentanyl, cocaine, and tramadol found at the stash house were "part of the same course of conduct or common scheme" as his conviction for possessing heroin with intent to distribute. See *id.* We disagree. The district court did not clearly err in finding that Rollerson's uncharged and acquitted conduct was relevant to his offense of conviction. See *United States v. Baines*, 777 F.3d 959, 963 (7th Cir. 2015) ("Whether uncharged offenses amount to relevant conduct under the Sentencing Guidelines is a factual determination, which we review for clear error.") (citation omitted).

The fact that a defendant engaged in other uncharged or acquitted drug transactions “is not sufficient to justify treating those transactions as ‘relevant conduct’ for sentencing purposes.” *United States v. Ortiz*, 431 F.3d 1035, 1041 (7th Cir. 2005), quoting *United States v. Crockett*, 82 F.3d 722, 730 (7th Cir. 1996). In assessing relevant conduct, we look for “a strong relationship between the uncharged conduct and the convicted offense, focusing on whether the government has demonstrated a significant ‘similarity, regularity and temporal proximity.’” *United States v. McGowan*, 478 F.3d 800, 802 (7th Cir. 2007), quoting *Ortiz*, 431 F.3d at 1040. These factors are derived from commentary in the Sentencing Guidelines explaining that, under U.S.S.G. § 1B1.3, conduct is part of a “common scheme or plan” if it is “substantially connected” to a convicted offense “by at least one common factor, such as common victims, common accomplices, common purpose, or similar *modus operandi*.” § 1B1.3, comment 5(B)(i). And, separately, activity is “part of the same course of conduct” as a convicted offense if it is “part of a single episode, spree, or ongoing series of offenses.” *Id.* at 5(B)(ii).

What we know about Rollerson’s uncharged drug buys showed similarity, regularity, and temporal proximity to his offense of conviction. Two of the buys involved heroin, the same drug for which Rollerson was convicted. The other two involved fentanyl, a drug that was also found in large quantities at the stash house. The buys took place at that same stash house. And they occurred regularly through the weeks leading to the search of the stash house in April 2017. These facts support the district court’s finding that the uncharged buys constituted relevant conduct.

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The same goes for the acquitted possession of fentanyl, cocaine, and tramadol. Rollerson sold fentanyl during two of the controlled buys at the stash house, and the police soon after those buys found a large amount of it, four kilograms. The fentanyl, cocaine, and tramadol were also found alongside the heroin for which Rollerson was convicted. Moreover, Rollerson's controlled buys involved two separate drugs, further supporting the district court's finding that the cocaine and tramadol were likely part of the same drug-dealing scheme as the heroin, even though those substances were not involved in the controlled buys.

Rollerson says his case is like *United States v. Ortiz*, 431 F.3d 1035 (7th Cir. 2005), and *United States v. Draheim*, 958 F.3d 651 (7th Cir. 2020), where we rejected relevant conduct findings. But those cases are not at all like Rollerson's. In *Ortiz*, we found that a defendant's alleged purchases of large amounts of cocaine across three states from 1997 to 1999 were not part of the same course of conduct or scheme as his convictions for selling much smaller amounts of marijuana and cocaine to a DEA informant in 2000 and 2001. 431 F.3d at 1041–42. We explained that the prosecution had failed to show temporal proximity (the alleged conduct occurred at least ten months before the offenses of conviction), regularity (the alleged conduct's frequency differed from that of the sales leading to Ortiz's convictions), or similarity (the alleged conduct occurred in a different location). *Id.* Rollerson's uncharged and acquitted drug activity, on the other hand, all occurred at the same location during the same month. *Draheim* is also readily distinguishable. That defendant's lone "sale of two grams of street meth in a city" simply did not "match up" with a "collaborative bulk order from the other side of the nation for nearly fifty grams of pure [meth]." 958 F.3d at 659–60 (emphases

added). So the conduct in *Draheim* occurred in a different location, involved much more drugs, and included other traffickers.

Because Rollerson's uncharged buys and acquitted drug amounts were relevant to his heroin conviction and proven with sufficiently reliable information, Rollerson's sentence is AFFIRMED.

UNITED STATES DISTRICT COURT

Southern District of Indiana

UNITED STATES OF AMERICA

v.

