No. 16-6592

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MATTHEW B. CORDER,

Defendant-Appellant

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

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

The United States does not object to defendant-appellant's request for oral argument in this case.

STATEMENT OF JURISDICTION

This appeal is from a judgment of conviction and sentence under the laws of the United States. The district court had jurisdiction under 18 U.S.C. 3231. The court sentenced Corder and entered final judgment on October 20, 2016. (Judgment, R. 71, PageID# 1066-1071). Corder timely appealed on October 24,

2016. (Notice of Appeal, R. 73, PageID# 1076). This Court has jurisdiction under 18 U.S.C. 3742 and 28 U.S.C. 1291.

STATEMENT OF ISSUES

1. Whether sufficient evidence supported Corder's convictions under 18 U.S.C. 242.

2. Whether the district court properly declined to instruct the jury that the doorway of one's home is a public place, where Corder's arrest of the victim took place inside the victim's home.

3. Whether the district court properly admitted a redacted state trial court order dismissing criminal charges against the victim.

4. Whether the district court properly found that, in testifying in his own defense, Corder waived his Fifth Amendment right to remain silent as to his credibility as a law enforcement officer.

5. Whether the district court's jury instruction defining willfulness under 18 U.S.C. 242 was proper.

6. Whether the district court correctly held that physical restraint is not an element of 18 U.S.C. 242 for purposes of United States Sentencing Guidelines § 3A1.3.

STATEMENT OF THE CASE

1. Statement Of Facts

a. Corder's False Arrest Of Baize

On October 22, 2014, Deric Baize returned home to find the police vehicle of defendant Matthew Corder, a deputy with the Bullitt County Sheriff's Office, parked in front of Baize's home in Baize's parking spot. Parking spots in Baize's trailer park are assigned and monitored, and residents who park their cars improperly can get fined. Baize therefore worried about his car but parked to the side as best he could and went inside to eat. (Transcript, R. 63, PageID# 657, 659); (Transcript, R. 64, PageID# 683, 814, 818).

Shortly thereafter, Corder returned to his vehicle after finishing a nearby police call with fellow deputy Billy Allen. Upon seeing Corder return, Baize exited his home, stood on his front porch, and spoke with Corder as Corder got into his vehicle. (Transcript, R. 63, PageID# 658); (Transcript, R. 64, PageID# 728, 817, 820).

Baize asked Corder what was happening, to which Corder told Baize to mind his own business. When Baize asked Corder to move his car so that Baize could park in the correct spot, Corder retorted that he would move his car when he was ready. Baize, frustrated, told Corder to "fuck off" and began walking back into his house; Corder responded, "What did you say?"; Baize stated "I did not

stutter. I said 'fuck off.'" Baize then walked into his home and closed his front door. (Transcript, R. 63, PageID# 658-659); (Transcript, R. 64, PageID# 712, 820, 824-825); (Transcript, R. 59, PageID# 357).

The volumes of both of their voices were normal for their 15-second exchange, although Baize raised his voice the second time he cursed after Corder asked Baize to repeat himself. Corder never told Baize that he was speaking too loudly and never asked Baize to quiet down; instead, Corder invited Baize to repeat himself. No neighbor called the police or came out of their home to complain about noise or Baize's choice of language. The lots across the street from Baize's home were empty on the night of the exchange, and the occupied lot closest to Baize was located behind his trailer. Corder never told Baize before Baize reentered his home that he was under arrest. (Transcript, R. 63, PageID# 553-554, 658-659); (Transcript, R. 64, PageID# 687, 703-706, 712, 728-729, 734-735, 777, 779, 820, 824-825); (Transcript, R. 59, PageID# 361-362, 400); (Trial Ex. 9, R. 68, PageID# 1040).

Following their exchange and after Baize went inside, Corder walked up Baize's front steps and knocked on Baize's screen door.[1] Baize, holding a pizza box, opened his front door but left his screen door closed. Corder opened Baize's closed screen door and told Baize to exit his home. Baize twice refused. Corder ordered Baize to exit his home "or there are going to be issues." Baize said that Corder needed a warrant, but Corder responded that he did not "need no warrant" because Baize's "hollering" at Corder and then running back inside his home had created exigent circumstances. Baize again refused. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:00-0:46); (Transcript, R. 64, PageID# 697).

Corder reached inside Baize's home to grab Baize while telling him to "put the pizza down" and "bring your ass out here." Baize again refused and said "you are not allowed in my house." Corder grabbed hold of Baize's left arm and attempted to drag Baize out of his home, but Baize braced himself against the inside of the doorframe and pulled his left arm back into the house. Baize, standing entirely inside his home, asked Corder three times to "get off me." Corder responded: "I'm not letting go of you, you understand that?" Corder then

[1] This part of Corder's encounter with Baize was captured on video footage from Corder's body camera. (Trial Exs. 3a & 3b, R. 68, PageID# 1040); (Transcript, R. 63, PageID# 660-665); (Transcript, R. 64, PageID# 732-736); (Transcript, R. 59, PageID# 381, 390, 394). The United States has sent four CD copies of trial Exhibits 3a, 3b, 4, 9, 12, and 13 to the Clerk's office for inclusion in the appellate record.

entered Baize's home, grabbed Baize by the back of the neck, and began to arrest him. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:45-1:05); (Transcript, R. 63, PageID# 660); (Transcript, R. 64, PageID# 388).

As Corder entered Baize's home, Deputy Allen arrived at the scene. Allen had seen Corder walk up the steps to Baize's front porch and walked the 50-60 feet over to Baize's home from the previous police call. Allen presumed that Corder had a valid basis to arrest Baize so attempted to place Baize in handcuffs. Baize resisted arrest by tensing and flexing his arms while pleading with Corder to "please listen." Corder tased Baize into submission with pain that felt "like breaking a bone" or "needles being jammed into" him. Baize's sister, who had witnessed the scuffle, sobbed when Corder tased her brother. (Trial Ex. 3a, R. 68, PageID# 1040, at 1:02-2:25); (Transcript, R. 63, PageID# 664); (Transcript, R. 64, PageID# 720, 730-732, 737, 763, 780, 831).

Corder and Allen then took Baize out to Corder's police vehicle. Baize explained to Allen what triggered the incident: that he had asked Corder "if he could please move his vehicle." Corder interjected: "And what did I say? I said, as soon as I get done I will, okay, and then you tell me to fuck off?" Corder then asked Baize what was so important about the parking spot and, without giving him a chance to respond, told him that "fuck you gets you a whole different ballgame, buddy." Baize apologized, to which Corder responded: "fuck that. You get to go

to jail tonight." When Baize tried to explain that, during the scuffle, he had been asking Corder why Corder was arresting him, Corder told Baize "you knew why, slick. You sit up there and tell me to fuck off." Corder also said that Baize "act[ed] stupid" by refusing to leave his home. As Corder patted down Baize, Corder casually added, "Tell somebody to fuck off, what planet did you ever think that was going to fucking go," and then advised Baize that the "next time you tell a police officer to fuck off, you might want to think about it." (Trial Ex. 3a, R. 68, PageID# 1040, at 2:33-4:43); (see also Transcript, R. 59, PageID# 359, 395-398).

With Baize in the police vehicle, Corder recounted to Allen his prior exchange with Baize:

> He said, uh, do you think you can move, so I can park there?
> I said, move, when I get done, I'll move.
> Well you know, this is my property, blah blah blah.
> I said, excuse me, I said do you understand I've got a reason to be here?
> He said, well you're on my property.
> I said, uh, this is the roadway slick.
> Well then he means to tell me to go fuck off.

Corder did not say anything about Baize making unreasonable noise or fleeing from him. (Trial Ex. 3b, R. 68, PageID# 1040, at 0:00-0:27).

b. Corder's Malicious Prosecution Of Baize

Corder issued Baize a uniform citation that charged him with three misdemeanors: disorderly conduct in the second degree, Ky. Rev. Stat. Ann. § 525.060 (West 2017), fleeing and evading in the second degree, Ky. Rev. Stat.

Ann. § 520.100 (West 2017), and resisting arrest, Ky. Rev. Stat. Ann. § 520.090 (West 2017). In support of the first two charges, the citation alleged that the "[i]ncident caused alarm to neighbors & occupants of trailer" and that Baize "to evade ran inside [his] trailer." The witness box on the citation, where Corder would list any witnesses and their contact information in the event of a hearing or trial, was empty. (Trial Ex. 4, R. 68, PageID# 1040); (Transcript, R. 63, PageID# 512, 548-549); (Transcript, R. 64, PageID# 740-741).

In Kentucky, an arrest citation operates as the charging document. At Baize's arraignment the next day, the pretrial services officer determined Baize's risk level to be low and recommended that Baize be released on his own recognizance or on an unsecured bond. After reviewing Corder's charges and supporting allegations, however, the magistrate judge rejected the pretrial services officer's recommendation and detained Baize on a $1500 cash bond. The judge stated that she rejected the less restrictive options because the citation charged that Baize evaded the police and resisted arrest. (Trial Ex. 12, R. 68, PageID# 1040, at 2:08-3:02); (Transcript, R. 63, PageID# 515); (Trial R. 64, PageID# 739, 785-787, 795).

