No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHNNY WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

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

PETITION FOR A WRIT OF CERTIORARI

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SUBMITTED: November 09, 2021

QUESTION PRESENTED

When the Government clearly defines the scope and object of a drug distribution conspiracy in a charging Indictment, do the lower courts err when they fail to require the government to prove that a defendant has the requisite *mens rea* to join a conspiracy to possess or distribute the specific controlled substance that causes death or serious injury to purchasers of that drug, thus causing that defendant to suffer an enhanced sentence of imprisonment.

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PETITION FOR A WRIT OF CERTIORARI

Johnny Williams, the Petitioner, respectfully asks this Court to grant a Writ of Certiorari to review the decision of the Sixth Circuit Court of Appeals (entered May 26, 2021), affirming his conviction and sentence.

OPINION BELOW

The Opinion of the Sixth Circuit Court of Appeals in *United States v. Johnny Williams,* No. 18-6343, was rendered on May 26, 2021, and is published and officially reported as *United States v. Johnny Williams*, 998 F.3d 716 (6th Cir. 2021). (App. 9a).

JURISDICTION

This Petition seeks review of the Opinion of the Sixth Circuit Court of Appeals, rendered May 26, 2021, affirming the Petitioner's conviction pursuant to the trial court's judgment of conviction entered on December 27, 2018. A Petition for Rehearing and Rehearing *En Banc* was timely filed with the United States Court of Appeals for the Sixth Circuit and was denied by Order dated August 18, 2021.

Jurisdiction is conferred upon the Court of Appeals pursuant to 28 U.S.C. §1291. The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1) and United States Supreme Court Rule 10.

This petition is timely filed pursuant to Supreme Court Rule 13.1 and 13.3.

CONSTITIUTIONAL AND STATUTORY PROVISIONS

18 U.S.C § 2 provides:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, induces or procures its commission, is punishable as a principal.
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

21 U.S.C. § 841 provides:

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

21 U.S.C. §841(b)(1)(C) provides:

> In the case of a controlled substance in schedule I or II, ...such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life.... Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such sentence.

21 U.S.C. § 846 provides:

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

STATEMENT OF THE CASE

A. Introduction

The words used by the government when indicting any individual for criminal conduct matter. Likewise, the structure of criminal statutes enacted by Congress matters when determining the congressional intent behind the statute. These fundamentally fair principles are ignored when an individual is sentenced to a mandatory minimum 20 years' imprisonment for conspiracy without requiring the government to prove the individual knew the objects of the conspiracy as defined by the government. Those precepts are also ignored when the government is not required to prove a defendant possessed the *mens rea* to knowingly join the conspiracy or to commit the acts charged. This case presents a question of national importance, because the appeal court decision significantly impacts the due process rights of criminal defendants charged as part of any conspiracy conviction.

B. The underlying case

Counterfeit prescription pills are distributed in Florida, Kentucky, and Tennessee. The drug enterprise is moved to Tennessee, where pills, appearing to be Percocet are manufactured. In fact, those pills contain alprazolam, acetaminophen, and fentanyl. The Petitioner takes no part in the manufacturing process and is unaware that the pills are counterfeit or that they contain fentanyl.

Petitioner obtains pills from a person three times removed from the manufacturers. He sells them to a local drug distributer, who then resells them to

his "regular" customers. The distributer's customers fall ill. An investigation ensues, and Indictments are returned.

The government's Fifth Superseding Indictment narrowly defines the scope of the charged conspiracy and expressly sets forth its objectives. The government charges:

Object of the Conspiracy

1. The object of the conspiracy was to distribute and possess with intent to distribute counterfeit pills that contained fentanyl.
2. A further object of the conspiracy was to obtain monetary profits in the form of illegal drug proceeds from the distribution of the counterfeit pills.

Manner and Means of Conspiracy

The manner and means by which the defendants and co-conspirators would further and accomplish the objects of the conspiracy included, among others, the following:

1. It was part of this conspiracy to manufacture counterfeit Percocet pills using fentanyl in the Middle District of Tennessee.
2. It was further part of this conspiracy to use pill pressing equipment to form and stamp the pills to appear identical to actual Percocet pills.
3. It was further part of this conspiracy that members of the conspiracy would distribute the counterfeit pills that contained fentanyl that had the capability of causing death or serious bodily injury to their customers.

The substantive counts of the Indictment allege the knowing and intentional distribution and possession with intent to distribute a mixture or substance containing a detectable amount of fentanyl, the use of which resulted in serious bodily injury to specific individuals.

A plea of not guilty is entered. During the proceedings and at trial, issues are raised concerning the Petitioner's lack of knowledge of the objects of the charged

conspiracy, his lack of knowledge about the nature of the controlled substances, and the defense request for a buyer-seller instruction.

A multiple day jury trial is held. The District Court denies the request for a buyer-seller instruction. It refuses to instruct on multiple conspiracies. In pertinent part, the District Court specifically instructs that the jury is limited to deciding whether the government proved the crimes charged against each defendant, that the government must prove every element of each crime, and that, as to the conspiracy, "this does not require proof that a defendant knew the drug involved was fentanyl. It is enough that the defendant knew that it was some kind of a controlled substance." As to the substantive charges, the District Court further instructs, "the defendant did not have to know that the drug involved was fentanyl in order to knowingly possess it." The Court gives the same instruction relating to the distribution element. As to the injuries incurred, the District Court tells the jury it need not find that the injuries were foreseeable. (App. 48a, 49a, 51a, and 53a).

Guilty verdicts are returned and accepted by the District Court. A 20-year sentence is imposed on the conspiracy and substantive counts, all to run concurrently. An appeal follows.

C. The Appeal

In his brief to the Sixth Circuit Court of Appeals and at oral argument, the Petitioner challenges his conviction. He asserts that the District Court overlooks that the charged conspirators must understand the object of a conspiracy and join it before criminal liability attaches. He posits that if a defendant does not know the

ultimate purpose of the conspiracy, his participation is not sufficient to sustain the conviction as a member of that conspiracy.

A three-judge panel of the Sixth Circuit Court of Appeals affirms the conviction via an opinion rendered on May 26, 2021. The panel reasons that:

> The evidence is sufficient to show that a reasonable jury could find all three defendants participated in a 'chain' conspiracy to distribute controlled substances. (App. 14a).

The Court also reasons as follows:

> We have repeatedly held that 'the government need not prove *mens rea* as to the type and quantity of the drugs in order to establish a violation of §§ 841 and 846. *United States v. Villarce,* 323 F.3d 435, 439, & n.1 (6th Cir. 2003) (quoting *United States v. Garcia,* 252 F.3d 838, 844 (6th Cir. 2001)).
>
> > The *mens rea* the government must prove is established by § 841(a), which requires nothing more specific than an intent to distribute a controlled substance. Drug type and quantity are irrelevant to this *mens rea* element .... [T]he penalty provisions of § 841(b) ... require only that the specified drug types and quantities be involved in an offense.
>
> *United States v. Dado,* 759 F.3d 550, 570 (6th Cir.2014) (citations and internal quotation marks omitted). Most recently, we addressed whether the Supreme Court decision in *Rehaif v. United States,* 139 S. Ct. 2191 (2019), abrogated this precedent and concluded that it did not. See *United States v. Mahaffey,* 983 F.3d 238, 242-45 (6th Cir. 2020). (App. 15a).

D. Rehearing

A Petition for Rehearing *En Banc* is timely filed, where it is argued that the Sixth Circuit panel's decision is incorrect. The Petition for Rehearing *En Banc* was denied by Order dated August 18, 2021. (App. 31a).

As a result, this Petition follows.

REASONS FOR GRANTING THE PETITION

The question presented is one of national importance and is likely to reoccur in future conspiracy prosecutions. With the proliferation of drug conspiracy prosecutions, it is paramount that the government's burden to prove *mens rea* brought pursuant to 21 U.S.C. § 841(a), 841(b)(1)(C), and 846, be determined. Beyond statutory construction of those statutes to determine congressional intent regarding *mens rea*, Due Process is absent when mandatory minimum sentences are increased if the government is not required to prove any defendant had *mens rea* to join a conspiracy when knowledge of its objects is absent, or when defendants are without knowledge of the particular controlled substance that results in serious injury or death to consumers of those substances.

Federal conspiracy law is a creature of statute. Congress provides the statutory content, and prosecutors across the United States and in every circuit are not hesitant to indict and prosecute individuals for violations of both substantive and conspiracy offenses. In 1990, the Seventh Circuit comments that, "[P]rosecutors seem to have conspiracy on their word processors as Count One." *United States v. Reynolds,* 919 F.2d 435, 439 (7th Cir. 1990). This trend has continued, and prosecutors frequently use conspiracy indictments in alarming numbers.

In *Grunewald v. United States,* 353 U.S. 391, 404 (1957), the Supreme Court advises that, "Prior cases in this court have repeatedly warned that we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions." The decision of the Sixth Circuit Court of Appeals herein widens the net, allowing for conviction of individuals without the government having to prove the requisite *mens rea* for conviction of conspiracy to distribute specific controlled substances as identified in the government's indictment. The

significance of the question presented is one of national importance, not only because of the widespread prosecution of conspiracy crimes, but also because of the mandatory minimum sentences that may result for the unintended acts of persons charged and convicted. The issue is likely to reoccur in conspiracy prosecutions across the nation. This case is also likely to have an impact on the administration of justice because the Sixth Circuit misinterprets and unduly limits this Court's holdings in *Rehaif v. United States,* 139 S. Ct. 2191, 2197 (2019).

(a) The decision of the Sixth Circuit Court of Appeals is incorrect.

Conspiracy is a specific intent crime. *United States v. United States Gypsum Co,* 438 U.S. 422, 436 (1978), holds that "The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal law." The Sixth Circuit recognizes that conspiracy is a specific intent crime. *United States v. Trevino,* 7 F.4th 414, 424-25 (6th Cir. 2021). Nevertheless, it erroneously restricts the intent requirement to only one part of 21 U.S.C. § 841, the underlying offense in this drug conspiracy and substantive law prosecution. By doing so, it relieves the government from proving *mens rea* for all elements of the statute, exposing defendants to lengthy mandatory minimum sentences to which they might otherwise not be exposed.

1. "The fundamental characteristic of a conspiracy is a joint commitment to an 'endeavor which, if completed, would satisfy all of the elements of [the underlying substantive] criminal offense.' " *Ocasio v. United States,* 136 S. Ct. 1423, 1429 (2016), quoting *Salinas v. United States,* 522 U.S. 52, 65 (1997). The law requires

that the government prove that the charged conspirators act with "at least the degree of criminal intent necessary for the substantive offense" that was the object of the conspiracy. *United States v. Feola,* 420 U.S. 671, 686 (1975). Conspirators must pursue the same criminal objective. *Salinas, supra,* at 63. These fundamental essentials of any criminal prosecution for conspiracy violations can not be overlooked when the government specifically defines a conspiracy's objectives in the Indictment it authored.

"The terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement, consonant alike with ordinary notions of fair play and settled rules of law ...." *Connally v. General Const. Co.,* 269 U.S. 385, 391 (1926).

2. Congress's statutory structure is clear and incorporates the presumption of *mens rea* for all elements of the crime. 21 U.S.C. § 841(a)(1) provides that it is a crime to "knowingly and intentionally" distribute or possess with intent to distribute certain controlled substances. Thus, a *mens rea* requirement is clearly included in the language of the statute. The next statutory section provides that when the substance is a Schedule I or Schedule II controlled substance, there is no mandatory minimum sentence, and the maximum sentence is 20 years. 21 U.S.C. § 841(b)(1)(C). Fentanyl is a Schedule II controlled substance. 21 C.F.R. § 1308.12(c)(9). Percocet is also a Schedule II drug. 21 C.F.R. 1308.12(b)(1)(xiv).

Congress steps up the possible penalties as the severity of an individual's conduct escalates. Minimum sentences are increased to five, ten, or twenty years, dependent upon the type or quantity of the substances involved. Also, in cases resulting in death or serious bodily injury because of the distribution, the mandatory minimum sentence becomes 20 years and the maximum is life. 21 U.S.C. § 841(b)(1)(C). [1]

The Sixth Circuit opinion holds that "the government need not prove *mens rea* as to the type and quantity of the drugs to establish a violation of §§ 841 and 846. The opinion holds that drug type is irrelevant to the *mens rea* element stated in § 841(a). (App. 15a). When the Sixth Circuit opines that the government need not prove *mens rea* as to the type of drugs to establish a violation of 21 U.S.C. §§ 841 and 846 when it alleges a serious physical injury or death has occurred, it follows that Congress must have intended to automatically impose mandatory sentences of five, ten, or twenty 20 years for unintentional acts. If this had been the intended consequence of the Congressional enactment, surely the statute would have been written more clearly. The Sixth Circuit construction and application of the statutory language is incorrect, leading to a violation of Due Process and misapplication of the statutory intent evinced by Congress.

