

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEMETRIUS D. BIBBS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

6th Circuit Case No. 22-6056

APPENDIX C
District Court Order on Motion for New Trial

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*Randall E. Reagan is Court-appointed Counsel for Petitioner
pursuant to the Criminal Justice Act of 1964*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No.: 3:19-CR-151-TAV-DCP-9
)	
DEMETRIUS D. BIBBS,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

This criminal case is before the Court on defendant's renewed motion for a judgment of acquittal and motion for a new trial [Doc. 532], which the government opposes [Doc. 534]. After considering the record and controlling law, for the reasons that follow, the Court will **DENY** defendant's motion [Doc. 532].

I. Background

On October 8, 2020, a federal grand jury returned a multi-count, multi-defendant second superseding indictment, charging defendant with conspiracy to distribute 50 grams or more of methamphetamine, and quantities of fentanyl, oxycodone, alprazolam, marijuana, buprenorphine, and heroin, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A), 841(b)(1)(C), 841(b)(1)(E), and 841(b)(2) (Count 1), aiding and abetting the possession of firearms in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 2 (Count 2), aiding and abetting the possession with intent to distribute a quantity of heroin, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C) and 18 U.S.C. § 2 (Count 12), aiding and abetting the possession and brandishing of a firearm

in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i), (ii) (Count 13), and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count 15) [Doc. 243].

The case proceeded to trial on July 7, 2021, with eight of the charged defendants proceeding to trial jointly [Doc. 495]. At the close of the government's case-in-chief, defendant made an oral motion for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure [Doc. 537-2, pp. 259–65]. Of relevance, defendant argued that there was insufficient evidence to support a conviction under Count 1, noting that none of the cooperating witnesses except Camaron Billips knew defendant, and the fact that defendant was friends with Billips was insufficient to sustain a conviction on the conspiracy count [*Id.* at 260].

In response, the government agreed that, as to Count 1, only defendant's alleged involvement as to the conspiracy to distribute oxycodone and heroin should be submitted to the jury [*Id.* at 273–74]. The government conceded that defendant should only be “responsible for the heroin and the Roxys that he was distributing with . . . Billips” [*Id.* at 274]. The government also agreed to drop the brandishing portion of Count 13 as related to defendant [*Id.* at 274–75]. The Court ultimately denied defendant's motion for judgment of acquittal [Doc. 554, pp. 126–41].

After a seven-day trial, a jury convicted defendant on the portion of Count 1 relating to the conspiracy to distribute a quantity of heroin, the lesser included offense of Count 12, that is, aiding and abetting possession of heroin, and Count 15, but acquitted defendant on

Counts 2 and 13 [Doc. 519]. Defendant now renews his motion for a judgment of acquittal on Count 1 and moves, in the alternative, for a new trial [Doc. 532].

II. Legal Standards

A motion for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure challenges the sufficiency of the evidence to support the conviction. *See* Fed. R. Crim. P. 29(c); *United States v. Montgomery*, 358 F. App'x 622, 628 (6th Cir. 2009). When reviewing such a motion, the Court must decide “whether, after viewing the evidence in a light most favorable to the government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Gardner*, 488 F.3d 700, 710 (6th Cir. 2007). In doing so, the Court must not weigh evidence, assess witness credibility, or “substitute its judgment for that of the jury.” *United States v. Chavis*, 296 F.3d 450, 455 (6th Cir. 2002). This standard places a “very heavy burden” on defendants challenging the sufficiency of the evidence. *Id.*

Alternatively, the Court “may vacate any judgment and grant a new trial” under Rule 33 “if the interest of justice so requires.” Fed. R. Crim. P. 33(a). “The paradigmatic use of a Rule 33 motion is to seek a new trial on the ground that the jury’s verdict was against the manifest weight of the evidence.” *United States v. Munoz*, 605 F.3d 359, 373 (6th Cir. 2010) (internal quotation marks and alterations omitted). But such motions should be granted “[o]nly in extraordinary circumstances . . . when the verdict exceeds the bounds of reasonableness.” *United States v. Burks*, 974 F.3d 622, 625 (6th Cir. 2020) (citation omitted). “On the one hand, [the Court] must scrutinize the record and ensure that

a ‘miscarriage of justice’ did not occur. On the other hand, the court must respect the role of the jury and ensure that evidence-supported convictions are upheld.” *Id.* In contrast to a Rule 29 motion, a district judge considering a Rule 33 motion on the weight of the evidence “can act in the role of a ‘thirteenth juror’ and consider the credibility of the witnesses and the weight of the evidence to [e]nsure that there is not a miscarriage of justice.” *United States v. Lutz*, 154 F.3d 581, 589 (6th Cir. 1998). However, “the verdict is not unreasonable simply because different inferences could have been drawn or because other results are more reasonable.” *Burks*, 974 F.3d at 625 (internal quotation marks and alterations omitted).

