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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NATHAN GODDARD (24-3841); CAHKE CORTNER (24-3844),

Defendants-Appellants.

Nos. 24-3841/3844

Appeal from the United States District Court for the Southern District of Ohio at Dayton.
No. 3:19-cr-00171—Michael J. Newman, District Judge.

Argued: July 23, 2026

Decided and Filed: October 7, 2026

Before: KETHLEDGE, Chief Judge; NALBANDIAN and HERMANDORFER, Circuit Judges.

COUNSEL

ARGUED: Elizabeth A. Arrick, CASEY, BAILEY & MAINES, PLLC, Lexington, Kentucky, for Appellant Nathan Goddard. Timothy F. Sweeney, LAW OFFICE OF TIMOTHY F. SWEENEY, Cleveland, Ohio, for Appellant Cahke Cortner. Mary Beth Young, UNITED STATES ATTORNEY'S OFFICE, Columbus, Ohio, for Appellee. **ON BRIEF:** Elizabeth A. Arrick, CASEY, BAILEY & MAINES, PLLC, Lexington, Kentucky, for Appellant Nathan Goddard. Timothy F. Sweeney, LAW OFFICE OF TIMOTHY F. SWEENEY, Cleveland, Ohio, for Appellant Cahke Cortner. Mary Beth Young, UNITED STATES ATTORNEY'S OFFICE, Columbus, Ohio, for Appellee.

OPINION

HERMANDORFER, Circuit Judge. After learning that Nathan Goddard was storing a large quantity of fentanyl in his brother-in-law's basement, federal law-enforcement agents obtained a warrant to search the property. Later that evening, a team of officers surrounded the premises and executed the warrant. Task Force Officer Jorge Del Rio knocked and announced law enforcement's presence at the home. Another officer battered down the door. Officer Del Rio then entered and proceeded to the basement staircase. Other officers followed, repeatedly announcing their presence as police.

Goddard, his friend Cahke Cortner, and two others were present in the basement. As officers entered upstairs, Goddard grabbed his high-velocity pistol—which Cortner had helped provide and equipped with a laser sight—from a nearby table. Goddard then stationed himself in a basement corner, which placed him next to a stash of drugs and money and out of view of anyone on the staircase. Meanwhile, Cortner grabbed his own laser-sighted pistol, headed into a back basement room, chambered a round, and disengaged the safety.

As Officer Del Rio descended the basement steps, Goddard fired. In the gunfire exchange that followed, Goddard fatally shot Officer Del Rio in the head. The men, evidence showed, would have been looking at each other at the time.

Those events led to the trial of Goddard and Cortner for Officer Del Rio's killing and various related charges. Rejecting Goddard's self-defense theory, the jury convicted him of killing Officer Del Rio while engaging in a drug-trafficking offense as well as murder of a federal officer. And though Cortner did not himself shoot Officer Del Rio, the jury also convicted him of the killing using what's called *Pinkerton* liability—a theory that permits members of a conspiracy to be held responsible for any reasonably foreseeable crimes within the conspiracy's scope. *See Pinkerton v. United States*, 328 U.S. 640, 646-48 (1946). The jury further convicted both Goddard and Cortner of additional drug and gun offenses.

Based on those convictions, the district court sentenced both men to life imprisonment. Goddard and Cortner now challenge their convictions, pressing a range of evidentiary, jury-instruction, and sufficiency challenges. Cortner also challenges the procedural and substantive reasonableness of his sentence. We reject their arguments and affirm.

I

A

On the morning of November 4, 2019, Drug Enforcement Agency (DEA) agents arrested Jovan House, a Dayton-area drug dealer. After agreeing to cooperate with the DEA, House identified Nathan Goddard as his supplier.

Goddard was no stranger to law enforcement. In August 2018, Oklahoma City police officers stopped Goddard and his associates for a traffic violation. Suspecting Goddard of drug trafficking, officers searched his vehicle and discovered 18 kilograms of cocaine and one kilogram of fentanyl hidden inside a secret compartment. Goddard also has prior convictions for conspiracy to distribute cocaine and marijuana, perjury, assault, distribution of marijuana, and a laundry list of minor drug and traffic offenses.

It seemed Goddard had not moved on from his trafficking activities. In House's interview with police, House recounted how Goddard had provided him with two pounds of marijuana the day before. The transaction took place in the basement of 1454 Ruskin Road, a residence owned by Goddard's brother-in-law, Lionel Combs III. According to House, Goddard showed him 10 kilograms of cocaine and fentanyl during the transaction. House also noticed a firearm sitting on a coffee table in the basement. At some point during the sale, Goddard's friend Cahke Cortner arrived. Cortner was carrying a firearm.

At the DEA's prompting, House called Goddard. House and Goddard discussed "trees"—a code word for marijuana—and Goddard confirmed that he still had the "fetty" that he showed to House the day before. Warrant Aff., R.133-2, PageID 646. Goddard offered to sell the fentanyl to House for $60,000 per kilogram.

Special Agent James Vill used House's information to obtain a search warrant for 1454 Ruskin Road. After obtaining the warrant, the DEA had House call Goddard a second time to ensure that the fentanyl was still present at the property. Goddard confirmed that it was. Around the same time, the DEA prepared an operational plan for executing the warrant. The plan called for the search-warrant team to enter 1454 Ruskin Road through a side entrance. Doing so would provide direct access to a staircase that led down to the basement, which is where the team expected to find the drugs. After the search-warrant team assembled outside the side door, Officer Jorge Del Rio would knock and announce law enforcement's presence. Upon entering the residence, Officer Del Rio and another team member would clear the first floor. Other team members would wait at the top of the basement steps with a ballistic shield and order anyone in the basement to come up the stairs.

Law enforcement arrived at 1454 Ruskin Road around 7:00 that evening. The search-warrant team assembled in a stack outside the side door of the residence. Officer Del Rio was the second member of the stack. He was wearing a tactical vest with "police markings on it," a "D.E.A. hat," and a black mask. Day 6 Trial Tr., R.340, PageID 3540.

Officer Del Rio loudly knocked and announced law enforcement's presence. After waiting a "reasonable amount of time," another officer used a battering ram to breach the side door. Day 7 Trial Tr., R.341, PageID 3753. The search-warrant team then entered the residence while continuing to shout "police[,] D.E.A., search warrant." Day 6 Trial Tr., R.340, PageID 3562. But rather than clear the first floor, as the operational plan contemplated, Officer Del Rio proceeded straight to the basement staircase. He began to descend the basement steps with his gun in front of him and his body "perpendicular to the steps" and facing out into the basement. *Id.* at PageID 3563.

Goddard was sitting in the basement at the time of the warrant's execution. He heard the battering ram hit the side door and, as he later told police investigators, "thought it was the police." Day 8 Trial Tr., R.342, PageID 3965. With him were Cortner, the home's owner Combs, and another individual, Courtney Allen. Goddard reacted to the DEA's entry by grabbing his pistol, an FN 5-7 loaded with armor-piercing ammunition. Goddard had illegally acquired that pistol with Cortner's help through a series of straw purchasers. And Cortner had

outfitted the pistol with a laser sight. The gun had been sitting on a nearby coffee table next to $11,000 in cash and some marijuana.

After arming himself, Goddard "moved to th[e] [basement] corner where there's a blind spot coming down the stairs." *Id.* at PageID 3966. In doing so, Goddard placed himself next to six plastic tubs containing 50 to 60 pounds of marijuana and a closet containing three kilograms of fentanyl, six kilograms of cocaine, over $44,000 in cash, a rifle, and drug paraphernalia. Goddard then "told everybody else to get into the backroom" of the basement. *Id.* Heeding Goddard's command, Cortner moved to the back room, drew his own pistol, chambered a round, and disengaged the safety.

When Officer Del Rio appeared on the basement staircase, Goddard fired. Officer Del Rio returned fire once, and Goddard fired several more times. At the end of that exchange, Officer Del Rio lay wounded at the bottom of the basement steps. One of Goddard's shots had struck Officer Del Rio in the head. Given the location of the entry wound, Officer Del Rio and Goddard were "pretty much looking at each other" when Goddard fired. *Id.* at PageID 3984.

Officer Del Rio's colleagues transported him to a local hospital, where he died the next day. Goddard, Cortner, Combs, and Allen surrendered to law enforcement shortly after the shooting. They were arrested and transported to the Dayton Police Department, where they agreed to speak with police investigators about the shooting.

B

The Government later charged Goddard, Cortner, and Combs with multiple crimes relating to Officer Del Rio's death. As relevant here, a grand jury indicted the three men for (1) conspiracy to possess 400 grams or more of fentanyl, five kilograms or more of cocaine, and marijuana with the intent to distribute, *see* 21 U.S.C. §§ 841 & 846; (2) possession of 400 grams or more of fentanyl, five kilograms or more of cocaine, and marijuana with the intent to distribute, *see id.* § 841; and (3) intentionally killing Officer Del Rio while engaging in a drug-trafficking offense, *see id.* § 848(e)(1). Goddard also was charged with first-degree murder of a federal officer. *See* 18 U.S.C. §§ 1111 & 1114. Cortner was charged with carrying a firearm

during and in relation to a drug-trafficking offense. *See id.* § 924(c)(1)(A). And Combs was charged with maintaining a drug premises. *See* 21 U.S.C. § 856(a)(2).

Goddard and Combs moved to suppress the evidence seized from 1454 Ruskin Road. The district court denied the motions, reasoning that probable cause supported the search warrant and that the good-faith exception to the warrant requirement applied in any event. The Government, for its part, moved in limine to exclude evidence relating to the pre-search operational plan for executing the warrant at Ruskin Road. The district court reserved ruling on that motion until trial, at which point it granted the motion.

On the eve of trial, Combs pled guilty to maintaining a drug premises. Goddard and Cortner opted to proceed. The two-week trial that followed featured testimony from over 20 witnesses as well as extensive physical and electronic evidence. That evidence chronicled the events at 1454 Ruskin Road on the evening of November 4, 2019, as well as Goddard's and Cortner's broader efforts to obtain firearms and distribute large quantities of drugs. The jury convicted Goddard and Cortner on all counts.

Probation then prepared a presentence investigation report for each defendant. Cortner objected to probation's calculated base offense level and to its application of a sentencing enhancement for Officer Del Rio's status as a law-enforcement officer. The district court overruled Cortner's objections and sentenced him to life imprisonment. Goddard, too, received a life sentence. Combs—based on the lone charge of maintaining a drug premises—was sentenced to time served.

Goddard and Cortner timely appealed. Goddard challenges the denial of his motion to suppress evidence from the Ruskin Road search, the district court's exclusion of evidence related to the DEA's operational plan, and the sufficiency of the evidence supporting his convictions for the first-degree murder and intentional killing of Officer Del Rio. Cortner adopts Goddard's operational-plan argument by reference. *See* Fed. R. App. P. 28(i). Cortner also challenges the sufficiency of the evidence supporting his convictions, the district court's jury instruction on co-conspirator liability, and the reasonableness of his sentence. We consider, and reject, each argument in turn.

II

We begin with Goddard's argument that the district court erred by denying his motion to suppress. Goddard contends that the DEA lacked probable cause to search 1454 Ruskin Road for evidence of his drug trafficking because, he says, the information House provided was not sufficiently reliable. He further contends that the good-faith exception to the warrant requirement does not apply. Reviewing the district court's factual findings for clear error and its legal conclusions de novo, we disagree. *See United States v. Simmons*, 129 F.4th 382, 386 (6th Cir. 2025). Probable cause supports the search warrant for 1454 Ruskin Road. So we need not consider Goddard's good-faith arguments. Nor need we address the Government's contention—which the district court did not pass on—that Goddard lacks standing to challenge the Ruskin Road search. *Cf. Byrd v. United States*, 584 U.S. 395, 411 (2018).

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. "Probable cause is a low bar." *Frenchko v. Monroe*, 160 F.4th 784, 796 (6th Cir. 2025) (citation omitted). It requires only "a fair probability that the specific place that officers want to search will contain the specific things that they are looking for." *United States v. Reed*, 993 F.3d 441, 447 (6th Cir. 2021).

The search-warrant affidavit at issue principally cited facts stemming from law enforcement's interaction with House—who was identified only as a "cooperating defendant." Warrant Aff., R.133-2, PageID 646. When "the bulk of the information in the [warrant] affidavit comes from a confidential source, a court must consider the veracity, reliability, and the basis of knowledge for that information as part of the totality of the circumstances" informing probable cause. *United States v. Coffee*, 434 F.3d 887, 893 (6th Cir. 2006). Typically, we look for "indicia of the informant['s] reliability" or "substantial independent police corroboration" of the confidential source's information. *Id.* (citation omitted). But those requirements "need not take any particular form." *Id.* (citation omitted). That the confidential source "witnessed the drug deal" described in the affidavit or "was known to the officers" can establish the requisite reliability. *United States v. Dyer*, 580 F.3d 386, 391 (6th Cir. 2009). And law enforcement's

efforts to surveil the target residence, among other steps, can provide sufficient corroboration. *Id.* at 392.

Judged against those principles, the warrant affidavit here provided probable cause to search 1454 Ruskin Road for evidence of drug trafficking. For starters, the affidavit contained "sufficient indicia of reliability." *Id.* The affidavit recounts that a cooperating defendant (House) "obtained approximately one pound of marijuana from Goddard" at 1454 Ruskin Road "on or about November 3, 2019." Warrant Aff., R.133-2, PageID 646. During that transaction, the affidavit explains, the cooperating defendant "observed approximately ten kilograms of drugs in the basement that Goddard purported to be fentanyl." *Id.* That personal information about "a drug transaction in the basement of the place to be searched" and "a large quantity of [drugs] remain[ing] after the sale" evidences the cooperating defendant's reliability. *Dyer*, 580 F.3d at 391. The same goes for the fact that the cooperating defendant's identity "was known to the officers." *Id.* His information was therefore "entitled to far greater weight than [that] of an anonymous source." *Id.* (citation omitted).

The affidavit further details the DEA's efforts to corroborate House's information. The affidavit explains that the DEA asked the cooperating defendant to call Goddard. On the recorded call that followed, Goddard confirmed that he still had the fentanyl in the basement. DEA agents then drove House past 1454 Ruskin Road and began surveilling the residence. They noticed that two vehicles registered to known drug dealers were parked in the driveway. Those steps amount to "some" corroboration of House's information. *See id.* at 392. Our caselaw requires nothing more, as "substantial independent police corroboration" is unnecessary where, as here, "the informant witnessed the illegal activity on the premises searched and was known to the officer writing the affidavit." *Id.*

Goddard counters that the DEA should have done more to verify House's information, such as by confirming that the phone number House called was registered to Goddard or by including "firsthand information sufficient to establish probable cause." Goddard Br. 36. "But we assess an affidavit on the adequacy of what it does contain, not on what it lacks, or on what a critic might say should have been added." *Reed*, 993 F.3d at 454 (citation omitted). Because

law enforcement's steps were sufficient to support probable cause, doing more to verify House's information was not required.

III

We next address the district court's decision to exclude evidence relating to the DEA's operational plan. Goddard argues that the district court's decision violated his constitutional rights and the Federal Rules of Evidence. Cortner adopts that argument by reference. We reject their contentions.

At trial, Goddard argued that he acted in self-defense when he shot Officer Del Rio. To support that theory, he sought to show that Officer Del Rio "reckless[ly]" deviated from the operational plan for the Ruskin Road search by descending the basement steps without cover. Goddard Br. 24. But the district court, in line with the Government's motion in limine, limited Goddard's ability to adduce evidence or testimony about the DEA's operational plan. The district court reasoned that any "deviation" from the operational plan was not "relevant" to "Mr. Goddard's objective belief about who was entering the basement." Day 4 Trial Tr., R.338, PageID 3098-99. It also stated that the operational-plan evidence "could improperly mislead or confuse the Jury." *Id.* at PageID 3099. So the district court would "not allow a comparison of what the plan was versus what actually occurred." *Id.* But it did allow defense counsel to question witnesses about "what did or did not happen that night," and "plans, policies, and procedures in terms of generalities." *Id.*

A

Goddard and Cortner begin by arguing that the district court's decision to limit testimony about the operational plan violated their constitutional rights to confrontation and to present a defense. But neither defendant raised those arguments below. Instead, Goddard argued only that the operational-plan evidence was admissible under the Federal Rules of Evidence. Cortner did not raise any separate arguments at trial. That means we review for plain error. *See United States v. Burrell*, 114 F.4th 537, 555 (6th Cir. 2024).

To prevail on plain-error review, a defendant must establish (1) an error, (2) that was obvious or clear, (3) that affected the defendant's substantial rights, and (4) that affected the fairness, integrity, or public reputation of judicial proceedings. *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc). Among other things, that showing requires the defendant to identify on-point caselaw demonstrating that the district court's error was "clearly contrary to the law at the time of appeal." *United States v. Tellez*, 86 F.4th 1148, 1154 (6th Cir. 2023) (citation omitted).

Goddard and Cortner cannot clear that "high bar." *Id.* They maintain that the district court's decision violates their constitutional rights to confront witnesses at trial and to have a meaningful opportunity to present a complete defense. *See generally Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986); *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). But neither identifies a case holding that a district court committed constitutional error by excluding similar operational-plan evidence for similar purposes in similar circumstances. To the contrary, and as discussed next, courts have excluded similar evidence for the reasons the district court gave here. *See, e.g.*, *United States v. Wilk*, 572 F.3d 1229, 1235 (11th Cir. 2009). Goddard and Cortner thus cannot show that the district court's decision is "clearly contrary to the law" in this Circuit. *Tellez*, 86 F.4th at 1154 (quotation omitted). That failure alone forecloses their constitutional argument.

B

That leaves Goddard and Cortner's argument that the district court violated Rules 402 and 403 of the Federal Rules of Evidence. Goddard preserved his evidentiary challenge by raising it in the district court. So we review the district court's decision for abuse of discretion. *United States v. Page*, 163 F.4th 385, 396 (6th Cir. 2025). "An abuse of discretion exists when the district court applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *United States v. Collins*, 799 F.3d 554, 570 (6th Cir. 2015) (citation omitted).

