# APPENDIX A

22-1360-cr (L)
*United States v. Williams-Dorsey*

# 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 TO 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 20th day of November, two thousand twenty-three.**

PRESENT:

RICHARD C. WESLEY,
DENNY CHIN,
JOSEPH F. BIANCO,
*Circuit Judges.*

---

United States of America,

*Appellee,*

v.

22-1360-cr, 22-1459-cr,
22-1461-cr

Davonte Williams-Dorsey, AKA Davonte Williams-Dorsey,

*Defendant-Appellant.*

---

FOR APPELLEE: NICHOLAS COMMANDEUR, Assistant United States Attorney, *for* Carla B. Freedman, United States Attorney for the Northern District of New York, Syracuse, NY.

FOR DEFENDANT-APPELLANT: PETER J. TOMAO, Garden City, NY.

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

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

Defendant-Appellant Davonte Williams-Dorsey appeals from the district court's judgment of conviction, entered on June 27, 2022. Following a four-day trial, at which Williams-Dorsey represented himself *pro se*, a jury convicted Williams-Dorsey of: (1) conspiracy to distribute and to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846; (2) possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A); and (3) possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i). These convictions relate to Williams-Dorsey's role in the sale of approximately twenty kilograms of methamphetamine to a government confidential source (hereinafter, the "CS") on January 8, 2020, in Syracuse, New York, where Williams-Dorsey was arrested in possession of a loaded 9mm handgun. The evidence at trial included, *inter alia*, the testimony of co-conspirator Tyshawn Logan, who explained how Williams-Dorsey directed him to retrieve the drugs from California and bring them to Syracuse. Williams-Dorsey was sentenced principally to 180 months' imprisonment.

Williams-Dorsey asserts two overarching arguments on appeal. First, he argues that the district court violated his constitutional rights to a fair trial and due process because of the manner in which the trial was conducted, as well as the substantive rulings with respect to his trial preparation and the preclusion of his proposed defenses. Second, he argues that the district court erred in admitting evidence of prior bad acts at trial. We assume the parties' familiarity with the

underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision to affirm.

## I. Fair Trial and Due Process

"[A] criminal defendant is entitled by the Constitution to a meaningful opportunity to present a complete defense." *Scrimo v. Lee*, 935 F.3d 103, 112 (2d Cir. 2019); *see also Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the [government's] accusations."). "Repeated interference with the defense case may work to deprive [a] defendant of a fair trial." *United States v. Filani*, 74 F.3d 378, 386 (2d Cir. 1996). However, "a criminal defendant's right to present evidence is not boundless; it may be limited by evidentiary and procedural rules designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Scrimo*, 935 F.3d at 112 (internal quotation marks and citation omitted). We examine the entire record to determine whether a defendant received a fair trial. *United States v. Mickens*, 926 F.2d 1323, 1327 (2d Cir. 1991). "[T]he cumulative effect of a trial court's errors, even if they are harmless when considered singly, may amount to a violation of due process requiring reversal of a conviction." *United States v. Al-Moayad*, 545 F.3d 139, 178 (2d Cir. 2008).

Williams-Dorsey contends that the district court deprived him of a fair trial by improperly: (i) preventing him from preparing adequately for trial; (ii) precluding him from presenting entrapment and duress defenses; and (iii) interfering with his presentation of evidence and arguments at trial. We address each claim in turn.

### a. Trial Preparation

Williams-Dorsey asserts that several of the district court's rulings prevented him from adequately preparing for trial as a *pro se* defendant. As set forth below, we conclude that each of these challenges is without merit.

#### 1. Request for an Investigator

Williams-Dorsey asserts that the district court improperly denied his request for funds for an investigator under the Criminal Justice Act.

The Criminal Justice Act ("CJA") authorizes funding for investigative services upon a finding "that the services are necessary . . . ." 18 U.S.C. § 3006A(e)(1). The defendant requesting funds "has the burden of satisfying the district court that the services are reasonably necessary," and "must articulate a reasonable basis for the requested services." *United States v. Sanchez*, 912 F.2d 18, 22 (2d Cir. 1990) (alteration adopted) (internal quotation marks and citation omitted). The district court is entitled to require a defendant to submit specific evidence before appointing an investigator. *Id.* (holding that the district court had discretion to deny funds for investigative services after defendant failed to provide an affidavit explaining need). We review a district court's decision to deny such funding for abuse of discretion. *United States v. Bah*, 574 F.3d 106, 118 (2d Cir. 2009).

Williams-Dorsey first requested funds for an investigator in a letter filed January 4, 2021, stating that "[t]here's interesting matters that must be investigated in order for me to be awarded a fair opportunity at trial." App'x at 164. On April 20, 2021, he filed another request, listing twenty-five witnesses who "needed to be interviewed and reasoning why."[1] *Id.* at 179–80. After

[1] Williams-Dorsey's terse explanations for needing to interview these witnesses were vague and generalized. For example, for about a dozen of the proposed witness interviews, Williams-Dorsey only indicated that the purpose of the interview was their "role in investigation." App'x at 180.

reviewing his request, the magistrate judge directed Williams-Dorsey to file a more detailed motion, identifying "what specific resource [he was] looking for with respect to the witnesses," and "spell[ing] out more specifically how [each] witness has relevant information and how that's relevant at this trial." *Id.* at 232, 236–37. Williams-Dorsey did not file a supplemental motion as directed by the court. At a final pretrial conference, the district court found that Williams-Dorsey had "not compl[ied] with the direction of the court as to why these witnesses [were] necessary," and therefore declined to authorize the funds for an investigator. *Id.* at 295–96.

In short, although Williams-Dorsey provided the district court with a list of potential witnesses and a vague reference to their anticipated testimony, he did not sufficiently explain why their testimony or the investigative services were reasonably necessary, even after the court requested that specific information. Accordingly, we conclude that the district court did not abuse its discretion in denying Williams-Dorsey's request for CJA funds to hire an investigator.

**2. Review of Discovery**

Williams-Dorsey also argues that he was not afforded adequate time to review certain discovery materials, and that the district court's enforcement of a protective order in place violated his discovery rights under Rule 16 of the Federal Rules of Criminal Procedure.

Although the government must allow a defendant to inspect or copy certain documents that it intends to use at trial, *see* Fed. R. Crim. P. 16(a)(1)(E), a district court may, "for good cause, deny, restrict, or defer discovery or inspection" in the form of a protective order, *see* Fed. R. Crim. P. 16(d)(1). The "entire management of discovery," including the issuance and enforcement of protective orders, is "within the [d]istrict [c]ourt's broad discretion." *United States v. Loera*, 24 F.4th 144, 155 (2d Cir. 2022). We have found that it is within the district court's discretion, for example, to "require . . . approval before [p]rotected [d]iscovery could be shown to persons not

part of defense counsel's team," or to "permit[] the Government to defer disclosure of various discovery documents until close to the trial." *Id.* (rejecting appellant's argument that the court's protective order denied him the ability to present a defense).

Here, the district court entered a protective order, which authorized the government to designate certain discovery as "Protected Materials [that] may be shown to and reviewed with any incarcerated Defendant, but such incarcerated Defendant may not maintain a copy of the Protected Materials while incarcerated."[2] App'x at 40–41. Williams-Dorsey was incarcerated pretrial, and on December 21, 2020, the district court approved his motion to proceed *pro se*. In a letter filed with the court on February 5, 2021, Williams-Dorsey requested that he be "afforded the ability to review the protected discovery."[3] *Id.* at 166. The district court promptly responded to this request, ordering that Williams-Dorsey be brought to the courthouse to review the protected materials for four hours. The district court ordered three additional review sessions at the courthouse before trial, totaling approximately twelve additional hours.

