make it clear that the jury could only consider the handwritten notes for the purpose of deciding whether the names reflected in the notations might be associated with one another. According to the trial judge, "there's no double hearsay problem if that's the only purpose for which it's allowed." The trial judge issued two written orders on this evidentiary ruling as well.

The trial judge issued the following limiting instruction to the jury:

> Members of the jury, I instruct you that you can consider all of the 105 pages of this Exhibit 177 for the truth of the data or the matters contained in those pages except for the annotations handwritten by the North Sight Communications employee whose source of information was an outsider and which appear at these particular pages, 33-34, 61, 69, 94-95, 99 and 101. These handwritten notes on these specific pages can only be considered by you, the jury, for the limited purpose of determining whether the same -- referring to the notes, handwritten notes -- establish association among the alleged members of the drug conspiracy as charged in the Indictment.

Joel asked the trial judge to reconsider her ruling and she explained in an order considering his request that the admission of the handwritten notes was "for the limited purpose of the jury determining whether the records establish an association between the alleged members of the drug conspiracy charged. This is no different than tallies, logs, ledgers, contact lists . . . which are admitted in determining association in criminal activity."

We review preserved objections to "[e]videntiary rulings, including whether to admit evidence over a hearsay

objection, . . . for abuse of discretion." United States v. Colón-Díaz, 521 F.3d 29, 33 (1st Cir. 2008).

Juan, Carlos, and Joel all argue that the judge was wrong to admit these handwritten notes for any purpose because the accuracy and veracity of the notes could not be confirmed. These defendants emphasize that, if the jury was allowed to consider whether the notes showed association between the alleged conspirators, then the jury would first have to consider the notes to be true and accurate.

The government responds that the handwritten notations were properly admitted with limitation to infer association between the names in the notes and the defendants on trial as well as the association between the alleged members of the conspiracy -- the court's limiting instruction appropriately tailored these purposes. This court, argues the government, has previously allowed circumstantial evidence of association between alleged coconspirators when, for example, a payroll list seized from a defendant's bedroom was admitted for this limited purpose and the jury was told not to consider it for the truth of the information contained on it. United States v. Hensel, 699 F.2d 18, 33-35 (1st Cir. 1983). The government also points us to the admission of a hand-written drug ledger kept on a pad of paper by a codefendant for the purpose of showing the existence of a drug conspiracy. Casas, 356 F.3d at 124-25. Of course, as Juan and Joel point out,

these cases involved a codefendant as the author of the writings, whereas here there is no suggestion that a codefendant wrote the notations on the admitted North Sight business records or even verified what had been written. This is an important distinction, which the trial judge did not appear to consider when articulating her decision to allow the handwritten notes here.

We need not decide whether this distinction means the trial judge erred when she admitted the exhibit for the limited purpose expressed because, even if she erred, the error was harmless and doesn't warrant disturbing the jury verdict.[18] See United States v. Laureano-Pérez, 797 F.3d 45, 68-69 (1st Cir. 2015) (declining to decide whether an error had been made because the error, if any, was harmless). Improperly admitted evidence "is harmless if it is 'highly probable that the error did not influence the verdict.'" United States v. Meises, 645 F.3d 5, 23 (1st Cir. 2011) (quoting United States v. Flores-de-Jesús, 569 F.3d 8, 27

[18] Juan's discussion of United States v. Blechman, an out-of-circuit case holding the trial court in that case erred by admitting online account records as a business record exception to the rule against hearsay, 657 F.3d 1052, 1056-58, 1066 (10th Cir. 2011), is not what persuades us there may have been error here. As the trial judge aptly distinguished in her order addressing Joel's request that she reconsider her ruling about the handwritten notes on the North Sight records, the district court in Blechman had admitted the documents as Federal Rule of Evidence 803(6) business records, whereas she acknowledged the double hearsay problem with the handwritten notes and did not admit them for that reason, but allowed the jury to see the notes for the expressly limited purpose she articulated.

(1st Cir. 2009)); see also United States v. Montijo-Maysonet, 974 F.3d 34, 49 (1st Cir. 2020) (error may be considered harmless when "the record minus the improper[ly admitted evidence] gives us 'fair assurance . . . that the [jurors'] judgment was not substantially swayed by the error'" (quoting Kotteakos v. United States, 328 U.S. 750, 765 (1946))). The harmlessness "inquiry requires a case-specific examination of factors that include 'the centrality of the tainted material,' its prejudicial impact, and any other indications that 'the error affected the factfinder's resolution of a material issue.'" Meises, 645 F.3d at 24 (quoting Sepúlveda, 15 F.3d at 1182). The burden to establish harmlessness falls on the government, id.; the government carried this burden by pointing to the ample other evidence that by itself convincingly established the necessary connections among Juan, Carlos, and Joel, and with other alleged members of the drug enterprise.

The government has shown that, without the exhibit in question, there was other evidence that Juan, Carlos, and Joel knew each other and associated with other alleged members of the drug conspiracy. For example, with respect to Juan, one of the testifying law enforcement agents (Special Agent Cedeño) told the jury during trial that the notebook seized from the kitchen of Juan's apartment included a list of names and phone numbers; the names corresponded to nicknames of several of the other alleged members of the organization. Another law enforcement agent

testified about watching Juan's authority over other suspected members during one part of the investigation when Juan ordered these men to comply with that law enforcement agent's instructions to the group of them. And CW Vega testified he observed Juan receive pre-packaged drugs from other people CW Vega knew to be members of the drug enterprise.

In addition, CW Ferrer testified about his participation in meetings among alleged coconspirators including Juan, Carlos, and Joel. One such meeting occurred when CW Ferrer and his cousin were physically with Carlos and Joel; CW Ferrer testified he watched Joel speak with Juan using a walkie-talkie type of function on his cell phone to ask Juan questions about why Juan was not with them in person. These examples of evidence in the record show that apart from the handwritten notes the jury had other convincing evidence from which to find the alleged members of the drug enterprise knew each other and spent time together. As a result, the government has shown that any error in admitting the North Sight business records with the handwritten notations was harmless because it was "highly probable" this single exhibit did not sway the verdict. Id. at 23.