KEENAN ROLLERSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:17CR00101-001

USM Number: 15757-028

Beau B. Brindley and Michael J. Thompson

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) 2 and 5 - 8 after a plea of not guilty

The defendant is adjudicated guilty of these offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21§§841(a)(1) and 851	Possession with Intent to Distribute Heroin	04/27/2017	2
18§922(g)(1)	Unlawful Possession of a Firearm by a Convicted Felon	04/27/2017	5
18§922(g)(1)	Unlawful Possession of a Firearm by a Convicted Felon	04/27/2017	6
18§922(g)(1)	Unlawful Possession of a Firearm by a Convicted Felon	04/27/2017	7
18§922(g)(1)	Unlawful Possession of a Firearm by a Convicted Felon	04/27/2017	8

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

- ☒ The defendant has been found not guilty on count(s) 1, 3, and 4
- ☐ Count(s) are dismissed on the motion of the United States.

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

June 30, 2020

Date of Imposition of Sentence:

A CERTIFIED TRUE COPY

Roger A.G. Sharpe, Clerk
U.S. District Court
Southern District of Indiana



By Pam Pope
Deputy Clerk

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Date: 7/2/2020

DEFENDANT: Keenan Rollerson

CASE NUMBER: 1:17CR00101-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **276 months (Count 2: 276 months; Counts 5-8: 120 months per count, all concurrent)**.

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

That the defendant be designated as close as possible to his family in Indianapolis, Indiana.

☒ 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

☐ 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 was delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

BY: _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Keenan Rollerson

CASE NUMBER: 1:17CR00101-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **6 years (Count 2: 6 years; Counts 5-8: 3 years per count, all concurrent)**.

MANDATORY CONDITIONS

1. You shall not commit another federal, state, or local crime.
2. You shall not unlawfully possess a controlled substance.
3. You shall refrain from any unlawful use of a controlled substance. You shall submit to one drug test within 15 days of release from imprisonment and at least two periodic 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 shall 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 shall cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You shall participate in an approved program for domestic violence. *(check if applicable)*

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

The defendant must comply with the conditions listed below.

CONDITIONS OF SUPERVISION

1. You shall report to the probation office in the federal judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer.
3. You shall permit a probation officer to visit you at a reasonable time at home or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer.
4. You shall not knowingly leave the federal judicial district where you are being supervised without the permission of the supervising court/probation officer.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change.
8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon.

DEFENDANT: Keenan Rollerson

CASE NUMBER: 1:17CR00101-001

9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
12. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision.
13. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage.
14. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods.
15. You shall not use or possess alcohol.
16. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption.
17. You shall provide the probation officer access to any requested financial information and shall authorize the release of that information to the U.S. Attorney's Office for use in connection with the collection of any outstanding fines and/or restitution.
18. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches.

I understand that I and/or the probation officer may petition the Court to modify these conditions, and the final decision to modify these terms lies with the Court. If I believe these conditions are being enforced unreasonably, I may petition the Court for relief or clarification; however, I must comply with the directions of my probation officer unless or until the Court directs otherwise. Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the condition of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)

Defendant_____
Date_____
U.S. Probation Officer/Designated Witness_____
Date

DEFENDANT: Keenan Rollerson

CASE NUMBER: 1:17CR00101-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

	<u>Assessment</u>	<u>JVTA Assessment</u> ¹	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$500.00		\$1,000.00	

- ☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case (AO245C)* 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.

<u>Name of Payee</u>	<u>Total Loss</u> ²	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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Totals

- ☐ 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:

¹ Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

² 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: Keenan Rollerson

CASE NUMBER: 1:17CR00101-001

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, ☐ F or ☐ G 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** ☐ If this case involves other defendants, each may be held jointly and severally liable for payment of all or part of the restitution ordered herein and the Court may order such payment in the future. The victims' recovery is limited to the amount of loss, and the defendant's liability for restitution ceases if and when the victims receive full restitution.
- G** ☐ 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:

One FNH, 5.7x28mm semiautomatic handgun; one MasterPiece Arms, 5.7x28mm semiautomatic handgun; one Anderson Manufacturing, 5.56 caliber semiautomatic handgun; one Anderson Manufacturing, 5.56 caliber semiautomatic rifle; numerous rounds of 5.7x28mm ammunition; and \$153,690.00 cash.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) CAUSE NO: 1:17-cr-00101-JPH/DML
) Indianapolis, Indiana
) June 30, 2020
KEENAN ROLLERSON,) 1:53 p.m.
)
Defendant.)

