

No. _____

IN THE
Supreme Court of the United States

MELISSA RICHARDSON,
Petitioners,

v.
UNITED STATES OF AMERICA,
Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

**APPENDIX TO THE PETITION FOR A WRIT
OF CERTIORARI FILED BY
MELISSA RICHARDSON**

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APPENDICES

1. July 22, 2021 Judgment and Opinion of the United States Court of Appeal for the Fifth Circuit
2. Report and Recommendation to deny Motion to Suppress (W.D.La. Doc. 42)
3. Order denying Motion to Suppress (W.D.La. Doc. 49)
4. Order denying Motion for Judgment of Acquittal and, Alternatively, Motion for New Trial (W.D.La. Doc. 79)
5. Order denying Motion for New Trial (W.D.La. Doc. 105)

Respectfully submitted,

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TAB 1

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 22, 2021

Lyle W. Cayce
Clerk

No. 20-30472
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MELISSA RICHARDSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:19-CR-115-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

PER CURIAM:*

Melissa Richardson was convicted by a jury of 15 counts of acquiring controlled substances by misrepresentation, fraud, forgery, deception, or subterfuge, violations of 21 U.S.C. § 843(a)(3). She was sentenced to 12 months and one day as to each count of conviction, to run concurrently. The

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 20-30472

district court also imposed a year of supervised release as to each count of conviction, also to run concurrently. Richardson appeals, challenging the district court's denial of her motion to suppress verbal and written statements she made to agents with the Department of Veterans Affairs Office of Inspector General as well as the sufficiency of the evidence.

First, when the entire record is reviewed in the light most favorable to the Government and in light of the express credibility determinations, the district court did not err in concluding that Richardson was not in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966). *See Stansbury v. California*, 511 U.S. 318, 323 (1994); *United States v. Gibbs*, 421 F.3d 352, 356-57 (5th Cir. 2005); *United States v. Harrell*, 894 F.2d 120, 123 (5th Cir. 1990). Similarly, the totality of the circumstances indicate that Richardson's verbal and written statements were voluntarily given. *See United States v. Cardenas*, 410 F.3d 287, 293 (5th Cir. 2005). The district court therefore did not err in denying her motion to suppress. *See Gibbs*, 421 F.3d at 356-57.

Second, viewing the evidence in the light most favorable to the verdict, there was sufficient evidence for the jury to conclude that Richardson obtained the hydrocodone pills by misrepresentation, fraud, forgery, deception, or subterfuge. *See United States v. Rodriguez*, 553 F.3d 380, 389 (5th Cir. 2008); *United States v. Bass*, 490 F.2d 846, 857 (5th Cir. 1974), *overruled on other grounds by United States v. Lyons*, 731 F.2d 243 (5th Cir. 1984) (en banc). As such, her related argument that there was insufficient evidence to support her conviction because the jury's acquittal of one count is "irreconcilably inconsistent" with the guilty verdicts on counts 2 through 16 is unavailing. *See United States v. Gieger*, 190 F.3d 661, 664 (5th Cir. 1999).

AFFIRMED.



United States Court of Appeals for the Fifth Circuit

Certified as a true copy and issued
as the mandate on Aug 13, 2021

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 20-30472
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 22, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MELISSA RICHARDSON,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:19-CR-115-1

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 13, 2021

Mr. Tony R. Moore
Western District of Louisiana, Shreveport
United States District Court
300 Fannin Street
Suite 1167
Shreveport, LA 71101-0000

No. 20-30472 USA v. Richardson
USDC No. 5:19-CR-115-1

Dear Mr. Moore,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Mary Stewart

By: Mary C. Stewart, Deputy Clerk
504-310-7694

cc:

Mrs. Nichole Marie Buckle
Ms. Allison Duncan
Mr. Thomas Forrest Phillips

TAB 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CASE NO. 19-cr-00115-01

VERSUS

JUDGE DONALD E. WALTER

MELISSA RICHARDSON (01)

MAGISTRATE JUDGE HORNSBY

REPORT AND RECOMMENDATION

Introduction

Melissa Richardson (“Defendant”) is charged with 20 counts of acquiring controlled substances by fraud while working as a pharmacist at the VA Medical Center in Shreveport. Before the court is Defendant’s Motion to Suppress (Doc. 26) in which Defendant alleges that she was subjected to a custodial interrogation without being advised of her Miranda rights and that she was denied the right to counsel. For the reasons that follow, it is recommended that the motion be denied.

Relevant Facts

A. Agents’ Testimony

A hearing was held on the motion to suppress. John Ramsey, a special agent with the VA Office of Inspector General, testified that his office was contacted by the VA Medical Center in Shreveport, Louisiana, regarding missing controlled substances. SA Ramsey and Special Agent Jennifer Vancor travelled to the VA Medical Center and reviewed surveillance footage of the vault where Defendant was conducting a secondary count of all of the outgoing controlled substances that were to be mailed to veterans. The

relevant parts of the video were admitted as Defendant's Ex. 4. The agents watched the video over several hours and noticed Defendant making repeated sleight of hand motions that were consistent with diverting pills to her shirt pocket. Tr. 3-4.

Agents Ramsey and Vancor entered the vault and identified themselves to Defendant. They directed her to stand up and to keep her hands out of her pockets. Agent Ramsey grabbed Defendant's arm briefly as Defendant stood up from her chair. Defendant then followed the agents out of the vault. The agents did not want Defendant in the pill vault when they directed her to empty her pockets.

The agents took Defendant to the supervisor's office, which was a short distance down the hallway from the vault. Agent Ramsey walked in front of Defendant, and Agent Vancor walked behind her. In the office, the agents asked Defendant to empty her pockets. Agent Ramsey testified that Defendant was "very slow" at pulling things from her pocket, so Agent Vancor asked if she could help. (The pills were in the front left pocket of Defendant's scrubs.) Defendant said yes, and Agent Vancor reached into Defendant's pocket and pulled out a handful of pills. The agents suspected that Defendant may have been hiding a package, so they asked Defendant if they could search in her clothes. Agent Ramsey turned away and faced the door while Agent Vancor looked in Defendant's top and pants. No additional medications were found. Tr. 34.

Agent Ramsey testified that Defendant was never handcuffed and that she was told she was not under arrest. He advised her under Garrity that she was the subject of a federal

agency investigation for drug diversion. He gave her a Garrity form that stated she was not under arrest and that the interview was voluntary.¹ Tr. 8.

After Defendant was advised under Garrity, the agents began the interview. Defendant admitted that she diverted narcotics from the mail-out bottles. Defendant told the agents that she takes her own medication, but when that does not work, she needs hydrocodone. She said that it was easier to take the medicine from the veteran's bottles than to take off work and go to the doctor. Defendant did not ask for an attorney at any point during the interview, which lasted for an hour and a half to two hours. Tr. 11-13, 25.

Defendant then completed a sworn written statement. Agent Ramsey testified that Defendant was calm while she was writing the statement. Defendant also filled out a form resigning her employment, effective immediately. The outpatient supervisor escorted Defendant to her office to gather her personal belongings. The agents monitored her as she did so, and they saw her throwing pill bottles and medications that belonged to veterans into boxes. Defendant stated that they were medications that veterans had turned in over time, and she stored them in her desk. The agents collected all of the medications, which totaled over a thousand pills of both controlled and non-controlled substances. Tr. 15-17.

B. Defendant's Testimony

Defendant's version of the events is totally different from the testimony of Agents Ramsey and Vancor. She testified that she was in the vault verifying counts of prescriptions that were to be mailed out that afternoon. She stated that the agents came

¹ The signed form was admitted into evidence as Joint Exhibit 1.

into the vault, grabbed her by the arms, and said, “You need to come with us.” Defendant saw their badges and guns, so she went with them. The agents walked behind her and “were hollering at me to keep my hands up.” They told her to walk into the supervisor’s office. Tr. 57-58.

