No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOEDON BRADLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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JOEDON BRADLEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Petitioner Joedon Bradley, respectfully asks leave to file his petition for writ of certiorari without prepayment of costs and to proceed in forma pauperis. Mr. Bradley encloses his affidavit of indigence in support of this motion.

Dated: October 27, 2021

/s/ Matthew M. Robinson
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AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Joelan Bradley, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): 0	$ 0	$ 0	$ 0	$ 0
Total monthly income:	$ 0	$ 0	$ 0	$ 0

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA →			$
NA →			$
NA →			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
NA →			$
NA →			$
NA →			$

4. How much cash do you and your spouse have? $_____
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
0 →		$	$
0 →		$	$
0 →		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N-A

☐ Other real estate
Value N-A

☐ Motor Vehicle #1
Year, make & model N-A
Value _____

☐ Motor Vehicle #2
Year, make & model N-A
Value _____

☐ Other assets
Description N-A
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
0	$ 0	$ 0
0	$ 0	$ 0
0	$ 0	$ 0

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
J D B	Son	11
J P B	Son	13
J S B	Son	7

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No	$ 0	$ 0
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: _____	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ 0	$ 0
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other: _____	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): _____	$ 0	$ 0
Total monthly expenses:	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 12-15, 2021

Jocelyn Lewis
(Signature)

QUESTIONS PRESENTED FOR REVIEW

A. **Whether the Sixth Circuit Erroneously Affirmed Petitioner's Convictions When Evidence Demonstrated that Multiple Conspiracies Existed and that Petitioner Was Not in the Chain of Distribution with Respect to Second Conspiracy that Resulted in Bodily Injury or Death, Yet the District Court Failed to Instruct the Jury on Multiple Conspiracies and the Element of Chain of Distribution?**

B. **Whether the Sixth Circuit Erroneously Affirmed Bradley's Convictions on Counts 2-10 When the Government Failed to Present Evidence Demonstrating that Bradley Aided and Abetted in the Distribution of a Controlled Substance Containing Fentanyl?**

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III. TABLE OF AUTHORITIES

Case Law:

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IV. OPINIONS BELOW

The United States District Court for the Middle District of Tennessee entered final judgment of conviction on July 11, 2019. See Judgment, United States v. Bradley, 3:16-cr-00176 (MD Tenn.). The U.S. Court of Appeals for the Sixth Circuit affirmed the district court's judgment in a published opinion dated May 26, 2021. United States v. Bradley, No. 19-5764 (6th Cir); United States v. Williams, 998 F.3d 716 (6th Cir 2021). The Sixth Circuit subsequently denied petition for rehearing en banc on August 18, 2021. All decisions are attached.

V. STATEMENT FOR THE BASIS OF JURISDICTION

The district court had jurisdiction pursuant to 18 U.S.C. § 3231 as the case was a criminal matter involving a violation of the laws of the United States, including conspiracy to distribute a substance containing a detectable amount of fentanyl resulting in serious bodily injury or death, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 846 (Count One); and distribution of a mixture or substance containing a detectible amount of fentanyl resulting in the serious bodily injury and death, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2 (Counts Two-Ten). RE 256, Fifth Superseding Indictment, PageID#660-671. The district court entered judgment against Petitioner on October 10, 2017 and Petitioner filed a timely notice of appeal from that judgment on October 17, 2017. RE 776 Judgment; PageID#6783; RE 759 Notice of Appeal, PageID#6507. Accordingly, the Sixth Circuit had jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

This Court has jurisdiction under 28 U.S.C. § 1254(1), as the Sixth Circuit rendered an opinion affirming Petitioner's conviction on May 26, 2021 and a final decision on August 18, 2021, denying Petition for Rehearing En Banc. Petitioner is filing this petition within 90 days from that decision. See United States v. Williams, 998 F.3d 716 (6th Cir 2021); Order, attached.

VI. STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

> No person shall * * * be deprived of life, liberty, or property without due process of law * * *.

U.S. Const. Amend. V.

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.

U.S. Const. Amend. VI.

VII. STATEMENT OF THE CASE

On May 10, 2017, a Grand Jury sitting in the United States District Court for the Middle District of Tennessee issued an Fifth Superseding Indictment charging Bradley and three others with crimes related to the distribution of fentanyl. Bradley was charged with the following offenses:

Count One:	Conspiracy to distribute and possess with intent to distribute a mixture or substance containing a detectible amount of fentanyl, resulting in death or serious bodily injury, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 846.
Count Two:	Distribution of a substance containing a detectible amount of fentanyl, the use of which resulted in the serious bodily injury to Individual A, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.
Count Three:	Distribution of a substance containing a detectible amount of fentanyl, the use of which resulted in the death of Individual B, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.
Count Four:	Distribution of a 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 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.
Count Five:	Distribution of a 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 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C) and 18 U.S.C. § 2.

Count Six: Distribution of a 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 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2.

Count Seven: Distribution of a 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 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2.

Count Eight: Distribution of a 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 21 U.S.C. § 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2.

Count Nine: Distribution of a 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 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2.

Count Ten: Distribution of a 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 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) and 18 U.S.C. § 2.

RE 256 Fifth Superceding Indictment; PageID#660-670.

