NO. _____

# In The
# Supreme Court of the United States

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## ANTHONY FIELDS,

*Petitioner*,

**v.**

## UNITED STATES OF AMERICA,

*Respondent.*

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**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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# PETITION FOR WRIT OF CERTIORARI

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*Dated: April 25, 2022*

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## Questions Presented

1. Whether the court of appeals' decision affirming the denial of Petitioner's request to exercise his right to self-representation while ignoring completely his argument of legal error is in conflict with *Koon v. United States* and *Faretta v. California*?

2. Whether the court of appeals' affirmance of the district court's denial of Petitioner's motion to suppress evidence seized in a traffic stop of his vehicle was contrary to the evidence and in violation of the Fourth Amendment?

## List of Parties to the Proceeding

The individuals who appeared before the District Court in the criminal proceedings were Anthony Fields, Abdul Samuels, Calvin Wright, Lacy Hamilton, Lonnell Tucker, James Venable and Darryl Smith. Artinis Wilson, also indicted, was a fugitive at all relevant times. The following parties appeared before the Court of Appeals: Anthony Fields, Lonnell Tucker, Abdul Samuels and the United States of America.

The parties to this Petition are Anthony Fields and the United States of America.

## Statement of Related Cases

Petitioner's appeal was consolidated with those of his co-defendants, Lonnell Tucker (D.C. Cir. No. 19-3042) and Abul Samuels (D.C. Cir. No. 19-3078) in the court below. As of the date of the filing of this Petition, they have not sought further review in this Court and there are no related cases.

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

## Opinions Below

The oral opinion of the district court denying Petitioner's motion to represent himself is unreported. *See* Pet. App. 60a-65a. The oral opinion of the district court denying Petitioner's motion to suppress certain evidence is also unreported. *See* Pet. App. 48a-59a.

The opinion of the court of appeals, affirming Petitioner's conviction is reported at *United States v Tucker*, 12 F.4th 804 (D.C. Cir. 2021). *See* Pet. App. 1a-37a. The decision denying Petitioner's motion for rehearing is unreported. *United States v. Tucker*, Nos. 19-3042, 19-3043, 19-3078 (D.C. Cir. Jan. 13, 2022). *See* Pet. App. 47a.

## Jurisdiction

The District Court had jurisdiction over this matter pursuant to 18 U.S.C. § 3231. The jurisdiction of the Court of Appeals was invoked pursuant to 28 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Court of Appeals entered judgment on September 3, 2021 and denied Petitioner' timely petition for rehearing on January 13, 2022. On March 15, 2022, The Chief Justice granted Petitioner an extension of time within which to file a Petition for a Writ of Certiorari to, and including, May 13, 2022.

## Constitutional and Statutory Provisions Involved

The Sixth Amendment to the United States Constitution provides, in relevant part, that: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." U.S. Const. amend. VI.

The Fourth Amendment to the United States Constitution provides, in relevant part, that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." U.S. Const. amend. IV.

## Statement of the Case

1. On August 30, 2018, Petitioner Anthony Fields, was charged in an Indictment [ECF 1][1] with an assortment of drug distribution and criminal conspiracy charges relating to his alleged membership in a drug trafficking network, in violation of 21 U.S.C. §§ 841, 846. Following trial by jury, Petitioner was convicted of the narcotics conspiracy charge and also was found guilty of four counts of possession with intent to distribute PCP, Heroin, Fentanyl, Bupenorphine (Suboxone), and Synthetic Cannabinoids. In addition, the jury convicted Petitioner of unlawful maintenance of premises to manufacture, distribute, store, and use a controlled substance. Thereafter, Petitioner was sentenced to concurrent 192 months imprisonment and various concurrent terms of supervised release on the several counts for which he was convicted. *See* Pet. App. 39a-46a.

2. a. Prior to trial Petitioner moved to suppress the evidence to be introduced against him arising from a pretextual traffic stop. As recounted in pre-trial testimony, *see* CA App. 98-140,[2] on November 28, 2017, Petitioner was subject to a traffic stop grounded on suspicion of narcotics trafficking. After observing Petitioner leave a record store (suspected of being a drug trafficking location) and then drive to a parking lot to meet another person, officer Sean Chaney surmised that Petitioner had engaged in a drug transaction.

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[1] The abbreviation "ECF" denotes a docket entry on the District Court's electronic court docket system.
[2] References to "CA App." are to the Joint Appendix filed with Petitioner's opening brief in the court below.

On that basis Chaney asked uniformed Prince George's County officers to conduct a traffic stop of Petitioner's car. That stop, conducted by officer Jonathan Haskett and other members of his team, was based on Haskett's claim that Petitioner was "speeding" in a mall parking lot -- in particular, Petitioner was going "a little fast for people to – for [him] to react to people walking across the road" in the parking lot. *Id.* at 133.

Crucially, Haskett did not immediately conduct a stop of Petitioner's car. Rather Haskett "sat there and watched . . . for a few minutes" to see if anything else would happen. Or, as he put it in his report of events, Haskett "maintained a visual of the vehicle to see if it would become mobile, in an attempt to conduct a traffic stop for the traffic violation." The car however, did not "become mobile," and a "couple [of] minutes" later, a stationary traffic stop was initiated. *Id.* at 134-35, 145-47.

b. The district court denied Petitioner's suppression motion. Though the court expressed doubt that "the stop was conducted because [Petitioner] was speeding. He was observed speeding but the stop was going to happen anyway," *id.* at 144, it nonetheless determined that the traffic stop was objectively reasonable as there was probable cause to believe a traffic violation has occurred, irrespective of the officers' actual motivations. *See* Pet. App. 54a-57a.

c. The evidence from the stop, as well as the fruits of a subsequent related search of premises associated with Petitioner were all admitted at trial and formed a significant part of the basis for Petitioner's conviction.

3. a. Prior to trial Petitioner was represented by three separate counsel reflecting the challenges he faced in securing counsel with whom he could work. Shortly before trial, the district court appointed Ms. Kira West to represent Petitioner.

On the fourth day of trial, Petitioner's dissatisfaction with Ms. West was such that he refused to attend trial. *See* CA App. 337, 346-48. The next trial day, Petitioner advised the court that he wanted to represent himself. As Petitioner put it: "Ms. West has only been my attorney for three months. . . . Ms. West has done a good job filing motions and meeting deadlines, things of that nature. But Ms. West doesn't know the details of the case." Petitioner continued: "the discovery in this case is voluminous, right? . . . so it's almost impossible for Ms. West to accurately – I mean to effectively cross-examine the witnesses against me without knowing the case. It's impossible . . . . I thought that maybe … she would be ready; but as the days go on in the trial and I see her cross-examine, I understand that she's not ready. So I have no other recourse but to represent myself, because this is my life on the line . . . ." *Id.* at 360-61.

b. The district court rejected Petitioner's request. Relying on *United States v. Dougherty*, 473 F.2d 1113 (D.C. Cir. 1972) and *United States v. Washington*, 353 F.3d 42 (D.C. Cir. 2003), the court held that self-representation is an absolute right only if exercised before trial. Critically, for purposes of this Petition, in so ruling the district court misconstrued the constitutional nature of the Sixth Amendment right to self-representation, Initially, when advised that Petitioner had a Sixth

Amendment right to self-representation, the district court responded: "No, he doesn't, but go ahead." CA App. 358. Thereafter, in ruling on the motion, the district court confirmed its misunderstanding of the nature of Petitioner's claim, saying: "I don't understand why they [the D.C. Circuit] said it's a constitutional right, because *Dougherty* didn't say that." Pet. App. 63a. Biased by this legal misunderstanding, the district court proceeded to balance the equities as it might with any other trial management issue and concluded that it should exercise its discretion to deny Petitioner's request. *See id.* at 63a-65a.

c. Trial proceeded to completion with Ms. West acting as Petitioner's counsel throughout.

4. Petitioner timely appealed his conviction and sentence. [ECF 278]. On appeal the court of appeals affirmed Petitioner's conviction.

a. As to Petitioner's Sixth Amendment claim, the court of appeals first concluded that the standard of review was abuse of discretion. *See* Pet. App. 9a. It further concluded that a defendant's right to self-representation was diminished once trial has begun and was not absolute. *Id.* at 10a.

Reviewing the district court's weighing of potential prejudice to the government and co-defendants the panel concluded that the district court had correctly assessed the equities. In particular, the court of appeals agreed that permitting Petitioner to conduct his own defense would risk harming his codefendants and jeopardizing their rights. Reasoning that "[a] trial involving a *pro se* defendant and co-defendants who are assisted by counsel is pregnant with the

possibility of prejudice," *id.* at 11a (citing *United States v. Veteto*, 701 F.2d 136, 139 (11th Cir. 1983)), and noting Petitioner's "unwarranted hostility to fair proceedings," Pet. App. 11a, the court of appeals concluded that the district court had not "abuse[d] its considerable discretion when it denied [Petitioner's] request to represent himself." *Id.*

b. As to Petitioner's Fourth Amendment claim, the court of appeals first concluded that the district court had not erred in finding the law enforcement officer's testimony credible. *Id.* at 7a. Citing *Whren v. United States*, 517 U.S. 806, 810 (1996), the panel then concluded that the traffic stop was reasonable if there was probable cause to think a traffic violation had occurred. *See* Pet. App. 7a. It therefore rejected any suggestion that the stop was unreasonable because it was pretextual, as an argument foreclosed by precedent, *id.* at 8a, and affirmed the decision denying Petitioner's suppression motion (as well as his related "fruits of the poisonous tree" argument).

5. Petitioner sought panel rehearing, arguing that the panel had erred in completely ignoring his alternate argument that the district court had committed *per se* legal error by erroneously failing to recognize that Petitioner's right of self-representation was grounded in the Sixth Amendment. *See Faretta v. California*, 422 U.S. 806 (1975). Petitioner contended that by starting from a legally unsupportable premise – that no Sixth Amendment right to self-representation existed mid-trial – the district court's weighing of the matter was, as a matter of law, error, and thus an abuse of discretion necessitating a new trial. *See Koon v. United States*, 518 U.S. 81,

100 (1996). The panel below, Petitioner contended, compounded that error by neglecting the argument altogether.[3]

The court of appeals denied Petitioner's request for rehearing, without comment or explanation. *See* Pet. App. 47a.

6. This Petition follows, raising the questions of whether the court below misunderstood and misapplied this Court's *Koon* and *Faretta* precedents and whether the admission of illegally seized evidence violated Petitioner's Fourth Amendment rights.

## Reasons for Granting the Petition

1. a. The panel below failed to come to grips with the fact that the district court committed a significant legal error in assessing Petitioner's Sixth Amendment claim of self-representation. Indeed, it ignored the claim altogether. The court of appeals' failure to address and dispose of an issue that was fully briefed and addressed at oral argument warrants this Court's plenary review. *See* Sup. Ct. R. 10(a) (certiorari is warranted when "a United States court of appeals . . . has decided an important federal question in a way that . . . has so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power"). The court of appeals' willful disregard of a legal issue fully briefed and presented to it for decision satisfies this standard.

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[3] The issue of the district court's legal error was squarely presented to the court of appeals. It was first addressed in Petitioner's joint opening brief, *see* CA Br. at 33-36 (factual recitation); 44-46 (argument) and it was reasserted in the joint reply brief, *see* CA Reply Br. at 12-17. More to the point, though no oral argument transcript is currently available, this *per se* abuse of discretion error was the very first and principal submission made during argument before the panel. The panel's neglect of the issue cannot, therefore, have been inadvertent.

This court of appeals neglect of the *per se* abuse of discretion legal argument raised by Petitioner is palpable. The opinion below makes no reference to the *Koon* standard of *per se* error. Nor does it cite or mention, much less analyze, the district court's erroneous statements of law and its misunderstanding of *Faretta*'s constitutional status.

We submit that neglecting an issue fairly presented is grounds for the grant of certiorari and where, as here, the decision is erroneous, for correction. This Court should grant review and conclude that the district court abused its discretion in denying Petitioner's request to represent himself.

b. On the merits, the district court's evaluation of Petitioner's self-representation request rested on a fundamentally mistaken legal premise and the court of appeals refusal to address the issue compounded the error. Far from acknowledging Petitioner's Sixth Amendment interests the district court repeatedly denied their very existence.