---

[1] 21 U.S.C. § 846 provides that persons involved in a conspiracy to commit an offense defined in the subchapter for that offense (here controlled substance distribution) and the commission of which was the object of the conspiracy, is subject to the same penalties

3. Congress includes a *mens rea* provision in § 841(a), requiring the government to prove knowledge or intent with respect to controlled substance possession or distribution. *Rehaif v. United States,* 139 S.Ct. 2191, 2195 (2019), recognizes the strong presumption that Congress intends to require a culpable *mens rea* for every element of a crime. There is a presumption of *mens rea.* When reading the entirety of § 841 considering the *mens rea* presumption and its clear statutory language, Congress clearly intends to place upon the government the burden of proving intent with respect to the types (and quantities) of controlled substances involved in the offense when those substances, types, and quantities are "elements" of the crime. The Sixth Circuit's interpretation that *mens rea* is irrelevant is incorrect for many reasons.

4. 21 U.S.C. 841(b)(1)(C), establishes the mandatory minimum sentences where the particular substances involved cause death or serious injury. The argument that *mens rea* for all elements of the statute is required is not diminished because § 841(b) does not explicitly state any *mens rea* requirement. When the ordinary reading of the statute does not require any manipulation to determine its true content, no *mens rea* requirement need be explicitly stated. *Staples v. United States,* 511 U.S. 600, 604-05 (1994), is instructive. It holds that the language of a statute is the starting place when addressing a question of statutory construction. When determining the mental state required for federal crimes, the Court states that such determination requires "construction of the statute ...and inference of the intent of Congress." *Id.,* quoting *United States v. Balint,* 258 U.S. 250 (1922). Silence, then,

"does not necessarily suggest that Congress intended to dispense with a conventional *mens rea* element" because it is so embedded into the law. The Court has suggested in previous cases that "some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime." *Id.,* at 606. There is no such expressed intent in this case, nor is it implied.

5. A fact that increases the penalty for commission of a crime is an element of that crime and makes that crime an aggravated one. *Alleyne v. United States,* 570 U.S. 99, 103, 113 (2013). "As 'a matter of ordinary English grammar,' we normally read the statutory term 'knowingly' as applying to all subsequently listed elements of the crime." *Rehaif,* 139 S.Ct. at 2196.

Here, the government defines the scope of the charged conspiracy. The target of the prosecution is expressly identified as conspiracy "to distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl" and it was "reasonably foreseeable" that the distribution caused serious bodily injury" to certain individuals. R. 256: Indictment. (App. 21a). Incorporating the conspiracy allegations and overt acts in the Indictment, the government establishes the parameters of the prosecution which do not change at any time during prosecution of the case. A specific conspiracy is charged, and for the conviction to be legitimate for participation in that conspiracy, the defendants' *mens rea* for all the elements of that conspiracy should be subject to the government's burden of proof. Nevertheless, the Sixth Circuit opinion holds that the *mens rea* requirement requires "nothing more specific than an intent to distribute ***a***

controlled substance." (emphasis supplied). This overlooks the second part of the statute for which *mens rea* is an element when engaging in proper statutory construction. Because the *mens rea* requirement should be applicable to all elements of the statute as required by law and the government establishes the parameter of charges set forth in the Indictment, the government should be held to its burden of proving a defendant "knowingly or intentionally" distributes ***the*** controlled substance that caused the injuries asserted. Why? Fundamental fairness and the congressional intent require no less, especially where the mandatory minimum sentence is substantially increased.

6. The holding in *Rehaif* is unduly restricted by the Sixth Circuit opinion. The opinion holds that the precedent establishing that drug type and quantity are irrelevant to the *mens rea* requirement established by § 841(a) is not abrogated by the *Rehaif* decision. In doing so, it relies upon its prior reasoning in *United States v. Mahaffey,* 983 F.3d 238 (6th Cir. 2020). This reliance is misplaced. Both *MaHaffey* and this case at bar limit the *Rehaif* holding to cases where the presumption in favor of *mens rea* requires a court to read the scienter requirement into a statute only when such is needed to separate wrongful from otherwise innocent conduct. *MaHaffey,* 983 F.3d at 244-45. This has not been the case, and *Rehaif* is not so limiting.

In *United States v. Burwell,* 690 F.3d 500, 529 (D.C.Cir. 2012), Justice Kavanaugh's dissent states that the Supreme Court had never limited the

presumption of *mens rea* to only cases where it was necessary to prevent criminalizing otherwise innocent conduct. He says:

> It would be illogical in the extreme to apply the presumption of mens rea to an element of the offense that would, say, increase the defendant's punishment from no prison time to a term of 2 years in prison, but not to apply the presumption of mens rea to an element of the offense that would aggravate the defendant's crime and increase the punishment from 10 years to 30 years. As Professor LaFave has crisply stated, such an approach would be "unsound, and has no place in a rational system of substantive criminal law."

Id. His reasoning, including the statement that *mens rea* applies to each element of an offense, is sound. His dissent is applicable here and should be carefully considered by the Court.

When *Mahaffey,* 983 F.3d at 245, holds that drug type and quantity do not serve to convict an innocent actor, but only increase the sentence of an individual once convicted, it is apparent that those matters are considered sentencing factors, not elements of a crime. The case is wrongfully decided. The instant Sixth Circuit opinion, by its adoption of *MaHaffey's* reasoning, makes the same error. *Mens rea* analysis should be applied to all elements of the crime, not just some of them. Confusing these concepts is likely to reoccur without further direction from this Court.

7. *Mens rea* requirements are certainly altered dependent upon the scope of the conspiracy charged and the drug types involved. There is no mandatory minimum in generic drug trafficking conspiracies. If "A" buys drugs from "B" and sells them to "C" and the drugs are believed to be Percocet, is that the same conspiracy the government defined as one to sell counterfeit pills containing fentanyl? If "A" does

not know the fentanyl conspiracy or its objects, by selling to "C" has he joined the conspiracy, or is the former a different conspiracy? Is his *mens rea* the same in each? Is it enough that he be subject to a mandatory minimum sentence of 20 years for the latter, and subject to no mandatory minimum for the former? What makes the difference? *Mens rea,* which is now relevant to the outcome.

When the government, as here, charges a conspiracy to distribute and possess with intent to distribute a mixture or substance containing fentanyl, and further defines that as its object, an essential element is whether defendant knows the object and joins it with that knowledge. It is a different, aggravated crime when there are alleged facts that trigger a mandatory minimum sentence. Here that fact is the alleged conduct that the conspiracy would cause serious injury to consumers because of the fentanyl which the defendant did not know was present. The Sixth Circuit opinion maintains a strict liability approach to the conviction and sentence. Not only is there a presumption against strict liability crimes (see *Staples*, 511 U.S. at 607 n.3), but there is also inherent unfairness to subject any individual without the requisite *mens rea* to significant mandatory prison terms. If the *mens rea* requirement mandates that a defendant have knowledge of what facts make his conduct subject to criminal prosecution, then knowledge of the type of drugs involved is not only a condition of his guilt, but also what triggers imposition of the mandatory minimum sentence.

This Court must intervene in this case to establish the *mens rea* requirements necessary for just convictions in drug-trafficking conspiracies. This is

an appropriate case to address the issue presented, and, in light of the Court's concerns addressed in *Rehaif* and the developing body of law regarding sentencing matters where facts are essential to punishment, it is an appropriate vehicle to further clarify the law.

Finally, the question presented is likely to recur before this and other circuits. The issue presents the opportunity to address the ever-increasing conspiracy net that subjects individuals to harsh sentences without the need for the government to prove the intentionality of all the elements of the crimes charged.

CONCLUSION

This case presents a critical issue involving statutory construction, the burden of the government to prove *mens rea* in drug-trafficking conspiracies, and fundamental due process rights.

Because of that, this Petition for Writ of Certiorari, should be granted.

Respectfully Submitted,

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APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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SUBMITTED: November 09, 2021

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UNITED STATES DISTRICT COURT

Middle District of Tennessee

UNITED STATES OF AMERICA
v.
Johnny Williams

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:16 CR 176-04

USM Number: 24984-075

Michael David Noel
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, 2, 3, 4, 5, 7, 8, and 9 of Fifth Superseding Indictment

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846	Conspiracy to Distribute/Possess Fentanyl	9/10/2016	1
21 U.S.C. § 841(a)(1) and (b)(1)(C) and 18 § 2	Distribution/Possession with intent to distribute Fentanyl resulting in serious bodily injury	7/6/2016	2-5,7-9

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.

12/17/2018
Date of Imposition of Judgment

s/ Jack Zouhary
Signature of Judge

Jack Zouhary, U. S. District Judge
Name and Title of Judge

12/27/2018
Date

DEFENDANT: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

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 each as to Counts 1, 2, 3, 4, 5, 7, 8, and 9 of Fifth Superseding Indictment, to run concurrent to one another, for a total of 240 months. Defendant shall receive credit for time spent in federal custody.

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

- Defendant be incarcerated in a facility near West Memphis
- Participate in the Residential Drug Abuse Program (RDAP)
- Participate in vocational or education programs
- Participate in a cognitive behavioral therapy course.

☑ 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: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

SUPERVISED RELEASE

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

3 years each as to Counts 1, 2, 3, 4, 5, 7, 8, and 9 of Fifth Superseding Indictment, to run concurrent to one another, for a total of 3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in 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: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

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: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

SPECIAL CONDITIONS OF SUPERVISION

Substance Abuse Treatment and Testing

Defendant shall participate in a program of drug testing and substance abuse treatment which may include a 30-day inpatient treatment program followed by up to 90 days in a community correction center at the direction of the United States Probation Office. Defendant shall pay all or part of the cost for substance abuse treatment if the United States Probation Office determines he has the financial ability to do so or has appropriate insurance coverage to pay for such treatment.

Financial Records

Defendant shall furnish all financial records, including, without limitation, earnings records and tax returns, to the United States Probation Office upon request.

DEFENDANT: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

STANDARD CONDITIONS OF SUPERVISION

As part of your probation, 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 the time you were sentenced, 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: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

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	$ 800.00	$	$	$

☐ 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: Johnny Williams
CASE NUMBER: 3:16 CR 176-04

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 $ 800.00 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.

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 21a0115p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHNNY WILLIAMS (18-6343); JONATHAN BARRETT (19-5745); JOEDON BRADLEY (19-5764),

Defendants-Appellants.

Nos. 18-6343/19-5745/5764

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 3:16-cr-00176-4—Jack Zouhary, District Judge.

Argued: November 18-2020

Decided and Filed: May 26, 2021

Before: COLE, DONALD, and READLER, Circuit Judges.

COUNSEL

ARGUED: Steven R. Jaeger, THE JAEGER FIRM PLLC, Erlanger, Kentucky, for Appellant in 18-6343. Michael E. Terry, TERRY & GORE, Nashville, Tennessee, for Appellant in 19-5745. Matthew M. Robinson, ROBINSON & BRANDT, PSC, Covington, Kentucky, for Appellant in 19-5764. Amanda J. Klopf, UNITED STATES ATTORNEY'S OFFICE, Nashville, Tennessee, for Appellee. **ON BRIEF:** Steven R. Jaeger, THE JAEGER FIRM PLLC, Erlanger, Kentucky, for Appellant in 18-6343. Michael E. Terry, Stephanie H. Gore, TERRY & GORE, Nashville, Tennessee, for Appellant in 19-5745. Matthew M. Robinson, ROBINSON & BRANDT, PSC, Covington, Kentucky, for Appellant in 19-5764. Amanda J. Klopf, UNITED STATES ATTORNEY'S OFFICE, Nashville, Tennessee, for Appellee.

OPINION

BERNICE BOUIE DONALD, Circuit Judge. Johnny Williams, Jonathan Barrett, and Joedon Bradley (collectively, "the defendants") were indicted for conspiring with each other and six other individuals to distribute fentanyl, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 846. Each defendant was also charged with multiple counts of distributing and possessing with the intent to distribute fentanyl, the use of which resulted in serious bodily injury or death, in violation of § 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2. A jury found the defendants guilty on all counts. Each defendant filed a separate appeal, which this Court consolidated. The defendants challenge the sufficiency of the evidence as to their convictions and the district court's denial of pre-trial motions. For the reasons set forth below, we **AFFIRM** the convictions as to all three defendants.

I.

In May 2016, the Drug Enforcement Administration ("DEA") was investigating the distribution of counterfeit prescription pills in Florida, Kentucky, and Tennessee. The DEA raided the home of Eric Falkowski—the primary target of the investigation—and found tableting machines, bags of powders, and dyes. Soon thereafter, Joedon Bradley approached Falkowski, wanting to move Falkowski's drug business to Tennessee. Once in Madison, Tennessee, Falkowski and Bradley pressed thousands of pills containing a mixture of alprazolam, acetaminophen, and fentanyl. The white pills were marked with an "A333" stamp and looked nearly identical to Percocet pills.

On July 5, 2016, a large quantity of those counterfeit pills was distributed in Murfreesboro, Tennessee. On July 6, law enforcement and emergency medical personnel attended to several victims who overdosed on the counterfeit pills, which the victims thought were 10 mg Percocet pills. One individual died from the overdose, while seven other individuals had to be hospitalized. An investigation revealed that Jennifer Dogonski had brokered an agreement between Johnny Williams and Jonathan Barrett for the purchase of 150 pills.

On July 7, law enforcement then executed a search warrant for Barrett's home, where it found approximately 70 Xanax pills, but not the counterfeit pills. Law enforcement arrested Barrett and took him to the Murfreesboro Police Department ("MPD"), where law enforcement interrogated him and had him sign a written statement about his conduct before releasing him. Barrett then returned to the MPD days later for another recorded interrogation. During this second interrogation, on July 11, Barrett explained that he had purchased, and later distributed, 150 counterfeit Percocet pills in a deal Dogonski brokered between Williams and him. Barrett also acknowledged that he had traded the last of his counterfeit pills for the Xanax pills found in his home with the overdose victim who died.