III. Analysis

A. Sufficiency of Evidence on Drug Conspiracy Conviction

Defendant contends that there is no credible evidence that he knowingly joined the conspiracy in Count 1 [Doc. 532, p. 4]. He argues that there is no evidence that he interacted with any alleged co-conspirators other than Billips, and, even if the Court were to rely on Billips’s “dubious” testimony, it at best establishes that Billips and defendant associated with each other and used drugs together. Billips’s testimony shows that any drug distribution defendant engaged in was on his own and not part of the alleged conspiracy. Defendant further argues that the evidence merely shows a buyer-seller relationship between himself and Billips [*Id.*].

The government responds that the jury: (1) heard extensive testimony from Billips, whose testimony was corroborated by recorded phone calls, text messages, seized drugs,

money, and firearms; (2) saw a Facebook video in which defendant bragged about making money by dealing drugs; and (3) heard testimony from Hamilton County Sheriff's Office Detective Jason Maucere about defendant's former heroin supplier, Tracy Calloway (a/k/a "Fat T"), who was murdered in Chattanooga in 2019 [Doc. 534, p. 5]. The government argues that the conspiracy charge in Count 1 only required proof that "two or more people," that is, defendant and Billips, agreed to violate the federal drug laws, and defendant did not need to know everything about the conspiracy, or everyone involved [*Id.* at 5–6]. The government contends that this evidence demonstrated a high degree of trust between defendant and Billips and a mutual understanding and agreement to cooperate with each other to distribute drugs together [*Id.* at 6–9]. The government concludes that these expressions of trust, combined with Billips's trial testimony, which was corroborated, as well as the other evidence, is sufficient to demonstrate a conspiracy to distribute drugs, rather than a mere buyer-seller relationship [*Id.* at 9].

To sustain a conviction under 21 U.S.C. § 846, "the government must have proved (1) an agreement to violate drug laws, in this case 21 U.S.C. § 841(a)(1); (2) knowledge and intent to join the conspiracy; and (3) participation in the conspiracy." *United States v. Martinez*, 430 F.3d 317, 330 (6th Cir. 2005). "The existence of a conspiracy may be inferred from circumstantial evidence that can reasonably be interpreted as participation in the common plan." *Id.* (internal quotation marks omitted). Further, "[o]nce a conspiracy is shown beyond a reasonable doubt . . . a defendant's connection to the conspiracy need only be slight." *Id.* (internal quotation marks omitted). A defendant can be connected to a

conspiracy through evidence of his interactions with another co-conspirator, as long as there is evidence connecting defendant to the co-conspirator and the co-conspirator to the conspiracy. *United States v. Price*, 258 F.3d 539, 545 (6th Cir. 2001).

The Sixth Circuit has held that a buyer-seller relationship is not a conspiratorial agreement because the underlying crime of distribution requires actual, constructive, or attempted transfer of drugs from one party to another. *United States v. Wheat*, 988 F.3d 299, 307–08 (6th Cir. 2021). However, if two sellers agree to cooperate to arrange a drug deal with a buyer, the agreement is a conspiracy to distribute, even if it just involved one sale. *Id.* at 308. Moreover, a so-called “chain conspiracy,” wherein a wholesaler sells to a retailer with an agreement that the retailer will sell to end users also constitutes a conspiracy to distribute. *Id.* The critical question in determining whether an arrangement is a buyer-seller relationship or a conspiracy is whether the arrangement involved more than an agreement to transfer drugs from one party to another. *Id.* at 309.

Here, the Court finds sufficient evidence to support the jury’s verdict on the conspiracy charge in Count 1. Co-defendant Billips testified that he met defendant in county jail and, after his release from prison, reestablished a connection [Doc. 541-1, p. 189; Doc. 541-2, p. 56]. Billips identified defendant as “a member of the Bloods with whom [he] sold drugs” [Doc. 541-1, p. 196]. Billips testified that while it is not typical for Vice Lords and Bloods to work with each other, it is common in Chattanooga [Doc. 541-2, pp. 72–73].

