

App. 1

**United States Court of Appeals  
for the Fifth Circuit**

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No. 20-60437

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

DAN V. SHARP,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 3:18-CR-102-1

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(Filed Jul. 26, 2021)

Before JONES, SOUTHWICK, and COSTA, *Circuit Judges.*

GREGG COSTA, *Circuit Judge:*

Dan Sharp was charged with numerous drug trafficking and gun crimes arising out of three separate incidents. After tangling with two court-appointed attorneys, Sharp proceeded to trial *pro se*. A jury convicted him on fifteen counts. On appeal, Sharp raises procedural, evidentiary, and constitutional challenges to the district court proceedings. Finding no reversible error, we affirm.

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### I.

On September 27, 2017, police officers responded to an apparent suicide at a home in Horn Lake, Mississippi. As officers spoke with the decedent's husband, Dan Sharp, they noticed pill bottles and firearms around the room. This prompted the officers to obtain a search warrant, under which they seized drugs, digital scales, firearms, and ammunition from the home and from Sharp's car parked outside. After confirming that Sharp had felony convictions, officers arrested him.

Sharp had a second run-in with the police the following February, when his car swerved into the lane of a DeSoto County sheriff's deputy. The deputy stopped Sharp's car, and after Sharp admitted that he had a gun inside, retrieved the gun from the center console. At that point, the deputy spotted an open toiletry case on the passenger floorboard containing a clear bag of marijuana. The deputy and a special narcotics officer eventually recovered two more guns, digital scales, and quantities of methamphetamine, cocaine, marijuana, and oxycodone from Sharp's car.

Sharp's final encounter with police occurred on April 19, 2018. That day, a confidential informant told the DeSoto County Sheriff that Sharp had "a large amount of methamphetamine" outside the county courthouse in Hernando, Mississippi. Agents located Sharp's car at the courthouse and began tracking his movements, ultimately observing what they believed

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to be a drug sale. The agents detained Sharp and again found drugs and drug paraphernalia in his possession.

A grand jury indicted Sharp on nineteen counts stemming from those three incidents: two counts of possessing a firearm as a convicted felon, one count of drug distribution, fourteen counts of possessing drugs with an intent to distribute, and two counts of possessing a firearm in furtherance of a drug trafficking crime. The government subsequently dropped three counts.

Before trial, Sharp moved to sever the counts into separate trials for each of the three incidents. His first motion, filed through counsel, argued that Sharp would be prejudiced by having to face in one trial a multitude of charges originating out of the three separate incidents. When the district court denied this motion, Sharp filed a new motion to sever *pro se*, emphasizing that joinder of all counts could hamper his ability to testify on some charges but not others. The district court once again declined to sever the counts. Sharp also moved through counsel to exclude evidence arising out of the February traffic stop and April drug arrest, asserting that police unreasonably detained him on both occasions. The district court denied the suppression motions.

Throughout these pretrial proceedings, Sharp sparred with his court-appointed attorneys. He repeatedly tried to fire his first attorney, a federal public defender, citing poor communication and performance. And he eventually succeeded—noting “a complete

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breakdown in attorney-client communications,” the district court granted the public defender’s motion to withdraw. Sharp also clashed with his second court-appointed attorney, who, Sharp complained, refused to file certain motions and cast doubt on his competency by seeking a hearing to assess his fitness for trial. That attorney, meanwhile, filed a motion informing the court that Sharp had made a credible threat of violence against him. The district court found Sharp competent to stand trial and denied Sharp’s motions to substitute counsel, observing that he was likely to raise the same complaints “no matter who serves as his counsel.”

On the eve of trial, Sharp waived his Sixth Amendment right to counsel and elected to represent himself. The district court held a hearing and “strongly urge[d]” Sharp to stick with his attorney rather than proceed on his own. But Sharp insisted on proceeding *pro se*, so the court accepted his knowing and voluntary waiver and appointed the attorney as Sharp’s standby counsel. As the trial began and the government started offering exhibits, however, Sharp expressed confusion with how to proceed and doubts that he would be “able to carry on with this case.” Standby counsel spoke up, suggesting that maybe Sharp wanted to withdraw his counsel waiver while advising the court that he disagreed strongly with certain strategic moves he believed Sharp planned to make. The court twice asked Sharp if he was reconsidering his decision to represent himself, but in response, Sharp only reiterated his confusion as to materials that the government had just

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presented him. After clarifying what those materials were, the court moved on.