Limited cross-examinations
(Idalia, Juan, Joel, Carlos)

Up next is whether the trial judge impermissibly limited the scope of cross-examination of some of the witnesses. Idalia,

Juan, Joel, and Carlos contend the trial judge did just that in violation of their Sixth Amendment Confrontation Clause rights. "The Confrontation Clause of the Sixth Amendment guarantees criminal defendants the right to cross-examine witnesses who testify against them," United States v. Casey, 825 F.3d 1, 23-24 (1st Cir. 2016) (citing United States v. Vega Molina, 407 F.3d 511, 522 (1st Cir. 2005)), so defendants can "test the believability of a witness and the truth of his testimony," United States v. Rivera-Donate, 682 F.3d 120, 126 (1st Cir. 2012) (quoting United States v. González-Vázquez, 219 F.3d 37, 45 (1st Cir. 2000) (internal quotation omitted)). "This right is not without limits, however; the district court wields considerable discretion to impose 'reasonable limits' on cross-examination." Casey, 825 F.3d at 24 (quoting United States v. Raymond, 697 F.3d 32, 39-40 (1st Cir. 2012)). "When a witness's credibility is at issue, the trial court may limit cross-examination as long as the court allows sufficient leeway to establish a reasonably complete picture of the witness' veracity, bias, and motivation." Rivera-Donate, 682 F.3d at 126 (quoting González-Vázquez, 219 F.3d at 45) (internal quotation omitted). "We review de novo whether a defendant was afforded a reasonable opportunity to impeach a witness, and for abuse of discretion limitations the trial court

imposed on that opportunity." Casey, 825 F.3d at 24 (citing Raymond, 697 F.3d at 39-40).

CW Vega
(Idalia)

Idalia argues the trial judge infringed her Confrontation Clause rights when Idalia was not permitted to question CW Vega about whether he had met with the prosecutors outside the courtroom after he started testifying. Here's how this controversy unfolded during trial: CW Vega was one of the witnesses who testified about his observations of, and interactions with, Idalia. When he first testified about the timing and frequency of his crack cocaine purchases from Idalia at the residence she shared with her husband, codefendant Carlos, during the summer of 2006, CW Vega said he bought crack from a "woman" but he was not asked if the woman from whom he bought the crack was in the courtroom and he did not offer an in-court identification on his own. He indicated he had not known -- or ever found out -- who the "woman" was the first time he encountered her when he'd approached Carlos's house looking to buy crack from Carlos but bought instead from the woman who'd emerged from the house when he had yelled for Carlos. CW Vega also testified that he bought vials of crack from this woman at this house around sixteen times over a one-to-two month period and, during this same

period, he also bought vials of crack from Carlos from this same house.

A few days into his testimony (he testified on at least nine separate days), the prosecutor sought to introduce a photo of Idalia. Idalia's attorney objected because CW Vega had not identified Idalia a few days prior when he had been testifying about his crack purchases from the woman at Carlos's house. At the court's suggestion, the prosecutor asked CW Vega if the woman from whom he had purchased the crack was in the courtroom and he identified Idalia without any detectable hesitation in open court.

The next morning, Idalia's counsel raised a concern about potential prosecutorial misconduct after a codefendant's counsel reported to her that his client had seen two of the prosecutors leave the room in the courthouse where testifying witnesses typically cooled their heels when they weren't on the stand. The codefendant was clear that she had not seen CW Vega (or anyone else) in the room, but Idalia's counsel expressed a concern that, because CW Vega initially testified he had not known the identity of the woman at Carlos's house who sold him crack in June 2006 but a few days into his testimony identified Idalia in court as that woman, the prosecutors had influenced his memory and subsequent identification of her.

One of the prosecutors volunteered that she had been in the witness room with CW Vega a couple of times to discuss

scheduling and dietary matters but adamantly denied discussing any part of his testimony with him. The trial judge lightly reprimanded Idalia's counsel for jumping to conclusions without a stronger basis because seeing prosecutors emerge from a room holding trial papers did not in and of itself mean there was any misconduct. The trial judge also reminded Idalia's counsel that she would have an opportunity to cross-examine CW Vega about his in-court identification.

During Idalia's cross-examination, CW Vega answered "no" when first asked whether he had met with the prosecutors during his testimony. After CW Vega confirmed his testimony with respect to not knowing the identity of the woman the first night a woman sold him the vials of crack at Carlos's house and then identifying Idalia when asked if he saw the same woman in the courtroom, Idalia asked whether he had met with the prosecutors during the lunch recess immediately prior to his in-court identification of Idalia. The trial judge did not allow CW Vega to answer the question, removed the jury from the courtroom, and admonished Idalia's counsel for her inquiry into this subject when the trial judge had already inquired and resolved it when she determined there was no indication of any actual misconduct.

On appeal, Idalia asserts the trial judge erred by not allowing her to cross-examine CW Vega about his suspected lie when he said he had not met with prosecutors during the course of his

several days of testimony. Idalia contends that, beyond the issue of impeaching CW Vega's credibility, the limit placed on her cross-examination meant she could not explore his "reliability and potential suggestiveness." Idalia refers to this issue in her brief as a violation of her "due process" rights but her analysis is actually structured as a Sixth Amendment Confrontation Clause challenge, so we shall follow her lead and proceed under this latter framework.

The government counters Idalia had been permitted to cross-examine CW Vega extensively about his interactions with the woman who sold him crack as well as his subsequent identification of this woman as Idalia. As such, says the government, the trial judge did not abuse her discretion to reasonably limit the scope of cross-examination.

After reviewing the transcript of CW Vega's testimony on direct and cross-examination, in our view, there is no doubt Idalia was provided an adequate, reasonable opportunity to impeach CW Vega's direct testimony about his interactions with -- and identification of -- the woman from whom he bought the vials of crack. Idalia asked a series of detailed questions checking his testimony from the day he discussed his purchases to the day he identified Idalia in court. Idalia also asked a long series of questions delving into the history of CW Vega's drug use and effects he experienced while using drugs.

