APPENDIX A

EIGHTH CIRCUIT OPINION

REHEARING DENIAL

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 21-3906

United States of America

Appellee

v.

Marcrease Delance Farmer

Appellant

Appeal from U.S. District Court for the Eastern District of Missouri - Cape Girardeau
(1:19-cr-00183-SRC-1)

ORDER

The petition for rehearing by the panel is denied.

April 12, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix A

United States Court of Appeals
For the Eighth Circuit

No. 21-3906

United States of America

Plaintiff - Appellee

v.

Marcrease Delance Farmer

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Missouri - Cape Girardeau

Submitted: December 16, 2022
Filed: March 8, 2023
[Unpublished]

Before SMITH, Chief Judge, GRUENDER and STRAS, Circuit Judges.

PER CURIAM.

Marcrease Farmer believes that a biased jury and improper judicial factfinding violated his Sixth Amendment rights. The district court[1] disagreed and sentenced him to 210 months in prison. We affirm.

[1]The Honorable Stephen R. Clark, then United States District Judge for the Eastern District of Missouri, now Chief Judge.

APPENDIX A

I.

Farmer sold significant amounts of methamphetamine. His business came to a halt, however, when a frequent customer turned out to be an undercover state trooper. Despite having been caught in the act, Farmer decided to go to trial.

The trial did not begin the way he hoped. Of the 39 people who showed up for jury selection, only one was black. Farmer asked the district court to summon a new group on the ground that the venire did not represent a fair cross-section of the community, but it declined the request. *See* U.S. Const. amend. VI.

At the conclusion of the trial, the jury found Farmer guilty in under an hour. Right before sentencing, however, Farmer claimed to have discovered new information: Juror 11 and his sister had been in a heated argument just a year earlier, which raised the prospect of juror bias. Despite the connection, the district court denied Farmer's motion for a new trial.

Sentencing did not go any better. Over Farmer's objection, the district court determined that the mixture of drugs he sold contained 353.6 grams of "pure" or "actual" methamphetamine. At an offense level of 32 and a criminal-history category of V, the recommended range was 188–235 months in prison. *See* U.S.S.G. ch. 5, pt. A (sentencing table). The district court settled on a middle-of-the-range sentence of 210 months.

II.

Farmer believes that the issues with the jury entitle him to a new trial. We review fair-cross-section claims de novo, *see United States v. Rodriguez,* 581 F.3d 775, 789 (8th Cir. 2009), and juror-bias arguments for an abuse of discretion, *see United States v. Williams*, 77 F.3d 1098, 1100 (8th Cir. 1996).

APPENDIX A

A.

The Sixth Amendment guarantees "an impartial jury drawn from a fair cross section of the community." *Taylor v. Louisiana*, 419 U.S. 522, 536 (1975). Farmer's claim is that there was systematic exclusion of a "'distinctive' group" from the pool. *United States v. Reed*, 972 F.3d 946, 953 (8th Cir. 2020) (quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979)). To prevail, he had to demonstrate a "gross discrepancy" between the number of black people in the jury pool *as a whole* and the number present in the community. *Duren*, 439 U.S. at 366.

He never made that showing. He established that *his* jury may have been racially imbalanced, but a fair-cross-section claim requires more. "[I]t is the number . . . in the jury pool, not the number who showed up for jury selection in a particular case, that is relevant to assessing the merits of a fair[-]cross[-]section challenge." *United States v. Erickson*, 999 F.3d 622, 627 (8th Cir. 2021). The fact that one out of 39 potential jurors that day was black, in other words, does not by itself violate the Constitution.

B.

Farmer's juror-bias argument fares no better. To get a new trial, he must show that Juror 11 answered a question "dishonestly," "she was motivated by partiality," and a truthful answer would have justified removal for cause. *United States v. Tucker*, 137 F.3d 1016, 1026 (8th Cir. 1998).

Even if we assume that she was dishonest, there is no evidence that bias influenced her answers. She repeatedly stated that she was "[t]otally" impartial, and her actions backed up her words. *See Moran v. Clarke*, 443 F.3d 646, 650 (8th Cir. 2006) (explaining that one way to show bias is through a "profess[ed] . . . inability to be impartial"). Without prompting, she revealed that she recognized Farmer's sister and, rather than question her about it, defense counsel just decided to let the issue go. *See United States v. Ruiz*, 446 F.3d 762, 770 (8th Cir. 2006) ("[T]he juror

was not motivated by bias because the juror immediately notified the district court upon recognizing the family members of the defendants."). On this record, we cannot say that the situation here was "extreme" enough that an "average person" in Juror 11's shoes would have been "highly unlikely" to "remain impartial." *Manuel v. MDOW Ins. Co.*, 791 F.3d 838, 843 (8th Cir. 2015) (quotation marks omitted).[2]

III.

Nor does the Sixth Amendment pose a problem for Farmer's sentence. It is true, as he argues, that the district court found some facts at sentencing, including the weight and purity of the methamphetamine he sold. Still, none of those findings resulted in a sentence above the statutory maximum, which means that the Sixth Amendment never came into play. *See United States v. Aguayo-Delgado*, 220 F.3d 926, 933 (8th Cir. 2000) ("The rule of *Apprendi* [*v. New Jersey*, 530 U.S. 466, 490 (2000),] only applies where the non-jury factual determination increases the maximum sentence beyond the statutory range authorized by the jury's verdict.").

IV.

We accordingly affirm the judgment of the district court.

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[2]To the extent that Farmer claims the district court should have held a hearing to evaluate the makeup of the jury, including his claim of juror bias, we conclude that it did not abuse its discretion. *See Jeffries v. United States*, 721 F.3d 1008, 1014 (8th Cir. 2013) (determining whether to grant a hearing depends on the strength of the underlying claim).

APPENDIX A

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

JUDGE'S OPINION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	Case No. 1:19-cr-00183-SRC
	)	
MARCREASE DELANCE FARMER,	)	
	)	
Defendant(s).	)	

Memorandum and Order

Defendant Marcrease Farmer argues that numerous trial errors make him eligible for a new trial, or in the alternative, a judgment of acquittal. Farmer claims that Juror 11 concealed her bias against him during voir dire, and that the racial makeup of the venire violated his constitutional rights. He claims that the Court should not have admitted text messages, phone calls, and videos into evidence, and that the Court erred in overruling Farmer's objections to the introduction of 404(b) evidence and evidence seized from Farmer's car. Farmer also claims the United States failed to meet its burden of proving beyond a reasonable doubt that he intentionally transferred methamphetamine to an undercover officer. Having addressed a number of these issues before and during trial, and having carefully considered the present motions, the Court disagrees.

I. Background

On December 3, 2019, a grand jury returned the following indictment against Farmer for three counts of distribution of a controlled substance:

> On or about, August [2, 8, and 21, respectively] 2019, in Stoddard County, Missouri, within the Southeastern Division of the Eastern District of Missouri, Marcrease Delance Farmer, the defendant herein, knowingly and intentionally distributed fifty grams or more of a mixture or substance containing a detectable

> amount of methamphetamine, a controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1) and punishable under Title 21, United States Code, Section 841(b)(1)(B)(viii).

Doc. 1. The Court held a two-day jury trial for Farmer on July 21–22, 2021. At the outset of voir dire, Farmer moved to strike the venire because "of the 39 jurors that have been selected here for this voir dire . . . only one of them is African American" and "Mr. Farmer himself is a black male." Doc. 93 at pp. 12–13. The Court notes that when making this motion, Farmer's counsel incorrectly referred to the one African American venireperson as "Juror No. 29," Doc. 93 at p. 13, and that the only African American on the venire was actually Venireperson 27. *See* Doc. 93 at p. 63; Doc. 114 at p. 3 n.1 (noting that "the sole African American on the panel was Venireperson 27, who was selected to serve on the jury"); *see also* Doc. 93 at p. 108 (identifying Venireperson 27 as Juror 11). The Court denied the motion because Farmer based it solely on the outcome of the juror selection process, not the process itself. Doc. 93 at pp. 14–15.

Despite Venireperson 27's voluntarily disclosing during voir dire that she may know Farmer's family members, and that Farmer's family, including Farmer himself, may know her, Farmer did not ask her any questions, challenge her for cause, or peremptorily strike her. *See generally* Doc. 93; *see also id.* at pp. 102–09. The Court seated her as Juror 11. *Id.* at p. 108. At no time before the jury rendered its verdict did Farmer raise any issue, question, or concern with respect to Juror 11.

At trial, the United States presented evidence that Farmer sold methamphetamine to an undercover officer, Sergeant Templemire, on three occasions in August 2019. The evidence included: testimony from Sergeant Templemire and from Chemist Sarah Brown of the Missouri State Highway Patrol Crime Laboratory, text messages, audio recordings of phone calls,

audio/video recordings of the drug transactions, Brown's lab reports, and the methamphetamine itself.

At the close of the United States' case, Farmer made an oral motion for judgment of acquittal, arguing that videos presented at trial of the three transactions failed to show any methamphetamine. *Id.* at pp. 75–76. The Court denied the motion, finding that "while there is no actual video of the transaction of methamphetamine, that's not required." *Id.* at p. 76. The Court pointed to the "testimony that what was exchanged in the videos was methamphetamine" and to the physical evidence as well as the "testimony linking up the transactions to the physical evidence . . . ." *Id.* at pp. 76–77. Farmer chose not to present any evidence, *id.* at p. 78, and the Court denied his renewed motion for judgment of acquittal at the close of all the evidence. *Id.* at p. 83.

The jury unanimously found Farmer guilty of three counts of distributing a controlled substance in violation of 21 U.S.C. § 841(a)(1). Doc. 90. Farmer now raises a number of issues in seeking a new trial under Rule 33 of the Federal Rules of Criminal Procedure, or a judgment of acquittal under Rule 29(c). Doc. 99. As one of his grounds, Farmer claims that Juror 11 should have disclosed more of her knowledge of Farmer's family, and that she should not have served as a juror. *Id.* at pp. 4–5. The United States filed a response in opposition to Farmer's post-trial motion. Doc. 114. Farmer did not file a reply, and since the deadline to do so has passed, Farmer's post-trial motion is ripe.

II. Standard

A. Motion for a new trial

Rule 33(a) of the Federal Rules of Criminal Procedure provides that "[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of

justice so requires." Rule 33(b) similarly "allows district courts to vacate a conviction and grant a new trial on the basis of newly discovered evidence." *United States v. Meeks*, 742 F.3d 838, 840 (8th Cir. 2014). The decision to grant or deny a Rule 33 motion "is within the sound discretion of the [district] court." *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002). The court "can weigh the evidence, disbelieve witnesses, and grant a new trial even where there is substantial evidence to sustain the verdict[.]" *Id.* (citation and internal quotation marks omitted). But the court must allow the jury's verdict to stand unless the court determines a miscarriage of justice will occur. *Id.*; *see also United States v. Fetters*, 698 F.3d 653, 656 (8th Cir. 2012) ("Motions for new trials are generally disfavored and will be granted only where a serious miscarriage of justice may have occurred." (internal citation omitted)); *United States v. Worman*, 622 F.3d 969, 978 (8th Cir. 2010) ("A district court will upset a jury's finding only if it ultimately determines that a miscarriage of justice will occur.").

For allegations of trial error, the court should "balance the alleged errors against the record as a whole and evaluate the fairness of the trial" to determine whether a new trial is appropriate. *United States v. McBride*, 862 F.2d 1316, 1319 (8th Cir. 1988). The granting of a new trial under Rule 33 "is a remedy to be used only 'sparingly and with caution.'" *United States v. Dodd*, 391 F.3d 930, 934 (8th Cir. 2004) (quoting *Campos*, 306 F.3d at 579). And to obtain a new trial because of newly discovered evidence, a defendant must show that: "(1) the evidence was unknown or unavailable at the time of trial; (2) [the defendant] was duly diligent in attempting to uncover the evidence; (3) the newly discovered evidence is material; and (4) the newly discovered evidence is such [that] its emergence probably will result in an acquittal upon retrial." *Meeks*, 742 F.3d at 840 (citing Fed. R. Crim. P. 33(b); *United States v. Rubashkin*, 655 F.3d 849, 857 (8th Cir. 2011)).

B. Motion for a judgment of acquittal

Rule 29 of the Federal Rules of Criminal Procedure controls post-trial motions for judgment of acquittal. *See* Fed. R. Crim. P. 29(c)(2) ("If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal."). Such motions "put[] in issue the sufficiency of the evidence to sustain the verdict." *United States v. Lincoln*, 630 F.2d 1313, 1316 (8th Cir. 1980). The Eighth Circuit has explained the nature of a motion for a judgment of acquittal:

> A post-verdict motion for a judgment of acquittal . . . is . . . precisely like an appeal from a judgment of conviction on the ground that the evidence was not sufficient to sustain the verdict on which the judgment was entered. The court reviewing the sufficiency of the evidence, whether it be the trial or appellate court, must . . . view the evidence in the light most favorable to the verdict, giving the prosecution the benefit of all inferences reasonably to be drawn in its favor from the evidence. The verdict may be based in whole or in part on circumstantial evidence. The evidence need not exclude every reasonable hypothesis except that of guilt; it is sufficient if there is substantial evidence justifying an inference of guilt as found irrespective of any countervailing testimony that may have been introduced. If so, the issue of guilt or innocence has been properly submitted to the jury for its determination, and the motion for judgment of acquittal is properly denied.

Lincoln, 630 F.2d at 1316–17 (internal citations omitted). Courts will not lightly overturn a jury verdict, *United States v. Peneaux*, 432 F.3d 882, 890 (8th Cir. 2005), and will uphold a verdict as long as a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *United States v. Jirak*, 728 F.3d 806, 811 (8th Cir. 2013); *see also United States v. Peters*, 462 F.3d 953, 957 (8th Cir. 2006) (stating that the court "must uphold the jury's verdict even where the evidence 'rationally supports two conflicting hypotheses' of guilt and innocence" (quoting *United States v. Serrano-Lopez*, 366 F.3d 628, 634 (8th Cir. 2004))).

III. Discussion

Farmer argues first that newly discovered evidence about Juror 11 warrants a new trial under Rule 33(b)(1). Doc. 99 at pp. 3–5. Next, Farmer argues that multiple trial errors make a

new trial necessary under Rule 33(a). *Id.* at pp. 5–11. Last, Farmer claims he is entitled to a judgment of acquittal under Rule 29 because the United States failed to prove any of the three counts in the Indictment beyond a reasonable doubt. *Id.* at pp. 11–13. The Court addresses these arguments in turn.

