NO.

SUPREME COURT OF THE UNITED STATES

SIRRON MORALEZ	)
	)
Petitioner	)
	)
- VS. -	)
	)
UNITED STATES OF AMERICA	)
	)
Respondent.	)

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

/s Michael Losavio
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Sirron Moralez

QUESTION PRESENTED FOR REVIEW

Justification does not suffice for a detention and search be found where "…a police officer's zealous pursuit for an arrest blurred his constitutional obligation to find legitimate probable cause before searching a vehicle. " Dissenting Opinion of Judge Bernice Donald, *United States v. Sirron Moralez*, Opinion below.

The Sixth Circuit majority's analysis conflicts with the Fourth Circuit's holding that a container alone is insufficient to establish probably cause in *United States v. Saafir*, 754 F.3d 262 (4th Cir. 2014)…[was insufficient for a mere hip flask to support probable cause of an alcohol violation,]

Question I Presented is: Does an empty container with "THC" on the cover justify an extended detention in a traffic stop and support the seizure of the driver and search of the vehicle?

Question II Presented is: Can after-the-fact collection of the "totality of the circumstances" justify state action before the fact as to legitimize a state seizure and search?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT
WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Sirron Moralez, Appellant, Petitioner

United States of America, Appellee, Respondent

,

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS AND ORDERS BELOW

The opinion below of the United States Court of Appeals for the Sixth Circuit was rendered in *United States v. Sirron Moralez,* Case number 21-5859; that opinion affirmed the judgment of the United States District Court for the Western District of Kentucky in case number 5:19−cr−00068−TBR−1where the original sentence committed Moralez to the custody of the Bureau of Prisons to a total term of 120 months imprisonment.

JURISDICTION

i. The opinion of the United States Court of Appeals for the Sixth Circuit was entered on 18 August 2022; pursuant to Rule 13.1 of the rules of this Court, the Petition is timely filed.

ii. A petition for a rehearing en banc was filed in this matter and denied on September 30, 2022; no extension of time within which to file a petition for a writ of certiorari has been made.

iii. This is not a cross-Petition pursuant to Rule 12.5.

iv. The statutory provision conferring jurisdiction upon this Court to review upon a writ of certiorari the judgment or order in question is 28 U.S.C. §1254.

Constitutional Provisions And Other Authorities Involved In This Case

Fourth Amendment to the Constitution of the United States

First Amendment to the Constitution of the United States

STATEMENT OF THE CASE

Jurisdiction in the First Instance

Subject matter jurisdiction vested in the U.S. District Court for the Western District of Kentucky pursuant to 18 U.S.C. §3231; Moralez was indicted for offenses against the laws of the United States and was convicted upon a plea of guilty within that district.

Appellate jurisdiction vested in the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1291 and 28 U.S.C. §1294.

Presentation of Issues in the Courts Below and Facts

Kentucky State Trooper T.J. Williams of the Drug Enforcement Section West stopped Sirron Moralez for speeding on I-24. He asked Mr. Moralez for the rental car documentation of Moralez' vehicle, and as Moralez opened the center console Williams saw a brown box, which, as he detailed in the later suppression hearing, he'd seen "thousands of time before," with the letters "THC" on it, "which contains marijuana." Williams explained "They normally hold what's called a marijuana oil vape container" … "on top of an e-cigarette, and it contains approximately a gram, a gram and a half of marijuana oil."… and are not legal in Kentucky. (Williams, TSuppression, p6) He asked Moralez what was in it and Moralez said it was empty.

Trooper William had Moralez come back to his police vehicle and sit in the front passenger seat while he ran a check on Moralez's drivers license; while waiting, he began the "enforcement action" which would have been a citation issued to Moralez. Trooper Williams used this time for further investigation as "Well, during the enforcement action, I always carry on a conversation to figure out if I have any further criminal activity other than just, you know, possibly that marijuana oil pen."

During the suppression hearing Trooper Williams further explained:

> I didn't say anything about it. I knew I was already good with the box. We would find out what that was at a later time.
>
> …
>
> Well, when I looked at it from where I was at, I thought that's either going to be cocaine or methamphetamine. Didn't know until I found out later what it was, but ...
>
> …
> I knew at that time I didn't have to ask for consent. As a matter of fact, I felt so comfortable of what I had observed, I had a dog that was with us. Trooper Dodd was sitting right behind me. I could have deployed K9 Dax. We didn't. There was no need in it.
>
> Just to further my investigation and -- I always ask for consent whether I need it or I don't. I normally ask just to see what reaction I'm going to get. And as soon as I asked for consent, it was exactly what I thought it was going to be. He put his hands up and said, "No, you're not searching my car. I didn't rent it. My fiancée did."
>
> So I explained to him, I was like, "Well, we have a problem. I'm going to search your car because of the THC box that I saw." He just hung his head down like he was defeated and just shook his head. So I had him stand outside of the car -- after I advised him of his rights to stand outside the car while we searched it.

Methamphetamine was found in that search and Moralez was prosecuted. Moralez moved to suppress the items found in that search; the District Court in its Order Denying the motion to suppress acknowledged "If Williams had only observed the brown box, probable cause may be debatable." But the District Court went on "When the Court views all of these circumstances, Williams had probable cause to believe the vehicle contained evidence of a crime."

The Court of Appeals for the Sixth Circuit, in a 2 to 1 decision, affirmed the District Court and its denial of the motion to suppress. The majority said:

The district court did just this, asking what objective facts Williams knew when he searched Moralez's car. Fact one: Williams saw a box—the kind that normally holds marijuana paraphernalia—in Moralez's car. Marijuana is illegal in Kentucky. *See* Ky. Rev. Stat. Ann.218A.1422. Fact two: When Moralez exited the car, Williams got a glimpse of a glass vial filled with white powder.[1] Fact three: During his chat with Williams, Moralez acted nervous and told a story consistent with those of other drug couriers that Williams had encountered in his decades of law enforcement. Taken together, the THC box and the glass vial gave Williams at least a fair probability that a search of the car would come up with contraband. And then Moralez's nervous behavior and dodgy cover story bolstered that belief. So we agree with the district court that these facts show that "Williams had probable cause to believe the vehicle contained evidence of a crime." *Moralez*, 2020 WL 6492918, at *2.

