

CASE NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

ERIC ANTHONY GARNER
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

**On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the Fourth Circuit**

APPENDIX C

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

3
4 United States of America,

5 Plaintiff,

6 vs.

Criminal Action No. 3:24-cr-3-2

7 Eric Anthony Garner,

8 Defendant.

9
10 Proceedings had in the sentencing hearing in the
11 above-styled action on June 3, 2025, before the Honorable Gina
12 M. Groh, United States District Judge, at Martinsburg,
13 West Virginia.

14
15 APPEARANCES

16 On behalf of the United States of America:

17 Lara Omps-Botteicher
18 Assistant United States Attorney
19 United States Attorney's Office
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22 On behalf of the defendant:

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26 The defendant was present in person.

27 Proceedings reported by means of stenotype; transcript produced
28 by official court reporter.

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TESTIMONY OF CONOR O'SHEA

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P R O C E E D I N G S

(June 3, 2025, at 10:50 A.M.)

- - -

THE COURT: We will call our case.

THE CLERK: Certainly. This is the case of the United States of America versus Eric Anthony Garner, Criminal Number 3:24-cr-3, defendant 2.

The government is represented by counsel, Lara Omms-Botteicher. The defendant is present in person and by counsel, Derrick Lefler.

Are the parties ready to proceed?

MS. OMPS-BOTTEICHER: The United States is ready.

MR. LEFLER: The defendant is ready, Your Honor.

THE COURT: All right. Then, Mr. Garner, please stand and raise your right hand. We're going to get you under oath, sir.

(The defendant was sworn in.)

THE COURT: Please be seated.

Mr. Garner, I'll remind you now you're under oath, and if you make any untruthful statements or answers during today's proceeding, those untruthful statements or answers could form the basis for a separate action for perjury or false swearing. That having been said, feel free to ask questions. If you don't hear something, ask for it to be repeated. If you don't understand something, ask for an

1 explanation. And at all times, feel free to consult with your
2 attorney. Fair enough?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Have you, Mr. Lefler,
5 received the presentence investigation report and reviewed it
6 with your client?

7 MR. LEFLER: Yes, sir, Your Honor.

8 THE COURT: And have you, in fact, Mr. Garner,
9 received that report and reviewed it to your satisfaction with
10 your lawyer?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Has the government received and reviewed
13 it?

14 MS. OMPS-BOTTEICHER: Yes, Your Honor.

15 THE COURT: Okay. We've got I think over 20
16 objections to this PSR, so let's get to work.

17 Objection Number 1 objects to the portion of the
18 government's written statement. Is that just bringing it to
19 the Court's attention, Mr. Lefler? Because we can't change the
20 government's version.

21 MR. LEFLER: Yes. Yes, Your Honor. That was just
22 to -- we objected to the factual assertions there. And, Your
23 Honor, we do maintain the objections in one and two. I have
24 informed the United States that with reference to the
25 Objections 3 and 4, we are withdrawing those, and we had

1 previously, by supplemental sentencing memorandum, indicated we
2 were withdrawing several other objections as well.

3 At this point, Your Honor, I think the only objections
4 that we are maintaining are those to the relevant conduct in
5 terms of the drug weight as well as the finding -- the
6 objections related to finding Mr. Garner was a manager or
7 organizer or manager/leader.

8 THE COURT: Okay. So to make it clear for the
9 record, what numbers are still on the table? I'll let you say
10 it instead of going through my notes here on the --

11 MR. LEFLER: Yes, sir, Your Honor, if I may.

12 Your Honor, 12 and 16 are still on the table. Those are
13 the organizer/leader provisions. And 7, 9, and 17, which
14 relate to relevant conduct, are still maintained as well as 1
15 and 2. The others we have withdrawn.

16 THE COURT: Okay. So 12 and 16 as to
17 organizer/leader; 7, 9, and 17, which go to relevant conduct;
18 and 1 and 2, which I've already noted your position on that.
19 So we're really tabling 1 and 2 because it's just brought that
20 to the Court's attention; correct?

21 MR. LEFLER: Yes, ma'am.

22 THE COURT: Okay. All right. Let's go ahead and
23 hear organizer/leader or should we hear relevant conduct first?
24 I guess we should hear relevant conduct first.

25 Ms. Omps.

1 MS. OMPS-BOTTEICHER: Yes, Your Honor. I believe
2 since it's his objection -- and my thought was that we were
3 arguing the law and how it includes that he would be
4 responsible for Gary Brown's relevant conduct, which I could
5 address, but I don't know if he wants to argue first as to --

6 THE COURT: I may have put the cart before the
7 horse.

8 We'll turn back to you, Mr. Lefler. Let's hear your
9 argument on relevant conduct.

10 MR. LEFLER: Yes, Your Honor. And I don't think
11 there are any factual disputes. We have asserted a set of
12 facts that aren't undisputed, and the government has asserted
13 other facts we don't take exception to.

14 Basically, the argument here is, Your Honor, that
15 Mr. Garner's plea attributes a certain drug weight to him,
16 which would translate to a level 30 as opposed to the 34 that
17 probation recommends. And the difference there is basically
18 the difference between those substances that were related to
19 Mr. Garner's activities as part of the conspiracy he engaged in
20 with Mr. Powell and Mr. Rodriguez and not for all of the drugs
21 that Gary Brown had.

22 And that's -- it appears the focus is really on this
23 closet where Gary Brown maintained his drug supply. And the
24 difference between what is attributable to Mr. Garner as part
25 -- as his part of the conspiracy and what Mr. Brown had overall

1 because they're -- obviously, the Court is well aware this
2 is -- Mr. Brown's activities went far beyond what Mr. Garner
3 and Mr. Powell and Mr. Rodriguez were doing.

4 THE COURT: Well, here's the start of the problem
5 with the objection, Mr. Lefler. Your client pled to Count 1,
6 the conspiracy, so why doesn't everything that came out of
7 that -- why aren't all the substances that came out of that
8 conspiracy --

9 MR. LEFLER: Your Honor --

10 THE COURT: -- related back to your client?

11 MR. LEFLER: Well, recognize that in a conspiracy,
12 there is always the danger or the possibility the defendant
13 should be held -- would be held responsible for all drugs
14 involved in the entire conspiracy. The Count 1 conspiracy
15 is more limited than the Count 2 conspiracy and does primarily
16 focus on Mr. Garner, Rodriguez, and Mr. Powell. And the
17 Court can certainly attribute all of the weight that Mr. Brown
18 has.

19 We suggest that a more appropriate finding would be
20 limited to the spoke, if you will, that Mr. Garner represented
21 and not the entire wheel, if you will. And, Your Honor, that
22 still -- even at that, that attributes a significant drug
23 weight to Mr. Garner. Again, it's a level 30 versus 34, and
24 we just feel that it is appropriate to make that
25 differentiation.

1 One of the things that the probation report focuses on or
2 appears to assume is that Mr. Garner had full access to
3 Mr. Brown's drug supply and he did not. Mr. Garner did on
4 occasion conduct transactions for Gary Brown at Mr. Brown's
5 request when he was out of town, but on those occasions,
6 Mr. Garner was provided a prepackaged amount of drugs with
7 specific instructions as to where to deliver those. And he did
8 those -- and that was on occasion -- was certainly an exception
9 rather than the rule, but he did -- acknowledges that he did
10 that on a number of occasions without compensation but as a
11 favor to Mr. Brown. But he did not at any time have the
12 ability to access all of Mr. Brown's drug supply. On those
13 occasions, he was given a specific package with specific
14 instructions, and he was basically a delivery man.

15 Beyond that, the activity that he engaged in with
16 Mr. Powell and Mr. Rodriguez was the thrust of the conspiracy,
17 which he was involved in. Mr. Brown was obviously the ultimate
18 supplier in that conspiracy, but his activity was significantly
19 limited to those activities, and we'd simply suggest, while the
20 Court could find and attribute the entire Gary Brown drug
21 weight, that there is a basis for not doing so here and to
22 limiting this to that activity with which Mr. Garner was
23 directly related, which is still a significant drug weight and
24 merits an offense level of 30. And we would just ask the Court
25 to make that differentiation.

1 THE COURT: Thank you.

2 Ms. Omps.

3 MS. OMPS-BOTTEICHER: Thank you, Your Honor.

4 Under 1B1.3 of the guidelines, I do believe that it's
5 properly included to calculate Gary Brown's drug weight from
6 that closet on November 8, 2023, into Mr. Garner's relevant
7 conduct calculations.

8 You know, the seizure of the drugs from November 8, 2023,
9 is really just a snapshot on one day of what was in the supply
10 closet. And certainly there was never an issue with supplying
11 drugs during this conspiracy. And as undisputed on the line
12 reports and all of the intercepts, Mr. Garner and the
13 individuals who were the drug runners never ran out of being
14 able to really fulfill the drug orders. And, yeah, some days
15 they might not have enough coke and have to go get more, but,
16 you know, drugs were always available.

17 In the CCTV period, there was two different periods. And
18 from September 22, 2023, to October 12, 2023, when that
19 recording was being monitored, Mr. Garner went to Mr. Brown's
20 residence 16 different times during that period. So not only
21 is he a supplier to Mr. Garner, Mr. Garner goes over to
22 Mr. Brown's apartment on the CCTV footage. So he certainly
23 could go there and perhaps not enter the closet but pick up
24 drugs or drop off drug proceeds to Mr. Brown.

25 You know, in just looking at the conspiracy standards,

1 it's within the scope of the jointly undertaken criminal
2 activity. Is it in furtherance of that criminal activity? And
3 is it reasonably foreseeable in looking at this? And I think
4 in looking at those boxes under relevant conduct, it is.

5 With the amount of customers that they had and the fact
6 that Gary Brown is the drug supplier, they rarely have any
7 issues with supply. It's reasonably foreseeable that Mr. Brown
8 has stashed a large quantity of drugs.

9 Certainly drug dealing and possessing those drugs with
10 intent to distribute, mixing up these drugs, that's all in
11 furtherance of the criminal activity and within the scope of
12 that criminal activity. So it's not like a gun is found in
13 Mr. Brown's apartment and now we're trying to attribute it
14 to Mr. Garner. This is directly drugs that are being
15 attributed.

16 So I do think under the guidelines, by a preponderance of
17 the evidence, 1B1.3 applies here to attribute those drugs in
18 that stash area of the closet of the President Street apartment
19 to Mr. Garner.

20 THE COURT: Well, listening to the arguments of
21 counsel, reviewing these objections and responses, and
22 understanding the information reported to the Court in the
23 presentence investigation report, I do find by a preponderance
24 of the evidence that this drug weight was properly calculated
25 pursuant to Guideline 1B1.3(a)(1)(B).

