

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

MANTELL ALABI STEVENS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Sixth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX 1
Sixth Circuit Opinion Affirming
District Court's Judgment
(May 2, 2023)

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: May 02, 2023

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Eastern District of Kentucky
260 W. Vine Street, Suite 300
Lexington, KY 40507-1612

Mr. John Kevin West
Steptoe & Johnson
41 S. High Street, Suite 2200
Columbus, OH 43215

Re: Case No. 22-5410, *United States v. Stevens*
Originating Case No. : 5:20-cr-00143-2

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Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.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/Laurie A Weitendorf
Opinions Deputy

cc: Mr. Robert R. Carr

Enclosures

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 23a0207n.06

Case No. 22-5410

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED

May 02, 2023

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.)
MANTELL ALABI STEVENS,)
Defendant-Appellant.)
)
)
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)
ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
KENTUCKY
)
)
OPINION
)

Before: BOGGS, McKEAGUE, and THAPAR, Circuit Judges.

THAPAR, Circuit Judge. After Nick Adams died of a fentanyl overdose, a jury held Mantell Alabi Stevens, a drug dealer, responsible for his death. Stevens claims that there were three defects in his trial and sentencing. We disagree and affirm his convictions and sentence.

I.

Mantell Alabi Stevens sold what turned out to be fentanyl to Ashley Markham, who in turn sold it to Nick Adams. Apparently thinking it was heroin rather than fentanyl, Adams overdosed and died. The government charged Stevens with conspiracy to distribute fentanyl and heroin and distribution of fentanyl resulting in death. *See* 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), 846.

Before trial, the government used one of its peremptory challenges to strike an African American juror. Stevens challenged the strike under *Batson v. Kentucky*, 476 U.S. 79 (1986), claiming that it was motivated by racial discrimination. In response, the government claimed that

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it struck the juror because she said she might know a potential witness and because she worked in the mental-health field. The court allowed the strike.

At trial, Stevens's attorney conceded the conspiracy charge. But he argued that the government hadn't established that Stevens sold the drugs that led to Adams's death. At the close of the government's case, Stevens moved for a judgment of acquittal, claiming that no reasonable juror could find him guilty. The district court denied his motion, and the jury found him guilty on both counts.

The Presentence Report ("PSR") recommended a base offense level of 43. To reach that number, it relied on Section 2D1.1(a)(1) of the Sentencing Guidelines, which applies when an offense causes death or serious bodily injury and the defendant has at least one prior conviction for a "similar offense." Stevens objected, arguing that his prior conviction for possessing crack cocaine wasn't a "similar offense" under the Guidelines. The district court disagreed, adopted the PSR's recommended base offense level, and sentenced Stevens to 480 months' imprisonment.

II.

Stevens appeals, challenging (1) the district court's denial of his *Batson* challenge, (2) its denial of his motion for a judgment of acquittal, and (3) its application of Section 2D1.1(a)(1) at sentencing. We address each issue in turn.

A.

Batson challenge. Parties are typically entitled to use peremptory challenges to strike a potential juror for "any reason at all." *Batson*, 476 U.S. at 89 (citation omitted). But under *Batson*, they can't strike potential jurors because of their race. *Id.* If a party challenges a strike on this ground, *Batson* requires a three-step process: (1) the party challenging the strike must present a *prima-facie* case of racial discrimination; (2) the proponent of the strike must offer a race-neutral

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explanation; and (3) the trial court must decide whether the opposing party has proven purposeful discrimination. *United States v. Kimbrel*, 532 F.3d 461, 466 (6th Cir. 2008). “The ultimate inquiry is whether the State was ‘motivated in substantial part by discriminatory intent.’” *Flowers v. Mississippi*, 139 S. Ct. 2228, 2244 (2019) (quoting *Foster v. Chatman*, 578 U.S. 488, 513 (2016)). Here, like the district court, we assume Stevens could make a prima-facie case and proceed directly to steps two and three. *See Hernandez v. New York*, 500 U.S. 352, 359 (1991).

At step two, the government had to offer a race-neutral reason for striking the potential juror. *United States v. Cleveland*, 907 F.3d 423, 435 (6th Cir. 2018). Here, the government offered two: the potential juror worked in the mental-health field, and she might have known a potential government witness.

At step three, the district court concluded that Stevens didn’t establish purposeful discrimination. *See id.* Since the district court is best positioned to make this call, we review under the deferential clear-error standard. *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008).

Stevens hasn’t challenged the government’s first explanation: the juror’s employment in the mental-health field. So any challenge to that reason is forfeited. *See Small v. Memphis Light, Gas & Water*, 952 F.3d 821, 825 (6th Cir. 2020) (per curiam).

As for the government’s second explanation, Stevens has presented three arguments that it was pretextual. First, Stevens pointed out in the district court that the potential witness was a government witness. But, as the district court noted, knowledge of a witness is a “legitimate” reason for the government to strike a juror even if it’s the government’s witness. R. 115, Pg. ID 493. Prior familiarity with a potential witness could bias a juror, regardless of which party calls the witness. So without any other signs of animus, the fact that the potential witness was the government’s doesn’t show pretext.

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Second, Stevens argues on appeal that knowledge of the witness couldn't have been the real reason for the strike because the potential juror testified only that she "may" have known a potential witness. Appellant Br. 19 (citation omitted). He's right that the potential juror wasn't sure she knew the potential witness. But, as the district court pointed out, both parties had an opportunity to delve further into her knowledge. Neither did. In the face of both parties' silence, the only question is whether the government's silence was a cover for racial discrimination. That's a credibility judgment that the district court was well positioned to make after hearing the government's explanation. *See Snyder*, 552 U.S. at 477. Stevens hasn't shown it was clearly erroneous. And besides, the risk that a juror might know a witness is still a risk that the government can legitimately consider.

Finally, Stevens argues that the government didn't—and never intended to—call the witness, so striking a potential juror for knowing that witness could only be cover for discrimination. But, once again, the district court was in the best position to evaluate the government's motivations, and it concluded that the proffered reason was legitimate. That makes sense. The government often doesn't decide whether it's going to call a particular witness until trial is underway. That's because trial often goes differently than the parties expect at the outset. So before a trial starts, the prosecution often assumes that it may need several witnesses it ultimately doesn't. Thus, striking a juror based on possible knowledge of a witness—even if that witness ultimately doesn't testify—is reasonable. Stevens doesn't point to anything in the record showing that the district court's conclusion was clearly erroneous.

Stevens has failed to undermine one of the government's explanations, and he's presented no challenge to the other. So he hasn't shown that the government's strike was motivated by race.

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Flowers, 139 S. Ct. at 2235. The district court didn’t err, let alone clearly so, in denying Stevens’s *Batson* challenge.

B.

Motion for acquittal. The district court’s denial of the motion for acquittal was proper if, viewing the evidence in the light most favorable to the prosecution, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

Here, Stevens contends that the government failed to show that the drugs he sold to Markham were the same drugs that she sold to Adams. That’s a necessary element of Section 841(b)(1)(C), so Stevens argues that the government’s failure to establish that connection is fatal to his conviction. *See United States v. Hamm*, 952 F.3d 728, 738 (6th Cir. 2020) (noting that to be liable under Section 841(b)(1)(C), a defendant convicted on a conspiracy theory must have been part of the “distribution chain” of the drugs that killed the victim).

But the government offered evidence establishing that connection.¹ Specifically, it presented Markham’s phone and Facebook records, which documented her actions the day before Adams died: She ordered a gram and a half of heroin. She sold some of it, then she “cut” it—meaning she added some fiber to the heroin so that she had more to sell. Then she sold some to Adams. In addition, Markham testified that at the time of Adams’s death, Stevens was her regular

¹ Stevens claims this case is like *United States v. Saunders*, 325 F.2d 840 (6th Cir. 1964), in which we found the evidence insufficient to convict the defendant of drug distribution when it only established a “choice of reasonable probabilities,” *id.* at 843. But *Saunders* isn’t analogous. In that case, the only evidence the government presented was evidence that she and another person were observed “in the presence” of an informant when the informant obtained drugs. *Id.* Yet here, the government presented evidence directly connecting Stevens to Markham’s drugs, and directly connecting those drugs to Adams.

