NO.
SUPREME COURT OF THE UNITED STATES

TERRELL TRAMMELL	)
	)
Petitioner	)
	)
- VS. -	)
	)
UNITED STATES OF AMERICA	)
	)
Respondent.	)

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

/s Michael Losavio
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Counsel of Record for Petitioner
Terrell Trammell
pursuant to the Criminal Justice Act

QUESTION PRESENTED FOR REVIEW

There is a circuit split with Question I whether § 922(g)(1) is unconstitutional or not pursuant to *Bruen* such as to impact Trammell's conviction. As the Sixth Circuit Court of Appeals, there is a circuit split regarding whether § 922(g)(1) is unconstitutional pursuant to *Bruen*, and it found this defeats the Petitioner's Argument for relief under plain-error review.

Question I- If Counts 4 & 5, relating to firearms possession per **§** 922(g), were multiplicious and unconstitutional per the Second Amendment and this Court's holding in *Bruen*, would not the judgment and sentence on both counts violate the prohibition on Double Jeopardy of the Fifth Amendment and the permission and liberty of the Second Amendment where Trammell was convicted on both of these charges.

Question II – Should the judgement of acquittal as to Count 7 – assaulting, resisting or impeding a federal officer - have been granted, just as it was on Count 6- attempted murder of a federal officer? The evidence failed to establish all the elements needed for that alleged crime, just as they failed to establish the elements needed for Count 6 as the district court found.

Question III – Should the judgment of acquittal should have been granted as Counts 4 and 5 against Trammel as those firearms were possessed by the driver and others and not Trammell, per the Fifth Amendment, U.S. Constitution?

Question IV- Should the Judgment of Acquittal on Count 1, Conspiracy to Possess with the Intent to Distribute 40 grams of fentanyl, have been granted as to Terrell Trammell? And was it Reversible Error to Permit Evidence Relating to Frank Trammell's drug dealings to be Introduced in Terrell Trammell's Trial As A True Conspiracy Of Frank Trammell and his brother Terrell Trammell Was Never Shown?

Question V– Should the judgment of acquittal have been granted on Count 4, possession of a firearm in furtherance of drug trafficking, as no nexus to drug trafficking was shown?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT
WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

Terrell Trammell, Appellant, Petitioner

United States of America, Appellee, Respondent

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TABLE OF AUTHORITIES

OPINIONS AND ORDERS BELOW

The opinion below of the United States Court of Appeals for the Sixth Circuit was rendered in *United States v. Terrell Trammell,* Case number 23-5221; that opinion affirmed the judgment of the United States District Court for the Western District of Kentucky in case number 3:21-CR-28-1-BJB where the original sentence committed Trammell to the custody of the Bureau of Prisons to a total term of 352 months imprisonment. The Petition for Rehearing was denied

JURISDICTION

i. The opinion of the United States Court of Appeals for the Sixth Circuit was entered on 6 June 2024.

ii. A petition for a rehearing *en banc* was filed in this matter and denied on 24 July 2024; as such, this Petition is timely filed pursuant to Supreme Court Rules 1 & 3. No extension of time within which to file a petition for a writ of certiorari has been made.

iii. There is not a cross-Petition pursuant to Rule 12.5.

iv. The statutory provision conferring jurisdiction upon this Court to review upon a writ of certiorari the judgment or order in question is 28 U.S.C. §1254.

Constitutional Provisions And Other Authorities Involved In This Case

Second Amendment to the Constitution of the United States- A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Fifth Amendment to the Constitution of the United States- No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation

18 USC §922 g(1)-… **(g)**It shall be unlawful for any person— (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;… to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce

STATEMENT OF THE CASE

Jurisdiction in the First Instance

Subject matter jurisdiction vested in the U.S. District Court for the Western District of Kentucky pursuant to 18 U.S.C. §3231; Trammell was indicted for offenses against the laws of the United States and was convicted upon a plea of guilty within that district.

Appellate jurisdiction vested in the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. §1291 and 28 U.S.C. §1294.

Presentation of Issues in the Courts Below and Facts

This is a complex and, at times, confusing case, ranging from conflicting or complicated testimonies involving, among others, Brandy Fowler, issues as to perceptibility due to time of day and tinted window conditions, the presence or absence of body cameras and other issues.

Terrell Trammell was the focus of a drug investigation in Louisville, Kentucky that involved multiple law enforcement agencies. After a visit to a friend's apartment, law enforcement immediately acted to detain Trammell and his companion, who was driving the vehicle they entered. An agent of the FBI pulled in front of their vehicle as they were leaving, resulting in the agent being caught in the door of his car and then firing into Trammell's vehicle. Trammell and the young man were removed from the vehicle and placed under arrest, and the residence was then searched. In the residence firearms and narcotics were found.

Trammell was charged with conspiracy to distribute a controlled substance, distribution of a controlled substance, possession with the intent to distribute a controlled substance, possession of a firearm in furtherance of drug trafficking, possession of a firearm by a prohibited person, attempting the murder of a federal officer and assaulting, resisting or impeding a federal

officer. He proceeded to trial, where, after the dismissal of count six, the jury which found Mr. Trammell guilty on six of the charges and that the amount of fentanyl at issue in two of the charges was 40 g each.

Trammell appealed.

The Court of Appeals for the Sixth Circuit affirmed the District Court, stating:

> We have now twice considered and rejected this exact Second Amendment argument under plain-error review in published opinions. *Id.* at 415–17; *United States v. Alvarado*, 95 F.4th 1047, 1051–53 (6th Cir. 2024). Each time, we noted that there is a circuit split regarding whether § 922(g)(1) is unconstitutional pursuant to *Bruen*, which necessarily defeated the defendants' argument under plain-error review. *Johnson*, 95 F.4th at 416 (first citing *United States v. Jackson*, 69 F.4th 495, 505 (8th Cir. 2023); then citing *Range v. Att'y Gen.*, 69 F.4th 96, 106 (3d Cir. 2023) (en banc)); *Alvarado*, 95 F.4th at 1051 (same).
>
> Because we are bound by our own precedent on this purely legal question—and because the circuit split still exists—Trammell cannot show plain error in the district court's failure to sua sponte declare his felon-in-possession conviction unconstitutional.