But the dissent disagreed, noting the conflict with the Fourth Circuit in *United States v. Saafir*, 754 F.3d 262 (4th Cir. 2014) that held that simply seeing a container did not establish probably cause.

In *Saafir*, an officer observed a "hip flask commonly used to carry alcohol" in a stopped vehicle. *Id.* at 265. If the flask contained alcohol, the defendant would have been in violation of a North Carolina statute regarding the transportation of alcohol in a container other than the manufacturer's original container. *Id.*; s*ee* N.C. Gen. Stat. § 2-138.7(a1). The officer used the presence of the flask as foundation for probable cause to search the entire vehicle. *Saafir*, 757 F.3d at 265. The court properly held that the hip flask did not provide the officer probable cause; furthermore, "a search and seizure is unreasonable and therefore unconstitutional if it is premised on a law enforcement officer's misstatement of his or her authority." *Id.* at 266 (citing *Bumper v. North Carolina*, 391 U.S. 543, 547-50 (1968)).

The dissent observed:

> This is a case where a police officer's zealous pursuit for an arrest blurred his constitutional obligation to find legitimate probable cause before searching a vehicle. In a series of arguably intentional missteps, the officer exploited legal loopholes to arrive at this place–a violation of Moralez's Fourth Amendment right against unreasonable searches and seizures….
>
> … The majority suggests there are three "objective facts" that Williams knew at the time of the search that support a finding in favor of probable cause: (1) the glass vial of white powder found on the driver's seat, (2) the small THC-labeled box in the center console, and (3) Moralez's nervous demeanor and evasive responses. *See ante,* at 4-5. The majority's interpretation of these

material facts is a clear departure from the record and leaves out critical moments leading up to the search. *Id.* at 1-3. Williams's testimony of the facts leading up to the search are at odds with the dashcam footage of the arrest and his own post-arrest complaint. Upon thorough review of the record and applicable law, the officers lacked probable cause to search Moralez's vehicle at the time of the search.

First, the glass vial was not known to Williams at the time that he initiated the search. In the post-arrest report written by Williams immediately after the search, he stated that probable cause was established "[d]ue to the fact I observed the THC container" only. Williams further admitted that he did not see the vial initially, but that the vial was located *after* the search was initiated.

The alarming discrepancies surrounding the vial of powder create further cause for concern upon review of the dashcam footage of Williams's interaction with Moralez. When video footage of an incident is available to the court, the facts should be viewed in "the light depicted by the videotape." *See Scott v. Harris*, 550 U.S. 372, 380-81 (2007). Throughout the video footage, several interactions illustrate discrepancies in Williams's testimony regarding the vial of white powder. For example, in the Kentucky Incident-Based Reporting System ("KYIBRS"), Williams stated that he "observed a small glass vial on the driver's seat" prior to initiating the search which would have given him probable cause to search Moralez's vehicle. However, the video footage does not show that Williams saw or could have seen the vial of white powder fall out of Moralez's pockets. Even when viewing the footage in a light most favorable to the state, it is clear that Williams had an obstructed view of the driver's seat from his position at the rear passenger window. In addition, Williams initially stated that the THC box gave him probable cause to search the vehicle; he did not, however, mention any glass vial or independent basis to establish probable cause until months after the arrest. The live video footage is telling of this reality. During the video, there is absolutely no mention of the vial of white powder by Williams until approximately seventeen minutes after the stop was initiated. And it was the second officer, not Williams, that located the vial in the driver's seat of the car.

Second, I agree with the district court's assessment that "if Williams had only observed the brown box, probable cause may [be] debatable." *United States v. Moralez*, No. 5:19-cr-00068, 2020 WL 6492918, at *3 (W.D. Ky. Nov. 4, 2020). A container located in a vehicle may amount to probable cause when the container provides "more than a mere suspicion" or when the search qualifies as protective in nature. *Smith v. Thornburg*, 136 F.3d 1070, 1074 (6th Cir. 1998) (quoting *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990)); *see United States v. Goodwin*, 202 F.3d 270, at *4 (6th Cir. 2000) (Table). Here, the THC box, which was ultimately empty, only provided a mere suspicion that Kentucky's marijuana statute, Ky. Rev. Stat. Ann. § 218A.1422, was being violated.

A Petition for Rehearing En Banc was filed and denied.

This Petition follows.

REASONS FOR GRANTING THE WRIT

Question I: Does an empty container with "THC" on the cover justify an extended detention in a traffic stop and support the seizure of the driver and search of the vehicle?

The stop of Moralez went on too long for a simple speeding stop and the sight of a box marked "THC" did not justify extending that detention as to lead to a search of his vehicle.

Trooper Williams of the Kentucky State Police of the Drug Enforcement Section West, stopped Sirron Moralez for speeding on I-24. (Williams, TSuppression, pp 2-4) But he extended an investigation beyond its proper bounds without justification such that any evidence produce was "fruit of the poisonous tree" that could not be used against him and should have been suppressed.

Any evidence discovered after the surrender of Moralez' driver's license as extended by Trooper Williams was part of the illegal seizure and must be suppressed, including the inconclusive brown box labled "THC."

That a box with "THC" on it was seen does not support any probable cause of illegal activity. It was no clear sign of contraband even though a quick examination of the contents of the box would have resolved that, finding it empty.