A jury convicted Sharp of fifteen counts and acquitted him of one. On appeal—and with new counsel—Sharp seeks to undo his convictions on a number of grounds.

### II.

We start with the suppression issue. Sharp argues that the district court should have excluded evidence arising out of his February 2018 traffic stop because the DeSoto County sheriff’s deputy lacked justification to pull him over. The denial of Sharp’s suppression motion is subject to an especially deferential clear-error review because the court found, after taking live witness testimony, that the deputy’s account of the traffic stop was “much more credible than Sharp’s.” *See United States v. Santiago*, 410 F.3d 193, 197 (5th Cir. 2005). The court credited the deputy’s testimony that he pulled Sharp over because Sharp “abruptly swerved into his lane, nearly hitting his car,” and discounted Sharp’s story to the contrary. Sharp has not established that those findings were clearly erroneous. As a result, we affirm the denial of his suppression motion.

### III.

Sharp challenges the sufficiency of the evidence supporting his convictions for drug possession with intent to distribute, drug distribution, and firearm

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possession in furtherance of a drug trafficking offense. Because he moved for a judgment of acquittal, we review his sufficiency claims *de novo*. *United States v. Lee*, 966 F.3d 310, 316 (5th Cir. 2020). Still, “we give great deference to the jury’s factfinding role, viewing the evidence and drawing all inferences in favor of its verdict.” *Id.* (citation omitted).

The evidence supports Sharp’s convictions for drug possession with an intent to distribute. Officers explained that in September 2017, February 2018, and April 2018, they found Sharp with narcotics and in the presence of either drug paraphernalia, firearms, or both. Investigators also described text messages in which Sharp appeared to be negotiating drug sales in the days surrounding his September 2017 and April 2018 arrests. On the stand, Sharp even admitted that he had traded firearms for drugs and that he would offer free drugs to women but would not “get dudes high for free.” A rational jury could have therefore concluded that, on each occasion, Sharp knowingly possessed a controlled substance and intended to distribute it.

Sharp disputes that he possessed drugs on September 2017, insisting that he was only briefly visiting the home where they were discovered. But witnesses testified that Sharp was a regular presence in the house and sold drugs out of the bedroom where the drugs were stashed.

Sharp further claims that he never intended to distribute the drugs in his possession. Indeed, some of the quantities he possessed did not rule out personal

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use. Supporting the jury’s finding on intent, however, is that the drugs were always found with digital scales, baggies, or firearms. The presence of these guns and drug distribution materials allowed the jury to infer an intent to distribute even if the quantities were consistent with personal use. *See United States v. Youngblood*, 576 F. App’x 403, 407 (5th Cir. 2014) (citing *United States v. Kates*, 174 F.3d 580, 582 (5th Cir. 1999)).

Sharp’s conviction for drug distribution also stands. The jury heard witness Joseph Warren testify that he had bought cocaine from Sharp in the past and did so again on the date of Sharp’s April 2018 drug arrest. That alone is enough.

For the gun convictions that Sharp challenges, the jury had to determine that his possession of firearms in September 2017 and February 2018 “further[ed], advance[d], or help[ed] forward” a drug trafficking offense. *United States v. Cooper*, 979 F.3d 1084, 1090 (5th Cir. 2020) (citing *United States v. Ceballos-Torres*, 218 F.3d 409, 415 (5th Cir. 2000)); *see* 18 U.S.C. § 924(c)(1). The evidence establishes possession. Sharp had several guns in his vehicle when he was pulled over in February 2018. He exercised control over the home where firearms were found in September 2017, handled those firearms shortly before the police arrived on scene, and appeared with those same guns in photos recovered from his cellphone.

Ample evidence also indicates that Sharp possessed those firearms in furtherance of a drug

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trafficking offense. *See Ceballos-Torres*, 218 F.3d at 414–15 (noting possession is more likely to be in furtherance of a drug trafficking offense if the firearm is accessible to the defendant, stolen, possessed unlawfully, or in proximity to drugs). Sharp’s guns were close at hand and in proximity to drugs. He possessed them illegally (due to his prior felony convictions) and one of them had been stolen. The jury therefore heard plenty of evidence to support Sharp’s convictions on these counts. *See Cooper*, 979 F.3d at 1090–91 (upholding conviction when firearm found in defendant’s car alongside drug paraphernalia); *United States v. Charles*, 469 F.3d 402, 406–07 (5th Cir. 2006) (upholding verdict after noting that defendant, “as a convicted felon . . . was not permitted to possess any firearm for any purpose”).

