

No. _____

In the Supreme Court of the United States

TRAVIS THOMAS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

**PETITION FOR WRIT OF CERTIORARI
AND MOTION TO PROCEED *IN FORMA PAUPERIS***

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Counsel for Petitioner
(Criminal Justice Act)

August 8, 2022

No. _____

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TRAVIS THOMAS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

NOW COMES Petitioner TRAVIS THOMAS, JR., and, pursuant to Sup. Ct. R. 39 and 18 U.S.C. §3006A(d)(7), prays for leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed *in forma pauperis*. Petitioner was represented both at trial and on direct appeal by counsel appointed by the District Court under the Criminal Justice Act, 18 U.S.C. §3006A(c). A copy of the docket sheet reflecting the orders appointing trial and appellate counsel pursuant to the Criminal Justice Act is set forth in the Appendix. Pet. App. 17a, 23a. Petitioner's financial circumstances have not materially changed since the District Court's prior findings of indigency.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that the Court grant this motion in all respects.

Respectfully submitted on this, the 8th day of August, 2022.

/s John A. Peralta

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QUESTION PRESENTED

Immediately prior to the commencement of the jury trial in this case, over Petitioner's objection, the trial court granted the Government's motion to amend Count Three of the indictment to read possession of "fentanyl" rather than "fentyl." The trial proceeded with the term "fentanyl" substituted for "fentyl" in the reading of the indictment and in the Court's instructions to the jury.

This cannot be considered a simple typographical error, for there is, in fact, a prescription pharmaceutical by the name of "Fentanyl," which is manufactured in Bangladesh and sold only as an injectable liquid. It is the brand name pharmaceutical of the generic version of fentanyl citrate. Conversely, the fentanyl in this case was a non-pharmaceutical, illicitly manufactured substance in the form of a pill to be taken orally.

The question presented in this petition is:

Does the Fifth Amendment's Grand Jury Clause prohibit a trial amendment altering a factually distinct description of a required element?

PARTIES TO THE PROCEEDING

There are no parties to this proceeding other than those set forth in the caption of the case.

Petitioner Travis Thomas, Jr., was the Appellant in the Court of Appeals below and the Defendant in the District Court. Respondent is the United States of America, which was the Appellee in the Court of Appeals below and the Plaintiff in the District Court.

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https://pubchem.ncbi.nlm.nih.gov/compound/fentanyl	1
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https://www.medicinesfaq.com/brand/fentanyl	1

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that this Court issue a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit in this case and order plenary review of the issue set forth herein.

OPINIONS BELOW

United States v. Thomas, No. 21-50663 (5th Cir. May 11, 2022) - The opinion of the Court of Appeals below was not designated for publication in the Federal Reporter. A copy of the opinion is set forth in the Appendix. (Pet. App. 3a)

The oral decision of the United States District Court for the Western District of Texas on the issue presented herein was pronounced immediately prior to the commencement of trial. The relevant portion of the transcript is excerpted in the Appendix. (Pet. App. 7a)

JURISDICTIONAL STATEMENT

The opinion of the Court of Appeals was entered on May 11, 2022. A copy of the opinion is set forth in the Appendix. (Pet. App. 3a) No orders granting rehearing or extending time to file this petition have been entered in this case. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V provides, *inter alia*, that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury...”

21 U.S.C. §802(6) provides, *inter alia*, that “[t]he term ‘controlled substance’ means a drug or other substance, or an immediate precursor, included in schedule I, II, III, IV, or V, of part B of this subchapter.”

21 U.S.C. §812, Schedule II, (b)(6) lists “fentanyl” as a Schedule II controlled substance.

STATEMENT OF THE CASE

A. Factual Background

On December 14, 2020, a Deputy with the Ward County, Texas, Sheriff’s Office stopped a vehicle which had previously been reported stolen. Petitioner Travis Thomas, Jr., (hereinafter “Petitioner” or “Defendant”) was driving the vehicle and his co-defendant, Michael Moreno, was the sole passenger. Both were arrested and read their Miranda rights. Petitioner claimed to have purchased the vehicle but could not provide any supporting documentation.

An inventory of the contents of the vehicle was conducted and a safe was discovered in the center console. Inside the safe was a baggy containing methamphetamine. A laboratory analysis determined that the baggy contained 16.18 grams of methamphetamine with a purity level of 100%. The safe also contained two baggies containing a large number of blue pills. A laboratory analysis later revealed the pills to be fentanyl with a total weight of 132.5 grams. A glass methamphetamine pipe with residue was located on the front seat floorboard where Moreno was seated. A piece of foil with a half-burnt Oxycodone pill was located in the driver’s side door panel.

A search of the trunk revealed Petitioner’s bag of clothes and toiletries. In the bag deputies discovered four firearm components that comprised the entire assembly of an AR-15

rifle. A long brown cardboard box was also discovered in the trunk, addressed to a man named Jonathan Franco. Inside the box was a shotgun.

Co-defendant Moreno was interviewed and stated that while in San Angelo, Texas, he and Petitioner met with Jonathan Franco and Petitioner traded pounds of methamphetamine and a couple hundred hydrocodone pills for some firearms and the stolen vehicle.

Petitioner was interviewed and stated that he had been in trouble with a drug dealer in Calexico, California, and owed him \$10,000 for drugs and pills which had been “fronted” to Petitioner. Petitioner admitted to trading hydrocodone pills and two pounds of methamphetamine for the firearms and the stolen vehicle. It was also determined that Petitioner had transported a total of 775 grams of methamphetamine from California to San Angelo, Texas, for Franco. Petitioner also informed the agents that Petitioner had mailed Franco methamphetamine on five or six prior occasions, and that each transaction involved approximately one pound. Petitioner estimated that he has sold approximately seven pounds of methamphetamine to Franco on previous occasions.

B. Procedural History & Jurisdiction of the Courts Below

On January 29, 2021, Petitioner was charged by way of indictment with one count of Conspiracy to Possess with Intent to Distribute 50 Grams or More of Actual Methamphetamine in violation of 21 U.S.C. §§841(a)(1) & (b)(1)(A) and 846.

On March 24, 2021, a superseding indictment was returned charging Petitioner with the following counts:

- 1) Conspiracy to Possess with Intent to Distribute 50 Grams or More of Actual Methamphetamine in violation of 21 U.S.C. §§841(a)(1) & (b)(1)(A) and 846;

- 2) Possession with Intent to Distribute 50 Grams or More of Actual Methamphetamine in violation of 21 U.S.C. §841(a)(1) & (b)(1)(A);
- 3) Possession with Intent to Distribute a quantity of “fentanyl” [sic] in violation of 21 U.S.C. §841(a)(1) & (b)(1)(C);
- 4) Possession of a Firearm in Furtherance of a Drug Trafficking Crime in violation of 18 U.S.C. §924(c)(1); and,
- 5) Possession of a Firearm by a Prohibited Person in violation of 18 U.S.C. §§921(g)(1) and 924(a)(2).

A sixth count was brought only against the co-defendant.

Counts One and Two carried a statutory punishment of ten years to life in prison; Count Three carried a punishment of not more than twenty years in prison; Count Four carried mandatory a consecutive sentence of not less than five years in prison; and Count Five carried a sentence of up to ten years in prison. Probation was not authorized for Counts One, Two, Three and Four of the indictment.

