No.

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN JARMON,
Petitioner,

v.

UNITES STATES OF AMERICA,
Respondent.

On Writ of Certiorari
to the Court of Appeals for the Third Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

The first question presented is: Whether the Third Circuit Court of Appeals entered a decision in conflict with the decision of *United States v. Pressler* where the evidence presented at trial showed several loosely connected conspiracies as opposed to one overarching conspiracy.

The second question presented is: Whether the Third Circuit Court of Appeals entered a decision in conflict with the decision of *United States v. Johnson* and *United States v. Diaz* where the sentencing court's factual finding attributing more than 280 grams of crack cocaine was clearly erroneous because the finding was unsupported by substantial evidence, lacked adequate evidentiary support in the record, and was against the clear weight of the evidence.

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BRIEF FOR PETITIONER

Petitioner Juan Jarmon respectfully requests that this Court reverse judgement of the Third Circuit Court of Appeals.

OPINIONS BELOW

The Judgement of Conviction and Sentencing Order in the United States District Court for the Eastern District of Pennsylvania was entered November 27, 2019, at No. 2:17-CR-00072. Petitioner's case was appealed to the Third circuit Court of Appeals docketed at 19-1652. The Third Circuit Court of Appeals affirmed the District Court conviction and sentencing on September 15, 2021.

JURISDICTION

The judgement of the Third Circuit Court of Appeals was filed on September 15, 2021. This Petition is being filed on December 9, 2021. This Court has jurisdiction under 28 U.S.C. §1254(a). *See United States v. Gulf Refining Co.,* 268 U.S. 542 (1925); *United States v. Maze*, 414 U.S. 395, 94 S. Ct. 645, 38 L. Ed. 2d 603 (1974).

RELEVANT STATUTE AND RULE PROVISION

21 USC §846 states that 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.

Federal Rules of Criminal Procedure Rule 29(a) states that before submission to the jury and after the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

STATEMENT OF THE CASE

A. Factual background

This case was investigated by the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA) and the Philadelphia Police Department. During the investigation, the FBI and the DEA conducted wire intercepts of phone calls between several people in the indictment, which led to thousands of phone call recordings. Law enforcement also made controlled purchases of crack cocaine from persons listed in the indictment, using cooperating witnesses and confidential sources, during which the members were surveilled, audiotaped and/or videotaped by the FBI, DEA and the Philadelphia Police Department. Many of these recordings were captured in and around the Norman Blumberg Apartment Complex.

The Norman Blumberg Apartment Complex, hereinafter referred to as "Blumberg," was a public housing facility in North Philadelphia owned and operated by the Philadelphia Housing Authority and designed to provide affordable housing to low-income residents. Blumberg's geographic territory was bordered by North 22nd Street to the East, North 24th Street to the West, Jefferson Street to the South, and Oxford Street to the North.

Blumberg's two high-rise towers each contained eighteen floors with nine apartments on each floor, and a series of connected row home units, or "low-rises." One of the high-rise towers was located at 1516 Judson Way, hereinafter referred to as the "Judson Building." The other high-rise tower was located at 1515 Hemberger Way, hereinafter referred to as the "Hemberger Building."

The government's theory of this case is that Juan Jarmon was the leader of a large-scale drug conspiracy that operated within the Blumberg complex from 2012 until mid-2014. The

government set out to prove this claim through the testimony of three government agents, two lab technicians, a law enforcement 'drug language expert' and two cooperating co-defendants.

The first witness called by the government was FBI Special Agent Cardone. Through this witness, the government presented intercepted telephone calls between several different people and the defendant. Agent Cardone's testimony included several phone calls mostly consisting of calls to/from Rasheed Chandler (a government cooperating witness, paid confidential source and co-defendant). The phone calls with Rasheen Chandler discussed drug sales in the NBA regarding many different people including Anthony Staggers, an 'unidentified male,' Raheen Butler, Mike Ferrell, Dwayne Fountain, Damon Edwards, Crystal Calonne, 'Auntie,' Taft Harris, Ms. Pat, Stephen Dawkins, Derek Fernandez and Sharita Bailey. **A120-208**. Eight of the seventeen people speaking in these phone calls were not even listed in Appellant's conspiracy indictment. In fact, Edward Stinson, Jamilla Bellamy and Stephen Dawkins were all charged in a separate drug conspiracy covering the time period beginning in 2010 through September 2015.

The first phone call testified to by Agent Cardona was dated October 3, 2012. In this phone call Jamila Bellamy placed a call to Edward Stinson,[1] her boyfriend. Eleven minutes into the call, Bellamy handed her phone to Petitioner. Stinson told Petitioner that Petitioner was 'allowed' to sell drugs on the 18th floor. Stinson also says, regarding what Petitioner argues is Rasheen Chandler, 'He'll f ** with the late night for you, right, you just got to tell him make sure it's from me or whatever. Like he can't put nothing else in pink, in pink or nothing.'

[1] The government dismissed all charges in Petitioner's indictment against Edward Stinson prior to Petitioner's trial. Stinson was charged in a separate indictment for conspiracy to distribute crack cocaine on the 18th floor of the NBA from 2010 through 2105. Stinson's indictment covered the same geographic location, time frame and several of the same people as Petitioner's indictment. 17-cr-71, Eastern District of Pennsylvania.

Government exhibit 1A. Moreover, Rasheen Chandler testified that he sold drugs for Edward Stinson in 2012. **A352** Most significant for Petitioner, Rasheen Chandler told Agent Trainor that the bundles the he sold for Petitioner were always red. **A654-655**

The phone call recordings and transcripts presented by the government did not establish one overarching conspiracy, but instead, multiple conspiracies between various people at different times to sell drugs in the Norman Blumberg Apartments (NBA). The calls played for the jury showed a number of different people who worked for several different people, sometimes at different times, often at the same time. Petitioner's frustration was apparent in these calls as he struggled to find people to work for him. There were people who did not show up when they were supposed to, who moved from the area, who slept instead of working, etc. Cooperator Rasheen Chandler, who also sold for Edward Stinson, and used most of the people referenced in these calls to sell his drugs. Petitioner avers that the evidence from the October 2012 call shows that Rasheen Chandler continued to sell crack cocaine in pink packets for Edward Stinson during the time frame of Petitioner's indictment. This and the other calls show that there were many different people (known and unknown) who were involved in selling many different kinds of drugs in the NBA, sold drugs in baggies other than red, served other dealers in many different roles and worked for multiple people on different floors of the two high rises all at the same time.

Agent Cardona and Agent Trainor presented several video recordings that they testified showed hand to hand drug sales from Petitioner to confidential source JF. Agent Trainor testified that, prior to dropping JF off in the vicinity of the NBA, Agent Trainor would search JF by patting him down **over** his clothing, outfit JF with several concealed recording devices and provided JF with recorded cash. (emphasis added) **A508, A592**

Agent Trainor testified that JF bought crack cocaine on May 3, 2013, May 17, 2013, June 11, 2013 and September 5, 2013 from Petitioner at various locations outside of the NBA buildings. Agent Trainor testified that they stopped using JF to buy drugs from Petitioner because Petitioner 'accused the source of being a cop' and this presented a safety issue. **A563** On cross examination, however, Agent Trainor admitted that they had attempted another buy **after** this date and that the transcript of the recording shows that, when told by others that JF was a cop, Petitioner forcefully denied that [Petitioner] believed 'that the CI was a cop.' **A619-620**

Agent Trainor testified, regarding the May 3rd transaction, that he was unaware of how much money the agents gave to JF and was unaware how much money JF allegedly gave to Petitioner. All that Agent Trainor could say was that JF returned without any of the unknown amount of government supplied money. **A593-596** Most importantly, Agent Trainor could not account for the black bag seen on the video that allegedly contained drugs from the transaction, nor could he account for the money handed to the JF by Sean Jarmon as clearly seen on the video. **A 596** Agent Trainor admitted that the black bag seen being handed to the CS was missing from evidence: 'Q: So where is the black bag? A: I don't — I don't know.' **A597, A600-601** In fact, the black bag was never found. The amount recorded by the agents as seized from May 3rd was 36.6 grams, the amount submitted was 36.8 grams, the amount received by the lab was 37.9 grams and the net weight was 2.1 grams. **A601; A832-834** Agent Trainor also agreed that there was no video evidence of Petitioner handing anything to JF. **A605**