When they got inside the office, the agents asked her to empty her pockets, and she did so. Then Agent Vancor put on her gloves and used her hands to search inside Defendant’s top and pants while Agent Ramsey turned his back to them. Tr. 59.

Agent Ramsey then began asking Defendant questions, such as “where was the rest of it, who was in on it, what was I doing with it.” Defendant responded, “I don’t know what you’re asking.” Defendant testified that “everything that I would say, I was either cut off or they would tell me that I was lying and that I needed to tell the truth.” She then told the agents, “I don’t know what else to tell you but the truth, and that’s what I’m trying to do, but you keep stopping me.” Tr. 61-62.

The agents asked whether Defendant was taking the medications for herself. Defendant said that she was not and that she had prescriptions of her own in her purse. She asked the agents to let her go get them, but they told her, “No, you may not. We’re not dealing with that right now.” Tr. 62. Defendant testified that she did not know at the time why she was being investigated.

Defendant testified that she had a heart attack in 2013 that required bypass surgery. She stated that she continues to have stress-induced chest pains. She stated that she takes nitroglycerin to treat the chest pain, but that she often gets scared that she will have another heart attack. Tr. 53-54. She stated that the agents knew of her heart condition prior to

meeting with her. She alleged that the agents told her, “you need to tell the truth, have you been taking this for yourself, we know you have a heart condition, we know that you’ve had bypass surgery.” Tr. 66.

Defendant alleged that she started having chest pains and was starting to get “antsy” because she needed to take medicine, but she did not ask the agents whether she could leave to go take the medicine. She also needed to get home because her daughter would be dropped off at home soon. So she asked the agents, “What can I do to end this? Because I really need to go.” Agent Ramsey told her that her best bet was to “cooperate with him, to write down everything that they had told me was going on.” Defendant responded that she did not want to write anything without an attorney, but Agent Ramsey “told me that would be the biggest mistake I could make, because then I’d be in federal court for years and I would never practice as a pharmacist again.” She alleged that she did not believe she could leave the supervisor’s office. Tr. 67, 63.

Defendant testified that she wrote the statement at Agent Ramsey’s instruction. She was not sworn in before making the statement. She said, “I wrote down everything that he had fed to me earlier and made sure that I got everything in there.” She stated that Agent Ramsey gave her input as she was writing the statement. She spent 30 minutes writing the statement. Tr. 68. When asked whether she believed she had to write a statement in order to leave the interview, Defendant testified, “I do not think that the questioning would have ended had I not done exactly what they were telling me to do.”

Defendant testified that the agents did not give her the Garrity form until the interview was over and she had already made her written statement. She said that the

agents “slid everything to me and told me all I needed to do was sign and date and then sign. And so I did.” Tr. 62.

When she left the interview, she took her heart medication but did not seek medical attention or go to the emergency room. She got in her car and drove herself from the medical center.

C. Credibility Determination

After considering all of the evidence, especially the demeanor and credibility of the witnesses, the undersigned finds that the testimony of the two agents was much more credible than that of Defendant. The testimony of the two agents, who no longer work together or at the same agency, was consistent and believable. Their notes are consistent with their testimony and show that Defendant was properly advised of her rights under Garrity at the outset of the interview. Defendant signed the Garrity form (Govt. Ex. 1) before any questions began.

Defendant’s testimony, on the other hand, came across as forced and contrived. At one point in her testimony, she said the agents were “constantly throwing things at me.” Tr. 79. The undersigned asked follow-up questions to see what Defendant meant by that. She explained that they were telling her what to say and what to write down. But a careful reading of Defendant’s written statement (Defendant’s Ex. 2) betrays any notion that the agents dictated what she should write. The statement is lengthy and very neatly written. Had it been forced, it would have been brief and poorly written. She included specific details about her heart attack (100% blockage in my widow maker); how she gets headaches from nitroglycerin; and how, after she was approached by the agents in the vault,

she “honestly had not make [the] decision” whether to keep the diazepam and Tylenol 3 that were in her pocket or put them in the window for mail out. Those are not the words and phrases of someone who was being forced to write a statement and whose objective is to leave as quickly as possible.

Defendant’s testimony was, in a word, unbelievable. Accordingly, the undersigned rejects the testimony of Defendant and adopts the facts as presented by the written documentation and the credible testimony of Agents Ramsey and Vancor.

Law and Analysis

A. Non-Custodial Interrogation

Defendant argues in her motion to suppress she was subjected to a custodial interrogation without first being advised of her Miranda rights. The Fifth Amendment provides that “[n]o person shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. The Fifth Amendment, implemented by Miranda, protects an accused’s right against self-incrimination by prohibiting unwarned custodial interrogations. United States v. Coleman, 610 Fed. Appx. 347, 352-53 (5th Cir. 2015). Under Miranda, a statement made by a person in custody is inadmissible unless that person was informed that she has the right to have an attorney present during questioning, the right to remain silent, and that anything that the person says may be used against her. Miranda, 384 U.S. at 444-45. Law enforcement is not permitted to circumvent the protections of Miranda by intentionally withholding Miranda warnings until after their interrogation has already succeeded in eliciting a confession. Missouri v. Seibert, 542 U.S. 600, 613 (2004); United States v. Hernandez, 200 Fed. Appx. 283, 286 (5th Cir. 2006).

An obligation to administer Miranda warnings attaches “only where there has been such a restriction on a person’s freedom as to render him ‘in custody.’” Stansbury v. California, 511 U.S. 318 (1994) (per curiam). An interrogation is considered “custodial” generally when a police officer or investigator has initiated questioning after a defendant has been deprived of his freedom of action in a significant manner. Miranda, 384 U.S. at 444. The defendant has the burden of proving that he was under arrest or in custody. United States v. Davis, 792 F.2d 1299, 1309 (5th Cir. 1986).

The Supreme Court has held that a determination of custody depends on the objective circumstances of the interrogation. Stansbury, 511 U.S. at 322. The standard is whether a “reasonable person in the suspect’s situation” would perceive himself to be in custody. Yarborough v. Alvarado, 541 U.S. 652, 662 (2004). This objective reasonableness inquiry has two components: (1) what were the circumstances surrounding the interrogation; and (2) given those circumstances, would a reasonable person have felt that they could terminate the questioning and leave. Coleman, 610 Fed. Appx. at 353. The determination depends on the “totality of the circumstances,” and the Fifth Circuit has identified several relevant factors: (1) the length of the questioning; (2) the location of the questioning; (3) the accusatory, or non-accusatory, nature of the questioning; (4) the amount of restraint on the individual’s physical movement; and (5) statements made by officers regarding the individual’s freedom to move or leave. Id.

Here, an analysis of those factors leads to the conclusion that a reasonable person in Defendant’s situation would not have perceived herself to be in the custody of the agents. The entirety of the interview, including Defendant writing her statement and cleaning out

her desk, lasted only three hours and fifteen minutes, according to Agent Ramsey's notes.

It took place in an office at her place of work, rather than at a police station or other intimidating environment. Other than Agent Ramsey touching Defendant's arm when he entered the vault and asking her to keep her hands out of her pockets, there was no restraint on Defendant's movement. She was never handcuffed during the interview. Although the office door was closed to protect Defendant's privacy, the door was unlocked at all times.

The agents' testimony shows that the nature of the interrogation was non-accusatory. They had already found her with a large amount of prescription pills in her pockets; their questioning suggests they simply wanted to know why she was taking the medication. The agents also told Defendant that the interview was voluntary. They advised her of her rights under Garrity and she signed a form (Govt. Ex. 1) that acknowledged the interview was voluntary and that she did not have to answer questions. The agents also agreed to her using her cell phone to send text messages arranging for childcare.

Defendant points to the text message she sent to her son's father asking him to pick up their son and that explained she was "stuck in a situation at work & I cannot leave." However, this is common language for a person who is dealing with a serious situation at work. It does not prove that she was "in custody." The totality of the circumstances and the credible evidence weighs heavily in favor of finding that a reasonable person in Defendant's position would not have perceived herself to be in custody. Accordingly, the court finds that the interrogation was not custodial.

Because the interrogation was not custodial, Defendant did not have the right to counsel in the interview. See Edwards v. Arizona, 101 S.Ct. 1880 (1981). Furthermore, as previously stated, the court also finds that Defendant never requested an attorney. Agent Vancor testified that if the subject of an interview requests counsel, she would immediately stop the interview. Agents Vancor and Ramsey both testified that Defendant never requested counsel during the interview. Again, the court finds the testimony of the agents to be credible.

B. Voluntariness

A confession is voluntary if it is the product of the defendant's free and rational choice; it is voluntary in the absence of official overreaching either by direct coercion or subtle psychological persuasion. U.S. v. Bell, 367 F.3d 452, 460-461 (5th Cir. 2004); U.S. v. Mullen, 178 F.3d 334, 341 (5th Cir. 1999). The statement must be voluntarily, knowingly and intelligently made, and the individual confessing must be cognizant of the rights being abandoned and the consequences of doing so. U.S. v. Santiago, 2005 WL 1163424 (5th Cir. 2005). When the defendant challenges the voluntariness of his confession, the government must prove its voluntariness by a preponderance of the evidence in order for the confession to be admissible as substantive evidence at trial. U.S. v. Clay, 2005 WL 984129 (5th Cir. 2005).

Voluntariness is evaluated based on the totality of the circumstances, including the characteristics of the accused and the details of the interrogation. Schneckloth v. Bustamonte, 412 U.S. 218, 225 (1973). See also U.S. v. Barlow, 41 F.3d 935 (5th Cir. 1994). Factors include the age of the accused, his intelligence and education, advice

regarding his constitutional rights, length of detention, repeated and prolonged nature of the questioning and whether physical punishment such as deprivation of food or sleep was imposed. Id. No case turns on the presence or absence of a single factor. Id.

The totality of the evidence shows that Defendant's statements, both written and verbal, were freely and voluntarily made. There was no coercion, no threats, and no intimidation on the part of the agents. Defendant claims that she was eager to leave the interview as quickly as possible because she "began to experience headaches and chest pain and feared the stress would cause another heart attack." However, Defendant did not seek medical attention after leaving the interview as one would expect if she truly feared she was at risk for another heart attack. Additionally, her three-page statement was neatly written and detailed, suggesting that Defendant was calm and thoughtful when she wrote it. Although Defendant suggests that everything in the statement was "fed" to her by the agents, the court finds that the written statement contained personal information regarding Defendant's medical condition that the agents could not have contributed. Accordingly, the court finds that Defendant's statements were knowing and voluntary.

C. Defendant's Proffered Expert Testimony

During the suppression hearing, Defendant asked to call a forensic and clinical psychologist to testify that based on Defendant's personality, she is more likely to go along with people in a position of authority even if she disagrees. The undersigned gave detailed oral reasons for not allowing such testimony, including citations to cases such as Colorado v. Connelly, 479 U.S. 157, 170 (1986)(["T]he Fifth Amendment privilege is not concerned with moral and psychological pressures to confess emanating from sources other than

official coercion.” [inside quotes deleted]). As explained by the undersigned, if Defendant’s position were accepted, expert testimony will be needed before any defendant’s confession could be found voluntary. The proper focus is, instead, on official coercion, which was not present in this case.

Accordingly,

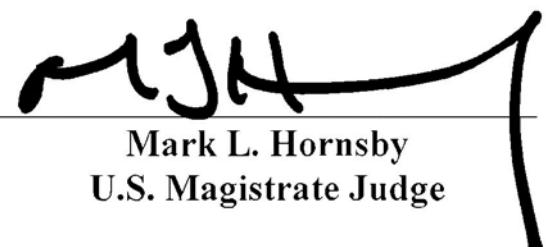
It is recommended that Defendant’s Motion to Suppress (Doc. 26) be denied.

Objections

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed. R. Crim. P. 59(b)(2), parties aggrieved by this recommendation have **fourteen (14) days** from the date of this report and recommendation to file specific, written objections with the Clerk of Court, unless an extension of time is granted under Fed. R. Crim. P. 45(b). A party may respond to another party’s objections within **fourteen (14) days** from the filing of the objections. Counsel are directed to furnish a paper copy of any objections or responses to the District Judge at the time of filing.

A party’s failure to file timely written objections to the proposed findings, conclusions and recommendation set forth above shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. See Douglass v. U.S.A.A., 79 F.3d 1415 (5th Cir. 1996) (en banc).

THUS DONE AND SIGNED in Shreveport, Louisiana, this 18th day of December.



Mark L. Hornsby
U.S. Magistrate Judge

TAB 3

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 19-0115-01

VERSUS

JUDGE DONALD E. WALTER

MELISSA RICHARDSON (01)

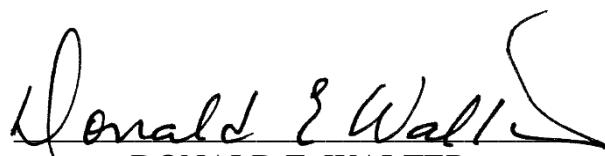
MAGISTRATE JUDGE HORNSBY

ORDER

For the reasons assigned in the Report and Recommendation of the Magistrate Judge previously filed herein, and having thoroughly reviewed the record, including the written objections filed, and concurring with the findings of the Magistrate Judge under the applicable law;

IT IS ORDERED that Defendant's Motion to Suppress (Record Document 26) is **DENIED**.

THUS DONE AND SIGNED at Shreveport, Louisiana, this the 6th day of January, 2020.


DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

TAB 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 19-0115

VERSUS

JUDGE DONALD E. WALTER

MELISSA W. RICHARDSON

MAGISTRATE JUDGE HORNSBY

ORDER

Before the Court is Defendant Melissa W. Richardson's post-verdict Motion for Judgment of Acquittal and, Alternatively, Motion for New Trial under Federal Rules of Criminal Procedure 29 and 33. See Record Document 77. The Government opposes the motion. See Record Document 78.

Richardson was charged by indictment with twenty counts of acquiring controlled substances by fraud, in violation of 21 U.S.C. § 843(a)(3). See Record Document 1. Following a four-day jury trial, the jury returned a verdict of guilty on Counts 2-16 and not guilty as to Count 1.¹ A mistrial was declared as to Counts 17 and 18. See Record Documents 60-61.

On a motion for judgment of acquittal, the court must view the evidence in the light most favorable to the verdict and assume the truth of the evidence offered by the prosecution. See United States v. Robertson, 110 F.3d 1113, 1117 (5th Cir. 1997). A Rule 29 motion for judgment of acquittal may not be granted if "after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979) (citation omitted) (emphasis in original). The undersigned finds that, based on the evidence adduced at

¹ A motion for judgment of acquittal was granted by the Court as to Counts 19 and 20.

trial, the jury's verdict was reasonable. Accordingly, Richardson's motion for judgment of acquittal is **DENIED**.

A motion for new trial may be granted under Federal Rule of Criminal Procedure 33 if required in the interest of justice. See Fed. R. Crim. P. 33(a). Unlike a motion for acquittal, a court deciding a motion for new trial may weigh the evidence and assess witness credibility. See Robertson, 110 F.3d at 1117 (citation omitted). The undersigned finds that the interests of justice do not justify setting aside the verdict and granting a new trial. Accordingly, Richardson's motion for a new trial is also **DENIED**.

THUS DONE AND SIGNED in Shreveport, Louisiana, on this 25th day of February, 2020.



DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

TAB 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO. 19-0115

VERSUS

JUDGE DONALD E. WALTER

MELISSA RICHARDSON

MAGISTRATE JUDGE HORNSBY

ORDER

Before the Court is a Motion to Reconsider Motion for New Trial filed by the Defendant, Melissa Richardson (“Richardson”). See Record Document 101. The Government opposes the motion. See Record Document 102.

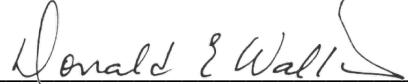
Federal Rule of Criminal Procedure 33(a) permits a court to grant a new trial “if the interest of justice so requires.” Fed. R. Crim. P. 33 (a). The decision to grant a new trial should be exercised in caution and should only be granted in exceptional cases. See United States v. Scroggins, 485 F.3d 824, 831 (5th Cir. 2007). A new trial is not required “unless there would be a miscarriage of justice or the weight of evidence preponderates against the verdict.” See United States v. Wall, 389 F.3d 457, 466 (5th Cir. 2004) (citing United States v. O’Keefe, 128 F.3d 885, 898 (5th Cir. 1997)). A court should only grant a new trial “upon demonstration of adverse effects on substantial rights of a defendant.” United States v. Rasco, 123 F.3d 222, 228 (5th Cir. 1997) (citation omitted).

The Court previously denied a motion by Richardson for a new trial finding that the interest of justice did not justify setting aside the verdict and granting a new trial. See Record Document 79. In the instant motion, Richardson argues that the Court should reconsider its denial because the Court implicitly acknowledged that the introduction of her confession led to unfair prejudice, confusion of the issues, and/or misled the jury. See Record Document 101-1 at

3. The Court strongly disagrees. Although the Court expressed during Richardson's sentencing that with the benefit of hindsight the confession would have probably been excluded under Federal Rule of Evidence 403, a new trial is not warranted. Given the strength of the video and testimonial evidence in this case, the introduction of the confession by the government was cumulative and unnecessary for conviction.¹ Moreover, the introduction of the confession lengthened the duration of the case. Both are reasons that would have supported the exclusion of the confession under Federal Rule of Evidence 403. If an error occurred, it was harmless.

Based on the foregoing, the Court does not believe that there was a prejudicial error that resulted in a miscarriage of justice or adversely affected Richardson's substantial rights. The interest of justice does not require a new trial. Accordingly, Richardson's motion to reconsider (Record Document 101) is hereby **DENIED**.

THUS DONE AND SIGNED this 24th day of July, 2020.



DONALD E. WALTER
UNITED STATES DISTRICT JUDGE

¹ The evidence against Richardson was substantial without her confession. When approached by federal agents, Richardson was found to have loose hydrocodone pills in her scrub pockets. Richardson testified that while performing a second count of prescriptions that were to be mailed out to veterans, she removed and placed hydrocodone pills in her pocket because she believed the pills were overages and she was trying to protect the VA from scrutiny by JACHO, the hospital's accreditation board. See Record Document 88 at 37-39. However, the video evidence shows Richardson, on numerous occasions, moving her arm towards her pocket (where the pills were later found) during the middle of recounting the prescriptions. See Record Document 63-1. The video evidence also shows Richardson verifying that the prescriptions were correct in the computer system, packing the prescriptions from which she removed the pills into mailing envelopes, sealing the envelopes, and placing the envelopes into the outgoing mail bin without separation from the prescriptions from which she did not remove pills. See id. The prescriptions in question were ultimately recounted and shortages were found. While Richardson provided testimony justifying her actions, the jury did not credit her explanations. The video evidence combined with the testimony of other members of the pharmacy staff regarding the proper standards and procedures provided proof of guilt beyond a reasonable doubt without the confession.