A. Motion for new trial under Fed. R. Crim. P. 33(b)

Farmer alleges that "[a]fter investigation," he "has determined that [Juror 11] was incapable of being fair and impartial, and withheld information from the Court" during voir dire. Doc. 99 at p. 3. As a result, he requests a new trial under Rule 33(b), or a hearing to question Juror 11 further. *Id.* For the Court to grant Farmer a new trial under Fed. R. Crim. P. 33(b) due to newly discovered evidence, Farmer must show that: "(1) the evidence was unknown or unavailable at the time of trial; (2) [Farmer] was duly diligent in attempting to uncover the evidence; (3) the newly discovered evidence is material; and (4) the newly discovered evidence is such its emergence probably will result in an acquittal upon retrial." *Meeks*, 742 F.3d at 840 (citation omitted).

The Sixth Amendment to the United States Constitution states that: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed[.]" U.S. Const. amend. VI. The Sixth Amendment guarantee of an impartial jury "has not been granted if any member of the jury was biased." *United States v. Johnson*, 688 F.3d 494, 500 (8th Cir. 2012) (quoting *Johnson v. Armontrout*, 961 F.2d 748, 751 (8th Cir. 1992)). "To obtain a new trial or evidentiary hearing on the basis of a juror's mistaken response on voir dire, a party must establish that (1) the juror 'answered dishonestly, not just inaccurately'; (2) the juror was 'motivated by partiality'; and (3) 'the true facts, if known, would have supported striking [the juror] for cause.'" *United States v. Needham*, 852 F.3d 830, 839 (8th Cir. 2017) (quoting *United States v. Tucker*, 137 F.3d 1016,

1026 (8th Cir. 1998)). "District courts . . . have 'broad discretion' regarding whether to conduct evidentiary hearings regarding juror misconduct allegations." *United States v. Needham*, 852 F.3d 830, 839 (8th Cir. 2017) (quoting *United States v. Muhammad*, 819 F.3d 1056, 1061 (8th Cir. 2016)); *see also United States v. Tucker*, 137 F.3d 1016, 1026 (8th Cir. 1998) ("The district court has broad discretion in handling allegations that jurors have not answered voir dire questions honestly, and we defer to its discretion in deciding whether a post-trial hearing is necessary.") (citation omitted).

1. Interactions with Juror 11 at trial

Juror 11, referred to as "No. 27" or "VP 27" below, *see* Doc. 93 at p. 108 (identifying Venireperson 27 as Juror 11), did not respond to the Court's general question after the parties introduced themselves (including Mr. Farmer):

> **COURT:** "Anyone -- does anyone know any of the folks that were just introduced or have had any business or other dealings with them in the past? If so, please raise your hand.

Doc. 93 at pp. 27–28. After one venireperson responded affirmatively and said he knew Mr. Hahn, counsel for the United States, the Court again asked:

> **COURT:** "Very good. So with that, anyone else? I see no other hands."

Id. at p. 28. Juror 11 again did not respond. Juror 11 later responded affirmatively to a question about being familiar with the area near Bernie, Missouri, the scene of the crime:

> **VP 27:** Yes, I live in the Malden area about 7 miles from Bernie.
> (Court reporter clarification.)
>
> **COURT:** All right. And you said 7?
>
> **VP 27:** Uh-huh.
>
> **COURT:** Very good. And so, ma'am, is there anything about that that would cause you not to be fair and impartial in this case?

VP 27: No.

COURT: Did you say "no"?

VP 27: "No."

COURT: Very good. And then is there anything about your knowledge of that particular area that would make it difficult for you to serve as a juror in [t]his case.

VP 27: No, it would not.

Id. at pp. 38–39. Juror 11 also did not respond to the following question the Court posed about knowing witnesses:

COURT: So the lawyers in the case have supplied me with names of witnesses they think are likely or possible to be called in this case. I am going to read the list in no particular order and ask you, after I go through the entire list, whether you know or are familiar with anyone or believe you know any of them. And if so, I'll ask you about your relationship with the individual, whether you can be fair and impartial. So you know that.

So the names are as follows: Travis Templemire, Pam Buchanan, Sarah Brown, Mike Slaughter and Mr. Farmer himself, as well. Anybody know any of those folks, have any prior dealings or relationship with any of those folks?

Id. at p. 40. After a recess, the Court relayed to the parties at a sidebar that during the recess:

COURT: No. 27 disclosed to [the courtroom deputy] that she knows the defendant's family. She saw them out in the hallway on this break and she said she does not know the defendant, but she knows at least one of the members of the family. So I want to leave that to you to inquire further of her about that, but she has disclosed that.

Id. at p. 62. The Court and the parties agreed that the Court would ask a question about knowing relatives of the parties. *Id.* at pp. 64–65. A short time later, the Court asked:

COURT: One other question. I'm going to circle back to a topic I was on earlier, which is knowledge of the folks in the courtroom. So you were introduced to the lawyers in the courtroom and the parties that are at the table. And so does anyone have any knowledge of or relationship with any close family member of any of the lawyers or parties in the courtroom?

Id. at p. 67. Juror 11 asked to approach the bench, and an extended conversation took place among the Court, Juror 11, and the attorneys. *Id.* at pp. 67–74. Farmer's counsel, however, did not ask Juror 11 a single question.

> **VP 27:** As we went to the bathroom, I had noticed the family members are out there and I do know – if those are his family members, I do know them. They are from the Malden surrounding area. Me and my husband served as foster parents and we have our kids that stay the night over at this woman's house that's outside. And I -- so I think she's family. So if she's some kin to him and everything, you know. Like I say, I stay in Malden and everybody knows us because of what we did, foster parents and adoptive parents.
>
> **COURT:** So to make sure I understand, so, you know –
>
> **VP 27:** I know her. Uh-huh. I know her from the Malden surrounding area.
>
> **COURT:** Okay.
>
> **VP 27:** And she have [sic] sisters and stuff that stays [sic] in Malden, too.
>
> **COURT:** Okay. And the part I didn't understand was about being a foster parent. You said kids stay? Can you clarify that?
>
> **VP 27:** Yes. Yes, me and my husband, we was [sic] foster parents and some of our foster kids just stayed over, you know, over at her house.
>
> **COURT:** Okay. So and do you know how this woman is related to Mr. Farmer?
>
> **VP 27:** I really don't. I don't really know a lot of people. My husband does. And, you know, like I said, I know her.
>
> **COURT:** Okay.
>
> **VP 27:** I don't know how.
>
> **COURT:** Let me ask you this: Do you know for a fact that she's related to Mr. Farmer or do you just suspect that based on –
>
> **VP 27:** I suspect because she is there. Now I'm thinking she's, you know, something related.
>
> **COURT:** Okay. So let's -- let me ask you a few more questions. So other than having seen her here, do you have any reason to believe she's -- or any knowledge that

she's related to Mr. Farmer?

VP 27: No.

COURT: Okay. Do you -- and I will ask the question: Do you know Mr. Farmer or have any association with him?

VP 27: I don't –

COURT: I will just ask you that again.