Trooper Williams, improperly making Martinez root through the car, saw a brown box with the letters "THC" on it, something he'd seen "thousands of times before"… "which contains marijuana;" Williams contended ""They normally hold what's called a marijuana oil vape container" … "on top of an e-cigarette, and it contains approximately a gram, a gram and a half of marijuana oil."… and are not legal in Kentucky. But Williams also asked Moralez what was in it and Moralez said it was empty. Williams cited Moralez for possession of drug paraphernalia

even when there is no indication such was found.

Trooper Williams' seizure of Moralez was based on an insufficient analysis based entirely on the *assumptions* made by the policeman. It's just a box. It can indicate a particular taste in music, such as the trip hop band T.H.C.[1] or the "Texas Hippie Coalition," sometimes stylized THC[2]. Or it may indicate something that is not an arrestable offense. The treachery of images[3] and the ways in which we interpret the forms and meaning of what we see[4], including through the lenses of our biases, does not permit uncontrolled discretion to seize and search by the state. Mere suggestion is not enough, especially when balanced against the First Amendment's protections of freedom of expression and the Fourth Amendment's right to be left alone. U.S.C.A 1st, U.S.C.A. 4th

Consider the extension of this as to those people with shirts with marijuana leaves emblazoned. Does that establish probable cause to seize and search?[5]

Seeing a box in and of itself does not establish probable cause of a crime. Perhaps an examination of the box and its contents might have provided further evidence, but that was not

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1 "T.H.C." a trip hop band, https://en.wikipedia.org/wiki/T.H.C._(band) accessed October 7, 2022

2 "Texas Hippie Coalition," https://en.wikipedia.org/wiki/Texas_Hippie_Coalition, accessed October 7, 2022

3 See, e.g. Renee Magritte, *The Treachery of Images*, 1928-1929, Los Angeles Museum of Art, Los Angeles, California, U.S.A.

4 "The ineluctable modality of the visible," Joyce, James. 1969. *Ulysses*. London: Bodley Head.

5 Bad fashion sense is not a crime, except as metaphor. In one baroque case an individual wearing a shirt reading "Seriously, I have drugs" was arrested. But the context was that the wearer saw a deputy sheriff enter the store, tried to pass a small package to the person next to him, who immediately pushed it back, all as witnessed by the deputy… "Pasco man wearing shirt that says 'Seriously, I have drugs' arrested, accused of having drugs," Tampa Bay Times, November 20, 2021

done. And, indeed, there was no testimony nor evidence that any illegal substance was found in the box. The trooper's KYBIRS report, Exhibit 1 to the Suppression Hearing, does not show any marijuana or related items seized. Just that there was a box with THC on it. This cannot be the foundation of anything as severe as an arrest.

Courts limit the inference of crime for indirect impressions of probable cause..

Judge Donald, dissenting in Moralez appeal, noted the majority's opinion conflicted with the Fourth Circuit opinion in *United States v. Saafir*, 754 F.3d 262 (4th Cir. 2014) that held that simply seeing a container did not establish probable cause. Judge Donald explained:

> In *Saafir*, an officer observed a "hip flask commonly used to carry alcohol" in a stopped vehicle. *Id.* at 265. If the flask contained alcohol, the defendant would have been in violation of a North Carolina statute regarding the transportation of alcohol in a container other than the manufacturer's original container. *Id.*; s*ee* N.C. Gen. Stat. § 2-138.7(a1). The officer used the presence of the flask as foundation for probable cause to search the entire vehicle. *Saafir*, 757 F.3d at 265. The court properly held that the hip flask did not provide the officer probable cause; furthermore, "a search and seizure is unreasonable and therefore unconstitutional if it is premised on a law enforcement officer's misstatement of his or her authority." *Id.* at 266 (citing *Bumper v. North Carolina*, 391 U.S. 543, 547-50 (1968)).

See also *Rasherd Lewis v. State of Maryland*, No. 44, September Term, 2018, https://mdcourts.gov/data/opinions/coa/2020/44a19.pdf accessed 7 October 2022 (the smell of marijuana alone does not establish probable cause of a crime.) Here more than a box was needed, and the search and arrest was improper and the fruits thereof should be suppressed.

Inferring THC referred to "TetraHydroCannabinol" does not necessarily establish criminal contraband under Kentucky law. KRS 218Al.010 makes it clear that not all cannabinoid activity is falls under its prohibited "marijuana" classification.

Trooper Williams never asked any other questions that might clarify the matter. The subsequent illegal detention of Moralez in the police vehicle only produced a very nervous

person, from Williams' description, which is perfectly normal, and an unknown vial of a white powder which was not inquired about nor tested prior to arresting Moralez and searching his vehicle.

Basing this entire episode of the seizure of Moralez and the search of his vehicle on that box was error and the motion to suppress the evidence found should have been granted.

Question II Presented is: Can after-the-fact collection of the "totality of the circumstances" justify state action before the fact as to justify a state search?

The District Court found that the totality of the circumstances justified the seizure and search in this case. But how we know, or, more to the point, how Trooper Williams "knew" of illegal activity is at the center of our inquiry. And he did not know with the sufficiency to justify probable cause, even though, as he testified, it was on the basis of that box labeled "THC" he arrested Moralez:

> …Just to further my investigation and -- I always ask for consent whether I need it or I don't. I normally ask just to see what reaction I'm going to get. And as soon as I asked for consent, it was exactly what I thought it was going to be. He put his hands up and said, "No, you're not searching my car. I didn't rent it. My fiancée did."
>
> So I explained to him, I was like, "Well, we have a problem. I'm going to search your car because of the THC box that I saw." He just hung his head down like he was defeated and just shook his head. So I had him stand outside of the car -- after I advised him of his rights to stand outside the car while we searched it.

(Transcript of Suppression Hearing, Trooper Williams, p 12)

Trooper Williams admitted he only saw "THC" and did not see "contains marijuana," did not see cannabis nor a Willie's Reserve sativa cartridge, did not smell any marijuana and admitted that the brown box itself was not contraband.