Law enforcement also interrogated Johnny Williams on July 7, 2016. During the interrogation, Williams decided to terminate questioning. The officers released Williams but, on his way out, they convinced him to come back to finish the interview. They read him his *Miranda* rights and Williams signed a waiver. During the interview, Williams stated that he received a call from Dogonski, who asked Williams if he had any oxycodone or Percocet pills. Williams admitted that he sold Dogonski the counterfeit Percocet pills, which he had obtained from "Bo." Following the interview, Williams was allowed to leave, but law enforcement seized his cell phone on the belief that it contained evidence of criminal activity. Four hours later, the officers obtained and executed a search warrant on the phone, where they discovered that Williams had exchanged text messages with Dogonski about the sale of the pills. Based on the information recovered from the search of his cell phone, a search warrant was later issued for Williams' apartment.

Law enforcement identified Davi Valles, Jr. as "Bo." Valles had purchased approximately 400 of the counterfeit pills from Preston Davis. Davis later admitted to manufacturing the pills with Falkowski and Bradley. In executing a search warrant at Davis' home, law enforcement found fentanyl, a pill press, and a pill die stamped with "A333." Law enforcement also searched Falkowski's phone and found text messages between him and Bradley discussing the manufacture and distribution of the pills. On December 22, 2016, law enforcement arrested Bradley. Once handcuffed, he admitted his involvement in manufacturing and distributing the pills with Falkowski.

On May 10, 2017, a federal grand jury issued a 10-count indictment, charging the defendants with crimes related to the distribution of fentanyl. Davis and Dogonski were each charged separately and made plea deals with the government. Between the Fourth and Fifth Superseding indictments, Falkowski, Valles, and LaKrista Knowles (a mid-level distributor) were removed as defendants after making plea deals with the government. Bradley was added to all nine substantive counts under an aiding-and-abetting theory. The remaining four defendants (Bradley, Barrett, Williams, and Jason Moss) were charged with one count of conspiracy to distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl under 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 846; and eight counts of distribution of a substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death, under 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2. Counts Six and Ten listed only Bradley, although the government voluntarily dismissed Count Six before trial.

At trial, the government introduced the defendants' statements obtained during questioning, as well as testimony from law enforcement officers, medical examiners, and victims. Based on the evidence presented at trial, the jury returned a verdict of guilty on all counts as to Bradley, Barrett, and Williams (but found Moss not guilty on all counts). In doing so, the jury found that the pills were the but-for cause of the harm to the victims. The district court then sentenced Williams to 240 months' imprisonment, Barrett to 276 months' imprisonment and Bradley to 360 months' imprisonment. The defendants filed timely notices of appeal, and now raise several challenges to their convictions.

II.

Defendants raise several sufficiency-of-the-evidence challenges. We address these challenges first to determine whether there can be a retrial. *See United States v. Parkes*, 668 F.3d 295, 300 (6th Cir. 2012).

In sufficiency-of-the-evidence challenges, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v.*

Virginia, 443 U.S. 307, 319 (1979) (emphasis omitted). It is the jury's job "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.* "[O]ur court on appeal will reverse a judgment for insufficiency of evidence only if this judgment is not supported by substantial and competent evidence upon the record as a whole, and this rule applies whether the evidence is direct or wholly circumstantial." *United States v. Stone*, 748 F.2d 361, 363 (6th Cir. 1984).

A. Existence of a Conspiracy (Count One)

All three defendants assert that there is insufficient evidence of a single conspiracy. Bradley and Barrett specifically argue that the evidence shows they only had a buyer–seller relationship with other defendants, but not an actual agreement. Bradley further asserts that the evidence, at best, shows multiple conspiracies rather than a single conspiracy, resulting in a prejudicial variance from the indictment.

1. In order "[t]o sustain a conviction for drug conspiracy under section 846, the government must prove beyond a reasonable doubt: (1) an agreement to violate drug laws; (2) knowledge of and intent to join the conspiracy; and (3) participation in the conspiracy." *United States v. Gardner*, 488 F.3d 700, 710 (6th Cir. 2007). Conspiracy requires: "(1) An object to be accomplished[;] (2) [a] plan or scheme embodying means to accomplish that object[;] and (3) [a]n agreement or understanding between two or more of the defendants whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means." *United States v. Bostic*, 480 F.2d 965, 968 (6th Cir. 1973).

An agreement can be tacit, not formal, and the "government may meet its burden of proof through circumstantial evidence." *United States v. Layne*, 192 F.3d 556, 567 (6th Cir. 1999). "Generally, a buyer-seller relationship alone is insufficient to tie a buyer to a conspiracy because mere sales do not prove the existence of the agreement that must exist for there to be a conspiracy." *United States v. Deitz*, 577 F.3d 672, 680 (6th Cir. 2009) (internal quotation marks omitted) (quoting *United States v. Cole*, 59 F. App'x 696, 699 (6th Cir. 2003)). However, we have "often upheld conspiracy convictions where there was additional evidence, beyond the

mere purchase or sale," of a wider agreement. *Cole*, 59 F. App'x at 699–700. To that end, circumstantial evidence that may establish that "a drug sale is part of a larger drug conspiracy" includes advance planning, ongoing purchases or arrangements, large quantities of drugs, standardized transactions, an established method of payment, and trust between the buyer and seller. *Deitz*, 577 F.3d at 680–81 (citations omitted).

Here, the evidence is sufficient to show that a reasonable jury could find that all three defendants participated in a "chain" conspiracy to distribute controlled substances. In a chain conspiracy, "the agreement can be inferred from the interdependent nature of the criminal enterprise." *See United States v. Hitow*, 889 F.2d 1573, 1577 (6th Cir. 1989). And knowledge of the operation "may be inferred from the interrelated nature of the drug business or the volume of drugs involved." *Id.* The evidence demonstrated that Bradley, as the manufacturer of thousands of counterfeit pills, worked with other intermediaries to achieve a common goal of distributing controlled substances. The government also showed that Williams bought 300 pills from Valles, sold pills to Dogonski (for sale to others), and worked with Dogonski to sell 150 pills to Barrett. Based on the number of Williams' contacts within the chain, a reasonable juror could find that he knowingly agreed to participate in a larger scheme to violate drug laws. Likewise, Barrett, as an end distributor in the chain, bought counterfeit pills with the intent to distribute them to third parties (rather than use them personally). He communicated with Dogonski about the availability of Percocet, purchased pills from Williams with Dogonski's assistance, and sold pills to another distributor and several end-users who overdosed. Although Barrett may not have known individuals higher in the chain, it was reasonable for the jury to find that he participated in the conspiracy. *See United States v. Martinez*, 430 F.3d 317, 332–33 (6th Cir. 2005) ("In a drug distribution 'chain' conspiracy, it is enough to show that each member of the conspiracy realized that he was participating in a joint venture, even if he did not know the identities of every member, or was not involved in all the activities in furtherance of the conspiracy.").

2. Both Williams and Barrett argue that they could not have been part of the conspiracy because they did not know that the pills were counterfeit and thus contained fentanyl. They argue that because they did not know the object of the conspiracy—to distribute and possess with

intent to distribute a drug mixture *with fentanyl*—they did not have the knowledge necessary to be part of the conspiracy.

This argument is unpersuasive. We have repeatedly held that "the government need not 'prove mens rea as to the type and quantity of the drugs' in order to establish a violation of" §§ 841 and 846. *United States v. Villarce*, 323 F.3d 435, 439 & n.1 (6th Cir. 2003) (quoting *United States v. Garcia*, 252 F.3d 838, 844 (6th Cir. 2001)).

> The *mens rea* the government must prove is established by § 841(a), which requires nothing more specific than an intent to distribute a controlled substance. Drug type and quantity are irrelevant to this *mens rea* element . . . . [T]he penalty provisions of § 841(b) . . . require only that the specified drug types and quantities be involved in an offense.

United States v. Dado, 759 F.3d 550, 570 (6th Cir. 2014) (citations and internal quotation marks omitted). Most recently, we addressed whether the Supreme Court's decision in *Rehaif v. United States*, 139 S. Ct. 1291 (2019), abrogated this precedent and concluded that it did not. *See United States v. Mahaffey*, 983 F.3d 238, 242–45 (6th Cir. 2020). To be sure, knowledge and intent to join the conspiracy includes that the defendant "was aware of the object of the conspiracy and that he voluntarily associated himself with it to further its objectives." *United States v. Hodges*, 935 F.2d 766, 772 (6th Cir. 1991). Therefore, we have "repeatedly held that participation in a scheme whose ultimate purpose a defendant does not know is insufficient to sustain a conspiracy conviction under 21 U.S.C. § 846." *United States v. Sliwo*, 620 F.3d 630, 633 (6th Cir. 2010) (collecting cases). But here, the ultimate purpose of the scheme was "to distribute and possess with intent to distribute counterfeit pills that contained fentanyl." Fifth Superseding Indictment, R. 256, PageID 661. And the government demonstrated that both defendants were aware that they were involved in distributing and possessing with intent to distribute counterfeit pills, which happened to "contain[] fentanyl." A reasonable juror could therefore conclude that Williams and Barrett knowingly joined this conspiracy.

3. Barrett cites *United States v. Wheat*, 988 F.3d 299 (6th Cir. 2021), for the proposition that he was merely a buyer and should not have been charged in the conspiracy. However, *Wheat* is distinguishable from this case. In *Wheat*, the defendant had a single meeting with a person named Reels and provided Reels with a free sample of heroin. *Id.* at 305. Reels decided

not to purchase any heroin and the two went their separate ways. *Id.* We therefore found that the evidence was insufficient to charge the defendant with a drug conspiracy. *Id.* We explained that "mere negotiations between drug traffickers will not suffice; the conspirators must actually agree to accomplish an illegal objective or accede to illegal terms that are acceptable to both." *Id.* at 307 (quoting *United States v. Pennell*, 737 F.2d 521, 536 (6th Cir. 1984)). This is not the case here, because Barrett purchased counterfeit Percocet pills for distribution. And as explained above, even if he did not know they were laced with fentanyl specifically, he was aware that he was purchasing controlled substances. *See Villarce*, 323 F.3d at 439 & n.1. Furthermore, in *Wheat*, the government "did not charge the defendant with distributing to Reels; it charged him with *conspiring* with Reels." *Id.* at 309 (emphasis added). Based on that inchoate offense alone, we found that providing Reels with a sample was not a conspiracy to distribute drugs. *Id.* Here, Barrett was charged with conspiring to distribute and for distribution of controlled substances. A reasonable jury could have found that the government proved beyond a reasonable doubt that Barrett committed those crimes.

4. Bradley and Barrett separately challenge their Count One convictions by arguing that the government's evidence demonstrated the existence of multiple conspiracies, rather than a single conspiracy, as was charged. Bradley contends that the alleged mismatch between the evidence and indictment was a prejudicial variance, whereas Barrett raises the issue as a sufficiency-of-the-evidence challenge.

a. We review the question of whether a variance has occurred *de novo*. *United States v. Caver*, 470 F.3d 220, 235 (6th Cir. 2006). "A variance to the indictment occurs when the charging terms of the indictment are unchanged, but the evidence at trial proves facts materially different from those alleged in the indictment." *Id.* "Within the context of a conspiracy, a variance constitutes reversible error only if a defendant demonstrates that he was prejudiced by the variance and that the 'indictment allege[d] one conspiracy, but the evidence can reasonably be construed *only* as supporting a finding of multiple conspiracies.'" *Id.* at 235–36 (alteration in original) (quoting *United States v. Warner*, 690 F.2d 545, 548 (6th Cir. 1982)). We "review the evidence as to the number of conspiracies in the light most favorable to the government, considering 'the existence of a common goal, the nature of the scheme, and the overlapping of

the participants in various dealings.'" *United States v. Williamson*, 656 F. App'x 175, 183 (6th Cir. 2016) (quoting *United States v. Smith*, 320 F.3d 647, 652 (6th Cir. 2003)); *see Caver*, 470 F.3d at 236. While "a single conspiracy does not become multiple conspiracies simply because each member of the conspiracy d[oes] not know every other member," each member must have "agreed to participate in what he knew to be a collective venture directed toward a common goal." *Warner*, 690 F.2d at 549 (citation omitted).

"An indictment does not charge multiple conspiracies if there is one overall agreement among the various parties to perform different functions in order to carry out the objectives of the conspiracy." *United States v. Kelley*, 461 F.3d 817, 830 (6th Cir. 2006) (internal quotation marks and citation omitted). But where there are "multiple agreements to commit separate crimes," then there are several conspiracies. *United States v. Vichitvongsa*, 819 F.3d 260, 273 (6th Cir. 2016) (quoting *United States v. Broce*, 488 U.S. 568, 571 (1989)). "The ultimate question is whether the evidence shows one agreement or more than one agreement." *Id.* (quoting *In re Grand Jury Proceedings*, 797 F.2d 1377, 1380 (6th Cir. 1986)).

Bradley did not suffer a prejudicial variance because the evidence cannot reasonably be construed as only showing the existence of multiple conspiracies. *Caver*, 470 F.3d at 235. Rather, as explained, the jury reasonably concluded that the evidence proved the existence of a single chain conspiracy. *See Hitow*, 889 F.2d at 1577; *see also Corral v. United States*, 562 F. App'x 399, 408 (6th Cir. 2014) ("Seemingly independent transactions may be revealed as parts of a single conspiracy by their place in a pattern of regularized activity involving a significant continuity of membership." (quoting *United States v. Kelley*, 849 F.2d 999, 1003 (6th Cir. 1988)); *United States v. Sinito*, 723 F.2d 1250, 1256 (6th Cir. 1983) (explaining that the totality of the circumstances—including the continuity of time, actors, offenses, and overt acts—supports one conspiracy to commit several crimes). Bradley alleges that he did not know either of the other defendants and did not sell counterfeit drugs to them and, therefore, cannot be responsible for aiding and abetting in the conspiracy. But again, we have explained that a defendant can be guilty of participating in a conspiracy even if he does not know all of the members or participate in all of the conspiracy's activities. *See Martinez*, 430 F.3d at 332–33; *United States v. Maliszewski*, 161 F.3d 992, 1014–15 (6th Cir. 1998).

Nor does a possibility of a variance mandate a reversal, as urged by Bradley. For the variance to constitute reversible error, a defendant must, at the very least, show that this variance prejudiced him. *Caver*, 470 F.3d at 237 (explaining that a variance is not *per se* prejudicial). "Where the evidence demonstrates *only* multiple conspiracies, a defendant is prejudiced if the error of trying multiple conspiracies under a single indictment substantially influenced the outcome of the trial." *Id.* (emphasis added) (citing *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)). There are two forms of possible prejudice: "(1) where the defendant is unable to present his case and is 'taken by surprise by the evidence offered at trial,' *United States v. Budd*, 496 F.3d 517, 527 (6th Cir. 2007) (quoting *Berger v. United States*, 295 U.S. 78, 82 (1935)), or (2) where the defendant is 'convicted for substantive offenses committed by another[,]' *United States v. Friesel*, 224 F.3d 107, 115 (2d Cir. 2000)." *United States v. Swafford*, 512 F.3d 833, 842 (6th Cir. 2008).

Even if there was a variance, Bradley was not prejudiced. Bradley was convicted of participating in a single conspiracy because there was evidence of knowledge of a common scheme to distribute and sell controlled substances. The government presented evidence of a common goal of making money by distributing drugs. And even if we were to find that there were a series of single conspiracies, we "may reverse the jury's verdict *only* if [we] find[] that the judgment is not supported by substantial and competent evidence, whether direct or wholly circumstantial, upon the record as a whole." *United States v. Hall*, 549 F.3d 1033, 1040 (6th Cir. 2008) (emphasis added). A defendant is prejudiced if "the evidence demonstrates *only* multiple conspiracies," *Caver*, 470 F.3d at 237 (citation omitted), which is not the case here. A defendant seeking relief on a sufficiency-of-the-evidence claim therefore bears a "very heavy burden." *United States v. Barnes*, 822 F.3d 914, 919 (6th Cir. 2016). Bradley fails to meet this burden here, because the jury could have found the existence of a single conspiracy.

b. Barrett alleges that he collaborated with Dogonski to buy what he thought were legitimate Percocet pills. This uncharged conspiracy, he claims, is separate from and not part of the conspiracy charged in Count One. However, the evidence is supportive of the verdict that Barrett knowingly and voluntarily participated in the conspiracy with Williams and Dogonski because the conspiracy was to distribute controlled substances. *See Martinez*,

430 F.3d at 332–33. And, as explained, it is possible to find Barrett participated in the charged conspiracy even if he was unaware the pills were counterfeit and contained fentanyl. *Dado*, 759 F.3d at 570.

B. Jury Instructions on Buyer-Seller and Multiple Conspiracies

Barrett and Bradley argue that the district court erred when it refused to provide requested pattern jury instructions about a buyer-seller relationship. Bradley also argues that the court erred by refusing to give a multiple conspiracies instruction.

We review the district court's choice of jury instructions for abuse of discretion. *United States v. Beaty*, 245 F.3d 617, 621 (6th Cir. 2001). A district court abuses its discretion in declining to give a requested instruction when: "(1) the instructions are correct statements of the law; (2) the instructions are not substantially covered by other delivered charges; and (3) the failure to give the instruction impairs the defendant's theory of the case." *United States v. Algee*, 599 F.3d 506, 514 (6th Cir. 2010). "We may reverse a judgment based on an improper jury instruction only if the instructions, viewed as a whole, were confusing, misleading, or prejudicial." *United States v. Prince*, 214 F.3d 740, 761 (6th Cir. 2000) (cleaned up) (citation omitted).

The district court did not abuse its discretion when it declined to give a buyer-seller jury instruction. As an initial matter, we have explained that when, as here, the district court gives complete instructions on the elements of conspiracy, failure to give a buyer-seller instruction is not reversable error. *See Dado*, 759 F.3d at 568; *United States v. Musick*, 291 F. App'x 706, 729 (6th Cir. 2008); *Riggs v. United States*, 209 F.3d 828, 833 (6th Cir. 2000), *abrogation on other grounds recognized by Kumar v. United States*, 163 F. App'x 361, 366 (6th Cir. 2005).

In any event, we find that the evidence sufficiently demonstrates that Bradley had a manufacturing operation and communicated extensively with a co-conspirator, Falkowski, who then sold pills to other distributors. There is sufficient evidence in the record to show that the relationship between Barrett and Dogonski was that of a trusted supplier and distributor. Dogonski brokered a deal between Williams and Barrett, and neither Barrett nor Williams were

mere customers purchasing drugs for personal use. Thus, the district court did not abuse its discretion in refusing to give the buyer-seller instruction to the jury.

The district court also did not err in refusing to give the multiple-conspiracies instruction to the jury. "A district court is not required to give a multiple conspiracies instruction where only one conspiracy is alleged and proved." *United States v. Ghazaleh*, 58 F.3d 240, 244 (6th Cir. 1995) (quoting *United States v. Lash*, 937 F.2d 1077, 1086 (6th Cir. 1991) (collecting cases)). As explained above, the jury found the existence of a single conspiracy beyond reasonable doubt, and the evidence is sufficient to support that conclusion. The district court's choice not to give a multiple-conspiracies instruction thus was not reversable error.

C. Jury Instructions on the Sentencing Enhancement

Barrett also challenges the district court's jury instructions related to the application of § 841(b)(1)(C)'s penalty enhancement. "Section 841(b)(1)(C) sets the maximum penalty for a violation of § 841(a)(1) and imposes a sentence of not more than twenty years" unless the use of the substance results in "death or serious bodily injury." *United States v. Jeffries*, 958 F.3d 517, 519 (6th Cir. 2020) (quoting § 841(b)(1)(C)). If that is the case, the defendant "shall be sentenced to a term of imprisonment of not less than twenty years or more than life." § 841(b)(1)(C). For the enhancement to apply, the government must prove that (1) the defendant knowingly or intentionally distributed a controlled substance; and (2) that a death resulted from that distribution. *See Burrage v. United States*, 571 U.S. 204, 210 (2014). "[W]here use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C) unless such use is a but-for cause of the death or injury." *Id.* at 218–19. But-for causation occurs when the distributed drug "'combines with other factors to produce' death, and death would not have occurred 'without the incremental effect' of the controlled substance." *United States v. Volkman*, 797 F.3d 377, 392 (6th Cir. 2015) (citation omitted).

We view the evidence supporting Barrett's sentencing enhancement in the light most favorable to the prosecution and decide whether "*any* rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319. "As § 841(b)(1)(C)'s penalty enhancement increases the statutory maximum penalty, it must be charged in the indictment and proven beyond a reasonable doubt by the prosecution." *Jeffries*, 958 F.3d at 519 (citing *Alleyne v. United States*, 570 U.S. 99, 107–08 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)).

Barrett argues that the district court should have told the jury that it could not convict him of this enhancement unless it found that he had some sort of culpable mental state regarding the victim's death and serious bodily injury. Specifically, Barrett contends that the statute requires proof that the defendant "*knew* the risk of harm and chose to proceed." Barrett did not raise this argument before the district court, and we therefore review it for plain error. *See United States v. Newsom*, 452 F.3d 593, 605 (6th Cir. 2006). To prevail on plain error review, Barrett must show that (1) an error occurred, (2) it was obvious or clear, (3) it affected his substantial rights, and (4) it seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *United States v. Olano*, 507 U.S. 725, 733–36 (1993).

The government asserts that "[t]he plain language of § 841(b)(1)(C) does not attach any *mens rea* requirement to the death-or-bodily-injury enhancement, and Barrett does not suggest otherwise." Barrett argues that the Due Process Clause requires the Court to infer a *mens rea* requirement in order to make the statute constitutional because (1) the enhancement increases the statutory range and thus effectively "creates a separate crime" and (2) this purportedly separate crime must have a *mens rea* requirement or else it will be a strict liability offense that threatens to criminalize innocent conduct, in violation of *Morissette v. United States*, 342 U.S. 246 (1952), *Staples v. United States*, 511 U.S. 600 (1994), and related cases. But we have held that "[i]t is always foreseeable that a violation of § 841(a)(1) will involve an ultimate user of the substance and that death or injury may result from that use." *Jeffries*, 958 F.3d at 524. Accordingly, the government does not need to demonstrate foreseeability to apply the § 841(b)(1)(C) enhancement. *Id.* And even if the government had been required to prove foreseeability, Barrett was not prejudiced by the error to not provide these jury instructions. Here, the manufacture of drugs laced with fentanyl—a highly lethal drug—does not make foreseeability so uncertain. We therefore find that no plain error occurred.

To prove that Bradley was liable for the death of others, moreover, the government cannot rely on *Pinkerton* liability, and must show that he was in the chain of distribution that caused the victim's death or injury. *United States v. Hamm*, 952 F.3d 728, 741 (6th Cir. 2020). The government did so here. It presented testimonial evidence from toxicology experts that indicated that the counterfeit pills containing fentanyl were the cause of the overdoses and demonstrated that Bradley was a manufacturer of this highly lethal drug. Because the government properly situated Bradley in the chain of distribution, the § 841(b)(1)(C) enhancement was properly applied to him. *See id.* at 747. Therefore, the district court did not err in applying the § 841(b)(1)(C) enhancement.

D. Barrett's and Bradley's Challenges to Counts Two through Ten of the Indictment

Barrett and Bradley argue that the district court erred in denying their motions to dismiss counts Two through Ten of the Fifth Superseding Indictment. We consider each defendant's arguments in turn.

1. Barrett argues that the indictment included multiple counts that were duplicitous. "Whether an indictment is duplicitous is a question of law that this Court reviews *de novo*." *United States v. Kakos*, 483 F.3d 441, 443 (6th Cir. 2007).

"Separate offenses must be charged in separate counts of an indictment." *United States v. Boyd*, 640 F.3d 657, 665 (6th Cir. 2011) (citing Fed. R. Crim. P. 8(a)). "A duplicitous indictment charges separate offenses within a single count. The overall vice of duplicity is that the jury cannot in a general verdict render its finding on each offense, making it difficult to determine whether a conviction rests on only one of the offenses or on both." *United States v. Anderson*, 605 F.3d 404, 414 (6th Cir. 2010) (quoting *United States v. Washington*, 127 F.3d 510, 513 (6th Cir. 1997). Duplicitous indictments do not allow "the jury to convict on one offense and acquit on another," which is why they implicate the Sixth Amendment guarantee of jury unanimity. *Washington*, 127 F.3d at 513.

Barrett argues that Counts Two, Three, Four, Seven, Eight and Nine (each charging a violation of 21 U.S.C. § 841(a)(1)) were duplicitous because possession with intent to distribute and distribution are distinct charges. We disagree. Disjunctive offenses like § 841(a)(1), which

identifies distribution and possession with intent to distribute as different means to commit the offense, can be charged conjunctively in an indictment. *See United States v. McAuliffe*, 490 F.3d 526, 534 (6th Cir. 2007) ("It is settled law that an offense may be charged conjunctively in an indictment where a statute denounces the offense disjunctively." (quoting *United States v. Murph*, 707 F.2d 895, 896 (6th Cir. 1983) (per curiam))); *see also* Fed. R. Crim. 7(c)(1) ("A count may allege that . . . the defendant committed [the offense] by one or more specified means.").

Barrett also argues that distribution and aiding and abetting are two different crimes and that it was improper to combine both under the multiple Counts. Barrett asserts that Counts Two, Three, Four, Seven, Eight, and Nine are "identical" except that they list injury to a specific individual. As such, Barrett asks this Court to order a new trial "because the vast amount of prejudicial and otherwise inadmissible evidence emanating from the conspiracy count and the 'aider and abettor' language renders singular assessment of the substantive counts impossible." Again, we are unpersuaded. An indictment can include an aiding-and-abetting theory without being duplicitous. *See United States v. VanderZwaag*, 467 F. App'x 402, 407 (6th Cir. 2012) (quoting *United States v. Banks*, 27 F. App'x 354, 359 (6th Cir. 2001); *United States v. Dean*, 969 F.2d 187, 195 (6th Cir. 1992).