On April 12-13, 2021, the case proceeded to a jury trial. Immediately prior to trial, over Petitioner’s objection, the Court granted the Government’s motion to amend the indictment to change the term “fentanyl” to “fentanyl.” (Pet. App. 7a) At the conclusion of the Government’s evidence, Petitioner’s Rule 29 motion for judgment of acquittal was denied by the Court. Petitioner was found guilty on all five counts of the indictment.

A Pre-Sentence Investigation Report (hereinafter “PSR”) was prepared by the United States Probation Office which calculated the applicable guidelines range, under the 2018 Guidelines Manual, as follows:

Base Offense Level	36
------------------------------	----

Adjustment for Obstruction of Justice	2
Applicable Offense Level	38

The PSR showed Petitioner to have 22 Criminal History Points for a Criminal History Category of VI. The PSR found that the applicable guidelines range was 360 months to life in prison, plus a mandatory consecutive sentence of at least 60 months for Count Four; a fine of \$50,000 to ten million dollars; a term of supervised release of at least five years on Counts One and Two, at least three years on Count Three, two to three years on Count Four and one to three years on Count Five; and a \$100 special assessment on each count. Probation was not authorized on any of the counts of conviction. Petitioner filed no written objections to the Pre-Sentence Investigation Report.

On July 8, 2021, the District Court held a sentencing hearing. Petitioner made no oral objections to the PSR. The Court sentenced Petitioner to 360 months in prison on Counts One and Two; 240 months in prison on Count Three; 60 months in prison on Count Four; and 120 months in prison on Count Five. The sentence on Count Four was ordered to run consecutively to the other counts – for a total of 420 months in prison. The Court further imposed five years of supervised release on Counts One and Two, three years on Count Three, five years on Count Four, and three years on Count Five – all to run concurrently. The Court ordered that no fine be imposed and ordered a \$100 special assessment.

The Judgment of Conviction was entered on July 19, 2021, and comported with the sentence orally pronounced. (Pet. App. 9a) Petitioner filed his notice of appeal on July 21, 2021.

On direct appeal to the Fifth Circuit, Petitioner argued, *inter alia*, that the trial amendment was one of substance, not form, and was therefore proscribed by the Fifth Amendment’s Grand Jury Clause.

On May 11, 2022, a panel of the Court of Appeals, exercising jurisdiction pursuant to 28 U.S.C. § 1291, issued an unpublished opinion affirming Petitioner’s conviction and sentence. (Pet. App. 3a) Addressing the constitutional error asserted herein, the Fifth Circuit stated:

In this case, alleging unlawful possession of “fentanyl” and amending the indictment to allege “fentanyl” was an amendment of form rather than substance. *See United States v. Young Bros., Inc.*, 728 F.2d 682, 693 (5th Cir. 1984). Although there is a pharmaceutical drug called Fentanyl, the record shows that this was a misnomer, as there is no evidence related to Fentanyl or to an injectable form of fentanyl. Thomas was arrested while in possession of pills, and he received discovery alerting him that the pills contained fentanyl. Thomas also gave a statement that he had traded fentanyl pills, among other things, for the stolen car he was driving. He never claimed that he had prepared to meet an indictment charging him with possessing the injectable liquid form of fentanyl made in Bangladesh under the brand name Fentanyl.

United States v. Thomas, No. 21-50663 (5th Cir. May 11, 2022).

No motion for rehearing or motion for reconsideration *en banc* was filed.

INTRODUCTION

Immediately prior to commencement of trial, over Petitioner's objection, the trial court amended the indictment in this case to change the word "fentanyl" to "fentanyl." There is a prescription pharmaceutical by the name of "Fentanyl," which is manufactured in Bangladesh and sold only as an injectable liquid. Conversely, the fentanyl seized in this case was a non-pharmaceutical, illicitly manufactured substance in the form of a pill to be taken orally.

Petitioner seeks review of the following question: does the Fifth Amendment's Grand Jury Clause prohibit a trial amendment altering a factually distinct description of a required element?

QUESTION PRESENTED

Does the Fifth Amendment's Grand Jury Clause prohibit a trial amendment altering a factually distinct description of a required element?

Immediately prior to the commencement of trial, the District Court on its own initiative brought what it deemed a typographical error in the indictment to the attention of the Attorney for the Government. The Court invited a motion to amend Count Three to change the controlled substance possessed from “fentanyl” to “fentanyl.” The Government responded with the requested motion and, over Appellant’s objection, the Court amended the indictment as proposed. (Pet. App. 7a) The term fentanyl was read to jury and included in the jury instructions. The said instructions stated: “for you to find the defendant guilty of Count Three, you must be convinced that the government has proved each of the following beyond a reasonable doubt... [t]hat the substance was in fact fentanyl...”

It cannot be assumed that the term “fentanyl” was a simple scrivener’s error – for there is an actual pharmaceutical drug by the name of Fentanyl. <https://www.popular-pharma.com/products/311> Fentanyl is a brand-name pharmaceutical version of the generic drug fentanyl citrate. (Pet. App. 25a) It is manufactured in Bangladesh and sold only as an injectable liquid. See <https://www.medicinesfaq.com/brand/fentanyl>, <https://medex.com.bd/brands/15459/fentanyl-100mcg> In addition, the two substances have different chemical structures. Compare https://pubchem.ncbi.nlm.nih.gov/compound/fentanyl_citrate with <https://pubchem.ncbi.nlm.nih.gov/compound/fentanyl>.

The Fifth Amendment provides, *inter alia*, that “[n]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury...”

As such, indictments cannot be amended except by the Grand Jury – except for matters of form.

Russell v. United States, 369 U.S. 749, 770 (1962).

If it lies within the province of a court to change the charging part of an indictment to suit its own notions of what it ought to have been, or what the grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury, as a prerequisite to a prisoner's trial for a crime, and without which the Constitution says 'no person shall be held to answer,' may be frittered away until its value is almost destroyed.

Ex Parte Bain, 121 U.S. 1, 10 (1887).

REASONS FOR GRANTING THE PETITION

Petitioner seeks review of the question of whether the Fifth Amendment's Grand Jury Clause bars the trial amendment of the indictment by altering a factually distinct description of a required element.

The amendment of the indictment in this case violated Petitioner's right to indictment by the Grand Jury secured by the Fifth Amendment to the United States Constitution. Immediately prior to the commencement of the jury trial in this case, over Petitioner's objection, the trial court granted the Government's motion to amend Count Three of the indictment to read possession of "fentanyl" rather than "fentyl." The trial proceeded with the term "fentanyl" substituted for "fentyl" in the reading of the indictment and in the Court's instructions to the jury.

Had this been a simple typographical error, no error would be presented for review. However, there is, in fact, a pharmaceutical by the name of "Fentanyl," which is manufactured in Bangladesh and sold only as an injectable liquid. It is the brand name pharmaceutical for the generic version of fentanyl citrate. Conversely, the fentanyl in this case was in the form of an illicitly manufactured, non-pharmaceutical pill to be taken orally. The Court's amendment,

therefore, was one of substance not form, and violated the Grand Jury Clause of the Fifth Amendment.

This case presents an excellent vehicle for addressing this important issue. This case involves an important issue of criminal law that is likely to arise again in the district courts and courts of appeal. In addition, the issue was directly raised with the District Court and Court of Appeals below.

The Court should grant this Petition because the Fifth Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R. 10(c).

I. This case involves an important issue of criminal law that is likely to arise again in the district courts and courts of appeal.