Counsel for Jonathan Barrett filed a motion seeking to dismiss Counts Two Three, Four, Seven, Eight and Nine of the Fifth Superseding Indictment. RE 319 Motion to Dismiss; PageID#885-899. The motion points out that:

> "Each of the particulars common to Count Two and the other substantive counts are identical to Count One allegations, except for the citation to the aiding and abetting statute. In Count One the government charges the four defendants jointly in one count by using conspiracy allegations. In Count Two the government attempts to charge the defendants jointly in one count by using the aiding and abetting statute. The substantive counts in this indictment are not real substantive counts, they are actually nine separate conspiracy counts, charging again the same crimes alleged in the Count One conspiracy. The government has charged all four defendants with two crimes relating to one specific Individual.

> The result is fatally flawed substantive counts that either (1) violate defendant's constitutional rights to fundamental due process by perverting the aiding & abetting statute to improperly join multiple defendants and multiple crimes in one count; or (2) violate the prohibition against Double Jeopardy by twice exposing Barrett to trial on identical charges.

Id; PageID#890.

A motion to dismiss Count One was also filed. RE 335, Motion to Dismiss; PageID#974-987. It was argued that "[b]ecause the crime charged in Count One is the § 84[6] conspiracy, all the allegations regarding violations of 21 U.S.C. § 841(b)(1)(C) (death or serious bodily injury) are inappropriate, not material, not relevant, and prejudicial; and the count is fatally flawed. A conspiracy conviction cannot be the basis for § 841(b)(1)(C) enhancement." Id; PageID#979-980. It was also argued that "[k]nowledge that the pills were counterfeit and contained fentanyl is necessary to join the conspiracy alleged in Count One. Barrett could not have joined this conspiracy without that knowledge." Id; PageID#984-985.

On February 28, 2018, Bradley joined in the motions. RE 474 Motion; PageID#1920-1922. Bradley added that for the reasons stated in Barrett's motions to dismiss, Counts Six and Ten should also be dismissed. Id.

On December 14, 2017, the district court heard argument concerning the pending motions to dismiss. RE 411 Transcript; PageID#1585-1608; see, RE 319 Motion to Dismiss; PageID#885-899; RE 335 Motion to Dismiss; PageID#974-987. The court denied each of the motions, finding that charging the defendants under an aiding and abetting theory was appropriate because the "defendant was charged with possessing pills with intent to distribute downstream and, therefore, defendant is potentially liable for aiding and abetting others." RE 411 Transcript; PageID#1586. The court explained, "the aiding and abetting charge is another way for the

government to get a guilty verdict. It's a different set of legal instructions." Id; PageID#1599.

On February 28, 2018, Bradley filed a Motion to Incorporate Count Six and Ten of the Fifth Superseding Indictment into Codefendant Barrett's Motion to Dismiss, pointing out that those counts had not been addressed within Barrett's previously filed motion. RE 474, Motion; Page ID#1920.

On March 5, 2018, Bradley filed a Motion arguing that the jury instructions should include "language that the Jurors must find beyond a reasonable doubt, that the Defendant knowingly distributed and/or knowingly possessed with the intent to distribute the specified substance, fentanyl. RE 517 Motion; PageID#2203-2208. Bradley also sought to strike the language from the jury charge that references aiding and abetting as it pertains to Bradley. Id.

The Court held a hearing on March 13, 2019 addressing any pending pretrial motions. RE 799 Motions Hearing; PageID#6986-7166. Bradley pointed out that "all the people charged in the Counts Two through Ten were principals and not aider and abettors. And that's significant for [Bradley] because my client doesn't know any of the people that are sitting at the defense table. And he doesn't know any of the victims. And so we were at a loss to understand how he could have aided and abetted on these days that were indicated in Counts Two through Ten." Id; PageID#7004.[1]

The government argued that the charge of "aiding and abetting is implicit in every charge and is appropriate in all cases," but that Bradley "did possess these drugs and did distribute them to other co-conspirators who have since pled guilty." Id; PageID#7005-7006. The court agreed with the government and ordered that the aiding an abetting charges were appropriate. Id.

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[1]Significantly, between the Fourth and Fifth Superseding indictments the government made plea deals with Falkowski, Valles, and Knowles, so they were removed as defendants. Joedon Bradley was added to all nine substantive counts under an aiding an abetting theory. Previously, Bradley had not been named in any substantive count, although he was a defendant in the conspiracy count.

On March 14, 2018, Mr. Bradley and his co-defendants proceeded to a jury trial in the United States District Court for the Middle District of Tennessee. The parties rested on March 22, 2018. At that point, the court addressed issues with respect to jury instructions. RE 617 Trial Trans; PageID#4517-4520. The court denied defense request for a "buyer-seller instruction." Id; PageID# 4519-4520. The court also denied defense request for a multiple conspiracy instruction. Id; PageID#4522. The court specifically noted Bradley's continuing objection to the to aiding and abetting instructions, the refusal to issue multiple conspiracy instructions, and the decision to issue the "incremental effect charge" to the jury. Id; PageID#4526-4527.

