APPENDIX

APPENDIX TABLE OF CONTENTS

Appendix A: Opinion and Judgment of the United States Court of Appeals for the Sixth Circuit (June 24, 2026) 1a

Appendix B: Judgment of the United States District Court for the Western District of Kentucky (Nov. 26, 2024)..... 12a

Appendix C: Order of the United States Court of Appeals for the Sixth Circuit (Aug. 11, 2026)..... 20a

NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0273n.06

Nos. 24-6073/25-5006/5007

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JERLEN HORTON (24-6073) and JACOBY SUMMERS (25-5006/5007), Defendants-Appellants.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY OPINION

Before: SUTTON, Chief Judge; McKEAGUE and BUSH, Circuit Judges.

JOHN K. BUSH, Circuit Judge. In these consolidated appeals, we consider a bevy of challenges that defendants-appellants Jerlen Horton and Chicoby Summers make to their drug-trafficking and firearms convictions. We conclude that the evidence was sufficient to convict, the district court was not required to declare a mistrial, the jury instructions were not plainly erroneous, and any evidentiary errors were harmless. We therefore **AFFIRM**.

I.

In the summer of 2021, law enforcement began investigating Horton, Summers, Alexis Stewart, and several other individuals. The officers surveilled two Louisville properties, one of which was Stewart's home. As is relevant here, officers collected evidence in two ways.

The first was through walk-through searches of the two properties. The searches revealed baggies, rubber bands, scales, bags of drugs, needles, a vacuum sealer, and ledgers. Officers also

discovered firearms, cell phones, and Stewart's clothes during the searches. Located in the clothing were some of the drugs.

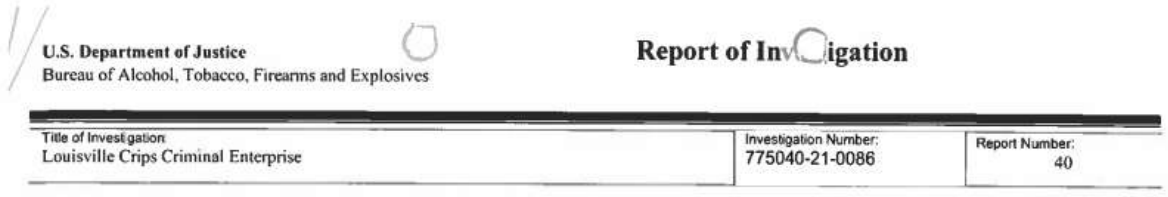
The second type of search was through pole-camera surveillance of the two properties. The pole cameras recorded extensive footage of Horton, Stewart, and Summers entering and exiting the homes, often with a key. In a handful of these videos, Horton and Summers can be seen with a firearm. Additionally, several cars can be seen backing into the driveway of the homes and then quickly leaving. Finally, the pole camera footage depicts Horton throwing drug precursors into a neighbor's dumpster.

Presented with this evidence, a grand jury in the Western District of Kentucky indicted Horton and Summers for (as is relevant to this appeal) possession with intent to distribute narcotics, conspiracy to commit the same, and possession of a firearm in furtherance of drug trafficking. The trial was mostly unremarkable, but three moments warrant additional discussion.

First, the clothing was a significant point of contention. Apparel with the words "Victory Clothing" emblazoned on them were found during the searches, and the jury saw evidence depicting defendants wearing shirts with "Victory Clothing" written on them. Defendants did not want the jury to see those images because they believed the clothes could be linked to the Victory Park Crips (an affiliate of the Crips gang in Louisville's Victory Park neighborhood), and most of the clothes were blue (the color associated with the Crips). The district court excluded any references to gangs at trial under Fed. R. Evid. 404(b) because there was insufficient evidence that either defendant was a gang member. Nonetheless, evidence related to Victory Park was admitted but only to show where defendants lived and their potential connection to the drug dens.

