No._____

IN THE

UNITED STATES SUPREME COURT OF THE UNITED STATES

JUAN RIVERA-GEORGE

Petitioner

Vs.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX

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Index

United States Court of Appeals
For the First Circuit

No. 17-1432

UNITED STATES,

Appellee,

v.

IDALIA MALDONADO-PEÑA,

Defendant, Appellant.

No. 17-1551

UNITED STATES,

Appellee,

v.

JUAN RIVERA-GEORGE, a/k/a TIO,

Defendant, Appellant.

No. 17-1681

UNITED STATES,

Appellee,

v.

SUANETTE RAMOS-GONZALEZ, a/k/a SUEI, a/k/a SUANETTE GONZALEZ-RAMOS,

Defendant, Appellant.

No. 18-1184

UNITED STATES,

Appellee,

v.

CARLOS RIVERA-ALEJANDRO,

Defendant, Appellant.

No. 18-1496

UNITED STATES,

Appellee,

v.

JOEL RIVERA-ALEJANDRO, a/k/a "J",

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Carmen Consuelo Cerezo, U.S. District Judge]

Before

Lynch, Thompson, and Kayatta,
Circuit Judges.

Mariángela Tirado-Vales for appellant Idalia Maldonado-Peña.
José R. Olmo-Rodriguez for appellant Juan Rivera-George.
Raymond L. Sanchez Maceira for appellant Suanette Ramos-Gonzalez.
Rachel Brill for appellant Carlos Rivera-Alejandro.
Rafael F. Castro Lang for appellant Joel Rivera-Alejandro.
Daniel N. Lerman, United States Department of Justice, Criminal Division, Appellate Section, with whom W. Stephen Muldrow, United States Attorney, Mariana Bauza, Assistant United

States Attorney, Brian A. Benczkowski, Assistant Attorney General, and John P. Cronan, Principal Deputy Assistant Attorney General, were on brief, for appellee.

June 30, 2021

THOMPSON, Circuit Judge.

OVERVIEW

These appeals arise from the drug conspiracy and distribution convictions of five members of a vast drug trafficking organization. Operating primarily out of the Los Claveles Housing Project ("Los Claveles") and the general Villa Margarita Ward area within the Municipality of Trujillo Alto, Puerto Rico, fifty-five individuals were indicted on charges of conspiracy to distribute heroin, cocaine, cocaine base (aka crack), marijuana, and prescription pills between May 2006 and May 2009. The indictment tagged each of the defendants before us with at least one role in the conspiracy; hierarchical designations ranging from leader, supervisor, drug owner, enforcer, runner, seller, or facilitator. Subsets of the fifty-five were charged with "aiding and abetting in the distribution of" one or more of heroin, cocaine base, cocaine, or marijuana. Some were also charged with conspiracy "to possess firearms in furtherance of drug trafficking crimes."

By the time a jury trial started in the summer of 2014 -- more than five years after the 2009 indictment (which certainly raises our eyebrows) -- most of the defendants had pled guilty. Four of them testified as cooperating witnesses ("CWs") for the government. At the end of the trial in December 2015 only eight defendants remained. The jury acquitted one defendant of all

charges and convicted the other seven of some or all of the charges against them.

Five of these defendants -- Joel Rivera-Alejandro, Carlos Rivera-Alejandro, Juan Rivera-George, Suanette Ramos-Gonzalez, and Idalia Maldonado-Peña -- have appealed their convictions (and some their sentences) and we briefly introduce them to you.

- Joel[1] was charged as one of the two leaders of the conspiracy as well as an enforcer. He was convicted of two conspiracy charges and all substantive drug charges, and sentenced to 360 months' imprisonment, concurrent.
- Carlos (Joel's brother) was identified as a supervisor, drug owner, seller, and enforcer. He was convicted on all counts against him and sentenced to 324 months' imprisonment, concurrent.
- Juan was tagged as a runner for the conspiracy, convicted on all counts, and sentenced to 235 months' imprisonment, concurrent.
- Suanette was charged for her roles as a seller and a facilitator and convicted of the drug conspiracy charge as well as the substantive marijuana distribution charge. Suanette was sentenced to 24 months' imprisonment, concurrent.
- Idalia (Carlos's wife) was identified in the indictment as a seller and convicted on the cocaine base distribution charge. Idalia was sentenced to 60 months' imprisonment.

The five defendants in these consolidated appeals raise a variety of challenges. In our review of their claims, we will

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[1] We have used the defendants' first names throughout this opinion because two of them (brothers) share the same last name and a third has a similar surname. We intend no disrespect to the defendants by using their first names and we only use them to make it clear as to whom we are referring as we work our way through their arguments before us.

start by addressing the speedy trial contentions before turning to other purported trial errors. We'll provide the background information necessary to place the issues and arguments in context as we proceed.[2] For those readers for whom what follows will be tl;dr,[3] the short version is that none of the issues raised by these five defendants translate into reversible error warranting vacatur of their convictions or sentences. Thus, we affirm the whole kit and caboodle.

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[2] A quick aside about our presentation of the testimony and evidence at trial as we trudge through the issues. Only Juan and Suanette challenge the sufficiency of the evidence to support their convictions, and we don't address those issues until after we have worked through others, including challenges to several evidentiary decisions made during trial. Our presentation of the facts will be in a neutral, "balanced fashion," except where otherwise specified, especially because "the precise manner in which we chronicle the backstory has no impact on our decision." United States v. Zimny, 846 F.3d 458, 460 n.2 (1st Cir. 2017) (citing United States v. Vázquez-Larrauri, 778 F.3d 276, 280 (1st Cir. 2015), and United States v. Rodríguez-Soler, 773 F.3d 289, 290 (1st Cir. 2014)). When we reach Juan's and Suanette's sufficiency-of-the-evidence arguments, we'll recite "our summary of the facts in the light most favorable to the jury's verdict." United States v. Chan, 981 F.3d 39, 45 (1st Cir. 2020) (citing United States v. Charriez-Rolón, 923 F.3d 45, 47 (1st Cir. 2019)).