When the trial judge cut off Idalia's attempt to bring up the conversations in the witness room between CW Vega and the prosecutors, she explained her concern that the trial would turn into an evidentiary hearing about the dubious conversation and she did not think such inquiry was justified based on what Idalia's codefendant reported observing and what the prosecutor acknowledged. But Idalia was permitted to continue her cross-examination after the trial judge told counsel to refrain from the inquiry about the witness room. Moreover, as Idalia herself points out, CW Vega's credibility was laid to bare when he admitted during cross-examination by counsel for a codefendant that he had deceived both probation officers and judges in the past, which she concludes must mean he has no trouble with lying to authority. Therefore, CW Vega's credibility and reliability were explored during his cross-examinations by more than one codefendant's attorney and the jury had abundant information from which to decide whether he testified truthfully about his identification of Idalia as the woman who sold crack to him.[19] For all of these reasons, the record

[19] Juan also makes a cursory statement that the trial judge erred by not allowing him to inquire about CW Vega's meetings with the prosecutors during his cross-examination of this witness and that this inquiry would have resulted in a successful impeachment of Vega's testimony. As the government points out, however, Juan's contention on this matter is waived for his failure to flesh out the argument. See Chan, 981 F.3d at 50 n.4 (citing Rodríguez v. Mun. of San Juan, 659 F.3d 168, 175 (1st Cir. 2011) ("[W]e deem waived claims not made or claims adverted to in a cursory fashion, unaccompanied by developed argument.")). And as we have just

shows the trial judge gave Idalia plenty of leeway to impeach CW Vega's identification of Idalia as one of the people from whom he bought crack. The reasonable limitations she placed on the scope of the cross-examination were not an abuse of discretion. See Casey, 825 F.3d at 24.

Sergeant Rivera Vélez
(Juan)

We turn now to Juan's complaint that the trial judge did not allow him to explore, during cross-examination, a meeting a trial witness had with the prosecutors during a court recess after the witness had started testifying. Puerto Rico Police Sergeant Luis Rivera Vélez was the first witness to testify at the trial. After a couple of days of testimony, the government disclosed to the trial judge, outside the presence of the jury, that it had met with this witness the morning of his second day of testimony to review and cut down the number of exhibits the government was admitting into evidence through him. Apparently there was some confusion on the government's part about whether it had been allowed to meet with its witness in the middle of his direct testimony. But after hearing the government's disclosure and explanation for what happened, the trial judge ultimately decided the government and the witness had genuinely misunderstood the

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written, the trial judge did not abuse her discretion when she did not allow this line of inquiry during the defendants' respective cross-examinations of this witness.

court's instructions and had not violated a court order when they met to discuss the trial exhibits.

During Juan's cross-examination of Sergeant Rivera, the trial judge interrupted his inquiry about whether the sergeant recalled the trial judge's instruction during the first day of testimony about not discussing the testimony with anyone. During a conversation at side bar, the trial judge admonished Juan's counsel for his attempt to impeach the witness based on an event that had been discussed, researched, and determined to have been the result of some confusion on the part of the government's attorneys and not of misconduct on the part of either the government or the witness. The trial judge ruled that, absent some indication that the witness had met with the government after the discussion following the government's own admission about the misunderstanding, Juan's counsel could not exploit the early misunderstanding as part of his attempt to impeach the witness's credibility.

Juan frames his complaint about the limitation on the scope of cross-examination as a violation of his right to confront Sergeant Rivera. Without citing any case law, Juan asserts the cross-examination would have been relevant to show the witness had a tendency to ignore the law, including the trial judge's explicit instructions. The government responds that Sergeant Rivera was not at fault for meeting with the government mid-testimony because,

as the trial judge explicitly found, he had been guided by the government's misunderstanding of the rules. The government also argues -- and the transcripts confirm -- that Juan and his codefendants were permitted to cross-examine Sergeant Rivera at length about various topics discussed during the direct examination.

After reviewing the testimony and discussion around this testimony, it is clear Juan had a full opportunity to cross-examine this witness and that the trial judge placed a reasonable and permissible limitation on the scope of Juan's cross-examination. We perceive no abuse of discretion here either. See Casey, 825 F.3d at 24.

Other witnesses
(Joel and Carlos)

Joel argues (and Carlos joins) his confrontation rights were infringed when the trial judge limited the scope of cross-examination and/or re-cross-examination for five of the government's witnesses. Joel contends the limitations improperly prevented him and his codefendants from developing their defense theory that other drug points were operating in the same area where they were accused of operating. Joel provides five examples of where he tried, during cross-examination, to elicit information

about how other organizations' drugs were packaged but the trial judge cut it off as irrelevant and collateral.

The government picks apart these five examples by pointing out that the defendants did in fact have the opportunity to cross-examine the witnesses they now claim they were precluded from questioning. Moreover, the government argues there were several witnesses who did testify about different drug packaging types and colors and, ultimately, that the jury got to hear the defendants' theory about more than one drug enterprise operating out of the same areas. A review of the trial transcripts supports the government's assertions here. Even when the trial judge sustained an objection from the government after Joel or a codefendant asked a specific question about other drug points or drug packaging details, the government asserts -- and the record shows -- that the defense got its main point across.[20] This

[20] The trial judge did sustain several objections during cross-examination and re-cross-examination about the details of other possible drug points at or around Los Claveles as beyond the scope of the direct or re-direct examination and such is a valid reason to sustain the objection. See United States v. Weekes, 611 F.3d 68, 70 (1st Cir. 2010) (Souter, J.) (holding no abuse of discretion when defendant was not allowed to cross-examine a witness about a matter outside the scope of the witness's direct testimony but other witnesses were questioned about that matter); United States v. Kenrick, 221 F.3d 19, 33 (1st Cir. 2000) (en banc) (acknowledging district court's "'extensive discretion' in controlling re-cross-examination"), abrogated on other grounds by Loughrin v. United States, 573 U.S. 351 (2014).

particular drug trafficking enterprise on trial was not the only game in town.

