

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
LEXINGTON**

CRIMINAL ACTION NO. 5:23-74-DCR-1

UNITED STATES OF AMERICA

PLAINTIFF

V.

PLEA AGREEMENT

GREGORY SCOTT SIZEMORE

DEFENDANT

* * * * *

1. Pursuant to Federal Rule of Criminal Procedure 11(c), the Defendant will enter a guilty plea to Counts 1 and 2 of the Indictment. Count 1 charges conspiracy to distribute 500 grams or more of mixtures or substances containing a detectable amount of methamphetamine and mixtures or substances containing a detectable amount of fentanyl in violation of 21 U.S.C. § 846.; Count 2 charges distribution of a mixture or substance containing a detectable amount of fentanyl, the use of which resulted in death, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). Pursuant to Rule 11(c)(1)(A), the United States will move at sentencing to dismiss Count 3 of the Indictment.

2a. The essential elements of Count 1 are as follows:

(a) First, that two or more persons formed, reached, or entered into an agreement or understanding to distribute methamphetamine and fentanyl, which are Schedule II controlled substances.

(b) Second, that at some time during the existence or life of the agreement or understanding, the Defendant knew the purpose of the agreement and deliberately joined the agreement or understanding.

(c) Third, that the quantity of mixtures or substances containing methamphetamine attributable to the Defendant as a result of his own conduct or the conduct of others reasonably foreseeable to him was 500 grams or more.

2b. The essential elements of Count 2 are as follows:

(a) First, that the defendant distributed a mixture or substance containing a detectable amount of fentanyl, a Schedule II controlled substance.

(b) Second, that the defendant did so knowingly and intentionally; and

(c) Third, that death resulted from the use of the controlled substance distributed by the defendant.

3. As to Counts 1 and 2 of the Indictment, the United States could prove the following facts that establish the essential elements of the offenses beyond a reasonable doubt, and the Defendant admits these facts:

(a) From December 2020 until January 2021, the Defendant, Gregory Scott SIZEMORE, agreed with Kris Allen Anglin, and with others, to distribute quantities of methamphetamine and fentanyl in Madison County, which is located within the Eastern District of Kentucky (EDKY). SIZEMORE admits that the quantity of drugs attributable to him by his own conduct and by that of coconspirators that was reasonably foreseeable to him as a member of the drug conspiracy includes at least 500 grams of methamphetamine mixtures.

(b) On January 11, 2021, an individual identified as M.B. fatally overdosed due to his ingestion of fentanyl. Richmond Police Department (RPD) officers arrived on scene and collected evidence, including the victim's phone. The Madison County Coroner's Office also responded. A blood sample was collected from M.B. and sent to Axis Laboratories for toxicological testing.

(c) Facebook messages located on M.B.'s phone contained proof as to the substance distributed, as well as the source of supply. The messages proved that SIZEMORE agreed to distribute a fentanyl-methamphetamine mixture to M.B. at his request. M.B. requested a mixture of "food" (heroin or fentanyl) and "clear" (meth). In setting up the transaction – and to prove that he had the money to pay for the drug - M.B. texted a picture of a \$20 bill to SIZEMORE that he intended to provide as payment to SIZEMORE.

(d) The Facebook messages further showed that SIZEMORE advised M.B. that co-defendant Kris Anglin would deliver the mixture containing fentanyl to M.B. SIZEMORE admits that he provided the fentanyl mixture to Anglin for further distribution to M.B. After M.B. received the purchased drug mixture, he messaged SIZEMORE to inquire how much fentanyl was in the mixture ("How much fatty in it?"). SIZEMORE replied, "tenth," meaning 1/10 gram. M.B. was found dead about 4 hours later. When Anglin was located and arrested, he had the \$20 bill used for the purchase in his possession.

(e) At the time of distribution, SiZEMORE was in a motel room at the Quality Inn in Madison County. Several hours after M.B. was found deceased, RPD detectives obtained a search warrant for the room where SiZEMORE had been staying. Upon execution of the warrant, no occupants were in the room. However, a black duffel bag was located in the room. The bag contained receipts and mail matter in SiZEMORE's name, along with a significant quantity of methamphetamine and a digital scale. Testing at the KSP Laboratory proved that it was 380 grams of a mixture or substance containing methamphetamine.