Although Williams-Dorsey argues that he did not have sufficient time to review the protected discovery materials, he does not identify any particular document or evidentiary item in the Rule 16 discovery that he needed more time to review. In short, on this record, there is no basis to conclude that the district court abused its discretion in determining that the additional steps taken to facilitate Williams-Dorsey's review of the Protected Materials were sufficient to allow

[2] The protective order defines "Protected Materials" as "discovery materials that (i) may reveal the identity of witnesses; (ii) might reveal sensitive, non-public information regarding individuals not involved in the crimes alleged; and (iii) are otherwise protected from disclosure by federal statute." App'x at 40–41. Under the order, the government had the authority to designate the discovery materials as protected. Williams-Dorsey did not oppose the entry of the protective order in the district court, nor does he argue on appeal that the protective order was not properly entered.

[3] We note that the protective order did not affect Williams-Dorsey's ability to maintain in his jail facility discovery materials that were not designated as "Protected Materials."

him to prepare his defense. Moreover, Williams-Dorsey has failed to identify how any additional time for such review would have impacted his performance during the trial or affected the jury's verdict. Therefore, even assuming *arguendo* that there was an abuse of discretion with respect to providing Williams-Dorsey more time to review the Protected Materials, he has failed to demonstrate any prejudice from the effects of the protective order that would warrant a new trial. *See United States v. Crisona*, 416 F.2d 107, 115 (2d Cir. 1969) (holding that error by district court in discovery matter was harmless).

Williams-Dorsey's related argument, that he did not have sufficient time to review materials disclosed by the government pursuant to the Jencks Act, 18 U.S.C. § 3500, is similarly unavailing. As a threshold matter, the district court lacks the authority to order the government to disclose Jencks material "until [the] witness has testified on direct examination in the trial of the case." 18 U.S.C. § 3500(a); *see also In re United States*, 834 F.2d 283, 287 (2d Cir. 1987) (holding that district court has "no inherent power to modify or amend the provisions of [the Jencks] Act"). As an accommodation, the government produced the Jencks material one week prior to trial. On appeal, Williams-Dorsey points to one instance where he asked for additional time to review Jencks material—namely, the statements and reports of the government's first witness, Agent Alicia Scanlon. However, after Williams-Dorsey's standby counsel told the district court that he had not finished reviewing Agent Scanlon's Jencks material, the district court arranged for nearly an hour of extra review before trial the next morning and told Williams-Dorsey, "[i]f you need a little more time, let me know." App'x at 510. When Williams-Dorsey later asked for an additional "few moments to review," the district court agreed. *Id.* at 515. The district court then confirmed with Williams-Dorsey that he was ready before resuming trial. Williams-Dorsey points to no other specific instance where he requested additional time to review a witness's Jencks material prior to

his cross-examination. Therefore, we discern no abuse of discretion in the district court's management of William-Dorsey's need to review the Jencks material before cross-examination of government witnesses.

In any event, a challenge to the verdict based on a defendant's ability to effectively use Jencks material is subject to harmless error analysis on appeal. *See United States v. Jackson*, 345 F.3d 59, 77 (2d Cir. 2003). Indeed, even when the government fails to produce the Jencks Act material, a defendant is not entitled to relief unless there is a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Nicolapolous*, 30 F.3d 381, 383–84 (2d Cir. 1994) (internal quotation marks and citation omitted). Here, Williams-Dorsey has made no showing that, with additional time to review and use the Jencks material produced to him, his questioning of any witness or the result of the trial would have been different.[4]

**b. Limitations on Defenses**

Williams-Dorsey argues that the district court improperly precluded him from raising the defenses of duress and entrapment. We disagree and conclude that the district court correctly ruled that these defenses were not available to Williams-Dorsey as a matter of law.[5]

---

[4] Williams-Dorsey's related argument that he was deprived of the effective assistance of standby counsel as it relates to the review of discovery, as well as other phases of the case, is also unpersuasive. The record reflects that Williams-Dorsey was assisted by standby counsel with respect to both pretrial and trial matters, and we find no basis to conclude that the district court improperly deprived Williams-Dorsey of the effective assistance to such counsel.

[5] As the government notes, we have held that a district court's decision "not to allow the presentation of a defense" is reviewed *de novo*. *See United States v. Markle*, 628 F.3d 58, 62 (2d Cir. 2010); *United States v. Kopp*, 562 F.3d 141, 145 (2d Cir. 2009) (per curiam). However, in some cases, we have also applied an "abuse of discretion" standard to review the factual basis of a proffered defense. *See, e.g.*, *United States v. Hurtado*, 47 F.3d 577, 584–85 (2d Cir. 1995). We need not further explore this issue here because we conclude, even under *de novo* review, that the district court properly determined that there was an insufficient factual basis to support either a duress or an entrapment defense.

A district court "may preclude a defendant from presenting a defense when 'the evidence in support of such a defense would be legally insufficient.'" *United States v. Williams*, 389 F.3d 402, 404 (2d Cir. 2004) (quoting *United States v. Villegas*, 899 F.2d 1324, 1343 (2d Cir. 1990)). Evidence in support of a defense is insufficient as a matter of law if the defendant cannot make a *prima facie* showing as to each element of that defense. *See Villegas*, 899 F.2d at 1343; *United States v. Mitchell*, 725 F.2d 832, 837 (2d Cir. 1983) ("A defendant must present some evidence on all of the elements of the defense.").

To set forth a duress defense, a defendant must establish three discrete elements: "(1) a threat of force directed at the time of the defendant's conduct; (2) a threat sufficient to induce a well-founded fear of impending death or serious bodily injury; and (3) a lack of reasonable opportunity to escape harm other than by engaging in the illegal activity." *United States v. Gonzalez*, 407 F.3d 118, 122 (2d Cir. 2005). "[A] valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct." *Mathews v. United States*, 485 U.S. 58, 63 (1988). "The defendant has the burden of showing inducement and, if inducement is shown, the prosecution has the burden of proving predisposition beyond a reasonable doubt." *United States v. Cromitie*, 727 F.3d 194, 204 (2d Cir. 2013) (citations omitted).

The government moved *in limine* to preclude Williams-Dorsey from asserting a duress defense. The district court then conducted a pretrial evidentiary hearing, at which Williams-Dorsey testified that he had been held captive in Mexico and that his captor told him that he would need to complete a drug deal in the United States in exchange for his release. Williams-Dorsey explained that he (Williams-Dorsey) arranged for another individual to fly down to Mexico to be held as collateral while he completed the drug deal. Thus, Williams-Dorsey testified that he

engaged in the twenty-kilogram methamphetamine transaction in Syracuse so the hostage could be released and he (Williams-Dorsey) "could be free of any future harm or captivity." App'x at 395. Following the hearing, the district court precluded Williams-Dorsey from a duress defense, explaining:

> Based on the testimony presented at the hearing, the Court finds that Defendant has failed to present "some" evidence of every element of his duress defense. Most importantly, he has not presented any evidence that he did not have a reasonable opportunity to escape the threatening situation either by fleeing or by seeking the intervention of the appropriate authorities. In fact, quite the opposite is true. Defendant had multiple opportunities to seek the intervention of the appropriate authorities before he engaged in the drug transaction on January 8, 2020, in Syracuse, New York. Defendant flew through several airports in the United States between his arrival on January 2, 2020, and January 8, 2020, and, by his own admission, never notified any official that he had been held in Mexico against his will or that in order to be free of [his captor's] threat to kill him, he had to engage in the drug transaction and that, unless he engaged in the drug transaction and returned to Mexico, [the individual detained in his place] would be killed.