Further

> Related to his Second Amendment argument, Trammell also asserts that his convictions for being a felon in possession of a firearm and possessing a firearm in furtherance of drug trafficking violate the Fifth Amendment's prohibition on double jeopardy. Trammell failed to raise this argument in district court, so our review is for plain error. *See United States v. Branham*, 97 F.3d 835, 841–42 (6th Cir. 1996).
>
> Trammell contends that the "status" element (i.e., that a person has been convicted of a felony) of being a felon in possession of a firearm is unconstitutional under *Bruen*, and therefore, this offense does not have a (constitutional) distinguishing element from the offense of possessing a firearm in furtherance of a drug-trafficking crime. Thus, he asserts that his felon-in-possession conviction is subsumed into his possession-of-a-firearm-in-furtherance-of-drug-trafficking conviction and violates double jeopardy. *See generally Blockburger v. United States*, 284 U.S. 299, 304 (1932).
>
> This argument fails for two reasons. First, we have not—and neither has the Supreme Court—declared the "status" element of

being a felon in possession of a firearm to be unconstitutional. So the district court not doing so sua sponte can hardly be plainly erroneous. *See Johnson*, 95 F.4th at 415–17; *Alvarado*, 95 F.4th at 1051–53. Second, we have squarely rejected the argument that crimes prohibited under § 922(g) (such as felon in possession of a firearm) and crimes prohibited under § 924(c) (such as possession of a firearm in furtherance of a drug-trafficking crime) violate the Fifth Amendment's Double Jeopardy Clause. *See United States v. Stotts*, 176 F.3d 880, 890 (6th Cir. 1999) (holding that § 924(c) and § 922(g) are separate offenses for double-jeopardy purposes); *United States v. Hayes*, 27 F.3d 568, at *5 (6th Cir. 1994) (unpublished table decision) (noting that "all circuits that have addressed this argument have

As to the sufficiency of the evidence that Trammell assaulted a federal officer, the Court of Appeals said

On appeal, Trammell argues that the district court's dismissal of the attempted-murder charge but not the assault charge was "inconsistent and error," contending that the government failed to prove intent for both crimes. Trammell asserts that neither he nor The driver specifically intended to assault Special Agent Berthay, so the evidence is insufficient to sustain his conviction for the assault charge. We reject these arguments.

As an initial matter, whether the driver specifically intended to assault Berthay is not dispositive because assault and resistance under § 111(a)(1) are general-intent crimes, so the government needed to prove only that the driver "knowingly, consciously, and voluntarily committed an act which the law makes a crime." *Milliron*, 984 F.3d at 1194. The evidence showed that the driver attempted to escape the police, who were executing a search warrant, and he ran a car into a federal officer in doing so. The driver undoubtedly intended to commit an illegal act by assaulting, resisting, opposing, impeding, or interfering with federal officers, as prohibited under § 111(a)(1). Thus, the evidence sufficiently established the underlying assault and resistance committed by the driver, as well as his accompanying general intent.

Because the evidence established The driver's intent to assault or resist Berthay, Trammell is left only with his argument that, just like he did not intend to kill Berthay, he also did not intend to assault Berthay, so he could not be guilty of this crime via aiding and abetting. This argument fares no better. First, we reject Trammell's contention that, because he did not intend to murder Berthay, he also could not

have intended to assault Berthay. Murder and assault contain different elements, so a person can intend to assault someone while lacking intent to murder. *Compare* 18 U.S.C. § 111(a)(1), *with* 18 U.S.C. § 1113, 1114. Second, to be guilty of this crime through an aiding-and-abetting theory, Trammell did not need to specifically intend to assault Berthay; rather, he needed to specifically intend "to aid in the commission of the crime." *Graham*, 622 F.3d at 450; *accord United States v. Nacotee*, 159 F.3d 1073, 1076 (7th Cir. 1998) (explaining that to be liable under the theory of aiding and abetting for the general-intent crime of assault, the "defendant must have had the specific intent to aid in the commission of the crime in doing whatever []he did to facilitate its commission"). The evidence plainly supports Trammell's specific intent to aid The driver in the assault and resistance of Berthay. As the district court observed, Trammell supplied The driver with the vehicle, allowed The driver to drive it, ran to the vehicle, encouraged the attempted flight from known police officers (by yelling "cops"), and acted in accordance with his motive to flee. The fact that The driver, not Trammell, was driving is irrelevant because Trammell was more than a "mere passenger." *See United States v. Pena*, 983 F.2d 71, 72–73 (6th Cir. 1993). A rational jury could therefore find that Trammell contributed to, and aided in the commission of, the assault and resistance of Berthay.

In sum, Trammell is not entitled to relief on any of his sufficiency-of-the-evidence arguments. Here, each of Trammell's firearms-related crimes requires proof of an element uncommon to the other: proof of a prior felony conviction, 18 U.S.C. § 922(g)(1), and proof that the defendant used the firearm for drug trafficking, 18 U.S.C. § 924(c)(1)(A). Trammell's double- jeopardy argument therefore does not survive plain-error review.

As to Trammell's argument that there was insufficient evidence to convict him on several charges, the Court of Appeals said:

> Trammell contends that he worked alone in selling drugs. He argues that the government failed to prove he was in a conspiracy with Frank, and therefore, the government merely proved buyer-seller relationships, which are insufficient to establish a conspiratorial relationship. *See id.* at 680. We disagree.
>
> Viewing the evidence in the light most favorable to the prosecution, the government proved beyond a reasonable doubt that Trammell conspired with Frank to sell drugs by taking over the

business after Frank's arrest. The government showed that Trammell obtained Frank's Chrysler 300; used the same unique method of exchange as Frank (i.e., "pitching the narcotics from their vehicle to the other"); worked with at least one of Frank's co-conspirators (Smith); and sold drugs to Frank's customers (including confidential informants) in furthering their drug conspiracy. Contrary to Trammell's arguments on appeal, a rational juror could conclude that the brothers' relationship was more than familial—the evidence showed that they were willing drug conspirators because they established a common scheme or plan.

…Contrary to Trammell's arguments on appeal, a rational juror could conclude that the brothers' relationship was more than familial—the evidence showed that they were willing drug conspirators because they established a common scheme or plan.

A Petition for Rehearing was filed and denied.

This Petition follows.

REASONS FOR GRANTING THE WRIT

Question I addresses a circuit split whether 18 USC § 922(g)(1) is unconstitutional pursuant to *Bruen* as to impact Trammell's conviction. *The Sixth Circuit noted that there is a circuit split regarding whether § 922(g)(1) is unconstitutional pursuant to Bruen, which necessarily defeated the defendants' argument under plain-error review.*

Question I- If Counts 4 & 5, relating to firearms possession, were multiplicious and unconstitutional per the Second Amendment and this Court's holding in per *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), would not the judgment and sentence on both counts violate the prohibition on Double Jeopardy of the Fifth Amendment and the permission and liberty of the Second Amendment where Trammell was convicted on both of these charges.