(f) SiZEMORE was stopped and arrested in Lexington (Fayette County) three days after the overdose. A large quantity of suspected methamphetamine and a small quantity of suspected fentanyl was found in SiZEMORE's vehicle. Testing at the KSP Laboratory proved that 367 grams contained methamphetamine and 2.2 grams contained fentanyl. SiZEMORE was charged with, and pled guilty to, Trafficking in a Controlled Substance First Degree (Methamphetamine) in Fayette Circuit Court Indictment Number 21-CR-273. On February 20, 2023, SiZEMORE was sentenced to 7 years' imprisonment for this offense.

(g) Toxicological testing showed that M.B.'s blood at the time of his death contained a lethal amount of fentanyl (at 6.5 ng/mL) and at least a toxic amount of methamphetamine (at 1,498 ng/mL). A forensic toxicologist, Michael Ward, reviewed the toxicology results and additional case materials. Toxicologist Ward opined that fentanyl was a "but for" cause of M.B.'s death. The level of methamphetamine in M.B.'s blood,

according to Toxicologist Ward, would produce toxic, if not lethal, effects, based on M.B.'s tolerance.

4. As part of this agreement, the United States will not seek enhanced punishments pursuant to 21 U.S.C. § 851. No information pursuant to 21 U.S.C. § 851 has been filed and one will not be filed if the Defendant pleads guilty pursuant to this agreement. The statutory punishment for Count 1 is imprisonment for not less than 10 years nor more than life imprisonment, a fine of not more than \$10,000,000, and a term of supervised release of not less than 5 years. The statutory punishment for Count 2 is imprisonment for not less than 20 years and not more than life imprisonment, a fine of not more than \$1,000,000, and a term of supervised release of not less than 3 years. A mandatory special assessment of \$100 per count applies, and the Defendant will pay this \$200.00 assessment to the U.S. District Court Clerk at the time of the sentencing hearing.

5. Pursuant to Rule 11(c) (1) (B), the United States and the Defendant recommend the following sentencing guidelines calculations, and they may object to or argue in favor of other calculations. This recommendation does not bind the Court.

(a) United States Sentencing Guidelines (U.S.S.G.), November 1, 2023, Manual, will determine the Defendant's guidelines range.

(b) Pursuant to U.S.S.G. § 1B1.3, the Defendant's relevant conduct includes all of the facts set forth in paragraph three, and the provided discovery materials.

(c) Pursuant to U.S.S.G. § 3D1.2 (d), Counts 1 and 2 would group for guideline calculation purposes. Pursuant to U.S.S.G. § 2D1.1(a)(1), the base offense level for Counts 1 and 2 is 43 because the Defendant is convicted under 21 U.S.C.

§ 841(b)(1)(C), the offense of conviction establishes that death resulted from the use of the substance, and the defendant committed the instant offense after at least one conviction for a similar offense, that is, possession of a controlled substance first degree by final judgment of the Madison Circuit Court on or about April 29, 2019, in Indictment 18-CR-788.

(d) Pursuant to U.S.S.G. § 3E1.1 and unless the Defendant commits another crime, obstructs justice or violates a court order, decrease the offense level by 2 levels for the Defendant's acceptance of responsibility. If the offense level determined prior to this 2-level decrease is level 16 or greater, the United States will move at sentencing to decrease the offense level by 1 additional level based on the Defendant's timely notice of intent to plead guilty.

6. No agreement exists about the Defendant's criminal history category pursuant to U.S.S.G. Chapter 4.

7. The Defendant waives the right to file a motion for a decrease in the offense level based on a mitigating role pursuant to U.S.S.G. § 3B1.2 and also waives the right to file a departure motion pursuant to U.S.S.G. Chapter 5, Parts H or K.

8. The Defendant waives the right to appeal the guilty plea and conviction. Except for claims of ineffective assistance of counsel, the Defendant also waives the right to attack collaterally the guilty plea, conviction, and sentence.

9. The parties agree that pursuant to 18 U.S.C. § 3771 (e) (2), M.B.'s mother meets the statutory definition of a crime victim since M.B. is deceased and she is a family member who has been proximately harmed as a result of the Defendant's commission of this offense. M.B.'s mother, or any designated representative, will be afforded any and all crime victim's rights pursuant to 18 U.S.C. § 3771 (a), and any other applicable authority.

10. The Defendant agrees that his conviction herein for distribution of fentanyl resulting in death pursuant to 21 U.S.C. § 841(a)(1) is a conviction that allows the Court to order restitution pursuant to 18 U.S.C. § 3663(a)(1)(A). If the United States submits a claim for restitution on behalf of M.B.'s estate, the Defendant agrees that he will pay restitution in an amount as agreed upon by the parties and ordered by the Court pursuant to 18 U.S.C. § 3663(a)(1)(A). If the parties are unable to agree as to the restitution amount, the Court will determine that amount after consideration of any evidence that the parties wish to present. The Defendant waives the right to directly appeal or collaterally attack the Court's determination as to any order of restitution imposed upon the Defendant.

11. The Defendant agrees to pay restitution in the amount and to the victim(s) as ordered at sentencing, pursuant to 18 U.S.C. § 3663(a)(3). The Defendant agrees that the restitution amount may include restitution for all losses caused by the Defendant's criminal conduct or through the commission of the offense of conviction, even if such losses resulted from crimes not charged or admitted by Defendant in the factual basis.

12. The Defendant abandons any interest in, and consents to the official use, destruction, or other disposition of, any item obtained by any law enforcement agency during the course of the investigation, unless an item is specifically provided for in another provision of this Agreement. The Defendant also waives any notice of a proceeding to implement the official use, destruction, or other disposition of any item abandoned under this paragraph.

13. The Defendant agrees to cooperate fully with the United States Attorney's Office by making a full and complete financial disclosure. Within 30 days of pleading guilty, the Defendant agrees to complete, sign, and return to the United States Attorney's Office a financial disclosure statement or affidavit disclosing all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or other third party, and disclosing any transfer of assets that has taken place within three years preceding the entry of this plea agreement. Upon request, the Defendant agrees to provide the United States Attorney's Office with records verifying his financial information or with any releases required to obtain such records, with such releases being valid for a period extending 90 days from the date of sentencing. The Defendant will submit to an examination, which may be taken under oath and may include a polygraph examination. Prior to sentencing, the Defendant agrees to notify the United States Attorney's Office and obtain its consent before transferring, encumbering, or disposing of any interest in property with a value exceeding \$1,000.00 owned or controlled directly or indirectly, individually or jointly, by the Defendant, including any interest held or owned under any name, including trusts, partnerships, and corporations. If the Defendant is ever incarcerated in connection with this case, the Defendant will participate in the Bureau of Prisons Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments. The Defendant agrees to notify the United States Attorney's Office of any material changes in his economic circumstances, as described in

18 U.S.C. § 3664(k), which occur prior to sentencing, within seven days of the event giving rise to the changed circumstances. If the Defendant fails to comply with any of the provisions of this paragraph, the United States, in its discretion, may refrain from moving the Court pursuant to U.S.S.G. § 3E1.1(b) to reduce the offense level by one additional level, and may argue that the Defendant should not receive a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a).

14. The Defendant understands and agrees that, pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States. If the Court imposes a schedule of payments, the Defendant agrees that it is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. The Defendant waives any requirement for demand of payment on any fine, restitution, or assessment imposed by the Court and agrees that any unpaid obligations will be submitted to the United States Treasury for offset. The Defendant waives any defense or objection to any action to enforce the collection of financial obligations to be imposed in connection with this prosecution, including, but not limited to, collection procedures authorized by the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001, et seq., 18 U.S.C. § 3664, or 18 U.S.C. § 3613. The Defendant expressly authorizes the United States to obtain the Defendant's credit reports at any time. The Defendant authorizes the U.S. District Court to release funds posted as security for the Defendant's appearance bond in this case, if any, to be applied to satisfy the Defendant's

financial obligations contained in the judgment of the Court. The Defendant authorizes the United States Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office.

15. If the Defendant violates any part of this Agreement, the United States may void this Agreement and seek an indictment for any violations of federal laws, and the Defendant waives any right to challenge the initiation of additional federal charges.


16. This document contains the complete and only Plea Agreement between the United States Attorney for the Eastern District of Kentucky and the Defendant. The United States has not made any other promises to the Defendant.

17. This Agreement does not bind the United States Attorney's Offices in other districts, or any other federal, state, or local prosecuting authorities.


18. The Defendant and the Defendant's attorney acknowledge that the Defendant understands this Agreement, that the Defendant's attorney has fully explained this Agreement to the Defendant, and that the Defendant's entry into this Agreement is voluntary.

CARLTON S. SHIER IV
UNITED STATES ATTORNEY


Date: 10/31/2023

By: 
G. Todd Bradbury
Assistant United States Attorney

Date: 10/20/23


Gregory Scott Sizemore
Defendant

Date: 10/26/23


Robert L. Abell
Attorney for Defendant