Before the
HONORABLE JAMES PATRICK HANLON, JUDGE

SENTENCING

* * * * *

FOR THE PLAINTIFF: Mr. Barry D. Glickman
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United States District Court
46 East Ohio Street
Room 309
Indianapolis, Indiana 46204

1 Fentanyl, they thought about it, and they made a decision
2 saying that it was not proven. And to now hold him
3 accountable for it as part of it nullifies I think the good
4 work done by the jury, which is something -- there is a letter
5 that I think is compelling in my memo that one juror had
6 written that is provided to Your Honor. Not in this case but
7 in another case on the same subject. And what it really
8 indicates is they are doing this hard work and if they found
9 out after it was all over, the thing they found him not guilty
10 for was something he was going to be sentenced for, I think
11 that would be greatly disappointing to jurors to know and I
12 ask Your Honor to please respect the jury's verdict and
13 sentence him for the quantities of conviction.

14 THE COURT: Mr. Glickman, anything further?

15 MR. GLICKMAN: No, Your Honor.

16 THE COURT: So, Mr. Rollerson, we'll begin -- we'll
17 take these one at a time. I will first talk about the
18 uncharged conduct, which is the Fentanyl and the heroin from
19 the controlled buys that are referenced in the presentence
20 report that I mentioned earlier, and then we'll talk about the
21 acquitted conduct after that. Because while they both are
22 similar in that they're not convicted conduct, they are a
23 little different.

24 So as far as the uncharged conduct goes, as I
25 summarized earlier, there is -- in Paragraph 12 of the

1 presentence report there is some detailed information about
2 the controlled purchases. It lays out that there were four
3 controlled purchases involving Fentanyl and heroin. It lays
4 out the quantities involved. We also have the affidavit that
5 was filed in support of the criminal complaint, which also
6 discusses the controlled purchases.

7 Paragraph 17 of the presentence report gives a
8 little bit more detail indicating that the controlled
9 purchases occurred at the Majestic Lane apartment, and then
10 the addendum gives even more detail indicating again that they
11 all took place at the Majestic Lane apartment, it gives the
12 specific dates, March 31st and April 7 of 2017, as the
13 controlled purchases of heroin and April 17 and April 24 as
14 the controlled purchases of Fentanyl.

15 So based on the level of detail that is contained in
16 the presentence report, I find that the information in the
17 presentence report relating to controlled buys is not
18 unsupported or naked allegations. I think that they are well
19 supported, and they do appear reliable, which is the standard
20 that I have to use here. And there isn't any evidence that I
21 have been made aware of from your counsel that would cause me
22 to call into question the reliability of what's contained in
23 the report.

24 I would also note that while I understand the
25 arguments that counsel has made -- and they are argued well

1 both in the brief and here -- that there is an abundance of
2 authority supporting what I just said, which is that the Court
3 can rely on the presentence report if it's supported and
4 reliable. For example, *United States versus Marx*, 864 F.3d
5 575, but that's just an example. And again, making clear that
6 the reason that I would not be able to rely on the presentence
7 report would be if there is some evidence that calls
8 reliability of it into question if this were an unsupported
9 charge, which I found it's not.

10 And there is no authority cited by the defense that
11 is controlling or persuasive that would lead me to conclude
12 otherwise or to accept the arguments that the Government has
13 to present the actual or underlying evidence of the controlled
14 buys or there is a right to discovery of the evidence
15 underlying those facts.

16 I did find earlier that if that information was to
17 be used at the trial then you would have a right to that
18 underlying information, but that otherwise, it was privileged.
19 At sentencing, different standards apply. We don't have the
20 formality of the rules of evidence, and there is other
21 differences. So I do find that the facts relating to the
22 controlled buys on the dates set forth in the presentence
23 report are established by a preponderance of the evidence. I
24 also find that they are -- "they" being the controlled buys --
25 are relevant conduct under the sentencing guidelines under

1 Section 1B1.3, because they are part of the same course of
2 action -- same course of conduct, I'm sorry, of the offenses
3 of conviction, and specifically the conviction relating to the
4 heroin, which was Count 2, and in support of that, I would
5 note that the nature of the substances, at least with respect
6 to the heroin, is the same. The location is the same for the
7 offense of conviction, and the uncharged conduct, that is that
8 the heroin was found at the Majestic Lane residence and that's
9 where the controlled buys are alleged to have occurred. There
10 is temporal proximity in that the controlled buys occurred in
11 March and April of 2017. The search warrant was executed in
12 April of 2017. So those are all reasons that I find that the
13 uncharged controlled buys are relevant conduct to the offense
14 of conviction, so therefore I overrule the objection with
15 respect to the controlled buys, and I will consider those
16 quantities in determining the base offense level.