This case arose in a federal drug prosecution and involves a trial amendment of the description of the controlled substance alleged in the indictment. As the Court is well aware, the district courts handle thousands of criminal drug cases each year. “Drug offenses of all types were the second most common federal crime in fiscal year 2020. The 16,829 total drug cases reported to the Commission accounted for 26.1 percent of all cases...” U.S. Sent’g Comm’n, Overview of Federal Criminal Cases, p.5 (2020). In addition, the federal controlled substance schedules list approximately 500 different controlled substances, many with hyper-technical definitions setting forth their chemical structures. See https://deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf. Finally, new, so-called designer drugs, continue to be created and distributed in the United States. See https://www.deadiversion.usdoj.gov/synthetic_drugs/about_sd.html.

Given the number and complexity of the federal controlled substance descriptions in the federal criminal code, the issue raised herein is ripe for repetition in the district courts and the courts of appeal.

The leading case in this area of law is *Stirone v. United States*, 361 U.S. 212 (1960). In *Stirone*, the Supreme Court found a constructive amendment where the indictment alleged an effect on interstate commerce involving sand, but the evidence at trial permitted conviction if the offense affected commerce in either sand or steel.

The issue herein is logically indistinguishable from that posed in *Stirone*. *Stirone* involved an amendment affecting an essential element - the effect on interstate commerce; the amendment in this case also altered an essential element – the controlled substance involved. In *Stirone*, the amendment permitted conviction on a broader set of facts than that alleged in the indictment – commerce involving sand or steel; in the case at bar the amendment similarly permitted conviction based on a broader set of facts than alleged by the Grand Jury – fentanyl in any form.

And most significantly, the amended charge in *Stirone* still constituted a criminal offense as did the amendment in the instant case. Therefore, the fact that Fentanyl is a brand name for the generic form of fentanyl should have no bearing on the analysis of the validity of the amendment in this case. The critical factor is the form of fentanyl alleged (injectable or pills), just as the issue in *Stirone* was the form of the effect on commerce (sand or steel).

Even the Fifth Circuit has acknowledged, contrary to its opinion below, that the federal controlled substance definitions are highly technical in nature and therefore require precise pleading. In *United States v. Huff*, 512 F.2d 66 (5th Cir. 1975), count one of the indictment alleged that the defendant unlawfully possessed 3,4 methylenedioxy amphetamine, however

count two omitted the “3,4” alleging the controlled substance as “methylenedioxy amphetamine” – which was not a controlled substance. After noting that indictments may only be amended by the Grand Jury except as to matters of form, this Court determined that the erroneous description of the controlled substance could not be considered a matter of form. “[W]e cannot regard this defect as a mere technicality, for the chemical and legal definition of these substances is itself technical and requires precision.” *Id.* at 69.

This Court should grant this petition in order to provide guidance to the courts below when the Government seeks to amend the technical definition of the controlled substance alleged.

II. This issue was raised and ruled upon in both the District Court and Court of Appeals below.

This is not a case involving plain error review. Erroneous amendment claims are reviewed *de novo*, *United States v. Bennett*, 874 F.3d 236, 256 (5th Cir. 2017), and are reversable *per se*. *United States v. Adams*, 778 F.2d 1117, 1123 (5th Cir. 1985).

Immediately prior to the commencement of trial, the District Court on its own initiative brought what it deemed a typographical error in the indictment to the attention of the Attorney for the Government. The Court invited a motion to amend Count Three to change the controlled substance possessed from “fentyl” to “fentanyl.” The Government responded with the requested motion and, over Petitioner’s objection, the Court amended the indictment as proposed. The term fentanyl was read to jury and included in the jury instructions. The said instructions stated: “for you to find the defendant guilty of Count Three, you must be convinced that the government has proved each of the following beyond a reasonable doubt... [t]hat the substance was in fact fentanyl...”

The said issue was subsequently presented to the Fifth Circuit which held that

In this case, alleging unlawful possession of “fentanyl” and amending the indictment to allege “fentanyl” was an amendment of form rather than substance. See *United States v. Young Bros., Inc.*, 728 F.2d 682, 693 (5th Cir. 1984). Although there is a pharmaceutical drug called Fentanyl, the record shows that this was a misnomer, as there is no evidence related to Fentanyl or to an injectable form of fentanyl.

United States v. Thomas, No. 21-50663 (5th Cir. May 11, 2022).

The issue presented herein was directly addressed by both the District Court and the Court of Appeals and is ripe for review by this Court.

CONCLUSION

For the reasons set forth above, the Court should grant this Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals.

Respectfully submitted,

s/ John A. Peralta
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Counsel for Petitioner
(Criminal Justice Act)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents have been served on all required parties to this proceeding in accordance with Sup. Ct. R. 29.5.

I further certify that true and correct copies of the foregoing Motion to Proceed *In Forma Pauperis* and Petition for Writ of Certiorari have been served on the Hon. Elizabeth B. Prelogar, Solicitor General of the United States, Office of the Solicitor General, Room 5614, United States Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530-0001, via the United States Postal Service and via the Court's electronic filing system, on this, the 8th day of August, 2022.

I further certify that true and correct copies of the foregoing Motion to Proceed *In Forma Pauperis* and Petition for Writ of Certiorari have been served on the Petitioner, Mr. Travis Thomas, Jr., Register No. 50013-298, USP Pollock, U.S. Penitentiary, P.O. Box 2099, Pollock, LA 71467, via the United States Postal Service, on this, the 8th day of August, 2022.

/s John A. Peralta

John A. Peralta

Counsel for Petitioner

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Respondent.

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PETITIONER'S APPENDIX

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United States Court of Appeals
for the Fifth Circuit

No. 21-50663
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 11, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

TRAVIS THOMAS, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 7:21-CR-18-1

Before SMITH, STEWART, and GRAVES, *Circuit Judges.*

PER CURIAM:*

Travis Thomas, Jr., appeals his conviction and sentence for conspiracy to possess with intent to distribute 50 grams or more of methamphetamine (“meth”), possession with intent to distribute 50 grams or more of meth, possession with intent to distribute fentanyl, possession of a firearm in

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50663

furtherance of a drug-trafficking crime, and possession of a firearm as a felon. Thomas challenges an amendment to the indictment, the drug quantity calculation, and an obstruction-of-justice enhancement, and he avers that trial counsel provided ineffective assistance by failing to object to the presentence report (“PSR”).

The Fifth Amendment provides the defendant the right to be tried solely on the grand jury’s allegations. *Stirone v. United States*, 361 U.S. 212, 215–18 (1960). Substantive amendments to the indictment must be resubmitted to the grand jury. *United States v. Huff*, 512 F.2d 66, 69 (5th Cir. 1975).

In this case, alleging unlawful possession of “fentanyl” and amending the indictment to allege “fentanyl” was an amendment of form rather than substance. *See United States v. Young Bros., Inc.*, 728 F.2d 682, 693 (5th Cir. 1984). Although there is a pharmaceutical drug called Fentanyl, the record shows that this was a misnomer, as there is no evidence related to Fentanyl or to an injectable form of fentanyl. Thomas was arrested while in possession of pills, and he received discovery alerting him that the pills contained fentanyl. Thomas also gave a statement that he had traded fentanyl pills, among other things, for the stolen car he was driving. He never claimed that he had prepared to meet an indictment charging him with possessing the injectable liquid form of fentanyl made in Bangladesh under the brand name Fentanyl.

