

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

v.

Criminal Case No. 1:18CR50
(Judge Kleeh)

TERRICK ROBINSON,
WILLIAM GREGORY CHAPPELL,
SEDDRICK DAMOND BANKS, and
JOEL JIMINEZ,

Defendants.

**DEFENDANT TERRICK ROBINSON'S MOTION FOR JUDGMENT OF ACQUITTAL
OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL AND
INCORPORATED MEMORANDUM OF LAW**

COMES NOW Defendant Terrick Robinson by his counsel, James B. Zimarowski and Edmund J. Rollo, and pursuant to *Federal Rule of Criminal Procedure 29(c)* renews his oral *Motion for Judgment of Acquittal* made at the conclusion of the Government's case and the conclusion of all evidence herein and now pursuant to *Rule 29(c)* renewed again. In the alternative, pursuant to *Federal Rules of Criminal Procedure 33* and *29(d)*, Mr. Robinson moves this Honorable Court for a new trial. As grounds for this *Motion*, Mr. Robinson provides the following:

1. Mr. Robinson respectfully asserts that he was denied his right to a "speedy trial" pursuant to the Speedy Trial Act, 18 U.S.C. § 3161, which provides, generally, that a defendant is entitled to have his trial within 70 days of his first appearance, subject to certain exceptions, as more particularly set forth in his previously filed *Amended Defendant Terrick Robinson's Motion to Dismiss - Speedy Trial Act*.

2. Mr. Robinson respectfully asserts that he was denied his right to a "speedy trial" pursuant to the *Sixth Amendment* of the *United States Constitution*, as more particularly set forth

in his previously filed *Defendant Terrick Robinson's Motion to Dismiss - Sixth Amendment*.

3. Mr. Robinson respectfully asserts that this Honorable Court erred in denying his *Defendant Terrick Robinson's Motion to Suppress - Fruits of Search Warrant of Hyundai Vehicle* for the reasons set forth therein.

4. Mr. Robinson respectfully asserts that this Honorable Court erred in denying his *Defendant Terrick Robinson's Motion to Suppress - Fruits of Search Warrant of Hotel Room* for the reasons set forth therein.

5. Mr. Robinson respectfully asserts that this Honorable Court erred in sustaining the Government's objection during counsel for Mr. Robinson's opening statement thereby denying counsel for Mr. Robinson the opportunity to describe evidence that Mr. Robinson intended to establish at trial concerning prosecutorial abuse of Mr. Robinson's right to a speedy trial. Similarly, Mr. Robinson respectfully asserts that this Honorable Court erred in sustaining the Government's objection during counsel for Mr. Robinson's cross-examination of Lt. Brian Purkey, a Government witness, on the issue of prosecutorial abuse of Mr. Robinson's right to a speedy trial and prohibiting examination of Lt. Purkey concerning same.

6. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr. Robinson's *Federal Rule of Criminal Procedure 29* oral *Motion for Judgment of Acquittal* at the close of the Government's case to dismiss Count 10, *Distribution of Fentanyl Resulting in Serious Bodily Injury or Death*, of the Superseding Indictment on the basis that, generally, the Government failed to prove that fentanyl was the "but for" cause of Ms. Dubois's death. *See Burrage v. United States*, 571 U.S. 204, 218, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014), *United States v. Alvarado*, 816 F.3d 242 (4th Cir. 2016).

7. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr.

Robinson's *Federal Rule of Criminal Procedure 29* oral *Motion for Judgment of Acquittal* at the close of the Government's case to dismiss Count 8, *Use of a Firearm During and Relation to a Drug Trafficking Crime - Aiding and Abetting*, of the Superseding Indictment on the basis that, generally, there was insufficient evidence as a matter of fact and law to find that Mr. Robinson aided or abetted either William Chappell or Seddrick Banks to possess or use a firearm during and relation to a drug trafficking crime.

8. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr. Robinson's *Federal Rule of Criminal Procedure 29* oral *Motion for Judgment of Acquittal* at the close of the Government's case to dismiss Count 9, *Use and Carry a Firearm During and Relation to a Drug Trafficking Crime*, of the Superseding Indictment on the basis that, generally, there was insufficient evidence as a matter of fact and law to find that Mr. Robinson used or carried a firearm during and relation to a drug trafficking crime.

9. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr. Robinson's *Federal Rule of Criminal Procedure 29* oral *Motion for Judgment of Acquittal* at the close of the Government's case to dismiss Count 7, *Possession with Intent to Fentanyl [sic] - Aiding and Abetting*, of the Superseding Indictment on the basis that, generally, there was a demonstrable break in the chain of custody of the substance found to be fentanyl; to wit, at the search of Room 202 of the Red Roof Inn on September 4, 2018, a duffel bag was inexplicably left behind unattended and not discovered until a hotel employee purportedly discovered same the next day. This duffel bag was then retrieved by law enforcement and a substance purported to be fentanyl was found therein. The chain of custody of this duffel bag – and, by extension, the substance found to be fentanyl – was irreparably broken when it was purportedly left unattended for approximately eight (8) hours in the open and unsecured Room 202.

10. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr. Robinson's *Federal Rule of Criminal Procedure 29* oral *Motion for Judgment of Acquittal* at the close of the Government's case to dismiss Count 1, *Conspiracy to Possess with Intent to Distribute and Distribute Controlled Substances*, Count 2, *Distribution of Methamphetamine*, Count 3, *Possession with Intent to Distribute Methamphetamine - Aiding and Abetting*, Count 4, *Possession with Intent to Distribute Cocaine Hydrochloride - Aiding and Abetting*, of the Superseding Indictment on the basis that, generally, there was insufficient evidence as a matter of fact and law to find that Mr. Robinson committed these offenses.

11. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr. Robinson's *Federal Rule of Criminal Procedure 29* oral *Motion for Judgment of Acquittal* at the close of the Government's case to dismiss any of the charges herein for any other reason set forth in the record herein.

12. Mr. Robinson respectfully asserts that this Honorable Court erred in denying Mr. Robinson's proposed "but for" instruction related to Count 10, *Distribution of Fentanyl Resulting in Serious Bodily Injury or Death*, of the Superseding Indictment. *See Burrage v. United States*, 571 U.S. 204, 218, 134 S.Ct. 881, 187 L.Ed.2d 715 (2014), *United States v. Alvarado*, 816 F.3d 242 (4th Cir. 2016).

TERRICK ROBINSON,
Defendant,

BY COUNSEL

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CERTIFICATE OF SERVICE

I, EDMUND J. ROLLO, hereby certify that I served a true and accurate copy of the foregoing DEFENDANT TERRICK ROBINSON'S MOTION FOR JUDGMENT OF ACQUITTAL OR, IN THE ALTERNATIVE, MOTION FOR NEW TRIAL AND INCORPORATED MEMORANDUM OF LAW on the United States of America and all other counsel herein filing same through the CM/ECF system this 24th day of January, 2020, including:

Assistant United States Attorney Traci Cook
Counsel for all other Defendants having made an appearance herein

TERRICK ROBINSON,

Defendant,

BY COUNSEL

/s/ Edmund J. Rollo

EDMUND J. ROLLO

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