NO. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MARKO STASIV

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

PETER F. LANGROCK
CJA Counsel for Petitioner
LANGROCK, SPERRY & WOOL, LLP
111 S. Pleasant Street
PO Drawer 351
Middlebury, VT 05753
(802) 388-6356
plangrock@langrock.com

January 28, 2022

Counsel for Petitioner

QUESTION PRESENTED

1. Was the Defendant, Marko Stasiv, entitled to have a hearing on the question of jury coercion in connection with his Motion for a New Trial when the trial judge, Judge P. Kevin Castel, denied the motion without a hearing?

PARTIES TO THE PROCEEDINGS AND RELATED PROCEEDINGS

Petitioner Marko Stasiv was the Appellant before the United States Court of Appeals for the Second Circuit.

Respondent United States of America was the Appellee before the Second Circuit.

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APPENDIX

TABLE OF AUTHORITIES

Marko Stasiv respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The Second Circuit's unpublished opinion is available at United States v. Marko Stasiv, 2021 WL 4888865 (2d Cir. October 20, 2021) and is reproduced as Appendix A.

JURISDICTION

The Second Circuit issued its unpublished opinion on 20 October 2021. The Defendant filed a Petition for Rehearing and Rehearing en banc on 28 October 2021. This petition was denied on November 19, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "[i]n all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . ."

STATEMENT OF THE CASE

The Defendant, Marko Stasiv, maintained his innocence throughout the course of the trial. The Defendant represented himself pro se throughout the trial with the assistance of a stand-by ghost counsel. After the trial was completed, the following matters occurred. It was determined that Juror #10 was crying when she answered "yes" to the guilty verdict at the time of the jury polling. She then went immediately after rendering the verdict and before leaving the courthouse to the defense team and indicated that she regretted her verdict and had caved during deliberation. Two days later the juror sent an unsolicited letter to defense counsel claiming to have made a "terrible mistake in caving into the juror and court pressure." The following day in a meeting with counsel, she produced a written narrative about certain matters that transpired

during deliberation. While her testimony concerning her personal impression is not admissible she would be able to have testified at a hearing to observation of objective happenings.

These observations would include that as 5:00 P.M. approached and she expressed her continued reluctance to convict on Counts 3 and 4 a juror became red-faced and agitated. He treated her with a demeaning heated-toned expression. She was standing across the table from him and leaning so far forward towards her, she thought he might jump out of his chair. From this it would be a fair to infer that a red-faced and agitated male coming out of his chair was a threat to her physical safety.

Assuming that the potential threat to her physical safety caused her to change her vote on the verdict, this would constitute the type of jury misconduct that would potentially call for a new trial. Defense made a Rule 33 motion for a new trial and Judge Castel dismissed it on August 29, 2019. The opinion included conclusions that went beyond what was factually before him.

STATEMENT OF THE FACTS

The overall evidence in this case shows that co-defendant Aleksandr Razumovskiy hatched a plan to target check cashing companies in several states and obtain monies by cashing fraudulent payroll checks that were ultimately returned for insufficient funds.

The scenario involved persons under Aleksandr Razumovskiy's control going into a state and, through the use of fraudulent documents obtaining state drivers' licenses and state identity cards. With those licenses and other fraudulent documents they opened up a business bank account in the name of a company that had been previously formed by Razumovskiy. A small deposit was made to open the account. The companies were a sham and never were intended to

operate as a real business. After the company bank account was opened payroll checks were obtained and the check cashing scheme started to operate.

The scam was operated by people ("cashers") under the direction of Razumovskiy who went to check cashing businesses and using false documents cashed what were claimed to be payroll checks. The "cashers" would receive funds for the face amount of the check less the companies' fee (usually 2%). The funds obtained would immediately be deposited in the business bank account so that by the time the fraudulent payroll checks reached the bank, there would be sufficient funds to cover them. This procedure was followed for several weeks with the size of the check increasing each week until there was a "bomb" week where instead of depositing the cash obtained from the victim check cashing companies, the operation left the state keeping the cash. They then moved onto another state and started the scam all over again.

The scam was designed to defraud the check cashing companies but leaving the banks unharmed. The banks were able to protect themselves by returning the checks for insufficient funds. There was no intended out-of-pocket loss to the banks.

There were three tiers of persons involved in the scam. Razumovskiy, the boss (who received 1/3 of the cash), a second tier, the persons who cashed the checks, and a third tier, the persons who drove the cashiers to the check cashing companies and who passed on the checks created at Razumovskiy's direction to the "cashers." The defendant Marko Stasiv was part of this third tier. Stasiv has maintained that he did not have knowledge of the scam and that he was only a driver and helped the "cashers" and that he did not have guilty knowledge of the illegality of what was happening. His further position is that he had no intention of defrauding

any financial institution insured by the FDIC and no institution insured by the FDIC was defrauded or suffered an actual loss.

REASONS FOR GRANTING THE PETITION

The District Court's refusal to hold a hearing on the question of juror coercion and making a decision denying the motion under Rule 33 for reasons outside the record violated Mr. Stasiv's right to an impartial jury.

The Sixth Amendment guarantees a criminal defendant's right to an "impartial jury." This Court in the Smith v. Phillips 455 US 209, 102 S. Ct. 940, 945 (1982) held that where there are credible allegations of jury misconduct a hearing is required in which the trial court determines the circumstances of what transpired, the impact on the juror and whether or not it was prejudicial. This Court should clarify the threshold for giving a Defendant an entitlement to a hearing where there appears to be credible allegations of jury misconduct.

In this case there are unsolicited submissions by a juror which indicated that she had caved in on a verdict and the verdict was not truly hers. She further stated that she caved in as a result of threatening gestures made by an agitated male juror and felt she had made a grave mistake in caving in. These facts would constitute a credible allegation of jury misconduct and a hearing should have been required. Judge Castel ruled "There is nothing therein that would give a reasonable juror the impression that she faced a physical assault if she refused to vote for conviction." In saying this he is coming to factual conclusions as to what happened, dismissing the juror as potentially not a reasonable person and dismissing the fact that she was facing physical assault. Had he made those findings after a hearing, they might well be supported. Mr. Stasiv, however, was entitled to have a chance to try and convince the court that the coercive nature of

what happened and the misconduct of the juror was such that he was deprived of a fair and impartial trial.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Stasiv's petition for writ of certiorari and remand for a new trial with a constitutionally adequate jury.

Dated: January 28, 2022

Respectfully submitted,

PETER F. LANGROCK
CJA Counsel of Record
LANGROCK, SPERRY & WOOL, LLP
111 S. Pleasant Street
PO Drawer 351
Middlebury, VT 05753
(802) 388-6356
plangrock@langrock.com

APPENDIX A

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2021 WL 4888865
Only the Westlaw citation is currently available.
United States Court of Appeals, Second Circuit.

UNITED STATES of America, Appellee,

v.

Marko STASIV, Defendant-Appellant.*

19-4286

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October 20, 2021

Appeal from a judgment of the United States District Court for the Southern District of New York (Castel, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of conviction entered on December 17, 2019, is **AFFIRMED**.

Attorneys and Law Firms

FOR PETITIONER: Peter F. Langrock, Langrock Sperry & Wool, LLP, Middlebury, VT.

FOR RESPONDENT: Jonathan E. Rebold, (Anna M. Skotko, on the brief), Assistant United States Attorneys, for Damian Williams, United States Attorney for the Southern District of New York, New York, NY.

PRESENT: GUIDO CALABRESI, BARRINGTON D. PARKER, RICHARD J. SULLIVAN, Circuit Judges.

SUMMARY ORDER

***1** Defendant-Appellant Marko Stasiv was convicted after a jury trial of conspiracy to commit bank fraud and wire fraud, in violation of 18 U.S.C. § 1349; wire fraud, in violation of 18 U.S.C. § 1343; and aggravated identify theft, in violation of 18 U.S.C. § 1028A. On appeal, Stasiv challenges (1) the district court's denial of his motion for a new trial or an evidentiary hearing based on alleged juror coercion, (2) the district court's denial of his motion for a new trial based on the submission of allegedly extra-record evidence to the jury, and (3) the sufficiency of the evidence proving that he participated in a conspiracy to commit wire fraud or bank fraud. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review for abuse of discretion the district court's denial of a motion for a new trial on the basis of juror misconduct. *United States v. Abrams*, 137 F.3d 704, 708 (2d Cir. 1998). Because of "a judicial reluctance ... to inquire into ... the conduct of the jurors during their deliberations," trial courts must insist on "clear" and "incontrovertible" evidence of a specific impropriety before holding a hearing to probe alleged juror misconduct. *King v. United States*, 576 F.2d 432, 438 (2d Cir. 1978) (citation and quotation marks omitted); *see also United States v. Vitale*, 459 F.3d 190, 197 (2d Cir. 2006). Ultimately, a district court may "overturn a jury's verdict only when its deliberations have taken the most egregious departures from rational discourse[.]" *Anderson v. Miller*, 346 F.3d 315, 330 (2d Cir. 2003).

Here, the district court acted well within its discretion in denying Stasiv's request for a new trial without holding an evidentiary hearing. Juror 10, who subsequently expressed regret about her decision to convict, claimed that as she was still considering the evidence, a fellow juror grew "red-faced and agitated," and his communications turned from "rational dialogue to a demeaning, heated tone and expression." App'x at 111. At one point, Juror 10 thought the offending juror had become so excited that "he might jump out of his chair." App'x at 111. It was only after that episode that Juror 10 decided to join the others and return a guilty verdict.

We see no basis for disturbing the verdict. We have upheld jury verdicts despite more egregious jury-room conduct than what was alleged here. *See, e.g.*, *Anderson*, 346 F.3d at 320 (affirming the district court's denial of habeas relief where juror affidavits alleged name-calling and a shouting match in which court officers had to intervene during jury deliberations); *Jacobson v. Henderson*, 765 F.2d 12, 13–15 (2d Cir. 1985) (affirming the district court's denial of habeas relief where juror affidavits alleged instances of "screaming, hysterical crying, fist banging, name calling, ... the use of obscene language," and a chair-throwing incident during deliberations); *United States v. Grieco*, 261 F.2d 414, 414–16 & n.1 (2d Cir. 1958) (affirming conviction where one juror's verbal abuse left another "shaking and crying"). Even assuming the truth of Juror 10's allegations, they reflect "at most" that she "felt [herself] to be under pressure ... to vote in favor of conviction." *Anderson*, 346 F.3d at 329. That sentiment does not warrant a new trial under the law of this Circuit, so the district court did not err in declining to hold a

hearing to investigate her allegations before denying Stasiv's motion for a new trial.[1]

***2** Stasiv also argues he is entitled to a new trial because the jury discovered inside Stasiv's backpack – which also contained other undisputedly relevant evidence, including a driver's license, permanent resident card, and two Ukranian passports, all in Stasiv's name – a cash deposit receipt from the City of New York Department of Correction ("DOC") with Stasiv's name on it. Stasiv argues that the receipt was prejudicial to him because it likely led the jury to conclude that he had been detained at Rikers Island. Whatever the relevance of the receipt, we hold that the district court did not abuse its discretion in denying Stasiv's request for a new trial.[2]

At the outset, we doubt that Stasiv is entitled to even raise this objection because "defense counsel is as responsible as the prosecutor for seeing to it that only proper exhibits are sent to the jury room, and normally the failure of counsel to register a timely objection to the submission of improper evidence to the jury will be deemed a waiver, unless it is shown that the evidence was so prejudicial that the defendant was denied a fair trial." *United States v. Camporeale*, 515 F.2d 184, 188 (2d Cir. 1975) (citation and quotation marks omitted) (alterations adopted). In any event, assuming that Stasiv did not waive this argument and that the jury was improperly exposed to extra-record information, Stasiv is still not entitled to a new trial because he was not prejudiced by this evidence.

Though "extra-record information of which a juror becomes aware is presumed prejudicial," *United States v. Greer*, 285 F.3d 158, 173 (2d Cir. 2002), "[t]his presumption may be rebutted," including by a showing "that an abundance of properly admitted evidence relevant to [the] matter exists." *United States v. Weiss*, 752 F.2d 777, 783 (2d Cir. 1985). That presumption is easily rebutted here. The evidence of Stasiv's guilt was overwhelming, including, among other things, electronic messages between Stasiv and a coconspirator discussing the creation of fraudulent utility bills to establish their residence in various states to execute the fraud, text messages about opening fraudulent bank accounts, testimony by Stasiv's coconspirator that implicated him, surveillance video of the members of the conspiracy opening fraudulent bank accounts, and business records showing the financial losses resulting from the fraud. On this record, we conclude that there was more than "an abundance" of evidence of Stasiv's guilt, so the jury's exposure to the DOC receipt was harmless. *Id.*

Stasiv's final argument is that the evidence was insufficient as to Count One, which charged him with conspiracy to commit bank and wire fraud, because it did not establish his intent to defraud federally insured financial institutions as required by the bank fraud statute. *See* 18 U.S.C. § 1344; *id.* § 20(1). We review the sufficiency of the evidence de novo, asking whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Vargas-Cordon*, 733 F.3d 366, 375 (2d Cir. 2013) (citation omitted). In so doing, we "draw all permissible inferences in favor of the government." *United States v. Kozeny*, 667 F.3d 122, 139 (2d Cir. 2011).

***3** Although Count One alleges a conspiracy with two objects – bank fraud and wire fraud – Stasiv challenges the sufficiency of the evidence only with respect to the bank fraud object. This alone dooms his argument because "it is well-settled that when a conspiracy ha[s] multiple objectives, a conviction will be upheld so long as evidence is sufficient to show that [the defendant] agreed to accomplish at least one of the criminal objectives." *United States v. DeLillo*, 620 F.2d 939, 948 (2d Cir. 1980) (citation and quotation marks omitted). The government produced extensive evidence of Stasiv's involvement in a scheme to commit wire fraud, as Stasiv himself concedes. *See* Appellant's Br. 6 ("[T]here is clear evidence of a plan to defraud check cashing companies[.]"). That scheme involved substantial reliance on wires, including telephones, to transmit fraudulent information in interstate commerce for the purpose of obtaining money. *See* 18 U.S.C. § 1343. This evidence of wire fraud is more than sufficient to sustain the jury's conviction on the conspiracy count.

* * *

We have considered Stasiv's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

All Citations

Not Reported in Fed. Rptr., 2021 WL 4888865

Footnotes

* The Clerk of Court is respectfully directed to amend the official caption as set forth above.

1 Stasiv's reliance on *Smith v. Phillips*, 455 U.S. 209 (1982), is misplaced, as that case involved a specific allegation that a juror had a conflict of interest because, during the trial, he had applied for a position as an investigator in the District Attorney's Office, *id.* at 212.

2 Stasiv assumes, without offering much support, that the receipt would not have been admitted into evidence had the government specifically offered it, citing only the district court's decision to exclude evidence of Stasiv's prior criminal record. We are not so sure. Unlike Stasiv's criminal history, the receipt could have been relevant to, for instance, demonstrating Stasiv's ownership of the backpack and its contents. But we need not resolve that issue to decide this appeal.

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 19th day of November, two thousand twenty-one.

United States of America,

Appellee,

v.

Marko Stasiv,

Defendant - Appellant.

ORDER

Docket No: 19-4286

Appellant, Marko Stasiv, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk