APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 23-3654

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SOLOMON ODUBAJO,

Defendant-Appellant.

Before: NORRIS, SUHRHEINRICH, and READLER, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Northern District of Ohio at Cleveland.

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

Kelly L. Stephens

Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 23-3654

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. SOLOMON ODUBAJO, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

ORDER

Before: NORRIS, SUHRHEINRICH, and READLER, Circuit Judges.

Solomon Odubajo appeals his conviction and 248-month sentence for drug, racketeering, and firearm offenses. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). As set forth below, we affirm the district court's judgment.

In April 2022, Odubajo shipped a parcel containing fentanyl pills from Arizona to Ohio; law enforcement officers intercepted that parcel at the post office. Odubajo later traveled to Ohio and drove his co-defendant, Laysalle Scales, Jr., to the post office to retrieve the parcel. Law enforcement officers arrested them and searched Odubajo's vehicle, finding a loaded handgun and $17,500 in cash. A search of a residence where Odubajo was staying uncovered additional fentanyl pills and cash.

A federal grand jury subsequently charged Odubajo with drug and racketeering offenses. Odubajo moved to suppress the evidence found in the searches of the parcel, vehicle, and residence. After an evidentiary hearing, the district court denied Odubajo's suppression motions.

Odubajo also moved to exclude "other acts" evidence related to his arrest at the Atlanta airport in February 2022. The district court denied Odubajo's evidentiary motions in part.

Odubajo proceeded to trial on the charges brought in a second superseding indictment: (1) conspiracy to distribute and possess with intent to distribute fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and 846; (2) interstate travel in aid of racketeering, in violation of 18 U.S.C. § 1952(a)(3); (3) attempted possession with intent to distribute fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and 846; (4) possession with intent to distribute fentanyl, in violation of 21 U.S.C. § 841(a)(1); (5) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A); and (6) possession of a firearm and ammunition by a felon, in violation of 18 U.S.C. § 922(g)(1). The jury convicted Odubajo on all six counts.

At sentencing, the district court applied a base offense level of 32 for at least 1.2 kilograms but less than 4 kilograms of fentanyl, *see* USSG § 2D1.1(c)(4), and, over Odubajo's objection, increased that offense level by 2 levels for his aggravating role as an organizer, leader, manager, or supervisor, *see* USSG § 3B1.1(c). Odubajo's total offense level of 34 and his criminal history category of III corresponded to a guidelines range of 188 to 235 months; that range became 248 to 295 months with the mandatory consecutive 60-month term for the § 924(c) count added. *See* 18 U.S.C. § 924(c)(1)(A)(i). The district court sentenced Odubajo to a total of 248 months of imprisonment and five years of supervised release.

This timely appeal followed. Odubajo challenges (1) the district court's denial of his suppression motions, (2) its admission of the Atlanta "other acts" evidence, and (3) its application of the 2-level aggravating-role enhancement.

1. Suppression Motions

We review "a district court's decision on a suppression motion for clear error as to factual findings and *de novo* as to conclusions of law." *United States v. Loines*, 56 F.4th 1099, 1105 (6th Cir. 2023). Where, as here, the district court denied the suppression motion, we consider the evidence in the light most favorable to the government. *United States v. Snoddy*, 976 F.3d 630, 633 (6th Cir. 2020).

Parcel: Odubajo moved to suppress the fentanyl found in the parcel intercepted by law enforcement. Cuyahoga County Sheriff's Deputy Michael Twombly, a task force officer with the Postal Inspection Service, testified that, while conducting parcel interdiction on the floor of the post office, he noted the parcel because it was an express package from Arizona, a state that is a source for drugs. Deputy Twombly also noticed that the parcel was addressed to "Larry R," using an initial rather than a full last name. After running the sender's and the recipient's addresses through a database, Deputy Twombly discovered that neither name listed on the parcel was associated with its respective address. Deputy Twombly then placed the parcel in a line-up with other packages for his dog, Ciga, to sniff for narcotics; the dog alerted to the parcel. Deputy Twombly testified that, based on Ciga's positive alert, he applied for a search warrant, which was approved by a magistrate judge. Deputy Twombly opened the parcel and discovered the fentanyl pills inside a wet/dry vacuum.

The district court questioned whether the initial interception of the parcel implicated the Fourth Amendment. *See United States v. Robinson*, 390 F.3d 853, 869–70 (6th Cir. 2004) (stating that a "brief investigative detention and relocation" of a package does not "constitute a search or seizure" where the postal inspector does "not open the package, and only temporarily divert[s] it from the ordinary delivery process"). As the district court acknowledged, even if it did, "only reasonable suspicion, and not probable cause, is necessary in order to briefly detain a package for further investigation, such as examination by a drug-sniffing dog." *Id.* at 870. Reasonable suspicion requires "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the particular intrusion by law enforcement. *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

Odubajo argues that an officer's declaration that an entire state is a source for drugs does not support a finding of reasonable suspicion. But Deputy Twombly did not rely on the parcel's state of origin alone. He also noticed that the parcel was sent by overnight or express mail, which indicated that "they would have spent a decent amount of money to send that from Arizona to Cleveland." Deputy Twombly found that the use of the recipient's initial rather than his full last

name was unusual, and a database search revealed that neither name listed on the parcel was associated with its respective address. These combined facts provided reasonable suspicion to briefly detain the parcel pending a dog sniff. *See, e.g.*, *United States v. Alexander*, 540 F.3d 494, 501 (6th Cir. 2008). Odubajo does not raise any objection to the dog sniff on appeal.

Odubajo challenges Deputy Twombly's search of the parcel on the basis that the officer opened the parcel before he received the signed search warrant. After Deputy Twombly emailed the warrant application to the magistrate judge's chambers, the magistrate judge called the officer, placed him under oath, and asked him questions about the affidavit. Deputy Twombly testified that the magistrate judge said, "I'll get this out to you," which the officer understood to mean that the warrant was approved. At 12:18 p.m., following this telephone conversation with the magistrate judge, Deputy Twombly opened the parcel. The magistrate judge issued the warrant at 12:56 p.m., and his chambers emailed the warrant to Deputy Twombly at 12:57 p.m.

Federal Rule of Criminal Procedure 41 allows a magistrate judge to "issue a warrant based on information communicated by telephone or other reliable electronic means" in accordance with Rule 4.1. Fed. R. Crim. P. 41(d)(3). Rule 4.1 provides in relevant part:

> To issue the warrant or summons, the judge must:
>
> (A) sign the original documents;
>
> (B) enter the date and time of issuance on the warrant or summons; and
>
> (C) transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.

Fed. R. Crim. P. 4.1(b)(6).

Here, the magistrate judge had not yet complied with Rule 4.1(b)(6) when Deputy Twombly opened the parcel. "But violations of federal rules do not justify the exclusion of evidence that has been seized on the basis of probable cause, and with advance judicial approval." *United States v. Cazares-Olivas*, 515 F.3d 726, 730 (7th Cir. 2008); *see also United States v. Crumpton*, 824 F.3d 593, 617 (6th Cir. 2016) (recognizing that the procedural steps outlined in the

federal rules are "ministerial" and "not required by the Fourth Amendment"). Deputy Twombly presented the warrant application, including an affidavit, to the magistrate judge; that warrant was based on probable cause—the dog's alert to the parcel—and described with particularity the property to be searched (the parcel) and seized (controlled substances). After placing Deputy Twombly under oath and asking him about the affidavit, the magistrate judge told him, "I'll get this out to you." Understanding that the magistrate judge had approved the warrant, Deputy Twombly opened the parcel. Within 40 minutes, the magistrate judge complied with Rule 4.1(b)(6) and transmitted the signed warrant to Deputy Twombly. At a minimum, the discovery of the fentanyl was inevitable, considering the warrant was received less than an hour later, *see United States v. Kennedy*, 61 F.3d 494, 497–501 (6th Cir. 1995). Under these circumstances, the district court properly denied Odubajo's motion to suppress.

Vehicle: Odubajo also moved to suppress evidence found in the search of his Ford Expedition, including a loaded handgun and $17,500 in cash. After an investigation, law enforcement conducted a controlled pickup of the parcel intercepted by Deputy Twombly. Law enforcement had conducted surveillance at a residence on Rosewood Boulevard in Avon, Ohio—a townhouse associated with Dalonte Rogers, who had made inquiries to the post office about the parcel. On the morning of the controlled pickup, Odubajo and Scales left the Rosewood address and drove a Ford Expedition to the post office, where Scales walked in and retrieved the parcel, which contained a location monitoring device. Odubajo and Scales left the post office with the parcel and returned to the Rosewood address, driving at a high rate of speed and appearing to attempt to evade surveillance. After pulling into the parking area adjacent to the Rosewood address, they exited the Ford Expedition, with Scales carrying the parcel, and were placed under arrest. Law enforcement searched the SUV and found a loaded handgun along with a large amount of cash.

"Officers may search an automobile without a warrant if they have probable cause to believe it contains evidence of a crime." *United States v. Morgan*, 71 F.4th 540, 543 (6th Cir. 2023). Officers may also "search a vehicle incident to a recent occupant's arrest," but "only if the

arrestee is within reaching distance of the passenger compartment at the time of the search *or* it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S. 332, 351 (2009) (emphasis added).

Odubajo argues that the warrantless search of the Ford Expedition was unlawful because he and Scales were 12 to 15 feet away from the SUV when they were arrested and could not move toward or reach for anything in the vehicle. But law enforcement had probable cause or at least reason to believe that the Ford Expedition contained evidence of drug trafficking given that Odubajo and Scales had just driven the SUV to the post office to retrieve the parcel containing fentanyl and then returned to the Rosewood address at a high rate of speed, appearing to attempt to evade surveillance. Once again, even assuming a violation, the discovery was inevitable because an officer testified that regardless of the on-site search, law enforcement would have impounded and searched the vehicle. *See Kennedy*, 61 F.3d at 497–501. Under these circumstances, the district court properly denied Odubajo's motion to suppress the evidence found in the Ford Expedition.

Townhouse: Odubajo further challenged the post-arrest entry into the Rosewood townhouse by law enforcement officers before they obtained a warrant. Postal Inspector Myrick Dennis testified that, after arresting Odubajo and Scales, the officers conducted a protective sweep to secure the townhouse but did not search the residence until they obtained a warrant. The district court concluded that the officers conducted "a lawful protective sweep just to make sure that there was no one in there who could destroy evidence or do anything else" and that "their entrance didn't exceed the permissible scope of a protective sweep."

"Exigent circumstances permitting police to enter a structure without a warrant may arise when evidence of drug crimes is in danger of destruction." *United States v. Elkins*, 300 F.3d 638, 655 (6th Cir. 2002). "[A] warrantless entry to prevent the destruction of evidence is justified if the government demonstrates: '1) a reasonable belief that third parties are inside the dwelling; and 2) a reasonable belief that these third parties may soon become aware the police are on their trail,

so that the destruction of evidence would be in order.'" *United States v. Lewis*, 231 F.3d 238, 241 (6th Cir. 2000) (quoting *United States v. Sangineto-Miranda*, 859 F.2d 1501, 1512 (6th Cir. 1988)).

Inspector Dennis testified that, after arresting Odubajo and Scales and confirming their identities, the officers did not know the whereabouts of Rogers, who had inquired about the parcel and listed the Rosewood address as his residence. According to Inspector Dennis, the officers believed that Rogers might be inside the Rosewood townhouse and have the opportunity "to destroy any evidence or tamper with evidence or essentially impede the investigation" upon seeing 20 to 25 law enforcement officers with marked vehicles flashing blue lights outside the townhouse. The officers used a loudspeaker to direct anyone inside the townhouse to come out with their hands up; one person came outside and, when asked who was inside, said "he didn't know—or he wasn't sure." Inspector Dennis testified that the officers entered through the front door, continuing to call out for anyone present, and located two more individuals, who were moved outside. He maintained that the officers did not search the townhouse until they obtained the warrant.

Under these circumstances, the officers reasonably believed that third parties were inside the Rosewood townhouse who might destroy evidence and reasonably conducted a limited sweep to remove any individuals and secure the residence. The district court properly rejected Odubajo's challenge to the warrantless entry into the Rosewood townhouse.

"Other Acts" Evidence

Odubajo moved to exclude "other acts" evidence—his arrest at the Atlanta airport two months prior to his arrest in his case. Odubajo was traveling from Atlanta to Phoenix with a one-way airline ticket purchased that same day when law enforcement officers stopped him and found in his possession over $35,000 in cash and an iPhone containing messages about trafficking fentanyl. The district court denied Odubajo's motion "because his conduct very close in time to the charged conduct is relevant toward knowledge, intent, lack of mistake," finding that "it's closely enough related that it's more probative than prejudicial." The district court granted Odubajo's motion as to older messages on the iPhone.

Federal Rule of Evidence 404(b) provides that "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). But such "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(2). Even if admissible for another purpose, such evidence may be excluded "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403.

The admission of "other acts" evidence under Rule 404(b) involves a three-step process requiring the district court to determine (1) "whether there is sufficient evidence that the 'other acts' took place," (2) "whether those 'other acts' are admissible for a proper purpose under Rule 404(b)," and (3) "whether 'the 'other acts' evidence is more prejudicial than probative." *United States v. Lattner*, 385 F.3d 947, 955 (6th Cir. 2004). We review each step of that process under a different standard, (1) using "the clear-error standard in reviewing the factual determination of whether the other acts actually took place," (2) reviewing "de novo the legal determination of whether the other acts were admissible for a proper purpose," and (3) applying "the abuse-of-discretion standard in reviewing the determination of whether the other-acts evidence is more prejudicial than probative." *United States v. Jaffal*, 79 F.4th 582, 597 (6th Cir. 2023).

Odubajo does not dispute that the events in Atlanta took place. He instead argues that the evidence relating to his arrest in Atlanta was not probative of any issue in the case. Evidence of other acts is probative of a material issue if "(1) the evidence is offered for an admissible purpose, (2) the purpose for which the evidence is offered is material or 'in issue,' and (3) the evidence is probative with regard to the purpose for which it is offered." *United States v. Haywood*, 280 F.3d 715, 720 (6th Cir. 2002) (quoting *United States v. Johnson*, 27 F.3d 1186, 1190–91 (6th Cir. 1994)).

Odubajo put his knowledge and intent at issue by pleading not guilty and denying his guilt at trial, arguing that he was merely "in the wrong place with the wrong people at the wrong time." *See Lattner*, 385 F.3d at 957 (stating that "claims of innocent presence or association . . . routinely open the door to 404(b) evidence of other drug acts"). "To determine if evidence of other acts is probative of intent, we look to whether the evidence relates to conduct that is 'substantially similar and reasonably near in time' to the specific intent offense at issue." *Haywood*, 280 F.3d at 721 (quoting *United States v. Blankenship*, 775 F.2d 735, 739 (6th Cir. 1985)). The Atlanta "other acts" evidence showed that, in February 2022, Odubajo attempted to travel on a one-way airline ticket from Atlanta to Phoenix with $35,000 in cash and an iPhone containing messages about trafficking blue fentanyl pills. Two months later, Odubajo mailed an overnight parcel containing blue fentanyl pills from Arizona to Ohio, traveled on a one-way airline ticket from Phoenix to Cleveland, drove to retrieve the parcel in a vehicle with a loaded handgun and $17,500 in cash, and returned to the Rosewood townhouse where law enforcement found more cash in his luggage and on his person as well as additional blue fentanyl pills. As the district court observed, there was "a very good argument" that the Atlanta evidence was "part and parcel of the same conduct." The district court properly determined that the Atlanta evidence was admissible as probative of Odubajo's knowledge and intent.

The district court acted within its discretion in determining that the Atlanta "other acts" evidence was more probative than prejudicial. "When the district court admits evidence over a party's undue-prejudice objection, we review the admitted evidence 'in the light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect.'" *United States v. Asher*, 910 F.3d 854, 860 (6th Cir. 2018) (quoting *United States v. Carney*, 387 F.3d 436, 451 (6th Cir. 2004)). As noted above, Odubajo put his knowledge and intent at issue, arguing that he was merely "in the wrong place with the wrong people at the wrong time," and the Atlanta "other acts" evidence was probative of those issues. "Furthermore, a limiting instruction was given informing the jury on the proper use of the evidence, which ameliorated the risk of unfair prejudice." *United States v. LaVictor*, 848 F.3d 428, 448 (6th Cir. 2017).

Even if the district court erred in admitting the Atlanta "other acts" evidence, that error was harmless. An error "is harmless 'unless is it more probable than not that the error materially affected the verdict.'" *United States v. Lloyd*, 462 F.3d 510, 516 (6th Cir. 2006) (quoting *United States v. Martin*, 897 F.2d 1368, 1372 (6th Cir. 1990)). The Atlanta evidence did not materially affect the outcome of the trial in the light of the other evidence supporting the drug trafficking counts, including the video footage of Odubajo addressing and mailing the parcel and his fingerprints on the vacuum box inside the parcel.

2. Aggravating-Role Enhancement

Odubajo challenges the district court's application of a 2-level aggravating-role enhancement under USSG § 3B1.1(c), which "applies when a defendant 'was an organizer, leader, manager, or supervisor in any criminal activity' involving four or fewer participants that was not otherwise extensive in its scope." *United States v. Minter*, 80 F.4th 753, 758 (6th Cir. 2023) (quoting USSG § 3B1.1(c)), 144 S. Ct. 1078 (2024). We review the district court's application of an aggravating-role enhancement under USSG § 3B1.1 "deferentially because it raises a 'fact-intensive' question." *Id.*

To qualify for an aggravating-role enhancement, "the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants." USSG § 3B1.1 cmt. n.2. To distinguish among the levels of aggravating roles, courts consider the following factors:

> the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

USSG § 3B1.1 cmt. n.4.

The district court determined that, based on the evidence presented at trial, "Odubajo played a leadership role in terms of planning this, organizing it, carrying it out, going through all the machinations he did with the car, the mailing, the receiving." The district court also noted that the messages admitted at trial showed that "Odubajo is a significant drug dealer."

Odubajo argues that the district court did not cite specific portions of the record to support its conclusion that the aggravating-role enhancement applied. But Odubajo fails to cite any case law requiring the district court to do so. The district court identified specific facts presented at trial supporting the application of the enhancement, including the facts that Odubajo mailed the parcel from Arizona to Ohio, arranged beforehand to have to his Ford Expedition transported from Louisiana to Ohio, and traveled from Arizona to Ohio to recover the parcel.

Odubajo asserts that the government improperly relied on co-defendant Scales's post-arrest interview with law enforcement to support the application of the aggravating-role enhancement. Odubajo contends that "there is no record as to what those statements were and the district court did not state that it had reviewed the video." According to the government, Scales's post-arrest interview was provided to defense counsel before trial and summarized in the presentence report. In any event, there is no indication that the district court relied on Scales's post-arrest interview in applying the aggravating-role enhancement given that the district court specifically referred to the evidence presented at trial.

Odubajo also argues that there was no evidence that he exercised any decision-making authority, recruited other participants, claimed a right to a larger share of the fruits of the crime, or exercised any authority or control over other participants. But "[a] district court need not find each factor in order to warrant an enhancement" under USSG § 3B1.1. *United States v. Castilla-Lugo*, 699 F.3d 454, 460 (6th Cir. 2012). The evidence presented at trial showed that Odubajo played a significant role in planning, organizing, and committing the offense. In light of this evidence and our deferential standard of review, we cannot say that the district court erred in applying the aggravating-role enhancement.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk