

FILED MAY 31 2019  
WILLIAM W. BLEVINS  
CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA \* CRIMINAL NO: 15-185  
v. \* SECTION: "B"  
CARL J. HURST \*  
\* \* \*

FACTUAL BASIS

The above-named defendant, **CARL J. HURST** ("HURST"), has agreed to plead guilty to Count 1 of the Second Superseding Indictment. Should this matter proceed to trial, the United States would prove beyond a reasonable doubt the following facts. Unless stated otherwise, these acts occurred in the Eastern District of Louisiana:

During the timeframe of the charged acetylfentanyl and heroin conspiracy, **HURST** and codefendant **Leroy SMITH** worked together and with others to obtain kilogram quantities of acetylfentanyl, a controlled substance analogue, from a Chinese drug manufacturer named **Xiaobing Yan**. **Yan** sold large quantities of controlled substance analogues through online "dark web" marketplaces.<sup>1</sup> As discussed below, **SMITH** used a New Orleans-based third party, Unindicted Co-Conspirator ("UCC"), to communicate drug orders to **Yan** via email. **HURST** acted as an intermediary between **UCC** and **SMITH**.

No later than 2014, **UCC** approached **HURST** to ask if **HURST** knew anyone who would be interested in purchasing acetylfentanyl. **HURST** knew that **SMITH** sold heroin at the time. **SMITH** expressed interest in purchasing acetylfentanyl. **HURST**, **SMITH**, and **UCC** then began

<sup>1</sup> In September 2017, the Southern District of Mississippi indicted **Xiaobing Yan** and his company, 9W Technology Co., on multiple counts of conspiring to distribute controlled substance analogues, including acetylfentanyl. *United States v. Xiaobing Yan*, Docket No. 17-CR-091. **Yan** has not been arrested and this case remains pending.

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using UCC's online connection with Yan to order quantities of acetylfentanyl from China. Yan charged approximately \$4,400 for one kilogram of acetylfentanyl.

To obtain acetylfentanyl, SMITH relayed orders of acetylfentanyl to HURST, who then relayed the orders to UCC. SMITH communicated with UCC only through HURST, not directly. Upon receiving an order, UCC communicated the order to Yan via email. HURST provided UCC with names of associates in the New Orleans area who were willing to receive the packages from China. HURST also enlisted New Orleans associates to wire payments to Yan in China. HURST used associates for these tasks in an attempt to distance himself, SMITH, and UCC from the illegal purchases. Many of the associates used as recipients of packages and senders of payment were close friends and family of SMITH and HURST, who themselves were long-time friends. SMITH paid HURST the money for the acetylfentanyl, a portion of which was sent to Yan. HURST charged SMITH between \$25,000-50,000 per kilogram of acetylfentanyl.

Upon receiving the product, SMITH and others mixed acetylfentanyl with heroin, repackaged the product, and sold it as "heroin." SMITH also sold acetylfentanyl as a standalone product but called it "heroin." Because acetylfentanyl was more potent than heroin, and thus more dangerous, SMITH added more diluent to the products that contained higher proportions of acetylfentanyl. After mixing his heroin/acetylfentanyl with cutting agent, SMITH typically utilized a press located at his father's residence to compress the product into brick form. SMITH also occasionally placed the mixed product in a vacuum-sealed food bag and wrapped it tightly with black tape. SMITH then placed the product in a pot and steamed the package, before placing it in the freezer. This method compressed the powder more quickly than using a press.

When SMITH began selling acetylfentanyl, his customers were pleased with the strength of the product. Word spread quickly that SMITH sold strong product. SMITH utilized multiple

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telephones to communicate with his drug associates, and sold quantities ranging from \$20 (sub-gram) bags to nine-ounce quantities. Within months of dealing acetylfentanyl, SMITH's drug operation had become lucrative and SMITH was making significant money. SMITH had several safes of cash drug proceeds hidden in different locations in New Orleans. On at least one occasion, SMITH brought HURST \$50,000 cash to hold for SMITH until it was time to order more acetylfentanyl.

For their part in the operation, HURST paid associates \$500-\$1,000 to make the Western Union wire payments to Yan in China. HURST also believes that individuals who received the packages of acetylfentanyl on SMITH's behalf were paid by SMITH. HURST and UCC profited by overcharging SMITH, who paid \$25,000-50,000 per kilogram, when the cost to purchase the product from Yan was approximately \$4,400. After paying his associates, HURST divided his profits with UCC.

In 2015, agents from the Drug Enforcement Administration (DEA) used search warrants to obtain emails between UCC and Yan. These emails showed that UCC and Yan had negotiated the purchase of at least 11 packages of acetylfentanyl that were sent to associates of SMITH and HURST. The names and addresses of the package recipients in New Orleans, as well as the names of the individuals sending the Western Union payments to Yan, were included in the emails. Each of these individuals had a personal connection to SMITH, HURST, or both.

In April 2015, federal agents intercepted three separate packages of acetylfentanyl that originated in China and were ordered by UCC on behalf of SMITH. Each of these three packages had been discussed in the emails between UCC and Yan. The packages were destined for associates of SMITH and HURST. One of the packages, intercepted on or about April 7, 2015, in Los Angeles, California, contained approximately one kilogram of acetylfentanyl. This package

was addressed to the New Orleans residence associated with HURST's girlfriend. Another package, intercepted on or about April 15, 2015, contained approximately one kilogram of acetylfentanyl and was destined for an ex-girlfriend of HURST's in New Orleans. The third package, intercepted on or about April 29, 2015, contained approximately one-half kilogram of acetylfentanyl and was destined for SMITH's sister in New Orleans.

HURST agrees that acetylfentanyl is a "controlled substance analogue" for purposes of 21 U.S.C. § 802(32), meaning the chemical structure of acetylfentanyl is substantially similar to the chemical structure of fentanyl; and acetylfentanyl has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system caused by fentanyl. Furthermore, HURST agrees that acetylfentanyl is also an "analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide [*i.e.*, fentanyl]" under 21 U.S.C. § 841(b)(1)(A)(vi). HURST agrees that the acetylfentanyl purchased from Yan and sold by SMITH was intended for human consumption.

SMITH was arrested and charged in this case in July 2015. In late 2017, while SMITH was incarcerated, agents developed evidence that HURST was dealing heroin. On November 3, 2017, agents conducted a controlled purchase of heroin from HURST. A Confidential Source (CS) met HURST on Bullard Avenue in New Orleans East. The CS was wearing an audio/video recording device. HURST picked up the CS in his silver Chevrolet Cruze, where they exchanged \$300 for approximately 2.9 grams of heroin. The CS later stated that HURST told him/her to call any time of day, because he "serves" (provides heroin to) construction workers at 5:00 a.m. every day. The phone call setting up this purchase was recorded, as was an audio/video of the purchase itself.

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On December 5, 2017, the CS conducted another controlled purchase from **HURST**, again in New Orleans East. The CS purchased approximately 7.1 grams of heroin for \$700. The CS was wearing an audio/video recording device at the time of the purchase.

On March 15, 2018, the CS conducted another controlled purchase from **HURST**, in the 7600 block of Gannon Road in New Orleans East. The CS purchased approximately 6.6 grams of heroin for \$700. The CS was wearing an audio/video recording device at the time of the purchase.

On March 18, 2018, DEA obtained an Orleans Parish search warrant for **HURST**'s residence, 7600 Wave Drive, New Orleans, Louisiana. Just before executing the warrant that morning, agents conducting surveillance of **HURST**'s residence saw **HURST**'s girlfriend exit the residence with two children and depart in a Nissan Maxima. Agents then executed the search warrant and encountered **HURST**, along with a baby, in the master bedroom of the residence. During the agents' search of the residence, **HURST** admitted that he had a bag of heroin on the top shelf of a cabinet located to the right of the stove in the kitchen. Agents in fact located a clear plastic bag containing approximately 31.1 grams of heroin in the cabinet. Agents also found a small, clear plastic bag containing approximately 0.76 grams of heroin in the front room of the residence. Agents recovered approximately 40 grams of suspected marijuana and multiple digital scales, one of which had white powder residue. **HURST** knowingly possessed the items seized from the residence.

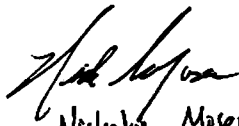
On the bed in the master bedroom, where agents found **HURST** and the baby, agents recovered a loaded Bersa Thunder 9, 9mm pistol, bearing serial number 606557. **HURST** knowingly possessed the pistol. **HURST** previously was convicted of a crime punishable by a term of imprisonment greater than one year, to wit, a conviction on February 27, 2012, in Jefferson

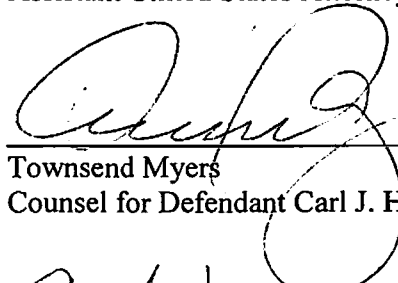
Parish Twenty-Fourth Judicial District Court, Case No. 11-3414, for possession of a controlled dangerous substance (cocaine) in excess of 28 to 200 grams, in violation of LA. R.S. 40:967, for which HURST was sentenced to 5 years. The 9mm pistol had traveled in and affected interstate commerce before coming into HURST's possession. The 9mm pistol was designed to expel a projectile by the action of an explosive.

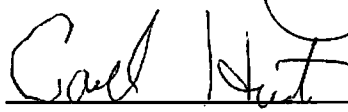
HURST and the government stipulate for the purposes of sentencing that HURST was responsible for at least 3 kilograms but less than 9 kilograms of a mixture or substance containing a detectable amount of acetylfentanyl, a fentanyl analogue, through HURST's own conduct and the reasonably foreseeable conduct of his co-conspirators.

Limited Nature of Factual Basis

This proffer of evidence is not intended to constitute a complete statement of all facts, but rather is a minimum statement of facts intended to prove the necessary factual predicate for the guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for HURST's plea of guilty to the charged offense.

  
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Nicholas Moses for Brandon Long 5/21/19  
Brandon S. Long (Date)  
Assistant United States Attorney

  
\_\_\_\_\_  
Townsend Myers 5/24/19  
Counsel for Defendant Carl J. Hurst (Date)

  
\_\_\_\_\_  
Carl J. Hurst 5/24/19  
Defendant (Date)

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