Second, despite the exclusion of any gang-related evidence, the jury still heard and saw two pieces of gang-related evidence. One was a comment from a prosecution witness explaining

that he specialized in gang investigations. The other was a brief instance where an unredacted version of Government's Exhibit 113 was displayed to the jury. At the very top of the exhibit, in small print, the document says "Louisville Crips Criminal Enterprise":


U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Report of Investigation

Title of Investigation:	Investigation Number:	Report Number:
Louisville Crips Criminal Enterprise	775040-21-0086	40

Gov't's Exh. 113, *proffered at* R. 133, Tr., PageID 2585. The district court said it "did not see" the words "Louisville Crips Criminal Enterprise" when the exhibit was first published to the jury. R. 133, Tr., PageID 2586.

Defendants twice requested mistrials based on that evidence, but the district court rebuffed them each time. The district court rejected the first request because the witness accused neither defendant of being part of a gang. The district court rejected the second request because the offending evidence "was up for a very brief period of time . . . ." *Id.* at PageID 2587.

Third, the Government did not prosecute Stewart pursuant to a pretrial diversion agreement. The diversion agreement said that Stewart "committed an offense against the United States"—possession with intent to distribute narcotics—and that she would cooperate with the Government in exchange for not being prosecuted. Horton's App'x at 0001–02. But when Horton's counsel asked about the diversion agreement on cross, Stewart denied committing any crimes. When Horton tried to admit a copy of the diversion agreement, the district court refused because the diversion agreement did not include an admission of guilt as to any specific crime.

After a week-long trial, the jury found both Horton and Summers guilty on all relevant counts. Horton was sentenced to a total of 336 months in prison and five years of supervised release. Summers was sentenced to a total of 300 months in prison and five years of supervised release. Both men appealed, and we consolidated the appeals.

II.

Horton and Summers raise several challenges to their convictions. We address below whether (a) the Government sufficiently proved defendants possessed a firearm in furtherance of drug trafficking, (b) a mistrial was warranted over references to gangs, (c) the jury instructions were plainly erroneous, and (d) the challenged evidentiary rulings impacted the outcome of the trial.

A.

To start, we conclude that the Government presented sufficient evidence to convict Horton and Summers of possessing a firearm in furtherance of drug trafficking under 18 U.S.C. § 924(c). "We review a challenge to the sufficiency of the evidence in a criminal case de novo." *United States v. Woods*, 14 F.4th 544, 551 (6th Cir. 2021). We view the facts in the light most favorable to the Government, drawing all reasonable inferences in its favor. *See United States v. Gooding*, 351 F.3d 738, 740–41 (6th Cir. 2003). We must determine whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Amawi*, 695 F.3d 457, 475 (6th Cir. 2012) (quoting *United States v. Humphrey*, 279 F.3d 372, 378 (6th Cir. 2002)) (emphasis in original). "Circumstantial evidence alone can defeat a sufficiency challenge." *Woods*, 14 F.4th at 551 (cleaned up).

Congress has imposed enhanced mandatory minimum sentences for defendants who "possess[] a firearm" "in furtherance of" "any crime of violence or drug trafficking crime . . . ."

18 U.S.C. § 924(c)(1)(A). To win a guilty verdict, the Government must prove the defendant "(1) possessed a firearm, (2) committed a drug-trafficking crime, and (3) possessed the firearm in furtherance of that crime." *United States v. London*, 175 F.4th 805, 820–21 (6th Cir. 2026).

Defendants briefed only the last element, and a defendant preserves challenges to his conviction on an element-by-element basis, so we will focus our attention on that one.[1] *See id.* at 821. To satisfy that element, the Government must establish "a specific nexus between the gun found and the crime charged." *Id.* More concretely, the Government must prove that the firearm was "possessed for the purpose of aiding or furthering a drug trafficking crime." *Id.* The Government can do this by, among other things, proving that the defendant "own[ed] a gun to protect the drugs, the proceeds of drug sales, or the dealer himself." *United States v. Maya*, 966 F.3d 493, 500 (6th Cir. 2020) (quoting *United States v. Bailey*, 882 F.3d 716, 721 (7th Cir. 2018)) (quotation marks omitted).