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and only source of heroin. That gave a rational juror enough to conclude that the same drugs Stevens sold to Markham, Markham sold to Adams.

Stevens presents five counterarguments, but none is persuasive. First, he argues that Markham's drug use impaired her memory, rendering her testimony unreliable. But we cannot weigh the credibility of witnesses—that task is reserved for the jury. *United States v. Jackson*, 470 F.3d 299, 309 (6th Cir. 2006). What's more, both Stevens's attorney and the court alerted the jury to possible concerns with Markham's memory. Nonetheless, the jury credited her testimony. And we can't reevaluate that credibility determination on appeal.

Second, Stevens points to an alleged color discrepancy between the drugs he sold to Markham and those found at Adams's residence. Markham said in text messages and testimony that the drugs she purchased from Stevens were "light gray," but officers described the substance found at Adams's residence as "white" (when seen at the scene) or "white and green" (when examined under fluorescent lighting at a lab). R. 117, Pg. ID 728–29; R. 116, Pg. ID 520; R. 118, Pg. ID 842–43. But since the jury convicted, we must resolve conflicting testimony in favor of the government. *United States v. Vasquez*, 560 F.3d 461, 469 (6th Cir. 2009). And a reasonable juror could have chalked the conflict up to differences in lighting, perception, or description. Or the jury might have concluded that the fiber Markham mixed into the drugs lightened their appearance.

Third, Stevens proposes an alternative theory about how fentanyl could've gotten into the drugs that Markham sold Adams: Markham cut the heroin Stevens sold her with fentanyl she received somewhere else. But speculation about other possible theories isn't enough to overturn the jury's verdict, and that's all Stevens can provide here. *See United States v. Sadler*, 24 F.4th 515, 547 (6th Cir. 2022). True, Markham received only 1.5 grams from Stevens, and she used

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some and sold some before selling 1.2 grams to Adams. So she would likely have had to mix what she got from Stevens with something else to have enough. But far from disproving the government's theory, that's entirely consistent with it—Markham's Facebook messages from the day before Adams's death say that she added fiber, not fentanyl, into the drugs before reselling them to Adams. The jury was entitled to credit that explanation.

Fourth, Stevens claims that the drugs he sold Markham couldn't have included fentanyl—a more potent drug than heroin—because customers had complained in the past that Stevens's drugs were weak. Yet isolated prior complaints alone don't establish that Stevens never sold fentanyl. Indeed, Markham noted that the potency of the drugs she received from Stevens varied, and that she only received complaints that the drugs were weak some of the time. What's more, these complaints likely came from experienced drug users. Adams had been clean for six months before using the drugs Markham sold him, so he had a low tolerance.

Finally, Stevens contends that if he had really sold Markham the drugs that killed Adams, Markham would've identified him as her source in messages expressing her guilt. But both Stevens and the government asked Markham about that at trial. And she explained that she didn't mention who she got the drugs from because she was simply expressing her remorse for being the person who directly facilitated Adams's death. The jury believed her explanation, so we won't second-guess it. *See Jackson*, 470 F.3d at 309.

In sum, Stevens can't shoulder the heavy burden of proving insufficiency of the evidence. The district court didn't err in denying his motion for judgment of acquittal.

C.

Sentencing challenge. Stevens claims that the district court misapplied Section 2D1.1(a)(1) of the Sentencing Guidelines. Because his challenge is to the district court's interpretation of the

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Sentencing Guidelines, we review with fresh eyes. *See United States v. King*, 516 F.3d 425, 427 (6th Cir. 2008).

Section 2D1.1(a)(1) of the Sentencing Guidelines establishes a base offense level of 43 if: (1) the defendant is found guilty of violating (among other statutes) Section 841(b)(1)(C); (2) death resulted from a substance distributed by the defendant; and (3) the defendant was previously convicted of a “similar offense.”