17 Anything further on that point before we go on to
18 acquitted conduct?

19 MR. BRINDLEY: Judge, I want to just make sure the
20 record is clear with respect to my objection. I understand
21 Your Honor's ruling. My objection is in large part because we
22 didn't get the underlying evidence. Our ability to figure out
23 the reliability of the claims about the actual incidents of
24 controlled purchase, it was limited. We weren't able to do
25 it. We weren't able to say yes this is true, or no it's not.

1 We only know that they told us it happened without even,
2 despite our request, being able to determine whether that's
3 accurate, who was involved, what was going on, whether
4 Mr. Rollerson was really there, et cetera. So I would only
5 amplify the record as to that, but I understand your ruling.

6 THE COURT: Okay. Thank you.

7 So moving on to the acquitted conduct, which of
8 course is more consequential because of the quantity of
9 Fentanyl involved here, there are several arguments that your
10 counsel set forth as to why that should not be used. Some are
11 based on the evidence, for example, arguing that there is no
12 reliable evidence that you had had knowledge of the Fentanyl
13 located there, and that's why it should not be considered, and
14 also an argument that the jury acquitted you on Count 2
15 because there was no evidence.

16 In response to that I would say that I don't think
17 that there is any inferences that can be appropriately drawn
18 from the acquittal other than the fact of the matter that the
19 jury found that one or more of the essential elements of the
20 offense was not established beyond a reasonable doubt. And
21 that is what the Court in *Watts* has indicated as well, that
22 it's difficult to draw inferences from jury verdicts.

23 So as far as the state of the law is concerned, the
24 Government has cited this *Watts* case, which is a Supreme Court
25 case, which does indeed hold that a jury's verdict of

1 acquittal does not prevent the sentencing court from
2 considering the conduct underlying acquitted charges as long
3 as it is proved by a preponderance of the evidence. So as
4 your counsel has also said, it is a discretionary thing that I
5 could choose to consider. I will also note, in addition to
6 *Watts*, under the Federal sentencing law, in particular
7 18 United States Code, Section 3661, there is no limitation
8 upon what I can consider at sentencing. So based on both the
9 statute and *Watts*, it is certainly allowed, it is a
10 permissible thing for a judge to do to take into account
11 acquitted conduct.

12 I don't -- I have no reason to really take a
13 position categorically as to acquitted conduct, and I just say
14 that because there is a number of arguments in the memo that
15 essentially talk about it would be wrong to use acquitted
16 conduct and it promotes lack of respect for the law and that
17 it undermines confidence and respect for the law in the jury
18 system, but I think what is more relevant in this instance is
19 for me to strictly apply the facts here. So my view would be
20 that the use of acquitted conduct at sentencing is, like most
21 other areas of law, highly fact intensive, because I think we
22 have an agreement here that it is a permissible thing to do,
23 and I think it is highly, highly fact intensive. So my ruling
24 is not going to be either saying I am for it or against it.
25 It's just going to be saying this is my application of the

1 facts in this particular case where we went to trial and we
2 have a developed record and how it applies here.

3 And I would also note that, of course, since this
4 case did go to trial I was able to sit in trial and see all of
5 the evidence and observe all of the evidence and facts that
6 were put in at the trial. I think it is important here to
7 view the Fentanyl recovered, specifically in relation to the
8 Fentanyl that was the subject of the controlled buys, which I
9 understand that you object to me even taking that into
10 account, but I have found that that has been shown by a
11 preponderance of the evidence. And I think what is really
12 important here is that the Fentanyl that was recovered during
13 the search warrant is of course the same substance that was
14 the subject on two of the controlled buys. That of course is
15 information that the jury did not know, and I think that's
16 highly relevant information here that would weigh in favor of
17 me taking into account the Fentanyl that was found during the
18 search warrant, as well as some of the other factors I talked
19 about before when we look at the similarity and the location
20 that, of course, the Fentanyl was found at the Majestic Street
21 residence and the controlled buys occurred there as well, the
22 nature of the substances, again, the temporal proximity.

23 But based on all of those factors, I think that the
24 facts relating to the Fentanyl recovered during the search
25 warrant have been proven by a preponderance of the evidence,

1 and for the reasons I already said, that that is relevant
2 conduct under the sentencing guidelines for all of the reasons
3 I have already said that specifically there is a relationship
4 between the Fentanyl that was recovered during the search
5 warrant and the conduct that was the offense of conviction,
6 which of course was the heroin, that it was part of the same
7 course of conduct and again would note that heroin and
8 Fentanyl were recovered at the Majestic Street residence,
9 heroin and Fentanyl were the subjects of the controlled buys,
10 both taking place at the same place, Majestic Street
11 residence, within a short proximity of time.