Agent Trainor testified that the video cameras for the May 17th transaction were not working but that JF met with Petitioner and returned with crack cocaine. Agent Trainor testified that the seized weight was 12 grams and the submitted weight was 23 grams. **A608** The lab

report showed that the gross weight was 50.7 grams and the net weight was 22.7 grams. **A832-834**

Agent Trainor testified that on July 12, 2013, JF was sent out with $1700 to make a controlled purchase. He returned with a substance that the DEA listed as a seized amount of 39.7 grams and a submitted weight of 69.9 grams. Agent Cardona field tested the substance and reported a positive result for cocaine. **A612-613** The lab, however found that the substance did not contain any cocaine. **A473** The powder had a net weight of 34.5 grams of a non-controlled substance. **A832-834** The government did not make the jury aware of Agent Cardona's finding of illegal substances where none existed. Instead, this information was only introduced by Petitioner through cross examination. **A612**

Agent Trainor then testified that on August 2, 2013, JF was given $450, went to a mini mart and returned with a substance that the agents recorded as 37.5 grams seized, 37.5 grams submitted. **A615** The lab received 49.3 gram package with a net drug weight of 16.1 grams. **A832-834** Agent Trainor testified that Petitioner did not appear anywhere on either video inside of the minimart nor did Petitioner engage in any transaction at all on that date. **A616**

Interestingly, Agent Cardone also testified regarding the August 2, 2013 transaction, but said that JF was given $900, met with Petitioner in the doorway of the minimart, completed a drug transaction and returned with crack that weighed 37.5 grams. **A677, A696** The video played for the jury, however, did not show Petitioner anywhere near the minimart and did not show any transaction in the door way of the mini mart. **A697-698** After seeing the video on cross examination, Agent Cardona testified 'the source **told** us that the transaction happened there.' (emphasis added). **A697**

Agent Trainor testified that on August 14, 2013, JF was given $450 and returned with a substance that the DEA recorded as a seized weight of 24.5 grams, submitted weight of 24.5 grams. The lab reported receiving a package weighing 40.7 grams with a drugs weight of 6.1 grams. **A832-834** Agent Trainor testified that Petitioner did not appear anywhere on the video of the transaction. **A616-617**

Agent Trainor testified that September 5, 2013, JF was given $2,400 and sent off to try to buy drugs from Petitioner. JF returned with three knotted bags of white powder with a seized weight of 66.1 grams and a submitted weight of 96.7 grams. **A618** The lab recorded a gross weight of 94.3 grams and a net weight of 58.9 grams. **A832-834** Three quarters of the powder submitted was not a controlled substance. Agent Trainor also stated, after listening to the transcript, that Petitioner was forcefully denying that he believed JF was a cop. **A620**

On September 30, 2013, agents gave JF $1300 to attempt to purchase an ounce of crack from Petitioner. JF came back without any money but handed over a white powdery substance that later tested to a fake substance. **A563-564** Agent Trainor testified that Petitioner did not appear at all on the video of the transaction. **A638**

The Confidential source used in all of these sales was identified as JF. Agent Cardona was questioned regarding the number of false names JF had used in eight separate prior arrests, Jf's use of several different dates of birth and social security numbers, all of which appeared in his NCIC 'rap sheet.' Agent Cardona did not answer the questions and told the court when asked, that she did not run the NCIC check. **A233** Agent Trainor, however, testified that Agent Cardona had, in fact, requested JF's complete NCIC rap sheet from the Pennsylvania State Police and that the State Police had sent the NCIC rap sheet back to Agent Cardona:

Q And there was some questions about this the other day. Correct me if I'm wrong, but someone has to -- from law enforcement has to request a criminal history from the Pennsylvania State Police is that correct?
A Or the FBI, and NCIC report, correct.
Q Okay. And then once they compile this report, they send it back to the person who requested it; is that fair to say?
A I'm --
Q They send it back attention to the law enforcement agent who requested the rap sheet in the first place?
A Oh, yes, correct.
Q And in that document that's in front of you, D4 -- I'm sorry, if you want to look at the first page of D-5, actually. I apologize. That was requested on what date?
A July 13th, 2018.
Q And who was that requested by?
A Sarah Cardone.
Q And that's the agent seated here at the table?
A Yes, that's correct.
Q So she's the one who requested and received that rap sheet?
A Yes, that's correct.

A587-588

The government then relied on two co-defendants turned government cooperators to try to show that Petitioner was leader of this alleged overarching conspiracy, however, their testimony contradicted the government's theory. The first cooperator was Rasheen Chandler.

Chandler, at the time of his cooperation with the government, was facing a possession with intent to deliver case in Philadelphia court for pink packets of crack that were found through a search warrant by the agents in this case, in his 18th floor apartment. Under oath in Petitioner's trial Chandler testified that he stored drugs in his apartment for Petitioner. However, Chandler pled guilty to possessing those same drugs with the intent to sell them in his Philadelphia County case. **A333** Chandler also testified that he sold drugs for Edward Stinson in the NBA. **A258**

Chandler testified that he also stored crack cocaine in Sharita Bailey's apartment on the 18th floor. **A260** Sharita Bailey is not listed on Petitioner's indictment and therefore, not

charged by the government as having conspired with Petitioner to store any of **his** drugs in her apartment. (emphasis added).

On cross examination, Chandler contradicted himself on many occasions regarding people that the government alleged worked for Petitioner. For example, in the government's case, Chandler testified that the only people that sold drugs for Petitioner were Mike Ferrell,[2] Anthony Staggers, Raheen Butler and Dottie Goode:[3]

> Q There's nobody else [other than Raheen Butler, Mike Farrell, Dottie Good and himself] that sold for my client, according to your direct testimony, is that correct?
> A Correct. **A349**

This, however, was directly contradicted to his prior statements to Agent Trainor wherein he stated that, as of February 18, 2014, **only** he and another male (not named) sell drugs on the 18th floor. **A647** Agent Trainor also testified that Chandler told him that Mike Ferrell was not involved in drug trafficking[4] and that Anthony Staggers worked for him as a lookout for one month and now sells marijuana around the NBA.[5] Moreover, Chandler testified on cross:

> THE COURT: Mr. Chandler, do you recall ever telling the Government that someone called Riddles [Raheen Butler] sold for Juan Jarmon? Yes or no?
> THE WITNESS: No.
> **A347**

The government then asked questions of Chandler regarding 'lookouts' to try to show that Petitioner was employing people to warn his sellers of police presence. On direct Rasheen Chandler testified that Reds, Paintjob, Diamond and Ant served as lookouts for Chandler. **A273** After Chandler testified that he could not remember any other people, the government provided

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[2] Agent Baver testified that, after he showed Dottie Good a photograph of Mike Farrell, she told him 'to her knowledge, however, Ferrell was not involved in distributing narcotics.' **A673**
[3] Dottie Good told Agent Baver that 'to her knowledge, Chandler was not involved in distributing narcotics.' **A673**
[4] A649
[5] A653

the names 'Jamie' to which Chandler testified that person also served as a lookout. **A304** 'Paintjob' and Jamie are not listed on Petitioner's indictment, however, 'Paint Job' is charged in a separate indictment for a drug conspiracy run by Edward Stinson.

On cross examination, Agent Trainor testified that Chandler told him: '[Rasheen Chandler] used males known only to him as Mitch, Larry and Reds. **A648**

Further, on cross-examination, Chandler testified:

> Q Now, with regard to these lookouts, you testified to various lookouts. Is it fair to say, sir, that the lookouts were kind of free agents; do you know what I mean by that?
> A Of course.
> Q So they would be out there and then they would work for this group or they would work for that group or they would work for two groups --
> A Of course.
> Q -- at the same time?
> A Various at that time.
> Q They could even work for two different buildings at the same time, correct?
> A Of course.
> **A349-350**

The government also called Dottie Good to show that she sold drugs for Petitioner and used his 'lookouts' during her shifts. Dottie Good testified that she sold drugs for Petitioner starting in April of 2013[6] and stopped on May 31st, but then went back to selling for one week in August of 2013.[7] On direct examination Dottie Good testified that she sold for Petitioner in the

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[6] **A405**

[7] **A406**

> Q Now, after the assault -- so you stopped that day, whatever the date of the assault was, you stopped selling crack cocaine?
> A Correct.
> …
> Q. And then do you remember telling the agents that you sold, after that, for one week in August of 2013?
> A Correct.