Baize could not afford the cash bond. He spent two weeks in jail before a third party arranged and guaranteed a $2000 surety bond. Baize ultimately lost

both his job and his home because of the arrest, charges, and jail time. (Transcript, R. 63, PageID# 657, 667); (Transcript, R. 64, PageID# 695, 791-792).

On December 8, 2014, the prosecutor agreed to drop all charges against Baize after the sheriff's office provided her with a copy of the video footage from Corder's body camera. The prosecutor and Baize's public defender, without Baize's knowledge, agreed on an order of dismissal that stipulated "that there was probable cause with respect to the charges herein." Baize found out that his case had been dismissed when he arrived for his pretrial hearing on January 13, 2015. (Motion in Limine, R. 40-1, PageID# 250); (Trial Ex. 13, R. 68, PageID# 1040); (Transcript, R. 63, PageID# 516, 669); (Transcript, R. 64, PageID# 791-793).

2. Procedural History

On December 16, 2015, a grand jury returned a two-count indictment charging Corder with violating 18 U.S.C. 242 by depriving Deric Baize of his constitutional rights under color of law. Count 1 charged that Corder violated Baize's right to be free from unreasonable seizures by seizing Baize without probable cause and by unlawfully entering Baize's home to effect the seizure. Count 2 charged that Corder violated Baize's right to be free from unreasonable seizures, which includes the right to be free from malicious prosecution, by charging Baize with "disorderly conduct" and "fleeing and evading" without probable cause and by knowingly including "false and misleading information in

the charging document," both of which caused Baize to be detained in jail. (Indictment, R. 1, PageID# 1-2).[2]

On July 22, 2016, after a four-day trial, a jury convicted Corder of both counts. The district court held a sentencing hearing on October 17, 2016. The court sentenced Corder to 27 months' imprisonment on Count 1 and 12 months' imprisonment on Count 2, to be served concurrently. (Verdict, R. 50, PageID# 310); (Sentencing, R. 83, PageID# 1388-1423); (Judgment, R. 71, PageID# 1068).

Corder filed a motion for bond pending appeal, which the district court denied on December 15, 2016. (Mot. for Bond, R. 74, PageID# 1078-1083); (Order, R. 85, PageID# 1432-1436). Corder then filed in this Court a motion for release pending appeal (Doc. 19, filed Dec. 20, 2016), which this Court denied on December 27, 2016 (Doc. 21-2).

SUMMARY OF THE ARGUMENT

Corder challenges on appeal his conviction and sentence on six different grounds, none of which has merit. First, he argues that the evidence was insufficient to convict him of Counts 1 and 2 because he had probable cause to arrest Baize. On Count 1, however, the jury had ample evidence to conclude that

[2] The government did not charge Corder with malicious prosecution for charging Baize with resisting arrest. Under Kentucky law, people may not resist arrest even if the underlying arrest is unlawful. See *Baze* v. *Commonwealth*, 965 S.W.2d 817 (Ky. 1997), cert. denied, 23 U.S. 1083 (1998).

Corder violated Baize's rights (a) not to be arrested without probable cause and (b) to be free from warrantless arrest in one's home absent consent or exigent circumstances, either of which suffices to uphold the jury's verdict. Corder's body camera footage and his own testimony demonstrated that he lacked both probable cause to arrest Baize and exigent circumstances to arrest Baize in his home. In addition, on Count 2, the jury had ample evidence to conclude that Corder violated Baize's right to be free from malicious prosecution because Corder used false statements to support the charges on Baize's arrest citation.

Second, Corder challenges the district court's denial of his request for a jury instruction that would have defined the doorway to a home as a public place where one can be arrested without a warrant. The district court did not abuse its discretion in denying Corder's proposed instruction because Corder's own body camera footage showed that Baize was not in his doorway when Corder began arresting him. Corder therefore needed to demonstrate exigent circumstances for his in-home arrest of Baize, just as the district court instructed.

Third, Corder challenges the district court's decision to admit a version of the order dismissing charges against Baize that redacted the stipulation of probable cause between the prosecutor and Baize's public defender. The court did not abuse its discretion in finding that the stipulation's probative value was outweighed by

potential prejudice because the stipulation had no legal weight and could confuse the jury on a central issue properly reserved to them.

Fourth, Corder challenges the district court's decision that, in testifying, Corder waived his Fifth Amendment right to remain silent with respect to a prior admission of lying to police internal affairs investigators. The court did not abuse its discretion, however, because Corder opened the door on direct examination by asserting his truthfulness as a police officer.

Fifth, Corder challenges the district court's rejection of his proposed jury instruction on the definition of willfulness under Section 242. He also raises for the first time on appeal challenges to two of the district court's word choices in the instruction. But the district court did not abuse its discretion because its instruction properly followed the Supreme Court's definition of willfulness in *Screws* v. *United States*, 325 U.S. 91 (1945). In addition, no grave miscarriage of justice occurred from the district court's word choices because the court's instructions, read properly together, comport with *Screws*.

Sixth, Corder challenges the district court's application of a two-level enhancement in calculating his Sentencing Guidelines range for his physical restraint of Baize during the offense. The district court properly applied the enhancement because physical restraint is not an element of Section 242.

ARGUMENT

I

SUFFICIENT EVIDENCE SUPPORTED CORDER'S CONVICTIONS UNDER 18 U.S.C. 242

Corder challenges the sufficiency of the evidence and argues that the district court erred by denying his motion for a judgment of acquittal. (Transcript, R. 64, PageID# 797-804); (Transcript, R. 66, PageID# 1034). That argument fails.

A. Standard Of Review

This Court reviews "de novo a district court's denial of a motion for acquittal based on the insufficiency of the evidence." *United States* v. *Cunningham*, 679 F.3d 355, 370 (6th Cir.), cert. denied, 133 S. Ct. 772 (2012). The relevant inquiry is whether, "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Ibid.* (citation omitted). A defendant "bears a very heavy burden" because this Court "may not independently weigh the evidence or substitute [its] judgment for that of the jury." *Ibid.* (citation and internal quotation marks omitted).

B. Ample Evidence Supports Both Of The Jury's Verdicts

The jury convicted Corder of two counts of violating 18 U.S.C. 242. (Transcript, R. 66, PageID# 1032). The statute makes it a crime to willfully, under color of law, deprive an individual of "of any rights, privileges, or immunities

secured or protected by the Constitution or laws of the United States." 18 U.S.C. 242; see also *United States* v. *Lanier*, 520 U.S. 259, 264 (1997). The statute elevates the crime to a felony "if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon." 18 U.S.C. 242.

On both counts, Corder challenges (as he did below) the sufficiency of evidence only on the element of whether Corder deprived Baize of his right to be free from unreasonable seizure due to unlawful arrest (Count 1), and his right to be free from unreasonable seizure due to malicious prosecution (Count 2). Br. 10-19. He therefore forfeited any challenge to the sufficiency of evidence as to Section 242's other elements.[3] See *Golden* v. *Commissioner*, 548 F.3d 487, 493 (6th Cir. 2008), cert. denied, 556 U.S. 1130 (2009).

[3] Corder challenges the district court's instruction with respect to willfulness (Br. 42-44), which lacks merit as discussed in Argument V, *infra*. But Corder has never challenged the sufficiency of the evidence with which the jury found that Corder acted willfully under the instruction given by the district court.

Regardless, the evidence established that Corder was acting under color of law as an officer when he arrested Baize (Transcript, R. 64, PageID# 816-818); that he openly defied or recklessly disregarded Baize's rights against unreasonable seizure (Transcript, R. 63, PageID# 591-595, 602-605, 612-613, 623-624, 626, 628-630); (Transcript, R. 59, PageID# 344-345, 348-351, 353-355, 391); and, for the felony charge under Count 1, that he used a taser, a dangerous weapon, to cause Baize physical pain that felt "like breaking a bone" (Trial Ex. 3a, R. 68, PageID# 1040, at 1:30-1:52); (Transcript, R. 63, PageID# 500-501, 664).

1. The Evidence Supports The Count 1 Conviction For Unlawful Arrest

The only issue on appeal regarding the sufficiency of evidence supporting Corder's conviction on Count 1 is whether Corder unreasonably seized Baize. The district court instructed the jury that it could make this finding under either of two legal theories: (a) Corder violated Baize's "right not to be arrested without probable cause," or (b) Corder violated Baize's "right to be free from warrantless arrest in one's home absent consent or exigent circumstances." (Jury Instructions, R. 49, PageID# 282, 286). The evidence, viewed in the light most favorable to the government, allows a rational jury to find beyond a reasonable doubt that Corder unreasonably seized Baize under both theories.[4]

a. Corder Lacked Probable Cause To Arrest Baize

Individuals have a Fourth Amendment right to be free from arrest by a law enforcement officer without probable cause. *Beck* v. *Ohio*, 379 U.S. 89, 91 (1964); *Donovan* v. *Thames*, 105 F.3d 291, 297-298 (6th Cir. 1997). "Whether probable cause exists depends upon the reasonable conclusion to be drawn from the facts

[4] Corder stated in his opening brief that, "[t]o convict under Count 1, the jury had to find beyond a reasonable doubt that Corder deprived Baize of 'the right not to be arrested without probable cause.'" Br. 11 (brackets omitted). Corder is mistaken. The jury had to find beyond a reasonable doubt that Corder deprived Baize of his right to be free from unreasonable seizure; arrest without probable cause was given as an example of an unreasonable seizure for which the jury could convict Corder, as was arrest in one's home absent a warrant, consent, or exigent circumstances. (Jury Instructions, R. 49, PageID# 282, 286).

known to the arresting officer at the time of the arrest." *Devenpeck* v. *Alford*, 543 U.S. 146, 152 (2004). The question is whether, "at the moment the officer seeks the arrest," *Wesley* v. *Campbell*, 779 F.3d 421, 429 (6th Cir. 2015), an objectively reasonable officer would conclude that an individual "has committed, is committing, or is about to commit an offense," *Fridley* v. *Horrighs*, 291 F.3d 867, 872 (6th Cir. 2002) (citation omitted), cert. denied, 537 U.S. 1191 (2003). In disputes over wrongful arrest, the existence of probable cause "presents a jury question, unless there is only one reasonable determination possible." *Ibid.* (citation omitted).