[3] If "tl;dr" isn't familiar, it stands for "Too Long; Didn't Read" which, as defined by Urban Dictionary, is "used by someone who wrote a large post[]/article/whatever to show a brief summary of their post as it might be too long." https://www.urbandictionary.com/define.php?term=tl%3Bdr, last visited June 28, 2021.

SPEEDY TRIAL

The defendants waited five years for trial
(Joel & Carlos)

"[T]he right to a speedy and public trial" is guaranteed to criminal defendants via the Sixth Amendment. United States v. Lara, 970 F.3d 68, 80 (1st Cir. 2020) (quoting U.S. Const. amend. VI). Therefore, criminal charges must be dismissed when the government violates this right. Id. (quoting United States v. Dowdell, 595 F.3d 50, 60 (1st Cir. 2010)). Joel and Carlos claim that their constitutional right to a speedy trial was violated because, after they were arrested and arraigned in mid-2009, the trial (which took 128 days to complete) didn't start until five years later.[4]

Below, the defendants voiced speedy trial complaints during the pretrial period. In April 2013, Joel filed a motion to dismiss his indictment alleging his constitutional right to a speedy trial had been violated. Carlos joined the motion. The magistrate judge to whom the motion was referred issued a Report and Recommendation ("R&R") in July 2013. The magistrate judge found the trial date had either been vacated or rescheduled eight times and attributed much of the delay to change of plea motions

[4] There was some mention of the Speedy Trial Act during the trial phase and Juan provides one paragraph summarizing the statute in his brief but, on appeal, the defendants' arguments focus exclusively on the constitutional rather than the statutory right to a speedy trial.

filed by forty of Joel's codefendants. He also cited the numerous pretrial motions Joel filed requesting new counsel which resulted in continuation motions so that each new counsel (three in all) could get up to speed. The magistrate judge also determined Joel had not shown prejudice from the delay and recommended the district court deny the motion to dismiss.

Joel objected to the R&R (and Carlos adopted that objection), focusing on the failure of the R&R to discuss the numerous pretrial motions the government had filed up to that point which had contributed to the delay of the trial's start date. According to Joel, in the four years between his indictment and his speedy trial motion to dismiss, he had filed 4 continuation motions whereas the government had filed 22 motions to either continue the trial date or extend the time to respond to a pending motion. Joel further argued the length of the delay was presumptively prejudicial as per our case law and the magistrate judge should not have required him to show the ways in which he'd been prejudiced. Responding to the objection, the trial judge entered a one-paragraph order agreeing with the R&R and concluding there had been no speedy trial violation.

On appeal, Joel and Carlos reprise their complaints.[5] We have consistently reviewed a district court's resolution of a

[5] Below, Juan and Suanette joined Joel's motion to dismiss for violation of their constitutional speedy trial rights, but

defendant's motion to dismiss his indictment on the basis of a Sixth Amendment violation of his right to a speedy trial for abuse of discretion.[6] Lara, 970 F.3d at 80. When we evaluate such a challenge, we consider, primarily, four factors as set forth in Barker v. Wingo, 407 U.S. 514, 530-32 (1972): "(1) 'the length of delay'; (2) 'the reason assigned by the government for the delay'; (3) 'the defendant's responsibility to assert his right'; and (4) 'prejudice to the defendant, particularly to limit the possibility that the defense will be impaired.'" Lara, 970 F.3d at 80 (quoting United States v. Handa, 892 F.3d 95, 101 (1st Cir. 2018)). However, "none of the four factors" is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." Barker, 407 U.S. at 533. Further, our case law tells

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neither filed an objection to the R&R nor indicated he or she joined in Joel's objection. The R&R explicitly put them on notice that the failure to object within 14 days of the R&R would waive their right to appellate review. Therefore, despite Juan's cursory arguments here about this issue and Suanette's attempt to join the arguments on appeal, they have waived this issue. See United States v. Díaz-Rosado, 857 F.3d 89, 94 (1st Cir. 2017).

[6] As we have mentioned in other opinions addressing a speedy trial violation argument, there is some debate about whether the abuse of discretion standard is the appropriate standard of review for this issue, but for various reasons it is the standard we have consistently applied. See Lara, 970 F.3d at 80; United States v. Irizarry-Colón, 848 F.3d 61, 68 (1st Cir. 2017). Here, the parties agree our review is governed by this standard, so we proceed with it once again.

us to presume delays of one year or more are prejudicial and to proceed with an analysis that "balance[s] all four of the factors to determine whether there has been a violation, as [no one factor] carries 'any talismanic power.'" Lara, 970 F.3d at 81 (quoting Dowdell, 595 F.3d at 60).[7] Additionally, the Supreme Court has been clear that the inquiry into the four factors is completely dependent on the circumstances of each individual case. See Barker, 407 U.S. at 530-31. Joel and Carlos argue all four Barker factors weigh in their favor. We turn now to examine them.

Everyone agrees that the first factor -- length of delay -- weighs in Joel's and Carlos's favor. There is no doubt that the time between the defendants' May 2009 indictments and the July 28, 2014 trial start date was more than one year.[8]

The second factor -- reasons for the delay -- is the "focal inquiry." Lara, 970 F.3d at 82 (quoting United States v. Souza, 749 F.3d 74, 82 (1st Cir. 2014)). Joel, joined by Carlos, and the government are quick to point fingers at each other. Both

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[7] A quick aside: Joel also tries to bring in the length of time that passed between the jury's verdict and his sentencing hearing. However, the Supreme Court has clearly stated the Sixth Amendment's guarantee to a speedy trial does not "apply to the sentencing phase of a criminal prosecution[.]" Betterman v. Montana, 136 S. Ct. 1609, 1612 (2016) ("[O]nce a defendant has been found guilty at trial or has pleaded guilty to criminal charges[,]" the guarantee doesn't apply).

