

APPENDIX

FILED

DEC 24 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARVIN TERRILL CARMEN,

Defendant-Appellant.

No. 22-35100

D.C. Nos. 2:21-cv-00203-WFN
2:13-cr-00008-WFN-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, District Judge, Presiding

Argued and Submitted December 2, 2024
Seattle, Washington

Before: W. FLETCHER, BERZON, and R. NELSON, Circuit Judges.

Arvin Terrill Carmen (“Carmen”) appeals from the district court’s denial of his motion to vacate or set aside his conviction for engaging in a continuing criminal enterprise. We review de novo a denial of a motion under 28 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

§ 2255. *United States v. Chacon-Palomares*, 208 F.3d 1157, 1158 (9th Cir. 2000).

We have jurisdiction under 28 U.S.C. §§ 2253 and 2255(d), and we affirm.

To be guilty of engaging in a continuing criminal enterprise, a person must be found to have committed a series of predicate violations “in concert with five or more other persons.” 21 U.S.C. § 848(c)(2)(A). Carmen argues that his trial counsel rendered ineffective assistance of counsel by failing to object to a jury instruction that required the government to prove that “CARMEN and at least ‘five or more other persons’ were part of an *agreement* or joint action to commit the continuing series of violations.” (Emphasis added.) To succeed, Carmen must show both that (1) his “counsel’s performance was deficient” for his failure to object to the instruction, and (2) “the deficient performance prejudiced [his] defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Carmen’s counsel’s performance was neither deficient nor prejudicial. As an initial matter, it is not clear that the jury instructions misstated the meaning of “in concert” as Carmen argues. The “plain meaning of the phrase ‘in concert’ signifies mutual agreement in a common plan or enterprise.” *Rutledge v. United States*, 517 U.S. 292, 300 (1996). The jury instructions were consistent with that meaning. Conspiracy is a lesser included offense of engaging in a continuing criminal enterprise, as § 848 also requires that the defendant, *inter alia*, commit a

series of substantive violations, act as a supervisor or organizer of the criminal enterprise, and obtain a substantial income. *Id.* at 299 n.7. Read as applying § 848’s “in concert” element only, the challenged portion of the instruction appears consistent with the “mutual agreement” meaning ascribed to that element by *Rutledge*.

In addition, “[a] single instruction to a jury may not be judged in artificial isolation, but must be viewed in the context of the overall charge.” *United States v. Frega*, 179 F.3d 793, 806 n.16 (9th Cir. 1999). A subsequent part of the jury instructions required the jury to find that Carmen “acted as an organizer, supervisor, or manager of the five or more other persons.” The special verdict form also required the jury to find that he “acted as an organizer, supervisor or manager of the five or more [other] persons . . . in furtherance of the continuing criminal enterprise.” We therefore agree with the district court that “any overbreadth in the definition of ‘in concert with’ was cured by detailed language” in other portions of the jury instructions that independently required such conduct. *Carmen v. United States*, No. 2:13-CR-0008-WFN-1, 2022 WL 256286, at *2 (E.D. Wash. Jan. 26, 2022). Accordingly, Carmen’s counsel’s performance was not deficient for failing to object to the aforementioned instruction. *See Juan H. v.*

Allen, 408 F.3d 1262, 1273 (9th Cir. 2005) (“[T]rial counsel cannot have been ineffective for failing to raise a meritless objection.”).

Even if Carmen’s counsel performed deficiently, Carmen cannot show prejudice. First, the “in concert” instruction was already contested prior to trial, when defense counsel proposed a jury instruction that was identical to the adopted instruction except for the sentence now being challenged. In adopting the prosecution’s proposed instruction instead, the district court effectively ruled against the defense regarding the challenged instruction, and Carmen has not shown that the court would have ruled differently on an additional objection at trial. Second, as pointed out above, other language in the jury instructions required the jury to find that Carmen acted in concert with five or more persons. Third, the jury heard overwhelming evidence that Carmen committed three or more narcotics violations with five or more other persons as required under § 848. Any error committed by Carmen’s trial counsel therefore would not “undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

AFFIRMED.

FILED

UNITED STATES COURT OF APPEALS

NOV 26 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARVIN TERRILL CARMEN,

Defendant-Appellant.

No. 22-35100

D.C. Nos. 2:21-cv-00203-WFN
2:13-cr-00008-WFN-1

Eastern District of Washington,
Spokane

ORDER

Before: W. FLETCHER, BERZON, and R. NELSON, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for panel rehearing, filed October 24, 2025. Judge Nelson has voted to deny the petition for rehearing en banc, and Judge W. Fletcher and Judge Berzon have so recommended.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc.

Fed. R. App. P. 40.

The petition for panel rehearing and rehearing en banc (Dkt. 84) is DENIED.

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 26, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ARVIN TERRILL CARMEN,

Movant,

-vs-

UNITED STATES OF AMERICA,

Respondent.

No. 2:13-CR-0008-WFN-1

ORDER DENYING § 2255 MOTION

Before the Court is Movant's 28 U.S.C. § 2255 Motion to Vacate, Set Aside or Correct Sentence. ECF No. 4618.

BACKGROUND

Mr. Carmen was indicted for: (1) continuing criminal enterprise; (2) conspiracy to distribute a controlled substance; and in a separate indictment, (3) possession with intent to distribute a controlled substance. A jury found Mr. Carmen guilty on all three counts. Mr. Carmen timely appealed the judgment, only as it related to the continuing criminal enterprise and conspiracy charges, and on December 24, 2018, the Ninth Circuit affirmed. The mandate was entered on April 3, 2019, and the judgment became final for purposes of collateral attack ninety days later, when the certiorari period expired. The COVID-19 pandemic struck during the period for collateral attack, so the Court authorized several deadline extensions due to lack of access to legal materials during mandated quarantine periods. See e.g., ECF No. 4561. Consequently, Mr. Carmen's motion is timely.

DISCUSSION

To gain relief, Mr. Carmen must establish that (1) he is in custody under a sentence of the federal court; (2) his request for relief was timely; and (3) the court lacked either personal or subject matter jurisdiction, the conviction or sentence is unconstitutional, the

1 conviction or sentence violates federal law, or the sentence or judgment is otherwise open
2 to collateral attack. 28 U.S.C. § 2255. Mr. Carmen has proven the first two elements. To
3 satisfy the third prong, Mr. Carmen argues that both his trial and appellate counsel
4 provided ineffective assistance of counsel for failure to object to alleged jury instruction
5 errors in the continuing criminal enterprise count.

6 To prevail on his ineffective assistance claims, Mr. Carmen must prove that trial and
7 appellate counsel's performance was deficient and that he was prejudiced by this deficient
8 performance. *United States v. Strickland*, 466 U.S. 668, 687 (1984). Courts must "indulge
9 a strong presumption that counsel's conduct falls within the wide range of reasonable
10 professional assistance; that is, the defendant must overcome the presumption that, under
11 the circumstances, the challenged action might be considered sound trial strategy."
12 *Strickland*, 466 U.S. at 689. "A fair assessment of attorney performance requires that
13 every effort be made to eliminate the distorting effects of hindsight, to reconstruct the
14 circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's
15 perspective at the time." *Id.* at 689 (internal citations omitted). To show prejudice, Mr.
16 Carmen must show that but for counsel's errors the results of the proceeding would have
17 been different. *Id.* at 694.

18 The Government argues that a stricter, procedural default standard applies. If that is
19 the case, to earn relief Defendant must show (1) cause excusing failure to raise the issue of
20 flawed jury instructions earlier and (2) actual prejudice resulting from the alleged error.
21 *United States v. Frady*, 456 U.S. 152, 167- 68 (1982). As explained in more depth below,
22 Defendant fails to demonstrate error sufficient to satisfy the requirements of either
23 *Strickland* or *Frady*, nor does he demonstrate prejudice.

24 Mr. Carmen raises two issues regarding the jury instructions: (1) the elements for
25 the continuing criminal enterprise charge failed to require unanimity as to the predicate
26 offenses as required by *Richardson v. United States*, 526 U.S. 813, 815 (1999); and (2) the
27 elements for continuing criminal enterprise impermissibly expanded the conduct described
28 by the statute by replacing "in concert with five or more other persons" with the phrase

1 "five or more other persons were a part of an agreement *or* joint action. . ." (emphasis
2 added). Mr. Carmen argues that because trial counsel failed to object to the jury
3 instructions, his performance was deficient under *Strickland*. Further, Mr. Carmen argues
4 that appellate counsel's failure to raise the issues on appeal constitutes ineffective
5 assistance of counsel.

6 Whether measured by the procedural default standard or *Strickland*, the jury
7 instructions sufficiently required unanimity. *Richardson* directs that jury instructions
8 specify that the jury must unanimously determine each predicate offense for continuing
9 criminal enterprise charges. Instruction No. 7 does just that. After explaining the charge
10 and listing types of narcotics offenses, Instruction No. 7 directs the jury as follows:

11 The jury must all agree on (1) which narcotics violations Defendant **CARMEN**
12 committed, and (2) at least three specific occasions on which he committed the
13 violations. It is not required that the narcotics violations be charged in the
14 Indictments. The jury must, however, find that Defendant **CARMEN** committed
15 each of the three narcotics violations beyond a reasonable doubt.

16 The instruction specifies that the jury must unanimously determine which underlying
17 offenses Mr. Carmen committed and identify three specific times he violated the law. Mr.
18 Carmen acknowledges that the jury instruction requires unanimity but argues that
19 reference to the elements in other counts where he was not charged with the specific
20 offense could have confused the jury and that the verdict form failed to specify that
21 unanimity was required. Regarding Mr. Carmen's concern regarding confusion that may
22 have arisen in referencing other counts, Instruction No. 7 specified that the *elements* were
23 listed in the other counts but did not indicate that the conduct addressed in the other counts
24 related to Defendant Carmen. As for the alleged deficiencies in the verdict form, Mr.
25 Carmen complains that the verdict does not specify that each underlying offense must be
26 unanimously agreed upon; however, the Government correctly notes that this concern is
27 cured because the jury instructions as a whole include the specific unanimity instruction.
28 "In evaluating jury instructions, we consider how the jury would have reasonably

1 understood the challenged instruction in the context of the instructions as a whole." *United*
2 *States v. Moran*, 493 F.3d 1002, 1009 (9th Cir. 2007) (citing *Francis v. Franklin*, 471 U.S.
3 307, 315 (1985)).