12 And so based on all of those reasons, I am going to
13 overrule the objection to considering the quantities of
14 Fentanyl that were recovered during the search warrant in
15 calculating the base offense level.

16 So let me pause there and ask Mr. Brindley, is there
17 any elaboration that you would like from me or any additional
18 points that you want to make for the record? Obviously this
19 is a very important finding and point.

20 MR. BRINDLEY: It is, Your Honor. I think we have
21 stated clearly our objection to the use of acquitted conduct
22 in this instance. I will say that one of the things that
23 happened at the trial was the jury was given information about
24 statements made by Mr. Rollerson which referred to some
25 substances and not others, and the acquitted substances were,

1 in fact, substances that were not referenced in the statement,
2 and, in fact, with exactitude.

3 The one that was referenced in the statement and was
4 found by the jury, the two that the -- the other three that
5 were not referenced were not found by the jury. And I think
6 that's a relevant factual consideration that would weigh in
7 favor of our position that the acquitted conduct was not found
8 or should not be found based on the evidence. The evidence
9 was largely, at the trial, hinged on Mr. Rollerson's purported
10 statement to law enforcement. There was a great deal of
11 argument and evidence about that and cross examination about
12 that and in the end the things that he was said to have
13 admitted to are the ones for which he was found guilty and the
14 things that he did not indicate knowledge of at all were those
15 for which he was acquitted. And I think that's a position
16 that factually is consistent with what the jury found, and I
17 would ask Your Honor to consider that as well when making your
18 determination. You didn't reference that, but I want to make
19 sure that's on the record.

20 THE COURT: Okay. Thank you. And I would further
21 note that of course that I incorporate into my reason for the
22 findings I made the evidence that was introduced at the trial
23 that was summarized in part by Mr. Glickman earlier relating
24 to the ties to the Majestic Street residence that were
25 introduced at trial, the evidence of that -- of

1 Mr. Rollerson's connection to that residence, including, but
2 not limited to, the mail, the key, and again, that there were
3 other items of evidence in particular introduced at the trial
4 that connect him to that residence.

5 And so for that and all of the reasons I have
6 already said, I do find that the Fentanyl recovered does -- is
7 part of the same course of conduct as the conduct that formed
8 the basis for the conviction.

9 Mr. Glickman, is there anything for the record you
10 wanted to add on this point?

11 MR. GLICKMAN: No, Your Honor.

12 THE COURT: Okay.

13 MR. BRINDLEY: Judge, can I say one more thing to
14 make sure the record is clear?

15 THE COURT: Yes, please, please.

16 MR. BRINDLEY: The only other thing I would say --
17 and I think Your Honor referenced this, and I just want to
18 make sure it's clear for the record -- Your Honor considered
19 the uncharged conduct as part of your consideration to
20 determine the permissible use of the acquitted conduct and we
21 do object to any use of the uncharged conduct for the reasons
22 previously stated. I think you said that, but I just want to
23 make sure I'm clear, I'm objecting to its use then in the
24 first instance and here in the second as well.

25 THE COURT: Yes. Thank you. And as I said, that is

1 a consideration in reaching the conclusion with respect to the
2 acquitted conduct what I said earlier about the uncharged
3 conduct.

4 And by the same vein, I would also find that the
5 cocaine and the Tramadol in Counts 3 and 4, which was also
6 acquitted conduct, that that also would be taken into account
7 at sentencing for the same reasons I already said for the
8 Fentanyl. I don't see a meaningful basis to distinguish those
9 counts. And I would also note that, in any event, I don't
10 think that including the cocaine and the Tramadol even would
11 have an affect on the base offense level in light of my other
12 findings. So I think that that is the conclusion of the
13 discussion of the objections.

14 So I adopt as my own findings the facts that are set
15 forth in the presentence report, and I accept the report for
16 the record under seal. In the event of an appeal, counsel on
17 appeal will have access to the sealed report but not the
18 recommendation portion, which shall remain confidential.

19 I know that this case, that there were 851
20 informations that were filed.

21 Mr. Glickman, is that correct?

22 MR. GLICKMAN: Yes, Your Honor.

23 THE COURT: So, Mr. Rollerson, if you do not
24 challenge the existence of your previous convictions before I
25 sentence you, you are not able to challenge the fact of those