[8] "The length of pretrial delay is calculated from either arrest or indictment, whichever occurs first." United States v. Casas, 425 F.3d 23, 33 (1st Cir. 2005).

defendants argue the root of the delay was the government's decision to indict and prosecute fifty-five defendants at the same time, exacerbated by the government's many motions to continue the trial date. According to Joel and Carlos, the delay was made more egregious by the trial judge's decision to wait to begin the trial until all the other defendants seeking to change their plea had done so, as well as the length of time she took to resolve pretrial motions such as Joel's motions to suppress. In particular, Carlos points out that defendants shouldn't have to choose between filing pretrial motions and getting to trial faster. The government argues the defendants principally caused the delays because of their numerous pretrial motions -- specifically, that the four defendants who bring speedy-trial claims (Joel, Carlos, Suanette, and Juan) filed ninety-nine pretrial motions -- and further say Joel's repeated change of counsel contributed to the delay.

When it comes to the reasons for delays, "different weights should be assigned to [the] different reasons" the government points to as justification for the delays. Barker, 407 U.S. at 531. In Lara, we held this factor weighed against the defendants there because their pretrial motions and those of other codefendants were the primary reason for the delays, not government foot-dragging. 970 F.3d at 82. In United States v. Casas, we noted the government had a legitimate reason for the five-and-a-half-year delay between the return of the indictment and the

arraignment: the government's inability to find the defendant. 356 F.3d 104, 112-13 (1st Cir. 2004). Here, unlike these prior cases, the five-year wait for trial was clearly caused by the numerous motions of all stripes filed by both the government and the defendants, including motions to suppress, discovery-related motions, change of plea motions, motions to continue the trial date, etc. Also contributing to the delay was the court's need on several occasions to continue the proceedings to attend to change-of-plea hearings from the other forty-seven indicted conspiracy members. Accordingly, it is difficult to draw a line and attribute trial delay to either the government or the defendants because they both substantially contributed to it.

Joel pushes back and insists that this mega-prosecution is the root cause of the impermissible, inordinate delay that transpired here and this court, he urges, should not countenance it. However, in considering a speedy trial challenge involving the prosecution of ten drug trafficking conspirators, this court deemed the joint proceeding an "efficient administration of justice," even when the time from arrest to trial took over three years. United States v. Casas, 425 F.3d 23, 33, 34 (1st Cir. 2005). Nonetheless, Joel argues the joint prosecution of fifty persons here certainly did not lead to efficiency as he waited more than five years to reach the first day of trial. As reasonably viewed, the efficient administration of justice is at least

questionable in this case and the delay causes us much concern. But given our conclusion that both sides contributed to the delay, we have no reason to reconsider Casas' efficiency rationale. So on we go.

Moving to the third factor -- when and how Joel and Carlos asserted their rights to a speedy trial -- we note they did file an unsuccessful motion to dismiss on this basis, albeit almost four years post-arraignment. Subsequently, Joel filed two notices asserting his right to a speedy trial -- one in December 2013 and another in May 2014 -- asking the district court to simply note that he was asserting his right but not requesting a responsive pleading from the government. In May 2015, after trial had been underway for ten months, Carlos claimed a speedy trial violation because he had already been detained for 72 months. This assertion came after codefendant Suanette sought an eight-week trial break due to pregnancy-related complications. In our view, in considering Joel's and Carlos's efforts to assert their speedy trial rights, while we cannot say they completely sat on their rights, their efforts were, at best, rather anemic. Barker, 407 U.S. at 531-32 ("Whether and how a defendant asserts his right . . . [and] [t]he strength of his efforts" reflects the degree of prejudice to defendants.).

With respect to the fourth factor -- prejudice -- we have previously "recognized three types of prejudice: 'oppressive

pretrial incarceration, anxiety and concern of the accused, and the possibility that the accused's defense will be impaired by dimming memories and loss of exculpatory evidence.'" Lara, 970 F.3d at 82-83 (brackets omitted) (quoting Doggett v. United States, 505 U.S. 647, 654 (1992)). Out of the gate, the government says that neither defendant explains how his defense was impaired -- i.e., prejudiced -- by the length of the delay. Nevertheless, Carlos argues this court has never confronted a delay of this length and given the presumption of prejudice beyond a one-year delay, our analysis should begin and end there.

Beyond the extraordinary delay, Joel claims prejudice, first citing the heightened and prolonged anxiety he experienced because he thought the government was retaliating against him for being acquitted in a Commonwealth death-penalty homicide trial. Second, that the "oppressive conditions of confinement while [he] was incarcerated" likewise need to factor into the prejudice analysis.[9]

Joel points to United States v. Black, 918 F.3d 243, 264-65 (2d Cir. 2019), in support of his claim of prejudice. While Black has the result Joel is looking for -- a dismissal due to

[9] As the government points out, Joel did not identify how the conditions at the prison were inhumane for him, in particular because he didn't articulate any reasons specific to him, pointing instead to a newspaper article about the general conditions at the prison.

speedy trial infractions of constitutional proportions -- the reason for the sixty-eight-month delay between indictment and trial in that case was attributed almost entirely to the government. For years it was unable to settle on the charges and it repeatedly flip-flopped on whether it was going to pursue the death penalty. Id. at 248 (government ultimately filed a superseding indictment with new charges almost three years after the indictment was filed, then announced it would not seek the death penalty). The defendants in Black also "repeatedly requested a speedy trial." Id. at 249. The anxiety to the defendants in Black caused by the uncertainty over whether they would face the death penalty in the case for which they stood trial was of a substantively different nature than the anxiety caused to Joel and his codefendants from their long wait to be tried for drug trafficking conspiracy.

While we clearly have grave concerns about the government's approach in this case which resulted in a protracted delay to verdict, we conclude the trial judge did not abuse her discretion in denying Joel's motion, joined by Carlos, to dismiss the indictment for violation of the Sixth Amendment's speedy trial guarantee. Balancing all four Barker factors, the presumed prejudice from the length of the delay is counterbalanced by Joel's and Carlos's contributions to the pretrial delays as well as the number of years they waited before asserting their speedy trial

rights. See Lara, 970 F.3d at 80. As such, Joel and Carlos have not shown how their ability to mount an adequate defense was hampered by the delay or how the trial judge abused her discretion by failing to so find.

That said, delaying the trial for those defendants who chose to exercise their constitutional right to have the government prove their guilt beyond a reasonable doubt while most of the rest of the codefendants changed their pleas certainly raises genuine concerns about the impact of the government's decision to charge and monolithically process "mega-cases" on defendants' rights to a speedy trial. This five-year gap between the indictment and the start of trial does not sit well with us. Some of the defendants spent this entire pretrial period detained while still presumed innocent. When speedy trial rights claims are raised, drawing a line and knowing when it has been crossed is circumstance-dependent, but the defendants' five-year wait for trial was as close as it comes to infringement. Despite their individual contributions to some of the delay, each defendant was forced to wait while forty-seven codefendants changed their pleas, changed their counsel, new counsel got up to speed on the case, and the judge processed and decided motions unrelated to them. Even though the defendants made no showing of how their defenses were actually impacted by the delay, at the very least witnesses' memories would have dulled and faded over that time.

There is no perfect solution to efficiently prosecuting alleged large drug distribution conspiracy cases, but the government needs to better balance the efficiencies it enjoys by prosecuting these so-called "mega cases" with the defendants' rights to a speedy trial by considering ways to break those indicted into groups which can reach the first day of trial (when the defendants choose to exercise this right) sooner. Additionally and importantly, we note that the government's speedy trial argument as presented in its briefing makes clear that the government's reading of Casas is simply incorrect. We did not give our blessing there to multidefendant indictments regardless of the consequences, nor did we bless years of delay caused by allowing the time for codefendants' change of pleas to make it easier for the government to use codefendant testimony. When the government indicts, it should have enough evidence to prove the case as to each and every defendant without delays such as occurred here. When the government brings such large multidefendant criminal prosecutions, it assumes a considerable risk of violating the constitutional rights of defendants. It also risks losing convictions on appeal because of its choices, which are not necessary choices, to proceed with a sizable number of defendants (and/or overcharging).

And one final speedy trial coda before moving on: it would be wise for the district court to better strategize how to

move such multi-party cases through the judicial system given the constitutional (and statutory) implications attendant thereto. When the Department of Justice presents the district court with these very difficult-to-manage scenarios, the court has management tools available to it to see that the cases are handled more expeditiously. Such tools are known to the district courts and it may well be there can be agreements as to procedures likely to secure more expeditious handling. Given these clear words of caution, we would not expect to see such unprecedented procedural prosecutions in the future.

The trial lasted 18 months
(Carlos)

After the trial started in July 2014, approximately 128 trial days were spread out over eighteen months, with the jury rendering its verdict in January 2016. The trial judge completed sentencing in May 2018. Carlos contends this "excessive trial length" was a violation of his Fifth Amendment right to due process. He argues he was prejudiced by the length of the trial, once it finally began, because during deliberations the jurors had to recall and process testimony they had heard over the course of the prior year-and-a-half. Our search of the record suggests this

is the first time Carlos is asserting such a due process infringement and Carlos directs us to nothing to the contrary.[10]

Because Carlos pivots to a due process argument on appeal, plain-error review applies -- "a standard that requires him to prove four things: (1) an error, (2) that is clear or obvious, (3) which affects his substantial rights . . . , and which (4) seriously impugns the fairness, integrity, or public reputation of the proceeding." United States v. Correa-Osorio, 784 F.3d 11, 17-18 (1st Cir. 2015).

Carlos presents a novel Fifth Amendment argument asking us to adopt and apply a modified four-factor speedy trial analytical framework to his due process claim. But he points to

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[10] The government generously opines Carlos asserted this claim when he replied to codefendant Suanette's motion in the summer of 2015 requesting the eight-week trial recess. But a review of Carlos's response reveals he presented no such objection. Instead, Carlos only argued the court should reconsider his detention status and allow him bond during the break because the length of time he had been detained since his arraignment (72 months) violated his speedy trial rights. The trial judge denied the bond request. It is clear the judge understood Carlos to be making a speedy trial motion because she responded to it by distributing a table reflecting the calendar days since the trial began when a full day of trial had not occurred and the reasons why trial had not been held -- or held for only half a day -- on any given day. The reasons ranged from illness on the part of a juror, an attorney, and a defendant, to scheduling conflicts across the board. The trial judge noted that none of the defendants had objected to the trial interruptions as they occurred and reiterated her speedy trial conclusion from the earlier motion -- "[d]efendants cannot trigger excludable delays during the pretrial stage [referring to the pretrial motions] and simultaneously log them as speedy trial violations."

no case -- binding or otherwise -- in which we or the Supreme Court have done so. Consequently, there cannot be any clear or obvious legal error on the part of the trial judge.[11] See United States v. McCullock, 991 F.3d 313, 322 (1st Cir. 2021) (an error is clear or obvious when a trial judge disregards controlling precedent). Therefore, Carlos's argument on this point stumbles at the threshold.

MOTIONS TO SUPPRESS

In this section, we examine Juan's and Joel's arguments that the trial judge erred in denying two motions to suppress.

The notebook from Juan's apartment
(Juan)

Police found a notebook full of names and phone numbers in Juan's apartment during a warrantless search. According to Juan, this notebook, admitted into evidence at trial, should have been suppressed as obtained in violation of his Fourth Amendment rights because the Drug Enforcement Administration ("DEA") agent who seized the notebook did so when Juan was not home and without obtaining voluntary consent from his wife prior to the search. As

[11] Moreover, it is unclear how Carlos considers the trial judge to have erred because, on appeal, he challenges neither the denial of his request for bond nor the judge's response to his speedy trial violation assertion based solely on the length of the trial. To be sure, the trial in this case was protracted and, as Carlos points out, there are many disadvantages to a criminal trial spreading over such a long period. However, as the trial judge pointed out, there were myriad reasons why the trial took so long.

we explain below, Juan waived this argument, so we decline to reach the merits.

After Juan filed a motion to suppress the notebook, a magistrate judge listened to testimony from one of the DEA agents and Juan's wife, and he ultimately recommended the district court deny the motion after concluding the government had adequately shown Juan's wife did voluntarily consent to the search. The magistrate judge's R&R had the usual warning: the parties had 14 days to file any objections to it and failure to object within that timeframe waived the right to appeal the order. Juan filed no objection and the trial judge approved and adopted the R&R.

Our procedural rules and case law are crystal clear that when, as here, a party fails to file an objection to an R&R, the party has waived any review of the district court's decision. United States v. Díaz-Rosado, 857 F.3d 89, 94 (1st Cir. 2017); Fed. R. Crim. P. 59(a); see also Garayalde-Rijos v. Mun. of Carolina, 747 F.3d 15, 21-22 (1st Cir. 2014) (noting the party had notice that the failure to object would result in waiver of further review of the decision); Davet v. Maccarone, 973 F.2d 22, 31 (1st Cir. 1992). We move on to the preserved suppression issue Joel raises.

The gun from Joel's father's car
(Joel)

Before trial, Joel sought suppression of a gun seized from the car he was driving when a law enforcement agent pulled him over outside his home. On appeal, Joel challenges the trial judge's denial of that motion.

"[W]hen we review a challenge to a district court's denial of a motion to suppress, we are to 'view the facts in the light most favorable to the district court's ruling' on the motion." United States v. Rodríguez-Pacheco, 948 F.3d 1, 3 (1st Cir. 2020) (quoting United States v. Camacho, 661 F.3d 718, 723 (1st Cir. 2011)). "[W]e recite the key facts as found by the district court, consistent with the record support." Id. (quoting United States v. Young, 835 F.3d 13, 15 (1st Cir. 2016)).

On February 26, 2009, agents from an investigative group called the Carolina Strike Force ("CSF") set up surveillance of the Los Claveles Public Housing Project in Trujillo Alto after receiving a tip from a reliable informant that the leaders of the drug trafficking organization under investigation met there on Thursdays to pick up money from the previous week's drug sales. The agents watched Joel drive into the housing complex in his father's car and leave in it, heading in the direction of his house in Villa Margarita. Officer Agustin Ortiz saw the car's windows were likely tinted darker than allowed by Puerto Rico law, so he

used his siren to initiate a stop. Instead of pulling over immediately, Joel indicated with his hand that Officer Ortiz should follow him. He eventually stopped at the gate in front of his driveway. Several family members exited the house and walked toward the car. Officer Evette Berrios Torres saw Joel trying to move a black object on the floor of the driver's seat with his foot while his mother was leaning against the car and trying to pick something up with her hand. Recognizing the object was a black pistol (which turned out to be a Glock model 26, .9 mm pistol) Officer Berrios seized it. Joel was arrested.

In a motion to suppress the gun, Joel detailed the same basic sequence of events as recited above and argued multiple reasons why the warrantless search of the vehicle violated his Fourth Amendment rights: law enforcement had no reasonable suspicion there was contraband in the car, the traffic stop for the allegedly illegal tint on the windows was clearly a pretext to search the vehicle, and he was forcibly removed from the vehicle after law enforcement opened the car door and saw the gun in plain view. Joel attached three documents to his motion: the warrant application and supporting affidavit for the car search (obtained after Joel was pulled over and arrested), a written declaration by Joel's father (who was at the house when Joel stopped the car and saw the series of events unfold), and a photo of the driver's area of the car (taken a few steps back from the open driver's side

door). Joel did not request an evidentiary hearing. Joel's father's recitation of what occurred during the traffic stop did not conflict with law enforcement's rendition: he briefly stated that, after Joel stopped his car at the front gate of their home, "law enforcement personnel surround[ed] the vehicle and instruct[ed] Joel to unlock the car door." "After Joel unlocked the door, law enforcement personnel opened the car door and removed him from the vehicle." Joel was not given a traffic ticket for the tinted windows on this day and his father was not given such a ticket for the vehicle at any other time.

The government opposed Joel's motion to suppress, arguing, first, the dark tint on the windows gave Officer Ortiz probable cause to stop the car and second, no Fourth Amendment violation had occurred because the gun had been seen in plain view and thus properly seized without searching the car. The trial judge denied the motion to suppress in a written order, relying on the documents Joel filed in support of his motion.[12]

During the trial, Puerto Rico Officer Ortiz (assigned to the Bureau of Alcohol, Tobacco, Firearms ("ATF") as an investigating agent but part of the CSF in 2008 and 2009) provided

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[12] The judge found there was no evidence the law enforcement agents had exercised physical force and that Joel had conceded the gun was in plain view when the police opened the unlocked door. Regardless, the judge concluded the police had probable cause to search based on Joel's behavior from the first wail of the siren through to the seizure of the gun.

more detail about how the gun was found in Joel's father's car.[13] Officer Ortiz had been assigned to be in a police cruiser on the day in question, ready to act if needed. In addition to describing the sequence of events as laid out above, he stated he pulled the car over both because the car had darkly tinted windows and because he needed to confirm Joel was in the car. He testified that while he did not test the tint level that day, he is trained in how to test the tint on the windows and perceived a difference between the tints on the front versus the back windows, with the front window tinted impermissibly darker.

He testified that when Joel stopped the car in front of the gate at the house, Joel opened the driver's side door and placed his left leg outside of the car, while honking the horn and calling out for someone to open the gate. Officer Ortiz told Joel to turn off the car, but another officer opened the front passenger door and turned off the ignition. Officer Ortiz said Joel's mother came out of the house saying "leave my son alone," then indicated she was going to faint, all the while leaning against the car and reaching inside. Agent Berrios walked up to Officer Ortiz to help with Joel's mother and Agent Berrios saw the firearm on the floor

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[13] We may consider this testimonial evidence from the trial because Joel renewed his suppression motion. See United States v. Howard, 687 F.3d 13, 17 (1st Cir. 2012); United States v. de Jesus-Rios, 990 F.2d 672, 675 n.2 (1st Cir. 1993).

of the car, near Joel's right foot. According to Officer Ortiz, "tactical operations [are] a heated, . . . hostile environment." The situation was so heated, according to Officer Ortiz, that he couldn't give the ticket for the dark tint on the windows and then he forgot to issue the ticket once everyone was at the police station. Following Officer Ortiz's testimony, Joel renewed his motion to suppress the gun. Again, it was denied.