There is a circuit split as to whether or not § 922(g)(1) is unconstitutional pursuant to *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022),

Conviction on Counts 4 and 5 violate prohibitions as to the Second Amendment on the right to possess firearms as detailed in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), double jeopardy and multiple punishments for the same offense.

Count 4 and Count 5 differ in that each may be claimed to have an element the other does not. Count 4 has the additional requirement of possession in furtherance of a drug trafficking offense. But Count 5 requires not an additional action element by Trammell but that he have a particular status, that of a convicted felon. That status existed for Trammell all through the commission of the conduct detailed in Count 4. Given that Count 5 is a status offense rather than one with an different element, and that status violation of 18 USC § 922(g)(1) itself is unconstitutional per *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022), and the Second Amendment to the US Constitution, the judgment for Count 5 should be vacated by the district court upon remand. Further, this Court found in *Garland v. Cargill,* Case No. 22-976, a federal prohibition on "bump stock" devices for rapid firing of rifles improper and that the ATF exceeded its statutory authority by issuing a Rule that classifies a bump stock as a

"machinegun" under §5845(b) as to limit possession of this item for firearms.[1]

The Sixth Circuit Court of appeals in *Oakland Tactical Supply, Llc, et al v. Howell Township*,[2] an unpublished opinion, vacated and remanded to the District Court the denial of shooting range permit for reconsideration of Oakland Tactical' s Second Amendment claim in light of *Bruen*. It did so noting that the standard for evaluating such claims was:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command." Bruen, 142 S. Ct. at 2129–30.

Here the United States has not justified its regulation as being consistent with our Nation's historical tradition of firearms regulation.

The conviction on Count 4 also violated the Second Amendment and is unconstitutional per *Bruen*. 18 USC § 922(g)(1) is unconstitutional pursuant to *Bruen* and the Second Amendment to the U.S. Constitution as applied to Mr. Trammell. See. *Range v. A.G.,* 69 F.4th 96 (3d Cir. 2023) (Petition for Cert granted)

The United States asserted that *United States v. Stotts*, 176 F.3d 880, 890 (6th Cir. 1999) precludes review of this issue as it is settled. It is not, particularly in light of *Bruen* and its progeny, such as *Range*. *Stotts* is inapplicable here as the double jeopardy challenge was to Stotts being convicted of being a felon in possession of a firearm and of carrying a destructive

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1 This Court in *United States v Rahimi,* 602 US ___ (2024) held it was permissible to temporarily disarm an individual posing a danger to others. That holding is inapposite to Trammell's case as the statute at issue permanently disarms him and anyone in his position. See, Gorsuch, J concurring: "We do not resolve whether the government may disarm an individual permanently" Id, at p 34

2 *Oakland Tactical Supply, Llc, et al v. Howell Township*, File Name 22a0322n.06, August 5, 2022, https://www.opn.ca6.uscourts.gov/opinions.pdf/22a0322n-06.pdf accessed 2/6/2024

device during and in relation to a controlled substance offense. This is a sufficient difference in the elements, not seen here in Trammell's case. Stotts did not have a Second Amendment right to carry a bomb, and his case was decided long before *Bruen* and other cases challenging the prohibition of a felon possessing a firearm.

Similarly, the United States cited several pre-*Bruen* Sixth Circuit cases limiting the right of felons to possess firearms that are inapposite in light of *Bruen.*

And the United States argues that those pre-*Bruen* cases are consistent with *Bruen* and remain binding, noting *dicta* in *Bruen*. Yet it acknowledges that where a statute burdens constitutionally protected conduct, as here, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Id. at 2130 There was no such justification provided by the United States here or at trial, so at the least this matter should be remanded for appropriate findings on this by the District Court.

As to the Second Amendment assertion, the Second Amendment itself as a ground statute for the United States prohibits the regulation that was used to punish Trammell.

Count 5 is subsumed into Count 4 so as to make punishment under Counts 4 and Count 5 violations of Double Jeopardy prohibition; the unconstitutionality of the statute per *Bruin* further makes enforcement against Trammell a violation of law.

This was error that was plain per *Bruen* and out-of-Circuit caselaw on point, it prejudiced Trammell in his substantial rights by increasing his sentence of imprisonment, and is one this Court should address to sustain the fairness and justice of the federal courts.. Fed. R. Crim. P. 52(b).

The Court of Appeals for the Sixth Circuit declined plain error review on the basis of the circuit split:

> …We have now twice considered and rejected this exact Second Amendment argument under plain-error review in published opinions. Id. at 415–17; United States v. Alvarado, 95 F.4th 1047, 1051–53 (6th Cir. 2024). Each time, we noted that there is a circuit split regarding whether § 922(g)(1) is unconstitutional pursuant to Bruen, which necessarily defeated the defendants' argument under plain-error review. Johnson, 95 F.4th at 416 (first citing United States v. Jackson, 69 F.4th 495, 505 (8th Cir. 2023); then citing Range v. Att'y Gen., 69 F.4th 96, 106 (3d Cir. 2023) (en banc)); Alvarado, 95 F.4th at 1051 (same).
>
> Because we are bound by our own precedent on this purely legal question—and because the circuit split still exists—Trammell cannot show plain error in the district court's failure to sua sponte declare his felon-in-possession conviction unconstitutional.

But if this Court finds that the statute is unconstitutional during the pendency of this case before it then this issue is error and Trammell is entitled to relief. *Linkletter v. Walker,* 381 U.S. 618 (1965); *United States v. Schooner Peggy,* 1 Cranch 103 (1801) See, e.g., *United States v. Booker*, 543 U.S. 220 (2005) (holding the US Sentencing Guidelines were only advisory and applying that ruling to all criminal cases on appeal as plain error.)

The judgment and sentence on Count 5 and Count 4 should be reversed and vacated and this matter remanded to the District Court to correct that judgment and sentence.

Question II – Should the judgement of acquittal as to Count 7 – assaulting, resisting or impeding a federal officer - have been granted, just as it was on Count 6- attempted murder of a federal officer? The evidence failed to establish all the elements needed for that alleged crime, just as they failed to establish the elements needed for Count 6 as the district court found.

. The government conceded that Mr. Trammell was not the driver of the vehicle when it hit the agent's car, but claims the driver drove it into the FBI agent, knowing he was law enforcement, pinning the agent against his own car with Trammell's and that futile attempt to get away was a joint action of the driver and Trammell in the chaotic seconds. Trammell was not liable as a conspirator with The driver, as there was no showing that anyone agreed to the object of pinning the

Agent in his car. It is not credible that in the split second chaos of that moment this was a considered, concerted action. There is no evidence that either the driver nor Trammell knew the Agent was law enforcement employed by the United States government or even that he was there before the Agent drove right up on them as they were driving away. 18 USC §111(a)(1) and 18 USC §1114. All of the facts detailed by the District Court may have related to another issue but not a conspiracy to run over an FBI Agent. Nor even as to the alleged crime itself and the *mens rea* to commit it, given the few seconds involved.