Barrett further argues that the charging of the § 841(b)(1)(C) enhancement provision "is significant because it adds an element to the distribution offense, but does not implicate the possession charge." But the district court correctly explained that "[t]he addition of Section 841(b) in the indictment is not an allegation of a separate crime, but rather [serves to] notify[] defendant of a mandatory minimum on those counts." The district court also cured any potential duplicity issue with unanimity instructions to the jury. *See United States v. Hendrickson*, 822 F.3d 812, 822 (6th Cir. 2016) ("Specific unanimity instructions are a method of curing 'duplicitous' charges . . . ."); *United States v. Adesida*, 129 F.3d 846, 849 (6th Cir. 1997).

2. In turn, Bradley contends that there was insufficient evidence to demonstrate that he aided and abetted co-conspirators in possessing fentanyl-mixture drugs, with the intent to distribute, in violation of 18 U.S.C. § 2. He therefore argues that his convictions on Counts 2–10 should be vacated. For sufficiency-of-the-evidence challenges, the question is whether

"any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319 (emphasis omitted).

Bradley cannot overcome that high bar. "To prove that [a defendant] aided and abetted drug transactions under 18 U.S.C. § 2, the government must establish that [he] participated in the venture as something []he wished to bring about and sought to make succeed." *United States v. Ward*, 190 F.3d 483, 487 (6th Cir. 1999). We find that there was sufficient evidence that Bradley knowingly and intentionally participated in the manufacture of counterfeit pills and obtained a portion of the pills for no other purpose than to sell to others. His manufactured pills passed through several distributors and ended up in the hands of end users who overdosed. There is no requirement that the government prove that Bradley either distributed to the end user himself or directly aided and abetted the person who did distribute to the end user. Rather, "a defendant may be convicted of distribution of controlled substances by virtue of being in a conspiracy with the perpetrator of the substantive distribution offense." *Hamm*, 952 F.3d at 738. As such, a rational trier of fact could have found Bradley guilty beyond a reasonable doubt of these offenses.

III.

A. Defendants' Motions to Suppress Statements Made During Interrogations

All three defendants argue that the district court erred in denying their motions to suppress incriminating statements made during separate interrogations with law enforcement. "When reviewing the denial of a motion to suppress, we will set aside the district court's factual findings only if they are clearly erroneous, but will review *de novo* the court's conclusions of law." *United States v. Lee*, 793 F.3d 680, 684 (6th Cir. 2015) (emphasis added). In this circumstance, we review "the evidence in the light most likely to support the district court's decision." *United States v. Adams*, 583 F.3d 457, 463 (6th Cir. 2009) (citation and internal quotation marks omitted).

Under *Miranda v. Arizona*, "the prosecution may not use statements . . . stemming from custodial interrogation of the defendant unless" law enforcement officials advised the defendant of his "right to remain silent, that anything he says can be used against him in a court of law, that

he has a right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." 384 U.S. 436, 444, 479 (1966). *Miranda* does not apply "simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect." *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam). Instead, a person is in custody for purposes of *Miranda* if, "in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *Howes v. Fields*, 565 U.S. 499, 509 (2012) (cleaned up) (citations omitted). We consider four non-exhaustive factors to guide this analysis: "(1) the location of the interview; (2) the length and manner of the questioning; (3) whether there was any restraint on the individual's freedom of movement; and (4) whether the individual was told that he or she did not need to answer the questions." *United States v. Hinojosa*, 606 F.3d 875, 883 (6th Cir. 2010). A determination of whether the defendant was in custody during interrogation raises a "mixed question of fact and law, and is thus reviewed *de novo*." *United States v. Swanson*, 341 F.3d 524, 528 (6th Cir. 2003).

Miranda warnings need not be formulaic but must reasonably convey the rights protected. *Duckworth v. Eagan*, 492 U.S. 195, 202–203 (1989); *see also United States v. Clayton*, 937 F.3d 630, 638–41 (6th Cir. 2019). Once *Miranda* rights are read, a suspect may either waive their rights or invoke them. *See Berghuis v. Thompkins*, 560 U.S. 370, 381–384 (2010). "[A] suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police." *Id.* at 388–89. A waiver, therefore, can be implicit, but an invocation must be explicit. *See id.* at 381–84; *North Carolina v. Butler*, 441 U.S. 369, 375–76 (1979).

Even so, a waiver must be made "voluntarily, knowingly and intelligently." *Miranda*, 384 U.S. at 444. This is so if the waiver was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). To guide this analysis, "[we] look[] at the totality of the circumstances concerning 'whether a defendant's will was overborne in a particular case.'" *Ledbetter v. Edwards*, 35 F.3d 1062, 1067 (6th Cir. 1994) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). Law enforcement may not coerce a suspect into waiving his *Miranda*

rights. We will accordingly invalidate a *Miranda* waiver if: "(i) the police activity was objectively coercive; (ii) the coercion in question was sufficient to overbear the defendant's will; (iii) and the alleged police misconduct was the crucial motivating factor in the defendant's decision to offer the statements." *United States v. Binford*, 818 F.3d 261, 271 (6th Cir. 2016) (quoting *United States v. Mahan*, 190 F.3d 416, 422 (6th Cir. 1999)). "[We] review[] a trial court's legal conclusions on *Miranda* waivers *de novo*, and findings of fact underlying those conclusions for clear error." *United States v. Al-Cholan*, 610 F.3d 945, 953 (6th Cir. 2010) (citation and internal quotation marks omitted).

1. Barrett's Motion to Suppress

Barrett argues that he was not advised of his *Miranda* rights during his first interrogation on July 7, 2016 and that he did not waive his rights during his second interrogation on July 11, 2016. We disagree.

During the evidentiary hearing on Barrett's motion to suppress, Special Agent Mabry testified as to the details of what Barrett's warning on July 7 entailed, covering the four categories of warnings *Miranda* requires. Special Agent Ellen Roy also explained that on July 11, she read each *Miranda* right to Barrett, who responded "Alright." Special Agent Roy testified that she told Barrett that "if [he] can't afford an attorney, one will be provided." To this, Barrett again responded, "Alright." Special Agent Roy further confirmed that Barrett understood his rights, asking, "Okay? Do you understand that?" And Barrett responded, "Yes, Ma'am." Special Agent Roy proceeded to ask Barrett if he wanted to speak with her, and he agreed after confirming that he understood the nature of the discussion. The record thus shows that on July 7 and July 11, Barrett was advised of his rights and waived them knowingly and voluntarily. Accordingly, the district court did not err in denying Barrett's motion to suppress.

2. Bradley's Motion to Suppress

Bradley makes an argument similar to Barrett's as to his custodial interrogation. But each officer who testified at trial agreed that Bradley affirmatively responded to and seemed to understand his *Miranda* rights. They further testified that Bradley was never offered a proffer agreement or told his statements would be protected by such agreement.

Bradley was interviewed by DEA Special Agent John Krieger and Metro Nashville Police Department Detective Fink. Bradley communicated a desire to cooperate with the officers throughout the interview. He described himself as "your star witness" and told the officers "It's over, y'all got me, it ain't don't matter . . . I'm testifying!" He also shared his knowledge of the ongoing criminal proceedings, noting that he "knew [officers] were coming" and had already reviewed "a lot of paperwork. . . it was [another indicted conspirator's] motion of discovery." The testimonial evidence at trial shows that Bradley knowingly waived his rights, was not coerced into talking, and that the district court did not err in denying his motion to suppress the statements.

3. Williams' Motion to Suppress

Williams also claims that he did not knowingly waive his *Miranda* rights during the interrogation. The record shows that Williams went voluntarily to the station after law enforcement offered to give him a ride. Once at the station, Detective Massey told Williams, "You're not under arrest. You still came up here voluntarily." Williams was not handcuffed or restrained, and Detective Massey informed him that he could leave if he wished. Indeed, Williams then told the officer that he wished to leave and the officers escorted him out of the building.

Once outside, Williams started talking to the officers, who informed him that if he wanted to keep talking, he would have to come back inside to speak with them. Williams then agreed to go back into the station with Detective Massey. He was once again informed that he was not under arrest and could leave at any time: "[I]f you choose not to [talk], then we'll do like we did a minute ago, we'll call a ride, you'll be out of here. Okay?" Detective Massey then Mirandized Williams and obtained a written waiver. After about 34 minutes, Williams chose to end the interview again and left the station. As such, Williams knowingly waived his rights during the interrogation.

B. Williams' Motion to Suppress the Evidence Seized from His Phone

Williams also argues that the district court erred in denying his motion to suppress the evidence obtained from his cell phone. We review a "district court's factual findings in a

suppression hearing under the clearly erroneous standard and the district court's conclusions of law *de novo*." *United States v. Avery*, 137 F.3d 343, 348 (6th Cir. 1997).

The Fourth Amendment to the United States Constitution protects "the people . . . against unreasonable searches and seizures." U.S. Const. amend. IV. A seizure of personal property is "*per se* unreasonable . . . unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized." *United States v. Place*, 462 U.S. 696, 701 (1983). If "law enforcement authorities have probable cause to believe that a container holds . . . evidence of a crime" and the "exigencies of the circumstances demand it," seizure of the container "pending issuance of a warrant to examine the contents" is permitted. *Id.* (collecting cases). However, "a seizure lawful at its inception can nevertheless violate the Fourth Amendment because its manner of execution unreasonably infringes possessory interests protected by the Fourth Amendment's prohibition on unreasonable seizures." *United States v. Jacobsen*, 466 U.S. 109, 124 (1984) (internal quotation marks omitted). The government has the burden of proving the legality of a warrantless search. *United States v. Beal*, 810 F.2d 574, 577 (6th Cir. 1987) (citing *United States v. Matlock*, 415 U.S. 164, 177 (1974)).

We review a district court's legal conclusion as to exigency *de novo* but will not disturb a district court's factual findings on the existence of exigent circumstances unless those findings are clearly erroneous. *United States v. Gaitan-Acevedo*, 148 F.3d 577, 585 (6th Cir. 1998). A finding is clearly erroneous if we are left with the "definite and firm conviction that a mistake has been committed" after viewing the entirety of the evidence. *United States v. Wheaton*, 517 F.3d 350, 367 (6th Cir. 2008) (quoting *United States v. Darwich*, 337 F.3d 645, 664 (6th Cir. 2003)).

In reviewing the district court's findings that sufficient exigent circumstances existed to justify a warrantless seizure, we consider the "totality of the circumstances and the inherent necessities of the situation." *Brooks v. Rothe*, 577 F.3d 701, 708 (6th Cir. 2009) (citing *United States v. Rohrig*, 98 F.3d 1506, 1511 (6th Cir. 1996)). "The inquiry focuses not on an officer's subjective intentions, but on whether an objectively reasonable officer could have believed that exigent circumstances existed." *Id.*

Here, the government demonstrated that during Williams' interrogation, he indicated that he had communicated with "Bo" (Valles) and Dogonski regarding the pills. The officers thus had an objectively reasonable basis for concluding that evidence of a crime existed on Williams' cell phone, and that it could be destroyed if the cell phone was not seized immediately. While courts must carefully balance governmental interests with the privacy concerns of individuals who have information stored on personal devices, there is evidence here of the government's strong interest in preventing the destruction of evidence that could have potentially saved lives of other victims who bought counterfeit pills. The government interest here thus outweighed the individual interest. Accordingly, the brief, warrantless seizure was justified under the exigent circumstances exception to the warrant requirement.

IV. CONCLUSION

For the foregoing reasons, we **AFFIRM** the defendants' convictions and sentences.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 18-6343/19-5745/5764

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHNNY WILLIAMS (18-6343); JONATHAN BARRETT (19-5745); JOEDON BRADLEY (19-5764),

Defendants - Appellants.

FILED
May 26, 2021
DEBORAH S. HUNT, Clerk

Before: COLE, DONALD, and READLER, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the defendants' convictions and sentences are AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

Nos. 18-6343/19-5745/5764

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 18, 2021
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHNNY WILLIAMS (18-6343); JONATHAN BARRETT (19-5745); JOEDON BRADLEY (19-5764),

Defendants-Appellants.

ORDER

BEFORE: COLE, DONALD, and READLER, Circuit Judges.

The court received three petitions for rehearing en banc. The original panel has reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. The petitions then were circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petitions are denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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Filed: August 18, 2021

Mr. Joedon Bradley
Ms. Stephanie Howard Gore
Mr. Steven Richard Jaeger

Re: Case No. 18-6343/19-5745/19-5764, *USA v. Johnny Williams*
Originating Case No. : 3:16-cr-00176-4

Dear Counsel and Mr. Bradley,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

cc: Ms. Amanda J. Klopf
Mr. Michael E. Terry

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

United States of America

Plaintiff,

-vs-

Jonathan Barrett
Johnny Williams
Jason Moss
Joedon Bradley

Defendants.

Case No. 3:16 CR 176

JURY INSTRUCTIONS
(before Closing Arguments)

JUDGE JACK ZOUHARY

You have heard the evidence. Now I will instruct you, and next you will hear final arguments of counsel. The Court and the jury have separate functions: you decide the disputed facts, and the Court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law or to apply your own concept of what you think the law should be.

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* * *

Equality Under the Law

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict based on the evidence.

This case should be considered and decided by you as an action between people of equal standing in the community, and holding the same or similar stations in life. Individuals and the Government stand equal before the law and are to be dealt with as equals in a court of justice.

Indictment

A criminal case begins with the filing of an Indictment. The Indictment informs a Defendant that he or she has been charged with an offense. The fact it was filed may not be considered for any other purpose. A plea of "not guilty" is a denial of the charge and puts in issue all the essential elements of each offense charged.

