IN THE
SUPREME COURT OF THE UNITED STATES
NOVEMBER TERM, 2020

No. _____

LUIS JAVIER CORREA-FIGUEROA
PETITIONER

V.

UNITED STATES OF AMERICA
RESPONDENT

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

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I. QUESTION PRESENTED

(A) WHETHER THE DISTRICT COURT COMMITTED A PROCEDURAL ERROR WHEN IT EXCLUDED EVIDENCE THAT PETITIONER WAS SHOT 11 TIMES, AND AS HE WAS TRYING TO EVADE THE BULLETS HE HIT FEDERAL VEHICLES IN VIOLATION TO COUNT 5, AND HIT A VEHICLE WITH FEDERAL OFFICERS INSIDE, A FEDERAL OFFENSE CHARGED IN COUNTS 6 THROUGH 13, 15 AND 16 (DAMAGE TO FEDERAL PROPERTY) REQUIRED EVIDENCE OF INTENT TO COMMIT DAMAGE TO FEDERAL OFFICERS AND U.S PROPERTY.

(B) WHETHER THE DISTRICT COURT ERRED BY DENYING PETITIONER'S MOTION FOR ACQUITTAL

II. LIST OF PARTIES

The caption of the case contains the names of all parties in the instant petition.

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Th TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Petitioner respectfully prays, that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the First Circuit which affirmed a judgment of the District Court for the district of Puerto Rico.

III. CITATIONS OF THE OFFICIAL OPINIONS BELOW

The official citation of the case at the Court of Appeals is, United States v. Luis Javier Correa-Figueroa Appeal, the No. 18-1291(1st Cir. 2020)

IV. STATEMENT OF BASIS OF JURISDICTION

The district court entered judgment on March 21, 2018, Petitioner appealed to the First Circuit Court of Appeal on April 6,2018. On September 23, 2020, the First Circuit affirmed the district court judgment. The mandate was issued on October 14, 2020. Therefore, the Supreme

Court's Jurisdiction is invoked under Title 28 U.S.C. § 1254(1), which confers jurisdiction on this Honorable Court to review on Writ of Certiorari the judgment in question.

V. RELEVANT STATUTORY PROVISIONS INVOLVED IN THE CASE

United States Federal Rules of Evidence 402 and 403.

VI. STATEMENT OF THE CASE

On or about June 2015, Correa-Figueroa, was working as a confidential source with the DEA. He provided support to law enforcement agents conducting investigations by offering information regarding unlawful activity or purchasing controlled substances or other items in a setting controlled by the DEA. In late June 2015, DEA agents received information through a confidential source, Daniel Rivera-Nunez (hereinafter Rivera-Nunez), that Appellant was allegedly conducting unlawful activity on the side. According to the PSR (Docket 223 pg. 20 par. 118), Rivera-Nunez had a criminal history with Correa-Figueroa as reflected from a stateside Puerto Rico criminal case around the year 2011. The case was later dismissed.

Subsequently, in order to corroborate the information proffered to agents that the Appellant was engaging in unknown unlawful activity outside of his role as an informant, Rivera Nunez and another confidential source recorded their conversations with Correa-Figueroa. During the conversations Correa-Figueroa discusses his need to obtain a kilo of cocaine in order to supply a drug point he was allegedly running. Petitioner was induced to believe that there were some individuals from the Dominican Republic who were in need of firearms in order to "handle a problem" they had in Puerto Rico. Correa-Figueroa agreed to provide two handguns with magazines and ammunition in exchange for two kilograms of cocaine. The agreement was that the defendant would receive the first kilogram of cocaine once he provided the firearms as a "loan"

to the Dominican nationals. The firearms would then be returned to Appellant and a second kilogram of cocaine would be provided. On July 6, 2015, Correa-Figueroa was recorded specifying that one of the firearms he was to provide would function as a fully automatic weapon. Unbeknown to him, on this date, he was terminated as a DEA confidential source. (Motion in Limine – Docket 145 pg. 2).