And

A412

> Q Okay. Well, you said you were working with my client, the dates that you said you were working with my client were?

hallway of the18th floor. **A375** However, on cross, she testified that she sold on the 15th floor because Petitioner did not want her to sell on the 18th floor:

> Q Do you recall what apartments on the 15th floor you went back and forth between?
> A It was the girl who actually lived on the 13, but he [Petitioner] had them come into the 15 so it wouldn't make the 18 floor like hot.
> **A405-406**

Agent Baver testified that Good also told him that she sold drugs on the 15th floor. **A668** Moreover, the DEA Form 7 stated that Dottie Good sold crack on the 15th floor. Cooperator Chandler testified that the only place people could buy crack cocaine was the 18th floor. **A357**

Dottie Good testified that she sold drugs for several people other than Petitioner:

> Q And then do you remember telling the agents that you sold, after that, for one week in August of 2013?
> A Correct.
> Q And then after that, you went on to sell for someone named Will?
> A Correct.
> **A406**
>
> …
>
> Q Is it fair to say that during the course of your drug dealing, in Norman Blumberg Apartments, you dealt with a lot of people? Fair to say?
> A No, just three.
> Q And who were those three?
> A It was Juan, Will, and Raheen.
> Q Raheen, who's that?
> A I don't know his last name.
> Q You sold for Raheen?
> A Yeah, but that was only like for maybe a week.
> Q When was that?
> A I'm not sure. Like it wasn't like nothing major.
> Q And you worked with other sellers; is that fair to say?
> A Yeah, but not nothing major like from when I first started.
> **A414**

A 2013.
Q April of 2013, when you started and you ended on May 31st of 2013, correct?

Dottie Good also testified regarding lookouts. On direct she testified that the lookouts that she used during her drug selling were 'Paint Job' and 'Diamond.'[8] However, on cross examination, Dottie Good testified:

> Q You worked with a lot of different lookouts; is that fair to say?
> A Mainly like Paint Job or Diamond, sometimes Wanda.
> Q Wanda is Paint Job's wife?
> A Correct.
> Q Okay. And these lookouts, do you recall when you sat down and met with the agents, that you said you didn't know anything about lookouts? Do you remember maybe having a conversation in January that you were not aware of the presence or identity of any lookouts because Mr. --
> A And what year was this?
> Q 2014.
> A Okay. Because probably at that time, I wasn't too aware of them.[9]
> **A415**

Agent Baver testified that on January 6, 2014, Dottie Good told him that she was not aware of the presence or identities of any lookouts:

> Q "Dottie Good told you that she would be notified by only Jarmon if she was instructed to cease drug sales because of law enforcement presence near the public housing units." Is that correct?
> A Yes.
> Q She also told you: "As a result, she, Dottie Good, was not aware of the presence or identities of any lookouts."
> A That's correct.
> **A669**

The government also used the cooperating codefendants to try to establish an amount of drugs sold by the alleged conspiracy. Rasheen Chandler testified on direct that he sold drugs for Petitioner for $350 per week and negotiated for more because he was storing it in his apartment.

[8] The government listed 'aka Diamond' on it's indictment under the name Stephen Dawkins, however, the name 'Paint Job' is not associated with anyone listed on the indictment. Stephen Dawkins is also charged in a separate conspiracy indictment at 17-cr-71.
[9] 'Wanda' is not charged in this conspiracy or any conspiracy that Petitioner is aware of.

A260 He also said that he would typically sell two bundles in his 4pm-8am shift, but not less.

A263-264 He testified that he sold drugs for Petitioner for eight to nine months. **A264**

On cross examination, however, Chandler stated he worked for Petitioner for six to eight months and told Agent Trainor is was six months. **A337** Chandler also stated that he would, in fact, sell less than two bundles and did not even know the least amount he would sell:

> Q Sir, do you remember saying, on a prior occasion, that you sold less than one bundle per day?
> A I told Pat it varies. It was not in stone that I sold one a day. It was -- it varies from time to time. It's slow, it's fast, different times. I don't know what he took for me to say one. No. Different times it varies.
> Q Okay. But when you said to the jury before that the least you ever sold was two bundles, you've said different things in the past, is that correct?
> A It fluctuates. Meaning like sales fluctuate. Fluctuate all the time. So, it's not that I'm not making different changes of the amounts, it was just that sometimes it fluctuates. I don't know what they took of it.
> Q So then the least amount of crack that you ever sold, you don't even know?
> A Yes.
> **A343-344**

Chandler told Agent Trainor that he had started selling some unspecified amount for Petitioner and a different dealer (Edward Stinson) at the same time and then **increased his sales** to 9 bundles every ten days, which equates to less than a bundle per day (emphasis added):

> Q You stated -- I'm sorry, he stated to you that he began selling for Juan Jarmon, and it was to earn money to pay his rent. Adding that their drug trafficking activities increased to where Jarmon and Edwards supplied Chandler with nine bundles of crack every ten days; is that correct?
> A Yes, I see it.
> Q So he's telling you it had increased to the point where it was nine bundles per every ten days?
> A Correct.
> Q And he also stated that he made a profit of approximately $550 every ten days; is that correct?
> A Yes, that's correct.
> **A647**

Dottie Good testified on direct that she sold for Petitioner from 12am through 8am but without any specific start date other than 2013. **A374** She testified that she would sell three, maybe

four bundles at the busiest and one at the least. **A377-378** Good also testified that she worked for several different sellers at different times. **A398; A414; A416** She also was arrested several times during the dates of the conspiracy selling her own drugs and was arrested several times for selling her own drugs outside of the conspiracy dates.

The government next called DEA Agent Patrick Trainor. Agent Trainor introduced photographic evidence and testified to controlled buys on the 18th floor of the NBA four times from Rasheen Chandler, one time from Michael Farrell and one time from Taft Harris. **A564-566** All of these controlled buys were conducted using a confidential source known as DA. **A566**

Make Ferrell ('Diamond') made a sale of four red packets to DA on September 20, 2013 and was never seen again. **A566-570, A898** On October 31, 2013, Taft Harris (Taz) sold six pink packets to DA. **A899; A625** Finally, Agent Trainor testified to four hand to hand transaction by Rasheen Chandler to DA in which he sold solely pink packets (although the DEA 6 reflected that the four packets sold on February 11, 2014 were red). **A628-630; A633; A813** Agents served a search warrant on Rasheen Chandler's apartment on February 18th and found in 43 pink packets of crack.

Agent Trainor testified that Rasheen Chandler told him that the drugs that he (Chandler) sold for Petitioner were always in red colored packets:

> Q Now, he then told you during this interview Chandler advised that these bundles were usually 250 bundles, which consisted of 55 bags of crack cocaine, worth $250, correct?
> A Yes.
> Q And then immediately after that: "Chandler stated these $5 bags were always red." Is that correct?
> A Yes, that's correct.
> Q And he was referring to the bags that were sold for Jarmon; is that correct?
> A Yes, that's correct. **A654-655**

Agent Baver testified to two sales that were made on April 18 and April 25th of 2013 by Dottie Good on the 18th Floor to a CS known as VB. Agent Trainor testified that the fourteen

packets that were sold by Dottie Good to VB on both dates were blue. **A634; A662-663; A896, A897** Government exhibit 401A also recorded that the April 18th sale occurred on the 15th floor. **A896**

Agent Trainor also testified that there were 'about 90 controlled buys in this case' even though only a handful were turned over in discovery. **A632** Therefore, it was not disclosed to Petitioner who made the remaining 75 controlled buys, where the buys were made, what product was sold, what color the packaging was or the weights of the sales.

The confidential sources used in the aforementioned sales all had prior convictions, pending cases, drug habits and were even on probation or parole at the time of their buys. The CS used in the hand-to-hand transactions with Petitioner, JF, had several prior convictions under several fake names for felony offenses including possession with intent to deliver. He had used many social security numbers and fake dates of birth in the past. He was also paid $11,800 to cooperate with the government.

The confidential source (CS) used in all of the drug transactions with Chandler, Ferrell and Harris was identified as DS. Agent Trainor testified that DS had a number of arrests prior to her use, was arrested using eight (8) different names and three (3) different dates of birth, several convictions for felony drugs and other crimes. **A639-640** In fact, DA was on probation at the time of her cooperation for a felony possession with intent to deliver case. **A640** When agent Cardona received the requested rap sheet back from the Pennsylvania State Police, she was informed that DA was wanted on an outstanding warrant for failure to appear on an assault case. **A641** DS was paid $11,400 for her assistance to the government.