As we stated above, "the district court wields considerable discretion to impose 'reasonable limits' on cross-examination." Casey, 825 F.3d at 24 (quoting Raymond, 697 F.3d at 39-40). Reviewing de novo whether Joel and the other defendants were given a reasonable opportunity to question each of the witnesses discussed in Joel's brief and the limitations on the scope of the cross or re-cross for abuse of discretion, we see the transcripts are replete with examples of these witnesses acknowledging other drug points operated by different people in areas similar to where the defendants before us were accused of operating their drug trafficking business. See id. In addition, we see no abuse of the trial judge's discretion to limit the scope of their cross-examination and re-cross-examination of these witnesses.

Excluded defense witnesses
(Juan)

Juan challenges the trial judge's decision not to allow him to present witnesses to impeach certain testimony offered by CW Ferrer. To place Juan's challenge in context, here is the short version of what happened at trial. CW Ferrer testified (among many other topics) about his drug addiction and that he supported his drug addiction by "selling drugs; sometimes my grandma would

give me some money, and, well, I would just hustle around. And I had a legal job." When another defense counsel explored the details of the "legal job" during cross-examination, CW Ferrer testified that he had worked at a restaurant and as a security guard. Juan eventually attempted to bring in witnesses whose proffered testimony was to prove CW Ferrer had not worked at two of the locations at which he claimed to have been employed in 2006 and 2008. Citing impermissible character evidence and collateral impeachment, the government objected. After considering Juan's proffer, the trial judge concluded these witnesses would not be allowed to testify. Their testimonies, she reasoned, fell squarely within the rule against impeachment by collateral evidence, had no other relevance or probative value, and would not have been material to the guilt or innocence of any defendant.

Before us, Juan challenges those conclusions and argues he should have been allowed to call those witnesses who could expose Ferrer's lies about his work history -- lies designed to minimize this CW's role in the conspiracy and hide the fact that he was -- in Juan's words -- a "major drug trafficker" for the organization. For its part, the government countered that Juan's proffered evidence would have been "the very definition of collateral." We agree.

"A matter is collateral if 'the matter itself is not relevant in the litigation to establish a fact of consequence,

i.e., not relevant for a purpose other than mere contradiction of the in-court testimony of the witness.'" United States v. Marino, 277 F.3d 11, 24 (1st Cir. 2002) (quoting United States v. Beauchamp, 986 F.2d 1, 4 (1st Cir. 1993)). In general, a party may not present extrinsic evidence for the sole purpose of impeaching a witness on a collateral matter. Id. The decision on whether a matter is collateral or material is within the district court's discretion. United States v. DeCologero, 530 F.3d 36, 60 (1st Cir. 2008). Like the trial judge, we fail to see how CW Ferrer's employment contemporaneous with his participation in a drug distribution conspiracy has any bearing on the issue of Juan's own culpability in that same conspiracy.[21]

Moreover, as Juan admits, he was allowed to and in fact did cross-examine CW Ferrer about the witness's employment history. In sum, the trial judge did not abuse her discretion when she precluded Juan's proffered impeachment witnesses from testifying.

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[21] Juan tries to carve a space for his excluded witnesses by arguing that the truthfulness of CW Ferrer's statement regarding his "legal job" became a legitimate issue to explore as soon as CW Ferrer testified on direct, in response to the government's questions, to this employment history. The government, however, eliminates that space when it points out that CW Ferrer stated he paid for his drugs by selling drugs and holding a "legal job" but that the prosecutor did not ask any follow-up questions about his "legal job," only his selling activity. The government states -- and this is supported by the trial transcripts -- that CW Ferrer only stated details of these "legal jobs" after he was asked about them on cross-examination.

Repetitive testimony
(Joel & Carlos)

In Joel and Carlos's final evidentiary issue, they contend the trial lasted 128 days in part because the trial judge allowed the government to present needlessly long and repetitive testimony about a few specific events, unearthed during the investigation, which ultimately had an unduly prejudicial effect on them in violation of Federal Rule of Evidence 403.[22] Joel (joined by Carlos) provides three examples:

- Five law enforcement agents testified about the same surveillance day which yielded a military box with drugs inside and a video taken of Joel yelling "snitch you are going to die" to an unidentified listener.
- Five law enforcement agents testified about the discovery of the gun in Joel's father's car the day that Joel was pulled over.
- Four agents testified about a shooting incident on the basketball court in Villa Margarita in which Joel got shot in the arm and went to the hospital.[23]

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[22] Federal Rule of Evidence 403 says "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of [among other reasons] needlessly presenting cumulative evidence."

[23] In considering Carlos's argument here, we note Joel presents only conclusory arguments about the repetitive or cumulative nature of the bulk of the testimony at issue. He provides lists of transcript pages for the witnesses he asserts provided the cumulative testimony for each incident, but he doesn't describe how the various testimonies are repetitive to the point of substantially outweighing their probative value. He also does not refer us to any case precedent in which we found a Rule 403 error where a few witnesses have testified about the same event and the district court declined to strike or disallow the testimony.

In response, the government, siding with the trial judge's reasoning, says the testimony about these events was not needlessly repetitive or cumulative just because more than one witness testified about the same event since each witness added a different part or perspective of the incident. Each witness here challenged as needlessly cumulative was in fact needed to share either different personal observations or vantage points of the incident in question or to testify to a distinct temporal part of the day the event occurred.

"Evidence is cumulative if repetitive, and if 'the small increment of probability it adds may not warrant the time spent in introducing it.'" Elwood v. Pina, 815 F.2d 173, 178 (1st Cir. 1987) (quoting 1 Weinstein's Evidence ¶ 401[07] at 401-47-48 (1985)). Rule 403 allows a trial judge "to 'exclude relevant evidence if its probative value is substantially outweighed by a danger of' certain pitfalls, including . . . 'needlessly presenting cumulative evidence.'" United States v. Mehanna, 735 F.3d 32, 59 (1st Cir. 2013) (quoting Fed. R. Evid. 403). Abuse of discretion guides our review of the district court's Rule 403 determination.[24]

[24] The government suggests our review of the supposedly cumulative testimony about the shooting incident on the basketball court should be for plain error because Joel did not object to the various law enforcement agent testimonies regarding this incident on a Rule 403 basis. Because the trial judge recognized Joel's standing objection throughout the trial to repetitive or cumulative evidence and because we find no abuse of discretion in allowing each of the witnesses Joel mentions to testify about the

United States v. Dudley, 804 F.3d 506, 515 (1st Cir. 2015). "An abuse of discretion showing is not an easy one to make. We afford deference to the district court's weighing of probative value versus unfair effect, only in 'extraordinarily compelling circumstances' reversing that 'on-the-spot judgment' from 'the vista of a cold appellate record.'" United States v. DiRosa, 761 F.3d 144, 154 (1st Cir. 2014) (quoting United States v. Doe, 741 F.3d 217, 229 (1st Cir. 2013)). In doing so, we acknowledge the trial judge's "better position to assess the admissibility of the evidence in the context of the particular case before it." Mehanna, 735 F.3d at 59 (quoting Sprint/United Mgmt. Co. v. Mendelsohn, 552 U.S. 379, 387 (2008)).

There is no debate that the trial judge has "considerable latitude in Rule 403 rulings." United States v. King, 827 F.2d 864, 867 (1st Cir. 1987). And it is true, as Carlos points out, that we have previously upheld a district court's decision to exclude cumulative evidence on Rule 403 grounds as an appropriate discretionary call. See id. But such an exclusionary call did not happen here -- just the opposite -- so saying we've upheld discretionary exclusionary rulings in the past without adequately explaining why it was error here to allow the evidence is not

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events Joel raises here, we do not conduct a separate plain error analysis for the overruled objections during the testimony about the shooting incidents.

helpful to Carlos's cause. We have surveyed the testimonies Joel contests and as in other cases we have examined, we find that "[a]lthough [defendants] can point to instances in which the same story was told more than once, such repetition" here "encompassed new and relevant details." United States v. Muñoz-Franco, 487 F.3d 25, 67 (1st Cir. 2007). Additionally, Carlos fails to show prejudice. See id. (noting "no indication" that "the arguably cumulative nature of the evidence affected the outcome of the trial in any way"). To whatever extent the testimonies from witnesses overlapped, the trial judge did not abuse her discretion by allowing each of the witnesses, who added to the story, to testify over Joel's cumulative evidence objection.

With that conclusion, we move on to the next set of issues.

UNFAIR TRIAL
(Joel, Carlos, Juan, Idalia)

Four defendants assert they were denied a fair trial for several reasons and because of purported errors by the trial judge.[25] They claim they had to contend with:

- a biased and prejudiced jury,

[25] Carlos mentions the denial of due process in his broad summary of his arguments, asserting the bias of the trial judge and the lack of access to daily trial transcripts denied him due process, but he does not flesh out an argument about how his due process rights were implicated here. Similarly, Joel makes a one phrase claim that the "multiple errors" throughout the trial "deprived [him] of his constitutional due process right to a fair trial" but doesn't develop any argument about due process per se.

- a biased trial judge, and
- a series of improper prosecutorial tactics.[26]

We'll delve into each of these arguments in turn, first setting the scene for each claim.

Jury bias

Joel, Carlos, Juan, and Idalia each argue there was at least one incident during the trial that either 1) showed the jury was biased against them or 2) caused the jury to be biased against them and their codefendants. Premise one is based upon two separate notes written to the trial judge during trial. Premise two arises from one juror's disclosure that he had recognized one of the law enforcement witnesses. Before sifting through the details of what happened at trial, we first spell out some general principles that guide our thinking.

"'All would agree that an impartial jury is an integral component of a fair trial' and must be 'jealously safeguarded.'" Sampson v. United States, 724 F.3d 150, 160 (1st Cir. 2013) (alteration adopted) (quoting Neron v. Tierney, 841 F.2d 1197, 1200-01 (1st Cir. 1988)). That said, "[a] district court has broad, though not unlimited, discretion to determine the extent

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Accordingly, our discussion in this section goes with their primary framing of this issue as whether either were denied a fair trial in any of the ways they argue to us.

[26] The defendants add to this fair trial grievance list the variety of evidentiary challenges we have already discussed and rejected.

and nature of its inquiry into allegations of juror bias." United States v. Corbin, 590 F.2d 398, 400 (1st Cir. 1979) (citations omitted). We review the trial judge's approach and resolution to allegations of jury bias for abuse of discretion. United States v. Ramírez-Rivera, 800 F.3d 1, 38 (1st Cir. 2015).

"[D]efendants seeking to establish juror misconduct bear an initial burden only of coming forward with a 'colorable or plausible' claim." United States v. French, 904 F.3d 111, 117 (1st Cir. 2018) (French I) (quoting United States v. Zimny, 846 F.3d 458, 464 (1st Cir. 2017)). "Once defendants have met this burden, an 'unflagging duty' falls to the district court to investigate the claim." Id. (quoting Zimny, 846 F.3d at 464). "The type of investigation the district court chooses to conduct is within the district court's discretion; it may hold a formal evidentiary hearing, but depending on the circumstances, such a hearing may not be required." Id. (citing Zimny, 846 F.3d at 465); see also United States v. French, 977 F.3d 114, 122 (1st Cir. 2020) (French II) (referring to a "formal evidentiary hearing" as "the gold standard for an inquiry into alleged juror misconduct" but reaffirming that "a full evidentiary proceeding in response to an allegation of juror bias" is "not required")). "[T]he court's primary obligation is to fashion a responsible procedure for ascertaining whether misconduct actually occurred and if so,

whether it was prejudicial." French I, 904 F.3d at 117 (quoting Zimny, 846 F.3d at 465).

> So long as the district judge erects, and employs, a suitable framework for investigating the allegation and gauging its effects, and thereafter spells out her findings with adequate specificity to permit informed appellate review, the court's "determination . . . deserves great respect and . . . should not be disturbed in the absence of a patent abuse of discretion."

French II, 977 F.3d at 122 (brackets omitted) (quoting United States v. Boylan, 898 F.2d 230, 258 (1st Cir. 1990)).

Notes from jurors
(Idalia, Juan, Carlos, Joel)

Idalia argues that two notes from the jury sent to the judge during trial make evident she did not receive a fair trial because these notes showed juror bias and the trial judge did not adequately examine or consider these bias indicators when brought to her attention.[27] We'll start by telling you what these notes were about and how the trial judge responded to them.

A couple of weeks into the trial, the judge received a note from one juror, who wrote that she felt "uncomfortable with

[27] Joel, Carlos, and Juan also mention these jury notes in their briefs as part of their broader arguments about the ways in which they claim they were denied a fair trial, but other than asserting the trial judge failed to adequately inquire and/or examine the extent of the jurors' prejudice against them, they do not develop their argument as much as Idalia, so we focus on her take of this issue. In fact, Carlos and Juan do not provide any argument about why these notes or the trial judge's manner of addressing them should disturb the guilty verdicts against them, so they have waived this particular issue.

the intimidating looks" from Joel's attorney and Carlos's attorney. Idalia's attorney asked the trial judge to excuse this juror, which the judge declined to do, explaining it would be like punishing the juror for bringing a concern to the attention of the court. The judge discussed how to phrase the response to the juror with the attorneys but stated she would not hold a hearing to ask the juror whether the juror had shared the concerns with other jurors or whether the juror's concerns were affecting the evaluation of the evidence unless the same concern was raised again. The judge provided the attorneys with an opportunity to object to the wording of her response, but after the attorneys spoke with their respective clients about the proposed response, everyone agreed to the trial judge's wording without further ado. The response returned to the juror read:

> I have received your note and discussed it with counsel. Regarding atty. Milanés and atty Burgos their response to your note is that they meant no disrespect to you and neither had nor have any intention to intimidate you. If there is any instance in which you need to address the court, feel free to do that.

There was a brief discussion about whether to admonish the juror not to discuss this concern with any other juror, but the trial judge decided she did not want to assume the juror had already spoken about it and did not want to discourage bringing these kinds of concerns to the court's attention. The trial judge

also reminded Joel's attorney not to look at the jury when he questioned witnesses, as had apparently been his trend so far.

The trial judge received the second note at issue at the end of the first day of closing arguments after the court session had ended. The jury had collectively sent a note asking if the judge could ensure they left the courthouse before the defendants and the defendants' family members "in order to avoid any encounters which are occurring on a daily basis." The trial judge responded to the note asking the jury to "advise to which defendants you are referring to when you mention encounters that are occurring on a daily basis." The jury replied it was referring to Suanette and Idalia and their family members. When the trial judge discussed the notes with counsel, Idalia's attorney expressed concern that this note meant the jury was biased against the defendants. She did not, however, request a hearing to further explore the jurors' request. The trial judge remarked that counsel was reading more into the note than what the jury had actually written and reminded all the attorneys that their clients were entitled to a fair trial but not a perfect one. The trial then continued with closing arguments.

Idalia filed a written motion for reconsideration, again expressing her concern about the ability of the jury to be impartial and asking the trial judge to conduct further inquiry into the jury note. And depending on how the jurors responded,

Idalia sought to poll each juror to assess whether anyone's impartiality had been compromised. The judge denied the motion in a written order, stating the jury had not referred to any specific incidents with the defendants and had simply asked to be allowed to leave the courthouse at the end of the day ahead of the defendants. The judge wrote: "There is no reason to read into this request the concerns of bias and lack of impartiality by the jurors that the two defendants are injecting into it. Nor have jurors voiced any concerns for their safety whatsoever."

On appeal, Idalia states the trial judge abused her discretion by not conducting a deeper inquiry into the jury's concerns expressed in these two notes, resulting in a verdict against her rendered by a partial jury. The government counters that the trial judge responded appropriately to each note. As for the note about the intimidating looks from two attorneys, the government is skeptical that the note could have implied any prejudice to Idalia because, importantly, her attorney wasn't one of the two mentioned. With respect to the note requesting a head start out of the building at the end of each day, the government argues the trial judge responded promptly to find out to which defendants the note referred and that Idalia has not provided any reason to doubt the judge's conclusion that the jury had not been tainted by their encounters with Idalia and Suanette as they left the building.

We agree with the government that there is no indication the trial judge abused her discretion when she denied Idalia's requests for hearings to further inquire about the two notes submitted by the jury.[28] See French I, 904 F.3d at 117. The record shows the trial judge brought the jury's respective concerns to the defendants as soon as was possible, carefully considered the best response, and allowed the defendants and their counsel to assist with the responses. Given the trial judge's wide discretion to decide how to investigate a defendant's concerns about jury bias, we conclude her response to the defendants' concerns was both reasonable and appropriately measured. We espy no error and move on to the next argument about jury bias.

Basketball
(Joel)

Two months into trial, one of the jurors submitted a written note to the trial judge, telling her he recognized a witness who had testified the day before as one of the men with whom he played in the same regular pick-up basketball games. The juror wrote the note to bring his recognition of the witness to the trial judge's attention and to raise a concern that other

[28] The government makes no waiver argument as to either note so we proceed to resolve these juror note issues on the merits.

players in the basketball league may be witnesses because he understood many of the players were involved in law enforcement.

The trial judge brought the juror into the courtroom to explore on the record this juror's connection to the witness. In response to the trial judge's questions, he indicated he'd been playing in this over-35 league for about a year. Twice a week or so he showed up at the court -- located behind the police station in Trujillo Alto -- and played with and against whomever else showed up that night as well. The juror told the trial judge he'd played with this witness five to ten times total but didn't know him personally and had never discussed this case with him or any other police officer. The juror hadn't recognized the witness's name when it was read as a part of a list of witnesses during voir dire because, as he told the judge, he didn't know any of the other players personally and couldn't provide anyone's full name. When the witness in question took the stand the day before, however, the juror recognized him. He didn't alert the court immediately because he didn't know how to do so during open court. Instead, he told the court security officer at the end of the day who suggested the juror write the note that made its way to the trial judge.