4 Turning to Mr. Carmen's second alleged error in the jury instructions, the Court
5 concludes that Instruction No. 7 adequately described the element pertaining to acting 'in
6 concert with' 5 or more other persons. Mr. Carmen complains that the language defining
7 the term acting in concert improperly included the phrase "were part of an agreement"
8 which inappropriately expanded the possible violative conduct to include a conspiracy
9 rather than remaining limited to "joint action" as required by the continuing criminal
10 enterprise statute. Mr. Carmen correctly notes that the definitional language in the second
11 element is broad in scope encompassing more than the leadership role required to find a
12 person guilty of continuing criminal enterprise. However, the instruction read as a whole,
13 including the third element, required that the jury conclude that Mr. Carmen acted as an
14 organizer, supervisor, or manager, to five or more persons. The special verdict form
15 required that the jury unanimously find, beyond a reasonable doubt, that Mr. Carmen acted
16 as an organizer, supervisor, or manager, of the five or more persons and required that the
17 jury unanimously agree which specific people were involved, as well as finding that they
18 were all acting in furtherance of the continuing criminal enterprise. Read in context with
19 the entire jury instruction and the special verdict form, any overbreadth in the definition of
20 'in concert with' was cured by detailed language in element three and the special verdict
21 form.

22 CERTIFICATE OF APPEALABILITY

23 An appeal of this Order may not be taken unless this Court or a circuit justice issues
24 a certificate of appealability finding that "the applicant has made a substantial showing of
25 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West). This requires a
26 showing that "reasonable jurists would find the district Court's assessment of the
27 constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
28 Based on the Court's preceding analysis, the Court concludes that jurists of reason may

1 differ with the Court's conclusion regarding use of the disjunctive in the definition of in
2 'concert with' in Instruction No. 7. Thus, a certificate of appealability should issue.

3 The Court has reviewed the file and briefing and is fully informed. Accordingly,

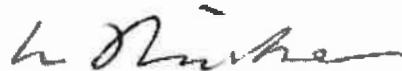
4 **IT IS ORDERED** that:

5 1. Movant's Motion to Vacate, Set Aside or Correct Sentence by a Person in
6 Federal Custody Pursuant to 28 U.S.C. § 2255, filed July 1, 2021, **ECF No. 4618**, is
7 **DENIED**.

8 2. The Government's Motion for Overlength Brief, filed December 8, 2021, **ECF**
9 **No. 4642**, is **GRANTED**.

10 The District Court Executive is directed to file this order, provide copies to counsel,
11 inform the Ninth Circuit Court of Appeals that if Mr. Carmen files a Notice of Appeal that
12 a certificate of appealability is **GRANTED**; **AND CLOSE** the corresponding civil file,
13 2:21-CR-0203-WFN.

14 **DATED** this 26th day of January, 2022.

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16 _____
17 WM. FREMMING NIELSEN
18 SENIOR UNITED STATES DISTRICT JUDGE

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAN 25 2013

SEAN F. McAVOY, CLERK
DEPUTY
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5

6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,)

8)
9 Plaintiff,)

10 vs.)

CR-13-8-WFN

INDICTMENT

11 ARVIN TERRELL CARMEN,)
12 RICHARD JAMAL HAYNES,)
13 SHARITA RENEE HORN,)
14 INALIEL COHAN LISBEY,)
15 GILBERT LEROY MADISON,)
16 GLEN EUGENE TURNER,)
17 ASHLEY BRITANY ARREDONDO,)
18 DONTA LYVOID BLACKMON,)
19 AMBER CHEROKEE BRANCH,)
20 KATRIEL MARQUIS BULLEY,)
21 BRANDON LEIGH CHAVEZ,)
22 JESSICA LYNN CLINTON,)
23 ANGELA BELL COLLINS,)
24 BRITTANI NICOLE COLLINS,)
25 DAVID EMILE COLBERT,)
26 ANDREA FELICE FOWLER,)
27 SALLY BLAKELY GUTHRIE,)
28 TYEMAR TYRONE HAYNES,)
ERIC CARDALL JAMERSON,)
ALEX (MNU) JAMES,)
JOEISHA LANAY JEFFERSON,)
MARLON DESHAWN JOHNSON,)
HARRY JOSEPH JOHNWELL, JR.,)
KEVIN BYRON LONDON,)
DONALD ARTHUR LYNCH,)
PORSHA RENEE MARCUS,)
DEANDRE DERRICK MEIGHAN,)

Vio: 21 U.S.C. § 848
Continuing Criminal
Enterprise
(Count 1)

21 U.S.C. § 846
Conspiracy to Distribute
a Controlled Substance
(Count 2)

21 U.S.C. § 841(a)(1)
Distribution of a
Controlled Substance
(Counts 4-10, 12, 13, 15,
17-18, 20, 22, 26-32)

21 U.S.C. § 841(a)(1)
Possession with Intent
to Distribute a
Controlled Substance
(Counts 3, 11, 16, 19,
21, 23-25)

21 U.S.C. § 846
Attempted Possession
with Intent to Distribute
a Controlled Substance
(Count 14)

21 U.S.C. § 853
Criminal Forfeiture

1 KEVIN DARNELL MILES,
2 ANTHONY MAURICE MILLER,
3 NOCOMIE TOMIA MOORE,
4 TAHEI DEVOND MOORE,
5 PRINCETON JAMAALLEE PERRY,
6 NACRISSA LEANE RAMZY (A/K/A
7 GREENIDGE),
8 MERCEDES LASHAWN REEVES,
9 MAURICE KEYONGRAY SHELMON,
10 KARLYNN ROMEO TONES,
11 JAMES DWAYNE WARD,
12 RUFUS (MNU) WARNOCK,
13 BOBBY JOE WINES,
14 ERICA MICHELLE WOODS,
15 DONALD RAY WRIGHT,
16 TINOAH ARDANIEL JEWREL BRAGG,
17 KENDRA LASHEENA BROWN,
18 TREASURE UNITY BROWN,
19 IRREIS CHANELL ANN BURNS,
20 AARONIKA TIAUNI KIARA
21 DUROUSSEAU,
22 LASADA KIYONTE GEORGE,
23 SALIMAH NOORAH GLASS,
24 SHINDONA RENEE JONES,
25 JEHVEAIRR (MNU) MAIDEN,
26 LESLIE PRESHIANNE MARTIN,
27 DIAMOND LEANNE MCDONALD,
28 ERICA DOUGLISHA MCDONALD,
TRIVIAH VIOLA ROBINSON,
ANTOINETTE ARTHENA GAMBOA
SANCHEZ,
JOYIAH CHARISSE THOMPSON,
TERRAI MONAE TRAYLOR,
LANAE TYONNA WHITE,
JOHN CODY BALK,
NICHOLAS SAN NICOLAS DE CARO,
MICHELLE DOMINIQUE FRIED,
DANIEL JOSHUA HUNKA,

Defendants.

