

NO. 26A\_\_\_\_\_

**In The Supreme Court of the United States**

CHICOBY SUMMERS,  
Applicant,

v.

UNITED STATES OF AMERICA,  
Respondent.

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit  
Nos. 25-5006, 25-5007 (consolidated with No. 24-6073)

On Appeal from the United States District Court  
for the Western District of Kentucky at Louisville  
The Honorable Rebecca Grady Jennings  
District Court Nos. 3:17-cr-00680-1 and 3:22-cr-00037-2

**APPLICATION FOR AN EXTENSION OF TIME TO FILE  
A PETITION FOR A WRIT OF CERTIORARI**

To the Honorable Brett M. Kavanaugh, Associate Justice of the  
United States and Circuit Justice for the Sixth Circuit

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Counsel of Record for Applicant

## INTRODUCTION

Applicant Chicoby Summers, by and through counsel, respectfully applies under Rules 13.5 and 30.2 of this Court for a 30-day extension of time within which to file a petition for a writ of certiorari. This application is made on behalf of Applicant Chicoby Summers only.

In support of this application, Applicant states as follows:

1. The United States Court of Appeals for the Sixth Circuit entered its opinion and judgment on June 24, 2026 (Appendix A), and denied Mr. Summers's petition for panel rehearing on July 10, 2026 (Appendix B);
2. Absent an extension, the petition for a writ of certiorari is due October 8, 2026, and this application is filed at least ten days before that date, as Rule 13.5 requires;
3. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1);
4. No prior extension of the time to file the petition has been sought or granted;
5. A jury in the Western District of Kentucky convicted Mr. Summers, and the Sixth Circuit affirmed. The petition would raise three issues about his conviction under 18 U.S.C. § 924(c)(1)(A) for possessing a firearm in furtherance of a drug trafficking crime: whether the evidence was enough to prove the "in furtherance" element; whether the district court plainly erred by not telling the jury it had to agree on which act of possession met that element; and whether there are any limits on an

appellate court's discretion to deny a petition for rehearing when a petitioner has identified significant misstatements of the record in the opinion.

6. Undersigned counsel is leaving her current law firm on October 1, 2026 and joining a new firm effective October 19, 2026. The Sixth Circuit appointed her to represent Mr. Summers under the Criminal Justice Act, 18 U.S.C. § 3006A, on June 20, 2025, and she will continue to represent him through the petition. The move requires her to transfer the case file, confirm that the appointment is carried over to the new firm, and arrange the support needed to prepare and file the petition and appendix;

7. Mr. Summers is incarcerated at the Federal Correctional Institution, McDowell and communications are invariably time intensive;

8. Mr. Summers will move to proceed in forma pauperis under Rule 39. He proceeded that way in the court of appeals, and because that court appointed counsel under the Criminal Justice Act, no affidavit is required. *See* Sup. Ct. R. 39.1; and

9. No party would be prejudiced by the requested extension, and Mr. Summers remains in custody. Applicant's Counsel advised Counsel for the United States of this application on September 21, 2026 and has not received a response with respect to their position.

WHEREFORE, Applicant respectfully requests that the time within which to file his petition for a writ of certiorari be extended to and including Monday, November 9, 2026.

DATED this 22nd day of September, 2026.

Respectfully submitted,

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By /s/ Selby P. Brown

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## **APPENDIX**

## **APPENDIX A**

File Name: 26a0273n.06

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

Jun 24, 2026

## OPINION

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

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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

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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<br>Bureau of Alcohol, Tobacco, Firearms and Explosives |                                         | <b>Report of Investigation</b> |
| Title of Investigation<br>Louisville Crips Criminal Enterprise                    | Investigation Number:<br>775040-21-0086 | Report Number:<br>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.

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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 . . . .”

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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.<sup>1</sup> *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.

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<sup>1</sup> 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).

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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

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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

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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

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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

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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

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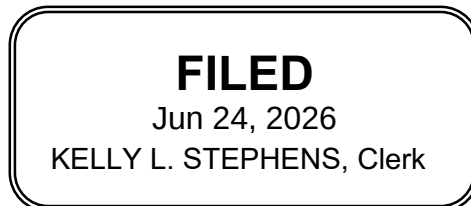
UNITED STATES OF AMERICA,

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**

A handwritten signature in black ink that reads "Kelly L. Stephens".

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Kelly L. Stephens, Clerk

## **APPENDIX B**

Case No. 25-5006/25-5007

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**ORDER**

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JERLEN HORTON [24-6073]

CHICOBY SUMMERS [25-5006 and 25-5007]

Defendants - Appellants

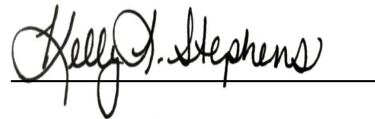
BEFORE: SUTTON, Chief Circuit Judge; MCKEAGUE, Circuit Judge; BUSH, Circuit Judge;

Upon consideration of the petition for rehearing filed by the Appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

**ENTERED BY ORDER OF THE COURT**

Kelly L. Stephens, Clerk

A handwritten signature in cursive script, reading "Kelly L. Stephens", is written over a horizontal line.

Issued: July 10, 2026