The district court concluded that the operational-plan evidence was irrelevant and therefore inadmissible under Rule 402. Alternatively, it also reasoned that the operational-plan

evidence could mislead the jury and thus barred its admission under Rule 403. Neither decision was an abuse of discretion.

Relevance. "Irrelevant evidence is not admissible." Fed. R. Evid. 402. Evidence "is relevant" if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action." Fed. R. Evid. 401. The parties dispute only whether the operational-plan evidence was relevant to the self-defense issue. It was not.

The "fact" that Officer Del Rio deviated from the operational plan is not "of consequence" to Goddard's assertion of self-defense. *Id.* To understand why, consider the district court's unchallenged self-defense instruction. That instruction provided that, to find that Goddard acted in self-defense, the jury had to conclude that Goddard (1) "did not know that Jorge Del Rio was a law enforcement officer"; (2) "reasonably believed that use of force was necessary to defend himself against an immediate use of unlawful force" by "a private citizen"; and (3) "used no more force than appeared reasonably necessary in the circumstances." Day 12 Trial Tr., R.348, PageID 5606-07. Given that instruction, "the evidence relevant to [Goddard's] self-defense claim was his perception of the officers' actions that [evening], not whether the officers followed proper procedure," including the operational plan, when "executing the search warrant." *Wilk*, 572 F.3d at 1235. The district court allowed Goddard to develop evidence related to his perception. That evidence included testimony on whether the "occupants of the basement" could see the marked police cruiser parked in front of the residence from the basement or hear law-enforcement officers announcing their presence. Day 6 Trial Tr., R.340, PageID 3478. But the facts that officers set out a pre-search operational plan and that Officer Del Rio deviated from that plan shed no light on Goddard's perception of officers' conduct "during entry into [the] residence." *Wilk*, 572 F.3d at 1235. The operational-plan evidence is therefore irrelevant.

Goddard identifies no caselaw that supports the relevance of the operational-plan evidence. Instead, his sole counterargument is that the operational plan is relevant because "its very purpose [wa]s to ensure" the "safety" of "the individuals within" 1454 Ruskin Road. Goddard Reply 22 (emphasis omitted). Yet Officer Del Rio's deviation from the operational

plan did not excuse Goddard's actions in shooting him. So "absent evidence that [Goddard] knew of" the operational plan ahead of time, any deviations from the plan are "irrelevant" to his "subjective" perception of what happened at 1454 Ruskin Road. *United States v. Rouco*, 765 F.2d 983, 995 (11th Cir. 1985) (excluding evidence regarding the adequacy of an arrest procedure).

Rule 403. Even if relevant, the district court did not abuse its discretion by concluding that the operational-plan evidence "could improperly mislead or confuse the Jury." Day 4 Trial Tr., R.338, PageID 3099. A district court "may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury." Fed. R. Evid. 403. And as one court has explained in affirming the exclusion of similar evidence, introduction of the operational-plan evidence risked "mislead[ing] the jury" because "it would create the impression that [Goddard's] criminal responsibility for [Officer Del Rio's] murder was to be contingent upon [Officer Del Rio's] conformity to standard arrest [or search] procedure, i.e., [Officer Del Rio's] lack of negligence." *Rouco*, 765 F.2d at 995. Goddard's response—that the jury was "much smarter than the trial judge and these prosecutors imagined," Goddard Reply 23—does not establish that the district court "applie[d] the wrong legal standard, misapplie[d] the correct legal standard, or relie[d] on clearly erroneous findings of fact" in assessing the risk of prejudice, *Collins*, 799 F.3d at 570 (citation omitted).

IV

We next address Goddard's sufficiency challenges to his convictions for first-degree murder and intentionally killing Officer Del Rio while engaging in a drug-trafficking offense. Goddard argues that insufficient evidence supports the jury's findings (1) that the killing was premeditated or perpetrated by lying in wait, (2) that Goddard did not act in self-defense, and (3) that Goddard was engaged in a drug-trafficking offense when he killed Officer Del Rio.

Sufficient evidence exists if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Baskerville*, 164 F.4th 459, 472 (6th Cir. 2026) (citation omitted). When reviewing the sufficiency of the evidence, we must "view the evidence in the light most favorable to the prosecution" and "resolve all issues of

credibility in favor of the jury's verdict." *Id.* (citation omitted). Applying our sufficiency framework, we conclude that each of Goddard's sufficiency challenges lacks merit.

A

We begin with Goddard's conviction of murder of a federal law-enforcement officer. *See* 18 U.S.C. §§ 1111, 1114. "Section 1111 retains a common law distinction between second degree murder, which requires a killing with malice aforethought, and first degree murder, which in addition to malice aforethought requires a killing with premeditation and deliberation." *United States v. Shaw*, 701 F.2d 367, 392 (5th Cir. 1983). Relevant here, the statute defines first-degree murder as "the unlawful killing of a human being with malice aforethought" that is perpetrated by "lying in wait" or "any other kind of willful, deliberate, malicious, and premeditated" means. 18 U.S.C. § 1111(a). Lying in wait and premeditation are thus "independently sufficient grounds for first-degree murder." *United States v. Downs*, 56 F.3d 973, 977 (8th Cir. 1995).

The jury convicted Goddard of first-degree murder. But in Goddard's view, the evidence was insufficient to demonstrate that he acted either with premeditation or after lying in wait. We disagree. A rational juror could have found that Goddard acted with premeditation. Because "sufficient evidence" for "one of the grounds" of conviction is all that's required to resolve Goddard's challenge, we do not address whether sufficient evidence supported the conclusion that he was lying in wait. *United States v. Wheat*, 988 F.3d 299, 313 (6th Cir. 2021).

The district court instructed the jury that a killing is premediated "when it is the result of planning or deliberation." Day 12 Trial Tr., R.348, PageID 5617. "[N]o particular time interval [is] necessary to constitute premeditation; instead, it is sufficient if the defendant had some prior design to commit murder." *United States v. Al-Din*, 631 F. App'x 313, 333 (6th Cir. 2015) (citation omitted). Premeditation therefore "exists when a person has a fully formed conscious purpose to kill, even for a moment." *United States v. Ball*, 18 F.4th 445, 456 (4th Cir. 2021) (citation omitted). In the context of a shooting, the "swift but deliberate actions" of "reach[ing] for [a] pistol," "rais[ing]" the pistol, and firing can "demonstrate that [the defendant] acted with the requisite premeditation." *United States v. Greer*, 57 F.4th 626, 629 (8th Cir. 2023). The

same goes for Goddard's decision to position himself in the basement corner, out of sight of anyone coming down the steps. *Cf. United States v. Comly*, 998 F.3d 340, 343 (8th Cir. 2021) ("hid[ing] in a closet" to ambush a police officer "demonstrated an intent to kill").

A rational juror could have concluded that Goddard's decision to shoot and kill Officer Del Rio was premeditated. To start, the jury heard testimony that drug traffickers like Goddard "use and carry firearms" as "a means of protecting their operation." Day 10 Trial Tr., R.346, PageID 5261. The jury also learned that Goddard had illegally acquired a high-capacity pistol and that Cortner later equipped that pistol with a laser sight. And on the night of the murder, Goddard kept the pistol, loaded with armor-piercing ammunition, in arm's reach. That sort of advance "preparation to resist with deadly force" supports a finding of premeditation. *United States v. Guyon*, 717 F.2d 1536, 1539 (6th Cir. 1983).

Goddard's actions in the moments leading up to the shooting further indicate that he acted with premeditation. Goddard admitted that when he heard law-enforcement officers enter 1454 Ruskin Road, the "first thing" he did was "grab[] the pistol." Day 8 Trial Tr., R.342, PageID 3965. He then stationed himself in a "blind spot" so he would be "out of the line of fire of anyone coming down the stairs." *Id.* at PageID 3966. The evidence supports that, when Officer Del Rio appeared, Goddard fired first; he then fired four more times, with one shot striking Officer Del Rio in the head while the men were looking at each other. It was thus "reasonable" for the jury "to infer a conscious awareness of intent to kill" given the "number of shots, the proximity to [the] victim," and the decision to "aim at" Officer Del Rio's head. *United States v. Smith*, 135 F.4th 905, 915 (10th Cir. 2025).

Goddard's responses are unavailing. Goddard reasons that he "had no time for 'reflection'" because only "7-12 seconds" elapsed "between when any supposed knock and announce occurred" and "when [Officer] Del Rio charged down the basement steps." Goddard Br. 41. For starters, it's not settled that only 7-12 seconds elapsed. The jury heard from witnesses who testified that approximately 30 seconds "elapsed from the knock and announce to the ram hitting the door[.]" Day 7 Trial Tr., R.341, PageID 3678. But even if Goddard's timeline is correct, it does not defeat premeditation.