Defendants possessed their firearms in furtherance of drug trafficking. They were seen with firearms in their pants pockets and waistbands while at two drug dens. Moreover, defendants were caught disposing of drug precursors at the same properties where they were caught on video carrying the guns. This suggests that those properties were important locations for the drug trafficking conspiracy. Those locations would thus likely be the target of violence from rival traffickers, and most drug traffickers would not call the police to protect their stash of illegal drugs.

[1] In a point heading, Horton says that "the United States did not admit sufficient evidence of guilt against defendant Horton as to several alleged offenses." Horton's Appellant's Br. at 13 (bolding and capitalization altered). But only Count 5 of the Second Superseding Indictment charged Horton with violating § 924(c)(1)(A), and the body of his brief lacks any argument regarding the other charges. Thus, to the extent Horton contests the sufficiency of the evidence on any other counts, we do not consider those arguments because they have not been adequately briefed. *See, e.g.*, *United States v. Lopez-Medina*, 461 F.3d 724, 748 n.6 (6th Cir. 2006).

A rational juror could easily conclude that defendants had firearms on them to protect themselves at those locations.

In arguing against this outcome, defendants distort the evidence and ignore the standard of review. Horton, for example, protests that the Government found "scant[] evidence connecting him to possible drug crimes." Horton's Appellant's Br. at 2 (bolding and capitalization altered). But that ignores the scales, massive quantities of drugs, and ledgers at two properties Horton regularly entered with a key. Summers, for his part, says that he never had a firearm "in connection with drug activity" despite bringing the gun to two drug dens. Summers's Appellant's Br. at 33 (bolding and capitalization altered). We struggle to see how Summers can plausibly make that argument while giving the Government the benefit of all possible inferences from the evidence, especially given our recognition that carrying a gun for protection while being part of a drug trafficking conspiracy violates § 924(c). *See Maya*, 966 F.3d at 500.

We therefore find sufficient evidence to support both defendants' convictions.

B.

We also reject both defendants' requests for a mistrial. We review the denial of a mistrial for an abuse of discretion. *United States v. Howard*, 621 F.3d 433, 458 (6th Cir. 2010). A district court abuses its discretion when it "relies on clearly erroneous findings of fact, uses an erroneous legal standard, or improperly applies the law." *United States v. Elias*, 984 F.3d 516, 520 (6th Cir. 2021) (quoting *United States v. Flowers*, 963 F.3d 492, 497 (6th Cir. 2020)). We may not reverse without "a definite and firm conviction that the trial court committed a clear error of judgment." *Flowers*, 963 F.3d at 497 (quoting *Landrum v. Anderson*, 813 F.3d 330, 334 (6th Cir. 2016)).

"[A] mistrial is a drastic remedy that results in additional expense to the judicial system as well as to all the parties." *United States v. Smith*, 44 F.3d 1259, 1268 (4th Cir. 1995). Because a

mistrial is such a severe remedy, a defendant seeking one must show that the inappropriate testimony was "so clearly improper and prejudicial . . . that the harm could not be erased by any instruction which the court might give." *United States v. Smith*, 601 F.3d 530, 538 (6th Cir. 2010) (quoting *United States v. Rudolph*, 403 F.2d 805, 806 (6th Cir. 1968)). We are therefore less likely to require a mistrial when the impugned evidence is framed to "minimize[]" any prejudice to the defendant, *Howard*, 621 F.3d at 459, or when the impugned evidence constitutes "only a small part of the evidence against [the] defendant," *United States v. Forrest*, 17 F.3d 916, 920 (6th Cir. 1994) (per curiam). Finally, a defendant is not entitled to a mistrial simply because he successfully moved to exclude certain evidence. *See Smith*, 601 F.3d at 538.

The district court did not abuse its discretion in denying the mistrial. To grant such a remedy would be too drastic a response to the jury seeing two inconsequential pieces of evidence. One was a passing comment in a direct examination where an officer said that he specialized in gang investigations to establish his general law enforcement credentials, and the other was a document where the words "Louisville Crips Criminal Enterprise" were printed on the top of the document in small font. Neither defendant gives us a basis for disturbing the district court's factual finding that nobody saw the second piece of evidence, and the impugned evidence comprises barely ten words in a week-long, eight-count drug trafficking trial.

