

Appendix A

In the
United States Court of Appeals
For the Seventh Circuit

No. 23-2138

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FREDERICK L. BREWER,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 1:22-cr-128 — William C. Griesbach, Judge.

ARGUED OCTOBER 31, 2024 — DECIDED JULY 21, 2025

Before SYKES, *Chief Judge*, and RIPPLE and LEE, *Circuit Judges*.

LEE, *Circuit Judge*. A jury found Frederick Brewer guilty of various offenses related to the sale and distribution of fentanyl. Specifically, Brewer was convicted of distributing fentanyl, possessing with the intent to distribute fentanyl, and participating in a conspiracy to do the same. At the same time, the jury indicated in the verdict form that the government had

failed to prove beyond a reasonable doubt that Brewer's conspiracy and possession convictions involved at least 40 grams of fentanyl. Based on this verdict form and other arguments as to the sufficiency of the evidence, Brewer twice moved for acquittal under Federal Rule of Criminal Procedure 29. The district court denied both motions. Brewer now appeals, arguing once again that the evidence was insufficient to support his convictions. He also contends that the district court erred in calculating the relevant drug quantity for purposes of sentencing. Because Brewer has failed to meet the high standard to overturn a jury verdict and the district court did not clearly err in its drug quantity determination, we affirm.

I

A

During its investigation into the illegal distribution of fentanyl in the form of fake "Percocet" pills (or "Percs") in Green Bay, Wisconsin, the Brown County Drug Task Force discovered that siblings Frederick Brewer and Don James, Jr., had sold such pills from their home in Green Bay from at least December 2021 until February 2022. Brewer and James eventually were charged with conspiracy to distribute and possess with intent to distribute fentanyl from approximately December 27, 2021, to February 9, 2022, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A)(vi) (Count One) and with possession with intent to distribute fentanyl on or about January 9, 2022, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(vi) and 18 U.S.C. § 2(a) (Count Two). Brewer was separately charged with distributing fentanyl on three occasions in January and February 2022 (Counts Three, Four, and Five), while James was charged with possessing fentanyl with the intent to

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distribute on February 21, 2022, and June 14, 2022 (Counts Six and Seven).

Over the course of a three-day jury trial, the government presented evidence that James had negotiated with third-party sources to buy fentanyl pills in bulk and, together with Brewer, sold the pills as “Percocets” or “Percs.” For example, James’s flight records and text messages indicated that he had traveled to Arizona from January 6 through 9, 2022, to purchase thousands of Perc pills from a supplier. Other text messages showed that he had offered to sell the pills he had just acquired to other Green Bay dealers. In fact, the day after James returned from Arizona, Brewer posted, “Got the percs,” on his Facebook page and continued to solicit buyers for the next several weeks. And, less than a week after James returned from Arizona, Brewer texted James requesting another supply of pills, saying: “Need 50 at least. N when you coming back to the house?”

The jury also heard from a confidential informant, who had purchased a total of thirty pills from Brewer on January 24, January 31, and February 7, 2022. The informant testified that, because she did not know Brewer personally, she had arranged the purchase through a “middler” who did. The informant accompanied the middler to meet Brewer either at his residence or in his car and obtained Perc pills from the middler after the middler’s meeting with Brewer. The informant’s testimony was corroborated by a slew of evidence, including testimony from Task Force agents who surveilled each buy, Brewer’s numerous text messages with the middler, and Brewer’s recorded jail call with his girlfriend naming the middler as the go-between with the informant.

The government also presented a recorded jail call between Brewer and James made the day after Brewer's arrest, during which Brewer told James that he "did exactly what [James] told [Brewer] to do" by hiding the pills in his "drawers," and that he needed to "dump that shit" to dispose of the pills. James replied, "You already know. You know what's going on."

In addition, agents testified that they had seized \$5,000 from the defendants' sister, who had taken the cash from James's personal safe (which she opened with a code James gave her while in jail) to pay his cash bail. Among the cash were bills that the informant had paid to Brewer at the January 31 controlled buy.

At the close of the government's evidence, Brewer and James moved for acquittal under Rule 29. When the motion was denied, they elected not to present any evidence and concluded their case.

The jury found James and Brewer guilty of all counts. Moreover, in the process of deciding Counts One and Two, the jury found that James's convictions involved 400 grams or more of a mixture and substance containing fentanyl. But, as to Brewer, the jury did not believe that the government had proven beyond a reasonable doubt that he was responsible for selling even 40 grams or more of fentanyl.

After the verdict, the defendants renewed their motions for judgment of acquittal, which the district court summarily denied as to Counts Three to Seven. The court, however, took the defendants' request as to Counts One and Two under advisement. Regarding the former, both Brewer and James argued that the trial evidence was insufficient to establish a

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conspiracy and reflected only a simple buyer-seller relationship. Brewer also argued that the evidence was insufficient to support a finding that he was guilty of possession with intent to distribute as alleged in Count Two, relying primarily on the jury's determination that the government had failed to prove that he was responsible for 40 grams or more of fentanyl.

In a subsequent written order, the district court denied the motions for acquittal on Counts One and Two. In doing so, it concluded that the evidence was "sufficient to establish that Brewer and James were not simply involved in a buyer/seller relationship, but that they were 'in business.'" The district court also rejected Brewer's contention that the jury's determination that the government had failed to prove the threshold amounts undermined the guilty verdicts. The court reasoned that Brewer's awareness of James's return to Green Bay with a large amount of fentanyl, coupled with Brewer's announcement on Facebook that he "[g]ot the percs" upon James's return, sufficiently supported the "jury's conclusion that Brewer possessed at least some of the fentanyl James brought back from Arizona ... with the intent to distribute as charged in Count Two of the indictment."

B

At sentencing, Brewer argued that he should only be held responsible for the fentanyl amount attributable to his distribution counts (Counts Three through Five), plus a single fentanyl pill that was found in his car when he was arrested. Because the total drug quantity attributable to him was only 3.311 grams, Brewer posited, the corresponding base offense level under the United States Sentencing Guidelines should have been 12 instead of 32 as the Probation Office had recommended in the presentence report (PSR). After hearing from

the parties, the district court disagreed, finding that Brewer's involvement in a conspiracy with James made it reasonable to attribute 1.2 to 4 kilograms of fentanyl to him for sentencing purposes and adopted the guidelines calculation in the PSR.

Brewer's total offense level, combined with Brewer's criminal history category, produced a sentencing guideline range of 360 to 1,800 months of imprisonment. And, after considering the sentencing factors set forth in 18 U.S.C. § 3553(a), the district court imposed a prison sentence of 144 months to be followed by 120 months of supervised release.

II

On appeal, Brewer asserts once again that the government's evidence was insufficient to support his convictions. He also contends, to preserve his rights in the future, that the sentencing court erred by applying a base offense level corresponding to a drug weight that was seemingly at odds with the jury's verdict. We take each argument in turn.

A

When evaluating a defendant's challenge to the sufficiency of the government's evidence to support his conviction, we start with a reminder that "[g]reat deference is owed to the jury's verdict." *United States v. Hofschulz*, 105 F.4th 923, 931 (7th Cir. 2024) (citing *United States v. Beechler*, 68 F.4th 358, 368 (7th Cir. 2023)). We therefore limit our inquiry only to "whether, after 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." *Musacchio v. United States*, 577 U.S. 237, 243 (2016) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). "This highly demanding standard is rightly

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characterized as imposing a nearly insurmountable burden.” *Hofschulz*, 105 F.4th at 932 (internal quotation marks omitted). Accordingly, “[w]e do not reweigh the evidence and may uphold verdicts entirely based on circumstantial evidence.” *United States v. O’Leary*, 957 F.3d 731, 733 (7th Cir. 2020).

1. Conspiracy (Count One)

We first address Brewer’s conviction for conspiracy to distribute and possess with intent to distribute fentanyl. To prove a drug-distribution conspiracy, the government must show that “the defendant knowingly agreed, at least implicitly, to distribute drugs with another.” *United States v. Page*, 123 F.4th 851, 859 (7th Cir. 2024) (en banc). And, as Brewer correctly points out, “evidence showing only that two people are in a buyer-seller relationship is insufficient to prove a drug-distribution conspiracy.” *Id.* (internal quotation marks omitted). Instead, the government must present “evidence establishing an agreement to distribute drugs that is distinct from evidence of the agreement to complete the underlying drug deals.” *United States v. Wright*, 85 F.4th 851, 861 (7th Cir. 2023) (internal quotation marks omitted). Put another way, the government must show that the co-conspirators had “a stake in the venture” and exhibited “informed and interested cooperation.” *Direct Sales Co. v. United States*, 319 U.S. 703, 713 (1943).

We have previously taken a “totality-of-the-circumstances” approach to distinguish between these two types of relationships, often invoking “rules of thumb” such as “sales on credit or consignment, an agreement to look for other customers, a payment of commission on sales, an indication that one party advised the other on the conduct of the other’s business, or an agreement to warn of future threats to each other’s

business stemming from competitors or law-enforcement authorities.” *United States v. Vizcarra-Millan*, 15 F.4th 473, 507 (7th Cir. 2021) (internal quotation marks omitted). But, as we have recently held, these “rules of thumb” are just that, and it is not necessary for the government to prove all, some, or even any of the factors, so long as there is evidence of a mutual agreement to distribute drugs. *See Page*, 123 F.4th at 861–62 (overruling *United States v. Colon*, 549 F.3d 565 (7th Cir. 2008), and holding that evidence of repeated, distribution-quantity transactions of illegal drugs alone is sufficient to sustain a drug-trafficking conspiracy conviction).

Here, when viewed in the light most favorable to the government, the record contains evidence from which a reasonable jury could find that Brewer and James had engaged in a joint venture to purchase and resell fentanyl. Take, for example, Brewer’s communications with a potential buyer indicating that he was privy to not only James’s travel to and from Arizona to purchase drugs, but also the “load” of “percs” pills that James had in tow. Furthermore, the day after James returned from Arizona, Brewer posted on his Facebook that he “got the percs.” And Brewer continued to solicit buyers on Facebook while texting James when he needed more inventory. What is more, bills that Brewer had obtained in exchange for Perc pills were found in the money their sister took out of James’s safe to bail James out of jail. And, while Brewer was in jail, he called James to tell him that he had followed James’s instructions to hide the drugs in his crotch if he was ever arrested. From these facts, a reasonable jury could find that Brewer and James were engaged in a joint venture to distribute fentanyl.

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Resisting this conclusion, Brewer points to the jury's determination on the verdict form that the government had failed to prove that Brewer's participation in the conspiracy involved 40 grams or more of fentanyl. As he sees it, these findings indicate the jury's belief that the government had failed to prove a conspiracy altogether. But this is baseless extrapolation. Section 841(a)(1) of Title 21 proscribes the distribution or possession with intent to distribute a controlled substance of *any* amount, and Section 846 prohibits a person from entering a conspiracy to do the same. *See* 21 U.S.C. §§ 841(a), 846. Here, the jury found sufficient evidence to convict Brewer of both conspiracy and possession with intent to distribute *some* amount of fentanyl—just not enough to satisfy the threshold amounts necessary to trigger the mandatory minimum terms of imprisonment set forth in 21 U.S.C. § 841(b)(1)(A)(vi) and (B)(vi).

Brewer also contends that the government's evidence of a drug-distribution conspiracy was speculative and unreliable. For example, he decries the government's failure to present the middler as a witness at trial. But "[o]ur task is not to 're-weigh the evidence or invade the jury's province of assessing credibility.'" *United States v. Peterson*, 823 F.3d 1113, 1120 (7th Cir. 2016) (quoting *United States v. Pribble*, 127 F.3d 583, 590 (7th Cir. 1997)). We will overturn a jury's verdict "only when the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt." *Id.* (citation modified). Such is not the case here.

2. Possession (Count Two)

Turning to Brewer's possession conviction, the government argued to the jury that Brewer had aided and abetted

James's (1) knowing and intentional possession of fentanyl, (2) with intent to distribute it, (3) while knowing it was a controlled substance. *See United States v. Irby*, 558 F.3d 651, 654 (7th Cir. 2009); *see also* 21 U.S.C. § 841(a)(1). In support, the government presented evidence that Brewer was aware of the purpose of James's trip to Arizona and that Brewer solicited buyers for Perc pills soon after James's return to Green Bay. The jury reviewed the evidence and found Brewer guilty of possession with the intent to distribute.

Brewer insists that the jury got it wrong. According to him, the multiple posts he published on Facebook following James's trip to Arizona (including "got the percs," "Who wants percocet," "I got them percs if you know who looking," "Wassup with dem percs out there") amount to nothing but mere chatter. This is a perplexing argument, not the least because we find it hard to fathom why anyone would repeatedly offer to sell an illegal substance on a social media platform, unless they were actually doing so. At any rate, there was more evidence than this. For example, the government orchestrated controlled buys of fentanyl pills at an address linked to Brewer and James. And Brewer provided that same address to another potential purchaser the day James returned from Arizona. We decline to disturb the jury's verdict on this record.

3. Distribution (Counts Three, Four, and Five)

Brewer also challenges his distribution convictions for each of the controlled buys, arguing that the middler, who was the sole person that directly dealt with Brewer during these transactions, did not testify at trial. As for the confidential informant who purchased the pills, Brewer discounts her

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credibility due to her supposed allegiance to the government and her inability to identify him at each controlled buy.