Williams, told Moralez, as shown on the video, that there was probable cause to search due to the box with "THC" on it; Williams did not know what was in the glass vial and, per his KYIBRS report, "I advised Sirron that I was going to search his vehicle because I observed the THC box in the center console.". Thus:

> Q.[Smith] So that's why you searched the car, is the box that said "THC"?
> A. [Williams] Yes. I didn't feel comfortable at that time telling him, "You've got cocaine sitting in your front seat," because I didn't know exactly what it was. I later on discovered that's what it was.

On redirect examination by the government Williams said this:

> Q. And that's a full paragraph. And then you go down to the next one, and it states, "I had probable cause to search the vehicle due to the THC box I observed and the glass vial on the seat," too?
>
> A. Correct.

Yet a glass vial of unknown substance does not establish probable cause of anything. Consistent with an arrest *first*, search for evidence *later* practice, Trooper Williams and Trooper Dodd proceeded as follows:

> A. [Williams] I went over to the driver side; Trooper Dodd went over to the passenger side. There was a backpack sitting in the passenger side floorboard. If I remember, it was a backpack-style bag sitting in the floorboard. I went over to get that vial. Before I could even do so, Trooper Dodd had looked up at me and told me to go 10-15, which is the code for put him under arrest, basically. He had opened up the backpack and discovered a large amount of methamphetamine. (emphasis added)
>
> Q. And I believe that turned out to be just shy of a kilo of methamphetamine –
> A. Yes, just shy.

So Trooper Williams admits that they searched Moralez' car before they checked the vial of white powder for cocaine, without the consent of Moralez to search and thus without probable cause. A vial of white powder does not establish probable cause of anything, just as a bag of powdered artificial sweetener does not establish probable cause of a crime.

And, on top of all that, the decision to search Moralez' vehicle was made while Moralez

was in Trooper Williams' cruiser, so none of the exceptions about "grabbing space" regarding officer safety nor the destruction of evidence justified searching the contents of Moralez' vehicle. *Arizona v. Gant* 556 US 332 (2009). And the argument that a later inventory search would have led to "inevitable discovery" is incorrect. Trooper Dodd visually searched the backseat of Moralez' car, saw a backpack, retrieved it and opened it; finding the methamphetamine would not necessarily have happened, as the inventory would have only been the backpack, not its contents. Nothing was introduced at the suppression hearing to support "inevitable discovery." The search lacked any rationale beyond that of an "automobile search" or "search incident to an arrest" and was illegal per *Arizona v. Gant*; that evidence of methamphetamine should have been suppressed.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . ." U.S. Const. Amend. IV. It is a well-settled principle of constitutional jurisprudence that an arrest without probable cause constitutes an unreasonable seizure in violation of the Fourth Amendment. The Supreme Court has noted the importance of preventing unbridled discretion by police officers in searching and seizing individuals. See *Arizona v. Gant* 556 US 332 (2009).

With either the existence of "reasonable suspicion" or "probable cause," the determination as to the existence of either rests on 1) a determination of the ***a priori*** historical facts leading up to the seizure and 2) a mixed question of law and fact as to whether those historical facts, considered by a reasonable police officer, amount to a reasonable suspicion or probable cause of criminal activity. *Ornelas v. United States,* 517 U.S. 690 (1996) (emphasis added).

The subjective opinions of even experienced police officers do not supplant the need for

objective evidence supporting probable cause of criminal misconduct before police action. That was not done here, and the evidence against Moralez should be suppressed.

Otherwise our liberties will fade away, in these perilous times.

CONCLUSION

The judgment and sentence were erroneous and this Petition for Writ of Certiorari should be granted and Mr. Moralez given the relief he has argued for herein.

Respectfully submitted,

/s Michael Losavio
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(502) 417-4970
Counsel of Record for
Petitioner Sirron Moralez

Certification of Word Count and Petition Length

The undersigned certifies that this Petition for a Writ of Certiorari does not exceed 5000 words nor 20 pages in length, not counting the appendix materials, and is in compliance with the length rules of Supreme Court Rule 33.

/s Michael Losavio
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Counsel of Record for Petitioner
pursuant to the Criminal Justice Act

Certificate of Service

A copy of the foregoing Petition for a Writ of Certiorari has been served this day by U.S. Postal Mail or via a private expedited service on Hon. Elizabeth B. Prelogar, Solicitor General of the United States, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001.

This 8th day of October, 2022

/s Michael Losavio
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Counsel of Record for Petitioner
pursuant to the Criminal Justice Act

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Statutes Involved in this Petition

Fourth Amendment to the US Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

First Amendment to the US Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540

Deborah S. Hunt
Clerk

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Filed: August 18, 2022

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Re: Case No. 21-5859, *USA v. Sirron Moralez*
Originating Case No. : 5:19-cr-00068-1

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

1. Mr.

James

J. Vilt

Jr.

Enclos

ures

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 22a0341n.06

Case No. 21-5859

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	ON APPEAL FROM THE
	)	UNITED STATES DISTRICT
v.	)	COURT FOR THE WESTERN
	)	DISTRICT OF KENTUCKY
SIRRON MORALEZ,	)	
Defendant-Appellant.	)	OPINION
	)	

Before: DONALD, BUSH, and NALBANDIAN, Circuit Judges.

NALBANDIAN, J., delivered the opinion of the court in which BUSH, J., joined. DONALD, J. (pp. 8–12), delivered a separate dissenting opinion.

NALBANDIAN, Circuit Judge. Sirron Moralez took a cross-country trip from Wyoming to Tennessee with a backpack full of methamphetamine as his traveling companion. But before he could cross the Tennessee border, a Kentucky trooper pulled him over for speeding. During the stop, the trooper observed a box with "THC" written on it and a glass vial of white powder in Moralez's car. A subsequent search of the car uncovered almost a kilo of meth. After his indictment, Moralez moved to suppress this evidence, citing a lack of probable cause. But the district court, relying on the automobile exception, denied his motion. For the following reasons, we affirm.