The district court's error was grounded on its misunderstanding of the time line of the development of this Court's self-representation jurisprudence. In its pre-*Faretta*, *Dougherty* opinion, the D.C. Circuit court observed that "When the right [to self-representation] is claimed after trial has begun, the court exercises its discretion. It may weigh the inconvenience threatened by defendant's belated request against the possible prejudice from denial of defendant's request. In exercising discretion, the judge may take into account the circumstances at the time, whether there has been prior disruptive behavior by defendant, whether the trial is in an advanced stage."

*Dougherty*, 473 F.2d. at 1118. The district court relied on this passage in exercising its discretion to deny Petitioner's request for self-representation. *See* Pet. App. 61a-62a.

Thus, the district court's failure to recognize the constitutional nature of Fields' right to self-representation stemmed, in large part, from the fact that *Dougherty* pre-dated the recognition of a constitutional right in *Faretta.* As such, *Dougherty* was a statutory case only. As a result, the district judge misperceived the constitutional nature of the right.

The district court compounded its error when it turned to an analysis of *Washington*, the D.C. Circuit's later (post-*Faretta*) case on the issue of self-representation. As the district court made clear, the D.C. Circuit's decision confused him: "I don't understand why they [the D.C. Circuit] said it's a constitutional right, because *Dougherty* didn't say that." Pet. App. 63a (referring to *United States v. Washington*, 353 F.3d 42 (D.C. Cir. 2003)).

The district court's fundamental misunderstanding of the constitutional nature of Petitioner's self-representation right is also demonstrated in an exchange that occurred earlier in the hearing. Counsel for Petitioner's co-defendant, Mr. Tucker suggested that, if Petitioner's request for self-representation were granted, Tucker would renew his motion for severance. *See* CA App. 356. Thereafter, counsel for co-defendant Calvin Wright asked to join in that motion. The following exchange then occurred:

MS. HERNANDEZ: I want to join, but also want to say that I understand Mr. Fields has a Sixth Amendment right to represent himself.

THE COURT: **No, he doesn't, but go ahead**.

*Id.* at 358 (emphasis supplied).

In short, there was strong evidence that the district court failed to understand the legal nature of Petitioner's request to represent himself. By starting from a legally unsupportable premise – that no Sixth Amendment right to self-representation existed mid-trial – the district court's equitable weighing of the matter was, as a matter of law, error, and thus an abuse of discretion necessitating a new trial. *See Koon v. United States*, 518 U.S. 81, 100 (1996) ("by definition" a court "abuses its discretion when it makes an error of law"). The panel's failure to assess and review this claim was an omission that compounded the error and requires the granting of this Petition and the Court's review.

2. a. The court of appeals' erroneous construction of the Fourth Amendment is contrary to existing precedent of this Court and also warrants review. In the court of appeals' telling, the stop of Petitioner was nothing more than a traffic stop objectively justified by speeding in a mall parking lot. But the reality is that this was anything but a routine mall speeding stop. It was an illegal seizure lacking probable cause.

As this Court has recognized, inaccurate or erroneous observations by an officer are fatal to a determination of probable cause: "'Th[e] demand for specificity in the information upon which police action is predicated . . . is *the central teaching*

*of this Court's Fourth Amendment jurisprudence.*'" *United States v. Cortez*, 449 U.S. 411, 418 (1981) (quoting *Terry*, 392 U.S. 1, 21 n.18 (1968)) (emphasis supplied).

In Petitioner's case as in other seizures, "[t]he officer's action must be 'justified at its inception.'" *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 185 (2004) (quoting *United States v. Sharpe*, 470 U.S. 675, 682 (1985)). "The standard takes into account the totality of the circumstances—the whole picture." *Navarette v. California*, 572 U.S. 393, 397 (2014) (internal quotation marks omitted). That required accuracy and specificity was missing in Petitioner's case.

b. Officer Haskett by his own admission decided to delay acting on the traffic stop. If experience (if not commonsense) is any guide, that is not how a typical traffic stop occurs. In a normal traffic stop, when observing speeding, an officer acts immediately, stops the offender, issues a citation, and takes such other action as might be appropriate.

Here, by his own testimony, Haskett did not act in the manner of a typical traffic stop. Rather he waited, delaying the stop for a "couple of minutes" -- an action that is inconsistent with the allegation that Petitioner was, in fact, speeding at the time he was observed.

Asked to explain why he waited, Haskett said that he was waiting for the car to "become mobile" so that he could conduct a traffic stop. But why would Haskett want the car to become mobile if he already had probable cause to make a stop in the first place? Common sense suggests, strongly, that a car in a mobile state is far more unpredictable and possibly dangerous than a car that is stationary. And so, if

Haskett in fact had observed a speeding offense before the car came to a rest, he would have had every incentive to conduct the stop at that time, while the car was not immobile.

This is especially the case because, of course, there is no guarantee that once a car resumes motion a traffic offense will occur. It is plausible, and perhaps even likely, that once a car restarts it will drive within the bounds of the traffic laws and no longer be subject to a stop. Given this uncertainty, it was clearly erroneous to credit Haskett's suggestion that he was waiting however long it might take for an uncertain future event to occur. If "a bird in the hand is worth two in the bush" then an offense observed – if it truly were observed – would be worth two possible offenses in the offing.

For this reason, Haskett's delay in approaching Petitioner's car gives rise to the inference that while the care was in a non-mobile state (as it was when it was eventually interdicted) Haskett did not initially believe that grounds existed for a genuine traffic stop. Only when the car failed to resume its journey did Haskett retroactively "realize" that speeding had occurred—or that it could be conjured and advanced as a rationale for making the stop.

c. One final point about Haskett's delay emphasizes the need for this Court's review. Though couched as a factual dispute, for which certiorari is often thought inappropriate, this dispute mask a more significant legal issue of recurring importance.

Even though Haskett said that he waited only a few minutes between the time of the traffic offense and conducting the traffic stop, nothing in the decision of the court of appeals suggests any outer limit to the time frame they would view as an acceptable delay in conducting a traffic stop. But, at some point, the probable cause for a traffic stop dissipates when the offending traffic violation is no longer ongoing. Were Petitioner's car parked for an hour, would a stop still be justified? Surely not. *See, e.g., United States v. Lopez*, 482 F.3d 1067 (9th Cir. 2007) (probable cause may dissipate over time); *United States v. Bervaldi*, 226 F.3d 1256 (11th Cir. 2000) ("staleness doctrine in the context of probable cause . . . requires that the information . . . show that probable cause exists at the time"). Accepting the decision of the court of appeals presents a slippery slope of factual indeterminacy. Rather, we submit, this Court should recognize that the failure to act immediately, combined with the possibility of unreasonable delay, is ample grounds to find the stop based on a non-credible assertion. More to the point, this case presents a vehicle for developing a bright-line rule regulating permissible law enforcement delay.

Accordingly, this Court should grant review for the purpose of determining the outer limits of a delay in executing a traffic stop, from when the probable cause ripened and for the further purpose of correcting the clearly erroneous conclusion of the district judge crediting the assertion that Petitioner was speeding. The stop of Petitioner's car was illegal and all the evidence from it, as well as the fruits of its poisonous tree, ought to have been suppressed.

## Conclusion

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit should be granted.

Respectfully submitted,

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# APPENDIX

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# United States Court of Appeals

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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Argued April 9, 2021 Decided September 3, 2021

No. 19-3042

UNITED STATES OF AMERICA,
APPELLEE

v.

LONNELL TUCKER,
APPELLANT

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Consolidated with 19-3043, 19-3078

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Appeals from the United States District Court
for the District of Columbia
(No. 1:18-cr-00267-1)
(No. 1:18-cr-00267-2)
(No. 1:18-cr-00267-6)

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*Paul S. Rosenzweig*, appointed by the court, argued the cause for appellant Anthony Fields. *Amelia Schmidt*, appointed by the court, argued the cause for appellant Abdul Samuels. With her on the briefs was *Matthew G. Kaiser*, appointed by the court. *Stephen C. Leckar*, appointed by the court, argued the cause for appellant Lonnell Tucker.

*Daniel J. Lenerz*, Assistant U.S. Attorney, argued the cause for appellee. With him on the brief were *Elizabeth Trosman*, *Chrisellen R. Kolb*, and *Gregory P. Rosen*, Assistant U.S. Attorneys.

Before: KATSAS, RAO, and WALKER, *Circuit Judges*.

Opinion for the Court filed PER CURIAM.

PER CURIAM: Appellants Anthony Fields, Abdul Samuels, and Lonnell Tucker were convicted on several drug- and firearm-related offenses. Each appellant challenges his convictions, and Samuels also challenges his sentence. We affirm.

I

In May 2018, a grand jury indicted Fields, Samuels, Tucker, and three other individuals on several charges related to an alleged drug-dealing conspiracy. The indictment stemmed from an investigation by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of drug activity at Next Level Cuts, a barbershop in the District of Columbia.

Much of the government's evidence came from searches in the months preceding the indictment. During a traffic stop in November 2017, officers found what appeared to be a drug ledger, approximately $9,000, and drug paraphernalia in Fields's vehicle. The ATF executed a search warrant on the barbershop three months later. In a suite above the barbershop, agents found cash, firearms, more drug paraphernalia, and large quantities of narcotics — heroin mixed with fentanyl, PCP, Suboxone, and synthetic marijuana. In the same room, they also found a document listing a medical appointment for Fields and a receipt for a purchase made with his credit card. A search of Fields's home led to more drug ledgers, two of

which listed "Foots" (*i.e.*, Samuels). During the ensuing searches of Samuels's home, ATF agents found a shotgun, drug paraphernalia, crack cocaine, marijuana, and synthetic marijuana. During the search, Samuels admitted that he kept the gun under his bed for protection.

Also central to the government's case was testimony from Byran Clark, a drug dealer who purportedly worked for Fields. Clark testified that Fields ran a drug operation out of the barbershop's upstairs suite and that Samuels often acted as a gatekeeper to the suite. He also reported that Tucker sold drugs out of the barbershop and frequented the suite.

Five defendants proceeded to trial. One pleaded guilty during the trial. The jury returned a mixed verdict as to the other four. It acquitted one defendant on the sole charge against him. It also acquitted Fields and Samuels on several firearms- and narcotics-related charges. But it found Fields, Samuels, and Tucker guilty of conspiracy to distribute and possess with intent to distribute various narcotics. *See* 21 U.S.C. §§ 841, 846.[1] It also found Fields guilty of possessing with intent to distribute each of the narcotics alleged in the conspiracy. *Id.* § 841(a). And it found Samuels guilty of possessing with intent to distribute cocaine base, *id.*, of possessing synthetic marijuana, *id.* § 844, and of felony possession of a firearm, 18 U.S.C. § 922(g).

The district court sentenced Fields to 192 months of imprisonment, Samuels to 84 months of imprisonment, and

[1] The jury found Fields guilty of conspiring to distribute PCP, heroin, fentanyl, buprenorphine, marijuana, and synthetic marijuana. Samuels was found guilty of conspiring to distribute heroin and fentanyl. And Tucker was found guilty of conspiring to distribute heroin.

Tucker to 60 months of imprisonment. All three appealed and collectively raise eight claims. We address each claim in turn.

II

We start with Fields, who contends that the police officers who searched him and his vehicle in November 2017 lacked a sufficient basis to conduct their traffic stop, violating the Fourth Amendment. Prior to the search, officers conducting undercover surveillance on a store known to sell drug paraphernalia witnessed Fields exit the store. The officers followed him. Fields drove to a nearby parking lot where another person entered Fields's car and then left after less than two minutes. Suspecting a drug sale and wanting to remain undercover, the officers called for backup and followed Fields to another nearby parking lot.

When backup officers arrived, they observed Fields illegally speed through that parking lot and then park. They momentarily observed Fields before they approached him and asked for his driver's license and registration. "Due to his nervous behavior and furtive movements," they then asked Fields to step out of his car and keep his hands away from his pockets. App. 145.

Contrary to the instruction, Fields made "constant furtive movements towards his pockets." *Id.* So the backup officers conducted a pat down, during which Fields spontaneously uttered "that white powder in my pocket is a supplement." *Id.* The "white powder" was Mannitol, a known cutting agent for cocaine. *Id.* at 146.

The backup officers also found $2,000 in cash and a ledger on Fields. Inside his car, a K-9 found another $7,001 in cash and multiple bottles with concealed "false bottoms containing

trace amounts of white powder." *Id.* Fields was subsequently arrested.