It’s undisputed that Stevens meets the first two criteria. He was convicted of violating Section 841(b)(1)(C), and, as discussed, there was sufficient evidence for the jury to conclude that Stevens caused the death of another.

So that leaves just the third criterion: a “similar offense.” We’ve previously held that “similar offense” in this context includes a “felony drug offense.” *United States v. Johnson*, 706 F.3d 728, 733 (6th Cir. 2013); *see* 21 U.S.C. §§ 802(44), 841(b)(1)(C). And Stevens’s prior conviction for possession of crack cocaine was a felony drug offense. Obviously, it involved drugs. And it was a felony because it was punishable by more than a year’s imprisonment. *See* Ky. Rev. Stat. §§ 218A.1415, 532.060(2)(d). Thus, the district court properly used that conviction to enhance Stevens’s sentence.

Stevens’s only counterargument is that *Johnson* is factually distinguishable. And that’s true—the predicate offense in *Johnson* was delivery of heroin, whereas here it’s possession of crack cocaine. *See Johnson*, 706 F.3d at 729. But the facts in *Johnson* are beside the point. *Johnson* held that “similar offense” in Section 2D1.1(a)(1) means “felony drug offense.” *Id.* at 733. That holding binds us.

* * *

We affirm.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-5410

UNITED STATES OF AMERICA,
Plaintiff - Appellee,
v.MANTELL ALABI STEVENS,
Defendant - Appellant.

FILED
May 02, 2023
DEBORAH S. HUNT, Clerk

Before: BOGGS, McKEAGUE, and THAPAR, Circuit Judges.

JUDGMENTOn Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington.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 Mantell Alabi Stevens's convictions
and sentence are AFFIRMED.**ENTERED BY ORDER OF THE COURT**_____
Deborah S. Hunt, Clerk

APPENDIX 2

District Court Order Overruling Stevens's Objections to

the Presentence Investigation Report

(April 29, 2022)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
(at Lexington)

UNITED STATES OF AMERICA,)
Plaintiff,)
V.)
MANTELL ALABI STEVENS,)
Defendant.)
Criminal Action No. 5: 20-143-DCR

**MEMORANDUM OPINION
AND ORDER**

*** *** *** ***

Defendant Mantell Stevens was convicted following a jury trial of one count of conspiring to distribute a mixture or substance containing a detectable amount of fentanyl and a mixture or substance containing a detectable amount of heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1), and one count of distributing a mixture or substance containing a detectable amount of fentanyl, the use of which resulted in the death of Nick Adams, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) (Count 2). [Record Nos. 23 and 90] Stevens' sentencing hearing is scheduled for May 6, 2022. [Record No. 92]

The United States Probation Office (“Probation Office”) has submitted a Presentence Investigation Report (“PSR”) for Stevens, which assesses a base offense level of 43 under U.S.S.G. § 2D1.1(a)(1) because he committed the offense charged in Count 2 after one or more prior convictions for a “similar offense.” In his second objection to the PSR (“Objection No. 2”), Stevens contends that his base offense level should be 38 (presumably under § 2D1.1(a)(2)) because he does not have a prior conviction for a “similar offense.” The Probation Office has responded in an Addendum to the PSR, stating that Stevens’ 2000

conviction for first degree possession of a controlled substance (crack cocaine) under KRS § 218A.1415, a Class D Felony documented in Paragraph 27 of the PSR,¹ qualifies as a “similar offense” for the purposes of § 2D1.1(a)(1) under *United States v. Johnson*, 706 F.3d 728 (6th Cir. 2013).

Section 2D1.1(a)(1) provides that a base offense level of 43 should apply “if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense” If the offense of conviction fits these circumstances but the defendant lacks a prior conviction for a similar offense, the base offense level is 38. *See* U.S.S.G. § 2D1.1(a)(2).