To carry its premeditation burden, the Government "need not show that the defendant deliberated for any particular length of time." *United States v. Treas-Wilson*, 3 F.3d 1406, 1409 (10th Cir. 1993) (citation omitted). All that's required is "some appreciable time for reflection and consideration." *Shaw*, 701 F.2d at 393. "[T]he lapse of days or hours or even minutes" is not necessary—seconds can suffice. *Id.* (citation omitted). The district court thus correctly instructed the jury that "[a]ny interval of time between forming the intent to kill, and acting on that intent, which is long enough for the Defendant to be fully conscious and mindful of what he intended and willfully set about to do, is sufficient to justify the finding of premeditation." Day 12 Trial Tr., R.348, PageID 5617-18. And on that score, the jury heard evidence supporting that Goddard had sufficient time to (1) process the entry of police upstairs, (2) grab his pistol from a nearby table, (3) move himself to a blind spot in the corner of the basement near the drug stash, (4) instruct others to get into the back room, (5) raise and aim his weapon towards Officer Del Rio, and (6) fire multiple rounds. Viewed in the light most favorable to the verdict, that evidence could lead a rational juror to "find premeditation in the time it took" Goddard to proceed through that series of actions. *Smith*, 135 F.4th at 915.

Goddard also argues that the premeditation evidence is insufficient because "[n]o evidence was presented that indicated Goddard had any malice or intention to harm a police officer." Goddard Br. 41. That argument fails because premeditation did not turn on Del Rio's status as a law-enforcement officer. *Cf. United States v. Salim*, 549 F.3d 67, 76 (2d Cir. 2008) (§ 1114 "does not require proof that the motivation for the attack was the victim's status"). Rather, Goddard needed only to "form[] an intent to kill," not an intent to kill a law-enforcement officer specifically. *Al-Din*, 631 F. App'x at 334. In any event, the jury could have found that Goddard intended to harm a law-enforcement officer, as we explain next. *See infra* Part IV.B.

B

In addition to concluding that Goddard acted with premeditation, the jury also concluded that Goddard did not shoot Officer Del Rio in an act of self-defense. Goddard contends that insufficient evidence supported the jury's no-self-defense finding. Here, too, we disagree.

"A person may resort to self-defense if he reasonably believes that he is in imminent danger of death or great bodily harm, thus necessitating an in-kind response." *United States v. Barrett*, 797 F.3d 1207, 1218 (10th Cir. 2015) (citation omitted). In a federal prosecution under § 1111, "the absence of self-defense must be proven beyond a reasonable doubt" by the Government. *United States v. Alvarez*, 755 F.2d 830, 842 (11th Cir. 1985). When the charge is murder of a federal law-enforcement officer, one way the Government can overcome a claim of self-defense is "by proving that the defendant knew of the victim's federal status." *Id.* at 843; *cf. United States v. Feola*, 420 U.S. 671, 686 (1975) (An "honest mistake of fact" about the victim's "official status" as a federal agent "would not be consistent with criminal intent."). The reason is that a defendant might have reason to act in self-defense when faced with an unlawful, private intruder, but not when a law-enforcement officer arrives to carry out his duties. *See Alvarez*, 755 F.2d at 843-45.

The jury instructions—unchallenged by Goddard—tracked those rules. The district court informed the jury that to "satisfy its burden that [Goddard] did not act in self-defense, the Government must prove beyond a reasonable doubt" that (1) Goddard "knew that Jorge Del Rio was a law enforcement officer"; or (2) Goddard "did not reasonably believe force was necessary to defend himself against an immediate use of unlawful force" even though he "actually believ[ed] that he was acting against a private citizen"; or (3) Goddard "used more force than appeared reasonably necessary in the circumstance." Day 12 Trial Tr., R.348, PageID 5619-20 (cleaned up). Goddard focuses on whether sufficient evidence supports the conclusion that he knew that Del Rio was a law-enforcement officer, so we do the same.

A rational juror could have concluded that Goddard knew that Del Rio was a law-enforcement officer. Indeed, the evidence showed that Goddard admitted as much. During Goddard's post-shooting interview, a police investigator asked Goddard "what happen[ed] when" he heard the law-enforcement officers enter the residence. Joint Ex. 2, 0:00-0:07. Explaining that he was "just being honest," Goddard replied that when he "hear[d] the dome, dome, dome" of the battering ram hitting the door he "thought it was the police" and the "first thing" he "did was grab[] the pistol." Day 8 Trial Tr., R.342, PageID 3970 (playing Joint Ex. 2).

So all the jury needed to conclude that Goddard knew of Officer Del Rio's status was Goddard's direct admission of that fact.

On top of Goddard's admission, multiple witnesses testified that Officer Del Rio loudly knocked and announced law-enforcement's presence for approximately 30 seconds before the search-warrant team used the battering ram to breach the residence. The search-warrant team continued shouting "D.E.A. police, search warrant" as they entered the residence. Day 6 Trial Tr., R.340, PageID 3429-30. And Officer Del Rio was wearing a hat emblazoned with "D.E.A." in gold letters and a vest with "police" and the "D.E.A. badge" on the chest. Day 8 Trial Tr., R.342, PageID 3984-85. Moreover, Goddard and Officer Del Rio were "pretty much looking at each other" when Goddard fired the fatal shot. *Id.* at PageID 3984. Even if Goddard did not hear or comprehend "the repeated cries of 'police' and 'search warrant,'" a rational juror could have concluded from the "visible indicators of [Officer Del Rio's] identity" that Goddard knew that Del Rio was a law-enforcement officer. *United States v. Branch*, 91 F.3d 699, 715 (5th Cir. 1996).

Goddard's counterarguments fail. To negate his knowledge of Officer Del Rio's law-enforcement status, Goddard cites other, contradictory portions of his post-shooting interview. Among other statements, Goddard claimed that he thought he was being robbed and that he didn't know the entrants were law enforcement. But "the jury was free to reject" those assertions as untrue, particularly since it learned that Goddard was untruthful at other points in the interview—including when he told police investigators that his current cell-phone number was a number that he had deactivated a month prior. *See United States v. Acosta*, 924 F.3d 288, 298 (6th Cir. 2019). Further, we must "view the evidence in the light most favorable to the prosecution." *Baskerville*, 164 F.4th at 472 (citation omitted). Doing so requires us to credit Goddard's admission that he knew that Del Rio was a law-enforcement officer.

Goddard also maintains that he couldn't see the markings on Officer Del Rio's vest. That argument, too, falters on the standard of review. It further ignores the evidence showing that Officer Del Rio also wore a hat that identified him as a law-enforcement officer and that officers repeatedly identified themselves while entering the residence. Goddard's final assertion, that the

"knock and announce was not reasonably executed," Goddard Br. 47, simply recycles the operational-plan argument that we have already rejected, *see supra* Part III.B.

C

Goddard's final sufficiency challenge attacks his conviction for intentionally killing Officer Del Rio while engaged in a drug-trafficking offense. Sufficient evidence supports that conviction, too.

As relevant here, 21 U.S.C. § 848(e)(1)(A) instructs that "any person engaging in an offense punishable under section 841(b)(1)(A) of this title . . . who intentionally kills . . . an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years," *id.* Goddard's sufficiency challenge focuses on whether he was "engaging in an offense punishable under section 841(b)(1)(A)." *Id.* Among the offenses punishable under § 841(b)(1)(A) is one making it unlawful "to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense" controlled substances. *See id.* § 841(a)(1). Putting those statutes together, Goddard asserts that the "engaging in" language requires the Government to prove that there is a "substantive connection[] between the murder and the drug offense." Goddard Br. 44. And he says such evidence is lacking here.

Our Court has not addressed the limits of § 848(e)(1)'s engaging-in element. Other courts, however, have "universally concluded" that § 848(e)(1)'s engaging-in language requires a "substantive connection between the defendant's drug activities and the charged killing." *United States v. Aguilar*, 585 F.3d 652, 658 (2d Cir. 2009) (collecting cases) (citation omitted). For present purposes, we can assume without deciding that § 848(e)(1) imposes a substantive-connection requirement because there was sufficient evidence to meet it.

The substantive-connection requirement is not demanding. As explained elsewhere, a substantive connection exists when a "drug-related motive" was "one purpose" of the killing, even if it was not "the sole purpose, the primary purpose, or even . . . equally as important as any non-drug-related purpose." *Id.* at 660 (citation omitted). Drug-related motives can run the gamut. They include "eliminat[ing] [a] threat" to the defendant's "drug trafficking activities" or

"protect[ing]" a "safe house" where the defendant "could hide drugs, money[,] and guns." *United States v. Hager*, 721 F.3d 167, 181 (4th Cir. 2013).

A rational juror could have concluded that a substantive connection exists between Goddard's underlying drug offense—possession of the fentanyl and cocaine found in the basement of 1454 Ruskin Road—and Officer Del Rio's killing. One law-enforcement officer testified that drug traffickers "use and carry firearms" as a "means of protecting their operation" and to "deter police." Day 10 Trial Tr., R.346, PageID 5261-62. The jury also heard testimony that even before law enforcement arrived, Goddard kept his pistol next to $11,000 in cash and some marijuana. And the jury learned that when Goddard heard law enforcement enter 1454 Ruskin Road, he grabbed his pistol and stationed himself between six tubs filled with 50 to 60 pounds of marijuana and a closet containing three kilograms of fentanyl, six kilograms of cocaine, over $44,000, and drug paraphernalia. From all that, the jury could have reasonably inferred that Goddard killed Officer Del Rio "to protect" his stash and "eliminate [a] threat that he felt to himself and to his drug trafficking activities." *Hager*, 721 F.3d at 181. Such a motive establishes a substantive connection between the underlying drug offense and the killing. *Id.*

Goddard disagrees. He first asserts that the "only connection between Goddard's offense and [Officer] Del Rio's killing is that [Officer] Del Rio was present in [1454 Ruskin Road] to execute a search warrant based on suspicion of Goddard's drug activity." Goddard Br. 44 (cleaned up). But as discussed, a rational juror could reasonably have concluded that Goddard knew that Del Rio was a law-enforcement officer and that he shot Officer Del Rio to deter law enforcement or protect his drug-trafficking operation. Nothing more is required to demonstrate a substantive connection. *See Hager*, 721 F.3d at 181.