Months later, in February 2018, ATF agents applied for a search warrant of Fields's car and the barbershop, which was suspected of being a stash house. The 18-page application included a paragraph about the November 2017 stop. After a court granted the search warrant, ATF agents found additional evidence of Fields's drug trafficking.

Before trial, Fields challenged the legality of the vehicular stop and search warrant. The district court held an evidentiary hearing on the stop. Sergeant Chaney (one of the two undercover officers) and Officer Haskett (one of the backup officers) both testified. The court found their testimony credible, concluded that there was probable cause to stop Fields, and denied Fields's suppression motion. The court also denied Fields's motion to suppress evidence from the February 2018 search.

As to the November 2017 stop, Fields challenges the court's findings that (1) the officers were credible, and (2) there was probable cause for the stop. In addition, he disputes the district court's rejection of his argument regarding the 2018 search, and he now adds an argument not raised in the district court — that the evidence from the February 2018 search warrant should be suppressed as poisonous fruit of the allegedly unlawful November 2017 stop.

A

As for the officers' credibility, we review the district court's findings for clear error. *United States v. Delaney*, 955 F.3d 1077, 1081–82 (D.C. Cir. 2020). And we reverse "when a district court credits *exceedingly improbable testimony*."

*United States v. Delaney*, 651 F.3d 15, 18 (2001) (cleaned up) (emphasis added).

Fields offers three reasons for reversal.

First, he argues that because Officer Haskett did not immediately stop him or take the necessary steps to cite him for speeding, no speeding actually occurred. But that conclusion does not follow from those facts. Officer Haskett was taking steps to cite Fields for speeding until he discovered evidence of a more serious crime — Fields's drug trafficking. It is therefore understandable the stop did not end how it began.

Second, Fields makes much of Sergeant Chaney's statement that he could not recall "[i]f there were any obvious reasons for the stop." App. 118. What Chaney actually said, when asked if he could recall "[i]f there were any obvious reasons for stop," was: "I believe there were, but off the top of my head, I couldn't tell you what it was. *Id.* But in any event, Sergeant Chaney was not even the officer who conducted the stop. Cause for the stop here depends on what was seen by Officer Haskett. And he recalled that Fields was speeding.

Third, Fields argues that Officer Haskett's testimony that Fields "was going a little fast," *id.* at 133, is inconsistent with his written report that Fields was "traveling at a high rate of speed through the parking lot" and that officers approached Fields to confront him "about speeding through the parking lot," *id.* at 145.

That argument, however, distorts Officer Haskett's testimony, which included at least five statements about Fields's driving:

(1) "I saw a silver Range Rover *speeding* through the parking lot";

(2) Fields "was *going a little fast* for people to — for [him] *to react to people walking across the road*";

(3) "I already had probable cause to stop the vehicle because of *speeding*";

(4) "I don't know the exact speed limit, but I do know that he was *driving faster than he should* if people are walking with their children and families shopping"; and

(5) Fields's "[*s*]*peed* [was] *greater than reasonable*."

Hr'g Tr. 9, 11, 31, ECF No. 246 (emphases added).

Contrary to Fields's argument, there is no genuine inconsistency between the written report and the totality of Officer Haskett's testimony. One can imagine a case where it might matter whether a defendant was barely speeding or dangerously speeding. But this is not that case. All that matters is that Fields committed a traffic violation.

The district court did not err in finding the officers' testimony credible. And we, like the district court, rely on it for the next part of our analysis.

B

We review the district court's determination that there was a legal basis for the stop *de novo*. *See Delaney*, 955 F.3d at 1081–82.

Because Officer Haskett observed Fields speeding, he had probable cause for the stop. It is well settled that a traffic stop "is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v. United States*, 517 U.S. 806, 810 (1996); *see also United States v. Sheffield*,

832 F.3d 296, 302 (D.C. Cir. 2016) (quoting *Whren*, 517 U.S. at 810).[2]

We will not consider Fields's argument that the speeding was merely a pretextual justification for the stop because the Supreme Court's precedents "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved." *Whren*, 517 U.S. at 813. So too do this court's precedents. *See Sheffield*, 832 F.3d at 302–03.

We affirm the district court's denial of Fields's motion to suppress.

C

Because Officer Haskett lawfully stopped Fields, there is no poisonous tree from which poisonous fruit could fall. Moreover, Fields forfeited his argument that the evidence from the February 2018 search warrant should be suppressed as fruit of the poisonous tree by not raising that argument in district court. "[S]uppression arguments that are not presented to the trial court are deemed waived and cannot be argued on appeal." *United States v. Castle*, 825 F.3d 625, 632 (D.C. Cir. 2016) (cleaned up).

III

Fields next argues that the district court erred when it denied his request to represent himself at trial. Fields had a difficult relationship with his attorneys throughout the prosecution. He fired his first attorney in 2018. Three months

[2] Even without probable cause, an officer's reasonable suspicion is alone enough to justify a traffic stop. *See Heien v. North Carolina*, 574 U.S. 54, 60 (2014).

before trial, he fired that attorney's successor. And then, seven days into trial, he tried to fire his third attorney. At that point, over his co-defendants' objections, Fields moved to represent himself. When the district court asked why, Fields said his attorney had not had time to learn the details of the case. He also believed his attorney was not "aggressive enough" during the trial. App. 361. The district court denied Fields's request, noting they were far along in the trial and Fields's self-representation at that juncture might harm his co-defendants.

Fields asks us to review the district court's decision *de novo*. But when a defendant's request to represent himself is made *after* trial has begun, we review the district court's decision for abuse of the court's "considerable discretion." *United States v. Noah*, 130 F.3d 490, 498 (1st Cir. 1997); *see also United States v. Washington*, 353 F.3d 42, 46 (D.C. Cir. 2004) (applying abuse of discretion standard).

"A person accused of a crime has an absolute right, under the Sixth Amendment, to represent himself *only* if he asserts that right *before trial*." *Washington*, 353 F.3d at 46 (emphases added). But if asserted *after* a trial begins, the right of self-representation is qualified. It must yield to other interests when those interests, such as harm to co-defendants, outweigh it. *See United States v. Bankoff*, 613 F.3d 358, 373–74 (3d Cir. 2010) ("However, after trial has commenced — *i.e.*, at least after the jury has been empaneled — the right of self-representation is curtailed. In that context, district courts have discretion to deny an untimely request to proceed *pro se* after weighing the prejudice to the legitimate interests of the defendant against the potential disruption of proceedings already in progress. How this balance should be struck is ultimately within the sound discretion of the district court, and we will review its decision under a highly deferential abuse-of-discretion standard.") (cleaned up); *United States v. Walker*, 142 F.3d 103, 108 (2d

Cir. 1998) ("Once a trial has begun, the defendant's right to self-representation is sharply curtailed. In cases in which the request is made following the commencement of the trial, the district judge must balance the prejudice to the legitimate interests of the defendant against the potential disruption of proceedings already in progress. On appeal, considerable weight will be given to the district court's assessment of this balance.") (cleaned up); *see also United States v. Dougherty*, 473 F.2d 1113, 1124 (D.C. Cir. 1972).

Citing this court's concern in *United States v. Washington* that a defendant's request to make his own closing argument may be an attempt to tell his story while evading cross-examination, *see* 353 F.3d at 46, Fields says, "At most, *Washington* stands for the proposition that a defendant may be denied self-representation when the request is an effort to game the system." Appellants' Br. 42. We disagree. Although a defendant's attempt to manipulate the process is a sufficient reason to deny a mid-trial request for self-representation, it is not a necessary reason. Prejudice to co-defendants is also a sufficient reason. So too is disruption of the proceedings. *Bankoff*, 613 F.3d at 373.

Here, the district court stated it could not "ignore the interests and the rights of the other defendants in this case." App. 367. It thoroughly explained to Fields his request would "risk harming" his co-defendants, "whether it's by a question you ask; whether it's by some objection you make or by an objection you don't make." *Id.* The court then again noted its duty to "not only consider your rights but the rights of these four other men" and concluded "the rights of these four other men will be jeopardized." *Id.* Therefore, the court denied Fields's mid-trial request, "given the late juncture and the amount of time that has passed in this case and where we find ourselves in this case." *Id.*

"A trial involving a *pro se* defendant and co-defendants who are assisted by counsel is pregnant with the possibility of prejudice." *United States v. Veteto*, 701 F.2d 136, 139 (11th Cir. 1983) (cleaned up). In this case, the reasons to fear that possibility — listed above by the district court — were compelling. And the district court could have added to those reasons Fields's erratic trial attendance and unwarranted hostility to fair proceedings. *See, e.g.*, Appellee's Supp. App. 422 (Fields: "I'm being railroaded here, man. I'm being railroaded here. I said this from the beginning that we wasn't going to get no justice in this court."); *id.* at 424 (Fields refused to attend afternoon trial proceedings); App. 372 (Fields: "I'm fighting the prosecution and I'm fighting you." Court: "You're not fighting me." Fields: "I'm definitely fighting you.").

The district court did not abuse its considerable discretion when it denied Fields's request to represent himself.

## IV

Fields raises two ineffective-assistance-of-counsel claims under *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail, he must show (1) "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" and (2) that the error prejudiced his defense. *Harrington v. Richter*, 562 U.S. 86, 104 (2011) (cleaned up). "Even under *de novo* review, the standard for judging counsel's representation is a most deferential one." *Id.* at 105. We "must apply a strong presumption that counsel's representation was within the wide range of reasonable professional assistance." *Id.* at 104.

Because Fields's claims are raised for the first time before this Court, we have two options — remand for an evidentiary hearing or reject them outright. The latter is permitted when defendants present their claims in a vague or conclusory

manner, when the trial record shows no deficient performance, or when that record shows no prejudice. *United States v. Sitzmann*, 893 F.3d 811, 831–32 (D.C. Cir. 2018) (per curiam); *United States v. Rashad*, 331 F.3d 908, 909–10 (D.C. Cir. 2003).

Here, every paragraph of Fields's brief — with the possible exception of his third of five paragraphs, noted below — is conclusory. And even when his arguments are at their least conclusory, the trial record shows no deficient performance or prejudice.

A

His first claim is laid out in four paragraphs. He begins in paragraph one by alleging that the relationship with his attorneys — recall that he fired the first two, and tried to fire the third — was "broken" and that their investigations were not "adequate":

> As we set forth above, Mr. Fields had a broken relationship with each of his attorneys. With respect to the first two, Mr. McCants and Mr. Retureta, one aspect of their ineffectiveness is already identified in the record but requires further exploration on remand — namely, their lack of adequate investigation.

Appellants' Br. 48.

Then in paragraph two, Fields describes his version of the evidence against him:

> As the Court is aware from the recitation elsewhere in this brief there was limited direct evidence against Mr. Fields. No surveillance

> photos showed him engaging in drug transactions. The only testimonial evidence against him came from a cooperating witness who, like all such witnesses, had mixed motivation. Thus, the main ground for Mr. Fields' conviction lay in the Government's attempt to tie him to drugs found in a room on the second floor above the barbershop. His alleged constructive possession of the goods found in that room was a critical piece of the government's case in chief.

*Id.*

Next, in paragraph three, Fields comes as close as he gets to a non-conclusory argument. He alleges other people had access to a room above the barbershop where he kept personal items and instrumentalities of drug trafficking. And he faults his initial attorneys for not finding them. But he never says how many people had access, who they were, or why we should believe that these unidentified people actually exist — aside from Fields's entirely self-serving "insiste[nce]" that they do:

> And thus, negating that inference of constructive possession was a vital component of Mr. Fields' defense. Throughout the time prior to trial, Mr. Fields insisted that other individuals also had keys to the room above the barbershop — a fact which, if established, would have afforded him the opportunity to argue the insufficiency of the government's evidence attempting to attribute those drugs to him. Yet, Mr. Fields' initial attorney, Mr. McCants, does not appear to have conducted the investigation necessary to evaluate Fields's

> requests. And Mr. Fields maintains that there is no evidence that Mr. Retureta pursued that investigation, either.

*Id.* at 48–49 (cleaned up).