On July 7, 2015, Correa-Figueroa engaged in several phone calls with a DEA undercover, where they discussed meeting that same day at the parking lot of the Plaza Guaynabo Shopping Center in Guaynabo, Puerto Rico. It was agreed that in exchange for a "loan" of two firearms, one operating as a fully automatic weapon, a kilo of cocaine would be provided. (Motion in Limine – Docket 145 pg. 2).

On that same date, Correa Figueroa arrived at the agreed location and showed the confidential source the firearms and magazines, and a takedown signal was given as a confirmation of the presence of the weapons. Government vehicles approached the Appellant as well as federal agents dressed in tactical gear. The Government alleged Correa-Figueroa attempted to flee, crashing into several vehicles thus, damaging Government and citizens property. Appellant's position was that he was afraid for his life and this was why he attempted to flee. During Correa-Figueroa's arrest he was shot 11 even times and as a consequence once detained was taken to the emergency room in Centro Medico, Rio Piedras. (Docket 115).

After Correa-Figueroa was under police custody, the agents searched the Jeep Cherokee and seized a bag found in the front floor of the passenger's side with one (1) Glock Pistol, Model 22, .40 caliber, bearing serial number BNH960US, loaded with a magazine containing .40 caliber ammunition; a magazine containing .40 caliber ammunition; (2) a Taurus Millennium handgun,

.40 caliber, bearing serial number SVA30021, loaded with a magazine containing .40 caliber ammunition and a magazine containing .40 caliber ammunition.

Before trial, the Government filed a Motion In Limine to preclude a video related to the shooting on July 7, 2015 arguing that under Rule 401 of Federal Criminal Procedure, the video was irrelevant to the charging offenses in the Indictment that is Counts One (1) through Sixteen (16). Additionally, the Government proffered that evidence of the shooting should not be admitted, pursuant to Federal Rule 403 of Criminal Procedure, as it is more prejudicial than probative. (Docket 145). The Appellant opposed the Motion In-Limine in a timely manner. (Docket 153). Prior to the trial, the Court sided with the Government and excluded the video related to the shooting during Correa-Figueroa's arrest.

On September 23, 2020, the Court of Appeal affirmed Mr. Javier Figueroa Life Sentence. (See *United States v. Luis Javier Figueroa* Appeal No. 18-1291 (1st Cir. 2020). The First Circuit reasoned that: "Furthermore, defendant has not established that the district court erred in denying his motion for acquittal, or that it abused its discretion in excluding certain evidence at trial. See *United States v. Tull-Abreu*, 921 F.3d 294, 303 (1st Cir. 2019) (this court will affirm "unless the evidence, viewed in the light most favorable to the government, could not have persuaded any trier of fact of the defendant's guilt beyond a reasonable doubt") (internal quotations omitted); *United States v. Phoeun Lang,* 672 F.3d 17. 23 (1st Cir. 2012) ("We review the legal interpretation of a rule of evidence de novo, but the decision to admit or exclude evidence is reviewed for an abuse of discretion.").

Mr. Correa-Figueroa is therefore respectfully requesting from this Court to grant his Writ of Certiorari, since he understands that the First Circuit did not considered the violation to the Appellant's sixth amendment right, to present a defense.

VII. REASONS FOR GRANTING THE PETITION

Appellant very respectfully understands that the First Circuit erred in concluding that the exclusion of evidence that he was shot 11 times, violated Petitioner's Six Amendment Right to a meaningful opportunity to present a complete defense." See Holmes v. South Carolina,547 U.S. 319, 324, 126 S. Ct. 1727, 164 L. Ed. 2d 503 (2006)) (quoting Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986), in turn quoting California v. Trombetta, 467 U.S. 479, 485, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984)).

Also, that the District Court Erred in denying Petitioner's Motion for Acquittal, since the government's evidence showed that the weapon possessed by Petitioner were a loan and not in furtherance of a drug trafficking crime.