1 The Grand Jury Charges:

2 COUNT ONE

3 That beginning on a date unknown, but by no later than the year 2008, the
4 exact date being unknown to the Grand Jury, and continuously thereafter up
5 through and including January 25, 2013, within the Eastern District of
6 Washington, and elsewhere, ARVIN TERRELL CARMEN, RICHARD JAMAL
7 HAYNES, GILBERT LEROY MADISON, SHARITA RENEE HORN, INALIEL
8 COHAN LISBEY, Defendants herein, did unlawfully, knowingly and intentionally
9 engage in a continuing criminal enterprise in that the Defendants unlawfully,
10 knowingly and intentionally violated 21 U.S.C. §§ 841(a)(1), 843(b), 846, 854,
11 856, which violations include, but are not limited to Conspiracy to Distribute a
12 Controlled Substance alleged in Count Two, and the substantive violation alleged
13 in Counts Eighteen, Twenty, and Twenty-Four, which Counts and Overt Acts are
14 realleged and incorporated herein by reference as though fully set forth in this
15 Count, and which violations were part of a continuing series of violations of the
16 Controlled Substances Act, 21 U.S.C. § 801, et seq., undertaken by Defendants, in
17 concert with at least five other persons with respect to whom, occupied positions
18 of organizer, supervisor, and any position of management, and from which such
19 continuing series of violations the defendants obtained substantial income and
20 resources; all in violation of 21 U.S.C. § 848(a), (c).

21 COUNT TWO

22 That beginning on a date unknown, but by no later than the year 2008, the
23 exact date being unknown to the Grand Jury, and continuously thereafter up
24 through and including January 25, 2013, in the Eastern District of Washington and
25 elsewhere, ARVIN TERRELL CARMEN, RICHARD JAMAL HAYNES,
26 SHARITA RENEE HORN, INALIEL COHAN LISBEY, GILBERT LEROY
27 MADISON, GLEN EUGENE TURNER, ASHLEY BRITANY ARREDONDO,
28 DONTA LYVOID BLACKMON, AMBER CHEROKEE BRANCH, KATRIEL

1 MARQUIS BULLEY, BRANDON LEIGH CHAVEZ, JESSICA LYNN
2 CLINTON, ANGELA BELL COLLINS, BRITTANI NICOLE COLLINS, DAVID
3 EMILE COLBERT, ANDREA FELICE FOWLER, SALLY BLAKELY
4 GUTHRIE, TYEMAR TYRONE HAYNES, ERIC CARDALL JAMERSON,
5 ALEX (MNU) JAMES, JOEISHA LANAY JEFFERSON, MARLON DESHAWN
6 JOHNSON, HARRY JOSEPH JOHNWELL, JR., KEVIN BYRON LONDON,
7 DONALD ARTHUR LYNCH, PORSHA RENEE MARCUS, DEANDRE
8 DERRICK MEIGHAN, KEVIN DARNELL MILES, ANTHONY MAURICE
9 MILLER, NOCOMIE TOMIA MOORE, TAHEI DEVOND MOORE,
10 PRINCTON JAMAALLEE PERRY, NACRISSA LEANE RAMZY (A/K/A
11 GREENIDGE), MERCEDES LASHAWN REEVES, MAURICE KEYONGRAY
12 SHELMON, KARLYNN ROMEO TONES, JAMES DWAYNE WARD, RUFUS
13 (MNU) WARNOCK, BOBBY JOE WINES, ERICA MICHELLE WOODS,
14 DONALD RAY WRIGHT, TINOAH ARDANIEL JEWREL BRAGG, KENDRA
15 LASHEENA BROWN, TREASURE UNITY BROWN, IRREIS CHANELL ANN
16 BURNS, AARONIKA TIAUNI KIARA DUROUSSEAU, LASADA KIYONTE
17 GEORGE, SALIMAH NOORAH GLASS, SHINDONA RENEE JONES,
18 JEHVEAIRR (MNU) MAIDEN, LESLIE PRESHIANNE MARTIN, DIAMOND
19 LEANNE MCDONALD, ERICA DOUGLISHA MCDONALD, TRIVIAH
20 VIOLA ROBINSON, ANTOINETTE ARTHENA GAMBOA SANCHEZ,
21 JOYIAH CHARISSE THOMPSON, TERRAI MONAE TRAYLOR, LANAE
22 TYONNA WHITE, JOHN CODY BALKKA, NICHOLAS SAN NICOLAS DE
23 CARO, MICHELLE DOMINIQUE FRIED, DANIEL JOSHUA HUNKA, and
24 others not known to the Grand Jury, did knowingly and intentionally combine,
25 conspire, confederate and agree together with each other and with other persons,
26 both known and unknown to the Grand Jury, to commit the following offense
27 against the United States, to wit: conspiracy to distribute a mixture or substance
28 containing a detectable amount of oxycodone hydrochloride, an opiate and

1 Schedule II controlled substance, pursuant to 21 U.S.C. § 812(c), specifically in
2 the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
3 841(a)(1), (b)(1)(C), all in violation of 21 U.S.C. § 846.