Corder argues that he had probable cause to arrest Baize for second degree disorderly conduct and fleeing and evading. Br. 10-19. Probable cause for either charge would suffice to validate the arrest. See *Devenpeck*, 543 U.S. at 152. The jury had ample evidence to conclude that Corder had probable cause for neither.[5]

i. Kentucky law requires that, to constitute second degree disorderly conduct, Baize must have "[made] unreasonable noise" while "in a public place and with intent to cause public inconvenience, annoyance, or alarm, or wantonly

[5] Corder does not argue that Baize's resistance validates the arrest, nor could he, as the relevant inquiry is what an objectively reasonable officer would conclude "at the moment the officer seeks the arrest." *Wesley*, 779 F.3d at 429. Baize did not resist until after the arrest was underway. (Trial Ex. 3a, R. 68, PageID# 1040, at 1:06-1:30); (Transcript, R. 64, PageID# 732).

creating a risk thereof." Ky. Rev. Stat. Ann. § 525.060(1)(b) (West 2017).[6] The alarm caused must disturb the peace and quiet of more than one person, and "a person may not be arrested for disorderly conduct as a result of activity which annoys only the police." *Kennedy* v. *City of Villa Hills*, 635 F.3d 210, 215 (6th Cir. 2011) (emphasis omitted) (quoting Ky. Rev. Stat. § 525.060 cmt.). Officers are instructed that they cannot use the statute to punish someone for "contempt of cop," a colloquial term in law enforcement that refers to disrespectful behavior toward an officer. (Transcript, R. 63, PageID# 542, 626-630).

Viewed in the light most favorable to the government, the testimony of Baize, Baize's sister, Deputy Allen, and Corder himself support the jury's finding that no reasonable officer in Corder's position would conclude that he had probable cause to arrest Baize for disorderly conduct. Baize and Corder both spoke at the same volume for a short back-and-forth exchange that lasted all of 15 seconds. (Transcript, R. 64, PageID# 687, 712, 728-729, 777). Corder never told Baize that he was speaking too loudly and never asked Baize to quiet down; instead, he invited Baize to repeat himself. (Transcript, R. 63, PageID# 658-659); (Transcript, R. 64, PageID# 703-706); (Transcript, R. 59, PageID# 362). No neighbor came out to complain about noise or Baize's choice of language, nor did

[6] The statute prohibits four types of disorderly acts; Corder arrested Baize under subsection (b) for "[making] unreasonable noise." (Transcript, R. 59, PageID# 354).

a neighbor call to complain after the fact. (Transcript, R. 63, PageID# 553-554); (Transcript, R. 64, PageID# 705-706, 734-735, 779); (Transcript, R. 59, PageID# 361-362, 400). In fact, the lots across the street from Baize's home were empty on the night of the exchange, so there was nobody nearby to alarm. (Transcript, R. 64, PageID# 703-704); (Trial Ex. 9, R. 68, PageID# 1040).

The charging citation further supports that Corder lacked probable cause to arrest Baize for disorderly conduct. In the citation, Corder stated that Baize had "caused alarm to neighbors & occupants of trailer." (Trial Ex. 4, R. 68, PageID# 1040); (see also Transcript, R. 63, PageID# 512); (Transcript, R. 64, PageID# 740-741). But Corder listed no names in the citation's witness box, and no neighbor ever complained about noise or Baize's choice of language. (Trial Ex. 4, R. 68, PageID# 1040); (Transcript, R. 63, PageID# 548-549, 553-554); (Transcript, R. 64, PageID# 705-706, 734-735, 741, 779); (Transcript, R. 59, PageID# 361-362, 400). Indeed, Corder admitted on cross-examination that he had later told his police captain that the totality of circumstances had not even warranted a *Terry* stop, much less an arrest and charge. (Transcript, R. 59, PageID# 371-372).

Instead, the video footage from Corder's body camera overwhelmingly demonstrated that Corder arrested Baize for committing "contempt of cop," not second degree disorderly conduct. When asked by Baize why he was being arrested, Corder flatly told him: "you knew why, slick. You sit up there and tell

me to fuck off." (Trial Ex. 3a, R. 68, PageID# 1040, at 3:52-3:58); (see also Transcript, R. 59, PageID# 395-396). Corder never once warned Baize about disturbing the peace; rather, he reprimanded Baize five times for speaking back to him with vulgar language. (Trial Ex. 3a, R. 68, PageID# 1040, at 2:33-3:12, 3:52-3:58, 4:25-4:43); (Transcript, R. 59, PageID# 395-396). In explaining and justifying the arrest to fellow officer Billy Allen, the only explanation Corder gave for the arrest was that Baize had told him "to go fuck off." (Trial Ex. 3b, R. 68, PageID# 1040, at 0:00-0:27).

In short, the jury had ample evidence to conclude that Baize's conduct and language, although disrespectful and perhaps ill-advised, did not constitute unreasonable noise, nor did it cause the public alarm or risk of alarm required to constitute second degree disorderly conduct. Therefore, Corder lacked probable cause to arrest Baize for it.

ii. Under Kentucky law, second degree fleeing and evading requires that a person "knowingly or wantonly disobeys a direction to stop * * * given by a person recognized to be a peace officer," that the officer "ha[ve] an articulable reasonable suspicion that a crime has been committed by the person fleeing," that the person fleeing have an "intent to elude or flee," and that the act of fleeing "is the cause of, or creates a substantial risk of, physical injury to any person." Ky. Rev. Stat. Ann. § 520.100(1)(a) (West 2017).

Viewed in the light most favorable to the government, the evidence supports the jury's finding that no reasonable officer in Corder's position would conclude that he had probable cause to arrest Baize for fleeing and evading. Baize testified that he never heard Corder tell him to stop, so Baize could not have knowingly or wantonly disobeyed a direction to do so. (Transcript, R. 64, PageID# 688-689). As discussed above, Corder himself told his police captain that the totality of the circumstances did not warrant even a *Terry* stop (Transcript, R. 59, PageID# 371-372), so a jury could conclude that Corder did not have an articulable reasonable suspicion that Baize had committed a crime. Baize's testimony and the video evidence also demonstrated that Baize lacked the necessary intent to flee: he simply walked back into his home after his short exchange with Corder to get something to eat and answered Corder's knock at the door 30 seconds later holding a pizza box. (Transcript, R. 63, PageID# 659, 662-663); (Transcript, R. 64, PageID# 697, 712-713); (Trial Ex. 3a, R. 68, PageID# 1040, at 0:30-0:34).

Finally, a jury could conclude that Baize's act of walking back into his home did not cause or create a substantial risk of physical injury to anyone. The video shows that Corder walked to Baize's front door, which Baize answered, without incident. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:00-0:30); (Transcript, R. 64, PageID# 825); (Transcript, R. 59, PageID# 382-383). Indeed, the only harm advanced by Corder at trial was "the fact that we did have to fight him," in other

words, the fact that Corder tased Baize into submission. (Transcript, R. 64, PageID# 842); (Transcript, R. 59, PageID# 383-384). No objectively reasonable officer could ascribe this harm to Baize, as it was caused not by Baize's act of walking back into his own home, but by Corder's act of entering Baize's home without a warrant, consent, or exigent circumstances, as discussed further in Argument I.B.1.b., *infra*.

In short, the jury had ample evidence to conclude that Baize's act of walking back into his home to get something to eat, with no direction from Corder to stop, failed to satisfy *any* of the elements for second degree fleeing and evading, much less all of them. Corder therefore lacked probable cause to arrest Baize for it.

iii. Corder challenges the jury's verdict by recounting the facts in a light favorable to him (Br. 13-15), and by citing an unpublished Kentucky Court of Appeals decision to argue that "Kentucky law supports the conclusion that Corder had probable cause to arrest Baize for disorderly conduct and fleeing or evading." Br. 15-17 (citing *Collins* v. *Commonwealth*, No. 2002-CA-001991-MR, 2004 WL 315035 (Ky. Ct. App. Feb. 20, 2004)).

First, the proper inquiry on appeal is whether, "viewing the evidence in the light most favorable to the *prosecution*," a trier of fact "could have found the essential elements of the crime beyond a reasonable doubt." *Cunningham*, 679 F.3d at 370 (citation omitted; emphasis added). For the reasons discussed above, a

rational jury could have found that Corder lacked probable cause to arrest Baize for both disorderly conduct and fleeing and evading and, therefore, that Corder unreasonably seized Baize in violation of his Fourth Amendment rights.

Second, *Collins* is inapposite. That the Kentucky court of appeals upheld a bench trial conviction for disorderly conduct in that case sheds little light on whether, in this case, a rational jury could have found that Corder lacked probable cause to arrest Baize for disorderly conduct and fleeing and evading. Regardless, the facts between the two are distinguishable. In *Collins*, the appellant yelled curse words at his girlfriend three different times and twice ignored warnings from the police to quiet down and vacate the area. 2004 WL 315035, at *1. By contrast, Baize and Corder had a single exchange with nobody else around in which Corder never told Baize that he was speaking too loudly, never asked Baize to quiet down, and instead invited Baize to repeat himself. (Transcript, R. 63, PageID# 658-659); (Transcript, R. 64, PageID# 703-706, 779); (Transcript, R. 59, PageID# 362). In addition, Baize did precisely what the appellant in *Collins* failed to do: go quietly into his own home. To the extent *Collins* has any bearing here, it underscores the unreasonableness of Corder's actions and the reasonableness of the jury's verdict.

b. Corder Arrested Baize In His Home Without A Warrant, Consent, Or Exigent Circumstances

Individuals also have a Fourth Amendment right to be free from a warrantless seizure in their homes absent consent or exigent circumstances.

Payton v. *New York*, 445 U.S. 573, 590 (1980); *Smith* v. *Stoneburner*, 716 F.3d 926, 930-931 (6th Cir. 2013). Exigent circumstances "may overcome the presumption against a warrantless entry," but if the entry stems from a minor crime, "the exigency must be a serious one." *Smith*, 716 F.3d at 931; see also *Welsh* v. *Wisconsin*, 466 U.S. 740, 750 (1984) ("When the government's interest is only to arrest for a minor offense," the "presumption of unreasonableness [that attaches to all warrantless home entries] is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate."). In other words, "a double presumption guard[s] against warrantless entries into a home to arrest a misdemeanor suspect." *Smith*, 716 F.3d at 933.

Hot pursuit of a fleeing suspect can create exigent circumstances. "Typically, hot pursuit involves a situation where a suspect commits a crime, flees and thereby exposes himself to the public, attempts to evade capture by entering a dwelling, and the emergency nature of the situation necessitates immediate police action to apprehend the suspect." *Cummings* v. *City of Akron*, 418 F.3d 676, 686 (6th Cir. 2005). "What makes the pursuit 'hot' is the emergency nature of the situation, requiring immediate police action." *Smith*, 716 F.3d at 931 (citation and internal quotation marks omitted). "The 'pursuit' begins when police start to arrest

a suspect in a public place, the suspect flees and the officers give chase." *Ibid.* (citation omitted).

Here, Corder does not argue that he had either a warrant or consent to enter Baize's home (see Br. 18-19); nor could he in light of Baize's express statement at his front door, captured on video, that "you are not allowed in my house" (Trial Ex. 3a, R. 68, PageID# 1040, at 0:46-0:51); (see also Transcript, R. 59, PageID# 388). Instead, Corder asserts the hot pursuit exception as an exigent circumstance to except his lack of a warrant or consent. Br. 18-19. Viewing the evidence in the light most favorable to the government, a rational jury could conclude that Corder's entry into Baize's home was neither "hot" nor a "pursuit," much less both.

As an initial matter, Corder sought to arrest Baize for two misdemeanors. He thus must overcome two presumptions: "the customary presumption against warrantless entries, *and* the presumption against warrantless entries to investigate minor crimes or to arrest individuals for committing them." *Smith*, 716 F.3d at 930-931 (citing *Payton*, 445 U.S. at 590, and *Welsh*, 466 U.S. 740). He cannot. There was nothing "hot" about Corder's entry into Baize's home as there was no emergency that required police action. By Corder's own testimony, Baize had entered his home and closed the door; there was no other person outside; there was no indication of alarm or annoyance; there was no ongoing noise or disturbance;

and there was no sign that anyone in Baize's home was injured or needed emergency aid. (Transcript, R. 59, PageID# 374-375). Rather, all was calm and quiet, and any risk to the public was remote if not nonexistent had Corder remained outside Baize's home. See *Smith*, 716 F.3d at 931. That conclusion is buttressed by the slow, deliberate pace with which Corder walked from his patrol car to Baize's front door. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:00-0:30).

In addition, Corder's entry of Baize's home did not involve a "pursuit." Pursuit begins under the exception only "when police start to arrest a suspect in a public place." *Smith*, 716 F.3d at 931. Yet Corder never sought to arrest Baize in a public place. By Corder's own testimony, he did not intend to arrest Baize as he walked up to Baize's closed front door. (Transcript, R. 64, PageID# 825). It was only after Baize refused to leave his home, despite Corder's repeated threats, that Corder decided to "get him." (Trial Ex. 3a, R. 68, PageID# 1040, at 0:30-0:45); (see also Transcript, R. 64, PageID# 697-698); (Transcript, R. 65, PageID# 886). At that point, Corder opened Baize's closed screen door, reached inside Baize's home, grabbed Baize's arm, refused to release Baize when Baize asked him to, entered Baize's home, grabbed Baize by the back of the neck, and tased Baize into submission on his own living room floor. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:34-1:52). In short, Corder's arrest of Baize began and ended while Baize was well inside his home.

Corder argues that he was in hot pursuit because "Baize did not stop when he was ordered." Br. 18. Corder is mistaken. As an initial matter, a rational jury could conclude that Corder never even ordered Baize to stop because Baize testified that he did not hear Corder tell him to do so, and the evidence on appeal is viewed in the light most favorable to the government. (Transcript, R. 64, PageID# 688-689). Even assuming that he had, however, Corder never told Baize that he was under arrest. (Transcript, R. 64, PageID# 824-825). Instead, Baize simply "chose to end their conversation and return inside his home." *Smith*, 716 F.3d at 931. As this Court held in *Smith*, "[t]o call that choice 'flight' would make a fugitive out of any citizen who exercises his right to end a voluntary conversation with a police officer." *Ibid.*

Corder also argues, citing *United States* v. *Rohrig*, 98 F.3d 1506 (6th Cir. 1996), that "[e]xigent circumstances can exist where a person is making unreasonable noise" and that "[e]xigent circumstances existed here because Corder believed Baize was making unreasonable noise." Br. 18-19. Corder's argument is misplaced. As previously discussed in Argument I.B.1.a.i., *supra*, the evidence is viewed in the light most favorable to the government, and a reasonable jury could conclude that Baize never made unreasonable noise and never caused, intended to cause, or risked causing public alarm. Regardless, even under Corder's version of the facts, *Rohrig* is inapposite.

In *Rohrig*, police officers faced "an ongoing and highly intrusive breach of a neighborhood's peace in the middle of the night." 98 F.3d at 1519. When officers responded to the scene, they were confronted by an "aural assault emanating from [the] Defendant's home" that they could hear from "a block away" and by "an irate group of pajama-clad neighbors." *Id.* at 1521. This Court found lawful the officers' warrantless entry "under the particular facts of th[e] case" where, "by entering [the] residence for the limited purpose of locating and abating a nuisance, the officers sought to restore the neighbors' peaceful enjoyment of their homes and neighborhood." *Id.* at 1519, 1521. Here, there was no ongoing nuisance to abate: Baize and Corder spoke for all of 15 seconds before Baize reentered his home and the noise ended. (Transcript, R. 64, PageID# 729); (Transcript, R. 59, PageID# 374-375); see also *Goodwin* v. *City of Painesville*, 781 F.3d 314, 331 (6th Cir. 2015) ("Several minutes of elevated noise cannot so diminish the [homeowner's] interest in maintaining their privacy that a warrantless entry would be permitted under *Rohrig*.").

* * * * *

Viewing the evidence in the light most favorable to the government, a rational jury could find beyond a reasonable doubt that Corder violated Baize's rights (a) not to be arrested without probable cause and (b) to be free from warrantless arrest in his home absent consent or exigent circumstances, either of

which suffices to uphold the jury's guilty verdict on Count 1 that Corder unreasonably seized Baize in violation of the Fourth Amendment.

2. The Evidence Supports The Count 2 Conviction For Malicious Prosecution

The only issue on appeal regarding the sufficiency of the evidence supporting Corder's conviction for malicious prosecution is whether Corder had probable cause to believe that Baize committed the crimes of both disorderly conduct and fleeing and evading.[7] Corder argues that he had probable cause to support both charges. Br. 10-19. For all of the reasons discussed in Argument I.B.1.a., *supra*, ample evidence establishes that Corder lacked probable cause to

[7] The district court instructed the jury that the act of malicious prosecution has four elements: (1) "someone acting under color of law * * * charges a person with a crime," (2) "without probable cause to believe that the person actually committed the charged crime," (3) "the officer's actions caused the person to suffer a deprivation of liberty apart from the initial arrest," and (4) "the charge against the person is ultimately dismissed." (Jury Instructions, R. 49, PageID# 286-287); see also *Webb* v. *United States*, 789 F.3d 647, 659 (6th Cir. 2015).

Corder challenges the sufficiency of evidence only on the second element (Br. 10-19), and therefore forfeited any challenge to the other elements. See *Golden*, 548 F.3d at 493. Regardless, the evidence established that Corder charged Baize through his issuance of the arrest citation (Transcript, R. 63, PageID# 515); (Transcript, R. 64, PageID# 739); that Corder's charges and supporting allegations in the citation caused the magistrate judge to set a bail that Baize could not afford, which kept Baize in jail for two weeks beyond the initial arrest (Trial Ex. 12, R. 68, PageID# 1040, at 2:47-3:02); (Transcript, R. 63, PageID# 667); (Trial R. 64, PageID# 787-788); and that the charges against Baize were ultimately dismissed (Motion in Limine, R. 40-1, PageID# 250); (Trial Ex. 13, R. 68, PageID# 1040); (Transcript, R. 64, PageID# 792-793).

arrest Baize for either, either of which supports the jury's verdict that he charged Baize with a crime without probable cause.

Particularly pertinent to the malicious prosecution count is that, in the citation charging Baize, Corder supported the charges for both disorderly conduct and fleeing and evading with statements that were patently false. Corder charged that Baize "caused alarm to neighbors & occupants of trailer" (Trial Ex. 4, R. 68, PageID# 1040), when in fact Baize did neither. (Transcript, R. 63, PageID# 512, 548-549, 553-554); (Transcript, R. 64, PageID# 705-706, 720, 740-741, 780); (Transcript, R. 59, PageID# 361-362, 400); (Trial Ex. 3a, R. 68, PageID# 1040, at 2:00-2:25). And Corder alleged that Baize "to evade ran inside [his] trailer" (Trial Ex. 4, R. 68, PageID# 1040), but the testimony of Baize and the video evidence established that Baize simply walked back into his home to get something to eat and, in doing so, caused a substantial risk of harm to no one. (Transcript, R. 63, PageID# 512, 659, 662-663); (Transcript, R. 64, PageID# 697, 712-713, 740); (Trial Ex. 3a, R. 68, PageID# 1040, at 0:30-0:34). Corder himself later admitted to his police captain that the totality of the circumstances had not even warranted a *Terry* stop. (Transcript, R. 59, PageID# 371-372).

In short, a rational jury could find beyond a reasonable doubt that Corder violated Baize's right to be free from malicious prosecution when Corder charged

him with disorderly conduct and fleeing and evading despite lacking probable cause to do so.

II

THE DISTRICT COURT PROPERLY DECLINED TO INSTRUCT THE JURY THAT A DOORWAY TO ONE'S HOME IS A PUBLIC PLACE

Corder appeals the district court's refusal to give a requested jury instruction that would have defined the doorway of a home as a public place where one is subject to warrantless arrest. Br. 20-31. Corder's challenge lacks merit.

Instruction 12 detailed for the jury Baize's constitutional rights that Corder was charged with violating. (Jury Instructions, R. 49, PageID# 286-287). With respect to the Count 1 charge that Corder violated Baize's right to be free from warrantless seizure in his home, the instruction stated:

> Arrests that occur **in someone's home** are presumed unreasonable unless one of three things are true: (1) the officer gets an arrest warrant authorized by a judge; (2) the person gives the officer consent to enter his or her home; or (3) there is an emergency situation—often referred to as exigent circumstances. Emergency situations may include a serious threat to someone's health or safety, the imminent destruction of evidence, or the hot pursuit of a fleeing suspect.
>
> If you find that the defendant arrested Deric Baize in his home without a warrant, consent, and in the absence of an emergency situation, then you may find that the arrest at issue was unreasonable.

(Jury Instructions, R. 49, PageID# 286).

Corder argued below that Instruction 12 was insufficient because, under *United States* v. *Santana*, 427 U.S. 38 (1976), and *Talbott* v. *Commonwealth*, 968 S.W.2d 76 (Ky. 1998), the doorway to a home is a public place where one has no reasonable expectation of privacy and can be arrested without a warrant. (Transcript, R. 65, PageID# 899-901, 912-914, 917, 928-930). Corder tendered a supplemental instruction that stated, in pertinent part:

> However, the doorway of one's home is considered a "public place" where one has no reasonable expectation of privacy and is thus subject to a warrantless arrest. Even if, the arrest occurs as a result of an officer reaching farther than the doorway area, the act of retreating into a home does not thwart an otherwise legal arrest pursuant to probable cause. If this is the case, the above restrictions relating to a police officer entering a home to make an arrest do not apply.

(Def.'s Supplemental Instruction, R. 44, PageID# 266).

The district court denied Corder's request to give the instruction. (Transcript, R. 65, PageID# 926-927, 930-931). The court distinguished *Santana* because the homeowner in that case, who was standing in her front doorway when the police arrived, "was believed to be holding evidence of a crime, went into the house, [and] left the door open," "facts that are really significantly different than what we have here." (Transcript, R. 65, PageID# 926). In addition, the court reasoned that *Santana* pre-dated *Payton* v. *New York*, 445 U.S. 573 (1980), and the instruction as written reflected *Payton*'s recognition that the Fourth Amendment draws a firm line at a home's entrance. (Transcript, R. 65, PageID# 926-927).

Finally, the court found that no reasonable jury could find that Baize was in his doorway rather than completely inside his house. (Transcript, R. 65, PageID# 930-931).

A. Standard Of Review

This Court "review[s] a properly preserved objection to a jury instruction by determining whether the charge, taken as a whole, fairly and adequately submits the issues and applicable law to the jury." *United States* v. *Blood*, 435 F.3d 612, 623 (6th Cir. 2006) (citation and internal quotation marks omitted). This Court reviews a district court's refusal to give a requested jury instruction "for abuse of discretion." *Ibid.* A district court "must charge the jury with an instruction on the defendant's theory of the case" only "if the theory has some support in the evidence and the law." *Ibid.* (citation and internal quotation marks omitted).

B. Corder's Requested Instruction Lacks Support In Evidence Or Law

As discussed previously in Argument I.B.1.b., *supra*, "[i]t is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton*, 445 U.S. at 586 (citation and internal quotation marks omitted). Consequently, police officers "may not enter a private home without a warrant absent an exigency or consent." *Smith* v. *Stoneburner*, 716 F.3d 926, 929-930 (6th Cir. 2013). The Supreme Court's command is clear: "the Fourth Amendment has drawn a firm line at the

entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590.

The district court did not abuse its discretion in denying Corder's proposed instruction. The proposed instruction would have advanced Corder's theory "that the arrest was not illegal because Baize was standing in his doorway (a public place) when the arrest occurred" based on "*Santana*'s principle that a person standing in the doorway of his home is in a public place and can be arrested without a warrant even in the absence of exigent circumstances." Br. 22, 24. Corder's theory, however, misreads the evidence and the law.

As a factual matter, Baize was not in his doorway when Corder initiated arrest. The video evidence plainly shows that Baize, unlike the suspect in *Santana*, remained inside his home the entire time, from Corder knocking on his door through Corder crossing his threshold to tase and arrest him. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:34-1:52). In fact, Corder was able to grab Baize only after opening Baize's closed screen door, which makes it physically impossible that Baize had been standing in his doorway or exposing himself to public sight and touch. (Trial Ex. 3a, R. 68, Page ID# 1040, at 0:30-0:38). In Corder's own words at trial, Baize was "in his house," and Corder arrested him because "we were trying to bring him out, [and] he resisted." (Transcript, R. 64, PageID# 832); (Transcript, R. 65, PageID# 886).

In any event, *Santana* is inapposite. The suspect in that case retreated into her home after the police initiated arrest, and the officers followed her through the open door, apprehending her in the vestibule of her home. *Santana*, 427 U.S. at 40-41. The Court recognized that the officers' actions constituted a warrantless entry into her home but upheld the arrest, holding that the suspect could not "thwart an otherwise proper arrest" by retreating into her home after the police began arresting her, particularly given "a realistic expectation that any delay would result in destruction of evidence." *Id.* at 42-43. The Court thereby established hot pursuit as an exigent circumstance for in-home arrests. See *Smith*, 716 F.3d at 931. Here, Corder did not initiate his arrest of Baize until Baize was in his vestibule. Corder therefore needed exigent circumstances to do so, just as the district court instructed the jury.

To the extent Corder argues that Baize being *visible* in his doorway renders him *in* his doorway for Fourth Amendment purposes (see Br. 28), he is wrong. In *Santana*, the defendant had been "standing directly in the doorway" of her home, where "one step forward would have put her outside, one step backward would have put her in the vestibule of her residence." 427 U.S. at 40 n.1. The Court held that, legally, she was in a public place because "[s]he was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house." *Id.* at 42. By contrast, as discussed

above, Baize was squarely in his vestibule behind a closed screen door. *Payton* therefore required that Corder have exigent circumstances to cross Baize's threshold. See *Smith*, 716 F.3d at 929, 931 (holding that a police officer needed exigent circumstances where the officer held open a retreating suspect's door, "crossed the threshold of the doorway to grab" the suspect by the wrist, and pulled the suspect back outside).

Corder's citations to *Talbott*, 968 S.W.2d 76, and *United States* v. *Gori*, 230 F.3d 44 (2d Cir. 2000), cert. denied, 534 U.S. 824 (2001), are likewise unavailing. See Br. 22, 24, 28-31. In *Talbott*, the Kentucky Supreme Court upheld the arrest of a suspect where the underlying arrest warrant was invalid, finding that she "was standing in the doorway of her home" when she was arrested. 968 S.W.2d at 81. Baize, by contrast, was in his home rather than his doorway when Corder arrested him. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:30-1:52); (see also Transcript, R. 64, PageID# 697-698); (Transcript, R. 65, PageID# 886). In *Gori*, the Second Circuit upheld the warrantless arrest of a suspect whom officers arrested when he voluntarily opened his door to a food delivery person. 230 F.3d at 52-54. This Court explicitly chose not to analyze the persuasiveness of *Gori* in *United States* v. *Saari*, 272 F.3d 804, 810-811 & n.5 (6th Cir. 2001), by distinguishing it from situations where individuals open their door or leave their house at a police

officer's command. Here, Baize only opened his front door because Baize knocked on it. (Trial Ex. 3a, R. 68, PageID# 1040, at 0:30-0:34).

In short, the district court properly denied Corder's request for a *Santana* instruction because Baize was not in his doorway when Corder arrested him.

III

THE DISTRICT COURT PROPERLY ADMITTED A REDACTED ORDER DISMISSING BAIZE'S CRIMINAL CHARGES

Corder challenges the district court's evidentiary decision to admit a redacted order dismissing Baize's criminal charges. Br. 32-34. Corder's challenge fails.

As discussed previously, the state prosecutor and Baize's public defender agreed to an order of dismissal after the sheriff's office provided the prosecutor with the video footage from Corder's body camera. (Motion in Limine, R. 40-1, PageID# 250); (Trial Ex. 13, R. 68, PageID# 1040); (Transcript, R. 63, PageID# 516); (see also Transcript, R. 64, PageID# 791-793). The order stipulated "that there was probable cause with respect to the charges herein." (Motion in Limine, R. 40-1, PageID# 250).

Corder filed a motion with the district court to use the stipulation as the "law of the case" to estop the government from arguing that Corder lacked probable cause to arrest Baize. (Motion in Limine, R. 22, PageID# 90-92); (Transcript, R. 79, PageID# 1138-1139); (Transcript, R. 82, PageID# 1171-1173). The district

court denied Corder's motion because the stipulation failed to meet the factors necessary for collateral estoppel. (Transcript, R. 82, PageID# 1173-1175). Corder does not challenge that ruling on appeal.

The government then sought to introduce a copy of the dismissal order in support of Count 2 to show that the charges against Baize had been dropped, but with the probable cause stipulation redacted. (Motion in Limine, R. 40, PageID# 245-247); (Transcript, R. 82, PageID# 1170). Corder opposed the motion, arguing that redacting the order would make the order appear like an agreement that Corder had not had probable cause to arrest Baize. (Transcript, R. 82, PageID# 1171-1173, 1179-1183).

The district court granted the government's motion and admitted a version of the order that redacted the stipulation. (Trial Ex. 13, R. 68, PageID# 1040); (Transcript, R. 82, PageID# 1207). The court reasoned that it would be inconsistent and misleading to find that the stipulation had no legal effect in the case but then allow the jury to see it, particularly when the order was being introduced as evidence of the dismissal, which was not in dispute (Transcript, R. 82, PageID# 1181-1184, 1206).

A. Standard Of Review

This Court reviews a district court's evidentiary decisions for an abuse of discretion. *United States* v. *Marrero*, 651 F.3d 453, 471 (6th Cir. 2011), cert.

denied, 565 U.S. 1128 (2012). The Court "will overturn a ruling on the admissibility of evidence only if the district court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors, . . . improperly applied the law, or used an erroneous legal standard," and "the erroneous evidentiary ruling affected the outcome of the trial." *Ibid.* (citation, internal quotation marks, and brackets omitted).

B. The District Court Properly Weighed The Relevant Factors

Under Federal Rule of Evidence 403, a district court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of," *inter alia*, "unfair prejudice, confusing the issues, [or] misleading the jury." Here, the district court explicitly weighed the probative value of the stipulation against its potential to mislead the jury on a key issue in the trial and did not commit a clear error of judgment in deciding to exclude it. The stipulation could have caused the jury to infer, mistakenly, that it had to find that Corder had probable cause to seize Baize—an issue central to the case and properly reserved to the jury to decide on its own accord. See *Fridley* v. *Horrighs*, 291 F.3d 867, 872 (6th Cir. 2002), cert. denied, 537 U.S. 1191 (2003). The probative value of the stipulation, on the other hand, became negligible after the district court ruled that the stipulation should

have no legal effect in the case, a ruling that Corder does not challenge on appeal. (Transcript, R. 82, PageID# 1173-1175).

Instead, Corder argues that the district court violated Federal Rule of Evidence 106 because "the complete order more accurately reflects both the prosecutor's and defense counsel's belief that the case could not be proved beyond a reasonable doubt even though probable cause existed for arrest." Br. 33. Corder is wrong.

Rule 106 codifies the common law rule of completeness and states that, "[i]f a party introduces all or part of a writing," then "an adverse party may require the introduction, at that time, of any other part * * * that in fairness ought to be considered at the same time." Fed. R. Evid. 106. But Rule 106 "covers an order of proof problem; it is not designed to make something admissible that should be excluded." *United States* v. *Adams*, 722 F.3d 788, 826 (6th Cir. 2013) (citation omitted). Here, however, the district court ruled, pursuant to Rule 403, that the stipulation was *not* admissible. (Transcript, R. 82, PageID# 1206). The rule of completeness is therefore inapposite. See *Adams*, 722 F.3d at 826.

IV

THE DISTRICT COURT PROPERLY FOUND THAT CORDER OPENED THE DOOR TO HIS TRUTHFULNESS AS A POLICE OFFICER

Corder challenges the district court's decision to allow the government to impeach his credibility as a witness and law enforcement officer on cross-

examination by asking him about his prior admission that he lied to police internal affairs investigators. Br. 34-42. Corder's challenge fails.

After Corder took the stand in his own defense, the government sought to cross-examine him about his admission, during a pre-employment interview with the Audobon Park Police Department, that during his career with the Louisville Metro Police Department, he lied to internal affairs investigators investigating him for misconduct. (Transcript, R. 64, PageID# 852-856). Corder objected under Federal Rule of Evidence 608 and the Fifth Amendment, arguing that "you don't give up your Fifth Amendment right against self-incrimination by taking the stand in an unrelated case" when "it is purely an extraneous truthfulness issue * * * on a totally separate matter." (Transcript, R. 65, PageID# 879).

The district court overruled his objection, finding that, by taking the stand in his own defense, Corder "waived the Fifth Amendment privilege to refuse to answer [the] questions." (Transcript, R. 59, PageID# 418-419). The court quoted *Brown* v. *United States*, 356 U.S. 148 (1958), in explaining that "[t]he breadth of his waiver is determined by the scope of relevant cross-examination," and found "that his credibility is relevant not only to his testimony, both on direct and to this point on cross," but also "to the issues to be submitted to the jury." (Transcript, R. 59, PageID# 418).

A. Standard Of Review

This Court reviews evidentiary rulings, including constitutional challenges to evidentiary rulings, for an abuse of discretion. *United States* v. *Schreane*, 331 F.3d 548, 564 (6th Cir.), cert. denied, 540 U.S. 973 (2003). This Court will overturn an evidentiary ruling "only if the district court committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors, . . . improperly applied the law, or used an erroneous legal standard," and "the erroneous evidentiary ruling affected the outcome of the trial." *United States* v. *Marrero*, 651 F.3d 453, 471 (6th Cir. 2011) (citation, internal quotation marks, and brackets omitted), cert. denied, 565 U.S. 1128 (2012).[8]

B. Corder Asserted His Credibility As A Police Officer On Direct Examination

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. However, a defendant "has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts." *Brown*, 356

[8] Corder cites *United States* v. *Blackwell*, 459 F.3d 739 (6th Cir. 2006), cert. denied, 549 U.S. 1211 (2007), to argue that his claim warrants de novo review. Br. 34. Corder is wrong. *Blackwell* cited *Schreane* to recognize that all evidentiary rulings warrant review for an abuse of discretion. 459 F.3d at 752. *Blackwell* simply added that the interpretation of the Constitution warrants de novo review, *ibid.*, but abuse of discretion review includes asking whether the district court "improperly applied the law, or used an erroneous legal standard," *Marrero*, 651 F.3d at 471 (citation and brackets omitted).

U.S. at 155 (citation omitted). "If he takes the stand and testifies in his own defense[,] his credibility may be impeached and his testimony assailed like that of any other witness, and the breadth of his waiver is determined by the scope of relevant cross-examination." *Id.* at 154-155. The Fifth Amendment privilege is still respected because the defendant "determines the area of disclosure and therefore of inquiry." *Id.* at 155.

The district court applied the correct legal standard. When Corder chose to testify in his own defense, he waived his Fifth Amendment rights to the extent "of relevant cross-examination." *Brown*, 356 U.S. at 154-155. This was the precise inquiry that the district court, quoting *Brown*, undertook. (Transcript, R. 59, PageID# 418).

In addition, the district court did not abuse its discretion in finding, based on the facts of this case, that Corder opened the door to cross-examination on his credibility as a law enforcement officer and his act of lying to internal affairs. (Transcript, R. 59, PageID# 418-419). On direct examination, Corder testified that he followed department policy, vouched for his judgment as a police officer, stated that he received a promotion after the incident, and advanced his own version of the facts that he asked the jury to believe instead of Baize's version. See, *e.g.*, (Transcript, R. 64, PageID# 828-829, 834-837, 844-848). In fact, he directly asserted his truthfulness as a police officer, including in his filing of the complaint:

Q: Okay. Well, the allegation is that you lied or misled to the detriment of Mr. Baize here. Did you lie on that complaint?
A: No, sir. What I wrote down was exactly what I observed.
Q: Okay. Now, what about the -- what about the attempting to elude? We've seen the statute. What you wrote about that is that to evade -- after stating the obscenity again, to evade ran inside the trailer.
A: Correct.
Q: Is there anything false about that?
A: Well, no.

(Transcript, R. 64, PageID# 841). Corder therefore laid himself open to cross-examination on his truthfulness as a police officer and on his faithfulness to police procedures, and his past lies to internal affairs fell well within the scope of relevancy.

Corder argues that the district court violated his rights under Rule 608(b)(1) because he was "cross-examined about a matter unrelated to the trial." Br. 37. Corder is mistaken. Under Rule 608(b), "[b]y testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness." Fed. R. Evid. 608. But as the district court found, Corder did not merely testify about "another matter"—in the scope of his direct examination, he testified about his truthfulness as a police officer and his faithfulness to police procedures. The district court thus properly concluded that his lies to internal affairs were "both reasonably related to the subjects covered by his testimony and relevant to the charges against him." (Transcript, R. 59, PageID# 419). To hold otherwise would run afoul of *Brown* by

allowing Corder to "set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts." 356 U.S. at 155 (citation omitted).

Corder further cites the committee notes to Rule 608(b) to argue that the district court violated Rule 403's balancing test because the lies to internal affairs were remote and lacked probative value. Br. 38-42. The district court did not commit a clear error in judgment in finding otherwise. Corder placed his truthfulness as a police officer and his faithfulness to police procedures at the center of his defense, which rendered his lies to internal affairs investigators who were investigating him for misconduct directly probative both of his credibility as a witness and a police officer, and of the charges against him, particularly the charge for malicious prosecution.

Regardless, if this Court finds that the district court erred in allowing the government to cross Corder on his lies to internal affairs, it did not affect the outcome of the trial. The jury heard Corder admit that he told his police captain that the totality of circumstances had not even warranted a *Terry* stop, much less an arrest and charge. (Transcript, R. 59, PageID# 371-372). And the jury saw Corder tell Baize in the video that he was arresting him because "[y]ou sit up there and tell me to fuck off." (Trial Ex. 3a, R. 68, PageID# 1040, at 3:52-3:58). Any error was harmless.

V

THE DISTRICT COURT PROPERLY FOLLOWED *SCREWS* IN INSTRUCTING THE JURY ON WILLFULNESS UNDER 18 U.S.C. 242

Corder appeals the district court's refusal to give his requested jury instruction on the definition of willfulness, the mens rea required under 18 U.S.C. 242. Br. 42-45. Corder also challenges for the first time on appeal the district court's use of the words "reckless" and "possibility" in its willfulness instruction. Br. 45-48. Corder's arguments lack merit.

Instruction 15 detailed for the jury the third element required under both counts: that Corder acted "willfully" in depriving Baize of his civil rights. See 18 U.S.C. 242. The instruction stated, as relevant here:

> The third element the government must prove with respect to each count is that the defendant acted willfully. A person acts willfully if he acts voluntarily and intentionally, with the specific intent to do something the law forbids. You may find that the defendant acted willfully if you find that he acted in open defiance or reckless disregard of Deric Baize's right to be free from unreasonable seizure. In other words, the defendant acted willfully if he seized Deric Baize knowing or recklessly disregarding the possibility that the seizure was constitutionally unreasonable.

(Jury Instructions, R. 49, PageID# 290).

The district court rejected Corder's alternative willfulness instruction. (Transcript, R. 65, PageID# 923). Corder tendered the following: "The word 'willfully,' as that term is used in the indictment or in these instructions, means that the act was committed voluntarily and purposely, with the specific intent to do

something the law forbids; that is with bad purpose either to disobey or disregard the law." (Def.'s Proposed Instructions, R. 35, PageID# 193). Corder also argued that, "if the court is not inclined to give my instruction on willfulness, I would object to any instruction on willfulness and ask the court to follow the recommendations in the Sixth Circuit and not give a general instruction on willfulness." (Transcript, R. 65, PageID# 923).

A. Standard Of Review

This Court "review[s] a properly preserved objection to a jury instruction by determining whether the charge, taken as a whole, fairly and adequately submits the issues and applicable law to the jury." *United States* v. *Blood*, 435 F.3d 612, 623 (6th Cir. 2006) (citation and internal quotation marks omitted). This Court reviews a district court's refusal to give a requested jury instruction "for abuse of discretion." *Ibid.*

To properly preserve an objection, a party must "inform the court of the specific objection and the grounds for the objection." *United States* v. *Semrau*, 693 F.3d 510, 527 (6th Cir. 2012) (quoting Fed. R. Crim. P. 30(d)). "If no objection is made, or the objection is not sufficiently specific," as happened here with Corder's challenges to the words "reckless" and "possibility" in the instruction, then this Court "review[s] the claimed defect in the instruction only for plain error." *Blood*, 435 F.3d at 625. "In the context of challenges to jury

instructions, plain error requires a finding that, taken as a whole, the jury instructions were so clearly erroneous as to likely produce a grave miscarriage of justice." *United States* v. *Castano*, 543 F.3d 826, 833 (6th Cir. 2008) (citation, internal quotation marks, and brackets omitted).

B. The District Court's Willfulness Instruction Followed Screws

In *Screws* v. *United States*, three police officers were charged with beating an African-American man to death under Section 242's predecessor statute that made it a crime for a person, under color of law, to willfully deprive an individual of a right secured or protected by the Constitution and laws of the United States. 325 U.S. 91, 92-93 (1945) (opinion of Douglas, J.). The Court expressed concern over the constitutionality of the statute "if the customary standard of guilt for statutory crimes is taken." *Id.* at 96. In particular, the Court worried that a police officer could face culpability for intending to perform an act that only later a court finds to be unconstitutional. *Id.* at 96-97.

The Court thus upheld the statute by interpreting "willfully" to mean "act[ing] in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite." *Screws*, 325 U.S. at 105. The Court reasoned that such an interpretation would avoid criminalizing acts by law enforcement officials undertaken in good faith because an officer "who defies a decision interpreting the Constitution knows precisely what he is doing": "he

either knows or acts in reckless disregard of its prohibition of the deprivation of a defined constitutional or other federal right." *Id.* at 104-105.

Here, the district court's instruction on willfulness fairly and adequately submitted the issues and applicable law to the jury. *Blood*, 435 F.3d at 623. Section 242 involves the same elements and statutory language as the criminal civil rights statute at issue in *Screws*, and the district court's instruction used the exact mens rea language from *Screws* to define the term "willfully." Compare (Jury Instruction 15, R. 49, PageID# 290) ("acted in open defiance or reckless disregard"), and *Screws*, 325 U.S. at 105 ("act in open defiance or reckless disregard"), with (Def.'s Proposed Instructions, R. 35, PageID# 193) (acts "with bad purpose either to disobey or disregard"). The district court's adherence to *Screws* is in accord with other courts and does not amount to an abuse of discretion. See *United States* v. *House*, 684 F.3d 1173, 1199-1200 (11th Cir. 2012), cert. denied, 133 S. Ct. 1633 (2013); *United States* v. *Mohr*, 318 F.3d 613, 619 (4th Cir. 2003); *United States* v. *Bradley*, 196 F.3d 762, 769 (7th Cir. 1999); *United States* v. *Johnstone*, 107 F.3d 200, 208 (3d Cir. 1997); *United States* v. *Reese*, 2 F.3d 870, 881 (9th Cir. 1993), cert. denied, 510 U.S. 1094 (1994).

C. The District Court's Willfulness Instruction Did Not Produce A Grave Miscarriage Of Justice

Corder argues for the first time on appeal that the district court should not have used the word "reckless" in Instruction 15 to "avoid[] any confusion about the

requisite mental state" because the court's instruction "includes multiple mental states (willfully, knowing, and recklessly)." Br. 45. As already explained, Corder is wrong because the court's language followed *Screws*. See Argument V.B., *supra*.

Corder also argues for the first time on appeal that the district court should not have used the word "possibility" in the instruction "because it permits a §242 conviction if there is only a *possibility* that the defendant violated a person's constitutional right," when "there must be an actual violation of a 'specific and definite' right." Br. 47. Corder is mistaken. Instruction 12 in fact required the jury to find that Corder violated a specific and definite right of Baize's—his right to be free from unreasonable seizure. (Jury Instructions, R. 49, PageID# 286-287); see also Arguments I and II, *supra*. Instruction 15, on the other hand, addressed only the mens rea element of Section 242. Read together, Instruction 15 required the jury to find that Corder "acted in open defiance or reckless disregard" of the right found violated in Instruction 12, which comports with *Screws*. See *Blood*, 435 F.3d at 623 (reviewing jury instructions "as a whole") (citation omitted).

Oddly, Corder quotes approvingly to the Third Circuit's framing of the willfulness inquiry: whether "the defendant had the particular purpose of violating a protected right made definite by rule of law or *recklessly disregarded the risk* that he would violate such a right." Br. 48 (emphasis added) (quoting *Johnstone*,

107 F.3d at 210). The district court's instruction used almost the exact same framing, saying that Corder acted willfully if he seized Baize "knowing or *recklessly disregarding the possibility* that the seizure was constitutionally unreasonable." (Jury Instructions, R. 49, PageID# 290) (emphasis added). The use of the term "possibility" rather than "risk" is a distinction without a difference. See *Black's Law Dictionary* (10th ed. 2014) (defining "risk" as "the existence and extent of the possibility of harm").

In short, the district court accorded with the other courts of appeals to have decided the issue by following *Screws* to interpret the willfulness element of Section 242 to include reckless disregard of a protected right. Instruction 15, read in conjunction with Instruction 12, required the jury to find both that Corder deprived Baize of the right to be free from unreasonable seizure and that Corder acted in open defiance or reckless disregard of that right. The court's instruction was correct, but even if it were not, any error was harmless and did not result in a gross miscarriage of justice, particularly in light of the overwhelming evidence of Corder's guilt. See Arguments I and II, *supra*.

VI

THE DISTRICT COURT PROPERLY APPLIED A TWO-LEVEL GUIDELINES ENHANCEMENT FOR PHYSICAL RESTRAINT

Corder argues that the district court erred by applying a two-level enhancement under United States Sentencing Guidelines § 3A1.3 for his physical restraint of Baize during the offense. Br. 48-50. Corder is wrong.

At Corder's sentencing hearing, the district court calculated a total offense level of 18 under the Sentencing Guidelines. (Sentencing, R. 83, PageID# 1394, 1422); (see also Presentence Investigation Report, R. 58, PageID# 327-328). Corder was convicted of violating 18 U.S.C. 242, a civil rights offense that falls under Guidelines § 2H1.1 (Offenses Involving Individual Rights – Civil Rights). Section 2H1.1(a)(3)(A) directs a base offense level of 10 if the offense involved "the use or threat of force against a person"; Section 2H1.1(b)(1) directs a six-level increase if "the offense was committed under color of law"; and Section 3A1.3 directs a two-level enhancement "[i]f a victim was physically restrained in the course of the offense." The district court applied the two-level enhancement because Baize had been physically restrained during the offense when he was handcuffed on the scene and then jailed for two weeks. (Sentencing, R. 83, PageID# 1393-1394).

A. Standard Of Review

This Court reviews de novo a district court's legal interpretation of the Sentencing Guidelines. *United States* v. *Tolbert*, 668 F.3d 798, 800 (6th Cir. 2012). "If the district court misinterprets the Guidelines or miscalculates the Guidelines range, then the resulting sentence is procedurally unreasonable." *United States* v. *Stubblefield*, 682 F.3d 502, 510 (6th Cir. 2012).

B. Physical Restraint Is Not An Element Of Section 242

Under Sentencing Guidelines § 3A1.3, a district court shall increase a defendant's offense level by two levels "[i]f a victim was physically restrained in the course of the offense." However, the court should "not apply this adjustment where the offense guideline specifically incorporates this factor, or where the unlawful restraint of a victim is an element of the offense itself." U.S.S.G. § 3A1.3 cmt. n.2. The Guidelines define "physically restrained" as "the forcible restraint of the victim such as by being tied, bound, or locked up." U.S.S.G. § 1B1.1 cmt. n.1(K); see also U.S.S.G. § 3A1.3 cmt. n.1 (incorporating the definition of "physically restrained" in Section 1B1.1).

Corder argues that physical restraint was an element of his offense.[9] Br. 49-50. But Section 242 requires the government to prove that an individual, acting under color of law, willfully deprived another person of a right protected by the Constitution or federal law. 18 U.S.C. 242; see also *United States* v. *Epley*, 52 F.3d 571, 575-576 (6th Cir. 1995). By the statute's plain terms, physical restraint is not an element. *Epley*, 52 F.3d at 583. Nor is physical restraint implicated in every Section 242 offense. As Corder himself acknowledged below (Sentencing, R. 83, PageID# 1391-1392), and as this Court stated in *Epley*, 52 F.3d at 583, a defendant can violate the statute without physically restraining the victim. That suffices to make Section 242 offenses eligible for Section 3A1.3, should the facts of a case warrant the enhancement.

Corder also argues that physical restraint "was injected into the offense" because the jury was asked in their instructions to find that Corder unreasonably seized Baize. Br. 49-50. Corder is mistaken. "[I]mpermissible 'double counting' occurs when precisely the same aspect of a defendant's conduct factors into his sentence in two separate ways," in other words, "[i]f a single aspect of the defendant's conduct both determines his offense level and triggers an

[9] Corder does not argue that his offense guideline, Section 2H1.1, specifically incorporated physical restraint of the victim, nor could he, as it incorporates "the use or threat of force against a person" and acting "under color of law." U.S.S.G. § 2H1.1(a)(3)(A) and (b)(1).

enhancement." *United States* v. *Farrow*, 198 F.3d 179, 193 (6th Cir. 1999). The question thus is whether the statute that triggered the base offense level includes the enhancement as an element to the offense. See *United States* v. *Walters*, 775 F.3d 778, 784-786 (6th Cir.) (comparing the Guidelines with statutory text to determine whether application of an enhancement constituted double counting), cert. denied, 135 S. Ct. 2913 (2015). As discussed above, Section 242 does not include physical restraint as an element of the offense.

In Corder's view, he should not receive the two-level enhancement, which would give him the same offense level as someone who violated civil rights under color of law in violation of Section 242 without using physical restraint. The Sentencing Guidelines, however, seek "to achieve proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity." *Farrow*, 198 F.3d at 193 (citation and internal quotation marks omitted). To assign "equal offense levels for conduct of differing severities" would "undermine[] the Guidelines' goal of proportionality in sentencing." *Id.* at 193-194.

Regardless, Corder overlooks that unreasonable seizure also does not have physical restraint as an element as defined under the Guidelines, *i.e.*, the "forcible restraint of the victim such as by being tied, bound, or locked up," U.S.S.G. § 1B1.1 cmt. n.1(K). Seizure by law enforcement occurs when a reasonable person

believes that he is not free to leave. *Michigan* v. *Chesternut*, 486 U.S. 567, 573 (1988); accord *United States* v. *Johnson*, 620 F.3d 685, 690 (6th Cir. 2010). Police can accomplish this with actions far short of forcible restraint. See, *e.g.*, *Johnson*, 620 F.3d at 690-691 (holding that a seizure occurred when police officers yelled at the defendant "to 'stop' and 'stay right there where he was' as they advanced toward him in the dead of night"); see also *United States* v. *Tholl*, 895 F.2d 1178, 1185 (7th Cir. 1990) (holding that arrest "does not necessarily entail the sort of forcible physical restraint contemplated by section 1B1.1").

In short, the district court correctly held that physical restraint is not an element of an offense under Section 242 or Sentencing Guidelines § 2H1.1. The court therefore properly applied the two-level enhancement under Guidelines § 3A1.3 for Corder's forcible restraint of Baize.

CONCLUSION

This Court should affirm defendant's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g), that the attached BRIEF FOR THE UNITED STATES AS APPELLEE:

(1) complies with the length requirements of Federal Rule of Appellate Procedure 32(a)(7) because it contains 13,000 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016, in 14-point Times New Roman font.

s/ Robert A. Koch
ROBERT A. KOCH
Attorney

Dated: May 12, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2017, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Robert A. Koch
ROBERT A. KOCH
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ADDENDUM

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

RECORD ENTRY NUMBER	DOCUMENT DESCRIPTION	PAGE ID# RANGE
1	Indictment	1-5
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35	Defendant's Proposed Jury Instructions	184-198
40	Motion in Limine	245-253
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58	Presentence Investigation Report	321-336
59	Transcript – Cross-Examination of Matthew B. Corder, July 21, 2016	339-426
63	Transcript – Jury Trial Volume 1, July 19, 2016	456-672
64	Transcript – Jury Trial Volume 2, July 20, 2016	673-868
65	Transcript – Jury Trial Volume 3, July 21, 2016	869-943
66	Transcript – Jury Trial Volume 4, July 22, 2016	944-1036

RECORD ENTRY NUMBER	DOCUMENT DESCRIPTION	PAGE ID# RANGE
68	Exhibit Inventory (references Exhibits 3a, 3b, 4, 9, 12, and 13)	1040
71	Judgment	1066-1071
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74	Motion for Bond Pending Appeal	1078-1083
79	Transcript of Motion Hearing, June 7, 2016	1098-1150
82	Transcript of Voir Dire, July 18, 2016	1163-1387
83	Transcript of Sentencing, October 17, 2016	1388-1428
85	Order Denying Bond, December 15, 2016	1432-1436