*Id.* at 420.

We conclude that, on this record, the district court properly precluded the duress defense. We have emphasized that "[a] defendant must make some showing on each element [of the duress defense], including the element that the defendant lacked a reasonable means to escape the threatening conduct 'by seeking the intervention of the appropriate authorities.'" *Gonzalez*, 407 F.3d at 122 (quoting *United States v. Bakhtiari*, 913 F.2d 1053, 1058 (2d Cir. 1990)). As the district court explained, even assuming *arguendo* that the jury credited Williams-Dorsey's version of the events leading up to the drug transaction, he could not demonstrate that he lacked reasonable opportunity to escape the threatened harm by alerting law enforcement authorities in the United States prior to the drug transaction in Syracuse. *See United States v. Alicea*, 837 F.2d 103, 106–07 (2d Cir. 1988) (affirming the preclusion of duress defense by two drug couriers where, even though they claimed they were being watched by their captors during the transportation of the drugs and that their family had been threatened, they had the opportunity to alert customs officials at the

airport); *Bakhtiari*, 913 F.2d at 1056–58 (affirming the preclusion of a duress defense where, even though the defendant alleged that Iranian government officials threatened to harm his family, "th[e] evidence was insufficient to establish that [the defendant] took reasonable steps to escape the threatened harm or to alert the proper authorities").[6] Accordingly, the district court correctly held that Williams-Dorsey was not entitled to present a duress defense to the jury.

We reach the same conclusion as to the entrapment defense. Williams-Dorsey's argument that he was induced to participate in the drug transaction by the CS is belied by uncontroverted evidence that he became involved in the scheme before his first interaction with the CS. Therefore, Williams-Dorsey could not establish government inducement to commit the crime, a requisite element of an entrapment defense. *See United States v. Pilarinos*, 864 F.2d 253, 256 (2d Cir. 1988) (holding that district court properly precluded an entrapment defense where there was no evidence that the defendant was induced to commit the charged crimes). Moreover, even if Williams-Dorsey could satisfy the inducement requirement, there was uncontradicted evidence of his predisposition to commit the crimes, including, *inter alia*, evidence of prior drug transactions with co-conspirator Logan (discussed *infra*). *See Hurtado*, 47 F.3d at 585 ("If the government . . . presents uncontradicted proof of predisposition, the entrapment defense is precluded as a matter of law.").

In sum, because the evidence in support of the duress and entrapment defenses was insufficient to satisfy the requisite elements of either defense, the district court properly precluded those defenses as a matter of law.

---

[6] The district court also separately concluded that the duress instruction was unwarranted because Williams-Dorsey had recklessly or negligently placed himself and the other individual allegedly held as a hostage in a position where it was probable that Williams-Dorsey would be subject to duress. **[A 421]** *See United States v. Agard*, 605 F.2d 665, 667 (2d Cir. 1979) ("[A duress] claim will not constitute a valid legal excuse when the defendant recklessly or negligently placed himself in a situation in which it was probable that he would be subject to duress.") (citations omitted). However, we need not address this alternative ruling.

**c. Trial Management**

Williams-Dorsey further contends that the district court improperly, *inter alia*, interrupted his opening statement, his cross-examination of the government's witnesses, and his summation. In doing so, according to Williams-Dorsey, "[the district judge] repeatedly injected himself into trial in front of the jury in a way that not only systematically undermined [his] ability to present his case but unmistakably portrayed to the jury that the judge believed what [he] said lacked any validity." Appellant's Br. at 11–12. We disagree.

We review trial-management claims for abuse of discretion. *United States v. Yakobowicz*, 427 F.3d 144, 149–50 (2d Cir. 2005). "The trial-management authority entrusted to district courts includes the discretion to place reasonable limits on the presentation of evidence." *United States v. Quattrone*, 441 F.3d 153, 183 (2d Cir. 2006) (internal quotation marks and citation omitted). Moreover, "[a] trial court may ask questions for such purposes as clarifying ambiguities, correcting misstatements, or obtaining information needed to make rulings." *United States v. Messina*, 131 F.3d 36, 39 (2d Cir. 1997) (internal quotation marks and citation omitted). As we have explained, "while the district judge is more than a moderator or umpire and has an active responsibility to see that a criminal trial is fairly conducted, his participation during trial—whether it takes the form of interrogating witnesses, addressing counsel, or some other conduct—must never reach the point at which it appears clear to the jury that the court believes the accused is guilty." *United States v. Robinson*, 635 F.2d 981, 984 (2d Cir. 1980) (internal quotation marks and citations omitted). On review, we must "examine the entire record and attempt to determine whether the conduct of the trial has been such that the jurors have been impressed with the trial judge's partiality to one side to the point that this became a factor in the determination of the jury." *United States v. Guglielmini*, 384 F.2d 602, 605 (2d Cir. 1967).

Here we recognize that, unlike in most trials, the district court interrupted Williams-Dorsey numerous times, including during his jury addresses and questioning of witnesses. However, the district court faced the difficult task of managing a criminal trial with a *pro se* defendant who was frequently making improper and baseless arguments or comments in front of the jury and asking questions on cross-examination that were repetitive, irrelevant, or otherwise improper. Under these particular circumstances, the interruptions reflected the proper exercise of the district court's discretion to fulfill its "responsibility to see that [the] criminal trial [was] fairly conducted," *Robinson*, 635 F.2d at 984 (internal quotation marks and citation omitted), including ensuring that the jury was not distracted or confused by improper arguments and comments. For example, in his opening statement, Williams-Dorsey stated, "I had many witnesses, I won't call them," and also told the jury that "[t]he government will hide many things," show the jury "fabricated reports," and withhold evidence of another individual involved in the offense. App'x at 500–02. The district court's instruction to the jury, that Williams-Dorsey would be able to put "[a]nything that is legally admissible . . . into evidence," was thus necessary to clarify to the jury that it was not being unfairly deprived of its ability to hear all relevant and admissible evidence.[7] *Id.* at 502. Moreover, the limitations on cross-examination often occurred after the district court had already allowed questioning on a particular topic or after Williams-Dorsey engaged in improper commentary in front of the jury. For instance, although Williams-Dorsey asserts that the district court limited his questioning of Logan about a prior arrest on cross-examination, that argument ignores the fact that Williams-Dorsey had already asked Logan a series of questions regarding the prior arrest. In addition, after the district court curtailed a series of improper and argumentative questions during

[7] At another point during the trial, Williams-Dorsey showed a manila folder to the jury upon which he had written "government misconduct" in bold letters while questioning witnesses.

Logan's cross-examination, Williams-Dorsey stated to the judge, in front of the jury: "I have a feeling you don't want me here questioning him or any other witness the government offers. I'm pretty sure I'm not the only one that feels that way in this courtroom." *Id.* at 825–27. Then Williams-Dorsey told the jury, "Every time you guys leave the courtroom, just wonder what happens, just wonder what justice is achieved here. That's why I'm *pro se*." *Id.* at 827.[8]

In sum, viewing this record as a whole, we conclude that the district court's interruptions, comments, and limitations on questioning during the trial were within its broad discretion to manage the criminal trial and, in any event, did not indicate any type of partiality that "became a factor in the determination of the jury." *Guglielmini*, 384 F.2d at 605. Accordingly, we find no basis to disturb the jury's verdict based on the district court's management of the trial.