During closing arguments, the government told the jury over defense continuing objection that in order to be found guilty of conspiracy, "these defendants do not need to know that what they were distributing contained fentanyl and they do not need to know that it was counterfeit. * * * What they need to know is that it was some kind of a controlled substance." RE 618 Trial Trans; PageID#4781. Over objection of defense counsel, the government told the jury that a conspiracy is like how Burger King sells french fries. Id; PageID#4783-4785. Specifically,

> Well, there's a potato farmer up in Idaho. He grows potatoes. Then those potatoes, through a series of steps, end up on a truck and a driver drives them and they get processed, they get chopped up, it's not on the chart, then they end up in a deep fryer and a line cook deep fries the French fries for you. Then he hands them, or she, hands them to the person at the counter, in the window, and the customer in the drive-thru gets those French fries. All of these people agreed to sell French fries. They're all in a conspiracy with the intent to possess and distribute French fries. They may not know each other. The potato farmer likely doesn't know the guy who's handing the customer the French fries through the window, but they're all in the same conspiracy.

Id; PageID#4784.

On March 26, 2018, the jury found Mr. Bradley guilty of Counts One, Two, Three, Four, Five, Seven, Eight, Nine and Ten. RE 578, Verdict, PageID#2819-2840. The jury further found that

death or serious injury occurred in each count charged. Id. Subsequently, motion for judgment of acquittal was filed. RE 624 Motion; PageID#5074-5089.

Prior to sentencing Bradley lodged objections with the Guideline Range calculations presented in his Presentence Investigation Report (PSR). RE 680 Position with Respect to Sentencing Factors; PageID#5583-5591; RE 682 Sentencing Memorandum; PageID#5596-5618; RE 760 PSR; PageID#6542-6544. Bradley objected to the assessment of a Criminal History Category V, arguing that he should receive a total of 9 criminal history points, resulting in a Criminal History Category IV. RE 680 Position with Respect to Sentencing Factors; PageID#5584. Bradley objected to paragraph 22 of the PSR and the 2-level weapon enhancement under § 2D1.1(b)(1). RE 680 Position with Respect to Sentencing Factors; PageID#5584-5585; RE760 PSR; PageID#6543. He further objected to the assessment of a 4-level leadership enhancement under § 3B1.1(a). RE 680 Position with Respect to Sentencing Factors; PageID#5585-5586; RE 760 PSR; PageID#6543-6544. Based on these objections, Bradley argued that the correct guideline range was 324 to 405 months' imprisonment. Id.

On December 17, 2018, Bradley appeared before the Honorable Jack Zouhary, United States District Judge. RE707 1st Sentencing Hearing; PageID#6261-6327. The district court found the Criminal History Category to be IV. Id; PageID#6267-6268. The government called Preston Davis in support of their position that Bradley should receive the weapon enhancement and the § 3B1.1(a) leadership enhancement. Id; PageID#6284-6325. On July 1, 2019, the court found Davis' testimony to be unreliable and sustained Bradley's objections to the leadership enhancement, weapon enhancement and criminal history score. RE 766 2nd Sentencing Hearing; PageID#6606-6648. The court found the total offense level to be 38 and a Criminal History Category IV, resulting in a

guideline imprisonment range of 324 to 405 months. Id; PageID#6614. The court then sentenced Bradley to a term of 360 months' imprisonment. Id; PageID#6642-6643.

Bradley filed a timely notice of appeal from a final judgment of the district court. RE 776 Judgment; PageID#6783; RE 759 Notice of Appeal, PageID#6507. On appeal to the Sixth Circuit Court of Appeals, Bradley made the following arguments:

I. Whether Bradley's Convictions on Counts 2-10 Must be Vacated Because the Government Failed to Present Evidence Demonstrating that Bradley Aided and Abetted in the Distribution of a Controlled Substance Containing Fentanyl as Charged in those Counts.

II. Whether Bradley's Conspiracy Conviction Must be Vacated Because the Evidence Demonstrated Multiple Conspiracies and Individual Buyer-Seller Relationships and Resulted in a Fatal Variance Between Indictment and Evidence Admitted at Trial.

III. Whether Bradley's Motion to Suppress Statements Made to the Authorities Should Have Been Granted When Bradley Did Not Knowingly and Voluntarily Waive His Miranda Rights.

On May 26, 2021, the Sixth Circuit issued a published opinion affirming Petitioner's convictions. United States v. Williams, 998 F.3d 716 (6th Cir 2021).

Petitioner, pro se, filed a petition for rehearing en banc. Petitioner argued that the district court erroneously applied the enhanced sentence under § 841(b)((1)(C) by relying on Pinkerton's theory of liability. Petition, p 6. Petitioner argued that the jury instructions failed to provide guidance on the "chain of distribution" element required to convict under § 841(b)(1)(C) and erroneously permitted an enhanced conviction without a finding that Petitioner was in the "chain of distribution." Id at 3. The Sixth Circuit issued a blanket order denying petition for rehearing in banc on August, 18, 2021.

VIII. STATEMENT OF FACTS

The following facts are taken directly from the Sixth Circuit's Opinion affirming Petitioner's conviction:

> 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.

IX. Argument Addressing Reasons for Allowing the Writ

Under Supreme Court Rule 10, the Court will review a United States Court of Appeals decision for compelling reasons. A compelling reason exists when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

In the instant case, the Sixth Circuit's decision erroneously applied Supreme Court precedent in affirming Petitioner's convictions when evidence demonstrated that multiple conspiracies existed and that Petitioner was not in the chain of distribution with respect to second conspiracy that resulted in bodily injury or death, yet the district court failed to instruct the jury on multiple conspiracies and the element of chain of distribution. The Sixth Circuit also erred in affirming Bradley's convictions

on Counts 2-10 because the government failed to present evidence demonstrating that Bradley aided and abetted in the distribution of a controlled substance containing fentanyl. In reaching its decision on both of those issues the Sixth Circuit has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

A. The Sixth Circuit Erroneously Affirmed Petitioner's Convictions When Evidence Demonstrated that Multiple Conspiracies Existed and that Petitioner Was Not in the Chain of Distribution with Respect to Second Conspiracy that Resulted in Bodily Injury or Death, Yet the District Court Failed to Instruct the Jury on Multiple Conspiracies and the Element of Chain of Distribution.

Bradley's convictions must be reversed because the evidence introduced at trial so diverged from the charges set forth in the indictment as to violate Bradley's rights under the Fifth and Sixth Amendments. The indictment charged a single conspiracy but the evidence at trial showed multiple conspiracies. Evidence demonstrated the existence of two separate and distinct conspiracies. The first conspiracy involved Petitioner, Eric Falkowski, Preston Davis and Knowles, and was a conspiracy to manufacture and distribute counterfeit percocet. The second conspiracy involved Barrett, Johnny Williams, Jason Moss, Jennifer Dogonski, and Davi Valles, and was a conspiracy to distribute those pills in Murfressboro, Tennessee. Petitioner was not part of the second conspiracy. The defense requests for a multiple conspiracy instruction to the jury was refused. As a result, there was a prejudicial variance between the indictment and the proof at trial because Bradley was not part of the chain of distribution in the second conspiracy and therefore improperly received the enhanced statutory penalty under § 841(b)(1)(C).

The Sixth Circuit agreed that it was error for the court to apply the resulting in death conviction under § 841(b)(1)(C) based on Pinkerton coconspirator liability theory. However, the

court found that error was not reversible because the evidence showed that Bradley was in the "chain of distribution" and therefore the § 841(b)(1)(C) enhancement was appropriate. The Sixth Circuit did not recognize that two separate and distinct conspiracies were proved at trial or that Bradley was not part of the second conspiracy in Murfreesboro where death or serious bodily injury occurred as a result of the controlled substances.

"An indictment may be the subject of an actual amendment, a constructive amendment, or a variance." United States v. Budd, 496 F.3d 517, 521 (6th Cir. 2007). Thus, constructive amendments and variances are two types of modifications to indictments that courts have recognized. United States v. Hynes, 467 F.3d 951, 961 (6th Cir. 2006). Constructive amendments and variances differ "with respect to the burden placed upon the defendant and the remedy mandated upon a showing that a constructive amendment or variance has occurred." United States v. Kuehne, 547 F.3d 667, 683 (6th Cir. 2008).

"If an indictment alleges one conspiracy, but the evidence can reasonably be construed only as supporting a finding of multiple conspiracies, the resulting variance between the indictment and the proof is reversible error if the appellant can show that he was prejudiced thereby." Warner, 690 F.2d at 548. "Whether a single or multiple conspiracies have been shown is usually a question of fact to be resolved by the jury under proper instructions and to be considered on appeal in the light most favorable to the government." United States v. Moss, 9 F.3d 543, 551 (6th Cir. 1993).

This Court has warned, "as [the conspiracy] is broadened to include more and more, in varying degrees of attachment to the confederation, the possibility for miscarriage of justice to particular individuals becomes greater and greater" Kotteakos v. United States, 328 U.S. 750, 776, 66 S. Ct. 1239, 90 L. Ed. 1557 (1946). The Supreme Court also warned of piling inference upon

inference. Swafford, 512 F.3d at 843 (citing Direct Sales Co. v. United States, 319 U.S. 703, 711, 63 S. Ct. 1265, 87 L. Ed. 1674 (1943) ("[C]harges of conspiracy are not to be made out by piling inference upon inference, thus fashioning ... a dragnet to draw in all substantive crimes.")). Thus, the purposes of the prohibition of proof of multiple conspiracies are "to prevent the prosecution from convicting the defendant of a different offense, not a lesser variation of the charged offense" and impose "guilt to an individual defendant involved in one conspiracy from evidence incriminating defendants in a conspiracy in which the particular defendant was not involved." United States v. Warman, 578 F.3d 320, 342 (6th Cir. 2009) (quoting United v States v. Hughes, 505 F.3d 578, 587 (6th Cir. 2007) and United States v. Levine, 569 F.2d 1175, 1177 (1st Cir. 1978)).

"While a single conspiracy does not become multiple conspiracies simply because each member of the conspiracy does not know every other member, it is necessary to show that each alleged member "agreed to participate in what he knew to be a collective venture directed toward a common goal." See Warner, 690 F.2d at 549. A single conspiracy can be divided into distinctive sub-groups. "As long as the different sub-groups are committing acts in furtherance of one overall plan, the jury can still find a single, continuing conspiracy." United States v. Rugiero, 20 F.3d 1387, 1392 (6th Cir. 1994) (quoting Warner, 690 F.2d at 550 n.8). Courts have "found single conspiracies even where the connections between the co-conspirators were minimal." United States v. Swafford, 512 F.3d 833, 842-43 (6th Cir. 2008) (citing United States v. Kelley, 849 F.2d 999, 1003 (6th Cir. 1988)). United States v. Smith, 320 F.3d 647, 652 (6th Cir. 2003)). Yet, if the record establishes multiple conspiracies, then reversal of a conviction is required. Swafford, 512 F.3d at 842. "The key is to determine whether the different sub-groups are acting in furtherance of one overarching plan." United States v. Ghazaleh, 58 F.3d 240, 244 (6th Cir. 1995).