The Indictment in this case charges the crimes were committed on various dates beginning around May 2016 and continuing through September 2016. The proof need not establish with certainty the exact dates of the alleged crimes. It is sufficient if the evidence in the case establishes beyond a reasonable doubt the crimes were committed on dates reasonably near the alleged dates.

Some of the people who may have been involved in these events are not on trial. This does not matter. There is no requirement that all members of a conspiracy be charged and prosecuted, or tried together in one proceeding. Your job is limited to deciding whether the Government has proved the crimes charged against each Defendant. Whether anyone else should be prosecuted and convicted for these crimes is not a proper matter for you to consider. The possible guilt of others is no defense to a criminal charge. Do not let the possible guilt of others influence your decision in any way.

Burden of Proof and Reasonable Doubt

Each Defendant pled not guilty to the crimes charged in the Indictment. Therefore, each Defendant starts the trial with a clean slate, with no evidence at all against him, and the law presumes that each is innocent. This presumption of innocence stays with each Defendant unless the Government presents evidence here in court that overcomes the presumption, and convinces you beyond a reasonable doubt that a Defendant is guilty of a given crime.

This means a Defendant has no obligation to present any evidence at all, or to prove to you in any way that he is innocent. It is up to the Government to prove each Defendant is guilty, and this burden stays on the Government from start to finish. You must find a Defendant is not guilty unless the Government convinces you beyond a reasonable doubt that he is guilty.

The Government must prove every element of each crime beyond a reasonable doubt. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt. Possible doubts or doubts based purely on speculation are not reasonable doubts. A reasonable doubt is a doubt based on reason and common sense. It may arise from the evidence, the lack of evidence, or the nature of the evidence.

Proof beyond a reasonable doubt means proof which is so convincing that you would not hesitate to rely and act on it in making the most important decisions in your own lives. If you are convinced that the Government has proved a Defendant guilty beyond a reasonable doubt, say so by returning a guilty verdict. If you are not convinced, say so by returning a not guilty verdict.

Evidence

Evidence is all the testimony received from the witnesses, any exhibits admitted during the trial, and any facts stipulated by counsel. You must make your decision based only on the evidence you saw and heard here in court. Do not let rumors, suspicions, or anything else you may have seen or heard outside this courtroom influence your decision in any way.

Evidence may be **direct** or **circumstantial**, or both.

"Direct evidence" is the testimony given by a witness who has seen or heard the facts to which he or she testifies. It includes exhibits admitted into evidence.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. "Circumstantial evidence" is the proof of facts by direct evidence from which you may infer other reasonable facts or conclusions.

If a witness testified he saw it raining outside, and you believed him, that would be direct evidence it was raining. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that would be circumstantial evidence from which you could conclude it was raining.

Direct evidence and circumstantial evidence inherently possess the same probative value, and both must be measured by the same standard of proof -- that is, proof beyond a reasonable doubt.

It is your job to decide how much weight to give the direct and circumstantial evidence. The law makes no distinction between the weight that you should give to either one, nor does it say that one is any better evidence than the other. You should consider all the evidence, both direct and circumstantial, and give it whatever weight you believe it deserves. You should use your common sense in weighing the evidence, considering it in light of your everyday experience with people and events.

Matters Not Evidence

The evidence does not include the Indictment, opening statements, or closing arguments of counsel. The opening statements and closing arguments of counsel are designed to assist you; they are not evidence.

Remember that lawyers are not witnesses, and because it is your duty to decide the case solely on the evidence that you see or hear in the courtroom, you must not consider as evidence statements of the lawyers. There is an exception, and that is if the lawyers agree to any fact. Such agreement (called a stipulation or admission) will be brought to your attention, and it will then be your duty to regard such fact as being conclusively proved without the need for further evidence.

Credibility of Witnesses

Another part of your job as jurors is to decide how credible or believable each witness was. This is your job, not mine. It is up to you to decide if a witness' testimony was believable, and how much weight you think it deserves. You are free to believe everything that a witness said, or only part of it, or none of it at all. But you should act reasonably and carefully in making these decisions.

Let me suggest some things for you to consider in evaluating each witness' testimony:

- Was the witness able to clearly see or hear the events?
- How good was the witness' memory?
- Was there anything that may have interfered with the ability of the witness to perceive or remember the events?
- How did the witness act while testifying?
- Did the witness have any relationship to the Government or a Defendant, or anything to gain or lose from the case, that might influence the witness' testimony?
- Did the witness testify inconsistently while on the witness stand, or did the witness say or do something (or fail to say or do something) at any other time that is inconsistent with what the witness said while testifying?
- Was the witness' testimony supported or contradicted by other evidence that you found believable?

Impeachment by Prior Inconsistent Statement

You have heard testimony here in Court from witnesses that may be different from statements they made before trial, either in an interview or before a grand jury. This earlier statement was brought to your attention only to help you decide how believable the testimony was. You cannot use it as proof of anything else.

However, a Defendant's prior statements may be considered as evidence.

Impeachment by Prior Conviction

You may have heard testimony from witnesses who were previously convicted of other crimes. These earlier convictions were brought to your attention only as one way of helping you decide how believable this testimony was. Do not use the fact of prior convictions for any other purpose. They are not evidence of anything else.

Number of Witnesses

Do not make any decisions based solely on the number of witnesses who testified. What is more important is how believable the witnesses were, and how much weight you think their testimony deserves. Concentrate on that, not the numbers.

Cooperating Witnesses

You have heard the testimony of Jennifer Dogonski, Davi Valles, Eric Falkowski, and LaKrista Knowles. You have also heard that they were involved in some of the same crimes charged in this case. The mere fact that a cooperating witness pled guilty to a crime is not evidence that a Defendant is guilty, and you cannot consider this against a Defendant in any way.

You have also heard that in exchange for their cooperation, the Government entered into plea agreements or non-prosecution agreements that include certain sentencing or charging considerations. It is permissible for the Government to enter into such agreements. But you should consider this testimony with more caution than the testimony of other witnesses. Consider whether such testimony may have been influenced by the Government's promises.

Do not convict a Defendant based on the unsupported testimony of a cooperating witness -- that is, such testimony standing alone -- unless you believe the testimony beyond a reasonable doubt.

Defendant's Decision Not to Testify

A Defendant has an absolute right not to testify. The fact that a Defendant did not testify cannot be considered by you in any way. Do not even discuss it in your deliberations.

Remember that it is up to the Government to prove each Defendant guilty beyond a reasonable doubt. It is not up to a Defendant to prove he is innocent.

Experts

You have heard the testimony of Dr. Stacey Hail, Dr. Miguel Laboy, and Dr. Nicola Ranieri, who expressed opinions based upon study or experience, or both, that makes them better qualified than the average person to form an opinion. This does not mean, however, that you are to consider yourselves bound by the opinion of any expert. And if expert opinions are in conflict, it is for you, as triers of fact, to determine which is the more worthy of belief. As with all witnesses, in determining what is the greater weight of the evidence, you should consider relative qualifications and credibility; and you may believe or disbelieve all or any part of the expert's testimony.

Exhibits

A number of exhibits and testimony relating to them have been introduced or discussed. You will determine what weight, if any, an exhibit should receive in light of all the evidence, no matter who produced the exhibit. The numbering of the exhibits may not follow consecutively. There are several reasons for this. Some exhibits may not have been offered, some may be duplicates, or the Court may have rejected some exhibits because of a legal or other ruling. Do not guess or draw any inference because you do not have a particular numbered exhibit.

Transcriptions of Tape Recordings

You have heard some tape recordings that were admitted into evidence, and you were given some written transcripts of those recordings. Keep in mind that the transcripts are not evidence. The recordings themselves are the evidence. If you noticed any differences between what you heard on the tapes and what you read in the transcripts, you must rely on what you heard, not what you read. And if you could not hear or understand any part of the recordings, you must ignore the transcripts for those parts.

Other Acts of Defendants

You have heard testimony that a Defendant committed acts other than the ones charged in the Indictment -- for example, certain text messages exchanged in May and June 2016, or other conversations regarding drug transactions not charged in this case. If you find a Defendant did those acts, you can consider the evidence only as it relates to the Government's claim about a Defendant's intent, motive, or knowledge. You must not consider it for any other purpose.

Remember that these Defendants are on trial here only for the crimes described in the following pages, not for any other acts. Do not return a guilty verdict unless the Government proves the crime(s) charged beyond a reasonable doubt for each individual Defendant.

Multiple Defendants Charged with the Same Crimes

Each Defendant has been charged with several crimes. The number of charges is no evidence of guilt, and this should not influence your decision in any way. And in our system of justice, guilt or innocence is personal and individual. It is your duty to separately consider the evidence against each Defendant on each charge, and to return a separate verdict for each one of them. For each one, you must decide whether the Government has presented proof beyond a reasonable doubt that a particular Defendant is guilty of a particular charge.

Your decision on any one Defendant or one charge, whether it is guilty or not guilty, should not influence your decision on any of the other Defendants or charges.

Punishment

If you decide that the Government has proved a Defendant guilty, then it will be my job to decide what the appropriate punishment should be.

Deciding what the punishment should be is my job, not yours. It would violate your oaths as jurors to even consider the possible punishment in deciding your verdict.

Your job is to look at the evidence and decide if the Government has proved each Defendant guilty beyond a reasonable doubt.

* * *

This concludes the general instructions on certain preliminary matters. I will now give you instructions of law on the specific issues in this case.

Conspiracy to Violate the Drug Laws
21 U.S.C. § 846

Count One of the Indictment charges each Defendant -- from May 2016 to September 10, 2016 -- with conspiracy to distribute, and possess with intent to distribute, counterfeit Percocet pills containing Fentanyl, which is a controlled substance; and to obtain monetary profits through distribution of the counterfeit pills.

It is a crime for two or more people to conspire, or agree, to commit a drug crime, even if they never actually achieve their goal. A conspiracy is a kind of criminal partnership. For you to find any of the Defendants guilty of the conspiracy charge, the Government must prove each of the following elements beyond a reasonable doubt:

(1) Two or more people **conspired,** or agreed, to distribute and possess with intent to distribute counterfeit pills containing Fentanyl, and to obtain monetary profits through distribution of the counterfeit pills; and

(2) Defendant **knowingly and voluntarily joined** the conspiracy.

Now I will give you more detailed instructions on some of these terms.

Criminal Agreement

With regard to the first element, the Government must prove that two or more people **conspired**, or agreed, to cooperate with each other to distribute and possess with intent to distribute Fentanyl, in order to obtain monetary profit from the illegal drug proceeds.

This does not require proof of any formal agreement, written or spoken. Nor does this require proof that everyone involved agreed on all the details. But proof that people simply met together from time to time and talked about common interests, or engaged in similar conduct, is not enough to establish a criminal agreement. These are things that you may consider in deciding whether the Government has proved an agreement. But without more they are not enough.

What the Government must prove is that there was a mutual understanding, either spoken or unspoken, between two or more people, to cooperate with each other to distribute and possess with intent to distribute Fentanyl, and to obtain monetary profit from that distribution. This is essential. An agreement can be proved indirectly, by facts and circumstances which lead to a conclusion that an agreement existed. But it is up to the Government to convince you that such facts and circumstances existed in this particular case.

One more point about the agreement. The Indictment accuses each Defendant of conspiring to commit two substantive drug crimes. The Government does not have to prove that a Defendant agreed to commit both crimes. But the Government must prove an agreement to commit at least one of them for you to return a guilty verdict on the conspiracy charge.

Joining the Conspiracy

With regard to the second element -- a Defendant's connection to the conspiracy -- the Government must prove that each Defendant **knowingly and voluntarily joined** the agreement. The Government must prove that a Defendant knew the conspiracy's main purpose and voluntarily joined the conspiracy intending to help advance or achieve its goals. You must consider each Defendant separately in this regard.

This does not require proof that a Defendant knew everything about the conspiracy, or everyone else involved, or that he was a member of it from the very beginning. Nor does it require proof that a Defendant played a major role in the conspiracy, or that his connection to it was substantial. A slight role or connection may be enough.

Further, this does not require proof that a Defendant knew the drug involved was Fentanyl. It is enough that the Defendant knew that it was some kind of controlled substance.

But proof that a Defendant simply knew about a conspiracy, or was present at times, or associated with members of the group, is not enough, even if he approved of what was happening or did not object to it. Similarly, just because a Defendant may have done something that happened to help a conspiracy does not necessarily make him a conspirator. These are all things that you may consider in deciding whether the Government has proved that each Defendant joined the conspiracy. But without more they are not enough.

A Defendant's knowledge can be proved indirectly by facts and circumstances which lead to a conclusion that he knew the conspiracy's main purpose. But it is up to the Government to convince you that such facts and circumstances existed in this particular case.

Possession of a Controlled Substance with Intent to Distribute
21 U.S.C. § 841(a)(1)

Counts Two to Five and Seven to Ten of the Indictment charge the crime of possession of Fentanyl with intent to distribute. As I have explained before, Fentanyl is a controlled substance. To find a Defendant guilty of this crime, you must find that the Government has proved each of the following elements beyond a reasonable doubt:

(1) Defendant **knowingly or intentionally possessed** Fentanyl; and

(2) Defendant **intended to distribute** Fentanyl.

Now I will give you more detailed instructions on some of these terms.