Billips testified that, in the summer of 2019, he and defendant began dealing drugs together [*Id.* at 58]. Billips stated that he “dealt drugs with” defendant in the sense that “he had some drugs, I had some drugs. We just be around each other selling drugs together. Be in the car with me or something like that, I be in the car with him or something like that” [*Id.*]. Billips testified that he knew defendant to sell heroin and that he obtained heroin from “Fat T” before his death in July 2019 [*Id.* at 65]. After Fat T’s death, defendant gave Billips money to purchase heroin from co-defendant Alim Turner, because defendant knew that Billips could obtain heroin from Turner [*Id.* at 66]. Billips proceeded to take defendant’s money and purchase heroin from Turner [*Id.*]. Specifically, Billips stated he obtained approximately 7 grams of heroin from Turner, and he and defendant sold the heroin obtained [*Id.* at 68].

Hamilton County Sheriff’s Department Detective Maucere testified that law enforcement found evidence of drug trafficking upon the search of defendant’s residence at 510 Gillespie [Doc. 541-1, p. 134]. Specifically, Detective Maucere identified a digital scale used for weighing narcotics, Narcan, used to counter an opioid overdose, “a little baggie with numerous plastic baggies contained inside it and outside of it” which is “very consistent with drug trafficking,” and a plastic bag containing approximately 1.2 grams of heroin [*Id.* at 139–41]. Detective Maucere testified that 1.2 grams of heroin was enough to service approximately 12 customers [*Id.* at 141].

Based on this evidence, the Court finds that a reasonable jury could find that defendant joined the heroin distribution conspiracy in this case. The evidence establishes

that defendant engaged in heroin distribution activities with co-defendant Billips, who was himself part of the larger multi-drug distribution conspiracy based in Knoxville. Of particular relevance, the evidence shows that on at least one occasion defendant provided funds to Billips with the intent that Billips would purchase heroin from Turner for resale by Billips and defendant in the Chattanooga area. The Court finds that this evidence is sufficient to establish that defendant joined the heroin distribution conspiracy. Ultimately, that defendant had little to no contact with members of the larger drug distribution conspiracy, beyond Billips, is irrelevant, as the Sixth Circuit has held that interactions with only one other co-conspirator is sufficient if the evidence connects the defendant to the co-conspirator and that co-conspirator to the larger conspiracy. *See Price*, 258 F.3d at 545.

Further, the Court finds that the relationship between defendant and Billips involved more than an agreement to transfer drugs from one party to another, and therefore, was more than a mere buyer-seller relationship. *See Wheat*, 988 F.3d at 309. Again, the Court notes that the evidence establishes that defendant asked Billips to purchase heroin from Turner, and defendant and Billips then sold the heroin together. Rather than a buyer-seller relationship, this activity is more akin to a chain conspiracy, which the Sixth Circuit has held constitutes a conspiracy under the law. *See id.* at 308. Defendant, using Billips as a middle-man, purchased heroin from Turner, the wholesaler, with the intent that defendant and Billips would then resell the heroin to customers in Chattanooga.

Accordingly, while there is some evidence that, initially, defendant and Billips merely sold heroin in one another's presence, after Fat T's death, when defendant asked

Billips to purchase heroin from Turner to resell together, defendant joined the heroin distribution conspiracy. Thus, the Court finds that, viewing the evidence in the light most favorable to the government, a rational trier of fact could have found all of the elements of the heroin conspiracy charged in Count 1 beyond a reasonable doubt. Moreover, even considering the weight and credibility of the evidence, the Court does not find that the verdict on Count 1 exceeds the bounds of reasonableness or results in a miscarriage of justice. Defendant's request for a judgment of acquittal, or, alternatively, a new trial on this ground is therefore **DENIED**.

B. Variance Between Proof and Allegations of Indictment

Defendant next argues that there is a fatal variance between the proof offered at trial and the allegations of Count 1 of the second superseding indictment [Doc. 532, p. 4]. He argues that the proof at trial showed multiple conspiracies, rather than the single charged conspiracy [*Id.* at 5]. Defendant states that no alleged co-conspirators, aside from Billips, had any contact with defendant or knew of his existence, and he was on none of the recorded wiretap calls or text messages. Defendant contends that the proof at trial showed that other co-defendants were Vice Lords from Knoxville, but defendant is not a Vice Lord and is from Chattanooga. Defendant acknowledges that the proof showed conspiracies between some of the co-defendants, but there was no proof of an overarching conspiracy involving defendant. Defendant contends that Billips's testimony could, at best, support a separate conspiracy between himself and defendant to distribute heroin in Chattanooga, which was not a part of the conspiracy as alleged in the indictment [*Id.* at 5–6]. Defendant

argues that the trying of multiple conspiracies as a single conspiracy had a substantial influence on the outcome of this case and violated his rights to due process and a fair trial [*Id.* at 10].

The government responds that, to the extent defendant contends that heroin trafficking in Chattanooga was not part of the conspiracy alleged in the indictment, this claim is wrong as the second superseding indictment charged a drug trafficking conspiracy “in the Eastern District of Tennessee and elsewhere” and Chattanooga is part of the Eastern District of Tennessee [Doc. 534, pp. 9–10]. The government contends that the evidence at trial established a common goal of profiting from the underground drug market, noting a wiretap call between Ronald and Alim Turner discussing an intent to expand their drug distribution to towns south of Knoxville, including Chattanooga [*Id.* at 11]. Moreover, the government argues that whether defendant directly dealt with all co-conspirators and was a member of a different gang does not impede his conviction [*Id.* at 12]. The government also argues that the fact that defendant and Billips were essentially on the same level within the organization is no impediment to defendant’s conspiracy conviction [*Id.* at 13]. Finally, the government contends that, even if defendant could show a variance, he cannot demonstrate that his substantial rights were affected [*Id.* at 13–14].

“A variance to the indictment occurs when the charging terms of the indictment are unchanged, but the evidence at trial proves facts materially different from those alleged in the indictment.” *United States v. Swafford*, 512 F.3d 833, 841 (6th Cir. 2008) (internal quotation marks omitted). The Court may reverse defendant’s conviction only if “a

variance occurred and that variance affected the defendant's substantial rights.” *Id.* (internal quotation marks and alterations omitted). In determining whether the evidence could reasonably support only a finding of multiple conspiracies, the Court must view the evidence in the light most favorable to the government. *Id.* “[W]hile a single conspiracy does not become multiple conspiracies simply because each member of the conspiracy does not know every other member, it is necessary to show that each alleged member agreed to participate in what he knew to be a collective venture directed toward a common goal.” *Id.* (internal quotation marks omitted). The Sixth Circuit has thus “found single conspiracies even where the connections between the co-conspirators were minimal.” *Id.*

Defendant's arguments regarding an alleged variance somewhat overlap his arguments that there was insufficient evidence to support a conviction on Count 1, which the Court has rejected. First, however, the Court notes that, to the extent that defendant argues that any alleged involvement in the heroin distribution conspiracy fell outside the scope of the second superseding indictment because it occurred in Chattanooga, Count 1 of the second superseding indictment specifically charges that defendant and others conspired to distribute, among other drugs, heroin, “in the Eastern District of Tennessee and elsewhere” [Doc. 243]. And Chattanooga falls within the Eastern District of Tennessee. *See* “Court Locations,” United States District Court Eastern District of Tennessee, <http://tned.uscourts.gov/court-locations> (last accessed November 29, 2022).

Next, viewing the evidence in the light most favorable to the government, the Court finds that defendant agreed to participate in what he knew to be a collective venture

directed toward a common goal, that is, trafficking of heroin. *See Swafford*, 512 F.3d at 841. At the very least, the evidence establishes that defendant knew that Billips was engaged in drug trafficking activities, that Billips had a source of supply in Knoxville (Turner), and that he and Billips could sell heroin obtained from Turner together. As the Court discussed previously, Billips is the link between defendant and the larger conspiracy, and the fact that he did not know other co-conspirators is irrelevant. Moreover, defendant's location and gang affiliation are not determinative. Evidence established that, while it is not typical for Vice Lords and Bloods to work together, such was a somewhat common practice in the Chattanooga area [Doc. 541-2, pp. 72–73]. And evidence showed that two of the leaders of the larger drug distribution conspiracy, Alim and Ronald Turner, discussed expanding their drug distribution operations to Chattanooga [Gov. Ex. 20, Tab C-15].

Ultimately, the Court concludes that there is sufficient evidence to support a finding of a single heroin conspiracy, as charged in Count 1 of the second superseding indictment. Thus, the Court finds that, viewing the evidence in the light most favorable to the government, a rational trier of fact could have found all of the elements of a single conspiracy charged in Count 1 beyond a reasonable doubt. Moreover, even considering the weight and credibility of the evidence, the Court does not find that the verdict on Count 1 exceeds the bounds of reasonableness or results in a miscarriage of justice. Defendant's request for a judgment of acquittal, or, alternatively, a new trial on this ground is therefore **DENIED**.

IV. Conclusion

For the reasons discussed, the Court finds, after viewing the evidence in a light most favorable to the government, that a rational trier of fact could have found beyond a reasonable doubt that defendant joined and participated in the heroin distribution conspiracy charged in Count 1. Additionally, the Court finds that granting defendant a new trial is not in the interest of justice. Neither a judgment of acquittal nor a new trial is warranted, and defendant's motion [Doc. 532] is therefore **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan

UNITED STATES DISTRICT JUDGE