At the outset, the Court observes that, while the 2000 first degree possession conviction is too old to count toward Stevens’ criminal history score under U.S.S.G. § 4A1.2(e), its age does not bar its consideration as a “similar offense” under § 2D1.1(a)(1). *See United States v. King*, 516 F.3d 425, 427-32 (6th Cir. 2008). In *King*, the United States Court of Appeals for the Sixth Circuit held that “§ 2D1.1(a)(1) unambiguously precludes the application of § 4A1.2(e)’s time limits” and that “§ 2D1.1(a)(1) does not contain any implicit time limitations.” *Id.* at 426, 432.

¹ While the Probation Office does not explicitly reference KRS § 218A.1415 in the PSR or the Addendum, this statute governs Stevens’ conviction for first degree possession of a controlled substance. Additionally, a first offense under this statute has been a Class D felony in Kentucky at all relevant times. *See* KRS § 218A.1415(2)(a) (2011); KRS § 218A.1415(2)(A) (1998).

Additionally, the “similar offense” language does not require a prior conviction for an offense *where death resulted*. The Sixth Circuit has rejected arguments that emphasize differences in “the outcome or magnitude of [the relevant] offenses” when considering the applicability of § 2D1.1(a)(1). *Johnson*, 706 F.3d at 731. In *Johnson*, the defendant argued, *inter alia*, that § 2D1.1(a)(1) should not apply because “the instant [distribution of heroin] offense resulted in death whereas the prior conviction did not, and the prior conviction only involved a small amount of heroin.” *Id.* at 731. Although the court noted that “these factors are not insignificant,” it concluded that “the defendant’s underlying conduct cannot be ignored.” *Id.* at 731-32 (citing *United States v. Westry*, 524 F.3d 1198, 1220 n. 12 (11th Cir. 2008) (determining that “possession” of a controlled substance was a similar offense to “possession with the intent to distribute”)). Because the relevant crimes both involved the distribution of heroin, they “[we]re in fact, ‘similar,’ [and] the district court did not err in applying § 2D1.1(a)(1).” *Id.* at 732; *see also United States v. Atkins*, 289 F. App’x 872, 875 (6th Cir. 2008) (stating that § 2D1.1(a)(1) applies “if the defendant has been convicted previously for selling illegal drugs.”).

Johnson’s primary holding is that “the term ‘similar offense’ is synonymous with the term ‘felony drug offense’” as used in § 841(b)(1)(C). *Johnson*, 706 F.3d at 733. In other words, any “felony drug offense” under § 841(b)(1)(C) could qualify as a “similar offense” under § 2D1.1(a)(1). The defendant does not object to the findings in Paragraph 27 of the PSR which documents the 2000 felony conviction for possession of a controlled substance. Thus, he tacitly agrees that he has a prior “felony drug offense” conviction, which could compel the

conclusion that he also has a prior conviction for a “similar offense” under § 2D1.1(a)(1).²

Still, Stevens’ relevant convictions are distinct from those of *Johnson* because: (1) his convictions involved different controlled substances; and (2) one of his convictions involved possession while the other involved distribution.

That said, the Sixth Circuit addressed nearly identical circumstances in *United States v. Rebmann*, No. 16-6842, 2017 U.S. App. LEXIS 20055 (6th Cir. Oct. 12, 2017) (unpublished order). There, the defendant pleaded guilty to distribution of fentanyl resulting in an overdose death, in violation of § 841(a)(1) and (b)(1)(C). *Id.* at *1. The parties agreed to recommend a base offense level of 38, and they made that recommendation at the sentencing hearing. *See id.* at *1-3. However, Senior United States District Judge Joseph M. Hood determined that *Johnson* and § 2D1.1(a)(1) should apply to provide a base offense level of 43 because the defendant had a prior conviction for a “similar offense,” first degree possession of a controlled substance (heroin) under KRS § 218A.1415(2)(a). *See id.* at *2-5.

On appeal, the defendant contended, *inter alia*, that the district court “misapplied *Johnson* by failing to distinguish his prior felony drug-possession conviction from the felony

² Even if Stevens does not agree with this point, the Probation Office cogently cites 21 U.S.C. § 802(44) to demonstrate that he does, in fact, have a prior “felony drug offense” conviction under the relevant statutory scheme (and a “similar offense” conviction under § 2D1.1(a)(1)). *See* 21 U.S.C. § 802(44) (“The term ‘felony drug offense’ means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.”); *see also United States v. Sica*, 676 F. App’x 81, 85-86 (2d Cir. 2017) (suggesting that the “felony drug offense” definition in § 802 may help define “similar offense”). The 2000 KRS § 218A.1415 violation would be a “felony drug offense” under § 802(44) at all relevant times because it involved a Schedule II narcotic and the statutory maximum term of imprisonment has consistently exceeded one year. *See* KRS § 218A.1415(2)(a) (2011); KRS § 218A.1415(2)(a) (1998); KRS § 532.020(1)(a) (1998).

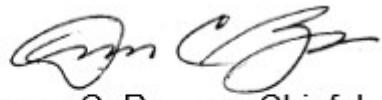
drug-trafficking offense in *Johnson*.” *Id.* at *3. The Sixth Circuit disagreed, finding that *Johnson* was “on point” because “similar offense” is synonymous with “felony drug offense” and the defendant did not dispute that he had a prior felony drug offense for possession under KRS § 218A.1415(2)(a), a Class D felony. *Id.* at *4-5.

Rebmann is instructive in Stevens’ case. Like the defendant in *Rebmann*, the controlled substances involved in Stevens’ two relevant convictions (crack cocaine and fentanyl) are different. *Rebmann* indicates that this distinction does not render the offenses dissimilar under *Johnson*. More significantly, *Rebmann* explicitly found *Johnson* to apply despite the fact that the prior conviction was for possession and the instant offense was for distribution. The same is true here, and the statutes governing the relevant convictions are also the same as in *Rebmann*, § 841(b)(1)(C) and KRS § 218A.1415. Thus, *Johnson*’s primary holding (“similar offense” is synonymous with “felony drug offense”) applies in this case, and Stevens’ prior felony conviction for first degree possession of a controlled substance qualifies as a “similar offense” under § 2D1.1(a)(1).

In summary, the foregoing case law indicates that Stevens’ objection lacks merit. All relevant authority supports the application of § 2D1.1(a)(1) and a base offense level of 43. Accordingly, it is hereby

ORDERED that Defendant Mantell Stevens’ Objection No. 2 to the PSR is
OVERRULED.

Dated: April 29, 2022.



Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky

APPENDIX 3
District Court's Final Judgment
(May 9, 2022)

FILED

UNITED STATES DISTRICT COURT

MAY 09 2022

Eastern District of Kentucky – Central Division at Lexington

AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Mantell Alabi Stevens

) JUDGMENT IN A CRIMINAL CASE

) Case Number: 5:20-CR-143-S-DCR-02
USM Number: 45063-509
John Kevin West
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

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

was found guilty on count(s) 1 and 2 [DE #23] after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:846	Conspiracy to Distribute a Mixture or Substance Containing a Detectable Amount of Heroin and Fentanyl	June 30, 2018	1
21:841(a)(1)	Distribution of a Mixture or Substance Containing a Detectable Amount of Fentanyl Which Resulted in an Overdose Death	May 29, 2018	2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

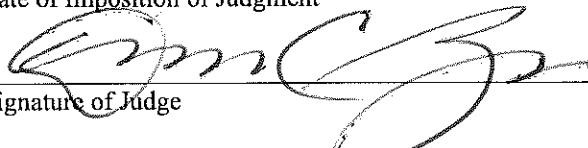
The defendant has been found not guilty on count(s) _____

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

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

May 6, 2022

Date of Imposition of Judgment


Signature of Judge

Honorable Danny C. Reeves, Chief U.S. District Judge

Name and Title of Judge

May 9, 2022

Date

DEFENDANT: Mantell Alabi Stevens
CASE NUMBER: 5:20-CR-143-S-DCR-02

IMPRISONMENT

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

**Two Hundred Forty (240) Months on Count 1 and Four Hundred and Eighty (480) Months on Count 2,
to run concurrently, for a total term of Four Hundred and Eighty (480)**

The court makes the following recommendations to the Bureau of Prisons:
That the defendant receive any necessary medical treatment for the conditions outlined in the presentence report;
That the defendant be designated to a facility closest to his home, for which he may qualify pursuant to section 601 of the First Step Act of 2018; and
That the defendant participate in any appropriate substance abuse treatment programs for which he qualifies.