None of this supports Trammell's aiding and abetting of the driver's split-second conduct that was alleged as a *knowing* effort to "assault, resist, oppose, impede, intimidate and interfere with C.R.B…" That Trammell had purported motive *to flee* does not support that he had motive *to assault* the agent, much less to aid and abet another to do so.

These do not show Trammell ""s[ought] by his actions to make [The driver's assault] succeed," particularly Point 4's discussion of conduct by Trammell *after* the incident. As the Court of Appeals acknowledged:

> When a defendant's guilt rests on the theory that he aided and abetted a federal crime, the government must prove: "(1) an act by the defendant that contributes to the commission of the crime, and (2) an intention to aid in the commission of the crime." *United States v. Graham*, 622 F.3d 445, 450 (6th Cir. 2010) (citation omitted); *see also* 18 U.S.C. § 2. Aiding and abetting encompasses "all assistance rendered by words, acts, encouragement, support, or presence." *Reves v. Ernst & Young*, 507 U.S. 170, 178 (1993). Regardless of the mens rea of the underlying offense, an element of aiding and abetting is "specific criminal intent," *United States v. Bryant*, 461 F.2d 912, 920 (6th Cir. 1972), which means "that the defendant shared in the criminal intent of the principal," *United States v. Brown*, 151 F.3d 476, 486 (6th Cir. 1998) (citation omitted).

Lastly, the government never proved that *the driver* intentionally and criminally assaulted the Agent in the chaos of the moment. The driver was pulling out as the Agent drove his car in

front to block them, with the Agent's driver's side door facing The driver's car and the agent jumping out of his vehicle with his body partially out of the car as The driver was going forward, pinning the Agent. *None of this was intended*. If The driver intended injury he would have accelerated when the Agent leaped out of his car; this would have led to far, far more severe injuries than the agent suffered. Indeed, the Agent was able to pull his weapon and fire into The driver's car; if The driver intended malicious assault he would have accelerated and incapacitated, and seriously injured the Agent.

A judgment of acquittal should have been granted on Count 7.

Question III – Should the judgment of acquittal should have been granted as Counts 4 and 5 against Trammel as those firearms were possessed by the driver and others and not Trammell, per the Fifth Amendment to the U.S. Constitution?

The evidence on two of those firearms, the Glock 19 and the American Tactical pistol, showed they were found on the driver-side floorboard of the Chrysler 300. It was the driver, not Trammell who was in the driver's seat of that vehicle.

Ms. Butler stated she had put the Taurus handgun gun on top of the kitchen cabinet. It was her apartment, and Trammell did not live with her. That Trammell had a key to his girlfriend's, and visited her, again is insufficient to infer possession, direct or constructive, of any of the firearms found there.

The Sig Sauer pistol was found in Ms. Butler's purse; Dalton Lewis identified that Sig Sauer as his previously and that he traded it to Mr. Trammell for drugs, but Lewis did not expressly state that Trammell actually possessed that firearm.

DNA testing was done on the American Tactical AR pistol, but that DNA match was insufficient to show possession. All it shows is a proximity to DNA from Trammell, including

from the hand of someone who had shaken or held his hand. Cross-contamination of DNA is a constant problem. See Toncic, Vanessa and Silva, Alexandra, "The Contamination and Misuse of DNA Evidence," Vol. 1 No. 1 (2021): Are We There Yet? The Golden Standards of Forensic Science.

Another firearm attributed to Trammell, the Glock 9mm pistol, bearing serial number XBR634, introduced as U.S. Exhibit 31A, was found to contain a DNA mixture from five or more individuals and was not able to be further identified.

No rational jury could have found that Trammell possessed any of those firearms. The judgment of acquittal on Counts 4 and 5 should have been granted.

Issue IV- Should the Judgment of Acquittal on Count 1, Conspiracy to Possess with the Intent to Distribute 40 grams of fentanyl, have been granted as to Terrell Trammell? And was it Reversible Error to Permit Evidence Relating to Frank Trammell's drug dealings to be Introduced in Terrell Trammell's Trial As A True Conspiracy Of Frank Trammell and Terrell Trammell Was Never Shown?

The government asserts that Trammell took over his brother Frank's drug business without any evidence of such a connection. Trammell worked alone in his dealings, with the driver driving him, contrary to the assertion of the United States of a conspiracy with his brother. The Sixth Circuit Court of Appeals in *United States v. LaPointe*, 690 F.3d 434 (6th Cir. 2012) noted the prosecution may not simply show a defendant's membership in a conspiracy and then, without more, assign him or her guilt for all of the conspiracy's substantive objectives. There is no evidence this is a conspiracy by Terrell Trammell, an agreement to engage in misconduct, with Frank Trammell or Frank's associates.

Trammell was never shown, whether by direct or circumstantial evidence, to have agreed to join any conspiracy with Frank Trammell. As in the Second Circuit Court of Appeals case of

United States v. Brock, 789 F.3d 60 (2nd Cir. 2015), there was "… insufficient evidence of a shared conspiratorial purpose …" And a conspiracy cannot be proven solely by personal relationships, so just because Mr. Trammell was the brother of Frank Trammell, who was arrested, and may have been intimate with someone in whose home narcotics were found does not establish a conspiracy. The United States lists various actions of drug dealers to support the conspiracy by inference, but this was not enough; the record in its entirely shows only Trammell and his driver.

That Trammell:

changed meeting places,

backed into parking spots,

used temporary license tags on the cars he purportedly used in his drug deals, and

used tools of the drug trade, like guns, scales, and baggies .

This simply does not show a conspiracy; more is needed. A common plan, in some cases, may be sufficient to support a conspiracy, but certainly not here.

There is no evidence of conspiracy involving Terrell Trammell with Frank Trammell or Frank's criminal associates.

There is no evidence that Terrell Trammell took over Frank Trammell's drug business, as the government claims. The government attempts to equate coincidence with causation, but that alone is insufficient. With no conspiracy shown, it was error to overrule Trammell's objections to the comments on Frank Trammell's activities as they were irrelevant and inadmissible Here the prejudice was severe due to the extensive nature of Frank's illegal dealings, including with addicts. And no connection to Terrell Trammell was made as to permit the admission of that evidence.

Mr. Trammell's judgment and sentence should be reversed and vacated and this matter remanded to the District Court for a new trial.

Issue V– Should the judgment of acquittal have been granted on Count 4, possession of a firearm in furtherance of drug trafficking, as no nexus to drug trafficking was shown?

