

U.S. DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
FILED 10-17-2018  
WILLIAM W. BLEVINS  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA \* CRIMINAL NO. 18-138  
v. \* SECTION: I  
WHITNEY JOSEPH SWAN, III \*  
\* \* \*

FACTUAL BASIS

Should this matter have gone to trial, the government would have proved through the introduction of competent testimony and admissible tangible exhibits, including documentary evidence, the following to support the allegations charged by the government in the indictment now pending against the defendant, **WHITNEY JOSEPH SWAN, III**, charging him with a violation of Title 21, United States Code, Sections 846, 843(a)(3), 841(a)(1), and 841(b)(1)(C), namely, conspiracy to acquire or obtain possession of oxycodone by fraud and to possess with the intent to distribute, and to distribute controlled substances, namely oxycodone.

1. The Controlled Substances Act (“CSA”), Title 21, United States Code, Section 801, *et seq.*, and its implementing regulations set forth which drugs and other substances are defined by law as “controlled substances.” Those controlled substances are then assigned to one of five schedules – Schedule I, II, III, IV, or V – depending on their potential for abuse, likelihood of physical or psychological dependency, accepted medical use, and accepted safety for use under medical supervision. A substance listed on Schedule I has a higher abuse potential than a substance on Schedule II. The abuse potential decreases as the Schedule numbers increase. Schedule II drugs or substances have some accepted medical use, but with severe restrictions, and

DOJ Trial Attorney JLL  
Defendant W.S.  
Defense Counsel KS

have a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous, and abuse can lead to addiction, overdose, and sometimes death.

2. Oxycodone is classified as a Schedule II controlled substance. Oxycodone is the generic name for a highly addictive prescription analgesic. The use of oxycodone in any form can lead to physical and/or psychological dependence, and abuse of the drug may result in addiction. Oxycodone is sold generically or under a variety of brand names, including OxyContin and Roxicodone.

3. The defendant, a resident of Jefferson Parish, Louisiana, was introduced to Danielle Lesslie for the purpose of having Lesslie create a fraudulent prescription for oxycodone that the defendant would then fill. The defendant supplied Lesslie with his personal identifying information (name, date of birth, telephone number) (“PII”) so that Lesslie could create a fraudulent prescription for oxycodone for the defendant using a prescription template that had been stolen from an area physician (“Physician 1”). The defendant had never been examined by Physician 1, nor had he ever been a patient of Physician 1.

4. On or before April 1, 2017, for the specific purpose of creating a fictitious prescription for oxycodone, the defendant provided to Lesslie his PII. Lesslie used the defendant’s PII to create a fraudulent prescription purportedly authorized by Physician 1 for oxycodone pills. On or about April 1, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Lesslie and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

5. On or before May 5, 2017, for the specific purpose of creating a fictitious

prescription for oxycodone, the defendant provided to Lesslie his PII. Lesslie used the defendant's PII to create a fraudulent prescription purportedly authorized by Physician 1 for oxycodone pills. On or about May 5, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Lesslie and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

6. On or before June 4, 2017, for the specific purpose of creating a fictitious prescription for oxycodone, the defendant provided to Lesslie his PII. Lesslie used the defendant's PII to create a fraudulent prescription purportedly authorized by Physician 1 for oxycodone pills. On or about June 4, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Lesslie and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

7. On or before July 10, 2017, for the specific purpose of creating a fictitious prescription for oxycodone, the defendant provided to Lesslie his PII. Lesslie used the defendant's PII to create a fraudulent prescription purportedly authorized by Physician 1 for oxycodone pills. On or about July 10, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Lesslie and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

8. On or before September 2, 2017, for the specific purpose of creating a fictitious prescription for oxycodone, the defendant provided to Lesslie his PII. Lesslie used the defendant's PII to create a fraudulent prescription purportedly authorized by Physician 1 for

DOJ Trial Attorney             
Defendant             
Defense Counsel

oxycodone pills. On or about September 2, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Lesslie and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

9. On or before October 5, 2017, for the specific purpose of creating a fictitious prescription for oxycodone, the defendant provided to Lesslie his PII. Lesslie used the defendant's PII to create a fraudulent prescription purportedly authorized by Physician 1 for oxycodone pills. On or about October 5, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Lesslie and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

10. In or around October 2017, the defendant learned that Co-Conspirator 1 could create fictitious prescriptions for oxycodone using Physician 1's prescription template. The defendant supplied Co-Conspirator 1 with his PII so that Co-Conspirator 1 could create a fraudulent prescription for oxycodone for the defendant using Physician 1's stolen prescription template.

11. On or before November 16, 2017, for the specific purpose of creating a fictitious prescription for oxycodone, the defendant provided to Co-Conspirator 1 his PII. Co-Conspirator 1 used the defendant's PII to create a fraudulent prescription purportedly authorized by Physician 1 for oxycodone pills. On or about November 16, 2017, at a pharmacy located in the Eastern District of Louisiana, the defendant filled the fraudulent prescription previously created by Co-Conspirator 1 and purportedly authorized by Physician 1. The defendant kept a portion of the oxycodone pills obtained with this prescription for himself and sold a portion on the black market.

12. In total, between April 2017 and November 2017, the defendant conspired and was aided and abetted Co-conspirators in acquiring and obtaining possession of approximately 5,850 milligrams of oxycodone being not only obtained by fraud, but also being ultimately distributed and resold on the black market.

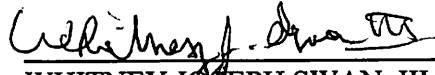
13. In sum, the Government's evidence would prove the defendant, **WHITNEY JOSEPH SWAN, III**, conspired to acquire and obtain possession of oxycodone by fraud, and to possess with the intent to distribute, and distribute oxycodone, a Schedule II controlled substance.

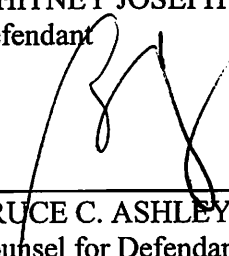
**Limited Nature of Factual Basis**

This proffer of evidence is not intended to constitute a complete statement of all facts known by **SWAN**, and/or the government, and it is not a complete statement of all facts described by **SWAN** to the Government. Rather, it is a minimum statement of facts intended to prove the necessary factual predicate for his guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for the pleas of guilty to the charged offenses by **SWAN**.



The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from, *inter alia*, Special Agents and forensic examiners from the Federal Bureau of Investigation and the United States Department of Health and Human Services – Office of the Inspector General, Drug Enforcement Administration, and admissible tangible exhibits in the custody of the FBI, HHS, and DEA.

READ AND APPROVED:

  
\_\_\_\_\_  
WHITNEY JOSEPH SWAN, III  
Defendant

  
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BRUCE C. ASHLEY, II  
Counsel for Defendant

  
\_\_\_\_\_  
JARED L. HASTEN  
Trial Attorney

DOJ Trial Attorney   
Defendant   
Defense Counsel 