I.

To work off a $2,000 debt owed to his cocaine dealer, Moralez agreed to deliver a package of methamphetamine from Wyoming to Tennessee. But before he got to Tennessee, Kentucky State Police Trooper T.J. Williams clocked Moralez going more than ten miles over the speed limit and pulled him over.

After Williams approached the car, Moralez turned over his driver's license and explained that he drove a rental car. Williams followed up by asking for the rental paperwork. As Moralez rifled through the center console to find it, Williams glimpsed a brown box with the label "THC." Williams knew this kind of box typically contained marijuana vape oil, which is illegal in Kentucky. His suspicions raised, Williams asked Moralez to sit in the front of the squad car while Williams ran his license. Moralez agreed. As Moralez exited his car, Williams caught another glimpse of potential contraband. This time, it came in the form of a small glass vial filled with white powder that looked like cocaine or methamphetamine.

To keep Moralez from running off, Williams stayed mum about the vial and marijuana paraphernalia. As he ran the driver's license, Williams chatted with Moralez about the purpose of his trip. Moralez spun a yarn that Williams had heard before, explaining that he made the long drive alone just to spend a few days in Nashville. When pressed, Moralez admitted that he didn't know where he was staying, only that he would have to call someone when he got there. Based on his 30-plus years of experience, Williams thought Moralez's tale sounded like that of a drug courier. What's more, as Moralez told his story, he started to sweat profusely despite the air conditioning in Williams's cruiser. And as Moralez spoke, he couldn't stop picking at his fingers or laughing nervously.

At this point, Williams knew that he had enough evidence to search the car. With the help of another trooper, he did just that. The troopers found close to a kilo of methamphetamine. And as it turns out, the vial was filled with cocaine and the THC box contained a marijuana vape pen Moralez bought in Colorado.

Soon after the search and subsequent arrest, a federal grand jury charged Moralez and two others with conspiracy to possess methamphetamine with intent to distribute under 21 U.S.C. § 846 and then Moralez alone with possession with intent to distribute under 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii). Moralez then moved to suppress the evidence from his car. His theory? Williams didn't have probable cause for the search because the THC couldn't qualify as contraband at first glance. After a suppression hearing, the district court denied Moralez's motion. Weighing the totality of the circumstances, the court concluded that "the glass vial alone gave Williams probable cause," and when considered with "all [the] other circumstances . . . probable cause is clear." *United States v. Moralez*, No. 5:19-cr-00068, 2020 WL 6492918, at *2 (W.D. Ky. Nov. 4, 2020).

Once the district court denied his motion, Moralez pleaded guilty. But as part of his plea deal, he preserved the right to appeal the denial of his suppression motion. *See* Fed. R. Crim. P. 11(a)(2).

Exercising that right, Williams now asks us to reconsider the district court's decision. But that's not all. For the first time on appeal, Moralez objects to the length of the stop, the validity of his arrest, a late *Miranda* warning, and more. We consider the argument he preserved first and then turn to his new claims.

II.

A.

When a district court's ruling on a motion to suppress comes to us, we review the district court's findings of fact for clear error and questions of law de novo. *United States v. Gardner*, 32 F.4th 504, 514 (6th Cir. 2022). In doing so, we view the evidence "in the light most likely to support the district court's decision." *United States v. Hurst*, 228 F.3d 751, 756 (6th Cir. 2000) (quotation omitted). Here, Moralez's sole challenge is whether Williams have probable cause to search Moralez's vehicle. We review the ultimate determination of probable cause de novo. *Gerics v. Trevino*, 974 F.3d 798, 805 (6th Cir. 2020); *Ornelas v. United States*, 517 U.S. 690, 697 (1996).

We begin with the basics. The Fourth Amendment, as a general matter, requires probable cause and a search warrant before an official may conduct a search. *See Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018). There are, of course, exceptions to the warrant requirement. Relevant here, the automobile exception allows law enforcement to search a vehicle "without a warrant if they have probable cause . . . that the vehicle contains evidence of a crime." *United States v. Lumpkin*, 159 F.3d 983, 986 (6th Cir. 1998). Probable cause exists when the totality of the circumstances shows a "fair probability that contraband or evidence of a crime will be found in a particular place." *Smith v. Thornburg*, 136 F.3d 1070, 1074 (6th Cir. 1998) (quoting *United States v. Wright*, 16 F.3d 1429, 1437 (6th Cir. 1994)). To conduct this analysis, we don't look at events after the search or the subjective intent of the officers. Instead, we look at "the objective facts known to the officers at the time of the search." *Id.* at 1075.

The district court did just this, asking what objective facts Williams knew when he searched Moralez's car. Fact one: Williams saw a box—the kind that normally holds marijuana paraphernalia—in Moralez's car. Marijuana is illegal in Kentucky. *See* Ky. Rev. Stat. Ann.

§ 218A.1422. Fact two: When Moralez exited the car, Williams got a glimpse of a glass vial filled with white powder.[1] Fact three: During his chat with Williams, Moralez acted nervous and told a story consistent with those of other drug couriers that Williams had encountered in his decades of law enforcement. Taken together, the THC box and the glass vial gave Williams at least a fair probability that a search of the car would come up with contraband. And then Moralez's nervous behavior and dodgy cover story bolstered that belief. So we agree with the district court that these facts show that "Williams had probable cause to believe the vehicle contained evidence of a crime." *Moralez*, 2020 WL 6492918, at *2.