In the instant case, there was no one overarching plan. Instead, the evidence establishes two distinct and separate plans to violate the law and two distinct conspiracies with different participants. However, neither of those conspiracies match the conspiracy charged in the indictment. Put differently, the government failed to demonstrate that Bradley was involved in the same conspiracy with Eric Falkowski, Preston Davis, Davi Valles, Jr., Lakrista Knowles, Jennifer Dogonski, Jonathan Barrett, Johnny Williams and Jason Moss.

Each of the individuals named in the indictment had one thing in common–they all purchased and sold controlled substances. Falkowski manufactured and distributed counterfeit percocets. Bradley and Davis were two of his regular customers. During this relationship, Bradley assisted Falkowski (along with Knowles and Davis) in moving his pill making operation. Bradley assisted Falkowski and Davis with manufacturing fentanyl at Davis' residence. The evidence showed Bradley had a stake in this process. But this is not the conspiracy charged in the indictment because the evidence also demonstrated the existence other conspiracies involving Eric Falkowski, Preston Davis, Davi Valles, Jr., Jennifer Dogonski, Jonathan Barrett, Johnny Williams and Jason Moss with respect to the subsequent distribution of the counterfeit percocets in Murfreesboro, Tennessee.

Evidence demonstrated that the individuals charged in Counts 2-10 of the indictment originally received pills from Preston Davis and Eric Falkowski. Bradley was not aware of, nor did he participate in those transactions. See, RE 614 Trial Trans; PageID#3803-3807. In fact, no evidence was presented that Bradley participated in the downstream sales of the pills once they had been manufactured. Evidence was presented that Bradley knew Falkowski, Davis, and Knowles, but there was no evidence that Bradley knew the individuals in Murfreesboro or that a portion of the pills Bradley assisted in manufacturing would be sold to others in Murfreesboro. No evidence was

presented that Bradley knew of the activities of Barrett, Johnny Williams, Jason Moss, Jennifer Dogonski, or Davi Valles. Evidence was presented that Bradley knew Davis and Falkowski would likely distribute the pills once they were manufactured. But no evidence was presented that Bradley knew the pills would be distributed by Davis to Barrett and others, who would then later distribute the pills to others, including Dogonski, Valles, or Knowels and subsequently to the individual victims listed in the indictment. This is not surprising because that involved a different conspiracy from which Bradley was involved.

Following Bradley's participation in the manufacturing on the pills, the government failed to provide evidence that other individuals selling the pills were acting in furtherance of a common goal or that there was any significant interdependence among the individuals charged. Each of the defendants had their own suppliers and customers and acted independently of one another. What they all had in common was the fact they were selling controlled substances and had obtained controlled substances through Eric Falkowski. However, there was no interdependence among the individuals charged in the conspiracy. Indeed, the evidence established that Bradley did not even know any of his codefendants from Murfreesboro. The government failed to prove that the each of the individual defendants were acting in furtherance of a common goal or that there was any significant interdependence among them. Id. Consequently, multiple conspiracies existed and there is a variance between the single conspiracy charged and the multiple conspiracies proved at trial.

Finding a variance does not mandate a reversal; in order for the variance to constitute reversible error, a defendant must at the very least show that this variance prejudiced him. See Caver. 470 F.3d at 237 (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. (citing Kotteakos, 328 U.S. at 765, 66 S.Ct. 1239). That is precisely the situation in the instant case where the evidence demonstrates only that two distinct conspiracies existed.

The two most problematic forms of prejudice stemming from a variance are: (1) where the defendant is unable to present his case and is "taken by surprise by the evidence offered at trial," Budd, 496 F.3d at 527 (quoting Berger v. United States, 295 U.S. 78, 82, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)), or (2) where the defendant is "convicted for substantive offenses committed by another." United States v. Friesel, 224 F.3d 107, 115 (2nd Cir.2000). Prejudice may also exist where "'spillover' [occurs] because of a large number of improperly joined defendants." Id. Indeed, "the possibility of prejudice resulting from a variance increases with the number of defendants tried and the number of conspiracies proven." United States v. Bertolotti, 529 F.2d 149, 156 (2nd Cir.1975) (emphasis added) (citing Blumenthal v. United States, 332 U.S. 539, 559, 68 S.Ct. 248, 92 L.Ed. 154 (1947)).

As noted in Swafford,

> "the sale of [a controlled substance] to many unrelated customers is no different from the sale of birdseed to many birdwatchers or the sale of other products at retail to many users who are unconnected to each other. Where there is no connection between users of the same product but the factfinder mistakenly believes there is a union of interest and criminal intent and an agreement to coordinate activity, the harm to the public will appear to be greater and the participants more culpable. Here, the appearance of coordinated criminal activity appears more culpable than individual sales, implicating the Supreme Court's long-standing admonition that "charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning ... a dragnet to draw in all substantive crimes."

Id. at 842-43 (footnotes and quotes omitted).

In the instant case, the prejudice discussed in Swafford is readily apparent. Bradley was

charged in a conspiracy involving several defendants who purchased controlled substances originally supplied by Falkowski and who subsequently redistributed those controlled substances to others, who redistributed those substances to individuals in Murfreesboro. There is no interdependence or connection among the codefendants charged in the conspiracy as they had suppliers and customers independent from each other. The proof at trial establish a conspiracy to manufacture and distribute controlled substances involving Falkowski, Davis, Bradley and Knowles, and a second conspiracy consisting of multiple independent controlled substance transactions involving others charged in the indictment.