No weapons were found in Trammell's physical possession. Two of the firearms were found at the driver's feet on the driver's side of Trammell's automobile, where the driver was driving. No drugs were found in that automobile, nor in proximity to Trammell. The other firearms were in the possession of Trammell's friend, Ms. Butler, not Trammell. The presence of trace DNA of Trammell, along with that of others, does not sufficiently establish his possession of those items. Other guns found in someone else's apartment were not sufficiently connected to Trammell as to show *he* possessed them.

Trammell did not possess a firearm in connection to a drug trafficking offense and cannot be punished under Counts 4 5 of the Indictment. The Judgment of Acquittal should have been granted and these Count 4 dismissed.

CONCLUSION

The judgment and sentence were erroneous and this Petition for Writ of Certiorari should be granted and Mr. Trammell given the relief he has argued for herein.

Respectfully submitted,

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Certification of Word Count and Petition Length

The undersigned certifies that this Petition for a Writ of Certiorari does not exceed 5900 words nor 20 pages in length, not counting the appendix materials, and is in compliance with the length rules of Supreme Court Rule 33.

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Certificate of Service

A copy of the foregoing Petition for a Writ of Certiorari has been served this day by U.S. Postal Mail or via a private expedited service on Hon. Elizabeth B. Prelogar, Solicitor General of the United States, Department of Justice, 950 Pennsylvania Ave., N. W., Washington, DC 20530-0001.

This 2nd day of October, 2024

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Statutes Involved in this Petition

Second Amendment, U.S. Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fifth Amendment, U.S. Constitution

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

18 U.S.C. § 922(g)(1)

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

…

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce

NOT RECOMMENDED FOR PUBLICATION

File Name: 24a0277n.06

No. 23-5221

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED
Jun 25, 2024
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY
	)	
v.	)	
	)	
TERRELL TRAMMELL,	)	**OPINION**
	)	
Defendant-Appellant.	)	

BEFORE: SILER, CLAY, and GRIFFIN, Circuit Judges

GRIFFIN, Circuit Judge.

Law enforcement began investigating defendant Terrell Trammell after he took over his brother's drug-trafficking business. When officers executed a search warrant at Trammell's stash house, he and a co-conspirator fled, but they collided with an FBI agent and his vehicle while doing so. Between the search of Trammell's stash house and vehicle, law enforcement located multiple guns and a distribution-level quantity of drugs. A jury convicted him of drug- and firearms-related crimes, as well as aiding and abetting the assault and resistance of a federal officer. Trammell now challenges his convictions on sufficiency-of-the-evidence, constitutional, and evidentiary grounds, and he asserts that his sentence is procedurally unreasonable. We affirm.

I.

Louisville police officers and the FBI investigated defendant's brother, Frank Trammell, and his associates for drug trafficking. Following several controlled buys, law enforcement learned that Frank ran his drug-trafficking business from a Chrysler 300, so they obtained and executed several search warrants, including one for the Chrysler. They arrested Frank but were unable to locate the vehicle.

After Frank's arrest, one of the confidential informants who bought drugs from Frank began receiving phone calls from James Smith, who claimed to be the informant's "new drug dealer, [and] that they were taking over" following Frank's arrest. Law enforcement capitalized on this opportunity and began conducting controlled buys with Smith. Right before one of those transactions, someone driving Frank's Chrysler arrived nearby and met up with Smith. Law enforcement then began surveilling the Chrysler and discovered that Terrell Trammell was the driver.

They then witnessed Trammell conduct several drug transactions and controlled buys. A few times, Trammell had a co-conspirator, Dyllon The driver, with him. Trammell also drove the Chrysler to the apartment of his girlfriend, Jamila Butler, several times while dealing drugs.

Based on this surveillance, law enforcement obtained a search warrant for Butler's apartment and the Chrysler. Officers staked out the apartment until the Chrysler—with Trammell and The driver inside—arrived. Trammell and The driver entered the apartment, and officers waited for them to exit before executing the warrant. As the two exited, officers wearing marked vests appeared, shouting "police" and "get on the ground" at them. Meanwhile, in the parking lot, FBI Special Agent Ryan Berthay activated his lights and sirens.

Despite the officers' commands, Trammell and The driver ran to the Chrysler and attempted to flee. To prevent their escape, Berthay moved his vehicle so that it blocked the Chrysler from leaving the apartment complex. He then attempted to exit his vehicle, but the Chrysler—with The driver driving and Trammell in the passenger seat—rammed into the side of Berthay's vehicle, pinning him in between the two vehicles. The Chrysler crushed Berthay, who responded by shooting into the Chrysler (although he did not hit Trammell or The driver).

The remaining officers quickly approached the Chrysler, opened the doors, and found The driver crouched behind the driver's seat and Trammell on the floor in front of the passenger seat. Officers arrested both suspects, and a search uncovered two loaded firearms on the floor in front of the driver's seat, one of which had Trammell's DNA on it. In the subsequent search of Butler's apartment, officers found two loaded firearms and a distribution-level quantity of a mixture of heroin and fentanyl.

A jury convicted Trammell for conspiracy to distribute heroin and fentanyl; distribution of heroin and fentanyl; possession with intent to distribute fentanyl; possession of a firearm in furtherance of drug trafficking; possession of a firearm as a felon; and aiding and abetting the

assault and resistance of a federal officer. The Probation Department prepared a presentence investigation report (PSR), calculating his Guidelines range at 352–425 months in prison. Trammell did not object to the PSR. At sentencing, he confirmed multiple times that he had no objections to the PSR and that its Guidelines calculation—which the district court adopted—was correct. The district court then sentenced him to 352 months' imprisonment, the bottom of his Guidelines range. Trammell timely appealed.

II.

Trammell challenges several of his convictions on sufficiency-of-the-evidence grounds. We review a challenge to the sufficiency of the evidence for a criminal conviction de novo. *United States v. Robinson*, 813 F.3d 251, 255 (6th Cir. 2016). A defendant raising a sufficiency-of-the-evidence challenge on appeal faces a "very heavy burden." *Id.* (citation omitted). The defendant must show that, even when viewing the evidence in the light most favorable to the prosecution, no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Jackson*, 473 F.3d 660, 669 (6th Cir. 2007) (citation omitted). We may not "reweigh the evidence, reevaluate the credibility of witnesses, or substitute our judgment for that of the jury." *United States v. Callahan*, 801 F.3d 606, 616 (6th Cir. 2015) (citation and brackets omitted).

A.

We begin with Trammell's conspiracy conviction. Drug conspiracy under 21 U.S.C. § 846 requires the government to prove (1) "two or more individuals have agreed to violate a drug law" and (2) the defendant "knowingly and voluntarily entered into this agreement." *United States v. Mosley*, 53 F.4th 947, 956 (6th Cir. 2022) (citation omitted). Because conspirators do not enter into formal agreements to break the law, "a tacit or material understanding among the parties will suffice." *United States v. Deitz*, 577 F.3d 672, 677 (6th Cir. 2009) (citation omitted). Indeed,

"[t]he existence of a conspiracy may be inferred from circumstantial evidence that can reasonably be interpreted as participation in the common plan." *Id.* (internal quotation marks omitted).

Trammell contends that he worked alone in selling drugs. He argues that the government failed to prove he was in a conspiracy with Frank, and therefore, the government merely proved buyer-seller relationships, which are insufficient to establish a conspiratorial relationship. *See id.* at 680. We disagree.

Viewing the evidence in the light most favorable to the prosecution, the government proved beyond a reasonable doubt that Trammell conspired with Frank to sell drugs by taking over the business after Frank's arrest. The government showed that Trammell obtained Frank's Chrysler 300; used the same unique method of exchange as Frank (i.e., "pitching the narcotics from their vehicle to the other"); worked with at least one of Frank's co-conspirators (Smith); and sold drugs to Frank's customers (including confidential informants) in furthering their drug conspiracy. Contrary to Trammell's arguments on appeal, a rational juror could conclude that the brothers' relationship was more than familial—the evidence showed that they were willing drug conspirators because they established a common scheme or plan.

B.

Trammell next challenges his convictions for possessing a firearm in furtherance of drug trafficking and being a felon in possession of a firearm, arguing that the firearms at issue were possessed not by him but instead by other individuals. Both crimes require the government to prove that the defendant purposely possessed a firearm. *United States v. Hall*, 20 F.4th 1085, 1107 (6th Cir. 2022) (explaining that a defendant must "knowingly possess[]" a firearm to be convicted of being a felon in possession under 18 U.S.C. 922(g)(1)); *United States v. Maya*, 966 F.3d 493, 500 (6th Cir. 2020) (noting that a defendant must possess a firearm for an "illicit purpose" to be convicted of possessing a firearm in furtherance of drug trafficking under 18 U.S.C. § 924(c)(1)(A)). "Possession may be either actual or constructive and it need not be exclusive but

may be joint." *United States v. Sadler*, 24 F.4th 515, 551 (6th Cir. 2022) (internal quotation marks omitted). Constructive possession can be proven by circumstantial evidence, and it exists where the defendant "has dominion over the premises where the firearm is located." *Id.* (citation omitted).

Absent any citation to legal authority, Trammell argues that the two firearms found in the Chrysler were located on the driver's side floorboard, so they could not have been his because he was in the passenger side of the vehicle at the time of his arrest. He ignores that he had been observed driving the vehicle on other occasions, that his DNA was found on one of the guns, and that The driver was his co-conspirator. A rational jury could conclude that these facts are at least

sufficient for Trammell's constructive or joint possession of the firearms found in the Chrysler. Moreover, a rational jury could infer that Trammell possessed the guns located in Butler's apartment—he frequented the apartment and possessed a key to it; thus, he exercised dominion over the apartment, meaning he constructively possessed the guns located there. *See id.*

Additionally, Trammell challenges the sufficiency of the evidence for his firearm-in-furtherance-of-drug-trafficking conviction for another reason: that the firearms were not associated with drug trafficking. However, he merely raises this argument in one sentence with no supporting authority, which is insufficient to properly raise the issue on appeal. *See, e.g.*, *United States v. Hendrickson*, 822 F.3d 812, 829 n.10 (6th Cir. 2016) ("A party may not raise an issue on appeal by mentioning it in the most skeletal way, leaving the court to put flesh on its bones." (internal quotation marks and alterations omitted)). So we will not consider it further.

C.

For his last sufficiency-of-the-evidence challenge, Trammell argues that his conviction for aiding and abetting the assault and resistance of a federal officer cannot stand, focusing on whether the government proved the requisite intent. To be guilty of assaulting or resisting a federal officer under 18 U.S.C. § 111(a)(1), "the government must show that the defendant: (1) forcibly (2) assaulted, resisted, opposed, impeded, intimidated, or interfered with (3) a federal officer (4) in the performance of his duties." *United States v. Milliron*, 984 F.3d 1188, 1194 (6th Cir. 2021) (citation omitted). Assault of a federal officer is a general-intent crime, "requiring only that a person knowingly, consciously, and voluntarily committed an act which the law makes a crime; it does not require a showing of bad purpose." *Id.* (internal quotation marks omitted).

When a defendant's guilt rests on the theory that he aided and abetted a federal crime, the government must prove: "(1) an act by the defendant that contributes to the commission of the crime, and (2) an intention to aid in the commission of the crime." *United States v. Graham*, 622

F.3d 445, 450 (6th Cir. 2010) (citation omitted); *see also* 18 U.S.C. § 2. Aiding and abetting encompasses "all assistance rendered by words, acts, encouragement, support, or presence." *Reves v. Ernst & Young*, 507 U.S. 170, 178 (1993). Regardless of the mens rea of the underlying offense, an element of aiding and abetting is "specific criminal intent," *United States v. Bryant*, 461 F.2d 912, 920 (6th Cir. 1972), which means "that the defendant shared in the criminal intent of the principal," *United States v. Brown*, 151 F.3d 476, 486 (6th Cir. 1998) (citation omitted).

In addition to the crimes for which he was convicted, Trammell was also indicted for aiding and abetting the attempted murder of a federal officer. But at trial, the government conceded that it had failed to prove that The driver had the necessary specific intent to kill Special Agent Berthay when ramming into Berthay's car. The district court agreed and dismissed this charge against Trammell upon his motion for a judgment of acquittal.

On appeal, Trammell argues that the district court's dismissal of the attempted-murder charge but not the assault charge was "inconsistent and error," contending that the government failed to prove intent for both crimes. Trammell asserts that neither he nor The driver specifically intended to assault Special Agent Berthay, so the evidence is insufficient to sustain his conviction for the assault charge. We reject these arguments.

As an initial matter, whether The driver specifically intended to assault Berthay is not dispositive because assault and resistance under § 111(a)(1) are general-intent crimes, so the government needed to prove only that The driver "knowingly, consciously, and voluntarily committed an act which the law makes a crime." *Milliron*, 984 F.3d at 1194. The evidence showed that The driver attempted to escape the police, who were executing a search warrant, and he ran a car into a federal officer in doing so. The driver undoubtedly intended to commit an illegal act by assaulting, resisting, opposing, impeding, or interfering with federal officers, as prohibited under § 111(a)(1). Thus, the evidence sufficiently established the underlying assault and resistance

committed by The driver, as well as his accompanying general intent.