**II. Prior Acts Evidence**

Williams-Dorsey argues that the district court erred in admitting evidence, offered through Logan and several law enforcement witnesses, regarding three prior incidents in which Williams-Dorsey was allegedly involved in smuggling—two relating to illegal drugs and one relating to undocumented immigrants. Williams-Dorsey contends that these incidents were inadmissible prior bad acts, *see* Fed. R. Evid. 404(b), and were irrelevant and highly prejudicial, *see* Fed. R. Evid. 403.

The government moved *in limine* to admit, under Fed. R. Evid. 404(b), evidence regarding: (1) an April 2018 vehicle stop in Oklahoma in which law enforcement officials seized from Williams-Dorsey and Logan $100,000 in cash, less than one week after Williams-Dorsey drove from Mexico to the United States; (2) an October 2018 vehicle stop in Indiana in which law

[8] To the extent Williams-Dorsey specifically challenges the district court's denial of his request to recall the case agent, we conclude that the district court did not abuse its discretion in making that determination in light of Williams-Dorsey's failure to sufficiently articulate what additional relevant testimony would be elicited if he was permitted to do so.

enforcement officials seized from Williams-Dorsey and Logan approximately five pounds of marijuana; and (3) a February 2019 vehicle stop in Arizona, when Williams-Dorsey was driving a car with several Guatemalan citizens who were present in the United States illegally, which led to Williams-Dorsey's arrest on a federal charge.[9]

The government argued to the district court that evidence of these three prior acts "was relevant to show [Williams-Dorsey's] knowledge and intent to engage in the illegal smuggling activity involved in this case." App'x at 283. It also argued that the April and October 2018 vehicle stops involving alleged narcotics trafficking "were relevant to demonstrate the relationship of trust" between Williams-Dorsey and co-conspirator Logan. *Id.* After hearing arguments on the motion, the district court ruled that the government could use the prior acts evidence in its case-in-chief.

We review a district court's decision to admit or exclude evidence for abuse of discretion. *See United States v. Skelos*, 988 F.3d 645, 662 (2d Cir. 2021). We will reverse such a ruling only when it is "manifestly erroneous" or "arbitrary and irrational." *United States v. Dawkins*, 999 F.3d 767, 788 (2d Cir. 2021) (internal quotation marks and citations omitted).

As a general matter, although evidence of "any other crime, wrong, or act" cannot be used to prove the defendant's propensity to commit the crime charged, it is admissible to show, *inter alia*, intent, knowledge, or absence of mistake. *See* Fed. R. Evid. 404(b)(1), (2); *United States v. Dupree*, 870 F.3d 62, 76 (2d Cir. 2017). Under this Circuit's "inclusionary approach," evidence of a prior act, offered "for any purpose other than to show a defendant's criminal propensity," is admissible so long as it is relevant to an issue at trial and the probative value of the evidence is not

[9] Williams-Dorsey subsequently pled guilty to the misdemeanor offense of assisting individuals after they had illegally entered the United States to avoid apprehension, in violation of 8 U.S.C. § 1325(a)(1) and 18 U.S.C. § 3.

substantially outweighed by the risk of unfair prejudice under Federal Rule of Evidence 403. *United States v. Garcia*, 291 F.3d 127, 136 (2d Cir. 2002) (citations omitted). For example, a district court "can . . . admit evidence of prior acts as probative of knowledge and intent if the evidence is relevant to the charged offense, *i.e.*, if there is a similarity or connection between the charged and uncharged acts." *Dupree*, 870 F.3d at 76 (citing *United States v. Paulino*, 445 F.3d 211, 223 (2d Cir. 2006)). It is likewise "within the [district] court's discretion to admit evidence of prior acts to inform the jury of the background of the conspiracy charged, in order to help explain how the illegal relationship between participants in the crime developed, or to explain the mutual trust that existed between coconspirators." *United States v. Rosa*, 11 F.3d 315, 334 (2d Cir. 1993).

We conclude that the district court did not abuse its discretion in admitting evidence regarding the April and October 2018 vehicle stops involving Logan and Williams-Dorsey. Logan testified that the money seized in the April 2018 vehicle stop was payment for approximately ten kilograms of cocaine that he and Williams-Dorsey had transported from California to New York, and that the marijuana seized in the October 2018 vehicle stop had been picked up by Williams-Dorsey in California. This evidence was probative of Williams-Dorsey's knowledge and intent to engage in a conspiracy with Logan involving drugs from California as charged in this case, and to rebut Williams-Dorsey's argument that he was an unwitting victim of an improper government buy-bust operation.[10] *See also United States v. Aminy*, 15 F.3d 258, 260 (2d Cir. 1994) ("Where . . . defendant does not deny that he was present during a narcotics transaction but simply denies wrongdoing, evidence of other arguably similar narcotics involvement may . . . be admitted to

[10] Contrary to Williams-Dorsey's contention, his knowledge and intent were disputed issues at trial, and he repeatedly argued to the jury that he lacked such knowledge or intent. *See, e.g.*, App'x at 912–13 (highlighting in summation that the second element of the conspiracy count is "knowingly, willingly and with intent" and arguing to the jury that "the facts are right in front of your face and the defendant . . . had no knowledge").

show knowledge or intent."); *United States v. Zackson*, 12 F.3d 1178, 1182 (2d Cir. 1993) ("[E]vidence that [defendant] had previously engaged in narcotics trafficking with [co-defendant] is highly probative of [defendant's] intent to enter another drug conspiracy with the same co-conspirator, and to rebut [defendant's] defense of innocent association."). The evidence of these two prior incidents also was probative to show how the criminal relationship of trust developed between Williams-Dorsey and Logan in the drug trade. *See United States v. Pitre*, 960 F.2d 1112, 1118 (2d Cir. 1992) (upholding admission of evidence of prior drug transactions involving the same parties to show "a relationship of trust between the parties and that they knew about transactions of this type" (internal quotation marks omitted)).

Williams-Dorsey suggests that this alleged "smuggling" evidence lacked probative value because it "did not show any *international* 'smuggling' of drugs" and "[t]he offenses charged in the indictment was [sic] limited to a single buy-bust deal in Syracuse rather than a smuggling offense." Appellant's Br. at 70–71 (emphasis added). However, the probative value of this evidence, in terms of Williams-Dorsey's knowledge regarding the nature of the transaction in Syracuse, as well as how his relationship of trust developed with Logan, was not contingent upon showing that there was an international aspect to any of these prior incidents of alleged drug trafficking activity with Logan. Nor was the probative value substantially undermined by the absence of identical circumstances surrounding the facts of the prior acts and the charged crime. *See, e.g.*, *United States v. McCallum*, 584 F.3d 471, 475 (2d Cir. 2009) ("Where [Rule 404(b)] evidence is offered for the purpose of establishing the defendant's knowledge or intent, we require that the government identify *a similarity or connection* between the two acts that makes the prior act relevant to establishing knowledge of the current act." (emphasis added) (internal quotation marks and citation omitted)). In short, the district court did not abuse its discretion in determining

that the evidence regarding the April and October 2018 vehicle stops was sufficiently similar to the charged conduct, and adequately connected to the development of the criminal relationship between Williams-Dorsey and Logan, to support the government's introduction of that evidence at trial under Rule 404(b).