Here, the government's proof is of different and unconnected groups of persons acting to purchase and sell controlled substances. To be sure, each of the defendants, including Bradley, obtained controlled substances through Falkowski. But this is the only link between Bradley and the defendants in Murfreesboro. In a situation like this, the practice of charging large numbers of defendants in one conspiracy charge broadens the criminal conspiracy "to include more and more, in varying degrees of attachment to the confederation." Kotteakos, 328 U.S. at 776. Thus, the possibilities for miscarriage of justice to particular individuals becomes greater and greater." Id. Here "a variance resulted in guilt transference, typically any danger of prejudice can be cured with a cautionary instruction to the jury stating that if it finds multiple conspiracies, it cannot use evidence relating to one conspiracy in determining another conspiracy. Hughes, 505 F.3d at 587 (citing United States v. Blackwell, 459 F.3d 739, 762 (6th Cir. 2006)).

A defendant is not entitled to a jury instruction unless there is support in the evidence and the law for the request. United States v. Wall, 130 F.3d 739, 746 (6th Cir. 1997). "'[W]hen the evidence is such that the jury could within reason find more than one conspiracy, the trial court

should give the jury a multiple conspiracy instruction.'" Caver, 470 F.3d at 246 (quoting Warner, 690 F.2d at 551. "[A] single conspiracy is not converted into multiple conspiracies merely because there may be some changes in persons involved or because they play different roles." Rugiero, 20 F.3d at 1391. "[T]he primary risk associated with the failure to give a multiple conspiracy instruction is the transference of guilt from defendants involved in one conspiracy to defendants in another conspiracy, such that a defendant is convicted for a conspiracy for which he was not indicted." Id. (citations omitted); see also United States v. Jordan, 511 Fed. Appx. 554, 569 (6th Cir. 2013).

The Sixth Circuit's observation that "Bradley, as the manufacturer of thousands of counterfeit pills, worked with other intermediaries to achieve a common goal of distributing controlled substances" shows only that Bradley was a member of the conspiracy to manufacture and distribute the counterfeit Percocet along with Falkowski, Davis and Knowles. After those pills were originally divided and distributed by Falkowski, Davis and Knowles, the conspiracy including Bradley ended. The undisputed evidence at trial showed that Bradley was completely unaware of the activities of Barrett, Williams, Moss, Dogonski and Davi Valles and that those individuals were further distributing the pills to others in the Mufreesboro area. Further, the undisputed evidence demonstrates that Bradley did nothing to encourage or further those downstream drug transactions. What is clear from the record is that two separate and independent conspiracies existed. The first involving Falkowski, Bradley and Davis, conspiring to manufacture and distribute counterfeit Percocet pills. The second involving Knowles and Davis, "who in turn fronted some of them to Valles, who sold a portion of them to Williams, who sold 150 of them through Dogonski to Barrett, who sold it on to end users" in Murfreesboro. Id.

The Sixth Circuit wrongly concludes that because Bradley participated in manufacturing of

the pills he was responsible for distribution of those pills to the end users no matter how many times the pills were sold and purchased. The Sixth Circuit's ruling means that a conspiracy to manufacture drugs is never ending and that every person along the distribution chain, no matter how remote from the manufacturing of the drugs, are members of the same original conspiracy. This cannot be a just or correct result.

A conviction should be reversed "if 'a variance occurred and that variance affected [the defendant's] substantial rights.'" Swafford, 51 F.3d 833, 841 (6th Cir. 2008) (citing United States v. Caver, 470 F.3d 220, 235 (6th Cir. 2006)). Prejudice is shown in the instant case because the district court failed to provide an instruction with respect to multiple conspiracies and because the variance affected Bradley's substantial rights through spillover evidence, guilt transference which improperly led to his enhanced conviction under § 841(b)(1)(C), even though he was not in the chain of distribution of the second conspiracy. See, United States v. Hamm, 952 F.3d 728, 741 (6th Cir. 2020)(jury instructions misstated the law in permitting Pinkerton liability to apply § 841(b)(1)(C)'s death-or-injury enhancement because the jury needed to find that defendants were "part of the chain of distribution").

Here, following Bradley's participation in manufacturing counterfeit pills, the government failed to provide evidence that Barrett and others individuals selling the pills were acting in furtherance of a common goal or that there was any significant interdependence among the individuals charged. The defendants had their own suppliers and customers and acted independently of one another. What they all had in common was the fact they were selling controlled substances and had obtained controlled substances manufactured by Falkowski and Bradley. However, there was no interdependence among the individuals down the chain of distribution. Indeed, the evidence

established that Bradley did not even know most of his codefendants. As in Swafford, the government failed to prove that the each of the individual defendants were acting in furtherance of a common goal or that there was any significant interdependence among them. Id. Consequently, there is a variance between the single conspiracy charged and the two conspiracies proved at trial.

"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." Swafford (cites omitted). Prejudice stemming from a variance can include "(1) where the defendant is unable to present his case and is taken by surprise by the evidence offered at trial, [] or (2) where the defendant is convicted for substantive offenses committed by another." Swafford, 512 F.3d at 842-43(quotes and cites omitted). Further, prejudice may exist where "spillover [occurs] because of a large number of improperly joined defendants." Id. Here, there is no interdependence or connection among the codefendants charged in Count One. However, because the defendants were charged under the umbrella of one conspiracy count the appearance of coordinated criminal activity appears more serious than individual sales. Swafford, 512 F.3d at 843. Accordingly, the variance and proof of multiple conspiracies prejudiced Bradley.