Possession

With regard to the first element, the Government does not necessarily have to prove that a Defendant physically possessed the Fentanyl for you to find him guilty of this crime. The law recognizes two kinds of possession: **actual** possession and **constructive** possession. Either one of these, if proved by the Government, is enough to convict.

To establish **actual** possession, the Government must prove that the Defendant had direct, physical control over the Fentanyl, and knew that he had control of it.

To establish **constructive** possession, the Government must prove that the Defendant had the right to exercise physical control over the Fentanyl, and knew that he had this right, and that he intended to exercise physical control over the Fentanyl at some time, either directly or through others. For example, if you left something with a friend intending to come back later and pick it up, or intending to send someone else to pick it up for you, you would have constructive possession of it while it was in the actual possession of your friend.

The Government also does not have to prove that the Defendant was the only one who had possession of the Fentanyl. Two or more people can share actual or constructive possession over property. And if they do, both are considered to have possession as far as the law is concerned. But just being present where something is located does not equal possession. The Government must prove that the Defendant had actual or constructive possession of the Fentanyl, and knew that he did, for you to find him guilty of this crime. This, of course, is for you to decide.

Further, as with the conspiracy charge, the Defendant did not have to know that the drug involved was Fentanyl in order to "**knowingly**" possess it. It is enough that the Defendant knew it was some kind of controlled substance.

Intent

With regard to the second element, the phrase "**intended to distribute**" means the Defendant intended to deliver or transfer a controlled substance sometime in the future. This includes the actual, constructive, or attempted transfer of a controlled substance. To distribute a controlled substance, there need not be an exchange of money.

To decide whether a Defendant had the intent to distribute, you may consider all the facts and circumstances shown by the evidence, including the Defendant's words and actions. Intent to distribute can be inferred from the possession of a large quantity of drugs -- too large for personal use alone. You may also consider the estimated street value of the drugs, the purity of the drugs, the manner in which the drugs were packaged, the presence or absence of a large amount of cash, the presence or absence of weapons, and the presence or absence of equipment used for the sale of drugs. The law does not require you to draw such an inference, but you may draw it.

Distribution of a Controlled Substance
21 U.S.C. § 841(a)(1)

Counts Two to Five and Seven to Ten of the Indictment also charge the crime of distributing Fentanyl. To find a Defendant guilty of this crime, you must find that the Government has proved each of the following elements beyond a reasonable doubt:

(1) Defendant **knowingly or intentionally distributed** Fentanyl; and

(2) Defendant knew at the time of distribution that the substance was a controlled substance.

Now I will give you more detailed instructions on some of these terms.

Distribution

With regard to the first element, the term "**distribute**" means the Defendant delivered or transferred a controlled substance. This includes the actual, constructive, or attempted transfer or sale of a controlled substance.

To decide whether a Defendant **knowingly or intentionally** distributed a controlled substance, you may consider all the facts and circumstances shown by the evidence, including the Defendant's words and actions. You may also -- but are not required to -- consider the same facts and inferences previously described under "**intent to distribute.**"

As with the other charges, the Defendant did not have to know that the drug involved was Fentanyl to "**knowingly**" distribute it. It is enough that the Defendant knew that it was some kind of controlled substance.

State of Mind

Next, I want to explain something about proving a Defendant's state of mind.

Ordinarily, there is no way that a Defendant's state of mind can be proved directly, because no one can read another person's mind and tell what that person is thinking. But a Defendant's state of mind can be proved indirectly from the surrounding circumstances. This includes things like what the Defendant said, what he did, how he acted, and any other facts or circumstances in evidence that show what was in the Defendant's mind.

You may also consider the natural and probable results of any acts that the Defendant knowingly did (or did not do), and whether it is reasonable to conclude that the Defendant intended those results. This, of course, is all for you to decide.

Aiding and Abetting

For you to find a Defendant guilty of distributing or possessing with intent to distribute Fentanyl, it is not necessary for you to find that he personally committed the crime. You may also find him guilty if he intentionally helped or encouraged someone else to commit the crime. A person who does this is called an **aider and abettor**.

But for you to find a Defendant guilty of distributing or possessing with intent to distribute Fentanyl as an aider and abettor, you must be convinced that the Government has proved each of the following beyond a reasonable doubt:

(1) The crime of distributing or possessing with intent to distribute Fentanyl was committed;

(2) Defendant helped to commit the crime or encouraged someone else to commit the crime; and

(3) Defendant intended to help commit or encourage the crime.

Proof that a Defendant may have known about the crime, even if he was there when it was committed, is not enough for you to find him guilty. You can consider this in deciding whether the Government has proved that he was an aider and abettor, but without more it is not enough. What the Government must prove is that the Defendant did something to help or encourage the crime with the intent that the crime be committed.

Death or Serious Bodily Injury

Count One of the Indictment alleges each Defendant's conduct, and the conduct of other conspirators reasonably foreseeable to the Defendants, resulted in the death of Individual B (Michael "Shane" Shipley) and **serious bodily injury** to Individuals A (Jody Ballard), C (Cassie Fisher), D (Christopher Padgett), F (Joyce Weisse), G (Jerry Capps), H (Larry Dunaway), and I (Roy Dean Frazier). Counts Two through Ten of the Indictment allege that the Defendants named in those counts distributed Fentanyl, the use of which resulted in the death or serious bodily injury of the Individuals listed in those counts.

To find that the death or serious bodily injury of one of the identified Individuals resulted from a Defendant's conduct, the Government must prove beyond a reasonable doubt that the death or serious bodily injury would not have occurred if the Individual had not ingested the Fentanyl.

The Government need not prove that the death or serious bodily injury was foreseeable to a Defendant, or that Fentanyl was the sole cause of an Individual's death or serious bodily injury; rather, it need only show that without the incremental effect of the Fentanyl, the Individual would not have died or suffered a serious bodily injury. Again, what the Government must prove, beyond a reasonable doubt, is that the death or serious bodily injury would not have occurred but for ingesting the Fentanyl.

A "**serious bodily injury**" is an injury that involves a substantial risk of death.

* * *

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
MAY 10 2017
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	NO. 3:16-CR-00176
v.	)	
	)	JUDGE TRAUGER
[1] JONATHAN BARRETT	)	
a.k.a. "Punky"	)	18 U.S.C. § 2
[4] JOHNNY WILLIAMS	)	21 U.S.C. §§ 841(a)(1) and 846
[5] JASON MOSS	)	
[6] JOEDON BRADLEY	)	

FIFTH SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES:

From beginning as early as on or about May 1, 2016 and continuing to and including on or about September 10, 2016, in the Middle District of Tennessee, and elsewhere, defendants, **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS,** and **[6] JOEDON BRADLEY**, did knowingly and willfully combine, conspire, confederate, and agree with each other, with Eric Falkowski, Preston Davis, Davi Valles, Jr., Lakrista Knowles, and Jennifer Dogonski, and with other persons known and unknown to the Grand Jury, to distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance. In violation of Title 21, United States Code, Section 841(a)(1).

With respect to defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS,** and **[6] JOEDON BRADLEY**, their own conduct, and the conduct of other conspirators reasonably foreseeable to these defendants, resulted in the death of

Individual B, and the serious bodily injury to Individuals A, C, F, G, and H, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

With respect to defendants **[4] JOHNNY WILLIAMS, [5] JASON MOSS,** and **[6] JOEDON BRADLEY**, their own conduct, and the conduct of other conspirators reasonably foreseeable to these defendants, resulted in the serious bodily injury to Individual D, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

With respect to defendant **[6] JOEDON BRADLEY** his own conduct, and the conduct of other conspirators reasonably foreseeable to the defendant, resulted in the death of Individual E and the serious bodily injury to Individual I, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

Object of the Conspiracy

1. The object of the conspiracy was to distribute and possess with intent to distribute counterfeit pills that contained fentanyl.

2. A further object of the conspiracy was to obtain monetary profits in the form of illegal drug proceeds from the distribution of the counterfeit pills.

Manner and Means of the Conspiracy

The manner and means by which the defendants and co-conspirators would further and accomplish the objects of the conspiracy included, among others, the following:

1. It was part of this conspiracy to manufacture counterfeit Percocet pills using fentanyl in the Middle District of Tennessee.

2. It was further part of this conspiracy to use pill pressing equipment to form and stamp the pills to appear identical to actual Percocet pills.

3. It was further part of this conspiracy that members of the conspiracy would distribute the counterfeit pills that contained fentanyl that had the capability of causing death or serious bodily injury to their customers.

Overt Acts

In furtherance of the conspiracy and to accomplish the objects of the conspiracy, the members of the conspiracy committed the following overt acts, among others:

1. During the period of this conspiracy, Eric Falkowski produced counterfeit Percocet pills using various pill presses and a mixture of fentanyl, alprazolam and other substances.

2. In or about May 2016, Eric Falkowski, with the assistance of [6] **JOEDON BRADLEY** and others known and unknown to the Grand Jury, moved part of his pill making operation to the Middle District of Tennessee after law enforcement conducted a search of his Florida home and seized his pill presses.

3. During the period of this conspiracy, Preston Davis, [6] **JOEDON BRADLEY**, and Lakrista Knowles were some of Eric Falkowski's mid-level distributors of fentanyl in the Middle District of Tennessee.

4. Eric Falkowski, [6] **JOEDON BRADLEY**, and Davis used Davis' residence in Madison, Tennessee to both store fentanyl and manufacture pills, including those containing fentanyl and alprazolam.

5. During the period of this conspiracy, Eric Falkowski and Preston Davis possessed, among other things, a pill press, a crank for a pill press, multiple dies capable of embedding text onto pills, including one die that spelled out "A333," a pill grinder, fentanyl, alprazolam and other drug manufacturing and drug trafficking related paraphernalia.

6. During the period of this conspiracy, Eric Falkowski, distributed fentanyl in the Middle District of Tennessee to several other distributors, including: Preston Davis, **[1] JONATHAN BARRETT, a.k.a. "Punky,"** Davi Valles, Jr., **[4] JOHNNY WILLIAMS, [5] JASON MOSS, [6] JOEDON BRADLEY**, Lakrista Knowles and others known and unknown to the Grand Jury.

7. On or about July 4 through 5, 2016, Eric Falkowski, with the help of **[6] JOEDON BRADLEY,** manufactured a minimum of approximately 400 pills of a mixture or substance containing a detectable amount of fentanyl. The pills were counterfeit Percocet, white in color with "A333" stamped on them. A minimum of approximately 400 "A333" fentanyl pills were distributed to Preston Davis.

8. On or about July 5, 2016, after Preston Davis obtained the approximately 400 "A333" fentanyl pills, Preston Davis distributed those pills to Davi Valles, Jr.

9. On or about July 5, 2016, after Davi Valles, Jr. obtained the approximately 400 "A333" fentanyl pills, Valles sold some of the pills to **[4] JOHNNY WILLIAMS**. **[5] JASON MOSS** drove **[4] WILLIAMS** to the Nashville, Tennessee area to meet with Valles to purchase and pick up the "A333" fentanyl pills. After obtaining the pills from Valles, **[4] WILLIAMS** and **[5] MOSS** took the pills back to the Murfreesboro, Tennessee area for distribution.

10. On or about July 5, 2016, **[4] JOHNNY WILLIAMS** communicated with Jennifer Dogonski, and agreed to sell 150 of the "A333" fentanyl pills to **[1] JONATHAN BARRETT, a.k.a. "Punky,"** in Murfreesboro, Tennessee for $1,050.00 later in the day.

11. On or about July 5, 2016, **[5] JASON MOSS** drove **[4] JOHNNY WILLIAMS** to pick up Dogonski. **[4] WILLIAMS** sold some of the "A333" fentanyl pills to Dogonski at that time. Dogonski then sold a portion of the "A333" fentanyl pills that **[4] WILLIAMS** distributed to Dogonski to Individual D. Individual D consumed some of those pills and overdosed.

12. On or about July 5, 2016, **[5] JASON MOSS** then drove **[4] JOHNNY WILLIAMS** and Jennifer Dogonski to another location in Murfreesboro, Tennessee to meet with **[1] JONATHAN BARRETT, a.k.a. "Punky." [4] WILLIAMS** sold **[1] BARRETT** 150 of the "A333" fentanyl pills for $1,050.00. **[4] WILLIAMS** paid Dogonski $150.00 for her participation.

13. Beginning on or about July 5, 2016, through on or about July 6, 2016, **[1] JONATHAN BARRETT, a.k.a. "Punky,"** sold and distributed all 150 "A333" fentanyl pills he purchased from **[4] JOHNNY WILLIAMS** to individuals in and around the Murfreesboro, Tennessee area.

14. On or about July 6, 2016, **[1] JONATHAN BARRETT, a.k.a. "Punky,"** learned that individuals were being hospitalized as a result of consuming the "A333" fentanyl pills, and sent Jennifer Dogonski the following text message at approximately 11:49 a.m.: "The. Imprints. Are. Wrong. They. Crumble. In to dust. Real. Easy. And. People. Are. Getting. F**ked up. And. Going yo hospital. He. Getting. People on them." Thereafter, **[1] BARRETT** continued to sell the "A333" fentanyl pills.