VP 27: I don't know him or anything. I don't know if he knows me because like I said, we are well-known in the Malden area because of what we do but other than that –

COURT: But you have no reason to know him or believe you had any prior contact with Mr. Farmer; is that correct?

VP 27: Yeah, I don't know him.

COURT: So that's correct?

VP 27: That's correct.

COURT: All right. All right. Thank you. Counsel?

MR. HAHN [for the United States]: Juror No. 27, do you believe that you know members of Mr. Farmer's family?

VP 27: Oh, yes.

COURT: And more than one?

VP 27: If that's her out there -- if that's her out there, I know her --

MR. HAHN: Okay. Someone --

VP 27: -- people.

MR. HAHN: -- here that's associated with the trial present in the courthouse waiting just outside the courtroom, you recognize –

VP 27: I recognize her.

MR. HAHN: -- people that -- and you do know members of Mr. Farmer's family?

VP 27: Okay. If she's kin -- I mean, if she's here for him or with him, I don't know.

MR. HAHN: Yeah. And I guess what I'm asking, though, a little more general --

VP 27: That's what I'm afraid of.

MR. HAHN: Okay. You do know members of Mr. Farmer's family --

VP 27: Okay.

MR. HAHN: -- is that correct? I'm not putting words in your mouth. I'm just trying to figure out . . .

VP 27: Okay. Let me say here: If she is a kin to him, yes, I do.

MR. HAHN: Okay. Do you know any other members of Mr. Farmer's family?

VP 27: Just mostly kids that hang around the Malden area.

MR. HAHN: And you said that --

VP 27: I don't know if they are Farmers, but it -- you know, I know her and her kids.

MR. HAHN: And you said based on what you and your husband do in the community, you are well-known?

VP 27: Uh-huh, we're well-known.

MR. HAHN: And what is it that you do in the community in Malden?

VP 27: We was [sic] foster parents and adoptive parents for 30 years in that area.

COURT: And what about your work, your livelihoods or social organizations or things. I mean, are you well-known otherwise or it's primarily based on foster children you are saying that you are well-known?

VP 27: Well, we lived there for over 35 years, so a lot of people knows [sic] us in general. So . . .

MR. HAHN: And I guess my next question is: If this lady that you know is here and is in some way connected with Mr. Farmer, would you feel uncomfortable sitting in this case?

And let's say further that you believe the evidence was sufficient to convict him, Mr. Farmer. Would it make you uncomfortable sitting and making that kind of decision and then having to meet people back in the community –

VP 27: I will. I would. Yes, I would.

MR. HAHN: Okay. And that's what we are trying to get at.

VP 27: Yes, I would.

MR. HAHN: Is there anything that may cause you to hesitate or be uncomfortable in this courtroom? Because what we are trying to do is get a jury panel that doesn't have -- is free of outside influences –

VP 27: Uh-huh.

MR. HAHN: -- that may affect your verdict one --

VP 27: Right.

MR. HAHN: -- way or the other either way.

VP 27: Right.

MR. HAHN: And do you feel that you would be – you could be fair -- unfair? You would not be able to be impartial?

VP 27: I would not be unfair, but I would be uncomfortable --

MR. HAHN: Okay.

VP 27: -- sitting.

MR. HAHN: And that would -- and let's say that if you were part of a jury that returned a guilty verdict and you saw those people or people that you knew related to Farmer or -- and you are from the same community, right?

VP 27: Uh-huh.

MR. HAHN: I'm asking sort of two questions at once. Would you feel uncomfortable seeing those people in the community afterwards?

VP 27: No.

MR. HAHN: Would you feel uncomfortable sitting in this case?

VP 27: I would.

MR. HAHN: Okay. And that's what we are getting at.

VP 27: Okay. I don't associate with a lot of people. I'm more like a homebody, work home and take care of my family. So I'm not really out there.

MR. HAHN: But you would feel uncomfortable sitting here --

VP 27: I would feel uncomfortable; but if I had to, I would make the, you know, the right decision.

COURT: Let me ask you this, ma'am: At the end of the day the real inquiry here is could you be fair and impartial in this case --

VP 27: Oh, totally.

COURT: -- and decide this case based solely on the evidence presented here in the courtroom and my instructions on the law?

VP 27: Totally. Yes, I will.

COURT: Okay. Even if you had some discomfort about --

VP 27: Oh, yes.

COURT: -- knowledge of a person?

VP 27: Yes.

COURT: All right. Thank you. Mr. Borowiak.

MR. BOROWIAK [for the Defendant]: No, Your Honor, I have nothing else to add.

COURT: Okay. Very good. Thank you, ma'am.

Id. at pp. 67–74.

2. Farmer's motion for a new trial based on newly discovered evidence fails to meet Rule 33(b)'s requirements

To obtain a new trial based on newly discovered evidence, Farmer must show that "the evidence was unknown or unavailable at the time of trial" and that he "was duly diligent in attempting to uncover the evidence," among other things. *Meeks*, 742 F.3d at 840 (citing *Rubashkin*, 655 F.3d at 857). And the Eighth Circuit has held that the relevant "time of trial" is before the jury returns a verdict:

> This court adhere[s] to the general rule that jury misconduct known to defendant or his counsel and not called to the attention of the court before the return of the verdict, cannot be a ground for a new trial . . . "A party may not stand idly by, watching the proceedings and allowing the Court to commit error of which he subsequently complains."

United States v. Hoelscher, 914 F.2d 1527, 1543 (8th Cir. 1990) (internal citation omitted) (quoting *United States v. Dean*, 667 F.2d 729, 733–34 (8th Cir. 1982)). In both *Dean* and *Hoelscher*, the court noted that the court retained two alternate jurors until the jury rendered a verdict, as the Court did here. *Id.*; *Dean*, 667 F.2d at 731; Doc. 94 at pp. 126, 133.

Farmer believes that his sister Jahvashea Farmer[1], who was present at the courthouse during voir dire, was the family member that Juror 11 spotted during a recess. Doc. 99 at p. 3. He claims that he learned from his sister that Juror 11 "not only knew Defendant and his family, but had prior negative experiences with them" and had "expressed anger and frustration with those family members." *Id.* at p. 4. Specifically, according to Jahvashea, about a year before Farmer's trial, Juror 11's son threw a firework at Jahvashea's car, damaging it. *Id.* Jahvashea reported the incident to the police, Doc. 99-1, and allegedly spoke with Juror 11 about it. Doc. 99 at p. 4. From information his sister provided, Farmer claims he learned that "Juror [11] was

[1] The Court refers to Farmer's sister by her first name to differentiate between her and Farmer, and not to imply familiarity.

upset with Jahvashea Farmer for involving her son with the police, and made her displeasure known to Jahvashea Farmer." *Id.* Farmer also alleges that—according to his sister—Juror 11 "knew Defendant through family connections and social engagements" and that Juror 11 "concealed this relationship at voir dire, stating that she somewhat knew Jahvashea Farmer, but denied knowing Defendant." *Id.* at pp. 4–5.

However, the Court notes that in his motion, Farmer does not mention when he learned the information from his sister (who was present at the courthouse during voir dire, *id.* at p. 3). He does not make any effort to show that the information was "unknown or unavailable at the time of trial," or that he was "duly diligent in attempting to uncover the evidence" before the jury returned a verdict, leaving the Court to speculate whether Farmer has met his burden under Rule 33(b).

Critically, Farmer never states whether he and his counsel ever discussed whether Farmer—or, as importantly, his sister Jahvashea—knew or had any dealings with Juror 11. *See* Doc. 99. For example, he never states whether he made any inquiry at all regarding Juror 11 during voir dire, or at any other time before the jury returned a verdict and the Court excused the alternate jurors. Doc. 94 at p. 133. Several of Juror 11's statements during voir dire put Farmer's counsel on notice to, at a minimum, inquire of Farmer himself, Jahvashea, and perhaps other family members, for example: when Juror 11 stated that she recognized a person in the courthouse whom she thought was related to Farmer, Doc. 93 at p. 67, when Juror 11 stated "I don't know if [Farmer] knows me because like I said, we are well-known in the Malden area," *id.* at p. 70, and when she stated that she and her husband were well-known because they had lived in the area for over thirty-five years and had been foster and adoptive parents there for thirty years. *Id.* at p. 71.

Farmer only makes two possibly related points in his motion. First, Farmer claims that "[i]t is fair to conclude that the negative interaction with Defendant's family caused her to be biased against Defendant. Had this bias been known, [Juror 11] would have been struck for cause due to her bias." Doc. 99 at p. 5. But while this assertion goes to what may have happened if the information was known, it does not establish that the information was unknown or unavailable at the time of trial, or whether Farmer was diligent to uncover the information. Second, the police report attached as Exhibit A to Farmer's motion indicates that it was printed on August 31, 2021, after the close of trial on July 22, 2021. Doc. 99-1 (police report); *see also* Doc. 90 (jury verdict dated July 22, 2021). But the fact that the date of the printout falls after the trial does not by itself meet Farmer's burden under Rule 33(b), and Farmer does not make any claim based on the date of the printout regarding when he learned about the existence of the police report or why it was unknown or unavailable at the time of trial.

"Rule 33(b) motions are disfavored," *Meeks*, 742 F.3d at 840 (citing *United States v. Baker*, 479 F.3d 574, 577 (8th Cir. 2007)), and the law abhors sleeping on one's rights. As noted, Farmer could have but chose not to take the simple measure of stating (through counsel) that he knew or had reason to know Juror 11; similarly, he chose not to ask his sister, whom Juror 11 identified and who was present in the courthouse on the day of trial, the same questions. The Court could have easily excused Juror 11 or seated an alternate juror at any time before the jury returned a verdict, conserving not only judicial but juror resources—as well as the resources of the prosecution and defense. The Court finds that once Juror 11 spoke during voir dire, if not earlier, Farmer could have known the information relevant to Juror 11, and that Farmer was not diligent in seeking the information during trial. *Meeks*, 742 F.3d at 840 (citing *Rubashkin*, 655 F.3d at 857); *Hoelscher*, 914 F.2d at 1543 (quoting *Dean*, 667 F.2d at 733–34).

The totality of the circumstances gives rise to the inference that Farmer desired to keep Juror 11 on the panel because she was the only African American venireperson. Farmer had a decision to make—and to make any time before the jury rendered its verdict—whether to raise an objection to Juror 11 based on information he could and should have known or to proceed with her as a juror. He cannot sit on the information he had, or had access to, regarding Juror 11, keep her on the jury on the gamble that he prevails, and then raise an objection when that gamble fails. *Hoelscher*, 914 F.2d at 1543 (quoting *Dean*, 667 F.2d at 733–34) ("A party may not stand idly by, watching the proceedings and allowing the Court to commit error of which he subsequently complains."); *cf. United States v. Jones*, 597 F.2d 485, 489 n.3 (5th Cir. 1979) (collecting cases holding in the context of jury-tampering charges that "a defendant cannot learn of juror misconduct during the trial, gamble on a favorable verdict by remaining silent, and then complain in a post-verdict motion that the verdict was prejudicially influenced by that misconduct").

For all of these reasons, Farmer has not met his burden, and his Rule 33(b) motion fails.

3. Farmer fails to allege facts sufficient to warrant a new trial or evidentiary hearing under the Eighth Circuit's juror-bias test

Additionally, Farmer fails to allege facts sufficient to warrant a new trial or evidentiary hearing under the Eighth Circuit's juror-bias test. Farmer must show (1) that the juror "answered dishonestly, not just inaccurately," (2) that the juror was "motivated by partiality," and (3) that "the true facts, if known, would have supported striking [the juror] for cause." *Needham*, 852 F.3d at 839 (quoting *Tucker*, 137 F.3d at 1026). Even assuming Farmer could show that Juror 11's answers during voir dire were dishonest, rather than merely incorrect (which he hasn't), Farmer fails to allege actual or implied bias, and thus fails the second part of

the test. Because Farmer fails the second part of the test, the Court need not address the other parts.

In *Needham*, the Eighth Circuit addressed the second part of the test in detail:

> Because "courts presume that a prospective juror is impartial," establishing juror partiality is a high hurdle. *Moran v. Clarke*, 443 F.3d 646, 650 (8th Cir. 2006). "Essentially, to fail this standard, a juror must profess his inability to be impartial and resist any attempt to rehabilitate his position." *Id.* at 650–51 (holding that the district court did not abuse its discretion in denying a motion to strike jurors that "acknowledged difficulty being impartial, given their strong emotions" on the underlying facts of the case because the jurors "consistently stated that they could be impartial").
>
> Absent a juror's profession of the inability to be impartial, juror bias "may be implied [only] in certain egregious situations." *Manuel v. MDOW Ins. Co.*, 791 F.3d 838, 843 (8th Cir. 2015) (quoting *Sanders v. Norris*, 529 F.3d 787, 792 (8th Cir. 2008)). Such "extreme situations" are limited to those "in which 'the relationship between a prospective juror **and some aspect of the litigation** . . . [makes it] highly unlikely that the average person could remain impartial.'" *Id.* (ellipsis and alteration in original) (quoting *Sanders*, 529 F.3d at 792). "[E]xamples might include a revelation that a juror is an **actual employee of the prosecuting agency**, that the juror is a **close relative of one of the participants** in the trial or the criminal transaction, or that the juror was a **witness or somehow involved in the criminal transaction**." *United States v. Tucker*, 243 F.3d 499, 509 (8th Cir. 2001) (quoting *Smith v. Phillips*, 455 U.S. 209, 222 (1982) (O'Connor, J., concurring)).

United States v. Needham, 852 F.3d 830, 840 (8th Cir. 2017) (emphasis added).

Farmer fails to allege actual bias. Here Juror 11 professed multiple times that she could be impartial, reinforcing the presumption that she lacked any actual bias toward Farmer. Doc. 99 at pp. 39, 44, 59, 66, 73; *Moran*, 443 F.3d at 650. Notably, Juror 11 came forward on her own initiative to express concern after she recognized Farmer's sister outside the courtroom, which speaks to her honesty and lack of bias. *See United States v. Ruiz*, 446 F.3d 762, 770 (8th Cir. 2006) (affirming denial of new trial where "[t]he district court concluded that the juror was not motivated by bias because the juror immediately notified the district court upon recognizing the family members of the defendants, expressing her concern about the situation" and adding that

"the juror's honesty is reflected by her self-disclosure"). Further, Farmer fails to allege facts even indicating that Juror 11 harbored any bias towards Farmer himself. Instead, his allegations of bias only relate to an incident between Juror 11 and Farmer's sister that by Farmer's own account has no relation to the litigation. Doc. 99 at p. 5 (stating without support that "[i]t is fair to conclude that the negative interaction with Defendant's family caused [Juror 11] to be biased against Defendant.").

Farmer also fails to allege implied bias. As noted above, bias may only be implied "in certain egregious situations," *Needham*, 852 F.3d at 840, such as "a revelation that a juror is an actual employee of the prosecuting agency, that the juror is a close relative of one of the participants in the trial or the criminal transaction, or that the juror was a witness or somehow involved in the criminal transaction." *United States v. Tucker*, 243 F.3d 499, 509 (8th Cir. 2001) (quoting *Smith*, 455 U.S. at 222 (O'Connor, J., concurring)). These "extreme situations" are limited to those "in which 'the relationship between a prospective juror and some aspect of the litigation . . . [makes it] highly unlikely that the average person could remain impartial in his deliberations.'" *Manuel*, 791 F.3d at 843 (ellipsis and alternation in original) (quoting *Sanders*, 529 F.3d at 792). Farmer points to nothing even suggesting that Juror 11 had a relationship with "some aspect of the litigation." *Needham*, 852 F.3d at 840 (citing *Manuel*, 791 F.3d at 843).

For these reasons, the Court denies Farmer's motion for a new trial under Rule 33(b).

B. Motion for a new trial under Fed. R. Crim. P. 33(a)

Farmer raises five arguments for why the Court should grant him a new trial under Rule 33(a): First, the racial makeup of the venire violated his constitutional rights. Doc. 99 at pp. 5–6. Second, the Court erred in denying his Motion in Limine, Doc. 69, to exclude certain text messages and telephone calls. Doc. 99 at pp. 7–8. Third, the Court erred in overruling his

objections at trial to the introduction of videos of meetings between Farmer and Sergeant Templemire. *Id.* at pp. 8–9. Fourth, the United States' use of 404(b) evidence was improper. *Id.* at pp. 9–10. And fifth, Sergeant Templemire did not have probable cause to seize evidence from Farmer's car on August 21, 2019, and the Court erred in denying Farmer's related Motion to Suppress Evidence, Doc. 35, and overruling his Objection, Doc. 52, to the magistrate judge's Report and Recommendation, Doc. 45. Doc. 99 at pp. 10–11.

1. Racial makeup of the venire

Because Juror 11 was the only African American venireperson, Farmer claims that the racial makeup of the venire violated his constitutional rights. Doc. 99 at pp. 5–6; *see also* Doc. 93 at pp. 12–15. As the Eighth Circuit recently stated, "[t]o establish a prima facie violation of the Sixth Amendment's fair cross section requirement," Farmer must demonstrate that the representation of African Americans in the Southeastern Division's jury pool "'is not fair and reasonable in relation to the number of such persons in the community,' . . . among other elements." *United States v. Erickson*, 999 F.3d 622, 626 (8th Cir.) (quoting *Duren v. Missouri*, 439 U.S. 357, 364 (1979)), *cert. denied*, No. 21-6003, 2021 WL 5284805 (U.S. Nov. 15, 2021).

As was the case in *Erickson*, here "the record contains no evidence about the percentage of potential jurors" in the Southeastern Division's jury pool who identified as African American at the time of Farmer's trial. *Id.* at 627. Apart from his own observation that only one of the venire was African American, the only evidence Farmer presents is census data showing African American representation in the counties making up the Southeastern Division. Doc. 99 at p. 6; Doc. 99-2 (chart containing demographic information). Farmer fails "to provide any data on the racial makeup of juror pools in the [Eastern District of Missouri] or any statistical analyses showing underrepresentation." *United States v. Horton*, 756 F.3d 569, 578 (8th Cir. 2014); *cf.*

United States v. Rogers, 73 F.3d 774, 776–77 (8th Cir. 1996) (providing examples of the type of statistical data needed to establish a prima facie case).

Because Farmer has not presented any evidence about the number of African Americans in the Southeastern Division's jury pool, he has failed to show that African American representation in that jury pool was "not fair and reasonable in relation to the number of [African Americans] in the community." *Erickson*, 999 F.3d at 627 (quoting *Duren*, 439 U.S. at 364); *see also Singleton v. Lockhart*, 871 F.2d 1395, 1399 (8th Cir. 1989) ("Evidence of a discrepancy on a single venire panel cannot demonstrate systematic exclusion.").

2. Admission of text messages and phone calls

Farmer argues that the Court improperly admitted messages and phone calls between Farmer and Sergeant Templemire, because the United States failed to authenticate them. Doc. 99 at pp. 7–8. Like in his Motion in Limine, Farmer claims that the United States "failed to provide any telephone records showing that the phone number was associated to an account belonging to [Farmer]" and "failed to provide a witness that observed sending or making the phone calls or text messages." *Id.* at p. 7. Farmer cites to no case law in support of his position that authenticating text messages and telephone calls requires telephone records and an observing witness, and the Court again finds that neither is necessary here.

"Authentication is satisfied by 'evidence sufficient to support a finding that the item is what the proponent claims.'" *Needham*, 852 F.3d at 836 (quoting Fed. R. Evid. 901(a)). "The party authenticating the exhibit need only provide a rational basis for the party's claim that the document is what it is asserted to be. This may be done with circumstantial evidence." *Id.* at 836 (internal quotation marks and citations omitted). "[A] rational basis for believing the text messages . . . were [Farmer's] . . . is all that is required to clear the low bar for authenticating

evidence . . . ." *United States v. Turner,* 934 F.3d 794, 798 (8th Cir. 2019), *cert. denied,* 140 S. Ct. 1217 (2020). Additionally, a "telephone conversation may be shown to have emanated from a particular person by virtue of its disclosing knowledge of facts known peculiarly to him." Fed. R. Evid. 901 advisory committee's note, ex. 4; s*ee also United States v. Garrison,* 168 F.3d 1089, 1093 (8th Cir. 1999).

At trial, Sergeant Templemire testified that Farmer consented to Templemire's obtaining Farmer's telephone number on July 10, 2019, the date of their first meeting. Doc. 93 at p. 141. Sergeant Templemire then obtained Farmer's phone number, ending in 6873, and stored it on his cell phone as a contact. *Id.* at p. 142. He testified that Farmer called him, and he called Farmer, on that number on several occasions after July 10, 2019. *Id.* at p. 143. He also testified that when Farmer called him, he recognized Farmer's voice fairly immediately and the contact he stored in his phone for Farmer would pop up. *Id.* at pp. 143–44. Sergeant Templemire's previous in-person conversations with Farmer aided him in recognizing Farmer's voice. He testified that Farmer consistently used the same telephone number to communicate with him from early-to-mid July through August 21, 2019. *Id.* at p. 144. He conservatively estimated that he exchanged 50 text messages with Farmer at that number prior to August 2, 2019, for the purpose of arranging to buy methamphetamine from Farmer. *Id.* at pp. 144, 148. He further testified that the places where he met Farmer to purchase methamphetamine were consistent with the plans they made via text messages and telephone calls. *Id.* at pp. 141–45. And, as contemplated by those text messages and telephone calls, on August 2, 8, and 21, Farmer met Sergeant Templemire at a pre-arranged location to sell him methamphetamine. Doc. 93 at pp. 162–67, 191–95, 203–11.

Sergeant Templemire's testimony meets the "rational basis" standard, *see Needham*, 852 F.3d at 836 (citation omitted), and provides sufficient evidence to support a finding that the messages sent and received from the number ending in 6873 were sent and received by Farmer. *See United States v. Ramirez-Martinez,* 6 F.4th 859, 866 (8th Cir. 2021). Accordingly, the Court finds that the United States properly authenticated the text messages and telephone calls, and that their admission into evidence comported with Fed. R. Evid. 901(a).

3. Admission of videos documenting meetings between Farmer and Sergeant Templemire

Farmer next argues that that the videos detailing the meetings between Sergeant Templemire and Farmer—and the still photos by extension—were cumulative, and that their admission violated Federal Rule of Evidence 403. Doc. 99 at pp. 8–9. Farmer argues that the videos are "cumulative" because they failed to show any narcotics or money exchanged between the individuals and only bolstered Sergeant Templemire's testimony. *Id.* The Court disagrees.

Federal Rule of Evidence 403 provides that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by the danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." The Eighth Circuit instructs that "[e]vidence is 'cumulative' when it adds very little to the probative force of the other evidence' and its contribution to the truth 'would be outweighed by its contribution to the length of the trial, with all the potential for confusion . . . that a long trial creates.'" *United States v. Robertson*, 948 F.3d 912, 917 (8th Cir.) (quoting *United States v. Williams,* 81 F.3d 1434, 1443 (7th Cir. 1996)), *cert. denied*, 141 S. Ct. 298 (2020).

At trial, the United States presented videos depicting Farmer's presence at each of the transactions charged in counts 1, 2, and 3 of the Indictment. The video recordings corroborate

Sergeant Templemire's testimony by not only showing Farmer's presence at the transactions, but also by revealing the actual words spoken by Sergeant Templemire and Farmer. The recordings thus served to assist the jury in determining that Sergeant Templemire met with Farmer to purchase methamphetamine on August 2, 8, and 21. The videos were highly probative of Farmer's knowing involvement in the charged offense, which added significantly to the probative force of Sergeant Templemire's testimony. They also did not prolong what was a short, two-day trial. Accordingly, the Court finds that the videos were not cumulative and that their admission comported with Rule 403.

4. Admission of prior uncharged drug transactions under 404(b)

Consistent with his objections at trial and his Objection to the Government's Intent to Rely Upon 404(b) Evidence, Doc. 80, Farmer claims that the Court erred in admitting evidence of two uncharged drug transactions under Fed. R. Evid. 404(b), and argues that as a result the Court should grant him a new trial. Doc. 99 at pp. 9–10. The United States maintains that the evidence "was admissible to show Sergeant Templemire's identification of Farmer and his familiarity with his voice and his telephone number, and to show that Defendant Farmer knowingly and intentionally distributed methamphetamine" during the three charged transactions in August 2019. Doc. 114 at p. 36. For the same reasons the Court overruled Farmer's prior objections, it does so again here. *See* Doc. 93 at pp. 156–57 (overruling Farmer's objection to the introduction of 404(b) evidence during trial).

Fed. R. Evid. 404(b) provides that evidence of other crimes, wrongs, or acts—which "is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character"—"may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of

mistake, or lack of accident." The Eighth Circuit instructs that "[e]vidence of prior bad acts is admissible if (1) the evidence is relevant to a material issue; (2) the prior bad acts are similar in kind and reasonably close in time to the crime charged; (3) there is sufficient evidence to support a finding by the jury that the defendant committed the prior acts; and (4) the potential prejudice of the evidence does not substantially outweigh its probative value." *United States v. Anderson*, 879 F.2d 369, 378 (8th Cir. 1989) (citing *United States v. Mothershed*, 859 F.2d 585, 588 (8th Cir. 1988)). With this test in mind, the Court turns to the facts in this case.

First, the evidence of prior drug transactions is relevant to the material issues of knowledge and intent. The elements of the crime charged—distribution of 50 grams or more of a mixture or substance containing methamphetamine—required the United States to prove (among other things): (1) that Farmer intentionally transferred a mixture or substance containing methamphetamine to Sergeant Templemire; and (2) that Farmer knew at the time of transfer that the mixture or substance contained methamphetamine, a controlled substance. *See* Doc. 1. As in *United States v. Gilmore*, by pleading not guilty, Farmer "put the government to its proof on all elements of the charged crime, including intent, knowledge, and identity." 730 F.2d 550, 554 (8th Cir. 1984). And as in *Gilmore*, here "the challenged testimony supports the [United States]' position on each of these issues." *Id.*

Second, the prior drug transactions are similar to the charged transactions and occurred only a few weeks before. Like the charged transactions, each of the prior transactions involved Farmer selling methamphetamine to Sergeant Templemire, Doc. 93 at pp. 147–55, and are "sufficiently similar to support an inference of criminal intent." *United States v. Ironi*, 525 F.3d 683, 687 (8th Cir. 2008) (citation omitted). "Remoteness is determined on a case-by-case basis." *United States v. Gutierrez-Ramirez*, 930 F.3d 963, 967 (8th Cir. 2019). Here, only a few weeks

separated the charged drug transactions (in August 2019) from the prior transactions (in July 2019)—a much shorter period than multiple-year gaps the Eighth Circuit deemed not overly remote in other cases. *See, e.g.*, *id.* at 967 (three-year gap not too remote); *United States v. Samuels*, 611 F.3d 914, 918 (8th Cir. 2010) (eight-year gap not too remote); *United States v. Trogdon*, 575 F.3d 762, 766 (8th Cir. 2009) (eleven-year gap not too remote).

Third, by presenting testimony from Sergeant Templemire, the United States met its burden to show by a preponderance of the evidence that Farmer committed the acts, *United States v. Gettel*, 474 F.3d 1081, 1087 (8th Cir. 2007), by introducing evidence allowing "a jury [to] reasonably conclude that the acts occurred and that the defendant was the actor." *United States v. Loveless*, 139 F.3d 587, 592 (8th Cir. 1998) (quotation omitted). Farmer does not argue otherwise. *See* Doc. 99 at pp. 9–10. Instead, in conclusory fashion, Farmer argues that "[t]he prohibitive [sic] value of the incidents were strongly outweighed by their prejudicial value." *Id.* at p. 10. The Court rejects this argument, as it did twice before, because the prior transactions were relevant to—and highly probative of—elements of the crime charged, including knowledge, identity, and intent. *See, e.g.*, *Gilmore*, 730 F.2d at 554–55. Further, the Court reduced any prejudicial effect of the prior drug transaction evidence by giving a limiting instruction to the jury. Doc. 93 at pp. 146–47; *see also United States v. Ironi*, 525 F.3d 683, 688 (8th Cir. 2008) (finding that "any prejudicial effect of admitting the prior crimes was reduced by the district court's limiting instruction to the jury that it could only consider the prior crimes to determine [the defendant]'s intent").

5. Admission of evidence seized from Farmer's car

As in his pre-trial Motion to Suppress Evidence, Doc. 35, and his Objection, Doc. 52, to the magistrate judge's Order and Recommendation, Farmer again claims that Sergeant

Templemire did not have probable cause to seize evidence from Farmer's car on August 21, 2019. Doc. 99 at pp. 10–11. For the reasons the Court articulated in its order adopting the magistrate judge's Report and Recommendation and making additional findings and conclusions, Doc. 56 at pp. 4–8, the Court again concludes that "the evidence supports the conclusion that Sergeant Templemire had probable cause to search the car" and that "[b]ased on the Court's de novo review of the evidence and the law . . . no grounds for suppression exist." *Id.* at pp. 7–8.

For these reasons, the Court denies Farmer's motion for a new trial under Rule 33(a).

C. Motion for judgment of acquittal

Alternatively, Farmer argues that he is entitled to a judgment of acquittal because the United States failed to prove counts 1, 2 and 3 of the Indictment beyond a reasonable doubt. Doc. 99 at pp. 11–13. Farmer focuses solely on the videos the United States introduced at trial, claiming that "each video failed to show the transfer of any narcotics." Doc. 99 at p. 12. He argues that "Templemire had ample opportunity to record methamphetamine and present it to the finder of fact, but failed to do so." *Id.*

Jury instructions 10, 11, and 12 list the elements of the crime charged in each count:

> The crime of distribution of 50 grams or more of a mixture or substance containing methamphetamine, as charged in [counts 1, 2, and 3, respectively] of the Indictment, has three elements, which are:
>
> *One*, the defendant intentionally transferred a mixture or substance containing methamphetamine to Travis Templemire;
>
> *Two*, at the time of the transfer, the defendant knew that it was a mixture or substance containing methamphetamine, a controlled substance; and
>
> *Three*, the amount the defendant distributed was 50 grams or more of a mixture or substance containing methamphetamine.

Doc. 89 at pp 10–12; *see also* Doc. 1 (Indictment).

Though Farmer focuses on the video recordings, he does not address the other evidence—witness testimony, audio recordings, and methamphetamine—the United States presented at trial regarding each count. Regarding count 1, Sergeant Templemire testified at trial that he purchased methamphetamine from Farmer on August 2, 2019. Doc. 93 at pp. 158–87. He spoke to Farmer two times over the phone before the transaction, and the United States introduced an audio recording of those calls into evidence. *Id.* at pp. 158–60. Sergeant Templemire received text messages from Farmer (which were introduced into evidence) before meeting him around 3:45 p.m. at a parking lot of a Crossroads store "at the corner of U and H Highway just west of Bernie" in Stoddard County, Missouri. *Id.* at pp. 151–65. Sergeant Templemire testified that he pulled up with his driver's window next to Farmer's driver's window and paid Farmer $930.00 in exchange for more than 50 grams of methamphetamine. *Id.* at pp. 165–71. The United States introduced the methamphetamine from the August 2, 2019, meeting into evidence, *id.* at pp. 179–82, along with an audio/video recording Sergeant Templemire made of the meeting. *Id.* at p. 174. Chemist Sarah Brown of the Missouri State Highway Patrol Crime Laboratory analyzed the substance that Farmer sold to Sergeant Templemire on August 2, 2019. Doc. 94 at pp. 62–64. Based on her report, Government's Exhibit 26, Brown testified that the substance was 55.77 grams of a substance containing methamphetamine. *Id.*

Regarding count 2, Sergeant Templemire testified that he purchased methamphetamine from Farmer on August 8, 2019. Doc. 93 at pp. 191–203. As with the August 2, 2019, transaction, Farmer and Sergeant Templemire exchanged text messages arranging for a transaction on August 8, 2019, *id.* at pp. 191–92, at the same location as before, *id.* at p. 192. Sergeant Templemire testified that around 5:45 p.m. on August 8, 2019, he met Farmer in the

Crossroads store parking lot at the corner of U and H Highway, and Farmer sold him around three-and-a-half ounces of methamphetamine—more than 50 grams—for $1,700.00. *Id.* at pp. 192–95. Sergeant Templemire again recorded the transaction, and the audio/video recording was introduced into evidence, *id.* at pp. 196–97, along with the methamphetamine Sergeant Templemire purchased on August 8, 2019, *id.* at p. 200. Brown also analyzed the substance that Farmer sold to Sergeant Templemire on August 8, 2019. Doc. 94 at pp. 65–66. Based on her report, Government's Exhibit 27, Brown testified that the substance was 98.74 grams of a substance containing methamphetamine. Doc. 94 at pp. 65–67.

Regarding count 3, Sergeant Templemire testified that he purchased methamphetamine from Farmer on August 21, 2019. Doc. 93 at pp. 203–20. Farmer and Sergeant Templemire exchanged text messages between August 15 and August 20, 2019, arranging for Farmer to sell Sergeant Templemire eight ounces of methamphetamine for $2,200.00. *Id.* at pp. 203–04. They also spoke over the phone about the purchase, and the prosecution moved into evidence audio recordings of the phone calls. *Id.* at p. 206–08. They agreed to meet on August 21, 2019, at the same location as the two prior meetings. *Id.* at pp. 208–09. Sergeant Templemire testified that on August 21, 2019, he again met Farmer in the Crossroads store parking lot, but this time entered Farmer's vehicle to conduct the transaction. *Id.* at pp. 209–11. The methamphetamine Sergeant Templemire purchased from Farmer for $2,200.00 on August 21, 2019, had a field weight of 105 grams. *Id.* at pp. 192–95, 198–90, 208–12. The Court received the methamphetamine into evidence along with an audio/video recording of the meeting. *Id.* at pp. 213–14, 216–18. Brown likewise analyzed the substance that Farmer sold to Sergeant Templemire on August 21, 2019. Doc. 94 at pp. 67–69. Based on her report, Government's

Exhibit 28, Brown testified that the substance was 224.23 grams of a substance containing methamphetamine. *Id.*

Viewing the totality of the evidence in the light most favorable to the verdict, and giving the United States the benefit of all reasonable inferences, *Lincoln*, 630 F.2d at 1316–17, the Court concludes that the evidence presented at trial was more than sufficient for the jury to find Farmer guilty beyond a reasonable doubt on counts 1, 2, and 3. It was the jury's function to evaluate the video recordings and to weigh Officer Templemire's testimony alongside the testimony of the United States' other witnesses and the other audio and video recordings admitted at trial. *United States v. Ireland*, 62 F.3d 227, 230 (8th Cir. 1995) (citing *United States v. Agofsky*, 20 F.3d 866, 869 (8th Cir.), *cert. denied*, 513 U.S. 909 (1994)). Therefore, the Court declines to overturn the jury's guilty verdict and acquit Farmer. *See United States v. Surratt*, 172 F.3d 559, 565 (8th Cir. 1999) ("It is not necessary for the evidence before the jury to rule out every reasonable hypothesis of innocence. It is enough that the entire body of evidence be sufficient to convince the fact-finder beyond a reasonable doubt of the defendant's guilt.") (citing *United States v. Noibi*, 780 F.2d 1419, 1422 (8th Cir. 1986)).

Accordingly, the Court denies Farmer's motion for a judgment of acquittal.

IV. Conclusion

For these reasons the Court denies Farmer's [99] Motion for New Trial, or in the Alternative, Motion for Judgment of Acquittal.

So Ordered this 8th day of December 2021.

SLR. CR

STEPHEN R. CLARK
UNITED STATES DISTRICT JUDGE