Further, the variance resulted in guilt transference and spillover, which should have been resolved with a cautionary instruction to the jury stating that if it finds multiple conspiracies, it cannot use evidence relating to one conspiracy in determining another conspiracy. United States v. Blackwell, 459 F.3d 739, 762 (6th Cir. 2006). "'[W]hen the evidence is such that the jury could within reason find more than one conspiracy, the trial court should give the jury a multiple conspiracy instruction.'" Caver, 470 F.3d at 246 (quoting United States v. Warner, 690 F.2d 545, 551 (6th Cir. 1982). "[T]he primary risk associated with the failure to give a multiple conspiracy

instruction is the transference of guilt from defendants involved in one conspiracy to defendants in another conspiracy, such that a defendant is convicted for a conspiracy for which he was not indicted." United States v. Rugiero, 20 F.3d 1387, 1391 (6th Cir. 1994) (citations omitted).

That is precisely what occurred here where the district court denied the defense request for a multiple conspiracy instruction. Thus, the harm was never cured. Further, the erroneous jury instructions violated Bradley's right to due process because they relieved the government of its obligation to prove beyond a reasonable doubt all elements of the offense for which Bradley was charged. See, Sandstrom v. Montana, 442 U.S. 510, 524 (1979); In Re Winship, 397 U.S. 358, 364 (1970). Specifically, the failure to provide a multiple conspiracy instruction relieved the government of its burden to prove that Bradley was in the chain of distribution with respect to the second conspiracy in Mufreesboro and improperly subjected him to the enhanced conviction under § 841(b)(1)(C). See, Hamm, 952 F.3d at 741.

Accordingly, Bradley's participation in the first conspiracy cannot lead to a conclusion that Bradley was involved in the second conspiracy to distribute many of those pills in Murfreesboro. This is significant because while Bradley may have assisted in the production of the pills in the original conspiracy, he was not part of the chain of distribution for the second conspiracy. Swafford, 512 F.3d at 842. In affirming Bradley's enhanced conviction under § 841(b)(1)(C), the Sixth Circuit has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

B. The Sixth Circuit Erroneously Affirmed Bradley's Convictions on Counts 2-10 When the Government Failed to Present Evidence Demonstrating that Bradley Aided and Abetted in the Distribution of a Controlled Substance Containing Fentanyl.

Proof was insufficient for a rational trier of fact to find beyond a reasonable doubt that Bradley aided and abetted, or otherwise distributed, a substance containing fentanyl as alleged in Counts 2-10 of the 5th Superseding Indictment. RE 256; PageID#660-671. Bradley did not participate in any of the specific transactions alleged in Counts 2-5 and 7-10 Indictment. The only basis to convict him on those counts were under a theory of aiding and abetting.

Evidence at trial established that Bradley participated the initial manufacture of the pills containing fentanyl, but that he was not aware of and did not participate in each of the substantive distribution counts. No evidence was presented indicating that Bradley assisted in the delivery of the controlled substance listed in each of the substantive counts to the victims in Murfreesboro, Tennessee. No evidence was presented demonstrating that Bradley offered assistance or encouragement to any of the principles in the commission of the substantive offenses. Because the government failed to establish that Bradley "participated in the distribution counts as something he wished to bring about and sought to make succeed," the convictions on Counts 2-10 should have been vacated. See, United States v. Cecil, 615 F.3d 678, 694 (6th Cir. 2010) (quoting United States v. Ward, 190 F.3d 483, 487 (6th Cir. 1999); see also, United States v. Knox, 839 F.2d 285, 294 (6th Cir. 1088).

Amazingly, the Sixth Circuit Panel found that the offenses for aiding and abetting were supported by the evidence. Although the court found it to be a close call concerning the aiding and abetting convictions, it concluded that "a rational trier of fact could have found Bradley guilty

beyond a reasonable doubt of these offenses." In reaching this decision the Sixth Circuit has "departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

"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. Cecil, 615 F.3d 678, 694 (6th Cir. 2010) (quoting United States v. Ward, 190 F.3d 483, 487 (6th Cir. 1999); see also, United States v. Knox, 839 F.2d 285, 294 (6th Cir. 1088). In United States v. Ledezma, 26 F.3d 636 (6th Cir. 1994), the Court held that in order to prove aiding and abetting the government must show that the defendant knew the principal possessed a controlled substance with the intent to distribute it, and that the defendant assisted in the principal's plan to deliver the controlled substance. Id. at 641 (citation omitted). As noted in Ledezma, "the essence of the crime of aiding and abetting is the defendant's offering assistance or encouragement to his principal in the commission of a substantive offense." Id. at 642. "[A] generalized belief or suspicion that something illegal is going on" is not sufficient to sustain a conviction for aiding and abetting. United States v. Calabro, 467 F.2d 973, 982 (2d Cir. 1972).