Because the evidence established The driver's intent to assault or resist Berthay, Trammell is left only with his argument that, just like he did not intend to kill Berthay, he also did not intend to assault Berthay, so he could not be guilty of this crime via aiding and abetting. This argument fares no better. First, we reject Trammell's contention that, because he did not intend to murder Berthay, he also could not have intended to assault Berthay. Murder and assault contain different elements, so a person can intend to assault someone while lacking intent to murder. *Compare* 18 U.S.C. § 111(a)(1), *with* 18 U.S.C. § 1113, 1114. Second, to be guilty of this crime through an aiding-and-abetting theory, Trammell did not need to specifically intend to assault Berthay; rather, he needed to specifically intend "to aid in the commission of the crime." *Graham*, 622 F.3d at 450; *accord United States v. Nacotee*, 159 F.3d 1073, 1076 (7th Cir. 1998) (explaining that to be liable under the theory of aiding and abetting for the general-intent crime of assault, the "defendant must have had the specific intent to aid in the commission of the crime in doing whatever []he did to facilitate its commission"). The evidence plainly supports Trammell's specific intent to aid The driver in the assault and resistance of Berthay. As the district court observed, Trammell supplied the driver with the vehicle, allowed the driver to drive it, ran to the vehicle, encouraged the attempted flight from known police officers (by yelling "cops"), and acted in accordance with his motive to flee. The fact that The driver, not Trammell, was driving is irrelevant because Trammell was more than a "mere passenger." *See United States v. Pena*, 983 F.2d 71, 72–73 (6th Cir. 1993). A rational jury could therefore find that Trammell contributed to, and aided in the commission of, the assault and resistance of Berthay.

In sum, Trammell is not entitled to relief on any of his sufficiency-of-the-evidence arguments.

III.

Trammell next seeks vacatur of his firearms-related convictions on constitutional grounds, arguing that they violate the Second Amendment and the Double Jeopardy Clause.

A.

Trammell argues that 18 U.S.C. § 922(g)(1) violates the Second Amendment in light of the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), rendering his felon-in-possession conviction unconstitutional. But Trammell did not raise this argument before the district court, so we review for plain error. *United States v. Johnson*, 95 F.4th 404, 415 (6th Cir. 2024). "Under plain-error review, a defendant must establish: (1) an error, (2) that was plain, (3) that affected substantial rights, and (4) that seriously impacted the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks omitted).

We have now twice considered and rejected this exact Second Amendment argument under plain-error review in published opinions. *Id.* at 415–17; *United States v. Alvarado*, 95 F.4th 1047, 1051–53 (6th Cir. 2024). Each time, we noted that there is a circuit split regarding whether § 922(g)(1) is unconstitutional pursuant to *Bruen*, which necessarily defeated the defendants' argument under plain-error review. *Johnson*, 95 F.4th at 416 (first citing *United States v. Jackson*, 69 F.4th 495, 505 (8th Cir. 2023); then citing *Range v. Att'y Gen.*, 69 F.4th 96, 106 (3d Cir. 2023) (en banc)); *Alvarado*, 95 F.4th at 1051 (same).

Because we are bound by our own precedent on this purely legal question—and because the circuit split still exists—Trammell cannot show plain error in the district court's failure to sua sponte declare his felon-in-possession conviction unconstitutional.

B.

Related to his Second Amendment argument, Trammell also asserts that his convictions for being a felon in possession of a firearm and possessing a firearm in furtherance of drug trafficking violate the Fifth Amendment's prohibition on double jeopardy. Trammell failed to raise this argument

in district court, so our review is for plain error. *See United States v. Branham*, 97 F.3d 835, 841–42 (6th Cir. 1996).

Trammell contends that the "status" element (i.e., that a person has been convicted of a felony) of being a felon in possession of a firearm is unconstitutional under *Bruen*, and therefore, this offense does not have a (constitutional) distinguishing element from the offense of possessing a firearm in furtherance of a drug-trafficking crime. Thus, he asserts that his felon-in-possession conviction is subsumed into his possession-of-a-firearm-in-furtherance-of-drug-trafficking conviction and violates double jeopardy. *See generally Blockburger v. United States*, 284 U.S. 299, 304 (1932).

This argument fails for two reasons. First, we have not—and neither has the Supreme Court—declared the "status" element of being a felon in possession of a firearm to be unconstitutional. So the district court not doing so sua sponte can hardly be plainly erroneous. *See Johnson*, 95 F.4th at 415–17; *Alvarado*, 95 F.4th at 1051–53. Second, we have squarely rejected the argument that crimes prohibited under § 922(g) (such as felon in possession of a firearm) and crimes prohibited under § 924(c) (such as possession of a firearm in furtherance of a drug-trafficking crime) violate the Fifth Amendment's Double Jeopardy Clause. *See United States v. Stotts*, 176 F.3d 880, 890 (6th Cir. 1999) (holding that § 924(c) and § 922(g) are separate offenses for double-jeopardy purposes); *United States v. Hayes*, 27 F.3d 568, at *5 (6th Cir. 1994) (unpublished table decision) (noting that "all circuits that have addressed this argument have rejected it"). Here, each of Trammell's firearms-related crimes requires proof of an element uncommon to the other: proof of a prior felony conviction, 18 U.S.C. § 922(g)(1), and proof that the defendant used the firearm for drug trafficking, 18 U.S.C. § 924(c)(1)(A). Trammell's double- jeopardy argument therefore does not survive plain-error review.

IV.

Trammell next raises evidentiary challenges to law enforcement officers' testimony regarding Frank's drug-trafficking business and techniques. We review the district court's evidentiary rulings for abuse of discretion. *United States v. Ramer*, 883 F.3d 659, 669 (6th Cir. 2018).

At trial, Trammell objected to some of the testimony regarding Frank's drug dealing on lack-

of-relevance grounds. The district court overruled his objection. He argues on appeal that the district court should have found this evidence to be inadmissible under Federal Rules of Evidence 402, 403, and 404, claiming that "no conspiracy with Frank Trammell was ever shown," so any testimony about Frank's drug-trafficking business was irrelevant and highly prejudicial, tainting the jury's guilty verdict on the conspiracy count.

The district court did not abuse its discretion in allowing this testimony. First, evidence of co-conspirators' actions in furtherance of the conspiracy is relevant in proving the scope, tactics, and knowledge of the conspiracy and co-conspirators. *See United States v. Toney*, 161 F.3d 404, 413 (6th Cir. 1998) (finding no abuse of discretion under Rules 401 and 403 in admitting testimony regarding the conduct of co-conspirators); *United States v. Jerkins*, 871 F.2d 598, 605 (6th Cir. 1989) (finding no abuse of discretion under Rule 403 "in allowing references to other drug dealers during the course of the trial"); *United States v. Harris*, 983 F.2d 1069, at *3 (6th Cir. 1992) (unpublished table decision) (per curiam) (finding no abuse of discretion in admitting evidence of an unindicted co-conspirator's actions because "such evidence [was] probative of [the defendant's] knowledge of the conspiracy and of the conspiracy's scope"). As explained above, the government proved that Trammell took over Frank's drug-trafficking business and that they were therefore co- conspirators. Circumstantial evidence (such as Trammell and Frank's common drug-dealing tactics, use of the same vehicle, and sales to the same clients) of the scope of their conspiracy was relevant in proving the conspiracy and was not highly prejudicial, so the district court did not abuse its discretion in admitting this relevant, highly probative evidence under Rules 402 or 403.

Second, the district court also committed no error under Rule 404(b).[1] "Rule 404(b) is not implicated when the other crimes or wrongs evidence is part of a continuing pattern of illegal activity." *United States v. Barnes*, 49 F.3d 1144, 1149 (6th Cir. 1995). Indeed, bad acts by other participants in a common scheme are admissible as long as they constitute part of the same criminal episode, whether or not a conspiracy is charged, and "as long as independent evidence ties the defendant to that scheme." *Toney*, 161 F.3d at 413–14. The trial record, which shows drug sales initially conducted by Frank and continued by Trammell, sufficiently establishes a common scheme among the brothers to traffic heroin. Evidence of their "continuing pattern of illegal activity" does not implicate Rule 404(b),

so the district court did not abuse its discretion in admitting this evidence.

V.

Trammell finally appeals his sentence, arguing it was procedurally unreasonable for the district court to impose certain enhancements.[2] But he has expressly waived any such challenges.

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[1]Trammell raises this argument for the first time on appeal, though the government does not ask for plain-error review. Thus, we review under the normal abuse-of-discretion standard. *United States v. Williams*, 641 F.3d 758, 763–64 (6th Cir. 2011).

[2]Trammell perfunctorily contends that his sentence was substantively unreasonable, but he fails to provide any argument on the district court's consideration of the 18 U.S.C. § 3553(a) *See United States v. Priddy*, 808 F.3d 676, 681 (6th Cir. 2015) ("[W]here the defendant has 'explicitly agreed' that a particular guideline calculation or enhancement applies to his sentence, any challenge to that enhancement on appeal is waived." (citation omitted)), *abrogated on other grounds by United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017). Trammell failed to object to the PSR itself, and at sentencing, he agreed that the exact enhancements he now challenges were correctly applied by the PSR and the district court. *Cf. United States v. Mabee*, 765 F.3d 666, 673 (6th Cir. 2014). Thus, Trammell "expresse[d] a plain, positive concurrence with applying the enhancement[s]" and waived all arguments to the contrary. *Priddy*, 808 F.3d at 681 (internal quotation marks omitted). So we may not consider Trammell's challenges to any enhancements on appeal. *United States v. Carter*, 89 F.4th 565, 568 (6th Cir. 2023).

VI.

We affirm the judgment of the district court.

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factors or why his bottom-of-the-Guidelines sentence was too long. This insufficiently developed argument is therefore abandoned. *Hendrickson*, 822 F.3d at 829 n.10.

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.
Terrell Trammell

JUDGMENT IN A CRIMINAL CASE

(For offenses committed on or after November 1, 1987)
Case Number: 3:21-CR-28-1-
BJB US Marshal No: 16326-509
Counsel for Defendant: **Daniel Whitley** Counsel for the United States: **Frank E. Dahl** Court Reporter: **Rebecca Boyd**
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 by a jury on November 17, 2022 on Counts 1-5 and 7 of the Superseding Indictment after a plea of not guilty.**

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(s)

☐ 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.

2/24/2023
Date of Imposition of Judgment

February 27, 2023

DEFENDANT: **Trammell, Terrell**
CASE NUMBER: **3:21-CR-28-1-BJB**

COUNTS OF CONVICTION

Title / Section and Nature of Offense	Date Offense Concluded	Count
21:846, 841(a)(1) and 841(b)(1)(B) CONSPIRACY TO POSSESS WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE	11/5/2020	1s
21:841(a)(1) and (b)(1)(C) DISTRIBUTION OF A CONTROLLED SUBSTANCE	10/9/2020	2s
21:841(a)(1) and (b)(1)(C) and 18:2 POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE, aiding and abetting	11/5/2020	3s
18:924(c)(1)(A) POSSESSION OF A FIREARM IN FURTHERANCE OF DRUG TRAFFICKING	11/5/2020	4s
18:22(g)(1) and 924(a)(2) POSSESSION OF A FIREARM BY A PROHIBITED PERSON	11/5/2020	5s
18:111(a)(1), 111(b) and 2 ASSAULTING, RESISTING, OR IMPEDING A FEDERAL OFFICER, aiding and abetting	11/5/2020	7s

DEFENDANT: **Trammell, Terrell**
CASE NUMBER: **3:21-CR-28-1-BJB**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **292 months on Counts 1 and 3, 240 months on Count 2 and 7, and 120 months on Count 5, all to be served concurrently, and 60 months on Count 4 to be served consecutively, for a total of 352 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: **Trammell, Terrell**
CASE NUMBER: **3:21-CR-28-1-BJB**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **5 years on Counts 1,3, and 4 and 3 years on Counts 2, 5, and 7, to be served concurrently for a total 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: **Trammell, Terrell**
CASE NUMBER: **3:21-CR-28-1-BJB**

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 knowingly 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: **Trammell, Terrell**
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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/her ability to pay as reflected in his/her monthly cash flow as it relates to the court approved sliding fee scale.
15. The defendant must submit to testing to determine if he/she has used a prohibited substance. The defendant shall contribute to the Probation Office's costs of service rendered based upon his/her 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 submit his or her person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 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

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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:** **$ 600.00**

☒ **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 DKYW321CR000028-002 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.

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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 $ 600 due immediately, balance due
☐ not later than , or
☒ in accordance with E below

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: The Court enters forfeiture against the Defendant, without objection, in accordance with the preliminary order filed by the United States, and will issue a final order of forfeiture in accordance with FRCrP 32.2(c).**

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.

C-1 Order on Petition for Rehearing En Banc – denied

No. 23-5221

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 24, 2024
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERRELL TRAMMELL,

Defendant-Appellant.

ORDER

BEFORE: SILER, CLAY, and GRIFFIN, 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