Moralez's argument that neither the THC box nor the vial alone provided probable cause fails to convince us otherwise. For one thing, that argument misunderstands what the totality-of-the-circumstances analysis does. To start, we look at the entire picture rather than engaging in a "hypertechnical line-by-line scrutiny." *United States v. Christian*, 925 F.3d 305, 311 (6th Cir. 2019) (en banc) (alterations and quotation omitted); *see also District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018) (explaining that the "totality-of-the-circumstances test 'precludes [a] divide-and-conquer analysis'" (quoting *United States v. Arvizu*, 534 U.S. 266, 274 (2002))). So instead of asking whether the THC box or the vial alone provided probable cause, we ask whether all of the evidence, taken together, gave Williams probable cause to search the vehicle.

[1] The dissent disagrees with the district court's version of the facts on this point. As the dissent sees it, the dashcam video and Williams's post-arrest report contradict his testimony that Williams saw the glass vial before the search. We disagree: (1) Williams had a clear view of the front seat when Moralez got out of the car (D.E. 34, 02:17), (2) Williams told the other officer that Moralez "dropped that when he got out," (*Id.*, 17:07) and (3) Williams asked Moralez about the vial that he dropped when he got out of the car. (*Id.*, 20:23.) True, the post-arrest report mentions the vial after the search. But given the video evidence and Williams's testimony (that the district court found credible), we cannot say that the district court erred, much less clearly.

Contrary to Moralez's assertions, the district court gave proper consideration to both the THC box and the vial. True, the court said that with only the THC box "probable cause may be debatable." *Moralez*, 2020 WL 6492918, at *2. But that was just the first domino to fall. After seeing the box, Williams then saw the glass vial. And the district court said that the "vial alone gave Williams probable cause." *Id.* We agree. A vial of white powder gave Williams more than a fair probability that he would uncover illegal contraband. *See Texas v. Brown*, 460 U.S. 730, 742–43 (1983) (finding that a balloon tied up in a way often used to carry narcotics gave probable cause); *United States v. Baxter*, 69 F.3d 538 (6th Cir. 1995) (unpublished table decision) (per curiam) (holding that an officer had probable cause to arrest after observing a vial with a white powder).

All told, the THC box, the vial, Moralez's nervous behavior, and his suspicious story, gave Williams probable cause to search his car. The dissent's conclusion otherwise is an exercise in the "divide-and-conquer analysis" that the Supreme Court prohibits. *Wesby*, 138 S. Ct. at 588.

B.

Now we turn to the arguments that Moralez makes for the first time on appeal. Moralez argues that there was no probable cause for his arrest (as opposed to the search); the stop went on too long; Williams was not allowed to ask for rental paperwork; Williams was not allowed to ask Moralez to sit in the squad car; Williams issued the *Miranda* warning too late; and the inevitable discovery exception to the warrant requirement doesn't apply. But Moralez didn't make any of those arguments to the district court. And when Moralez pleaded guilty, his Rule 11(a)(2) plea agreement preserved only the right to "appeal the District Court's Memorandum Opinion and Order denying his Motion to Suppress." (R. 69, Plea Agreement, PageID 199 (emphasis and

brackets omitted).) That order—and Moralez's motion to suppress—didn't cover any of the new issues that Moralez raises.

Under our caselaw, Moralez's failure to preserve these specific issues is a fatal problem. "A voluntary and unconditional guilty plea waives all non-jurisdictional defects in the proceedings." *United States v. Ormsby*, 252 F.3d 844, 848 (6th Cir. 2001). But under Rule 11(a)(2), a defendant may enter a conditional guilty plea preserving the right to appeal specific pre-trial motions and specific issues on appeal. *See United States v. Alexander*, 540 F.3d 494, 504–05 (6th Cir. 2008). When a defendant, as here, fails to preserve a specific issue for appeal in his plea agreement, that issue is not properly before us. *See id.* at 505; *see also United States v. Napier*, 233 F.3d 394, 399 (6th Cir. 2000) (finding that the defendant didn't preserve an issue not written in his plea agreement); *United States v. Goyer*, 567 F. App'x 414, 420 (6th Cir. 2014) (declining to rule on a jury-instruction issue because it wasn't preserved on appeal); *United States v. Dossie*, 188 F. App'x 339, 345 (6th Cir. 2006) (same for other issues when the defendant only preserved appeal on double jeopardy and collateral estoppel grounds); *see also United States v. Anderson*, 374 F.3d 955, 957–58 (10th Cir. 2004) (refusing to consider defendant's new appellate suppression theory because it was "outside the scope of his reserved appellate rights"). Because Moralez didn't preserve his new arguments in his plea agreement, we can't hear them now.

And even if we construed some of his arguments as going to "suppression" broadly and thus not precluded by his plea agreement, they would still fail. Because he didn't raise those arguments in the district court, we would apply plain error and that standard is not met here.

III.

The arguments Moralez properly preserved for appeal lack merit. We affirm.

BERNICE BOUIE DONALD, Circuit Judge, dissenting. This is a case where a police officer's zealous pursuit for an arrest blurred his constitutional obligation to find legitimate probable cause before searching a vehicle. In a series of arguably intentional missteps, the officer exploited legal loopholes to arrive at this place–a violation of Moralez's Fourth Amendment right against unreasonable searches and seizures. Because I believe that the officer lacked probable cause to search the vehicle, I dissent.

The majority suggests there are three "objective facts" that Williams knew at the time of the search that support a finding in favor of probable cause: (1) the glass vial of white powder found on the driver's seat, (2) the small THC-labeled box in the center console, and (3) Moralez's nervous demeanor and evasive responses. *See ante,* at 4-5. The majority's interpretation of these material facts is a clear departure from the record and leaves out critical moments leading up to the search. *Id.* at 1-3. Williams's testimony of the facts leading up to the search are at odds with the dashcam footage of the arrest and his own post-arrest complaint. Upon thorough review of the record and applicable law, the officers lacked probable cause to search Moralez's vehicle at the time of the search.

First, the glass vial was not known to Williams at the time that he initiated the search. In the post-arrest report written by Williams immediately after the search, he stated that probable cause was established "[d]ue to the fact I observed the THC container" only. Williams further admitted that he did not see the vial initially, but that the vial was located *after* the search was initiated.