In the instant case, absolutely no evidence was presented demonstrating that Bradley offered assistance or encouragement to the principal's in the commission of a substantive offenses listed in Counts 2-5 and 7-10. The evidence demonstrated that Bradley participated in the manufacturing of pills containing fentanyl with Eric Falkowski and Preston Davis, and that Bradley obtained a portion of those manufactured pills. Evidence was presented that the principles in Counts 2-5 and 7-10 received pills from Preston Davis and Eric Falkowski, but that Bradley was not aware of or did not participate in those transactions. See, RE 614 Trial Trans; PageID#3803-3807. No evidence was

presented that Bradley participated in the downstream sales of the pills once they had been manufactured. Evidence was presented that Bradley knew Falkowski, Davis, and Knowles, but there was no evidence that Bradley knew the individuals in Murfreesboro or that a portion of the pills Bradley assisted in manufacturing would be sold to others in Murfreesboro. No evidence was presented that Bradley knew of the activities of Barrett, Johnny Williams, Jason Moss, Jennifer Dogonski, or Davi Valles. The evidence demonstrated that Bradley had no knowledge that the pills would be distributed to Barrett, who would then later distribute the pills to others, who would later distribute to others again, including Dogonski, Valles, or Knowels, who would then distribute to the end users. Nor could such a chain of events be considered reasonably foreseeable within the conspiracy.

The government argues that Bradley was guilty as a principle for the charges alleged in Counts 2-5 and 7-10 because Eric Falkowski and Bradley pressed approximately 3,000 pills. Approximately 1,500 pills were given to Knowles, and Bradley took the rest. (R. 615, TTR Vol. 5, #3993.)" The government also claims that Bradley was directly in the chain of distribution to the victims. Govt. Brief at 97. The government acknowledges that Bradley did not participate in the sale of drugs from Davis to Valles, but claims that he was aware of it because after overdoses had occurred, Bradley told Valles that "shit was gonna be fucked up." Id; citing RE 614, TTR Vol. 4; PageID#3779. The evidence does not in any way support the proposition that Bradley knew Davis had distributed pills to Valles, who later distributed pills to Williams, who later distributed the pills to others. RE 614 TTR Vol. 4; PageID#3776-3777.

While evidence does support a conviction for a conspiracy between Bradley, Falkowski, Davis and Knowles to manufacture and distribute controlled substances, that same evidence does

not support a finding that Bradley is guilty as an aider and abettor for the distribution of the pills alleged in Counts 2-5 and 7-10 of the indictment. The evidence fails to show that Bradley (1) knew that the principals possessed a controlled substance with the intent to distribute it, and (2) that Bradley encouraged or assisted in the principal's plan to deliver the controlled substance. See, United States v. Ledezma, 26 F.3d 636, 641-41 (6th Cir. 1994)("the essence of the crime of aiding and abetting is the defendant's offering assistance or encouragement to his principal in the commission of a substantive offense").

Evidence was presented that Bradley participated in the manufacturing of pills containing fentanyl with Eric Falkowski and Preston Davis, and that Bradley obtained a portion of those manufactured pills. Evidence was presented that the principles in the substantive counts received pills from Davis and Falkowski, but that Bradley was not aware of or did not participate in those transactions. See, RE 614 Trial Trans; PageID#3803-3807. No evidence exists showing that Bradley participated in the downstream sales of the pills once they had been manufactured and spilt between Bradley, Knowles and Falkowoski. Evidence was presented that Bradley knew Falkowski, Davis, and Knowles, but there was no evidence that Bradley knew the individuals in Murfreesboro or that a portion of the pills Bradley assisted in manufacturing would be sold to others in Murfreesboro, who would in turn sell the pills to others. No evidence was presented that Bradley knew of the activities of Barrett, Williams, Moss, Dogonski, or Valles at the time those individuals engaged in drug transactions. No evidence was presented that Bradley knew the pills would be distributed to Barrett, who would then later distribute the pills to others, including Dogonski, Valles, or Knowels.

In sum, no evidence was presented that Bradley offering assistance or encouragement to any of the above named principles in the sale of pills containing fentanyl to victims listed in the

indictment. The individuals sales of the pills listed in Counts 2-10 occurred far down the chain of distribution. After Eric Falkowski, Preston Davis and Bradley manufactured the pills containing fentanyl, Bradley did not know the principles in those counts and he had no stake in outcome of those later sales. Because there is no evidence that Bradley knew the principles and assisted in or encouraged, the independent drug sale listed in Counts 2-10, the evidence fails to support convictions for aiding and abetting and Bradley's convictions on those counts must be overturned. Pena, 983 F.2d at 72-73. In affirming Bradley's convictions despite the overwhelming lack of evidence, the Sixth Circuit has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S.Ct.R. 10(a).

CONCLUSION

Petitioner respectfully submits that he has demonstrated compelling reasons to grant writ of certiorari in this case. Accordingly, certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a on October 27, 2021, a true and accurate copy of the petition for writ of certiorari was electronically filed and was sent via U.S. Mail with sufficient postage affixed to Assistant U.S. Attorney Amanda J. Klopf at amanda.klopf@usdoj.gov; and Office of the Solicitor General, Room 5614, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001 and a PDF copy was emailed to the Office of the Solicitor General to SupremeCtBriefs@USDOJ.gov.

The undersigned further certifies that a on January 3, 2022, a true and accurate copy of the corrected petition for writ of certiorari was sent via UPS Overnight Mail with sufficient postage affixed to Assistant U.S. Attorney Amanda J. Klopf at U.S. Attorney's Office, 110 Ninth Avenue South, Suite A961, Nashville, TN 37203 and Office of the Solicitor General, Room 5614, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001.

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