1 This is a jointly undertaken criminal activity, and, as
2 such, the defendant is accountable for all the acts of others,
3 including Gary Brown, Jr., that were within the scope of the
4 jointly undertaken criminal activity, in furtherance of that
5 criminal activity, and reasonably foreseeable in connection
6 with the criminal activity.

7 This defendant before the Court was very busy in the
8 activities of that drug conspiracy. The actions of Mr. Brown
9 were understandably and reasonably foreseeable in connection
10 with the criminal activity, meaning reasonably foreseeable to
11 this defendant before the Court that Mr. Brown's actions were
12 in connection with the criminal activity -- all the actions
13 with regard to the drug movement, sale, and supply were in
14 furtherance of the criminal activity, and all the actions of
15 this defendant, along with Mr. Brown, were within the scope of
16 the criminal activity because they went hand in hand.

17 We've got this defendant before the Court making
18 deliveries for Gary Brown, Jr. when Gary Brown, Jr. is out of
19 town. Gary Brown, Jr. giving this defendant access to the drug
20 supply to fulfill the orders. Mr. Brown, during the phone
21 call -- intercepted phone call advising defendant to come to
22 his residence to obtain a drug supply, and defendant was
23 directed to obtain a drug supply the previous day as well.

24 It's clear from the government's version that this
25 defendant was aware of Mr. Brown's drug distribution activities

1 because of the communication he had back and forth with
2 Mr. Brown as intercepted during the course of the
3 investigation. Mr. Brown's drug distribution activities can't
4 really be separated completely from defendant's drug
5 distribution activities on Brown's behalf. They were during
6 the same course or conduct during the course of this
7 conspiracy, reasonably foreseeable to the defendant, and
8 occurring when defendant was a member of the conspiracy and
9 connected to the conspiracy.

10 So for all those reasons, defendant must be held
11 accountable for the drug weight attributable to Mr. Gary Brown,
12 Jr., and, as such, the Objections 12 and 16 are overruled. The
13 report will not be amended as to those objections. I'm
14 sorry -- it's not 12 and 16. It's 7, 9, and 17 are overruled,
15 and we won't amend the report.

16 Now, moving on to 12 and 16, and 12 and 16 go to
17 organizer/leader.

18 I'll hear from you now, Mr. Lefler.

19 MR. LEFLER: Your Honor, we have objected to the
20 designation that Mr. Garner is an organizer or leader of the
21 conspiracy.

22 The activity that we're really talking about here --
23 because I don't think there's any question that Gary Brown is
24 at the top of this, and everybody is, in some sense, working
25 for Gary Brown as the supplier of these substances.

1 THE COURT: I guess there's no -- there's no contest
2 that it involved -- the conspiracy or criminal activity
3 involved five or more participants either; correct? Your only
4 objection goes to the heart of whether he -- your client was an
5 organizer or leader?

6 MR. LEFLER: Your Honor, I would submit that the
7 activity that we're talking about here was, in this instance,
8 less than five in terms of people involved were Mr. Rodriguez,
9 Mr. Powell, Mr. Garner, and Gary Brown. The other individuals
10 that are listed in the indictment, Mr. Garner has explained and
11 we have submitted in the defendant's statement, had no business
12 involvement with Gary Brown III or Mr. Singletary. They were
13 individuals who were tied to Gary Brown, but he did not deal
14 with those individuals.

15 THE COURT: So who do you believe the individuals
16 involved with your client were?

17 MR. LEFLER: Mr. Powell --

18 THE COURT: Gary Brown, Jr.

19 MR. LEFLER: Mr. Powell, Gary Brown, Jr., and
20 Mr. Rodriguez -- Mr. T and Protégé.

21 THE COURT: Is --

22 MR. LEFLER: And --

23 THE COURT: Okay. Because those are the AKAs for --

24 MR. LEFLER: Yes.

25 THE COURT: -- Powell and Rodriguez. So Brown, Jr.,

1 Powell, Rodriguez -- what about Gary Brown III?

2 MR. LEFLER: He did not -- we didn't deal with him,
3 Your Honor. He was not connected to our activities.
4 Mr. Powell, Mr. Rodriguez, and Mr. Garner operated, we would
5 submit, as a collective team, and it was a collective effort
6 that each involved individual had their roles.

7 Mr. Garner typically took the telephone calls, and
8 certainly the wire intercepts indicate that he did frequently,
9 but there were other occasions where calls would be taken by
10 Mr. Powell or Mr. Rodriguez and those orders taken. Typically,
11 Mr. Powell and Mr. Rodriguez were doing the hand-to-hand
12 transactions on the street after being informed by Mr. Garner
13 as to what the individuals were coming for; but there were
14 occasions where Mr. Garner had to handle those transactions.
15 So while we have relatively defined roles, they weren't
16 exclusive. It was these three individuals doing what needed to
17 be done at a given time to affect the transactions.

18 THE COURT: Well, four according to your admissions;
19 right? Gary Brown, Jr., Powell, Rodriguez, and your client.

20 MR. LEFLER: Yes, ma'am. But Mr. Brown -- Mr. Brown
21 did not do anything except provide the supply.

22 THE COURT: Right.

23 MR. LEFLER: And there's certainly no question that
24 Mr. Garner was the contact point for Mr. Brown because he knew
25 Mr. Brown. Had a long-standing friendship with him,

1 relationship. Obvious to the Court that Mr. Garner has
2 struggled with addiction issues for many years. Mr. Brown had
3 previously supplied Mr. Garner drugs as a user, so he was
4 familiar with Mr. Brown, and he was -- that was the conduit to
5 bring the substances into this operation that he and Mr. Powell
6 and Mr. Rodriguez were conducting.

7 But in terms of Mr. Garner directing them or ordering
8 people what to do, or when to do it, or how to do it, that
9 wasn't the situation. They were not working for him. As
10 Mr. Garner has explained in his account, he would pay Mr. Brown
11 for the drugs. He would then pass those on to Powell and
12 Rodriguez, who paid him a certain amount, and then they sold
13 for the amount that was sold, and they kept the difference.

14 So it was not -- now, certainly, there were some
15 understood pricings of what people who came and ordered, if you
16 will, understood what they were going to be paying. So,
17 collectively, they had some understanding as to a price scale,
18 but Mr. Garner wasn't fronting drugs to Powell and Rodriguez
19 nor was Mr. Brown fronting drugs to Mr. Garner and -- so it was
20 an operation where everyone had a role. Those roles
21 interchanged when necessary.

22 And given that, Your Honor, we do not believe that
23 Mr. Garner is or should be categorized as a leader or organizer
24 of this. He and Mr. Powell and Mr. Rodriguez were friends.
25 They hung out together, they used drugs together, and they

1 collectively got into this arrangement together.

2 And we do not believe that those things that the
3 guideline points to, to differentiate leaders or organizers
4 from other participants, are applicable here. And we would ask
5 the Court to not find that Mr. Garner was a leader or
6 organizer.

7 And, Your Honor, I have -- I would like to submit just an
8 exhibit that is basically a set of -- a number of wire
9 intercepts or line sheets that were before the Court with
10 reference to Mr. Powell's sentencing. And those are offered,
11 Your Honor, only to show that Mr. Powell had communications in
12 this matter with people where -- we have one where he's taking
13 the order, a function that Mr. Garner would typically occupy.
14 He is referring to the team in another one of the messages.
15 And then in others, he is directly communicating with
16 Mr. Brown, himself.

17 So this is not a situation where all the information and
18 all the communication flowed through Mr. Garner but, again, I
19 think is consistent with the understanding that this was a
20 collective effort between these three gentlemen to distribute
21 these substances. And Mr. Garner fully recognizes his
22 responsibility and his culpability in this matter, and he's not
23 attempting to avoid that in any fashion. We simply would ask
24 the Court to recognize that he was just one of the several that
25 were engaged and was not the fellow at the top of the heap

1 here.

2 THE COURT: Why do you not include Delroy Singletary
3 as part of that collective effort as you described it?

4 We'll file this, Chad.

5 MR. LEFLER: Yes, if I could ask that be marked as
6 defendant's Exhibit 1.

7 Mr. Singletary was associated with Gary Brown. He was
8 around on occasions, but he was not, according to Mr. Garner,
9 part of what they were doing. He wasn't -- he just wasn't
10 involved in that group. That it was -- you know, it was the
11 three of them conducting that business.

12 THE COURT: All right. Thank you.

13 Ms. Omps.

14 MS. OMPS-BOTTEICHER: Thank you, Your Honor. So
15 what I'm hearing then is if he's on the same level as Protégé,
16 he got a three-level enhancement for being a manager or
17 supervisor but not an organizer or leader. So I don't know if
18 that's an agreement to that, but it seemed that if he's being
19 put in that same level of culpability, Protégé got the three
20 levels and Mr. Brown got the four levels. So we might just be
21 arguing over one additional level here. But I wanted to
22 highlight that for the Court.

23 I guess first, I'd just like to call the case agent and
24 put in a little bit of testimony and then I have exhibits as
25 well.

CONOR O'SHEA - DIRECT EXAMINATION

1 So I would call Corporal O'Shea.

2 (The witness was sworn in.)

3 THE CLERK: You may have a seat in the witness chair
4 and please watch your step.

5 DIRECT EXAMINATION

6 BY MS. OMPS-BOTTEICHER:

7 Q. Can you please state your name.

8 A. Corporal Conor O'Shea.

9 Q. And what's your occupation?

10 A. I'm a deputy with the Jefferson County Sheriff's
11 Department, currently assigned to the Eastern Panhandle Drug
12 and Violent Crimes Task Force.

13 Q. And were you one of the primary case agents on the
14 investigation into Gary Bernard Brown, Jr. and Eric Anthony
15 Garner?

16 A. Yes, ma'am.

17 Q. Okay. And through your work as the case agent, were you
18 involved in the wiretap portion of the investigation?

19 A. Yes, ma'am.

20 Q. And did that occur primarily in July of 2023 through
21 December 2023?

22 A. Yes, ma'am, it did.

23 Q. Okay. During your time as a case agent, did you monitor
24 many of the intercepted communications?

25 A. I did.

CONOR O'SHEA - DIRECT EXAMINATION

1 Q. If you were not the live monitor, would you review the
2 intercepted communications following -- when you would come in
3 for the next shift?

4 A. Yes, ma'am.

5 Q. Okay. The individual lines that were being intercepted
6 at the time of the investigation, was that Gary Brown, Jr.'s
7 cell phone as well as the Facebook account?

8 A. That's correct.

9 Q. Okay. And did Mr. Garner have several lines that he was
10 intercepted on?

11 A. Yes, ma'am.

12 Q. Was that Target Telephone 2, a number of 443-756-1877?

13 A. That's correct.

14 Q. As well as a Target Telephone 3, 443-788-6649?

15 A. Yes, ma'am.

16 Q. And did Mr. Brown primarily utilize Target Telephone 1,
17 which is 443-762-8773?

18 A. Yes, ma'am.

19 Q. And did Mr. Brown also have another cellular device known
20 and Target Telephone 4 and that number was 667-229-9449?

21 A. Yes, ma'am.

22 Q. Was Target Telephone 5 primarily used by Saul Powell,
23 also known as Protégé?

24 A. Yes, it was.

25 Q. And was that number 443-787-6730?

CONOR O'SHEA - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. And, finally, did Sherron Roberts and Gary Brown, Jr.
3 also use a phone known as Target Telephone 7?

4 A. They did.

5 Q. And was that number 443-651-7462?

6 A. Yes, ma'am.

7 Q. Okay. So initially during the interception period, did
8 the investigation start with monitoring the Facebook
9 communications to and from Gary Brown's account as well as Eric
10 Garner's Target Telephone 2?

11 A. That's correct.

12 Q. And, generally, what were the type of communications
13 occurring on Target Telephone 2?

14 A. Drug transactions. It was drug customers calling Target
15 Telephone 2, placing drug orders, and then those drug orders
16 being fulfilled.

17 Q. Now, during the monitoring period, would other
18 individuals utilize Target Telephone 2?

19 A. Yes, ma'am.

20 Q. Okay. So who are the individuals using that cellular
21 device?

22 A. We intercepted Mr. Powell as well. Mr. Rodriguez was
23 also intercepted on there occasionally and Mr. Garner.

24 Q. Okay. Was it a drug phone?

25 A. Yes, ma'am.

CONOR O'SHEA - DIRECT EXAMINATION

1 Q. All right. And what do we mean by the fact that it's a
2 drug phone?

3 A. It was purely used to conduct drug transactions.

4 Q. Okay. And then for Target Telephone 3, how would you
5 categorize that phone?

6 A. More of a personal cell phone.

7 Q. Would drug business also be conducted on it?

8 A. Yes, ma'am. There was still drug transactions conducted
9 on that.

10 Q. Okay. And how would you classify Protégé's use of Target
11 Telephone 5?

12 A. Along the same lines. Primarily used for drug
13 transactions as well. Also some personal calls.

14 MS. OMPS-BOTTEICHER: Your Honor, may I approach?

15 THE COURT: Yes.

16 MS. OMPS-BOTTEICHER: I have an extra copy for the
17 Court.

18 BY MS. OMPS-BOTTEICHER:

19 Q. Corporal O'Shea, I'm handing you what's been marked for
20 identification as Government's Exhibit 2.

21 Is this a selection of intercepted communications that
22 was used to obtain search warrants on several residences?

23 A. Yes, ma'am, it is.

24 Q. Okay. And through this selection of intercepted
25 communications, does it begin with a communication on July 30,

CONOR O'SHEA - DIRECT EXAMINATION

1 2023?

2 A. Yes. That's correct.

3 Q. Okay. And now these communications, since it's a
4 selection, there's several different devices that are combined
5 into this summary document?

6 A. Correct.

7 Q. Okay.

8 MS. OMPS-BOTTEICHER: Your Honor, I just move the
9 admission of Government Exhibit 2 for purposes of this
10 hearing.

11 THE COURT: Any objection?

12 MR. LEFLER: No objection.

13 THE COURT: Admitted.

14 (Government Exhibit No. 2 was admitted.)

15 BY MS. OMPS-BOTTEICHER:

16 Q. In regards to the very first communication on July 30,
17 2023, is that a communication between Mr. Brown using Target
18 Telephone 7 and Eric Garner using Target Telephone 2?

19 A. That's correct.

20 Q. Okay. And on this communication, is Mr. Garner stating,
21 "All is well under the bell"?

22 A. That is correct.

23 Q. All right. What does that mean?

24 A. We believe it to mean that everything was secure at the
25 Belvedere, which was one of the stash locations and

CONOR O'SHEA - DIRECT EXAMINATION

1 Mr. Garner's residence.

2 Q. Okay. In Mr. Brown's response, does he say "Instruct him
3 to put everything, you know, everything, you know -- do these
4 things over his protocols; and did you make the deposit?"

5 A. That is correct.

6 Q. Okay. And is the investigative beliefs following that as
7 to what you believe was occurring in this call?

8 A. Yes, ma'am, that's correct.

9 Q. Okay. And what did you believe was occurring in the
10 call?

11 A. Mr. Brown was instructing Mr. Garner to make sure that
12 the other drug runners, the other codefendants, were basically
13 following his rules for distributing drugs. And then he's
14 further asking if Mr. Garner made the cash deposit from the
15 drug -- or for the drug proceeds.

16 Q. Okay. And what did Mr. Garner respond to this
17 communication?

18 A. He stated, "I have not. I've been kinda running. Umm, I
19 have not, but I'm trying to get it done tonight. I'm kind of
20 running, trying to help them get the paperwork aspect of things
21 now."

22 Q. Okay. So in this communication, did investigators
23 believe that Mr. Garner was assisting others working for the
24 operation on how to do the paperwork?

25 A. Yes, ma'am.

CONOR O'SHEA - DIRECT EXAMINATION

1 Q. And what did the paperwork entail?

2 A. Essentially making sure that their account -- the drugs
3 distributed matched the proceeds made.

4 Q. Okay. And then turning to page 3 of the exhibit for this
5 selection of intercepted communications, there is a few
6 different messages on this numerical value that was sent. What
7 is that numerical value that investigators believe was being
8 relayed by Mr. Brown to Eric Garner?

9 A. A total currency amount --

10 Q. Okay.

11 A. -- from drug proceeds -- drug sale proceeds.

12 Q. Okay. And would this come at the close of business after
13 a set day of drug trafficking?

14 A. Yes, ma'am.

15 Q. Okay. And does this selection of intercepted
16 communications involve different messages over different dates
17 that's noted with investigator comments?

18 A. It does.

19 Q. Okay. Through your investigation were JP Morgan Chase
20 records obtained?

21 A. Yes, they were.

22 Q. And were different JP Morgan Chase accounts identified
23 that the organization was utilizing?

24 A. Yes.

25 Q. Was Mr. Garner seen on ATM footage depositing or

CONOR O'SHEA - DIRECT EXAMINATION

1 withdrawing cash from those JP Morgan Chase accounts?

2 A. Yes, ma'am.

3 Q. Now, as far as Protégé's role in the investigation, what
4 would you assess as his role?

5 A. Initially, we viewed Protégé as essentially working under
6 Mr. Garner. After we had attempted to serve some subpoenas at
7 the Belvedere, the drug trafficking organization was made aware
8 of law enforcement presence there. They had what they
9 classified as a Code Red. And at that time, Mr. Powell
10 essentially was promoted and given a separate residence and,
11 essentially, a sub-operation from Mr. Garner.

12 Q. And was that further learned through intercepted
13 communications with Kaitlyn Knight?

14 A. That's correct.

15 Q. Okay. Was it referred to as a Code Red scare?

16 A. Yes, ma'am.

17 Q. Is that reflected on Exhibit 2, pages 7, 8 and 9?

18 A. Yes, ma'am.

19 Q. Okay. Now, in looking at the selection of intercepted
20 calls as well, on page 2, does Protégé also communicate with
21 Brown indicating whether the drug business is occurring for the
22 day?

23 A. Yes, ma'am.

24 Q. Okay. And does Protégé also send communications at
25 different times, noting that all is well under the bell?

CONOR O'SHEA - DIRECT EXAMINATION

1 A. That's correct.

2 Q. Okay. I'm looking at page 4 of Exhibit 2.

3 Does Mr. Garner also communicate with Mr. Brown directly
4 saying all is well under the bell?

5 A. Yes, ma'am.

6 Q. All right. So would you believe that at some point,
7 Mr. Garner and Protégé were acting in tandem?

8 A. Yes, ma'am.

9 Q. Did they have a relationship together?

10 A. It is our understanding that there was some kind of -- at
11 least at one point -- romantic relationship between the two.

12 Q. Okay. And did they reside together for a period of time?

13 A. Yes, ma'am.

14 Q. And if you could turn to page 10 of Exhibit 2.

15 Is this an intercepted call that occurred on September
16 15, 2023, between Mr. T and Eric Garner?

17 A. It is.

18 Q. Okay. And this was over Target Telephone 3?

19 A. That's correct.

20 Q. And who is Mr. T?

21 A. Mr. T is Gary Rodriguez, who is also one of the drug
22 runners.

23 Q. All right. And during this communication, is Mr. T
24 believed to be the drug runner on the street who is
25 communicating with Eric Garner on what's needed to serve a drug

CONOR O'SHEA - DIRECT EXAMINATION

1 order?

2 A. Yes, ma'am.

3 THE COURT: What page are we on again?

4 MS. OMPS-BOTTEICHER: Page 10 of Exhibit 2.

5 THE COURT: Okay.

6 BY MS. OMPS-BOTTEICHER:

7 Q. Then turning to page 11. During the investigation on
8 October 5, 2023, was there a phone call between Sherron Roberts
9 and an unknown individual regarding rent payment?

10 A. Yes, ma'am.

11 Q. What was occurring in these set of calls on October 5,
12 2023?

13 A. I believe this is Ms. Roberts stating -- or talking to an
14 individual about getting money orders so that rent could be
15 paid --

16 Q. Okay.

17 A. -- for the Belvedere I believe.

18 Q. And on page 13 of the exhibit, after this call with
19 Ms. Roberts and the unknown individual regarding a money order
20 for rent payment, does Sherron Roberts have a call with Eric
21 Garner about the money order?

22 A. That is correct.

23 Q. And so would you identify Sherron Roberts as an
24 additional coconspirator involved in the organization with
25 Mr. Garner?

CONOR O'SHEA - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. And turning to page 14 of Exhibit 2, is there another
3 follow-up conversation between Mr. Garner and Ms. Roberts
4 regarding how Mr. Garner needs to pay for the rent payment in
5 the future?

6 A. That's correct.

7 Q. And does Ms. Roberts instruct Mr. Garner that it needs to
8 be paid through Zelle or the app?

9 A. That is correct.

10 Q. And then in the very -- in another call on October 27,
11 2023, is there another communication between Mr. Garner and
12 Ms. Roberts indicating that they were going to be meeting each
13 other?

14 A. Yes, there is.

15 Q. And what was Ms. Roberts' primary role in the
16 organization?

17 A. Primarily the money-laundering aspect. Saw her make
18 several large cash deposits for Mr. Brown.

19 Q. On page 16 of the selection of intercepted
20 communications, there's a communication between Eric Garner and
21 Mr. Brown on October 1, 2023.

22 Do you see where Mr. Garner is discussing that he was
23 trying to get the count for Mr. Brown?

24 A. Yes.

25 Q. Okay. And what does that mean?

CONOR O'SHEA - DIRECT EXAMINATION

1 A. The count meaning that he was trying to establish how
2 many drugs were needed or how much cash -- or I'm sorry -- drug
3 proceeds had been made.

4 Q. And was Mr. Brown questioning why Mr. Garner hadn't been
5 answering the phone?

6 A. Yes, that's correct.

7 Q. And did Mr. Garner reply, "It's kind of on fire. Trying
8 to get back here and organize the bag"?

9 A. Yes, ma'am.

10 Q. Based off of your investigation and monitoring the
11 intercepted communications, what did you believe that to mean?

12 A. That they were very busy with fulfilling drug orders.

13 Q. Okay. Now, certainly there's different communications
14 with Mr. Powell and Brown as well. And is there sometimes
15 communications where Mr. Garner and Mr. Powell are using the
16 same device and talking to Mr. Brown?

17 A. That's correct.

18 Q. Okay. And did that occur on October 13, 2023, at page
19 17?

20 A. Yes, ma'am.

21 Q. And in this intercepted communication, was Mr. Brown
22 questioning where individual drug customers were and how long
23 they were waiting?

24 A. Yes, ma'am.

25 Q. Okay. And did Protégé indicate that he was waiting to

CONOR O'SHEA - DIRECT EXAMINATION

1 get the caps, and he had to wait until he got back, indicating
2 he had to wait until Mr. Garner got back?

3 A. That's correct.

4 Q. Based on your investigation, did Protégé ever travel to
5 Mr. Brown's apartment and go up to his residence at President
6 Street?

7 A. We did not see Protégé there.

8 Q. He was never intercepted on the CCTV camera?

9 A. No, ma'am.

10 Q. Was Mr. Garner seen on a regular basis?

11 A. Yes, ma'am.

12 Q. And based on the investigation and the seizure of drugs
13 on November 8, 2023, was the bulk of the drugs stashed at
14 Mr. Brown's location?

15 A. Yes, it was.

16 Q. Okay.

17 MS. OMPS-BOTTEICHER: Your Honor, may I approach?

18 THE COURT: Yes.

19 MS. OMPS-BOTTEICHER: I have the line sheet for
20 Target Telephone 3, but I only intend to highlight certain
21 communications.

22 THE COURT: Okay.

23 BY MS. OMPS-BOTTEICHER:

24 Q. I'm handing you what's been marked for identification
25 purposes as Government Exhibit 1.

CONOR O'SHEA - DIRECT EXAMINATION

1 Is that the line sheet for Target Telephone 3?

2 A. Yes, ma'am.

3 Q. Okay.

4 THE COURT: What I'm holding in my hand, is this a
5 courtesy copy for the Court?

6 MS. OMPS-BOTTEICHER: Yes.

7 THE COURT: Okay.

8 BY MS. OMPS-BOTTEICHER:

9 Q. Now, Target Telephone 3, you identified as primarily used
10 by Mr. Garner?

11 A. That's correct.

12 Q. And when agents are reviewing these calls, do they try to
13 put at least a synopsis of what the call and communication was
14 about?

15 A. That's correct.

16 Q. So looking at page 5 of the communication 31. On this
17 one, did Mr. Garner, as a synopsis, states called a runner and
18 that the runner was out there trying to find a certain
19 customer?

20 A. That's correct.

21 Q. And then turning to page 29 on this line sheet,
22 communication number 145. Is this another instance of a drug
23 runner is out on the street and is calling Pops to figure out
24 where the customer is?

25 A. Yes, ma'am.

CONOR O'SHEA - DIRECT EXAMINATION

1 Q. And is that a similar transaction on page 45?

2 A. Yes, ma'am.

3 Q. Okay. And in this one, when the runner is calling, and
4 Eric Garner is telling them where she's located and that she's
5 here, does Mr. Garner make clear he's not working that day?

6 A. Yes, ma'am.

7 Q. Okay. On page 49 of the communications intercepted, was
8 Mr. Garner in a communication with Mr. Powell?

9 A. Yes, ma'am.

10 Q. And they're identified at the top in that gray box that
11 says the participants on the call?

12 A. That's correct.

13 Q. Okay. And during this communication, was Mr. Powell
14 obtaining the boxes of bags needed for Mr. Garner?

15 A. That's correct.

16 Q. And does Mr. Garner instruct him to bring the receipts
17 for the bags?

18 A. He does.

19 Q. Okay. On page 63, is this intercepted communication
20 between Mr. Garner and Mr. Powell?

21 A. Yes, ma'am.

22 Q. And does Mr. Garner call Protégé and Protégé reports that
23 they are doing inventory?

24 A. That's correct.

25 Q. And does Mr. Garner also state that he wasn't stopping

CONOR O'SHEA - DIRECT EXAMINATION

1 today?

2 A. That's correct.

3 Q. And did they have a discussion about an order for blue
4 jumbos?

5 A. Yes, ma'am.

6 Q. Okay. What was a jumbo?

7 A. A jumbo was a gel capsule that was filled with the
8 fentanyl mixture. It was larger than -- it was priced at \$10 a
9 piece, and it was larger than the \$6 fentanyl and \$4 fentanyl
10 capsules that the DTO also sold.

11 Q. Okay. And when you say the DTO sold, did Mr. Brown also
12 sell the \$4 clear fentanyl capsules and then the \$6 colored
13 fentanyl capsules?

14 A. Yes, ma'am.

15 Q. And both on Mr. Garner's customer side, as well as
16 Mr. Brown's side, was that a blue-tinted fentanyl?

17 A. Yes, ma'am.

18 Q. And as far as the November 8, 2023, seizure of those
19 drugs, did you all seize blue-tinted fentanyl?

20 A. We did.

21 Q. Okay. And in regards to the jumbo brand, did Mr. Brown
22 sell jumbo caps?

23 A. He did not.

24 Q. Was that unique to Mr. Garner's operation with his client
25 base?

CONOR O'SHEA - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. And just briefly, where did Mr. Brown meet with his drug
3 customers as opposed to where Mr. Garner met with his
4 customers?

5 A. Mr. Brown primarily met with his drug customers right on
6 West Mount Royal Avenue in Baltimore, and we saw Mr. Garner
7 primarily meeting his customers on East Chase Street or on
8 Saint Paul Street right around the corner.

9 Q. And how would you define Mr. Garner's customer base as
10 opposed to Mr. Brown's?

11 A. Mr. Brown had a minimum \$300 order limit that he would
12 not serve customers that were not spending at least \$300. So,
13 essentially, you would get more of your addicts or low-end
14 users that would go to Mr. Garner's side of the operation.

15 Q. Okay. Because he would meet with them even if they
16 didn't have a \$300 order?

17 A. Correct. You could purchase single fentanyl capsules
18 from him.

19 Q. Okay. If you could turn to page 86 of Government Exhibit
20 1.

21 Is this another example of Mr. Garner checking in with
22 Mr. Protégé regarding the amount of fentanyl caps he had?

23 A. That is correct.

24 Q. Okay. And are there similar calls throughout Target
25 Telephone 3?

CONOR O'SHEA - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. Okay. And is the communications that we highlighted a
3 pattern of the type of intercepted communications that were
4 being intercepted regarding Mr. Garner?

5 A. Yes, ma'am.

6 Q. Now, during the investigation, was there search warrants
7 executed on both Mr. Garner's residence and the residence at
8 the Belvedere?

9 A. That's correct.

10 MS. OMPS-BOTTEICHER: Your Honor, may I approach?

11 THE COURT: Yes.

12 MS. OMPS-BOTTEICHER: Here is the Court's courtesy
13 copy.

14 BY MS. OMPS-BOTTEICHER:

15 Q. Corporal O'Shea, I'm handing you what's been marked for
16 identification purposes as Government Exhibit 4.

17 Are those just several photographs from the execution of
18 a search warrant at the Belvedere location?

19 A. Yes, ma'am.

20 Q. And during the execution of the search warrants, was
21 there a large quantity of drugs or drug paraphernalia seized?

22 A. Yes, ma'am.

23 Q. Okay. And so what's in these trash bags that the Court
24 sees?

25 A. Inside the trash bags is a very large amount of empty,

CONOR O'SHEA - DIRECT EXAMINATION

1 unfilled gel capsules.

2 Q. And in the bottom right corner in this glass bookshelf,
3 is that the clear caps that would be used?

4 A. Yes, ma'am.

5 Q. And then above that in the trash bag that you can see
6 through, was those the colored fentanyl capsules?

7 A. Correct.

8 Q. Okay. So by the officers' estimation, there were
9 thousands of capsules located here?

10 A. I would say that's accurate.

11 Q. And on Bates page 4930 of Exhibit 4, is that just
12 another overview of the blenders up top as well as the caps
13 below?

14 A. Correct.

15 Q. And then on the second bookshelf that was beside it,
16 looking at 4925, does that have quinine?

17 A. It does.

18 Q. Okay. What is quinine used for?

19 A. Quinine is a common cutting or mixing agent that we see
20 utilized in fentanyl mixtures.

21 Q. And there's also packaging and baggies located?

22 A. That's correct.

23 Q. And then through -- where Mr. Garner was staying on
24 December 12, 2023, as well as where Mr. Powell was staying on
25 December 12, 2023, which is at the Belvedere -- or I

CONOR O'SHEA - DIRECT EXAMINATION

1 apologize -- at the other residence. Mr. Garner was located at
2 the Belvedere; correct?

3 A. That's correct.

4 Q. Okay. During the execution of those warrants, was
5 approximately a thousand dollars seized from each location?

6 A. That's correct.

7 Q. And then was a lesser sum of money seized from
8 Mr. Brown's residence?

9 A. That's correct.

10 MS. OMPS-BOTTEICHER: Your Honor, may I approach?

11 THE COURT: Yes, ma'am.

12 BY MS. OMPS-BOTTEICHER:

13 Q. Corporal O'Shea, I'm handing you what's been marked for
14 identification purposes as Government's Exhibit 3.

15 Are these photographs from Gary Brown's cellular device?

16 A. They are.

17 Q. And is this located at his residence at President
18 Street?

19 A. Yes, ma'am, it does appear to be.

20 Q. And these four cellular devices, or photos, they were
21 seized from his cell phone that was seized from that
22 residence?

23 A. That's correct.

24 Q. And what did these photographs depict?

25 A. They depict large sums of currency, including a money

CONOR O'SHEA - DIRECT EXAMINATION

1 counter.

2 Q. Okay. And, again, through your recollection of
3 monitoring the CCTV footage, Mr. Garner was seen going to
4 Mr. Brown's residence frequently during that time period?

