concern that her tone and demeanor (including facial expressions and looks reflecting "impatience, annoyance, and ire") with and towards him was markedly different from the way she treated the government's attorneys and could be interpreted by the jury as "animosity" against the defense. The trial judge noted counsel's "subjective perceptions" and concern in a written order entered on the docket stating she had needed to address the defense attorneys' "courtroom manners" outside the presence of the jury and repeating that she had had "no issues" with the defendants' courtroom behavior. When the trial judge read her order into the record, she added:

> And I reaffirm, I have absolutely no partiality toward the Government or the defendants. I have said the defendants have always displayed utmost respect. They have been exemplary in their behavior. Unfortunately, their attorneys do not show the same respect for the [c]ourt that their clients do. When you measure up to them, you won't need this, you won't need this kind of statement from the [c]ourt. It is not the defendants; it is you.

A second example is from January 2015, when Carlos's trial counsel again raised a concern that the trial judge was treating him differently from the government's attorneys and asked her to declare a mistrial because her "rebuking tone, menacing looks and accompanying body language" towards him were not looked on favorably by the jury. In the alternative, Carlos's counsel asked the judge to "refrain[] from engaging defense attorneys in that tone, with that body language, and that sort of look[]." The

trial judge denied the oral motion, commenting that she had been working hard to ensure the trial was fair to the defendants but that some of the defendants' attorney's behavior had been less than exemplary. The trial judge stated she had no bias against any of the defendants and was explaining each of her evidentiary rulings in detail so that all the parties understood the decisions she was making throughout the trial.

A third example occurred in February 2015, when, in the middle of testimony on direct examination from a law enforcement officer, the trial judge said "Mr. Burgos" (Carlos's trial counsel's name) twice to get him to stop whatever he was doing at counsel table at the time. The testifying officer subsequently, and outside of the jury's presence, accused Mr. Burgos of making a disparaging remark -- calling the officer "smartass" while he was testifying. Mr. Burgos admitted to conferring with co-counsel during the witness's testimony but categorically denied making any remarks towards the witness. The trial judge took Mr. Burgos at his word but warned him that she would take further action if any other witnesses made a similar complaint about his courtroom behavior.

The trial transcripts are replete with examples of the trial judge commenting on Mr. Burgos's behavior. Several times throughout witness testimony, hearings held to address issues which arose during trial, and during bench conferences, the trial

judge asked Mr. Burgos (in addition to other attorneys) to stop laughing or otherwise disrupting what she and others were trying to listen to.

Before us, Carlos argues that the trial judge repeatedly mistreated Mr. Burgos in front of the jury, discrediting him several times throughout the trial, which served to deprive his client of a fair trial. Joel, who likewise voices fair trial concerns, acknowledges that, using the cold appellate record, it is hard to show the way in which the trial judge's looks and tone toward Mr. Burgos and some of the other attorneys prejudiced the defendants, but also argues the judge's attitude towards Mr. Burgos was clearly noted by the jury, which created prejudice against the defendants.

"When addressing allegations of judicial bias, we consider 'whether the comments were improper and, if so, whether the complaining party can show serious prejudice.'" United States v. Ayala-Vazquez, 751 F.3d 1, 24 (1st Cir. 2014) (quoting DeCologero, 530 F.3d at 56). "[W]e consider isolated incidents in light of the entire transcript so as to guard against magnification on appeal of instances which were of little importance in their setting." United States v. Espinal-Almeida, 699 F.3d 588, 607 (1st Cir. 2012) (brackets omitted) (quoting United States v. Ofray-Campos, 534 F.3d 1, 33 (1st Cir. 2008)). "Clearly a trial judge should be fair and impartial in her comments during a jury trial

because a fair trial in a fair tribunal is a basic requirement of due process." Id. (citing United States v. de la Cruz-Paulino, 61 F.3d 986, 997 (1st Cir. 1995)). "However, a finding of partiality should be reached only from an abiding impression left from a reading of the entire record." Id. (quoting de la Cruz-Paulino, 61 F.3d at 997). "And even an imperfect trial is not necessarily an unfair trial." Ayala-Vazquez, 751 F.3d at 24 (citing Espinal-Almeida, 699 F.3d at 608).

"As a general rule, a judge's mid-trial remarks critical of counsel are insufficient to sustain a claim of judicial bias or partiality against the client." Logue v. Dore, 103 F.3d 1040, 1046 (1st Cir. 1997) (citing Liteky v. United States, 510 U.S. 540, 555 (1994)). As in Logue, the comments and demeanor the defendants complain of here were interspersed throughout the trial, sometimes at sidebar or when the jury was not in the room and sometimes in the presence of the jury. "Statements that are made by a judge in the jury's presence are, of course, subjected to stricter scrutiny." Id. There were clearly several incidents where the trial judge admonished Mr. Burgos, both in and out of the presence of the jury. The incidents described above illustrate Carlos and Joel's general concerns. The record is clear that there was no love lost between Mr. Burgos and the trial judge. But, as the government points out, the direct reprimands and discussions regarding Mr. Burgos's courtroom behavior were mostly conducted

outside the presence of the jury. We further note that this is not a situation in which the trial judge impermissibly hijacked witness questioning or made inappropriate commentary about any defendant or vouched for a witness's credibility. See United States v. Raymundí-Hernández, 984 F.3d 127, 152-57 (1st Cir. 2020) (reversing convictions because the trial judge's comments during trial and sua sponte cross-examination-like questioning of a key defense witness indicated a pro-prosecution bias and likely affected the outcome of the trial). Lastly, after reviewing the trial transcripts, we note that some of the trial judge's admonitions to Mr. Burgos may well have been justified by his courtroom behavior.

To the extent any of the trial judge's demeanor or commentary may have come close to crossing the line, we observe that her end-of-trial instructions to the jury addressed her reproaches to counsel:

> It is the duty of the [c]ourt to admonish an attorney, members of the jury, who out of zeal for his or her cause, does something which the [c]ourt deems is not in keeping with the rules of evidence or with the rules of procedure. You are to draw no inference against the party represented by an attorney to whom an admonish [sic] of the [c]ourt was addressed during the trial of this case.

The government argues that if the jury perceived any animosity, it was cured by the trial judge's instruction to the jury. We agree. "In assessing the impact of a judge's actions, jury

instructions can be a means of allaying potential prejudice." Logue, 103 F.3d at 1046-47. In our view, this instruction was "sufficient to palliate any untoward effects" from the trial judge's words, tone, or demeanor towards defendants' attorneys throughout the trial. Id. at 1047.

Examining the record as a whole, we conclude that the judge's statements on the record and demeanor in the courtroom did not indicate judicial partiality against the defendants or in favor of the government and "did not compromise the fundamental fairness of the proceedings." Logue, 103 F.3d at 1046; see also United States v. Rodríguez-Rivera, 473 F.3d 21, 28 (1st Cir. 2007).

Prosecutors' tactics
(Joel & Carlos)

Joel (joined by Carlos) asserts the prosecutors engaged in several improper tactics throughout the trial, all of which (in their view) add to the pile of reasons how and why their trial was ultimately unfair. The government treats their arguments as alleging prosecutorial misconduct and while neither defendant specifically frames this issue in those precise terms, we agree that we should address the arguments using our well-established framework for reviewing claims of prosecutor misconduct. "We review preserved claims de novo and unpreserved claims for plain error." United States v. Rosario-Pérez, 957 F.3d 277, 299 (1st Cir. 2020) (citing United States v. Sepúlveda-Hernández, 752 F.3d

22, 31 (1st Cir. 2014)). "Either way, we may first consider whether the government's conduct was, in fact, improper." Id. (citing United States v. Duval, 496 F.3d 64, 78 (1st Cir. 2007)). "If so, we will only reverse if the misconduct 'so poisoned the well that the trial's outcome was likely affected.'" Id. (quoting United States v. Vázquez-Larrauri, 778 F.3d 276, 283 (1st Cir. 2015)). "Four factors guide our analysis: (1) the severity of the prosecutor's misconduct, including whether it was deliberate or accidental; (2) the context in which the misconduct occurred; (3) whether the judge gave curative instructions and the likely effect of such instructions; and (4) the strength of the evidence against the defendant." Id. (quoting Vázquez-Larrauri, 778 F.3d at 283).