15. **[1] JONATHAN BARRETT, a.k.a. "Punky,"** later learned that individuals may have died as a result of consuming the "A333" fentanyl pills, and sent Dogonski the following text message at approximately 12:49 p.m.: "Girl. That was. At hospital. Just. Died. Off. Those." Thereafter, **[1] BARRETT** continued selling the "A333" fentanyl pills, and approximately 45 minutes later, sent a potential customer the following text message: "got. 8. Left."

16. On or about July 5, 2016 through on or about July 6, 2016, Individual A obtained some of the "A333" fentanyl pills distributed by **[1] JONATHAN BARRETT, a.k.a. "Punky."** Individual A consumed some of the pills, overdosed and had to be taken to the hospital.

17. On or about July 5, 2016 through on or about July 6, 2016, Individual B obtained some of the "A333" fentanyl pills distributed by **[1] JONATHAN BARRETT, a.k.a. "Punky."** Individual B consumed some of the pills, overdosed and died as a result.

18. On or about July 5, 2016 through on or about July 6, 2016, Individual C obtained some of the "A333" fentanyl pills distributed by **[1] JONATHAN BARRETT, a.k.a. "Punky."** Individual C consumed some of the pills, overdosed and had to be taken to the hospital.

19. On or about July 5, 2016 through on or about July 6, 2016, Individual F obtained some of the "A333" fentanyl pills distributed by **[1] JONATHAN BARRETT, a.k.a. "Punky."** Individual F consumed some of the pills, overdosed and had to be taken to the hospital.

20. On or about July 5, 2016 through on or about July 6, 2016, Individual G obtained some of the "A333" fentanyl pills distributed by **[1] JONATHAN BARRETT, a.k.a. "Punky."** Individual G consumed some of the pills, overdosed and had to be taken to the hospital.

21. On or about July 5, 2016 through on or about July 6, 2016, Individual H obtained some of the "A333" fentanyl pills distributed by **[1] JONATHAN BARRETT, a.k.a. "Punky."** Individual H consumed some of the pills, overdosed and had to be taken to the hospital.

22. On or about July 5, 2016 through on or about July 7, 2016, Individual I obtained some of the "A333" fentanyl pills distributed by Lakrista Knowles. Individual I consumed some of the pills, overdosed and had to be taken to the hospital.

All in violation of Title 21, United States Code, Section 846.

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual A.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the death of Individual B.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual C.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[4] JOHNNY WILLIAMS [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual D.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT SIX

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016,in the Middle District of Tennessee, defendant **[6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the death of Individual E.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual F.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual G.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT NINE

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 6, 2016, in the Middle District of Tennessee, defendants **[1] JONATHAN BARRETT, a.k.a. "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, AND [6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual H.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

COUNT TEN

THE GRAND JURY FURTHER CHARGES:

Beginning on or about July 5, 2016 and continuing to and including on or about July 7, 2016, in the Middle District of Tennessee, defendant **[6] JOEDON BRADLEY,** aided and abetted by others known and unknown to the Grand Jury, did knowingly and intentionally distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, a Schedule II controlled substance, the use of which resulted in the serious bodily injury to Individual I.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C) and Title 18, United States Code, Section 2.

CRIMINAL FORFEITURE

1. The allegations contained in this Indictment are re-alleged and incorporated by reference as if fully set forth in support of this forfeiture.
2. Upon conviction of any of the violations alleged in Counts 1-10 of this indictment, the defendants, **[1] JONATHAN BARRETT, a/k/a "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, and [6] JOEDON BRADLEY** shall forfeit to the United States, pursuant to Title 21, United States Code, Section 853:

   (A) any property constituting, or derived from, any proceeds which the defendants, **[1] JONATHAN BARRETT, a/k/a "Punky," [4] JOHNNY WILLIAMS, [5] JASON MOSS, and [6] JOEDON BRADLEY,** obtained directly or indirectly as a result of said violation; and

(B) any and all property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation,

including but not limited to a money judgment in an amount to be determined representing the proceeds of the offense, or the property used, or intend to be used, or to commit or facilitate the commission of the offense.

3. If any of the forfeitable property described above, as a result of any act or omission of the defendant(s),

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property that cannot be divided without difficulty;

The United States shall be entitled to forfeiture of substitute property, and it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendants up to the value of said property listed above as subject to forfeiture.

A TRUE BILL

[redacted]

FOREPERSON

JACK SMITH
ACTING UNITED STATES ATTORNEY

ASSISTANT UNITED STATES ATTORNEY
AMANDA J. KLOPF

CRIMINAL COVER SHEET
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Petty Offense ( )
Misdemeanor ( )
Felony (X)
Juvenile ( )

County of Offense: Murfreesboro and Others
AUSA's NAME: Amanda J. Klopf and Courtney Coker

Jonathan Barrett (1)
Defendant's Full Name

Defendant's Address

Interpreter Needed? ___ Yes X No

If Yes, what language? _____

Stephanie Gore
Defendant's Attorney

COUNT(S)	TITLE/SECTION	OFFENSE CHARGED	MAX. PRISON	MAX. FINE
1	Title 21, U.S.C. Sections 841(a)(1), 841(b)(1)(C) and 846.	Conspiracy to possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00
2-4, 7-9	Title 21, U.S.C. Section 841(a)(1)	Distribution and Possession with Intent to Distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00

If the defendant is charged with conspiracy but not with the primary offense, list the primary offense below:

TITLE/SECTION	OFFENSE	MAX. PRISON	MAX. FINE

Is the defendant currently in custody? Yes (X) No ( ) If yes, State or Federal? Federal

Has a complaint been filed? Yes (X) No ( )

If Yes: Name of the Magistrate Judge Barbara D. Holmes Case No.: 16-MJ-1093
Was the defendant arrested on the complaint? Yes (X) No ( )

Has a search warrant been issued? Yes ( ) No ()
If Yes: Name of the Magistrate Judge SEE ATTACHED Case No.: _____

Was bond set by Magistrate/District Judge? Yes ( ) No (X) Amount of bond: _____

Is this a Rule 20? Yes ( ) No (X) To/from what district? _____
Is this a Rule 40? Yes ( ) No (X) To/from what district? _____

Is this case related to a pending or previously filed case: Yes (x) No ()
What is the related case number? 16-CR-176
Who is the Magistrate Judge? _____

Estimated trial time: 6 days

The Clerk will issue a **Summons** (circle one)
Bond Recommendation: DETAINED

CRIMINAL COVER SHEET
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Petty Offense ( )
Misdemeanor ( )
Felony (X)
Juvenile ( )

County of Offense: Murfreesboro and Others
AUSA's NAME: Amanda J. Klopf and Courtney Coker

Johnny Williams (4)
Defendant's Full Name

Defendant's Address

Interpreter Needed? ___ Yes _X_ No

If Yes, what language? _____

Michael Noel
Defendant's Attorney

COUNT(S)	TITLE/SECTION	OFFENSE CHARGED	MAX. PRISON	MAX. FINE
1	Title 21, U.S.C. Sections 841(a)(1), 841(b)(1)(C) and 846.	Conspiracy to possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00
2-5, 7-9	Title 21, U.S.C. Section 841(a)(1)	Distribution and Possession with Intent to Distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00

If the defendant is charged with conspiracy but not with the primary offense, list the primary offense below:

TITLE/SECTION	OFFENSE	MAX. PRISON	MAX. FINE

Is the defendant currently in custody? Yes (x) No ( ) If yes, State or Federal? Federal

Has a complaint been filed? Yes (x) No ( )

If Yes: Name of the Magistrate Judge Judge Barbara D. Holmes Case No.: 16-MJ-1103
Was the defendant arrested on the complaint? Yes () No (x)

Has a search warrant been issued? Yes ( ) No ()
If Yes: Name of the Magistrate Judge SEE ATTACHED Case No.: _____

Was bond set by Magistrate/District Judge? Yes ( ) No (X) Amount of bond: _____

Is this a Rule 20? Yes ( ) No (X) To/from what district? _____
Is this a Rule 40? Yes ( ) No (X) To/from what district? _____

Is this case related to a pending or previously filed case: Yes (x) No ()
What is the related case number? 16-CR-176
Who is the Magistrate Judge? _____

Estimated trial time: 6 days

The Clerk will issue a **Summons** (circle one)
Bond Recommendation: DETAINED

CRIMINAL COVER SHEET
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Petty Offense ( )
Misdemeanor ( )
Felony (X)
Juvenile ( )

County of Offense: Murfreesboro and Others
AUSA's NAME: Amanda J. Klopf and Courtney Coker

Jason Moss (5)
Defendant's Full Name

Defendant's Address

Interpreter Needed? ___ Yes _X_ No

If Yes, what language? _____

Paul Bruno
Defendant's Attorney

COUNT(S)	TITLE/SECTION	OFFENSE CHARGED	MAX. PRISON	MAX. FINE
1	Title 21, U.S.C. Sections 841(a)(1), 841(b)(1)(C) and 846.	Conspiracy to possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00
2-5, 7-9	Title 21, U.S.C. Section 841(a)(1)	Distribution and Possession with Intent to Distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00

If the defendant is charged with conspiracy but not with the primary offense, list the primary offense below:

TITLE/SECTION	OFFENSE	MAX. PRISON	MAX. FINE

Is the defendant currently in custody? Yes (x) No ( ) If yes, State or Federal? federal

Has a complaint been filed? Yes ( ) No (x)

If Yes: Name of the Magistrate Judge _____ Case No.: _____
Was the defendant arrested on the complaint? Yes () No ( )

Has a search warrant been issued? Yes ( ) No ()
If Yes: Name of the Magistrate Judge SEE ATTACHED Case No.: _____

Was bond set by Magistrate/District Judge? Yes ( ) No (X) Amount of bond: _____

Is this a Rule 20? Yes ( ) No (X) To/from what district? _____
Is this a Rule 40? Yes ( ) No (X) To/from what district? _____

Is this case related to a pending or previously filed case: Yes (x) No ()
What is the related case number? 16-CR-176
Who is the Magistrate Judge? _____

Estimated trial time: 6 days

The Clerk will issue a **Summons** (circle one)
Bond Recommendation: DETAINED

CRIMINAL COVER SHEET
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Petty Offense ( )
Misdemeanor ( )
Felony (X)
Juvenile ( )

County of Offense: Murfreesboro and Others
AUSA's NAME: Amanda J. Klopf and Courtney Coker

Joedon Bradley (6)
Defendant's Full Name

Defendant's Address

Interpreter Needed? ___ Yes _X_ No

If Yes, what language? _____

Rayburn McGowan, Jr.
Defendant's Attorney

COUNT(S)	TITLE/SECTION	OFFENSE CHARGED	MAX. PRISON	MAX. FINE
1	Title 21, U.S.C. Sections 841(a)(1), 841(b)(1)(C) and 846.	Conspiracy to possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00
2-10	Title 21, U.S.C. Section 841(a)(1)	Distribution and Possession with Intent to Distribute a mixture or substance containing a detectible amount of fentanyl, the use of which resulted in serious bodily injury or death	Mandatory Minimum of Twenty (20) years up to Life.	$1,000,000.00

If the defendant is charged with conspiracy but not with the primary offense, list the primary offense below:

TITLE/SECTION	OFFENSE	MAX. PRISON	MAX. FINE

Is the defendant currently in custody? Yes (x) No ( ) If yes, State or Federal? Federal

Has a complaint been filed? Yes ( ) No (x)

If Yes: Name of the Magistrate Judge _ Case No.:
Was the defendant arrested on the complaint? Yes () No ()

Has a search warrant been issued? Yes (x) No ()
If Yes: Name of the Magistrate Judge SEE ATTACHED Case No.: _____

Was bond set by Magistrate/District Judge? Yes ( ) No (X) Amount of bond: _____

Is this a Rule 20? Yes ( ) No (X) To/from what district? _____
Is this a Rule 40? Yes ( ) No (X) To/from what district? _____

Is this case related to a pending or previously filed case: Yes (x) No ()
What is the related case number? 16-CR-176
Who is the Magistrate Judge? _____

Estimated trial time: 6 days

The Clerk will issue an Arrest Summons (circle one)
Bond Recommendation: DETAINED

date issued	number	Judge
7/19/2016	16-MJ-1071	Holmes
7/21/2016	16-MJ-1074	Holmes
7/26/2016	16-MJ-1079	Holmes
8/24/2016	16-3046-MB	Brown
8/26/2016	16-3047-MB	Brown
9/2/2016	16-MJ-2091	Knowles
9/9/2016	16-MJ-2104 A&B	Knowles
9/10/2016	16-mj-2108	Knowles
9/13/2016	16-mj-2113	Knowles
9/14/2016	16-MJ-2116	Knowles
9/14/2016	16-MJ-2117	Knowles
9/20/2016	16-MJ-2127	Knowles
10/26/2016	16-MJ-1133	Holmes
12/2/2016	16-MJ-2151	Frensley
12/5/2016	16-MJ-2152	Frensley
12/8/2016	16-MJ-2159	Frensley
12/6/2016	16-MJ-2156	Frensley
12/19/2016	16-mj-2176	Frensley
12/21/2016	16-mj-2183	Frensley
1/17/2017	17-MJ-1008	Holmes
1/23/2017	17-MJ-1015	Holmes
1/31/2017	17-MJ-1028	Holmes
2/2/2017	17-MJ-1032	Holmes
2/2/2017	17-MJ-1031	Holmes
2/6/2017	17-MJ-4010	Newbern
2/7/2017	17-MJ-1034	Holmes