Although the district court did not explicitly conduct the requisite balancing under Rule 403, that error does not provide a ground for reversal here because Williams-Dorsey makes no persuasive argument that the probative value of this evidence was substantially outweighed by the danger of unfair prejudice, especially where the Rule 404(b) evidence did not involve conduct more serious or inflammatory than the charged crimes. *See United States v. Williams*, 205 F.3d 23, 34 (2d Cir. 2000). Moreover, the district court minimized any potential prejudice by providing the jury with a limiting instruction regarding the proper consideration of that evidence. *See Dupree*, 870 F.3d at 77 ("Although the district court could have conducted a more explicit analysis of the Rule 403 balancing test, there was no harmful error because . . . [the co-conspirator's] testimony was probative as to disputed, relevant issues and was not unduly prejudicial in light of the similarity of the conduct and the contemporaneous limiting instruction.").[11]

Finally, with respect to the admission of the February 2019 vehicle stop in Arizona involving the transportation of individuals who had entered the United States illegally, Williams-Dorsey argues that the district court erred because the evidence lacked probative value for any proper purpose, especially because it did not involve narcotics and Logan was not involved in the

[11] Williams-Dorsey contends that the limiting instruction was insufficient because it was not given to the jury contemporaneously with the admission of the evidence. However, he did not request a contemporaneous instruction, and there is no basis to conclude that the jury was unable to follow the limiting instruction given by the district court as part of the final charge before their deliberations. *See United States v. Paternina-Vergara*, 749 F.2d 993, 999 (2d Cir. 1984) ("[I]n the absence of a request by defense counsel, the lack of a contemporaneous limiting instruction was not error at all, much less a ground for reversal.").

offense. However, we need not address that argument because, even assuming *arguendo* that the district court erred in admitting evidence regarding the February 2019 vehicle stop, any such error was harmless based on the record as a whole. *See United States v. Felder*, 993 F.3d 57, 71 (2d Cir. 2021). The evidence of Williams-Dorsey's prior involvement on one occasion in transporting individuals after they illegally entered the United States was extremely limited and constituted an insubstantial part of the government's overall proof at trial and its arguments to the jury in summation. Therefore, especially in light of the overwhelming evidence against Williams-Dorsey, we "can conclude with fair assurance that the evidence did not substantially influence the jury." *United States v. Cadet*, 664 F.3d 27, 32 (2d Cir. 2011) (internal quotation marks and citation omitted).

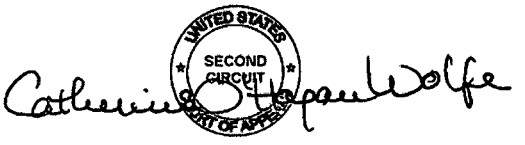
Accordingly, the admission of the prior acts provides no basis for reversal of the convictions.[12]

* * *

We have considered Williams-Dorsey's remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.[13]

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court




[12] We also reject Williams-Dorsey's contention that the prosecutor made any improper arguments with respect to the Rule 404(b) evidence in the opening statement or summation. The prosecutor's statements and arguments regarding the evidence were not improper in light of the trial record and the district court's ruling regarding admission of the Rule 404(b) evidence. *See generally Zackson*, 12 F.3d at 1183 ("The government has broad latitude in the inferences it may reasonably suggest to the jury during summation." (internal quotation marks and citation omitted)).

[13] In light of our affirmance of the conviction, Williams-Dorsey's request that the case be transferred to a different district judge on remand is denied as moot.

**United States Court of Appeals for the Second Circuit**
**Thurgood Marshall U.S. Courthouse**
**40 Foley Square**
**New York, NY 10007**

**DEBRA ANN LIVINGSTON**
**CHIEF JUDGE**

**CATHERINE O'HAGAN WOLFE**
**CLERK OF COURT**

Date: November 20, 2023
Docket #: 22-1360cr
Short Title: United States of America v. Williams-Dorsey

DC Docket #: 5:20-cr-86-1
DC Court: NDNY (SYRACUSE)DC Docket #: 5:20-cr-86-1
DC Court: NDNY (SYRACUSE)DC Docket #: 5:20-cr-86-1
DC Court: NDNY (SYRACUSE)
DC Judge: Scullin

## BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:
* be filed within 14 days after the entry of judgment;
* be verified;
* be served on all adversaries;
* not include charges for postage, delivery, service, overtime and the filers edits;
* identify the number of copies which comprise the printer's unit;
* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
* state only the number of necessary copies inserted in enclosed form;
* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
* be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit**
**Thurgood Marshall U.S. Courthouse**
**40 Foley Square**
**New York, NY 10007**

**DEBRA ANN LIVINGSTON**
**CHIEF JUDGE**

Date: November 20, 2023
Docket #: 22-1360cr
Short Title: United States of America v. Williams-Dorsey

**CATHERINE O'HAGAN WOLFE**
**CLERK OF COURT**

DC Docket #: 5:20-cr-86-1
DC Court: NDNY (SYRACUSE)DC Docket #: 5:20-cr-86-1
DC Court: NDNY (SYRACUSE)DC Docket #: 5:20-cr-86-1
DC Court: NDNY (SYRACUSE)
DC Judge: Scullin

## VERIFIED ITEMIZED BILL OF COSTS

Counsel for

_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

_____

and in favor of

_____

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____ ____) _____

Costs of printing reply brief (necessary copies _____) _____

**(VERIFICATION HERE)**

_____

Signature

# APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

v. 5:20-CR-86 (FJS)

DAVONTE WILLIAMS-DORSEY,

Defendant.

---

| APPEARANCES | OF COUNSEL |
|---|---|
| OFFICE OF THE UNITED STATES ATTORNEY<br>James Hanley U.S. Courthouse<br>& Federal Building<br>100 South Clinton Street<br>P.O. Box 7198<br>Syracuse, New York 13261-7198<br>Attorneys for the United States | NICOLAS COMMANDEUR, AUSA |
| ZIMMER LAW OFFICE, PLLC<br>The University Building<br>120 East Washington Street<br>Suite 815<br>Syracuse, New York 13202<br>Attorneys for Defendant | KIMBERLY M. ZIMMER, ESQ. |

SCULLIN, Senior Judge

## MEMORANDUM-DECISION AND ORDER

## I. INTRODUCTION AND BACKGROUND

On March 11, 2020, a federal grand jury charged Defendant in a three-count Indictment with (1) conspiracy to distribute with intent to distribute a controlled substance, (2) possession with intent to distribute a controlled substance, and (3) possession of a firearm in furtherance of a drug trafficking crime. *See* Dkt. No. 15. The first charge specified that, from on or about

December 1, 2019, through January 8, 2020, in Onondaga County, Defendant conspired with codefendant Tyshawn Logan and others to knowingly and intentionally distribute and possess with intent to distribute a controlled substance, involving 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of 21 U.S.C. §§ 841(a)(1) and 846. *See id.* at 1-2. The second count charged that, on or about January 8, 2020, Defendant knowingly and intentionally possessed with intent to distribute a controlled substance involving 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers, in violation of 21 U.S.C. § 841(a)(1). *See id.* at 2. Thirdly, the Indictment charged Defendant with knowingly possessing a firearm, specifically a Taurus Model G2C 9-millimeter handgun, serial number TMA93089, in furtherance of one or more of the drug trafficking crimes described in Counts 1 and 2, in violation of 18 U.S.C. § 924(c)(1)(A)(i). *See id.* at 2-3.