We therefore affirm the denial of the motions for a mistrial.

C.

We next reject Summers's challenge to the district court's instruction on the applicability of § 924(c). Summers concedes that he did not preserve his instructional challenge, so we will review only for plain error. *See United States v. Sims*, 975 F.2d 1225, 1240 (6th Cir. 1992). A

district court does not plainly err unless "binding case law" directly "answers the question presented . . . ." *United States v. Al-Maliki*, 787 F.3d 784, 794 (6th Cir. 2015).

Summers argues that the district court was required to issue a specific unanimity instruction as to the date and time when he carried the firearm in furtherance of drug trafficking. But he does not point to any binding case law saying as much, and we cannot find any.

Under the Sixth Amendment, a defendant may not be convicted of a crime unless the jury "unanimously finds that the Government has proved each element" of the offense beyond a reasonable doubt. *Richardson v. United States*, 526 U.S. 813, 817 (1999). Thus, "the jury must unanimously decide that all facts that constitute 'elements' of a crime occurred, but it does not necessarily need to be unanimous" in deciding what those facts were. *United States v. Hendrickson*, 822 F.3d 812, 822–23 (6th Cir. 2016). Unsurprisingly, we have never held that the jury must unanimously agree on the date and time when the defendant possessed the firearm. That is enough to reject Summers's objection on plain error review. *See Al-Maliki*, 787 F.3d at 794.

But the problem for Summers goes one step further. The mere fact that a jury must unanimously agree on an issue does not mean that the defendant is entitled to a specific unanimity instruction on that issue. Rather, we generally use a three-part test for determining when a specific unanimity instruction is warranted, *see generally United States v. Miller*, 734 F.3d 530, 538 (6th Cir. 2013), and we have never applied that test as part of a holding to a factual scenario similar to the one we have here.

Summers relies heavily on *United States v. Steele*, where we endorsed a district court's decision to "task[] the jury with deciding unanimously on one instance of firearm possession in furtherance of a drug trafficking crime . . . ." 919 F.3d 965, 973 (6th Cir. 2019). This reliance is misplaced. We never said that doing so was *necessary* in that case, and we certainly did not say

that doing so is necessary in all § 924(c) cases like the one before us. True, *Steele* contemplated scenarios where the *Richardson* principle would be inapplicable; if a jury convicts with wildly diverging understandings of the "means," it would "risk[] serious unfairness and lack[] support in history or tradition." *Id.* (quoting *Richardson*, 526 U.S. at 820). But no such scenario obtained in *Steele*, and it does not obtain here, either. So even if *Steele*'s dicta supported Summers's argument, it would be insufficient to establish plain error. *See United States v. Whren*, 111 F.3d 956, 960–61 (D.C. Cir. 1997); *see also Al-Maliki*, 787 F.3d at 794 ("A lack of binding case law that answers the question presented will also preclude our finding of plain error.").

We therefore hold that the district court's jury instructions were not plainly erroneous.

D.

Finally, we reject Horton's and Summers's evidentiary challenges because any claimed error was harmless, and we may not reverse over harmless error. *See United States v. Freeman*, 730 F.3d 590, 595 (6th Cir. 2013).

We start with Horton. He alleges that he should have been allowed to admit a copy of the diversion agreement that Stewart signed with the Government to impeach her credibility when she said that she did not commit any drug offenses. Any error from exclusion of the diversion agreement was harmless.

The colloquy between Stewart and Horton's counsel on the diversion agreement takes up over twenty pages of the trial transcript. During that colloquy, Horton's counsel had the opportunity to ask what the agreement said, and he did so at length. Moreover, the jury saw evidence that Stewart entered and left a drug den, lived at a drug den, and had illegal narcotics in her clothes. The diversion agreement would have been cumulative of all the other evidence showing that Stewart committed drug crimes. Moreover, if the jury sincerely believed, in the face

of all that evidence, that Stewart had not committed drug offenses, then nothing would have convinced it otherwise. Because the diversion agreement would have been cumulative evidence, and because the outcome would not have changed with its admission, any error in excluding the diversion agreement was harmless. *See, e.g.*, *United States v. Agrawal*, 97 F.4th 421, 430 (6th Cir.), *cert. denied*, 145 S. Ct. 258 (2024).