EVIDENCE WAS BOTH RELEVANT UNDER RULE 401 AND NOT UNDUE PREJUDICIAL TO THE GOVERNMENT

Count's Five, Fifteen and Sixteen of the Indictment charged violations of 18 USC §1361, for Willfully Injuring Property of the United States. Count's Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen charge a violation of 18 USC §111, for Assaulting a Federal Officer. (Id)

On March 03, 2017, the Government field a Motion In Limine to prevent Petitioner from presenting evidence that during the Petitioner's arrest, the arresting officers started shooting at him and he had to escape. Petitioner was shot 11 times. The government argued that the evidence

related to the shooting that occurred on July 7, 2015 was irrelevant pursuant to Federal Rule of Evidence 401.

As to Count 5 and Counts 15-16 related to the damage to federal property, the government alleged that evidence was not relevant since the commission of the offenses occurred prior to the discharge of any firearm. As to counts 6 to 13 that related to the assault on a federal officer, the government alleged that the evidence of the shooting was not relevant since the evidence of the shooting does not make the commission of the crime more or less likely, because the criminal acts of assaulting law enforcement officers had already concluded at the time the shooting commenced. (Docket # 145, p. 6, ¶1)

RELEVANCE

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." See Fed. R. Evid. 401. The evidence of the shooting was relevant, since one the elements of Count's Five, Fifteen and Sixteen (18 USC §1361), and for Count's Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen (18 USC §111), was that Petitioner did not acted on self-defense. The fact that at the time of the Petitioner's arrest, after the takedown signal, the officers started to shoot at him, Petitioner started to escape and hit the federal vehicles and hit the vehicles were the federal officers were, is very pertinent to Petitioner's defense.

The evidence of the shootings was necessary and material since the Jury was instructed that Petitioner could not be guilty of assaulting, resisting, opposing, impeding, intimidating, or interfering with an officer if the Petitioner had no knowledge of the officer's identity and reasonably believed he was the subject of a hostile attack against his person such that he was

entitled to use reasonable force in his defense. (Docket # 127) also, that the government had to show beyond reasonable doubt that Petitioner was not acting in self-defense. (Trial Transcripts Docket # 232, p. 100, lines 22-25 and p. 101, Lines 1-4)

NOT UNDULY PREJUDICIAL TO THE GOVERNMENT

Federal Rule of Evidence 403 ("Rule 403") requires the exclusion of "relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403; see also *United States v. Varoudakis, 233 F.3d 113, 122* (1st Cir. 2000) (internal citations omitted).

This Honorable Court has emphasized that Rule 403 protects "against unfair prejudice, not against all prejudice." *Old Chief v United States*, 519 U.S. 172 (1987). Here, the government alleged that even if relevant, the evidence of the shooting should not be admitted as it is more prejudicial than probative pursuant to FRE 403. (Id at page 9, ¶1)

The government indicated that the introduction of said evidence (Shottings) will result in a mini-trial on a matter that is not before this Honorable Court. Which agents discharged their firearms, from where, which firearm's bullet struck the defendant's vehicle, which firearm's bullet struck the defendant is immaterial in the criminal matter. If the evidence is presented, the United States would have to present evidence to rebut any allegation made by the defendant. This would take the Court and the jury off on an extreme tangent that has no bearing on his guilt or "innocence" in the charges alleged in Counts 1 through 16." (Docket 145, P. 9, ¶4)

On March 17, 2017, the district court denied the governments in limine and indicated that the court will address the matter, if and when it comes up at trial." (Docket #160) On March 20, 2017 before the trial started, the court granted the government's request to prevent Petitioner from presenting to the jury his defense, with little or no argument on this point. (Docket 233, p. 7, Lines 7-8)

Petitioner had a defense against Counts Count's Five, Fifteen and Sixteen (18 USC §1361), and for Count's Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen (18 USC §111), because he reasonable belief that agents were strangers who intended to inflict harm upon me. That is defense to a charge of violations of 18 USCS §§ 1361. See *United States v. Young*, 464 F.2d 160 (5th Cir. 1972), app. after remand, 482 F.2d 993 (5th Cir. 1973), and he was prevented from presenting it to the Jury.

Even the judge instructed the jury, that the government had to prove beyond reasonable doubt that Petitioner did not acted on self-defense. (Docket 232, p. 101, lines 1-4) If the court would have allowed the evidence of the jury, the Jury could have considered the same along with the evidence of the government to determine, if I was guilty beyond reasonable doubt. There is no doubt that Petitioner was in an immediate danger at the time he committed the offense charged in counts Count's Five, Fifteen and Sixteen (18 USC §1361), and for Count's Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen (18 USC §111).

The evidence of the shooting was both relevant under Fed. Rule of Evidence R. 401, and not was unfairly prejudicial under Fed. Rule of Evidence R. 403. Petitioner was prejudices by the Court's exclusion of pertinent, relevant evidence that prevented him from presenting a defense and

was not unduly prejudicial to the government since the government had to show the jury that Petitioner did not acted on self-defense.

II. THE COURT ERRED BY DENYING PETITIONER'S MOTION UNDER RULE 29

"Rule 29 of the Federal Rules of Criminal Procedure provides that a court may acquit a defendant after the close of the prosecution's case if the evidence is insufficient to sustain a conviction." United States v. Alfonzo-Reyes, 592 F.3d 280, 289 (1st Cir. 2010). "[T]he tribunal must discern whether, after assaying all the evidence in the light most flattering to the government, and taking all reasonable inferences in its favor, a rational fact finder could find, beyond a reasonable doubt, that the prosecution successfully proved the essential elements of the crime." United States v. Hernández, 146 F.3d 30, 32 (1st Cir. 1998)(citing United States v. O'Brien, 14 F.3d 703, 706 (1st Cir. 1994)); see United States v. Marin, 523 F.3d 24, 27 (1st Cir. 2008).

In analyzing a Rule 29 motion, "[v]iewing the evidence in the light most flattering to the jury's guilty verdict, [the Court must] assess whether a reasonable factfinder could have concluded that the defendant was guilty beyond a reasonable doubt." United States v. Lipscomb, 539 F.3d 32, 40 (1st Cir. 2008). Thus, "the jurisprudence of Rule 29 requires that a deciding court defer credibility determinations to the jury." Hernández, 146 F.3d at 32 (citing O'Brien, 14 F.3d at 706); United States v. Walker, 665 F.3d 212, 224 (1st Cir. 2011) ("we take the facts and all reasonable inferences therefrom in the light most agreeable to the jury's verdict."). Additionally, the Court "must be satisfied that 'the guilty verdict finds support in a plausible rendition of the record.'" United States v. Pelletier, 666 F.3d 1, 12 (1st Cir. 2011) (quoting United States v. Hatch, 434 F.3d 1, 4 (1st Cir. 2006)). This standard is a "formidable" one, especially as "[t]he government need not

present evidence that precludes every reasonable hypothesis inconsistent with guilt in order to sustain a conviction." United States v. Loder, 23 F.3d 586, 589-90 (1st Cir. 1994)(internal quotation marks omitted). Moreover, there is no "special premium on direct evidence." O'Brien, 14 F.3d at 706. "[T]he prosecution may satisfy its burden of proof by direct evidence, circumstantial evidence or any combination of the two." Id. (citing United States v. Echeverri, 982 F.2d 675, 677 (1st Cir. 1993)). Expressed in alternate fashion, "no premium is placed on direct as opposed to circumstantial evidence; both types of proof can adequately ground a conviction." United States v. Ortiz, 966 F.2d 707, 711 (1st Cir. 1992).

As to evidentiary conflicts, "the trial judge must resolve all evidentiary conflicts and credibility questions in the prosecution's favor; and moreover, as among competing inferences, two or more of which are plausible, the judge must choose the inference that best fits the prosecution's theory of guilt." United States v. Olbres, 61 F.3d 967, 970 (1st Cir. 1995); see Hernández, 146 F.3d at 32 (the trial court is required to "consider all the evidence, direct and circumstantial, and resolve all evidentiary conflicts in favor of the verdict.")(citing United States v. Carroll, 105 F.3d 740, 742 (1st Cir. 1997)). On the other hand, "[t]he court must reject only those evidentiary interpretations that are unreasonable, unsupportable, or only speculative and must uphold any verdict that is supported by a plausible rendition of the record." United States v. Ofray Campos, 534 F.3d 1, 31-32 (1st Cir. 2008). See also United States v. Cruz Laureano, 404 F.3d 470, 480 (1st Cir. 2005) (urging the trial court "not to believe that no verdict other than a guilty verdict could sensibly be reached, but must only satisfy itself that the guilty verdict finds support in a plausible rendition of the record.")(citing United States v. Gómez, 255 F.3d 31, 35 (1st Cir. 2001).

The First Circuit reiterated the above general standard in United States v. Meléndez Rivas, 566 F.3d 41 (1st Cir. 2009) (citing Lipscomb, 539 F.3d at 40), holding that the sufficiency standard for a Motion for Acquittal under Rule 29 required the district court to determine whether, viewing the evidence in the light most favorable to the government, a reasonable fact finder could have concluded that the defendant was guilty beyond a reasonable doubt. The Court, therefore, is not to discard compliance with the requirement of the standard of "guilty beyond a reasonable doubt." However, a defendant challenging his conviction for insufficiency of the evidence faces an "uphill battle." United States v. Hernández, 218 F.3d 58, 64 (1st Cir. 2000). Nevertheless, "despite the prosecution-friendly overtones of the standard of review, appellate oversight of sufficiency challenges is not an empty ritual." United States v. De La Cruz Paulino, 61 F.3d 986, 999 n.11 (1st Cir. 1995).

ARGUMENT

To prove Counts 3 and 4 the government presented the testimony of Agents Rafael Diaz, Jesus Marrero, Confidential Informants Daniel Rivera Nuñez and Ricardo Rivas.

AGENT RAFAEL DIAZ DE JESUS testified that:

a.1) Q. Agent Diaz, can you tell the members of the jury what the plan was?

A. Well, basically taking into consideration the dangerousness of that weapon, we told the CS, Daniel Rivera Nunez, to tell the defendant that there was a Dominican drug dealer who had lost a cargo in Puerto Rico. And that he needed some weapons in order to be able to recover the cargo.

Q. And what type of cargo are you referring to, sir?

A. Cargo of cocaine, drugs. We basically asked for a loan.

Q. Okay. Who's we, sir?

A. The DEA.

Q. Was your plan to let the defendant know that the DEA wanted to borrow firearms?

A. No. We used a CS.

a.2) Q. And what was the plan, sir? And please use the names of the individuals and what action they were supposed to take.

A. Okay. The plan was for the SOI to make a phone call to Mr. Correa, the accused. He was going to tell him that he had lost a cargo, and that he had located the person who had stolen from him. And he needed the firearms. And that in exchange for the loan, he was going to tender a kilo to him when the business was done.

a.3) You told the CI, Daniel Rivera Nunez, to ask for the weapons as a loan?

A. Correct.

Q. So the weapons weren't going to be for payment for the drugs; is that correct?

A. It was going to be a loan.

Q. It was going to be a loan. But my question is the weapons were not going to be used for the payment of the drugs they were requesting?

A. No, as a loan.

a.4) And in that conversation, once again, the information is that the weapons would be returned as soon as they finish the job?

A. Correct.

b) DANIEL RIVERA NUÑEZ stated that in direct examination from AUSA Bonhomme that:

b.1) Q. Let me stop you there for a minute. In this conversation, July 6, you told the defendant, they want to work out the issue. They're going to give you a sweet deal for the loan. They're going to give you some new Jordans. Who is they?

A. Some Dominicans.

Q. What was the loan?

A. The loan was that the Dominicans needed some weapons.

b.2) Q. Okay. And the truth was that you stated yesterday that those weapons were going to be a loan?

A. That's how it was seen, correct.

Q. All right. Because the weapons were not going to be used to pay for the drugs that were being asked; is that correct?

A. No.

c) AGENT JESUS R. MARRERO COLON stated in my cross-examination that:

Q. And in those recordings, what you say is you need the weapons to do a job. And that you would return them

Immediately. Is that correct?

A. That's correct, which was not going to happen.

The evidence produced at trial does not comply with the requirements needed to prove beyond a reasonable doubt the basic elements of the offense of a violation of 18 USC §924(c)(1)(B)(ii), also known as Possession of a Machinegun in Furtherance of a Drug Trafficking Crime. The weapons and the reason for their presence at the scene of the alleged crime are to take them off the street. They were not payment for the drugs and were not pretending to be used in

protection of the alleged drugs that were going to be provided to Mr. Correa Figueroa. The testimony showed that the weapons were a loan and not in furtherance of a drug trafficking crime.

This argument is also applicable to Count Three of the Indictment that charges a violation of 18 USC §924(c) also known as Possession of a Firearm in Furtherance of a Drug Trafficking Crime. Count's Five, Fifteen and Sixteen of the Indictment charges violations of 18 USC §1361, also known as Willfully Injuring Property of the United States. Once again, the Government failed to produce evidence to comply with the elements of the offense because no evidence was provided That Petitioner was "willfully" causing his vehicle to collide into a vehicle property of the United States. The testimony of the Agents and the video clearly show that it was the Agents who, intentionally and following their expert training in these types of situations were shooting at the Petitioner.

Count's Six, Seven, Eight, Nine, Ten, Eleven, Twelve and Thirteen of the Indictment charge a violation of 18 USC §111, also known as Assault upon a Federal Officer. The Government failed to present evidence related to the basic elements of these Counts. No evidence was presented related that Petitioner intentionally assaulted anyone that day. All evidence points that he was trying to leave the area because he had no idea who these armed individuals where, and they were shooting at him.

Petitioner did not know the approaching Agents were Law Enforcement Officers no matter how many times the Government tried unsuccessfully to prove that Petitioner saw them dressed in their black outfits and with small letters that say "Police" and "DEA" in their jackets. The events happened in less than 30 seconds and there was evidence that the Officers were shotting at him.

In cross examination of Agents Diaz and Marrero they were asked if there were other possible ways to arrest Petitioner, that would have avoided putting innocent lives at risk and they answered that if they did so, it would interfere with their investigation. The DEA preferred to go ahead with a full-fledged assault to arrest the Petitioner, instead of peacefully arresting him in their offices or in his US Probation's Officer's Office. Agent Rafael Diaz De Jesus testified on cross examination that:

a) Q. Okay. Nothing stopped you from calling him in that day to your office to discuss that matter; is that correct?

A. Effecting the investigation.

Q. But the truth is you already had him allegedly admitting the commission of a crime; is that correct?

A. Correct.

Q. And you had him on an audio recording; is that correct?

A. Correct.

Q. So my question is nothing stopped you from calling Mr. Correa to go to your office to investigate this case that

you had just started?

A. The investigation -

b) Q. Nothing stopped you from calling Mr. Correa on July 6, 2015, and arresting him for the crimes that you allege he had committed, and you had recordings for?

A. The investigation itself.

c) Q. Okay. As part of your training, and as your duties as a DEA agent, at the time that you were going to make an arrest, you have to avoid at any cost a target of investigation from fleeing from the place that you're going to arrest him; is that correct?

A. Correct. Within the frame of the law.

Again, the evidence produced at trial shows that the weapons and the reason for their presence at the scene of the alleged crime are to take them off the street. They were not payment for the drugs and were not pretending to be used in protection of the alleged drugs that were going to be provided to Mr. Correa Figueroa. The testimony showed that the weapons were a loan and not in furtherance of a drug trafficking crime.

VIII. CONCLUSION

Petitioners respectfully understand that the arguments presented warrant that this Honorable Court Grant the instant Writ of Certiorari.

Respectfully submitted,

In San Juan, Puerto Rico, November 9, 2020.

s/RAYMOND L. SANCHEZ MACEIRA, ESQ.
COURT APPOINTED COUNSEL FOR PETITIONER

IX. CERTIFICATE OF SERVICE

I, Raymond Sánchez-Maceira, do certify that on November 9, 2020, copies of the attached MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI were served to each party to the above proceeding, or to that party's counsel, and on every other person required to be served, pursuant to Supreme Court Rules 29.3 and 29.4, by depositing an envelope containing the above documents in the United States Mail, properly addressed to them with first-class postage prepaid.

The names and addresses of those served are as follows:

U.S. Department of Justice
Room 5614
Dept. of Justice
950 Pennsylvania Ave. N.W.
Washington DC 20530-0001

US Attorney's Office
Torre Chardón 1201
350 Chardón Ave.
San Juan P.R. 00918

In San Juan, Puerto Rico, November 9, 2020.

s/RAYMOND SÁNCHEZ-MACEIRA, ESQ
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United States Court of Appeals
For the First Circuit

No. 18-1291

UNITED STATES,

Appellee,

v.

LUIS JAVIER CORREA FIGUEROA, a/k/a Barney, a/k/a Gordo,

Defendant - Appellant.

Before

Torruella, Lynch and Thompson,
Circuit Judges.

JUDGMENT

Entered: September 23, 2020

Defendant-appellant Louis Javier Correa-Figueroa appeals after a jury convicted him on 16 counts, including one count of possession of a machinegun in furtherance of a drug trafficking crime (Count Four), see 18 U.S.C. § 924(c)(1)(B)(ii), for which he was sentenced to life as a result of having a prior § 924(c) conviction on his record, see 18 U.S.C. § 924(c)(1)(C)(ii). Defendant has filed a counseled brief, challenging his life sentence under the First Step Act, and a supplemental pro se brief, challenging a ruling against him on a motion in limine before trial, as well as the denial of a motion for acquittal following trial. The government has moved for summary disposition.

After careful review of the record and of each and every argument sufficiently developed on appeal, this court affirms. Defendant has not made out a claim that the First Step Act is applicable to his case or that it would have altered the statutory minimum on Count Four in any way given the specific facts of this case. Cf. United States v. Gonzalez, 949 F.3d 30, 42-43 (1st Cir. 2020) (discussing First Step Act and the operation of its retroactivity provisions). Furthermore, defendant has not established that the district court erred in denying his motion for acquittal, or that it abused its discretion in excluding certain evidence at trial. See United States v. Tull-Abreu, 921 F.3d 294, 303 (1st Cir. 2019) (this court will affirm "unless the evidence, viewed in the light most favorable to the government, could not have persuaded any trier of fact of the defendant's guilt beyond a reasonable doubt") (internal quotations omitted); United States v. Phoeun Lang,

672 F.3d 17, 23 (1st Cir. 2012) ("We review the legal interpretation of a rule of evidence de novo, but the decision to admit or exclude evidence is reviewed for an abuse of discretion.").

The government's motion for summary disposition is granted, and the judgment of the district court is affirmed.

Affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Raymond Luis Sanchez-Maceira
Luis Javier Correa Figueroa
Mariana E. Bauza Almonte
Maria L. Montanez-Concepcion
Francisco A. Besosa-Martinez
Vanessa Elsie Bonhomme