Even assuming this, Fields's least conclusory paragraph, is sufficiently non-conclusory — which is doubtful — it was neither deficient performance nor prejudicial for his counsel not to investigate "other individuals" with "keys to the room above the barbershop" where Fields kept cash, drugs, drug paraphernalia, and personal items. Connecting others to the room would not have eliminated the evidence connecting Fields to the room. So even if his attorney had investigated the unnamed "other individuals," and even if they too were drug dealers, the jury would have learned nothing more than the unremarkable fact that Fields, a drug dealer, hung out and shared space with other drug dealers. *Cf.* Trial Tr. 69, ECF No. 312 ("[D]espite the fact that you heard Mr. Fields in person and on the phone again and again and again talk about how everybody has got keys, everybody has access . . . , [m]ultiple people can jointly have property in their constructive possession. That's the concept of both constructive possession and a conspiracy. It's teamwork.").

Finally, in paragraph four, Fields ends his first claim where he began — by repeating his conclusory claim that his attorneys should have "conduct[ed] an investigation":

> As the Supreme Court recently put it: "Counsel . . . has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. . . . In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the

> circumstances, applying a heavy measure of deference to counsel's judgments." Here, no assessment has been made as to the judgment of counsel in failing to conduct an investigation — manifestly necessitating an evidentiary inquiry.

*Id.* at 49 (cleaned up).

B

Fields's other (conclusory) claim is laid out in one paragraph — paragraph five. There he alleges his attorney did not adequately cross-examine Clark, the government's witness who identified him as the leader of the conspiracy. But Fields identifies no question his attorney should have asked that would have impeached Clark or exculpated Fields. Instead, Fields faults his attorney for not mentioning the absence of call records reflecting Clark's conversations with Fields. The absence of evidence, however, is not evidence of absence. So the absence of call records would not, in Fields's words, have "exploit[ed] inconsistencies" in Clarks's testimony. *Id.* And Fields fails to specify any other purported inconsistencies:

> In addition, at an evidentiary hearing Mr. Fields would also establish the reasons for his dissatisfaction with the representation provided by Ms. West, whose cross-examination of the cooperating witness, Byran Clark, was in Mr. Fields' view inadequate. She failed to exploit inconsistencies between the proffers that Mr. Clark earlier had made to the government and his sworn testimony. By way of example, although Clark contended that he was in frequent contact with Mr. Fields there were no

> call records — none — reflecting conversations between them.

*Id.*

In short, Fields does little more than state his "dissatisfaction" with his attorneys based on an investigation and cross-examination he deems inadequate for the vaguest of reasons and then conclude that this alone entitles him to relief. But we reject conclusory claims that leave out specific reasons for counsel's deficient performance and prejudice under *Strickland*. It is not nearly enough for Fields to simply state his dissatisfaction and then conclude that his dissatisfaction satisfied *Strickland*. We will therefore not remand Fields's ineffective-assistance-of-counsel claims for an evidentiary hearing and instead reject those claims.[3]

V

We now turn to Samuels's claims. He first contends that his trial counsel, Joseph Conte, provided ineffective assistance. Samuels primarily argues that Conte was ineffective under *Cuyler v. Sullivan*, 446 U.S. 335 (1980), which requires the defendant to show "(1) that his lawyer acted under an actual conflict of interest" and (2) that the conflict caused "an actual lapse in representation." *United States v. McGill*, 815 F.3d 846, 943 (D.C. Cir. 2016) (cleaned up); *see Cuyler*, 446 U.S. at 349. Because *Cuyler* relaxes *Strickland*'s prejudice

[3] We also hold a non-conclusory argument would have fared no better. With regard to Clark's testimony, the performance of Fields's trial attorney was not deficient or prejudicial. She repeatedly elicited purported inconsistencies between his pre-trial statements and trial testimony, as did three attorneys for Fields's co-defendants. Fields's attorney even made the point about the absence of text messages in her closing argument.

requirement, we are "reluctant to allow defendants to force their ineffective assistance claims into the 'actual conflict of interest' framework and thereby supplant the strict *Strickland* standard." *United States v. Taylor*, 139 F.3d 924, 930 (D.C. Cir. 1998) (cleaned up). We thus closely scrutinize claims under *Cuyler*.

Samuels argues that Conte was conflicted because his daughter worked for the U.S. Attorney's Office for the District of Columbia, which prosecuted Samuels. Although Conte mentioned his daughter's job to the prosecutor, he informed neither Samuels nor the district court. Shortly before Samuels's sentencing, the district court learned about the issue, appointed new counsel, and ordered briefing. The court concluded that Conte's failure to disclose his daughter's job raised a potential conflict of interest, and it set an evidentiary hearing on that issue. Later, the court granted the parties' joint motion to vacate the hearing without resolving the conflict issue. Now on appeal, Samuels again contends that Conte had a conflict of interest.

As discussed, we ordinarily remand "colorable and previously unexplored claims of ineffective assistance" for evidentiary hearings. *United States v. Marshall*, 946 F.3d 591, 596 (D.C. Cir. 2020) (cleaned up); *see McGill*, 815 F.3d at 942. But remand is unwarranted where the record establishes that counsel was not ineffective, where the appellant's allegations are vague and conclusory, or where the appellant fails to identify an issue that "requires a determination of facts." *Sitzmann*, 893 F.3d at 832 (cleaned up). Moreover, our standard for remand is blunted by "the strong presumption that counsel made all significant decisions in the exercise of reasonable professional judgment," which extends to claims under *Cuyler*. *Taylor*, 139 F.3d at 934 (cleaned up); *see also Burger v. Kemp*, 483 U.S. 776, 784 (1987) ("[W]e generally

presume that the lawyer is fully conscious of the overarching duty of complete loyalty to his or her client.").[4]

We assume that Conte was conflicted and resolve this appeal under *Cuyler*'s second prong, which considers whether the conflict led to an "actual lapse in representation." *McGill*, 815 F.3d at 943 (cleaned up). To satisfy this standard, Samuels must articulate a strategy that a reasonable, nonconflicted defense counsel would have pursued. *See United States v. Gantt*, 140 F.3d 249, 254 (D.C. Cir. 1998). The conflict must have caused the failure to pursue this strategy, *United States v. Bruce*, 89 F.3d 886, 896 (D.C. Cir. 1996), and must have "significantly affected counsel's performance . . . rendering the

[4] We are skeptical that Samuels preserved his ineffective-assistance claim. "The law in this circuit is that a claim of ineffective assistance must be made in a motion for a new trial 'when counsel changes prior to appeal and when there is still a reasonable opportunity to challenge a conviction in the District Court.'" *United States v. Wood*, 879 F.2d 927, 933 (D.C. Cir. 1989) (quoting *United States v. Debango*, 780 F.2d 81, 86 (D.C. Cir. 1986)). Before he appealed, Samuels received new counsel and pressed a claim that his former counsel was ineffective because of a conflict of interest. Moreover, after the district court set an evidentiary hearing to explore the conflict issue, Samuels — acting through his new counsel — affirmatively moved to proceed without a hearing. Nevertheless, the government waived any forfeiture (or waiver) argument by stipulating that it would not raise that issue in the joint motion to vacate the evidentiary hearing. *See United States v. Layeni*, 90 F.3d 514, 522 (D.C. Cir. 1996). The government's stipulation is not binding on us, *see Weston v. WMATA*, 78 F.3d 682, 685 (D.C. Cir. 1996), and we have significant concern with remanding now for a hearing that Samuels affirmatively eschewed. But because we may reject Samuels's *Cuyler* claim on the present record, we accept the stipulation and proceed to the merits.

verdict unreliable, even though *Strickland* prejudice cannot be shown," *Mickens v. Taylor*, 535 U.S. 162, 173 (2002).

Under this standard, Conte's failure to tell anyone other than the prosecutor about his daughter's job is not itself enough to establish ineffective assistance. *Cuyler* "requires proof of effect upon representation." *Id*. Without more, the "inadequate disclosure" of a conflict is "not an adverse effect on counsel's performance." *United States v. Mett*, 65 F.3d 1531, 1536 (9th Cir. 1995); *see Blake v. United States*, 723 F.3d 870, 878, 881–82 (7th Cir. 2013). And Samuels does not explain how Conte's limited disclosure so significantly affected his performance as to make the verdict unreliable.

To show an adverse effect, Samuels identifies three points that he claims Conte failed to raise. According to Samuels, Conte (1) missed an argument supporting a motion to suppress his statement about the shotgun found under his bed, (2) failed to timely oppose expert testimony on drug distribution, and (3) did not cite evidence to support a multiple-conspiracy instruction. Samuels posits that Conte avoided these points to advance his daughter's interests as an employee in the U.S. Attorney's office — *i.e.*, he "pulled punches that a reasonable, conflict-free counsel would have thrown." Appellants' Br. 51. Samuels concludes that these failures make his verdict unreliable. We disagree.

To begin, Samuels failed to identify any plausible link between the alleged conflict and the points that Conte purportedly missed. *See Bruce*, 89 F.3d at 896. His theory of causation — that Conte "pulled punches" to help his daughter — is belied by the trial record, which shows that the punches Conte threw were no less forceful than the ones he ostensibly pulled. For example, as explained below, Conte sought to sever Samuels's trial from Fields's, which would have

considerably increased the government's workload, *see Richardson v. Marsh*, 481 U.S. 200, 210 (1987). He also forcefully challenged the credibility of the government's central witness and offered alternative explanations for why Samuels appeared on Fields's ledger (to pay for car insurance) and for why Samuels identified the shotgun (to cover for his girlfriend). With no distinction between these arguments and the ones that Conte ostensibly missed, Samuels's theory of causation is not plausible.

Separate from causation, none of the purportedly missed arguments identifies a plausible lapse in representation. The first concerns Conte's unsuccessful motion to suppress Samuels's admission that he owned the shotgun agents found in his house. Conte had argued that the admission was involuntary because Samuels was suffering from heroin withdrawal at the time. The district court disagreed. On appeal, Samuels faults Conte for not also arguing that the statement was involuntary because he was under the influence of cocaine.

Conte's failure to make this argument was not a colorable lapse in representation. The "mere fact that one has taken drugs, or is intoxicated, or mentally agitated, does not render consent involuntary." *United States v. Castellanos*, 518 F.3d 965, 969 (8th Cir. 2008) (cleaned up). Instead, "coercive police activity" is necessary to find a confession involuntary. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). And the district court, in rejecting the heroin-withdrawal argument, found that the audio recording of Samuels's confession showed "no coercive police activity." App. 89. It would thus have been futile to argue that Samuels's consent was involuntary due to cocaine use. And the failure to raise a meritless objection is not colorably deficient. *See Sitzmann*, 893 F.3d at 833.

Second, Samuels argues that Conte failed to investigate or timely challenge testimony from a government expert that the amount of cocaine seized from Samuels's home — approximately 3.5 grams — was consistent with distribution rather than personal use. Conte moved to exclude the testimony on the day of the expert's testimony, but the district court denied the motion as untimely.

Samuels again identifies no colorable deficiency. For one thing, he does not explain why the motion to exclude the expert testimony might have been successful if timely, so this argument is too vague and conclusory to support remand. *See id.* at 832–33. He instead contends that Conte failed to develop evidence to counter the government's expert. But Conte forced the expert to concede that the amount of cocaine in Samuels's possession could have been for personal use. And he relied heavily on the possibility of personal use in his closing arguments, contending, for example, that Samuels owned a scale because he bought in bulk and did not want to be cheated. In other words, Samuels faults Conte for not offering cumulative evidence to support personal use, which is not enough for remand. *See id.* at 833.

Finally, Samuels contends that Conte botched his request for a multiple-conspiracy instruction, which would have clarified that the jury needed to find that Samuels was a member of the same conspiracy charged in the indictment to support a guilty verdict. In denying Conte's request, the district court reasoned that there was no evidence of Samuels "interacting with anyone else . . . who's not identified as a conspirator in this case." App. 609. Samuels contends that there was such evidence, which Conte missed, namely Clark's testimony that Samuels obtained crack cocaine to distribute in Virginia from "a guy named Miguel Harris." *Id.* at 391. The

indictment mentioned neither Harris nor a conspiracy to distribute crack cocaine.