As for the drug-quantity finding, Thomas’s statements in his police interview, which occurred after he was advised of his *Miranda* rights, are sufficiently reliable evidence of the quantity for those transactions. *See United States v. Barfield*, 941 F.3d 757, 763–64 (5th Cir. 2019). Although the lab report with the purity findings was excluded at trial as hearsay, the drug-quantity calculation may be based on reliable evidence without regard to its admissibility under the rules of evidence. *See* U.S.S.G. § 6A1.3, p.s.; *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013); *see United States v. Dinh*,

No. 21-50663

920 F.3d 307, 313 (5th Cir. 2019).

It was appropriate for the district court to extrapolate the purity level, given Thomas's admission that a man named Alex was his sole source of supply for the drugs he delivered and mailed to Franco. *See United States v. Rodriguez*, 666 F.3d 944, 947 (5th Cir. 2012). Thus, Thomas has not shown that the district court's reliance on the PSR's calculation of purity level, and its resulting determination of the amount of actual meth attributed to Thomas, was error, plain or otherwise. *See United States v. Betancourt*, 422 F.3d 240, 247 (5th Cir. 2005).

Additionally, Thomas fails to show plain error in the imposition of a sentence enhancement for obstruction of justice. *See U.S.S.G. § 3C1.1*. His testimony at his codefendant's trial that the codefendant had no knowledge of the drugs was contradicted by his codefendant's statements to police. Thomas's testimony was relevant to the material fact of whether his codefendant had knowledge of the drugs and supports a finding that Thomas committed perjury by attempting falsely to exculpate his codefendant. *See United States v. Flanagan*, 484 F. App'x 973, 974 (5th Cir. 2012); *see § 3C1.1, comment. (n.4(B))*.

In his final issue on appeal, Thomas complains that he received ineffective assistance because his trial attorney failed to object to the drug-quantity calculation and the sentence enhancement in the PSR. Because Thomas's post-*Miranda* statements constitute sufficiently reliable evidence of the quantity, and the source of supply supports the district court's reliance on the PSR's calculation of purity, counsel was not deficient in failing to object to the amount of actual meth attributed to Thomas. *See United States v. Kimler*, 167 F.3d 889, 893 (5th Cir. 1999) (noting that counsel does not render ineffective assistance by failing to make meritless objections). Likewise, because Thomas's attempt to exculpate his codefendant supports the en-

No. 21-50663

hancement for obstruction of justice, counsel was not deficient in failing to object to the enhancement. *See id.* Thomas has not shown that counsel was deficient in failing to object to the PSR or that he was prejudiced by such a failure. *See Strickland v. Washington*, 466 U.S. 668, 697 (1984).

AFFIRMED.

USA vs. Thomas - Jury Trial - Vol. 1 - April 12, 2021

1 drug and unlawfully -- it's not properly been indicted.

2 THE COURT: Ms. Daniels was discovery given to the
3 defense that it was, in fact, fentanyl?

4 MS. DANIELS: Yes, Your Honor.

5 THE COURT: And some time ago, in fact.

6 MS. DANIELS: Yes, Your Honor.

7 THE COURT: All right. Then the objection is
8 overruled. The indictment in Count Three is corrected. I'll
9 grant the motion to correct from F-E-N-T-Y-L to the correct
10 spelling of fentanyl. I'm not a hundred percent. It's
11 F-E-N-T-A-N-Y-L, I believe. Is that correct?

12 MS. DANIELS: Yes, Your Honor, that's correct.

13 THE COURT: Okay. Very good. So we'll do that. So
14 it's just a couple of letters. And the Court does find it is a
15 scribner's error only, discovery having been -- that it was
16 fentanyl, in fact. And I don't know what "fentanyl" is, how it's
17 spelled currently.

18 Now, I have a couple of things I want to go through
19 and then we'll talk about logistics so Mr. Thomas is familiar.

20 Mr. Acker has tried several -- I think two, three, or
21 four cases since the COVID -- all this pandemic, and so he's
22 very familiar. And Ms. Daniels has as well, several.

23 So I've got a witness list from the government. I
24 don't have one from the defense. Be prepared to list off your
25 witnesses, of course. Be prepared -- I tell you what. Since

USA vs. Thomas - Jury Trial - Vol. 1 - April 12, 2021

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

UNITED STATES OF AMERICA

v.

Case Number: 7:21-CR-00018(1) DC
USM Number: 50013-298

TRAVIS THOMAS JR

Alias(es):
None.

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, Travis Thomas, Jr, was represented by Kevin D. Acker.

The defendant was found guilty by jury trial to Count(s) 1, 2, 3, 4, 5 of the Superseding Indictment on March 4, 2021. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

Title & Section	Nature of Offense	Offense Ended	Count(s)
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A) and 21 U.S.C. § 841(a)(1)	Conspiracy to Possess With Intent to Distribute and Distribute 50 Grams or More of Actual Methamphetamine	December 14, 2020	1
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(A)	Possession With Intent to Distribute 50 Grams or More of Actual Methamphetamine	December 14, 2020	2
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Possession With Intent to Distribute a Quantity of Fentanyl	December 14, 2020	3
18 U.S.C. § 924(c)(1)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	December 14, 2020	4
18 U.S.C. § 922(g)(1), 18 U.S.C. § 924(a)(2)	Felon in Possession of a Firearm	December 14, 2020	5

As pronounced on July 8, 2021, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

On motion of the United States, the Court has dismissed all remaining counts with prejudice.

It is further ordered that the defendant shall 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 shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this 19th day of July, 2021.



David Counts
United States District Judge

DEFENDANT: TRAVIS THOMAS JR
CASE NUMBER: 7:21-CR-00018-1 DC

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **Three Hundred Sixty (360) months on Count 1; Three Hundred Sixty (360) months on Count 2; Two Hundred Forty (240) months on Count 3; Sixty (60) months on Count 4; One Hundred Twenty (120) months on Count 5. Counts 1, 2, 3 and 5 to run concurrent. Count 4 to run consecutive to all other Counts** with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to California or Arizona as possible.

The defendant shall remain in custody pending service of sentence.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of the Judgment.

United States Marshal

DEFENDANT: TRAVIS THOMAS JR
CASE NUMBER: 7:21-CR-00018(1) DC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Five (5) years on Count 1; Five (5) years on Count 2; Three (3) years on Count 3; Five (5) years on Count 4; Three (3) years on Count 5. All Terms to run concurrent.**

While on supervised release, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court and shall comply with the following additional conditions:

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 a 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. The probation officer may conduct a search under this condition only when reasonable suspicion exists that the defendant has violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search shall be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: TRAVIS THOMAS JR
 CASE NUMBER: 7:21-CR-00018(1) DC

CONDITIONS OF SUPERVISED RELEASE

(As Amended November 28, 2016)

It is ORDERED that the Conditions of Probation and Supervised Release applicable to each defendant committed to probation or supervised release in any division of the Western District of Texas, are adopted as follows:

Mandatory Conditions:

- [1] The defendant shall not commit another federal, state, or local crime during the term of supervision.
- [2] The defendant shall not unlawfully possess a controlled substance.
- [3] The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- [4] The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- [5] If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et. seq.) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- [6] If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- [7] If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.
- [8] The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- [9] The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- [1] The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- [2] After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- [3] The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- [4] The defendant shall answer truthfully the questions asked by the probation officer.