The alarming discrepancies surrounding the vial of powder create further cause for concern upon review of the dashcam footage of Williams's interaction with Moralez. When video footage of an incident is available to the court, the facts should be viewed in "the light depicted by the

videotape." *See Scott v. Harris*, 550 U.S. 372, 380-81 (2007). Throughout the video footage, several interactions illustrate discrepancies in Williams's testimony regarding the vial of white powder. For example, in the Kentucky Incident-Based Reporting System ("KYIBRS"), Williams stated that he "observed a small glass vial on the driver's seat" prior to initiating the search which would have given him probable cause to search Moralez's vehicle. However, the video footage does not show that Williams saw or could have seen the vial of white powder fall out of Moralez's pockets. Even when viewing the footage in a light most favorable to the state, it is clear that Williams had an obstructed view of the driver's seat from his position at the rear passenger window. In addition, Williams initially stated that the THC box gave him probable cause to search the vehicle; he did not, however, mention any glass vial or independent basis to establish probable cause until months after the arrest. The live video footage is telling of this reality. During the video, there is absolutely no mention of the vial of white powder by Williams until approximately seventeen minutes after the stop was initiated. And it was the second officer, not Williams, that located the vial in the driver's seat of the car.

Second, I agree with the district court's assessment that "if Williams had only observed the brown box, probable cause may [be] debatable." *United States v. Moralez*, No. 5:19-cr-00068, 2020 WL 6492918, at *3 (W.D. Ky. Nov. 4, 2020). A container located in a vehicle may amount to probable cause when the container provides "more than a mere suspicion" or when the search qualifies as protective in nature. *Smith v. Thornburg*, 136 F.3d 1070, 1074 (6th Cir. 1998) (quoting *United States v. Bennett*, 905 F.2d 931, 934 (6th Cir. 1990)); *see United States v. Goodwin*, 202 F.3d 270, at *4 (6th Cir. 2000) (Table). Here, the THC box, which was ultimately empty, only provided a mere suspicion that Kentucky's marijuana statute, Ky. Rev. Stat. Ann. § 218A.1422, was being violated.

Our sister circuit has settled this exact issue of containers that provide a mere suspicion of a violated statute in *United States v. Saafir*, 754 F.3d 262 (4th Cir. 2014). In *Saafir*, an officer observed a "hip flask commonly used to carry alcohol" in a stopped vehicle. *Id.* at 265. If the flask contained alcohol, the defendant would have been in violation of a North Carolina statute regarding the transportation of alcohol in a container other than the manufacturer's original container. *Id.*; s*ee* N.C. Gen. Stat. § 2-138.7(a1). The officer used the presence of the flask as foundation for probable cause to search the entire vehicle. *Saafir*, 757 F.3d at 265. The court properly held that the hip flask did not provide the officer probable cause; furthermore, "a search and seizure is unreasonable and therefore unconstitutional if it is premised on a law enforcement officer's misstatement of his or her authority." *Id.* at 266 (citing *Bumper v. North Carolina*, 391 U.S. 543, 547-50 (1968)).

Here, Moralez was in possession of a merely suspicious container which ultimately contained no evidence of a crime. Williams plainly stated to Moralez that the box warranted a search of the entire vehicle, and this statement is a plain misstatement of the law. It therefore follows that we should adopt the same rule put forth in *Saafir*: an officer may not initiate a search solely based upon the presence of a merely suspicious container, and the officer may not misstate their authority when initiating a search.

This circuit has held that probable cause exists when there is a "fair probability that contraband or evidence of a crime will be found in a *particular place*." *Smith v. Thornburg*, 136 F.3d 1070, 1074-75 (6th Cir. 1998) (emphasis added) (quoting *United States v. Wright*, 16 F.3d 1429, 1437 (6th Cir. 1994)). Here, Williams railroads through the necessary protection measures that require a nexus between the search and the particular place that raised his suspicions (the THC box in the console). When Williams notified Moralez of his intent to search the vehicle, Moralez

told Williams that the THC box was empty of any illegal contents. Not satisfied and exceeding the scope of his authority, Williams stated "well, I'm gonna look," and proceeded to search the *entire vehicle* without consent. The officers searched everything but the THC box; Williams searched the trunk, while the second officer searched the passenger side. Notably, even if the box itself warranted probable cause for a search, the officers would have only had authority to search the box, not the entire vehicle. *See California v. Acevedo*, 500 U.S. 565, 580 (1991).

Third, Williams argues that Moralez's nervous demeanor led him to believe that a crime was taking place. However, this Court has held that "factors such as a person's nervousness . . . while part of the reasonable suspicion analysis, are given little weight." *United States v. Johnson*, 482 F. App'x 137, 145 (6th Cir. 2012) (quoting *United States v. Samuels*, 443 F. App'x 156, 161 (6th Cir. 2011)). Williams stated that he observed Moralez "displaying extreme nervous behavior, more than what you'd display if you were just stopped for a speeding ticket." Williams's observation of Moralez's behavior is inconsequential as "[t]ime and again, we have said that nervousness—even extreme nervousness— 'is an unreliable indicator' . . . 'especially in the context of a traffic stop.'" *See United States v. Noble*, 762 F.3d 509, 522-23 (6th Cir. 2014) (quoting *United States v. Richardson*, 385 F.3d 625, 630 (6th Cir. 2004)).

An analysis of the record shows that the glass vial of white powder could not have created probable cause because Williams did not know of the glass vial until after the search began. In addition, the presence of an empty box labeled "THC" only creates a mere hunch that a crime has been committed. Even assuming that the box at issue here could be used to establish probable cause, only the box would be subject to a search, rather than the entire vehicle. Finally, Moralez's nervous behavior is an unreliable indicator that a crime is being committed and cannot establish

probable cause alone. Thus, it is eminently clear that the totality of the circumstances show Williams lacked probable cause to search Moralez's vehicle. Therefore, I dissent.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 21-5859

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SIRRON ANTHONY MORALEZ,

Defendant - Appellant.