4 **COUNT THREE**

5 That on or about May 19, 2010, in the Eastern District of Washington,
6 KEVIN DARNELL MILES, Defendant herein, did knowingly and intentionally
7 possess with intent to distribute a mixture or substance containing a detectable
8 amount of oxycodone hydrochloride, an opiate and Schedule II controlled
9 substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing
10 oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18
11 U.S.C. § 2

12 **COUNT FOUR**

13 That on or about June 29, 2011, in the Eastern District of Washington,
14 MARLON DESHAWN JOHNSON, Defendant herein, did knowingly and
15 intentionally distribute a mixture or substance containing a detectable amount of
16 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
17 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
18 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

19 **COUNT FIVE**

20 That on or about July 15, 2011, in the Eastern District of Washington,
21 MARLON DESHAWN JOHNSON, Defendant herein, did knowingly and
22 intentionally distribute a mixture or substance containing a detectable amount of
23 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
24 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
25 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

26 **COUNT SIX**

27 That on or about August 9, 2011, in the Eastern District of Washington,
28 DEANDRE DERRICK MEIGHAN and ASHLEY BRITANY ARREDONDO,

1 Defendants herein, did knowingly and intentionally distribute a mixture or
2 substance containing a detectable amount of oxycodone hydrochloride, an opiate
3 and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in
4 the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
5 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

6 COUNT SEVEN

7 That on or about August 11, 2011, in the Eastern District of Washington,
8 DONALD AURTHER LYNCH, Defendant herein, did knowingly and
9 intentionally distribute a mixture or substance containing a detectable amount of
10 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
11 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
12 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

13 COUNT EIGHT

14 That on or about September 7, 2011, in the Eastern District of Washington,
15 ANTHONY MAURICE MILLER, Defendant herein, did knowingly and
16 intentionally distribute a mixture or substance containing a detectable amount of
17 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
18 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
19 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

20 COUNT NINE

21 That on or about September 22, 2011, in the Eastern District of Washington,
22 DEANDRE DERRICK MEIGHAN and ASHLEY BRITANY ARREDONDO,
23 Defendants herein, did knowingly and intentionally distribute a mixture or
24 substance containing a detectable amount of oxycodone hydrochloride, an opiate
25 and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in
26 the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
27 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

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COUNT TEN

That on or about September 26, 2011, in the Eastern District of Washington, MARLON DESHAWN JOHNSON, Defendant herein, did knowingly and intentionally distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

COUNT ELEVEN

That on or about September 26, 2011, in the Eastern District of Washington, MICHELLE DOMINIQUE FRIED, Defendant herein, did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2

COUNT TWELVE

That on or about September 28, 2011, in the Eastern District of Washington, MICHELLE DOMINIQUE FRIED, Defendant herein, did knowingly and intentionally distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

COUNT THIRTEEN

That on or about October 21, 2011, in the Eastern District of Washington, ANTHONY MAURICE MILLER and DEANDRE MOSES SANDERS, Defendants herein, did knowingly and intentionally distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in

1 the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
2 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

3 **COUNT FOURTEEN**

4 That on or about November 29, 2011, in the Eastern District of Washington,
5 DONALD RAY WRIGHT, Defendant herein, did knowingly and intentionally
6 attempt to possess with intent to distribute a mixture or substance containing a
7 detectable amount of oxycodone hydrochloride, an opiate and Schedule II
8 controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills
9 containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1),
10 (b)(1)(C), and 18 U.S.C. § 2, all in violation of 21 U.S.C. § 846.

11 **COUNT FIFTEEN**

12 That on or about December 14, 2011, in the Eastern District of Washington,
13 ANTHONY MAURICE MILLER, Defendant herein, did knowingly and
14 intentionally distribute a mixture or substance containing a detectable amount of
15 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
16 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
17 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

18 **COUNT SIXTEEN**

19 That on or about December 20, 2011, in the Eastern District of Washington,
20 DANIEL JOSHUA HUNKA, Defendant herein, did knowingly and intentionally
21 possess with intent to distribute a mixture or substance containing a detectable
22 amount of oxycodone hydrochloride, an opiate and Schedule II controlled
23 substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing
24 oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18
25 U.S.C. § 2

26 **COUNT SEVENTEEN**

27 That on or about December 29, 2011, in the Eastern District of Washington,
28 KATRIEL MARQUIS BULLEY, Defendant herein, did knowingly and

1 intentionally distribute a mixture or substance containing a detectable amount of
2 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
3 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
4 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

5
6 COUNT EIGHTEEN C 15

7 That on or about January 24, 2012, in the Eastern District of Washington,
8 RICHARD JAMAL HAYNES and TAHEI DEVOND MOORE, Defendants
9 herein, did knowingly and intentionally distribute a mixture or substance
10 containing a detectable amount of oxycodone hydrochloride, an opiate and
11 Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the
12 form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
13 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

14
15 COUNT NINETEEN

16 That on or about March 13, 2012, in the Eastern District of Washington,
17 GLEN EUGENE TURNER, Defendant herein, did knowingly and intentionally
18 possess with intent to distribute a mixture or substance containing a detectable
19 amount of oxycodone hydrochloride, an opiate and Schedule II controlled
20 substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing
21 oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18
22 U.S.C. § 2

23
24 COUNT TWENTY

25 That on or about March 23, 2012, in the Eastern District of Washington,
26 RICHARD JAMAL HAYNES, Defendant herein, did knowingly and intentionally
27 distribute a mixture or substance containing a detectable amount of oxycodone
28 hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C.
§ 812(c), specifically in the form of pills containing oxycodone hydrochloride, in
violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

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COUNT TWENTY-ONE

That on or about June 1, 2012, in the Eastern District of Washington, NICHOLAS SAN NICOLAS DE CARO, Defendant herein, did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2

COUNT TWENTY-TWO

That on or about August 15, 2012, in the Eastern District of Washington, SHARITA RENEE HORN, Defendant herein, did knowingly and intentionally distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

COUNT TWENTY-THREE

That on or about September 27, 2012, in the Eastern District of Washington, ERICA MICHELLE WOODS, Defendant herein, did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2

COUNT TWENTY-FOUR

That on or about October 1, 2012, in the Eastern District of Washington, RICHARD JAMAL HAYNES, Defendant herein, did knowingly and intentionally possess with intent to distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled

1 substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing
2 oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18
3 U.S.C. § 2

4 **COUNT TWENTY-FIVE**

5 That on or about October 5-6, 2012, in the Eastern District of Washington,
6 **AMBER CHEROKEE BRANCH**, Defendant herein, did knowingly and
7 intentionally possess with intent to distribute a mixture or substance containing a
8 detectable amount of oxycodone hydrochloride, an opiate and Schedule II
9 controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills
10 containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1),
11 (b)(1)(C), and 18 U.S.C. § 2

12 **COUNT TWENTY-SIX**

13 That on or about October 24, 2012, in the Eastern District of Washington,
14 **NICHOLAS SAN NICOLAS DE CARO**, Defendant herein, did knowingly and
15 intentionally distribute a mixture or substance containing a detectable amount of
16 oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at
17 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone
18 hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

19 **COUNT TWENTY-SEVEN**

20 That on or about November 8, 2012, in the Eastern District of Washington,
21 **MAURICE KEYONGRAY SHELMON** and **KARLYNN ROMEO TONES**,
22 Defendants herein, did knowingly and intentionally distribute a mixture or
23 substance containing a detectable amount of oxycodone hydrochloride, an opiate
24 and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in
25 the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. §
26 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

1 **COUNT TWENTY-EIGHT**

2 That on or about November 13, 2012, in the Eastern District of Washington,
3 **DONALD ARTHUR LYNCH**, Defendant herein, did knowingly and intentionally
4 distribute a mixture or substance containing a detectable amount of oxycodone
5 hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C.
6 § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in
7 violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

8 **COUNT TWENTY-NINE**

9 That on or about November 15, 2012, in the Eastern District of Washington,
10 **DONALD ARTHUR LYNCH**, Defendant herein, did knowingly and intentionally
11 distribute a mixture or substance containing a detectable amount of oxycodone
12 hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C.
13 § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in
14 violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

15 **COUNT THIRTY**

16 That on or about November 16, 2012, in the Eastern District of Washington,
17 **BOBBY JOE WINES**, Defendant herein, did knowingly and intentionally
18 distribute a mixture or substance containing a detectable amount of oxycodone
19 hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C.
20 § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in
21 violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

22 **COUNT THIRTY-ONE**

23 That on or about November 21, 2012, in the Eastern District of Washington,
24 **BOBBY JOE WINES**, Defendant herein, did knowingly and intentionally
25 distribute a mixture or substance containing a detectable amount of oxycodone
26 hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C.
27 § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in
28 violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

COUNT THIRTY-TWO

That on or about December 3, 2012, in the Eastern District of Washington, NICHOLAS SAN NICOLAS DE CARO, Defendant herein, did knowingly and intentionally distribute a mixture or substance containing a detectable amount of oxycodone hydrochloride, an opiate and Schedule II controlled substance, listed at 21 U.S.C. § 812(c), specifically in the form of pills containing oxycodone hydrochloride, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and 18 U.S.C. § 2.

NOTICE OF CRIMINAL FORFEITURE ALLEGATIONS

1. The allegations contained in Counts 1 and 2 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 21 U.S.C. § 853.

2. Pursuant to 21 U.S.C. § 853, upon conviction of an offense in violation of 21 U.S.C. §§ 841, 846 and 848, the Defendants, ARVIN TERRELL CARMEN, RICHARD JAMAL HAYNES, SHARITA RENEE HORN, INALIEL COHAN LISBEY, GILBERT LEROY MADISON, GLEN EUGENE TURNER, ASHLEY BRITANY ARREDONDO, DONTA LYVOID BLACKMON, AMBER CHEROKEE BRANCH, KATRIEL MARQUIS BULLEY, BRANDON LEIGH CHAVEZ, JESSICA LYNN CLINTON, ANGELA BELL COLLINS, BRITTANI NICOLE COLLINS, DAVID EMILE COLBERT, ANDREA FELICE FOWLER, SALLY BLAKELY GUTHRIE, TYEMAR TYRONE HAYNES, ERIC CARDALL JAMERSON, ALEX (MNU) JAMES, JOEISHA LANAY JEFFERSON, MARLON DESHAWN JOHNSON, HARRY JOSEPH JOHNWELL, JR., KEVIN BYRON LONDON, DONALD ARTHUR LYNCH, PORSHA RENEE MARCUS, DEANDRE DERRICK MEIGHAN, KEVIN DARNELL MILES, ANTHONY MAURICE MILLER, NOCOMIE TOMIA

1 MOORE, TAHEI DEVOND MOORE, PRINCTON JAMAALLEE PERRY,
 2 NACRISSA LEANE RAMZY (A/K/A GREENIDGE), MERCEDES LASHAWN
 3 REEVES, MAURICE KEYONGRAY SHELMON, KARLYNN ROMEO
 4 TONES, JAMES DWAYNE WARD, RUFUS (MNU) WARNOCK, BOBBY JOE
 5 WINES, ERICA MICHELLE WOODS, DONALD RAY WRIGHT, TINOAH
 6 ARDANIEL JEWREL BRAGG, KENDRA LASHEENA BROWN, TREASURE
 7 UNITY BROWN, IRREIS CHANELL ANN BURNS, AARONIKA TIAUNA
 8 KIARA DUROUSSEAU, LASADA KIYONTE GEORGE, SALIMAH NOORAH
 9 GLASS, SHINDONA RENEE JONES, JEHVEAIRR (MNU) MAIDEN, LESLIE
 10 PRESHIANNE MARTIN, DIAMOND LEANNE MCDONALD, ERICA
 11 DOUGLISHA MCDONALD, TRIVIAH VIOLA ROBINSON, ANTOINETTE
 12 ARTHENA GAMBOA SANCHEZ, JOYIAH CHARISSE THOMPSON, TERRAI
 13 MONAE TRAYLOR, LANAE TYONNA WHITE, JOHN CODY BALKA,
 14 NICHOLAS SAN NICOLAS DE CARO, MICHELLE DOMINIQUE FRIED,
 15 DANIEL JOSHUA HUNKA, shall forfeit to the United States of America, any
 16 property constituting, or derived from, any proceeds obtained, directly or
 17 indirectly, as the result of such offense(s) and any property used or intended to be
 18 used, in any manner or part, to commit or to facilitate the commission of the
 19 offense(s), including, but not limited to:

MONEY JUDGMENT

A sum of money equal to \$20,000,000.00 in United States currency, representing the amount of proceeds obtained as a result of the controlled substances offense(s) for which the Defendants are jointly and severally liable.

23 3. Pursuant to 21 U.S.C. § 853, upon conviction of an offense in
 24 violation of 21 U.S.C. §§ 841 and 846, the Defendants, MERCEDES LASHAWN
 25 REEVES, shall forfeit to the United States of America, any property constituting,
 26 or derived from, any proceeds obtained, directly or indirectly, as the result of such

27 INDICTMENT - 14

28 Indictment.wpd

1 offense(s) and any property used or intended to be used, in any manner or part, to
2 commit or to facilitate the commission of the offense(s), including, but not limited
3 to, the following assets:

4 U.S. CURRENCY

5 Approximately \$28,862.00 U.S. currency, seized on or about June 6,
6 2012.

7 4. Pursuant to 21 U.S.C. § 853, upon conviction of an offense in
8 violation of 21 U.S.C. §§ 841 and 846, the Defendant, ERICA MICHELLE
9 WOODS, shall forfeit to the United States of America, any property constituting,
10 or derived from, any proceeds obtained, directly or indirectly, as the result of such
11 offense(s) and any property used or intended to be used, in any manner or part, to
12 commit or to facilitate the commission of the offense(s), including, but not limited
13 to, the following assets:

14 U.S. CURRENCY

15 Approximately \$107,270.00 U.S. currency, seized on or about
16 September 27, 2012.

17 5. Pursuant to 21 U.S.C. § 853, upon conviction of an offense in
18 violation of 21 U.S.C. §§ 841 and 846, the Defendant, RICHARD JAMAL
19 HAYNES, shall forfeit to the United States of America, any property constituting,
20 or derived from, any proceeds obtained, directly or indirectly, as the result of such
21 offense(s) and any property used or intended to be used, in any manner or part, to
22 commit or to facilitate the commission of the offense(s), including, but not limited
23 to, the following assets:

24 U.S. CURRENCY

25 Approximately \$7,632.00 in U.S. currency seized on or about October
26 3, 2012.

27 INDICTMENT - 15

28 Indictment.wpd

1 If any forfeitable property, described herein, as a result of any act or omission of
2 the Defendants:

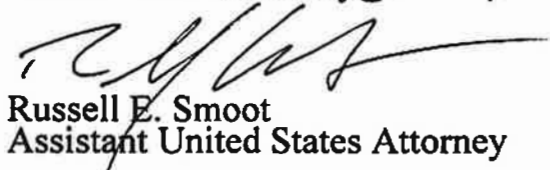
- 3 (a) cannot be located upon the exercise of due diligence;
- 4 (b) has been transferred or sold to, or deposited with, a third party;
- 5 (c) has been placed beyond the jurisdiction of the court;
- 6 (d) has been substantially diminished in value; or
- 7 (e) has been commingled with other property which cannot be divided
8 without difficulty;

9 the United States of America shall be entitled to forfeiture of substitute property
10 pursuant to 21 U.S.C. § 853(p).

11 DATED this 25TH day of January, 2013.

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14 

15 Michael C. Ormsby
16 United States Attorney

17 

18 Russell E. Smoot
19 Assistant United States Attorney

INSTRUCTION NO. 7

1
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3 Defendant **ARVIN TERRILL CARMEN** is charged in Count 1 of Indictment
4 No. 13-CR-0008 with engaging in a continuing criminal enterprise in violation of the laws
5 of the United States. In order for Defendant **CARMEN** to be found guilty of that charge,
6 the Government must prove each of the following elements beyond a reasonable doubt:

7 **First**, Defendant **CARMEN** committed a continuing series of three or more
8 narcotics violations. That is, on three or more occasions, Defendant **CARMEN** committed
9 one or more of the following narcotics violations:

10 • Conspiracy to distribute a controlled substance in violation of the laws
11 of the United States (the elements of this offense are set forth in Instruction No. 8);

12 or

13 • Distribution of a controlled substance in violation of the laws of the
14 United States (the elements of this offense are set forth in Instruction No. 12); or

15 • Possession with intent to distribute a controlled substance in violation of
16 the laws of the United States (the elements of this offense are set forth in Instruction
17 No. 14); or

18 • Use of a communication facility in furtherance of a drug-trafficking
19 offense in violation of the laws of the United States (the elements of this offense are
20 set forth in Instruction No. 17).

21 The jury must all agree on (1) which narcotics violations Defendant **CARMEN**
22 committed, and (2) at least three specific occasions on which he committed the violations.
23 It is not required that the narcotics violations be charged in the Indictments. The jury
24 must, however, find that Defendant **CARMEN** committed each of the three narcotics
25 violations beyond a reasonable doubt.

26 The phrase "a continuing series of three or more narcotics violations" means three
27 or more of the federal narcotics violations which are in some way related to one another
28 and that occurred over a definite time period.

INSTRUCTION NO. 7 (cont.)

1
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3 **Second**, Defendant **CARMEN** committed the violations together with five or more
4 other persons.

5 The Government does not have to prove that all five or more of the other persons
6 operated together at the same time, or that Defendant **CARMEN** knew all of them. The
7 Government must prove beyond a reasonable doubt, however, that Defendant **CARMEN**
8 and at least "five or more other persons" were part of an agreement or joint action to
9 commit the continuing series of violations of the federal narcotics violations.

10 **Third**, Defendant **CARMEN** acted as an organizer, supervisor, or manager of the
11 five or more other persons.

12 The Government does not need to show that Defendant **CARMEN** was a ringleader;
13 rather it need only show that he organized, managed, or supervised at least five people.
14 The jury must all agree as to the identity of at least five persons in the enterprise.

15 **Fourth**, Defendant **CARMEN** obtained substantial income or resources from the
16 violations.

17 The phrase "substantial income or resources" requires proof that the income or
18 resources obtained from the activity must be significant, not trivial. It is not limited to
19 profit, but includes gross income or gross receipts. "Substantial income or resources" may
20 include money and other things of value, such as controlled substances, which are actually
21 received by Defendant **CARMEN**.

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 14 2014

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

ARVIN TERRILL CARMEN,

Defendant.

No. 2:13-CR-0008-WFN-1

VERDICT

We, the Jury in the above-captioned case, find the Defendant, **ARVIN TERRILL CARMEN**:

COUNT 1

1. Guilty Of the offense of Continuing Criminal Enterprise as charged in Count 1 of the Indictment in **2:13-CR-0008**
Not Guilty/Guilty

Special Findings

(a) We the Jury, unanimously find beyond reasonable doubt Defendant **ARVIN TERRILL CARMEN** committed at least one or more of the following narcotics violations in furtherance of the continuing criminal enterprise:

(i) Conspiracy to distribute a controlled substance in violation of the laws of the United States

As charged in Count 2: Yes (Please answer **NO** or **YES**)

(ii) Distribution of a controlled substance, in violation of the laws of the United States: (Please answer each question **NO** or **YES**)

One time: Yes

Two times: Yes

Three or more times: Yes

1 (iii) Possession with intent to distribute a controlled substance in violation
2 of the laws of the United States: (Please answer each question **NO** or
3 **YES**)

4 One time: Yes

5 Two times: Yes

6 Three or more times: Yes

7 (iv) Use of a communication facility in furtherance of a drug-trafficking
8 offense, in violation of the laws of the United States: (Please answer
9 each question **NO** or **YES**)

10 One time: Yes

11 Two times: Yes

12 Three or more times: Yes

13 (b) We the Jury, unanimously find, beyond a reasonable doubt, Defendant
14 **ARVIN TERRILL CARMEN**, acted as an organizer, supervisor or
15 manager of the five or more of the persons, with all of us agreeing as to the
16 specific five or more persons, in furtherance of the continuing criminal
17 enterprise:

18 Yes (Please answer **NO** or **YES**)

19 **COUNT 2**

20 2. Guilty Of the offense of Conspiracy to Distribute Oxycodone
21 Not Guilty/Guilty Hydrochloride as charged in Count 2 of the Indictment
22 in 2:13-CR-0008

23 **DATED** this 14 day of November, 2014.

21 U.S.C.A. § 848

§ 848. Continuing criminal enterprise

(a) Penalties; forfeitures

Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 30 years and which may be up to life imprisonment, to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of Title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title.

(b) Life imprisonment for engaging in continuing criminal enterprise

Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

(2)(A) the violation referred to in subsection (c)(1) involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B) of this title, or

(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received \$10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 841(b)(1)(B) of this title.

(c) “Continuing criminal enterprise” defined

For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if--

(1) he violates any provision of this subchapter or subchapter II the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II--

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

(d) Suspension of sentence and probation prohibited

In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and the Act of July 15, 1932 (D.C.Code, secs. 24-203 - 24-207), shall not apply.

(e) Death penalty

(1) In addition to the other penalties set forth in this section--

(A) any person engaging in or working in furtherance of a continuing criminal enterprise, or any person engaging in an offense punishable under section 841(b)(1)(A) of this title or section 960(b)(1) of this title who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and

(B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or subchapter II who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death.

(2) As used in paragraph (1)(B), the term "law enforcement officer" means a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.

21 U.S.C. § 848.