It is at least plausible that Samuels would have received the multiple-conspiracy instruction had Conte flagged this evidence. If requested, a district court must give the instruction where the "record evidence supports the existence of multiple conspiracies." *United States v. Sanders*, 778 F.3d 1042, 1047 (D.C. Cir. 2015) (cleaned up). And Clark testified that Samuels "started purchasing" crack from Harris for distribution. App. 391. This testimony could perhaps support the inference that Harris was a "regular source," which would be enough to create a separate conspiracy. *United States v. Morris*, 836 F.2d 1371, 1374 (D.C. Cir. 1988).

But Conte's failure to secure the instruction is not enough to show that a conflict "significantly affected" his performance and made the verdict "unreliable." *Mickens*, 535 U.S. at 173. Whatever the contours of this standard, the failure to recall a single line of testimony in a three-week trial that might support a peripheral jury instruction cannot fairly be described as significant. Moreover, it casts no doubt on the verdict, which found that Samuels was guilty of conspiring to distribute heroin and fentanyl, not crack cocaine. Samuel's case thus falls well outside *Cuyler*, which "is designed to protect a defendant when it is impossible to reconstruct what might have occurred without counsel's conflict of interest." *Plunk v. Hobbs*, 766 F.3d 760, 766 (8th Cir. 2014).

Samuels alternatively contends that Conte was ineffective under *Strickland*, which requires him to show that his counsel's performance was deficient and prejudicial, *see* 466 U.S. at 687. For the reasons given above, Samuels has not proven deficient performance. And because he does not satisfy *Cuyler*'s lower standard to prove a "significant[]" effect on representation, he

also fails to satisfy *Strickland*'s more demanding requirement of prejudice. *Mickens*, 535 U.S. at 173.

In sum, Samuels has established no colorable claim of ineffective assistance under *Cuyler* or *Strickland*. His *Cuyler* claim fails because he has not plausibly proven that Conte's alleged conflict of interest caused an adverse effect that rises to the level of an actual lapse in representation. And his *Strickland* claim fails for lack of any colorable case for deficient performance or prejudice.

VI

Samuels next argues that the district court impermissibly limited his ability to cross-examine Clark, the government's central witness, about his prior bad acts. When Clark testified, he had previously pleaded guilty to kidnapping and obstruction of justice as part of a plea agreement that depended on his cooperation against Samuels in this case. Samuels claims that Clark earned the kidnapping charge by taking a person hostage at gunpoint, robbing him, and pointing a gun at the victim's head. For obstruction of justice, Samuels contends that Clark directed a third party to threaten a witness to not testify. Clark also had other prior convictions, including one for murder. Samuels sought to cross-examine Clark about his convictions and the facts underlying them to impeach Clark's credibility and to establish that the plea agreement gave Clark a bias.

The district court adopted a halfway approach, explaining that it had to balance the probative value of Clark's prior bad acts against the risk that the facts would "just dirty [him] up because he's a bad dude." App. 428. The court allowed Samuels to cross-examine Clark about the existence of his prior convictions; about the facts underlying charges the government reduced, dropped, or never brought due to Clark's cooperation; and about other possible sources of bias. But it excluded

questions about the facts underlying his convictions, reasoning that they would be "more prejudicial than probative." Appellee's Supp. App. 490. It also agreed with the government that those questions risked a "circus within a circus, a trial within a trial" about Clark. App. 433–34. Finally, it refused to let Samuels question Clark about the alleged witness intimidation after concluding that Samuels had no factual basis in the record to assume a threat occurred.

Samuels contends that the district court's ruling violated both the Confrontation Clause and Federal Rule of Evidence 403. Under the Confrontation Clause, a trial court "may limit cross-examination only after there has been permitted, as a matter of right, a certain threshold level of cross-examination." *United States v. Hall*, 945 F.3d 507, 513 (D.C. Cir. 2019) (cleaned up). That threshold is satisfied "so long as defense counsel is able to elicit enough information to allow a discriminating appraisal of a witness's motives and bias." *Id.* (cleaned up). Otherwise, district courts "retain wide latitude" to "impose reasonable limits on . . . cross-examination" under the Federal Rules of Evidence. *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). Relevant here, Rule 403 allows courts to exclude evidence "if its probative value is substantially outweighed by a danger of . . . unfair prejudice" or "confusing the issues." We review limits on cross-examination for an abuse of discretion. *United States v. Lin*, 101 F.3d 760, 768 (D.C. Cir. 1996); *Henderson v. Geo. Wash. Univ.*, 449 F.3d 127, 133 (D.C. Cir. 2006).

The district court did not violate the Confrontation Clause. Such a violation occurs "only when the court bars a legitimate line of inquiry that might have given the jury a significantly different impression of the witness's credibility." *United States v. Miller*, 738 F.3d 361, 375 (D.C. Cir. 2013) (cleaned up). Samuels elicited ample testimony to give the jury the

impression that Clark was lawless and had a substantial reason to testify in favor of the government. Among other impeaching facts, the jury learned about Clark's cooperation agreement; his prior convictions; and that he robbed and kidnapped a man, stole a car, and used a firearm during various crimes. This cross-examination easily clears the threshold required by the Confrontation Clause. *See, e.g.*, *Hall*, 945 F.3d at 513 (no violation where defendant cross-examined government witness on guilty plea in cooperation deal).

Nor did the district court abuse its discretion under Rule 403. Without acknowledging the court's concerns about unfair prejudice, Samuels argues that the salacious facts underlying Clark's prior convictions are "information the jury should have heard to evaluate whether someone with that little regard for human life and the law would have any compunction about lying under oath to reduce his time in prison." Appellants' Br. 75. But while "evidence of lawlessness can undermine the perpetrator's probable truthfulness . . . admission of such evidence is subject to the sound discretion of the trial court." *United States v. Garcia Sota*, 948 F.3d 356, 363 (D.C. Cir. 2020); *see also* FED. R. EVID. 609(a)(1)(A). And the court here acted well within its discretion in concluding that the risk of unfair prejudice stemming from the facts it excluded substantially outweighed any cumulative probative value. This Court has long acknowledged the risk that evidence of prior criminal activity would impermissibly lead juries to discredit witnesses because they are "bad men," rather than because they are biased or not credible. *United States v. Fox*, 473 F.2d 131, 135 (D.C. Cir. 1972). Thus, "when evidence of a prior conviction is admitted for purposes of impeachment, cross-examination is usually limited to the essential facts rather than the surrounding details of the conviction." *United States v. Baylor*, 97 F.3d 542, 544 (D.C. Cir. 1996). Not only did the district court allow cross-examination on the essential facts of

Clark's convictions, it let the jury hear about a wide range of Clark's other criminal activity. We find no error in the district court's limited restrictions on Clark's cross-examination.

Samuels also contends that the details underlying the obstruction charge are particularly probative because they involved a threat to intimidate a witness. But the district court did not limit questions about witness intimidation based on Rule 403. As noted, it restricted those questions because Samuels lacked a factual basis to ask them. *See Lin*, 101 F.3d at 768 ("counsel must have a reasonable basis for asking questions on cross-examination which tend to incriminate or degrade the witness") (cleaned up). In his reply brief, Samuels objects that the district court erroneously discounted evidence that provided a factual basis for the questions. This objection is forfeited, *see M.M.V. v. Garland*, 1 F.4th 1100, 1111 (D.C. Cir. 2021), and also meritless. Samuels points to no record evidence suggesting that Clark threatened a witness. Instead, he gestures at unspecified grand-jury testimony that he admits is not in the record, which is not good enough. *See United States v. Boyd*, 54 F.3d 868, 871–72 (D.C. Cir. 1995) (basis for cross-examination must be in the record). Samuels also faults the government for not providing further evidence to support its representation that Clark's obstruction charge did not involve threats. But an objection to limits on cross-examination is not the appropriate vehicle to challenge the government's compliance with discovery obligations. Samuels held the burden of proffering a sufficient factual basis to question Clark about threats. *See Lin*, 101 F.3d at 768. And the district court did not abuse its discretion when it ruled that he failed to satisfy that burden.

Moreover, any error by the district court would have been "rendered fully harmless by the broad range of other heinous conduct that the court allowed defense counsel to bring out in

cross-examination." *Garcia Sota*, 948 F.3d at 363; *see Van Arsdall*, 475 U.S. at 684; *United States v. Whitmore*, 359 F.3d 609, 622 (D.C. Cir. 2004). As explained, Samuels extracted testimony from Clark about his convictions and the facts underlying several violent crimes for which the government declined to prosecute him. Samuels's inability to elicit similar impeaching evidence was harmless because the cross-examination "was enough to enable the jury to assess the relation between [Clark's] lawlessness and his propensity for truthfulness." *Garcia Sota*, 948 F.3d at 363.

In sum, the district court acted well within its discretion under the Confrontation Clause and Rule 403 in limiting Clark's cross-examination, and any improper limits would have amounted to harmless error.

## VII

We next consider the arguments made by Samuels and Tucker that the district court abused its discretion in denying their motions to sever their trials from Fields's trial. Samuels and Tucker argue that severance was warranted due to "spillover" prejudice resulting from the disparity in evidence between them and Fields as well as Fields's obstreperous behavior during trial. Fields, the undisputed ringleader of the drug distribution conspiracy, frequently displayed less than exemplary behavior in court. At one point, he absented himself from the trial for part of a day. Towards the end of trial, Fields testified on his behalf. He was the only defendant to do so, and the testimony did not go well. Fields gave conflicting and unbelievable explanations for the evidence against him, accused the government of planting evidence, speculated about the government's motives for prosecuting him and his co-defendants, and became combative with the prosecutor and the district court. Both before and after Fields's testimony,

Samuels and Tucker moved to sever their trials on the ground that Fields's lies and misbehavior would be held against them by the jury. The district court denied this motion, explaining that Fields's credibility was a matter for the jury to decide and that Fields did not say anything "about the other defendants that already didn't come in the government's case-in-chief." App. 725.

"We review the denial of a motion to sever for abuse of discretion." *United States v. Wilson*, 605 F.3d 985, 1015 (D.C. Cir. 2010). The Federal Rules of Criminal Procedure permit joinder of defendants "alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." FED. R. CRIM. P. 8(b). Joint trials are preferred in federal criminal cases because they "promote efficiency and serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts." *Zafiro v. United States*, 506 U.S. 534, 537 (1993) (cleaned up). The preference for joint trials is "'especially strong' when 'the respective charges require presentation of much the same evidence, testimony of the same witnesses, and involve . . . defendants who are charged, *inter alia*, with participating in the same illegal acts.'" *Wilson*, 605 F.3d at 1016 (cleaned up). We find that neither the disparity in evidence between co-defendants, nor Fields's behavior during trial, warranted severance because any risk of prejudice was curable with appropriate instructions.

A joined defendant may seek to sever his trial from that of his co-defendants. "If the joinder of . . . defendants . . . appears to prejudice a defendant . . . , the court *may* . . . sever the defendants' trials, or provide any other relief that justice requires." FED. R. CRIM. P. 14(a) (emphasis added). The permissive language of this rule makes clear that severance is not required "even if prejudice is

shown." *Zafiro*, 506 U.S. at 538–39. Instead, Rule 14 grants a district court "significant flexibility to determine how to remedy any potential risk of prejudice posed by the joinder of multiple defendants in a single trial." *United States v. Moore*, 651 F.3d 30, 95 (D.C. Cir. 2011) (per curiam). Severance is the exception rather than the rule and is required only when there is "a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro*, 506 U.S. at 539. Although a serious risk may arise when "defendants are tried together in a complex case and they have markedly different degrees of culpability," even in cases where the risk of prejudice is high, "less drastic measures, such as limiting instructions, often will suffice to cure any risk of prejudice." *Id.* In light of these principles, motions to sever should be granted "sparingly." *United States v. Celis*, 608 F.3d 818, 844 (D.C. Cir. 2010).

Appellants "carr[y] the burden of demonstrating prejudice resulting from a failure to sever." *United States v. Gooch*, 665 F.3d 1318, 1336 (D.C. Cir. 2012). Samuels and Tucker here assert spillover prejudice, namely the risk "the jury would use evidence of one defendant's guilt against another." *United States v. Spriggs*, 102 F.3d 1245, 1256 (D.C. Cir. 1996). They maintain this prejudice arose from trying them, peripheral players in the conspiracy, together with Fields, "a perjurious and obstructionist lead defendant." Appellants' Br. 97. Samuels and Tucker fail to demonstrate prejudice.