We briefly summarize the ways in which Joel and Carlos assert the prosecutors misbehaved throughout the trial. We also provide the government's explanation about why and how each instance did not actually amount to misconduct by the prosecutors in this case. To cut to the chase, our examination of each incident alleged by Joel and Carlos has not uncovered any misconduct on the part of the prosecutors. Here's what's alleged:

- Allowing Sergeant Rivera to testify about the drug distribution activities of two codefendants who were not part of the trial when this witness did not have personal knowledge about these activities and was relying on what others had told him. As the government points out (and the trial transcripts confirm), the basis for this witness's knowledge was revealed while he was on the stand and the prosecutor

admitted she was mistaken by her belief that he'd had personal knowledge about the activities of the two codefendants in question. In addition, the trial judge struck the testimony and instructed the jury that they were to disregard it.

- Speaking with Sergeant Rivera mid-testimony and refusing to turn over the reports from his interviews with the defendants so Joel wouldn't have the benefit of these reports to prepare his cross-examination. The government's misunderstanding regarding the trial judge's order not to meet with witnesses once their testimony had begun has already been examined supra. In response to Joel's accusation that the government withheld Rivera's reports from various interviews with witnesses, the government asserts the record clearly reflects that the reports Joel sought either did not exist because Rivera had not written them, or Joel acknowledged he had ultimately received the report. As the government argues, there is no indication of prosecutorial misconduct here either because the government complied with all the discovery orders.
- Referring to Joel as the operator of the drug trafficking organization with a few different witnesses. The government asserts -- and the trial transcripts show -- either the witness volunteered Joel's role as part of an answer to a question, the witness was testifying to Joel's own description of his role, or the prosecutor's question implying Joel was a leader was posed during the grand jury proceedings and only came out during the trial through proper memory refreshing for the particular witness. The government also shows us where the jury heard unchallenged testimony several times from witnesses that Joel was the leader of the enterprise.
- Asking CW Ferrer during re-direct examination about other defendants who had pled guilty. The government argues there was no misconduct when the government asked CW Ferrer about whether another codefendant had pled guilty because Joel had introduced this series of questions when, during his cross-examination, he started inquiring about how much jail time Ferrer had received upon his own guilty plea and whether other codefendants had also simply been sentenced to time served.

As we previewed above, our review of the record reveals each of these claims "lack[s] arguable merit" because none shows actual

prosecutorial misconduct. See Rosario-Pérez, 957 F.3d at 299. So, we do not explore them any further.[32]

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[32] There are two more "unfair trial" arguments to bring to the reader's attention, each relegated to this footnote because neither is sufficiently developed for our review. First, Carlos says he was unfairly disadvantaged during trial by not having access to daily trial transcripts. He asserts the trial might have been shorter if he and his codefendants had access to daily transcripts because the length of the bench conferences and arguments over specific testimony would have been shorter if they had been able to consult the transcripts of the testimony they were arguing over. During the trial, the judge granted a motion filed by Suanette -- joined by Carlos and other defendants -- for access to the transcripts the government had already ordered. Carlos asserts she gave him and his codefendants a hard time about their request for transcripts but there is no indication in the briefing or the discussion about Suanette's motion that the trial judge denied a request for daily transcripts. And Carlos acknowledges that indigent defendants are not automatically entitled to free daily transcripts. See 18 U.S.C. § 3006A. Instead, Carlos states that, in order to mount an "adequate defense," daily transcripts should be one of the entitlements included within a defendant's constitutional rights. In the absence of a developed record or argument, however, all we can do is acknowledge this was one of the ways in which Carlos says there were cumulative errors in his trial requiring reversal and a combination of errors depriving him of a fair trial.

Second, Juan mentions "inhumane conditions" several times throughout the factual and procedural summary in his brief, mentioning the times he was feeling ill or was sleep deprived or had inadequate food, but he does not tie these claims to any of his arguments about how he was denied a fair trial or how or why these events would be a reason to vacate his convictions or warrant a new trial. Carlos, in his brief, states that he "adopts" Juan's claims about "the documented and debilitating conditions of confinement" but also does not develop any argument on this topic. As the government asserts in response, these claims are therefore waived. See Chan, 981 F.3d at 50 n.4.

Cumulative error
(Joel, Carlos, Juan)

Joel, Carlos, and Juan also argue that the combined effect of the errors they say were made during trial (including the purported evidentiary errors and the ways in which they claim they were denied a fair trial) leads to the inescapable conclusion that they are entitled to a new trial. Joel's list of errors he claims add up to cumulative error include jury bias, judicial bias, improper prosecutorial tactics, evidentiary errors, and the denial of the motion to suppress the gun found in his father's car. Juan says the cumulative effect of the evidentiary errors he raised in addition to the list of ways he asserts (without explaining why) he was denied a fair trial will justify setting aside his convictions. Carlos, for his part, asserts the combination of the trial errors, including those related to jury bias, judicial bias, improper prosecutor tactics, evidentiary errors, and insufficient access to transcripts all deprived him of a fair trial.

When we are presented with a cumulative error argument, "[w]e review the rulings for abuse of discretion before deciding what cumulative effect any errors may have had." United States v. Centeno-González, 989 F.3d 36, 50 (1st Cir. 2021) (quoting United States v. Perez-Montañez, 202 F.3d 434, 439 (1st Cir. 2000)). "In doing so, we 'must consider each such claim against the background of the case as a whole, paying particular weight to factors such

as the nature and number of the errors committed; their interrelationship, if any . . . ; and the strength of the government's case.'" Id. (ellipsis in original) (quoting Sepulveda, 15 F.3d at 1196). Joel, Carlos, and Juan's cumulative error claims fail because we have not found any errors in any of the ways they contend they were denied a fair trial and the one potential evidentiary error (admitting the handwritten notations on the North Sight Communications business records) was harmless. See id. at 50.

And with that, we move on to the evidentiary sufficiency arguments.

SUFFICIENCY OF THE EVIDENCE

Suanette and Juan each argue they were entitled to judgments of acquittal on all the counts with which they were charged. Recall Suanette was convicted of conspiracy to distribute narcotics as a seller and a facilitator as well as of aiding and abetting the distribution of marijuana. Juan was charged with and convicted of two conspiracy counts (to distribute narcotics in the role of a "runner" and to possess firearms in furtherance of drug trafficking) and four aiding-and-abetting-drug-distribution counts (heroin, crack cocaine, powder cocaine, and marijuana). Both defendants moved for judgments of acquittal at the end of the government's presentation of evidence and again at the end of all

the defendants' presentations of evidence. The trial judge denied both motions.

"Because the defendants made the same arguments before the district court (therefore preserving this legal issue for our review), our task is to consider afresh their arguments about why they say they are entitled to judgments of acquittal." United States v. Chan, 981 F.3d 39, 51 (1st Cir. 2020). "That is, we give no deference to the district court's assessment of the same arguments when it evaluated the defendants' motions for judgments of acquittal." Id. "To complete our review, we 'consider all the evidence, direct and circumstantial, in the light most favorable to the prosecution, draw all reasonable inferences consistent with the verdict, and avoid credibility judgments, to determine whether a rational jury could have found the defendants guilty beyond a reasonable doubt.'" Id. at 55 (cleaned up) (quoting United States v. Negrón-Sostre, 790 F.3d 295, 307 (1st Cir. 2015)). If we agree with the defendants that the trial judge erred when she denied their motions for judgments of acquittal, then we must order acquittal. Montijo-Maysonet, 974 F.3d at 41 ("[T]he Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient." (quoting Burks v. United States, 437 U.S. 1, 18 (1978))).[33]

[33] We would usually tackle the sufficiency-of-the-evidence arguments at the front end of our opinion because successful

Suanette's and Juan's primary involvement in the drug trafficking organization were in two separate locations and the evidence of their respective roles came from different witnesses. So we'll address their challenges to the sufficiency of the evidence to support their convictions separately.

Suanette's convictions

The testimony about Suanette's involvement in the drug trafficking organization came from two of the CWs we've encountered already: Lopez and Vega.[34] They each testified about their personal observations of Suanette providing sellers within the organization with baggies of marijuana as well as working side-by-side with her husband and codefendant Carlitos. CW Lopez testified that he was a drug addict who bought and sold marijuana and cocaine at the Villa Margarita "curve" on Amapola Street. In 2005 or 2006, CW Lopez watched the drug distribution hierarchy and process while he built a fence for Carlos (the defendant on appeal before us). Lopez

> could see the sellers when [Carlos] would give them their shifts, when he would give them material to sell. . . .

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sufficiency challenges have double jeopardy implications, see Montijo-Maysonet, 974 F.3d at 41, but we cover these claims of error here in chronological order to the phase in which the trial judge ruled on these motions because only two of the five defendants raised these arguments before us and because we affirm the trial judge's denial of the motions for judgments of acquittal.

[34] A quick reminder that we are now reciting "our summary of the facts in the light most favorable to the jury's verdict." Chan, 981 F.3d at 45 (citing Charriez-Rolón, 923 F.3d at 47).

> [W]hen they finished working, they could come to the area in front of his house to do the tally, they would go to the carport in Joel's house, and there they would tally up. And anything regarding the drug point, well, [Carlos] was the man.

After CW Lopez finished building the fence, he became a lookout for the curve drug point, a "runner" (according to Lopez, that's someone who picked up money from clients, bought the drugs, then delivered the drugs back to the clients),[35] a direct seller, and a buyer. CW Lopez described the recharge process: when a seller ran low on product (whether heroin, cocaine, or marijuana), the seller would ask for a "recharge" through a handheld radio. Carlitos resupplied marijuana. CW Lopez testified he bought marijuana from Suanette at the drug point in Villa Margarita on Amapola Street from 2007 to 2008. According to CW Lopez, he did not observe Suanette resupply marijuana to the drug point, but "[she] always accompanied Carlitos when he was selling and she collected the money. If you went to buy, she would be the one collecting the money."

CW Vega testified he worked as a seller for the drug organization and sold marijuana from the abandoned house at the "curve." CW Vega often saw Carlitos in a truck and sometimes saw Suanette drive the same truck, especially when CW Vega had radioed Carlitos about needing to be resupplied because she often delivered

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[35] Other folks add additional responsibilities to this "runner" job description, as we'll touch on later.

the next batch of marijuana in that truck after Joel had called CW Vega to tell him the new inventory was on its way. CW Vega said Suanette delivered around 80 baggies of marijuana around 7:30 a.m. four times a week in 2007 and the beginning of 2008. CW Vega also testified he did not see Suanette sell marijuana to customers at the drug point, but he paid her for the resupply by handing money to the lookout on duty who gave the money to Suanette.

The trial judge denied Suanette's first motion for judgment of acquittal in a written order, explaining that Suanette's assistance to her husband Carlitos at the drug point, her interaction as seller to CW Lopez, and her role as resupplier for Vega was enough to show she was "part of the organized structure and coordination of the drug point and that she worked with and assisted these other defendants in the possession with intent to distribute all types of drugs sold." After the jury rendered its verdict on January 5, 2016, Suanette filed a written Rule 29 motion for a judgment of acquittal which the trial judge denied without explanation.

On appeal, Suanette argues the government failed to prove she either conspired to distribute narcotics or aided and abetted the marijuana distribution.

Conspiracy to distribute narcotics

"To convict someone of [drug-conspiracy], the government must prove beyond a reasonable doubt that he knew about and

voluntarily participated in the conspiracy, 'intending to commit the underlying substantive offense.'" United States v. Acosta-Colón, 741 F.3d 179, 190 (1st Cir. 2013) (quoting United States v. Ortiz de Jesús, 230 F.3d 1, 5 (1st Cir. 2000)). "[P]roof may come from direct evidence or circumstantial evidence, like inferences drawn 'from members' words and actions and from the interdependence of activities and persons involved.'" Id. (quoting Ortiz de Jesús, 230 F.3d at 5).

Suanette contends there was insufficient evidence to convict her of conspiracy because living with Carlitos did not mean she had joined the conspiracy, she was indifferent to the success of the drug selling enterprise, she had no interdependence with any members of the conspiracy, she didn't know what the others were doing, and there was no evidence she associated with anyone else in the conspiracy. The government responds there was sufficient evidence to convict Suanette of conspiring to traffic marijuana from Lopez's and Vega's testimony. The government says their testimony shows she was directly involved in dealing drugs and helping Carlitos and Vega with their drug sales. In our view, the government has the better argument. Two witnesses testified Suanette either resupplied or directly sold marijuana to them at one of the organization's drug hubs, that sometimes she was on her own, and sometimes she was with Carlitos, who had also been charged with the conspiracy to traffic drugs.

Suanette also makes a broad argument that the testimony from one CW contradicted the other because one testified she resupplied him with baggies of marijuana to sell and the other CW testified she did not resupply him, but she did sell directly to him either on her own or when she was with Carlitos. Suanette's argument doesn't help convince us there was insufficient evidence. When we view the testimony in the light most favorable to the prosecution (as we must, see Chan, 981 F.3d at 51), a rational jury could have easily concluded each CW simply had different interactions and experiences with her. CW Lopez and CW Vega observed her actions from their respective roles and positions within the organization. Each of their testimonies, on their own, could have been sufficient to convict her because they both observed her engage in the sale of marijuana: she delivered the inventory of marijuana for CW Vega to sell a few times a week, and she sold marijuana to CW Lopez by collecting the money while her husband handed the drugs to him.

Suanette also protests that "[m]ere association with a conspirator is not enough to prove beyond a reasonable doubt that [she] is also a co-conspirator." True, but CW Lopez's and CW Vega's testimony goes beyond mere association. Each of these witnesses testified that she either handed marijuana to them or a coconspirator standing nearby or took money from them while her husband handed the marijuana over to them. Their testimony

demonstrates she purposefully and willingly interacted with them. There is, therefore, sufficient evidence to sustain her conviction for the drug distribution conspiracy. See Acosta-Colón, 741 F.3d at 190-91.

Aiding and abetting distribution of marijuana

Suanette states in her brief that there was insufficient evidence to convict her of aiding and abetting the distribution of marijuana but her entire argument seems to focus on her insistence that there was insufficient evidence to sustain her conviction for the conspiracy count. Giving her the benefit of the doubt, we briefly state that there certainly was sufficient evidence to find her guilty beyond a reasonable doubt of the aiding and abetting charge. The government argues the same evidence that convicted her of the conspiracy count is sufficient to prove beyond a reasonable doubt that she aided and abetted the distribution of marijuana. We agree.

To convict Suanette of aiding and abetting in the distribution of marijuana, the government needed to prove she "'associated h[er]self with the venture,' 'participated in [the venture] as something that [s]he wished to bring about,' and that [s]he 'sought by [her] actions to make the venture succeed.'" United States v. Monteiro, 871 F.3d 99, 109 (1st Cir. 2017) (quoting Negrón-Sostre, 790 F.3d at 311). The testimony from CW Lopez and CW Vega clearly shows she was more than merely present

for the interactions they had with her; she actively engaged in the distribution of marijuana when she resupplied CW Vega four times a week at the same time on each of those days and participated in the sale of marijuana to CW Lopez when she took the money he tendered when he bought from her and Carlitos. Cf. Negrón-Sostre, 790 F.3d at 311-12 (mere presence is insufficient to prove aiding and abetting possession with intent to distribute). We affirm her conviction for aiding and abetting the distribution of marijuana and move on to Juan's arguments about the lack of evidence supporting his convictions.

Juan's convictions

The testimony about Juan's actions included CWs and law enforcement agents. CW Ferrer testified about his experiences at Los Claveles, a tower of apartments where he often spent time with his cousin, Julio Alexis, and watched his cousin buy marijuana from the lobby. CW Ferrer also bought marijuana for others who were scared to go into this apartment building. Over time, CW Ferrer often helped during his cousin's shifts by giving customers the marijuana they bought while his cousin took the money. CW Ferrer testified he met Juan for the first time in January 2008, when he went to Juan's apartment with his cousin, who had just finished a shift and needed to do his "tally." (A tally, CW Ferrer explained, is when the seller returns the drug inventory he or she did not sell during a shift back to the runner along with the money

collected from sales throughout the shift.) CW Ferrer watched his cousin record the number of baggies of marijuana and cocaine, vials of crack, and aluminum folds of heroin.

CW Ferrer also testified that he went to Villa Margarita in the summer of 2008 with his cousin when Juan asked the cousin to take the tally there. When CW Ferrer and his cousin arrived at Villa Margarita, Joel called Juan using the walkie-talkie function on a cell phone to find out why Juan had not brought the tally over himself. CW Ferrer testified the tally his cousin handed to Joel included money, marijuana, cocaine, crack vials, and aluminum packets of heroin. CW Ferrer went back to Villa Margarita another time with his cousin, again on Juan's request.

CW Vega also testified about Juan's actions. When Vega was working for the enterprise as a lookout at Villa Margarita in May 2008, he saw Juan several times. On one occasion, other members of the enterprise handed Juan packages of heroin, marijuana, and crack cocaine, which Juan placed in the seat of the motorcycle he had arrived on before riding off in the direction of Los Claveles. CW Vega also saw Juan at Los Claveles when Vega was there to buy drugs. CW Vega testified he watched Juan get off an elevator and ask the man from whom CW Vega was buying to give him (Juan) the tally; the seller gave Juan money and Juan gave the seller a package with vials of crack.

Members of law enforcement also testified about Juan's actions. When Agent Evette Berrios Torres went to Villa Margarita in July 2008 as part of her investigation of drug trafficking and organized crime in that area, she observed Juan command the men he was with to cooperate with her and the other agents at the scene, leading by example when he walked up to her vehicle and placed his hands on the hood and ordering the others to do the same. According to Agent Berrios, they complied.

On appeal, Juan argues there was insufficient evidence to prove his guilt beyond a reasonable doubt and he identifies a lot of evidence against him as unreliable or not credible. He claims that the "main evidence" against him was CW Ferrer's testimony, which Juan brands as "[u]nreliable, uncorroborated, vague and scant." He also claims that CW Vega's testimony was vague and not credible. The government, for its part, argues that Juan's arguments boil down to his contention that the testimony of the CWs should not have been believed. We won't spend a boat load of time here examining Juan's claims because a defendant cannot win a sufficiency-of-the-evidence challenge by claiming (as Juan does) the witnesses against him were not credible. Our framework for reviewing this kind of challenge means we give the government the benefit of the doubt and resolve any questions of witness credibility against the defendant. United States v. Cruz-Ramos,

987 F.3d 27, 38 (1st Cir. 2021); United States v. Manor, 633 F.3d 11, 13 (1st Cir. 2011).

The government says there was sufficient evidence to convict Juan of conspiracy because it showed he was running the Los Claveles drug point for the drug trafficking organization. The government also argues that there was sufficient evidence to convict Juan of aiding and abetting drug trafficking because there was much eyewitness testimony that he managed the sale of several types of drugs from the Los Claveles drug point along with Joel and other members of the organization.

To the extent Juan is arguing that CW Ferrer's testimony was insufficient because it was uncorroborated, we can also head this off immediately because it is well-settled that "[t]estimony from even just one witness can support a conviction." Negrón-Sostre, 790 F.3d at 307 (quoting United States v. Alejandro-Montañez, 778 F.3d 352, 357 (1st Cir. 2015)). There was sufficient evidence on CW Ferrer's testimony alone to uphold Juan's conspiracy and aiding-and-abetting-the-distribution convictions. But more than one witness testified about Juan's involvement with the drug trafficking organization; CW Vega also testified about two specific instances of watching Juan receive packages of drugs or money in direct exchange for a package of drugs and Agent Berrios watched several men fall into line when Juan clearly had authority

to tell them what to do when she and her agents met them at Villa Margarita.

The testimony also demonstrates there was sufficient evidence to convict Juan of the conspiracy count because Juan clearly "knew about and voluntarily participated in the conspiracy, 'intending to commit the underlying substantive offense.'" Acosta-Colón, 741 F.3d at 190 (quoting Ortiz de Jesús, 230 F.3d at 5). The testimony summarized above also demonstrates there was sufficient evidence to convict Juan of the four aiding and abetting counts because Juan clearly "'associated himself with the venture,' 'participated in [the venture] as something that he wished to bring about,' and 'sought by his actions to make the venture succeed.'" Monteiro, 871 F.3d at 109 (brackets in original) (quoting Negrón-Sostre, 790 F.3d at 311).[36]

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[36] Juan does not address his count of conviction for conspiracy to possess a firearm in furtherance of a drug trafficking crime, so he has waived any argument about the sufficiency of the evidence for that crime. See, e.g., Cruz-Ramos, 987 F.3d at 35 n.5 (citing Rodríguez, 659 F.3d at 175).

Juan also provides a laundry list of other evidence from trial and asserts, without any supporting case law whatsoever, why these pieces of evidence cannot support his conviction. We decline to address these assertions because he did not provide any developed argument about them. See Chan, 981 F.3d at 50 n.4 (citing Rodríguez, 659 F.3d at 175 ("It should go without saying that we deem waived claims not made or claims adverted to in a cursory fashion, unaccompanied by developed argument."); Holloway v. United States, 845 F.3d 487, 491 n.4 (1st Cir. 2017) (stating an argument was waived when party failed to provide any legal citations to support its argument)).

Finally, Juan writes a few lines suggesting his drug-related convictions should be dismissed because the indictment specified

Juan's convictions affirmed, we move on to the sentencing issues.

SENTENCING

Joel, Carlos, Juan, and Idalia all challenge the methods the trial judge used to calculate the drug quantities attributable to each of them when she determined their individual guidelines sentencing ranges ("GSRs") before imposing their individual sentences. Before tackling their respective arguments, we provide some basic sentencing principles which govern the way we consider their arguments.

Our overall task when we examine a sentence or, as here, the sentencing process, is to consider whether the sentence is reasonable. Typically, our reasonableness review "is bifurcated, requiring us to ensure that the sentence is both procedurally and substantively reasonable." United States v. Arsenault, 833 F.3d 24, 28 (1st Cir. 2016) (citing United States v. Mendez, 802 F.3d 93, 97 (1st Cir. 2015)). "We ordinarily review both procedural and substantive reasonableness [arguments] under a deferential

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the location of his activities as within 1,000 feet of a public housing authority but Los Claveles is private property outside the purview of 18 U.S.C. § 860(a). The indictment actually charges him and the others with distribution "within 1000 feet of a playground in Los Claveles Housing Project and in around the Villa Margarita Ward . . . ," not a housing facility. Regardless, any argument or claim he intended to make on this basis is waived because it is perfunctory and undeveloped. See id.

abuse-of-discretion standard." Id. (citing United States v. Maisonet-González, 785 F.3d 757, 762 (1st Cir. 2015), cert. denied sub nom. Maisonet v. United States, 136 S. Ct. 263 (2015)).

"However, when assessing procedural reasonableness, this [c]ourt engages in a multifaceted abuse-of-discretion standard whereby 'we afford de novo review to the sentencing court's interpretation and application of the sentencing guidelines, [examine] the court's factfinding for clear error, and evaluate its judgment calls for abuse of discretion.'" Id. (quoting United States v. Ruiz-Huertas, 792 F.3d 223, 226 (1st. Cir. 2015)). "And we will find an abuse of discretion only when left with a definite conviction that 'no reasonable person could agree with the judge's decision.'" McCullock, 991 F.3d at 317 (quoting Cruz-Ramos, 987 F.3d at 41). One of the ways in which a district court can commit a procedural error in sentencing is to improperly calculate the GSR. United States v. Lee, 892 F.3d 488, 491 (1st Cir. 2018).

Drug Quantity
(Joel & Carlos)

Joel and Carlos[37] both challenge the trial judge's findings of the drug quantities she used to calculate their GSR

[37] Joel was sentenced to 360 months on each of the following four counts: conspiracy to distribute narcotics, aiding and abetting the distribution of heroin, aiding and abetting the distribution of crack cocaine, and aiding and abetting the distribution of powder cocaine; 120 months on the count for aiding and abetting the distribution of marijuana; and 240 months on the count for conspiracy to possess a firearm in furtherance of a drug

and determine their respective sentences. Before delving into the arguments, we lay the groundwork for our review by summarizing Joel's and Carlos's objections and motions leading up to their sentencing hearings.

The presentencing report ("PSR") suggested a finding of 25,446.49 kg of marijuana for the three-year conspiracy (after converting the suggested quantities of the other drugs at play as instructed in U.S.S.G. § 2D1.1, App. Note 8(D)). Before his sentencing hearing, Carlos filed an objection to the drug quantity included in the PSR, arguing this quantity was based on unreliable testimony from CW Vega. According to Carlos, CW Vega testified to different drug amounts during cross-examination than he did during his direct testimony. Carlos also argued that CW Vega's testimony regarding drug quantities only covered a portion of the three-year conspiracy and that Vega couldn't provide accurate quantities because his role shifted throughout the conspiracy from lookout to seller, meaning his testimony about quantities couldn't be extrapolated to calculate the total quantity for the entire three-

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trafficking crime, all to be served concurrently. Carlos, who was also convicted of all six counts charged, was sentenced to 324 months on each of the following counts: conspiracy to distribute narcotics, and aiding and abetting the distribution of heroin, crack cocaine, and powder cocaine, respectively; 120 months on the count for aiding and abetting the distribution of marijuana, and 240 months on the count for conspiracy to possess a firearm in furtherance of a drug trafficking crime, all to be served concurrently.

year timespan of the charged conspiracy. Joel, for his part, also filed an objection to his own amended PSR, expressly adopting Carlos's arguments regarding extrapolation from CW Vega's testimony.

The trial judge overruled both objections, finding CW Vega's testimony reliable on the whole despite the occasional discrepancies in precise amounts. Addressing Carlos's and Joel's objections to using this testimony to extrapolate the total quantity for the length of the conspiracy, the judge stated the probation office used drug quantities from all four CWs and plausibly extrapolated from the testimonies to provide a conservative total quantity for sentencing purposes.

At the subsequent sentencing hearings, the judge attributed 25,446.49 kg of marijuana to Joel and to Carlos.[38] For Carlos, the judge calculated a total offense level of 41 with a criminal history category ("CHC") of I for a GSR of 324 to 405 months and ultimately sentenced him to 324 months. For Joel, the judge calculated a total offense level of 42 with a CHC of II for

[38] This quantity was the total quantity estimated in each PSR as attributable to the three-year conspiracy after the various controlled substances were converted to equivalent marijuana quantities as instructed in U.S.S.G. § 2D1.1(c), App. note 8(D), for purposes of determining the base offense level.

a GSR of 360 months to life and ultimately sentenced him to 360 months.[39]

On appeal, Joel and Carlos continue to press their argument that the only evidence of the drug quantities sold was testimony from CW Vega who, they say, did not provide reliable testimony because, throughout his testimony, he was inconsistent about how much he typically sold each shift he worked. Both also insist that the other CWs did not provide daily sales figures. Both appellants rely on United States v. Rivera-Maldonado, where we warned that "[t]he potential for grave error where one conclusory estimate serves as the multiplier for another . . . may undermine the reasonable reliability essential to a fair sentencing system." 194 F.3d 224, 233 (1st Cir. 1999) (remanding for resentencing because the drug quantity used to determine the base offense level was based on a pyramid of unreliable inferences). Carlos specifically argues that the trial judge's calculation of the drug quantity by multiplying small amounts seized across dozens of days of investigations in order to reach a daily sales figure is the kind of grave error we warned about in Rivera-Maldonado.

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[39] Joel's counsel renewed the objection to the drug quantity during the sentencing hearing. Carlos's counsel did not lodge any additional objections during the sentencing hearing.

The government responds that the judge used a reasoned estimate of the drug quantity attributable to Joel and Carlos when she adopted the PSR's calculations because the probation office's calculation, while largely informed by CW Vega's testimony, was corroborated by other CWs' testimony regarding sales volumes. The government points out that, even if CW Vega's testimony had been entirely consistent between direct and cross-examination, the probation office's calculations of drug quantity were below the lowest quantity to which he testified. The government also emphasizes that the quantities calculated in the PSRs were conservative in other ways too, such as using only the estimated quantities of drugs sold at Villa Margarita and not adding quantities from sales at Los Claveles, considering the two-shift selling operation at Villa Margarita (as opposed to a single shift) as starting later in time than the testimony supported, halving the quantities sold during the day vs. night shifts, and using only sales figures for "slow" days (rather than the higher quantities supported by the testimonies for "busy" days).

"When making a drug quantity finding, the sentencing court's responsibility is to 'make reasonable estimates of drug quantities, provided they are supported by a preponderance of the evidence.'" Lee, 892 F.3d at 491 (quoting United States v. Mills, 710 F.3d 5, 15 (1st Cir. 2013)). "We review those estimates 'deferentially, reversing only for clear error.'" Id. (quoting

Mills, 710 F.3d at 15). "We will only find clear error when our review of the whole record 'forms a strong, unyielding belief that a mistake has been made.'" Id. at 491-92 (alteration adopted) (quoting Cumpiano v. Banco Santander P.R., 902 F.2d 148, 152 (1st Cir. 1990)).

A defendant who is convicted of conspiracy to distribute controlled substances will be held responsible "not only for the drugs he actually handled but also for the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy." United States v. Correa-Alicea, 585 F.3d 484, 489 (1st Cir. 2009) (quoting United States v. Santos, 357 F.3d 136, 140 (1st Cir. 2004)). Although the court "may rely on reasonable estimates and averages" to reach "its drug-quantity determinations", those estimates must possess "adequate indicia of reliability" and "demonstrate record support," Rivera-Maldonado, 194 F.3d at 228 (internal citations omitted); a "hunch or intuition" won't cut it, Correa-Alicea, 585 F.3d at 489 (quoting Marrero-Ortiz, 160 F.3d at 780). When we review the district court's factual finding as to drug quantity for clear error, we are looking for "whether the government presented sufficient reliable information to permit the court reasonably to conclude that [the appellants were] responsible for a quantity of drugs at least equal to the quantity threshold for the assigned base offense level." Correa-Alicea, 585 F.3d at 489 (quoting United States v.

Barnett, 989 F.2d 546, 553 (1st Cir. 1993)). We have previously recognized that "an estimate of drug quantity may be unreliable if based on an extrapolation from too small a sample." Id. (citing Rivera-Maldonado, 194 F.3d at 231 (holding a dozen controlled buys over a six-month period was not sufficiently reliable for estimating the overall drug quantity)).

The drug quantity the trial judge used to determine the applicable base offense level for Joel and Carlos was based on much more than a small sample of drugs seized by the government. The CWs testified at length about the operational details of their drug trafficking organization, including where the drugs were sold and how the sellers were organized first in one day shift but eventually evolved into a 24-hour operation with a day shift and a night shift. CW Vega testified in detail about how much he sold on each day of the week, depending on the time of day. While he did not testify to the same exact quantities when cross-examined, he provided the same general quantity range and, as the government points out, the PSR explicitly explains how it included conservative estimates for the length of time the sales were made 24 hours/day as opposed to 12 hours/day and the quantity of each drug sold per day.

The extrapolation of the drug quantities attributable to the entire length of the conspiracy was clearly based on information from CW Vega and informed by the testimony from other

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CWs as well as testimony from the government's experts, and we have no concerns that there are any grave errors in the calculation of the total quantity attributed to the conspirators. See Rivera-Maldonado, 194 F.3d at 233. In our opinion, the judge's drug quantity finding was based on sufficiently reliable information and we have no reason to believe a mistake or clear error was made in the calculation of the total drug quantity. See Correa-Alicea, 585 F.3d at 489.

Juan

Juan raises different arguments than Joel and Carlos in his challenge to his 235-month sentence.[40] Prior to the sentencing hearing, Juan asserted he should only be held responsible for the drug sales at Los Claveles and not the sales at Villa Margarita because, according to him, there was no evidence linking him to Villa Margarita. He also asserted that there was no way for the court to determine the drug quantity for purposes of calculating his sentence because there was no testimony at trial about the quantity of the drugs sold at Los Claveles. During his sentencing hearing, Juan relied on the written memorandum he'd already filed.

[40] Juan was sentenced to 235 months on his convictions for conspiracy to distribute narcotics, conspiracy to possess a firearm in furtherance of a drug trafficking crime, and aiding and abetting the distribution of powder cocaine, crack cocaine, and heroin. Juan was also sentenced to 120 months on his conviction for aiding and abetting the distribution of marijuana, to be served concurrently with the sentence for the other counts of conviction.

The government argued the evidence at trial revealed Juan was a high-level runner for the organization who was clearly instructing other members of the conspiracy about where to go and what to sell, and that the Los Claveles and Villa Margarita drug points were part of the same operation with the same main operators, including Juan. On appeal, Juan contends his sentence was unreasonable for the same reasons he articulated in his sentencing memorandum.

As we previously stated, we review preserved sentencing arguments for abuse of discretion, reviewing the findings of fact for clear error and any conclusion regarding the governing sentencing laws de novo. Arsenault, 833 F.3d at 28. Juan argues that his sentence is procedurally unreasonable because the judge used the drug quantity evidence from sales at the "curve" to calculate his sentence. Juan says this evidence doesn't reflect his personal involvement in the conspiracy because he had allegedly worked as a runner at Los Claveles, not at the "curve," so the quantities for drug sales at the "curve" were not attributable to him in the absence of evidence connecting him to drug trafficking at the "curve."

Juan's right that "when a district court determines drug quantity for the purpose of sentencing a defendant convicted of participating in a drug trafficking conspiracy, the court is required to make an individualized finding as to drug amounts attributable to, or foreseeable by, that defendant." United States

v. Colon-Solis, 354 F.3d 101, 103 (1st Cir. 2004). But this is not the same thing as requiring that "the defendant must have personally handled the drugs for which he is held responsible," which we don't. Id. at 103 n.2 (citing U.S.S.G. § 1B1.3). "A defendant may be held responsible for drugs involved in his 'relevant conduct' [and] 'such conduct may include a defendant's own acts or the acts of others.'" Id. (first quoting U.S.S.G. § 1B1.3, then quoting United States v. Laboy, 351 F.3d 578, 578 (1st Cir. 2003)).

As the government points out, in a drug conspiracy, the quantities of drugs sold by others operating within the enterprise are attributable to a defendant as long as the sales were a reasonably foreseeable consequence of the enterprise. United States v. Ramírez-Negrón, 751 F.3d 42, 53 (1st Cir. 2014) ("A defendant may be held responsible only for drug quantities 'foreseeable to [that] individual.'" (quoting United States v. Correy, 570 F.3d 373, 380 (1st Cir. 2009))). "Foreseeability encompasses 'not only . . . the drugs the defendant actually handled but also . . . the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy.'" Id. (brackets omitted) (quoting Santos, 357 F.3d at 140).

Both the Villa Margarita and Los Claveles drug points were part of the single conspiracy for which Juan was charged and

convicted; as summarized supra when we reviewed Juan's challenge to the sufficiency of the evidence to support his convictions, there was testimony to support Juan's movements and actions at and between both locations. It was therefore reasonably foreseeable that, while Juan primarily worked at Los Claveles, the sales at Villa Margarita would be both attributable and attributed to him. The trial judge did not abuse her discretion by using the drug quantities calculated from the sales at Villa Margarita when she calculated and imposed Juan's sentence.[41]

Idalia

Idalia challenges the trial judge's attribution of her husband's crack sales to her. The evidence at trial showed Idalia directly sold vials of crack from her home, and at times completed the sales transactions when a customer was looking for her husband, Carlos. Idalia was sentenced to sixty months for her one count of conviction for aiding and abetting the possession with intent to distribute fifty grams or more of crack within 1,000 feet of a protected facility.

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[41] Juan also states that his sentence was substantively unreasonable because some of the similarly situated codefendants (including other alleged drug runners) received more lenient sentences. Other than listing some of these codefendants' names, alleged role in the conspiracy, and ultimate sentence, Juan doesn't develop this argument. It is therefore waived. See Chan, 981 F.3d at 50 n.4.

Prior to her sentencing hearing, Idalia successfully challenged the PSR's recommendation that the court calculate her GSR using the amount of crack attributable to the entire conspiracy. The trial judge sustained her objection to the extent Idalia had not been convicted of the conspiracy charge but found the estimated amount of crack sold to CW Vega by Carlos was properly attributable to Idalia because her one count of conviction included aiding and abetting the distribution of crack cocaine. At the sentencing hearing, Idalia pressed her objection to the inclusion of the crack sold by Carlos in the court's finding of the amount of crack for which she was held responsible for sentencing purposes. She argued there was no indication CW Vega had bought crack from both her and Carlos at the same time -- always from either one or the other when the other was not present. In response, the trial judge noted CW Vega's testimony that he first bought from Idalia after she emerged from the house she shared with Carlos in response to Vega calling for Carlos and that he always bought from Carlos and Idalia from the yard of their house. The judge relied on U.S.S.G. § 1B1.3, which provides the relevant conduct for the determination of the GSR. See Sections 1B1.1, 1B1.2(b). Idalia was on the hook for:

> (1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and
> (B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or

> enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all acts and omissions of others that were--
> (i) within the scope of the jointly undertaken criminal activity,
> (ii) in furtherance of that criminal activity, and
> (iii) reasonably foreseeable in connection with that criminal activity;
> that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense[.]

Section 1B1.3.

On appeal, Idalia continues her battle against the calculation of her GSR including the sales by Carlos to CW Vega during the time in which she also sold crack to Vega. She argues that her sentence is unreasonable as a result of this attribution, especially because the trial judge rounded up to two months of Carlos's sales to her when CW Vega's testimony indicated she might have only sold to him during a one-month period. The round up, according to Idalia, constitutes clear error on the part of the judge. The government responds that CW Vega's testimony reflected a two-month purchasing timeframe and argues that, as a matter of law, Carlos's sales to Vega during these two months were properly included in the total quantity attributed to Idalia for the purpose of calculating her GSR.

As we have previously stated, "[t]he district court's finding as to the amount of drugs reasonably foreseeable to [a defendant] need only be supported by a preponderance of the

evidence and need not be exact so long as the approximation represents a reasoned estimate." United States v. Ortiz-Torres, 449 F.3d 61, 79 (1st Cir. 2006) (citing Santos, 357 F.3d at 141). In addition, "[w]e will set aside a drug-quantity calculation only if clearly erroneous; if there are two reasonable views of the record, the district court's choice between the two cannot be considered clearly erroneous." Id. (citing Santos, 357 F.3d at 141).

Idalia, quoting United States v. Ortiz, 966 F.2d 707, 712 (1st Cir. 1992), points out that "the line that separates mere presence from culpable presence is a thin one, often difficult to plot." Indeed, we have also stated that "mere association between the principal and those accused of aiding and abetting is not sufficient to establish guilt; nor is mere presence at the scene and knowledge that a crime was to be committed sufficient to establish aiding and abetting." Id. (alteration adopted) (quoting United States v. Francomano, 554 F.2d 483, 486 (1st Cir. 1977)). However, these statements of black letter law related to the substantive charge of aiding and abetting won't help her here. There is no doubt she was on the hook for the crack sold by her partner at the same location and to the same person when it came to determining a reasonable sentence to impose for her aiding and abetting conviction. See U.S.S.G. § 1B1.3. The sentencing guidelines are clear, so the trial judge was not wrong to include

Carlos's crack sales to CW Vega during the time period the latter identified as also buying crack from Idalia when the trial judge calculated the total drug quantity attributable to Idalia.

Turning our attention to Idalia's argument that the trial judge clearly erred by using a two-month period to estimate the total quantity of crack attributable to Idalia for sentencing purposes, the government points out that Idalia did not specifically challenge the one- vs. two-month period during the sentencing proceedings. Because her challenge to the manner in which the trial judge calculated the total drug quantity attributable to her is well-preserved, we'll give her the benefit of the doubt about the preservation of this argument here for our review.

CW Vega first testified he bought crack from Idalia and Carlos for "a short while" starting in June 2006. When pressed by the prosecutor to be more specific about the time, he said "I would go to the drug point daily, so I would say about a month, two months" for a total of fifteen times after the first time he bought vials of crack from Idalia on the front porch. CW Vega also testified that he bought orange-capped vials of crack cocaine from Carlos -- in the yard of Carlos's house -- during "the same time of the two months" as when he bought from Idalia -- from the porch of the same house. The trial judge's decision to use the two-month period for calculating the GSR was not wrong, never mind

clearly wrong, because this time period and subsequent estimated quantity was supported by a preponderance of the evidence. See Ortiz-Torres, 449 F.3d at 79. Idalia's challenge to the procedural reasonableness of her sentence therefore fails.

Crack:Powder
(Carlos)

In addition to his drug quantity argument, Carlos also challenges the district court's denial of his request that it use a 1:1 ratio for crack cocaine:powder cocaine instead of the 18:1 ratio provided in the drug equivalency table in the 2016 U.S. Sentencing Guidelines, § 2D1.1, App. Note 8(D).[42] The trial judge denied Carlos's motion because she was not convinced the ratio should be reduced at all in light of the § 3553 factors and "objectives of sentencing policy." Before us, Carlos argues the judge should have used her discretion to apply a 1:1 ratio because the use of the smaller ratio would have had a big impact on his GSR and, according to him, there is increasing support for courts to vary from the 18:1 ratio in the guidelines. Carlos also says the trial judge did not give an adequate explanation for her

[42] Pursuant to the drug equivalency table in the 2016 U.S.S.G. § 2D1.1, App. Note 8(D), the court is to convert 1 gram of cocaine base to 3,571 grams of marijuana but 1 gram of powder cocaine to 200 grams of marijuana when it calculates the total drug quantity attributable to a defendant. Herein lies the 18:1 ratio.

refusal to use the requested 1:1 ratio.[43] The government responds that the trial judge did indeed provide her reasons for denying Carlos's motion and was not required to vary from the ratio provided in the guidelines. We agree and explain below why we leave Carlos's sentence as we have found it.

As part of the trial court's wide discretion in sentencing, the Supreme Court has acknowledged the "district courts' authority to vary from the crack cocaine Guidelines based on policy disagreement with them, and not simply based on an individualized determination that they yield an excessive sentence in a particular case." Spears v. United States, 555 U.S. 261, 264 (2009) (emphasis in original). Despite Carlos's insistence that the judge should have used a 1:1 ratio when determining the total drug quantity here, there is no question that the judge had the discretion to stick to the 18:1 ratio in the guidelines and did not abuse her discretion by deciding not to vary from the applicable drug equivalency table. See id. While there is an acknowledged disparity in sentencing created by such a divergent conversion scheme for crack vs. powder cocaine, Dorsey v. United

[43] The government says Carlos has not preserved this argument for our review because Carlos's ratio-based arguments to the trial judge during the sentencing phase did not frame this issue in terms of procedural unreasonableness. We disagree and proceed with our standard abuse of discretion lens of review because we don't see a pivot in the framing of Carlos's argument in his brief before us.

States, 567 U.S. 260, 266, 268 (2012), we need not and do not get into that policy controversy here, despite Carlos's invitation to follow a couple of district court judges who have chosen to vary from the drug equivalency ratios captured in the sentencing guidelines. The trial judge did not abuse her discretion when she denied Carlos's motion to use a 1:1 crack to powder cocaine ratio.

WRAP UP

For the reasons we stated and explained for each of the issues discussed above, we affirm all the defendants' convictions and sentences.

United States Court of Appeals
For the First Circuit

No. 17-1551

UNITED STATES,

Appellee,

v.

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

Defendant, Appellant.

JUDGMENT

Entered: June 30, 2021

This cause came on to be heard on appeal from the United States District Court for the District of Puerto Rico and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: Juan Rivera-George's convictions and sentence are affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: Jose Ramon Olmo-Rodriguez, Timothy R. Henwood, Maritza Gonzalez-Rivera, Mariana E. Bauza Almonte, Hector E. Ramirez-Carbo, Dina Avila-Jimenez, Teresa S. Zapata-Valladares, Vanessa Elsie Bonhomme, Daniel Lerman, Juan Rivera-George

United States Court of Appeals
For the First Circuit

No. 17-1551

UNITED STATES,

Appellee,

v.

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

Defendant - Appellant.

Before

Howard, Chief Judge,
Lynch, Thompson, Kayatta and Barron,
Circuit Judges.

ORDER OF COURT

Entered: October 19, 2021

Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Jose Ramon Olmo-Rodriguez, Juan Rivera-George, Timothy R. Henwood, Maritza Gonzalez-Rivera, Mariana E. Bauza Almonte, Hector E. Ramirez-Carbo, Dina Avila-Jimenez, Teresa S. Zapata-Valladares, Vanessa Elsie Bonhomme, Daniel Lerman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 1) JOEL RIVERA-ALEJANDRO, a/k/a "J" (Counts One through Seven) 2) CARLOS RIVERA-ALEJANDRO, a/k/a "Homero" (Counts One through Seven) 3) ALEXIS RIVERA-ALEJANDRO, a/k/a "Alex," a/k/a "Villa" (Counts One through Seven) 7) CARLOS E. RIVERA-RIVERA, a/k/a "Carlitos," a/k/a "Carlitos Nariz" (Counts One through Seven) 14) JUAN RIVERA-GEORGE, a/k/a "Tio" (Counts One through Seven) 19) SUANETTE RAMOS-GONZALEZ, a/k/a "Suei," a/k/a "Suanette González-Ramos" (Counts One through Five and Count Seven) 47) IDALIA MALDONADO-PEÑA (Counts One through Five and Count Seven) Defendants	CRIMINAL 09-0165CCC

STATEMENT OF REASONS IN SUPPORT OF COURT'S SEPTEMBER 30, 2015 ORDER (D.E. 3972) DENYING DEFENDANTS' ORAL MOTION FOR A MISTRIAL

During the September 25, 2015 morning session, defendants requested a mistrial. Defense attorney Sánchez-Maceira, who made the first statements, informed that defendants had said that "at least three jurors saw them handcuffed when they were coming out of the elevator . . . that one of them was the foreman." Transcript ("TR."), p. 5. Defense attorney Cuyar added that the other juror was "juror 11" while Mr. Milanés added "1, 2 and 11 . . . the defendants understand that they saw number 1, number 2 and number 11."

TR., p. 6. What follows are relevant references or excerpts of the testimonies provided by defendants [14] Juan Rivera-George, [7] Carlos E. Rivera-Rivera, [3] Alexis Rivera-Alejandro and [1] Joel Rivera-Alejandro. Four of the five detained defendants, who testified during the evidentiary hearing held that day on the mistrial motion.

Juan Rivera-George, the first witness, testified that after the trial session ended on September 24, 2015 he and the other four co-defendants in custody were taken from the courtroom to the cellblock. They were initially placed in a restricted elevator, went down one floor, walked across the courthouse's basement and then boarded a second elevator, with their backs to the elevator's doors, to go up one floor to the area where the cellblock is located. Once the doors of the second elevator opened, he turned around. He stated there was one marshal holding the elevator, another opening the cell block, and two other deputies positioned one outside and one inside the elevator. He further testified that there was no one in front of the glass window of the door that separates the cellblock area, where the elevator opened, from the corridor through which the jury was just passing by. Rivera-George said that he saw just one juror whom he described "the first juror in the first row . . . the old man, like kind of bald, and he got beard and he got glasses too." He claimed both made eye contact; "he looked at me and he just put his face down, just keep walking, like he tried to look, I don't know how to say that, he was looking like above his glasses and then he [kept] walking." TR., p. 27. Rivera-George said he was wearing the civilian clothes he uses for trial with handcuffs behind his back. Asked "who else was present when you saw that juror," he answered: "the marshals and my co-defendants." TR., p. 23. He then specifically referred to Deputy Marshal Villanueva, and was asked if he could "identify where

Villanueva was at that moment" (id.) referring to the moment when he saw the one juror. To this he answered: "he's opening the cellblock. He has to put a combination to open the door, he was putting the combination . . . he was opening the door, he was putting the code." TR., p. 24. This is the location described by Mr. Rivera-George regarding "where Villanueva was standing at the moment that [he] saw the juror." Asked again about Villanueva putting in the code, Mr. Rivera-George answered: "yeah, for opening the door (TR., p. 25), for the door of the cellblock." He said that, with reference to the door where he saw the juror, Villanueva was putting a combination to open the door on the left while he saw the juror on the door on the right.

During cross examination, Mr. Rivera-George explained that the door with the glass window was right in front of him (TR., p. 31), that his uncle Alex and nephew Carlitos were next to him inside the elevator, that the five defendants were all next to each other (TR., p. 34), and that all five defendants were "in the elevator." TR., pp. 34-35. When the elevators doors opened, he was facing the door of the window because he "turned around when the elevator stopped." TR., p. 35. He also stated that the encounter during which he and the juror looked at each other lasted "like five to six seconds." TR., p. 39. He said that when he saw the juror the other defendants were next to him. TR., p. 40. He was then asked by the prosecutor: "so you're the one immediately in front of that window?" (TR., p. 41), referring to the glass pane of the wooden door seen in the photos admitted as Exhibits II and II(2) and in the video, Joint Exhibit V. He then answered: "yeah, all of us, immediately that window," TR., p. 41. He answered "yes" to the following question: "so you're the one in front of this window; the other ones are to the side; right?"

He was then questioned about Court Security Officer (CSO) Rafael López' position. CSO López has been in charge of the jury in this case from the beginning and accompanies the jurors every time they enter and exit the courthouse. He testified that he saw López when "he was holding the door; that he was at the door on the outside; that López and another deputy, Ríos, moved at the same time. He [Lopez] blocked the window" and that "before Lopez blocked the window he saw one juror." TR., pp. 43-44. He further explained that after he saw that one juror, he "didn't see any other jurors because the window was blocked" and that the distance between him and the juror that he saw was like three or four more steps after the podium from the witness stand." TR., p. 44. This distance was measured at 19 feet and 7 inches approximately. TR., p. 47.

During the afternoon session on the hearing of the mistrial request, seven photographs were admitted as Joint Exhibits I, I(a), II, II(a), II(b), III and IV. The second witness was defendant Carlos E. Rivera-Rivera. He placed the initials of each of the five defendants inside the elevator that brought them up to the cellblock area on September 24, 2015. He stated that he heard defendant Rivera-George tell Alexis that the jury was coming out and that he turned around and saw deputy marshal Villanueva standing at the door. Asked if he meant the door to the cell block or the door with the window, he answered "the door with the window; (TR., pp. 59-60), that "he wasn't exactly at the door; he stood by the door but the jury had already passed, it was a matter of seconds." TR., p. 60. He testified that CSO López was trying to cover the glass on the other side by standing in front of it. TR., p. 61. He explained that "when [he] looked towards the door, [he] saw Villanueva moving to cover the door, and [he] saw López, and at that same moment [he] also saw juror

number 11 passing by. He looked, but like I said it was a matter of seconds." TR., pp. 61-62. Immediately following this he said: "the juror looked. Since he is a little tall, he could see over López. He looked at me and I looked at him, but he kept walking." TR., p. 62. Asked again "how long was this encounter that you mentioned, that he looks at you and you looked at him," he reiterated, "I would say like one or two seconds. It was fast, a matter of seconds. I was handcuffed behind me." TR., p. 62. He was then shown Joint Exhibit II, which is a photo taken from inside the foyer area depicting the wooden door with the glass window through which defendant claims they were seen and a wooden door with a star logo of the U.S. Marshals Service which is the entrance to the cell block where the defendants change from civilian clothes to prison garbs before returning to MDC Guaynabo for the day. He stated that "[t]his picture is taken from inside the elevator out; you can see the door with the glass we were talking about and . . . the one with the star . . . to the cell block." Asked to identify with the letter "V" "the area where you first saw Villanueva" (referring to Deputy Marshal Villanueva) when you first turned around," he answered: "Villanueva was walking from this door towards this one, it was a matter of seconds." TR. p. 63, lines 13-21. The Court inquired: "this door is which one Mr. Rivera?" to which he answered: "the first would be the door of the cell block towards the door with the glass." He then made the markings V1 and V2, for Villanueva 1 and Villanueva 2, which is print-out Joint Exhibit II(a).

Defendant Alexis Rivera-Alejandro testified that: "once the elevator door opened, the marshals stepped out, Villanueva walked towards the door where the star is," (referring to the cell block solid wood door), "we turned, myself, my codefendant Rivera-George and my nephew (referring to Carlos E. Rivera-Rivera) and when we turned, Rivera-George told me, look at the jury,