

NO.
SUPREME COURT OF THE UNITED STATES

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

APPENDIX TO

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

Opinion Affirming of the United States Court of Appeals for the Sixth Circuit... A 1-14...
United States v. Terrell Trammell, 23-5221

Judgment of the U.S. District Court for the Western District of Kentucky.....B 1-8...
United States v. Terrell Trammell,

Order denying Petition for Rehearing En
Banc.....C 1-2

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NOT RECOMMENDED FOR PUBLICATION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,

v.

TERRELL TRAMMELL,

Defendant-Appellant.

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ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE WESTERN
DISTRICT OF KENTUCKY

OPINION

No. 23-5221, *United States v. Trammell*

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.

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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

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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,

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“[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

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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.

¹Trammell 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).

²Trammell 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.

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.

**United States District Court
Western District of Kentucky
LOUISVILLE DIVISION**

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

**V.
Terrell Trammell**

(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):

<u>Title / Section and Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
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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

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

Judgment-Page 2 of 8

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

COUNTS OF CONVICTION

<u>Title / Section and Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
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**

**IMPRISONM
ENT**

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**

CASE NUMBER: **3:21-CR-28-1-BJB**

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

DEFENDANT: **Trammell, Terrell**
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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.

<u>Name of Payee</u>	** Total <u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order</u> <u>Or Percentage Of Payment</u>
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If applicable, restitution amount ordered pursuant to plea agreement. \$

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

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

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

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

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

DEFENDANT: **Trammell, Terrell**
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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