DEFENDANT: TRAVIS THOMAS JR
 CASE NUMBER: 7:21-CR-00018-1 DC

- [5] The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [6] The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view.
- [7] The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall 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, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.
- [8] The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- [9] If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within 72 hours.
- [10] The defendant shall 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] The defendant shall 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- [13] The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- [14] If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- [15] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- [16] If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- [17] If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.

DEFENDANT: TRAVIS THOMAS JR
 CASE NUMBER: 7:21-CR-00018(1) DC

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 200 E. Wall St. Room 222, Midland, TX 79701 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW721CR000018-001 to ensure proper application to your criminal monetary penalty.**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTAL:	\$500.00	\$0.00	\$0.00	\$0.00	\$0.00

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of **\$500.00**.

Fine

The fine is waived because of the defendant's inability to pay.

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 above. However, pursuant to 18 U.S.C. §3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

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

* 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.

**U.S. District Court [LIVE]
Western District of Texas (Midland)
CRIMINAL DOCKET FOR CASE #: 7:21-cr-00018-DC-1**

Case title: USA v. Thomas et al

Magistrate judge case number: 7:20-mj-00454-RCG

Date Filed: 01/27/2021

Assigned to: Judge David Counts

Appeals court case number: 21-50663
Fifth Circuit

Defendant (1)

Travis Thomas, Jr

represented by **John A. Peralta**
Attorney & Counselor at Law
P.O. Box 1412
Lufkin, TX 75902
936-899-5396
Fax: 936-899-5396
Email: JohnPeraltaLaw@yahoo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Kevin D. Acker
Acker Law Firm, PLLC
1109 S. Calvin
Monahans, TX 79756
432-940-6037
Fax: 432-362-7248
Email: kevin.acker@hotmail.com
TERMINATED: 07/30/2021
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Pending Counts

CONSPIRACY TO DISTRIBUTE
CONTROLLED SUBSTANCE
(1s)

CONTROLLED SUBSTANCE -
SELL, DISTRIBUTE, OR DISPENSE
(2s)

Disposition

Imprisonment of 360 months to run concurrently
with Counts 2, 3, 5; 5 years Supervised Release to
run concurrently with Count 2, 3, 4, 5; \$100.00
Special Assessment fee; No Fine.

Imprisonment of 360 months to run concurrently
with Counts 1, 3, 5; 5 years Supervised Release to
run concurrently with Count 1, 3, 4, 5; \$100.00
Special Assessment fee; No Fine.

NARCOTICS - SELL, DISTRIBUTE,
OR DISPENSE
(3s)

18:924C.F: VIOLENT
CRIME/DRUGS/MACHINE GUN
(4s)

UNLAWFUL TRANSPORT OF
FIREARMS, ETC.
(5s)

Imprisonment of 240 months to run concurrently with Counts 1, 2, 5; 3 years Supervised Release to run concurrently with Count 1, 2, 4, 5; \$100.00 Special Assessment fee; No Fine.

Imprisonment of 60 months to run consecutively to ALL Counts; 5 years Supervised Release to run concurrently with Count 1, 2, 3, 5; \$100.00 Special Assessment fee; No Fine.

Imprisonment of 120 months to run concurrently with Counts 1, 2, 3; 3 years Supervised Release to run concurrently with Count 1, 2, 3, 4; \$100.00 Special Assessment fee; No Fine.

Highest Offense Level (Opening)

Felony

Terminated Counts

21:846=CD.F: CONSPIRACY TO
DISTRIBUTE CONTROLLED
SUBSTANCE
(1)

Disposition

Dismissed with prejudice.

Highest Offense Level (Terminated)

Felony

Complaints

21:846=CD.F - CONSPIRACY TO
POSSESS WITH INTENT TO
DISTRIBUTE 5 GRAMS OR MORE
OF METHAMPHETAMINE

Disposition

Plaintiff

USA

represented by **Joseph H. Gay, Jr.**
Assistant U.S. Attorney
601 N.W. Loop 410
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San Antonio, TX 78216
(210) 384-7030
Fax: 210 384-7031
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Monica L. Daniels
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 432-686-4110
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
12/17/2020	<u>1 (p.11)</u>	COMPLAINT Signed by Judge Ronald C. Griffin as to Travis Thomas, Jr (1), Michael Moreno (2). (ms2) [7:20-mj-00454-RCG] (Entered: 12/18/2020)
12/17/2020	<u>2 (p.17)</u>	Application for Writ of Habeas Corpus ad Prosequendum as to Travis Thomas, Jr (ms2) [7:20-mj-00454-RCG] (Entered: 12/18/2020)
12/17/2020	<u>3 (p.18)</u>	ORDER FOR ISSUANCE OF Writ of Habeas Corpus ad Prosequendum as to Travis Thomas, Jr. Signed by Judge Ronald C. Griffin. (ms2) [7:20-mj-00454-RCG] (Entered: 12/18/2020)
12/17/2020	<u>4 (p.19)</u>	Writ of Habeas Corpus ad Prosequendum issued as to Travis Thomas, Jr for Instanter (ms2) [7:20-mj-00454-RCG] (Entered: 12/18/2020)
12/22/2020		Arrest of Travis Thomas, Jr. (slt) [7:20-mj-00454-RCG] (Entered: 12/28/2020)
12/28/2020	<u>8</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Initial Appearance as to Travis Thomas, Jr held on 12/28/2020 (Minute entry documents are not available electronically.) Detention Hearing set for 1/4/2021 09:00 AM in Midland before Judge Ronald C. Griffin, Preliminary Hearing set for 1/4/2021 09:00 AM in Midland before Judge Ronald C. Griffin, (Court Reporter Digital.) (slt) [7:20-mj-00454-RCG] (Entered: 12/28/2020)
12/28/2020	<u>9 (p.20)</u>	ORDER APPOINTING COUNSEL as to Travis Thomas, Jr: Kevin D. Acker for Travis Thomas, Jr appointed. Signed by Judge Ronald C. Griffin. (slt) [7:20-mj-00454-RCG] (Entered: 12/28/2020)
12/28/2020	<u>10 (p.21)</u>	MOTION to Detain Defendant without Bond by USA as to Travis Thomas, Jr. (slt) [7:20-mj-00454-RCG] (Entered: 12/28/2020)
12/28/2020	<u>11 (p.22)</u>	ORDER OF TEMPORARY DETENTION: as to Travis Thomas, Jr: Detention Hearing set for 1/4/2021 at 09:00 AM in Midland before Judge Ronald C. Griffin, Preliminary Hearing set for 1/4/2021 at 09:00 AM in Midland before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (slt) [7:20-mj-00454-RCG] (Entered: 12/28/2020)
12/28/2020	<u>12 (p.24)</u>	ORDER as to Travis Thomas, Jr: Detention Hearing set for 1/4/2021 at 09:00 AM in Midland before Judge Ronald C. Griffin, Preliminary Hearing set for 1/4/2021 at 09:00 AM in Midland before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (slt) [7:20-mj-00454-RCG] (Entered: 12/28/2020)

01/04/2021	<u>18</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Preliminary Hearing as to Travis Thomas, Jr held on 1/4/2021 (Minute entry documents are not available electronically.), Due Process Protections Act Warning given in Open Court as to Travis Thomas, Jr (Court Reporter Digital.) (ms2) [7:20-mj-00454-RCG] (Entered: 01/05/2021)
01/04/2021	<u>19</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Detention Hearing as to Travis Thomas, Jr held on 1/4/2021 (Minute entry documents are not available electronically.) (Court Reporter Digital.) (ms2) [7:20-mj-00454-RCG] (Entered: 01/05/2021)
01/04/2021	<u>20 (p.25)</u>	WITNESS LIST by USA as to Travis Thomas, Jr (ms2) [7:20-mj-00454-RCG] (Entered: 01/05/2021)
01/04/2021	<u>21 (p.26)</u>	EXHIBIT LIST as to Travis Thomas, Jr (Attachments: # <u>1 (p.11)</u> Sealed Document)(ms2) [7:20-mj-00454-RCG] (Entered: 01/05/2021)
01/04/2021	<u>22 (p.27)</u>	ORDER GRANTING <u>10 (p.21)</u> Motion to Detain Defendant without Bond. Bond set to No Bond as to Travis Thomas Jr (1). Signed by Judge Ronald C. Griffin. (ms2) [7:20-mj-00454-RCG] (Entered: 01/05/2021)
01/27/2021	<u>25 (p.30)</u>	INDICTMENT(Redacted Version) filed. Unredacted document sealed pursuant to E-Government Act of 2002 as to Travis Thomas, Jr (1) count(s) 1, Michael Moreno (2) count(s) 1. (slt) (Entered: 01/27/2021)
01/29/2021	<u>27 (p.32)</u>	ORDER Setting District Court Arraignment as to Travis Thomas, Jr; District Court Arraignment set for 2/9/2021 02:30 PM before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (bot3) (Entered: 01/29/2021)
02/08/2021	<u>29 (p.34)</u>	Waiver of personal appearance at Arraignment, plea of not guilty by Travis Thomas, Jr (Acker, Kevin) (Entered: 02/08/2021)
02/08/2021	<u>30 (p.35)</u>	Order Accepting Waiver of Personal Appearance at Arraignment and Entry of Plea of Not Guilty by Travis Thomas, Jr. Signed by Judge Ronald C. Griffin. (slt) (Entered: 02/09/2021)
02/08/2021	<u>31 (p.36)</u>	SCHEDULING ORDER as to Travis Thomas, Jr: Plea Agreement due by <u>3/19/2021</u> , Docket Call set for <u>3/3/2021 at 09:00 AM</u> in Midland before Judge Ronald C. Griffin, Jury Selection set for <u>4/5/2021 at 08:30 AM</u> in Midland before Judge David Counts, Jury Trial set for <u>4/5/2021 at 08:30 AM</u> in Midland before Judge David Counts. Signed by Judge Ronald C. Griffin. (slt) (Entered: 02/09/2021)
03/03/2021	<u>36</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Docket Call as to Travis Thomas, Jr, Michael Moreno held on 3/3/2021 (Minute entry documents are not available electronically.) (Court Reporter Digital.) (slt) (Entered: 03/04/2021)
03/03/2021	<u>37 (p.38)</u>	

		ORDER Setting Status Conference as to Travis Thomas, Jr: Status Conference set for 3/9/2021 at 09:30 AM in Midland before Judge Ronald C. Griffin; Rearraignment set for 3/9/2021 at 09:30 AM in Midland before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (slt) (Entered: 03/04/2021)
03/09/2021	<u>40</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Status Conference as to Travis Thomas, Jr held on 3/9/2021 (Minute entry documents are not available electronically.) (Court Reporter Digital.) (slt) (Entered: 03/10/2021)
03/09/2021	<u>41 (p.39)</u>	ORDER Setting Status Conference as to Travis Thomas, Jr: Status Conference set for 3/16/2021 at 09:30 AM in Midland before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (ja) (Entered: 03/10/2021)
03/16/2021	<u>42</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Status Conference as to Travis Thomas, Jr. held on 3/16/2021. (Minute entry documents are not available electronically.) (Court Reporter Digital.) (se) (Entered: 03/16/2021)
03/16/2021	<u>44 (p.40)</u>	ORDER Setting Status Conference as to Travis Thomas, Jr., Michael Moreno. Status Conference set for 3/19/2021 10:00 AM in Midland before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (se) (Entered: 03/16/2021)
03/19/2021	<u>45</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin:Status Conference as to Travis Thomas, Jr, Michael Moreno held on 3/19/2021 (Minute entry documents are not available electronically.) (Court Reporter Digital.) (slt) (Entered: 03/19/2021)
03/24/2021	<u>46 (p.41)</u>	INDICTMENT(Redacted Version) filed. Unredacted document sealed pursuant to E-Government Act of 2002 as to Travis Thomas, Jr (1) count(s) 1s, 2s, 3s, 4s, 5s, Michael Moreno (2) count(s) 1s, 2s, 3s, 4s, 6s. (slt) (Entered: 03/24/2021)
03/25/2021	<u>48 (p.44)</u>	DESIGNATION OF EXPERT WITNESSES by USA as to Travis Thomas, Jr, Michael Moreno (Daniels, Monica) (Entered: 03/25/2021)
03/25/2021	<u>49 (p.46)</u>	WITNESS LIST by USA as to Travis Thomas, Jr, Michael Moreno (Daniels, Monica) (Entered: 03/25/2021)
03/25/2021	<u>50 (p.48)</u>	NOTICE of Intent to Use Evidence by USA as to Travis Thomas, Jr, Michael Moreno <i>404(b) Moreno</i> (Daniels, Monica) (Entered: 03/25/2021)
03/25/2021	<u>51 (p.50)</u>	NOTICE of Intent to Use Evidence by USA as to Travis Thomas, Jr, Michael Moreno <i>404(b) Thomas</i> (Daniels, Monica) (Entered: 03/25/2021)
03/25/2021	<u>52 (p.52)</u>	NOTICE of Intent to Use Evidence by USA as to Travis Thomas, Jr, Michael Moreno <i>609(b) Moreno</i> (Daniels, Monica) (Entered: 03/25/2021)
03/25/2021	<u>53 (p.54)</u>	NOTICE of Intent to Use Evidence by USA as to Travis Thomas, Jr,