The same is true with Summers. He alleges that the district court should not have admitted evidence of him wearing "Victory Park" clothing, arguing that its admission was substantially more prejudicial than probative. *See* Fed. R. Evid. 403. But the evidence against Summers was so overwhelming that excluding the clothing would not have altered the outcome. *See, e.g.*, *United States v. Hardy*, 643 F.3d 143, 154 (6th Cir. 2011). After all, Summers was caught on video entering two drug dens, often with a key and sometimes carrying a gun. A jury could easily have concluded, based on that evidence alone, that Summers was guilty of all the crimes alleged.

III.

For these reasons, the district court's judgments are **AFFIRMED**.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 24-6073/25-5006/5007

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JERLEN HORTON (24-6073); CHICOBY SUMMERS (25-5006/5007),

Defendants - Appellants.

Before: SUTTON, Chief Judge; McKEAGUE and BUSH, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Western District of Kentucky at Louisville.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgments of the district court are AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

USDC KYWD 245B (Rev. 02/16) Judgment in a Criminal Case Sheet 1

United States District Court

Western District of Kentucky

LOUISVILLE DIVISION

UNITED STATES OF AMERICA
V.
Jerlen Horton

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:22-CR-37-1-RGJ
US Marshal No: 19105-033
Counsel for Defendant: **Patrick Renn, Retained**
Counsel for the United States: **Frank Dahll, III and Joshua Ryan Porter**
Court Reporter: **April Dowell**

THE DEFENDANT:

☐ Pursuant to plea agreement

☐ Pleaded guilty to count(s)

☐ Pleaded nolo contendere to count(s) which was accepted by the court.

☒ **Was found guilty on count(s) 1-5 of the Second Superseding Indictment on July 29, 2024 after a plea of not guilty by jury.**

ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offense(s):

Title / Section and Nature of Offense	Date Offense Concluded	Count

FOR CONVICTION OFFENSE(S) DETAIL - SEE COUNTS OF CONVICTION ON PAGE 2

The defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ **The defendant has been found not guilty on count 7 of the Second Superseding Indictment on July 30, 2024.**

☐ Count(s) (Is) (are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and the United States Attorney of any material change in the defendant's economic circumstances.

11/14/2024
Date of Imposition of Judgment

Rebecca Grady Jennings, District Judge
United States District Court

November 25, 2024

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

COUNTS OF CONVICTION

Title / Section and Nature of Offense	Date Offense Concluded	Count
21:841(a)(1), (b)(1)(A), (b)(1)(B), (b)(1)(C), and 846 CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE CONTROLLED SUBSTANCES	8/22/2023	1ss
21:841(a)(1), (b)(1)(A), and 18:2 POSSESSION WITH INTENT TO DISTRIBUTE FENTANYL	11/3/2021	2ss
21:841(a)(1) and (b)(1)(B) and 18:2 POSSESSION WITH INTENT TO DISTRIBUTE HEROIN	11/3/2021	3ss
21:841(a)(1) and (b)(1)(C) and 18:2 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE	11/3/2021	4ss
18:924(c)(1)(A) POSSESSION OF A FIREARM IN FURTHERANCE OF DRUG TRAFFICKING	11/3/2021	5ss

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **276 MONTHS as to each of Counts 1-4 of the Second Superseding Indictment, to be served CONCURRENT with each other, and 60 MONTHS on Count 5, which shall be served CONSECUTIVE to the terms imposed in Counts 1-4, for a TOTAL TERM of 336 MONTHS**

☐ **The Court makes the following recommendations to the Bureau of Prisons:**

☒ **The defendant is remanded to the custody of the United States Marshal.**

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at A.M. / P.M. on
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ Before 2:00 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.
- ☐ The defendant shall continue under the terms and conditions of his/her present bond pending surrender to the institution.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ To _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **5 YEARS as to each of Counts 1-3 and 5 of the Second Superseding Indictment and 3 YEARS as to Count 4 which shall be served CONCURRENTLY, for a TOTAL TERM of 5 YEARS.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. ☒ **You must cooperate in the collection of DNA as directed by the probation officer.**
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense.
7. ☐ You must participate in an approved program for domestic violence.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

SPECIAL CONDITIONS OF SUPERVISION

14. The defendant must participate in a substance abuse treatment program as approved by the Probation Office and follow the rules and regulations of that program. The defendant shall contribute to the Probation Office's costs of service rendered based upon his ability to pay as reflected in his monthly cash flow as it relates to the court approved sliding fee scale.