Goddard's remaining counter is that he "was not engaging in an offense punishable under § 841(b)(1)(A)" at all. Goddard Reply 15. Instead, in his telling, he was merely "playing video games with his friends when officers burst through the basement door and [Officer] Del Rio stormed down into the basement." *Id.* (cleaned up). Goddard, however, forfeited that argument twice over by raising it for the first time in his reply and by failing to support it with legal or factual citations. *See Peters Broad. Eng'g, Inc. v. 24 Capital, LLC*, 40 F.4th 432, 443 (6th Cir. 2022). Regardless, Goddard's argument fails because it does not account for his admission that

he was responsible for the drugs found in the basement. Nor does it account for his unchallenged conviction of possession with intent to distribute.

V

We now turn to Cortner. He likewise attacks the sufficiency of the evidence supporting his convictions for participating in a drug-trafficking conspiracy and possession of controlled substances with the intent to distribute. Cortner's challenges to these convictions lack merit.

A

We begin with Cortner's conviction for conspiracy to possess fentanyl, cocaine, and marijuana with the intent to distribute. A drug-conspiracy conviction "requires an agreement to violate the drug laws, the defendant's knowledge of the agreement, and the defendant's decision to voluntarily join (or 'participate in')" the agreement. *United States v. Potter*, 927 F.3d 446, 453 (6th Cir. 2019). The agreement "need not be express or formal." *Id.* (citation omitted). Instead, a "tacit or mutual understanding among the parties is sufficient." *Id.* (citation omitted). And "participation in the common plan" can "be inferred from circumstantial evidence." *United States v. Elliott*, 876 F.3d 855, 863 (6th Cir. 2017) (citation omitted). Further, "once the existence of a conspiracy is shown, the evidence linking an individual defendant to that conspiracy need only be slight." *Potter*, 927 F.3d at 453 (cleaned up).

Sufficient evidence supports Cortner's conspiracy conviction. At trial, the Government emphasized Cortner's text messages with an individual known as Big Von. And understandably so. On the morning of the shooting, Cortner texted Big Von "what's the numbers in the streets on [the] green whole thang." Day 10 Trial Tr., R.346, PageID 5209. Big Von responded "24s." *Id.* Cortner then replied that he had "some 22s beautiful and that's what I get them for sour og and gorilla glue." *Id.* Cortner also remarked "ol boy and girl here wit'em." *Id.* Upon receiving that message, Big Von asked Cortner "oh yeah what's them numbers[?]" *Id.* at PageID 5211. Cortner told Big Von that he would "find out." *Id.* He then called Goddard. *Id.* Shortly after the phone call with Goddard, Cortner texted Big Von "32 for old girl and 60 for dude." *Id.*

An FBI agent interpreted that conversation for the jury. The agent began by explaining that drug traffickers frequently "talk in code words." *Id.* at PageID 5254. In his experience, drug traffickers referred to "fentanyl" as "ol boy" or "dude." *Id.* When discussing cocaine, they used the "code name[]" "[g]irl." *Id.* at PageID 5256. "[C]ode words" for marijuana, the agent explained, include "og" and "gorilla glue." *Id.* at PageID 5257. The agent also testified that in 2019 fentanyl sold for $50,000 to $60,000 a kilogram, cocaine for $30,000 to $40,000 a kilogram, and marijuana for $2,000 to $3,000 a pound. The agent then characterized the conversation between Cortner and Big Von as follows: Cortner told Big Von that "he's got marijuana for sale for $2,200" and that "fentanyl and cocaine are located with the marijuana." *Id.* at PageID 5270-71. Big Von responded that he "want[ed] to know what the prices are for the fentanyl and the cocaine." *Id.* at PageID 5272. Cortner replied that he would "find out" and then called Goddard. *Id.* at PageID 5272-73. After speaking with Goddard, Cortner "text[ed] Big Von the prices for [the] fentanyl and [the] cocaine"—those prices were "$32,000 for the cocaine" and "$60,000 for the fentanyl." *Id.* at PageID 5273.

Cortner's "conversations" with Big Von and Goddard about the "drug-trafficking business" are evidence that he knew of and participated in the conspiracy. *United States v. Hall*, 20 F.4th 1085, 1106 (6th Cir. 2022). Cortner's call to Goddard to obtain the price of the cocaine and fentanyl suggests that Goddard and Cortner had an "agreement to violate the drug laws" and that Cortner knowingly and voluntarily participated in the agreement. *Potter*, 927 F.3d at 453. And that Cortner "approach[ed] [Big Von] about possibly purchasing" drugs "demonstrates both that [Cortner] was aware of the object of the conspiracy and that he voluntarily associated himself with its object and purpose." *United States v. Harris*, 397 F.3d 404, 414 (6th Cir. 2005).

Still more evidence connects Cortner to the conspiracy to distribute drugs. Jovan House testified that Cortner was present and carrying a firearm when House purchased marijuana from Goddard on November 3, 2019. House also confirmed that in his experience, "drug houses" often had someone who "is in charge of security" and carrying a "gun." Day 4 Trial Tr., R.338, PageID 3305. Given that testimony, Cortner's "presence in the" basement and "actual possession of" a firearm during the November 3 transaction at Ruskin Road further evidences his

"voluntary association with, and continued membership in, the conspiracy." *Harris*, 397 F.3d at 414-15.

Cortner's primary counter rests on reinterpreting the text messages. He casts his conversation with Big Von as a "quintessential buy-sell communication[] between a buyer (Cortner) and [a] personal-use weed supplier ('Big Von')." Cortner Br. 38. But again, we must "view the evidence in the light most favorable to the prosecution," not in the light most favorable to Cortner. *Baskerville*, 164 F.4th at 472 (citation omitted). And the FBI agent testified that the text messages reflected Cortner's effort to sell Big Von fentanyl and cocaine in addition to marijuana. Cortner's effort to explain away the Big Von conversation fails against our standard of review. Nor does Cortner's assertion that he was "merely passing along" information that "Goddard provided" fare better. Cortner Br. 39. The "jury could consider" Cortner's "exposure to the nature of [Goddard's] activities, and reasonably deduce [Cortner's] knowledge of and participation in the conspiracy from his actions in response." *Elliott*, 876 F.3d at 864. That Cortner was more go-between than kingpin makes him no less a member of the drug-trafficking conspiracy.

Cortner finally asserts that his "mere presence" at 1454 Ruskin Road and "association" with Goddard do not establish his membership in the conspiracy. Cortner Br. 33, 35. Spotting Cortner his premise, it runs aground on the facts. House testified about the role of security in drug transactions. And House stated that Cortner was armed during the drug transaction with Goddard. From that testimony, the jury could have concluded that Cortner "was not merely in the vicinity while [Goddard] carried on a conspiracy behind his back," but instead was acting as Goddard's security during the transaction with House. *Elliott*, 876 F.3d at 864. Because our standard of review requires us to "view the evidence in the light most favorable to the prosecution," we cannot credit Cortner's insistence that his conduct was innocuous. *Baskerville*, 164 F.4th at 472 (citation omitted). And besides, Cortner's position overlooks other evidence that was "sufficient to tie [Cortner] to the conspiracy in question," including his drug-price conversation with Big Von. *Harris*, 397 F.3d at 415.

B

Cortner also attacks the sufficiency of the evidence supporting his conviction under 21 U.S.C. § 841 for possession of controlled substances with the intent to distribute. That charge stemmed from the drugs recovered from the basement of 1454 Ruskin Road. The district court instructed the jury that it could convict Cortner for possession with intent to distribute if it found either that "he personally committed this crime" or that he acted as "an aider and abettor" by "intentionally help[ing] someone else to commit the crime." Day 12 Trial Tr., R.348, PageID 5592, 5596.

The Government presses only the aiding-and-abetting theory as a basis for the conviction. So we limit our discussion to whether sufficient evidence supports the conclusion that Cortner aided and abetted Goddard's possession with the intent to distribute the drugs recovered at Ruskin Road. To convict Cortner for aiding and abetting Goddard's drug-trafficking crime, the Government had to prove (1) "an act by [Cortner] that contributes to the commission of the crime," and (2) Cortner's "intention to aid in the commission of the crime." *Harris*, 397 F.3d at 415 (citation omitted). Sufficient evidence supports both elements.

As set out above, Cortner's text messages with Big Von show that he intentionally "contribute[d] to the commission of" Goddard's crime. *Id.* Through those messages, Cortner informed Big Von that the fentanyl, cocaine, and marijuana that Goddard possessed were for sale and "quoted him the price" for those drugs after obtaining that information from Goddard. *United States v. Vasquez*, 560 F.3d 461, 469 (6th Cir. 2009). Goddard's crime of conviction was possessing drugs with the intent to distribute. The jury could have concluded from the evidence that Cortner knowingly "assisted in [Goddard's] plan to" distribute the drugs by helping to facilitate a drug transaction between Goddard and a potential buyer. *United States v. Webber*, 208 F.3d 545, 554 (6th Cir. 2000).

Cortner disputes that conclusion by rehashing his arguments about the Big Von text messages. That effort fails for the reasons already discussed. Cortner also argues that there is no evidence that he "actually or constructively possessed *any* of the drugs." Cortner Br. 45. But "it is well-settled that it is not necessary for the government to prove that the defendant actually or

even constructively possessed the drugs in order to obtain a conviction for aiding and abetting." *Webber*, 208 F.3d at 554. So whether Cortner personally possessed the drugs is beside the point.

VI

Cortner also contests his conviction on the 21 U.S.C. § 848(e)(1) charge for intentionally killing Officer Del Rio. As is now familiar, it was Goddard, not Cortner, who pulled the trigger in Officer Del Rio's killing. Yet under *Pinkerton v. United States*, 328 U.S. 640 (1946), "a member of a conspiracy is liable for substantive offenses committed by his co-conspirators, even if he did not participate in them, as long as: (1) the offenses are done in furtherance of the conspiracy, (2) they fall within the scope of the unlawful project, and (3) they are reasonably foreseeable consequences of the unlawful agreement," *United States v. Hamm*, 952 F.3d 728, 744 (6th Cir. 2020) (cleaned up). That theory of liability is known as *Pinkerton* liability.

In Cortner's view, the district court committed legal error by instructing the jury that it could convict Cortner under § 848(e)(1) using a *Pinkerton* theory of co-conspirator liability. Cortner further asserts that the jury had too little evidence to convict under *Pinkerton* in any event. Both of Cortner's challenges fail.

A

We start with Cortner's jury-instruction challenge to his conviction under 21 U.S.C. § 848(e)(1) for the intentional killing of Officer Del Rio. In the instruction now at issue, the district court informed the jury that it could convict Cortner for violating § 848(e)(1) based on *Pinkerton* liability. Cortner argues that the district court's allowance for *Pinkerton* liability violated § 848(e)(1)'s provisions and the Due Process Clause.[1] As Cortner concedes, we review his contentions for plain error because trial counsel did not object to the *Pinkerton* instruction below.

[1]Cortner also contends that his trial counsel was constitutionally ineffective for failing to object to the *Pinkerton* instruction. But we "generally" will "not review such claims on direct appeal." *United States v. Kenny,* 505 F.3d 458, 462 (6th Cir. 2007). Cortner provides no reason to deviate from that general practice here.

1

Taking Cortner's statutory argument first, we conclude that *Pinkerton* liability is not plainly inconsistent with § 848(e)(1).

Section 848(e)(1) directs that "any person engaging in an offense punishable under section 841(b)(1)(A)" who "intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years." 21 U.S.C. § 848(e)(1). As we've discussed, that provision covered Goddard's killing of Officer Del Rio. And nothing about the relevant statutory text plainly forecloses application of *Pinkerton* liability. Indeed, other circuits have recognized that *Pinkerton* liability applies to offenses under § 848(e)(1). *See United States v. Johnson*, 804 F. App'x 8, 11 (2d Cir. 2020); *United States v. Walker*, 142 F.3d 103, 113-14 (2d Cir. 1998); *United States v. Britt*, 112 F. App'x 352, 355 (5th Cir. 2004); *United States v. Collazo-Aponte*, 216 F.3d 163, 174, 194-95 (1st Cir. 2000) (affirming convictions under § 848(e)(1)(A) based on *Pinkerton* liability), *vacated in part on other grounds*, 532 U.S. 1036 (mem.). Cortner identifies no case of this Court (or any other) holding otherwise, so he cannot prevail on his plain-error challenge. *See Tellez*, 86 F.4th at 1154.

Cortner's responses come up short. He first suggests that *Pinkerton* liability is inconsistent with § 848(e)(1) because the statute criminalizes only intentional killings, whereas *Pinkerton* authorizes convictions of individuals who lack any intent to kill. But Cortner's mens-rea argument misapprehends the mechanics of *Pinkerton* liability.

The work of *Pinkerton* is not to impute an offender's mens rea for the relevant substantive crime to all of his co-conspirators. It is to assign responsibility for the offender's "act" to each co-conspirator, so long as the offense was reasonably foreseeable and within the conspiracy's scope. *Pinkerton*, 328 U.S. at 646-47; *see also Alvarez*, 755 F.2d at 849 ("A co-conspirator is vicariously liable for the acts of another co-conspirator" (cleaned up)). For such offenses, the "criminal intent to do the act is established by the formation of the conspiracy." *Pinkerton*, 328 U.S. at 647. So *Pinkerton* deems each qualifying co-conspirator just as culpable for substantive offenses as the principal—not because all conspirators shared the same mens rea

for the substantive offense, but because they all knowingly joined a conspiracy in which the commission of that offense was reasonably foreseeable. *Id.*; *cf. United States v. Thompson*, 286 F.3d 950, 965 (7th Cir. 2002) ("[I]n those cases that involve premeditated murder[,] the specific intent requirement is captured by the reasonable foreseeability qualification.").

Were Cortner's position correct, then *Pinkerton* could not cover any specific-intent crimes. Yet this Court has affirmed *Pinkerton*-based convictions under statutes that require particular mens rea showings. *See, e.g.*, *United States v. Sadler*, 24 F.4th 515, 544-45 (6th Cir. 2022) (*Pinkerton*-based conviction for "knowing or intentional distribution" of controlled substances); *United States v. Martin*, 920 F.2d 345, 348-49 (6th Cir. 1990) (same). Other courts, too, have affirmed *Pinkerton*-based convictions for offenses with specific-intent requirements (including murder). *See, e.g.*, *United States v. Gonzales*, 841 F.3d 339, 351-53 (5th Cir. 2016). Cortner's *Pinkerton*-based conviction is therefore not plainly inconsistent with the law of this Circuit—or any other. *See Tellez*, 86 F.4th at 1154.

Cortner next asserts that *Pinkerton* liability is inconsistent with the Supreme Court's decision in *Rosemond v. United States*, 572 U.S. 65 (2014), which placed limits on aiding-and-abetting convictions under 18 U.S.C. § 924(c). Recognizing the important distinction between aiding-and-abetting and conspiracy, however, we have held that "*Rosemond* did not alter the *Pinkerton* framework." *United States v. Edmond*, 815 F.3d 1032, 1047 (6th Cir. 2016), *vacated on other grounds*, 581 U.S. 912 (mem.). So circuit precedent forecloses Cortner's argument.

To the extent Cortner argues that *Pinkerton* is categorically inapplicable to murder offenses, that too fails on plain-error review. We have no precedent saying so. And we've upheld a *Pinkerton*-based conviction for causing the death of an individual through use of a firearm. *See United States v. Winston*, 55 F. App'x 289, 299-300 (6th Cir. 2003). Other courts, for their part, have affirmed *Pinkerton*-based murder convictions. *See, e.g.*, *Alvarez*, 755 F.2d at 847-48; *Gonzales*, 841 F.3d at 351-53. It therefore is not "obvious" that the district court erred, if it did at all, by giving a *Pinkerton* instruction on § 848(e)(1)'s intentional-killing charge. *Tellez*, 86 F.4th at 1154.

2

Nor did the district court's *Pinkerton* instruction plainly violate the Due Process Clause. Cortner is not the first to contest *Pinkerton*'s consistency with due-process principles. In rejecting prior challenges, we have pointed to *Pinkerton*'s requirement that the relevant criminal offense be "foreseeable" to the defendant. *United States v. Christian*, 942 F.2d 363, 367 (6th Cir. 1991). Recall that *Pinkerton* liability is available only if the substantive crime was a "reasonably foreseeable consequence of the unlawful agreement." *Hamm*, 952 F.3d at 744 (cleaned up). That "foreseeability concept," we have explained, protects against "a possible due process violation" even when there is "a strained relationship between the conspirator and the substantive crime." *Christian*, 942 F.2d at 367.

The district court instructed the jury that to convict Cortner using *Pinkerton* liability, it had to find that Officer Del Rio's killing was "within the reasonably foreseeable scope of the unlawful project." Day 12 Trial Tr., R.348, PageID 5605. Under this Court's caselaw, the instruction's reasonable-foreseeability requirement avoids any plain due-process violation.

Cortner responds with a different view of *Pinkerton*'s interaction with due process. On his theory, "due process limits to *Pinkerton* liability" should "bar any such liability in a case of intentional murder where the *Pinkerton* defendant" had "a minor role in the alleged conspiracy" or "the relationship between [the] defendant and the murder is slight." Cortner Br. 54 (cleaned up). To be sure, some have entertained limiting the doctrine along Cortner's proposed lines. *Cf., e.g.*, *United States v. Bingham*, 653 F.3d 983, 997 (9th Cir. 2011).[2] But even if a narrowing move might work in other cases, it does not help Cortner here. Because the district court's instruction tracked our caselaw, Cortner cannot show any plain error from the failure to instruct the jury on his *Pinkerton*-liability proposal. *See Tellez*, 86 F.4th at 1154.

Nor, it's worth noting, would Cortner seem to pass his own minor-role test given the trial evidence connecting him to both the drug conspiracy and the killing of Officer Del Rio. We now

[2]Others have asked the Supreme Court to outright overrule *Pinkerton*, *see, e.g.*, Petition for Writ of Certiorari at 25-27, *Reese v. United States*, No. 25-2 (collecting sources), which is beyond our authority.

turn to assessing that evidence in the context of Cortner's sufficiency challenge to his § 848(e)(1) conviction.

B

Cortner's sufficiency challenge to his intentional-killing conviction asserts that the evidence was insufficient to satisfy the elements of *Pinkerton* liability. Cortner preserved that sufficiency challenge, meaning we apply the standard sufficiency-review rules recited above. Doing so, we disagree that the evidence was insufficient to support application of *Pinkerton* liability.

Pinkerton's vicarious-liability principle does not sweep in all crimes committed by co-conspirators. Still, the scope of liability remains "broad." *Hamm*, 952 F.3d at 744. *Pinkerton* applies to any "substantive offense of other conspirators committed during and in furtherance of the conspiracy." *United States v. Odom*, 13 F.3d 949, 959 (6th Cir. 1994). That's true "even if the offense is not an object of the conspiracy." *Id.*

The district court's *Pinkerton* instruction brought these elements together when it discussed Cortner's charge for the killing of Officer Del Rio. That instruction informed the jury that, to convict, it had to find (1) that Cortner "was a member of the conspiracy charged in Count 1 of the Indictment," (2) that "one or more of the other members committed the crime of Intentionally Killing an Individual While Engaged in Drug Trafficking," (3) that the killing "was committed to help advance the conspiracy," and (4) that the killing "was within the reasonably foreseeable scope of the unlawful project." Day 12 Trial Tr., R.348, PageID 5605.

Cortner challenges the sufficiency of the evidence supporting every element of *Pinkerton* liability. But we've already determined that sufficient evidence supports the jury's conclusions that Cortner was a member of the conspiracy, *see supra* Part V.A, and that Goddard intentionally killed Officer Del Rio while engaged in drug trafficking, *see supra* Part IV.C. We therefore focus on the remaining two elements.

1

Pinkerton liability requires that the substantive offense "help advance the conspiracy." *United States v. Woods*, 14 F.4th 544, 554 (6th Cir. 2021). Another way to frame the inquiry is to ask whether the substantive offense was committed "in furtherance of the conspiracy." *See, e.g.*, *Odom*, 13 F.3d at 959. And under our caselaw, the possession or use of a firearm is "in furtherance of" a drug-trafficking crime when the defendant uses "a gun to protect the drugs, the proceeds of drug sales, or the dealer himself." *United States v. Maya*, 966 F.3d 493, 500 (6th Cir. 2020) (citation omitted).

A rational juror could have concluded that Goddard killed Officer Del Rio to advance the charged drug-trafficking conspiracy. That result flows from the trial record, which could be viewed as supporting that Goddard acted "to protect the drugs" and the "proceeds of drug sales" located in the basement of 1454 Ruskin Road. *Id.*; *see also supra* Part IV.C. The evidence showed that drug traffickers "use and carry firearms" to "protect[] their narcotics" and "protect[] the money that they collect from selling those narcotics." Day 10 Trial Tr., R.346, PageID 5261. And the jury learned that Goddard, upon hearing law enforcement's entry, armed himself and moved to a blind spot near a stash containing multiple kilograms of drugs, over $44,000 in cash, and an AR-style rifle. Faced with that evidence, a "jury could reasonably conclude" that Goddard's decision to "shoot a federal agent" was an action taken "in furtherance of the narcotics conspiracy" because Goddard was "protecting" the conspiracy's drugs and drug proceeds. *United States v. Romero*, 897 F.2d 47, 51 (2d Cir. 1990).

Cortner responds that the "drugs and money were completely irrelevant, not even an afterthought," because he and Goddard "were in the basement to play video games on 11/4/2019, not anything to do with drug activity." Cortner Br. 60-61 (emphasis omitted). But that amounts to an assertion that we should "substitute our judgment for that of the jury." *Sadler*, 24 F.4th at 539 (cleaned up). Yet here again, we must view the evidence "in the light most favorable to the prosecution" and draw "[a]ll reasonable inferences" to "support the jury verdict." *Id.* (citation omitted). And the evidence could be taken to reasonably support the jury's view that Goddard, in shooting Officer Del Rio, sought to facilitate and protect his drug-trafficking activity.

2

Sufficient evidence also supports the conclusion that Goddard's killing of Officer Del Rio was reasonably foreseeable to Cortner.

This Court's cases don't provide a one-size-fits-all foreseeability rule. Rather, as Cortner rightly points out, we've "explicitly rejected the fiction that a firearm's presence *always* will be foreseeable to persons participating in illegal drug transactions." *United States v. Catalan*, 499 F.3d 604, 607 (6th Cir. 2007) (emphasis added) (citation omitted). Our precedent's position thus differs from other courts' bright-line approach to drug-trafficking conspiracies and violence. *See, e.g.*, *United States v. Basilici*, 138 F.4th 590, 599 (1st Cir. 2025) ("A codefendant's possession and discharge of a dangerous weapon is foreseeable to a defendant with reason to believe that their collaborative criminal venture includes an exchange of controlled substances." (cleaned up)); *United States v. Cruz*, 805 F.2d 1464, 1474 (11th Cir. 1986) (The "violent use of firearms is the reasonably foreseeable consequence of a narcotics offense, sufficient to allow for co-conspirator liability under the *Pinkerton* doctrine.").

Even so, our *Pinkerton* cases involving the intersection of firearms and drug-trafficking conspiracies have consistently cited a few factors that help gauge foreseeability.

Significant quantity or value of drugs. Large drug quantities or high transaction values make it more likely that a drug conspiracy's participants "would expect others to be carrying protection." *United States v. Wade*, 318 F.3d 698, 702 (6th Cir. 2003). Assessing that factor, courts have found weapons crimes foreseeable based on the quantity of drugs involved when transactions involved wholesale quantities of drugs or substantial sums of money. *See, e.g.*, *Odom*, 13 F.3d at 953, 959 (at least 2.385 kilograms of cocaine and prior transaction worth $90,000); *Christian*, 942 F.2d at 368 ("$60,000 for three kilograms of cocaine"); *Alvarez*, 755 F.2d at 848 ("one kilogram of cocaine for $49,000"); *United States v. Diaz*, 864 F.2d 544, 549 (7th Cir. 1988) ("kilogram of cocaine worth $39,000); *Collazo-Aponte*, 216 F.3d at 196 ("kilogram quantities of cocaine and crack" and quantity of heroin worth $10,000), *vacated in part on other grounds*, 532 U.S. 1036 (mem.). But "nickel-and-dime operation[s]" don't give rise to the same expectation. *Alvarez*, 755 F.2d at 848. Thus, in *Wade*, we concluded that the

amount of drugs at issue—"$1,100 worth of crack and powder cocaine"—was too marginal standing alone to support foreseeability of a co-conspirator's gun possession. 318 F.3d at 702.

Here, the conspiracy that Cortner joined involved large-scale drug transactions. Law-enforcement officers recovered three kilograms of fentanyl, six kilograms of cocaine, and 50 to 60 pounds of marijuana from 1454 Ruskin Road. More than that, the evidence showed that Cortner knew, from his conversations with Goddard and Big Von on the morning of the shooting, that those drugs were worth hundreds of thousands of dollars. The "huge quantities" of drugs and cash found in the basement would allow a rational juror to infer that Goddard's use of the firearm to protect his drug stash was reasonably foreseeable. *Id.*

Weapon present or carried in visible location. Our precedent also supports the common-sense conclusion that firearm crimes are more likely to be foreseeable when there is "objective evidence that the defendant knew the weapon was present." *Id.* Such evidence might establish that a defendant had information about his co-conspirator's firearm possession, *see United States v. Myers*, 102 F.3d 227, 238 (6th Cir. 1996) (defendant "knew" his co-conspirator "had [a] gun" hidden under seat of car), or that the firearm was "visible" or else accessible to the defendant, *Wade*, 318 F.3d at 703; *see United States v. Alvarez-Valenzuela*, 231 F.3d 1198, 1204 (9th Cir. 2000) ("jury could reasonably infer that the gun was visible" given carrier's need to adjust it in waistband); *United States v. Resko*, 3 F.3d 684, 696 (3d Cir. 1993) ("gun on a bed" in room with defendants); *Alvarez*, 755 F.2d at 849 (shooter was "fidgeting with a leather pouch that was suspected to contain a weapon").

This factor likewise cuts in favor of foreseeability. Cortner not only knew that Goddard, a multi-time felon, had the firearm used to shoot Officer Del Rio. Cortner himself helped acquire the firearm through a straw purchaser and then equipped it with a laser sight. Laser sights tend to increase the accuracy, and thus the lethality, of firearms; using one to aim and fire at a target, rather than shooting from the hip or firing haphazardly, aligns with premeditated action. On this record, that Cortner provided a known drug dealer with the murder weapon and outfitted it with a laser sight would thus allow a jury to conclude that Cortner should have foreseen not just that Goddard would shoot someone, but that Goddard premeditated. All the more because Cortner's and Goddard's matching weapons were designed to fire ammunition that

pierces body armor. Further, Goddard's weapon was sitting in plain view on the coffee table just before the shooting. Given the ready location of Goddard's weapon and its characteristics, the jury was "entitled to infer" that Cortner "must have been aware of the likelihood" that "deadly force would be used, if necessary, to protect the conspirators' interests." *Alvarez*, 755 F.2d at 849.

Preparation to use weapon as protection within the conspiracy. Evidence that members of a conspiracy "had contemplated and prepared for using [a] gun" also helps establish foreseeability of later firearms crimes. *Romero*, 897 F.2d at 51. Here, the jury was told about the presence of weapons during the drug transaction with House the day before the shooting. And House testified that in his experience, "drug houses" often had someone who "is in charge of security" and carrying a "gun." Day 4 Trial Tr., R.338, PageID 3305. Cortner, the jury heard, was carrying a gun as Goddard showed House kilogram-quantities of fentanyl.

The events immediately preceding the shooting, taken in the light most favorable to the Government, further confirm that Goddard's intent to use a firearm was reasonably foreseeable. When Goddard heard law-enforcement officers breach the side door to 1454 Ruskin Road, he grabbed his pistol, positioned himself in a basement-corner blind spot near large quantities of drugs, and directed Cortner to hide in the back room. Cortner then retreated to the back room, unholstered his pistol, and chambered a round. Because Cortner "witnessed the use of firearms by his co-conspirators" and "was himself armed," a rational juror could conclude that Goddard's killing of Officer Del Rio "was a foreseeable act in furtherance of the conspiracy." *United States v. Bruno*, 873 F.2d 555, 560 (2d Cir. 1989).

Defendant's depth of relationship with drug trade or conspiracy. Finally, "the degree of the defendant's involvement in the conspiracy" can inform whether it's proper to infer that he "knew of the common link between guns and drugs." *Wade*, 318 F.3d at 703. Cortner contends that the Government had thin evidence—in the form of a few text exchanges with Big Von—of his involvement in the drug-trafficking conspiracy. But that evidence, alongside Cortner's presence at Ruskin Road and his correspondence with Goddard about the eventual murder weapon, could support a rational juror's conclusion that Cortner had a "close relationship to" Goddard, a "wholesale dealer[]." *Id.* at 704. Nor, as discussed, was Cortner left to infer a link

between guns and drugs: He and Goddard had guns during drug transactions and prepared to use their guns during the warrant's execution. The jury thus could have concluded that Cortner's involvement in the drug conspiracy meant he knew both of Goddard's weapon possession and of the prospect that Goddard was planning to use the gun (equipped with a laser sight) immediately before he shot Officer Del Rio.

VII

The final issues in this appeal concern Cortner's sentence of life imprisonment. Cortner argues that his sentence is both procedurally and substantively unreasonable. We disagree on both fronts.

A district court must impose a reasonable sentence. That requirement has a procedural and a substantive component. A sentence is procedurally reasonable if "the district court properly calculated the [Sentencing] [G]uidelines range, treated that range as advisory, considered the sentencing factors in 18 U.S.C. § 3553(a), refrained from considering impermissible factors, selected the sentence based on facts that are not clearly erroneous, and adequately explained why it chose the sentence." *United States v. Roper*, 161 F.4th 430, 434 (6th Cir. 2025) (citation omitted). "Substantive reasonableness considers whether the [district] court placed too much weight on some of the § 3553(a) factors and too little on others such that the sentence is too long (if a defendant appeals) or too short (if the government appeals)." *Id.* (citation omitted). "We review both procedural and substantive reasonableness for abuse of discretion." *Id.*

A

Cortner argues that his sentence is procedurally unreasonable because the district court (1) chose the wrong base offense level and (2) improperly applied a six-level sentencing enhancement when calculating his sentencing range under the U.S. Sentencing Guidelines. But he agrees that, if we reject his first argument, his second argument makes no difference to his sentence. We indeed reject his first argument about the base offense level, and so need not address the enhancement issue.

The Sentencing Guidelines provide detailed instructions on how district courts should calculate a defendant's base offense level. First, the district court must "[d]etermine, pursuant to §1B1.2 . . . the offense guideline section from Chapter Two . . . applicable to the offense of conviction." U.S.S.G. § 1B1.1(a)(1) (2024). Section 1B1.2 directs the district court to "[r]efer to the Statutory Index (Appendix A) to determine the Chapter Two offense guideline." *Id.* § 1B1.2(a). Appendix A in turn "specifies the offense guideline section(s) in Chapter Two . . . applicable to the statute of conviction." *Id.* Appendix A.

The district court followed those procedures here. Cortner was convicted of violating 21 U.S.C. § 848(e)(1)(A). Appendix A provides that § "2A1.1" is the relevant guideline for a conviction under "21 U.S.C. § 848(e)." *Id.* Appendix A. And § 2A1.1 sets a base offense level of "43." *Id.* § 2A1.1(a). The district court thus assigned Cortner a base offense level of 43. Because that decision followed from a straightforward application of the Guidelines, the district court did not commit procedural error.

Cortner thinks otherwise. In his view, § 2A1.1 does not apply here because that provision is limited to "*premeditated* murders," while he was convicted of an "intentional killing" using *Pinkerton* liability. Cortner Br. 64-65. According to Cortner, the district court should have applied § 2A1.2, the Guideline for second-degree murder, and assigned him a base offense level of 38. Whatever the logical appeal of Cortner's reasoning, the Guidelines foreclose his step-down approach. "Judges determine the offense level for the underlying offense by looking to Appendix A of the Guidelines." *United States v. Hanna*, 661 F.3d 271, 289 (6th Cir. 2011) (citation omitted). A district court's task is "to locate the relevant statute of conviction" in the Appendix and "then determine which Guideline section is applicable." *Id.* And Appendix A is clear that § 2A1.1, not § 2A1.2, applies to convictions under 21 U.S.C. § 848(e). *Id.* Appendix A.

Because the district court correctly assigned Cortner a base offense level of 43, we need not address Cortner's challenge to the six-level enhancement under § 3A1.2. Cortner concedes that the enhancement "had no practical effect when [§] 2A1.1 dictated a 43." Cortner Br. 65. He is right: The Guidelines' maximum offense level is 43. U.S.S.G. ch. 5, Part A, n.2. And the Guidelines recommend a sentence of life imprisonment for an offense level of 43. *Id.* ch. 5, Part

A. So Cortner's offense level, and thus Guidelines range, would have remained life imprisonment regardless of whether the enhancement applied.

B

Last, Cortner argues that his within-Guidelines sentence of life imprisonment is substantively unreasonable. Within-Guidelines sentences are presumed reasonable. *United States v. Gardner*, 32 F.4th 504, 530 (6th Cir. 2022). To rebut that presumption, the defendant must show that the "district court chose a sentence arbitrarily, ignored pertinent § 3553(a) factors, or gave unreasonable weight to any single factor." *Id.*

The district court imposed a reasonable sentence. It "reflected deeply on the Section 3553(a) factors." Cortner Sent. Hr'g Tr., R.351, PageID 6044. After doing so, the district court determined that a life sentence was appropriate. It stressed the "unfathomable" harm Cortner caused to Officer Del Rio's family and the Dayton community, the massive quantities of drugs for which Cortner was responsible, and Cortner's "utter lack of respect for the law"—as evidenced, among other factors, by "the quantity of drugs [Cortner] was conspiring to possess and to sell, and his role in the murder of Task Force [Officer] Del Rio to protect those drugs and drug sale proceeds." *Id.* at PageID 6047-48, 6050 (citation omitted) (cleaned up). "We see no basis for second guessing that judgment." *United States v. Rayyan*, 885 F.3d 436, 443 (6th Cir. 2018). The district court's careful analysis demonstrates that it "based its sentence on [the § 3553(a) factors], did not place undue weight on any one of them, and did not consider illegitimate factors." *Gardner*, 32 F.4th at 530. No abuse of discretion occurred.

Cortner points to several mitigating factors as proof that he should receive a lesser sentence, including his self-described "minimal role" in the offenses and "non-involvement in the killing," his "zero criminal history," his "character references," and Combs's sentence of time served. Cortner Br. 66-67. But the "district court did not need to accept [Cortner's] version of events at sentencing, and it did not err in refusing to do so." *United States v. Haile*, 157 F.4th 820, 829 (6th Cir. 2025). Nor can Cortner credibly advance a "disparity argument" based on Combs: Cortner helped acquire the murder weapon and was convicted on several charges including Officer Del Rio's intentional killing, whereas Combs entered a plea that left him

convicted only of one offense for maintaining a drug premises. *United States v. Wells*, 55 F.4th 1086, 1094 (6th Cir. 2022). And regardless, Cortner's mitigating-factors argument "ultimately boils down to an assertion that the district court should have balanced the § 3553(a) factors differently." *Roper*, 161 F.4th at 438 (citation omitted). "Such an assertion is simply beyond the scope of our appellate review, which looks to whether the sentence is reasonable, as opposed to" whether "we would have imposed the same sentence" in "the first instance." *Id.* (citation omitted).

* * *

We affirm.