We have long-established standards for reviewing a district court's denial of a motion to suppress: we consider the motion anew, giving full deference to the district court's findings of fact (disturbing them only if the record reveals the findings were clearly wrong), and upholding the denial "if any reasonable view of the record supports it." United States v. Gonsalves, 859 F.3d 95, 103 (1st Cir. 2017). Stated slightly differently, "[u]nder this rubric we can likewise affirm a denial on any basis apparent in the record." Id. Applying this standard, we affirm the denial of Joel's motion to suppress the gun.

We can quickly dispose of one argument Joel raises here: that the trial judge erred by not conducting a pretrial hearing before denying the motion to suppress, instead relying on the search warrant application and supporting affidavit completed after the warrantless stop. The government responds that Joel was not entitled to a hearing on his motion because he hadn't pointed to any disputed facts. Generally, the district court has

discretion as to whether it holds an evidentiary hearing when considering a motion to suppress evidence, so abuse of discretion informs our review of the trial court's denial of an evidentiary hearing. United States v. Ponzo, 853 F.3d 558, 572 (1st Cir. 2017). "A defendant has no right to an evidentiary hearing unless he shows 'that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record' -- most critically, he 'must show that there are factual disputes which, if resolved in his favor, would entitle him to the requested relief.'" Id. (quoting United States v. Francois, 715 F.3d 21, 32 (1st Cir. 2013)). Notably, Joel still has not pointed to any material facts about the stop and seizure of the gun he believes are in dispute. Additionally, Joel never requested a hearing, either in his pretrial motion to suppress or when he renewed his motion during trial. The trial judge did not, therefore, abuse her discretion by not holding a hearing.

Aside from his procedural gripe, Joel argues Agent Ortiz did not have any "specific articulable facts to justify" pulling him over because the level of tint on the windows was merely a disingenuous pretext for the stop. The government says the tinted windows provided plenty justification. We agree. There is no doubt that "[a]n officer can stop a car if he sees a driver commit a traffic offense, even if the stop is an excuse to investigate something else." United States v. McGregor, 650 F.3d 813, 820

(1st Cir. 2011) (citing Whren v. United States, 517 U.S. 806, 810 (1996)). The officer can then order those inside the vehicle to get out. Id. (citing Maryland v. Wilson, 519 U.S. 408, 410, 414-15 (1997)). Officer Ortiz, based on his training and experience, testified he initiated the traffic stop in part because he noticed Joel's unlawfully tinted front window. This alone, under the governing case law, is adequate justification for the stop.[14]

Joel raises no challenge to the seizure of the gun once he stopped the car. And there is no dispute Officer Berrios saw the gun on the floor of the driver's seat when Joel was exiting the car, which the trial judge so found. The denial of Joel's suppression motion is, therefore, affirmed.

EVIDENTIARY ISSUES

The defendants raise a litany of evidentiary issues, which we address in turn. These issues include whether:

- the handwritten notes from law enforcement's interviews with codefendants should have been produced to the defendants;
- the handwritten notes on a series of documents admitted as business records were properly admitted for a limited purpose;
- the scope of cross-examination of some witnesses was improperly limited;

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[14] For the first time on appeal, Joel argues -- spilling lots of ink -- that Officer Ortiz lacked probable cause to stop him because the supposed tip from an informant that the organization's leaders met at a specific location each Thursday flunked the long-established standards for reliability and credibility for tips. Bypassing forfeiture and plain error review, we decline to address Joel's argument because, as the government correctly points out, the stop was justified by the tinted windows infraction.

- proffered impeachment testimony was erroneously disallowed; and
- the trial judge should not have allowed multiple witnesses to testify about the same investigatory incident.

In order to sensibly address these issues, we need to introduce four men who were indicted along with the defendants but pled guilty before trial and became CWs for the government: Manuel Ferrer Haddock ("Ferrer"), Jaime Lopez Canales ("Lopez"), Jamie Rivera Nieves ("Rivera"), and Miguel Vega Delgado ("Vega").[15] Testifying law enforcement agents involved in the investigation also feature prominently in the evidentiary challenges raised in this next section. We will provide a summary of their testimony that is relevant to the evidentiary issues raised here as we go.

Rough notes from interviews with CWs
(Suanette, Juan)

Law enforcement officers jotted down informal notes when they formally interviewed CW Lopez and CW Ferrer. They then prepared official reports which Suanette and Juan received. Both defendants contend the "rough notes" should have been given to them during the trial upon their request. Suanette's arguments here focus on the notes' supposed value as exculpatory evidence while Juan's claims hinge on an alleged Jencks Act violation.

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[15] Per "Spanish naming conventions, if a person has two surnames, the first (which is the father's last name) is primary and the second (which is the mother's maiden name) is subordinate." United States v. Martínez-Benítez, 914 F.3d 1, 2 n.1 (1st Cir. 2019).

CW Lopez
(Suanette)

In August 2014, Suanette filed a motion to compel the production of the "rough notes" from CW Lopez's interview. Invoking both the Jencks Act (18 U.S.C. § 3500) and Brady v. Maryland, 373 U.S. 83 (1963) (but not explaining how either entitled her to the notes she sought), Suanette said these "rough notes" were "fundamental in corroborating the witness information in the DEA report and to verify" the consistency of CW Lopez's testimony before the grand jury and trial jury. Suanette also asked that, in the alternative, the notes be produced to the trial court for in camera inspection before ruling.

At the court's request that Suanette explain her "need" for the notes, Suanette provided additional details to support her motion for production. Suanette admitted she'd received "synops[e]s" of the Lopez interviews, but complained they were insufficient because they captured the agents' "interpretation[] of what . . . [Lopez] told them" and not the raw information straight from his mouth. Also in her response, Suanette claimed although she had evidence CW Lopez had not mentioned her during his first interview she was also entitled to the rough notes from his other four interviews because if Lopez did not name her in any of these subsequent interviews then those notes would also be exculpatory evidence.

In a written order, the trial judge denied Suanette's motion to compel, concluding neither the Jencks Act nor Brady entitled her to the rough notes. Labeling "sheer speculation" Suanette's argument that the agents' interview summaries might be missing "evidence or information favorable to them of an exculpatory nature," she concluded Suanette had not made a "colorable [Brady] claim." With respect to Suanette's Jencks Act contention, the judge concluded she would only be entitled to the notes if CW Lopez actually adopted the contents of the agents' interview notes as his own.

On appeal, Suanette again argues that, because the official DEA report of all CW Lopez's interviews did not include her name in connection with the conspiracy, the rough notes are exculpatory as well as impeachment evidence that should have been produced pursuant to Brady: exculpatory because the reasonable inference from the failure to name her is that she was not involved in the conspiracy and impeachment because the notes contradicted CW Lopez's trial testimony. There, he testified that he bought marijuana from Suanette at the drug point in Villa Margarita on Amapola Street from 2007 to 2008 and she "collected the money" from the customers while her husband handed over the product, information which, if true, would have found its way into the rough notes. Plus, according to Suanette, his testimony about her alleged involvement supposedly conflicted with that of CW Vega.

(We'll get into this supposed conflicting testimony a little later when we address Suanette's sufficiency argument). By not having this supposedly exculpatory evidence during the trial Suanette says she was prejudiced.[16] If there was doubt about the relevance of the rough notes, the trial judge, at minimum, should have made an in camera inspection of them.

The government responds that the trial judge did not abuse her discretion when she denied Suanette's motion to compel because the rough notes were immaterial and not likely exculpatory. Immaterial because Suanette already knew and had evidence CW Lopez never told law enforcement agents she was part of the drug conspiracy -- her name was not on the list of alleged members of the drug trafficking organization that law enforcement included in their official report from the interviews with him. Further, as the government points out, Suanette cross-examined CW Lopez at length about whether he had mentioned her during his formal interviews. The rough notes were also immaterial because CW Lopez was not the only witness to testify about Suanette's drug transactions.

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[16] We do not discern any argument on appeal challenging the trial judge's conclusion that the rough notes sought were not discoverable pursuant to the Jencks Act. We read Suanette's argument to focus entirely on the value of the rough notes as exculpatory and impeachment evidence. But we will soon get into the Jencks Act when we address Juan's arguments about rough notes from CW Ferrer's interviews below.

As for the trial judge's refusal to inspect the notes in camera, the government says Brady does not allow fishing expeditions and Suanette did not show the notes would contain exculpatory or impeachment information that was not already in other documents in her possession. As we view it, the government has the better arguments on this issue, and we'll explain why after first setting out the governing legal principles.

A trial judge's conclusion that information is not exculpatory under Brady gets examined through an abuse-of-discretion lens. United States v. Schneiderhan, 404 F.3d 73, 78 (1st Cir. 2005) (citing United States v. Rosario-Peralta, 175 F.3d 48, 55 (1st Cir. 1999)). To make an effective Brady claim, "[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the [government], either willfully or inadvertently; and prejudice must have ensued." United States v. Avilés-Colón, 536 F.3d 1, 19 (1st Cir. 2008) (quoting Strickler v. Greene, 527 U.S. 263, 281-82 (1999)). "The import of withholding evidence is heightened 'where the evidence is highly impeaching or when the witness' testimony is uncorroborated and essential to the conviction.'" Id. (emphasis omitted) (quoting Conley v. United States, 415 F.3d 183, 189 (1st Cir. 2005)). "Suppressed impeachment evidence is immaterial under Brady, however, if the

evidence is cumulative or impeaches on a collateral issue." Id. (quoting Conley, 415 F.3d at 189).

After reviewing the record as a whole, we do not see how Suanette could have gained anything substantial from the production of the rough notes from CW Lopez's interviews, even if, had they been produced, they revealed no mention of Suanette's name. Here's why: as Suanette herself discusses in her brief, she asked one of the law enforcement agents who interviewed CW Lopez if Lopez ever mentioned Suanette during his interviews. The agent said he couldn't remember. When pressed again, the agent agreed that he would have "[m]ost likely" written her name down if CW Lopez had mentioned her. This exchange makes the precise point Suanette says she needed to make.

Moreover -- and as the government indicates -- the DEA's official report of the interviews with CW Lopez included a list of the members of the drug trafficking organization under investigation that CW Lopez fingered, and Suanette wasn't on that list. We fail to see how the absence of her name from the rough notes -- if that is what the rough notes actually confirmed -- could have had more qualitative value than the absence of her name from the list of members in the DEA's summary report. In consequence, the rough notes were immaterial and also cumulative of other evidence in the record. Therefore, the trial judge's

decision denying Suanette's motion to compel production of the rough notes was hardly an abuse of her discretion.

CW Ferrer
(Juan)

During the trial testimony of CW Ferrer, Juan's counsel, pursuant to the Jencks Act, moved for production of the rough notes from CW Ferrer's interviews with law enforcement agents. Juan's counsel wanted more than the summaries already provided by the government because, according to him, CW Ferrer was adding new details to his testimony and because of this, he wanted the notes to compare what CW Ferrer said back then to what he was saying in court. The trial judge verbally denied the motion and addressed it again when she ruled on Suanette's written motions for the production of the rough notes from CW Lopez's interviews. In the written order, the trial judge left the production issue open for further consideration depending on how he answered a couple of questions. Because the Jencks Act requires a witness to sign or verify a third party's accounting of the witness's testimony, she ruled she would ask CW Ferrer if the government agents read their notes back to him during his interview and whether he had approved the notes as read back.

During trial, the trial judge did precisely as she said she would. CW Ferrer stated he could recall some notes read back to him but not whether he approved them, or if he did, whether it

was verbally or by signing something. He was interviewed on at least seven occasions and did not recall what or how much was read back to him on any given day, nor whether he had raised any discrepancies between what he said and what was read back to him. The trial judge declined to order production of the rough notes because she lacked the required affirmative evidence that CW Ferrer adopted the written notes as his own. Therefore, they did not qualify as Jencks Act statements.

On appeal, Juan contests the trial court's findings. He asserts CW Ferrer did in fact adopt the rough notes because he testified that the notes were read back to him even if he could not remember if he approved them verbally or in writing and did not recall discussion of any discrepancies. Jencks requires nothing more, he says. The government says that the trial judge committed no error. Juan had all he needed to cross-examine Ferrer about his interviews with the agents -- the DEA-6 report (the official report of the investigation).

Our review of the trial judge's Jencks Act determination is for abuse of discretion. See Schneiderhan, 404 F.3d at 78.

"The Jencks Act, 18 U.S.C. § 3500, in concert with Fed. R. Crim. P. 26.2, controls the production of certain witness statements in the government's possession." United States v. Marrero-Ortiz, 160 F.3d 768, 775 (1st Cir. 1998). "[T]o be discoverable under the Jencks Act, a government record of a witness

interview must be substantially a verbatim account." United States v. Sepulveda, 15 F.3d 1161, 1179 (1st Cir. 1993) (citing United States v. Newton, 891 F.2d 944, 953-54 (1st Cir. 1989)). In addition -- and most importantly here -- "the account must have been signed or otherwise verified by the witness himself." Id. (citing United States v. Gonzalez-Sanchez, 825 F.2d 572, 586-87 (1st Cir. 1987)).[17]

"Where a defendant requests discovery of potential Jencks material, our precedent requires the district judge to conduct an independent investigation of any such materials and determine whether these materials are discoverable under the Jencks Act." United States v. Gonzalez-Melendez, 570 F.3d 1, 3 (1st Cir. 2009) (per curiam) (emphasis omitted).

> This independent review may include such measures as *in camera* inspection of any disputed document(s), and conducting a hearing to evaluate extrinsic evidence, including taking the testimony of the witness whose

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[17] 18 U.S.C. § 3500(b) provides that:

> After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

Crucial for Juan's argument, however, is that a statement is defined in § 3500(e)(1) in relevant part as "a written statement made by said witness and signed or otherwise adopted or approved by him." (Emphasis added.)

> potential statements are at issue as well as the person who prepared the written document in which those statements appear.

Id. at 3 n.2 (citing Goldberg v. United States, 425 U.S. 94, 108-09 (1976)). As we previously described, the trial judge did just that: she undertook the required "independent investigation" when she probed CW Ferrer's recollection and understanding of the agents' interview notes. See id. at 3 (emphasis omitted). She even expanded the inquiry by allowing Juan's attorney to ask clarifying questions before explaining her Jencks Act ruling.

In support of his claim of error, Juan insists the facts here are analogous to those in Goldberg, where a CW who had been interviewed by prosecutors a few times prior to trial couldn't perfectly recall whether the attorneys' handwritten notes were read back to him or whether he was always asked if the notes were accurate. 425 U.S. at 100-101. Even though the Goldberg court remanded, this case is not helpful to Juan because the Supreme Court was primarily focused on whether the notes were attorney work product. Id. at 101-08. Indeed, part of the scope of the ordered remand was for the trial court to determine, as a matter of fact, whether the "notes were actually read back to [him] and whether he adopted or approved them." Id. at 110. We conclude then, as the trial judge did, that the government was not obligated to produce these rough notes because the trial court's investigation did not establish CW Ferrer approved the notes taken

during his interviews and the notes did not therefore qualify as statements pursuant to the Jencks Act. See Marrero-Ortiz, 160 F.3d at 775-76 (holding the government had no obligation to produce rough notes taken by a government official during an interview with an individual who testified for the government at trial because there was no evidence on the record that the witness adopted the notes). The trial judge did not abuse her discretion.

Business records from North Sight Communications
(Joel, Carlos, Juan)

One piece of physical evidence admitted during trial was a set of business records from North Sight Communications ("North Sight"), a business with whom one of the members of the conspiracy had an account for cell phones with a walkie-talkie-type functionality. Some of the pages of the records had handwritten notes, linking each specific device associated with the account to a specific individual. Joel, Carlos, and Juan challenge the trial judge's decision to admit these handwritten notes.

Here's how these notes and records were allowed: about halfway through the trial, Angel Miranda, Vice President of North Sight, testified that his company offered Motorola iDEN service, which allowed a cellular phone to be used as a walkie-talkie as well as a regular phone and, with the right plan, one phone could radio broadcast to several other units at the same time. Miranda explained that when a fleet (or large group) of devices was issued

under one account, a North Sight employee made handwritten notes as a regular course of business on the customer's printed account documents connecting the name of each individual who had a device with the device assigned to that individual. These handwritten notes were made while the customer stood in front of the employee and indicated who had which device listed on the account. These hard copy invoices and other records on the account were then stored in physical files.

The file for the account opened under the name Carlos Rivera Rivera (aka Carlitos, Suanette's husband, one of the individuals indicted along with the other defendants in this case) included approximately 100 pages and was admitted as an exhibit at trial, over the defendants' objections, under the business record exception to the rule against hearsay. In line with Miranda's description of North Sight's business practice, some of the pages reflected handwritten names and numbers, including the first names or nicknames of some of the defendants presently appealing.

The defendants objected on the basis that the handwritten notations presented impermissible double hearsay. After lengthy voir dire of the witness and much argument by counsel, the trial judge concluded the "handwritten notes on those pages [were] . . . probative of association between members of the alleged conspiracy. There's no other possible probative value." The trial judge proposed a limiting instruction for the jury to