## IV.

Next, Sharp argues that the district court denied him a fair trial by declining to sever the counts into three separate trials. An indictment may charge the defendant with two or more distinct offenses if the offenses “are of the same or similar character.” FED. R. CRIM. P. 8(a). “Joinder of charges is the rule rather than the exception and Rule 8 is construed liberally in favor of initial joinder.” *United States v. Huntsberry*, 956 F.3d 270, 287 (5th Cir. 2020) (citation omitted). The court may nonetheless sever joined counts into separate trials “[i]f the joinder of offenses . . . appears to prejudice [the] defendant.” FED. R. CRIM. P. 14(a).

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We review the denial of a motion to sever “under an exceedingly deferential abuse of discretion standard.” *United States v. Hager*, 879 F.3d 550, 557 (5th Cir. 2018) (citation omitted). The district court “will not be reversed without a showing of specific and compelling prejudice which results in an unfair trial.” *United States v. Ballis*, 28 F.3d 1399, 1408 (5th Cir. 1994) (citation omitted). The court, moreover, can usually forestall prejudice from the failure to sever counts “through an appropriate jury instruction.” *United States v. Turner*, 674 F.3d 420, 430 (5th Cir. 2012).

Sharp has not made a “specific and compelling” showing of prejudice resulting from the failure to sever his counts. Sharp contends that the district court’s refusal to sever the counts forced Sharp to make the difficult choice between testifying “on all counts or none.” But nowhere does Sharp explain how his defense suffered from his ultimate decision to take the stand. He correctly notes that joinder may prejudice a defendant who “wish[es] to testify in his own defense on one charge but not testify on another.” 1A CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 223 (5th ed. 2020). Yet severance in this scenario “is not mandatory.” *Ballis*, 28 F.3d at 1408 (quotation omitted). Sharp does not identify any particular charge about which he was eager to speak or remain silent, so he has not met his “burden of demonstrating that he has both important testimony to give concerning one count and a strong need to refrain from testifying on the other.” *Id.* (quotation omitted). Even if he had met that burden, the district court preempted the concerns

Sharp raises by limiting cross-examination to “the matters that [Sharp] presented in his narrative testimony.” The district court thus acted within its discretion by denying his motion to sever.

V.

A pair of Sharp’s claims of trial error face a particularly high hurdle on appeal. Sharp contends that the district court denied him a fair trial by requiring him to wear shackles in sight of the jury. He alternatively seeks a new trial due to the introduction of testimony from DeSoto County Sheriff’s Detective Thomas Brea that Sharp claims violated his rights under the Confrontation Clause. Sharp, however, failed to raise these issues in the district court. Because he did not, this court reviews only for plain error—“a clear or obvious forfeited error affecting his substantial rights” that “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Davis*, 754 F.3d 278, 281 (5th Cir. 2014); *see id.* (reviewing shackling order for plain error); *United States v. Acosta*, 475 F.3d 677, 680–81 (5th Cir. 2007) (reviewing Confrontation Clause claim for plain error).

A.

Sharp has not shown that the district court erred in ordering him to wear leg shackles, which were padded throughout trial to minimize the noise they would make. Due process “prohibit[s] the use of physical restraints visible to the jury absent a trial court

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determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.” *Deck v. Missouri*, 544 U.S. 622, 629 (2005). The district court’s concern that a defendant poses a safety risk, however, may be “a valid, particularized reason” for shackling him. *United States v. Ayelotan*, 917 F.3d 394, 401 (5th Cir. 2019); *see also United States v. Maes*, 961 F.3d 366, 376 (5th Cir. 2020) (upholding shackling of defendant who faced a long sentence and “presented a security risk and a flight risk”). And the court “may rely heavily on the U.S. Marshal’s advice when deciding whether defendants should be shackled during trial.” *Maes*, 961 F.3d at 375 (quotation omitted). Here, the district court identified safety concerns to justify using the padded shackles: Sharp’s criminal history, which included battering a juror and assaulting a law enforcement officer; the long sentence he faced; and the Marshal’s security concerns. Indeed, Sharp had threatened one of his lawyers before trial in this case. Sharp does not show an error on the shackling issue, let alone one that clears the plain-error hurdles.

### B.

Sharp has, by contrast, cleared the first hurdle by showing error in the admission of an informant’s out-of-court statement in violation of the Confrontation Clause. *See U.S. CONST. amend. VI*. Detective Brea stated on direct examination that on the day of Sharp’s April 2018 arrest, “another agent . . . got a call from a confidential informant saying Mr. Sharp was at [the

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county courthouse], and he was in possession of a large amount of methamphetamine.”

The government argues that it introduced the informant’s tip for a nonhearsay purpose: to explain the course of the investigation rather than to assert that the informant’s account was true. To be sure, a tip need not be true to “provide context for the[] investigation or explain ‘background’ facts.” *United States v. Kizzee*, 877 F.3d 650, 659 (5th Cir. 2017). But the mere existence of a purported nonhearsay purpose does not insulate an out-of-court statement from a Confrontation Clause challenge. *See id.* at 656. The probative value of the nonhearsay purpose of explaining the investigation may pale in comparison to the risk that the jury will consider a highly inculpatory out-of-court statement for its truth. *Id.* (recognizing this risk).

Imagine the following testimony in a murder case:

PROSECUTOR: Why did you start investigating the defendant?

DETECTIVE: An eyewitness told me that the defendant was the shooter.

Such testimony may, just as the government contends here, “explain why the defendant became a suspect or how the officer was able to obtain a search warrant.” *United States v. Jones*, 930 F.3d 366, 377 (5th Cir. 2019). But surely such a rationale does not permit an end run around the confrontation right. The nonhearsay justification fails because, by recounting a “witness’s statement to the police that the defendant is

guilty of the crime charged,” the officer has introduced an intolerably high risk that the jury will take that statement as proof of the defendant’s guilt. *Id.*; *see also Taylor v. Cain*, 545 F.3d 327, 336 (5th Cir. 2008) (recognizing that testimony similar to the hypothetical violated the defendant’s confrontation rights). We thus have recognized that “courts must be vigilant in ensuring that these attempts to ‘explain the officer’s actions’ with out-of-court statements do not allow the backdoor introduction of highly inculpatory statements that the jury may also consider for their truth.” *United States v. Sosa*, 897 F.3d 615, 623 (5th Cir. 2018) (quoting *Kizzee*, 877 F.3d at 659).

Although Sharp’s crime was drug dealing rather than murder, Detective Brea’s testimony is just as problematic as the hypothetical posed above. He relayed an out-of-court statement of the most damaging kind—that Sharp was committing the crime—and left Sharp with no opportunity to confront his accuser. There was “minimal need” for the detective to share that highly incriminating account, as he could have instead told the jury more generally that a tip prompted him to investigate Sharp. See *Kizzee*, 877 F.3d at 660; *see also United States v. Sarli*, 913 F.3d 491, 500 (5th Cir. 2019) (Duncan, J., dissenting) (noting the officer “could have explained the circumstances leading to [the defendant’s] arrest without divulging the details from the tip”). When, as here, “an officer’s testimony leads to the clear and logical inference that out-of-court declarants believed and said that the defendant was guilty of the crime charged, Confrontation Clause

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protections are triggered.” *Kizzee*, 877 F.3d at 657 (quotation omitted).

Backdooring highly inculpatory hearsay via an explaining-the-investigation rationale is a recurring problem. *See, e.g., Atkins v. Hooper*, 979 F.3d 1035, 1040–41 (5th Cir. 2020); *Jones*, 930 F.3d at 377–78; *Sarli*, 913 F.3d at 496; *Kizzee*, 877 F.3d at 661; *Taylor*, 545 F.3d at 335. Statements like those made by Detective Brea threaten to “eviscerate the constitutional right to confront and cross-examine one’s accusers.” *United States v. Silva*, 380 F.3d 1018, 1020 (7th Cir. 2004). The government must take care to avoid eliciting this kind of unconstitutional testimony.

Although the jury should not have heard the informant’s statement, Sharp cannot establish that the error “affected the outcome of the district court proceedings.” *United States v. Thomas*, 724 F.3d 632, 645 (5th Cir. 2013) (citation omitted). Overwhelming evidence allowed the jury to find that Sharp distributed drugs and possessed drugs with an intent to distribute them on April 19, 2018. Detective Brea personally observed Sharp drive to a tattoo parlor that day and engage in what looked like a “hand-to-hand transaction” with Joseph Warren, one of the shop’s employees. Warren himself confirmed Brea’s suspicion, testifying that police caught him buying cocaine from Sharp. And a search of Sharp’s vehicle revealed several controlled substances (including cocaine and methamphetamine) as well as drug paraphernalia. The weighty evidence of Sharp’s guilt means he is unable to show prejudice from the Confrontation Clause violation.

VI.

Sharp next contends that the district court violated his constitutional right to counsel by declining to elevate his standby counsel to full trial counsel when the lawyer suggested it. This court reviews *de novo* a defendant's claim that the district court violated his right to counsel "by allowing him to represent himself at trial." *United States v. Joseph*, 333 F.3d 587, 589 (5th Cir. 2003) (citation omitted).

A criminal defendant has a constitutional right to the assistance of counsel. U.S. CONST. amend. VI. But the Sixth Amendment also gives defendants the right to represent themselves. *Faretta v. California*, 422 U.S. 806, 819–20 (1975). Before trial, Sharp elected the latter option, and does not dispute that his original waiver of counsel was a knowing and voluntary one. *See United States v. Davis*, 269 F.3d 514, 518 (5th Cir. 2001) ("In order for a waiver to be knowing and intelligent, the trial judge must warn the defendant against the perils and disadvantages of self-representation.")

A defendant who makes a valid waiver of the right to counsel may reassert the right to an attorney. *See United States v. Pollani*, 146 F.3d 269, 272 (5th Cir. 1998). Absent a finding that reintroduction of counsel would require delay or "impede the orderly administration of justice," a district court cannot deny a *pro se* defendant's motion to be represented by counsel. *United States v. Smith*, 895 F.3d 410, 421 (5th Cir. 2018) (citing *Pollani*, 146 F.3d at 273). This is not a case, however, in which the district court refused to grant a *pro se*

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defendant's request to retract his counsel waiver. *Cf. Pollani*, 146 F.3d at 272.

Sharp expressed confusion over exhibits offered by the government and some doubt that he would be able to go forward without advice from standby counsel. Standby counsel then suggested that perhaps Sharp intended to retract his counsel waiver. In response, the court sought to clarify whether Sharp wished to continue representing himself. It reminded Sharp that he had chosen to represent himself and twice asked him if he wanted to stick to that plan. In answering the court's questions, however, Sharp never reasserted his right to counsel. Because Sharp knowingly waived his counsel right and then declined, after he was given multiple opportunities by the district court, to "withdraw his prior waiver and reassert his right to counsel," the court did not err by allowing him to represent himself. *See United States v. Patterson*, 42 F.3d 246, 248 (5th Cir. 1994). Allowing standby counsel's suggestion that full representation is warranted to override the defendant's stated desire to proceed *pro se* would undermine the right to self-representation.

## VII.

Still dissatisfied by his pretrial representation, Sharp presses an ineffective assistance of counsel claim on appeal. Defendants, however, cannot usually bring ineffective assistance claims on direct appeal. *United States v. Gulley*, 526 F.3d 809, 821 (5th Cir. 2008) (citation omitted). The reason is that typically

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“the record does not provide sufficient detail about [pre-]trial counsel’s conduct and motivations to allow this court to make a fair evaluation of the merits of the defendant’s claim.” *Id.* (quotation omitted). That is the case here. We thus deny Sharp’s ineffective assistance claim without prejudice to his raising the claim on collateral review. *See United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014).

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The judgment is AFFIRMED.

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**United States Court of Appeals  
for the Fifth Circuit**

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No. 20-60437

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UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

DAN V. SHARP,

*Defendant—Appellant.*

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 3:18-CR-102-1

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(Filed Jul. 26, 2021)

Before JONES, SOUTHWICK, and COSTA, *Circuit Judges.*

**JUDGMENT**

This cause was considered on the record on appeal  
and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judg-  
ment of the District Court is AFFIRMED.

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**UNITED STATES DISTRICT COURT**  
Northern District of Mississippi

UNITED STATES  
OF AMERICA

v.

Dan V. Sharp

**JUDGMENT IN A  
CRIMINAL CASE**

(Filed May 18, 2020)

Case Number:  
0537 3 :18CR00102-001

USM Number:18547-042

Thomas C. Levidiotis  
Defendant's Attorney

## THE DEFENDANT:

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, and 18 of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)	Felon in Possession of a Firearm	02/14/2018	1 and 8

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21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Possession of a Controlled Sub- stance with In- tent to Distribute	04/19/2018	2, 3, 5, 6, 9, 11, 12, 13, 15, 16, and 18
18 U.S.C. § 924(c)(1)(A)	Possession of a Firearm in Fur- therance of a Drug Trafficking	02/14/2018	7 and 14

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

- The defendant has been found not guilty on count(s)
- Count(s) \_\_\_\_\_ is/are dismissed on the motion of the United States.

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

May 15, 2020  
Date of Imposition of Judgment

Glen H. Davidson  
Signature of Judge

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Glen H. Davidson, Senior Judge  
Name and Title of Judge

May 15, 2020

Date

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

One hundred thirty-five (135) months on Counts 2, 3, 5, 6, 9, 11, 12, 13, 15, 16, and 18 of the Superseding Indictment, and One hundred twenty (120) months on Counts 1 and 8 of the Superseding Indictment, such terms to run concurrently, and sixty (60) months on each of Counts 7 and 14 of the Superseding Indictment, for a total of one hundred twenty (120) months, to be served consecutively to all other counts. Therefore, producing a total sentence of imprisonment of two hundred fifty-five (255) months.

- The court makes the following recommendations to the Bureau of Prisons:
- 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.

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- 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.

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UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of: Five (5) years on Counts 7 and 14 of the Superseding Indictment and three (3) years on Counts 1, 2, 3, 5, 6, 8, 9, 11, 12, 13, 15, 16, and 18, of the Superseding Indictment, all such terms to run concurrently, which will produce a total term of five (5) years Supervised Release.

1. You must not commit another federal, state or local crime.

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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 cooperate in the collection of DNA as directed by the probation officer. *(check, if applicable)*
5.  You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *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)*
6.  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.

## **STANDARD CONDITIONS OF SUPERVISION**

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.

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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.

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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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

**SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall participate in a mental health treatment program, under the administrative supervision of the probation officer, until successfully discharged. While participating in treatment, the defendant shall abide by all rules and requirements of the program.
2. The defendant shall participate in a program of testing and treatment for substance abuse, details of which will be outlined and supervised by the probation officer, until such time as the defendant

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successfully completes the program or is deemed by the treatment provider to no longer be in need of treatment.

3. The defendant shall abstain from the use of alcohol during his term of supervision.
4. The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of his supervision. Any search must be conducted at a reasonable time and in a reasonable manner.

**CRIMINAL MONETARY PENALTIES**

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

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

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal*

*Case (AO 245C)* will be entered after such determination.

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

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

**\*\* All payments are to be made payable to Clerk of Court by money order or cashier's check and mailed to: Clerk of Court, 911 Jackson Avenue, Room 369, Oxford, MS 38655. \*\***

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

**TOTALS** \$ \_\_\_\_\_ \$ \_\_\_\_\_

Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on

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\* 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.

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Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
  - the interest requirement is waived for the fine  restitution.
  - the interest requirement for the fine  restitution is modified as follows:

**SCHEDULE OF PAYMENTS**

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

- A**  Lump sum payment of \$ 1,500 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.,*

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*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:  
\*Payment of any balance on any remaining criminal monetary penalties after placement on probation or supervised release, or after release from incarceration to a term of supervised release, shall be made in regular monthly installments of not less than 10 percent of the defendant's gross monthly income or not less than \$100 per month, whichever is greater. Such payments to commence no later than 60 days from placement on probation, supervised release or release from incarceration to a term of supervised release.

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

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

Joint and Several

Defendant and Co-Defendant. Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

**DENIAL OF FEDERAL BENEFITS**

*(For Offenses Committed On or  
After November 18, 1988)*

**FOR DRUG TRAFFICKERS PURSUANT TO 21  
U.S.C. § 862**

IT IS ORDERED that the defendant shall be:

- ineligible for all federal benefits for a period of Ten (10) years ending May 15, 2030.
- ineligible for the following federal benefits for a period of \_\_\_\_\_.  
*(specify benefit(s))* \_\_\_\_\_  
\_\_\_\_\_

**OR**

- Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

**FOR DRUG POSSESSORS PURSUANT TO 21  
U.S.C. § 862(b)**

IT IS ORDERED that the defendant shall:

- be ineligible for all federal benefits for a period of \_\_\_\_\_.
- be ineligible for the following federal benefits for a period of \_\_\_\_\_.  
*(specify benefit(s))* \_\_\_\_\_  
\_\_\_\_\_
- successfully complete a drug testing and treatment program.
- perform community service, as specified in the probation and supervised release portion of this judgment.

**IS FURTHER ORDERED** that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

**Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement,**

welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk is responsible for sending a copy of this page and the first page of this judgment to:

**U.S. Department of Justice, Office of Justice  
Programs, Washington, DC 20531**

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