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

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

at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Mantell Alabi Stevens
CASE NUMBER: 5:20-CR-143-S-DCR-02

SUPERVISED RELEASE

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

Five (5) Years on each of Counts 1 and 2, to run concurrently, for a total term of FIVE (5) YEARS

MANDATORY CONDITIONS

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

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

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STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: Mantell Alabi Stevens
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SPECIAL CONDITIONS OF SUPERVISION

1. You must abstain from the use of alcohol.
2. You must submit your person, offices, properties, homes, residences, vehicles, storage units, papers, computers, other electronic communications or data storage devices or media, to a search conducted by the probation office. Failure to submit to a search will be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.
3. You must provide to the USPO, within 7 (seven) days of release from the custody of the Bureau of Prisons, a written report, in a form the USPO directs, listing each and every prescription medication in your possession, custody or control. The list must include, but not be limited to, any prescription medication that contains a controlled substance and includes all current, past and outdated or expired prescription medications in your possession, custody, or control at the time of the report.
4. You must notify the USPO immediately (*i.e.*, within no later than 72 hours) if you receive any prescription for a medication containing a controlled substance during the period of supervised release. You must provide the USPO such documentation and verification as the USPO may reasonably request and in a form the USPO directs.
5. You must comply strictly with the orders of any physician or other prescribing source with respect to use of all prescription medications. Further, you may not use or consume marijuana, or marijuana products, even if such controlled substance were to be prescribed to you by a physician, licensed professional or other person.
6. You must report any theft or destruction of your prescription medications to the U.S. Probation Officer within 72 hours of the theft or destruction.
7. You may not purchase, possess, use, distribute or administer any controlled substance or paraphernalia related to controlled substances, except as prescribed by a physician.
8. You must provide the probation officer with access to any requested financial information.
9. You may not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.

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CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 200.00 (\$100/Count)	\$ 21,699.50	\$ Waived	\$ N/A	\$ N/A

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

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

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
J.A.	\$21,699.50	\$21,699.50	

TOTALS \$ 21,699.50 \$ 21,699.50

Restitution amount ordered pursuant to plea agreement \$ _____

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

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

the interest requirement is waived for the fine restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

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SCHEDULE OF PAYMENTS

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

A Lump sum payment of \$ 21,899.50 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

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

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

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

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

F Special instructions regarding the payment of criminal monetary penalties:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
101 Barr Street, Room 206, Lexington, KY 40507

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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

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

Joint and Several

Case Number

Defendant and Co-Defendant Names

<i>(including defendant number)</i>	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Mantell Alabi Stevens (5:20-CR-143-S-DCR-02)	\$21,699.50	\$21,699.50	J.A.
Ashley Nicole Markham (5:20-CR-143-S-DCR-01)	\$21,699.50	\$21,699.50	J.A.

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

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

APPENDIX 4
18 U.S.C. § 841 and
Section 2D1.1(a)(1) of the U.S. Sentencing Guidelines

[United States Code Annotated](#)

[Title 18. Crimes and Criminal Procedure \(Refs & Annos\)](#)

[Part I. Crimes \(Refs & Annos\)](#)

[Chapter 40. Importation, Manufacture, Distribution and Storage of Explosive Materials](#)

18 U.S.C.A. § 841

§ 841. Definitions

Effective: July 29, 2010

[Currentness](#)

As used in this chapter--

(a) “Person” means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(b) “Interstate” or foreign commerce means commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State. “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(c) “Explosive materials” means explosives, blasting agents, and detonators.

(d) Except for the purposes of [subsections \(d\), \(e\), \(f\), \(g\), \(h\), \(i\), and \(j\) of section 844](#) of this title, “explosives” means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. The Attorney General shall publish and revise at least annually in the Federal Register a list of these and any additional explosives which he determines to be within the coverage of this chapter. For the purposes of [subsections \(d\), \(e\), \(f\), \(g\), \(h\), and \(i\) of section 844](#) of this title, the term “explosive” is defined in subsection (j) of such [section 844](#).

(e) “Blasting agent” means any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided*, That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

(f) “Detonator” means any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

(g) “Importer” means any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

(h) “Manufacturer” means any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

(i) “Dealer” means any person engaged in the business of distributing explosive materials at wholesale or retail.

(j) “Permittee” means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter.

(k) “Attorney General” means the Attorney General of the United States.

(l) “Crime punishable by imprisonment for a term exceeding one year” shall not mean (1) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices as the Attorney General may by regulation designate, or (2) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

(m) “Licensee” means any importer, manufacturer, or dealer licensed under the provisions of this chapter.

(n) “Distribute” means sell, issue, give, transfer, or otherwise dispose of.

(o) “Convention on the Marking of Plastic Explosives” means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

(p) “Detection agent” means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including--

(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

(4) Ortho-Mononitrotoluene (*o*-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

(5) any other substance in the concentration specified by the Attorney General, after consultation with the Secretary of State and the Secretary of Defense, that has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

(q) “Plastic explosive” means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form has a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.

(r) “Alien” means any person who is not a citizen or national of the United States.

(s) “Responsible person” means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.

(t) Indian Tribe¹.—The term “Indian tribe” has the meaning given the term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 ([25 U.S.C. 479a](#)).²

CREDIT(S)

(Added [Pub.L. 91-452, Title XI, § 1102\(a\)](#), Oct. 15, 1970, 84 Stat. 952; amended [Pub.L. 104-132, Title VI, § 602](#), Apr. 24, 1996, 110 Stat. 1288; [Pub.L. 107-296, Title XI, §§ 1112\(e\)\(1\), \(3\)](#), 1122(a), Nov. 25, 2002, 116 Stat. 2276, 2280; [Pub.L. 111-211, Title II, § 236\(b\)](#), July 29, 2010, 124 Stat. 2286.)

Notes of Decisions (9)

Footnotes

1 So in original. Probably should not be capitalized.

2 So in original. The second closing parenthesis probably should not appear.

18 U.S.C.A. § 841, 18 USCA § 841

Current through P.L.118-7. Some statute sections may be more current, see credits for details.

§2D1.1

PART D – OFFENSES INVOLVING DRUGS AND NARCO-TERRORISM

Historical Note

Effective November 1, 1987. Amended effective November 1, 2007 (amendment 711).

1. UNLAWFUL MANUFACTURING, IMPORTING, EXPORTING, TRAFFICKING, OR POSSESSION; CONTINUING CRIMINAL ENTERPRISE

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

(a) Base Offense Level (Apply the greatest):

- (1) **43**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (2) **38**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or
- (3) **30**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense; or
- (4) **26**, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5), and the offense of conviction establishes that death or serious bodily injury resulted from the use of the substance; or
- (5) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level **32**, decrease by **2** levels; (ii) level **34** or level **36**, decrease by **3** levels; or (iii) level **38**, decrease by **4** levels. If the resulting offense level

is greater than level **32** and the defendant receives the 4-level (“minimal participant”) reduction in §3B1.2(a), decrease to level **32**.

(b) Specific Offense Characteristics

- (1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.
- (2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by **2** levels.
- (3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by **2** levels. If the resulting offense level is less than level **26**, increase to level **26**.
- (4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by **2** levels.
- (5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by **2** levels.
- (6) If the defendant is convicted under 21 U.S.C. § 865, increase by **2** levels.
- (7) If the defendant, or a person for whose conduct the defendant is accountable under §1B1.3 (Relevant Conduct), distributed a controlled substance through mass-marketing by means of an interactive computer service, increase by **2** levels.
- (8) If the offense involved the distribution of an anabolic steroid and a masking agent, increase by **2** levels.
- (9) If the defendant distributed an anabolic steroid to an athlete, increase by **2** levels.