During the trial, the Government presented evidence from thirteen witnesses and introduced various exhibits, which included Defendant's recorded conversations, video of Defendant, extraction reports from Instagram accounts and cell phones, photographs, plea agreements, and the 9-millimeter handgun. Defendant, representing himself pro se, did not present a case. The jury returned a verdict on the fourth day of trial, July 2, 2021, convicting Defendant as charged in the Indictment and finding that his drug trafficking crimes involved 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine. *See* Dkt. No. 177. On March 18, 2022, Defendant filed the pending motion for acquittal and for a new trial pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure. *See* Dkt. No. 225.

## II. DISCUSSION

### A. Defendant's Rule 29 motion for a judgment of acquittal

At the close of the Government's case-in-chief, Defendant moved for a judgment of acquittal, pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure, arguing that the Government had not presented sufficient evidence and that the Court should dismiss the case, which the Court denied. *See* Dkt. No. 225 at 4 (citing Dkt. No. 221-2 at 153). Defendant now renews his motion for a judgment of acquittal pursuant to Rule 29. *See id.* at 5. He does not point to any facts or law to support his request. *See generally id.*

Federal Rule of Criminal Procedure 29(c) permits a district court to set aside the verdict and enter a judgment of acquittal after the jury has returned a guilty verdict. *See* Fed. R. Crim. P. 29(c)(2). "On a defendant's post-verdict motion, the court 'must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction.'" *United States v. Cacace*, 796 F.3d 176, 191 (2d Cir. 2015) (quoting Fed. R. Crim. P. 29(a)). "The test established by the Supreme Court requires the court to determine 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States v. Mahannah*, 193 F. Supp. 3d 151, 153 (N.D.N.Y. 2016) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). "A single witness' testimony, if believed by the jury, is sufficient to support a federal conviction regardless of whether it is corroborated so long as it is not 'incredible on its face and is capable of establishing guilt beyond a reasonable doubt.'" *Peart v. Royce*, No. 9:17-cv-01187-JKS, 2019 U.S. Dist. LEXIS 127193, *16 (N.D.N.Y. July 31, 2019) (quoting *United States v. Parker*, 903 F.2d 91, 97 (2d Cir. 1990))

(other citation omitted). "Rule 29(c) does not provide the trial court with an opportunity to 'substitute its own determination of . . . the weight of the evidence and the reasonable inferences to be drawn for that of the jury.'" *United States v. Guadagna*, 183 F.3d 122, 129 (2d Cir. 1999) (quotation omitted). Finally, "[t]he court must consider the evidence 'in its totality, not in isolation, and the government need not negate every possible theory of innocence.'" *Mahannah*, 193 F. Supp. 3d at 153 (quoting *United States v. Cote*, 544 F.3d 88, 98 (2d Cir. 2008)) (other citation omitted).

Defendant has not provided any reasoning to support why he believes that the Government's evidence is insufficient to prove, beyond a reasonable doubt, that he is guilty of the crimes charged in the Indictment. However, upon review of the evidence produced at trial, as discussed below, the Court finds that the evidence was sufficient for the jury to reasonably find Defendant guilty as charged.

In its case-in-chief, the Government first presented Special Agent Alicia Scanlon, a United States Drug Enforcement Administration ("DEA") agent, who targeted Defendant, listened to his communications with an informant – which were played for the jury – and interpreted Defendant's coded language for the jury to explain that he was planning a drug transaction known as a "buy-bust." *See* Dkt. No. 221-1 at 4-16. She also explained that she was part of the law enforcement team that surveilled the location where the drug transaction was supposed to take place, and she equipped the informant with a recording device when taking him to that location. *See id.* at 16-24. Notably, the jury reviewed as evidence the recording from that device as well as a written transcription of it. *See id.* As part of that recording, the jury could hear that Defendant and the informant discussed whether Defendant had 20 or 30 kilograms of methamphetamine and what the price would be for the drugs. *See id.*

at 25-28. The Government also played video evidence of the drug transaction for the jury. *See id.* at 30-31. According to Agent Scanlon, law enforcement arrested Defendant at the time of the transaction, and the police interviewed him later that day. *See id.* at 32-33.

Jason Worth, a City of Rome police detective who assisted the DEA and interviewed Defendant following his arrest, testified that Defendant allegedly admitted to him that he was in Syracuse "[t]o do a 20 kilo drug deal," and he explained whom he expected to meet, where, who was with him, and how the drugs made their way to Syracuse. *See id.* at 102-108. Defendant also apparently admitted to Detective Worth that the handgun he was carrying when he was arrested belonged to Mr. Logan, and he had removed it from the Airbnb where he was staying before going to the drug deal. *See id.* at 109. Daniel Babbage, a detective and investigator with the Syracuse Police Department, also testified that he was present at the buy-bust and that he interviewed Defendant along with Detective Worth. *See id.* at 176-183.

The Government then called Keith Fox, a Senior Investigator with the New York State Police. *See id.* at 121. Investigator Fox photographed the contents of the drug transaction, and the jury viewed those photographs as well as other evidence recovered from the scene while Investigator Fox described what the jury was viewing. *See id.* at 122-132. Another member of the arrest team, Anthony Hart, Jr., a special agent with the DEA, testified about his role as well. *See id.* at 139-140. Special Agent Hart testified that, upon arresting Defendant, he found a loaded 9-millimeter Taurus handgun in Defendant's waistband. *See id.* at 142-144.

The Government next called Robert Travis, II, an intelligence research specialist with the DEA, who testified that he extracted data from an iPhone that law enforcement recovered during the buy-bust, and the Government showed the jury screenshots that Specialist Travis recovered of text messages sent through a specific messaging app on the phone. *See id.* at 154-

162. Specialist Travis also extracted data from an iPhone belonging to Mr. Logan, and he showed conversations he extracted between Mr. Logan and Defendant that were stored on the phone. *See id.* at 163-167.

Lastly, on the first day of trial, the Government called Paul Eberle, Jr., a border patrol supervisor in Casa Grande, Arizona, who testified about an incident in February 2019, in which Defendant was arrested for alien smuggling across the Mexican-American border. *See id.* at 168-172.

On the second day of trial, the Government called Mr. Logan to testify. Mr. Logan, who was indicted with Defendant, appeared for the Government pursuant to a plea agreement, in which he testified initially about his history with Defendant. For example, he stated that, in 2018, he, Defendant, and a friend drove 10 kilograms of cocaine from California to New York in exchange for cash, which they spent driving around the country, renting exotic cars, and staying in nice hotels. *See* Dkt. No. 221-2 at 18-30. According to Mr. Logan, he and Defendant had made those trips two or three times. *See id.* at 30-35. He also testified that Defendant had told him that he was making money transporting illegal immigrants into the United States. *See id.* at 35.

With respect to the incident for which Defendant stood trial, Mr. Logan testified that he and Defendant got 22 kilograms of drugs from California to Syracuse, which he unpackaged in an Airbnb, put into two suitcases, and left for Defendant to take to the transaction. *See id.* at 36-42. Mr. Logan also testified about phone call and text message conversations between Defendant and him regarding the drug transaction, which were shown to the jury; and he also recalled his movements between California, Arizona, Illinois, Ohio, Colorado, and New York City before the transaction in Syracuse. *See id.* at 41-52, 54-58, 60-61. Mr. Logan explained

that Defendant arrived in Syracuse on January 7, 2020, one day before he was arrested, and the last time Mr. Logan saw his handgun was that night when he was in the Airbnb with Defendant; when Mr. Logan woke up on January 8, 2020, his gun was gone. *See id.* at 53, 59-61.

The Government next called Brian Taylor, an Indiana police officer, who testified that he had stopped Defendant, Mr. Logan, and another male passenger on a highway in that state in 2018, which corroborated some of Mr. Logan's testimony about their prior cross-country drug trafficking experiences. *See id.* at 116-118. Similarly, Matt Niles, a DEA agent stationed in Oklahoma, testified that he stopped Defendant, Mr. Logan, and another male on a highway in Oklahoma, which also corroborated some of Mr. Logan's testimony. *See id.* at 123-127.

The Government also called Henry Esche, an Investigator with the New York State Police, to testify regarding extractions of Defendant's and Mr. Logan's Instagram accounts, which were produced for the jury. *See id.* at 3-13. Furthermore, to sustain its burden with respect to the chemical composition of the drugs, the Government called Christopher Benintendo, a forensic chemist for the DEA, to testify. He analyzed the drugs that law enforcement secured after the buy-bust and concluded that it was just a bit under 10 kilograms of methamphetamine. *See id.* at 131-141. Lastly, the Government called Matthew Kurimsky, a firearms examiner for Onondaga County, to testify regarding the firearm that Defendant had in his waistband when he was arrested, which was a Taurus G2CPT111 semi-automatic 9-millimeter pistol with serial number TMA93089. *See id.* at 144-147. According to Mr. Kurimsky, the firearm was operable, and it was high-capacity, having more than "12 plus 1 rounds of ammunition." *See id.* at 147-148. He also determined that the pistol was semi-automatic and subcompact. *See id.* at 148-149.

Based on the foregoing evidence, which the Court must view in the light most favorable to the prosecution, the Court finds that the Government met its burden in offering evidence that a jury could find beyond a reasonable doubt established Defendant's guilt with respect to all three counts charged in the Indictment. As such, the Court denies Defendant's renewed motion for a judgment of acquittal.

**B. Defendant's Rule 33 motion for a new trial**

"Rule 33 confers 'broad discretion upon a trial court to set aside a jury verdict and order a new trial to avert a perceived miscarriage of justice[.]'" *United States v. Vanhise*, 797 F. App'x 618, 621 (2d Cir. 2020) (summary order) (quoting *United States v. Sanchez*, 969 F.2d 1409, 1413 (2d Cir. 1992)). "[U]nlike a Rule 29 challenge, courts may grant a Rule 33 motion where the verdict is contrary to 'the weight of the evidence[.]'" *Id.* (quoting *United States v. Ferguson*, 246 F.3d 129, 136 (2d Cir. 2001)). The court must examine the totality of the case to determine whether competent, satisfactory, and sufficient evidence supports the jury's finding that the defendant is guilty beyond a reasonable doubt. *See United States v. Sanchez*, 969 F.2d 1409, 1414 (2d Cir. 1992). "There must be a real concern that an innocent person may have been convicted. ... It is only when it appears that an injustice has been done that there is a need for a new trial 'in the interest of justice.'" *Id.* (internal footnote omitted).

In this case, Defendant raises two different reasons why he believes he is entitled to a new trial. First, he contends that the Court denied him a fair trial because he was not able to keep certain discovery, labeled "Protected Materials," in his possession in jail. Second, Defendant contends that the Court should have permitted him to raise the affirmative defense of duress. The Court addresses each of these issues in turn.

*1. The Court's protective order*

Rule 16 of the Federal Rules of Criminal Procedure provides that, "[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief." Fed. R. Crim. P. 16(d)(1). This allows courts to issue "protective orders" governing discovery of certain materials. *See generally id.* Courts in this Circuit have found that reasonable restrictions on a defendant's access to protected materials in a jail setting are appropriate, particularly when there is a legitimate concern for witness safety. *See United States v. Ruth*, No. 1:18-CR-00004 EAW, 2020 U.S. Dist. LEXIS 100933, *6 (W.D.N.Y. June 9, 2020); *United States v. Garcia*, 406 F. Supp. 2d 304, 306-07 (S.D.N.Y. 2005). *But see United States v. Burgess*, No. 18-cr-373 (RJS), 2018 U.S. Dist. LEXIS 240839, *6-*10 (S.D.N.Y. Sept. 21, 2018).

In March 2020, the Government moved for a protective order pursuant to Rule 16(d)(1), alleging that the discovery in the case included sensitive information and that the charges alleged in the Indictment pertained to a substantial narcotics trafficking operation, which raised "concerns about public dissemination of materials that might identify witnesses or ongoing investigations." *See* Dkt. No. 18 at 3. The Government argued that it had "recent experience in other cases involving allegations of drug trafficking where inmates circulated discovery through the jails with notes purporting to identify cooperating witnesses." *See id.* Additionally, the Government asserted that it had recently intercepted defendants' jail calls in unrelated cases in which they discussed "posting information about their cases, including discovery, on social media accounts, purportedly to help identify cooperating witnesses." *See id.* Defendant did not timely object to the Government's motion for a protective order. *See generally* Dkt. Nos. 18-22.

The Court thereafter issued a protective order in this case, in which it designated as "Protected Materials" "certain discovery materials that (i) may reveal the identity of witnesses; (ii) might reveal sensitive, non-public information regarding individuals not involved in the crimes alleged; and (iii) are otherwise protected from disclosure by federal statute." *See* Dkt. No. 22 at 1-2. The Court specified that the "Protected Materials may be shown to and reviewed with any incarcerated Defendant, but such incarcerated Defendant may not maintain a copy of the Protected Materials while incarcerated." *See id.* at 2. Furthermore, the Court noted that nothing in the order prevented Defendant "from making an application to the Court challenging the Government's designation of material as Protected Materials[.]" *See id.*

Defendant now contends that he did not receive a fair trial because he did not have access to those materials while he was detained. *See* Dkt. No. 225 at 7. However, Defendant also acknowledges that the Court permitted him to meet with standby counsel to review discovery materials covered by the protective order on no fewer than four occasions, as well as two other times before pretrial conferences, and in the morning before trial commenced. *See id.*; Dkt. Nos. 77, 97, 125, 135. Moreover, as the Government points out, Magistrate Judge Lovric explicitly informed Defendant when he was seeking to represent himself that it would be more "difficult" for him to do so because he would not be permitted to keep certain discovery materials in jail with him and that only Judge Scullin could undo the protective order. *See* Dkt. No. 230 at 10-12. In any event, Defendant indicated that, in representing himself, he could "work at getting discovery and orders compelling or changing the protective order [him]self[.]" *See id.* at 13. It appears that, throughout the course of this litigation, Defendant has failed to indicate which information he did not receive or could not view for a long enough period of

time, nor does it appear that he ever moved the Court to dismiss the protective order in its entirety.

Based on the fears of witness tampering raised in the Government's motion, the Court's issuance of several orders to produce Defendant to the courthouse to review discovery materials with standby counsel, and Defendant's willingness to proceed pro se knowing that he could not hold certain discovery materials in jail, the Court finds that its decision to issue the protective order pursuant to Rule 16(d)(1) did not violate Defendant's constitutional right to a fair trial. As such, the Court denies Defendant's motion for a new trial on this ground.

*2. Defendant's duress defense*

Defendant generally alleges that the Court denied him a fair trial when it precluded him from raising the affirmative defense of duress. *See* Dkt. No. 225 at 7. "The defense of duress . . . 'constitutes a legal excuse for criminal conduct when, at the time the conduct occurred, the defendant was subject to actual or threatened force of such a nature as to induce a well-founded fear of impending death or serious bodily harm from which there was no reasonable opportunity to escape other than by engaging in the otherwise unlawful activity.'" *United States v. Bakhtiari*, 913 F.2d 1053, 1057 (2d Cir. 1990) (quoting *United States v. Mitchell*, 725 F.2d 832, 837 (2d Cir. 1983) (quoting *United States v. Agard*, 605 F.2d 665, 667 (2d Cir. 1979))). "'Where there is reasonable opportunity to escape the threatened harm, the defendant must take reasonable steps to avail himself of that opportunity, whether by flight or by seeking the intervention of the appropriate authorities.'" *Id.* at 1058 (quoting *Alicea*, 837 F.2d at 106). "However, such a claim will not constitute a valid legal excuse when the defendant has recklessly or negligently placed himself in a situation in which it was probable that he would be subject to duress." *United States v. Agard*, 605 F.2d 665, 667 (2d Cir. 1979) (citations omitted).

Finally, "[a] defendant . . . 'must present some evidence on all of the elements of the defense,' including the distinct 'element of lack of a reasonable opportunity to escape the threatening situation . . . .'" *Bakhtiari*, 913 F.2d at 1057-58 (quoting *United States v. Patrick*, 542 F.2d 381, 388 (7th Cir. 1976)).

Here, the Court held an evidentiary hearing and afforded Defendant the opportunity to show that he could establish the elements of a duress defense at trial. *See* Dkt. No. 168. As the Court explained in its Memorandum-Decision and Order denying Defendant's motion to raise the duress defense, Defendant testified at the hearing that he met with an individual through Instagram who asked him if he wanted to make money, he said that he did, and all he had to do was go to Mexico and wait there for a week. *See* Dkt. No. 170 at 2-3. When Defendant arrived in Mexico, the people he was supposed to meet took his passport and identification card, and informed him that he was being held because the individual he met on Instagram had taken drugs from the people in Mexico and had not paid them. *See id.* at 3. Defendant kept his phone with him while in Mexico, and he made numerous phone calls and posted on social media. *See id.* Defendant eventually negotiated for his baby son and his son's mother to visit him in Mexico for his birthday, which they did, and while they were there Defendant left them with the people who were allegedly holding him hostage so that he could return to Arizona for a court appearance. *See id.* Defendant did not tell any of the officers in customs in Arizona or anyone at his court appearance that he was being held hostage in Mexico or that his baby and baby's mother were being held hostage there. *See id.* at 3-4. Defendant also met with Mr. Logan and another friend in Ohio before he returned to Mexico, and he never tried to report anything to law enforcement about what was happening there. *See id.* at 4.

Once Defendant returned to Mexico, he was allegedly informed that he would have to do a drug deal to pay off the debts of the person he met on Instagram, and he would have to find someone to take his place in Mexico while he was doing the drug deal. *See id.* Defendant then contacted Mr. Logan, who said he would send his cousin to Mexico to take Defendant's place until Defendant completed the drug deal and returned. *See id.* Defendant and Mr. Logan's cousin celebrated New Year's Eve in Mexico before Defendant left for the United States, and he posted videos of the celebration to social media. *See id.* Defendant then flew from Mexico to Los Angeles to conduct the drug transaction, but he did not tell any officers when he went through customs and immigration about what was happening in Mexico or why he had returned to the United States. *See id.* at 5. Defendant then spent a few days in Arizona regarding his court case there, and then he flew from Arizona to Syracuse on January 7, 2020, the day before he was arrested for his drug transaction. *See id.* Defendant never informed law enforcement personnel in either Arizona or Syracuse about what was going on in Mexico. *See id.* According to Defendant, he believed that when he gave the drugs to the designated person in Syracuse, that person would give him money that he was supposed to take with him back to Mexico to free both himself and Mr. Logan's cousin. *See id.*

Based on Defendant's testimony, the Court found that Defendant failed to present "some" evidence of every element of his duress defense. *See id.* Most importantly, the Court found that Defendant had not presented any evidence that he did not have a reasonable opportunity to escape the threatening situation either by fleeing or by seeking the intervention of the appropriate authorities. *See id.* The Court noted that Defendant actually had "multiple opportunities" to seek intervention from law enforcement before he engaged in the drug transaction on January 8, 2020, leading to his arrest in Syracuse. *See id.* He flew through

several airports and interacted with customs agents and law enforcement multiple times, yet he never told anyone that he was being held in Mexico against his will or that, to be free, he would have to engage in a drug transaction. *See id.* The Court further noted that, by initially traveling to Mexico voluntarily to earn money under those circumstances and by leaving his baby son and his son's mother there while he returned to the United States for a court appearance, "there can be no doubt that Defendant recklessly or negligently placed himself as well as his family in a situation in which it was probable that he would be subject to duress." *See id.* at 6. Accordingly, for all of the reasons that the Court articulated in its prior Order addressing this issue, the Court concludes that its decision precluding Defendant from raising the affirmative defense of duress did not deny him a fair trial. The Court therefore denies Defendant's motion for a new trial on this ground.

## III. CONCLUSION

After carefully considering the entire file in this matter, the parties' submissions and the applicable law, and for the above-stated reasons, the Court hereby

**ORDERS** that Defendant's motion for acquittal or for a new trial, *see* Dkt. No. 225, is **DENIED;** and the Court further

**ORDERS** that, due to a conflict with the Court's schedule, sentencing is rescheduled to **11:30 a.m.** on **Friday, June 17, 2022,** in **Syracuse, New York.** The Court further directs the parties to file their sentencing memoranda on or before **May 27, 2022.**

**IT IS SO ORDERED.**

Dated: May 3, 2022
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Judge

# APPENDIX C

# SPA11



**United States District Court**
**Northern District of New York**

---

United States of America

vs 5:20-cr-86 (FJS)

DaVonte Williams-Dorsey,
Defendant.

---

**ORDER TO PRODUCE**

**IT IS ORDERED** that the above named defendant be produced from the Montgomery County Jail to appear at the United States Courthouse, 100 South Clinton Street, Syracuse, New York, Courtroom #4, 10th floor **on March 4, 2021 at 10:00am**, where the defendant will meet with his stand-by counsel, Kimberly Zimmer, to review Court ordered "protected discovery" material. The defendant will be allowed to review the material and take notes, under the supervision of counsel. The defendant shall not retain in his possession any copies of this discovery material. The defendant shall not confer or seek advice from counsel at this meeting. Because the defendant has chosen to represent himself in this case, it continues to be the defendant's responsibility to prepare his case, without the assistance of stand-by *trial counsel*. The meeting shall conclude no later than 2:00pm. The defendant will then be returned to the custody of the Montgomery County Jail.

**IT IS SO ORDERED.**

February 10, 2021
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Judge

# APPENDIX D

# 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 24th day of January, two thousand twenty-four.

United States of America,

Appellee,

v.

Davonte Williams-Dorsey, AKA Davonte Williams-Dorsey,

Defendant - Appellant.

**ORDER**

Docket Nos: 22-1360 (Lead)
22-1459 (Con)
22-1461 (Con)

Appellant, Davonte Williams-Dorsey, 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