Before: DONALD, BUSH, and NALBANDIAN, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Kentucky at Paducah.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

United States District Court

Western District of Kentucky

PADUCAH DIVISION

UNITED STATES OF AMERICA
V.
Ila Elaine Cathey

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

Case Number: 5:19-CR-68-3-TBR
US Marshal No: 26340-075
Counsel for Defendant: **Aaron M. Dyke, Federal Public Defender**
Counsel for the United States: **Seth A. Hancock, Asst. U.S. Atty.**
Court Reporter: **Terri Turner**

THE DEFENDANT:

2. **Pursuant to a Rule 11(c)(1)(B) plea agreement**

3. **Pleaded guilty to Count 1 in the Indictment, knowingly, willingly and voluntarily on March 24, 2021.**

§ Pleaded nolo contendere to count(s) which was accepted by the court.

§ Was found guilty on count(s) after a plea of not guilty

ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offense(s):

Title / Section and Nature of Offense	Date Offense Concluded	Count

FOR CONVICTION OFFENSE(S) DETAIL - SEE COUNTS OF CONVICTION ON PAGE 2
The defendant is sentenced as provided in pages 2 of this Judgment. The sentence is imposed through 8 ___ ___ 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 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 the United States Attorney of any material change in the defendant's economic circumstances.

4/28/2022
Date of Imposition of Judgment

Thomas B. Russell, Senior Judge

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

COUNTS OF CONVICTION

Title / Section and Nature of Offense	Date Offense Concluded	Count
21 U.S.C. § 846, 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A)(viii) - CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE METHAMPHETAMINE, Class A Felony	6/11/2019	1

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **TIME SERVED as to Count 1 in the Indictment.**

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

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

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

☐ at A.M. / P.M. on

☐ as notified by the United States Marshal.

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

☐ Before 2:00 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

☐ The defendant shall continue under the terms and conditions of her present bond pending surrender to the **institution.**

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ T o _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By_____
Deputy U.S. Marshal

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **3 years as to Count 1.**

MANDATORY CONDITIONS

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

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

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

STANDARD CONDITIONS OF SUPERVISION

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

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

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

SPECIAL CONDITIONS OF SUPERVISION

14. The defendant must submit to testing to determine if he/she has used a prohibited substance. The defendant shall contribute to the Probation Office's costs of service rendered based upon his/her ability to pay as it relates to the court approved sliding fee scale. The defendant must not attempt to obstruct or tamper with the testing methods.

15. The defendant shall participate in a community-based mental health treatment program approved by the U.S. Probation Office. The defendant shall contribute to the Probation Office's cost of services rendered based upon his/her ability to pay as reflected in his/her monthly cash flow as it relates to the court-approved sliding fee scale.

16. 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 their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

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.

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

_____

Defendant Date

_____

U.S. Probation Officer/Designated Witness Date

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	**$ 100.00**		

☒ **The fine and the costs of investigation, prosecution, and supervision are waived due to the defendant's inability to pay.**

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

☒ **Restitution is not an issue in this case.**

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

Criminal debt may be paid by check or money order or may be paid online at www.kywd.uscourts.gov (See Online Payments for Criminal Debt). If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order Or Percentage Of Payment

☐ If applicable, restitution amount ordered pursuant to plea agreement. . . . . $

☐ The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. 3612(f). All of the payment options on Sheet 5, Part B may be Subject to penalties for default and delinquency 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 in terest requirement is waived for the

☐ Fine and/or ☐ Restitution

☐ The interest requirement for the ☐ Fine and/or ☐ Restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: **Cathey , Ila Elaine**
CASE NUMBER: **5:19-CR-68-3-TBR**

SCHEDULE OF PAYMENTS

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

A ☒ **Lump sum payment of $ 100.00 due immediately.**
☐ not later than , or
☐ in accordance with E below); or

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

C ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of $

Over a period of (E.g. months or years) year(s) to commence The date of this judgment, or after (E.g., 30 or 60 days)

D ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of $

Over a period of (E.g. months or years) year(s) to commence Release from imprisonment to a term of supervision; or after (E.g., 30 or 60 days)

E ☐ Special instructions regarding the payment of criminal monetary penalties:

Any balance of criminal monetary penalties owed upon incarceration shall be paid in quarterly installments of at least $25 based on earnings from an institution job and/or community resources (other than Federal Prison Industries), or quarterly installments of at least $60 based on earnings from a job in Federal Prison Industries and/or community resources, during the period of incarceration to commence upon arrival at the designated facility.

Upon commencement of the term of supervised release, the probation officer shall review your financial circumstances and recommend a payment schedule on any outstanding balance for approval by the court. Within the first 60 days of release, the probation officer shall submit a recommendation to the court for a payment schedule, for which the court shall retain final approval.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the United States District Court, Gene Snyder Courthouse, 601 West Broadway, Suite 106, Louisville, KY 40202, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

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: Forfeiture shall be addressed by a separate order from the Court.**

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

No. 21-5859

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SIRRON MORALEZ,

Defendant-Appellant.

ORDER

BEFORE: DONALD, BUSH, and NALBANDIAN, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied. Judge Donald would grant rehearing for the reasons stated in her dissent.

ENTERED BY ORDER OF THE COURT

DEBORAH S. HUNT, CLERK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540

Deborah S. Hunt
Clerk

POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: September 30, 2022

Mr. Michael M. Losavio
1819 Edenside Avenue
Louisville, KY 40204

Re: Case No. 21-5859, *USA v. Sirron Moralez*
Originating Case No.: 5:19-cr-00068-1

Dear Mr. Losavio,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Beverly L. Harris
En Banc Coordinator
Direct Dial No. 513-564-7077

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