15. The defendant must submit to testing to determine if he has used a prohibited substance. The defendant shall contribute to the Probation Office's costs of service rendered based upon his ability to pay as it relates to the court approved sliding fee scale. The defendant must not attempt to obstruct or tamper with the testing methods.

16. The defendant shall participate in a community-based mental health treatment program approved by the U.S. Probation Office. The defendant shall contribute to the Probation Office's cost of services rendered based upon his ability to pay as reflected in his monthly cash flow as it relates to the court-approved sliding fee scale.

17. The defendant shall submit his person, property, house, residence, vehicle, papers, computers [as defined in 18 USC 1030(e)(1)], other electronic communications or data storage devices or media, or office to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions,* available at: www.uscourts.gov.

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

_____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

USDC KYWD 245B (Rev. 02/16) Judgment in a Criminal Case Sheet 5 - Criminal Monetary Penalties

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	**$ 500.00**		

☒ **The fine and the costs of investigation, prosecution, incarceration and supervision are waived due to the defendant's inability to pay.**

☐ The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☒ **Restitution is not an issue in this case.**

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

Criminal debt may be paid by check or money order or may be paid online at www.kywd.uscourts.gov (See Online Payments for Criminal Debt). Your mail-in or online payment must include your case number in the exact format of DKYW322CR000037-002 to ensure proper application to your criminal monetary penalty. If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	** Total Amount of Loss	Amount of Restitution Ordered	Priority Order Or Percentage Of Payment

☐ If applicable, restitution amount ordered pursuant to plea agreement. . . . . $

☐ The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. 3612(f). All of the payment options on Sheet 5, Part B may be Subject to penalties for default and delinquency pursuant to 18 U.S.C. 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived for the ☐ Fine and/or ☐ Restitution

☐ The interest requirement for the ☐ Fine and/or ☐ Restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: **Horton , Jerlen**
CASE NUMBER: **3:22-CR-37-1-RGJ**

SCHEDULE OF PAYMENTS

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

A ☒ **Lump sum payment of $ 500.00 Due immediately, balance due**
☐ not later than , or
☒ **in accordance with C, D, or E below); or**

B ☐ Payment to begin immediately (may be combined with C, D, or E below); or

C ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of $
Over a period of (E.g. months or years) year(s) to commence (E.g., 30 or 60 days)
after The date of this judgment, or

D ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of $
Over a period of (E.g. months or years) year(s) to commence (E.g., 30 or 60 days)
after Release from imprisonment to a term of supervision; or

E ☒ **Special instructions regarding the payment of criminal monetary penalties:**

Any balance of criminal monetary penalties owed upon incarceration shall be paid in quarterly installments of at least $25 based on earnings from an institution job and/or community resources (other than Federal Prison Industries), or quarterly installments of at least $60 based on earnings from a job in Federal Prison Industries and/or community resources, during the period of incarceration to commence upon arrival at the designated facility.

Upon commencement of the term of supervised release, the probation officer shall review your financial circumstances and recommend a payment schedule on any outstanding balance for approval by the court. Within the first 60 days of release, the probation officer shall submit a recommendation to the court for a payment schedule, for which the court shall retain final approval.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the United States District Court, Gene Snyder Courthouse, 601 West Broadway, Suite 106, Louisville, KY 40202, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ **The defendant shall forfeit the defendant's interest in the following property to the United States: See separate orders**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

No. 24-6073

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Aug 11, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JERLEN HORTON,

Defendant-Appellant.

ORDER

BEFORE: SUTTON, Chief Judge; McKEAGUE and BUSH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk