APPENDIX

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APPENDIX A

20-33
United States v. Lora

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 15th day of February, two thousand twenty-two.

PRESENT:
MICHAEL H. PARK,
WILLIAM J. NARDINI,
MYRNA PÉREZ,
Circuit Judges.

UNITED STATES OF AMERICA,

***Appellee*,**

v. **20-33**

EFRAIN LORA, also known as Shorty,

Defendant-Appellant.*

FOR DEFENDANT-APPELLANT:	DAVID J. WILLIAMS, Jarvis, McArthur & Williams, LLC, Burlington, VT
FOR APPELLEE:	DAVID J. ROBLES (Karl Metzner, *on the brief*), Assistant United States Attorney, *for* Audrey Strauss, United States Attorney for the Southern District of New York, New York, NY

* The Clerk of Court is respectfully directed to amend the caption accordingly.

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

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Efrain Lora appeals his conviction for offenses related to his participation in a narcotics ring and the murder of rival drug dealer Andrew Balcarran on August 11, 2002. The government's case was that Lora, along with codefendants Oscar Palmer, Luis Trujillo, and Luis Lopez, ran an operation selling cocaine and cocaine base in the Bronx. As charged, these four coconspirators decided to murder Balcarran in retaliation for threats Balcarran had made against them over drug territory. On the day of the murder, Lora's confederates approached Lopez's cousin, Dery Caban, in a green Chevrolet Lumina, as Lora sat in a vehicle just behind them. Caban joined the group in the Lumina and was told of the threats Balcarran made against them; the Lumina then went to pick up two guns—one for Caban, and one for Palmer. Trujillo exited the Lumina, entered his apartment, and returned with the guns. After Trujillo returned, Lopez stepped out of the Lumina and into Lora's car. The Lumina—with Trujillo as the driver, and Palmer and Caban as armed passengers—then drove away. Shortly thereafter, Lora called the Lumina to convey that Balcarran was standing in front of his house. Trujillo then drove the Lumina to Balcarran's home, and Palmer and Caban each shot Balcarran, killing him.

On June 24, 2016, after a one-week trial, a jury found Lora guilty of one count of aiding and abetting the use and carrying of a firearm during and in relation to a drug trafficking crime causing the death of a person, 18 U.S.C. §§ 2, 924(j); one count of aiding and abetting the intentional killing of a person while engaged in a conspiracy to distribute narcotics, 21 U.S.C. § 848(e)(1)(A); 18 U.S.C. § 2; and one count of conspiring to distribute five kilograms or more of cocaine mixtures and substances and 280 grams or more of cocaine base mixtures and substances, 21 U.S.C. §§ 841(b)(1)(A), 846. The district court determined that there was insufficient evidence to prove the quantity of drugs involved in the offense and so vacated the quantity finding in Count 3 and vacated the conviction on Count 2 in its entirety. The district court then sentenced Lora to 30 years of imprisonment, followed by five years of supervised release. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

I. Evidentiary Rulings

Lora challenges the district court's admission of two statements at trial, both introduced through Caban's testimony, that Lora contends are inadmissible hearsay. Lora challenges the admission of: (1) Lopez's statement to his cousin Caban after the murder that the purpose of the murder was to take over territory for drug sales; and (2) conversations between Palmer and Lopez, overheard by Caban, complaining that Lora was "stingy" with respect to their fair share of the profits from their drug

operation.[1] The government defends both statements as admissions against interest. *See* Fed. R. Evid. 804(b)(3). "We review a district court's evidentiary rulings under a deferential abuse of discretion standard, and we will disturb an evidentiary ruling only where the decision to admit or exclude evidence was manifestly erroneous." *United States v. Delva*, 858 F.3d 135, 156 (2d Cir. 2017) (citation omitted).

We conclude that the district court did not abuse its discretion by admitting both challenged statements at trial. When a declarant is unavailable, his or her statement is admissible if "a reasonable person in the declarant's position would have made [the statement] only if the person believed it to be true because, when made, [the statement] . . . had so great a tendency to . . . expose the declarant to civil or criminal liability." Fed. R. Evid. 804(b)(3)(A). Where, as here, the statement is offered in a criminal case and would expose the declarant to criminal liability, the statement must also be "supported by corroborating circumstances that clearly indicate its trustworthiness." Fed. R. Evid. 804(b)(3)(B); *see United States v. Lumpkin*, 192 F.3d 280, 287 (2d Cir. 1999) ("To evaluate whether a statement is sufficiently trustworthy, we look to evidence that corroborates both the declarant's trustworthiness and the truth of the statement.").

Lora argues on appeal that the government failed to identify sufficient corroborating circumstances because it never provided evidence that Lopez and

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[1] On reply, Lora withdrew his argument that a third statement was inadmissible hearsay; the government defended the statement as an admission of a coconspirator.

Palmer were generally trustworthy individuals. But no such evidence was necessary. The rule requires only a showing of "corroborating circumstances that clearly indicate [a statement's] trustworthiness." Fed. R. Evid. 804(b)(3)(B). We have divided that inquiry into "corroboration of the *truth* of the declarant's statement," which "focus[es] on whether the evidence in the record supported or contradicted the statement"; and "corroboration of the declarant's trustworthiness," which "focus[es] on [the] declarant's *reliability when the statement was made*." *United States v. Doyle*, 130 F.3d 523, 544 (2d Cir. 1997) (emphasis added) (quoting *United States v. Salvador*, 820 F.2d 558, 561 (2d Cir. 1987)). It would make little sense for the rule to require—as Lora argues it should—proof of the general trustworthiness of the declarant, particularly given that the rule applies only to individuals who have exposed themselves to criminal liability. *See United States v. Gupta*, 747 F.3d 111, 127 (2d Cir. 2014) (explaining that the rule "is founded on the commonsense notion that reasonable people, even reasonable people who are not especially honest, tend not to make self-inculpatory statements unless they believe them to be true" (quoting *Williamson v. United States*, 512 U.S. 594, 599 (1994))).

To the extent that Lora argues that the district court abused its discretion by admitting these statements without sufficient corroborating evidence of the trustworthiness of the declarants in making the statements, we disagree. In general, "the trustworthiness of a third party confession lies within the sound discretion of the trial court." *United States v. Guillette*, 547 F.2d 743, 754 (2d Cir. 1976). Here,

the government adduced corroborating evidence of the kind endorsed by our case law. In particular, both statements were made between coconspirators—*i.e.*, "to a person whom the declarant believes is an ally," *United States v. Saget*, 377 F.3d 223, 230 (2d Cir. 2004) (citation omitted)—and were not made to "curry favor" with the government or "shift blame" away from the coconspirators to Lora, *see United States v. Williams*, 506 F.3d 151, 155 (2d Cir. 2007). We thus reject Lora's contention that there was so little corroboration of the declarants' trustworthiness in making these statements that the district court abused its discretion in admitting the statements at trial.[2]

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[2] Lora further argues that the government violated his due process rights by "deliberately with[holding] critical information from the court that proved that [a] hearsay declarant, Luis Lopez, was a serial liar." Appellant's Br. at 35. Specifically, he points to Lopez's statement during a change-of-plea hearing that the group murdered Balcarran because of threats and demands for payment Balcarran made against them if they wanted to "sell drugs in the area." *Id.* at 37 (quoting App'x at 983). Lora contrasts this statement with the statement introduced through Caban at trial, namely Lopez's assertion that the reason for murdering Balcarran was to acquire drug territory.

Lora disclaims, however, any argument that the government violated its obligations to disclose information to him under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). To the extent Lora accuses the government of "misleading a judge" by arguing to the court that the trustworthiness of Lopez's statements was sufficiently corroborated, Appellant's Br. at 36, we disagree that such a statement was misleading. *See supra* at 3–5. Nor was Lopez's statement at his change-of-plea hearing even necessarily "contradictory" to the government's introduced statement that

II. Sufficiency of the Evidence

Lora also challenges the sufficiency of the evidence on the first count of the indictment, which charged him with facilitating the using and carrying of a firearm during and in relation to a drug trafficking crime causing the death of a person. *See* 18 U.S.C. §§ 2, 924(j). "[W]e must view the evidence in the light most favorable to the government, crediting every inference that couldhave been drawn in the government's favor, and deferring to the jury's assessment of witness credibility and its assessment of the weight of the evidence." *United States v. Coplan*, 703 F.3d 46, 62 (2d Cir. 2012) (cleaned up). We must affirm a conviction if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Applying these standards, we reject Lora's challenge.

Section 924(j) provides the penalties for "[a] person who, in the course of a violation of [18 U.S.C. § 924(c)], causes the death of a person through the use of a firearm." 18 U.S.C. § 924(j). In turn, section 924(c) covers "any person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm." *Id.* § 924(c)(1)(A). Lora was charged as an aider and abettor of the section 924(j) violation, *see id.* § 2, by virtue of his complicity in Balcarran's murder, done in furtherance of the group's cocaine distribution.

Defendants killed Balcarran to secure drug territory. Appellant's Br. at 37.

Lora repeatedly argues that there was insufficient evidence that he "knowingly performed some act that facilitated and encouraged Caban's use, carrying or possession of a firearm" or that he "encouraged or facilitated Caban's use of that firearm to cause the death of Andrew Balcarran." *E.g.*, Appellant's Br. at 42. But Lora's interpretation of section 924(c) (and so section 924(j)) has been squarely rejected by the Supreme Court. In *Rosemond v. United States*, 572 U.S. 65 (2014), the Court held that an active participant in a drug trafficking crime "has the intent needed to aid and abet a § 924(c) violation when he knows that one of his confederates will carry a gun." *Id*. at 77. The defendant also need not have taken any action facilitating the possession or use of the gun. The *Rosemond* Court clarified that—under the common-law complicity rule that "every little bit helps—and a contribution to some part of a crime aids the whole," *id.* at 73—a defendant aids and abets a section 924(c) violation by "facilitat[ing] any part—even though not every part—of [the] criminal venture," *id*. at 72. Here, if the government showed that Lora aided and abetted a murder done in furtherance of a drug crime, its only additional burden was to show that Lora willingly participated despite foreknowledge that his confederate would possess a firearm in carrying out the venture.

To the extent that Lora argues that a rational jury could not have concluded that the government met its burden here, we disagree. Through Caban, the government introduced evidence that Lora sat in the vehicle directly behind the green Lumina when Palmer, Trujillo, and Lopez first approached Caban to enlist him in their murder plans. After the group

retrieved the two weapons, Caban recalled, Lopez exited the Lumina and told him he was joining Lora in Lora's car. An eyewitness recalled then seeing Lora, as well as Palmer, driving around the block of Balcarran's house multiple times. Caban testified that Palmer took a call from Lora telling him that Balcarran was in front of his house. After that call, Caban, along with the other codefendants in the green Lumina, then drove up to Balcarran's home, and Caban and Palmer each fired a shot Balcarran, killing him. Deferring, as we must, to the jury's assessment of witness credibility, *Coplan*, 703 F.3d at 62, we conclude that this sequence of events would allow a rational jury to determine beyond a reasonable doubt that Lora was an accomplice to the murder of Balcarran.

Further, the government introduced evidence of Lora's involvement in a narcotics ring that clashed with Balcarran's rival drug operation—thus providing evidence of Lora's motive, as well as tending to show that the murder was done in furtherance of a drug trafficking crime. According to several witnesses, Lora, Palmer, Trujillo, and Lopez ran an operation selling cocaine at a location in the Bronx. On the day of the murder, Balcarran's niece observed Palmer get into an altercation with her uncle and threaten to kill him. Caban similarly testified that Palmer told him that Balcarran had threatened him and demanded money "or he wanted to go in [Palmer's drug territory] and sell as well." Trial Tr. at 250. Caban also recalled that after the murder, his cousin, Lopez, admitted to him that the reason for the murder—which Lopez had recruited Caban to join in—was to take over Balcarran's drug territory, in addition to securing

existing drug territory against threats made by Balcarran.

Viewing this evidence in the light most favorable to the government, we believe a jury could rationally determine that the government showed beyond a reasonable doubt that Lora was an aider and abettor to Balcarran's murder done in furtherance of a drug trafficking crime, and that Lora knew his confederates were armed when, with his active participation, they drove to find, shoot, and kill Balcarran. We thus reject Lora's challenge to the sufficiency of the evidence for his conviction under 18 U.S.C. §§ 2 and 924(j).

* * *

We have considered the remainder of Lora's arguments and find them to be without merit.[3] For the foregoing reasons, we affirm the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court

[3] Lora briefly argues that 18 U.S.C. § 924(j) did not require the district court to impose a consecutive sentence. But, as he acknowledges, that argument is foreclosed by our case law. *See United States v. Barrett*, 937 F.3d 126, 129 n.2 (2d Cir. 2019).

APPENDIX B

18 U.S.C. § 924
Penalties

* * *

(c)(1)(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii)if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

(B) If the firearm possessed by a person convicted of a violation of this subsection—

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

(2) For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46.

(3) For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(B) that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(4) For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

(5) Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

* * *

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.

* * *