As an initial matter, we reject Brewer's request to "reweigh the evidence or invade the jury's province of assessing credibility." *Peterson*, 823 F.3d at 1120 (internal quotation marks omitted). But we also stress that the government's case was replete with evidence that, taken as a whole, sufficiently demonstrated that Brewer knowingly distributed fentanyl and knew that it was a controlled substance. *See* 21 U.S.C. § 841(a)(1). At each of the controlled buys, the informant and the middler purchased ten pills from Brewer. The controlled buys in January took place at James's and Brewer's address. Brewer's phone contained messages he exchanged with the middler between January 24 and 31 about the sale of drugs. For the February 7 controlled buy, which took place at the middler's address, police officers identified Brewer after the transaction through personal and video surveillance. A rational trier of fact presented with this record could easily find Brewer guilty of all three distribution counts.

B

Finally, Brewer contends that the sentencing court improperly considered acquitted conduct when calculating his guidelines range. As Brewer sees it, because the verdict form effectively acquitted him of conspiracy and possession involving 40 grams or more of fentanyl, the district court erred in attributing 1.2 to 4 kilograms of fentanyl to him for sentencing purposes. Instead, Brewer insists, the correct drug quantity should have been less than 4 grams of fentanyl—thirty pills from the controlled buys and the single pill found in his car—which would have put him at a substantially lower guidelines range.

At the same time, Brewer concedes that this argument is foreclosed by *United States v. Watts*, 519 U.S. 148 (1997), where the Supreme Court held that “a jury’s verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.” *Id.* at 157. We have followed suit. See *United States v. Robinson*, 62 F.4th 318, 320–21 (7th Cir. 2023); *United States v. Thurman*, 889 F.3d 356, 371 (7th Cir. 2018). Accordingly, Brewer states that he only raises this argument to preserve it, and we affirm the district court’s sentencing determination.¹

III

For the foregoing reasons, Brewer’s conviction and sentence are AFFIRMED.

¹ We recognize that the 2024 edition of the United States Sentencing Guidelines includes an amendment clarifying that “[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court, unless such conduct also establishes, in whole or in part, the instant offense of conviction.” U.S. SENT’G GUIDELINES MANUAL § 1B1.3(c) (U.S. SENT’G COMM’N 2024). This amendment does not apply to Brewer, as courts are directed to “use the Guidelines Manual in effect on the date that the defendant is sentenced.” *Id.* § 1B1.11(a). Brewer was sentenced on May 24, 2023, while the 2024 edition of the Guidelines went into effect on November 1, 2024. And there is no indication that this amendment applies retroactively.

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 22-CR-128
USM Number: 06198-510

FREDERICK L. BREWER

Edward Hunt

Defendant's Attorney

Timothy Funnell and
Alexander Duros

Assistant United States Attorney

THE DEFENDANT was found guilty of counts one through five of the superseding indictment. The Defendant is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Date Concluded	Count(s)
21 U.S.C. §§ 846 and 841(b)(1)(A)(vi)	Conspiracy to Distribute and Possess with Intent to Distribute Fentanyl	February 9, 2022	1
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(vi) and 18 U.S.C. § 2(a)	Possess with Intent to Distribute Fentanyl	January 9, 2022	2
21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2(a)	Distribution of Fentanyl	February 7, 2022	3-5

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

All remaining counts are dismissed upon 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 the United States Attorney of material changes in economic circumstances.

Date Sentence Imposed: May 24, 2023

s/ William C. Griesbach

United States District Judge

Date Judgment Entered: May 25, 2023

DEFENDANT: FREDERICK L. BREWER
CASE NUMBER: 22-CR-128

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of one hundred forty-four (144) months as to counts one through five to run concurrent with each other for a total term off one hundred forty-four (144) months imprisonment. The sentence shall run concurrent with any state court sentence the defendant is currently serving, specifically, Brown County Circuit Court Case No. 18CF643. The sentence shall commence as of May 24, 2023.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The defendant be placed at FCI Oxford or a facility nearest to his home as possible.
The defendant participates in the BOP 500-hour drug treatment program.
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

United States Marshal

By: Deputy United States Marshal

DEFENDANT: FREDERICK L. BREWER
CASE NUMBER: 22-CR-128

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of ten (10) years as to counts one through five to run concurrent with each other for a total term of ten (10) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess or use 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. *(check if applicable)*
 - ☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(check if applicable)*
3. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3363 and 3363A or any other statute authorizing a sentence of restitution. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ 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)*
6. ☐ 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 pages.

DEFENDANT: FREDERICK L. BREWER
CASE NUMBER: 22-CR-128

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 shall report to the probation office in the district to which you are released within 72 hours of your release from the custody of the Bureau of Prisons and shall report to the probation officer in a manner and frequency as reasonably directed by the Court or probation officer.
2. You shall not leave the State of Wisconsin without permission of the court or probation officer.
3. You shall answer truthfully all inquiries by the probation officer, subject to your Fifth Amendment right against self-incrimination, and follow the reasonable instructions of the probation officer.
4. You shall use your best efforts to support your dependents.
5. You shall use your best efforts to find and hold lawful employment, unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. You shall notify the probation officer at least ten days prior to any change in your place of residence or employment. When such notification is not possible, you shall notify the probation officer within 72 hours of the change.
7. You shall not knowingly go to places or enter buildings where controlled substances are unlawfully sold, used, distributed, or administered.
8. You shall not associate with any persons known by you to be engaged or planning to be engaged in criminal activity. "Associate," as used here, means reside with or regularly socialize with such person.
9. You shall permit a probation officer to visit you at reasonable times at home and shall permit confiscation of any contraband observed in plain view of the probation officer.
10. You shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

DEFENDANT: FREDERICK L. BREWER

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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to participate in a program of testing to include not more than six urinalysis tests per month and residential or outpatient treatment for drug and alcohol abuse, as approved by his probation officer, until such time as he is released from such program. The defendant shall pay the cost of this program under the guidance and supervision of his probation officer. The defendant shall also refrain from excessive use of alcoholic beverages throughout the supervised release term. Excessive as used here shall be defined as exceeding a blood alcohol level of 0.08%.
2. The defendant shall submit his person, property, house, residence, vehicle, office, papers, computers, other electronic communications or data storage devices, or media, to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: FREDERICK L. BREWER
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached page.

<u>Total Special</u> <u>Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$500.00	\$0.00	\$0.00	\$0.00	\$0.00

- ☐ 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 a defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

PAYEE	AMOUNT
TOTAL:	

- ☐ Restitution amount ordered pursuant to plea agreement: \$ ____.
- ☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments 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.

* 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.

DEFENDANT: FREDERICK L. BREWER
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SCHEDULE OF PAYMENTS

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

- A** ☒ Lump sum payment of \$500.00 due immediately
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal monthly installments of not less than \$_____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after the date of this judgment; or
- D** ☐ Payment in equal monthly installments of not less than \$_____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within 30 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: _____

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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 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
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution; or ☐ The defendant shall pay the following court costs:
- ☐ 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) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Appendix C

1 TRANSCRIPT OF PROCEEDINGS

2 (Transcribed from audio recording.)

3 THE CLERK: The Court calls Case No. 22-CR-128, United
4 States of America versus Frederick L. Brewer, for sentencing.
5 May I have the appearances, please.

6 MR. FUNNELL: Good afternoon, your Honor. Tim Funnell
7 and Alex Duros for the Government.

8 THE COURT: Good afternoon.

9 MR. HUNT: Good afternoon, your Honor. Frederick L.
10 Brewer appears in person and by counsel Edward J. Hunt.

11 THE COURT: Good afternoon.

12 MR. KOEHLER: Good afternoon, your Honor. Brian
13 Koehler on behalf of probation.

14 THE COURT: Good afternoon, all.

15 Okay. Mr. Brewer is before the Court for sentencing today.
16 He was found guilty of the conspiracy to distribute controlled
17 substances and then a possession of controlled substances and
18 three counts of delivery. And the presentence report is on
19 file. I know we incorporated a state presentence report. I
20 also have a sentencing memorandum from Mr. Hunt, a letter from
21 the Department of Corrections indicating his successful
22 completion of a program.

23 And I know there are objections to the guideline
24 calculation. This was a case, of course, that was tried before
25 the Court, so I had the opportunity to hear the evidence. I

1 have, I think, two post-verdict decisions I issued, relatively
2 short decisions. But, again, I considered the evidence.

3 So I'm going to go ahead and find that I -- since the facts
4 were disputed at trial, I don't expect Mr. Hunt to do anything
5 but object to the factual statements in the presentence report
6 or to many of them. But I'm satisfied from my review of the
7 presentence report and based on the evidence I heard in the
8 course of the trial and my further consideration of all the --
9 of the entire file that the factual statements set forth in the
10 presentence report are accurate and true and correct. And I
11 will adopt those factual statements as my findings of fact.

12 With respect to the guideline calculation, I -- Mr. Hunt
13 did make a number of objections. I've had the opportunity to
14 review those and the Government's response. I'm also going to
15 adopt the guideline calculation here. I am satisfied -- this
16 is -- Mr. Hunt is correct. This was not the typical drug case
17 in which the drugs are found and then they're tied to the
18 defendant in a very specific way. This case was circumstan-
19 tial. There were inferences that the jury was asked to draw.
20 Some they drew, some they did not.

21 But in terms of the amount, I'm satisfied that the base
22 level calculated in the presentence report is correct, that Mr.
23 Brewer may not have been the main person, the direct purchaser
24 of the over 15,000 pills from Arizona, but he was -- he
25 conspired with Mr. James. He was involved with Mr. James.

1 This was a conspiracy, and I'm satisfied that that amount is --
2 was certainly foreseeable, knowingly was part of this whole
3 effort to sell and distribute fentanyl in this community.

4 And they were -- they were counterfeit. They were
5 presented as percs or Percocet drugs, but Mr. Brewer was well
6 aware it was fentanyl, as is everybody, frankly, that you can't
7 not know, I think, in this culture right now that phony
8 Percocet pills are fentanyl coming up from the cartels and that
9 given the history and evidence here I'm satisfied that Mr.
10 Brewer was well aware of that as well.

11 And I'm satisfied that the obstruction enhancement applies
12 as well. Mr. Brewer I think the evidence and the inferences
13 reasonably drawable from that evidence support by a
14 preponderance of the evidence certainly, if not more, that Mr.
15 Brewer disposed of drugs that were secreted or hidden in his
16 crotch at the time of his arrest, also that he gave
17 instructions to others to -- to destroy or to eliminate his
18 Facebook postings and to try to insulate his social media
19 accounts or to eradicate any incriminating information from his
20 social media accounts and then his interest in locating
21 informants and warning people about informants. All of those
22 things convince me that the enhancement for obstructing is also
23 correct.

24 So I think that -- does that address all of the objections
25 to the guidelines? Is there one I omitted? Oh, criminal

1 history category. Yeah, I'm satisfied that the criminal
2 history category is correctly scored. I'm not even sure Mr.
3 Hunt disagrees that it's correctly scored, at least as to
4 guidelines as they exist now.

5 Now, the degree to which the criminal history, especially a
6 calculated criminal history or even the guidelines themselves,
7 the offense severity score, should influence sentencing is -- I
8 mean, in a post-*Booker* world, I mean, I -- in all honesty, the
9 sentences I impose I impose not based on guidelines. I hope
10 that's clear. I'm hardly ever that close to the guidelines.

11 I consider the -- the nature and circumstances of the
12 offense, the history and character of the defendant, and then I
13 try my best to fashion a sentence that meets those goals of
14 imposing just punishment, providing deterrence, protecting the
15 public from further crimes of the defendant, and then providing
16 opportunities for rehabilitation, keeping in mind that the
17 guidelines, their goal is to avoid unwarranted sentence
18 disparity. I emphasize unwarranted because I think much
19 sentence disparity in our system is warranted because of the
20 nature of the offense, the person's culpability, the person's
21 age and involvement in the offenses.

22 But -- and I'm confident that any sentence that I impose
23 here -- and I haven't made up my mind what that will be -- will
24 be based on those factors much more than any allegiance to this
25 guideline calculation that comes out of a mathematical

1 calculation that at times can seem very esoteric and frankly
2 abstract.

3 So I preface my remarks with that, but have I omitted any
4 of the objections to the guideline calculation?

5 MR. HUNT: No, your Honor. Something that is in the
6 objections, but it's also in my sentencing memorandum is
7 grounds for variances. The objection related to 5G that deals
8 with giving credit for a sentence that's being served on a
9 state court that's related. And I noticed something. I have a
10 typo on my objection Page 18. I say the sentencing date is
11 March 24th. It's May 24th. And I said in my sentencing
12 memorandum at Page 18 March 24th when I meant May 24th. And
13 I'm asking for credit from February to May 24th, but that's
14 just as much a call for sentencing memoranda variance as it is
15 objection, so.

16 THE COURT: Yeah. I don't think that's so much an
17 objection. That's a matter of discretion with the Court --

18 MR. HUNT: Right.

19 THE COURT: -- considering various -- the relation
20 between the offense of sentence -- the sentencing offense and
21 then the prior conviction. So we can address that in -- both
22 parties can address that in the course of their arguments.

23 So then I, as I said, adopt the factual statements in the
24 presentence report as my findings of fact. To the extent I may
25 offer other findings, they will be based upon my observation of

1 the witnesses, my hearing the testimony during the course of
2 the trial.

3 I'm adopting, also, the recommended guideline calculation.
4 I'm satisfied that the offense level properly adjust --
5 calculated is 38 and that the criminal history category
6 properly calculated again or it's computed is VI. So the
7 criminal -- the guideline range is 360 months, 30 years, to
8 1,800 months, and I haven't calculated what that is. So we're
9 looking at very high guideline ranges here. But that's the
10 starting point in the sentencing determination.

11 As I indicated, I fully expect and will intend to impose a
12 sentence that's based on the factors, not the -- not the
13 guidelines as much, although as the statute requires I'm
14 certainly to consider the guidelines and I'll give those some
15 consideration here now.

16 Mr. Funnell, then I'll hear from the Government.

17 MR. FUNNELL: Your Honor, one other issue is the 851
18 information that was filed. I don't think there's any dispute
19 there would have had to have been a written objection from the
20 defense which hasn't occurred. And the presentence report
21 incorporates the 30-year maximum that applies, so I just wanted
22 the record to be clear that that's been established.

23 THE COURT: Yeah. The information was filed. There
24 was no objection to it.

25 Mr. Hunt, am I correct that there's no objection that that

1 all meaningless. His conduct shows that it was meaningless.

2 There is simply no basis to conclude that there's reliable
3 information that his criminal history category substantially
4 overrepresents the seriousness of his history or the likelihood
5 that he will commit other crimes. His guideline range is
6 exactly where it should be.

7 And then that leads to the -- back to the offense conduct.
8 I've talked about the dangers of fentanyl, how the Court is
9 very familiar with that, having sentenced other fentanyl cases
10 and certainly looking at the information here in the
11 presentence report. Not only is Mr. Brewer actively dealing
12 fentanyl, as the Court indicated, after he's caught he hides
13 the pills successfully, flushes them down the toilet in the
14 jail cell, gets somebody else to deactivate his Facebook
15 account. He's talking to her about finding out who the
16 snitches are.

17 All of these factors, all of the circumstances, your Honor,
18 I think are unfortunately aggravated. There's -- there's very
19 little mitigating here, if anything, that I can point to about
20 -- about Mr. Brewer. And for all those reasons, I would urge
21 the Court to impose a lengthy sentence. It's sufficient. It's
22 not greater than necessary. I think 20 to 25 years in prison
23 followed by eight years of supervised release is the
24 appropriate sentence. Thank you.

25 THE COURT: Thank you, Mr. Funnell.

1 Mr. Hunt.

2 MR. HUNT: Thank you, your Honor. First of all, I
3 think we must concentrate on the fact that this was an entirely
4 unusual case. The period of the conspiracy starts on December
5 27th, 2021. That's three days in 2021 and 31 days in January
6 of 2022 and nine days of February, a remarkably short
7 conspiratorial period. On top of that, this case -- and I
8 pointed this out in my sentencing memorandum -- there's not the
9 usual case that we see often in federal court where you have
10 five or more named conspirators that are charged, wiretaps are
11 up and running for an extended period of time, guns are in
12 play, courses of confidential informants and confidential
13 sources are working targets with great success. This, as it
14 relates to Frederick Brewer and what the jury found and what
15 the jury did not find, this cannot be said to be a large-scale
16 fentanyl case involving an extended cast of characters,
17 extensive drug weights distributed over a large period of time.

18 And no one with a straight face will say that fentanyl is
19 not dangerous. No one with a straight face will say that
20 heroin is not dangerous. No one with a straight face will say
21 that cocaine or marijuana is not dangerous, not anyone that at
22 least has been in federal courtrooms.

23 But it's worth noting no overdoses were introduced as part
24 of the evidence in support of the Government's theory of
25 prosecution here. No one died. I understand the data points

1 that Mr. Funnell is making, and I appreciate those. And I'm
2 not here to disagree with those data points. But there is a
3 case where those data points have more gravitas. It's not the
4 case against Frederick Brewer.

5 I'm -- as the Court can tell, I'm focusing on the nature of
6 the offense factor of the 3553 factors to start my
7 presentation, and I'll work my way through. And I'll avoid
8 repeating what I've already written because the Court has, I
9 know, read my sentencing memorandum and other submissions.

10 But it cannot go without saying, your Honor, that as long
11 as we're paying attention to key components of the presentence
12 report, we can't ignore that Mr. James' culpability here,
13 compared to Mr. Brewer's culpability, is like night and day.
14 Mr. James has acknowledged in the presentence report and not
15 disputed he is connected to somebody named A-Z-G-I-O, who I
16 suspected is in Arizona, person that's in the drug trade. He's
17 also connected in the Green Bay area with a man named Trel, who
18 is his distributor. And we're talking about significant
19 amounts to distribute. He's also connected with another Green
20 Bay distributor named MugerKZ, M-U-G-E-R-K-Z. This is all
21 found on Pages 20, 21, 22, and -- not pages, paragraphs, 20,
22 21, 22, and 23. Now, in all of those discussions which the
23 jury heard and mentions of MugerKZ and Trel and amounts,
24 significantly Mr. Brewer isn't part of that dialogue.

25 So, again, another cliché, we're talking about apples and

1 oranges here and night and day and smaller involvement as
2 opposed to larger involvement.

3 The jury did not apparently have any problem finding that
4 Mr. James was involved in answering that special verdict form
5 in the 400 gram area, at least 400 grams of fentanyl. And that
6 was in relation to Count 1, the conspiracy, and Count 2, the
7 possession with intent to distribute.

8 As to Mr. Brewer, the jury -- and I ask the Court to
9 consider this in variance to the guidelines -- the jury made a
10 finding that the Government had not proved beyond a reasonable
11 doubt that Mr. Brewer was involved as it related to the
12 conspiracy of at least 400 grams of fentanyl, and they made a
13 similar finding that the Government had not proved beyond a
14 reasonable doubt that Mr. Brewer was involved in at least 40
15 grams.

16 They answered those two questions the same way as to Count
17 2. They could not find beyond a reasonable doubt that the
18 Government had proven that Mr. Brewer, as to Count 2, was
19 responsible for at least 400 grams. And they could not find
20 that he was responsible for at least 40 grams.

21 So all this talk about the dangers of fentanyl is
22 warranted. But this is an -- and all this talk about people
23 dying from fentanyl, it certainly is warranted. It should be
24 part of the public square dialogue. And not only in the
25 criminal justice system, but in the media. But it shouldn't

1 tip the scales towards a harsh sentence for Mr. Brewer when you
2 take a look at his overall behavior.

3 Yes, it's true, Judge, can't be denied the jury made a
4 finding that a conspiracy existed and Mr. Brewer and Mr. James
5 were in it. And they made a finding as -- as to Count 1. They
6 mind a finding as to Count 2 that Mr. Brewer was guilty of
7 possession -- possession with intent to distribute fentanyl.

8 Judge, when shifting gears a little bit here, when -- when
9 we consider his criminal history, my -- my point can be just
10 summarized very simply. There is an abundance of one point
11 scoring offenses which by their nature, being one-point
12 offenses, may very well overstate the seriousness of his
13 criminal history. And many of them, as the Court notes -- will
14 note are for municipal ordinance violations. So that, your
15 Honor, it is the defense contention and, also, scoring that he
16 received two points for disorderly conduct which is on the menu
17 of offenses, the lowest level offense in the Wisconsin Criminal
18 Code, and his scoring for possession of THC.

19 I just say that if we hop in a car and we drive to not too
20 far away from here to Michigan, the upper peninsula, we have a
21 state that's saying, well, marijuana's okay. And then there's
22 another state to our south that says it's not illegal either.
23 I don't mean use is okay, it's no longer criminalized. And my
24 point in objecting to his two criminal histories is -- or
25 rather to his criminal history scoring is that taking a look at

1 every instance I did make an objection, I do believe, your
2 Honor, that it overstated the seriousness of his criminal
3 history.

4 Does it make him a nuisance? Yes. Yeah. But it does not
5 make him a killer. It does not make him the type of person
6 that preys on children. It does not make him the type of
7 heinous offender that everyone should be crossing their -- to
8 the other side of the street when he walks down.

9 Now, your Honor, I realize when I say this as one of his
10 sympathetic points in the tragedy of his life that he's been
11 plagued with alcohol and drug abuse, I realize that that can be
12 viewed as a two-edged sword. But I just want to emphasize that
13 the more I study this, when I see this as much more of a
14 problem than when I was even a young lawyer, people addicted to
15 drugs on a large scale basis and alcohol problems being
16 rampant, I -- I do believe that there's a component of mental
17 illness. And I ask the Court to weigh that as well.

18 And, also, it can't be ignored as I point out on Page 13
19 and 14 that he did suffer heartache in his life. The passing
20 of T'Kyia, who is although not his biological daughter, but he
21 considers himself her father, that occurred in 2021. So it's
22 not -- the death is not mentioned in the old state court report
23 that is a component of the PSR in our case, the state PSR I'm
24 talking about. But it haunts him.

25 And the fact that he grew up in -- at least in the early

1 years of his life was living in and out of shelters, that's
2 significant. That certainly explains how he could become prey
3 to the bad choices that are noted in the PSR in terms of his
4 prior contacts with the criminal justice system.

5 Judge, if you can imagine a greater deterrent, while we're
6 talking about deterrent, if you can imagine a greater
7 deterrent, I mean I have a tough time living with this in terms
8 of -- this is frightening. This is terrifying. The idea that
9 I could be facing not less than 25 years for an offense, that
10 is what he had to live with because frankly there was a chance
11 if that 851 information caught fire and the judge -- sorry --
12 the jury returned a question saying, yes, it's 400 grams, his
13 sentence could be a 25-year mandatory minimum. He was living
14 with that for a long time. And I think that that should be
15 weighed in this sense: It was frightening -- and I use the
16 phrase "frightening" -- sobering, and maturing to live with
17 that.

18 Finally, Judge, before I for -- sorry -- finally, Judge,
19 before I conclude, I completely disagree with Mr. Funnell's
20 assessment of whether Section 5G1.3 variance applies. It's
21 true that he was convicted of a different offense, but he was
22 revoked for this offense. And my reading of the law is that a
23 district court is within its rights to give a defendant credit
24 for time served on a undischarged case sentence even if the
25 state sentence is unrelated to the federal sentence. And this

1 may be done even if it will reduce the federal sentence below
2 mandatory minimum. And I cited *United States vs. Hernandez*,
3 *620 F.3d 822, Seventh Circuit, 2010*. That's at Page 16 of my
4 sentencing memoranda. And I've been in courtrooms where other
5 judges have given this type of credit where the defense -- I'm
6 sorry, where the conduct that the person is revoked for and he
7 was revoked because of this case, the conduct in this case, is
8 -- is related to the instant federal prosecution.

9 So taking all of those things into account, distinguishing
10 Mr. Brewer from Mr. James radically, weighing the nature of
11 this case which was up and running for a small time, and all of
12 the other factors I discussed -- and I'll point out one last
13 factor, one that goes back to the offense conduct. There was a
14 search warrant for a search of the home of Mr. Brewer. I
15 believe it was motivated by a warrant. And they didn't find
16 money there, and they didn't find any drugs there except for
17 some marijuana. But they didn't find fentanyl. Taking that
18 into account, your Honor, my final remarks are I'd ask the
19 Court to consider employing United States Sentencing Guideline
20 5G1.3 variance and adjust downward in variance 50 months and 16
21 days of his sentence to account for the time between February
22 8th, 2022, when he was taken into custody and his revocation
23 process began, and today's date May 24th, 2021.

24 I'm also asking the Court to sentence Mr. Brewer to a
25 sentence in the range of 21 months to no more than 27 months as

1 a fair and just sentence. It is a sentence sufficient but not
2 greater than necessary in compliance with the factors listed in
3 18 USC 3553(a). Thank you.

4 THE COURT: Okay. I don't think there's any dispute
5 that I have discretion to make this sentence concurrent or
6 consecutive to the term of probation or partially. I mean,
7 that's -- that's -- I look at the total amount and -- but
8 clearly his -- his revocation from extended supervision, his
9 sentence -- the sentence imposed in state court was for the
10 prior offense. This is a separate offense. So it seems to me
11 I can do either, partially or wholly concurrent. I think we
12 look at the total amount of time he's going to serve.

13 Mr. Brewer, is there anything you would like to say then
14 before I impose a sentence?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Okay. And I didn't really go into it in
17 any detail because there was a factual -- I mean, there was a
18 not guilty plea, and this was a trial. But, Mr. Hunt, I didn't
19 mean to shut you off if there was any dispute as to the factual
20 statements in the presentence report, any objection to those
21 factual disputes -- or factual statements. I know as I -- you
22 argue about criminal history. And I know much of the
23 information in the presentence report was not evidence adduced
24 at trial. It's particularly concerning prior offenses, if you
25 want to be heard on any of those prior offenses, because

1 they're described in detail in the presentence report.

2 MR. HUNT: No, your Honor.

3 THE COURT: Okay.

4 MR. HUNT: And I took your opening remarks as an
5 invitation to say if I had disputes about the factual bases.

6 THE COURT: Okay. And so I've adopted those factual
7 statements as well. And, well, I think this was a trial, of
8 course, and Mr. Brewer has maintained his plea of not guilty
9 throughout the trial and continues. And so I'm confronted with
10 the facts as it is during the trial and the presentence report,
11 his conviction is of record. The jury -- I've denied motions
12 to overturn the jury verdict, and I'm satisfied that the jury
13 reached reasonable verdicts that was based on the evidence.
14 I'm convinced the jury was correct in its assessment of his
15 guilt. And as to the amounts, the jury's failure to find
16 beyond a reasonable doubt that the Government proved those
17 amounts certainly doesn't prevent the Court, as Mr. Funnell
18 pointed out in his response to the defense objections, that the
19 Court is free to determine and must determine the amounts based
20 on a preponderance of the evidence at sentencing, and I've done
21 that to get to the guideline range we're talking about. And
22 those are the facts that are before me.

23 In arriving at a just sentence, as I said earlier, I am to
24 assess the nature and circumstances of the offense and then the
25 history and character of the defendant and then fashion a

1 sentence that meets those important goals of providing just
2 punishment, providing deterrence, protecting the public from
3 further crimes of the defendant, and then providing
4 opportunities for rehabilitation, keeping in mind the need to
5 avoid unwarranted sentence disparities and the goal of
6 providing some consistency with guidelines so that we can
7 provide at least some uniformity in sentencing.

8 Now, turning first to the nature and circumstances of the
9 offense, this is an extremely serious offense. It's not only
10 because it involves the selling of controlled substances, but
11 the amount and the nature of those controlled substance are
12 certainly aggravating factors here. I do emphasize, as Mr.
13 Funnell invited me to do so, the statements in the presentence
14 report, the recitation of the DEA's findings. This is
15 Paragraph 15, 16, 17.

16 Fentanyl is a synthetic opioid. It's very common now
17 throughout this country. I note that and as the presentence
18 does, it's coming from two primary drug cartels in Mexico. It
19 seems to be coming through China. So the selling of this drug
20 not only poisons our community here and the impact on it, and
21 Mr. Hunt emphasizes that, oh, there's no deaths tied to this.
22 And he's correct, there's no deaths tied to this, but we don't
23 know the end product. We don't know the end-users of all of
24 the fentanyl that was marketed and sold and distributed by this
25 conspiracy. To say there were no deaths at all, I don't know.

1 But I'm certainly not going to pretend there were. There's no
2 evidence of that, and so -- but the fact is this is poison.
3 And we know from the history. We know from the amount of
4 overdose deaths that in this country that fentanyl is a -- is a
5 poison that is killing people, even when it doesn't take their
6 literal lives, it diminishes lives, it destroys lives, it makes
7 them dependent on a substance, and it deprives them of their
8 ability to function as full human beings, as parents, as
9 employees, as citizens in the community. And the -- we're
10 talking about one of the most dangerous drug -- the most
11 dangerous drug that we see now, although I think these animal
12 tranquilizers and others that are making the rounds are
13 probably even more dangerous, but we haven't seen that much of
14 that here yet.

15 Nevertheless, we're dealing with a poison in an amount on a
16 scale that's really, you know, kind of unique in this -- in
17 this part of our district. It's a large amount with a direct
18 connection to Arizona, a direct connection to presumably the
19 kinds of people that are involved in these cartels. And so
20 it's conduct that supports those cartels with the kind of money
21 flowing down there and the poison coming up. So we're dealing
22 with -- and Mr. Brewer's complicity in this is not as a -- as
23 Mr. Hunt argued, a buyer-seller. This is his brother that's
24 bringing in these amounts. He's in communication with him as
25 he's getting off his airplane, as he's getting him back to his

1 apartment where they're joining together and setting up the
2 Facebook and other social media that the percs are for sale and
3 that business is going.

4 And so I'm satisfied that I'm dealing with a very serious
5 offense, one that's damaging to the community in which it's
6 committed, as well as to the larger community, the larger
7 country as a whole and, frankly the entire -- you know, even
8 internationally this is dangerous behavior.

9 That's not to say Mr. Brewer is aware or contributes in a
10 direct way to this, but in a -- well, I shouldn't say in a
11 direct way. He is contributing in a direct way. But his
12 interests are obviously just to get rich, just to make money,
13 and he doesn't seem to care. And the other aspect of it, of
14 course, I look to the history and character of the defendant.
15 And the history here is, as Mr. Funnell has summarized, very
16 bleak.

17 Mr. Hunt makes a number of comments about it. He had a
18 traumatic childhood to some extent. I think that it's
19 important to note that he had family members who cared for him,
20 who did not abuse him, who tried to give him the best that they
21 could. He suffered heartache in life we're told. Well, who
22 doesn't suffer heartache in life? That's part of life. We all
23 suffer heartache. We don't sell drugs to get over our
24 heartache, especially where half of the heartache comes from
25 the abuse of drugs.

1 And this is isn't a young man. This is a man that has had
2 the opportunities. Sometimes I hear someone in Mr. Brewer's
3 position say: Just give me another chance. Well, Mr. Brewer
4 has had chance after chance after chance. That's what
5 probation really is. It's a chance. It's a withholding of a
6 sentence, putting someone under supervision, directing them to
7 get the services they need to live a good life. Usually it
8 involves drug treatment. It involves getting a job or getting
9 -- completing your education, doing those things that people
10 learn early in life and figure out even late in life are
11 necessary in order to have a full, flourishing human life. And
12 Mr. Brewer has frankly avoided those things.

13 The absence of any significant employment history shows
14 really an irresponsibility, especially for someone who's a
15 father of three children and has earned -- you know, garnered
16 these arrearages in child support. So I'm looking at very few
17 promising and -- I mean, a lot of aggravating factors and
18 frankly few, if any, mitigating factors.

19 One mitigating factor, and I'm not sure it's more the
20 absence of an aggravating factor is I didn't see firearms in
21 this case. I did not see Mr. Brewer in possession of a
22 firearm. That's a positive. I regard it as positive or at
23 least the absence of a negative that I think would warrant a
24 much higher sentence than I'm otherwise inclined to give.
25 Nevertheless, I'm looking at a person who's got the highest

1 criminal history category, has a continuation of criminal
2 conduct other than when he's in prison. Or -- and even under
3 supervision, he continues to commit crimes. So I'm satisfied
4 that this -- this offense is deserving of a significant
5 sentence because of the nature and circumstances of the
6 offense. The need for punishment is great here. The need to
7 deter this type of behavior, which is so dangerous to our
8 community, to the culture, to the larger nation is also
9 important, especially because of the deadly nature of this drug
10 and the kind of quantities we were looking at here.

11 I'm also satisfied that there's a need to protect the
12 public. The defendant continues to engage in this behavior
13 even after serving his first I think significant prison
14 sentence, four-year sentence. He was released early, but still
15 a significant sentence, and goes right back to the same
16 behavior even when he's on extended supervision. I think that
17 indicates a lack of concern about the law. And at some point
18 one simply has to admit that actions speak louder than words,
19 and actions here of Mr. Brewer show a total lack of concern for
20 the law and for his obligations to his fellow citizens, an
21 obligation to stop poisoning them, stop selling this stuff, and
22 get a job and act as a responsible adult. He's failed to do
23 that over the years, and it has frankly caught up with him.

24 So I'm satisfied that a sentence of a 144 months is
25 appropriate here. That's 12 years. I'm going to add ten years

1 of supervised release. That's a total of 22 years he'll be
2 under supervision, the first 12 of those in prison.

3 I recognize that's far less than the guideline range here,
4 far less than what the Government has asked for. I think it's
5 -- 12 years is certainly no slap on the wrist. It is a
6 substantial sentence for someone who's never had a sentence
7 greater than four years and didn't even serve that. At 34
8 years of age, he'll be in his 50s when he's -- completes that
9 sentence. And he'll be on supervision in his -- I mean, in his
10 40s when he completes that sentence and he'll be on supervision
11 for another -- another ten years after that. Supervision --
12 and I am confident, especially as it is now and I think with
13 technology even more in the future, supervision will provide
14 ways of monitoring him to make sure he does not return to this
15 behavior, to make sure that he does comply with the law and
16 that he engages or he starts using his abilities. And he has
17 abilities to hold a job, to be a functioning and contributing
18 member of society.

19 Nothing I see in the presentence suggests that Mr. Brewer
20 has not always had that ability to be a contributing member of
21 society, to be other than the kind of person that frankly harms
22 society by the conduct in which he's voluntarily chosen to
23 involve himself in. I don't -- I don't see any excuse or
24 mitigating factors here that would warrant a reduction from
25 that amount in looking at a sentence involving conduct this

1 serious and this damaging and dangerous to the community.

2 So I also think it provides protection of the public.
3 Supervision will accomplish that as well. And it is -- as I
4 said, it's certainly a -- I hope it sends that message. I
5 doubt many people would, despite the riches to be earned from
6 dealing fentanyl. I also agree with Mr. Hunt that Mr. Brewer's
7 involvement in this offense needs to be distinguished from Mr.
8 James, who was -- seems to have been the leader, the person who
9 was -- had the contact in Arizona and who was much more heavily
10 involved it seems, had other distributors besides Mr. Brewer.
11 And under these circumstances, it seems to me this is a
12 sentence that accomplishes those goals of imposing just
13 punishment, providing effective deterrence, protecting the
14 public, and providing Mr. Brewer with opportunities for
15 rehabilitation.

16 He's still going to be a relatively young man when he
17 completes his sentence. I'm hopeful that this will be the last
18 time he is sentenced to federal prison, but that's entirely up
19 to him, as it always has been. He has the keys to his future
20 in his own hands. I just hope he uses them better this time
21 than he has in the past. And this sentence, I think, will
22 ensure that he -- he's put in the direction and give a strong
23 incentive for doing so.

24 The -- I'm going to impose the same sentence on each count.
25 It will be concurrent -- each count will be concurrent with

1 each other. The sentence is run as of today. This is May
2 24th, 2023. It will run concurrent with his state -- his
3 current state sentence, so the federal sentence will be
4 somewhat less than the full 12 years, but he's certainly -- I'm
5 not going to reduce it further. I'm satisfied that the conduct
6 that -- or the revocation was due to this conduct, and so I can
7 consider it partially, but that was for a separate offense so
8 I'm not going to give him full credit by reducing the sentence
9 I've imposed even further. I've considered the total amount of
10 time he's in custody, and so that sentence will run, as I said,
11 as of today forthwith, as of May 24th, 2023. But it will be
12 concurrent with the sentence imposed in -- in 18 CF 643, Brown
13 County Case No. 18 CF 643.

14 In terms of the conditions of supervision, Mr. Hunt, you've
15 indicated in your presentence report I believe that you've gone
16 over these with your client. Are there any objections to those
17 conditions of supervision?

18 MR. HUNT: We have gone over those. There are no
19 objections, and we waive reading of those conditions --

20 THE COURT: All right.

21 MR. HUNT: -- your Honor.

22 THE COURT: Those are the conditions that I will
23 impose. I adopt those conditions and the rationale for those
24 conditions. I think they are the kind of conditions I would
25 impose in a case like this. I'm satisfied they are reasonable

1 conditions. They apply to the need for supervision and the
2 specific offense at issue.

3 I emphasize to Mr. Brewer that state supervision is
4 different than federal supervision. Federal supervision is by
5 probation and works for the Court, not that works for the
6 Department of Corrections. And so your -- any violation is
7 reported directly to the Court. And then I decide to bring you
8 back before the Court if you violate conditions of supervision.
9 Unlike the state probation officers, federal probation aren't
10 inundated. They have fewer clients, and so supervision ends up
11 being stricter. We'll know if you violate conditions. If you
12 go back to drug dealing, we will know quickly. You will be
13 back in this Court. And if I've been too lenient in the
14 sentence I've imposed, I'll have plenty of opportunity to
15 correct it. But that's not a message you want to send. So
16 that will be the decision of the Court as well.

17 Those conditions that are adopted with the rationale for
18 those conditions, and I accept the waiver of the pronouncement
19 of those and reading of those as part of pronouncement of
20 sentence. Those conditions are imposed.

21 Other than the appeal rights, have I omitted anything?

22 MR. HUNT: Your Honor, I would --

23 MR. FUNNELL: Special assessment, your Honor?

24 THE COURT: Pardon?

25 MR. FUNNELL: Special assessment.

1 THE COURT: Special assessment of \$100 on each count,
2 that is correct.

3 MR. HUNT: And, your Honor, I would ask for a
4 recommendation that Mr. Brewer be placed in the 500-hour --
5 500-hour RDAP drug treatment program.

6 THE COURT: I will recommend that -- include that
7 recommendation in the judgment of conviction.

8 MR. HUNT: And the last recommendation is that he be
9 placed in a prison at or near Wisconsin, a recommendation.

10 THE COURT: The judgment will also include a
11 recommendation for placement as close to his home as possible.

12 Anything else?

13 MR. HUNT: No, your Honor.

14 MR. FUNNELL: No, your Honor.

15 THE COURT: All right. Thank you, all, then. This
16 matter is concluded.

17 MR. HUNT: Your Honor, did you do appeal rights?

18 THE COURT: Oh, appeal rights, sure. Thank you.

19 Mr. Brewer, you have the right to appeal your conviction as
20 you know. But in any event, if you cannot afford costs of an
21 appeal, the clerk will assist you so you can file in forma
22 pauperis and you don't have to pay those costs. But if you
23 choose to appeal, you must file a notice of appeal within 14
24 days of the entry of the judgment. If you fail to file a
25 timely notice of appeal, you would lose that right.

1 Do you understand those things?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Anything else?

4 MR. HUNT: No.

5 MR. FUNNELL: No.

6 THE COURT: Thank you, both.

7 (At 2:42 p.m. the hearing ended.)

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