		Michael Moreno 609(b) Thomas (Daniels, Monica) (Entered: 03/25/2021)
03/25/2021	<u>54 (p.57)</u>	ORDER as to Travis Thomas, Jr, Michael Moreno: Pretrial Conference set for 4/13/2021 at 08:00 AM in Midland before Judge David Counts. Signed by Judge David Counts. (slt) (Entered: 03/25/2021)
03/25/2021	<u>55 (p.58)</u>	ORDER RESETTING as to Travis Thomas, Jr, Michael Moreno: Jury Selection set for 4/13/2021 at 08:30 AM in Midland before Judge David Counts; Jury Trial set for 4/13/2021 at 08:30 AM in Midland before Judge David Counts. Signed by Judge David Counts. (slt) (Entered: 03/25/2021)
03/29/2021	<u>56 (p.59)</u>	ORDER Setting District Court Arraignment as to Travis Thomas, Jr: Arraignment set for 3/31/2021 at 02:30 PM in Midland before Judge Ronald C. Griffin. Signed by Judge Ronald C. Griffin. (slt) (Entered: 03/29/2021)
03/31/2021	<u>58</u>	Minute Entry for proceedings held before Judge Ronald C. Griffin: Arraignment as to Travis Thomas Jr (1) Count 1,1s,2s,3s,4s,5s and Michael Moreno (2) Count 1,1s,2s,3s,4s,6s. Plea of not guilty entered on 3/31/2021 (Minute entry documents are not available electronically). (Court Reporter Lilly Reznik) (slt) (Entered: 03/31/2021)
03/31/2021	<u>59 (p.61)</u>	ORDER Setting Status Conference as to Travis Thomas, Jr, Michael Moreno: Status Conference set for 4/1/2021 at 02:30 PM in Midland before Judge David Counts. Signed by Judge David Counts. (slt) (Entered: 03/31/2021)
03/31/2021	<u>60 (p.62)</u>	ORDER Resetting Status Conference as to Travis Thomas, Jr, Michael Moreno: Status Conference set for 4/5/2021 at 12:00 PM in Midland before Judge Ronald C. Griffin. Signed by Judge David Counts. (slt) (Entered: 03/31/2021)
03/31/2021	<u>61 (p.64)</u>	MOTION to Sever Defendant by USA as to Travis Thomas, Jr, Michael Moreno. (Daniels, Monica) (Entered: 03/31/2021)
03/31/2021	<u>62 (p.67)</u>	EXHIBIT LIST by USA as to Travis Thomas, Jr, Michael Moreno (Daniels, Monica) (Entered: 03/31/2021)
04/01/2021	<u>63 (p.70)</u>	DEFICIENCY NOTICE: re <u>61 (p.64)</u> MOTION to Sever Defendant as to Travis Thomas, Jr, Michael Moreno. (slt) (Entered: 04/01/2021)
04/05/2021		Text Order GRANTING <u>61 (p.64)</u> Motion to Sever as to Defendant Travis Thomas Jr (1) and Michael Moreno (2) entered by Judge David Counts. The Court will reset the trial dates by separate order. It is so ORDERED. (This is a text-only entry generated by the court. There is no document associated with this entry.)(mas) (Entered: 04/05/2021)
04/05/2021	<u>64 (p.71)</u>	ORDER as to Travis Thomas, Jr : Pretrial Conference set for 4/12/2021 at 08:00 AM in Midland before Judge David Counts. Signed by Judge David Counts. (slt) (Entered: 04/05/2021)

04/05/2021	<u>65</u> (p.72)	ORDER as to Travis Thomas, Jr : Jury Selection set for 4/12/2021 at 08:30 AM in Midland before Judge David Counts; Jury Trial set for 4/12/2021 at 08:30 AM in Midland before Judge David Counts. Signed by Judge David Counts. (slt) (Entered: 04/05/2021)
04/05/2021	<u>68</u> (p.73)	ORDER as to Travis Thomas, Jr, Michael Moreno. Signed by Judge David Counts. (slt) (Entered: 04/05/2021)
04/05/2021	<u>69</u>	Minute Entry for proceedings held before Judge David Counts:Motion Hearing as to Travis Thomas, Jr, Michael Moreno held on 4/5/2021 re <u>61</u> (p.64) MOTION to Sever Defendant filed by USA (Minute entry documents are not available electronically). (Court Reporter Ann Record) (slt) (Entered: 04/06/2021)
04/06/2021	<u>74</u> (p.74)	MOTION in Limine by USA as to Travis Thomas, Jr, Michael Moreno. (Daniels, Monica) (Entered: 04/06/2021)
04/07/2021		Text Order GRANTING <u>74</u> (p.74) Motion in Limine as to Travis Thomas Jr. (1) and Michael Moreno (2) entered by Judge David Counts. It is so ORDERED. (This is a text-only entry generated by the court. There is no document associated with this entry.)(mas) (Entered: 04/07/2021)
04/12/2021		Voir Dire begun on 4/12/2021 Travis Thomas Jr (1) on Count 1s,2s,3s,4s,5s. (slt) (Entered: 04/13/2021)
04/12/2021	<u>76</u>	Minute Entry for proceedings held before Judge David Counts:Pretrial Conference as to Travis Thomas, Jr held on 4/12/2021 (Minute entry documents are not available electronically). (Court Reporter Ann Record) (slt) (Entered: 04/13/2021)
04/12/2021	<u>77</u>	Minute Entry for proceedings held before Judge David Counts:Jury Selection as to Travis Thomas, Jr held on 4/12/2021 (Minute entry documents are not available electronically), Jury Trial as to Travis Thomas, Jr held on 4/12/2021 (Minute entry documents are not available electronically). (Court Reporter Ann Record) (slt) (Entered: 04/13/2021)
04/12/2021		ORAL MOTION for Acquittal by Travis Thomas, Jr. (slt) (Entered: 04/13/2021)
04/12/2021		ORDER DENYING [] Motion for Acquittal as to Travis Thomas Jr (1). Signed by Judge David Counts. (slt) (Entered: 04/13/2021)
04/13/2021	<u>81</u> (p.81)	WITNESS LIST as to Travis Thomas, Jr. (slt) (Entered: 04/15/2021)
04/13/2021	<u>82</u> (p.82)	EXHIBIT LIST by USA as to Travis Thomas, Jr (Attachments: # <u>1</u> (p.11) Exhibit 2, # <u>2</u> (p.17) Exhibit 3, # <u>3</u> (p.18) Exhibit 4, # <u>4</u> (p.19) Exhibit 5, # <u>5</u> Exhibit 6, # <u>6</u> Exhibit 7, # <u>7</u> Exhibit 8, # <u>8</u> Exhibit 9, # <u>9</u> (p.20) Exhibit 10, # <u>10</u> (p.21) Exhibit 11, # <u>11</u> (p.22) Exhibit 12, # <u>12</u> (p.24) Exhibit 13, # <u>13</u> Exhibit 18, # <u>14</u> Exhibit 19, # <u>15</u> Exhibit 20)(slt) Modified on 4/15/2021 to change filed date(tr). (Entered: 04/15/2021)
04/13/2021	<u>83</u> (p.84)	Court's Charge/Instructions to Jury as to Travis Thomas, Jr. (slt) (Entered: 04/15/2021)

04/13/2021	<u>85 (p.102)</u>	JURY VERDICT (Redacted Version) as to Travis Thomas Jr (1) Guilty on Count 1s,2s,3s,4s,5s. filed. Unredacted Version Sealed pursuant to E-Government Act of 2002. (slt) (Entered: 04/15/2021)
04/13/2021	<u>87</u>	Minute Entry for proceedings held before Judge David Counts:Jury Trial as to Travis Thomas, Jr held on 4/13/2021 (Minute entry documents are not available electronically). (Court Reporter Ann Record) (slt) (Entered: 04/15/2021)
04/15/2021	<u>95 (p.104)</u>	EXHIBIT RECEIPT by Travis Thomas, Jr, Michael Moreno. (slt) (Entered: 04/15/2021)
04/15/2021	<u>96 (p.106)</u>	ORDER Setting Sentencing as to Travis Thomas, Jr : Sentencing set for 7/8/2021 at 02:30 PM in Midland before Judge David Counts. Signed by Judge David Counts. (slt) (Entered: 04/15/2021)
06/22/2021	<u>101 (p.436)</u>	SEALED PRESENTENCE INVESTIGATION REPORT Filed as to Travis Thomas, Jr by Officer Douglas Bramley. (Document available to court only) (Attachments: # (1-2) (Sanchez, Cecilia) (Entered: 06/22/2021)
07/08/2021	<u>102</u>	Minute Entry for proceedings held before Judge David Counts:Sentencing held on 7/8/2021 for Travis Thomas, Jr (1), Count(s) 1, Dismissed with prejudice.; Count(s) 1s, Imprisonment of 360 months to run concurrently with Counts 2, 3, 5; 5 years Supervised Release to run concurrently with Count 2, 3, 4, 5; \$100.00 Special Assessment fee; No Fine. Count(s) 2s, Imprisonment of 360 months to run concurrently with Counts 1, 3, 5; 5 years Supervised Release to run concurrently with Count 1, 3, 4, 5; \$100.00 Special Assessment fee; No Fine. Count(s) 3s, Imprisonment of 240 months to run concurrently with Counts 1, 2, 5; 3 years Supervised Release to run concurrently with Count 1, 2, 4, 5; \$100.00 Special Assessment fee; No Fine. Count(s) 4s, Imprisonment of 60 months to run consecutively to ALL Counts; 5 years Supervised Release to run concurrently with Count 1, 2, 3, 5; \$100.00 Special Assessment fee; No Fine. Count(s) 5s, Imprisonment of 120 months to run concurrently with Counts 1, 2, 3; 3 years Supervised Release to run concurrently with Count 1, 2, 3, 4; \$100.00 Special Assessment fee; No Fine. (Minute entry documents are not available electronically.) (Court Reporter FTR-Midland.) (se) (Entered: 07/09/2021)
07/19/2021	<u>106 (p.107)</u>	JUDGMENT AND COMMITMENT as to Travis Thomas, Jr (1), Count(s) 1, Dismissed with prejudice.; Count(s) 1s, Imprisonment of 360 months to run concurrently with Counts 2, 3, 5; 5 years Supervised Release to run concurrently with Count 2, 3, 4, 5; \$100.00 Special Assessment fee; No Fine.; Count(s) 2s, Imprisonment of 360 months to run concurrently with Counts 1, 3, 5; 5 years Supervised Release to run concurrently with Count 1, 3, 4, 5; \$100.00 Special Assessment fee; No Fine.; Count(s) 3s, Imprisonment of 240 months to run concurrently with Counts 1, 2, 5; 3 years Supervised Release to run concurrently with Count 1, 2, 4, 5; \$100.00 Special Assessment fee; No Fine.; Count(s) 4s, Imprisonment of 60 months to run consecutively to ALL Counts; 5 years Supervised Release to run concurrently with Count 1, 2, 3, 5;

		\$100.00 Special Assessment fee; No Fine.; Count(s) 5s, Imprisonment of 120 months to run concurrently with Counts 1, 2, 3; 3 years Supervised Release to run concurrently with Count 1, 2, 3, 4; \$100.00 Special Assessment fee; No Fine.. Signed by Judge David Counts. (bot1) (Entered: 07/19/2021)
07/19/2021	<u>107 (p.459)</u>	Sealed Statement of Reasons as to Travis Thomas, Jr (SOR documents are not available electronically.) (bot1) (Entered: 07/19/2021)
07/21/2021	<u>108 (p.113)</u>	Appeal of Final Judgment by Travis Thomas, Jr. No filing fee submitted (Acker, Kevin) (Entered: 07/21/2021)
07/21/2021	<u>109 (p.114)</u>	MOTION to Withdraw as Attorney by Travis Thomas, Jr. (Attachments: # <u>1 (p.11)</u> Proposed Order proposed order of withdraw)(Acker, Kevin) (Entered: 07/21/2021)
07/21/2021		NOTICE OF APPEAL following <u>108 (p.113)</u> Notice of Appeal (E-Filed) by Travis Thomas, Jr Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a <u>Transcript Order</u> and follow the instructions set out on the form. If the appellant has a court appointed attorney under CJA, the CJA 24 vouchers must be completed in the E-voucher system. (se) (Entered: 07/21/2021)
07/30/2021		Text Order GRANTING <u>109 (p.114)</u> Attorney Kevin Acker's Motion to Withdraw as Attorney and Order Appointing Attorney John Peralta to represent Defendant Travis Thomas Jr (1) for Appellate Purposes under the Criminal Justice Act Entered by Judge Ronald C. Griffin. (This is a text-only entry generated by the court. There is no document associated with this entry.) (ms2) (Entered: 07/30/2021)
07/30/2021		Attorney John A. Peralta for Travis Thomas, Jr added. Attorney Kevin D. Acker terminated as to Travis Thomas, Jr. (se) (Entered: 08/02/2021)
08/19/2021	<u>113 (p.117)</u>	TRANSCRIPT REQUEST by Travis Thomas, Jr for dates of 4/12-13/21; 7/8/21 before Judge Hon. David Counts,. Proceedings Transcribed: Opening/Closing Statements, Jury Trial, Sentencing Hearing. Court Reporter: Ann Record. re Notice of Appeal - Final Judgment., (Peralta, John) (Main Document 113 replaced on 8/19/2021) (slt). Modified to remove request for sentencing - atty will submit another request on 8/19/2021 (slt). (Entered: 08/19/2021)
08/31/2021	<u>114 (p.118)</u>	TRANSCRIPT REQUEST by Travis Thomas, Jr for dates of 4/12-13/21 before Judge Hon. David Counts,. Proceedings Transcribed: Opening/Closing Statements, Jury Trial,. Court Reporter: Ann Record. re Notice of Appeal - Final Judgment., (Peralta, John) (Entered: 08/31/2021)
08/31/2021	<u>115 (p.119)</u>	TRANSCRIPT REQUEST by Travis Thomas, Jr for dates of 7/8/21 before Judge Hon. David Counts,. Proceedings Transcribed: Sentencing Hearing. Court Reporter: Digital - Dipti Patel. re Notice of Appeal - Final Judgment., (Peralta, John) (Entered: 08/31/2021)

10/04/2021	<u>119 (p.405)</u>	TRANSCRIPT filed of Proceedings as to Travis Thomas, Jr held on 7/8/2021 Proceedings Transcribed: Sentencing. Court Reporter/Transcriber Liberty Transcripts, Telephone number (847) 848-4907. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. Redaction Request due 10/25/2021, Redacted Transcript Deadline set for 11/4/2021, Release of Transcript Restriction set for 1/3/2022, Appeal Record due by 10/19/2021, (kc) (Entered: 10/04/2021)
10/12/2021	<u>120 (p.120)</u>	TRANSCRIPT filed of Proceedings as to Travis Thomas, Jr held on 4/12/2021 Proceedings Transcribed: Jury Trial - Volume 1. Court Reporter/Transcriber Ann Record, Telephone number 432-688-4371. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. Redaction Request due 11/2/2021, Redacted Transcript Deadline set for 11/12/2021, Release of Transcript Restriction set for 1/10/2022, Appeal Record due by 10/27/2021, (Record, Ann) (Entered: 10/12/2021)
10/12/2021	<u>121 (p.351)</u>	TRANSCRIPT filed of Proceedings as to Travis Thomas, Jr held on 4/13/2021 Proceedings Transcribed: Jury Trial - Volume 2. Court Reporter/Transcriber Ann Record, Telephone number 432-688-4371. Parties are notified of their duty to review the transcript to ensure compliance with the FRCP 5.2(a)/FRCrP 49.1(a). A copy may be purchased from the court reporter or viewed at the clerk's office public terminal. If redaction is necessary, a Notice of Redaction Request must be filed within 21 days. If no such Notice is filed, the transcript will be made available via PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. Redaction Request due 11/2/2021, Redacted Transcript Deadline set for 11/12/2021, Release of Transcript Restriction set for 1/10/2022, Appeal Record due by 10/27/2021, (Record, Ann) (Entered: 10/12/2021)

FentylTM



2 ml

Fentanyl 100 mcg

Fentanyl

IV Injection