First, Samuels and Tucker have not demonstrated prejudice from evidentiary spillover. Disparity in evidence requires severance "when the evidence against one defendant is 'far more damaging' than the evidence against the moving party," but will not require severance in a conspiracy trial when there is "substantial and independent evidence of each

defendant's significant involvement in the conspiracy." *Moore*, 651 F.3d at 95–96 (cleaned up). "[A]bsent a *dramatic* disparity of evidence, any prejudice caused by joinder is best dealt with by instructions to the jury to give individual consideration to each defendant." *Id.* at 95 (cleaned up). The varying roles played by members of a conspiracy will "not render joint trial inappropriate as long as the jury can reasonably compartmentalize the substantial and independent evidence against each defendant." *United States v. Straker*, 800 F.3d 570, 628 (D.C. Cir. 2015) (per curiam). As we will explain in Part VIII, the government introduced substantial and independent evidence of Samuels's and Tucker's involvement in the conspiracy. Although Samuels and Tucker played a subordinate role in the conspiracy led by Fields, we hold "the disparity of evidence did not rise to a level necessary to mandate severance." *Moore*, 651 F.3d at 96.

Second, Samuels and Tucker have not established prejudice from Fields's misbehavior during trial. Courtroom misconduct by a co-defendant must be especially egregious to mandate severance. *See, e.g.*, *United States v. Rocha*, 916 F.2d 219, 229 (5th Cir. 1990) (no severance required when co-defendant "mouthed the words, 'You are dead,' and moved a finger across his throat" during a witness's direct examination); *United States v. Marshall*, 458 F.2d 446, 448, 452 (2d Cir. 1972) (no severance required when a co-defendant directed obscenities at the court and witnesses, absented himself, threw a chair towards the jury box, and cut his wrists during summation). "Cautionary instructions . . . should remain the primary weapons against improper jury bias." *United States v. Mannie*, 509 F.3d 851, 857 (7th Cir. 2007). Fields's behavior was mildly disruptive: he was combative on the stand, refused to attend part of the trial, and made demonstrably false statements during his testimony. This misbehavior is simply not so beyond the pale as to mandate severance.

At bottom, this is not a case in which curative instructions were ineffective against potential prejudice. The district court gave several careful and tailored instructions throughout the trial. When Fields failed to show up one day, the district court instructed the jury that his "absence should not . . . be viewed as evidence or held against any other defendant in this matter in any way whatsoever." App. 347. The district court also instructed the jury that "each defendant is entitled to have the issue of his guilt as to each of the crimes for which he's on trial determined from his own conduct and from the evidence that applies to him as if he were being tried alone." Appellee's Supp. App. 784–85. The instructions explicitly stated that the jury's verdict as to one defendant should not "influence [its] verdict with respect to any other defendant as to that count or any other count in the Indictment." *Id.* at 785. The effectiveness of the district court's instructions is indicated by the jury returning mixed verdicts as to each of the defendants, including Fields. *See United States v. Gilliam*, 167 F.3d 628, 636 (D.C. Cir. 1999) (explaining that mixed "verdicts indicate that the jury was able to distinguish between the defendants"). We presume that juries follow the court's instructions when, as here, there is no evidence to the contrary. *Id.*

The district court cured any potential prejudice to Samuels and Tucker with limiting instructions and did not abuse its discretion in denying their motions to sever.

VIII

We turn next to Samuels's and Tucker's challenge to the sufficiency of the evidence to sustain their convictions for conspiracy to distribute heroin under 21 U.S.C. § 846.

To overturn a jury verdict for insufficient evidence, "a defendant faces a high threshold." *United States v. Washington*, 12 F.3d 1128, 1135 (D.C. Cir. 1994). In reviewing for

sufficiency of the evidence, we consider "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Gaskins*, 690 F.3d 569, 576–77 (D.C. Cir. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In applying this standard, we "draw[] no distinction between direct and circumstantial evidence, and 'giv[e] full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact.'" *United States v. Williams*, 836 F.3d 1, 6 (D.C. Cir. 2016) (quoting *United States v. Battle*, 613 F.3d 258, 264 (D.C. Cir. 2010)).

To convict Samuels and Tucker of conspiracy to distribute heroin, the government had to prove they acted knowingly and with the "specific intent to further the conspiracy's objective." *United States v. Childress*, 58 F.3d 693, 708 (D.C. Cir. 1995). The evidence here easily passes muster under our deferential standard of review.

With respect to Samuels, sufficient evidence supports that he knowingly furthered the conspiracy to distribute heroin. Fields controlled operations in the drug distribution conspiracy from the suite above the barbershop, where agents found approximately $60,000 worth of heroin as well as other drug paraphernalia. The evidence established that Samuels assisted Fields in this endeavor. Clark, the cooperating witness who testified that he frequently went to the barbershop to obtain heroin from Fields, placed Samuels regularly with Fields while Fields packaged drugs for distribution. GPS data from Samuels's cellphone also put him in the vicinity of the barbershop hundreds of times during the life of the conspiracy. As Clark testified, Samuels assisted Fields by opening the door and controlling access to the upstairs suite where the drugs were, which was corroborated by text messages to Samuels that

included "let me in" and "open the door." Appellee's Supp. App. 191–92. Text messages also demonstrated that Samuels was in frequent contact with other members of the conspiracy and used coded references to drug transactions. Moreover, Clark testified that Samuels had delivered five grams of heroin on one occasion when Clark was in a car with two other members of the conspiracy. Viewed in the light most favorable to the government, this evidence, combined with Samuels's frequent presence in the barbershop while Fields, the leader of the conspiracy, engaged in drug transactions, is sufficient to sustain Samuels's conviction for conspiracy to distribute heroin. *See, e.g.*, *Childress*, 58 F.3d at 712 (finding the evidence sufficient when defendants personally handled drugs, prepared them for sale, and did so at the direction of the conspiracy's leader).

Sufficient evidence also supported Tucker's conviction and established his role as a street-level dealer in the conspiracy. Clark's testimony put Tucker at the barbershop frequently, "[a]cting like [Tucker had] a license to sell drugs . . . [h]aving . . . no discretion, . . . no trying to hide it or anything, just out in the open." Appellee's Supp. App. 457. Tucker's frequent presence at the barbershop was corroborated by GPS data and law enforcement surveillance. Notably, agents observed Tucker engaged in "what appeared to be a hand-to-hand narcotics transaction" on the street in front of the barbershop. *Id.* at 363. Clark testified that he saw Tucker coming from the upstairs suite of the barbershop adjusting his "lower crotch area," and explained that when he used to sell drugs, he hid his stash in his "crotch area" to avoid detection by the police. *Id.* at 458. Clark also explained that heroin could be pink or tan depending on the substance it was cut with and that dealers often used slang to talk about narcotics. Tucker's text messages mentioned selling pink shirts and tan shoes, statements the jury could reasonably infer were references to

narcotics. Given Tucker's close relationship with Fields and frequent presence at the barbershop, the jury also could reasonably infer that Tucker obtained the heroin he sold from Fields. Viewing the evidence in the light most favorable to the government, sufficient evidence supported Tucker's conviction for conspiracy to distribute heroin.

Samuels and Tucker also seek to rely on *Gaskins*, in which this court found the evidence insufficient to sustain a drug-trafficking conspiracy conviction. In that case, despite extensive police surveillance and searches, no evidence put Gaskins in the presence of drugs, nor did any witness connect him to the conspiracy. *See* 690 F.3d at 572. Tucker argues that the evidence against him is similarly flimsy because he did not directly text members of the conspiracy, and Clark's testimony and the street-level buys at most established his role as an independent street-level dealer. Samuels also points to the lack of controlled buys, wiretaps, or surveillance as reasons why the evidence against him was insufficient. These arguments founder on the fact that the evidence against both Samuels and Tucker was far more robust than the evidence in *Gaskins*. Unlike Gaskins, both Samuels and Tucker "discussed drugs, distributed drugs, [and were] in the presence of drugs connected to the conspiracy." *Gaskins*, 690 F.3d at 577; *see also United States v. Shi*, 991 F.3d 198, 207 (D.C. Cir. 2021) (distinguishing *Gaskins* as a case in which there was an "overwhelming lack of evidence").

For these reasons, the evidence is sufficient to sustain the convictions of Samuels and Tucker.

IX

Tucker also challenges his sentence, arguing that the district court erred in calculating the quantity of heroin attributable to him for purposes of setting his Sentencing

Guidelines range. Although the district court's calculation was based on inferences, those inferences were reasonable in light of the record.

We "review[] a sentence imposed under the Guidelines to determine whether it is 'reasonable.'" *United States v. Flores*, 995 F.3d 214, 219 (D.C. Cir. 2021) (quoting *United States v. Blalock*, 571 F.3d 1282, 1285 (D.C. Cir. 2009)). This determination involves two steps: First, we ensure the district court did not commit a "significant procedural error," and second, we review whether the sentence is objectively reasonable. *United States v. Settles*, 530 F.3d 920, 923 (D.C. Cir. 2008) (quoting *Gall v. United States*, 552 U.S. 38, 51 (2007)). Tucker challenges only the district court's methodology for calculating the drug quantity attributable to him — a procedural error. Significant procedural errors include "failing to calculate (or improperly calculating) the [Sentencing] Guidelines range, . . . selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Gall*, 552 U.S. at 51.

A defendant's sentence for a drug conspiracy is based on the amount of drugs attributed to him. Under the Sentencing Guidelines, a defendant's base offense level is derived from his "relevant conduct," which includes the drug quantity involved for an offense. U.S.S.G. § 1B1.3 (2018) (cleaned up); *United States v. Burnett*, 827 F.3d 1108, 1120 (D.C. Cir. 2016). When necessary, such as when there has been "no drug seizure or the amount seized does not reflect the scale of the offense," the district court must approximate the drug quantity. U.S.S.G. § 2D1.1 cmt. n.5. Further, when a defendant is part of a drug conspiracy, his relevant conduct includes "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." *United States v. Bostick*, 791 F.3d 127, 158 (D.C. Cir. 2015) (quoting U.S.S.G.

§ 1B1.3(a)(1)(B)). "We review the District Court's determination of drug quantity relevant for sentencing under a clear error standard." *United States v. Mack*, 841 F.3d 514, 527 (D.C. Cir. 2016).

The district court attributed 75 grams of heroin to Tucker. Although the presentence report found Tucker's relevant conduct included 546.7 grams due to his involvement in the conspiracy, the district court declined to hold Tucker responsible for all the sales made from the barbershop or to Clark. Instead, it estimated the amount of heroin for which Tucker was personally responsible. Based on the amount of heroin sold by Tucker to the confidential informant (0.58 grams), the GPS data, Clark's testimony, and surveillance, the district court estimated that Tucker sold 0.5 grams of heroin five times weekly for thirty weeks, totaling 75 grams. That quantity resulted in a Guidelines range of 51 to 63 months, and with Tucker's career offender enhancement, the range increased to 210 to 262 months. The district court found this range overstated Tucker's criminal history, so it used the sentences received by other members of the conspiracy as benchmarks and ultimately sentenced Tucker to sixty months' imprisonment. The district court's calculation of the drug quantity attributable to Tucker, which was based on reliable evidence in the record, was not clearly erroneous.

Tucker argues the district court erred by using a method for calculating the drug quantity for his base offense level that was "unduly speculative." Appellants' Br. 105. We find, however, that the district court employed a reasonable method, which resulted in a conservative estimate. While it found "Tucker was part of a core group of individuals that operated out of that barbershop," Appellee's Supp. App. 794, it chose not to attribute the 546.7 grams of heroin recommended by the presentence report. The court instead used the amount of

heroin Tucker distributed in a single controlled buy to extrapolate five similarly sized sales per week for thirty weeks. Although one sale is a small sample size, that does not render the court's extrapolation unduly speculative, particularly when it results in a conservative estimate. *Cf. United States v. Correa-Alicea*, 585 F.3d 484, 491 (1st Cir. 2009) (affirming a district court's use of two controlled purchases multiplied by a "highly conservative" "estimate of one transaction per day"). In addition, the district court's estimation that five sales per week were of heroin is reasonable based on Tucker's frequent presence at the barbershop and the quantity of heroin seized there. "[D]rug quantity calculations are an art, not a science," and the district court chose a reasonable method. *United States v. Block*, 705 F.3d 755, 760–61 (7th Cir. 2013) (explaining "we afford trial courts some room for speculation and reasonable estimation so long as percentages and quantities were not pulled out of thin air") (cleaned up).