5 A. Yes, ma'am.

6 Q. And as far as just who was involved in the conspiracy and
7 the number of participants, in your estimation, there was Gary
8 Brown, Jr., Eric Garner, Gary Rodriguez, Charles Singletary,
9 Sherron Roberts, and Gary Brown III?

10 A. That is correct.

11 Q. How was Gary Brown III involved with Mr. Garner?

12 A. On at least one occasion, we -- during conducting
13 physical surveillance in Baltimore, we did observe Mr. Garner
14 getting out of a white BMW that we knew to be operated by Gary
15 Brown III.

16 Q. And did Gary Brown III drive Mr. Brown on that occasion
17 -- or Mr. Garner on that occasion?

18 A. He did. And to clarify, that was -- he was getting out
19 of Mr. Brown III's vehicle to conduct a drug transaction.

20 Q. Okay. And that was also monitored through intercepted
21 communications?

22 A. Correct.

23 Q. Okay. Was this a time period when Mr. Brown was out of
24 town?

25 A. Yes, ma'am.

CONOR O'SHEA - DIRECT EXAMINATION

1 Q. Okay. And then there's been some discussion about
2 Delroy's relationship with the drug trafficking organization.
3 Based on your involvement, how would you define
4 Mr. Singletary's role and his relationship with Mr. Garner?

5 A. He was a drug runner similar to Mr. Rodriguez that was
6 within the DTO and distributing drugs in the same areas as
7 Mr. Garner.

8 Q. Now, to turn back to the line report, Government Exhibit
9 1, there was one additional communication I wanted to
10 highlight. If you can turn to page 151, all the way near the
11 back in that exhibit. And it would be communication number
12 876.

13 Is this a call between Eric Garner and Delroy Singletary?

14 A. It is.

15 Q. And during this call, was Mr. Singletary utilizing Target
16 Telephone 2?

17 A. He was.

18 Q. Okay. And so Mr. Garner was communicating on Target
19 Telephone 3?

20 A. That's correct.

21 Q. And based on the transcript for this communication, what
22 was occurring between Mr. Singletary and Mr. Garner?

23 A. They were discussing a drug order that needed to be
24 filled.

25 Q. Okay. And did Delroy, using TT2, state, "Sixty-seven for

CONOR O'SHEA - DIRECT EXAMINATION

1 the boy Daniel around that spot. He at 218 East. He needs
2 67"?

3 A. That's correct.

4 Q. Was that common language used to place a drug order with
5 the DTO?

6 A. Yes, ma'am.

7 Q. And then in addition to just participants, did
8 Mr. Garner's side of the drug trafficking organization have a
9 significant number of drug customers as well that would count
10 as participants?

11 A. Yes, ma'am.

12 Q. Does that include Shelby and Dusty Thompson?

13 A. It does.

14 Q. Does that include Ashley Story?

15 A. Correct.

16 Q. As well as C.J. Morgan?

17 A. Yes, ma'am.

18 Q. Okay.

19 MS. OMPS-BOTTEICHER: Thank you, Your Honor. No
20 further questions.

21 THE COURT: Cross.

22 Ms. Omps, do you want to take those exhibits that you
23 want --

24 MS. OMPS-BOTTEICHER: Oh, yes, Your Honor.

25 And may I move, for the record, exhibits -- I think we

CONOR O'SHEA - CROSS-EXAMINATION

1 already moved 2, but Exhibits 1, 3, and 4?

2 THE COURT: Any objection?

3 MR. LEFLER: No, ma'am.

4 THE COURT: They're admitted.

5 MS. OMPS-BOTTEICHER: Thank you, Your Honor.

6 (Government Exhibit Nos. 1, 3, and 4 were admitted.)

7 CROSS-EXAMINATION

8 BY MR. LEFLER:

9 Q. Deputy O'Shea, just looking at the line sheet you were
10 just looking at, page 151 -- do you still have that in front of
11 you?

12 A. No, sir, I don't.

13 THE CLERK: Which exhibit?

14 MR. LEFLER: Exhibit 1.

15 BY MR. LEFLER:

16 Q. Deputy, the -- were you aware or do you have any
17 knowledge of Mr. Garner's relationship with Mr. Brown outside
18 of this conspiracy?

19 A. I believe that Mr. Brown had stated to us after his
20 arrest that he, I think, essentially met Mr. Garner on the
21 street, if I remember correctly.

22 Q. They've known each other for some time?

23 A. Yes, sir.

24 Q. And when we look at these selected intercepts, such as
25 Exhibit 2, the italicized or the parenthetical commentary,

CONOR O'SHEA - CROSS-EXAMINATION

1 those are opinions provided by law enforcement; correct?

2 A. I would say educated opinions.

3 Q. But they're opinions?

4 A. Yes, sir.

5 Q. Do you have Exhibit 2?

6 A. No, sir, I don't.

7 Q. You and Ms. Omps-Botteicher were looking at this and the
8 discussion between Mr. Garner and Mr. Brown. And Brown says,
9 "Instruct him to put everything, you know, over -- do these
10 things over his protocols." Who is "him"?

11 A. I believe, without having the full conversation right in
12 front of me, I can't say 100 hundred percent --

13 Q. Okay.

14 A. -- who, but one of the drug runners.

15 Q. And there was some reference to paperwork that these drug
16 runners were supposed to be preparing?

17 A. Yes, sir.

18 Q. Did you discover any paperwork or reports that were
19 prepared by any of these individuals?

20 A. I don't believe that we have, like, reports necessarily,
21 but there were -- like I said, they were instructed to
22 essentially do countdowns at the end of their shifts, similar
23 to cashing out a cash register, to make sure that their funds
24 matched what they sold.

25 Q. Well, now, these countdowns, were they relating to money

CONOR O'SHEA - CROSS-EXAMINATION

1 or were they relating to the amount of drugs?

2 A. Primarily money but obviously also, you know, if there's
3 any drugs left over from the day -- because they would be given
4 their amount of drugs to fulfill the orders needed -- and so
5 it's essentially a count on inventory and money earned.

6 Q. And you all back in -- looking at Exhibit 1, there was
7 some examination of a conversation that occurred on page 45?

8 A. Yes, sir.

9 Q. And this is a conversation between Mr. Powell and
10 Mr. Garner?

11 A. Yes, sir.

12 Q. And you had indicated that Mr. Garner says he's not
13 working today?

14 A. Correct.

15 Q. But the line above that -- and I don't -- it says,
16 "There's just different shit about D and P." "P" could be
17 Powell or Protégé or Pops?

18 A. Yes, sir.

19 Q. Okay. But the line above that said, "Are you or Pops
20 going to service her?" And so the -- whoever is doing this
21 communication would appear to be neither Mr. Powell or
22 Mr. Garner; correct?

23 A. That is possible.

24 Q. Okay. And then the response was, "I'm not doing
25 anything. I'm not working today."

CONOR O'SHEA - CROSS-EXAMINATION

1 So whoever the individual was communicating to was the
2 one that was not working today; correct?

3 A. It does appear that way, yes, sir.

4 Q. Okay. So it would appear that it was Mr. Powell who said
5 "I'm not working today"?

6 A. It is possible.

7 Q. Okay. And to that point, there's no indication that
8 Mr. Garner told people when they were going to work, is
9 there?

10 A. I wouldn't say that's necessarily true. I mean, based
11 off of this one intercept, I mean, you obviously infer that;
12 but there are other intercepts that we didn't discuss today.

13 Q. And with reference to the photographs that we have in
14 Exhibit 4 -- and those were the ones from one of the
15 locations. I don't recall whether it was the Belvedere or
16 Chase Street.

17 You don't know when those items came to be at that
18 location, do you?

19 A. Through our investigation, through intercepts, and
20 actions that we took, we believe that the bulk of the drug
21 supply and the drug operation was transferred over to the
22 Belvedere after November 8th when we had our surreptitious
23 search at The Avalon closet and seized a large amount of the
24 drug supply, which kind of then led them to believe that there
25 was now a law enforcement investigation.

CONOR O'SHEA - CROSS-EXAMINATION

1 Q. And that was Mr. Brown's location?

2 A. That is correct.

3 Q. And Mr. Brown moved that out of there?

4 A. That is -- that is what we determined off of intercepts,
5 GPS movement on vehicle trackers, and -- yeah.

6 Q. Okay. And when was that search executed?

7 A. November 8, 2023.

8 Q. When were these photos taken?

9 A. That was in December of --

10 Q. Okay.

11 A. December 12th, I believe, 2023.

12 Q. Okay. And when you searched Mr. Brown's home or
13 apartment, he did not have any of that equipment there;
14 correct?

15 A. There was -- I don't believe he had anything in the
16 apartment. There were still items left in the closet that were
17 seized on that day.

18 Q. Production items?

19 A. There were some -- at least appeared to be mixing agents
20 that were left from the search.

21 Q. Okay. Cut --

22 A. Yes.

23 Q. -- basically?

24 A. Yes, sir.

25 Q. Okay.

CONOR O'SHEA - REDIRECT EXAMINATION

1 MR. LEFLER: I don't think I have anything
2 additional.

3 THE COURT: Ms. Omps.

4 MS. OMPS-BOTTEICHER: Just two quick follow-up
5 questions, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. OMPS-BOTTEICHER:

8 Q. Corporal O'Shea, during your investigation, did you
9 look up the rent for the average low-end apartment at the
10 Belvedere?

11 A. I did.

12 Q. And was that approximately \$1,200 a month?

13 A. Yes, ma'am.

14 Q. Okay. And that's for a studio apartment?

15 A. That's what it appeared, yes.

16 Q. Okay. And what type of apartment was rented? Did they
17 have -- was it a studio that Mr. Garner had?

18 A. No. It was a one bedroom.

19 Q. Okay.

20 MS. OMPS-BOTTEICHER: And, Your Honor, one more --
21 one final question.

22 BY MS. OMPS-BOTTEICHER:

23 Q. After the drugs were seized on November 8, 2023, did
24 Mr. Brown immediately travel to Mr. Garner's residence?

25 A. He did.

CONOR O'SHEA - REDIRECT EXAMINATION

1 Q. And that was according to his vehicle tracker?

2 A. Yes, ma'am.

3 MS. OMPS-BOTTEICHER: Thank you, Your Honor. No
4 further questions.

5 THE COURT: Anything further, Mr. Lefler?

6 MR. LEFLER: No, ma'am.

7 THE COURT: You may return to your seat. Thank you.

8 (Witness excused.)

9 THE COURT: Ms. Omps.

10 MS. OMPS-BOTTEICHER: Thank you, Your Honor.

11 In looking at the factors, I think the testimony bears
12 out that there was at least five or more participants involved
13 or it was otherwise extensive. However the Court wants to view
14 that.

15 A participant is just someone who is criminally
16 responsible. It does count Mr. Garner. So based on the
17 testimony, we have Mr. Garner's involvement, Mr. Brown, Gary
18 Brown III -- he drove Mr. Garner to one of the transactions
19 that he handled on Mr. Brown's behalf. We then had Mr. T,
20 which is Gary Rodriguez, as a drug runner, and Mr. Powell,
21 Protégé, who was also working with Mr. Garner and a drug
22 runner. Additionally, we have the testimony regarding Sherron
23 Roberts and her work as far as getting a money order to pay for
24 one of Mr. Garner's apartments. And then we have all the drug
25 customers as well that was involved.

1 So even if we take issue and take Delroy Singletary out
2 of it, which I think he's still in based on the intercepted
3 communications and the officer's testimony, we then have all
4 the drug customers. And there were numerous ones named by the
5 case agent, including Shelby and Dusty Thompson. We have
6 Ashley Story, C.J. Morgan, and there were countless others
7 charged in the indictment, but that certainly gets us to the
8 five or more participants part of the analysis.

9 In looking at the factors under whether he's a leader or
10 organizer in this case, although Mr. Brown clearly is at the
11 top and is a leader/organizer and received the four levels, it
12 doesn't make it that Mr. Garner is also not a leader/organizer.
13 There can be multiple leader/organizers in an investigation.
14 And here I think what's important is the fact that there's
15 Mr. Brown and his drug customers, who are \$300 or more, and
16 that's all who he's going to deal with, and then you have
17 Mr. Garner's side, who meets at a different location in
18 Baltimore. He is, for the bulk of the intercepted
19 communications, directing the runners on how much the order is,
20 where to go. Mr. T is out on the street running and meeting
21 with customers. Protégé is commonly running and meeting with
22 customers. During the intercepted communications, Protégé even
23 buys the bags and is directed by Mr. Garner to bring the
24 receipt for the six boxes of bags that they need.

25 We had Mr. Garner, who is different from Protégé in the

1 fact that he's going to Mr. Brown's residence, and he's caught
2 on CCTV footage. Protégé is never caught on the CCTV footage
3 going to Mr. Brown's residence where agents believe Mr. Garner
4 was either dropping off drug proceeds or picking up drugs. And
5 the intercepted communications regarding the totals for the
6 organization are only shared with Mr. Garner. Those are those
7 Facebook messages that Mr. Brown is sending to Mr. Garner,
8 updating him on the total for the drug operation. Those don't
9 go to Protégé. They don't go to Mr. T or Delroy Singletary.
10 They're going to Mr. Garner because he's a partner with
11 Mr. Brown. You only share that type of high-level information
12 with a partner. And since Mr. Brown is a leader/organizer and
13 his partner is Mr. Garner, he's also the leader/organizer of
14 his own operation.

15 Certainly, he's ultimately supplied drugs by Mr. Brown,
16 but at the end of the day, he's also the one deciding that
17 they're going to sell the jumbos. That's not something sold by
18 Mr. Brown's DTO. That's unique to Mr. Garner's side of the DTO
19 that they're going to sell jumbo fentanyl caps.

20 And Mr. Garner also has some discretion as far as where
21 to meet customers, what customers they're going to deal with.
22 Mr. Brown doesn't deal with any of that. So there's a level of
23 discretion for that side of the DTO that the other drug runners
24 don't have and that Mr. Brown really isn't a part of because
25 that's Mr. Garner's side. At the end of the day, Mr. Garner

1 just wants to make sure he's getting his money paid for the
2 drugs that he's supplying to Mr. Garner.

3 Additionally, I think what also shows the partner
4 relationship is that as soon as the drugs are seized on
5 November 8, 2023, the first place Mr. Brown is going is to
6 Mr. Garner's residence because the drug stash has been taken.

7 We also have in the government's version, I think, a
8 really good call that's not objected to where it's a call
9 between Mr. Brown and Mr. Garner about Mr. Garner coming over
10 and getting the drug stash. Those calls aren't being had with
11 any other drug runner or DTO member. And I think that's what
12 sets it apart for the leader/organizer activity here.

13 Certainly, if the Court doesn't agree, we would argue
14 that at a minimum, he's as culpable as Protégé at the three
15 levels. But because of the decision-making authority, the
16 nature of his participation with Mr. Brown, that close
17 relationship that Mr. Brown doesn't have with any other person
18 regarding access to the drugs, the money, the fact that
19 Mr. Garner was making deposits as well and was in that upper
20 echelon of drug members in the conspiracy, we believe that
21 Mr. Garner qualifies for the leader/organizer four-level
22 enhancement.

23 THE COURT: Thank you.

24 Anything further, Mr. Lefler?

25 MR. LEFLER: Your Honor, just very briefly. I don't

1 think you can include customers within a purported conspiracy
2 otherwise --

3 THE COURT: Are you sure about that?

4 MR. LEFLER: Well, I mean, every -- I don't believe
5 you -- I don't believe it's appropriate. I certainly -- I
6 haven't looked closely at that issue. It was just raised but
7 certainly every --

8 (Simultaneous speech.)

9 THE COURT: (Indiscernible) been a case of the
10 application notes.

11 Ms. Omps.

12 MS. OMPS-BOTTEICHER: Well, in the application notes
13 under "Otherwise Extensive," it says, "All persons involved
14 during the course of the entire offense are to be considered."
15 And then under "participants," it says that you can't qualify
16 people who are not criminally responsible for the commission of
17 the offense, but certainly a participant is a person who is
18 criminally responsible for the commission of the offense but
19 needs not have been convicted.

20 THE COURT: All right. So setting that aside,
21 Mr. Lefler.

22 MR. LEFLER: In setting that aside, Your Honor, I --
23 Mr. Garner is not a partner. He was the -- certainly the
24 contact point with Mr. Brown as having had the previous
25 relationship. He was the individual who acquired the drugs

1 used in the operation with Mr. Powell and Mr. Rodriguez, but
2 that was part of his role. And, again, each individual had
3 their role, but he wasn't directing people when they were going
4 to work or what they were going to do. He took orders and
5 conveyed those orders so that they could be delivered by the
6 people who were serving that function. But, again, all these
7 individuals at some point in time served all functions.

8 Again, it's just -- we think that this is the operation
9 that was -- Mr. Brown is clearly at the top. And there are,
10 within the exhibits submitted by the government, communications
11 where Mr. Brown is directing Mr. Garner and speaking with him
12 rather harshly about what he needs to do and not do and
13 conveying that to his compatriots.

14 So we would just ask the Court to not find that
15 Mr. Garner is an organizer or leader based on those points.

16 THE COURT: All right. I find that the government
17 has proven by a preponderance of the evidence, both through the
18 government's version as contained in the PSR and the testimony
19 in particular of the witness, who testified on behalf of the
20 government here today, as I find that his testimony was
21 competent and credible, that this defendant was an organizer or
22 leader of the criminal activity involved in this case and that
23 it involved five or more participants and was otherwise
24 extensive.

25 He wasn't the organizer or leader. He was one of the

1 organizers and leaders because that's how this organization was
2 put together according to the testimony and the government's
3 version in this case. And we don't even have to dwell on, in
4 the Court's ruling here, whether the operation was otherwise
5 extensive because it's clear there were five or more
6 participants.

7 The defendant, through counsel's own admission in arguing
8 the objection here today, has admitted that the participants
9 included Gary Brown, Jr., Powell, Rodriguez, and, of course,
10 the defendant, himself. That's four by the defendant's own
11 admission, but there were others as heard through the testimony
12 here today.

13 There was Ms. Roberts. The discussion about paying the
14 rent and that she had the particular discussion on that Target
15 Phone 2 with this defendant after she had the discussion with
16 Brown about the rent. Discussing with the defendant about
17 waiting on someone to pick up a money order for the rent
18 payment. And that was a direct discussion that Roberts had
19 with Garner.

20 We also know that Gary Brown III, despite defendant's
21 argument to the contrary, was also one of the participants
22 because he, in fact, drove the defendant to a drug transaction
23 and that drug transaction was observed by the authorities who
24 were monitoring the transactions and the wires as part of the
25 investigation in this case. There was also Singletary, who was

1 a drug runner similar to Rodriguez, a drug runner for the
2 defendant, Mr. Garner. And we heard testimony about multiple
3 drug customers who can be included as participants and
4 additional drug runners.

5 We also know through the government's version and
6 testimony here today that not only did we have five or more
7 participants in this conspiracy, as proven by the government,
8 but also that this defendant, Mr. Garner, oversaw the
9 individuals, the individuals further at the top like
10 Mr. Powell, but also those drug runners who he directed to meet
11 customers on his behalf.

12 This defendant provided -- was provided the money count
13 by Protégé, Mr. Powell. This defendant collected receipts.
14 This defendant would report back to Brown about all being well
15 at the stash house. And this defendant also was the one who
16 was seen on a regular basis going to Brown, the number one
17 defendant's apartment, where the drugs were stashed and getting
18 that supply. He, according to the testimony of the officer
19 testifying here today, was seen doing that. The officer
20 further testified that he never saw Powell doing it or that no
21 one saw Powell doing that as part of the transactions and foot
22 traffic to Brown's apartment that were monitored.

23 Based on that alone -- and there's plenty more in this
24 case -- but that is enough to satisfy the requirements of the
25 four-level enhancement under Guideline 3B1.1(b); and,

1 therefore, I am overruling the defendant's Objections 12 and 16
2 as it relates to 12 because this defendant, I find, was one of
3 the organizers and leaders of this criminal activity involved
4 in this case and that that criminal activity involved five or
5 more participants.

6 That leaves no further objections to address here today;
7 correct, Counsel?

8 MR. LEFLER: That's correct, Your Honor.

9 THE COURT: All right. Then the presentence report
10 will not be amended. It will be filed under seal in this case.
11 I direct the clerk to do that.

12 And now I will note, the procedural history of this case,
13 in part, involved on January 21, 2025, this defendant appearing
14 in the United States Magistrate Court for the Northern District
15 of West Virginia sitting in Martinsburg. And at that time, the
16 defendant tendered a plea of guilty without a written plea
17 agreement to Count 1 of the indictment charging conspiracy to
18 possess with intent to distribute and to distribute 400 grams
19 or more of a fentanyl mixture. After consideration, the Court
20 accepted defendant's plea of guilty to the crime charged in
21 Count 1 and deferred acceptance of -- I'm sorry -- deferred
22 adjudging the defendant guilty and acceptance of his plea of
23 guilty.

24 Subsequent to that, a presentence investigation report
25 was ordered. Having now received and reviewed that report and

1 ruled upon any factual and legal issues raised thereby, I find
2 the charge to which Mr. Garner pled adequately reflects the
3 seriousness of the offense behavior.

4 So at this time, Mr. Garner, I accept your plea of
5 guilty, and you stand convicted of the offense to which you
6 pled guilty under your -- before the magistrate earlier in this
7 case.

8 I'll announce my tentative findings as to the applicable
9 guidelines.

10 We start with a base offense level of 34, pursuant to
11 Guideline 2D1.1(c)(3). The base offense level is 34 because
12 defendant's total drug-relevant conduct is at least 10,000
13 kilograms but less than 30,000 kilograms of converted drug
14 weight.

15 Then, two levels are added pursuant to Guideline
16 2D1.1(b)(12) because defendant maintained a premises for the
17 purpose of manufacturing or distributing controlled substances.
18 And in this case, it was the distribution.

19 Pursuant to Guideline 2D1.1(b)(16)(E), two levels are
20 added because defendant committed the offense as part of a
21 pattern of criminal conduct engaged in as a livelihood.

22 Then, as discussed at length here today in the objection
23 phase of this proceeding, pursuant to Guideline 3B1.1(a), four
24 levels are added because defendant was one of the organizers or
25 leaders of this criminal activity that involved five or more

1 participants. That brings us to an adjusted offense level of
2 42.

3 Following that, pursuant to Guideline 3E1.1(a), there's a
4 two-level reduction for acceptance of responsibility; and
5 pursuant to Guideline 3E1.1(b), there will be an additional
6 one-level reduction if there's a motion by the government.

7 MS. OMPS-BOTTEICHER: So moved, Your Honor.

8 THE COURT: Granted. That brings us to a total
9 offense level 39.

10 Defendant has a criminal history category of two based
11 upon three points. With a total offense level of 39 and a
12 criminal history category of 2, the guidelines recommend
13 imprisonment in the range of 292 to 365 months; supervised
14 release, 5 years; a fine in the range of 50,000 to
15 \$10,000,000.

16 There's a special assessment fee in the amount of \$100
17 owed on that one felony count of conviction. The cost of
18 imprisonment is \$4,309 per month. The cost of community
19 confinement is \$3,453 per month. And the cost of supervision
20 is \$395 per month.

21 Are there any legal objections to the tentative guideline
22 findings, Counsel?

23 MS. OMPS-BOTTEICHER: No, Your Honor.

24 MR. LEFLER: Your Honor, I just would note the
25 objections we had previously made and the exception of the

1 Court's ruling.

2 In addition, Your Honor, just to clarify, we had objected
3 to the criminal livelihood enhancement, but that was derivative
4 of the Court's finding with reference to a leader or organizer,
5 so recognize with the Court's ruling that that is appropriately
6 applied.

7 THE COURT: Agreed. We'll note your exceptions to
8 the Court's rulings here today.

9 I did receive and review the defendant's sentencing
10 memorandum, his supplemental sentencing memorandum, his motion
11 for variant sentence, sentence below the guidelines, and also
12 the government's response in opposition to the motion for
13 variant sentence.

14 I'll hear from you now, Mr. Lefler.

15 MR. LEFLER: Yes, ma'am, Your Honor.

16 We would ask the Court to consider a variant sentence for
17 Mr. Garner. Clearly, a sentence at the guideline level -- any
18 sentence at the guideline level is tantamount to a death
19 sentence, a life sentence for Mr. Garner, and will most
20 assuredly promise that he would die in prison, and would submit
21 that a life sentence in this matter is greater than necessary
22 to achieve the sentencing goals.

23 Mr. Garner faces a ten-year mandatory minimum sentence.
24 He will be a senior citizen at the end of that sentence even if
25 it were the mandatory minimum sentence. Recognizing that the

1 Court has previously sentenced Mr. Powell, I think, to a
2 15-year sentence, we certainly would have no anticipation that
3 the Court would sentence Mr. Garner less than that or below
4 that, given the Court's findings, but would request that the
5 Court grant a sentence consistent with the variance request and
6 lower the offense level by five levels to sentence him
7 consistent with the guidelines at that point.

8 Your Honor, it's clear that Mr. Garner's offense conduct
9 here is driven by his long-standing addiction. It's been a
10 struggle for most of his adult life. I think that the
11 presentence report sets out a couple of factors that perhaps
12 underlie that. His loss of his mother, with whom he had an
13 extraordinarily close relationship at an early age, some
14 additional loss of close family members -- I believe a sister
15 along the way with whom, again, he had an extraordinarily close
16 relationship. He suffered an injury as a young adult, which
17 provided him significant debilitation that, I think,
18 contributed as well.

19 Any sentence the Court is going to impose in this case,
20 Your Honor, is going to be significant. I would submit that
21 given Mr. Garner's age, when he comes out of any sentence, if
22 the Court would see fit to permit him the opportunity to ever
23 be released, he will be of a significantly advanced age, and
24 the prospect for any continued criminality would be, I think,
25 extraordinarily low at that point.

1 He has had an opportunity in the last year plus, I think,
2 to consider the choices he's made and the course that he has
3 conducted over the last number of years, and those, again,
4 driven by, I think, his substance abuse issues. Needless to
5 say, I'm convinced that in my conversations with him, if he
6 could go back and do those things over, he would do
7 differently.

8 We had requested a five-level variance to bring the
9 sentencing range down to 168 to 210 months. We would ask the
10 Court to consider a sentence at the low end of that range.

11 Mr. Garner will have an opportunity while incarcerated to
12 address the issues -- substance abuse issues. As we've noted,
13 he also has some significant physical issues that need to be
14 addressed as well.

15 But a sentence of that length, Your Honor, again, is very
16 significant, and it would serve to provide significant
17 punishment to Mr. Garner. Again, when he would be released, he
18 would be an elderly gentleman at that point. He's 58 years old
19 now, so a sentence of 15 years or 16 years is going to put him
20 well into his 70s before he will be released. It will
21 certainly serve as a deterrent for the effect -- to the extent
22 that that effect is desirable because it is an extraordinarily
23 significant sentence, and it will certainly, again, keep him
24 from society, if you will, until a time that his likelihood of
25 reoffending is extraordinarily low.

1 He has expressed his desire to me at this point, if he
2 were able to see the light of day again, to go home and sit on
3 the porch with his brother. That's his ultimate goal, Your
4 Honor. And we'd ask the Court to consider allowing him that
5 opportunity, provided he survives the sentence the Court would
6 impose.

7 We do talk about the need to avoid disparity in
8 sentencing. And while we might typically think of that in
9 terms of just sheer numbers, sheer length of sentence, I think
10 in a case like this, you also have to look at Mr. Garner's age
11 and the fact that Gary Brown, who was clearly the fellow at the
12 top of all of this, is significantly younger than Mr. Garner.
13 He has received a lengthy sentence, but when he completes that
14 sentence, he will not be a young man, but he will certainly not
15 be the age that Mr. Garner would be with a similar sentence.
16 It would not be -- it's not a life sentence for Gary Brown, Jr.
17 A sentence along those lines is, almost without question, a
18 life sentence for Eric Garner. And that is a disparity that I
19 think the Court has to take into account or should take into
20 account in considering these things.

21 At this point, Your Honor, Mr. Garner simply asks for a
22 small measure of mercy from the Court. He has a criminal
23 history that is not impressive. It is a series of, as I
24 recall, one-point convictions. Given his history with
25 substance abuse, that's exceptional. And it certainly, I

1 think, is an indication that he -- again, that, in combination
2 with his age, he's not -- he will not present a danger to
3 society when he is released as a senior citizen, if you will.

4 We also have noted treatment needs. Obviously, substance
5 abuse or mental health treatment. We would ask the Court to
6 make those recommendations. And Mr. Garner, from a physical
7 standpoint, has a very significant problem -- a knee problem --
8 that he was scheduled to have addressed surgically not too long
9 after -- that schedule was not too long after the date of his
10 arrest. So since that time, he has been making do and
11 receiving the treatments he's received at the regional jail,
12 which has been perhaps adequate but certainly not the treatment
13 that he needs, and we would ask the Court in its sentencing to
14 make recommendations that he be promptly evaluated and receive
15 the treatment he needs with reference to his knee because I
16 think any additional delays presents the very real concern that
17 it would cause further damage.

18 Again, Your Honor, Mr. Garner recognizes the seriousness
19 of his offense and recognizes the seriousness of the punishment
20 that necessarily follows. What he is asking for is an
21 opportunity to not spend the rest of his life incarcerated.
22 Thank you.

23 THE COURT: Thank you, sir.

24 Mr. Garner, you have the right to address the Court
25 before you're sentenced. Would you like to say something, sir?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: All right.

3 Ms. Omps -- and before you get going, Mr. Lefler
4 mentioned Mr. Powell had received a 15-year sentence. Was he
5 the one that was homeless and recruited into this operation?

6 MS. OMPS-BOTTEICHER: Yes.

7 THE COURT: Okay. I thought that was the case.
8 Sometimes these run together though.

9 All right. I'll hear from you, Ms. Omps.

10 MS. OMPS-BOTTEICHER: Thank you, Your Honor.

11 First, the United States would move to dismiss Count 2 of
12 the indictment against this defendant as he did plead to Count
13 1.

14 We are asking for a within-guideline range sentence. And
15 I recognize that it's 292 to 365, but I believe it's
16 appropriate for several reasons.

17 The first in regards to his argument about age. You
18 know, most defendants age out of criminal activity, and we
19 didn't have that here. Instead, we have the defendant who --
20 his criminal history has zero-point offenses because of the age
21 of them, but he's involved in drugs and drug distribution and
22 manufacturing at a young age. In his early 20s, he has these
23 starting convictions. And, you know, some of them aren't just
24 simple possession. There are distribution. And, you know, I
25 can understand the argument if this was an aberrant offense.

1 So it's not part of his long-standing criminal history, but
2 it's not out of character for him. And as he's aged, he hasn't
3 stopped the behavior. Instead he dived all in.

4 And when we're looking at how much he was involved with
5 Mr. Brown, he's a partner with him. He's up at the top as a
6 leader/organizer and, you know, he did all this despite the
7 fact that he did have knee problems and his age is older. That
8 didn't discourage him from building this partnership of drug
9 trafficking with Mr. Brown. And, you know, Mr. Garner wasn't
10 someone recruited in later on in this investigation. He was at
11 it from the beginning, since 2021. And when the investigation
12 started, it was all Pops and Gee. Those are their street
13 names. That's the only thing that officers heard as to where
14 these blue fentanyl caps were coming from. So he is directly
15 responsible for the two-plus years of wrecking havoc on our
16 community with fentanyl caps.

17 And, you know, we've determined that the drug weight is
18 at least 4 kilograms of fentanyl. Just from the drugs stored
19 in that cabinet that was seized on November 8, 2023, you know,
20 over 20,000 caps could have been made from that seizure. And
21 then just figuring out that -- let's say they're sold at \$4
22 each. That's \$80,000 of profit seized on one day by officers.
23 And it's just astounding. And the level of customers that they
24 had and the amount of drugs that they had is just truly
25 unprecedented for any of our investigations.

1 In monitoring Target Telephone 2, there was easily a
2 hundred customers just on that line. And most of them couldn't
3 be -- I won't say most, but many couldn't be identified by
4 officers. They're showing up. Hand-to-hands are just getting
5 done without any communications. Then there are phone numbers
6 that are like TextNow numbers or other numbers with no
7 subscribers that are burner phones, and those people can never
8 be tracked down of who is buying from them. So certainly I
9 recognize that there was a lot of people indicted in this case.
10 There were hundreds more buying drugs. Those are just the ones
11 that could be identified and were generally repeat customers or
12 rose to some other level due to criminal history.

13 But there were drugs being sold to not only West Virginia
14 residents, but Virginia, Maryland, Pennsylvania. Truly an
15 empire of drug trafficking built in its two years in Baltimore,
16 Maryland.

17 Mr. Garner had a significant amount of responsibility and
18 control over the customers he was serving and his area of the
19 drug trafficking organization. And the fact that he was really
20 involved from the ground up with Mr. Brown, he should have a
21 similar sentence to Mr. Brown.

22 His criminal history is a two, but I think that's a
23 little bit misleading because some of the offenses has aged
24 out, but certainly his criminal history shows the trajectory of
25 that. He didn't change his behavior, and he's still involved

1 in criminal conduct despite being in his 50s.

2 For those reasons, we would ask for a within-guideline
3 range-sentence.

4 THE COURT: Thank you, Ms. Omps.

5 Counsel, I did carefully consider all those factors set
6 forth in 18 U.S.C. § 3553(a) in carefully considering the
7 arguments of counsel in support of the motion for variant
8 sentence, and I carefully considered the arguments of the
9 government in opposition of that motion. And all of that in
10 light of those factors, including the nature of the instant
11 offense, defendant's criminal history, his personal history and
12 characteristics, and I just find a downward variance is not
13 warranted in this case. So, accordingly, defense counsel's
14 motion for downward variance is denied.

15 And I'll elaborate that upon -- those reasons further
16 when I get to the justification for this sentence; but,
17 meanwhile, will the defendant please stand.

18 Pursuant to the Sentencing Reform Act of 1984, it's the
19 judgment of this Court that the defendant, Eric Anthony Garner,
20 also known as Pops, is hereby committed to the custody of the
21 Bureau of Prisons to be imprisoned for a term of 300 months.

22 You may have a seat, gentlemen.

23 I make the following recommendations to the Bureau of
24 Prisons: That defendant be incarcerated at an FCI or facility
25 as close to Baltimore, Maryland, as possible; that he be

1 incarcerated at a facility where he can participate in
2 substance abuse treatment, including the 500-Hour Residential
3 Drug Abuse Treatment Program; that he be incarcerated at a
4 facility where he can participate in mental health treatment;
5 that defendant submit to DNA collection while incarcerated or
6 at the direction of the probation officer; and that he be given
7 credit for time served from January 23, 2024, through the
8 present.

9 Upon release from imprisonment, Mr. Garner, you're placed
10 on supervised release for a term of five years. And while on
11 supervised release, you must comply with the following
12 mandatory conditions: You must not commit another federal,
13 state, or local crime. You must not unlawfully possess a
14 controlled substance. You must refrain from any unlawful use
15 of a controlled substance. You must submit to one drug test
16 within 15 days of release from imprisonment and at least two
17 periodic drug tests thereafter. You must cooperate in the
18 collection of DNA as directed by your probation officer. And
19 you must pay the assessment imposed in accordance with
20 18 U.S.C. § 3013.

21 You must also comply with the standard conditions adopted
22 by this Court in its November 29, 2016, standing order as well
23 as the following special conditions:

24 You must not use or possess any controlled substances
25 without a valid prescription. And if you do have a valid

1 prescription, you must disclose the prescription information to
2 the probation officer and follow the instructions on the
3 prescription.

4 You must not go to or remain at any place where you know
5 controlled substances are illegally sold, used, distributed, or
6 administered without first obtaining the permission of the
7 probation officer.

8 You must participate in a substance abuse treatment
9 program. You must submit to substance abuse testing to
10 determine if you used a prohibited substance and must not
11 attempt to obstruct or tamper with the testing methods.

12 All of these conditions assist probation in identifying
13 treatment needs, providing rehab services, reducing the risk of
14 recidivism, and provide for protection of the community.

15 It's ordered you pay the U.S. a \$100 special assessment
16 fee as to Count 1, which is due in full immediately. I find
17 defendant does not have the ability to pay a fine, so I'm
18 waiving the fine in this case.

19 The preliminary order of forfeiture shall be incorporated
20 and made part of the record as part of the J and C.

21 I do note that in the event the guideline determinations
22 made in this case are found to be incorrect, I still would have
23 imposed a sentence identical to that imposed in this case
24 pursuant to the 18 U.S.C. § 3553(a) factors.

25 In considering those factors, the basis for the Court's

1 sentence today is as follows: Defendant's involvement in this
2 case involved the distribution of multiple controlled
3 substances, including cocaine, cocaine base, and fentanyl
4 capsules, throughout various counties in the Northern District
5 of West Virginia between January 2021 and January 2024.

6 The defendant was a leader in this conspiracy in which he
7 directed drug runners to complete drug transactions on his
8 behalf. He also provided assistance to Gary Brown, Jr. in his
9 drug distribution activities by conducting transactions when
10 Mr. Brown was unable or unavailable to perform them himself.

11 Defendant utilized not only his own apartment but also a
12 stash house to manufacture and distribute those controlled
13 substances. There was a substantial amount of drug weight in
14 this case, and defendant's involvement in the distribution of
15 controlled substances was significant.

16 Defendant admitted to utilizing drug dealing as his
17 source of income, indicating one of the main reasons for his
18 involvement was for financial gain. His actions have caused
19 irrevocable damage to the individuals involved in this
20 conspiracy at the lower levels and to the community.

21 Defendant's substance abuse history began with the use of
22 alcohol and marijuana at the age of 12. He used cocaine and
23 crack cocaine beginning in his late teenage years to early 20s.
24 Defendant continued to use these substances regularly until his
25 arrest in January 2024. I believe defendant would benefit from

1 participation in drug treatment programs available within the
2 BOP.

3 The defendant before this Court has been involved in the
4 criminal justice system since he was 21 years old. His adult
5 criminal history consists of multiple theft-related offenses,
6 several manufacture or distribution of controlled substances
7 convictions, and five possession of controlled substances
8 offenses as indicated in the PSR.

9 Although he's received various forms of punishment,
10 including imprisonment and suspended sentences, for his
11 previous criminal conduct, it does not appear that these
12 sanctions have deterred defendant from continued criminal
13 activity. To the contrary, it appears defendant's criminal
14 conduct escalated as he continued to exhibit a disregard for
15 the law.

16 Defendant is 58 years old. He's been diagnosed with high
17 blood pressure, chronic obstructive pulmonary disease, chronic
18 pain in the right knee, and osteoarthritis. He utilizes a
19 walker to assist with mobility due to severe pain in his left
20 ankle and right knee. Defendant has been diagnosed with
21 depression and is prescribed medication. But I note that none
22 of defendant's physical disabilities prevented him from
23 consistent violations of the law, including the industrious
24 effort involved in the conspiracy in this case.

25 Defendant described having a perfect upbringing. He

1 denied suffering any form of abuse and his basic needs were
2 met. Defendant completed high school and attended some
3 college. Although he does have prior employment history, the
4 defendant has been unemployed for approximately eight years and
5 has been awaiting approval for Social Security disability
6 benefits.

7 Based on defendant's involvement in the instant offense,
8 his personal history and characteristics, and his criminal
9 history, this sentence of 300 months' imprisonment is
10 warranted. It reflects the serious nature of the offense and
11 will serve as punishment for defendant's criminal conduct.

12 Overall, it meets the sentencing objectives of
13 punishment, general deterrence, incapacitation, and
14 rehabilitation.

15 The five-year term of supervised release will allow
16 probation to monitor defendant's conduct in the community and
17 assist him in reintegrating into the community and establishing
18 a law-abiding lifestyle, hopefully, following his release.

19 I picked up in the PSR that the defendant used a walker
20 to assist with mobility, but he didn't come into court with a
21 walker today, did he? Oh, it is there. Okay.

22 In imposing no fine, I find that defendant's income,
23 earning capacity, and financial resources are as stated in the
24 PSR, and a fine in any amount will constitute a burden upon the
25 defendant.

1 I'll dismiss the remaining count of the indictment, which
2 is 2, upon motion of the government.

3 MS. OMPS-BOTTEICHER: So moved, Your Honor.

4 THE COURT: Granted.

5 Mr. Garner, you have the right to appeal the judgment of
6 this Court insofar as it may be appealable. Any notice of
7 appeal must be filed with the clerk of this court within 14
8 days from entry of the judgment and commitment order. If you
9 desire a lawyer on appeal, and you can't afford a lawyer, the
10 appropriate court will review your financial affidavit to
11 determine your eligibility for court-appointed counsel; and if
12 you request, the clerk of this court will enter and prepare a
13 notice of appeal on your behalf.

14 Anything further on behalf of your client, Mr. Lefler?

15 MR. LEFLER: Your Honor, again, I don't know exactly
16 how it works between the Court and the BOP, but to the extent
17 that the Court can notify them of the significant urgent need
18 to address his knee situation, we would appreciate that
19 information.

20 THE COURT: I will direct the marshals to do that,
21 and I'll make a recommendation, too, that the BOP seriously
22 consider that he be incarcerated at a medical facility.

23 MR. LEFLER: Yes, ma'am. Thank you.

24 THE COURT: You're welcome.

25 Anything further, Ms. Omgs, on behalf of the government?

1 MS. OMPS-BOTTEICHER: No, Your Honor. Thank you.

2 THE COURT: All right. Then we will get back out
3 here at 1 o'clock for our afternoon docket.

4 Defendant is remanded.

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6 (Hearing concluded at 12:30 P.M.)

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CERTIFICATE

I, Kate A. Slayden, Registered Professional Reporter and Official Court Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action on June 3, 2025, as reported by me.

I certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Given under my hand this 23rd day of July 2025.

/s/Kate A. Slayden

Kate A. Slayden, RPR
Official Reporter, United States
District Court for the Northern
District of West Virginia