The trial judge concluded neither the juror nor the witness engaged in any misconduct and the juror had an adequate explanation about how he brought the issue to the trial judge's

attention. The trial judge denied the defendants' request to excuse the juror because she concluded the proper remedy was to instruct the juror not to play basketball with this group until the trial was over rather than dismiss him from the jury.

The next day, the judge called the juror back for another conversation at the bench. She asked the juror whether he would give more weight or credibility to the police officer's testimony because they had played basketball together. The juror said no because he doesn't know anything about the witness other than what he had seen on the basketball court and had no reason to give more weight to his testimony than to another witness based on the experiences on the basketball court. Following this exchange, the juror departed the courtroom and the trial judge invited further comment from all counsel. The prosecutor declined and counsel for Joel, Carlos, and Juan raised no additional demur.

Now before us, Joel argues the trial judge abused her discretion by refusing to dismiss this juror. Joel says the juror's "failure to inform" the court that he played basketball with police officers "reflected bias in favo[r] of the police with whom he played every week."[29]

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[29] Carlos states in his brief that he joins Joel's argument on this issue, but he does not provide any independent or additional argument. We pause for a moment to remind the defendants -- many of whom joined in various arguments by their codefendants -- that they cannot simply state a blanket intention to join another's argument and leave it at that. Adoption by

The government argues the trial judge did not abuse her discretion when she denied the defendants' request to dismiss the juror because the issue was brought promptly to her attention, she conducted an in-depth inquiry into the connection between the juror and the witness, and appropriately concluded the juror was not biased by his "casual" connection to this witness.

We can agree with Joel on one point: a "juror's interpersonal relationships" are an important factor to consider. But this situation is a far cry from the case Joel cites in support of his argument. In French I, a defense counsel learned after the conviction and sentencing of his client for marijuana production and distribution conspiracy that one of the jurors had lied on her jury questionnaire and during voir dire when she had not disclosed that her son had been convicted a few times of offenses related to his use and distribution of marijuana and cocaine. 904 F.3d at 114-15. The trial judge denied the codefendants' motion for a new

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reference can be a risky move because it is well-known that it "cannot occur in a vacuum and the arguments must actually be transferable from the proponent's to the adopter's case." United States v. Brown, 669 F.3d 10, 16 n.5 (1st Cir. 2012) (citing Casas, 425 F.3d at 30 n.2). A statement of intention to join another's argument without providing any independent argument about the issue whatsoever will often result in waiver. See id.

Juan, for his part, includes this incident as part of a list of reasons why he did not receive a fair trial from an impartial jury but doesn't provide any developed argument around this incident in particular.

Both Carlos and Juan have therefore waived this particular issue. See id.; Chan, 981 F.3d at 50 n.4.

trial and request for an evidentiary hearing, but we reversed and remanded after holding that an investigation into the juror's misconduct had been warranted. Id. at 116, 120. The defendants appealed again when upon remand the judge again denied their motion for a new trial following an evidentiary hearing to determine whether the juror had in fact engaged in misconduct and whether the misconduct, if any, was prejudicial to the defendant. French II, 977 F.3d at 121-22. We affirmed the district court's denial, rejecting the defendants' arguments that the court's investigation had not been thorough or structured enough. Id. at 122. We also stated that "'[t]he touchstone' of our appellate review is 'reasonableness.'" Id. at 122 (quoting United States v. Paniagua-Ramos, 251 F.3d 242, 249 (1st Cir. 2001)).

Here, the juror's misconduct, as the defendants see it, was not disclosing his basketball-playing activities and not recognizing the name of one of the witnesses as one of the players who plays in the informal, pick-up basketball games during voir dire. But after the juror notified the trial judge that he had recognized the witness on the stand, the trial judge immediately questioned the juror, at length, twice. The trial judge was reasonably satisfied that the juror credibly denied having any personal relationship with the witness, and that he had not intentionally misled the court during voir dire. Also reasonable was the trial judge's determination that the juror was not going

to favor the witness's testimony because of the time he had spent with the witness playing basketball. The trial judge's actions and decisions here do not reflect any abuse in her exercise of the wide discretion she had to decide how to investigate a claim of juror misconduct. See French I, 904 F.3d at 117.

Next up: the third and final claim of jury bias.

Knowing some defendants were detained
(Joel & Carlos)

Three times during the trial, the defendants raised concerns to the trial judge that the jurors had either seen them in handcuffs or deduced some of them were detained pending the outcome of the trial based on a newspaper article published during the trial. We describe each incident before getting into the arguments Joel and Carlos make about why the trial judge didn't address each appropriately.

Incident number 1 - whether some jurors saw some defendants handcuffed in the courthouse elevator: one mid-trial day (in September 2015), as the jurors left the courtroom, they may have caught sight of some defendants, in handcuffs, in an elevator on their way to the courthouse cell block. The defendants asked the trial judge to ask the jurors about what they saw and to declare a mistrial if warranted. The judge ultimately did not question the jurors, but she held an evidentiary hearing at which she heard testimony from four of the defendants about this

encounter and she considered video evidence from the courthouse hallways which captured the juror's movements with respect to the defendants' positions in the elevator.

After the hearing, the trial judge determined that if any of the jurors saw the defendants in handcuffs, it was for a brief moment only and, regardless, "none of the jurors exchanged looks with the defendants." She concluded the encounter did not warrant a mistrial because this was not a happenstance in which the jurors had seen the defendants shackled or gagged. She compared the quick glance one juror made in the direction of the elevator (which she observed in the video) to the quick glimpses the jurors had caught in United States v. Ayres, in which we held that a "quick glimpse once or twice of the defendants in handcuffs out of court . . . would hardly dilute their presumption of innocence" because a moment's view of defendants in handcuffs is far different from cases in which the jurors saw a defendant shackled for longer periods of time or were "repeatedly reminded of the defendants' confinement." 725 F.2d 806, 812-13 (1st Cir. 1984).

Incident number 2 - whether some jurors saw defendants handcuffed in the courtroom: near the end of trial (in December 2015), during a lunchtime recess, the courtroom door was ajar for some moments when a trial spectator left the courtroom while some defendants were in handcuffs in the courtroom and the jury was

walking in the hallway past the courtroom door. The defendants requested a mistrial. The trial judge held a hearing, heard the defendants' versions of events, considered courtroom security video footage, then concluded none of the jurors could have seen inside the courtroom for more than "a matter of seconds" and "[n]o reasonable minded person who view[ed] the videos in an impartial manner could conclude" the jurors saw the defendants handcuffed. The defendants also tried to provide the trial judge with photographic and videographic evidence that purported to reenact the scene, but the trial judge refused to consider these reenactments and ultimately denied the motion for mistrial.

Incident number 3 - whether the jurors read a newspaper article from which they might have deduced some of the defendants in their trial were detained: also towards the end of trial, an article published in a local newspaper disclosed that two drug trials had been suspended by the court for a few days after a gastroenteritis virus started spreading through the detention center where many defendants in those trials were being held. Joel and Carlos filed a motion for a hearing to determine whether a mistrial would be required and asked that the trial judge poll the jurors to find out whether they had seen the article and inferred from it that Joel and Carlos were two of the defendants referred to in the article. The judge denied the motion because the article had not named the cases or the defendants involved, rendering Joel

and Carlos's concerns too speculative. She also commented that Joel and Carlos's concern over the potential release of their identities was not completely credible because they had filed a motion two days later on the public docket of their case complaining about the conditions of the detention center in which they were being held. The trial judge also distinguished a juror's knowledge of a defendant's detention from a juror seeing a defendant shackled and handcuffed in a courtroom, which she concluded had not occurred.

The denial of a motion for mistrial is reviewed for abuse of discretion. Gonsalves, 859 F.3d at 107. As we indicated above, "[c]onducting an inquiry into a colorable question of jury taint is a delicate matter, and there is no pat procedure for such an inquiry." United States v. Bradshaw, 281 F.3d 278, 290 (1st Cir. 2002) (citing Evans v. Young, 854 F.2d 1081, 1083-84 (7th Cir. 1988)). "[T]he trial court has wide discretion to fashion an appropriate procedure for assessing whether the jury has been exposed to substantively damaging information, and if so, whether cognizable prejudice is an inevitable and ineradicable concomitant of that exposure." Id.

Joel and Carlos argue to us that the trial judge was wrong not to ask the jurors whether they saw defendants handcuffed and, if so, what and who they saw, as well as whether they had

seen the newspaper article.[30] We note, however, that, in response to both courthouse incidents, the trial judge conducted an evidentiary hearing to investigate whether the jury could have seen or did see the defendants in handcuffs. This, as we earlier noted, is "the gold standard" for an inquiry into an incident that could create or lead to juror bias. French II, 977 F.3d at 122. While the trial judge did not bring jurors in to question them, she did consider testimony from the defendants as well as photographs and/or video footage from courthouse security cameras and provided detailed written summaries about what the defendants told her during the hearing and what she found after reviewing the videos.

The defendants do not claim the trial judge was clearly wrong with any of her factual determinations after the hearings -- the standard of review we would apply to her findings. See Bradshaw, 281 F.3d at 291 ("[W]e accept the trial court's factual findings only to the extent that they are not clearly erroneous." (citation omitted)). Instead, they insist she needed to make a

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[30] Idalia also mentions, in a footnote, the defendants' collective request for a mistrial after members of the jury saw the defendants in handcuffs, which the trial judge denied. Idalia does not make any argument that the denial of the motion for mistrial was in error, so we will not undertake a review of this ruling on her behalf. Juan, for his part, also lumps these events into his list of reasons why he did not receive a fair trial from an impartial jury but once again doesn't provide any developed argument around this incident in particular.

direct inquiry to the jurors to find out what they saw. The government counters that she conducted an appropriate inquiry into these two incidents and her findings are unassailable.

True, the trial judge, in her written orders explaining the denial of the motions for mistrial, did not expressly address the defendants' requests to question the members of the jury. However, her written "statements of reasons" indicate and demonstrate her detailed consideration about whether the jurors could have seen the defendants during the two incidents. In other words, she answered the question of whether the jury had possibly viewed the defendants in cuffs another way. That she did not bring jurors in for questioning was not an abuse of her discretion to determine how to investigate these possible sources of bias. See Bradshaw, 281 F.3d at 290.[31]

Turning our attention briefly to the newspaper article, the trial judge also did not err by choosing not to ask the jurors about whether they had read it. As the government argues, if the jurors read the article, then, at worst, they may have inferred that a defendant in this trial was being detained, but mere awareness that one or more defendants were detained during the

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[31] To be sure, "[c]are should be taken whenever reasonably possible to prevent the jurors from viewing a defendant handcuffed while the defendant is on trial. In the absence of a showing of prejudice, however, a fleeting glance by jurors of a defendant outside the courtroom in handcuffs does not justify a new trial." Ayres, 725 F.2d at 813.

trial is not sufficiently prejudicial to require a mistrial. See Ayres, 725 F.2d at 812-13; see also United States v. Deandrade, 600 F.3d 115, 119 (2d Cir. 2010) ("[A] brief and fleeting comment on the defendant's incarceration during trial, without more, does not impair the presumption of innocence to such an extent that a mistrial is required."). Asking the jurors one-by-one whether they saw it would have only served to tip them off that the article existed.

All in all, there was no hint the trial judge abused her discretion when she investigated and addressed the defendants' various jury bias concerns.

Judicial Bias
(Joel & Carlos)

We now turn our attention to whether the trial judge showed bias against some of the defendants' trial attorneys. Several times throughout the trial, the judge admonished some of the defense counsel's behavior in open court, whether for laughing, talking, or otherwise disrupting or interrupting the proceedings. Several times, counsel brought concerns to the court that she was treating them differently than the government's attorneys to the detriment of the defendants. Joel and Carlos now contend her bias toward their trial attorneys resulted in an unfair trial.

For example, in September 2014, Carlos's trial counsel filed a miscellaneous motion asking the trial judge to note his