In sum, the district court did not clearly err in calculating the drug quantity attributable to Tucker.

X

For the foregoing reasons, we affirm.

*So ordered.*

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 19-3042** **September Term, 2021**

**1:18-cr-00267-APM-6**
**1:18-cr-00267-APM-2**
**1:18-cr-00267-APM-1**

**Filed On: September 3, 2021** [1912721]

United States of America,

Appellee

v.

Lonnell Tucker,

Appellant

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Consolidated with 19-3043, 19-3078

## O R D E R

It is **ORDERED**, on the court's own motion, that the Clerk withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41. This instruction to the Clerk is without prejudice to the right of any party to move for expedited issuance of the mandate for good cause shown.

**FOR THE COURT:**
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

# UNITED STATES DISTRICT COURT

District of Columbia

UNITED STATES OF AMERICA
v.
ANTHONY FIELDS

**AMENDED JUDGMENT IN A CRIMINAL CASE**

Case Number: 18-cr-267-1 (APM)
USM Number: 16945-016

**Date of Original Judgment:** 6/21/2019 *(Or Date of Last Amended Judgment)*

Kira Anne West and Nicole Ann Cubbage
Defendant's Attorney

FILED
NOV 12 2019
Clerk, U.S. District and Bankruptcy Courts

**THE DEFENDANT:**

☐ pleaded guilty to count(s)

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

☑ was found guilty on count(s) 1-5, 7, and 8 of the superseding indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| 21 U.S.C. § 846 | Conspiracy to distribute and possess with intent to distribute one hundred grams or more of a mixture and substance containing a detectable amount of phencyclidine, (cont.) | 2/1/2018 | 1 |

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

☑ The defendant has been found not guilty on count(s) 13 and 14

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

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

6/13/2019
Date of Imposition of Judgment

Signature of Judge

Amit P. Mehta, U.S. District Judge
Name and Title of Judge

11/12/19
Date

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## ADDITIONAL COUNTS OF CONVICTION

| Title & Section | Nature of Offense | Offense Ended | Count |
|---|---|---|---|
| | one hundred grams or more of heroin, a detectable amount of fentanyl****, a detectable amount of buprenorphine, a detectable amount of marijuana and a detectable amount of synthetic cannabinoids.**** | | |
| 21 U.S.C. § 841(a)(1) and § 841(b)(1)(B)(iv) | Unlawful possession with intent to distribute one hundred grams or more of a mixture and substance containing a detectable amount of phencyclidine. | 2/1/2018 | 2 |
| 21 U.S.C. § 841(a)(1) and § 841(b)(1)(B)(i) | Unlawful possession with intent to distribute one hundred grams or more of heroin. | 2/1/2018 | 3 |
| 21 U.S.C. § 841(a)(1) and § 841(b)(1)(b)(vi) | Unlawful possession with intent to distribute forty grams or more of fentanyl. | 2/1/2018 | 4 |
| 21 U.S.C. § 841(a)(1) and § 841(b)(1)(C) | Unlawful possession with intent to distribute buprenorphine. | 2/1/2018 | 5 |
| 21 U.S.C. § 802(32), § 841(a)(1), and § 841(b)(1)(C) | Unlawful possession with intent to distribute a detectable amount of synthetic cannabinoids. | 2/1/2018 | 7 |
| 21 U.S.C. § 856(a)(2) | Unlawful maintenance of a premises to manufacture, distribute, store, and use a controlled substance. | 2/1/2018 | 8 |

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :
192 months (16 years) on each of Counts 1-5, 7, and 8, to run concurrently.

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

The court recommends placement at FCI Allenwood or FCI Hazelton. Additionally, the defendant is recommended for placement in the following programs: occupational education program and residential drug abuse prevention program (RDAP).

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

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

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## SUPERVISED RELEASE

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

96 months (8 years) on each of Counts 1-4, 72 months (6 years) on Count 5, and 36 months (3 years) on each of counts 7 and 8. All terms of supervised release are to run concurrently.

## MANDATORY CONDITIONS

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

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

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## STANDARD CONDITIONS OF SUPERVISION

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

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

## U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## SPECIAL CONDITIONS OF SUPERVISION

The defendant must submit to substance abuse testing to determine if he has used a prohibited substance. The defendant must not attempt to obstruct or tamper with the testing methods.

The defendant must participate in a vocational services program and follow the rules and regulations of that program. Such a program may include job readiness training and skills development training.

The defendant must participate in an educational services program and follow the rules and regulations of that program. Such programs may include high school equivalency preparation and/or other classes designed to improve his proficiency in skills such as reading, writing, mathematics, or computer use.

The probation office shall release the presentence investigation report to all appropriate agencies in order to execute the sentence of the Court. Treatment agencies shall return the presentence report to the probation office upon the defendant's completion or termination from treatment.

Within sixty days of release from incarceration or placement on supervision, the defendant will appear before the Court for a re-entry progress hearing. Prior to the hearing, the probation officer will submit a report summarizing his status and compliance with release conditions. If the defendant is supervised by a district outside of the Washington DC metropolitan area, the United States Probation Office in that district will submit a progress report to the court within 60 days of the commencement of supervision.

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

| | Assessment | Restitution | Fine | AVAA Assessment* | JVTA Assessment** |
|---|---|---|---|---|---|
| TOTALS | $ 600.00 | $ | $ | $ | $ |

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

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

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

| | | | | |
|---|---|---|---|---|
| TOTALS | $ _____ | 0.00 | $ _____ | 0.00 |

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: ANTHONY FIELDS
CASE NUMBER: 18-cr-267-1 (APM)

## SCHEDULE OF PAYMENTS

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

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

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

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

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:

The special assessment is immediately payable to the Clerk of the Court for the US District Court, District of Columbia. Within 30 days of any change of address, the defendant shall notify the Clerk of the Court of the change until such time as the financial obligation is paid in full.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

| Case Number<br>Defendant and Co-Defendant Names<br>*(including defendant number)* | Total Amount | Joint and Several Amount | Corresponding Payee, if appropriate. |
|---|---|---|---|

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☑ The defendant shall forfeit the defendant's interest in the following property to the United States:
Pursuant to Rule 32.2(a) of the Federal Rules of Criminal Procedure, the defendant shall forfeit US currency in the amount of $7,202 recovered by the defendant and/or his co-conspirators in connection with this prosecution.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 19-3042** **September Term, 2021**

**1:18-cr-00267-APM-6**

**Filed On:** January 13, 2022

United States of America,

Appellee

v.

Lonnell Tucker,

Appellant

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Consolidated with 19-3043, 19-3078

**BEFORE:** Katsas, Rao, and Walker, Circuit Judges

**O R D E R**

Upon consideration of appellant Tucker's petition for panel rehearing filed in No. 19-3042 on September 20, 2021, and appellant Fields' petition for panel rehearing filed in No. 19-3043 on September 24, 2021, it is

**ORDERED** that the petitions be denied.

**Per Curiam**

**FOR THE COURT:**
Mark J. Langer, Clerk
BY: /s/
Daniel J. Reidy
Deputy Clerk

I told you I didn't write this over lunch.

All right. Let me just rule on the other motions.

This is the motion to suppress evidence from November 28th of 2017, the traffic stop.

Let me just say: I'm, then, also granting the government's motion for reconsideration.

On November 28th, 2017, officers from the Prince George's County Police Department stopped Defendant Anthony Fields while parked in a silver Range Rover in a shopping center parking lot.

A search of Fields and the Range Rover uncovered a white powdery substance that was suspected to be cocaine but later determined actually to be the supplement, mannitol, over $9,000 in cash, a small white sheet of paper that the government contends is a drug debt ledger, and false-bottom plastic containers used to conceal narcotics. Mr. Fields was arrested and charged with possession with intent to distribute cocaine.

Thereafter, on January 30th, 2018, Special Agent Rebekah Moss applied for warrants to search various places that relied, in part, on Mr. Fields' stop and arrest on November 28th, 2017.

Mr. Fields moves to suppress the evidence seized during the Maryland traffic stop and arrest.

The Court held an evidentiary hearing on

Mr. Fields' motion on February 12th, 2019, and February 15th, 2019.

The government presented two witnesses: Special Agent Sean Chaney, who, at the time, was a sergeant supervisor with the Prince George's County Police Department, and is now employed with the Maryland State Attorney General's office; and, two, Officer Jonathan Haskett, who presently is employed by the Prince George's County Police Department.

The defense called no witnesses.

The Court also admitted into evidence various photographs of the items seized during the search, as well as Officer Haskett's written report of the arrest.

The Court found Special Agent Chaney and Officer Haskett to be credible and makes the following factual findings based on their testimony:

On the day in question, Special Agent Chaney and the detective under his command, Detective Brandon Taylor, were conducting surveillance of Babs Records, a store located on Marlboro Pike, and known to law enforcement for selling drug paraphernalia.

The surveillance was not for a specific investigative purpose but instead was used by Special Agent Chaney to train Detective Taylor in surveillance techniques.

During their surveillance of Babs Records, they

witnessed a man, later identified as Mr. Fields, enter Babs Records without a bag and then exit a short time later with a bag.

Based on this observation and his years of experience, knowledge of the sale of drug paraphernalia at Babs Records, Special Agent Chaney grew suspicious of the man, and so decided to follow him.

Mr. Fields got into a silver Range Rover and drove first to a restaurant where Mr. Fields remained for an unspecified period of time.

He then drove to a parking lot of a shopping center on Marlboro Pike.

After Mr. Fields arrived there, Special Agent Chaney observed another man approach the Range Rover, though he could not say from where. He then saw the man enter it, remain inside for less than two minutes, and then depart, though he could not say to where the man departed.

Mr. Fields never left the vehicle.

Special Agent Chaney could not see what transpired between the two men inside the Range Rover.

Nevertheless, he suspected the two men in the Range Rover had engaged in a drug transaction.

He so deduced based on knowledge and experience of Babs Records as a place to purchase drug paraphernalia, combined with seeing a man quickly enter and exit the

Range Rover in the parking lot.

He said that this was also consistent with the drug sale because in his experience, a dealer usually remains in the car, while the buyer approaches the car and enters it.

Thus having suspected a drug deal, Special Agent Chaney called for uniformed officers to conduct a stop of the Range Rover.

Approximately 3:00 p.m., Officer Haskett, in a marked police car, responded to this call for a suspected drug transaction, along with other officers in his unit.

At some point, though the testimony was not clear on this, Officer Haskett spotted the Range Rover and he observed it speeding in a parking lot located at 58548 -- excuse me, he observed it speeding in a parking lot located at 5848 Silver Hill Road.

Though Officer Haskett did not know the speed limit in the parking lot, he believed that his high speed or the high speed violated a Maryland law prohibiting driving at a speed greater than reasonable.

Officer Haskett further testified that in his judgment, the speed of the Range Rover presented a safety issue, because there were pedestrians in the parking lot at the time, and he agreed that the parking lot was crowded.

On cross-examination, defense tried to discredit

this observation by suggesting that Officer Haskett had not included it in his report, namely that the Range Rover was "speeding."

The Court does not find his line of examination to undermine Officer Haskett's testimony. His report states that he observed the Range Rover "traveling at a high rate of speed through the parking lot," and there's no material difference between that description and the term "speeding."

The Range Rover then parked in the lot. Officer Haskett did not immediately approach the car. Instead, he observed it for a period of minutes to see if the driver of the car was there to meet anyone with whom he might exchange drugs. He neither observed the driver leave the car nor anyone approach it.

Eventually, Officer Haskett and two other marked cars performed what is termed a "pinch" to prevent the Range Rover from driving away.

Officer Haskett approached from the rear of the car. And upon arriving at the driver's side of the vehicle, he observed the driver, Mr. Fields, surreptitiously place a white object into his pants pocket.

He asked Mr. Fields for his license and registration.

He observed Mr. Fields breathing heavily, darting his eyes and acting nervously.

He then asked Mr. Fields to step out of the car.

After doing so, Officer Haskett observed Mr. Fields patting and manipulating his jacket and pants pocket.

Officer Haskett advised Mr. Fields to keep his hands away from his pockets because he was concerned that Mr. Fields may have possessed a weapon.

He then conducted a pat-down of Mr. Fields.

During the pat-down, Mr. Fields stated, without prompting, that "the white powder is in his pocket" -- excuse me, "the white powder in his pocket is a supplement."

Mr. Fields then said that the "white powder" was in his right jacket pocket.

Officer Haskett then removed from the right jacket pocket a brown paper bag containing a white powdery substance in a plastic bag.

Officer Haskett field tested the substance, which resulted in a positive indication for cocaine.

Mr. Fields was then placed under arrest, at which point Mr. Fields said that the white substance was mannitol.

A search of his person incident to arrest revealed approximately $2,000 in cash in his pocket and a piece of paper from his right pants pocket that Officer Haskett identified as a drug ledger.

Because of the suspected narcotics and the large

amount of cash found on Mr. Fields, a K-9 unit was called in to perform a dog sniff.

The K-9 alerted to the presence of drugs in the central console in the trunk area.

Based on this alert, officers performed a thorough search of the car. This search uncovered approximately $7,000 in cash, diversion bottles commonly used to hide drugs that contained a trace amount of white powder, and two white bottles containing a white powder.

Officer Haskett testified that this additional powder also field tested positive for cocaine, though he did not take a photograph of the second field test.

Mr. Fields first objects to the legality of the stop. In assessing the validity of the stop, the inquiry is an objective one. See United States versus -- *Whren v. United States*, 517 U.S. 806 from 1996.

As the D.C. Circuit stated in *United States versus Washington*, *Whren* exemplifies -- this is a quote -- "*Whren* exemplifies the broader principle that courts analyze searches and seizures based on what an objectively reasonable officer could have believed and done, not what the officer subjectively thought." And that's 559 F.3d 573 at 578 from 2009.

Whereas here, one of the bases offered for the stop is a traffic violation.

The Circuit has recognized that "A stop is reasonable under the Fourth Amendment so long as the police have probable cause to believe that a traffic violation has occurred, regardless of the officer's actual motivations for the stop." That's from *United States versus Walters*, 361 Fed. Appx. 153 at 154 from 2009.

The Circuit also said, in *Washington*, that, "The officer's actual subjective motives, detecting guns" -- excuse me, "detecting drug and gun crimes are irrelevant to the Fourth Amendment analysis of the traffic stop and protective search of the car." That's *Washington* at 559 F.3d at 575.

As applied here, what these principles mean is that if law enforcement had an objectively reasonable basis to stop Mr. Fields for a traffic violation, it is irrelevant, one, that the real reason was to investigate a suspected drug transaction, and, two, that law enforcement might have been wrong about having a reasonable, articulable suspicion of a drug offense.

In this case, the Court finds that law enforcement had probable cause to stop Mr. Fields for a traffic violation.

As discussed, the Court credits Officer Haskett's testimony, that he observed Mr. Fields driving at a high rate of speed in a shopping center parking lot.

That observation gave Officer Haskett probable cause to believe that Mr. Fields had committed a traffic infraction.

Specifically, Title 21 Section 801 of the Maryland state transportation code provides that "A person may not drive a vehicle on a highway at a speed that, with regard to the actual and potential dangers existing, is more than that which is reasonable and prudent under the conditions."

That's Maryland Code, annotated transportation 22-801.

That statute and the interpretation given to it by the Maryland Court of Appeals defines the term "highway" broadly enough such that it includes a shopping center parking lot.

The statute defines "highway" as including "the entire width between the boundary lines of any way or thoroughfare of which any part is used by the public for vehicular travel, whether or not the way or thoroughfare has been dedicated to the public and accepted by any proper authority."

That's Maryland Code, annotated transportation code, 11-127.

And in *United States versus Ambrose*, the Court of Appeals of Maryland affirmed the breadth of the definition of "highway," stating that, "Requiring a private

roadway, driveway or parking lot to have an unrestricted right of use by the public would, in total, render any private roadway, driveway or parking lot immune to the motor vehicle laws contained in Title 21. Such a result would be illogical and violate the canons of statutory construction." That's 403 Md. Reporter 525 at 439 through 40.

Thus, Title 2 Section 124 of the Maryland code applies to the shopping center parking lot where Officer Haskett observed Mr. Fields.

It matters not that Officer Haskett was not able to cite chapter and verse of the Maryland code. It is sufficient that he observed Mr. Fields traveling at a sufficiently high rate of speed for a parking lot that he put at risk the safety of pedestrians. Accordingly, the stop was legal.

Mr. Fields also contends that there was no justification for the pat-down search of his person. But that question is not a material one in this case because Officer Haskett testified that during the pat-down, Mr. Fields spontaneously said that the white powder in his pocket was a supplement and indicated that the substance could be found in his right jacket pocket.

That statement either standing alone or in combination with other facts known to law enforcement about Fields' suspected drug activities that day justified Officer

Haskett removing the brown bag containing the white powder substance from Mr. Fields' pocket.

Once the substance field tested positive for cocaine, Officer Haskett was permitted to search Mr. Fields.

In following the positive dog sniff, law enforcement was permitted to search the car.

Even if the frisk were relevant, for example, if Fields contends that the illegal frisk somehow negated the spontaneous statements that he made, Officer Haskett's conduct would still pose no Fourth Amendment concern.

"When police have an objectively reasonable basis to conduct a traffic stop for a suspected moving violation and possess or develop an objectively reasonable fear the driver may be armed, the officers may frisk the driver and search the car." That's *Washington*, 559 F.3d at 575.

In this case, Officer Haskett possessed a reasonable fear that Mr. Fields might be armed.

Haskett had been told that Fields might have been engaged in a drug transaction, and it is not uncommon for traffickers to have access to firearms and weapons.

Furthermore, Officer Haskett observed Mr. Fields put a white object in his pants pocket; and after he got out of the car, Mr. Fields patted down both his jacket and pants pockets, behavior that caused Officer Haskett to become concerned that Mr. Fields might have a weapon.

Giving due regard for officer safety, the Court finds that Officer Haskett had "a reasonable belief based on specific and articulable facts, which taken together with the rational inference from those facts, reasonably warrant, in his belief, that Mr. Fields was dangerous and that he may gain immediate control of weapons." And that's quoting, as modified, *Michigan versus Long*, 563 U.S. 1032 at 1049 through 50, 1968.

And so for these reasons, Mr. Fields' motion to suppress the evidence from the November 28th, 2017, traffic stop, which is ECF 66, is denied.

All right. Finally, I'll get to the search -- excuse me, the seizure of the keys and the Suboxone strips on February 1st.

On February 1st, 2018, law enforcement executed a search warrant for a silver 2018 Land Rover driven by Mr. Fields as relevant to Mr. Fields' motion. Officers seized keys attached to a Redskins' lanyard and 23 Suboxone Strips in his pants pockets.

Mr. Fields moves to suppress those items on the ground, that the search and seizure violated his Fourth Amendment rights.

The Court held a hearing on February 15th, 2019. Special Agent Wayne Gerrish and Special Agent Rebekah Moss testified for the government. Mr. Fields testified on his

understand that?

THE DEFENDANT: I understand that.

But it was -- I was at least --

THE COURT: Hang on.

And you still wish to proceed without a lawyer?

THE DEFENDANT: Yes, sir, yeah.

THE COURT: Okay.

Why don't you have a seat.

I'll say, I've never been in a trial in which every day presents new, interesting challenges quite like this one.

I have to reach all the way back to 1972, the case is *United States versus Dougherty*, 473 F.2d 1113, from the D.C. Circuit.

D.C. Circuit writes as follows: "In sum, whether or not the right of pro se representation has a constitutional foundation, it is patently a statutory right. See U.S. -- 28 U.S.C. 1654.

"This right was not only conferred by Congress in 1789 but has wide reverberation in organic state law and was recognized by Congress as a fundamental right.

"We conclude that this right must be recognized if it is timely asserted and accompanied by a valid waiver of counsel.

"And if it is not itself waived, either expressly

or constructively, as by disruptive behavior during trial.

"The precedents relied on by the government or subjecting the pro se right to extensive qualifications do no more than establish these basic -- three of these basic elements: Timely assertion, need for intelligent waiver of counsel, and the possibility of a waiver of the pro se right.

"A number of cases involve the special circumstances of defendants whose mental capacity was impaired.

"The bulk of the cases cited to us involve requests made after the commencement of trial and do no more than apply the recognized principle that the fundamental right to conduct the case pro se is one that must be claimed timely before trial begins.

"Just as a defendant, who has an unrestricted right to retain counsel of his own choosing must seek permission of the Court once his choice has been made to select a different retained counsel and is subject to the sound discretion of the Court when he seeks to make a change after trial has commenced, so a defendant must obtain the Court's permission when he seeks to make a change in order to select himself as counsel.

"When the pro se right is claimed after trial has begun, the Court exercises its discretion. It may weigh the

inconvenience threatened by defendant's belated request against the possible prejudice from denial of defendant's request.

"In exercising discretion, the judge may take into account the circumstances at the time, whether there has been a prior disruptive behavior by defendant, whether the trial is in an advanced stage.

"The right to self-representation, though asserted before trial, can be lost by disruptive behavior during trial, constituting constructive waiver.

"But that is a far different situation from that presented by the instant case where appellants unequivocally claim the right to represent themselves well in advance of the beginning of trial and selection of the jury."

That case, as I said, *United States versus Dougherty*.

*United States versus Washington*, D.C. Circuit case decided October 20, 2003, 353 F.3d 42, case in which a person demanded the right to represent himself at a closing.

The Circuit wrote and held that the District Court did not abuse its discretion by refusing that request.

The Court wrote, "A person accused of a crime has in absolute right under the Sixth Amendment to represent himself only if he asserts that right before trial," citing *Dougherty*.

Although I don't understand why they said it's a constitutional right, because *Dougherty* didn't say that, but in any event, "We, therefore, only review for abuse of discretion the District Court's denial of Mr. Washington's motion to deliver his own closing argument.

"The District Court clearly did not abuse its discretion by denying Washington's request which came at the close of trial after the government had rested its case and the defense had announced Washington would not testify on his own behalf.

"In view of the timing and the specific nature of the request not to take over from counsel for the reminder of the case but, rather, to do his own closing argument, the District Court was reasonably concerned with presenting Washington from basically testifying without having to be cross-examined."

We find ourselves somewhere not quite as far as along, obviously, as *Washington* but, nevertheless, we find ourselves way well along in this case.

We are now more than a week -- or we're about to start the second week of evidence in this case. A lot of evidence has been presented by the government. There is still yet more evidence to be presented, including that of a cooperating witness.

Mr. Fields does not have legal training. He does

not have knowledge of the legal procedures and the Rules of Evidence that are going to be critical going forward in this case.

And I cannot ignore the interests and the rights of the other defendants in this case.

The other lawyers are right, Mr. Fields. If you get up and represent yourself at this juncture, you risk harming their cases; whether it's by a question you ask; whether it's by some objection you make or by an objection you don't make; whether it's by calling a witness who might hurt one of these other defendants; and I have to, in this case, not only consider your rights but the rights of these four other men.

And my fear is that if you represent yourself, the rights of these four other men will be jeopardized.

And so I'm not prepared, given the late juncture and the amount of time that has passed in this case and where we find ourselves in this case, to grant your request to represent yourself.

Ms. West will continue to represent you in this trial and you will receive her assistance.

You are warned that, to the extent you are unsatisfied with this and it causes you to become angry or unhappy, let alone disruptive, you know, I will have -- you may be removed from the courtroom, if you become disruptive.

I'm not saying you have been, but I'm saying --

THE DEFENDANT: I want to exercise my right not to attend no more of these proceedings.

I want to exercise my right not to attend no more of these proceedings. So you can have the whole trial without me.

THE COURT: Okay.

Why don't you stand up, Mr. Fields.

Let me just make sure you understand what you're asking me, okay?

MS. WEST: May I have a moment to confer with Mr. Fields, Your Honor?

THE COURT: Sure. Why don't you speak with him.

(Defense counsel conferred with Defendant Fields off the record.)

MS. WEST: Your Honor, I'm sitting at the table and everybody can hear my conversation with Mr. Fields. I'd ask permission to speak with him for five minutes in the lockup.

THE COURT: You've got two minutes.

MS. WEST: Yes, sir.

THE COURT: I've got to start this trial.

(Counsel and Defendant Fields exited the courtroom.)

MS. HERNANDEZ: Your Honor, I know you have to --