The CS used in the drug sales with Dottie Good not only had a very long rap sheet, but was also 'purchasing drugs without authorization from the FBI or the DEA' and was subsequently 'terminated as a source for the FBI and DEA.' **A662** Petitioner was not informed by the government

that the CS was terminated. In fact, Petitioner found out only through defense counsels own investigation that both the CS and the co-operating co-defendant Dottie Good had been arrested together for buying and selling drugs to each other, while cooperating with the government, in the lobby of the NBA.[10] Both were charged in that incident and those cases remained open during the investigation and most of Dottie Good's cooperation.[11]

To help prove the amount of drugs seized, the government called two witnesses from the DEA Northeast Laboratory where the drugs from the CS sales were sent. Ms. Vitale testified that she could not say when any of the drugs were received at the lab for testing but that it would be on the DEA 7 form. **A467** Ms. Vitale testified, 'Well I know when I received it from the evidence vault, but I — as far as when it comes to me in the lab, that should be reflected on — it should be on the evidence label. Not necessarily. That could be when they sealed it. It would be on the DEA 7.'

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[10] The testimony from Dottie Good's cross examination:

Q And then after that, you're arrested on December 26th of 2014, again, for selling drugs, correct?
A Correct.
Q Now, at that point, in that case, you sold drugs to someone named Bike Lady; is that correct?
A Yes.
Q And you know Bike Lady because you've sold to Bike Lady in the past; is that correct?
A Correct.
A408

Agent Trainor testified:

Q And you learned that subsequent to her working with you, and making [the two Dottie Good purchases in April 2013] purchase, she was arrested about maybe a year -- well, December 26 of 2014, for buying drugs off of Dottie Good, off the book -- yeah, off the books; do you recall that?
A This is the --
Q Her initials are V.B.?
A Oh, yes. Yes, of course.
Q You recall that she was arrested along with Dottie Good, for dealing drugs in the, I believe it was the lobby of the Hemberger building?
A Yes. Yes. Oh, yeah.
A447

[11] On March 16, 2015, Good received a four (4) year probation for a 'negotiated guilty plea' to Possession with Intent to Deliver. Docket Number: CP-51-CR-0000465-2015

A475 She also testified that the evidence was often times opened, resealed, opened again to put something in and then resealed again:

> Q Okay. And then in this case, correct me if I'm wrong, but it looks like you sealed it once, you opened it back up. You must have put something in it because the weight changed. Is that fair to say?
> A Yeah. I would expect the second weight to be a little bit heavier because -- well, there's other labels that I put. Yeah. And it looks like I put something in there. I'm just speculating. It's possible I opened it because I didn't put all the packaging in there, and that's why the weight is different. But yes, I did reopen it to put something in it.
> Q But you don't know what that was?
> A I don't remember. I'd have to see my notes. **A469**

She testified that the gross weight and net weights on each lab report varied because:

> Well, the gross weight is all the packaging and the contents. The net weight is just the rock like substance or powder, whatever the sample is. So, the net weight is just the sample, and the gross weight is the whole package. **A470**

The Court admitted defense counsel's exhibits that included the DEA6, DEA7 and DEA7As for each of the controlled purchases. These exhibits showed that none of the blocks pertaining to the chain of custody of the evidence had been filled in. These exhibits also showed that sometimes the 'seized weights' were vastly different from the 'submitted weights' which were vastly different from the 'net weights' testified to by Ms. Vitale. The exhibits also showed that on some occasions, the 'seized weights' were exactly the same as the 'submitted weights.' Agent Trainor testified:

> **Q** Can you explain when it says seized, what does that mean?
> A That's the weight of the bag, as it's mailed to the -- as it's mailed to the laboratory.
> Q Okay. So, when you see the bag, do you -- I'm not talking about submitted, I'm talking about seized. When you describe seized, is that the weight of the whatever it is that the CI brought back to you?
> A Correct. That should be the weight of the drug exhibit in chief, correct.
> Q So, that would be the drugs and whatever is contained inside. Whether it's packets or plastic, not a bag, correct?
> A Yes, that's correct. Packaging material.
> Q Submitted then would be what you submit to the lab, including the sealed envelope?
> A Correct.

Q On these exhibits for 28 and 29, the seized weight is exactly the same as the submitted weight; is that correct?
A Yes, it is.
Q So, obviously, the packaging that you're sending away to the laboratory has to weigh something, correct?
A Oh, yes, correct.
Q So, how can the seized and the submitted be exactly the same for both exhibits?
A It would appear that the officer who prepared the report may not have included the weight of the evidence bag in the weight of the exhibit. **A601-602**

Appellant compiled and provided to the jury a chart that contained all of the discrepancies in weight regarding the seized and submitted drugs. **A820; A768** The chart consisted of all drugs seized pursuant to CS buys provided in discovery.[12] **A832-834**

Agent Trainor testified that none of the forms for any of the drugs purchased in this case that were sent to the laboratory for weighing and testing were filled out with regard to the chain of custody information, even though there are boxes on each form to record such information:

Q So, as I understand it then, the custodian, the person who's taking the drugs from the DEA field office in Philadelphia, fills out the first part of that box; is that correct?
A No, no that's signed by the staff at Lab New York City when the exhibit is received by them.
Q Okay. So, then it says received from, and then name received by; is that correct?
A Yes, correct.
Q And then for laboratory evidence receipt, received from and received by, correct?
A Yes, correct.
Q It's not filled in.
A No, it is not.
Q And it's actually not filled in on any of these forms, is it?
A I don't see it on either of these forms, correct?
Q On any of these forms. Is that fair to say? On any DEA 7 that we've talked about today, correct?
A Correct.
Q So, as -- if the laboratory receives this and they don't know what date they received it or who they received it from, this form isn't going to help them, correct?
A That's correct.
Q But the rest of the form is filled out by a DEA agent?
A Yes, that's correct. **A604-605**

[12] One example is from the May 17 hand to hand sale. The amount seized was recorded as 12 grams, the amount submitted as 23 grams, the net amount as 8.9 grams and the gross as 40.6. Another example is the April 25th hand to hand with Dottie Good where the amount seized was recorded as 1.9 grams, the amount submitted as 1.9 grams, the net amount as .61 and the gross as 32.5.

At the conclusion of the government's case, Petitioner moved for a judgement of acquittal pursuant to Fed.R.Crim.P. 29 on all charges. **A709, A760** The district court denied the Rule 29 motion **A760.** The court issued a Memorandum Opinion of appellant's Rule 29 denial on May 7, 2019. **A13-28** Petitioner was found guilty on March 13, 2019 to most of the counts including the count 1 conspiracy. **A38-39**

A final PSI was delivered via email to Petitioner's counsel on June 12, 2019. On October 21, 2019, Petitioner filed timely objections to the PSR. **A835-839** The sentencing hearing was held on November 21, 2019. At this hearing, the court found the amount of drugs attributable to Petitioner to be 723.33 grams using a calculation that he handed to counsel in court.[13] This calculation was based almost exclusively on the testimony of the two cooperating codefendants. The trial court found the guideline range to be 360 months to life. The court sentenced Petitioner to 360 months.

B. Procedural History

On February 8, 2017, a federal grand jury in the Eastern District of Pennsylvania returned a 48-count Indictment charging Juan Jarmon, Damon Edwards, Edward Stinson, Donta Edwards, Raheen Butler, Michael Farrell, Dottie Good, Taft Harris, Jr., Stephen Thompson, Stephen Dawkins, Sr., Derek Fernandes, Anthony Lee Staggers and Gene Wilson, Jr. with the following offenses: conspiracy to distribute 280 grams or more of cocaine base ('crack'), in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(A) [Count 1]; distribution of crack, in violation of 21

[13] A851-852; A894-895

U.S.C. § 841(a)(1) and (b)(1)(C) [counts 3, 5, 7, 9, 11, 13, 15, 22, 34, 38, and 44]; distribution of cocaine base ('crack') and aiding and abetting , in violation of 21 U.S.C § 841(a)(1)and (b)(1)(C) and 18 U.S.C. § 2 [counts 17, 42 and 46]; possession with intent to distribute cocaine base, in violation of 21 U.S.C. §841(a)(1) and (b)(1)(C) [count 40]; possession with intent to distribute cocaine base and aiding and abetting , in violation of 21 U.S.C. § 841(a)(1)and (b)(1)(C) and 18 U.S.C. § 2 [counts 20, 24, 26, 28, 30, 32 and 36]; distribution of cocaine base within 1000 feet of public housing, in violation of 21 U.S.C § 841(a)(1)and (b)(1)(C) and 18 U.S.C. § 2 [counts 4, 6, 8, 10, 12, 14, 16, 23, 35, 39 and 45]; distribution of cocaine base within 1000 feet of public housing and aiding and abetting in violation of 21 U.S.C §860 (a) and 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 [counts 18, 43 and 47]; possession with intent to distribute cocaine base within 1000 feet of public housing, in violation of 21 U.S.C §860 (a) and 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 [count 4]; possession with intent to distribute cocaine base within 1000 feet of public housing and aiding and abetting, in violation of 21 U.S.C § 841(a)(1)and (b)(1)(C) and 18 U.S.C. § 2 [counts 21, 25, 27, 29, 31, 33 and 37]; unlawful use of a communication facility furtherance of a drug felony, in violation of 21 U.S.C. § 843(b) [counts 2 and 19]; and maintaining a drug house and aiding and abetting, in violation of 21 U.S.C. § 856 and 18 U.S.C. § 2 [count 48]. Specifically, Juan Jarmon was charged in counts 1, 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36 and 37 of the Indictment.

Petitioner's trial began on March 5, 2019. At the conclusion of the government's case, Petitioner moved for a judgement of acquittal pursuant to Fed.R.Crim.P. 29 on all charges. **A709, A760** The district court denied the Rule 29 motion. **A760** The court issued a Memorandum Opinion of Petitioner's Rule 29 denial on May 7, 2019. **A13-28** On March 13,

2019 Petitioner was convicted by the jury on counts 1, 2, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33. He was acquitted on Counts 22 and 23.

On November 21, 2019 Juan Jarmon was sentenced as follows: Count 1, imprisonment: 360 months with supervised release of five (5) years; special assessment of $1300; Counts 8, 12, 14, 16, 18, 25, 27, 29, 31 and 33 imprisonment of 360 months; supervised release of 6 years; special assessment: $1300; Count 2, imprisonment of 48 months; supervised release of one (1) year; special assessment of $1300; counts 9, imprisonment of 240 months; supervised release of three (3) years; special assessment of $1300. **A38-45**

On December 2, 2019, Petitioner filed an appeal from a judgement of the United States District Court, Eastern District of Pennsylvania from Petitioner's conviction and sentence that was entered on November 27, 2019. **A1.** On September 15, 2021, the third Circuit Court of Appeals affirmed the conviction.

SUMMARY OF THE ARGUMENT

The case presented by the government against Petitioner showed several loosely connected conspiracies as opposed to one overarching conspiracy. The government introduced intercepted phone conversations that, instead of showing a group of individuals all working toward a common goal or common understanding, exemplified an unorganized loosely associated number of known and unknown individuals talking about drugs. The calls also showed that the Petitioner could not rely on any 'workers' to sell his product because either they would not show up to sell for him, ignored instructions, could not account for money lost, moved out of the area and/or were selling for other dealers during the time of the charged conspiracy.

The two cooperating codefendants presented by the government were untrustworthy having many prior convictions, giving over twenty inconsistent prior statements to police, being paid a substantial amount of money by the government for their cooperation, selling for several other drug suppliers and even selling and/or possessing large quantities of their own crack cocaine resulting in felony charges while cooperating with the government (one of the cooperating codefendants and one of the confidential informants were charged with felony drug possession/delivery for selling to one another outside of the purview of the government agents).

The key cooperating witness had given at least twenty (20) prior statements to the government. In one of those statements, he told the agents that Petitioner only sold crack in red packets and that he, the cooperating co-defendant, sold for a dealer whom the government dropped all charges against prior to the start of the trial and charged, instead, in a separate indictment. The dealer that the cooperating co-defendant testified that he sold for was captured on a recorded call telling petitioner that the cooperating co-defendant sold only his product in pink packets and that no one else could use pink packets.

The government provided photographs captured from surveillance photos regarding a number of hand-to-hand sales that were allegedly conducted at petitioner's direction as part of the overarching conspiracy. However, almost all of these co-defendants that were captured on surveillance video did not sell crack in the red baggies, but instead in pink or blue baggies.

Even in a light most favorable to the government, the evidence was insufficient to prove that Petitioner was responsible for the distribution of at least 280 grams of crack cocaine and the trial court should have granted his Motion under Federal Criminal Procedure Rule 29.

The trial court relied on the testimony of the two cooperating codefendants' testimony to determine the amount of drugs they sold and the time period in which they claimed to have sold for Petitioner. Petitioner showed that, not only were the co-operating co-defendants completely incredible and unreliable, but that the chain of custody for the collection, transportation and testing of the evidence was non-existent. Moreover, the testimony revealed that there was no consistent method of weight determination of the crack cocaine by the agents prior to the evidence being mailed to the lab. This was shown by the inexplicable errors between the weight of the evidence when seized versus the net and gross weight of the same evidence when it was mailed to and weighed by the lab. This inconsistency was never explained and was not taken into account by the trial court. Therefore, any weight attributable to Petitioner based on the evidence was unsupported by the evidence, lacked adequate evidentiary support in the record, and was against the clear weight of the evidence.

ARGUMENT

I. THE FIRST QUESTION PRESENTED IS: WHETHER THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF UNITED STATES V. PRESSLER WHERE THE EVIDENCE PRESENTED AT TRIAL SHOWED SEVERAL LOOSELY CONNECTED CONSPIRACIES AS OPPOSED TO ONE OVERARCHING CONSPIRACY.

There was no reasonable basis for the decision of the jury to find Petitioner guilty of one overarching conspiracy. Instead, the evidence proved a number of small and separate conspiracies, some involving Petitioner and some involving people either charged in the indictment, charged in other indictments or not charged at all. The standard of review for a claim of insufficiency is that the court must view the record in a light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence. *United States v. Smith,* 294 F.3d 473 (3rd Cir. 2002); *United States v. Wolfe,* 245 F.3d 257 (3rd Cir. 2001).

Federal Rule of Criminal Procedure Rule 29(a) before submission to the jury asserts that:

> "After the close of all the evidence, the government in a defendant's motion must enter judgment of acquittal for any defense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so."

The defendant may challenge the sufficiency of the evidence at the close of the government's case, or once the prosecution has rested under Federal Rule of Criminal Procedure Rule 29. *United States v. Miller,* 527 F.3d 54 (3rd Cir. 2008). In determining whether to grant a Rule 29 motion the Court must view the available evidence in a light most favorable to the

government. *United States v. Smith,* 294 F.3d 473 (3rd Cir. 2002). A jury may use circumstantial evidence to support reasonable inferences of fact. However, inferences may be drawn from established facts, as long as there exists a logical and convincing connection between the facts established and the conclusion inferred. *United States v. McNeill,* 887 F.2d 448 (3rd Cir. 1989) However, such inferences may not be based on mere speculation or conjecture.

As to offenses involving controlled substances, a defendant is accountable for all quantities of contraband with which he was directly involved and in the case of a jointly undertaken criminal activity, all reasonably foreseeable quantities of contraband that were within the scope of the criminal conduct that he jointly undertook. *United States v. Price*, 13 F. 3d 711 (3rd Cir. 1994) The Third Circuit has made it clear that a defendant is responsible for the amount of drugs distributed by his co-conspirators **only if** the drugs were distributed in furtherance of the conspiracy and within the scope of the agreement. *United States v. Price*, at 732.

In *United States v. Price,* 256 F.3d 144, 149 (3rd Cir 2001), the court held that the elements of a charge of conspiracy are: (1) "a unity of purpose between the alleged conspirators;" (2) "an intent to achieve a common goal;" and (3) "an agreement to work together toward that goal." *United States v. Gibbs*, 190 F.3d 188, 197 (3d Cir. 1999), see also *United States v. Mastrangelo*, 172 F.3d 288 (3rd Cir. 1999). Because there rarely is direct evidence of a qualifying agreement to work with someone else, many courts often speak of 'factors' that tend to show the existence of a conspiracy. *United States v. Pressler*, 256 F.3d 144, 149 (3d Cir. 2001). The existence of a conspiracy "can be 'inferred from evidence of related facts and circumstances from which it appears as a reasonable and logical inference, that the activities of the participants . . . could not have been carried on except as the result of a preconceived scheme or common understanding' *United Sates v. Kapp*, 781 F.2d 1008, 1010 (3rd Cir. 1986),

quoting United States v. Ellis, 595 F.2d 154, 160 (3d Cir. 1979). The challenge is especially acute when it comes to drug conspiracies. *United States v. Pressler*, 256 F.3d 144, 149. Accordingly, in many drug cases, the principal question is whether the people who buy drugs from the primary dealer or from his or her confederates have joined the underlying conspiracy. Id at 150. In *United States v. Gibbs*, 190 F.3d 188, 199 (3rd Cir. 1999), the court noted that certain circumstances may be especially probative of a conspiracy, such as "the length of affiliation between the defendant and the conspiracy; whether there is an established method of payment; the extent to which transactions are standardized; and whether there is a demonstrated level of mutual trust." *United States v. Frisby*, 574 Fed. Appx. 161, 164.

While the question of whether a single conspiracy is established as set forth in the indictment, or whether there are multiple conspiracies, is a fact question to be decided by a jury. *United States v. Perez*, 280 F.3d 318 (3rd Cir. 2002); *Blumenthal v. United States*, 332 U.S. 539 (1947). Where the government fails to present sufficient evidence of the charged conspiracy, a Rule 29 Motion is appropriate.

The government in this case will argue under the theory that drug conspiracies involving numerous suppliers and distributors operating under the aegis of a common core group can be treated as a single conspiracy. The government need not prove that each defendant knew all the details, goals, or other participants. *United States v Theodoropoulos, 866 F.2d 587, 594* (3d Cir. 1989). On the other hand, unless the "peripheral members . . . have been aware of one another and have done something in furtherance of a single illegal enterprise, . . the conspiracy alleged lacks 'the rim of the wheel to enclose the spokes.' *United States v. Castro*, 776 F.2d 1118, 1124 n.4 (3d Cir. 1985), *cert. denied* 475 U.S. 1029, 89 L. Ed. 2d 342, 106 S. Ct. 1233 (1986) (quoting

Kotteakos v. United States, 328 U.S. 750, 755, 90 L. Ed. 1557, 66 S. Ct. 1239 (1946)). Whether there are several criminal enterprises overlapping criminal conspiracies, or a single overarching conspiracy, depends upon whether they share a single unified purpose in understanding one common agreement. *United States v. Brown*, 587 F.3d 1082 (11th Cir. 2009)

A single conspiracy does not exist solely because many individuals deal with a common central player or common geographical location. What is required is a shared single criminal objective not just similar or parallel objectives between similarly situated people. *United States v. Calderon*, 578 F.3d 78 (1st Cir. 2009); *United States v. Bostic*, 791 F.3d 127 (D.C. Cir. 2015). In determining whether separately charged conspiracies are really a single conspiracy the court applies a totality of circumstances test: (1) the timing of the alleged conspiracies; (2) the identity of the alleged co-conspirators; (3) the offenses charged in the indictment; (4) the overt acts charged or description of the offense charged which indicate the nature and scope of the activity charged; and (5) the locations of the alleged conspiracies.

United States v. Rivera, 800 F.3d 1, 45 (1st Cir. 2015)

In *United States v. Pressler*, the court did not find a conspiracy between Caban, the large heroin distributor) and Shreffler (a buyer and seller of Caban's heroin) even though Caban also sold to customers that were referred to him by Shreffler. The court found that even though Shreffler distributed a sizable amount of heroin, most of the people to whom Shreffler distributed heroin had other sources of supply, and many of them distributed the drug as well. The court found: 'here there was no independent evidence of an overarching conspiracy, that Shreffler knew that his seller sold drugs to other people or that some of his buyers did likewise provides scant support for the proposition that any of these individuals agreed to cooperate with one another.' *United States v. Pressler*, 256 F.3d 144, 152

The Court went on to distinguish the facts of this case from *Gibbs*:

> This basic difference also explains why one of the factors about which we spoke in Gibbs does not translate well to the situation at bar. Gibbs stated that "the length of affiliation between the defendant and the conspiracy" was relevant to determining whether the defendant agreed to join it. 190 F.3d at 199 (emphasis added). We explained that this factor is relevant because "when a defendant drug buyer has repeated, familiar dealings with members of a conspiracy, that buyer probably comprehends fully the nature of the group with whom he [or she] is dealing, is more likely to depend heavily on the conspiracy as the sole source of his [or her] drugs, and is more likely to perform drug-related acts for conspiracy members in an effort to maintain his [or her] connection to them." Id. at 199. This factor (and our explanation for it) assumes the existence of an underlying conspiracy; after all, it makes little sense to talk about the defendant's comprehension of the nature of the "group" with whom he or she is dealing unless it has already been shown that there is an underlying group. The lack of an underlying (or overarching) conspiracy is the Government's problem here.
>
> *United States v. Pressler*, 256 F.3d 144, 152

Moreover, the court found that '[T]he fact that several of Shreffler's buyers knew that Shreffler often got his drugs from Caban and that they knew about each other is not enough to establish an agreement among them to distribute heroin. *United States v. Pressler*, 256 F.3d 144, 153

First, the proof in our case admittedly made out a case, not of a single conspiracy, but of several conspiracies, notwithstanding only one was charged in the indictment. *United States v. Falcone*, 311 U.S. 205; *United States v. Peoni*, 100 F.2d 401(2nd Cir. 1938); *Tinsley v. United States*, 43 F.2d 890, 892-893. Petitioner's drug business was only one of many operating in the NBA. All of the drug dealers used workers and lookouts that were independent contractors who worked for many dealers at the same time.

The phone calls that were introduced through Agent Cardona showed a disorganized, loosely held unreliable hodgepodge of people that worked in the NBA in the drug trade. The calls showed that multiple dealers operated within the NBA at multiple, overlapping times frequently against each other. The evidence from the calls showed that people lied to Petitioner,

did not show up to sell drugs for him, were only around the building for short periods of time, were stealing from Petitioner or did not sell any drugs at all.

Rasheen Chandler used lookouts that either were not charged in the conspiracy or were charged in conspiracies in other indictments and that the lookouts were free agents, worked for various groups at the same time and even worked for dealers selling in different buildings at the same time. **A349-350** Dottie Good told the government in 2014 that she was unaware of the presence or identities of any lookouts white she told drugs for Appellant. Five years later during her direct testimony she said that she remembers three lookouts; one who was charged in two different conspiracies and a husband-and-wife couple, one of whom was charged in a conspiracy in a different case. **A669** This evidence shows that, not only were the two cooperating codefendants completely unreliable, but that the 'lookouts' were not involved in a single overarching conspiracy with Petitioner, because they did not share a single criminal objective.

Instead, if this Court believes the testimony that lookouts existed, they shared were similar or parallel objectives with Petitioner. These people were being used by multiple groups for multiple purposes. The government did not charge or even know the identities of the majority of people named by the cooperators. Therefore, this evidence helped to prove that there were multiple conspiracies. Most importantly, there was absolutely no proof of "a demonstrated level of mutual trust" between Petitioner and anyone else in the alleged conspiracy as listed in *United States v. Frisby*, 574 Fed. Appx. 161, 164 a circumstance especially probative of a conspiracy.

Second, the evidence showed that there were multiple conspiracies because the two government cooperating witnesses testified that they sold drugs for multiple people throughout the time period covered in Petitioner's indictment. The first phone call played by the

government established that their cooperating codefendant sold drugs for Edward Stinson in a different conspiracy charged by the government. Stinson told Petitioner that he could sell drugs in any color other than pink because Chandler was only allowed to sell drugs for Stinson in pink bags. Not only did Chandler testify that he sold drugs for Stinson, but Agent Trainor testified that Chandler told him that Petitioner only sold his drugs in red packets. All of the sales, that the government put into evidence in their case, including those sold by Chandler, to the confidential sources, were in pink packets. When agents raided Chandler's room they recovered 43 pink packets of crack contained in a cooking bowl. Dottie Good testified that she sold for three different people and told Agent Baver about a fourth. Additionally, Dottie Good (and the government's CS) were arrested for selling drugs to the CS six months after the date of the indictment.

Third, the cooperating codefendants were completely unreliable and no trier of fact should have given their testimony weight. Both cooperators had open prior PWID arrests, both received extremely significant breaks on their open cases during the time of their cooperation and one was suffering from severe mental health issues at least at the time of her testimony. Neither one spent any significant time in any jail on this case, despite facing decades in both mandatories and guideline ranges. In fact, Dottie Good, a career criminal under federal law for three prior PWID convictions, served less than one day in jail for her role in this alleged conspiracy. It is unknown what significant break was given to Rasheen Chandler as he was not sentenced at the time of Petitioner's sentencing hearing. These witnesses were consistently inconsistent, incredible and were given unbelievable breaks by the government in their cases. For the reasons outlined above, no rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the testimony of Rasheen Chandler or Dottie Good.

Fourth, the confidential informants had significant motive to falsify as they were all agents of the government. Despite having cameras positioned both in the hallway of the 18th floor and outside the NBA from November 27, 2013, there was no photograph or video from either of these cameras that ever showed Petitioner with anyone mentioned in the indictment or in the trial, of Petitioner dealing any drugs within the NBA or of Petitioner even present on the 18th floor of the NBA.

Finally, Agents Trainor and Baver introduced evidence of eight hand to hand sales inside of the NBA involving codefendants and two confidential sources, DA and VB. Make Ferrell ('Diamond') made a sale of four red packets to DA on September 20, 2013 and was never seen again. On April 18th and 25th of 2014, Dottie Good made two sales - one on the 15th floor consisting of four blue packets and one on the 18th floor consisting of ten blue packets to VB and was never seen again. On October 31, 2013, Taft Harris (Taz) sold six pink packets to DA. Finally, Rasheen Chandler sold six times to DA. One sale is for red packets and all the remaining sales are solely pink packets.

The confidential sources used in the aforementioned sales all had prior convictions, pending cases, drug habits and were even on probation or parole at the time of their buys. The confidential source (CS) used in all of the transactions with Chandler, Ferrell and Harris was identified as DA (sometimes DS). Agent Trainor testified that DS had a number of arrests prior to her use, was arrested using eight (8) different names and three (3) different dates of birth, several convictions for felony drugs and other crimes. DA was on probation at the time of her cooperation for a felony possession with intent to deliver case. When agent Cardona received the requested rap sheet back from the Pennsylvania State Police, she was informed that DA was wanted on an outstanding warrant for failure to appear on an assault case.

The CS used in the drug sales with Dottie Good was 'purchasing drugs without authorization from the FBI or the DEA' and was subsequently 'terminated as a source for the FBI and DEA.' Petitioner was not informed by the government that the CS was terminated. In fact, Petitioner found out only through his own investigation that both the CS and the co-operating co-defendant Dottie Good had been arrested together for buying and selling drugs to each other in the lobby of the NBA less than six months after the time frame of the indictment. Both were charged in that incident and those cases remained open during the investigation and most of Dottie Good's cooperation.

The government's evidence showed a disorganized dysfunctional group of people who were working for a number of different sellers at any given time. It showed that the government used unreliable sources who each had a myriad of past convictions and had open cases, bench warrants and one who was even terminated by the government for 'purchasing drugs without authorization from the FBI or DEA'[14] and who were paid, in total, over $25,000 by the government for their services. Here, the government's evidence presented through recorded phone calls, hand to hand sales and two cooperating codefendants showed overlapping, competing and distinct multiple conspiracies including those run by Rasheen Chandler for Edward Stinson and Dottie Good selling for several different people in the NBA, including herself.

For these reasons, it is evident that there was no unity of purpose between the alleged conspirators, no intent to achieve a common goal and no agreement to work together toward that goal and, therefore, there was no rational basis for the decision by the jury to find one overarching conspiracy beyond a reasonable doubt.

[14] Confidential source VB was arrested for buying drugs from Dottie Good outside the purview of the government for her own personal use.

II. THE SECOND QUESTION PRESENTED IS: WHETHER THE THIRD CIRCUIT COURT OF APPEALS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF *UNITED STATES V. JOHNSON* AND *UNITED STATES V. DIAZ*, WHERE THE SENTENCING COURT'S FACTUAL FINDING ATTRIBUTING MORE THAN 280 GRAMS OF CRACK COCAINE WAS CLEARLY ERRONEOUS BECAUSE THE FINDING WAS UNSUPPORTED BY SUBSTANTIAL EVIDENCE, LACKED ADEQUATE EVIDENTIARY SUPPORT IN THE RECORD, AND WAS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE.

When a district court improperly bases a sentence on clearly erroneous facts, such a procedural error requires reversal. *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). The court will find a sentencing court's factual findings clearly erroneous if they are "unsupported by substantial evidence, lack adequate evidentiary support in the record, are against the clear weight of the evidence or where the district court has misapprehended the weight of the evidence." *United States v. Johnson*, 302 F.3d 139, 159 (3d Cir. 2002), quoting *United States v. Roberson*, 194 F.3d 408, (3d Cir.1999); *United States v. Roman*, 121 F.3d 136, 140 (3d Cir. 1997); *United States v. Metro*, 882 F.3d 431, 437 (3d Cir. 2018).

Under *United States v. Diaz*, 951 F.3d 148, 159 (3rd Cir. 2020), a sentencing court must determine by a preponderance of the evidence that a defendant was responsible for a particular weight of a substance before attributing that amount to the defendant. *United States v. Collado*, 975 F.2d 985, 998 (3d Cir. 1992). District courts may not calculate quantity based on "mere speculation." *Id.* However, we permit "some degree of estimation" in drug conspiracy cases because "the government usually cannot seize and measure all the drugs that flow through a large drug distribution conspiracy." *Id.*; *United States v. Paulino*, 996 F.2d 1541, 1545 (3d Cir. 1993).

Moreover, at sentencing a court must take care not to "automatically shift the quantity attributable to the conspiracy as a whole to the defendant." *United States v. Rivera Calderon,578 F.3d 78, 100 (1st Cir. 2009); United States v. Cruz-Rodriguez, 541 F.3d 19, 32 (1st Cir.*

2008)(*citing United States v. Colon-Solis, 354 F.3d 101, 103 (1st Cir. 2004))*. Rather, "[w]here a defendant has been convicted of participating in a drug-trafficking conspiracy, a sentencing court must determine the specific quantity of drugs for which the defendant is [personally] responsible." *Cruz-Rodriguez*, 541 F.3d at 32 (*United States v. Colon-Solis, 354 F. 3d 101, 103 (1t Cir. 2004)); see also United States v. Vargas,* 560 F.3d 45, 49 (1st Cir. 2009) (recognizing that "a defendant's offense level is driven largely by the quantity of drugs attributed to him.")

A defendant is responsible for "drugs he personally handled or anticipated handling, and, under the relevant conduct rubric, for drugs involved in additional acts that were reasonably foreseeable by him and were committed in furtherance of the conspiracy." *United States v. Sepulveda*, 15 F.3d 1161, 1197 (1st Cir. 1993) *citing United States v. Garcia*, 954 F.2d 12, 15 (1st Cir. 1992) The quantity finding must be supported by a preponderance of the evidence. *United States v. Rivera-Maldonado*, 194 F.3d 224, 228-29 (1st Cir. 1999) (noting that a district court's quantity finding must have "demonstrable record support" and be based on reliable evidence), but "the sentencing court may rely on reasonable estimates and averages." *Rivera-Maldonado*, 194 F.3d at 228.

Here, Petitioner avers that the District Court's factual determination that Petitioner was responsible for at least 280 grams of heroin, hence a guideline level of 30, should be reversed as is clear error under *US v. Johnson* and based on mere speculation under *US v. Diaz*.

First, the sentencing court committed clear error by finding Petitioner liable for the drugs sold by Rasheen Chandler and Dottie Good because, for the reasons articulated in Argument I, the government did not prove beyond a reasonable doubt that Petitioner was part of a single overarching conspiracy.

The Third Circuit held that "the standard for accomplice attribution under § 1B1.3 is stringent." *Price* at 732, *citing United States v. Miele,* 989 F.2d 659, 666 (3d Cir. 1993). In *United States v. Collado*, 975 F.2d 985, 990 (3d Cir. 1992), the Third Circuit also held that a defendant can be responsible for the quantity of drugs distributed by his or her co-conspirators only if the drugs distributed (1) were in furtherance of the jointly undertaken activity, (2) were within the scope of the defendant's agreement, and (3) were reasonably foreseeable in connection with the criminal activity the defendant agreed to undertake. *United States v. Price,* 13 F.3d 711, 732; *See Collado* at 995. Regarding what is reasonably foreseeable, the Third Circuit Court of Appeals has made it clear that when applying "accomplice attribution" in determining the drug amounts that are reasonably foreseeable in a drug conspiracy, it is critical that the sentencing court conduct a "searching and individualized inquiry into the circumstances surrounding each defendant's involvement in the conspiracy." *United States v. Collado*, 975 F.2d at 995. (Also see *United States v. Whitted*, 502 Fed. Appx. 143 (3rd Cir. 2020).

Here, the evidence showed multiple conspiracies all running at the same time, in the same location and sometimes using the same workers. As argued above, the evidence showed that the drugs sold by Rasheen Chandler in the pink packets were drugs sold at the direction of and for the benefit of Edward Stinson and Rasheen Chandler. Edward Stinson stated that only his crack could be sold in pink packets and that he had a 'boy on the 18th floor that was selling for him' that Petitioner avers was Rasheen Chandler. Agent Trainor testified that Rasheen Chandler told him that Petitioner always sold his drugs in red packets. Moreover, Dottie Good admitted in her testimony and in her statements to the government that she sold crack cocaine for at least three different sellers (and herself) within the NBA. All fourteen of the packets sold by Dottie Good were packaged in blue. There were only two sales that were put into evidence that consisted of

red packets, four sold by Mike Farrell on September 20, 2013 and four sold by Rasheen Chandler on February 11, 2014. Every other packet either sold by Rasheen Chandler or seized in Rasheen Chandler's room were pink as described by Edward Stinson. As such, Petitioner argues that most of the drugs used by the district court in its sentencing calculations were not in furtherance of any jointly undertaken activity by Petitioner, but instead by Chandler and Good in their own separate conspiracies selling for individuals who do not appear on Petitioner's indictment.

Second, the sentencing court estimated the amount of drugs attributable to Petitioner based on mere speculation as the evidence presented was wholly unreliable. The government's evidence regarding the amount of drugs sold in the conspiracy came from three sources: (1) the testimony of two FBI lab chemists, (2) the testimony of two cooperating co-defendants and (3) three confidential informants.

Petitioner avers that the weight of the drugs evidence testified to by the FBI laboratory chemists and resultantly attributed to Petitioner by the sentencing court was unreliable, inconsistent and wholly without any evidence of a chain of custody.

The government need not prove a perfect chain of custody for evidence to be admitted at trial; gaps in the chain normally go to the weight of the evidence rather than its admissibility. The Third Circuit has long rejected the proposition that evidence may only be admitted if a "complete and exclusive" chain of custody is established. *United States v. Rawlins*, 606 F.3d 73, 82 (3d Cir. 2010); *United States v. DeLarosa,* 450 F.2d 1057, 1068 (3d Cir. 1971). Instead, gaps in the chain go to the weight of the evidence. *Id.* at 83, *citing, Melendez-Diaz v. Massachusetts*, 557 U.S. ___, 129 S. Ct. 2527, 2532 n.1, 174 L. Ed. 2d 314 (2009) (quoting *United States v. Lott*, 854 F.2d 244, 250 (7th Cir. 1988); *See also United States v. Clark*, 425 F.2d 827, 833 (3d Cir. 1970).

Here, there were not just gaps, but a total lack of any recorded chain of custody. Agent Trainor testified that none of the forms for any of the drugs purchased in this case that were sent to the laboratory for weighing and testing were filled out with regard to the chain of custody information, even though there are boxes on each form to record such information. One of the lab chemists, Ms. Vitale, testified that she could not say when any of the drugs were received at the lab for testing. She also testified that the evidence was often opened, resealed, opened again to put something in and then resealed again. The evidence also showed that, on some occasions, the 'seized' amount of evidence from the drug sales matched the 'submitted' amount, but many times it varied greatly. Moreover, the amounts 'seized' by the agents varied greatly from the 'net' weight recorded by the chemists at the lab. According to what constitutes the 'seized' weight and the 'net' weight from the testimony of Agent Trainor and Ms. Vitale, these number should match exactly. As can be seen from the reports, these numbers were rarely even close, let alone matched exactly. The evidence also showed that different agents recorded vital information regarding the amounts seized and submitted in different ways. Petitioner compiled and provided the jury a chart that contained all the discrepancies in weight regarding the seized and submitted drugs to show the inconsistent weights of the collected evidence.

Based upon the inconsistent weights, the inconsistent methods used to weigh the evidence, the lack of any chain of custody and the procedures used at the laboratory, Petitioner argues that the no rational trier of fact could have found proof of any amount of drugs attributable to Petitioner beyond a reasonable doubt based on the presented evidence. As such, the trial court's finding of more than 280 grams was unsupported by substantial evidence and lacked adequate evidentiary support in the record.

The sentencing court's estimation of drugs attributable to Petitioner lacked evidentiary support because, for the reasons argued above, the cooperating codefendants were completely unreliable. As stated above, both Rasheen Chandler and Dottie Good had many arrests (several for possession with intent to deliver crack cocaine), gave many inconsistent statements to the investigating agents, were paid for their cooperation, were given significant breaks on this case as well as cases that they were charged with and were open during their cooperation, were caught selling their own drugs at the NBA unrelated to the charges in the indictment and other examples.

The sentencing court almost exclusively relied on the testimony of these two witness to determine the amount upon which Petitioner was sentenced. For these reasons and the reasons articulated in Argument I, Petitioner avers that the sentencing court's estimation was unsupported by substantial evidence and lacked adequate evidentiary support in the record.

Additionally, the sentencing court's estimation of drugs attributable to Petitioner lacked evidentiary support because the confidential sources used to purchase the drugs attributed to the alleged conspiracy all had prior convictions, pending cases, drug habits, were even on probation or parole at the time of their buys and were paid over $25,000 for their cooperation. **A228** The confidential source (CS) used in all the transactions with Chandler, Ferrell and Harris was identified as DA (sometimes DS). Agent Trainor testified that DS had many arrests prior to her use, was arrested using eight (8) different names and three (3) different dates of birth, several convictions for felony drugs and other crimes. DA was on probation at the time of her cooperation for a felony possession with intent to deliver case. When agent Cardona received the requested rap sheet back from the Pennsylvania State Police, she was informed that DA was wanted on an outstanding warrant for failure to appear on an assault case.

The confidential source used in the drug sales with Dottie Good was 'purchasing drugs without authorization from the FBI or the DEA' and was subsequently 'terminated as a source for the FBI and DEA.' Petitioner was not informed by the government that the CS was terminated. In fact, Petitioner found out only through his own investigation that both the CS and the co-operating co-defendant Dottie Good had been arrested together for buying and selling drugs to each other in the lobby of the NBA less than six months after the time frame of the indictment. Both were charged in that incident and those cases remained open during the investigation and most of Dottie Good's cooperation.

The Confidential source used in all the sales that were allegedly made by petitioner was identified as JF. JF had at least eight separate prior arrests and provided fifteen different names, dates of births and social security numbers on his encounters with law enforcement. He was also paid $11,800 for his cooperation. **A228**. Several times the agents were unsure of the amounts of money given to him, returned from him, where money visible on the video recordings went or where a bag allegedly containing illegal substances went after handed to JF on video. Several times JF returned unknown substances to the agents after allegedly purchasing crack from Petitioner.

Moreover, the people selling the drugs to these confidential sources were not part of a cohesive, organized structure. Instead, the government's evidence showed a disorganized dysfunctional group of people who were working for a number of different sellers at any given time. It showed that the government used unreliable sources who each had a myriad of past convictions and had open cases, bench warrants and one who was even terminated by the government for 'purchasing drugs without authorization from the FBI or DEA.'[15] Moreover, these confidential sources were paid, in total, over $25, 000 by the government for their services. Here, the

[15] Confidential source VB was arrested for buying drugs from Dottie Good outside the purview of the government for her own personal use.

government's evidence presented through these hand-to-hand sales to these confidential sources showed overlapping, competing and distinct multiple conspiracies. For these reasons and the reasons articulated in Argument I, Petitioner avers that the sentencing court's estimation was unsupported by substantial evidence and lacked adequate evidentiary support in the record.

CONCLUSION

For the foregoing reasons, the judgement of the Third Circuit Court of Appeals should be reversed.

Respectfully submitted,

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