

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KAELEN JACOBKEALI WENDEL,

Defendant - Appellant.

No. 24-4606

D.C. No.

2:23-cr-00060-MEMF-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Maame Ewusi-Mensah Frimpong, District Judge, Presiding

Argued and Submitted March 6, 2026
Pasadena, California

Before: WARDLAW, DESAI, and DE ALBA, Circuit Judges.

Kaelen Jacobkeali Wendel appeals his 240-month sentence after a jury convicted him of distribution of fentanyl resulting in death and serious bodily injury in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). Wendel was charged after he allegedly distributed fentanyl while in jail, leading to Jose Velasquez's overdose and Edgar Estrada's death. Wendel challenges the sufficiency of the evidence to impose

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

the twenty-year mandatory minimum sentence under Section 841(b)(1)(C). He also challenges the jury instruction on serious bodily injury, arguing that the district court erred by (1) not providing a definition of serious bodily injury, and (2) giving a permissive inference instruction. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

1. We review claims of insufficient evidence de novo, viewing the evidence in the light most favorable to the prosecution, to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *United States v. Tuan Ngoc Luong*, 965 F.3d 973, 980–81 (9th Cir. 2020).

To obtain a conviction under § 841(a)(1), the government must prove that (1) Wendel knowingly distributed fentanyl, and (2) he knew it was fentanyl or some other prohibited drug. *See United States v. Houston*, 406 F.3d 1121, 1122 (9th Cir. 2005). Wendel does not challenge these elements of his conviction on appeal.

A sentencing enhancement applies if the distribution results in death or serious bodily injury. 21 U.S.C. § 841(b)(1)(C). Thus, the government must prove beyond a reasonable doubt that Estrada’s death was a result of the fentanyl Wendel distributed. *See Burrage v. United States*, 571 U.S. 204, 210 (2014).

A rational factfinder could conclude beyond a reasonable doubt that Estrada used fentanyl distributed by Wendel. *See Jackson v. Virginia*, 443 U.S. 307, 319

(1979) (concluding that jurors can draw reasonable inferences from the evidence presented at trial). Wendel distributed fentanyl to Michael Villapania, who, in turn, distributed that fentanyl to Velasquez. And around six hours after Villapania's distribution to Velasquez, Velasquez and Estrada simultaneously overdosed on fentanyl in the same cell. Villapania testified that Wendel was the "first one in a long time" in D-Unit to bring in "any kind of . . . drug," and that the fentanyl Villapania distributed to Velasquez was Wendel's. Based on the timing and location of Estrada's death, and the lack of alternative sources of fentanyl in the jail cell, the jury reasonably inferred that Estrada used fentanyl that Wendel distributed.¹

An intervening act did not break the chain of causation. Although Wendel asks us to apply aiding and abetting liability principles to the death finding, the sentencing enhancement requires only "cause-in-fact," or but-for causation. *Houston*, 406 F.3d at 1125. Accordingly, the possibility that Estrada obtained the drug from an intermediary does not change the analysis under Section 841(b)(1)(C).

2. The district court did not plainly err by (1) failing to give the statutory definition of "serious bodily injury" in its jury instruction, or by (2) giving an erroneous permissive inference instruction that the jury may find serious bodily

¹ Wendel argues that other prisoners may have had fentanyl in D-Unit. But the only question is whether it is a reasonable inference that Estrada used fentanyl distributed by Wendel in this instance. Because it is reasonable based on the evidence introduced, we must draw the inference in the government's favor. *See United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010) (en banc).

injury based on Velasquez’s drug overdose.

We review forfeited challenges to a district court’s formulation of the jury instructions for plain error, and we do not review waived challenges.² *United States v. Perez*, 116 F.3d 840, 845–46 (9th Cir. 1997). We also review de novo whether a jury instruction violates due process by creating an unconstitutional presumption or inference. *United States v. Warren*, 25 F.3d 890, 897 (9th Cir. 1994).

Under plain-error review, Wendel must “show that (1) there was an error, (2) the error is clear or obvious, (3) the error affected his substantial rights, and (4) the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Johnson*, 979 F.3d 632, 636 (9th Cir. 2020). Wendel cannot show plain error.

First, Wendel argues that the district court erred by not defining “serious bodily injury.” But even if this was error, Wendel fails to show that the error affected his substantial rights. *See Greer v. United States*, 593 U.S. 503, 508 (2021) (stating that to satisfy the “substantial rights” prong of plain-error review, defendant must

² The government argues that Wendel waived his instructional claims regarding the serious bodily injury element because the parties submitted jointly proposed instructions and his argument was previously available to him. *See United States v. Cain*, 130 F.3d 381, 383 (9th Cir. 1997) (finding waiver where defendant’s counsel “proposed the instruction to which he now objects” and the basis for his challenge, the Ninth Circuit model instruction and case law supporting it, “was already on the books”). Although Wendel’s counsel proposed the instruction to which he now objects, the basis for his challenge and the case law supporting it was not “already on the books.” Thus, there is no waiver. *See id.*

show that had the court “correctly instructed the jury . . . there is a ‘reasonable probability’ that he would have been acquitted” (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004)). Here, Velasquez’s overdose meets the definition of “serious bodily injury” based on the evidence, including the amount of Narcan needed to revive him. *See* 21 U.S.C. § 802(25) (defining “serious bodily injury” as “bodily injury which involves – (A) a substantial risk of death; (B) protracted and obvious disfigurement; or (C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty”). Thus, there is not a reasonable probability that Wendel would have been acquitted had the district court defined “serious bodily injury.”

Second, Wendel challenges the permissive inference jury instruction. A permissive inference is constitutional so long as it can be said “with substantial assurance” that the inferred fact is “more likely than not to flow from the proved fact on which it is made to depend.” *United States v. Rubio-Villareal*, 967 F.2d 294, 296 (9th Cir. 1992) (en banc) (citation modified); *see also Warren*, 25 F.3d at 897 (stating that a permissive inference violates due process “if the suggested conclusion is not one that reason and common sense justify in light of the proven facts before the jury” (citation modified)).

Here, the inferred fact that Velasquez suffered serious bodily injury is “more likely than not to flow” from the proved fact that he overdosed. The government

presented evidence that established that Velasquez’s overdose created a substantial risk of death. For example, the nurse who treated Velasquez in his cell testified that he was blue in color and did not appear to be breathing; he employed numerous life-saving interventions, including nine doses of Narcan; and Velasquez came very close to dying. In short, there was adequate evidence from which the jury rationally could “make the connection permitted by the inference.” *Warren*, 25 F.3d at 898 (citation omitted).

A permissive inference instruction can be defective even if it does not violate due process. *Rubio-Villareal*, 967 F.2d at 297. But even if the district court’s permissive inference jury instruction was “clear” or “obvious” error, Wendel fails to show that the error affected his “substantial rights” because the government presented adequate evidence that Velasquez’s use of Wendel’s fentanyl resulted in a substantial risk of death. *See United States v. Saini*, 23 F.4th 1155, 1165–66 (9th Cir. 2022) (finding instructional error was harmless where there was “overwhelming evidence” on the erroneous portion of the instruction). In sum, Wendel has not met his burden to show that the jury instruction here was plain error.

AFFIRMED.